



1 subsequently issued a status order on February 12, 2015 (Order, ECF No. 16). In the status order,  
2 the court noted as follows: “Plaintiff may seek to amend the complaint. The parties shall meet  
3 and confer regarding amending the complaint and file a joint stipulation to amend, or plaintiff  
4 shall file a motion to amend, by March 8, 2015.” (*Id.* at 2.) Consistent with the court’s directive,  
5 plaintiff filed the instant motion on March 8, 2015. (ECF No. 18.) As noted above, defendants  
6 have not opposed the motion.

## 7 II. LEGAL STANDARD

8 Federal Rule of Civil Procedure 15(a)(2) states, “The court should freely give  
9 leave [to amend] when justice so requires[,]” and the Ninth Circuit has “stressed Rule 15’s policy  
10 of favoring amendments.” *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir.  
11 1989). “In exercising its discretion [regarding granting or denying leave to amend] ‘a court must  
12 be guided by the underlying purpose of Rule 15—to facilitate decision on the merits rather than  
13 on the pleadings or technicalities.’” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th  
14 Cir. 1987) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). However, “the  
15 liberality in granting leave to amend is subject to several limitations. Leave need not be granted  
16 where the amendment of the complaint would cause the opposing party undue prejudice, is sought  
17 in bad faith, constitutes an exercise in futility, or creates undue delay.” *Ascon Props.*, 866 F.2d at  
18 1160 (internal citations omitted); *see also Sonoma Cnty. Ass’n of Retired Employees v. Sonoma*  
19 *Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). “[T]he consideration of prejudice to the opposing  
20 party carries the greatest weight.” *Id.* It is “the touchstone of the inquiry under [R]ule 15(a).”  
21 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). A court’s decision  
22 to grant or deny leave to amend rests in the sound discretion of the district court and is reviewed  
23 for abuse of discretion. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996).

## 24 III. DISCUSSION

25 Plaintiff seeks to amend the complaint in the following manner: (1) to add claims  
26 for breach of contract, breach of the covenant of good faith and fair dealing, intentional  
27 misrepresentation and negligence and (2) to join Agricultural Management and Production  
28 Company, LLC, which plaintiff states is the successor in interest to defendant Agricultural

1 Management and Production, Inc. (ECF No. 18 at 2.) Plaintiff has provided sufficient  
2 justification for amending the complaint.

3 After defendants were served with the original complaint, they produced an  
4 unsigned settlement agreement between themselves and plaintiff dated October 1997, purporting  
5 to bar plaintiff's claims in this action. (*Id.*) Because defendants were unable to produce a signed  
6 copy of that agreement, the parties proceeded with this action. (*Id.*) However, on the day before  
7 the status conference, defendants produced a signed copy of the settlement agreement, which  
8 Robert Smythe had delivered to his counsel's office the day before. (Baker Decl. at 1, ECF No.  
9 14.) Plaintiff was unaware of the agreement before filing the original complaint. (ECF No. 18 at  
10 3.) "The lack of institutional memory . . . is primarily due to the unfortunate passing of Plaintiff's  
11 counsel in that matter, . . . who was killed in the terrorist attacks of September 11, 2001." (*Id.*)  
12 At the status conference, plaintiff informed the court of those circumstances, and the court  
13 granted thirty days for the parties either to stipulate to the filing of an amended complaint or for  
14 plaintiff to file a motion for leave to amend the complaint. (ECF No. 15.)

15 Because plaintiff has provided sufficient justification for an amendment, the  
16 burden shifts to defendants to show justice requires denial. Defendants have not opposed the  
17 motion, and there is no evidence in the record showing "strong evidence" of undue delay, undue  
18 prejudice, bad faith, futility, or dilatory motive on plaintiff's part. *See Sonoma Cnty. Ass'n of*  
19 *Retired Employees*, 708 F.3d at 1117. Hence, defendants cannot meet their burden of persuasion.

20 Accordingly, the court GRANTS plaintiff's motion and DIRECTS plaintiff to file  
21 on the docket the first amended complaint in the form proposed in connection with plaintiff's  
22 motion, within fourteen days of the date of this order. This order resolves ECF No. 18.

23 IT IS SO ORDERED.

24 DATED: May 15, 2015.

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26   
27 UNITED STATES DISTRICT JUDGE  
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