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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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PHIBRO BIODIGESTER, LLC,

Plaintiff,

v.

MURPHY-BROWN, LLC d/b/a  
SMITHFIELD FOODS, INC,

Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING MOTION FOR  
LEAVE TO FILE SECOND AMENDED  
COMPLAINT

Case No. 4:22-cv-00050-RJS

Chief District Judge Robert J. Shelby

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Before the Court is Plaintiff Phibro Biodigester, LLC's Motion for Leave to File Second Amended Complaint (Motion).<sup>1</sup> Phibro moves under Federal Rules of Civil Procedure 15 and 60 seeking leave to file a second amended complaint which includes claims for damages in addition to claims for injunctive relief contained in the First Amended Complaint. Defendant Murphy-Brown opposes the Motion<sup>2</sup>. Having received Phibro's Reply<sup>3</sup>, the matter is fully briefed and ripe for decision. For the reasons stated below, the Motion is GRANTED.

**BACKGROUND**

The deterioration of the manure supply relationship at issue here has been well documented in prior orders.<sup>4</sup> Facing a manure-supply cessation, Phibro originally filed suit August 8, 2022 seeking equitable relief.<sup>5</sup> After Phibro's Motion for Temporary Restraining

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<sup>1</sup> [Dkt. 133](#), filed February 23, 2023.

<sup>2</sup> [Dkt. 135](#), filed March 16, 2023.

<sup>3</sup> [Dkt. 136](#), filed March 30, 2023.

<sup>4</sup> See [Dkt. 95](#), filed November 18, 2022; [Dkt. 144](#), filed September 21, 2023.

<sup>5</sup> [Dkt. 2](#), filed August 8, 2022.

Order<sup>6</sup> was denied,<sup>7</sup> the parties conducted expedited discovery in preparation for a motion and hearing for preliminary injunction. On September 13, 2022, Phibro filed an Amended Complaint for Injunctive Relief (“Amended Complaint”) again seeking equitable relief, but adding additional grounds for the relief.<sup>8</sup> Phibro then filed a Motion for Preliminary Injunction<sup>9</sup> which was subsequently denied.<sup>10</sup> Thereafter, Judgment was entered and the case was closed.<sup>11</sup> Phibro immediately filed a motion seeking relief from the Judgment and moving for the case to be reopened on November 21, 2022.<sup>12</sup> While the motion seeking to reopen the case was pending, Phibro also exercised the alternative dispute resolution procedures contained in the contract governing the manure supply relationship. Phibro then filed the Motion before the court seeking leave to file an additional amended complaint to add claims for damages. On September 21, 2023, the court entered a Memorandum Decision and Order granting Phibro’s Motion for Relief from Court Order, which rescinded the Judgment and ordered this case be reopened.<sup>13</sup>

### ANALYSIS

Federal Rules of Civil Procedure Rule 15 provides that other than amending a complaint as a matter of course, “a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.”<sup>14</sup> A party is permitted to file a motion for leave to file an amended complaint at the same time as it

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<sup>6</sup> [Dkt. 3](#), filed August 8, 2022.

<sup>7</sup> [Dkt. 48](#), filed August 29, 2022.

<sup>8</sup> [Dkt. 51](#), filed September 13, 2022.

<sup>9</sup> [Dkt. 58](#), filed September 30, 2022.

<sup>10</sup> [Dkt. 95](#), filed November 18, 2022.

<sup>11</sup> [Dkt. 95](#), filed November 18, 2022; [Dkt. 97](#), filed November 21, 2022.

<sup>12</sup> [Dkt. 98](#), filed November 21, 2022.

<sup>13</sup> [Dkt. 144](#), filed September 21, 2023.

<sup>14</sup> Fed. R. Civ. P. 15(b).

files for relief from judgment under Rule 60.<sup>15</sup> Before the liberal standard of Rule 15(a) can be used to grant a motion to amend where a judgment exists, the party is “obliged first to obtain relief from the judgment . . . .”<sup>16</sup> “[W]hether leave should be granted is within the trial court's discretion.”<sup>17</sup>

Here, justice requires leave be granted allowing Phibro to file its Second Amended Complaint. First, Phibro’s motion seeking relief from the judgment has now been granted, permitting this Court to evaluate the present Motion under the liberal direction of Rule 15(a).<sup>18</sup> Second, Murphy-Brown tacitly acknowledges that Phibro faced limitations in seeking damages under the controlling contract before alternative dispute procedures had run their course.<sup>19</sup> Third, Murphy-Brown does not actually oppose Phibro bringing claims for damages at some point, but only argues that the Motion is procedurally improper at this time.<sup>20</sup> Fourth, Murphy-Brown should not be caught off guard or prejudiced by this Order—damages have been discussed as a potentially more appropriate claim for relief throughout this case. Additionally, only limited, expedited discovery has taken place and Murphy-Brown will still have an adequate opportunity to conduct any discovery necessary to defend against Phibro’s claims in the Second Amended Complaint.

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<sup>15</sup> *Glenn v. First Nat. Bank in Grand Junction*, 868 F.2d 368, 370 (10th Cir. 1989).

<sup>16</sup> *The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005).

<sup>17</sup> *Christensen v. Taylor*, 811 F. App'x 501, 502 (10th Cir. 2020).

<sup>18</sup> Dkt. 144.

<sup>19</sup> Opposition at 7.

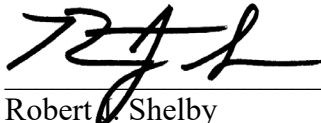
<sup>20</sup> Opposition at 2.

**CONCLUSION**

IT IS HEREBY ORDERED that the Motion is GRANTED. Phibro is given leave to file a copy of the proposed second amended complaint attached to its Motion on or before October 6, 2023.

Signed September 21, 2023.

BY THE COURT

A handwritten signature in black ink, appearing to read 'RWS', is written over a horizontal line.

Robert W. Shelby  
United States Chief District Judge