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

CHOUMAS PRODUCE CO., INC.,  
Plaintiff,

v.

ACADEMY FRUIT SALES, LLP, et al.,  
Defendants.

Case No. 1:18-cv-00457-LJO-SKO

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE OF COURT TO  
FILE A FIRST AMENDED COMPLAINT**

(Doc. 24)

**I. INTRODUCTION**

On April 4, 2018, Plaintiff Choumas Produce Co., Inc., filed a complaint against Defendants Academy Fruit Sales, LLP, Jayson Paul T. Scarborough, Gary Dean Scarborough, and Academy Fruit Company, LLC for violations of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e *et seq.* (Doc. 1.) On May 7, 2018, Plaintiff filed a motion seeking leave to file a First Amended Complaint (the "Motion"). (Doc. 24.)

On May 23, 2018, Defendant Gary Dean Scarborough, the only defendant to have appeared in the case, filed his statement of non-opposition to Plaintiff's Motion. (Doc. 32) The Motion is therefore deemed unopposed. After having reviewed the papers and supporting material, the matter is deemed suitable for decision without oral argument pursuant to Local Rule 230(g), and the Court hereby VACATES the hearing set for June 13, 2018.

1 For the following reasons, Plaintiff’s unopposed Motion shall be granted.

2 **II. DISCUSSION**

3 Rule 15 of the Federal Rules of Civil Procedure provides that “[t]he court should freely  
4 give leave” to amend a pleading “when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth  
5 Circuit has instructed that the policy favoring amendments “is to be applied with extreme  
6 liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). “In  
7 the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive  
8 on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
9 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of  
10 amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Foman v.*  
11 *Davis*, 371 U.S. 178, 182 (1962).

12 Here, Plaintiff seeks to amend its Complaint to substitute erroneously-identified Defendant  
13 “Academy Fruit Sales, LLC” with “Academy Fruit Company, LLC,” the correct name of that  
14 Defendant. (*See* Doc. 26 at 2.) The Court finds that justice would be served by permitting  
15 Plaintiff to amend its complaint as specified above. Accordingly, in the absence of any undue  
16 prejudice to the appearing Defendant, as evidenced by his lack of opposition to the motion,  
17 Plaintiff’s Motion shall be granted.

18 **III. ORDER**

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

- 20 1. Plaintiff’s unopposed Motion for Leave of Court to File a First Amended  
21 Complaint (Doc. 24) is GRANTED;
- 22 2. The hearing on the Motion set for June 13, 2018, is VACATED;
- 23 3. Plaintiff shall file its First Amended Complaint as proposed and attached to its  
24 Motion (Doc. 24, Ex. 1) within two (2) days from the date of this order;
- 25 4. Plaintiff shall serve its First Amended Complaint on the unserved defendants  
26 within the time permitted by the Federal Rules of Civil Procedure; and

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5. Defendant Gary Dean Scarborough shall file his response to the First Amended Complaint within the time permitted by the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: May 24, 2018

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE