

1 complaint. (Doc. 12.) The following day, Defendant withdrew its motion. (*See* Doc. 13.)

2 On May 14, 2012, Defendant filed a second Motion to Dismiss, seeking relief in the form
3 of a dismissal of Plaintiff’s amended complaint. The motion was to be heard before District
4 Judge Anthony W. Ishii on June 18, 2012. (Doc. 14.)

5 On June 6, 2012, Plaintiff submitted a Request for Dismissal of Defendant Kenworth
6 only, without prejudice. On June 7, 2012, Judge Ishii ordered that Defendant Kenworth be
7 dismissed from the action. (Doc. 19.)

8 On July 18, 2012, Plaintiff filed a motion to amend the complaint. As no defendants have
9 appeared, no opposition was filed. That matter was set to be heard August 10, 2012. (Doc. 21.)
10 For the reasons given below, the Court grants Plaintiff’s motion.

11 DISCUSSION

12 Under Rule 15(a) of the Federal Rules of Civil Procedure, a plaintiff may amend his
13 complaint once “as a matter of course,” and without leave of court, before a response has been
14 filed. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). However, a party can only amend
15 the pleading with the opposing party’s written consent or the court’s leave once a responsive
16 pleading has been filed. Fed. R. Civ. P. 15(a)(2). Here, Plaintiff filed a First Amended
17 Complaint on May 14, 2012, thus, leave of Court is required. (Doc. 14.)

18 Rule 15(a)(2) of the Federal Rules of Civil Procedure provides, in relevant part:

19 *Other Amendments.* In all other cases, a party may amend its pleading
20 only with the opposing party’s written consent or the court’s leave. The court
should freely give leave when justice so requires.

21 The United States Supreme Court has stated that

22 [i]n the absence of any apparent or declared reason – such as undue delay, bad
23 faith or dilatory motive on the part of the movant, repeated failure to cure
24 deficiencies by amendments previously allowed, undue prejudice to the opposing
party by virtue of allowance of the amendment, futility of amendment, etc. – the
leave sought should, as the rules require, be “freely given.”

25 *Foman v. Davis*, 371 U.S. 178, 182 (1962).

1 This policy is “to be applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon,*
2 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citations omitted). The Ninth Circuit has summarized
3 the factors to be considered by the court to include: (1) undue delay; (2) bad faith; (3) prejudice
4 to the opponent; and (4) futility of amendment. *Loehr v. Ventura County Cmty. Coll. Dist.*, 743
5 F.2d 1310, 1319 (9th Cir. 1984). However, not all of these factors merit equal weight. *Eminence*
6 *Capital, LLC, v. Aspeon, Inc.*, 316 F.3d at 1052. It is the consideration of prejudice that carries
7 the greatest weight. *Id.* Absent prejudice, or a strong showing of the remaining factors, there is a
8 presumption in favor of granting leave to amend. *Id.*

9 The Court has examined all of the factors listed above. Plaintiff’s amendments appear
10 reasonable and seek to name the proper defendant. Plaintiff seeks to add Capacity of Texas, Inc.
11 as a proper defendant on the basis that they are the manufacturer of the truck which caused
12 Plaintiff’s injuries. There is no indication that this amendment will cause undue delay or that it
13 will cause prejudice to Defendants. Similarly, there is nothing to suggest that the amendment
14 was made in bad faith. Therefore, leave to amend will be granted.

15 Further, once the Second Amended Complaint is filed, Plaintiff is entitled to an
16 additional 120 days to effect service of process. Fed. R. Civ. P. 4(m); *see City of Merced v.*
17 *Fields*, 997 F.Supp. 1326, 1337-39 (E.D. Cal. 1998); *see also, Del Raine v. Carlson*, 153 F.R.D.
18 622, 628 (S.D. Ill. 1994) (the addition of new parties in an amended complaint initiates a new
19 120-day timetable as to the added parties).

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1 **CONCLUSION**

2 Accordingly, for the above reasons, IT IS HEREBY ORDERED that Plaintiff's Motion
3 for Leave to File a Second Amended Complaint is GRANTED. The Clerk of the Court is
4 directed to file the Second Amended Complaint. Because the Court has granted Plaintiff's
5 motion, it will not address Plaintiff's alternative argument. Finally, Plaintiff's request filed
6 August 3, 2012 (Doc. 26) is rendered moot by this Order.

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8 IT IS SO ORDERED.

9 **Dated: August 8, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE