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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WAGNER AERONAUTICAL, INC.; MAMMOTH FREIGHTERS LLC; WILLIAM WAGNER; and WILLIAM TARPLEY, Plaintiffs, v. DAVID DOTZENROTH; SEQUOIA AIRCRAFT CONVERSIONS, LLC; CAI CONSULTING LTD.; and CHARLES WILEY DOTZENROTH, Defendants.	Case No. 3:21-cv-00994-L-AGS **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT** Hearing Date: November 19, 2021 Courtroom 5B Judge M. James Lorenz

Expedited discovery has revealed that individuals affiliated with the National Institute for Aviation Research at Wichita State University ("NIAR") have misappropriated Plaintiffs' trade secrets. As detailed in the attached Proposed Amended Complaint, those officials (the putative "NIAR Defendants") willingly received the trade secrets from Defendants David and Wiley Dotzenroth and used the proprietary information with knowledge, or reason to know, that the trade secrets had been misappropriated. To remedy the NIAR Defendants' misconduct and to centralize all disputes regarding Plaintiffs' trade secrets, Plaintiffs seek leave to amend their complaint to add the NIAR Defendants as parties to this case.

The Ninth Circuit has recognized a "'strong policy permitting amendment,'" *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999), that is to be "'applied with extreme liberality,'" *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). Consistent with that liberal policy, amendment should be permitted here. Plaintiffs seek leave to amend within the deadline set by this Court while the case is still in its early stages. Written discovery is underway, but it is not set to close until January 31, 2022. Fact discovery is not set to close until March 31, 2022. Plaintiffs' motion is thus timely. Amendment will also not result in undue prejudice to any party. No new claims are asserted against the existing defendants, and discovery involving those defendants may proceed as scheduled. With respect to the NIAR Defendants, amending the complaint is identical to the alternative option: filing this case as a separate action. Accordingly, no justification exists to overcome the presumption in favor of granting leave to amend.

BACKGROUND

I. PLAINTIFFS' ORIGINAL COMPLAINT

On May 25, 2021, Plaintiffs filed a complaint against Defendants David Dotzenroth ("Dotzenroth"); Wiley Dotzenroth ("Wiley"); Sequoia Aircraft Conversions, LLC; and CAI Consulting Ltd. (collectively, the "Dotzenroth Defendants"), asserting, among other

claims, that the Dotzenroth Defendants misappropriated trade secrets in violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836. Dkt. 1.[1]

As alleged in that complaint, Plaintiffs drew on their deep experience and expertise in the passenger-to-freighter ("P2F") conversion industry to develop a program for the conversion of a specific model of jumbo jet. Dkt. 1 at ¶¶ 15, 17-18, 28, 33-34, 36-39. In developing that program, Plaintiffs created the trade secrets at issue – a business plan, a budget and schedule roadmap, and certain information contained in those documents – which set forth a wide array of proprietary information, including engineering and design details; a business and marketing strategy; financial information, including cost estimates, projected revenue, and capital requirements; schedules; labor estimates; and competitive-advantage analyses. *Id.* ¶¶ 37-38.

Dotzenroth, who lacked engineering or conversion experience, worked with Plaintiffs for more than a year. Plaintiffs gave him access to their trade secrets (and other information) so that he could secure financing for the program. Dkt. 1 at ¶¶ 33-35. His access was contingent on maintaining the confidentiality of the trade secrets, *id.*, and Dotzenroth understood the need for confidentiality, *id.* ¶¶ 45-46. Indeed, he was particularly vocal about requiring outsiders to execute NDAs and reminded Plaintiffs to mark the trade secrets as "proprietary." *Id.* ¶ 46.

In the summer of 2019, Dotzenroth and Plaintiffs parted ways after Dotzenroth failed to secure funding for the P2F program. Dkt. 1 at ¶¶ 52-55. Almost immediately, Dotzenroth began searching for a new partner. Using Plaintiffs' proprietary information, he sought out NIAR and secured its partnership for his own P2F conversion program as well as additional partners and investment. *Id.* ¶¶ 56-65. Ultimately, Dotzenroth's gambit was successful. In September 2020, NIAR announced a partnership with Dotzenroth for a conversion program that would compete with Plaintiffs' program. *Id.* ¶ 66.

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[1] Claims against two additional defendants, Andrew Mansell and Steven Welo, were dismissed without prejudice pursuant to a joint stipulation. Dkt. 109.

