

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ERIC BALLARD,
Plaintiff,
v.
LUMENIS INC.,
Defendant.

Case No. [5:15-cv-03164-HRL](#)

**ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND COMPLAINT¹**

Re: Dkt. No. 53

Shortly after the complaint was filed, the parties stipulated to conditional certification of a collective class and distribution of notice. Plaintiffs now move for leave to amend their complaint to replace the previously named plaintiff, Eric Ballard,² with opt-in plaintiff Raul Cordero and to add Cordero’s New York state labor law claims. Defendant Lumenis, Inc. (Lumenis) opposes the motion on the ground that this case is not an appropriate collective action.

Rule 15(a) of the Federal Rules of Civil Procedure governs motions for leave to amend and provides that “[t]he court should freely give leave when justice so requires.” FED. R. CIV. P.15(a)(2). The decision whether to grant leave to amend is within the discretion of the trial court. See Waits v. Weller, 653 F.2d 1288, 1290 (9th Cir. 1981). Leave need not be granted, however,

¹ The matter is deemed suitable for determination without oral argument. Civ. L.R. 7-1(b).

² Ballard, along with several other collective members, accepted defendant’s Fed. R. Civ. P. 68 offers of judgment.

1 where the amendment would cause the opposing party undue prejudice, is sought in bad faith,
2 constitutes an exercise in futility, or creates undue delay. Foman v. Davis, 371 U.S. 178, 182
3 (1962). “Absent prejudice, or a strong showing of any of the remaining Foman factors, there
4 exists a presumption under Rule 15(a) in favor of granting leave to amend.” Eminence Capital
5 LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

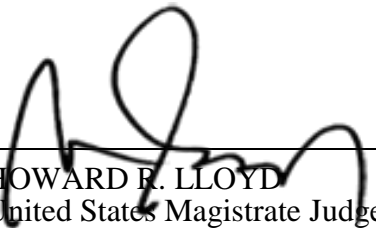
6 This court finds no undue prejudice, bad faith, or undue delay. Although Lumenis
7 contends that the amendment will be futile, defendant essentially is asking this court to make
8 factual findings re decertification that cannot appropriately be made on the record presented. If
9 Lumenis believes that decertification is warranted, then it should bring a proper motion at the
10 appropriate time.

11 Plaintiffs’ motion for leave to amend the complaint is granted. The amended complaint
12 shall forthwith be filed as a separate ECF docket entry.

13 SO ORDERED.

14 Dated: April 22, 2016

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HOWARD R. LLOYD
United States Magistrate Judge

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5:15-cv-03164-HRL Notice has been electronically mailed to:

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