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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CORY LEDBETTER,  
Plaintiff,  
v.  
SWISSPORT FUELING INC.,  
Defendant.

Case No: C 11-01405 SBA

**ORDER GRANTING MOTION TO  
DISMISS AND GRANTING  
REQUEST FOR LEAVE TO  
AMEND**

Docket 53.

SWISSPORT FUELING INC.,  
Third-Party Plaintiff,  
v.  
MMI TANK, INC.,  
Third-Party Defendant.

The parties are presently before the Court on MMI Tank, Inc.'s ("MMI Tank") motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 53. Plaintiff Cory Ledbetter ("Plaintiff") has filed a statement of non-opposition to MMI Tank's motion, but has requested leave to file a second amended complaint. Dkt. 55. MMI Tank opposes Plaintiff's request for leave to file a second amended complaint. Dkt. 56. Having read and considered the papers filed in connection with these matters and being fully informed, the Court hereby GRANTS MMI Tank's motion to dismiss and GRANTS Plaintiff's request for leave to file a second amended complaint, for the reasons stated below. The Court, in its discretion, finds these matters suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 **I. DISCUSSION**

2 In light of Plaintiff's statement of non-opposition, the Court GRANTS MMI Tank's  
3 motion to dismiss the first amended complaint. Because it is not clear that the first  
4 amended complaint cannot be saved by any amendment, the Court GRANTS Plaintiff's  
5 request for leave to amend. See Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048,  
6 1056 (9th Cir. 2007) (Dismissal without leave to amend is proper only if it is clear that "the  
7 complaint could not be saved by any amendment."). While MMI Tank contends that  
8 Plaintiff's request for leave to amend should be denied, MMI Tank has failed to  
9 demonstrate that the first amended complaint cannot be saved by any amendment. Indeed,  
10 MMI Tank states that "it does not *appear* that plaintiff can cure his complaint by making  
11 additional allegations." Dkt. 56 at 2 (emphasis added).

12 **II. CONCLUSION**

13 For the reasons stated above, IT IS HEREBY ORDERED THAT:

14 1. MMI Tank's motion to dismiss the first amended complaint is GRANTED.

15 2. Plaintiff's request for leave to file a second amended complaint is  
16 GRANTED. Plaintiff shall have twenty-one (21) days from the date this Order is filed to  
17 file a second amended complaint. The Court warns Plaintiff that the failure to timely file a  
18 second amended complaint shall result in dismissal of this action with prejudice. MMI  
19 Tank shall notify the Court in the event Plaintiff fails to comply with this deadline.

20 3. This Order terminates Docket 53.

21 IT IS SO ORDERED.

22 Dated: 6/21/12

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24 SAUNDRA BROWN ARMSTRONG  
25 United States District Judge  
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