II. PROCEDURAL HISTORY AND EXPEDITED DISCOVERY

On June 21, 2021, Plaintiffs filed a motion for a preliminary injunction, indicating that they planned to seek expedited discovery in support of their motion. Dkt. 16. Plaintiffs did so on June 24. Dkt. 33. The Court granted Plaintiffs' request for expedited discovery on July 1, 2021. Dkt. 42. On July 16, 2021, the Court considered the scope of expedited discovery, authorizing Plaintiffs to serve one discovery request and two interrogatories on Defendants. Hr'g Tr. 9:17-10:7, 26:23-28:18, 32:7-33:18. The Court also authorized depositions of David and Wiley Dotzenroth and permitted Plaintiffs to serve a subpoena on NIAR. *Id.* Through expedited discovery, Plaintiffs have received documents from both the Dotzenroth Defendants and NIAR, as well as interrogatory responses from the Dotzenroth Defendants. The depositions of David and Wiley Dotzenroth concluded on October 14, 2021.

Discovery under Rule 26 is ongoing. The document discovery deadline is January 31, 2022. Dkt. 91 at 1. Fact discovery will conclude by March 31, 2022. *Id.* at 1. Expert discovery begins February 28, 2022, and concludes June 30, 2022. *Id.* at 2-3. The deadline to join other parties, to amend the pleadings, or to file additional pleadings is October 22, 2021. *Id.* at 1.

III. THE PROPOSED AMENDED COMPLAINT

Expedited discovery has revealed that NIAR received Plaintiffs' trade secrets from the Dotzenroth Defendants and that officials at NIAR knew, or had reason to know, that the trade secrets belonged to Plaintiffs and that the Dotzenroth Defendants lacked authorization to distribute or use them. Nonetheless, those NIAR officials chose to capitalize on the stolen information it received, launching a conversion program with the Dotzenroth Defendants in direct competition with Plaintiffs' program. Consequently, Plaintiffs seek leave to amend the complaint to add certain NIAR personnel as defendants.

The Proposed Amended Complaint, which is attached as Exhibit 1 and is incorporated herein, details NIAR's misconduct. Expedited discovery has revealed that the Dotzenroth Defendants repeatedly provided NIAR personnel with Plaintiffs' trade

secrets, along with other material the Dotzenroths received from Plaintiffs. The Dotzenroth Defendants attempted to obscure the origins of the information they passed along to NIAR. But they bungled those efforts: It was obvious that the documents NIAR received belonged to Plaintiffs. And it was equally obvious the Dotzenroths were trying to hide that fact. For example, in copied versions of the business plan Dotzenroth sent to NIAR, the Dotzenroth Defendants accidentally left in references to "Mammoth" – Plaintiffs' company name – as well as other references to Plaintiffs. *See, e.g.*, Ex. 1 at ¶¶65, 70, 80. Metadata in documents sent to NIAR revealed that Plaintiffs were the author of the documents forwarded by the Dotzenroth Defendants. *Id.* ¶¶63, 66. And emails sent by the Dotzenroth Defendants indicated that they were forwarded from another party. *Id.* ¶¶63, 99. Eventually, in 2021, the Dotzenroth Defendants forwarded an unaltered copy of Plaintiffs business plan to a NIAR engineer, leaving no doubt as to the origin of the documents. *Id.* ¶98.

Expedited discovery has also revealed the extent of harm caused by NIAR's trade-secret misappropriation. NIAR and the Dotzenroth Defendants are directly competing with Plaintiffs on the wings of proprietary information stolen from Plaintiffs. Ex. 1 at ¶¶96-101, 104-15. Accordingly, Plaintiffs now seek leave to add the NIAR Defendants as parties to this case.

ARGUMENT

Within the deadline set by this Court and months before document discovery is set to conclude, Plaintiffs seek leave to add the NIAR Defendants as defendants in this action. Beyond adding a single claim against the NIAR Defendants for trade-secret misappropriation, the Proposed Amended Complaint adds no new claims and does not substantively alter the allegations against the Dotzenroth Defendants. Under these circumstances, leave to amend is warranted.

Federal Rule of Civil Procedure 15(a) instructs district courts to "freely give leave" to amend "when justice so requires." Under that directive, there is a "'strong policy permitting amendment,'" *Bowles*, 198 F.3d at 757, that is to be "'applied with extreme

liberality,'" *Eminence Cap.*, 316 F.3d at 1051; *see Bona Fide Conglomerate, Inc. v. Sourceamerica*, No. 14-cv-751, 2016 WL 67720, at *4 (S.D. Cal. Jan. 5, 2016) (courts are "extremely liberal" in "favoring leave to amend").

