

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Franchise Holding II, LLC,
10 Plaintiff,

No. CV-12-01363-PHX-DGC

ORDER

11 v.

12 Huntington Restaurants Group, Inc, et al.,
13 Defendants.

14 Plaintiff Franchise Holding II, LLC moves to amend its complaint pursuant to
15 Rule 15(a). Doc. 33. Defendants filed a response opposing the proposed amendment
16 (Doc. 34) and Plaintiff filed a reply (Doc. 35). For the reasons that follow the Court will
17 grant the motion.

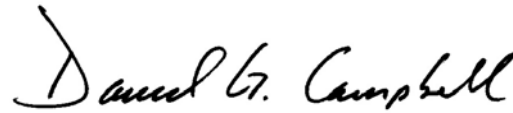
18 Rule 15(a) provides that leave to amend “shall be freely given when justice so
19 requires.” Fed. R. Civ. P. 15(a). The Ninth Circuit has explained that it is an abuse of
20 discretion to deny a motion to amend when “there is a lack of prejudice to the opposing
21 party and the amended complaint is obviously not frivolous, or made as a dilatory
22 maneuver of bad faith[.]” *Howey v. United States*, 481 F.2d 1187, 1190-91 (9th Cir.
23 1973). Plaintiff filed its motion to amend within the deadline set in the October 31, 2012
24 Case Management Order. Doc. 27. It seeks to add facts alleging additional breaches of
25 the contract that is already at issue in this case. Doc. 33 at 3. These claims are not
26 frivolous.

27 Defendants make two arguments. First, they repeat an argument from their motion
28 to dismiss that Plaintiff claims excessive damages. This argument is irrelevant to the

1 question of whether leave to amend should be granted (in fact, the damages portion of the
2 complaint remains unchanged). Second, Defendants argue that because a fee award is
3 sometimes available in breach of contract claims under Arizona law, they have been
4 prejudiced by the additional fees generated investigating these “tangential” claims and
5 drafting a motion and a new complaint. Doc. 34 at 3-4; *see* A.R.S. § 12-341.01. Any
6 increase in a potential fee award that is the result of investigating a non-frivolous claim is
7 not unduly prejudicial, and Defendants will be required to pay Plaintiff’s fees only if
8 Plaintiff prevails. Additionally, the costs of drafting a motion to amend could have been
9 avoided had Defendants stipulated to the proposed amendments.

10 **IT IS ORDERED** that Plaintiff’s motion for leave to amend (Doc. 33) is **granted**.
11 Plaintiff shall file an amended complaint on or before **February 20, 2013**.

12 Dated this 13th day of February, 2013.

13
14
15 

16 _____
17 David G. Campbell
18 United States District Judge
19
20
21
22
23
24
25
26
27
28