IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S. WELL SERVICES, LLC, U.S. WELL SERVICES HOLDINGS, LLC, PROFRAC MANUFACTURING, LLC, PROFRAC SERVICES, LLC,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 4:24-CV-00839-KPE
LIBERTY ENERGY, INC., LIBERTY OILFIELD SERVICES LLC, LIBERTY ADVANCED EQUIPMENT TECHNOLOGIES LLC, ST9 GAS AND OIL LLC, ST9, INC.,	§	
Defendants.	§	

PLAINTIFFS' MOTION FOR LEAVE TO FILE THE SECOND AMENDED COMPLAINT

Pursuant to Rules 15 and 16 of the Federal Rules of Civil Procedure, Plaintiffs U.S. Well Services, LLC, U.S. Well Services Holdings, LLC (together, "USWS"), ProFrac Manufacturing, LLC ("ProFrac Manufacturing"), and ProFrac Services, LLC ("ProFrac") (collectively, "Plaintiffs") respectfully submit this Motion for Leave to File the proposed Second Amended Complaint ("SAC") to add Chris Buckley and Paul Lightfoot.[1]

I. INTRODUCTION

Plaintiffs seek leave from the Court to amend their complaint to add Chris Buckley, the previous owner and executive of Defendants ST9 Gas and Oil LLC and ST9, Inc., as well as former employee of Defendant Liberty Energy, Inc., and Paul Lightfoot, a previous director at ST9, Inc.

[1] Plaintiffs' proposed Second Amended Complaint is attached as Exhibit A to this Motion.

Following the filing of Plaintiffs' Amended Complaint (Dkt. 32), Defendants filed an Answer and Counterclaims (Dkt. 39), asserting Plaintiffs' patents—U.S. Patent Nos. 10,598,258 ("the '258 patent") 11,959,533 ("the '533 patent")—should be corrected to include Chris Buckley as an inventor.[2] *See id.* at 26–28. In response to Defendants' counterclaims, Plaintiffs conducted additional fact discovery revealing Chris Buckley and Paul Lightfoot's role in Plaintiffs' trade secret claim went far and beyond what was previously understood. This includes Chris Buckley and Paul Lightfoot attending meetings with Plaintiffs' employees to discuss electric hydraulic fracturing equipment while at the same time misrepresenting Liberty's ownership of ST9 Gas and Oil LLC to Plaintiffs' employees. Most brazenly, Chris Buckley used an inspection of Plaintiffs' fire-damaged hydraulic fracturing equipment to sneakily take pictures of different components and gain insight into Plaintiffs' trade secrets that was later incorporated in Defendants' own patents.

Plaintiffs' proposed amendment is brought with good cause, in good faith, before the parties have noticed any depositions and before the parties have begun any substantive discovery.[3]

II. STATEMENT OF RELEVANT PROCEDURAL HISTORY

On March 6, 2024, Plaintiffs filed their original Complaint (Dkt. 1) against Defendants Liberty Energy, Inc., Liberty Oilfield Services LLC, Liberty Advanced Equipment Technologies LLC, and ST9 Gas and Oil LLC. On April 29, 2024, the then-named Defendants filed their Partial Motion to Dismiss (Dkt. 19). On May 16, 2024, Plaintiffs moved for an extension to file an amended complaint, which the Court granted on May 17, 2024. *See* Dkts. 28, 29.

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[2] Further, Defendants asserted ST9 Gas and Oil LLC has never been an affiliate, agent, or successor of ST9, Inc. and has ST9, Inc. was never owned by Liberty Energy, Inc. *See id.* at 6. However, there is evidence Chris Buckley was an owner of both entities and the Non-Disclosure Agreement entered into by ST9, Inc. and USWS denotes "ST9 Oil and Gas LLC" letterhead.

[3] To be clear, Plaintiffs do not need to move for leave to add the inequitable conduct allegations as Plaintiffs remain within the Scheduling Order deadline. (Dkt. 30).

