UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREGORY LAU,	:	
	:	
Plaintiff,	:	NO. 3:04CV971 (MRK)
	:	
v.	:	
	:	
MERRIAM MOTORS, INC.,	:	
	:	
Defendant.	:	

RULING AND ORDER

Currently pending before the Court are Plaintiff's Motion for Leave to File Amended Complaint and Plaintiff's Motion to Disqualify Defendant's Counsel. Having considered the briefs of the parties, the Court DENIES Plaintiff's Motion for Leave to File Amended Complaint [doc. #30] and GRANTS in part and DENIES in part Plaintiff's Motion to Disqualify Defendant's Counsel [doc. #33].

I

The original Complaint [doc. #1] in this case was filed in June 2004, and a Scheduling Order [doc. #12] was entered requiring that amendments to the pleadings be filed no later than September 30, 2004. Discovery was to be completed by August 31, 2005, although that deadline was later extended to October 31, 2005 at the request of both parties. *See* Modified Scheduling Order [doc. #29]. Six days before the extended close of discovery, Plaintiff filed a motion to amend his complaint [doc. #30]. In his motion, Plaintiff seeks to add a new count for wrongful discharge in violation of public policy, asserting that on October 19, 2005, new information had come to light that necessitated the motion to amend. The "new" information was that the State had decided to move

forward with charges against Defendant that Plaintiff claims he brought to light. Defendant counters that allowing Plaintiff to introduce an entirely new legal theory into this case on the eve of the close of discovery would unduly prejudice Defendant.

Generally, courts should freely grant permission to amend. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a). However, the Second Circuit has made it clear that the good cause standard of Rule 16 supercedes the more liberal standard of Rule 15(a) when, as here, a motion to amend is filed after the deadline for amending pleadings set by a court's scheduling order has passed. *See, e.g.*, *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 86 (2d Cir.2003) ("Where a scheduling order has been entered, the lenient standard under Rule 15(a), which provides leave to amend 'shall be freely given,' must be balanced against the requirement under Rule 16(b) that the Court's scheduling order 'shall not be modified except upon a showing of good cause.'"). Such an order was entered in this case, requiring that Plaintiff's amendments to the pleadings be filed no later than September 30, 2004. *See* Order [doc. #12].

Despite Plaintiff's claim of "new" information, it is apparent to the Court that Plaintiff has long been in possession of all of the facts needed to plead a wrongful discharge claim. *See Parker v. Columbia Pictures Industries*, 204 F.3d 326, 340-41 (2d Cir. 2000) (upholding a finding that plaintiff had not shown good cause under Rule 16(b) where plaintiff was aware of the relevant facts "prior to and throughout the course of this litigation"). That the State has just now decided to move forward with the charges Plaintiff allegedly brought to light is not a required element of such a claim, which is focused on the conduct of the Defendant, not the State. Having known the facts underlying his claim for years and having been fully aware of the schedule, Plaintiff nonetheless unduly delayed asserting the claim until the extended discovery was essentially complete. Accordingly, the Court

finds that Plaintiff has not shown good cause for permitting such a late amendment.

Furthermore, the Court is persuaded that Defendants would be unfairly prejudiced by allowing the addition of a new claim after the close of discovery. This case has been pending for nearly two years. If the Court were to permit the amendment, the Court would have to extend the discovery period, since Defendant would be entitled to conduct discovery on Plaintiff's new claim. Undoubtedly, Defendant would have to retake one or more depositions that have already been completed. In those circumstances, Defendant has shown that it would be unfairly prejudiced by allowing assertion of a new claim that could have been presented much sooner. Therefore, the Court denies Plaintiff's motion for leave to amend his complaint.

II

Plaintiff moves to disqualify Defendant's attorneys because one of them, Thomas O'Dea, Jr., and his law firm, Halloran & Sage LLP (H&S), previously represented Plaintiff in a related matter. Plaintiff maintains that, in conjunction with that prior suit, Mr. O'Dea questioned Plaintiff about highly sensitive matters that bear on the present case. Defendant maintains that Mr. O'Dea and H&S never represented Plaintiff, only his employer; that the matter was unrelated to the present suit; and that Mr. O'Dea never received any sensitive information from Plaintiff or passed on any such information to fellow attorneys at H&S.

It is not clear to the Court whether any formal or even informal attorney-client relationship actually existed between Mr. O'Dea and Plaintiff, and there is no evidence that Mr. O'Dea ever received confidential information from Plaintiff. However, it is possible that Plaintiff believed – perhaps mistakenly – that Mr. O'Dea was representing him. To combat even the appearance of impropriety, the Court accepts Mr. O'Dea's suggestion that he remove himself from further

involvement in the case, and therefore grants Plaintiff's motion insofar as Mr. O'Dea is concerned. The Court directs Mr. O'Dea to transfer handling of the case to another attorney at his firm, and to refrain from discussing the case with other H&S attorneys. Plaintiff's request for costs related to filing the motion to disqualify is denied.

III

In sum, Plaintiff's Motion for Leave to File Amended Complaint [doc. #30] is DENIED. Plaintiff's Motion to Disqualify Defendant's Counsel [doc. #33] is GRANTED in part and DENIED in part. It is granted insofar as Plaintiff requests that Mr. O'Dea be disqualified from further participation in the present suit. It is denied insofar as Plaintiff requests that other attorneys at Halloran & Sage LLP be disqualified, and insofar as Plaintiff asks to be awarded the costs associated with the disqualification motion. The Court further orders that any dispositive motions be filed **by March 24, 2006**. If no dispositive motions are filed, a Joint Trial Memorandum is due **by April 24, 2006**.

IT IS SO ORDERED,

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: February 22, 2006.