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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**INTERVAL EQUIPMENT SOLUTIONS, INC., 1:16-cv-512-LJO-SKO**

**Plaintiff,**

**v.**

**SANDVIK MINING AND CONSTRUCTION  
USA, LLC,**

**Defendant.**

**ORDER GRANTING PLAINTIFF  
LEAVE TO AMEND AND DENYING  
AS MOOT DEFENDANT’S MOTION  
TO DISMISS (Doc. 5)**

15 On April 18, 2016, Defendant filed a motion under Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiff’s  
16 complaint. Doc. 5. Twenty-three days later, on May 11, 2016, Plaintiff filed a first amended complaint  
17 (“FAC”). Under Fed. R. Civ. P. 15(a)(B), a plaintiff may file an amended complaint in response to a  
18 Rule 12(b) motion without the Court’s or the defendant’s permission so long as it is filed within 21 days  
19 after the Rule 12(b) motion is filed. If a plaintiff fails to comply with this 21-day deadline, any amended  
20 complaint may be filed only with the defendant’s “written consent or the court’s leave.” Fed. R. Civ. P.  
21 15(a)(2).

22 Here, Plaintiff filed its FAC 23 days after Defendant filed its Rule 12(b)(6) motion to dismiss.  
23 Plaintiff therefore was permitted to file the FAC only with Defendant’s written consent or the Court’s  
24 leave. *Id.* Defendant has not consented explicitly to the filing of the FAC, but appears not to object to the  
25 FAC’s consideration, as Defendant filed a notice withdrawing its motion to dismiss in light of the FAC.

1 Under these circumstances, the Court finds leave to amend is appropriate. Accordingly, the FAC shall be  
2 considered the operative complaint in this case. Defendant shall have twenty-one (21) days from the date  
3 of entry of this order to respond to the FAC.

4 Because Defendant has withdrawn its motion to dismiss (Doc. 5), the Clerk of Court is directed  
5 to administratively terminate that motion.

6  
7 IT IS SO ORDERED.

8 Dated: May 16, 2016

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE