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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAON ROBINSON,
Plaintiff,
v.
THE CHEFS' WAREHOUSE, INC.,
Defendant.

Case No. [15-cv-05421-RS](#)**ORDER GRANTING LEAVE TO
AMEND AND REFERRING
DISCOVERY DISPUTE**

Plaintiff Shaon Robinson seeks leave to file an amended complaint, adding an additional plaintiff (Sean Clark), an additional defendant, (Chef's Warehouse West Coast, LLC) and additional claims for relief under California's Private Attorney General Act ("PAGA") and Family Rights ACT ("FRA"). The proposed amended complaint also contains other "non-substantive" changes to which defendant has not objected. Because the original proposed amended complaint (labeled as "First Amended Complaint") (Dkt. 21-1, Exh. A) was replete with drafting errors that impeded analysis of whether the pleading was viable, plaintiff was directed to file a new proposed complaint, and the parties were allowed supplemental briefing regarding the revised proposal.¹ The motion for leave to amend is now again ripe, and pursuant to Civil Local Rule 7-1(b) will be decided without oral argument.

¹ Plaintiff labeled the revised proposal a "Second Amended Complaint," even though no "First Amended Complaint" has been allowed. See Dkt. No. 27.

1 Plaintiff's counsel was expressly ordered to "proofread with care," to avoid the types of
2 errors previously identified. Counsel failed to give that admonishment due attention. The revised
3 proposal still contains some of the form pleading options in the 14th claim for relief, pointed out
4 in the prior order as problematic. The proposal continues to use "defendant" and "defendants"
5 interchangeably. In places, the complaint refers to "plaintiff" in the singular, without first clearly
6 identifying which plaintiff is intended.

7 All that said, it can now be divined from the face of the proposed amended complaint,
8 particularly as confirmed by plaintiff's briefing that (1) only the first through eighth and fifteenth
9 through sixteenth claims for relief are advanced by Robinson and Clark on behalf of themselves
10 and the putative class, (2) the ninth through fourteenth claims for relief are advanced by Robinson
11 individually,² and (3) Clark advances no strictly individual claims. Additionally, it is clear that
12 Robinson and Clark do not intend to distinguish between The Chef's Warehouse, Inc. and Chef's
13 Warehouse West Coast, LLC, and that all references to "defendant" in the singular can be
14 understood as applying to either or both defendants, subject to proof as to which entity was the
15 employer.

16 While the failure to comply with the prior order's instruction to proofread carefully cannot
17 be condoned, the remaining drafting mistakes are not a basis to deny leave to amend. In light of
18 the fact that Robinson admittedly is asserting no purely individual claims, defendants' complaint
19 that no factual allegations are offered to support any such claims is moot. At this juncture,
20 defendants have not established a failure to exhaust administrative remedies as to the FRA claim.
21 Finally, while the statute of limitations may become relevant to the scope of any class that
22 otherwise may be certified, it does not render the proposed amendment futile. Accordingly, the
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25 ² Stray references to members of the class in paragraphs 170 and 172 of the 14th claim for relief
26 do not alter this conclusion and will be disregarded. To the extent the language of the complaint
27 could be construed differently from the limitations Robinson and Clark have conceded in their
28 opposition briefing, they will be held to those concessions, and the limitations set out in this order.

1 motion for leave to amend is granted. The proposed pleading at Dkt. No. 27 is hereby deemed
2 filed as the operative complaint. It may hereafter be referred to by the title shown in its caption-
3 Second Amended Complaint—even though it technically it represents only the first amendment
4 allowed.

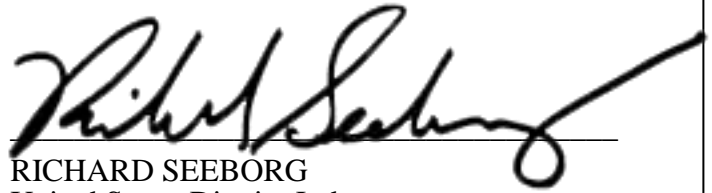
5 Plaintiff’s administrative motion (Dkt. No. 33) seeking leave to file a unilateral letter brief
6 regarding a discovery dispute, and all future discovery disputes are hereby referred to a randomly-
7 assigned magistrate judge for resolution.

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9 **IT IS SO ORDERED.**

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11 Dated: November 10, 2016


RICHARD SEEBORG
United States District Judge

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