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**United States District Court
Central District of California**

NICANORA ESQUIVEL, an individual,
Plaintiff,

v.
PRUDENTIAL LIFE INSURANCE
COMPANY, doing business as Office of
Servicemembers’ Group Life Insurance,

Defendant/Counterclaim-Plaintiff.
AND RELATED CROSS-ACTIONS

Case № 2:17-cv-8610-ODW (JCx)

**ORDER GRANTING PLAINTIFF’S
MOTION TO FILE SECOND
AMENDED COMPLAINT [66]; AND
DENYING DEFENDANT’S &
THIRD-PARTY DEFENDANT’S
MOTION TO DISMISS AS MOOT
[53, 59]**

I. INTRODUCTION

Plaintiff, Nicanora Esquivel, filed the pending Motion for Leave to File Second Amended Complaint against Defendant, the Prudential Life Insurance Company of America (“Prudential”).¹ (ECF No. 66.) Plaintiff seeks to add additional factual allegations and six new exhibits to her previously amended Complaint. (*Id.*, see also ECF No. 55.) Prudential opposes Plaintiff’s Motion alleging that Plaintiff’s filing is futile and constitutes bad faith. (ECF No. 77.) Based on the analysis below, the Court **GRANTS** Plaintiff’s Motion to File Second Amended Complaint and therefore

¹ Plaintiff mistakenly brought suit against Prudential under the title of “Prudential Life Insurance Company doing business as Office of Servicemembers’ Group Life Insurance.” (ECF No. 25.)

1 **DENIES** Defendant’s Motion for Interpleader and Dismissal of Claims, as moot.²
2 (ECF Nos. 53, 66.)

3 **II. BACKGROUND**

4 **A. Factual Background**

5 Esquivel is the widow of Richard Vidaurri (“Insured”), who died on May 31,
6 2017. (First Amended Complaint (“FAC”) ¶ 2, ECF No. 55.) The Insured maintained
7 a life insurance policy (the “Policy”) for \$200,000.00 with Prudential through their
8 Office of Servicemembers’ Group Life Insurance (“OSGLI”) and Veterans’ Group Life
9 Insurance Services (“VGLIS”).³ (*Id.* ¶ 3.) In 1999, the Insured designated his mother,
10 Delia Villar, as the sole beneficiary of his Policy. (*Id.* ¶ 13(a).) Yet, after marrying
11 Esquivel and becoming the father of “two small children,” the Insured contacted
12 Prudential to inquire “about how he could increase the amount of his [coverage] . . . and
13 how he could request a change to his beneficiary(ies).” (Def.’s Mot. for Relief in
14 Interpleader and Dismissal of Claims (“Def.’s Mot.”) 5:14–17, ECF No. 53.)

15 On June 5, 2017, Prudential was informed of the Insured’s death and created a
16 “claim file” for the Insured’s Policy. (Def.’s Mot. 6.) Thereafter, a Prudential employee
17 uploaded a screenshot into the file, which reflected that the Insured designated, through
18 “online submission,” that the benefits of his Policy be paid “By-Law.”⁴ (Def.’s Mot.
19 6.) Upon examination of the Insured’s claim file, Prudential informed Esquivel on June
20 28, 2017, that she was the sole beneficiary of the Policy “By-Law and invited her to

21 ² After carefully considering the papers filed in support of the Motion, the Court deemed the matter
22 appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

23 ³ Insured was honorably discharged from the U.S. Army on July 31, 1999, and received the Policy
24 around December 1, 1999. The Insured’s Policy is governed by 38 U.S.C. §§ 1965–1980 and 38 CFR
25 Part 9. (FAC ¶ 4.)

26 ⁴ “A By-Law designation means that the death benefit when due is payable pursuant to a facility of
27 payment provision, which is . . . in the following Order of Precedence:

- 28 1) The surviving spouse of the insured; if none
- 2) The child or children, in equal shares, with the shares of any deceased children to be distributed among the descendants of that child; if none,
- 3) The parents in equal shares or all to the surviving parents; if none,
- 4) A duly appointed executor or administrator of the insured’s estate; if none,
- 5) Other next of kin.” (Def.’s Mot. 6–7.)

