IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHER MARIANA ISLANDS

OXANA GALKINA

Plaintiff,

vs.

MYUNG SUH KANG, SOOK KYUNG KANG, PALACE CORPORATION, JONG H. KIM and ALBERT LEE,

Defendants.

Civil Case No: 0 l-03 94E

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT PURSUANT TO COM. R. CIV. P. 15 (A)

THIS MATTER came before the Court on December 27, 2001 at 1:30 p.m. in courtroom 223 A. on Plaintiffs Motion for Leave to Amend the Complaint pursuant to Corn. R. Civ. P. 15 (a) in order to add new parties. David G. Banes, Esq. appeared on behalf of Plaintiff OXANA GALKINA (hereinafter GALKINA). Robert B. Dunlap II, Esq. appeared on behalf of Defendant JONG H. KIM and ALBERT LEE (hereinafter KIM & LEE). Having read and considered all the papers filed in connection with this motion, having considered the arguments advanced by the parties and being fully informed, the Court **GRANTS** Plaintiffs' Motion for Leave to further Amend their complaint to include certain additional parties.

I. BACKGROUND

Plaintiff GALKINA filed a complaint on July 18,200 1 against Defendants KIM & LEE seeking to enforce a favorable Department of Labor and Immigration decision. Defendants responded on September 11, 2001. The court issued an Entry of Default against Defendants on October 22, 2001. Plaintiff OXANA now seeks to amend the complaint to add the following three plaintiffs: Svetlana Lazykina Atalig, Olga Lazykina, and Diana Rakmatoulina. All three were co-workers of Plaintiff OXANA at Palace Corporation, and co-complainants in Labor case *No. 97-384* and CAC No. 97-l 19-09.

II. DISCUSSION

1. Standard of Discretion

The issue presented before this Court is whether Plaintiff can amend the complaint to add Svetlana Lazykina Atalig, Olga Lazykina, and Diana Rakmatoulina as parties. Corn. R. Civ. P. 15 (a) states, in pertinent part:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . [o]therwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

The Commonwealth Rules of Civil Procedure related to the amendment of complaints must be interpreted liberally. See Govendo v. MPLC, 2 N.M.I. 485, 503 (1992), *citing 27* Fed. Proc. L. Ed. § 62:258 (1984) (Liberal allowance of amendments to pleadings is a recognition that controversies should be decided on the merits whenever practicable.) Corn. R. Civ. P. 15 (a) is fashioned after its federal counterpart rule, therefore the court may look to federal law for guidance when interpreting local statutory law. In re Maaofna, 1 N.M.I. 454 (1990).

Generally, leave to amend is granted unless a weighing of several factors suggests that leave would be inappropriate. It is well-settled that in the absence of undue delay,. bad faith, dilatory motive, failures to cure previous deficiencies futility of amendment or undue prejudice, motions to amend complaints are freely granted when justice so requires. Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) *See also,* DCD Programs, Ltd. v. Leighton, 833

F.2d 183, 186 (9th Cir. 1987) (weighing "bad faith, undue delay, prejudice to the opposing party and futility of amendment); U.S. v. Webb, 655 F.2d 977,980 (9th Cir. 1981); Island Aviation, Inc. v. Marianas Islands Airport Authority, 1 C.R. 355,380 (D.N.M.I. 1983).

Defendant's opposition to the amendment rests upon the "futility of amendment" exception listed in Foman v. Davis. Specifically, Defendant argues that the statute of limitations has expired, thus precluding Plaintiff from bringing suit and ultimately rendering any amendment to add new parties futile.

2. Futility of Amendment

Proposed amendments that clearly would not prevail or positively advance the position of a party will be denied. Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962); Newland v. Dalton, 81 F.3d 904,907 (9th Cir. 1996) ("[D]istrict courts need not accommodate futile amendments.") Defendants contend that a further amendment to add additional parties would be futile, and should be denied, because the claim is barred by a 4 CMC § 9246 (a), which has a six month statute of limitations.

Defendants are correct that an amendment to include a time-barred claim would be futile. See Sackett v. Beaman, 399 f.2d 884,892 (9th Cir.1968) (affirming denial of motion for leave to amend because statute of limitations rendered claim futile); Chem v. New York Life Ins. Co., 1997 WL 792942, 1997 U.S.Dist. LEXIS 20054 (N.D.Cal. Oct. 21, 1997) (dismissing without leave to amend because statute of limitations rendered claim futile). Accordingly, the Court must determine whether the proposed amendment is time-barred.

3. Statute of Limitations

Defendants claim that the statute of limitations in this case is set out by 4 CMC § 9246 (a) which states in relevant part:

> [A]ny action commenced on or after the effective date of this amendment, to enforce a cause of action for unpaid wages, unpaid overtime compensation, or liquidated damages under the Minumum

> Wage and Hour Act, 4 CMC Section 9211 et. seq., or any other cause of action under the Non-Resident Worker Act, 3 CMC Section 4 111 et. seq., must be commenced within six months after the cause of action accrued, ...

4 CMC § 9246 (a).

Defendant claims that the above statute controls, thus making Plaintiffs suit untimely. In contrast, Plaintiff GALKINA claims that the statute of limitation set forth by 4 CMC § 9246 (a) only applies to the filing of an action to pursue a wage claim against an employer and not to enforce a judgment or collect upon a previous award.

Ordinarily, if the language of the statute is clear and unambiguous, there is no need to resort to the indicia of the intent of the legislature. It is well-settled that statutory language must be given its plain meaning. See Estate of Faisao v. Tenorio, 4 N.M.I. 260,265 (1995); Office of the Attornev Gen. v. Deala, 3 N.M.I. 110, 117 (1992); Nansav Micronesia Corn. v. Govendo, 3 N.M.I. 12, 18 (1992). However, this "plain meaning" rule "does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose." U.S. v. Marolf 173 F.3d 1213, 1217 -1218 (9th Cir. 1999) *citing* Lungren v. Deukmeiian, 45 Cal.3d 727,248 Cal.Rptr. 115, 755 P.2d 299, 303-04 (1988). See *also* In re Centurv Cleaning Services, Inc., 195 F.3d 1053, 1058 (9th Cir. 1999).

Further, "It is a settled rule of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." Id. at 1218. *citing* Younger v. Superior Court, 21 Cal.3d 102, 145 Cal.Rptr. 674, 577 P.2d 1014, 1021-22 (1978). "The intent prevails over the letter, and the letter will, if possible, be so read so to conform to the spirit of the act." Id at 12 18. *citing* Lungren, 248 Cal.Rptr. 115, 755 P.2d at 304.

Here, 4 CMC § 9246 (a) is clear in stating that, "[A]ny action . . . must be commenced within six months after the cause of action accrues." If followed strictly, Defendant's argument that this current action is time barred would control since it was not "commenced" within six months. However, the analysis does not stop there. In determining the "spirit" of the statute, a

discussion of the purpose behind statutes of limitation is warranted.

Historically, statutes of limitation have "represent[ed] a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." United States v. Kubrick, 444 U.S. 111, 117, 100 S.Ct. 352, 62 L.Ed.2d 259 (1979) *(quoting* in *part* Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342,349, 64 S.Ct. 582, 88 L.Ed. 788 (1944)). The legislative bar is intended to prevent the assertion of old claims in opposition to which "evidence has been lost, memories have faded, and witnesses have disappeared." Id. at 348-49, *cited with approval in* United States ex rel. Hyatt v. Northrop Corp., 9 1 F.3d 12 11, 12 17 (9th Cir. 1996); see *also* Bancorp Leasing & Fin. Corn. v. Agusta Aviation Corp., 8 13 F.2d 272,276 (9th Cir. 1987).

Here, there is no concern that "evidence has been lost," "memories have faded," or that "witness have disappeared" because the claims have already been fully litigated in two previous proceedings. First during the proceeding that resulted in the January 29, 1998 Administrative Order and second during the appeal of that Order. See *Generally* C.A.C. 97-l 19-09; L.C. No. 97-384. Further, Since the Defendants chose not to further appeal the findings of the administrative order, no new evidence could be submitted because the order is no longer reviewable pursuant to 3 CMC § 4445 (a).

