

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WECO SUPPLY COMPANY, INC., a
California corporation,

1:10-CV-00171-OWW-SMS

Plaintiff,

MEMORANDUM DECISION AND ORDER
RE DEFENDANT'S MOTION TO
STRIKE PLAINTIFF'S FIRST
AMENDED COMPLAINT (Doc. 21.)

v.

THE SHERWIN-WILLIAMS COMPANY,

Defendant.

THE SHERWIN-WILLIAMS COMPANY,

Cross-Complainant,

v.

WECO SUPPLY COMPANY, INC., a
California corporation, and
ROES 1-10, inclusive,

Cross-Defendant.

I. INTRODUCTION.

Before the court for decision is Defendant Sherwin-Williams' motion to strike Plaintiff's first amended complaint. Defendant claims that the amended pleading was untimely filed and should be disregarded.

Plaintiff Weco Supply Company opposes the motion on grounds that the pleading was untimely due to an internal calendaring error. It argues that no prejudice resulted from the inadvertent mistake.

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II. DISCUSSION.

This is a business dispute over Sherwin-Williams' decision to discontinue selling its "Western" line of paint to Weco Supply Company, an auto paint supplier located in Fresno, California. Following this decision, Weco claims that Sherwin-Williams engaged in a series of unlawful business practices designed to capture Weco's customer base, including obtaining Weco's trade secrets and manipulating the Fresno auto paint market. Weco initiated litigation against Sherwin-Williams in Fresno County Superior Court on December 22, 2009. (Doc. 1.) The matter was removed to federal court on the basis of diversity jurisdiction on February 2, 2010. (Id.)

On July 13, 2010, pursuant to an Amended Scheduling Order, the Court stated that the parties had until August 3, 2010 to amend the complaint and answer. (Doc. 15.) Plaintiff, however, did not file an amended complaint by that date and Defendant now moves to strike the first amended complaint on timeliness grounds.

Plaintiff acknowledges that an amended complaint was not filed on August 3, 2010. Rather, Plaintiff filed the amended pleading on September 3, 2010, thirty days after the deadline.¹ (Doc. 19.) Plaintiff claims, through its counsel's declaration, that the oversight was a result of an "in-house calendaring error" and that no prejudice resulted to Sherwin-Williams:

The Amended Complaint was not filed timely due to an in-house calendaring error. WECO is not acting in bad faith or with the intent to delay these proceedings. In addition, I am unaware of any prejudice to

¹ The motion to strike followed six days later, on September 9, 2010. (Doc. 21.)

1 Sherwin-Williams in this litigation due to the late-filed
2 Amended Complaint. I am also unaware of any prejudice to
3 Sherwin-Williams if the Court granted WECO leave to file
4 the Amended Complaint already on file herein.

5 (Doc. 23 at ¶ 4.)

6 According to the declaration of Plaintiff's legal counsel, he
7 attempted to electronically "meet and confer" with counsel
8 concerning the accidental oversight on September 29, 2010.
9 Sherwin-Williams' counsel, however, was not interested in
10 stipulating to the filing of an amended complaint or a modification
11 of the scheduling order.

12 The analysis begins by noting that several district courts in
13 this Circuit have accepted untimely filings if based on
14 inadvertence and no prejudice resulted.² See, e.g., *Clark v.*
15 *Small*, No. 09-cv-1484-JMA, 2010 WL 935675, at *1 (S.D. Cal. Mar.
16 15, 2010) (untimely document accepted because "its untimeliness is
17 not prejudicial to Plaintiff."); *Brandon v. Rite Aid Corp., Inc.*,
18 408 F. Supp. 2d 964, 967 (E.D. Cal. 2006) (considering untimely
19 documents because "there is no danger of delay or prejudice
20 here."). Here, Plaintiff's counsel filed a declaration explaining
21 that the amended pleading was late-filed due to an internal
22 calendaring error. He also stated that the late-filing was not a
23 "product of bad faith" and that, to the extent he was aware,
24 Defendant was not prejudiced. Defendant has not argued otherwise,
25 as its one-page motion is silent on the prejudicial impact of the

26 ² In *Clark* and *Brandon*, like here, the tardiness was
27 relatively insignificant. Those cases, however, dealt with
28 untimely motions, oppositions, and replies. That distinction is
not controlling given the fact that Plaintiff satisfies Rule 15 and
16 of the Federal Rules of Civil Procedure, discussed *infra*.