1 submit a claim.” (Def.’s Mot 7:22–23, *see also* FAC ¶¶ 17, 18.) On July 6, 2017,
2 Esquivel asserted claim to the Insured’s Policy. (Def.’s Mot. 8.)

3 Thereafter, Prudential discerned that a mistake had occurred with the Insured’s
4 claim file. Pursuant to Prudential’s “usual practice,” a Claims Examiner reviewed the
5 Insured’s claim file before issuing payment. (*Id.*) Upon secondary review, Prudential
6 determined that the screenshot uploaded to the Insured’s file had been removed and that
7 no record existed of the Insured having ever submitted an online By-Law designation.
8 (*Id.*) After additional appraisal by supervising staff, the screenshot originally
9 discovered in the Insured’s claim file was determined to have been related to a different
10 policy account. (*Id.* 9.) Moreover, Prudential determined that the Insured never
11 submitted a new designation “whether in writing or via the internet.” (*Id.*) In light of
12 these new discoveries, Prudential informed Esquivel on September 6, 2017 that she was
13 not the sole beneficiary of the Policy. (FAC ¶ 22.) Esquivel now contends that
14 “Prudential unreasonably failed to properly track the beneficiary . . . and then
15 deliberately attempted to cover up that fact.” (FAC ¶ 1(b).)

16 **B. Procedural Background**

17 On November 29, 2017, Esquivel filed a Complaint alleging: (1) Negligence;
18 (2) Negligent Misrepresentation; (3) Unjust Enrichment; and (4) Demand for
19 Interpleader. (Compl., ECF No. 1.) On January 31, 2018, Prudential filed an
20 Amended Answered and Counterclaim to Plaintiff’s Complaint and filed an Amended
21 Third-Party Complaint against Villar. (ECF Nos. 25, 26.) Villar responded to
22 Prudential’s Third-Party Complaint in Interpleader on February 26, 2018. (ECF
23 No. 40.)

24 Prudential then filed a Motion for Relief in Interpleader and Dismissal of
25 Claims on May 8, 2018. (ECF No. 53.) Shortly thereafter, Esquivel filed her
26 Opposition to Prudential’s Motion for Relief in Interpleader and her First Amended
27 Complaint (“FAC”) alleging: (1) Tortious Breach of the Implied Covenant of Good
28 Faith and Fair Dealing; (2) Negligence; (3) Negligent Misrepresentation; (4) Unjust

1 Enrichment and Restitution; and (5) Declaratory Relief.⁵ (ECF Nos. 55, 57.) On May
2 25, 2018, Villar filed a motion for Joinder in Prudential’s Motion for Interpleader.
3 (ECF No. 59.) On June 14, 2018, Esquivel filed for a Motion for Leave to File
4 Second Amended Complaint, maintaining the same five claims from her FAC, but
5 asserting additional facts. (ECF No. 66.) Prudential opposed Esquivel’s Motion for
6 Leave to File Second Amended Complaint. (ECF No. 77.)

7 **III. LEGAL STANDARD**

8 Amendments to a party’s complaint are permitted as a matter of course within
9 twenty-one days of service of a motion or of service of a responsive pleading. Fed. R.
10 Civ. P. 15(a)(1). However, if a party can no longer amend as a matter of course, the
11 amending party must obtain “the opposing party’s written consent or the court’s leave.”
12 Fed. R. Civ. P. 15(a)(2). When determining whether leave to amend should be granted,
13 the Court considers: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party;
14 (4) futility of amendment; and (5) prior amendment of the Complaint. *Pepsi-Cola*
15 *Metro. Bottling Co. v. Ins. Co. of N. Am.*, CV 10-2696 SVW (MANx), 2010 WL
16 11549719, at *1 (C.D. Cal. Nov. 18, 2010).