Taking the above into consideration, the Court must now address whether the "letter" of 4 CMC § 9246 (a) comports with the spirit behind it. The legislative history associated with the passing of 4 CMC § 9246 (a) is slim. However, Plaintiff did present this Court with a letter written by the Governor Tenorio to the House of Representatives when he signed PL 10-30 (4 CMC § 9246 (a)) into law. The letter states in relevant part:

> The investigators at the Department of Labor and Immigration inform me that the present statute of limitations is perhaps too long. After two years, records are often lost, and memories are faulty. The shorter statute of limitations should encourage workers to bring actions more quickly. It will also discourage frivolous complaints brought solely for obtaining a transfer.
> . . . .

> . . . In signing this bill into law, I am aware of legitimate concerns about a worker's right of complaint. I think six months is a reasonable period in which to bring such a complaint, but I would oppose any further reduction in the statutory period beyond this . . . .

(PI. Ex. A)

By stating the shorter statute of limitations was to address problems such as "lost records" and "[faulty] memories" the Governor's letter shines light onto the purpose behind shortening the then existing two-year statute of limitation to the current six month statute of limitation. The stated purposes prompting the amendment are identical to the reasons justifying statutes of limitations in general. As discussed above, the traditional concerns which are usually remedied by statutes of limitation are not present here.

A search of 9th Circuit case law failed to reveal any relevant case law on this issue. However, Plaintiff has provided one case of particular importance from outside the 9th Circuit jurisdiction. In Haynes v. Contat, 643 N.E.2d 941 (Ind. Ct. App. 1994) the court held that an action to recover penalties assessed in a prior hearing did not fall under the same statute of limitation as the original action did.

Haynes was a prospective tenant who brought an action based upon racial discrimination. Contat, the defendant landlord, failed to appear and the court found in favor of Haynes and awarded damages against Contat. Contat failed to pay and approximately three years later Haynes filed an action seeking to enforce the order. Contat moved to dismiss, alleging that Haynes' action was barred by the two-year statute of limitations that govern a racial discrimination claim. In rejecting the argument, the court reasoned,

> Although race discrimination was the subject of Haynes' original complaint, the issue has been fully adjudicated [in the previous administrative proceeding]. Any further hearing on the merits was lost when Contat failed to seek judicial review [of the administrative hearing]. Because [Haynes'] court action seeks only to judicially enforce the [administrative order], and not adjudicate a race discrimination claim, [Haynes'] should not be bound by the two-year limitations period.

Haynes v. Contat, 643 N.E.2d 941,942 (Ind. Ct. App. 1994)

Similarly, a wage claim was the subject of GALKINA's original complaint, and that issue has been fully adjudicated. Like Contat, KIM & LEE's failure to seek judicial review of the

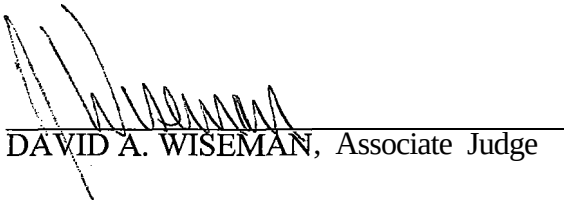
administrative order precludes any further hearing on the merits. Defunturum v. Saipan Manufacturers, Inc., App. No. 97-006 (N.M.I. Sup. Ct. Oct. 27, 1997) (Opinion at 2). Like Haynes, Plaintiff GALKINA is not seeking to adjudicate the underlying claim. Rather, GALKINA is only seeking to enforce the underlying claim. Accordingly, GALKINA should not be bound by the six-month limitations period.

The Court's holding begets the question of what the applicable statute of limitations is. Given that Plaintiff GALKINA's current action would satisfy the twenty-year limitation imposed by 7 CMC § 2502 and the six-year limitation imposed by CMC § 2505, this Court does not need to address the issue since the action is timely under both.

III. CONCLUSION

For the foregoing reasons, this Court holds that Plaintiffs claim is not futile and Plaintiffs Motion for Leave to Amend the Complaint is hereby **GRANTED.**

So ORDERED this 22 day of January 2002.



DAVID A. WISEMAN, Associate Judge