

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Holm v. Acima Credit Digital, LLC

Holm · No. 3:24-CV-02345-GPC-DTF · Decided March 27, 2025

OPINION

Holm v. Acima Credit Digital, LLC

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 GABERICK HOLM, individually, and on Case No.: 3:24-CV-02345-GPC-DTF behalf of all
others similarly situated, 12

ORDER GRANTING PLAINTIFF’S

Plaintiff,

13 MOTION FOR LEAVE TO FILE AN

v. AMENDED COMPLAINT

14

ACIMA CREDIT DIGITAL, LLC (f/k/a

15 [Dkt. No. 24.]

ACIMA CREDIT, LLC d/b/a ACIMA

16 CREDIT LEASING,

17 Defendant. 18

19 Before the Court is Plaintiff’s motion for leave to file an amended complaint. 20 (Dkt. No. 24.)
Defendant filed an opposition, (Dkt. No. 28), and Plaintiff filed a reply. 21 (Dkt. No. 30.) Based
on the reasoning below, the Court GRANTS Plaintiff’s motion for 22 leave to file an amended
complaint. 23 Background 24 On October 23, 2024, Plaintiff Gaberick Holm (“Plaintiff”) filed a
putative class 25 action complaint in San Diego Superior Court against Defendant Acima Credit
Digital, 26 LLC (“Defendant”) alleging violations of the Military Lending Act, 10 U.S.C. § 987,
et. 27 1 seq., (“MLA”) and the Truth in Lending Act, 15 U.S.C. § 1638, for Defendant’s alleged 2
lending practices. As to the MLA, Plaintiff claims that Defendant’s loans (1) charge 3 interest
above the 36% statutory Military Annual Percentage Rate (“MAPR”) cap; (2) fail 4 to provide any
required MLA Disclosures; (3) include a Class Action Ban and Waiver of 5 Jury Trial; and (4)
include a mandatory binding arbitration clause. (Dkt. No. 1-2, Compl. 6 ¶ 54.) 7 On December 16,
2024, Defendant removed the action to this Court on federal 8 question jurisdictional grounds.1
(Dkt. No. 1.) In this motion, Plaintiff seeks to amend his 9 complaint to: (1) allege “additional

facts bearing on the question of whether Defendant’s 10 purported leases were, in fact, consumer credit agreements covered by the MLA”; and (2) 11 clarify the “contours of the putative classes.” (Dkt. No. 24-1 at 2.2) According to Plaintiff, 12 these amendments are necessary to “the Court’s analysis of the agreement at issue and 13 whether the MLA applies, in which case the arbitration provision and class waiver [at issue] 14 are void.” *Id.* Defendant opposes arguing that that proposed amendments “are futile and . 15 . . unfairly prejudice Defendant” (Dkt. No. 28.) On March 6, 2025, Plaintiff filed a 16 reply. (Dkt. No. 30.) 17 Discussion 18 Under Federal Rule of Civil Procedure (“Rule”) 15, courts “should freely give leave 19 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2); see also *Foman v. Davis*, 20 371 U.S. 178, 182 (1962) (“Rule 15(a) declares that leave to amend ‘shall be freely given 21 when justice so requires’; this mandate is to be heeded.”); *DCD Programs, Ltd. v. Leighton*, 22 833 F.2d 183, 186 (9th Cir. 1987) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th 23 24 1 On January 7, 2025, Defendant filed a motion to dismiss class claims and stay individual claims in 25 favor of arbitration. (Dkt. No. 17.) The parties agreed to pause briefing on the motion to dismiss until the Court rules on Plaintiff’s motion for leave to file an amended complaint. (Dkt. Nos. 25, 27.) 26 2 Page numbers are based on the CM/ECF pagination. 27

1 Cir. 1981)) (“[R]ule 15’s policy of favoring amendments to pleadings should be applied 2 with ‘extreme liberality.’”). Granting leave to amend rests in the sound discretion of the 3 trial court. *Int’l Ass’n of Machinists & Aerospace Workers v. Republic Airlines*, 761 F.2d 4 1386, 1390 (9th Cir. 1985). 5 “Five factors are taken into account to assess the propriety of a motion for leave to 6 amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and 7 whether the plaintiff has previously amended the complaint.”³ *Johnson v. Buckley*, 356 8 F.3d 1067, 1077 (9th Cir. 2004); see also *Foman*, 371 U.S. at 182 (*Foman factors*). These 9 factors do not carry equal weight; the possibility of delay alone, for instance, cannot justify 10 denial of leave to amend, but when combined with a showing of prejudice, bad faith, or 11 futility of amendment, leave to amend will likely be denied. *DCD Programs, Ltd.*, 833 12 F.2d at 186; *Bowles v. Reade*, 198 F.3d 752, 757-58 (9th Cir. 1999). The single most 13 important factor is whether prejudice would result to the non-movant as a consequence of 14 the amendment. *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); 15 *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 668 F.2d 1014, 16 1053 n.68 (9th Cir. 1981). “Absent prejudice, or a strong showing of any of the remaining 17 . . . factors, there exists a presumption under Rule 15(a) in favor of granting leave to 18 amend.” *Eminence Cap. LLC*, 316 F.3d at 1052 (emphasis in original). The burden of 19 demonstrating prejudice falls on the party opposing leave to amend. *DCD Programs, Ltd.*, 20 833 F.2d at 187. When determining whether to grant leave to amend, courts “must remain 21 guided by ‘the underlying purpose of Rule 15 . . . to facilitate decision on the merits, rather 22 than on the pleadings or technicalities.’” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 23 2000) (en banc) (quoting *Noll v. Carlson*, 809 F.2d 1446 (9th Cir. 1987)). 24 25 26 3 Because this is Plaintiff’s first request to amend in this