17 Altogether, a court should “freely give leave [to amend] when justice so
18 requires.” *Id.*; *see also DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir.
19 1987). However, the court may deny leave to amend “[w]here the party seeking
20 amendment knows or should know of the facts upon which the proposed amendment is
21 based but fails to include them in the original complaint” *E.E.O.C. v. Boeing Co.*,
22 843 F.2d 1213, 1222 (9th Cir. 1988).

23 **IV. DISCUSSION**

24 **A. Leave to File Second Amended Complaint**

25 Following Rule 15, amendments are “to be applied with extreme liberality,” and
26 a presumption that leave to amend should be granted. *Zendel v. ABC Video Prods.*,
27 CV 10-2889-VBF(Ex), 2011 WL 13214018, at *2 (C.D. Cal. May 16, 2011); *see also*

28 _____
⁵ Esquivel’s Demand for Interpleader was withdrawn without prejudice. (ECF No. 55.)

1 *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999) (applying the four-
2 factor test to a motion to amend, and noting that the “determination should be
3 performed with all inferences in favor of granting the motion”). Here, Esquivel
4 requests leave to amend to include additional factual allegations and six exhibits that
5 were previously unknown. (Mot. Leave to File Second Amended Complaint (“Mot.
6 SAC”), ECF No. 66.) Prudential argues that Esquivel’s leave to amend should be
7 denied because it is futile and brought in bad faith. (Opp. to Pl.’s Mot. for Leave to
8 Amend (“Opp. Mot.”), ECF No. 77.) Altogether, the four factor test weighs in favor
9 of **GRANTING** Esquivel’s Motion to Amend.

10 *1. Undue Delay*

11 The first factor the Court considers is whether Plaintiff unduly delayed in seeking
12 to amend the Complaint. *See Griggs*, 170 F.3d at 880. Undue delay requires inquiry
13 into “whether the moving party knew or should have known the facts and theories raised
14 by the amendment in the original pleading.” *Jackson v. Bank of Haw.*, 902 F.2d 1385,
15 1388 (9th Cir. 1990). In considering this, the Court looks to whether the moving party
16 justified “their delay in moving to file an amended complaint.” *Id.* However, “delay
17 alone no matter how lengthy is an insufficient ground for denial of leave to amend.”
18 *United States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981). The Court must also find bad
19 faith or prejudice. *Id.*

20 Here, Esquivel filed her motion to amend before the Court’s June 25, 2018
21 deadline to amend pleadings. (ECF No. 46.) On May 29, 2018, thirteen days after
22 filing the FAC, Esquivel informed Prudential that she was moving to amend and did so
23 in less than one month after her initial FAC filing. (Mot. SAC 7.) Furthermore,
24 Esquivel argues that the changes introduced in the amended Complaint were recently
25 obtained from discovery and therefore not known at the time of the FAC. (Mot. FAC
26 5:19–20.) Considering Prudential does not raise any argument for undue delay and
27 Esquivel’s efficient communication with Prudential, the Court finds that Esquivel did
28

1 not unduly delay in seeking to amend the Complaint. Therefore, this factor weighs in
2 favor of granting leave to amend.

3 *2. Bad Faith*

4 Next, the Court considers whether there is any display of bad faith by the
5 Plaintiff. *Griggs*, 170 F.3d at 880. “In order for the Court to find that a moving party
6 filed for leave to amend in bad faith, the opposing party must offer evidence that shows
7 ‘wrongful motive’ on the part of the moving party.” *dpiX LLC v. Yieldboost Tech, Inc.*,
8 No. 14-CV-05382-JST, 2015 WL 5158534 at *4 (N.D. Cal. Sep. 2, 2015.); *see also*
9 *DCD Programs*, 833 F.2d at 187 (determining that there must be “evidence in the record
10 which would indicate a wrongful motive”).

