

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 PATRICIA A MCCOLM,
10 Plaintiff,
11 v.
12 SAN FRANCISCO HOUSING AUTHORITY, et
13 al.,
14 Defendants.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No. C 06-07378 CW
ORDER GRANTING
MOTION FOR LEAVE TO
FILE SUPPLEMENTAL
COMPLAINT

Plaintiff Patricia A. McColm moves for leave to file a supplemental complaint. Defendants oppose the motion. Plaintiff has not filed a reply. The matter was taken under submission. Having read all the papers submitted by the parties, the Court GRANTS the motion for leave to file a supplemental complaint.

PROCEDURAL BACKGROUND

On November 30, 2006, Plaintiff filed her complaint in this action and on October 16, 2007, she filed her First Amended Complaint. On August 19, 2008, the Court issued a case management order in which October 21, 2008 was set as the last day for Plaintiff to add additional parties or claims, completion of fact discovery was set for January 30, 2009, the case-dispositive motion cut-off date was set for April 30, 2009 and trial was set to begin

1 on September 28, 2009. On October 21, 2008, Plaintiff filed this
2 motion in which she seeks to add one new defendant and additional
3 allegations. Plaintiff states that she could not file the motion
4 sooner because of her own illness and because she is the executor
5 of her father's estate which caused her to be involved in emergency
6 probate matters.

7
8 LEGAL STANDARD

9 Federal Rule of Civil Procedure 15(d) permits "supplemental
10 pleadings setting forth transactions or occurrences or events that
11 have happened since the date of the pleading sought to be
12 supplemented." The purpose of Rule 15(d) is to promote as complete
13 an adjudication of the dispute between the parties as is possible.
14 LaSalvia v. United Dairymen of Ariz., 804 F.2d 1113, 1119 (9th Cir.
15 1986). "Rule 15(d) is intended to give district courts broad
16 discretion in allowing supplemental pleadings. The rule is a tool
17 of judicial economy and convenience." Keith v. Volpe, 858 F.2d
18 467, 473 (9th Cir. 1988). Public policy strongly favors allowing
19 amendment. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th
20 Cir. 1987). However, "a supplemental complaint should have some
21 relation to the claim set forth in the original pleading," and a
22 court may deny leave to supplement a complaint on grounds of undue
23 delay, prejudice to the opposing party, or futility. Id. at 474.
24 Futility exists where no set of facts can be proved which would
25 state a valid claim, or where the claim would be subject to
26 dismissal. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th
27 Cir. 1988).

28 DISCUSSION

Defendants assert that they will be prejudiced if Plaintiff is

1 allowed to file a supplemental complaint because Plaintiff filed
2 her motion only three months before discovery cutoff and adding a
3 new defendant will cause delay because the new defendant will have
4 to file a responsive pleading. Defendants also argue that the new
5 allegations will mean more discovery will be necessary. Citing
6 Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994), Defendants also
7 argue that the motion should be denied because Plaintiff was aware
8 of the newly named defendant and allegations at the time she filed
9 her original pleading, but did not include them at that time.
10 Defendants add that Plaintiff will not be prejudiced by the denial
11 of her motion because all the same causes of action will remain in
12 the complaint even if the party and additional facts are refused.

13 Although Defendants may be correct that allowing Plaintiff to
14 file a supplemental complaint will delay the case, Plaintiff
15 complied with the case management order by filing her motion within
16 the deadline given for adding new defendants or claims. If
17 Defendants felt that date was too close to the discovery cut off
18 date, the time to have voiced that concern was at the case
19 management conference.

20 Kaplan is distinguishable from this case. There, discovery
21 was already completed, the trial date was only two months away and
22 the plaintiff had already amended the complaint twice. Id. Here,
23 discovery is three months from completion and the trial date is
24 approximately one year in the future. Most importantly, Plaintiff
25 filed her motion within the deadline set in the case management
26 order. Furthermore, it is difficult to discern from the pleadings
27 whether Plaintiff will be prejudiced by being foreclosed from
28 adding the additional defendant and allegations. Based on the

1 foregoing and the strong public policy in favor of allowing
2 amendment to allow a complete adjudication of the dispute between
3 the parties, the Court grants Plaintiff's motion to file her
4 supplemental complaint.

5 CONCLUSION

6 For the foregoing reasons, Plaintiff's motion (Docket # 62) is
7 GRANTED. The clerk shall file the supplemental complaint that has
8 been lodged with the Court. Defendants need not file an answer but
9 may rest on their prior answer. The clerk's office shall serve the
10 new Defendant as soon as possible. A further case management
11 conference will be held on February 3, 2009 at 2:00 pm.

12
13 IT IS SO ORDERED.

14
15 Dated: 11/24/08



16 CLAUDIA WILKEN
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 PATRICIA A MCCOLM,

5 Plaintiff,

6 v.

7 SAN FRANCISCO HOUSING et al,

8 Defendant.
9 _____/

Case Number: CV06-07378 CW

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
11 Northern District of California.

12 That on November 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Patricia A. McColm
17 P.O. Box 27274
18 San Francisco, CA 94127

19 Dated: November 24, 2008

20 Richard W. Wieking, Clerk
21 By: Sheilah Cahill, Deputy Clerk
22
23
24
25
26
27
28