

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In Re Mosaic LLM Litigation.

Master Case No. 24-cv-01451-CRB

**ORDER GRANTING LEAVE TO
AMEND**

Plaintiffs are authors that are suing Defendants Databricks and MosaicML for copyright infringement stemming from Defendants' large language models, or LLMs, which are used to train artificial intelligence. The Court had initially dismissed a newly added direct infringement claim against Databricks but noted that Plaintiffs could move to amend when discovery revealed information that would support factual allegations for the direct infringement claim. Order (dkt. 162) at 5. Plaintiffs now seek to do so to file their Second Amended Consolidated Complaint and include claims for direct infringement, contributory infringement, inducement of infringement, and to update the proposed class definition. Mot. (dkt. 196). Defendants oppose, citing undue delay and prejudice. The Court **GRANTS** Plaintiffs' motion to modify the scheduling order and for leave to amend.¹ For this order, the Court presumes familiarity with the facts and background law.

I. LEGAL STANDARD

Once a district court files a pretrial scheduling order, Rule 16 governs the timetable for amending pleadings. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607–08

¹ The Court finds this matter suitable for resolution without oral argument. Civ. L.R. 7-1(b).

1 (9th Cir. 1992). A “party seeking to amend pleading after [the] date specified in
2 scheduling order must first show ‘good cause’ for amendment under Rule 16(b)” before
3 demonstrating that amendment was proper under Rule 15. Id. at 608. Good cause is a
4 heightened standard that “primarily considers the diligence of the party seeking the
5 amendment.” Id. at 609. “If the party seeking the modification ‘was not diligent, the
6 inquiry should end’ and the motion to modify should not be granted.” Zivkovic v. S.
7 California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson, 975 F.2d at
8 609).

9 Under Rule 15, courts “freely give leave when justice so requires.” Fed. R. Civ. P.
10 15(a)(2). The Ninth Circuit has instructed that the policy favoring amendment “should be
11 applied with ‘extreme liberality.’” United States v. Webb, 655 F.2d 977, 979 (9th Cir.
12 1981) (quoting Rosenberg Brothers & Co. v. Arnold, 283 F.2d 406, 406 (9th Cir. 1960)
13 (per curiam)). Factors such as “undue delay, bad faith or dilatory motive on the part of the
14 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
15 prejudice to the opposing party by virtue of the amendment, [and] futility of amendment”
16 justify denial of leave to amend. Foman v. Davis, 371 U.S. 178, 182 (1962). Of these
17 factors, “the resulting prejudice to the opposing party” is the “crucial factor.” Howey v.
18 United States, 481 F.2d 1187, 1190 (9th Cir. 1973). On the other hand, “delay alone does
19 not provide sufficient grounds for denying leave to amend.” United States v. Pend Oreille
20 Pub. Util. Dist. No. 1, 926 F.2d 1502, 1511 (9th Cir. 1991) (cleaned up).

21 II. DISCUSSION

22 Defendants’ key arguments opposing Plaintiffs’ motion center on delay, diligence,
23 and prejudice. See Opp’n (dkt. 213). Plaintiffs respond that they have diligently
24 proceeded with discovery before seeking amendment and that Defendants have not
25 demonstrated actual prejudice. Reply (dkt. 227) at 2–9. While good cause is a close call,
26 the Court grants Plaintiffs’ motion due to the strong policy favoring amendment.

27 A. Rule 16: Good Cause

28 On balance, it appears that Plaintiffs were diligent in seeking amendment.

1 “Diligence is ‘the critical issue’ in the good cause determination.” Google LLC v. Sonos, Inc., No. 20CV03845EMCTSH, 2021 WL 4061718, at *5 (N.D. Cal. Sept. 7, 2021) (citing Sunpower Corp. Sys. v. Sunlink Corp., 2009 WL 1657987, at *1 (N.D. Cal., June 12, 2009)).

