

TENTATIVE Order Regarding Motion for Leave to Amend

Plaintiff Silverio Amezquita, individually and on behalf of all others similarly situated, (“Ameszquita”) moved for leave to file a First Amended Complaint (“FAC”) under Federal Rule of Civil Procedure 15. Mot., Dkt. No. 37. Defendant Target Corporation (“Target”) opposed the motion. Opp’n, Dkt. No. 40. Amezquita filed a reply. Reply, Dkt. No. 41.

For the following reasons, the Court **GRANTS** the motion to amend.

I. BACKGROUND

On April 13, 2018, Amezquita filed a class action complaint against Target in San Bernardino County Superior Court, alleging failure to pay overtime wages, provide meal and rest breaks, provide accurate itemized wage statements, pay all earned wages at termination, and unfair competition. See Dkt. No. 1, Ex. 1. Amezquita defined the class in question as all California citizens currently or formerly employed as non-exempt employees by Target at distribution centers in California within four years prior to the filing of the action through the date of class certification. Id.

On May 24, 2018, Target removed this action to the Central District of California pursuant to the Class Action Fairness Act of 2005. See Dkt. No. 1. Prior to this removal, Amezquita had informed Target of its intent to file an amended complaint adding a claim for expense reimbursements. See Mot. Dkt. No. 37, at 1.

On June 11, 2018, Target moved to dismiss or stay Amezquita’s case in light of two earlier-filed class actions that were pending against Target: Loughrie v. Target Corp., U.S.D.C., C.D. Cal., No. 5:17-cv-02342, and Espinoza v. Target Corp., U.S.D.C., C.D. Cal., No. 5:18-cv-0111 (“Loughrie/Espinoza”). See Mot., Dkt. No. 12.

While Target’s motion to stay/ dismiss was pending, Amezquita moved for leave to amend his complaint to add an expense-reimbursement claim. See Mot., Dkt. No. 18. On July 9, 2018, the Court granted Target’s motion to stay this action

pending resolution of Loughrie/Espinoza. Order, Dkt. No 26.

After the parties in Loughrie/Espinoza reached a class settlement, they presented the settlement to the Superior Court in a second case brought by Loughrie. Opp'n, Dkt. No. 40, at 3. On May 14, 2019, the Superior Court granted final approval of the settlement. Id. Following that, on July 17, 2019, this Court dismissed Loughrie/Espinoza with prejudice. Id.

On May 5, 2020, Amezquita contacted Target about lifting the stay, and Target did not oppose the subsequent motion to lift the stay. Id. Target did, however, oppose Amezquita's proposal to add alternative workweek schedules ("AWS") and expense-reimbursement claims, because those claims were already pending in other cases filed against Target "on behalf of virtually identical putative classes and thus would be subject to stay." Id.; Mot., Dkt. No 32. On August 14, 2020, the Court granted Amezquita's motion to lift the stay. Order, Dkt. No. 36, at 3.

Amezquita filed the present motion to amend. Mot., Dkt. No. 37. Target opposed. Opp'n. Dkt. No. 40. Amezquita filed a reply. Reply, Dkt. No. 41.

II. LEGAL STANDARD

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). In all other cases, a party may amend its pleading only with written consent from the opposing party or the court's leave, which should be "freely give[n] . . . when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (requiring that policy favoring amendment be applied with "extreme liberality").

In the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). The consideration of prejudice to the opposing party "carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d

1048, 1052 (9th Cir. 2003). “Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility, or where the amended complaint would also be subject to dismissal.” Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) (internal citations omitted).

III. DISCUSSION

Amezquita argues that Target “will not be prejudiced by the amendment because it involves the same parties and addresses the same alleged unlawful conduct.” See Mot., Dkt. No. 37, at 3. Moreover, Amezquita argues that there is no undue delay because he “sought to add the claim even before removal, but was forced to wait because of the removal.” Id.