1 untimely filing. As no detrimental effect is delineated or
2 explained, the Ninth Circuit's "forgiving approach to excusable
3 neglect, accepting even 'weak' reasons if they reveal mere
4 'negligence and carelessness, not [...] deviousness or
5 willfulness'" governs. See *E. & J. Gallo Winery v. Cantine Rallo,*
6 *S.p.A.*, 430 F. Supp. 2d 1064, 1088 (E.D. Cal. 2005) citing *Bateman*
7 *v. U.S. Postal Service*, 231 F.3d 1220, 1225 (9th Cir. 2000).³

8 Under the standards that apply to Federal Rule of Civil
9 Procedure 15(a), a district court maintains discretion to grant or
10 deny a motion to amend. The Rule specifies that such "leave shall
11 be freely given when justice so requires." Fed. R. Civ. P. 15(a).
12 Plaintiff satisfies this standard pursuant to its November 5, 2010
13 filing, which is treated as a Rule 15(a) motion for leave. It is
14 relatively early in the case, the filing resulted from an
15 inadvertent calendaring error, and Defendant has not identified a
16 particularized prejudicial impact stemming from the 30-day delay.
17 In the Ninth Circuit, "a court must be guided by the underlying
18 purpose of Rule 15 - to facilitate decision on the merits rather

19 _____
20 ³ Defendant offers no explanation why Plaintiff's accidental
21 oversight should not be excused under this "forgiving" approach or,
22 alternatively, Rule 15. It is difficult to understand why
23 Defendant refused to grant a professional courtesy to co-counsel
24 and stipulate to the filing of its amended complaint, which was
25 substantially similar to the original complaint and a mere four
26 weeks tardy. Counsel is reminded that motions to strike are
27 "generally disfavored because of the limited importance of
28 pleadings in federal practice and because it is usually used as a
delaying tactic." *In re New Century*, 588 F. Supp. 2d 1206, 1220
(C.D. Cal. 2008) (citation omitted). Counsel is further informed
that this Court presides over the heaviest caseload in the nation,
with over 1,200 pending criminal and civil cases and the
requirement of addressing this matter is a waste of judicial
resources.

1 than on the pleadings or technicalities." *Eldridge v. Block*, 832
2 F.2d 1132, 1135 (9th Cir. 1987) (citations omitted). The Court
3 also finds that Plaintiff has demonstrated "good cause" as that
4 term is defined in Rule 16.⁴ Plaintiff's amended complaint is
5 ORDERED FILED. The motion to strike is DENIED.

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7 IV. CONCLUSION.

8 For the reasons set forth above:

- 9 1. Defendant's motion to strike is DENIED;
10 2. Plaintiff's first amended complaint is ORDERED FILED;
11 3. Defendant shall have thirty (30) days to respond to the
12 amended complaint.

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14 IT IS SO ORDERED.

15 Dated: November 22, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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23 ⁴ As an scheduling order was issued in this case, the present
24 challenge implicates Rule 16 of the Federal Rules of Civil
25 Procedure. In this Circuit, once the court has entered a pretrial
26 scheduling order pursuant to Rule 16, the standards of Rule 16
27 rather than Rule 15 govern amendment of the pleadings. See *Johnson*
28 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992).
Orders entered before the final pretrial conference may be modified
only "for good cause." Fed. R. Civ. P. 16(b). Pursuant to its
brief and Mr. Laird's declaration, Plaintiff has demonstrated "good
cause" as that term is defined in Rule 16.