5 Defendants contend that Plaintiffs had received relevant productions in July and
6 August 2025—some even earlier. Opp’n at 9. Plaintiffs concede this point but counter
7 that further discovery and deposition testimony was necessary to “contextualize” their
8 eventual allegations and identify “the technical details of Defendants’ infringement.”
9 Reply at 2–3. The Court agrees with Plaintiffs. “Waiting to file [a] motion until after
10 obtaining corroborating deposition testimony is [] sufficient to meet the good cause
11 requirement of Federal Rule of Civil Procedure 16(b).” The Bd. of Trustees of Leland
12 Stanford Junior Univ. v. Roche Molecular Sys., Inc., No. C 05-04158 MHP, 2008 WL
13 624771, at *7 n.7 (N.D. Cal. Mar. 4, 2008). “Indeed, waiting to amend a complaint or
14 answer until a strong evidentiary basis for the amended claims has been developed is
15 preferable to prematurely asserting those claims on the basis of a limited record that may
16 or may not support them.” Entangled Media, LLC v. Dropbox Inc., 348 F.R.D. 649, 655
17 (N.D. Cal. 2025). While Defendants are correct that Plaintiffs perhaps could have moved
18 sooner, instead of waiting the week before fact discovery closed, (Opp’n at 6), Plaintiffs
19 conduct is still sufficient to demonstrate diligence, especially given the Court’s prior
20 admonishment to have a stronger factual basis for Plaintiffs’ allegations of direct
21 infringement, (Order at 5).

22 Defendants’ strongest point is the fact that Plaintiffs had cited a blog post in their
23 original complaint that contained a hyperlink indicating that Defendants’ dataset came
24 from the Pile. Surreply (dkt. 243) at 1–2. Plaintiffs’ only answer is that the post lacks
25 “any reference to The Pile.” Reply at 5 n.2. But as Defendants note, that is not true.
26 While the post does not refer to the Pile on its face, the link does reveal the dataset’s
27 origin. Accordingly, this issue makes good cause a close call. Nevertheless, this detail
28 would still require the corroborative documents and deposition testimony Plaintiffs later

1 sought in order to flesh out factual allegations for amendment. The Court exercises its
2 discretion to determine that there is good cause to modify the scheduling order. See Hunt
3 v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (noting that district courts have a
4 broad discretion to control the course of litigation under Rule 16).

5 **B. Rule 15**

6 **1. Undue Delay**

7 Defendants make the same delay argument for Rule 15 as they did for Rule 16.
8 And it is rejected for the same reasons. Even if the Court were to accept it, “delay alone
9 no matter how lengthy is an insufficient ground for denial of leave to amend.” Webb, 655
10 F.2d at 980.

11 **2. Prejudice**

12 Defendants contend that they would be significantly prejudiced because fact
13 discovery has closed, and the proposed claims would “radically alter the contours of the
14 case and require extensive additional discovery.” Opp’n at 11. That is inaccurate.
15 Plaintiffs’ new claims do not come as a total surprise to Defendants; Defendants had
16 successfully dismissed the direct infringement claim when it was added before. See Reply
17 at 7. And as Plaintiffs assert, the operative complaint already asserts similar claims and
18 allegations against MosaicML. Id. at 8. Plaintiffs’ proposed claims do not inject novel
19 and unrelated legal theories into this case.

20 Moreover, while the Court is cognizant of Defendants’ concern with the close of
21 fact discovery, the “need for further discovery alone does not constitute prejudice
22 sufficient to deny leave to amend.” Rodriguez v. Barrita, Inc., No. C 09-4057 RS, 2013
23 WL 12175047, at *3 (N.D. Cal. Jan. 14, 2013). Plaintiffs also represent that “the proposed
24 new claims of infringement are directly tied to documents and facts that are within the
25 scope of Defendants’ pre-existing collection.” Reply at 7. And, to the extent that further
26 discovery is required, it will be limited. Id. at 7 n.4. The Court will hold Plaintiffs to their
27 representations and this order is not to be interpreted as permitting expansive discovery
28 after amendment. In exercising its discretion, the Court is “guided by the underlying

1 purpose of Rule 15 to facilitate decision on the merits, rather than on the pleadings or
2 technicalities.” Webb, 655 F.2d at 979–80. Accordingly, the Court finds that Defendants
3 would not be prejudiced by the addition of the proposed claims.

4 **3. Bad Faith**

5 Defendants point to all their above arguments as demonstrating Plaintiffs’ bad faith.
6 Opp’n at 13–15. As explained, the Court disagrees with Defendants on the prior Foman
7 factors and that Plaintiffs’ conduct rises to the level of bad faith. See Eminence Cap., LLC
8 v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (requiring “a strong showing” of any
9 Foman factors to deny leave to amend). While the Court will scrutinize any future delays
10 on Plaintiffs’ part, the current posture is not one of bad faith and tactical delays.

11 **III. CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS** Plaintiffs’ motion to modify the
13 scheduling order and for leave to file their amended complaint.

14 **IT IS SO ORDERED.**

15 Dated: January 20, 2025



16
17
18
19
20
21
22
23
24
25
26
27
28

CHARLES R. BREYER
United States District Judge