

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

NICOLE HUGHES, et al.,  
Plaintiffs,  
v.  
S.A.W. ENTERTAINMENT, LTD, et al.,  
Defendants.

Case No. 16-cv-03371-LB

**ORDER GRANTING PLAINTIFFS’  
MOTION TO AMEND COMPLAINT**

Re: ECF No. 122

**INTRODUCTION**

On August 29, 2018, the court granted the defendants’ motion to compel arbitration with respect to named plaintiffs Nicole Hughes, Angelynn Hermes, and Penny Nunez, and opt-in plaintiff Dora Marchand. *Hughes v. S.A.W. Entm’t, Ltd.*, No. 16-cv-03371-LB, 2018 WL 4109100 (N.D. Cal. Aug. 29, 2018).<sup>1</sup> The court ordered Ms. Hughes, Ms. Hermes, Ms. Nunez, and Ms. Marchand to submit all claims other than claims under the California Private Attorney General Act (“PAGA”) to binding arbitration and stayed each plaintiff’s PAGA claims (if any) while that plaintiff’s arbitration is pending. *Id.* at \*5. The court granted the plaintiffs leave to file a motion to

<sup>1</sup> Order – ECF No. 120. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 amend their complaint to add a new named plaintiff who did not sign an arbitration agreement  
2 with the plaintiffs. Id.

3 On September 19, 2018, the plaintiffs filed a motion to amend their complaint to (1) add a new  
4 named plaintiff, Diana Tejada, and (2) add a new named defendant, SFBSC Management, LLC.  
5 The defendants opposed the plaintiffs’ motion to amend. The court held a hearing on November  
6 15, 2018, and now grants the plaintiffs’ motion to amend.

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### ANALYSIS

9 Under Federal Rule of Civil Procedure 15(a), outside of a one-time “matter of course”  
10 amendment, a party may amend its pleading “only with the opposing party’s consent or the court’s  
11 leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” Id.  
12 This leave policy is applied with “extreme liberality.” See *Eminence Capital, LLC v. Aspeon, Inc.*,  
13 316 F.3d 1048, 1051 (9th Cir. 2003). A court considers five factors to determine whether to grant  
14 leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of  
15 amendment, and (5) whether the plaintiff previously amended his complaint. See *Nunes v.*  
16 *Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). Of the factors, prejudice to the opposing party is the  
17 “touchstone of the inquiry under rule 15(a)” and “carries the greatest weight.” See *Eminence*  
18 *Capital*, 316 F.3d at 1052. Absent prejudice or a strong showing on other factors, a presumption  
19 exists under Rule 15(a) favoring granting leave to amend. See *id.* The party opposing a motion to  
20 amend bears the burden of showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,  
21 187 (9th Cir. 1987).

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1 compel arbitration of Ms. Tejada’s claims and/or a renewed motion to stay or dismiss this case  
2 under the first-to-file rule.<sup>2</sup>

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4 **CONCLUSION**

5 The court grants the plaintiffs’ motion to amend. The plaintiffs may file the proposed Third  
6 Amended Complaint attached to their motion. As discussed at the November 15 hearing, the  
7 parties must meet and confer on a schedule for any motion briefing and for any further attempts at  
8 alternative dispute resolution.

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10 **IT IS SO ORDERED.**

11 Dated: November 19, 2018



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13 LAUREL BEELER  
14 United States Magistrate Judge

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26 <sup>2</sup> The defendants previously discussed Ms. Tejada in the context of their prior motion to compel  
27 arbitration, but then also argued that Ms. Tejada was “a ‘mere passive observer’ to this lawsuit as an  
28 FLSA plaintiff.” Defs. Mot. to Compel Arb. Reply – ECF No. 97 at 12. The court’s August 29 order  
did not address Ms. Tejada, who at the time was not a named plaintiff. See Hughes, 2018 WL  
4109100. The parties should not take from the August 29 order that the court has expressed any  
opinion as to whether Ms. Tejada’s claims are subject to arbitration.