On May 22, 2024, the Court entered the Scheduling Order in this matter. *See* Dkt. 30 at 1. As relevant to the present case, the Scheduling Order states the deadline to add additional parties is July 18, 2024 and, "[t]hereafter, it is necessary to obtain leave of court." *Id.* Additionally, the Scheduling Order states the deadline to amend pleadings is November 14, 2024, the completion of fact discovery is July 10, 2025, dispositive and non-dispositive motions deadline is October 16, 2025, and the final pretrial conference is January 29, 2026. *See id.* at 2–4.

On June 3, 2024, Plaintiffs filed their Amended Complaint (Dkt. 32) asserting additional factual allegations and adding ST9, Inc. as a defendant. *See generally id.* On June 11, 2024, Defendants moved to extend their answer deadline, which the Court granted the same day. *See* Dkts. 34, 35. On June 18, 2024, the Court denied Defendants' Partial Motion to Dismiss (Dkt. 19). *See* Dkt. 38.

On July 1, 2024, Defendants filed their Answer and Counterclaims (Dkt. 39) to Plaintiffs' Amended Complaint. In their Answer and Counterclaims (Dkt. 39), Defendants assert a number of affirmative defenses relating to Chris Buckley, including that Chris Buckley should have been named as co-inventors of the '258 patent and '533 patent and, alternatively, that Liberty Energy, Inc. had the license through its acquisition of ST9 to use these aforementioned patents. *See id.* at 14–17. Additionally, Defendants filed two counterclaims asserting Chris Buckley should be included as an inventor on these two patents. *See id.* at 26–28, *see also id.* at 19–26 (alleging Chris Buckley's alleged involvement in the design and engineering underpinning these patents). On July 22, 2024, Plaintiffs filed their Answer (Dkt. 40) to Defendants' Counterclaims.

III. LEGAL STANDARD

Rule 15(a) of the Federal Rules of Civil Procedure requires the trial court to grant leave to amend "freely." As the Fifth Circuit has recognized, the rule evinces a "presumption in favor of granting parties leave to amend." *Dueling v. Devon Energy Corp.*, 623 Fed. Appx. 127, 130 (5th

Cir. 2015). The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading. *Dussouy v. Gulf Coast Inv. Corp*., 660 F.2d 594, 597-98 (5th Cir. 1981) (internal citations omitted). Thus, unless there is a "substantial reason" like a "serious prejudice to the opponent," the district court's discretion is not broad enough to permit denial. *See id.* at 597–98, n.2; *see also English v. Tex. Farm Bureau Cas. Ins. Co.*, 2020 WL 10316672, at *2 (W.D. Tex. Dec. 9, 2020) (citing *Wimm v. Jack Eckerd Corp.*, 3 F.3d 137, 140 (5th Cir. 1993)).

Furthermore, as a scheduling order has been entered in this case, Federal Rule of Civil Procedure 16 must also be considered. *See Tex. Indigenous Council v. Simpkins*, 544 F. App'x 418, 420 (5th Cir. 2013) (per curiam) ("When a trial court imposes a scheduling order, Federal Rules of Civil Procedure 15 and 16 operate together to govern the amendment of pleadings."); *S&W Enters., LLC v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 536 (5th Cir. 2003) ("Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired."). Only upon the movant's demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court's decision to grant or deny leave. *S&W Enters., LLC*, 315 F.3d at 536.

IV. ARGUMENT AND AUTHORITIES

In the present case, both Rule 15(a) and Rule 16(b) heavily favor granting Plaintiffs' Motion for Leave as there is good cause, the amendment is brought in good faith, and Defendants will suffer no prejudice.

Under Fifth Circuit precedent, four factors are relevant to a showing of good cause for purposes of Rule 16(b)(4): "(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Dar v. Am. Eagle Outfitters, Inc.*, No.

4:17-CV-0819, 2018 WL 11472381, at *2 (S.D. Tex. Oct. 9, 2018) (Ellison, J.) (quotation omitted). "The Fifth Circuit has cautioned that amendments should not be permitted where they would fundamentally alter the nature of the case, or require the defendant to 'prepare a defense for a claim different from the one before the court.'" *Id.* (quoting *Smith v. EMC Corp.*, 393 F.3d 590, 596 (5th Cir. 2004)).

