

**United States District Court
Western District of Washington**

No. 2:17-cv-00561-RAJ

Dui Mai, Plaintiff,

vs.

United States, et al., Defendant.

Motion for Leave to Amend Complaint

Note on Motion Calendar: 3/2/18

I. MOTION

Mr. Mai moves this Court for leave to file an amended complaint per FRCP 15(a)(2). Per LCR 15, the proposed amended complaint is attached to this motion as an exhibit.

II. FACTS

On April 11, 2017, Mr. Mai filed the present lawsuit against the United States and various federal government officers and entities, challenging the constitutionality of 18 USC § 922(g)(4) as applied to him because the application of that statute to him results in a lifetime ban on firearm possession for an otherwise healthy individual.

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On February 8, 2018, the Court granted the government's motions in full, dismissing Mr. Mai's case. However, the Court's order was based, at least in part, on an insufficiently pleaded complaint. Order at 9:6. Specifically, the Court stated that the plaintiff failed to allege facts sufficient to support the contention that he no longer suffers from the condition that lead to his involuntary treatment. *Id.* at 9:23-24. The Court also mentioned that the plaintiff failed to allege facts showing how the state court's grant of his firearms petition distinguishes him from the mentally ill. *Id.* at 10:6-7. The Court then stated that Washington state's restoration statute does not require a finding that the petitioner no longer suffers from the condition related to the commitment. *Id.* at 7-10.¹ Finally, in footnote 3 on page 12, the Court again notes that plaintiff did not introduce sufficient evidence to show that someone in his condition does not bear an additional risk of gun violence or suicide. *Id.* at 10 n.3.

III. ARGUMENT

FRCP 15(a)(2) states that a party may amend its pleadings only with the court's leave, but the court "should freely give leave when justice so requires." The underlying purpose of FRCP 15(a) is "to facilitate decisions on the merits, rather than on technicalities or pleadings." *James v. Piller*, 269 F.3d 1124, 1126 (9th Cir. 2001). A court may deny leave to amend if it finds the existence of "bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue

¹ Contrary to this assertion, the restoration statute states that a court must find that the "symptoms related to the commitment are not reasonably likely to recur." RCW 9A.047(3)(a)(iv).

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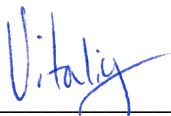
allowance of the amendment, or futility of amendment.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009).

Here, there is no bad faith, repeated failures to cure, or undue prejudice to the opposing party. The Court was not entirely clear in its order whether futility would apply here, since the Court continued its discussion into the merits of the complaint itself. The proposed amendment incorporates facts and evidence that are directly relevant to the Court’s concerns in its order dismissing the case, such as mental health evaluations and the actual findings of the King County Superior Court. The evaluations, coming from three separate doctors/licensed psychologists, all unanimously agree that Mr. Mai poses no threat of harm to himself or others and that he presents with no observable psychopathology.

IV. CONCLUSION

Based on the foregoing, the Court should grant leave to amend the complaint.

Respectfully submitted,

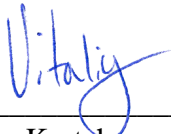


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Attorney for Mr. Mai
Date: 2/12/18

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1 I hereby certify that on 2/12/18, I electronically filed the foregoing with the clerk of the
2 court using the CM/ECF System, which in turn automatically generated a Notice of Electronic
3 Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF
4 for the foregoing specifically identifies recipients of electronic notice. I hereby certify that I have
5 mailed by United States Postal Service the document to the following non-CM/ECF participants:
6 None.

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8 Respectfully submitted,

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13 Vitaliy Kertchen

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