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

OBESITY RESEARCH INSTITUTE,  
LLC,  
  
Plaintiff,  
  
v.  
  
FIBER RESEARCH  
INTERNATIONAL, LLC,  
  
Defendant.

Case No. 15-cv-00595-BAS(MDD)  
  
**ORDER GRANTING  
PLAINTIFF’S MOTION FOR  
LEAVE TO FILE FIRST  
AMENDED COMPLAINT**  
  
(ECF No. 52)

AND RELATED COUNTERCLAIM

On March 16, 2015, Obesity Research Institute, LLC (“Obesity Research”) filed a Complaint for Declaratory Judgment against Fiber Research International, LLC (“Fiber Research”) asking the Court to declare that it has no liability under either the Lanham Act, 15 U.S.C. §§ 1125 *et seq.*, or the Federal Food, Drug, and Cosmetic Act (“FFDCA”), 21 U.S.C. §§ 301 *et seq.* (ECF No. 1.) On May 28, 2015, Fiber Research filed an Answer, in which it asserts the affirmative defense of unclean

1 hands, and a First Amended Counterclaim. (ECF No. 41 (“FACC”).) Obesity  
2 Research has moved to dismiss the FACC and strike the affirmative defense. (ECF  
3 Nos. 42, 43.)

4 On June 30, 2015, U.S. Magistrate Judge Mitchell D. Dembin issued a  
5 scheduling order directing that any motion to amend the pleadings be filed by July  
6 27, 2015. (ECF No. 46 at ¶ 2.) On July 22, 2015, Obesity Research filed the present  
7 motion seeking leave to file a First Amended Complaint for Declaratory Judgment.  
8 (ECF No. 52.) Fiber Research opposes. (ECF No. 54.)

9 The Court finds this motion suitable for determination on the papers submitted  
10 and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the reasons set forth below,  
11 Court **GRANTS** Obesity Research’s Motion for Leave to File a First Amended  
12 Complaint. (ECF No. 52.)

### 13 **I. LEGAL STANDARD**

14 Rule 15(a)(2) of the Federal Rules of Civil Procedure directs that “a party may  
15 amend its pleading only with the opposing party’s written consent or the court’s  
16 leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P.  
17 15(a)(2). “[T]his policy is to be applied with extreme liberality.” *Morongo Band of*  
18 *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

19 Although the decision whether to allow amendment is in the court’s discretion,  
20 “[i]n exercising its discretion, a court must be guided by the underlying purpose of  
21 Rule 15—to facilitate decision on the merits rather than on the pleadings or  
22 technicalities.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)  
23 (internal quotations omitted). Denial of a request to amend is only proper when it  
24 “would be clearly frivolous, unduly prejudicial, cause undue delay or a finding of bad  
25 faith is made.” *United Union of Roofers, Waterproofers and Allied Trades No. 40 v.*  
26 *Ins. Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir. 1990).

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1 **II. DISCUSSION**

2 Obesity Research seeks leave to file a First Amended Complaint for  
3 Declaratory Judgment (1) to add Shimizu Chemical Corporation (“Shimizu”) as a  
4 party; (2) to add a cause of action for declarative relief based on California’s unfair  
5 competition and false advertising laws; and (3) adding allegations to bolster its  
6 defense of laches. (ECF No. 52.) Fiber Research opposes, arguing: (1) the  
7 amendment would be clearly frivolous or futile because Shimizu has assigned its  
8 interests to Fiber Research; and (2) Fiber Research would be prejudiced by the  
9 amendment because it would cause undue delay. (ECF No. 54.) The Court disagrees.

10 Although Fiber Research alleges Shimizu has assigned its claims to Fiber  
11 Research, Fiber Research has filed no documentation confirming this assignment.  
12 Obesity Research has an interest in making sure the assignment is valid. It would not  
13 be frivolous to assure that this litigation resolves all issues with respect to Propol and  
14 its connection to Obesity Research’s Lipozene. Hence, the Court finds amendment  
15 to add Shimizu would not be futile.

16 More importantly, the Court finds amendment would not be unduly prejudicial.  
17 The Court is mindful that the current scheduling order requires that discovery be  
18 completed by February 29, 2016 and that this amendment is likely to extend the  
19 discovery time. (*See* ECF Nos. 71, 72.) However, Obesity Research contends it plans  
20 to serve Shimizu via mail, countering Fiber Research’s argument that service will  
21 require months of delay. (*See* ECF No. 52-1 at p. 6; ECF No. 55 at pp. 2-3.) Obesity  
22 Research further states it was waiting on an order on its motion to dismiss the  
23 Counterclaims before adding Shimizu as a party, but, as the Court had not yet ruled  
24 on the motion, moved to amend before the cut-off date set in Judge Dembin’s  
25 scheduling order. (ECF No. 52-1 at p. 3.) Obesity Research also alleges that it gave  
26 notice to Fiber Research back in June of last year of its intent to amend to add Shimizu  
27 as a party if the motion to dismiss was not granted. (*Id.*; *see also* ECF Nos. 52-9;  
28 ECF No. 55 at p. 3.) However, Fiber Research was not willing to stipulate to the

1 amendment. (ECF No. 52-1 at p. 4; ECF No. 52-2 at ¶¶ 10, 11.)


2 As leave to amend a pleading should be freely granted so that the Court can  
3 resolve all issues on the merits, and the Court finds that such an amendment would  
4 not be “clearly frivolous, unduly prejudicial, cause undue delay,” and there has been  
5 no finding of bad faith, the Court **GRANTS** Obesity Research’s motion. *See United*  
6 *Union of Roofers*, 919 F.2d at 1402.

7 **III. CONCLUSION**

8 For the foregoing reasons, Obesity Research’s Motion for Leave to File a First  
9 Amended Complaint is **GRANTED** (ECF No. 52). Obesity Research shall file the  
10 First Amended Complaint for Declaratory Judgment, in the form attached as Exhibit  
11 1 to the Declaration of Scott J. Ferrell, no later than **March 3, 2016**.

12 **IT IS SO ORDERED.**

13  
14 **DATED: February 25, 2016**

  
**Hon. Cynthia Bashant**  
**United States District Judge**