

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

GREGORY WILLEMS,

CASE NO. 1:10-cv-00172-LJO-SKO

Plaintiff,

**ORDER GRANTING LEAVE TO
FILE FIRST AMENDED
COMPLAINT**

v.

BASF CORPORATION,

Defendant.

(Docket No. 17)

On June 25, 2010, Plaintiff filed a motion to amend his complaint pursuant to Federal Rule of Civil Procedure 15(a). Plaintiff proposes to amend the complaint to include a "Fourth Cause of Action for Intentional Misrepresentation" based upon information gathered during discovery. Plaintiff attached a copy of his proposed First Amended Complaint ("FAC") to his motion as Exhibit A. On July 15, 2010, Defendant filed a notice of non-opposition in response to Plaintiff's motion.

Pursuant to Federal Rule of Civil Procedure ("FRCP") 15(a)(1), "a party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." However, in all other cases, "a party may amend its pleading only with the opposing party's written consent or the court's

1 leave." Fed. R. Civ. Pro. 15(a)(2). The FRCP instructs that "[t]he court should freely give leave [to
2 amend] when justice so requires." *Id.*

3 Here, Plaintiff may not amend his complaint as a matter of right because Defendant answered
4 the complaint on March 12, 2010. Instead, Plaintiff requests leave to file a FAC pursuant to Rule
5 15(a)(2) to plead an additional cause of action based upon information he allegedly gained through
6 discovery. While Defendant does not concede the accurateness or truth of the facts Plaintiff wishes
7 to plead in his amended complaint, Defendant does not oppose Plaintiff's request to file an amended
8 complaint. Additionally, Plaintiff timely notified the Court and Defendant in the parties' joint
9 scheduling report filed on June 1, 2010, that he intended to move to amend the complaint to add a
10 cause of action for misrepresentation after some initial discovery was obtained. In its Scheduling
11 Order of June 10, 2010, the Court granted Plaintiff leave to file an amended complaint on or before
12 August 16, 2010. In light of Defendant's non-opposition, the Court's June 10, 2010, Scheduling
13 Order allowing amendment, and the Court's review of the proposed FAC, Plaintiff's request for leave
14 to amend the complaint as indicated will be granted.

15 Accordingly, IT IS HEREBY ORDERED THAT:

- 16 1. Plaintiff's motion seeking leave to file an amended complaint is GRANTED; and
17 2. In light of Defendant's non-opposition, the hearing in this matter currently set for July
18 30, 2010, is hereby VACATED.

19
20 IT IS SO ORDERED.

21 **Dated: July 19, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE