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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF CALIFORNIA

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8 LISA DAVIS,

9 Plaintiff,

10  
11 v.

12 SOCIAL SERVICE COORDINATORS,  
13 Inc., et al.,

14 Defendants.

1:10-cv-02372-OWW-SKO

MEMORANDUM DECISION AND ORDER  
RE: MOTION TO AMEND (Doc. 18)

15 I. INTRODUCTION.

16 Lisa Davis ("Plaintiff") proceeds with an action pursuant to  
17 29 U.S.C. § 201 et seq. against Social Service Coordinators, Inc.  
18 and Social Service Coordinators, LLC ("Defendants").<sup>1</sup> Plaintiff  
19 filed a first amended complaint ("FAC") on January 18, 2011. (Doc.  
20 6).

21 Defendants filed a motion to dismiss the FAC on February 8,  
22 2011. (Doc. 11). Plaintiff filed a second amended complaint on  
23 March 21, 2011. (Doc. 22). The court struck Plaintiff's second  
24 amended complaint on March 31, 2011 for failure to obtain leave.  
25 (Doc. 17). The order striking Plaintiff's second amended complaint  
26 directed Plaintiff to file either opposition to Defendants motion

27  
28 <sup>1</sup> Plaintiff seeks to proceed as a class representative pursuant to Fed. R. Civ. P. 23. The court does not reach the class certification issue at this time.

1 to dismiss the FAC or, alternatively, a motion for leave to amend.

2 Plaintiff filed a motion for leave to amend the complaint on  
3 April 20, 2011. (Doc. 19). Defendants filed opposition to the  
4 motion to amend on May 16, 2011. (Doc. 20). Plaintiff filed a  
5 reply on May 25, 2011. (Doc. 21).

6 **II. FACTUAL BACKGROUND.**

7 Defendant Social Services Coordinators, Inc. ("SSC") hired  
8 Plaintiff as a "remote case manager" in August 2010. SSC  
9 terminated Plaintiff on November 25, 2010.

10 SSC's business includes telemarketing to Medicare  
11 beneficiaries in order to qualify beneficiaries for particular  
12 benefit programs. SSC employs persons characterized by the FAC as  
13 "intake/outreach employees;" SSC gave these employees titles such  
14 as "remote case managers," "case managers," "case reviewers," "case  
15 examiners," "intake progress services," "already-enrolled unit,"  
16 "golden touch unit," "mailing services," and "disability screener"  
17 managers," "intake specialists," "intake coordinators," "community  
18 program specialists," "in-progress services," "already-enrolled  
19 unit," "golden touch unit," "mailing services," and "disability  
20 screener." The primary job duty of intake/outreach employees is to  
21 make telephone calls to predetermined senior citizens enrolled in  
22 particular Medicare plans. Plaintiff alleges SSC created the  
23 various job titles given to intake/outreach employees in order to  
24 facilitate SSC's practice of wrongfully classifying such employees  
25 as exempt from applicable federal and state wage and hour laws.  
26 Plaintiff seeks to serve as the class action representative for all  
27 similarly situated intake/outreach employees subjected to  
28 Defendants' alleged unlawful conduct.

1 Plaintiff worked in excess of eight hours in a workday and/or  
2 in excess of forty hours in a work week. SSC failed to pay premium  
3 compensation for overtime hours, failed to provide off-duty meal  
4 and rest breaks, failed to provide reimbursement of business  
5 expenses incurred by Plaintiff, failed to provide accurate wage  
6 statements, and failed to provide immediate payment of earned and  
7 unpaid wages at the time of employment termination.

8 **III. LEGAL STANDARD.**

9 Rule 15(a) of the Federal Rules of Civil Procedure provides  
10 that a party may amend its pleadings "only with the opposing  
11 party's written consent or the court's leave" and that "the court  
12 should freely give leave when justice so requires." Fed. R. Civ. P.  
13 15(a) (2). This rule should be applied with "extreme liberality"  
14 in favor of allowing amendments in the early stages of a case. See  
15 *Jones v. Bates*, 127 F.3d 839, 847 n.8 (9th Cir. 1997). A court  
16 should consider four factors in determining whether to grant leave  
17 to amend: (1) undue delay, (2) bad faith, (3) futility of  
18 amendment, and (4) prejudice to the opposing party. *United States*  
19 *v. Pend Oreille Pub. Util. Dist. No. 1*, 926 F.2d 1502, 1511 (9th  
20 Cir. 1991). Delay alone is not sufficient grounds for denying leave  
21 to amend. *Id.* The consideration of prejudice to the opposing party  
22 is the most important factor. *Eminence Capital, LLC v. Aspeon,*  
23 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("Prejudice is the  
24 "touchstone of the inquiry under Rule 15(a)"). Absent prejudice, or  
25 a strong showing of any of the remaining factors, there is a  
26 presumption under Rule 15(a) in favor of granting leave to amend.  
27 *Id.* "'Where there is a lack of prejudice to the opposing party and  
28 the amended complaint is obviously not frivolous, or made as a

1 dilatory maneuver in bad faith, it is an abuse of discretion' to  
2 deny leave to amend." *Pend Oreille*, 926 F.2d at 1511-1512 (citing  
3 *Howey v. U.S.*, 481 F.2d 1187, 1190-91 (9th Cir. 1973)). However,  
4 "[w]hile Fed.R.Civ.P. 15(a) encourages leave to amend, district  
5 courts need not accommodate futile amendments." *Newland v. Dalton*,  
6 81 F.3d 904, 907 (9th Cir. 1996).

