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United States District Court  
For the Northern District of California

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

SARA ZINMAN, individually, and on  
behalf of all others similarly  
situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

No. 09-02045 CW

ORDER DENYING  
PLAINTIFF'S  
MOTION FOR LEAVE  
TO FILE AN  
AMENDED COMPLAINT  
(Docket No. 24)

Plaintiff Sara Zinman charges Defendant Wal-Mart Stores, Inc., with violations of federal and state wage-and-hour laws. She now moves for leave to amend her complaint. Defendant opposes the motion. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court DENIES Plaintiff's motion.

BACKGROUND

Plaintiff, a California resident, filed her complaint on May 8, 2009. She claims that, while employed by Defendant as a Merchandise Assistant for its walmart.com division, Defendant failed to compensate her for overtime, provide meal and break periods, reimburse her for expenses related to her job duties, and provide and maintain accurate itemized wage statements and time records. In her operative complaint, she brings claims under

1 federal and state wage-and-hour laws and pleads that she intends to  
2 represent nation-wide and California classes of individuals who are  
3 or were employed by Defendant as Merchandise Assistants.

4 Beginning in August, 2009, the parties engaged in "First Phase  
5 Discovery" to prepare for private mediation. See Supp. Jt. Case  
6 Management Statement of March 30, 2010. Through this limited  
7 discovery, Plaintiff learned that "people performing the duties of  
8 merchandise assistant for Wal-Mart stores were classified and  
9 compensated properly." Mack Decl. ¶ 3. However, she claims to  
10 have discovered that employees for walmart.com, in "approximately  
11 30 job titles," were erroneously classified as non-exempt  
12 employees.<sup>1</sup> Mack. Decl. ¶ 4.

13 To include these reclassified employees in her action,  
14 Plaintiff moves for leave to amend her complaint to plead the  
15 following class definition:

16 The Class is comprised of a group of individuals in 30  
17 different positions who are currently or were employed by  
18 Wal-Mart in California as walmart.com employees within  
the applicable statutory period and who were mis-  
classified as exempt employees by Defendant.

19 Proposed Am. Compl., ¶ 20. Plaintiff's proposed amended complaint

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21 <sup>1</sup> The Mack Declaration, filed in support of Plaintiff's  
22 motion, states that these employees were "classified as non-exempt  
23 employees until approximately February 2009" and that "in February  
24 2009 walmart.com reclassified these 30 job titles from non-exempt  
25 to exempt status." Mack Decl. ¶¶ 4-5. This characterization  
26 appears to be in error. William Davidovich, Defendant's Vice-  
27 President of Human Resources & Office Services, states that, in  
February, 2009, Defendant reclassified "approximately thirty other  
positions" and that "current and former employees" in these  
positions "received retroactive overtime payments for all overtime  
hours worked . . . ." Davidovich Decl. ¶¶ 6-7. The Court  
therefore understands Plaintiff to mean that Defendant reclassified  
the employees in the thirty positions from exempt to non-exempt  
status.

1 does not include a claim under the Fair Labor Standards Act and  
2 does not seek to certify a nation-wide class.

3 A case management order was entered on August 31, 2009,  
4 setting a deadline for mediation and scheduling a further case  
5 management conference. No other dates were set. According to the  
6 parties' most recent case management statement, the parties did not  
7 participate in mediation by March 31, 2010, as directed by the  
8 Court.

9 DISCUSSION

10 Federal Rule of Civil Procedure 15(a) provides that leave of  
11 the court allowing a party to amend its pleading "shall be freely  
12 given when justice so requires." Leave to amend lies within the  
13 sound discretion of the trial court, which discretion "must be  
14 guided by the underlying purpose of Rule 15 to facilitate decision  
15 on the merits, rather than on the pleadings or technicalities."  
16 United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981) (citations  
17 omitted). Thus, Rule 15's policy of favoring amendments to  
18 pleadings should be applied with "extreme liberality." Eminence  
19 Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

20 The Supreme Court has identified four factors relevant to  
21 whether a motion for leave to amend should be denied: undue delay,  
22 bad faith or dilatory motive, futility of amendment and prejudice  
23 to the opposing party. Foman v. Davis, 371 U.S. 178, 182 (1962).  
24 The Ninth Circuit holds that these factors are not of equal weight;  
25 "it is the consideration of prejudice to the opposing party that  
26 carries the greatest weight." Eminence Capital, 316 F.3d at 1048.  
27 "Absent prejudice, or a strong showing of any of the remaining  
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1 Foman factors, there exists a presumption under Rule 15(a) in favor  
2 of granting leave to amend." Id. (emphasis in original) (citation  
3 omitted).

