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

LYDIA DOMINGUEZ, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

No. 09-02306 CW

ORDER GRANTING
PLAINTIFFS'
MOTION FOR LEAVE
TO FILE SECOND
AMENDED COMPLAINT
(Docket No. 335)

On June 21, 2010, Plaintiffs filed a motion for leave to file a second amended complaint and an application for a temporary restraining order. The Court expedited the briefing and hearing schedule on both motions. On June 29, 2010, the Court granted Plaintiffs' application for a temporary restraining order. At the hearing on the matter, the Court allowed the parties to file supplemental briefing on the motion for leave to file an amended complaint.¹ Having considered all the papers submitted by the parties, the Court GRANTS Plaintiffs' motion for leave to file a second amended complaint.

¹ The Court grants Plaintiffs' Request for Judicial Notice of Exhibits A-G in support of Plaintiffs' Supplemental Reply because these documents were filed in the litigation of a related case, V.L. v. Wagner, CV 09-4668. Burbank-Glendale Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998).

1 BACKGROUND

2 Plaintiffs move to amend their complaint to add two claims by
3 Union Plaintiffs that Fresno County's rate decrease violates
4 section 30(A) of the Medicaid Act. 42 U.S.C. § 1396a(a)(30)(A).
5 Plaintiffs also move to add Carolyn Stewart, a new Named Plaintiff,
6 to their original four claims. In addition, Plaintiffs seek to add
7 all Union Plaintiffs to claims three and four of the complaint,
8 which allege that Defendants' conduct violates the Americans with
9 Disabilities Act (ADA) and the Rehabilitation Act (RA). Plaintiffs
10 also move to add two new Union Plaintiffs, United Domestic Workers
11 of America (UDW) and California United Homecare Workers (CUHW), to
12 each claim in the complaint.

13 State Defendants oppose the motion and argue that Plaintiffs
14 fail to show good cause for the amendment at this stage in the
15 litigation and that they would be prejudiced by this amendment.
16 State Defendants also argue that it would be futile to add the
17 Union Plaintiffs to claims three and four because they lack
18 standing to bring claims under the ADA and RA.

19 LEGAL STANDARD

20 The Supreme Court has identified four factors relevant to
21 whether a motion under Federal Rule of Civil Procedure 15 for leave
22 to amend should be denied: undue delay, bad faith or dilatory
23 motive, futility of amendment and prejudice to the opposing party.
24 Foman v. Davis, 371 U.S. 178, 182 (1962). Futility, on its own,
25 can warrant denying leave to amend. Bonin v. Calderon, 59 F.3d
26 815, 845 (9th Cir. 1995).

27 In the scheduling order for this case, the Court set October
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1 20, 2009 as the deadline to add parties and claims. A scheduling
2 order "may be modified only for good cause and with the judge's
3 consent." Fed. R. Civ. P. 16(b)(4). Where a schedule has been
4 ordered, a party's right to amend its pleading is governed by this
5 good cause standard, not the more liberal standard of Rule
6 15(a)(2). Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608
7 (9th Cir. 1992). In order to determine whether good cause exists,
8 courts primarily consider the diligence of the party seeking the
9 modification. Id. at 609; see also Coleman v. Quaker Oats Co., 232
10 F.3d 1271, 1294 (9th Cir. 2000). "[N]ot only must parties
11 participate from the outset in creating a workable Rule
12 16 scheduling order but they must also diligently attempt to adhere
13 to that schedule throughout the subsequent course of the
14 litigation." Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D.
15 Cal. 1999).

16 DISCUSSION

17 I. Amendment to Include Ms. Stewart as a Named Plaintiff

18 Defendants contend that Carolyn Stewart, whom Plaintiffs seek
19 to add as a Named Plaintiff, could have been added previously and
20 that Plaintiffs fail to articulate good cause for this amendment.
21 Defendants argue that, because there is already a certified class
22 of In-Home Supportive Services (IHSS) recipients that are residents
23 of Fresno, adding Ms. Stewart to ensure adequate representation is
24 not necessary and does not meet the good cause standard.

