

1  
2  
3  
4 **UNITED STATES DISTRICT COURT**  
5 **SOUTHERN DISTRICT OF CALIFORNIA**

6 ANA LUCIA MEDINA CORDOVA,  
7  
8 Plaintiff,

CASE NO. 15-CV-00155-WQH  
(MDD)

ORDER

9 vs.

10 R & R FRESH FRUITS AND  
11 VEGETABLES OF CALIFORNIA,  
INC.; and CHRIS LIZAOLA,

12 Defendants.

13 HAYES, Judge:

14 The matter before the Court is the motion for leave to file a second amended  
15 complaint filed by Plaintiff Ana Lucia Medina Cordova. (ECF No. 13).

16 **I. Background**

17 On January 22, 2015, Plaintiff Ana Lucia Medina Cordova commenced this  
18 action by filing the Complaint in this Court. (ECF No. 1). On February 13, 2015,  
19 Defendants R & R Fresh Fruits and Vegetables of California, Inc. (“R & R”) and Chris  
20 Lizaola filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).  
21 (ECF No. 3). On March 2, 2015, Plaintiff filed the First Amended Complaint (“FAC”)  
22 pursuant to Federal Rule of Civil Procedure 15(a)(1). (ECF No. 6). On March 3, 2015,  
23 the Court issued an order denying the motion to dismiss as moot. (ECF No. 7).

24 On March 11, 2015, Defendants filed a motion to dismiss pursuant to Federal  
25 Rule of Civil Procedure 12(b)(6). (ECF No. 8). On April 16, 2015, the Court issued  
26 an Order, granting in part and denying in part the motion to dismiss. (ECF No. 12).  
27 The Court dismissed Plaintiff’s third claim for fraud, fourth claim for negligent  
28 misrepresentation, and sixth claim for breach of fiduciary duty.

1 On May 6, 2015, Plaintiff filed the motion for leave to file a second amended  
2 complaint. (ECF No. 13). On May 19, 2015, Defendants filed an opposition. (ECF  
3 No. 17). On May 31, 2015, Plaintiff filed a reply. (ECF No. 19).

## 4 **II. Discussion**

5 Plaintiff contends that none of the *Foman v. Davis* factors are present in this case.  
6 Plaintiff asserts that the proposed second amended complaint removes the breach of  
7 fiduciary duty that was dismissed by the Court in its April 16, 2015 Order and states  
8 fraud and negligent misrepresentation claims with particularity. Defendant contends  
9 that Plaintiff has failed to state fraud and negligent misrepresentation claims for the  
10 third time, even though the court found that the Complaint and FAC both failed to state  
11 fraud and negligent misrepresentation claims.<sup>1</sup>

12 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given  
13 when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with  
14 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
15 Cir. 2003) (quotation omitted). In determining whether to allow an amendment, a court  
16 considers whether there is “undue delay,” “bad faith,” “undue prejudice to the opposing  
17 party,” or “futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Not  
18 all of the [*Foman*] factors merit equal weight... [I]t is the consideration of prejudice  
19 to the opposing party that carries the greatest weight.” *Eminence Capital*, 316 F.3d at  
20 1052 (citation omitted). “The party opposing amendment bears the burden of showing  
21 prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).  
22 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there  
23 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence*  
24 *Capital*, 316 F.3d at 1052.

25 After review of the motion for leave to file a second amended complaint and all  
26

---


27 <sup>1</sup> Contrary to Defendants’ assertion, the Court did not address the allegations of  
28 the original Complaint. On March 2, 2015, Plaintiff filed the First Amended Complaint  
pursuant to Federal Rule of Civil Procedure 15(a)(1), rendering moot Defendants’ first  
motion to dismiss. (ECF Nos. 6-7).

1 related filings, the Court concludes that Defendants have not made a sufficiently strong  
2 showing of the *Foman* factors to overcome the presumption under Rule 15(a) in favor  
3 of granting leave to amend. *See Eminence Capital*, 316 F.3d at 1052.

4 **III. Conclusion**

5 IT IS HEREBY ORDERED that the motion for leave to file a second amended  
6 complaint (ECF No. 13) is GRANTED. Plaintiff shall file the proposed second  
7 amended complaint attached to the motion within **ten (10) days** from the date of this  
8 Order.

9 DATED: June 9, 2015

10   
11 **WILLIAM Q. HAYES**  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28