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28United States District Court
For the Northern District of California

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

MINNY FRANK,

No. C 13-0089 MMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION TO ADD PARTY**

v.

COUNTY OF HUMBOLDT, et al.,

Defendants.

Before the Court is plaintiff Minny Frank's ("Frank") "Motion to Add a Party," filed January 10, 2014, by which Frank, pursuant to Rule 15 of the Federal Rules of Civil Procedure, seeks leave to name Roxanne Halczak ("Halczak"), an employee of defendant County of Humboldt, as a defendant to her complaint. Defendants County of Humboldt, County of Humboldt Department of Health and Human Services, James Bragg, Christy Reihm, Katherine Young, and Keri Schrock (collectively, "County defendants") have filed opposition, to which plaintiff has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court hereby rules as follows.¹

Frank filed the operative complaint on May 22, 2013. As noted, Frank's motion to add Halczak as a defendant was not filed until January 10, 2014. County defendants argue plaintiff has unduly delayed in seeking amendment because (1) the deadline for fact

¹ By order filed March 5, 2014, the Court deemed the matter suitable for decision on the parties' written submissions and vacated the hearing set for March 7, 2014.

1 discovery, pursuant to the Pretrial Preparation Order, was February 7, 2014 (see Opp'n at
2 2:11-12); and, (2) plaintiff knew Halczak's name as early as July 27, 2013, as evidenced by
3 plaintiff's reference to her in discovery requests served by plaintiff on that date (see id. at
4 2:12-15).

5 Where, as here, a responsive pleading has been filed and more than twenty-one
6 days have passed thereafter, Rule 15 provides that "a party may amend its pleading only
7 with the opposing party's written consent or the court's leave." See Fed.R.Civ.P. 15(a). As
8 further provided therein, "[t]he court should freely give leave when justice so requires." See
9 id.; see also Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003)
10 (holding leave to amend ordinarily should be granted with "extreme liberality"). In
11 determining whether such leave should be granted, the court considers the presence of
12 "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to
13 cure deficiencies by amendments previously allowed, undue prejudice to the opposing
14 party by virtue of allowance of the amendment, [and] futility of amendment." See id. at
15 1052 (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). Among those factors, "it is the
16 consideration of prejudice to the opposing party that carries the greatest weight," see
17 Eminence Capital, 316 F.3d at 1052, and "[t]he party opposing amendment bears the
18 burden of showing prejudice," DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th Cir.
19 1987). "Absent prejudice, or a strong showing of any of the remaining Foman factors, there
20 exists a presumption under Rule 15(a) in favor of granting leave to amend," Eminence
21 Capital, 316 F.3d at 1052 (emphasis in original).

22 Here, without further elaboration, County defendants argue prejudice has been
23 shown because Halczak's responsive pleading would not be due until after the close of
24 facts discovery. County defendants do not address any of the other factors identified in
25 Foman, and to the extent their argument relies on the passage of time following the above-
26 referenced discovery request, any such argument is unavailing, as "[u]ndue delay by itself
27 . . . is insufficient to justify denying a motion to amend." See Bowles v. Reade, 198 F.3d
28 752, 758 (9th Cir. 1999); see also United States v. Webb, 655 F.2d 977, 980 (9th Cir. 1981)

1 (noting “delay alone no matter how lengthy is an insufficient ground for denial of leave to
2 amend”; remanding for further proceedings where record contained no “finding of fact
3 showing bad faith or prejudice”).²

4 Accordingly, for the reasons stated above, Frank’s motion to add Halczak as a
5 defendant to the instant action is hereby GRANTED, on condition Frank files her Second
6 Amended Complaint and effectuates service of process on Halczak by March 28, 2014,
7 and files proof of service by April 4, 2014.³

8 **IT IS SO ORDERED.**

9 Dated: March 10, 2014

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11 MAXINE M. CHESNEY
12 United States District Judge

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23 ² By contrast, under Rule 16, which governs cases in which the pretrial scheduling
24 order sets a deadline for amendment of pleadings, a motion to amend after expiration of
25 that deadline requires a showing of “good cause,” see Fed. R. Civ. P. 16(b)(4), which, in
26 turn, “primarily considers the diligence of the party seeking the amendment.” See Coleman
27 v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000). In the instant case, the
28 scheduling order does not include a deadline for amendment of pleadings.

³ County defendants argue that, as a further condition, the Pretrial Preparation Order
should be modified to afford Halczak “a reasonable time to complete fact discovery and for
designation of experts.” (See Opp’n 2:22-3:1.) The Court declines at this time to make
such a modification, without prejudice to Halczak’s so moving after she has appeared in the
case.