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Superior Court of California, County of Santa Clara
Case No. 20CV368472
Tesla, Inc. v. Pascale, et al

Document 25



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FILED
OCT 23 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY A. NAKAMOTO DEPUTY

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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 TESLA, INC.,

12 *Plaintiff,*

13 v.

14 RIVIAN AUTOMOTIVE, INC., RIVIAN
15 AUTOMOTIVE, LLC, TAMI PASCALE,
16 KIM WONG, JESSICA SIRON,
CARRINGTON BRADLEY, SAVAYIA
BERO, and DOES 2-20.

17 *Defendants.*
18
19

Case No. 20CV368472

**Assigned for all purposes to the
Hon. Socrates P. Manoukian**

**EX PARTE APPLICATION FOR
LEAVE TO AMEND COMPLAINT**

NO HEARING REQUESTED

Date: Oct. 20, 2020
Time: 8:15 am
Dept: 20

Complaint Filed: July 17, 2020
Trial Date: TBD

20 **FAXED**
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ORIGINAL

1 **EX PARTE APPLICATION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on October 20, 2020, at 8:15 a.m., in Department 20 of the Su-
4 perior Court for the State of California, Santa Clara County, Plaintiff Tesla, Inc. will apply *ex parte* pur-
5 suant to Code of Civil Procedure sections 473 and 474 for an order granting Tesla leave to amend its
6 complaint and to file a Second Amended Complaint.

7 Good cause exists to grant this application. *After* the First Amended Complaint was filed, an
8 additional employee (Jessica Yoste) misappropriated Tesla documents as she left for Rivian. And new
9 facts came to light about a senior Rivian recruiter (Vince Duran) that support making him a defendant.
10 Leave to amend is needed to designate these two defendants. Tesla also seeks to bring an additional cause
11 of action against Rivian based on facts already alleged. Leave to amend will thus gather all defendants in
12 one case and ensure that the parties' disputes are resolved in one trial.

13 The defendants will not be prejudiced by leave to amend. This case is in the very early stages.
14 The defendants have not yet responded to the First Amended Complaint. The initial case-management
15 conference has not yet occurred. And the parties have agreed to extend the time to respond (to October
16 28, 2020), so that the defendants need only respond to the proposed Second Amended Complaint.

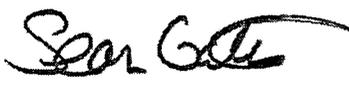
17 Quidel provided notice of this *ex parte* application to counsel for the defendants on October 15,
18 2020. (Declaration of Sean P. Gates ("Gates Decl.") ¶ 5.) The defendants stated they will not oppose this
19 application. (*Ibid.*)

20 This application is based upon the attached memorandum of points and authorities, the concur-
21 rently filed declarations of Charles Finfrock and Sean Gates, the paper and records on file, and upon such
22 documentary and oral evidence as may be offered to the Court at the hearing on this matter.

23
24 Dated: October 16, 2020

CHARIS LEX P.C.

25
26 By: _____



27 SEAN P. GATES
Attorneys for Plaintiff
28 TESLA, INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Based on events that occurred *after* the First Amended Complaint was filed and newly discovered
4 facts, Tesla respectfully requests leave to file the proposed Second Amended Complaint. That document
5 is attached as Exhibit A to the concurrently filed Declaration of Sean Gates. The changes to the First
6 Amended Complaint appear in a redline comparison of the First Amended Complaint and Second
7 Amended Complaint, which is attached as Exhibit B to the Declaration of Sean Gates. The parties have
8 agreed to extend the time for the defendants to respond, so that the defendants need only respond to the
9 Second Amended Complaint that Tesla now seeks to file.

10 Specifically, Tesla requests leave to do the following: *one*, designate two defendants—previously
11 named as fictitious “Doe” defendants—who misappropriated Tesla trade secrets, but whose identities were
12 discovered *after* the First Amended Complaint was filed; and *two*, add a cause of action based on the same
13 general set of facts, a step the case law readily allows.

14 California has a longstanding policy of liberality in permitting amended complaints, which allows
15 cases to be resolved in one trial. Indeed, it would be an abuse of discretion to deny an amendment where,
16 as here, the case is in the early stages, defendants have not even responded to the complaint, and defend-
17 ants will not be prejudiced. (*See, e.g., Atkinson v Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) Indeed,
18 one of the events that Tesla seeks allege did not even occur until after the First Amended Complaint was
19 filed. Tesla has been more than diligent in unearthing the facts supporting the remaining new allegations.
20 As the case law recognizes, there is no prejudice in adding a cause of action based on facts already alleged.
21 And it is an abuse of discretion to deny leave to amend in the absence of prejudice.

22 **II. BACKGROUND**

23 Based on its investigation into the actions of Tesla employees who recently left Tesla to join Riv-
24 ian, Tesla filed the original complaint in this action on July 17, 2020, naming six defendants plus addi-
25 tional defendants under fictitious “Doe” names. On August 25, 2020, pursuant to Code of Civil Procedure
26 sections 472 and 474, Tesla filed the First Amended Complaint, which identified one of the “Does” and
27 alleged additional facts.

1 After filing the First Amended Complaint, Tesla discovered the identity of two additional Does,
2 Jessica Yoste and Vince Duran. Tesla’s investigation revealed that after the First Amended Complaint
3 was filed, Jessica Yoste left Tesla for Rivian, having uploaded Tesla confidential information to her per-
4 sonal email address. (Declaration of Charles Finfrock (“Finfrock Decl.”) at ¶ 3.) These new allegations
5 appear in paragraphs 58-63 and 83 of the proposed Second Amended Complaint. (*Id.*; Gates Decl. Ex. A
6 at ¶¶ 59-63, 83.) Adding Ms. Yoste is clearly warranted since her misappropriation occurred after the
7 First Amended Complaint was filed.

