

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Smallwood v. Department of Veterans Affairs

No. 1:24-cv-00141-JLT-CDB (E.D. Cal. Aug. 13, 2025) · No. 1:24-cv-00141-JLT-CDB · Decided August 13,
2025

OPINION

Smallwood v. Department of Veterans Affairs

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 SHAWN SMALLWOOD, Case No. 1:24-cv-00141-JLT-CDB 12 Plaintiff, ORDER
GRANTING PLAINTIFF’S

MOTION FOR LEAVE TO FILE FIRST

13 v. AMENDED COMPLAINT

14 DEPARTMENT OF VETERANS (Doc. 34)

AFFAIRS, et al., 15 Deadline: August 18, 2025 Defendants. 16 17 On January 31, 2024, Plaintiff
Shawn Smallwood initiated this action with the filing of a 18 complaint against the SASD
Development Group, LLC, the United States Department of Veterans 19 Affairs (“VA”), and VA
employees in their official capacity. (Docs. 1, 2). Pending before the 20 Court is Plaintiff’s motion
for leave to file a first amended complaint, filed August 7, 2025. (Doc. 21 34). 22 Background 23
In the motion, Plaintiff asserts that the proposed first amended complaint removes the first 24 and
second claims for relief in the initial complaint and “consolidates those claims under the 25
existing claim that the VA failed to conduct adequate” review under the National Environmental
26 Protections Act (“NEPA”) of the “Community-Based Outpatient Clinic” (the “Project”) in 27
Bakersfield, California, “prior to executing the lease for the Project.” (Doc. 34 at 3-4). 1 first
concerns the VA’s findings in April 2025 of “No Significant Impact” as “arbitrary, capricious, 2 an
abuse of discretion and contrary to law in violation of NEPA and Administrative Procedures 3
Act.” The second concerns the United States Fish and Wildlife Service’s (“FWS”) “Biological 4
Opinion” issued in March 2025 as “arbitrary, capricious, an abuse of discretion and contrary to
law 5 in violation of the Endangered Species Act and Administrative Procedure Act.” Plaintiff
represents 6 that, additionally, Douglas A. Collins is added as a defendant in his official capacity
as the current 7 Secretary of the VA, and removes Denis Richard McDonough, who was Secretary
of the VA when 8 the original complaint was filed. Further, Plaintiff states that Paul Souza and
Kim S. Turner of the 9 FWS are added in their official capacity in regards to the new claim
challenging the FWS’ 10 “Biological Opinion.” Id. at 4. 11 Plaintiff asserts that opposing parties

would not be prejudiced by amendment of the 12 complaint as they do not oppose the motion. *Id.* at 5-6. Plaintiff states there is no undue delay as 13 the amendment to the complaint is sought regarding “recent 2025 decisions of the VA and FWS, 14 which had not yet occurred when Plaintiff the Original Complaint in January 2024.” Plaintiff 15 represents that this motion is not brought in bad faith or with improper motive, that there have been 16 no previous amendments to the complaint, and amendment would not be futile as the claims are 17 brought “well within their respective statute of limitations and the addition of FWS and its 18 associated officers will not affect this Court’s jurisdiction.” *Id.* at 6. 19 Accompanying the motion is the declaration of counsel for Plaintiff Brian B. Flynn. (Doc. 20 34-1). Mr. Flynn represents that he provided the proposed first amended complaint to Defendants 21 via email, as well as a redline comparison with the original complaint, and Defendants did not 22 oppose the motion. *Id.* ¶¶ 2-6. Plaintiff attaches to the motion the proposed first amended 23 complaint (Doc. 34, Ex. 1) and a redline comparison with the original complaint (*id.*, Ex. 2). 24 Governing Law

25 Rule 15 permits a plaintiff to amend the complaint once as a matter of course no later than 26 21 days after service of the complaint or 21 days after service of a responsive pleading or motion 27 to dismiss, whichever is earlier. See Fed. R. Civ. P. 15(a)(1). After such time has passed or plaintiff 1 consent of the adverse parties. Fed. R. Civ. P. 15(a)(2). “Rule 15(a) is very liberal” and a court 2 should freely give leave to amend when “justice so requires.” *AmerisourceBergen Corp. v. 3 Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006); see *Chodos v. W. Publ. Co.*, 292 F.3d 992, 4 1003 (9th Cir. 2002) (“it is generally our policy to permit amendment with ‘extreme liberality’”) 5 (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990)). 6 Granting or denying leave to amend a complaint under Rule 15 is within the discretion of 7 the court. *Swanson v. United States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996). “In exercising 8 this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision 9 on the merits, rather than on the pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 10 979 (9th Cir, 1981); *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011) (“refusing 11 Chudacoff leave to amend a technical pleading error, albeit one he should have noticed earlier, 12 would run contrary to Rule 15(a)’s intent.”). 13 A court ordinarily considers five factors in assessing whether to grant leave to amend: “(1) 14 bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) 15 whether the plaintiff has previously amended his complaint.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 16 (9th Cir. 2004). The factors are not weighed equally. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th 17 Cir. 1995); see *Atkins v. Astrue*, No. C 10–0180 PJH, 2011 WL 1335607, at *3 (N.D. Cal. Apr. 7,

18 2011) (the five factors “need not all be considered in each case”). Undue delay, “by itself ... is 19 insufficient to justify denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 20 1999). On the other hand, futility of amendment and prejudice to the opposing party can,

by 21 themselves, justify the denial of a motion for leave to amend. *Bonin*, 59 F.3d at 845; see *Eminence 22 Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (the consideration of prejudice 23 to the opposing party carries the greatest weight). 24 In conducting this five-factor analysis, the court generally grants all inferences in favor of 25 permitting amendment. *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999). 26 Moreover, the court must be mindful that, for each of these factors, the party opposing amendment 27 has the burden of showing that amendment is not warranted. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 1011, 1012 (9th Cir. 1987). 28 Discussion 2 The Court addresses the relevant Nunes factors below. 3 A. Bad Faith 4 A motion to amend is made in bad faith where there is “evidence in the record which would 5 indicate a wrongful motive” on the part of the litigant requesting leave to amend. *DCD Programs*, 6 833 F.2d at 187; *Wizards of the Coast LLC v. Cryptozoic Entm’t LLC*, 309 F.R.D. 645, 651 (W.D.

