



1 *Capital*, 316 F.3d at 1052 (emphasis in original).

2 Plaintiff opposes the motion almost entirely on the argument that amending the answer to  
3 add the counterclaims will be futile because they would not survive a motion to dismiss. *See*  
4 Response at 4-8.<sup>1</sup> “Denial of leave to amend on this ground is rare. Ordinarily, courts will defer  
5 consideration of challenges to the merits of a proposed amendment until after leave to amend is  
6 granted and the amended pleading is filed.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539  
7 (N.D. Cal. 2003); *see also Abels v. JBC Legal Group, P.C.*, 229 F.R.D. 152, 157 (N.D. Cal. 2005).  
8 Deferring ruling on the sufficiency of the proposed amended pleadings is especially appropriate “[i]n  
9 view of Rule 15(a)’s permissive standard.” *Velasco v. SEI Pharms., Inc.*, 2013 WL 310336, \*2  
10 (S.D. Cal. Jan. 25, 2013) (quoting *Hynix Semiconductor Inc. v. Toshiba*, 2006 WL 3093812, \*2  
11 (N.D. Cal. Oct. 31, 2006) and collecting cases).

12 Accordingly, the motion for leave to amend is GRANTED. The Second Amended Answer  
13 and Counterclaim shall be filed within 14 days of this Order.

14 IT IS SO ORDERED.

15 DATED: May 22, 2013

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18 NANCY J. KOPPE  
19 United States Magistrate Judge  
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27 <sup>1</sup> Plaintiff also states in a single sentence in a footnote that there has been undue delay. *See*  
28 Response at 3 n.1. The Court finds this bare assertion unpersuasive. Accordingly, the Court concludes  
that there is no undue delay, bad faith or prejudice.