HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

June B. Greiner, Plaintiff, v. Cameron Wall, et al., Defendants.	CASE NO. C14-5579-RBL ORDER GRANTING LEAVE TO AMEND, DENYING MOTIONS TO COMPEL AND FOR SANCTIONS, AND STRIKING DEADLINES DKT. #72, 78, 79

THIS MATTER is before the Court on Plaintiff Greiner's Second Motion to Amend the Complaint [Dkt. #72], First Motion to Compel Discovery and to Impose Sanctions [Dkt. #78], and Second Motion to Compel Discovery and to Impose Sanctions [Dkt. #79]. Greiner alleges that the individually named Defendants, Internal Revenue Service Criminal Investigation and Department of Homeland Security Investigations Special Agents, failed to knock and announce before entering her home during *execution* of a search warrant. This case is nearly two years old with a trial date less than two months away, yet, discovery disputes pervade.

Greiner asks the Court for leave to amend her complaint (a second time) to identify trainings and policies that the Special Agents allegedly failed to follow when obtaining and executing the search warrant. Defendants ask the Court to deny her request, arguing any new

claims would cause undue delay, would unfairly prejudice them, and would be futile. "[T]he claims against the individual defendants would be dismissed based on qualified immunity and the claims against the United States would be barred …." *See* Dkt. 75 at 15. Greiner argues that it would be premature for the Court to examine the merits of her arguments because she proposes only to add facts supporting existing, plausible claims.

Trial courts should freely grant leave to amend "when justice so requires." Fed. R. Civ. Pro. 15(a)(2). Courts consider the presence or absence of undue prejudice to the opposing party, undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, and futility of the proposed amendment. *See U.S. ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001). These factors are not given equal weight, as futility alone can justify denial of a motion for leave to amend. *See id.* (citing *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.1995)). "[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (referencing 3 J. Moore, *Moore's Federal Practice* ¶ 15.08[4] (2d ed. 1974) (proper test to be applied when determining the legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6))).

Balancing these factors indicates that justice requires the Court grant Greiner leave to amend her complaint. Permitting leave to amend so close to trial will unduly prejudice the Defendants, unless trial is delayed. But, the Defendants have not identified a bad faith or dilatory motive, and Greiner has amended her complaint only once before. Also, her proposed amendments are not futile: Her claims that the Special Agents' actions violated her Fourth Amendment rights by unreasonably searching her home in a manner that violated IRS trainings

and policies and that the Government is liable for the Special Agents executing the search warrant in a manner that violated IRS trainings and policies and damaged her property are facially plausible. Accordingly, Greiner's Second Motion to Amend the Complaint [Dkt. #72] is GRANTED. She may file the Updated Second Amended Complaint. *See* Dkt. #76-1.[1]

Defendants request additional time to conduct discovery into Greiner's newly asserted claims, to obtain expert witness opinions, and to present dispositive motions. *See* Dkt. #75 at 15. Greiner objects to a continuance. Because the proposed amended complaint not only newly alleges that the Defendants violated IRS trainings and policies in executing the search warrant, but also in *obtaining* it, the Defendants request for additional time is warranted. Indeed, they would be prejudiced otherwise.

Therefore, the Scheduling Order [Dkt. #34] is STRICKEN. Trial is RESCHEDULED for the Court's earliest available date, Monday, December 12, 2016. The Clerk will issue a new scheduling order, setting forth the discovery and motions deadlines. If the parties have any insurmountable conflicts, they may email Jean Boring, Courtroom Deputy.

Greiner also asks the Court to compel Defendants to produce any documents involving Special Agent Gino's and the Department of Homeland Security's roles in obtaining and executing the search warrant. Defendants reasonably objected to these discovery requests. Moreover, they contend that they will provide additional relevant discovery after Greiner amends her complaint. Therefore, Greiner's First and Second Motions to Compel Discovery and to Impose Sanctions [Dkt. ##78 and 79] are DENIED without prejudice.

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[1] Greiner's Motion [Dkt. #76] requesting that the Court strike Defendants' Response because it exceeds twelve pages is DENIED as moot.

IT IS SO ORDERED.

Dated this 14th day of April, 2016.

Ronald B. Leighton
United States District Judge