

1 against Plaintiff for filing the charge of discrimination by providing an unfavorable
2 reference to Plaintiff's future employer. (*Id.*)

3 **III. PLAINTIFF'S MOTION TO AMEND (ECF NO. 12)**

4 Plaintiff seeks to amend his Complaint in order to add compensatory damages to
5 his requests for relief. (ECF No. 12 at 2.) "A party may amend its pleading once as a matter
6 of course within . . . 21 days after service of a motion under Rule 12(b) . . ." Fed. R. Civ.
7 P. 15(a)(1)(b). Plaintiff filed his Motion to Amend on April 3, 2018, eighteen days after
8 Defendant served its Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) on March 15, 2018.
9 (ECF Nos. 6, 12.) Accordingly, Plaintiff's Motion to Amend will be granted as a matter of
10 course.¹

11 **IV. PLAINTIFF'S MOTION TO ADD A PLEADING (ECF NO. 16)**

12 Plaintiff filed his Motion to Add a Pleading on April 16, 2018, more than twenty-one
13 days after service of Defendant's Motion to Dismiss on March 15, 2018. (ECF Nos. 6, 16.)
14 In these circumstances, "a party may amend its pleading only with the opposing party's
15 written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give
16 leave when justice so requires." *Id.* "The decision of whether to grant leave to amend
17 nevertheless remains within the discretion of the district court, which may deny leave to
18 amend due to 'undue delay, bad faith or dilatory motive on the part of the movant, repeated
19 failure to cure deficiencies by amendments previously allowed, undue prejudice to the
20 opposing party by virtue of allowance of the amendment, [and] futility of amendment.'" *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). However, "[u]ndue delay by itself is insufficient to justify
23 denying leave to amend." *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161,
24 1184 (9th Cir. 2016) (citing *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712–
25 13 (9th Cir. 2001)).

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¹Defendant does not oppose Plaintiff's Motion to Amend. (ECF No. 18.)

1 Plaintiff seeks to augment his proposed First Amended Complaint (“FAC”) with
2 exhibits related to grant awards he received. (See ECF No. 16 at 1-2.) Because Plaintiff
3 may amend his complaint, the Court finds that no undue prejudice would result from
4 allowing Plaintiff to add exhibits to his complaint. In addition, the record before the Court
5 does not reflect undue delay, bad faith, dilatory motive, or failure to cure deficiencies on
6 the part of the movant. Accordingly, the Court will grant Plaintiff’s Motion to Add a
7 Pleading.

8 **V. DEFENDANT’S MOTIONS (ECF NOS. 6, 15)**

9 Defendant’s Motion to Dismiss will be denied as moot given Plaintiff’s intent to file
10 an amended complaint. Defendant’s Motion to Strike will also be denied as moot, though
11 Plaintiff is advised that “[s]urreplies are not permitted without leave of court.” LR 7-2(b).

12 **VI. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several cases
14 not discussed above. The Court has reviewed these arguments and cases and determines
15 that they do not warrant discussion as they do not affect the outcome of the motions before
16 the Court.

17 It is therefore ordered that Defendant’s Motion to Dismiss (ECF No. 6) is denied.

18 It is further ordered that Plaintiff’s Motion to Amend (ECF No. 12) is granted.

19 It is further ordered that Defendant’s Motion to Strike (ECF No. 15) is denied.

20 It is further ordered that Plaintiff’s Motion to Add a Pleading (ECF No. 16) is granted.

21 Plaintiff is instructed to file a First Amended Complaint that includes the exhibits he
22 requested to add within fifteen (15) days.

23 DATED THIS 19th day of April 2018.

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26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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