

1 Civ. P. 15(a)). However, courts “need not grant leave to amend where the amendment: (1) prejudices
2 the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is
3 futile.” Id. The factor of “[u]ndue delay by itself . . . is insufficient to justify denying a motion to
4 amend.” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting
5 Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

6 Plaintiff's case has been pending since October 21, 2010. The delay in litigation will be further
7 extended if Plaintiff is granted leave to amend. However, given that the complaint has not been served,
8 and no other party has appeared in the action, amending the complaint should not prejudice the opposing
9 party. Plaintiff seeks to file a Second Amended Complaint which is more accurate and precise than the
10 First Amended Complaint. The Court finds no evidence of bad faith or futility. Therefore, in the interest
11 of justice, Plaintiff's motion to amend the complaint shall be granted.

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Plaintiff's motion to amend the complaint, filed on January 21, 2011, is GRANTED;
- 14 2. Within thirty days from the date of service of this order, Plaintiff shall file a Second
15 Amended Complaint; and
- 16 3. Plaintiff's failure to comply with this order shall result in a recommendation that this
17 action be dismissed for failure to obey a court order.

18
19 IT IS SO ORDERED.

20 **Dated: May 24, 2011**

21 /s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE