

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Scott v. Heredia

Scott v. Heredia · No. 1:24-cv-01067-KES-CDB · Decided May 14, 2025

OPINION

Scott v. Heredia

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DESIRAE SCOTT, et al., Case No. 1:24-cv-01067-KES-CDB 12 Plaintiffs, ORDER
GRANTING PLAINTIFFS'

MOTION FOR LEAVE TO FILE SECOND

13 v. AMENDED COMPLAINT

14 ANTONIA HEREDIA, et al., (Docs. 30, 33) 15 Defendants. THREE-DAY DEADLINE 16
Clerk of the Court to Terminate Motion to Dismiss (Doc. 32) and Vacate Hearing' 17 18 On
September 7, 2024, Plaintiffs Jonathan Williams and Desirae Scott, individually and 19 as
guardian ad litem for minor Plaintiffs S. W. and D. W., initiated this action with the filing of a 20
complaint against numerous individual Defendants employed with the Kern County's Sheriff's 21
Office. (Doc. 1). On December 10, 2024, Plaintiffs filed the operative first amended complaint. 22
(Doc. 13). Pending before the Court is Plaintiffs' motion for leave to file a second amended 23
complaint. (Docs. 30, 33). 24 Background 25 Plaintiffs filed their first motion to amend the
complaint on March 31, 2025. (Doc. 30). On

26 April 2, 2025, the Court noted that the motion was noticed for hearing on a date in violation of
27 Local Rule 230(b) and, thus, ordered Plaintiffs to file and serve a new notice of motion setting
forth a proper hearing date and time. (Doc. 31). Plaintiffs then re-filed their motion in substantial
part 1 with a new compliant hearing date and time. Upon review, the Court notes the only
substantial 2 change in Plaintiffs' renewed motion (Doc. 33) is removal of the text of Exhibit 1 to
the proposed 3 second amended complaint (Doc. 30-3 at 21-45), though the Exhibit 1 cover page
remains. 4 (Compare Doc. 30-3 at 20-45, with Doc. 33-2 at 22). 5 In their motion, Plaintiffs assert
that: 6 [The first amended] complaint is incomplete because the Plaintiffs did not have sufficient
information on the defendants and their involvement in the underlying 7 claims. Because of
allegations of child abuse, the underlying criminal case and juvenile dependency cases are subject
to confidentiality. There are at least two law 8 enforcement defendants and four different sets of
social workers and their supervisors in the dependency case. State law also imposes

confidentiality on the 9 addresses of the foster parents. 10 Plaintiffs' attorney had to rely on an opinion from a California Court of Appeal and 11 the Plaintiffs' memory and notes to draft and file the Complaint and First Amended Complaint to preserve the statute of limitations. Plaintiffs now have sufficient 12 information to amend the First Amended Complaint so that their Second Amended 13 Complaint is sufficiently pled, and Defendants have the necessary information and notice to provide their answers or file a motion to dismiss. 14 15 (Doc. 33 at 3-4). Plaintiffs provide that they have removed Carole Allen and Desiree Lopez as 16 Defendants due to being incorrectly named, as well as removed their claims for judicial deception 17 and failure to protect. Plaintiffs' counsel declares that they have obtained stipulated agreement for 18 the filing of the proposed second amended complaint from counsels for Defendants Ashley Bryant, 19 Dizander Guerrero, Antonia Heredia, Maria Tinoco, and Fatima Dee. (Doc. 33-1 ¶ 8). Plaintiffs' 20 counsel further declares that they sent a request to stipulate to Defendant Maira Puente but have 21 not heard back, and Plaintiffs' assert that they have not been able to determine the address of 22 Defendant Cynthia Bertrand. (Id. ¶ 10). Plaintiffs attach their proposed second amended complaint 23 to their motion. (Docs. 30-3, 33-2). 24 In the motion to dismiss brought by Defendants Bryant, Guerrero, Heredia, and Tinoco 25 (Doc. 32), counsel attaches to his meet and confer declaration email exchanges with counsel for 26 Plaintiffs, evidencing stipulation for leave to amend the operative first amended complaint. (Doc. 27 32-1 at 3). No opposition to Plaintiffs' motion has been filed and the time to do so has expired. 1 Governing Law

2 Rule 15 permits a plaintiff to amend the complaint once as a matter of course no later than 3 21 days after service of the complaint or 21 days after service of a responsive pleading or motion 4 to dismiss, whichever is earlier. See Fed. R. Civ. P. 15(a)(1). After such time has passed or plaintiff 5 has once amended their complaint, amendment may only be by leave of the court or by written 6 consent of the adverse parties. Fed. R. Civ. P. 15(a)(2). "Rule 15(a) is very liberal" and a court 7 should freely give leave to amend when "justice so requires." *AmerisourceBergen Corp. v. 8 Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006); see *Chodos v. W. Publ. Co.*, 292 F.3d 992, 9 1003 (9th Cir. 2002) ("it is generally our policy to permit amendment with 'extreme liberality'" 10 (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990))). 11 Granting or denying leave to amend a complaint under Rule 15 is within the discretion of 12 the court. *Swanson v. United States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising 13 this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision 14 on the merits, rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 15 979 (9th Cir. 1981); *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011) ("refusing 16 Chudacoff leave to amend a technical pleading error, albeit one he should have noticed earlier, 17 would run contrary to Rule 15(a)'s intent."). 18 A court ordinarily considers five factors in assessing whether to grant leave to amend: "(1) 19 bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) 20 whether the plaintiff has previously amended his complaint." *Nunes v. Ashcroft*, 375 F.3d 805,

808 21 (9th Cir. 2004). The factors are not weighed equally. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); see *Atkins v. Astrue*, No. C 10-0180 PJH, 2011 WL 1335607, at *3 (N.D. Cal. Apr. 7, 2011) (the five factors “need not all be considered in each case”). Undue delay, “by itself ... is insufficient to justify denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 25 1999). On the other hand, futility of amendment and prejudice to the opposing party can, by 26 themselves, justify the denial of a motion for leave to amend. *Bonin*, 59 F.3d at 845; see *Eminence 27 Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (the consideration of prejudice 1 In conducting this five-factor analysis, the court generally grants all inferences in favor of 2 permitting amendment. *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999). 3 Moreover, the court must be mindful that, for each of these factors, the party opposing amendment 4 has the burden of showing that amendment is not warranted. *DCD Programs, Ltd. v. Leighton*, 833 5 F.2d 183, 187 (9th Cir. 1987). 6 Discussion 7 Here, Plaintiffs’ motion is unopposed. All Defendants served with summons and complaint 8 have stipulated to the motion, with the exception of Defendant Puente who, Plaintiffs’ counsel 9 declares, did not respond. Defendant Puente has not filed any opposition. Defendant Bertrand has 10 not been served as her address, Plaintiffs represent, has not been located. (Docs. 20, 33 at 3, 33-1 11 at 2-3). 12 The Court has considered the Nunes factors and finds they weigh in favor of amendment. 13 The Court finds neither bad faith on the part of Plaintiffs nor undue delay in bringing the motion in 14 light of Plaintiffs’ representations regarding the confidentiality of the underlying criminal and 15 juvenile dependency cases due to allegations of child abuse. Likewise, the Court finds no prejudice 16 to opposing parties; Defendants Bryant, Guerrero, Heredia, Tinoco, and Dee have stipulated to 17 amendment, Defendant Puente has not yet filed a responsive pleading, and Defendant Bertrand has 18 not been located for service. 19 No party asserts that leave to amend would be futile; indeed, Plaintiffs appear to seek to file 20 an amended complaint in part to address asserted deficiencies Defendants claim in their pending 21 motion to dismiss exist in the operative first amended complaint. See generally (Doc. 34). Lastly, 22 the fact that Plaintiff has amended his complaint once prior does not weigh against amendment 23 here, particularly as the prior amendment was filed before summons were issued or service upon 24 any party was completed. (See Doc. 13). 25 Conclusion and Order 26 For the foregoing reasons, IT IS HEREBY ORDERED: 27 1. Plaintiffs’ motion for leave to file a second amended complaint (Docs. 30, 33) is 1 2. No later than three (3) days following entry of this order, Plaintiffs SHALL FILE as a stand- 2 alone docket entry the second amended complaint proposed in the motion, including all 3 attached exhibits; 4 3. Defendants shall respond to the second amended complaint within 14 days of its filing (see 5 Fed. R. Civ. P. 15(a)(3)); and 6 4. Because the second amended complaint supersedes the first amended complaint, the Clerk 7 of the Court is DIRECTED to terminate Defendants’ pending motion to dismiss (Doc. 32) 8 and to vacate the motion hearing set for May

19, 2025, before District Judge Kirk E. 9 Sherriff. 10 | SO ORDERED. Dated: _May 14, 2025 | hr
12 UNITED STATES MAGISTRATE JUDGE
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28