Plaintiffs easily meet their burden of showing good cause in the present case. *First*, the failure to timely move for leave to amend was due to ongoing fact investigation in relation to Defendants' allegations and counterclaims raised in their Answer and Counterclaims (Dkt. 39) filed on July 1, 2024. Plaintiffs were surprised Defendants asserted claims to correct inventorship regarding Plaintiffs' '258 patent and the '533 patent and, therefore, these claims necessitated additional fact discovery to understand whether such claims had merit. Plaintiffs' investigation revealed the opposite of Defendants' allegations. Rather, as plead in the proposed Second Amended Complaint, Chris Buckley misrepresented to USWS employees that ST9 was not owned by Liberty, and improperly took images of the internal workings of Plaintiffs' electric hydraulic fracturing equipment. *See* Ex. A, Proposed Second Amended Complaint.

Second, as discussed above, Chris Buckley and Paul Lightfoot are important and critical defendants to Plaintiffs' claims. And Defendants have themselves assert a number of affirmative defenses and counterclaims solely regarding their allegations Chris Buckley should be included as an inventor on Plaintiffs' '258 patent and '533 patents. *See, e.g.*, *Tiras v. Encompass Home & Auto Ins. Co.*, No. 4:10-CV-03266, 2012 WL 176437, at *3 (S.D. Tex. Jan. 18, 2012) (Ellison, J.) ("As the Scheduling Order's date for amending pleadings has already passed, the Court must consider whether Plaintiffs have demonstrated good cause under Rule 16(b). Plaintiffs have not provided an explanation for their failure to timely amend. Nonetheless, the Court believes that there will be

little prejudice to Defendants if leave to amend is granted, given that other deadlines in this case have been extended; furthermore, the amendment is important to Plaintiffs' case.").

Third, allowing the amended pleading would result in no prejudice to Defendants. Indeed, Defendants raised Chris Buckley in both their affirmative defenses and counterclaims. *See* Dkt. 39 at 26–28. Therefore, Chris Buckley's involvement and conduct would necessarily be explored during discovery. Similarly, Paul Lightfoot was listed on provisional patent applications alongside Chris Buckley that are directly at issue in this matter. Accordingly, there is no element of surprise. Defendants can address this amendment and sufficiently prepare their defenses within the current case schedule. As such, the proposed amendment introduces no unfair prejudice to Defendants.

Fourth, the amendment would not affect the discovery in the case (which has only begun) or any other scheduling deadlines. *See, e.g.*, *InternetAd Sys., LLC v. Opodo Ltd.*, 481 F. Supp. 2d 596, 604 (N.D. Tex. 2007) (granting leave to amend and finding that, "[a]t this early stage in the case, Defendant has asserted no prejudice it will suffer as a result of the amendment."); *Andrade Garcia v. Columbia Med. Ctr. of Sherman*, 996 F. Supp. 605, 609 (E.D. Tex. 1998) (finding no undue prejudice in allowing an amended complaint when the parties could move for additional discovery, even though trial was just weeks away). This case remains in its infancy and there is ample time to conduct discovery, let alone for Defendants to request a continuance if necessary. Notably the amendment will not affect any deadlines on the schedule related to claim construction, with the *Markman* hearing currently scheduled for February 20, 2025. Dkt. 30 at 3.

Thus, the Court should next turn to Rule 15's liberal pleading requirements and grant amendment. As discussed above, there will be no prejudice to Defendants who have already raised Chris Buckley's involvement in the present case. Chris Buckley is already central to their affirmative defenses and their counterclaims. And Plaintiffs have acted in good faith and without

dilatory motive. Indeed, Plaintiffs' further factual investigation was to properly consider Defendants' counterclaims and to ensure that the addition of Chris Buckley and Paul Lightfoot was proper. Similarly, amendment would not be futile as Chris Buckley and Paul Lightfoot's alleged conduct relates back to the pleadings in the present case.

V. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs leave to amend, and Plaintiffs should be permitted to file his Second Amended Complaint adding Chris Buckley and Paul Lightfoot.

Dated: September 19, 2024

Respectfully submitted,

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By : /s/_Thomas M. Melsheimer

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5.3, I hereby certify that, on September 18, 2024, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system.

/s/ Thomas M. Melsheimer
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