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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FNS, INC.,  
  
vs.  
  
BOWERMAN TRUCKING, INC.,  
VISION X-PRESS, INC.; N.E.W.S.  
LOGISTICS, LLC; VICTORIA LEE  
BAINE; and DOES 1 through 20,  
  
Defendants.

CASE NO. 09-CV-866 IEG (PCL)  
  
**ORDER GRANTING PLAINTIFF’S  
MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT**  
  
**(Doc. No. 22)**

Presently before the Court is Plaintiff FNS, Inc.’s Motion for Leave to File a First Amended Complaint. (Doc. No. 22.) The Court finds the motion suitable for disposition without oral argument pursuant to Local Civil Rule 7.1(d)(1). For the reasons explained herein, the Court GRANTS the motion.

**BACKGROUND**

**I. Factual Background**

This matter involves lost cargo containing LG Electronics cellular phones. Plaintiff FNS, Inc. (“Plaintiff”) is a logistics company that provides, among other things, freight forwarding services. (Compl. ¶ 9.) About April 2008, Plaintiff entered into an agreement with LG Electronics Mobilecomm U.S.A., Inc. to provide transport services of shipments of phones. About June 30, 2008, Plaintiff and Defendant Bowerman Trucking, Inc. (“Bowerman”) entered into a contract in which Bowerman, as Plaintiff’s subcontractor or agent, agreed to transport a shipment of phones.

1 (Compl. ¶ 43.) Plaintiff alleges that Defendant Vision X-Press, Inc., Bowerman’s subcontractor or  
2 agent, left the shipment unattended at a truck stop, and the shipment was stolen. (Compl. ¶ 46.)

3 II. Procedural Background

4 On February 18, 2009, Plaintiff filed suit in the Superior Court of the State of California,  
5 County of Imperial against Defendants Bowerman, Vision X-Press, Inc., N.E.W.S. Logistics, LLC,  
6 Victoria Lee Baine, and Does 1-20. (Doc. No. 1.) On April 24, 2009, Bowerman removed the  
7 action to this court. (Doc. No. 1.) On May 1, 2009, Bowerman filed an answer (Doc. No.3), and  
8 on May 4, 2009, filed a cross-claim against the other defendants in this case (Doc. No. 4.) On  
9 May 19, 2009, Plaintiff filed a request for entry of clerk’s default as to all defendants except  
10 Bowerman. (Doc. No. 6.) Subsequently, on May 21, 2009, the Clerk of Court entered default as  
11 to those defendants. (Doc. No. 7.)

12 On October 2, 2009, Plaintiff filed the instant motion for leave to file a first amended  
13 complaint (“FAC”). (Doc. No. 22.) Plaintiff has attached the proposed FAC to its motion. On  
14 November 4, 2009, Bowerman filed a notice of non-opposition to Plaintiff’s motion. (Doc. No.  
15 23.) The hearing is scheduled for November 16, 2009 at 10:30 a.m.

16 DISCUSSION

17 I. Legal Standard

18 Under Fed. R. Civ. P. 15, “a party may amend the party’s pleading only by leave of court  
19 or by written consent of the adverse party; and leave shall be freely given when justice so  
20 requires.” Fed. R. Civ. P. 15(a)(2) (2009). “In the absence of any apparent or declared  
21 reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated  
22 failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
23 party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought  
24 should, as the rules require, be ‘freely given.’” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d  
25 1048, 1052 (9th Cir. 2003) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). However, “not  
26 all of the factors merit equal weight ... it is the consideration of prejudice to the opposing party  
27 that carries the greatest weight.” Id. at 1052. “Absent prejudice, or a strong showing of any of the  
28 remaining Foman factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to

1 amend.” Eminence Capital, 316 F.3d at 1052 (emphasis in original). The decision of whether or  
2 not to grant leave to amend under Rule 15(a) is within the sound discretion of the district court.  
3 California v. Neville Chem. Co., 358 F.3d 661, 673 (9th Cir. 2004).

4 The touchstone of the Rule 15(a) inquiry is whether the proposed amendment would  
5 unfairly prejudice the defendant. Eminence Capital, 316 F.3d at 1052. The party who opposes  
6 amendment bears the burden of demonstrating the prejudice. DCD Programs, Ltd. v. Leighton,  
7 833 F.2d 183, 187 (9th Cir. 1987).

8 II. Analysis

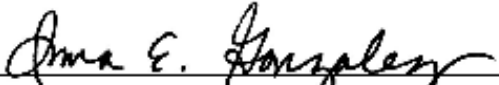
9 In the present case, Bowerman does not oppose Plaintiff’s motion, and therefore has made  
10 no demonstration of prejudice. Similarly, there has been no strong showing Plaintiff has requested  
11 the amendment in bad faith, that Plaintiff has unduly delayed in seeking to amend, or that the  
12 amendment would be futile.<sup>1</sup> Plaintiff states that, in light of documents obtained during discovery,  
13 it seeks to amend the complaint in order to simplify the facts and narrow the issues for trial.  
14 (Motion for Leave to File FAC at 4:13-23.) Absent the above showings, there is a presumption in  
15 favor of granting Plaintiff leave to amend under Rule 15(a). See Eminence Capital, 316 F.3d at  
16 1052. Accordingly, the Court grants Plaintiff’s motion.

17 CONCLUSION

18 For the reasons set forth herein, the Court **GRANTS** Plaintiff’s motion for leave to file a  
19 FAC. The Clerk shall docket the proposed first amended complaint attached to Plaintiff’s motion  
20 as Plaintiff’s First Amended Complaint.

21  
22 **IT IS SO ORDERED.**

23  
24 **DATED: November 9, 2009**

25   
26 **IRMA E. GONZALEZ, Chief Judge**  
27 **United States District Court**

28 <sup>1</sup> This is Plaintiff’s first attempt to amend the complaint, so the Foman factor of “repeated failure to cure deficiencies by amendments” is inapplicable here.