25 Plaintiffs claim that the addition of Ms. Stewart is necessary
26 to ensure there is a Named Plaintiff with non-relative IHSS
27 providers who would be affected by the wage cut in Fresno County.

1 Plaintiffs note that IHSS recipients are elderly or disabled and
2 often encounter serious health issues which can interfere with
3 their participation in litigation. Plaintiffs point to the death
4 of one previous Named Plaintiff, Sia Chue Yang, and the
5 institutionalization of another, Patsy Miller. Plaintiffs argue
6 that the fact that Ms. Stewart could have been added earlier does
7 not undermine the fact that it is necessary to add her now.

8 Plaintiffs seek to ensure the adequate representation of
9 members of the class, which is essential to the success of this
10 action. Plaintiffs have demonstrated diligence in maintaining a
11 viable Named Plaintiff. Given that the health of Ms. Miller may
12 continue to preclude her from fully participating in this action,
13 Plaintiffs have shown that the addition of Ms. Stewart will ensure
14 adequate representation for the members of the class in Fresno
15 County with non-relative providers. In addition, because Ms.
16 Stewart is a member of a class of plaintiffs previously identified,
17 and does not raise any new claims, Defendants will not be
18 prejudiced for lack of notice. Therefore, Plaintiffs may amend
19 their complaint to add Ms. Stewart as a Named Plaintiff.

20 II. Amendments to Include Union Plaintiffs

21 A. Good Cause

22 Defendants contend that Plaintiffs fail to show good cause for
23 the addition of Union Plaintiffs UDW and CUHW. Defendants argue
24 that Plaintiffs' lack of diligence precludes granting leave to
25 amend at this stage in the litigation. Defendants claim that
26 Plaintiffs do not provide a valid reason for the addition of UDW,
27 and furthermore, because UDW does not represent IHSS workers in
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1 Fresno County, Plaintiffs cannot claim the addition of this Union
2 Plaintiff is in response to the recent wage decrease there.
3 Defendants also claim that Plaintiffs fail to demonstrate that they
4 were diligent in trying to add CUHW as a party because Plaintiffs
5 fail to specify when wages rose in the county in which CUHW members
6 operate.

7 Plaintiffs claim that the State's approval of a rate reduction
8 in Fresno County without the analysis mandated by section 30(A)
9 gave rise to the need to add additional Union Plaintiffs.
10 Plaintiffs argue that they seek injunctive relief in and beyond
11 Fresno County, and therefore, that UDW does not represent Fresno
12 County providers is irrelevant. In addition, Plaintiffs allege
13 that they failed to include CUHW in the lawsuit until now because
14 they were not able to confirm until recently that the hourly wage
15 of CUHW providers fell within the parameters of the class claims.

16 Plaintiffs have sufficiently alleged good cause because they
17 have established that UDW and CUHW share the interests of the other
18 Union Plaintiffs in seeking to enjoin the state from further rate
19 reductions which will allegedly cause them economic harm.

20 Plaintiffs have also demonstrated that the need to add these
21 Plaintiffs was not known prior to the deadline for adding parties
22 and claims. It also appears that Plaintiffs were diligent in
23 trying to ascertain the appropriateness of CUHW as a plaintiff and
24 their delay in adding the party was not undue or dilatory.
25 Therefore, Plaintiffs may amend their complaint to add these
26 parties.

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1 B. Standing

2 An entity has associational standing where "(a) its members
3 would otherwise have standing to sue in their own right; (b) the
4 interests it seeks to protect are germane to the organization's
5 purpose; and (c) neither the claim asserted nor the relief
6 requested requires the participation of individual members in the
7 lawsuit." Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333,
8 343 (1977).

9 Defendants argue that adding Union Plaintiffs to the ADA and
10 RA claims of the action is futile because Union Plaintiffs lack
11 standing. Specifically, Defendants claim that Plaintiffs fail to
12 allege that specific union members or children of union members
13 would have standing to sue in their own right, and that the
14 interest of union members in receiving IHSS benefits is not germane
15 to the unions' purpose.