4 Defendant argues that it would be futile for Plaintiff to  
5 amend her complaint. An amendment would be futile if it is legally  
6 insufficient. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214  
7 (9th Cir. 1988). Futility, on its own, can warrant denying leave  
8 to amend. Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995).

9 Defendant asserts that, because an amended complaint would not  
10 relate back to the date on which Plaintiff's original complaint was  
11 filed, members of the proposed new class could not state a basis  
12 upon which relief could be granted. "An amendment adding a party  
13 plaintiff relates back to the date of the original pleading only  
14 when: 1) the original complaint gave the defendant adequate notice  
15 of the claims of the newly proposed plaintiff; 2) the relation back  
16 does not unfairly prejudice the defendant; and 3) there is an  
17 identity of interests between the original and newly proposed  
18 plaintiff." In re Syntex Corp. Secs. Litig., 95 F.3d 922, 935 (9th  
19 Cir. 1996) (citing Besig v. Dolphin Boating & Swimming Club, 683  
20 F.2d 1271, 1278-79 (9th Cir. 1982)). Syntex addressed the addition  
21 of party plaintiffs, who were to represent a newly proposed class  
22 comprised of individuals who had different interests from those in  
23 the class defined in the initial complaint. 95 F.3d at 935.  
24 Plaintiff does not persuade the Court that Syntex is materially  
25 distinguishable from this case. The principle underlying Syntex is  
26 that, to justify relation back, a prior complaint should give a  
27 defendant adequate notice of the claims brought in an amended  
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1 pleading. See, e.g., Besig, 683 F.2d at 1271 (stating that notice  
2 "is the critical inquiry" in determining whether to apply relation-  
3 back doctrine); Percy v. S.F. Gen. Hosp., 841 F.2d 975, 979-80 (9th  
4 Cir. 1988) (discussing adequacy of notice). Plaintiff seeks to  
5 expand her proposed class to include employees in thirty positions.  
6 She does not argue that her operative complaint, which defined her  
7 class as those individuals who are or were employed by Wal-Mart as  
8 Merchandise Assistants, gave Defendant any notice that she intended  
9 to bring claims on behalf of employees in other positions. See,  
10 e.g., Barnett v. County of Contra Costa, 2007 WL 196678, at \*6  
11 (N.D. Cal.) (holding that relation-back doctrine did not apply to  
12 plaintiff named in amended complaint who did not fall within scope  
13 of class as defined in first complaint). Nor does she suggest that  
14 she has an identity of interests with these new class members.  
15 Plaintiff offers no basis for her proposed amended pleading to  
16 relate back to the date of her original complaint.

17       Based on an April 29, 2010 filing date, there does not appear  
18 to be any basis upon which relief could be granted to members of  
19 the proposed class. The class would not be eligible to recover  
20 penalties for the alleged wage-and-hour violations because of the  
21 one-year statute of limitations. See Cal. Civ. Proc. Code § 340.  
22 Plaintiff does not dispute that, during the one-year period before  
23 April 29, 2010, the proposed class members were properly classified  
24 and cannot recover penalties based on misclassification. Nor does  
25 Plaintiff suggest that, based on this filing date, these class  
26 members could seek restitution of overtime pay. Because she cannot  
27 avail herself of the relation-back doctrine, permitting Plaintiff

1 to amend her complaint would be futile.

2 In addition, amendment would be futile because Plaintiff would  
3 be unable to certify a class of "individuals in 30 different  
4 positions who are currently or were employed by Wal-Mart in  
5 California as walmart.com employees." Proposed Am. Compl. ¶ 20.  
6 Plaintiff offers no insight into the nature of these positions, let  
7 alone any suggestion that she -- as the single named Plaintiff --  
8 could satisfy the requirements of Rule 23 for a class of employees  
9 in thirty different positions.

10 Plaintiff's vague and broad amended complaint would be futile.  
11 Accordingly, leave to amend is not justified.

12 CONCLUSION

13 For the foregoing reasons, the Court DENIES Plaintiff's motion  
14 for leave to file an amended complaint. (Docket No. 24.) A  
15 further case management conference is scheduled for September 7,  
16 2010 at 2:00 p.m.

17 IT IS SO ORDERED.

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19 Dated: June 1, 2010



20 CLAUDIA WILKEN  
21 United States District Judge  
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