

1  
2  
3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
5 **OAKLAND DIVISION**

6  
7 WELLS FARGO BANK, N.A., as  
8 TRUSTEE for the CLARA POPPIC  
9 TRUST,

No. C 08-02561 SBA

Plaintiff,

**ORDER**

[Docket No. 189]

v.

10  
11 KENNETH G. RENZ; ESTATE OF  
12 JACKSON R. DENNISON; ESTATE OF  
13 WILEY UMSTEAD; KAZUKO  
14 UMSTEAD; WON JAE YI aka  
15 MICHAEL YI; NAN Y. PARK; GUAN  
16 HUANG; YING ZHANG and SUI  
17 SONG,

Defendants.

18  
19 This matter comes before the Court on Defendant Kazuko Umstead's ("Defendant  
20 Umstead") Motion to Amend the Court's Order for Pretrial Preparation for Leave to File First  
21 Amended Cross-Claim and Second Amended Third-Party Complaint to Add Newly Discovered  
22 Parties ("Motion"). (Docket No. 189.) The hearing on the Motion is set for November 17, 2009.

23 After a responsive pleading has been served, the Federal Rules of Civil Procedure allow a  
24 party to amend a pleading "only with the opposing party's written consent or the court's leave." Fed.  
25 R. Civ. P. 15(a)(1)(A). But the court should freely give leave to amend whenever justice so  
26 requires. *Id*; *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per  
27 curiam); see also *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

28 Under Local Rule 7-3, any opposition to the motion or statement of non-opposition must be  
filed no later than 21 days before the hearing date. The Court's Standing Orders specifically warn  
that failure to file an opposition to a motion shall constitute a consent to the granting of the motion.

1 Therefore, any opposition or statement of non-opposition was due on or before October 27, 2009.  
2 Plaintiff Wells Fargo, N.A. ("Plaintiff"), as Trustee for the Clara Poppic Trust, filed a statement of  
3 non-opposition on October 27, 2009. (Docket No. 191.) To date, the Court has received no  
4 opposition or statement of non-opposition from any other party to the action.

5 Plaintiff commenced this action on May 21, 2008. (Docket No. 1.) On November 4, 2008,  
6 Plaintiff filed a Second Amended Complaint. (Docket No. 102.) During the course of discovery, on  
7 August 21, 2009, the deposition of defendant Kenneth Renz ("Defendant Renz") was conducted.  
8 Defendant Umstead alleges that the deposition of Defendant Renz revealed the existence of several  
9 parties that should be joined as defendants, including the Hoyt Corporation ("Hoyt"). Hoyt is a  
10 manufacturer of dry cleaning equipment that is allegedly responsible for releasing hazardous  
11 substances into the subject property.

12 Defendant Umstead notes that based on the information discovered at the deposition of  
13 Defendant Renz, Plaintiff filed a Motion for Leave to File Third Amended Complaint to join Hoyt as  
14 a defendant. (Docket No. 180.) Defendant Umstead requests that, should this Court grant Plaintiff's  
15 Motion for Leave to File Third Amended Complaint, the Court also grant Umstead leave to file a  
16 First Amended Cross-Claim ("FACC") adding Hoyt as a cross-defendant. Additionally, Defendant  
17 Umstead seeks leave to file a Second Amended Third-Party Complaint ("SATPC") adding Perc-  
18 Serv, Steam Equipment and Values as third-party defendants, also parties identified at the deposition  
19 of Defendant Renz. Lastly, Defendant Umstead asks this Court to enlarge the dates set in the Case  
20 Management Scheduling Order "a minimum of six months to allow adequate time for new parties to  
21 find counsel, respond to FACC and SATPC, and to catch-up with the parties currently involved in  
22 the litigation." (Mot. at 5:10-13.)

23 Here, the Court having granted Plaintiff's request to file a Third Amended Complaint,  
24 Defendant Umstead properly seeks leave of this Court to file a first amended cross-claim adding  
25 Hoyt as a defendant. No parties have objected to Umstead's request. Absent evidence of prejudice,  
26 there exists a presumption under Rule 15(a) in favor of granting leave to amend. *Eminence*, 316  
27

1 F.3d at 1051. No potential prejudice that could result from Defendant Umstead amending its cross-  
2 claim to add Hoyt as a defendant is apparent to this Court. Thus, the Court recognizes the  
3 presumption in favor of granting leave to amend, and GRANTS Defendant Umstead’s request for  
4 leave to file a first amended cross-claim to include Hoyt.

