**DEPARTMENT 34 LAW AND MOTION RULINGS**

Please call the clerk at (213) 974 5643 by 8:30 a.m. the date of the hearing if you wish to submit on the tentative.

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**Case Number:** BC556600 **Hearing Date:** January 07, 2015 **Dept:** 34

Moving Party: Plaintiffs Michiko Shiota Gingery, Koichi Mera, GHAT-US Corporation, and Masatoshi Naoki ("plaintiffs")

Resp. Party: Defendant City of Glendale ("defendant")

Plaintiff's motion for leave to file a second amended complaint is GRANTED.

Defendant's Request for Judicial Notice is DENIED because defendant fails to provide certified copies of the exhibits. (See Super. Ct. L.A. County, Local Rules, rule 3.8(b).)

BACKGROUND:

Plaintiffs commenced this action on 9/3/14 against defendant for declaratory and injunctive relief. On 9/18/14, plaintiffs filed a first amended complaint ("FAC") for: (1) violation of the Glendale Municipal Code; (2) violation of the Equal Protection Clause of the California Constitution; and (3) violation of the Privileges and Immunities Clause of the California Constitution. Plaintiffs are seeking injunctive and declaratory relief relating to a monument authorized by defendant regarding individuals known as "Comfort Women."

ANALYSIS:

Plaintiff seeks leave to file a second amended complaint.

Procedural analysis

Under California Rules of Court rule 3.1324(a):

(a) A motion to amend a pleading before trial must: [¶] (1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; [¶] (2) State what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and [¶] (3) State what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located.

Subdivision (b) of rule 3.1324 requires the motion be accompanied by a separate declaration, specifying: (1) the amendment's effect, (2) why the amendment is necessary and proper, (3) when the

facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier.

The Court notes that there are no exhibits attached to the DeClercq declaration; however, plaintiff has separately submitted a proposed SAC.

Plaintiffs provide a declaration that appears to comply with rule 3.1324. The declaration describes the amendment's effect, states why amendment is necessary and proper, and generally describes when the facts giving rise to the amendment were discovered and why the request was not made earlier. (See DeClercq Decl., ¶¶ 3-11.)

Substantive analysis

California Code of Civil Procedure section 473, subd. (a)(1) states: "The court may . . . , in its discretion, . . . allow, upon any terms as may be just, an amendment to any pleading or proceeding." Although granting the motion is entirely within the Court's discretion, denial is rarely justified:

If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error, but an abuse of discretion.

(Morgan v. Sup. Ct. (1959) 172 Cal.App.2d 527, 530.)

The Court is "bound to apply a policy of great liberality in permitting amendments to the complaint 'at any stage of the proceedings, up to and including trial,' absent prejudice to the adverse party." (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2013) ¶ 6:652 [quoting Atkinson v. Elk Corp. (2003) 109 Cal.App.4th 739, 761] [emphasis in original].) A court ordinarily will not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend, and grounds for demurrer or motion to strike are premature. (Id., ¶ 6:644.) If the allegations in the proposed SAC are insufficient or without merit, defendants may challenge them with a demurrer or motion for summary judgment. (See Atkinson v. Elk Corp. (2006) 109 Cal.App.4th 739, 760 ["the better course of action would have been to allow . . . [plaintiff] to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceedings."].)

However, the Court has discretion to deny leave to amend "where the pleading is deficient as a matter of law and the defect could not be cured by further appropriate amendment." (Weil & Brown, ¶¶ 6:444-6:464.1 [italics in original].) Defendants argue that the proposed added claim for unconstitutional interference with foreign affairs powers is barred by res judicata because the district court has dismissed a similar claim by plaintiff in another action. A judgment on a demurrer (or federal motion to dismiss) will have res judicata effect where the grounds upon which the demurrer was sustained are equally applicable to the second action. (See Pollock v. University of Southern California (2003) 112 Cal.App.4th 1416; McKinney v. County of Santa Clara (1980) 110 Cal.App.3d 787.)

Defendant's argument may well be meritorious; if so, the granting of Plaintiff's motion to amend in no way prevents defendant from re-asserting this argument in a demurrer, anti-SLAPP, or other appropriate motion.

Defendant is correct that a plaintiff may not amend the complaint after defendant has filed an anti-

SLAPP motion and before the hearing on the anti-SLAPP motion. (See Salma v. Capon (2008) 161 Cal.App.4th 1275, 1280.) However, in this case, plaintiffs filed their motion for leave to amend prior to defendant filing its anti-SLAPP motion. None of the authorities cited by either party address this specific situation. This court believes the proper procedure is to grant the motion for leave to amend, and then allow Defendant to file its new anti-SLAPP motion.

The Court is cognizant that the purpose of the anti-SLAPP motion is to provide a "quick and inexpensive method of unmasking and dismissing such suits." (Simmons v. Allstate Ins. Co. (2001) 92 Cal.App.4th 1068, 1073.) The Court's granting of plaintiff's motion does not contravene this goal. On December 2, 2014, the Court set a schedule – with the agreement of all parties – for the filing and hearing of a renewed anti-SLAPP motion:

· 1/14 Defendant to file its anti-SLAPP motion
· 1/28 Plaintiffs to file their opposition
· 2/11 Defendant to file its Reply
· 2/23 Court hearing on anti-SLAPP motion

Thus, the Court will rule on Defendant's anti-SLAPP motion within 7 weeks of today's hearing.

The motion for leave to amend is GRANTED.

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