8 As to Vince Duran, a senior Rivian recruiter, Tesla had been aware (and alleged in the First
9 Amended Complaint) that he instructed a current Tesla employee to misappropriate Tesla confidential
10 interview guides. But she declined to do so, and it was only after the First Amended Complaint was filed
11 that Tesla discovered that those documents were in fact misappropriated by Kim Wong and Tami Pascale.
12 (Finfrock Decl. ¶ 2.) These new allegations appear in paragraphs 36-40, 44, 49-50 of the proposed Second
13 Amended Complaint. (Gates Decl. Ex. A at ¶¶ 36-40, 44, 49-50.)

14 The proposed amendments also add a new cause of action under the California Computer Data
15 Access and Fraud Act, which is based on the same general operative facts alleged in the First Amended
16 Complaint—namely, that the defendants accessed information on Tesla’s computer systems. This cause
17 of action appears in paragraphs 120-126 of the Second Amended Complaint. (Gates Decl. Ex. A at ¶¶
18 120-126.)

19 After making these discoveries, Tesla informed the defendants of its intent to file a Second
20 Amended Complaint. The parties then agreed to extend the time for the defendants to respond to October
21 28, 2020, so that the defendants need only respond to the Second Amended Complaint.

22 On September 28, 2020, Tesla submitted the Second Amended Complaint for filing and served it
23 on the defendants. On October 8, 2020, the court clerk informed counsel for Tesla that the filing was not
24 accepted because Tesla needed an order granting leave.

25 **III. ARGUMENT**

26 Leave to amend pleadings is subject to a “policy of great liberality . . . at any stage of the pro-
27 ceeding.” (*Fogel v. Farmers Grp., Inc.* (2008) 160 Cal.App.4th 1403, 1423 [quoting *Berman v. Brom-*
28 *berg* (1997) 56 Cal.App.4th 936, 945].) The purpose of this policy is to allow cases “to be tried upon their

1 merits in one trial.” (*Rainier v Cmty. Mem. Hosp.* (1971) 18 Cal.App.3d 240, 254.) The policy extends
2 to identifying “Does” (*Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1170) and is so strong that it is “an
3 abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the
4 amendment” (*Fogel, supra*, at p. 1423; see also *Honing v Fin. Corp. of Am.* (1992) 6 Cal App.4th 960,
5 965.). The defendants here will not be prejudiced by the proposed amendment.

6 **A. It is proper to add newly discovered defendants.**

7 The purpose of the fictitious-name statute is to allow a party to plead a cause of action although
8 ignorant of the name of a defendant, thereby allowing a plaintiff to include all defendants in a single
9 complaint. (Code of Civ. Proc. § 474.) Once a plaintiff discovers the defendant’s identity, the plaintiff
10 must amend the pleading designating the defendant. (*Id.*) That is what Tesla seeks to do here.

11 As noted, Jessica Yoste misappropriated Tesla’s confidential information after the First Amended
12 Complaint was filed. Leave to identify Ms. Yoste is thus necessary and proper. (*Fuller v. Tucker, supra*,
13 84 Cal.App.4th at 1170.)

14 Similarly, although Tesla knew Mr. Duran’s name at the time of the original complaint, it lacked
15 the facts on which the current allegations are based. Section 474 “allows a plaintiff in good faith to delay
16 suing particular persons as named defendants until he has knowledge of sufficient facts to cause a reason-
17 able person to believe liability is probable.” (*Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345,
18 363.) As discussed above, when Tesla filed the First Amended Complaint, Tesla knew that Mr. Duran
19 had asked a current Tesla employee to send him confidential information. She declined, however, and
20 Tesla only discovered later that other Tesla (now Rivian) employees misappropriated the documents.
21 (Finfrock Decl. ¶ 2.) Leave to amend is necessary and proper to designate Mr. Duran as a defendant based
22 on these newly discovered facts. (See *GM Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 594 [“even
23 though the plaintiff knows the defendant’s actual identity (that is, his name), the plaintiff is ‘ignorant’
24 within the meaning of the statute if he lacks knowledge of that person’s connection with the case or with
25 his injuries”].)

26 **B. There is no prejudice in adding a claim based on the same general facts.**

27 The amendments also add a cause of action under the California Computer Data Access and Fraud
28 Act, which is predicated on the same general facts that support Tesla’s other causes of action. (Gates

1 Decl. Ex. A at ¶¶ 120-126.) Adding a cause of action based on the same general set of facts is not preju-
2 dicial. (See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [“it is irrelevant
3 that new legal theories are introduced as long as the proposed amendments ‘relate to the same general set
4 of facts’”]; *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) That is particularly true where, as
5 here, the parties have stipulated to an extension so that defendants need only respond to the new complaint.

6 **C. Absent prejudice, denying leave to amend would be an abuse of discretion.**

7 As set forth above, there is no prejudice to defendants here; they have not even responded to the
8 complaint, and the parties have stipulated to an extension so that defendants need only respond to the new
9 complaint. (E.g., *Atkinson*, 109 Cal.App.4th at 761 [“It is an abuse of discretion to deny leave to amend
10 a complaint where the opposing party was not misled or prejudiced by the amendment.”].)

11 **IV. CONCLUSION**

12 For the foregoing reasons, Tesla respectfully requests the Court grant leave to file its proposed
13 Second Amended Complaint.

14
15 Dated: October 16, 2020

CHARIS LEX P.C.

16
17 By: _____



SEAN P. GATES

Attorneys for Plaintiff
TESLA, INC.