UNITED STATES DISTRICT COURT DISTRICT OF OREGON PORTLAND DIVISION

NICOLE WELLONG and LUCIO MARTINEZ,

Plaintiffs,

Case No. 3:20-cv-01855-YY

v.

OPINION AND ORDER

FIKE INDUSTRIAL CONSTRUCTION LLC and STEVE GUERRERO,

Defendant.

Plaintiff has filed a Motion for Leave to File First Amended Complaint (ECF 10), which is GRANTED for the reasons discussed below.¹

Federal Rule of Civil Procedure 15(a)(2) provides that "[t]he court should freely give leave when justice so requires." However, leave to amend "is not to be granted automatically." *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990) (emphasis added). The court "may exercise its discretion to deny leave to amend due to 'undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, . . . [and] futility of amendment." *Carvalho v.*

¹ "Generally, a motion for leave to amend the pleadings is a nondispositive matter that may be ruled on by a magistrate judge pursuant to 28 U.S.C. § 636(b)(1). *Cazares v. Morris*, No. CV-09-2168-PHX-ROS (LOA), 2011 WL 2414543, at *2 (D. Ariz. June 16, 2011) (citations omitted).

^{1 –} OPINION AND ORDER

Equifax Info. Servs., LLC, 629 F.3d 876, 892-93 (9th Cir. 2010) (quoting Foman v. Davis, 371

U.S. 178, 182 (1962)) (alterations in original). Prejudice is the most important factor. Eminence

Capital, LLC v. Aspeon, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam).

At the hearing on this motion, plaintiffs' counsel explained that Wellong's sexual battery

claim was not asserted earlier because of her reluctance to file a police report. This is

understandable, given the nature of the claim. Plaintiffs' counsel also explained that he did not

raise Martinez's wage-related claims earlier because he did not learn of them until later in the

case. This is not as compelling an explanation, but there is no evidence of bad faith or dilatory

motive or repeated failure to cure deficiencies. Moreover, any prejudice to defendants can be

cured by extending the discovery deadline by four months, as defendants are requesting.

Accordingly, plaintiffs' Motion for Leave to File First Amended Complaint (ECF 10) is

GRANTED. Plaintiffs shall file the First Amended Complaint forthwith. Fact discovery shall be

completed by September 20, 2021, and dispositive motions, if any, shall be filed by October 8,

2021.

IT IS SO ORDERED.

Dated May 6, 2021.

/s/ Youlee Yim You

Youlee Yim You

United States Magistrate Judge

2 – OPINION AND ORDER