action, the Court need not discuss whether Plaintiff has previously amended his complaint. 27 1 Plaintiff argues that the Foman factors support his motion because the action is in 2 its infancy, he has been diligent in seeking amendment, Defendant will not suffer any 3 prejudice and he alleges a colorable claim under the MLA. On these factors, Defendant 4 contends that the proposed amendments (1) are futile; and (2) will unfairly prejudice it. 5 (Dkt. No. 28 at 2.) 6 A. Futility 7 “[A proposed] amendment is futile when no set of facts can be proved under the 8 amendment to the pleadings that would constitute a valid and sufficient claim or defense.” 9 Missouri ex rel. Koster v. Harris, 847 F.3d 646, 656 (9th Cir. 2017) (citation and quotation 10 marks omitted). “Denial of leave to amend on this ground is rare. Ordinarily, courts will 11 defer consideration of [futility] challenges . . . until after leave to amend is granted and the 12 amended pleading is filed.” Netbula, LLC v. Distinct Corp., 212 F.R.D. 534, 539 (N.D.

13 Cal. 2003); Green Valley Corp. v. Caldo Oil Co., No. 09cv4028-LHK, 2011 WL 1465883, 14 at *6 (N.D. Cal. Apr. 18, 2011) (noting “the general preference against denying a motion 15 for leave to amend based on futility”); see also Clarke v. Upton, 703 F. Supp. 2d 1037, 16 1043 (E.D. Cal. 2010) (“However, denial [of a motion to amend] on this ground is rare and 17 courts generally defer considerations of challenges to the merits of a proposed amended 18 pleading until after leave to amend is granted and the amended pleading is filed.”). As the 19 Ninth Circuit explained, “[i]t would be undesirable to resolve important legal questions on 20 the basis of allegations which are incomplete” and “[i]t has been said that the sufficiency 21 of an amended pleading ordinarily will not be considered on motion for leave to amend.” 22 Breier v. N. Cal. Bowling Proprietors’ Ass’n, 316 F.2d 787, 790 (9th Cir. 1963). 23 “The purpose of the MLA is to protect members of the military and their dependents 24 from the financial pitfalls related to consumer credit and ensure military readiness.” Cal. 25 Pawnbrokers Ass’n, Inc., v. Carter, No. 2:16cv2141-JAM-KJN, 2016 WL 6599819, at *1 26 (E.D. Cal. Nov. 8, 2016) (citation omitted). As such, the MLA governs terms of consumer 27 1 credit extended to members of the armed forces and their dependents. 10 U.S.C. § 987. 2 The MLA covers “creditor[s] who extend[] consumer credit” 10 U.S.C. § 987(a). 3 Consumer credit is defined as “credit offered or extended to a covered borrower primarily 4 for personal, family, or household purposes, and that is . . . [s]ubject to a finance charge; or 5 . . . [p]ayable by a written agreement in more than four installments.” 32 C.F.R. § 6 232.3(f)(1)(i)-(ii). Under the MLA, consumer credit does not include “(A) a residential 7 mortgage, or (B) a loan procured in the course of purchasing a car or other personal 8 property, when that loan is offered for the express purpose of financing the purchase and 9 is secured by the car or personal property secured.” 10 U.S.C. § 987(i)(6). 10 Defendant argues that because the Rental Purchase Agreement (“RPA”) at issue is a 11 lease agreement and not a credit agreement, the MLA does not apply. (Dkt. No. 28 at 4.) 12 Further, Defendant argues that, due to the Arbitration Agreement signed by the parties, 13 “any adjudication of the Plaintiff’s ability to amend the Complaint must, like the Complaint 14 itself, be adjudicated by the arbitrator.” (Id. at 5-6.) Finally, Defendant argues that 15 Plaintiff’s proposed amendments are

