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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAOMI KOGA-SMITH,
Plaintiff,

No. C-12-4050 EMC

v.

**ORDER RE DEFENDANT’S MOTION
FOR PRELIMINARY INJUNCTION**

METLIFE, *et al.*,
Defendants.

(Docket No. 39)

United States District Court
For the Northern District of California

Currently pending before the Court is a motion filed by Defendant Lisa K. Carter which she has characterized as a motion for a preliminary injunction. In the motion, Ms. Carter asks for the following relief: (1) an order barring Defendant MetLife from making any distribution of the funds absent approval of the Court; (2) an order permitting her to file crossclaims and counterclaims; and (3) an order enjoining Plaintiff Naomi Koga-Smith from voluntarily dismissing this suit pending the filing by Ms. Carter of her crossclaims and counterclaims. Having considered the papers submitted, the Court finds this matter suitable for disposition without oral argument and hereby rules as follows.

A. Distribution of Funds

MetLife has, in its response, indicated it will not distribute the funds to either party without a ruling from the Court. The motion for summary judgment is pending. Thus, Ms. Carter’s request is moot.

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1 B. Crossclaims and Counterclaims

2 To the extent Ms. Carter asks for leave to file crossclaims and counterclaims, the Court
3 denies the request but without prejudice.

4 As a preliminary matter, the Court notes that a crossclaim or counterclaim is not an
5 independent pleading but rather is part of the answer. *See* Fed. R. Civ. P. 7 (enumerating pleadings
6 allowed, none of which is specifically identified as a crossclaim or counterclaim). In the instant
7 case, Ms. Carter -- proceeding pro se -- never formally filed an answer. However, the Court now
8 deems her case management conference statement of January 25, 2013, to be her answer (as well as
9 her motion for summary judgment). Under Federal Rule of Civil Procedure 15, Ms. Carter could
10 have amended her answer to add crossclaims and counterclaims *without* seeking leave of the Court if
11 the amendment were made within 21 days after service of the answer. *See* Fed. R. Civ. P.
12 15(a)(1)(A) (discussing amendments as a matter of course). Because Ms. Carter did not amend
13 within this 21 day period, she may now amend only with leave of the Court. Under Rule 15, a
14 “court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). In
15 general, “[f]ive factors are taken into account to assess the propriety of a motion for leave to amend:
16 bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the
17 plaintiff has previously amended the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir.
18 2004).

19 Construing Ms. Carter’s request as a motion for leave to amend, the Court denies the request
20 without prejudice because, in order for the Court to evaluate, in particular, futility of the amendment,
21 it must know *exactly* what crossclaims and counterclaims Ms. Carter wishes to add. While Ms.
22 Carter has given a sense of what claims she would like to add, she has also stated that she “has not
23 fully decided what cross- or counterclaims to file, and may retain counsel to handle those claims.”
24 Docket No. 39 (Mot. at 2).

25 Accordingly, at this juncture, the Court denies Ms. Carter’s motion for leave to amend but
26 without prejudice. If and when Ms. Carter decides what crossclaims and counterclaims she would
27 like to add, then she should file a motion for leave to amend pursuant to Rule 15 and include, as an
28 attachment to the motion, a copy of the proposed amended answer containing the crossclaims and

1 counterclaims. The Court shall evaluate the proposed amendment based on the factors enumerated
2 above.

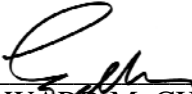
3 C. Voluntary Dismissal

4 Finally, Ms. Carter seeks an order enjoining Ms. Koga-Smith from voluntarily dismissing
5 this suit pending the filing by Ms. Carter of her crossclaims and counterclaims. The Court shall not
6 order this relief particularly because, at this juncture, it is not clear when Ms. Carter will be filing a
7 motion for leave to amend to add crossclaims and counterclaims. The Court also notes that this
8 ruling should not prejudice Ms. Carter because, under Federal Rule of Civil Procedure 41, Ms.
9 Koga-Smith may not voluntarily dismiss her lawsuit without an order from the Court or without the
10 consent of all parties. *See* Fed. R. Civ. P. 41(a)(1)(A) (providing that a plaintiff may voluntarily
11 dismiss without a court order where the dismissal takes place “before the opposing party serves
12 either an answer or a motion for summary judgment” or where all parties stipulate to dismissal).

13 This order disposes of Docket No. 39.

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15 IT IS SO ORDERED.

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17 Dated: March 8, 2013

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EDWARD M. CHEN
United States District Judge