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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT NINTEMAN,  
  
Plaintiff,  
  
v.  
  
THE DUTRA GROUP,  
  
Defendant.

Case No.: 18cv1222-MMA (AGS)

**ORDER GRANTING PLAINTIFF'S  
UNOPPOSED MOTION FOR LEAVE  
TO FILE FIRST AMENDED  
COMPLAINT**

[Doc. No. 13]

On June 11, 2018, Plaintiff Robert Ninteman (“Plaintiff”) commenced the instant action against Defendant The Dutra Group (“Defendant”) alleging claims for negligence under the Jones Act, and maintenance, cure and unearned wages under general maritime law. Doc. No. 1 (“Compl.”). On September 13, 2018, Plaintiff filed a motion requesting leave to file a First Amended Complaint. Doc. No. 13-2 (“Mtn.”). To date, Defendant has not filed an opposition to Plaintiff’s motion. *See* Docket. The Court, in its discretion, decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, the Court **GRANTS** Plaintiff’s unopposed motion for leave to file a First Amended Complaint.

**LEGAL STANDARD**

Federal Rule of Civil Procedure 15 governs amendment of pleadings. It states that if a responsive pleading has already been filed, the party seeking amendment “may

1 amend the party’s pleading only by leave of court or by written consent of the adverse  
2 party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).  
3 This rule reflects an underlying policy that disputes should be determined on their merits,  
4 and not on the technicalities of pleading rules. *See Foman v. Davis*, 371 U.S. 178, 181-  
5 82 (1962). Accordingly, the Court must be generous in granting leave to amend. *See*  
6 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (noting  
7 leave to amend should be granted with “extreme liberality”); *Ascon Props., Inc. v. Mobil*  
8 *Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

9 However, courts may deny leave to amend for several reasons, including the  
10 presence of bad faith on the part of the plaintiff, undue delay, prejudice to the defendant,  
11 futility of amendment, and whether the plaintiff has previously filed an amended  
12 complaint. *See Ascon Props.*, 866 F.2d at 1160; *McGlinchy v. Shell Chem. Co.*, 845 F.2d  
13 802, 809 (9th Cir. 1988). The test of futility “is identical to the one used when  
14 considering the sufficiency of a pleading challenged under Rule 12(b)(6).” *Miller v.*  
15 *Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

#### 16 DISCUSSION

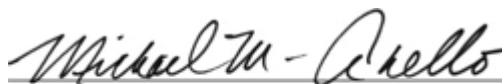
17 Plaintiff seeks to amend his Complaint by adding “a cause of action for  
18 unseaworthiness due to the lack of fall protection on the vessels to which he was  
19 assigned.” Mtn. at 2. Plaintiff requests the Court grant him leave to amend because there  
20 is no undue delay or prejudice to Defendant. *Id.* at 8. Here, the Court finds that  
21 Plaintiff’s proposed amendment is not futile, and there is no evidence that the proposed  
22 amendment will prejudice Defendant. Additionally, Plaintiff filed his motion by the  
23 deadline set forth in the Court’s scheduling order (*see* Doc. No. 12), and it does not  
24 appear that Plaintiff delayed in filing the instant motion. Further, Plaintiff has not  
25 previously amended his Complaint. Therefore, upon thorough review of the relevant  
26 documents, and after examining the relevant factors, the Court finds that permitting  
27 Plaintiff leave to amend his Complaint to add a cause of action for unseaworthiness is  
28 appropriate.

1 CONCLUSION

2 Accordingly, the Court **GRANTS** Plaintiff's unopposed motion for leave to file a  
3 First Amended Complaint. The Clerk of Court is instructed to file Plaintiff's First  
4 Amended Complaint (Doc. No. 13-1) as a separate docket entry.

5 **IT IS SO ORDERED.**

6 Dated: October 16, 2018



7 Hon. Michael M. Anello  
8 United States District Judge

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