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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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HOLLY ARTIS, on behalf of herself and
all others similarly situated,

No. C 10-05289 WHA

Plaintiff,

v.

DEERE & COMPANY and JOHN DEERE
LANDSCAPES, INC.,

Defendants.

**ORDER PARTIALLY
GRANTING AND
PARTIALLY DENYING
MOTION FOR LEAVE
TO FILE SECOND
AMENDED COMPLAINT
AND VACATING HEARING**

INTRODUCTION

In this purported class action for gender discrimination, plaintiff moves for leave to file a second amended complaint. For the reasons set forth below, the motion is **GRANTED IN PART AND DENIED IN PART**.

STATEMENT

Plaintiff commenced this purported class action in November 2010. She filed an amended complaint in March 2011, and that pleading remains operative. It purported to bring the action “on behalf of a Title VII class of all female job applicants and deterred applicants for entry level sales, customer service and shipping and receiving positions in DEERE’s Equipment Operations divisions who have been or may be denied employment” by defendants (Amd. Compl. ¶ 7).

1 A case management conference was held a week after plaintiff filed her amended
2 complaint. Following the conference, a case management scheduling order was issued on
3 March 28, 2011. That order stated: “Leave to add any new parties or pleading amendments must
4 be sought by **JULY 29, 2011**” (Dkt. No. 24 at 1).

5 In July 2011, plaintiff requested an extension of the deadline for seeking leave to add
6 named plaintiffs (Dkt. No. 44). The request was based on a discovery delay caused by
7 defendants' stonewalling. It was granted in August 2011. Plaintiff was instructed that she "may
8 file a motion for leave to add named plaintiffs by **SEPTEMBER 22, 2011**" (Dkt. No. 51 at 3-4).

9 Plaintiff filed the instant motion for leave to file a second amended complaint on
10 September 22, 2011. The proposed pleading adds two named plaintiffs and also contains other
11 amendments (Dkt. No. 59). Defendants do not oppose the addition of the two new plaintiffs, but
12 they do oppose the other proposed amendments (Dkt. No. 63). Plaintiff describes those additional
13 changes as “amend[ing] allegations to conform to the evidence produced to date and narrow[ing]
14 the class” (Br. 1). Defendants, on the other hand, view them as “substantially expand[ing] the
15 scope of the class” (Opp. 1). This order follows full briefing.

ANALYSIS

17 FRCP 15(a) states that a court should freely grant leave to amend when justice so requires.
18 Leave to amend, however, is not automatic. A district court may “deny leave to amend due to
19 undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure
20 deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue
21 of allowance of the amendment, [and] futility of amendment.” *Zucco Partners, LLC v.*
22 *Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (internal quotations omitted).

23 Once a district court has issued a scheduling order, FRCP 16 controls. The scheduling
24 order limits the time during which a party can amend its pleadings. Without a request to modify
25 the scheduling order, a party cannot amend its pleadings. At that point, any schedule
26 modification to allow pleading amendments must be based on good cause. FRCP 16(b)(4);
27 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). Good cause requires
28 diligence by the moving

1 party. A modification of the pretrial schedule would be merited if the deadline could not be met
2 “despite the diligence of the party seeking the extension.” *Johnson v. Mammoth*
3 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

4 Plaintiff’s request to add two more named plaintiffs was timely filed and is not opposed.
5 As to the addition of two new named plaintiffs, the motion is **GRANTED**.

6 Plaintiff’s request to make other pleading amendments, however, is untimely. The
7 deadline for seeking leave to amend passed on July 29, 2011 — nearly two months before
8 plaintiff filed the instant motion. The extension plaintiff was granted in August 2011 was limited
9 to the narrow purpose of adding new named plaintiffs; it did not allow other pleading
10 amendments.

11 Plaintiff makes no claim that she could not have met the July 29 deadline despite her
12 diligence in prosecuting her case. Plaintiff’s reply brief notes that in June 2011 she requested a
13 Rule 30(b)(6) deposition of defendant John Deere Landscapes, Inc. to be scheduled within July,
14 but that due to defendant’s scheduling constraints the deposition took place on September 8, 2011
15 (Reply Br. 4). Plaintiff was on notice of the July 29 deadline when she agreed to schedule the
16 deposition for September.

17 Plaintiff has not shown good cause for amending the case management scheduling order to
18 allow her unauthorized pleading amendments. As to the proposed amendments other than adding
19 named plaintiffs, the motion is **DENIED**. This order need not reach the parties’ arguments
20 concerning whether those amendments would have narrowed or expanded the proposed class and
21 whether they would have prejudiced defendants.

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CONCLUSION

2 For the foregoing reasons, plaintiff's motion for leave to file a second amended compliant
3 is **GRANTED IN PART AND DENIED IN PART**. Plaintiff may file a second amended complaint that
4 adds two more named plaintiffs, but the new pleading must be identical to the previous one in all
5 other respects. It must be filed by **OCTOBER 21, 2011**. The motion hearing previously set for
6 October 27, 2011, is **VACATED**.

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IT IS SO ORDERED.

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10 Dated: October 17, 2011.


11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE

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