

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEE KEMP, individually and on behalf of all others similarly situated, the general public, and as an “aggrieved employee” under the California Labor Code Private Attorney General Act,

No. C-09-3683 MHP

**MEMORANDUM & ORDER**

**Re: Plaintiff's Second Amended Complaint**

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES CORP., a New York corporation, and DOES 1-50, inclusive,

Defendants,

\_\_\_\_\_ /

It has come to the court’s attention that on December 8, 2010, plaintiff filed a Second Amended Complaint in which he asserts seven causes of action for the first time. Under Federal Rule of Civil Procedure 15(a)(2), a party may amend a pleading once as a matter of course and thereafter only by written consent of the opposing party or by leave of the court. In filing his First Amended Complaint on September 15, 2009, plaintiff exhausted his right to unilaterally amend his pleading. Plaintiff has neither sought permission of the court to bring additional claims nor procured defendants’ written consent. Accordingly, he has violated Rule 15.

This court’s November 8, 2010 order dismissing the First Amended Complaint without prejudice did not constitute permission for plaintiff to assert new claims; it merely allowed him the opportunity to cure deficiencies in the claims he had already asserted. If plaintiff wishes to proceed with any of his new claims, he must request leave from the court to do so, accompanied by reasons

1 why the court should grant such leave at this juncture. Alternatively, plaintiff may submit a  
2 stipulation entered into between the parties agreeing to the amended pleading.

3 The court accordingly vacates the hearing date set for Monday, February 14, 2011. Any  
4 motion by plaintiff for leave to amend his pleading must be filed within 14 days of the filing of this  
5 order, noticed and scheduled in accordance with Civil Local Rule 7-2 et seq.

6  
7 IT IS SO ORDERED.

8  
9 Dated: February 11, 2011

  
\_\_\_\_\_  
10 MARILYN HALL PATEL  
11 United States District Court Judge  
12 Northern District of California