

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL N. LUTMAN and DEBORAH
C. LUTMAN,

Plaintiffs,

v.

Case No: 2:15-cv-257-FtM-38CM

HARVARD COLLECTION
SERVICES, INC.,

Defendant.

ORDER¹

This matter comes before the Court on Plaintiffs Michael N. Lutman and Deborah C. Lutman and Defendant Harvard Collection Services, Inc.'s Joint Stipulation Re: Leave to File First Amended Complaint ([Doc. #23](#)) filed on August 17, 2015.

The background of this case has been recited at length in an earlier opinion ([Doc. #23](#)) and need not be repeated in detail here. In brief, Plaintiffs initiated this case on April 24, 2015 under the Telephone Consumer Protection Act ("TCPA"), the Fair Debt Collection Practices Act ("FDCPA"), and the Florida Consumer Collection Practices Act ("FCCPA"). ([Doc. #1](#)). On July 2, 2015, Defendant filed an Answer to Count I of Complaint ([Doc. #9](#)), and a Motion to Dismiss and/or Strike the remaining counts in the Complaint ([Doc. #10](#)). Plaintiffs thereafter filed an amended complaint ([Doc. #20](#)), which

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the Court struck for failure to comply with [Rule 15 of the Federal Rules of Civil Procedure \(Doc. #21\)](#). The Court also granted Defendant's Motion to Dismiss ([Doc. #10](#)) and, among other things, dismissed without prejudice Counts III through IX ([Doc. #22](#)). The parties now stipulate to Plaintiff filing the First Amended Complaint. ([Doc. #23](#)).

Under [Rule 15 of the Federal Rules of Civil Procedure](#), "a party may amend its pleading only with the opposing party's written consent or the court's leave." [Fed. R. Civ. P. 15\(a\)\(2\)](#). "The decision whether to grant leave to amend a complaint is within the sole discretion of the district court. Rule 15(a), however, limits the court's discretion by mandating that 'leave shall be freely given when justice so requires.'" [Laurie v. Ala. Crim. App.](#), 256 F.3d 1266, 1274 (11th Cir. 2001) (citation omitted). Consequently, the court must provide substantial justification to deny a motion to amend, such as "undue delay, bad faith, dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." [Foman v. Davis](#), 371 U.S. 178, 182 (1962).

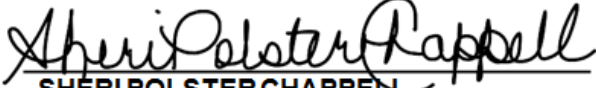
As stated, the parties stipulate to the proposed First Amended Complaint becoming the operative pleading in this case. ([Doc. #23](#)). Upon consideration of the interests of justice in this case, the Court will permitting the filing of the proposed First Amended Complaint ([Doc. #23-1](#)). This case is early in the litigation and amending the complaint will not delay this matter or prejudice Defendant. The Court, therefore, finds good cause to grant Plaintiff leave to amend.

Accordingly, it is now

ORDERED:

- (1) Plaintiffs Michael N. Lutman and Deborah C. Lutman and Defendant Harvard Collection Services, Inc.'s Joint Stipulation Re: Leave to File First Amended Complaint ([Doc. #23](#)) is **GRANTED**.
- (2) The Clerk of Court is **DIRECTED** to enter the attached proposed First Amended Complaint ([Doc. #23-1](#)).
- (3) Defendant Harvard Collection Service shall file an Answer to the First Amended Complaint on or before **September 1, 2015**.

DONE and **ORDERED** in Fort Myers, Florida this 21st day of August, 2015.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record