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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CIV S-10-0613 GEB EFB PS

Plaintiff,

vs.

JAMES CHRIS CASTLE aka
J. CHRIS CASTLE,

ORDER

Defendant.

_____ /
This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On June 2, 2010, the undersigned issued an order setting a status (pretrial scheduling) conference for July 14, 2010 and directing the parties to file a status report within fourteen days of the scheduled conference (or by June 30, 2010). Dckt. No. 13.

On June 30, 2010, plaintiff filed a status report in accordance with the June 2 order; however, no such status report was filed by defendant. Therefore, on July 8, 2010, defendant was ordered to file a status report and to show cause why he should not be sanctioned for his failure to comply with the June 2, 2010 order. Dckt. No. 19 (citing E.D. Cal. L.R. 110, 183; *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995)).

Rather than filing a status report or a response to the order to show cause, defendant filed a “Notice of Conditional Acceptance of the Order to Show Cause.” Dckt. No. 22. Therefore, on August 13, 2010, the undersigned issued a further order to show cause to defendant and

1 continued the status (pretrial scheduling) conference to October 6, 2010. Dckt. No. 24. The
2 August 13 order required defendant to file, on or before September 22, 2010, a status report
3 addressing the issues raised in the June 2, 2010 order, as well as a writing indicating why
4 sanctions should not be imposed for his failure to comply with the June 2 order. *Id.* at 3. The
5 August 13 order provided that if defendant failed to file a status report as ordered, plaintiff was
6 required to “file a writing, on or before September 29, 2010, indicating how plaintiff intends to
7 proceed with this action.” *Id.*

8 Once again, defendant failed to file a status report or a response to the order to show
9 cause, and instead filed a request for dismissal of this case and a “Notice of Conditional
10 Acceptance of the Order to Show Cause.” Dckt. No. 25. Although defendant’s multiple failures
11 to comply with this court’s orders could result in the imposition of sanctions, on September 29,
12 2010, plaintiff filed a motion for leave to file a second amended complaint in this action. Dckt.
13 No. 27. Because plaintiff’s motion to amend will be granted for the reasons stated below, the
14 status (pretrial scheduling) conference currently set for October 6 will be continued, and the July
15 8 and August 13 orders to show cause will be discharged.¹

16 Motion to Amend

17 Plaintiff moves to file a second amended complaint in this action, arguing that “[after the
18 United States filed an amended complaint, the Internal Revenue Service (‘IRS’) uncovered
19 additional sham UCC Financing Statements filed by defendant James Castle against employees
20 of the United States. These sham UCC Financing Statements were filed by defendant James
21 Castle in conjunction with Lara Karakasevic, who the United States wishes to add as a
22 defendant.” Dckt. No. 27 at 1. The proposed second amended complaint, which is attached to
23 plaintiff’s motion to amend, seeks to “(1) add three additional UCC Financing Statement filings
24 against IRS employees to be expunged, (2) add Lara Karakasevic as a defendant, and (3) request

25 ¹ However, defendant is admonished that future failures to comply with this court’s orders
26 or with the Local Rules will result in the imposition of sanction.

1 that Lara Karakasevic also be enjoined from filing nonconsensual lien filings against United
2 States' employees." *Id.* at 1-2.

3 Rule 15(a)(1) provides that "[a] party may amend its pleading once as a matter of course
4 within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading
5 is required, 21 days after service of a responsive pleading or 21 days after service of a motion
6 under Rule 12(b), (e), or (f), whichever is earlier." Rule 15(a)(2) provides that "[i]n all other
7 cases, a party may amend its pleading only with the opposing party's written consent or the
8 court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P.
9 15(a)(2). Because plaintiff has already amended its pleading once, plaintiff needs leave of court
10 to file a second amended complaint.

11 The policy of freely granting leave to amend should be applied with "extreme liberality."
12 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). When determining whether
13 to grant leave to amend under Rule 15(a), a court should consider the following factors: (1)
14 undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party.
15 *Foman v. Davis*, 371 U.S. 178, 182 (1962). According to the Ninth Circuit, "the crucial factor is
16 the resulting prejudice to the opposing party," and the burden of showing that prejudice is on the
17 party opposing amendment. *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973);
18 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003); *DCD Programs*,
19 833 F.2d at 187. Granting or denying leave to amend rests in the sound discretion of the trial
20 court, and will be reversed only for abuse of discretion. *Swanson v. U.S. Forest Serv.*, 87 F.3d
21 339, 343 (9th Cir. 1996).

22 Here, there is no indication that plaintiff unduly delayed in requesting leave to amend or
23 that the request is made in bad faith. In fact, the United States is requesting leave to amend the
24 complaint to include within its request for expungement additional sham filings that were
25 allegedly made by defendant Castle and which were unknown to the United States or had not yet
26 occurred at the time of filing of the original complaint, and to add an additional party who was

1 allegedly involved with making those filings. Further, amendment would not be futile since
2 plaintiff seeks to add to its complaint specific allegations regarding additional alleged sham
3 filings by defendant and to add another defendant who plaintiff alleges was involved with the
4 sham filings. Finally, amending the complaint will not prejudice defendant because, as plaintiff
5 contends, it “will pursue expunging these sham lien filings by Mr. Castle and Ms. Karakasevic
6 regardless of the outcome of this motion,” Dckt. No. 27 at 3, and because defendant has not yet
7 responded to the allegations in plaintiff’s complaint or first amended complaint. Accordingly,
8 plaintiff’s motion to file its second amended complaint will be granted.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s motion to file a second amended complaint, Dckt. No. 27, is granted;
- 11 2. Within seven days from the date this order is filed, plaintiff shall file a copy of the
12 second amended complaint as required by Local Rule 220;
- 13 3. The status (pretrial scheduling) conference currently set for October 6, 2010 is
14 continued to January 12, 2011 at 10:00 a.m. in Courtroom No. 24;
- 15 4. On or before December 22, 2010, the parties shall file status reports addressing the
16 issues raised in the June 2, 2010 order, Dckt. No. 13 at 2; and
- 17 5. The July 8 and August 13, 2010 orders to show cause are discharged.

18 DATED: October 4, 2010.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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