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**\*E-FILED 03-12-2010\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MACH-T3 ENGINEERING, LLC,

No. C09-03886 HRL

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE AN  
AMENDED COMPLAINT**

v.

BAE SYSTEMS LAND & ARMAMENTS LP,

[Re: Docket No. 20]

Defendant.

\_\_\_\_\_  
BAE SYSTEMS LAND & ARMAMENTS LP,

Counterclaimant,

v.

MACH-T3 ENGINEERING, LLC,

Counterdefendant.  
\_\_\_\_\_

Plaintiff Mach-T3 Engineering, LLC (“Mach-T3”) filed this action, invoking the court’s diversity jurisdiction and asserting claims for breach of contract, quantum meruit, and open book account. Briefly stated, plaintiff alleges that defendant BAE Systems Land & Armaments LP (“BAE”) owes hundreds of thousands of dollars for engineering and consulting services provided pursuant to the parties’ agreements. BAE asserts a counterclaim for breach of contract, alleging that Mach-T3 accepted and kept duplicate payments from defendant.

1 Mach-T3 now moves for leave to file a first amended complaint (or, alternatively, to  
2 supplement the original complaint) to add an additional breach of contract theory. Plaintiff  
3 contends that BAE improperly terminated the parties' contracts and prevented Mach-T3 from  
4 performing work under those agreements. Plaintiff also seeks to amend the amounts allegedly  
5 owed by defendant on the existing claims — i.e., to correct certain errors and to reflect  
6 payments that BAE made after the original complaint was filed. BAE says nothing about the  
7 proposed amendments to correct the sums allegedly owed. However, defendant vigorously  
8 opposes any amendment as to the alleged improper termination of the parties' contracts.  
9 Pursuant to this court's February 26, 2010 order, this matter was deemed submitted without oral  
10 argument. Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, this  
11 court grants the motion.

12 Rule 15(a) of the Federal Rules of Civil Procedure governs motions for leave to amend  
13 and provides that "[t]he court should freely give leave when justice so requires." FED. R. CIV.  
14 P. 15(a)(2). The decision whether to grant leave to amend under Rule 15(a) is committed to the  
15 sound discretion of the trial court. See Waits v. Weller, 653 F.2d 1288, 1290 (9th Cir. 1981).  
16 Leave need not be granted, however, where the amendment would cause the opposing party  
17 undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay.  
18 Foman v. Davis, 371 U.S. 178, 182 (1962). "Absent prejudice, or a strong showing of any of  
19 the remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting  
20 leave to amend." Eminence Capital LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

21 BAE argues that all four Foman factors are present here. Chief among defendant's  
22 contentions is that plaintiff unduly delayed in seeking amendment. It appears that plaintiff now  
23 wishes to assert an additional breach of contract theory based on information that it has known  
24 for several months. Nevertheless, the record presented indicates that, in the months after the  
25 original complaint was filed, BAE led plaintiff to believe that it was working to achieve a  
26 "global resolution" of all issues, including any dispute as to the alleged improper contract  
27 termination. (See Nuddleman Reply Decl., Ex. B). Although plaintiff conceivably might have  
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1 sought amendment sooner, under the circumstances presented here, the court does not find that  
2 any delay was undue.

3 Nor has BAE shown that it will be seriously prejudiced by the amendment. Here,  
4 defendant contends that the proposed amendment will convert what it viewed as a simple  
5 collection action into a more complex “termination” action with twice the amount of damages  
6 than those claimed in the original complaint. BAE argues that, in view of the April 23, 2010  
7 close of fact discovery, it simply will not have enough time to prepare its defense. Relying  
8 primarily upon AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946 (9th Cir. 2006),  
9 BAE argues that plaintiff’s motion must be denied. However, in that case, the movant,  
10 AmerisourceBergen, knew of the requisite facts for over a year and did nothing about it.  
11 AmerisourceBergen Corp., 465 F.3d at 953. Additionally, just three months prior to seeking  
12 amendment, AmerisourceBergen admitted to certain facts which it sought to drastically change  
13 on an amended pleading. Id. Here, plaintiff’s proposed amendment appears to be based upon  
14 essentially the same universe of facts alleged in the original complaint. And, the court does not  
15 find any shift in the nature of the case to be nearly as dramatic as BAE contends. Moreover,  
16 discovery remains open, and trial is some six months away. If BAE finds that, despite all due  
17 diligence, it needs more time beyond April 23, 2010 in which to conduct discovery, it may  
18 make an application to this court for good cause shown.

19 BAE next argues that the proposed amended pleading is futile because it does not allege  
20 sufficient facts to overcome a Fed. R. Civ. P. 12(b)(6) motion to dismiss. However, the  
21 proposed amended pleading (a) specifies the contracts in question; and (b) alleges that BAE  
22 “has not complied with the early termination requirements in the contracts” and “prevented  
23 Plaintiff from further performing work on contracts by refusing to allow Plaintiff entry onto  
24 Defendant’s premises prior to the termination dates specified in the contracts.” (Mot. Ex. A  
25 (Proposed Amended Complaint at 4-5)). These allegations are sufficient to state a claim for  
26 relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct.  
27 1955, 167 L.Ed.2d 929 (2007).

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Finally, BAE asserts that amendment is sought merely to gain some (unfair) leverage at the parties' mediation. However, on the record presented, this court finds no sound basis to conclude that plaintiff is seeking the amendment in bad faith.

Accordingly, plaintiff's motion to amend is granted. Plaintiff's alternate motion to supplement the existing complaint is deemed moot. Mach-T3 shall file its amended pleading as a new docket entry forthwith. Response to the amended complaint shall be made in accordance with the Federal Rules of Civil Procedure. See FED. R. CIV. P. 15(a)(3).

SO ORDERED.

Dated: March 12, 2010

  
\_\_\_\_\_  
HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

1 5:09-cv-03886-HRL Notice has been electronically mailed to:

2 Robert Edward Nuddleman robert@griegolaw.com

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4 Counsel are responsible for distributing copies of this document to co-counsel who have not  
5 registered for e-filing under the court's CM/ECF program.

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