

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 13-cv-03962-SC
ARVILLE WINANS, by and through)	
his guardian ad litem, RENEE)	ORDER GRANTING MOTION FOR
MOULTON, on his own behalf and on)	LEAVE TO FILE AMENDED
behalf of others similarly)	<u>COMPLAINT</u>
situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
EMERITUS CORPORATION and DOES 1)	
through 100,)	
)	
Defendants.)	
)	

Now before the Court is Plaintiff Arville Winans's unopposed motion, ECF No. 85 ("Mot."), for leave to file an amended complaint. See ECF No. 88 ("Notice of Non-Opposition"). The motion is appropriate for resolution without oral argument under Civil Local Rule 7-1(b). For the reasons set forth below, leave to amend is GRANTED.

This case alleges that Defendant Emeritus Corporation ("Emeritus") violated California's Consumer Legal Remedies Act,

1 Unfair Competition Law, and Elder Abuse Act by, among other things,
2 falsely representing that Emeritus' assisted living facilities in
3 California had sufficient staffing to provide the level of care
4 promised.

5 In this motion, Winans seeks leave to amend to add injunctive
6 relief allegations, add a new plaintiff and additional defendant,
7 and add allegations about Emeritus' knowledge of consumers'
8 expectations in selecting an assisted living facility. Winans
9 argues the amendment is proper under Federal Rule of Civil
10 Procedure 15(a)(2), which the Ninth Circuit has said should be
11 interpreted freely in favor of amendment. See Eminence Cap., LLC
12 v. Apseon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). Absent
13 significant prejudice, bad faith, undue delay, or futility of
14 amendment "there exists a presumption . . . in favor of granting
15 leave to amend." Id.

16 Here, the Court finds no evidence of prejudice, bad faith,
17 undue delay or futility of amendment, and thus leave to amend is
18 GRANTED. This should be unsurprising given that "[p]rejudice is
19 the 'touchstone of the inquiry under [R]ule 15(a)," and the party
20 opposing amendment "bears the burden of showing prejudice." Id. at
21 1052 (quoting Lone Star Ladies Inv. Club v. Schlotzsky's Inc., 238
22 F.3d 363, 368 (5th Cir. 2001)); DCD Progs., Ltd. v. Leighton, 833
23 F.2d 183, 186 (9th Cir. 1987). Here, the party that could claim
24 prejudice is Emeritus, however Emeritus declined to oppose the
25 motion. That raises the question: why was this motion even
26 necessary given that Rule 15 allows parties to simply stipulate to
27 an amendment? See Fed. R. Civ. P. 15(a)(2).

28 Based on the emails provided by Plaintiffs (and not

1 contradicted by Defendant), there appears to be no good reason for
2 Emeritus' decision. On the contrary, Plaintiffs sought a
3 stipulation to amendment and Emeritus's counsel simply stated that
4 "[a]lthough Emeritus will not stipulate to the filing of an amended
5 complaint, we will not oppose a Rule 15 motion" ECF No.
6 85-1 ("Colby Decl.") Ex. 3. Counsel did not provide a reason, and
7 even if he had, the Court cannot imagine a reasonable one -- given
8 the allocation of the burdens on a Rule 15 amendment, refusing to
9 stipulate but not opposing the motion means that leave will nearly
10 always (and certainly in cases like this) be granted. Instead, the
11 only result of forcing Plaintiffs to file a motion was imposing the
12 cost of preparing the motion on Plaintiffs and delaying proceedings
13 for more than a month while this motion navigated through the
14 Court's (already busy) docket. The Court reminds the parties that
15 "[i]n the future, failure to stipulate without good reason will
16 subject the non-cooperative party to sanctions." Parklyn Bay Co.
17 LLC v. Liberty Surplus Ins. Co., No. 3:13-cv-031124-EMC (N.D. Cal.
18 June 26, 2014), Dkt. No. 38; see also 28 U.S.C. § 1927.

19 For the reasons set forth above, leave to amend is GRANTED.

20
21 IT IS SO ORDERED.

22
23 April 3, 2015



24 UNITED STATES DISTRICT JUDGE

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