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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LINDE, LLC,  
Plaintiff,  
v.  
VALLEY PROTEIN, LLC,  
Defendant.

No. 1:16-cv-00527-DAD-EPG

ORDER VACATING STATUS  
CONFERENCE, GRANTING PLAINTIFF'S  
MOTION TO AMEND, AND ENTERING  
JUDGMENT

(Doc. No. 77)

VALLEY PROTEIN, LLC,  
Counter-claimant,  
v.  
LINDE, LLC,  
Counter-defendant.

On July 11, 2019, the undersigned granted in part the motion for summary judgment filed by plaintiff and counter-defendant Linde, LLC (“Linde”). (Doc. No. 76.) As relevant here, the

1 court granted summary judgment in Linde’s favor as to all claims and counter-claims except  
2 Linde’s claim against defendant and counter-claimant Valley Protein, LLC (“Valley Protein”) for  
3 breach of the implied covenant of good faith and fair dealing. (*Id.* at 40–41.) Because that cause  
4 of action remained unresolved, the court declined to enter judgment at that time. However, the  
5 court also noted that if Linde sought entry of judgment in its favor, it could voluntarily withdraw  
6 that cause of action, at which time judgment in Linde’s favor would appropriately be entered. (*Id.*  
7 at 41.) On July 31, 2019, Linde filed an application for dismissal of its cause of action for breach  
8 of the implied covenant of good faith and fair dealing. (Doc. No. 77.)

9         When a party seeks to dismiss some, but not all, of its claims, Federal Rule of Civil  
10 Procedure 15 applies rather than Federal Rule of Civil Procedure 41. *Gen. Signal Corp. v. MCI*  
11 *Telecomms. Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995). In analyzing whether leave to amend  
12 should be granted under Rule 15, courts consider five factors: (1) bad faith, (2) undue delay, (3)  
13 prejudice to the opposing party, (4) futility of amendment, and (5) whether the plaintiff has  
14 previously amended the complaint. *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th  
15 Cir. 2011) (citing *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)). “Prejudice to the  
16 opposing party is the most important factor.” *Jackson v. Bank of Haw.*, 902 F.3d 1385, 1397 (9th  
17 Cir. 1990) (citing *Zenith Radio Corp. v. Hazeltine Research Inc.*, 401 U.S. 321, 330–31 (1971)).

18         All five factors support amendment in this case. No bad faith is apparent here because  
19 Linde is simply seeking to have this case resolved in a timely manner. In addition, Linde’s filing  
20 indicates that it sought to withdraw its cause of action by way of stipulation, but that Valley  
21 Protein declined to stipulate. (Doc. No. 77 at 6.) Nor does the court find any undue delay—  
22 Linde’s filing indicates that it sought to enter into a stipulation with Valley Protein to dismiss its  
23 cause of action for breach of the implied covenant of good faith and fair dealing on July 18, 2019  
24 and received a response on July 29, 2019. (*Id.*) Linde’s application to dismiss that cause of  
25 action was filed two days thereafter, indicating that Linde has acted expeditiously in seeking to do  
26 so. Third, the court finds no prejudice to Valley Protein because “[i]t is axiomatic that prejudice  
27 does not attach to a claim that is properly dropped from a complaint under Rule 15(a) prior to  
28 final judgment.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 690 (9th Cir.


1 2005). Fourth, amendment is plainly not futile because Linde is not seeking to add new claims.  
2 Finally, a review of the docket indicates that Linde has never amended its complaint. Under these  
3 circumstances, construed as a motion to amend, Linde's application will be granted.

4 For these reasons,

- 5 1. Linde's application for dismissal (Doc. No. 77), construed as a motion to amend, is  
6 granted;
- 7 2. Linde's second cause of action for breach of the implied covenant of good faith  
8 and fair dealing is dismissed;
- 9 3. The status conference presently set for August 20, 2019 before the undersigned is  
10 vacated;
- 11 4. Judgment is entered in favor of Linde, LLC and against Valley Protein, LLC in the  
12 amount of \$1,002,047.89; and
- 13 5. The Clerk of Court is directed to close this case.

14 IT IS SO ORDERED.

15 Dated: August 5, 2019

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18 UNITED STATES DISTRICT JUDGE

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