

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Doe I, Doe II, Ivy He, Doe III, Doe IV, Doe V, )  
Doe VI, Roe VII, Charles Lee, Roe VIII, Liu )  
Guifu, and those individuals similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Cisco Systems, Inc., et al. )  
 )  
 )  
Defendants. )

Case No.: 5:11-CV-02449-EJD  
**ORDER GRANTING MOTION FOR  
LEAVE TO FILE A SECOND  
AMENDED COMPLAINT**  
  
**[Re: Docket Item No. 101]**

Presently before this court is Plaintiffs’ Motion for Leave to File a Second Amended Complaint. See Docket Item No. 101. Pursuant to Civil L.R. 7-1(b), the motion was taken under submission without oral argument. For the reasons discussed below, the court GRANTS Plaintiffs’ motion.

**I. BACKGROUND**

On May 19, 2011 Plaintiffs filed this putative class action. See Docket Item No. 1. Defendants filed a Motion to Dismiss the Complaint on August 4, 2011. See Docket Item No. 49. Plaintiffs filed a First Amended Complaint (“FAC”) on September 20, 2011 and Defendants filed a Motion to Dismiss the FAC on September 23, 2011 (Docket Item No. 67). On November 9, 2011, this court terminated Defendants’ Motion to Dismiss the FAC without prejudice and terminated Defendants’ Motion to Dismiss the original Complaint when the Supreme Court granted certiorari

1 on two cases, namely Kiobel v. Royal Dutch Petroleum Co., 621 F.3d 111 (2nd Cir. 2010), cert.  
2 granted, 79 U.S.L.W. 3728 (U.S. Oct. 17, 2011) (No. 10-1491), and Mohamad v. Rajoub, 634 F.3d  
3 604 (D.C. Cir. 2011), cert. granted, 80 U.S.L.W. 3059 (U.S. Oct 17, 2011) (No. 11-88). See  
4 Docket Item No. 79. Plaintiffs filed the present motion on August 1, 2013, after the Supreme  
5 Court announced its decisions in both cases.

## 6 II. LEGAL STANDARD

7 “[A] party may amend its pleading only with the opposing party’s written consent or the  
8 court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P.  
9 15(a)(2). “[R]ule 15’s policy of favoring amendments to pleadings should be applied with extreme  
10 liberality.” DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987) (internal citations  
11 and quotations omitted). In cases, however, where a party moves to amend or add a party after a  
12 specific deadline for filing motions or amending the pleadings, the “good cause standard” for  
13 modification of a scheduling order under Rule 16(b) governs. See Johnson v. Mammoth  
14 Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir. 1992).

15 Here, Plaintiffs met the deadline for amended pleadings previously set by the court. See  
16 Docket Item No. 100. The court therefore applies the more lenient Rule 15 standard. Under Rule  
17 15(a), leave to amend should be granted unless amendment: (1) would cause prejudice to the  
18 opposing party, (2) is sought in bad faith, (3) creates undue delay, (4) or is futile. Chudacoff v.  
19 Univ. Med. Ctr. of S. Nev., 649 F.3d 1143, 1153 (9th Cir. 2011). However, consideration of  
20 prejudice to the opposing party carries the greatest weight. Eminence Capital, LLC v. Aspeon,  
21 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

## 22 III. DISCUSSION

23 Plaintiffs seek to amend their pleadings to add newly-discovered facts, add two new  
24 plaintiffs, and address the recent Supreme Court decisions, which were not available to them when  
25 Plaintiffs drafted their FAC.

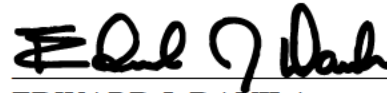
26 Defendants argue that Plaintiffs’ motion should be denied because amendment is futile,  
27 belated, and prejudicial. The first argument fails because the proposed amendments relate to the  
28 Supreme Court’s decision in Kiobel regarding the “touch and concern” standard articulated by the

1 Court. Whether the facts sufficiently “touch and concern” the United States to overcome the  
2 presumption against extraterritoriality is a question on the merits. Under Rule 15(a), “courts  
3 ordinarily defer consideration of challenges to the merits of a proposed amended pleading until  
4 after leave to amend is granted and the amended pleading is filed.” Hynix Semiconductor Inc. v.  
5 Toshiba Corp., 2006 WL 3093812 (N.D. Cal. Oct. 31, 2006). Defendants’ second argument fails  
6 because this present motion was filed in accordance with the deadline set by the court. Third, the  
7 court finds no prejudice against Defendants, as the nature of the claims and the underlying legal  
8 theories have not changed.

9 Thus, in light of the generous standard in favor of amendments and the absence of any  
10 demonstrated prejudice resulting from the amendment, IT IS HEREBY ORDERED that Plaintiffs’  
11 Motion for Leave to File a Second Amended Complaint is GRANTED. Plaintiffs must file an  
12 amended complaint as a separate docket entry forthwith.

13  
14 **IT IS SO ORDERED**

15 Dated: September 18, 2013

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17 EDWARD J. DAVILA  
18 United States District Judge