Target’s central argument in opposition to the motion is that the amendments Amezquita seeks would constitute an exercise in futility. Specifically, Target argues that “amendment would be futile as to plaintiff’s proposed AWS and expense reimbursement claims because those claims already are pending in other actions and thus would be subject to dismissal or stay. Amendment also would be futile as to plaintiff’s proposed on-premises rest period claim because the claim fails as a matter of law.” Opp’n, Dkt. No. 40, at 5. The Court will address each of Target’s concerns in turn.

Target asserts that an amendment to add AWS and expense reimbursement claims would be futile because (1) the Colorado River Doctrine bars these claims while the same claims are already being litigated in Ornelas, Barnes, and Ornelas II, (2) the “first-to-file” rule bars the pursuit of these claims because the earlier suits were filed first with essentially duplicative claims, and (3) denying those claims is in “the orderly course of justice.” Id. at 5–11.

Amezquita responds that once he files “the AWS claim, he will seek leave to consolidate this case with Ornelas. Because this case was filed before Ornelas, it captures a larger class period, including at least an additional thirty-five employees. Thus, leave to amend would not ultimately result in this case concurrently litigating with Ornelas. It would also expand the claims to more putative class members, thus promoting the interests and orderly conduct of justice.” See Reply, Dkt. No. 41, at 2.

The Court finds this Amezcuita's argument persuasive. Accordingly, the Court disagrees with Target's assertion that amendment would be futile on the AWS and expense reimbursement claims, particularly in light of Amezcuita's stated intent to consolidate this case with Ornelas.

Next, Target argues that the court should deny Amezcuita's motion to amend with respect to the addition of a claim for on-premises rest period breaks because the claim fails as a matter of law. See Opp'n, Dkt. No. 12. Specifically, Target states that the on-premises rest period argument fails because "a number of courts in California—including several in this district—have held that on-premises rest-period requirements do not violate California law." Id. at 13.

Amezcuita points out that the cases Target cites to for its assertion that rest-period requirements do not violate California law "all involved claims where the plaintiffs merely alleged that the employer enforced an on-premises rest break policy—without alleging any facts establishing that the policy required them to be on-duty or otherwise subjected to the defendant's control." See Reply, Dkt. No. 41, at 3. In the present case, however, Amezcuita's proposed FAC would not "merely allege an on-premises rest break policy" but would also allege "that the employees were required to remain on-duty, which the Augustus court ruled violated California law." Accordingly, the Court finds that Amezcuita's proposed amendment would not add claims that must fail as a matter of law.

Furthermore, Target will not be prejudiced by amendment because there is no radical shift in the case. See Crawford v. Gould, 56 F.3d 1162, 1169 (9th Cir. 1995) ("[A]mendment would not prejudice [defendants], because it would not require [them] to undertake an entirely new course of defense, or to conduct substantial additional discovery."). Amezcuita states that he needs "only minimal discovery to prepare this claim for class certification, and anticipates easy integration of any claims overlapping with other cases." See Mot., Dkt. No. 37, at 3.

There is also no indication that Amezcuita brings this motion in bad faith or as a dilatory tactic. This case is still in its early stages. What is more, both parties agree that Amezcuita filed a motion to amend more than a year ago, but withdrew the motion upon the stay of the case, which further indicates that this is not a bad-faith or dilatory tactic. See Opp'n, Dkt. No. 40, at 2.

Finally, as discussed above, amendment in this case is not futile, and this is Amezcuita's first real attempt at amending his pleading. Therefore, in light of the Ninth Circuit's mandate to apply the policy in favor of amendment with "extreme liberality," Morongo, 893 F.2d at 1079, the Court grants the motion for leave to file the proposed FAC.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion. Amezcuita shall file his motion to consolidate with the Ornelas actions within 21 days. Should he fail to do so, the Court will invite reconsideration of this action.

IT IS SO ORDERED.

Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.