11 First, Prudential contends that Esquivel’s Motion constitutes bad faith because of
12 “the timing.” (Opp. Mot. 7.) That is, the fact Esquivel filed a Motion to Amend directly
13 after Prudential filed its Motion for Interpleader and Dismissal of Claims is indicative
14 of an attempt to avoid Prudential’s dismissal. (*Id.* at 7–8.) To support its argument,
15 Prudential cites to various cases denying motions to amend filed after motions for
16 summary judgment. (*Id.* at 7.) Yet, Prudential never explains how motions for
17 summary judgment are analogous to motions for interpleader and dismissal of claims.
18 Had Prudential filed a motion for summary judgment, these cases would be sufficient
19 to raise concerns of bad faith. However, in light of the motion Prudential filed, its
20 timing argument is not persuasive.

21 Second, Prudential asserts bad faith by alleging that Esquivel is making
22 misrepresentations to the Court “to keep Prudential in the Case.” (Opp. Mot. 8.) To
23 establish this claim, Prudential points to Esquivel’s contention that Prudential is
24 suppressing evidence and her interpretation of the recording between Prudential and the
25 Insured. (Opp. Mot. 9–10.) Prudential strongly asserts that it has addressed these issues
26 and the majority of the factual allegations established in Esquivel’s new pleading,
27 proving that Esquivel’s allegations are false and misleading. (*See* Opp. Mot.)
28 However, simply attacking Esquivel’s understanding and interpretation of the events

1 surrounding the alleged facts is not sufficient to show a wrongful motive. If there were
2 no facts at issue between the two parties, then bad faith could exist. *See Griggs*, 170
3 F.3d at 881 (finding that bad faith exists when “the plaintiff is merely seeking to prolong
4 the litigation by adding new but baseless legal theories”). Since the record does not
5 indicate bad faith, this factor also weighs in favor of granting leave to amend.

6 3. *Prejudice to the Opposing Party & Prior Amendment*

7 The court next considers whether Plaintiff has previously amended the Complaint
8 and whether allowing amendment would be prejudicial to Prudential. *Pepsi-Cola*, 2010
9 WL 11549719, at *1. “As [the Ninth] circuit and others have held, it is the consideration
10 of prejudice to the opposing party that carries the greatest weight.” *Eminence Capital,*
11 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Still, “[t]he party opposing
12 amendment bears the burden of showing prejudice.” *DCD Programs*, 833 F.2d at 187.

13 This is only Esquivel’s second amendment to her Complaint, which includes new
14 factual allegations and six exhibits obtained through recent discovery. (*See Mot. SAC.*)
15 Furthermore, Prudential does not allege that the amendment would be prejudicial. (*See*
16 *generally Opp. Mot.*) Therefore, the Court finds both of these factors support granting
17 leave to amend.

18 4. *Futility of Amendment*

19 Finally, Prudential asserts that leave to amend should be denied because it is
20 futile. (*Opp. Mot.* 10.) It is well-established that the Court need not accommodate futile
21 amendments. *Newland v. Dalton*, 81 F.3d 904, 907 (9th Cir. 1996); *see also United*
22 *States ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1502 (9th Cir. 2001)
23 (internal citation omitted) (“Futility of amendment can, by itself, justify the denial of a
24 motion for leave to amend.”). A proposed amendment is futile when, “before discovery
25 is complete, . . . no set of facts can be proved under the amendment which would
26 constitute a valid claim or defense.” *Breakdown Servs., Ltd. v. Now Casting, Inc.*, 550
27 F. Supp. 2d 1123, 1132 (C.D. Cal. 2007). Such is not the case here.