16 Plaintiffs claim that Union Plaintiffs' members are themselves
17 recipients of in-home services and therefore face the imminent
18 threat of institutionalization, which is in violation of the goals
19 of the ADA and RA. Specifically, Plaintiffs allege that parents
20 who care for disabled children full-time and retired IHSS providers
21 who now receive in-home services are among their members.
22 Plaintiffs adequately allege that these members face
23 institutionalization if they cannot secure in-home services and
24 claim that this threat is imminent if wages for IHSS providers are
25 reduced. Therefore, these union members have standing to sue in
26 their own right.

27 In addition, Plaintiffs sufficiently demonstrate that the
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1 interests of these union members are germane to the Union
2 Plaintiffs. The test for germaneness is not demanding and requires
3 "only that an organization's litigation goals be pertinent to its
4 special expertise and the grounds that bring its membership
5 together." Humane Soc'y of the United States v. Hodel, 840 F.2d
6 45, 56 (D.C. Cir. 1988). The mission statements of Union
7 Plaintiffs convey that their purpose is to promote the interests of
8 IHSS consumers, to collaborate with consumers to enhance their
9 quality of life, and to ensure quality, long-term care for seniors
10 and persons with disabilities. Pls.'s Supplemental Reply at 7.
11 These mission statements adequately demonstrate interests Union
12 Plaintiffs seek to protect that are germane to their purpose.²

13 Therefore, Plaintiffs have demonstrated that Union Plaintiffs
14 have standing to bring claims under the ADA and RA. Accordingly,
15 Plaintiffs may amend their complaint to add Union Plaintiffs to the
16 ADA and RA claims.

17 III. New Claims for Relief

18 State Defendants argue that Plaintiffs should not be granted
19 leave to amend their complaint to add the fifth and sixth claims
20 because Plaintiffs are acting in bad faith and because the
21 additional claims would prejudice Defendants. Specifically, State
22 Defendants claim that Union Plaintiffs' claims challenging the
23 recent rate reduction in Fresno County improperly mix a labor
24 dispute with the instant action concerning the legality of
25 California Welfare and Institutions Code § 12306.1(d)(6), and are

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27 ² Defendants do not argue that Plaintiffs fail to satisfy the
28 third prong of Hunt.

1 merely a way for the unions to circumvent the bargaining process.
2 However, as the Court noted in its order granting Plaintiffs'
3 temporary restraining order, the State cannot abdicate its
4 responsibility to ensure that the IHSS program does not violate a
5 federal law by relying on the fact that the counties determine IHSS
6 wages and benefits through collective bargaining. Martinez v.
7 Schwarzenegger, 2009 WL 1844989, at *5 (N.D. Cal.) ("a county's
8 role in determining IHSS wages and benefits does not preclude the
9 State from analyzing the impact of [a rate reduction] on the
10 Section 30(A) factors prior to enactment"). Plaintiffs do not
11 challenge the process of collective bargaining, but rather the
12 absence of any assessment of the impact of the bargained-for rate
13 on the quality of and access to in-home services.

14 Defendants have not demonstrated that they will be prejudiced
15 by the addition of these claims or that Plaintiffs have added these
16 claims in bad faith. Therefore, Plaintiffs may amend their
17 complaint to add the fifth and sixth claims for relief.

18 CONCLUSION

19 For the foregoing reasons, Plaintiffs' motion for leave to
20 file a second amended complaint is GRANTED. (Docket No. 335).
21 Plaintiffs may add Named Plaintiff Carolyn Stewart and Union
22 Plaintiffs UDW and CUHW to claims one through four, all of the
23 Union Plaintiffs to claims three and four, and add the two new
24 claims for relief brought by Union Plaintiffs that State
25 Defendants' approval of Fresno County's wage decrease violates
26 section 30(A). Plaintiffs shall file the amended complaint
27 forthwith. Defendants may rest on their answer to the previous
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1 complaint or may respond to the amended complaint within twenty-one
2 days of its filing. Any motion to dismiss will be decided on the
3 papers.

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5 IT IS SO ORDERED.

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7 Dated: 08/30/10

Claudia Wilken

CLAUDIA WILKEN
United States District Judge

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