

1 Despite the discrepancy in the middle initials, Defendant disclosed the criminal history
2 report of the other named person on Plaintiff’s employment background check report
3 which was sold to RRS. (Id., ¶ 23.) Plaintiff was informed he could not be hired
4 because of the criminal history information. (Id., ¶ 24.) Plaintiff immediately disputed
5 the information with Defendant but Defendant failed to comply with certain provisions
6 of the Fair Credit Reporting Act (“FCRA”). He alleges that Defendant failed to utilize
7 reasonable procedures to ensure the maximum possible accuracy of information on
8 Plaintiff’s background check report required by 15 U.S.C. § 1681e(b), failed to use
9 strict procedures to ensure that the reported public records information for employment
10 purposes was complete and up to date as mandated by 15 U.S.C. § 1681k(a)(2), and
11 failed to disclose to Plaintiff a true copy of the original report upon request as required
12 by 15 U.S.C. § 1681g(a). (Id.)

13 On February 22, 2017, a scheduling order was filed by the Magistrate Judge
14 setting a deadline of March 24, 2017 as the date to file any motion to amend the
15 pleadings. (Dkt. No. 12.) On March 24, 2017, Plaintiff filed a motion for leave to file
16 an amended complaint. (Dkt. No. 15.) Plaintiff seeks to add a cause of action that
17 Defendant failed to provide Plaintiff a written notice of reinvestigation required under
18 15 U.S.C. § 1681i(a)(6). Defendant opposes the motion arguing there was undue delay
19 in bringing the motion and the motion is being brought in bad faith.

20 **A. Federal Rule of Civil Procedure 15**

21 Under Federal Rule of Civil Procedure (“Rule”) 15(a), leave to amend a
22 complaint after a responsive pleading has been filed may be allowed by leave of the
23 court and “shall freely be given when justice so requires.” Foman v. Davis,
24 371 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a). Granting leave to amend rests in the
25 sound discretion of the trial court. Internat’l Ass’n of Machinists & Aerospace
26 Workers v. Republic Airlines, 761 F.2d 1386, 1390 (9th Cir. 1985). This discretion
27 must be guided by the strong federal policy favoring the disposition of cases on the
28 merits and permitting amendments with “extreme liberality.” DCD Programs Ltd. v.

1 Leighton, 833 F.2d 183, 186 (9th Cir. 1987).

2 Because Rule 15(a) favors a liberal policy, the nonmoving party bears the burden
3 of demonstrating why leave to amend should not be granted. Genentech, Inc. v. Abbott
4 Labs., 127 F.R.D. 529, 530-31 (N.D. Cal. 1989). In assessing the propriety of an
5 amendment, courts consider several factors: (1) undue delay, (2) bad faith or dilatory
6 motive; (3) repeated failure to cure deficiencies by amendments previously permitted;
7 (4) prejudice to the opposing party; and (5) futility of amendment. Foman, 371 U.S. at
8 182; United States v. Corinthian Colleges, 655 F.3d 984, 995 (9th Cir. 2011). These
9 factors are not equally weighted; the possibility of delay alone, for instance, cannot
10 justify denial of leave to amend, DCD Programs, 833 F.2d at 186, but when combined
11 with a showing of prejudice, bad faith, or futility of amendment, leave to amend will
12 likely be denied. Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999). The single most
13 important factor is whether prejudice would result to the non-movant as a consequence
14 of the amendment. William Inglis & Sons Baking Co. v. ITT Continental Baking Co.,
15 668 F.2d 1014, 1053 (9th Cir. 1981).

16 Defendant argues there was undue delay in seeking the amendment as Plaintiff
17 waited six months after the original complaint was filed, after the initial disclosures
18 were exchanged, after the ENE was held and after the court's scheduling order was
19 filed, to file a motion for leave to amend the complaint. According to Defendant,
20 Plaintiff's failure to explain the delay is fatal to his motion. Next, Defendant contends
21 that Plaintiff is bringing his motion in bad faith as Plaintiff was expressly notified and
22 aware of Defendant's reinvestigation of the report and Plaintiff misunderstood
23 Defendant's directions after Plaintiff disputed the information. Plaintiff replies that
24 there has been minimal delay in seeking the amendment and there is a factual issue as
25 to whether Plaintiff was aware of Defendant's reinvestigation of the report and whether
26 Plaintiff misunderstood Defendant's directions.

27 As to undue delay, the Court looks at whether the moving party unduly delayed
28 in filing their motion. Jackson v. Bank of Hawaii, 902 F.2d 1385, 1388 (9th Cir. 1990).

1 In making such a determination, the court looks at “whether the moving knew or
2 should have known the facts and theories raised by the amendment in the original
3 pleading.” Id.

4 It is not clear when Plaintiff learned of the facts to support the proposed fourth
5 cause of action; nonetheless, Plaintiff timely raised a motion for leave to amend
6 complaint according to the court’s scheduling order. While the proposed fourth cause
7 of action may not have been raised until six months after the filing of the complaint,
8 the case is still in its early stages that undue delay cannot be shown from the filing of
9 Plaintiff’s motion. See Zoe Mktg., Inc. v. Impressions, LLC, 14cv1881 AJB(WVG),
10 2015 WL 12216340, at *2 (S.D. Cal. Apr. 9, 2015) (“undue delay will not result from
11 granting Defendant leave to amend given that the case remains in the early stages of
12 discovery.”). Moreover, even if Defendant could establish undue delay, “delay alone
13 . . . cannot justify denial of leave to amend,” DCD Programs, 833 F.2d at 186. Since
14 Defendant has not demonstrated any of the other factors to oppose the motion, undue
15 delay does not warrant denial of the motion. See Bowles, 198 F.3d at 758. The Court
16 concludes that Plaintiff did not unduly delay in bringing the present motion.

17 There can be bad faith in bringing an amendment if the party seeks to prolong
18 meritless litigation by adding baseless amendments to their complaint or if there is any
19 evidence of wrongful motive. Jones v. Bates, 127 F.3d 839, 847 n. 8 (9th Cir. 1997);
20 Griggs v. Pace American Group, Inc., 170 F.3d 877, 881 (9th Cir. 1999); DCD
21 Programs. Ltd., 833 F.2d at 187. Here, Defendant’s argument that Plaintiff “was
22 expressly notified and well aware of Defendant’s reinvestigation of the report” and that
23 Plaintiff misunderstood Defendant’s directions after he disputed the information,
24 present factual disputes and do not demonstrate wrongful motive or that Plaintiff is
25 seeking to prolong meritless litigation. Accordingly, Defendant has not demonstrated
26 that the motion is being brought in bad faith.

27 In sum, Defendant has not demonstrated that leave to amend should not be
28 granted. See Genentech, 127 F.R.D. at 530-31. Accordingly, the Court GRANTS

1 Plaintiff's motion for leave to file an amended complaint.

2 **Conclusion**

3 Based on the above, the Court GRANTS Plaintiff's motion for leave to file an
4 amended complaint. Plaintiff shall file an amended complaint within five (5) days of
5 the Court's order. The hearing date set for April 28, 2017 shall be vacated.

6 IT IS SO ORDERED.

7
8 DATED: April 18, 2017

9 
10 HON. GONZALO P. CURIEL
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28