28

1 Prudential devotes a considerable amount of time arguing that the claims alleged
2 in Esquivel’s SAC are without merit. (Opp. Mot. 11–15.) First, Prudential argues that
3 Esquivel’s tortious breach of the implied covenant of good faith and fair dealing claim
4 fails as a matter of law because she is seeking to “impose obligations on Prudential that
5 are in direct conflict with the [Policy] and SGLI statute.” (*Id.* at 11: 9–13.) Second,
6 Prudential contends that Esquivel’s negligence and negligent misrepresentation claims
7 are also futile because she fails to allege the required elements. (*Id.* 12.) Lastly,
8 Esquivel’s other claims for unjust enrichment and declaratory relief are purportedly
9 futile because the damages requested “are preempted by the SGLI Statute.” (Opp. Mot.
10 14:14–17.) Yet, Prudential’s arguments are conscribed to its opposition to Esquivel’s
11 Motion to Amend. (ECF No. 77.) Generally, “[t]he merits or facts of a controversy are
12 not properly decided in a motion for leave to amend and should instead be attacked by
13 a motion to dismiss for failure to state a claim or for summary judgment.” *Allen v.*
14 *Bayshore Mall*, No. 12-CV-02368-JST, 2013 WL 6441504, at *5 (N.H.D. Cal. Dec. 9,
15 2013) (quoting *McClurg v. Maricopa Cnt.*, No. 09-CV-1684-PHX, 2010 WL 3885142,
16 at *1 (D. Ariz. Sept. 30, 2010)). Thus, the Court declines to convert Esquivel’s motion
17 to amend into a motion to dismiss the proposed Second Amended Complaint. Since
18 Esquivel’s claims have factual support and the matter is still at the pleading stage, the
19 Court will not conclude as a matter of law that Esquivel is not entitled to recover under
20 these claims, at this juncture. Therefore, the Court does not find the SAC to be futile.
21 *See SAES Getters S.p.A. v. Areonex, Inc.*, 219 F. Supp. 2d 1081, 1086 (S.D. Cal. 2002)
22 (citations omitted) (“While courts will determine the legal sufficiency of a proposed
23 amendment using the same standard as applied on a Rule 12(b)(6) motion, [citation]
24 such issues are often more appropriately raised in a motion to dismiss rather than in an
25 opposition to a motion for leave to amend.”).

26 **B. Motion for Interpleader and Dismissal of Claims**

27 Prudential moved to dismiss Esquivel’s Complaint pursuant to Federal Rule of
28 Civil Procedure 12(b)(6) on May 8, 2018. (ECF No. 53.) On May 16, 2018, Esquivel

1 filed a First Amended Complaint Pursuant to Federal Rule of Civil Procedure 15, eight
2 days after Prudential filed its responsive pleading. (ECF No. 55.) Federal Rule of Civil
3 Procedure 15(a)(1) allows Esquivel to file an amended complaint once as a matter of
4 course within twenty-one days of service with a Rule 12(b) motion. Therefore,
5 Esquivel's amended complaint was proper. Moreover, Esquivel now moves to file a
6 Second Amended Complaint, which the Court has granted pursuant to Federal Rule of
7 Civil Procedure 15. As the pending motion to dismiss was based on a complaint that is
8 no longer operative, the motion is **DENIED** as **MOOT**. *See Ramirez v. Cty. of San*
9 *Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (finding that amended pleading
10 supersedes the first, and holding that motion attacking the first pleading may be deemed
11 moot). Furthermore, to the extent Prudential seeks to introduce evidence outside of the
12 complaint to challenge Esquivel's claims, it must do so through the proper procedural
13 vehicle. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.
14 2001) (holding the court may not consider evidence outside of the complaint on a
15 motion to dismiss).

16 V. CONCLUSION

17 For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion for
18 Leave to File Second Amended Complaint. (ECF No. 66.) And, the Court **DENIES**
19 Defendant's Motion for Relief in Interpleader and Dismissal of Claims, as moot. (ECF
20 No. 53.) Pursuant to Local Rule 15-1, Plaintiff is required to promptly file the approved
21 Second Amended Complaint as a separate document. L.R. 15-1.

22
23 **IT IS SO ORDERED.**

24 July 23, 2018

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27 **OTIS D. WRIGHT, II**
28 **UNITED STATES DISTRICT JUDGE**