7 Wash. 2015) (“In the context of a motion for leave to amend, ‘bad faith’ means acting with intent

8 to deceive, harass, mislead, delay, or disrupt.”) (citing *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 9 (9th Cir. 2006)). 10 Here, Plaintiff states the amendments are not brought in bad faith (Doc. 34 at 6) and there 11 is no information before the Court suggesting bad faith on the part of Plaintiff in seeking leave to 12 amend. The Defendants do not oppose amendment confirms the absence of bad faith on the Part 13 of Plaintiff. Accordingly, this factor weighs in favor of amendment. 14 B. Undue Delay 15 By itself, a showing of undue delay is insufficient to deny leave to amend pleadings. *Howey 16 v. United States*, 481 F.2d 1187, 1191 (9th Cir. 1973); *DCD Programs*, 833 F.2d at 186. However, 17 in combination with other factors, delay may be sufficient to deny amendment. *Webb*, 655 F.2d at 18 979-80; see *Lockheed Martin Corp. v. Network Solutions Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) 19 (substantial delay, while not dispositive, is relevant to whether to permit amendment). In assessing 20 whether there exists undue delay, a court shall consider if “the moving party knew or should have 21 known the facts and theories raised by the amendment in the original pleading.” *Jackson v. Bank 22 of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990) (citations omitted). The mere fact that a party fails 23 to offer a reason for not moving to amend earlier does not in itself constitute an adequate basis for 24 denying leave to amend. *Howey*, 481 F.2d at 1190-91. Whether there has been “undue delay” 25 should be considered in the context of (1) the length of the delay measured from the time the moving 26 party obtained relevant facts; (2) whether discovery has closed; and (3) proximity to the trial date. 27 *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798-99 (9th Cir. 1991). 1 Plaintiff’s representations that the added claims relate to VA and FWS decisions dating from 2025, 2 which had not been issued at the time of the filing of the original complaint. (Doc. 34 at 6). As 3 such, this factor weighs in favor of amendment. 4 C. Prejudice to Opposing Party 5 The most critical factor in determining whether to grant leave to amend is prejudice to the 6 opposing party. *Eminence Capital*, 316 F.3d at 1052. The burden of showing prejudice is on the 7 party opposing an amendment to the complaint. *DCD Programs, Ltd.*, 833 F.2d at 187. There is a 8 presumption

in favor of granting leave to amend where prejudice is not shown under Rule 15(a). 9 *Eminence Capital*, 316 F.3d at 1052. 10 Here, Defendants do not oppose Plaintiff's motion and there is no indication they would be 11 prejudiced by a grant of the motion. Thus, this factor weighs in favor of amendment. 12 D. Prior Amendments 13 The Court's discretion to deny leave to amend is "particularly broad" where a party has 14 previously amended the pleading. *Allen v. Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Here, 15 Plaintiff's proposed amendments would constitute the first amendment to the pleadings. Thus, this 16 factor weighs in favor of granting leave to amend. 17 E. Futility of Amendment 18 A court may deny leave to amend if the proposed amendment is futile or would be subject 19 to dismissal. *Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). An 20 amendment is futile if the complaint clearly could not be saved by amendment. *United States v. 21 Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). However, denial of leave to amend on 22 futility grounds is "rare." *Zurich Am. Ins. Co. of Illinois v. VForce Inc.*, No. 2:18-cv-02066-TLN- 23 CKD, 2020 WL 2732046, at *3 (E.D. Cal. May 26, 2020) (citing *Netbula, LLC v. Distinct Corp.*, 24 212 F.R.D. 534, 539 (N.D. Cal. 2003)). "Ordinarily, 'courts will defer consideration of challenges 25 to the merits of a proposed amended pleading until after leave to amend is granted and the amended 26 pleading is filed.'" *Id.* 27 Plaintiff represents that amendment would not be futile as the claims are brought "well 1 | not affect this Court's jurisdiction." (Doc. 34 at 6). The Court finds no clear indication of futility 2 | on the face of the proposed first amended complaint (Doc. 34, Ex. 1). Thus, this factor weighs in 3 | favor of granting leave to amend. 4 Because the Nunes factors all weigh in favor of amendment, the Court will grant Plaintiff's 5 || unopposed motion to amend the complaint. 6 Conclusion and Order 7 For the foregoing reasons, IT IS HEREBY ORDERED: 8 1. Plaintiff's motion for leave to file a first amended complaint (Doc. 34) is GRANTED (see 9 Fed. R. Civ. P. 15(a)(2)); 10 2. No later than August 18, 2025, Plaintiff SHALL FILE as a stand-alone docket entry the first 11 amended complaint proposed in the motion (Doc. 34, Ex. 1); 12 3. No later than 30 days after filing of the first amended complaint on the docket, Plaintiff 13 shall effect service of summons and complaint upon newly added Defendants and promptly 14 file proof of service thereof; and 15 4. Defendants' responsive pleadings shall be filed consistent with Fed. R. Civ. P. 15(a)(3)). 16 | IT IS SO ORDERED. M Dated: _ August 13, 2025 | hr
18 UNITED STATES MAGISTRATE JUDGE
19 20 21 22 23 24 25 26 27 28