futile because the amendments “have no bearing 16 whatsoever on Plaintiff’s TILA claim, which must be arbitrated . . . because there is no 17 comparable provision under TILA prohibiting disputes arising under TILA to proceed to 18 arbitration.” (Id. at 6.) Plaintiff replies that Defendant’s futility argument is merely a 19 recitation of the arguments from its motion to dismiss in favor of arbitration and is not 20 appropriate on a motion to amend. (Dkt. No. 30 at 4-5.) Further, Plaintiff maintains that 21 the enforceability of the arbitration provision is a question for the court and not the 22 arbitrator. (Id. at 5.) Finally, he argues that if the contract falls under the MLA, any 23 agreement to arbitrate in the contract is void. (Id. at 7-8.) 24 At this stage of the litigation, the Court is not ruling on the sufficiency of the 25 proposed pleadings, but only on whether “no set of facts” can be proven that would 26 constitute a valid and sufficient claim. See *Missouri ex rel. Koster*, 847 F.3d at 656 (citing 27 1 *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988)). Here, the parties dispute 2 whether the RPA is a consumer credit agreement subject to the MLA or a lease agreement, 3 not subject to the MLA. A resolution on this issue will determine whether the dispute is 4 subject to arbitration. The proposed amendments may support a valid MLA claim if the 5 terms of the RPA constitute a consumer credit agreement. However, the Court is not in a 6 position to rule on the sufficiency of the proposed amended complaint. See *Breier*, 316 7 F.2d at 790; see also *Taylor v. Alore, LLC*, No. C19-5086-BHS, 2019 WL 4058980, at *2 8 (W.D. Wash. Aug. 27, 2019) (“[Plaintiff] presents arguments on futility which are more 9 appropriate to a fully-briefed motion to dismiss than to opposition to a motion for leave to 10 amend.”). Therefore, the Court concludes that the proposed amendment is not futile and 11 that the issue of whether the RPA is a consumer credit agreement is better resolved in a 12 later motion to dismiss. See *Breier*, 316 F.2d at 790 (“It [is] undesirable to resolve 13 important legal question on the basis of allegations which are incomplete[.]”). 14 B. Prejudice 15 “Prejudice is the touchstone of inquiry under Rule 15(a),” and “[a]bsent prejudice, 16 or a strong showing of any of the remaining Foman factors, there exists a presumption 17 under Rule 15(a) in favor of granting leave to amend.” *Eminence Cap. LLC*, 316 F.3d at 18 1052 (internal quotation marks omitted). Prejudice may exist where new allegations 19 “greatly alter[] the nature of the litigation” and would require defendants to undertake, “at 20 a late hour, an entirely new course of defense.” *Morongo Band of Mission Indians v. Rose*, 21 893 F.2d 1074, 1079 (9th Cir. 1990); *Peterson v. California*, No. 1:10-cv-01132-SMS, 22 2011 WL 3875622, at *3 (E.D. Cal. Sept. 1, 2011) (“[W]hen, after a period of extensive 23 discovery, a party proposes a late-tendered amendment that would fundamentally change 24 the case to incorporate new causes of action and that would require additional discovery, 25 the amendment may be appropriately denied as prejudicial to the opposing party.”). 26 27 1 Defendant argues that because it has already filed a motion to dismiss, “to permit 2 || Plaintiffs’ amendment now would moot Acima’s Arbitration Motion, thereby delaying the 3 || resolution of that pending motion and requiring Acima to file a new arbitration motion 4 || directed to the amended complaint,” which would prejudice Defendant due to the time and 5 || resources necessary to re-litigate the arbitration issue. (Dkt. No. 28 at 6-7.) Plaintiff 6

disagrees. (Dkt. No. 30 at 8-9.) 7 First, the litigation is in its early stages, see *Fremantlemedia N. Am., Inc. v. AXA Ins. Co.*, 2010 WL 11601204, at *3 (C.D. Cal. Nov. 5, 2010) (granting motion for leave to 9 ||amend because, inter alia, the case was in “its early stages and neither party ha[d] 10 || conducted discovery, except for initial disclosures.”), and Plaintiff's proposed amendment 11 not add new legal claims or theories, but simply provide additional facts to support 12 claims. Further, expenses incurred before a motion to amend is filed does not constitute 13 || prejudice. *United States v. United States Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th 14 ||Cir. 2016). Accordingly, Defendant has failed to demonstrate any prejudice if Plaintiff is 15 || granted leave to file an amended complaint. 16 In sum, the Court concludes that the Foman factors support Plaintiff's motion for 17 || leave to file an amended complaint. 18 Conclusion 19 For the reasons set forth above, the Court GRANTS Plaintiff's motion for leave to 20 || file an amended complaint. Plaintiff shall file an amended complaint within five (5) days 21 the Court's order. The hearing currently set for April 11, 2025 is hereby VACATED. 22 IT IS SO ORDERED. 23 Dated: March 27, 2025 <= 5 United States District Judge 26 27

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