

Judge Ronald B. Leighton
United States District Court Judge



12-CV-05798-ORD

FILED	LODGED
RECEIVED	
JAN 18 2013	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY	

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

KIM TREMBLEY, et al,
Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY,

Defendant.

Civil Action No. 3:12-cv-05798 RBL

NOTE ON MOTION CALENDAR

MOTION TO AMEND COMPLAINT
NOTED FOR: January 18, 2013

PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiffs Kim Trembley, et al, move the Court for leave to file the Plaintiffs' First Amended Complaint. In accordance with LCvR7(b) and FRCP 15(a)(c), a copy of the proposed First Amended Complaint accompanies this motion. This motion is timely and, because the proposed amendment, which clarifies and narrows the Plaintiffs' allegations, poses no surprise or prejudice to any party, this motion should be granted in light of the liberality required by the rules and Supreme Court precedent. FRCP 15(a)(1) provides:

(a) Amendments before trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

T. DAVID APODACA
Attorney at Law
4102 NW Anderson Hill Road
Silverdale, WA 98383
Telephone: (360) 692-0950
Fax: (360) 692-4250

1 (B) ... 21 days after service of a responsive pleading.

2 It has been 21 days since the defendant served its Answer, which was served on
3 the 19th day of November. Therefore, the First Amended Complaint is timely.

4 Leave to amend pleadings "shall be freely given when justice so requires." Fed.
5 R. Civ. P. 15(a)(2). It is thus well established that amendments must be allowed absent
6 some good reason justifying denial of leave to amend. *E.g., Forman v. Davis*, 371 U.S.
7 178, 182, 83 S.Ct. 227, 230 (1962); *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C.
8 Cir. 1996). No such good reason exists here.

9 The changes proposed in the first amended complaint merely clarify and narrow
10 the issues to be litigated in this action. In particular, the Plaintiffs have attempted to
11 clarify the nature of the Defendant's negligence in that the Defendant caused a delay in
12 Mr. Trembley's receiving prompt emergency care which decreased his chances of
13 survival and thereby caused his death. Amendments that merely clarify or subtract
14 allegations previously made are not likely to cause surprise and are routinely permitted.
15 *See, e.g., Associated Musicians v. Parker Meridien Hotel*, 145 F.3d 85, 89-90 (2d Cir.
16 1998); *Allen v. Nat. Video, Inc.*, 610 F.Supp. 612, 621 (S.D.N.Y. 1985).

17 CONCLUSION

18 For these reasons, the Court should grant the Plaintiffs' motion for leave to file its
19 First Amended Complaint.

20 STATEMENT OF CONFERENCE

21 Plaintiffs' counsel has conferred or attempted to confer with counsel for the
22
23
24
25
26


1 parties. Plaintiffs' counsel attempted to confer by telephone with Kristin Johnson,
2 counsel for the Defendant, who was not available to speak to on 12/10/2012.

3
4 DATED: December 10, 2012.

Respectfully submitted:

5
6 

7 T. David Apodaca, WSBA #20207
8 Attorney for Plaintiffs

9
10
11
12
13 IT IS SO ORDERED THIS 15 DAY OF January, 2017
14 
15 UNITED STATES DISTRICT COURT JUDGE

16
17
18
19
20
21
22
23
24
25
26
T. DAVID APODACA
Attorney at Law
4102 NW Anderson Hill Road
Silverdale, WA 98383
Telephone: (360) 692-0950
Fax: (360) 692-4250