5 Based on the information provided at the deposition of Defendant Renz, Defendant Umstead  
6 also requests the Court’s leave, pursuant to Federal Rule of Civil Procedure 14, to “serve a summons  
7 and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed.  
8 R. Civ. P. 14(a)(1). In deciding whether impleader is appropriate, the district court must balance the  
9 "desire to avoid circuity of actions and to obtain consistent results against any prejudice that the  
10 plaintiff might suffer from complications of the case." *Irwin v. Mascott* (N.D. Cal. 2000) 94 F.  
11 Supp. 2d 1052, 1056 (citing *Somoportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435,  
12 439 n. 6 (3rd Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972)). Plaintiff filed a statement of non-  
13 opposition to Defendant Umstead’s Motion. The Court therefore exercises its broad discretion,  
14 erring on the side of judicial efficiency, to allow Umstead to amend its third-party complaint to  
15 include Perc-Serv, Inc., Steam Equipment Sales Company and Values, Inc.

16 Although Defendant Umstead invokes Federal Rule of Civil Procedure 16(e) to guide the  
17 Court’s analysis with respect to Umstead’s request to enlarge pretrial dates, Rule 16(e) actually  
18 applies only to requests to modify an order after a final pretrial conference. No such conference has  
19 occurred in this case. Rule 16(b) governs the present situation: once a scheduling order has been  
20 entered, it “may be modified only for good cause and with the judge's consent.” Fed. R. Civ. P.  
21 16(b)(4). The district court may modify the pretrial schedule “if it cannot reasonably be met despite  
22 the diligence of the party seeking the extension.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d  
23 604, 609 (9th Cir. 1992) (citing Fed. R. Civ. P. 16 advisory committee's notes (1983 amendment);  
24 *Harrison Beverage Co. v. Dribeck Importers, Inc.*, 133 F.R.D. 463, 469 (D.N.J. 1990); *Amcast*  
25 *Indus. Corp. v. Detrex Corp.*, 132 F.R.D. 213, 217 (N.D. Ind. 1990); *Forstmann*, 114 F.R.D. at 85;  
26 6A Wright, Miller & Kane, *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990) (“good  
27

1 cause” means scheduling deadlines cannot be met despite party’s diligence)). It is premature for the  
2 Court, without the input of any parties that may be added, to determine how much time, if any,  
3 additional parties may require to meet the Court’s deadlines. Defendant Umstead’s request is  
4 DENIED, but the Court will set a Case Management Conference where the issue can be raised and  
5 discussed with all parties.

6 Accordingly,

7 IT IS HEREBY ORDERED THAT:

- 8 1. Defendant Kazuko Umstead's Motion for Leave to File First-Amended Cross-Claim  
9 is GRANTED. Defendant Kazuko Umstead shall file the first-amended cross-claim  
10 within five days of the date this order is filed;
- 11 2. Defendant Kazuko Umstead's Motion for Leave to File Second Amended Third-Party  
12 Complaint to Add Newly Discovered Parties is GRANTED. Defendant Kazuko  
13 Umstead's shall file the second amended third-party complaint within five days of the  
14 date this order is filed;
- 15 3. Defendant Kazuko Umstead's Motion to Amend the Court’s Order for Pretrial  
16 Preparation is DENIED;
- 17 4. The hearing on the motion scheduled for November 17, 2009 is VACATED;
- 18 5. A Case Management Conference is scheduled for **January 14, 2010, at 3:30 p.m.**  
19 The parties shall **meet and confer** prior to the conference and shall prepare a joint  
20 Case Management Conference Statement which shall be filed no later than ten (10)  
21 days prior to the Case Management Conference that complies with the Standing  
22 Order For All Judges Of The Northern District Of California and the Standing Order  
23 of this Court. Plaintiffs shall be responsible for filing the statement as well as for  
24 arranging the conference call. All parties shall be on the line and shall call (510)  
25 637-3559 at the above indicated date and time.  
26

27 IT IS SO ORDERED.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: 11/16/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK N.A. et al,  
Plaintiff,

Case Number: CV08-02561 SBA  
**CERTIFICATE OF SERVICE**

v.  
RENZ et al,  
Defendant.  
/\_\_\_\_\_

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 16, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Won Jae Yi  
2565 Telegraph Avenue  
Berkeley, CA 94704

Dated: November 16, 2009

Richard W. Wiekling, Clerk  
By: LISA R CLARK, Deputy Clerk