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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MIKE AUSTIN, an individual, on behalf  
12 of himself and all others similarly situated,  
13 and DANIEL L. VOEKS, JR., an  
14 individual, on behalf of himself and all  
15 others similarly situated,

16 Plaintiffs,

17 v.

18 WESTERN CONCRETE PUMPING,  
19 INC., a California corporation, CHARLES  
20 REED, an individual, and BRETT REID,  
21 an individual,

22 Defendants.

Case No.: 17-cv-2363-AJB-MDD

**ORDER GRANTING PLAINTIFFS’  
UNOPPOSED MOTION FOR LEAVE  
TO FILE A SECOND AMENDED  
COMPLAINT**

(Doc. No. 21)

23 Plaintiffs request leave to file a second amended complaint. (*See generally* Doc. No.  
24 21-1.) Explicitly, Plaintiffs seek to add a cause of action under the Private Attorney General  
25 Act (“PAGA”). (*Id.*) Defendants do not oppose the motion. (Doc. No. 23.) As will be  
26 explained in more detail below, the Court **GRANTS** Plaintiffs’ motion for leave to amend.

**DISCUSSION**

27 Plaintiffs delineate several factors supporting their motion: (1) that Plaintiffs have  
28 followed PAGA’s procedural requirements; (2) pursuant to the case management order

1 entered in this case, Plaintiffs could file a motion for leave to amend on or before May 12,  
2 2018—Plaintiffs’ motion was filed on May 11, 2018; (3) Defendants were provided the  
3 proposed amended complaint; and (4) Plaintiffs complied with Civil Local Rule 15.1(b).  
4 (Doc. No. 21-1 at 2.) On May 25, 2018, Defendants filed a statement of non-opposition to  
5 Plaintiffs’ motion for leave to amend. (Doc. No. 23.)

6 Federal Rule of Civil Procedure 15(a) states that a “court should freely give leave  
7 when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Bowles v. Reade*, 198 F.3d 752,  
8 757 (9th Cir. 1999). But a district court need not grant leave to amend where the  
9 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an  
10 undue delay in litigation; or (4) is futile. *Bowles*, 198 F.3d at 757–58; *Jackson v. Bank of*  
11 *Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). However, not all of these factors merit equal  
12 weight. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). It is  
13 the consideration of prejudice that carries the greatest weight. *Id.* Absent prejudice, or a  
14 strong showing of the remaining factors, there is a presumption in favor of granting leave  
15 to amend. *Id.*

16 Here, as the motion is unopposed and was filed before the deadline set by the case  
17 management order, the opposing party will not be prejudiced. *See Lockheed Martin Corp.*  
18 *v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (explaining that where a  
19 motion to amend was made more than four months after the cutoff date, “[a] need to reopen  
20 discovery and therefore delay the proceedings supports a district court’s finding of  
21 prejudice . . . .”). Moreover, there is no evidence of bad faith and no reason to believe that  
22 the proposed amendment is futile. *See SAES Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp.  
23 2d 1081, 1086 (S.D. Cal. 2002) (illustrating that an amendment is futile “only if it would  
24 clearly be subject to dismissal.”).

25 Consequently, finding that none of the foregoing factors weighs against granting  
26 Plaintiffs leave to amend and most notably as Plaintiffs’ motion is unopposed, the Court  
27 finds leave to amend appropriate. *See Gonzales v. F/V Daniela*, No. 11cv01066 AJB  
28 (JMA), 2013 WL 444626, at \*1 (S.D. Cal. Feb. 4, 2013) (concluding that leave to amend


1 was warranted in light of the defendants' non-opposition to the motion and the plaintiff's  
2 reasonable explanation for the requested amendment); *see also Garcia v. United States*,  
3 No. 14cv1192-WQH-JLB, 2015 WL 4491205, at \*3 (S.D. Cal. July 22, 2015) (granting  
4 the plaintiff's motion for leave to file a fourth amended complaint after considering the  
5 motion and the defendants' non-opposition).

6 **CONCLUSION**

7 Accordingly, the Court **GRANTS** Plaintiffs' unopposed motion to file an amended  
8 complaint. Plaintiffs are to file their second amended complaint by **June 12, 2018**.  
9 Defendants will file a responsive pleading in accordance with the applicable rules.

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11 **IT IS SO ORDERED.**

12 Dated: June 5, 2018

13   
14 Hon. Anthony J. Battaglia  
United States District Judge