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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

2:11-CV-1017 JCM (GWF)

8 GLENN ALEXANDER BASS,

9   Plaintiff,

10 v.

11 JAMES HARRIS, et al.,

12   Defendants.

13

14   **ORDER**

15   Presently before the court is defendants John Braff, et. al.'s counter motion to amend/correct

16 pleadings to assert counterclaim. (Doc. #33). Defendants filed a copy of their proposed

17 counterclaim. (Doc. #32). Plaintiff Glen Alexander Bass filed an opposition. (Doc. #35).

18 Defendants then filed a reply. (Doc. #36).

19   Pursuant to the October 19, 2011, scheduling order, the deadline for motions to amend

20 pleadings and add parties was December 6, 2011. (Doc. #23). On March 8, 2012, plaintiff filed a

21 motion to extend deadlines. (Doc. #29). Defendants filed a response to this motion (doc. #31), and

22 filed the instant counter motion to amend/correct pleadings (doc. #33). Magistrate Judge Carl

23 Hoffman granted plaintiff's motion to extend deadlines at a hearing on March 26, 2012. (Doc. #34).

24   The instant motion asserts that plaintiff's motion to extend deadlines changed all of the

25 applicable dates except the deadline to amend pleadings or add parties. (Doc. #33). Thus,

26 defendants state that the deadline for amending pleadings should be changed along with the other

27 deadlines, and the court should grant defendants' motion to amend the pleadings or defendants will

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1   be prejudiced in this matter. (Doc. #33).

2   In response, plaintiff argues that the instant motion to amend is dilatory, prejudicial, and

3   futile. Plaintiff argues that any possible counterclaims were known to the defendants when plaintiff

4   filed this suit on June 21, 2011. (Doc. #35). Further, the original scheduling order stated that any

5   motion to amend must be filed by December 6, 2011. Thus, defendants have substantially delayed

6   and amendment is not appropriate. Further, plaintiff argues that he would be prejudiced by

7   amendment, because the deposition of James Harris has already been concluded and the time frame

8   to promulgate new written discovery has expired. (Doc. #35). Accordingly, plaintiff would not have

9   an opportunity to defend himself against the proposed counterclaims. (Doc. #35). Finally, plaintiff

10   argues that one of the proposed counterclaims, the abuse of process claim, is futile, and amendment

11   should not be granted. (Doc. #35).

12   Pursuant to Federal Rule of Civil Procedure 15(a), leave to amend "shall be freely given

13   when justice so requires." Absent a showing of an "apparent reason" such as undue delay, bad faith,

14   dilatory motive, prejudice to the defendants, futility of the amendments, or repeated failure to cure

15   deficiencies in the complaint by prior amendment, it is an abuse of discretion for a district court to

16   refuse to grant leave to amend a complaint. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531,

17   538 (9th Cir. 1989).

18   The court finds that there is good cause to grant defendants' counter motion to amend/correct

19   pleadings to assert counterclaim. *See* FED. R. CIV. P. 16(b)(4); FED. R. CIV. P. 15(a). The proposed

20   counterclaims all arise out of the same contractual agreements in dispute in the complaint and should

21   be adjudicated in the same case. Magistrate Judge Hoffman granted plaintiff's motion to extend

22   deadlines, and it is appropriate to extend the deadline to amend pleadings as well. While discovery

23   has closed, plaintiff may move to reopen discovery on the narrow issue of the proposed

24   counterclaim. Further, the close of discovery was very recent, April 27, 2012, so plaintiff would not

25   be prejudiced by any additional limited discovery. Therefore, the court finds that there is no apparent

26   reason to deny the motion to amend. *See Moore*, 885 F.2d at 538.

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1   Accordingly,

2   IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants John Braff, et.

3   al.'s counter motion to amend/correct pleadings to assert counterclaim (doc. #33) be, and the same

4   hereby is, GRANTED. Defendant shall file the proposed counterclaim (doc. #32) with the court

5   within 7 days of entry of this order.

6   DATED April 30, 2012.

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8   _____
         UNITED STATES DISTRICT JUDGE

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