In determining whether to grant leave to amend, courts consider the following factors: "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *Reyes v. United States*, No. 20-cv-1752, 2021 WL 4442036, at *1 (S.D. Cal. Sept. 28, 2021) (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962)). The factor of undue prejudice to the opposing party "'carries the greatest weight.'" *Id.* (quoting *Eminence Cap.*, 316 F.3d at 1052). "The party opposing amendment bears the burden of showing bad faith, unfair delay, prejudice, or futility of amendment." *Copart, Inc. v. Sparta Consulting, Inc.*, No. 14-cv-46, 2016 WL 3126108, at *3 (E.D. Cal. June 2, 2016); *see United States v. LeBeau*, No. 17-cv-1046, 2018 WL 2734924, at *2 (S.D. Cal. June 7, 2018) ("As a consequence of Rule 15(a)'s liberal spirit, the nonmoving party bears the burden of demonstrating why leave to amend should be denied."). "Absent prejudice, or a strong showing of any of the remaining . . . factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Eminence Cap.*, 316 F.3d at 1052 (emphasis in original).

"Allowing parties to amend based on information obtained in discovery is common and well established." *Fru-Con Constr. Corp. v. Sacramento Mun. Utility Dist.*, No. 05-cv-583, 2006 WL 3733815, at *5-6 (E.D. Cal. Dec. 15, 2006) (granting motion to amend pleadings to add two new parties).[2] Accordingly, where, as here, evidence of a party's

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[2] *Fru-Con* dealt with the "good cause" standard for amendment after the court has filed a pretrial scheduling order under Federal Rule of Civil Procedure 16. 2006 WL 3733815, at *3. That standard is "more stringent" than Rule 15's liberal standard for amendment. *San Diego Cnty. Credit Union v. Citizens Equity First Credit Union*, No. 18-cv-967, 2020 WL 1864781, at *6 (S.D. Cal. Apr. 14, 2020). Moreover, once the good-cause standard of Rule 16 is satisfied, courts then have "discretion to grant or deny leave to amend" under Rule

misconduct arises in discovery, courts routinely allow plaintiffs to amend their complaint to add that party as a defendant. *See, e.g.*, *Estate of Nunez v. County of San Diego*, No. 16-cv-1412, 2017 WL 2984121, at *4 (S.D. Cal. July 11, 2017) (permitting plaintiffs to add new parties based on information learned from discovery); *Rodriguez v. Vizio, Inc.*, No. 14-cv-368, 2014 WL 12479974, at *1 (S.D. Cal. Dec. 19, 2014) (granting plaintiff leave to amend where information learned through discovery gave rise to new claims against additional parties). In *Woodward v. County of San Diego*, No. 17-cv-2369, 2020 WL 1820265 (S.D. Cal. Apr. 10, 2020), for example, the court granted leave to add a new defendant under both Federal Rules of Civil Procedure 15 and 16 ***after*** fact discovery had concluded based on evidence obtained in discovery. *Id.* at *1-6; *see supra* n.2. Amendment is even more appropriate here than in *Woodward*, as the deadline to amend pleadings has not passed and fact discovery will not close until March 31, 2022. Dkt. 91 at 1.

None of the circumstances justifying denial of leave to amend are present here (although it is the burden of a party opposing amendment to show that such circumstances exist, *see* p. 5, *supra*). First, Plaintiffs have not previously filed an amended complaint or even sought to do so. Thus, there is no "repeated failure to cure deficiencies by amendments previously allowed." *Reyes*, 2021 WL 4442036, at *1.

Second, Plaintiffs have not unduly delayed, or acted in bad faith or with dilatory motive. This case is "still in its early stages" – fact discovery is set to close March 31, 2022 – and Plaintiffs have sought leave to amend within the deadline set by the Court. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (reversing a denial of leave to amend); *see* Dkt. 91 at 1. Moreover, Plaintiffs have moved for leave to amend just one week after the conclusion of the depositions ordered by the Court as part of expedited discovery. They have not delayed, let alone *unduly* delayed. *See Morongo Band of Mission*

15(a). *Woodward v. County of San Diego*, No. 17-cv-2369, 2020 WL 1820265, at *2 (S.D. Cal. Apr. 10, 2020).

1 *Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (affirming grant of leave to amend
2 where there was a delay "of nearly two years"). In any event, even if Plaintiffs had delayed,
3 which they have not, "[d]elay alone is not sufficient to justify the denial of a motion
4 requesting leave to amend." *DCD Programs*, 833 F.2d at 187.

