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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRITZ FERTILIZERS, INC.,

Plaintiff,

v.

BAYER CORPORATION; BAYER
CROPSCIENCE, LP; et al.,

Defendants.

1:06-CV-00287-OWW-DLB

ORDER REQUESTING
SUPPLEMENTAL BRIEFING

I. INTRODUCTION

Before the court is Plaintiff Britz Fertilizers, Inc.'s ("Britz") motion for leave to file a Second Amended Complaint. Britz seeks to add "alternative, but unpleaded" (Doc. 199 at 2) fraud claims against Bayer Corporation and Bayer CropsScience, LP ("Bayer"). Bayer opposes the motion.

II. SUPPLEMENTAL BRIEFING

Britz's motion is made "pursuant to Rule 15(a)." (Doc. 199 at 2.) Britz's memorandum of points and authorities, Bayer's opposition brief, and Britz's reply focus exclusively on whether leave to amend is proper under Rule 15 and associated case law. Rule 15, however, is not the only applicable rule.

In this case, the amended Scheduling Conference Order set the deadline for filing "[a]ll Non-Dispositive Pre-Trial Motions" on "April 20, 2009." (Doc. 96.)¹ Britz filed its motion for leave to file a Second Amendment Complaint, a non-dispositive motion, on November 6, 2009, over six months past the deadline.

¹ The deadline set for dispositive motions is May 4, 2009.

1 Generally, a motion to amend a pleading is analyzed under Rule
2 15. However, where, as here, a party moves to amend its pleading
3 after a deadline set in the scheduling conference order, the motion
4 is also subject to Rule 16's "good cause" standard. See Fed. R.
5 Civ. P. 16(b); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th
6 Cir. 2000); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607
7 (9th Cir. 1992). The movant must first show "good cause" under
8 Rule 16 for modifying the scheduling conference order, i.e., good
9 cause for not having filed a motion to amend before the deadline.
10 See *Johnson*, 975 F.2d at 608-09; see also *Coleman*, 232 F.3d at
11 1294. Rule 16's good cause standard "primarily considers the
12 diligence of the party seeking the amendment." *Johnson*, 975 F.2d at
13 609. If good cause exists under Rule 16, the movant must then
14 demonstrate that amendment of its pleading is proper under Rule 15.
15 *Id.* at 608.²

16 The parties have not briefed whether "good cause" exists under
17 Rule 16. To properly analyze Britz's motion, the parties are
18 ordered to submit supplemental briefing on whether good cause
19 exists under Rule 16. Britz, the moving party, is ordered to
20 submit initial supplemental briefing, not to exceed ten (10) pages,
21 by February 4, 2010. Any opposition to Britz's supplemental
22 briefing is due by February 11, 2010, and shall not exceed seven
23 (7) pages. Any reply is due by February 18, 2010, and shall not
24 exceed five (5) pages.

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27 ² A court may treat a belated motion to amend the pleadings as
28 a motion to amend the scheduling order. See *Johnson*, 975 F.2d at
608-09.

1 The hearing scheduled on Britz's motion for leave to file a
2 Second Amendment Complaint (Doc. 199), currently set for February
3 1, 2010, is VACATED. The motion is reset for March 22, 2010.

4 IT IS SO ORDERED.

5 Dated: January 27, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE