

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10  
11 MICHAEL LOCKLEAR,  
12 Plaintiff,

13 v.

14 HEWLETT PACKARD COMPANY,  
15 Defendant.

No. 2:14-cv-02651 KJM-KJN

ORDER

16  
17 This matter is before the court on plaintiff's motion to amend the complaint, filed  
18 on May 29, 2015. ECF No. 15. Defendant has filed a non-opposition to the motion. ECF  
19 No. 19. For the following reasons, plaintiff's motion to amend is GRANTED.

20 I. PROCEDURAL BACKGROUND

21 Michael Locklear ("plaintiff") commenced this action against Hewlett Packard  
22 Company ("defendant") on November 13, 2014. Compl., ECF No. 1. In the original complaint,  
23 plaintiff alleges various civil rights and employment discrimination claims, including: violation  
24 of the American with Disabilities Act, violations of the California Government Code, wrongful  
25 termination in violation of public policy, defamation, and others. *See generally* Compl., ECF  
26 No. 1. Plaintiff alleges he qualifies as a disabled person, suffering from "ADHD and a mental  
27 disability." *Id.* ¶ 14. Plaintiff further alleges that when defendant, plaintiff's employer, learned  
28 about plaintiff's disabilities, defendant engaged in adverse employment action, violated

1 plaintiff's civil rights, and caused "economic, consequential, and other damages" to plaintiff. *Id.*  
2 at 2–5. Plaintiff alleges administrative exhaustion with the Equal Employment Opportunity  
3 Commission and the California Department of Fair Employment and Housing. *Id.* ¶ 13. In its  
4 answer, defendant denies plaintiff is entitled to any relief and raises affirmative defenses  
5 asserting failure to state a claim, expiration of the applicable statute of limitations, failure to  
6 exhaust, failure to mitigate, at-will employee doctrine, estoppel and others. *See generally* ECF  
7 No. 6.

## 8 II. LEGAL STANDARD

9 Federal Rule of Civil Procedure 15(a)(2) provides, "[t]he court should freely give  
10 [leave to amend its pleading] when justice so requires," and the Ninth Circuit has "stressed Rule  
11 15's policy of favoring amendments." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149,  
12 1160 (9th Cir. 1989.) "In exercising its discretion [regarding granting or denying leave to  
13 amend] 'a court must be guided by the underlying purpose of Rule 15—to facilitate decisions on  
14 the merits rather than on the pleadings or technicalities.'" *DCD Programs, Ltd. v. Leighton*,  
15 833 F.2d 183, 186 (9th Cir. 1987) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.  
16 1981)). However, "the liberality in granting leave to amend is subject to several limitations.  
17 Leave need not be granted where the amendment of the complaint would cause the opposing  
18 party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue  
19 delay." *Ascon Properties*, 866 F.2d at 1160 (internal citations omitted). Not all the factors merit  
20 equal weight, and it is prejudice to the opposing party that carries the greatest weight. *Eminence*  
21 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Generally, additional claims  
22 result in prejudice to a defendant when plaintiff has substantially delayed requesting leave to  
23 amend. *See e.g.*, *United States v. Pend Oreille Public Utility Dist. No. 1*, 28 F.3d 1544, 1522–53  
24 (9th Cir. 1994); *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).  
25 Further, a court should look to whether the plaintiff has previously amended the complaint, as  
26 "the district court's discretion is especially broad 'where the court has already given plaintiff one  
27 or more opportunities to amend [its] complaint.'" *Id.* at 1161 (quoting *Leighton*, 833 F.2d at 186  
28 n.3).

1 III. ANALYSIS

2 First, there is no indication granting leave to amend will cause undue delay.  
3 Plaintiff timely filed his request and the discovery cutoff is January 29, 2016. ECF No. 11 at 2.

4 Second, there is no evidence plaintiff's motion to amend is sought in bad faith;  
5 rather, it is an attempt to address deficiencies. Plaintiff states leave should be granted because it  
6 will allow him to clarify and expand on the pleadings, request the proper damages, correct  
7 typographical and factual errors, and ultimately aid the trier of fact. ECF No. 15 at 2. Plaintiff  
8 additionally alleges that, "[s]ince filing the original complaint, Plaintiff's counsel learned of new  
9 facts supporting the claims and damages based on further investigation . . . that was not available  
10 at the time of filing the original complaint." *Id.* Thus, plaintiff moves to amend in the attempt  
11 to clarify his factual basis and legal theories.

12 Third, defendant will not be prejudiced by the court's granting leave to amend, as  
13 signaled by its non-opposition. The case is still in the discovery stage, and amendment will put  
14 defendant on notice of the more narrowly defined theories, providing it a better opportunity to  
15 raise defenses. *See Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.  
16 1990); *see also DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187–188 (9th Cir. 1987)  
17 ("Given that this case is still at the discovery stage with no trial date pending. . . there is no  
18 evidence that [defendant] would be prejudiced by the timing of the proposed amendment.").  
19 Courts regularly grant leave to amend where, as here, amendment would cure deficiencies in the  
20 original complaint, and when it is the party's first motion to amend. *See, e.g., Estate of*  
21 *Makarowsky ex rel. Gast. v. Lobdell*, 2012 WL 3877714 at \*2. (W.D. Wash. 2012).

22 Lastly, amendment will not be an "exercise in futility." A court may determine  
23 that an amendment of a complaint is futile, and dismiss a claim with prejudice, if the pleadings  
24 could not possibly be cured by the allegations of other facts. *Cook, Perkiss and Liehe, Inc. v. N.*  
25 *Cal. Collection Serv., Inc.*, 911 F.2d 242, 246–47 (9th Cir. 1990). Here, plaintiff seeks to furnish  
26 additional factual allegations and clarify claims for damages based on information previously  
27 unavailable at the time of the original filing. ECF No. 15 at 2. The new allegations do not

28 ////

1 eliminate the possibility of recovery. Amendment at this early stage is advantageous and leave  
2 to amend should be granted.

3 IV. CONCLUSION

4 For the foregoing reasons, plaintiff's motion to amend the complaint is  
5 GRANTED.

6 IT IS SO ORDERED.

7 DATED: August 10, 2015.

8  
9   
10 \_\_\_\_\_  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28