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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REBECCA M. AYALA,
Plaintiff,
v.
FRITO LAY, INC.,
Defendant.

No. 1:16-cv-01705-DAD-SKO

ORDER GRANTING PLAINTIFF’S MOTION
FOR LEAVE TO FILE THIRD AMENDED
COMPLAINT

(Doc. No. 28)

On September 1, 2016, plaintiff Rebecca Ayala filed the original complaint in this action in the Stanislaus County Superior Court of California, alleging that due to her whistleblower activity, defendant Frito Lay, Inc. (“Frito Lay”) retaliated against plaintiff by discriminating against her and wrongfully terminating her employment. (Doc. No. 1-5.) On November 7, 2016, defendant Frito Lay removed the action to federal court on the basis of diversity jurisdiction. (Doc. No. 1.) The operative complaint in this matter is plaintiff’s second amended complaint, filed on July 20, 2017. (Doc. No. 22) On August 7, 2017, defendant Frito Lay filed its answer to the second amended complaint. (Doc. No. 24.)

On December 19, 2017, plaintiff timely filed the present motion for leave to file a third amended complaint, seeking to add defendants Frito-Lay North America, Inc.; Frito-Lay Sales, Inc.; Rolling Frito-Lay Sales, LP; PepsiCo, Inc.; and FL Transportation, Inc. (Doc. No. 28.) Plaintiff asserts that such amendment is necessary because defendant Frito Lay claimed in its

1 answer to the second amended complaint that it did not employ plaintiff after 2006 and at the time
2 of plaintiff's termination of employment. (*Id.* at 1–2.) On January 9, 2018, defendant Frito Lay
3 filed a statement of non-opposition to plaintiff's motion. (Doc. No. 30.)

4 Under Rule 15 of the Federal Rules of Civil Procedure, once an answer has been filed, a
5 party may amend a pleading only with leave of court or after obtaining the written consent of the
6 adverse party. *See* Fed. R. Civ. P. 15(a). A court should grant leave to amend freely when justice
7 so requires. *Id.* The Supreme Court has instructed lower courts to heed carefully the command of
8 Rule 15. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). “[R]ule 15’s policy of favoring
9 amendments to pleadings should be applied with extreme liberality.” *DCD Programs Ltd. v.*
10 *Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citations and quotations marks omitted). As the
11 Supreme Court has articulated:

12 In the absence of any apparent or declared reason—such as undue
13 delay, bad faith or dilatory motive on the part of the movant,
14 repeated failure to cure deficiencies by amendments previously
15 allowed, undue prejudice to the opposing party by virtue of
allowance of the amendment, futility of the amendment, etc.—the
leave sought should, as the rules require, be “freely given.”

16 *Foman*, 371 U.S. at 182; *see also Bowles v. Reade*, 198 F.3d 752, 757–58 (9th Cir. 1999). Of
17 these considerations, the Ninth Circuit has held that “it is the consideration of prejudice to the
18 opposing party that carries the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316
19 F.3d 1048, 1052 (9th Cir. 2003). Thus, “[a]bsent prejudice, or a strong showing of any of the
20 remaining *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave
21 to amend.” *Id.*

22 Given the absence of any showing of prejudice, undue delay, bad faith, or futility of
23 amendment, the court concludes that leave to amend should be granted here. In light of
24 defendant’s statement of non-opposition and finding good cause, the court will grant plaintiff
25 leave to file a third amended complaint.

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Accordingly:

1. Plaintiff's motion for leave to file a third amended complaint (Doc. No. 28) is granted, and the third amended complaint (Doc. No. 28-2) is deemed filed and served as of the date of this order; and
2. Defendant shall file a response to the third amended complaint within fourteen (14) days of the service of this order.

IT IS SO ORDERED.

Dated: February 7, 2018


UNITED STATES DISTRICT JUDGE