5 Third, amendment will not result in undue prejudice. With respect to the Dotzenroth
6 Defendants, they face no undue prejudice because Plaintiffs assert no new claims against
7 the Dotzenroth Defendants, the substance of the factual allegations against the Dotzenroth
8 Defendants in the proposed Amended Complaint is essentially the same as in the
9 complaint, and discovery as between Plaintiffs and the Dotzenroth Defendants may
10 continue as scheduled. *See Agne v. Papa John's Int'l, Inc.*, No. 10-cv-1139, 2011 WL
11 13127653, at *1 (W.D. Wash. Nov. 3, 2011) (no undue prejudice where the "proposed new
12 complaint adds no new claims against Defendants" but instead added a new Defendant);
13 *Quicksilver, Inc. v. Kymsta Corp.*, No. 02-cv-5497, 2007 WL 9712162, at *1 (C.D. Cal.
14 Aug 20, 2007) (no undue prejudice where "no new causes of action or claims for relief"
15 were advance against the defendant).[3] With respect to the NIAR Defendants, they face no
16 prejudice whatsoever: An amended complaint in the current litigation has an identical
17 impact as a complaint in a newly filed action.

18 More fundamentally, because this case is "still in the early stages" and "[d]iscovery
19 is open," "there is no undue prejudice." *Tian-Rui Si v. CSM Inv. Corp.*, No. 06-cv-7611,
20 2007 WL 2601098, at *2 (N.D. Cal. Sept. 6, 2007). Indeed, rather than result in undue
21 prejudice, amendment here promotes judicial economy, allowing centralization of the
22 dispute involving Plaintiffs' trade secrets.[4]

23

24 [3] Plaintiffs agree that briefing on the Dotzenroth Defendants' pending motion for judgment
25 on the pleadings, Dkt. 96, applies equally to the proposed Amended Complaint as it does to the original complaint.

26 [4] Joinder of the NIAR Defendants is appropriate under Rule 20 because the claims against
27 the Dotzenroth Defendants and the NIAR Defendants "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" and involve common questions of law
28 or fact. Fed. R. Civ. P. 20(a)(2).

1 Finally, amendment is not futile. Far from it. Amendment is futile "'only if [the
2 amended complaint] would be clearly subject to dismissal.'" *Duchemin v. Leidos, Inc.*,
3 No. 18-cv-12, 2018 WL 2229368, at *2 (S.D. Cal. May 16, 2018). That is far from the
4 case here. Plaintiffs' amended complaint contains detailed allegations that – taken as true
5 and construed in the light most favorable to Plaintiffs, *McShannock v. JP Morgan Chase*
6 *Bank NA*, 976 F.3d 881, 886-87 (9th Cir. 2020) – easily satisfy Rule 8's pleading standards.
7 Plaintiffs allege specific facts showing, among other things, that (1) they owned trade
8 secrets, (2) the Dotzenroth Defendants provided the trade secrets to the NIAR Defendants
9 without authorization, (3) the NIAR Defendants knew that the trade secrets belonged to
10 Plaintiffs and that Dotzenroth was not authorized to disseminate them, and (4) the NIAR
11 Defendants nonetheless continued to use and benefit from Plaintiffs' trade secrets. *See* 18
12 U.S.C. §§ 1839(3), (5)-(6).

13 In any event, "[c]ourts ordinarily do not consider the validity of a proposed amended
14 pleading in deciding whether to grant leave to amend, and instead defer consideration of
15 challenges to the merits of a proposed amendment until after leave to amend is granted and
16 the amended pleadings are filed." *Jamil v. Workforce Res., LLC*, No. 18-cv-27, 2018 WL
17 3495649, at *3 (S.D. Cal. July 20, 2018). Moreover, any argument concerning the
18 sufficiency of the new claim in the proposed Amended Complaint is "'more appropriately
19 raised in a motion to dismiss'" brought by the NIAR Defendants – who are the subject of
20 the new claim – "'rather than in an opposition to a motion for leave to amend'" filed by
21 the Dotzenroth Defendants, against whom the claims have not changed. *Duchemin*, 2018
22 WL 2229368, at *2.

23 In short, Plaintiffs' motion for leave to amend is timely, will promote judicial
24 economy by centralizing the dispute regarding Plaintiffs' trade secrets, and will not result
25 in undue prejudice or unduly delay proceedings. Amendment therefore should be granted
26 under Rule 15(a) and the liberal policy favoring amendment.
27
28

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Leave to File an Amended Complaint should be granted.

DATED: October 22, 2021

Respectfully submitted,

By: /s/ Steven F. Molo

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