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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

No. C 07-1658 PJH

**ORDER GRANTING MOTION FOR
LEAVE TO FILE A FOURTH
AMENDED COMPLAINT**

Before the court is plaintiffs' motion for leave to file a fourth amended complaint.

The motion is GRANTED.

Given the discussion at the May 28, 2009 case management conference, the court clearly anticipated that plaintiffs would seek to amend the complaint to add allegations beyond those relating to the "Siebel claims." Moreover, the parties stipulated to all the dates set in the June 11, 2009 revised case management and pretrial order, including the provision that "[s]hould [p]laintiffs intend to seek any other amendment to the complaint, then [p]laintiffs shall make the appropriate motion[s] no later than August 26, 2009." Thus, the motion was both anticipated and timely.

In addition, even in the absence of the discussion at the May 28, 2009 case management conference, and, in the revised case management and pretrial order, of the provision authorizing the filing of a motion for leave to amend the complaint, the court would have considered plaintiff's motion under Federal Rule of Civil Procedure 15(a), not under Federal Rule of Civil Procedure 16(b). The prohibition against filing motions to amend pleadings fewer than 90 days before the close of fact discovery is a standard provision in the court's case management and pretrial orders. Having agreed to extend the

1 fact discovery cut-off date (and most other pretrial dates), the court anticipated that the
2 date for filing motions to amend pleadings would follow, and would become 90 days before
3 the new deadline for fact discovery.

4 Under Rule 15(a), leave to amend is ordinarily granted unless the amendment is
5 futile, would cause undue prejudice to the defendants, or is sought by plaintiffs in bad faith
6 or with a dilatory motive. Foman v. Davis, 371 U.S. 178, 182 (1962). Defendants have not
7 established that the motion should be denied based on any of these grounds.

8 Finally, in anticipation of dispositive motions in the near future, the court takes this
9 opportunity to advise the parties that the hyperbolic and vituperative language, the many
10 aspersions cast on opposing counsel, and the repeated accusations of misrepresentation
11 that appear throughout the papers filed by both sides, do nothing to advance either side's
12 case or otherwise assist the court in resolving the dispute, and serve only to annoy the
13 court and to add to general incivility that seems to pervade the practice of civil law these
14 days. The court expects to see less of this in future briefs. The parties should be further
15 advised that a motion for leave to file an amended complaint should not under any
16 circumstances necessitate the filing of a three-inch stack of paper.

17 The date for the hearing on plaintiffs' motion, previously set for Wednesday, August
18 19, 2009, is VACATED.

19
20 **IT IS SO ORDERED.**

21 Dated: August 14, 2009



PHYLLIS J. HAMILTON
United States District Judge