7 **IV. DISCUSSION.**

8 Defendants contend that Plaintiff's motion to amend should be  
9 denied because (1) Plaintiff does not have a good faith basis to  
10 amend her class action allegations; (2) Defendants will suffer  
11 undue prejudice if leave to amend is granted; (3) Plaintiff has not  
12 cured the deficiencies identified in Defendants' motion to dismiss;  
13 and (4) amendment is futile.

14 **A. Bad Faith**

15 Defendants contend that Plaintiff cannot amend her complaint  
16 to properly assert any claims on behalf of a "California Class" or  
17 "California Labor Subclass" because Defendants have represented to  
18 Plaintiff that she was the only "remote case manager" employed in  
19 California during the relevant time period.<sup>2</sup> Defendants'  
20 contention lacks merit. First, Plaintiff is not required to  
21 abandon her claims based on Defendants' self-serving  
22 representation. Second, Defendants' representation, even if true,  
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24 <sup>2</sup> Defendants submit a declaration from a current human resources employee who  
25 represents that no other remote case managers were employed in California during  
26 the operative time frame. The declaration does not aver that Defendants did not  
27 employ other individuals in California with job duties substantially similar to  
28 those of a remote case manager, however. At oral argument, Defense counsel  
represented that Defendants did not employ any other employees in California  
during the relevant time frame; there is no evidence of this assertion, and in  
any event, it is inappropriate to deny leave to amend based on such extrinsic  
evidence at this stage in the proceedings.

1 is not dispositive in light of Plaintiff's theory that SSC gave  
2 employees with essentially the same job duties different titles in  
3 furtherance of SSC's scheme to wrongfully claim such employees as  
4 exempt from relevant wage and hour laws. Defendants have not  
5 established that Plaintiff's motion to amend is brought in bad  
6 faith.

7 **B. Prejudice**

8 Defendants contend they will suffer undue prejudice "defending  
9 claims that have not been asserted in good faith." (Opposition at  
10 5-6). Defendants complain that they will be subjected to "needless  
11 discovery costs and continued litigation." (Id.). There is no  
12 evidence that Plaintiff's claims are brought in bad faith, and the  
13 prejudice Defendants complain of is nothing more than the  
14 inconvenience always present when a party is required to defend  
15 against a law suit. As this case is still in its early stages,  
16 there is no basis to find that granting leave to amend will  
17 prejudice Defendants.

18 **C. Deficiency of the Proposed Amended Complaint**

19 Defendants cite *Foman v. Davis*, 371 U.S. 178, 182 (1962) for  
20 the proposition that leave to amend should be denied because  
21 Plaintiff has "repeatedly" failed to cure deficiencies in her  
22 previous complaints. Defendants contention is based on a  
23 misreading of *Foman* and the federal rules. The passage cited from  
24 *Foman* suggests that further leave to amend should be denied where  
25 a party exhibits "repeated failure to cure deficiencies by  
26 amendments *previously allowed*." *Id.* (emphasis added). Here, no  
27 amendment to the complaint has been "previously allowed;" Plaintiff  
28 has only amended her complaint once, and that amendment was

1 effected as of right pursuant to Federal Rule of Civil Procedure  
2 15(a). Rule 15 must be applied with "extreme liberality" in favor  
3 of allowing amendments in the early stages of a case. *Jones*, 127  
4 F.3d at 847.

5 **D. Futility**

6 Defendants advance the conclusory contention that "Plaintiff's  
7 proposed SAC is 'futile' because it fails to cure the fatal defects  
8 discussed more fully above, and cited by SSC in its Motion to  
9 Dismiss." (Opposition at 7). Nothing in Defendants' motion to  
10 dismiss establishes that amendment is futile; to the contrary the  
11 motion to dismiss is predicated on Plaintiff's lack of specificity  
12 in pleading her claims.

13 The "extreme liberality" in favor of allowing amendments in  
14 the early stages of a case requires that Plaintiff be given an  
15 opportunity to file an amended complain. *Jones*, 127 F.3d at 847.  
16 Plaintiff's motion is GRANTED.

17 **ORDER**

18 For the reasons stated, IT IS ORDERED:

- 19 1) Plaintiff's motion to amend is GRANTED;  
20 2) Plaintiff's shall file an amended complaint by August 9,  
21 2011;  
22 3) Defendants shall respond to the amended complaint within  
23 twenty-one days following electronic service of the amended  
24 complaint.

25 IT IS SO ORDERED.

26 **Dated: July 28, 2011**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**