

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BADER FARMS, INC. and)	
BILL BADER,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:16-cv-00299
)	
MONSANTO CO.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

**PLAINTIFFS’ MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT**

Plaintiff Bader Farms, Inc. and Plaintiff Bill Bader (“Plaintiffs”), by and through counsel, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, hereby respectfully request leave from the Court to file an Amended Complaint, attached as Exhibit 1. Plaintiffs seek leave to amend their original Petition filed in the Circuit Court of Dunklin County, Missouri to: (1) assert a claim for civil conspiracy; (2) incorporate relevant facts and allegations previously unavailable to Plaintiffs prior to the filing of their original Petition; and (3) add additional allegations obtained in the ordinary course of this litigation. This request for leave to amend should not in any way delay these proceedings or prejudice Defendant Monsanto Company (“Defendant Monsanto”). Plaintiffs state the following in support of their motion:

1. This action was originally filed on November 23, 2016 in the Circuit Court of Dunklin County, Missouri.
2. On December 30, 2016, Defendant Monsanto removed this matter to the United States District Court, Eastern District of Missouri, Southeastern Division.

3. Also on December 30, 2016, Defendant Monsanto filed a Motion to Dismiss and a Memorandum in Support, and a Motion for Leave to Serve Expedited Discovery and Entry of Protective Order and Memorandum in Support.

4. On January 6, 2017, the parties conducted a conference call with the Court and the parties agreed to an extension for Plaintiffs' responses to Defendant's discovery requests.

5. On January 9, 2017, the Court granted Defendant's Motion for Leave to Serve Expedited Discovery and Entry of a Protective Order.

6. On January 13, 2017, Plaintiffs filed a Motion to Remand.

7. On January 17, 2017, Plaintiffs served their discovery responses on Defendant and produced hundreds of pages of documents.

8. On January 27 and January 28, 2017, Defendant conducted day-long physical inspections of Plaintiffs' property. Counsel for both parties were present during the inspections.

9. On February 8, 2017, the parties filed a joint motion to lift the protective order.

10. On February 16, 2017, the Court denied Plaintiffs' Motion to Remand.

11. On February 23, 2017, Plaintiffs filed their Memorandum of Law in Opposition to Defendant's Motion to Dismiss.

12. On March 2, 2017, Defendant filed its Reply Brief in Support of its Motion to Dismiss.

13. On April 10, 2017, the Court issued a Memorandum and Order (Doc. #50), postponing a final ruling and treating Defendant's motion to dismiss as a motion for summary judgment, pursuant to Rule 12(d) of the Federal Rules of Civil Procedure, along with granting the parties an additional twenty-one (21) days to present other materials and additional briefing.

14. Rule 15(a) of the Federal Rules of Civil Procedure governs the standards for leave to amend pleadings. Rule 15(a)(1) allows amendments as a matter of course. *See* Fed. R. Civ. P. 15(a)(1). For other amendments, Rule 15(a)(2) provides, “In all other cases, 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.” Fed. R. Civ. P. 15(a)(2).

15. Rule 15(a) has been liberally interpreted, and leave to amend pleadings should liberally granted. *See Buder v. Merrill Lynch, Pierce, Finner & Smith, Inc.*, 644 F.2d 690, 694 (8th Cir. 1981) *citing Foman v. Davis*, 371 U.S. 178, 182 (1962).

16. Under this liberal standard, the factors to consider in determining whether leave to amend should be granted include but are not limited to (1) whether the motion was filed in bad faith or with dilatory motive; (2) whether the motion was filed with undue delay; (3) whether leave to amend would be unduly prejudicial to the opposing parties; and (4) whether the proposed amendment would be futile. *See Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998), *citing Foman*, 371 U.S. at 182.

17. A motion to amend should be denied “only if it asserts clearly frivolous claims or defenses.” *Gamma-10 Plastics, Inc. v. Am. President Lines, Ltd.*, 32 F.3d 1244, 1255-56 (8th Cir. 1994) (citation omitted).

18. “Likelihood of success on the new claims or defenses is not a consideration for denying leave to amend unless the claim is clearly frivolous. Whether to grant a motion for leave to amend is within the sound discretion of the court.” *Id.* (citation omitted).

19. Here, Plaintiffs’ request for leave should be granted because it will not cause undue delay, it is not filed in bad faith, it will not prejudice Defendant Monsanto, and it is not futile.

20. First, there is no undue delay or bad faith. Plaintiffs' request for leave will not disturb any deadlines established by the Court, as no scheduling order or trial date in this matter has been entered or set. Plaintiffs also recently obtained new evidence related to Plaintiffs' claims in its original Petition and relevant to the Court's inquiry regarding the warning issues. *See* Ex. 2 – Aff. of Beverly T. Randles.

21. Additionally, Plaintiffs' Amended Complaint will conform to the additional allegations obtained in the ordinary course of this litigation, as exhibited by the Complaint filed in *Steven W. Landers, et al. v. Monsanto Co.*, 1:17-cv-20 (Doc. #1 in 1:17-cv-20).

22. As the Court is aware, Defendant Monsanto filed a Notice of Related Case on February 8, 2017. *See* Doc. #42.

23. Second, Defendant Monsanto will not be prejudiced because (1) discovery in this matter has not commenced for all the parties,¹ nor has a discovery schedule been outlined by the Court, (2) Plaintiffs, to date, have conducted no discovery, given the posture of this case, and (3) Plaintiffs' Amended Complaint will not in any way delay resolution of this matter.

24. Defendant Monsanto will not be prejudiced because this matter has not reached an advanced stage of litigation, as no trial date has been set and only Defendant Monsanto has conducted meaningful discovery. Nor has Defendant Monsanto moved for summary judgment.

25. Finally, Plaintiffs' request for leave to amend their original Petition will not be futile. The only new substantive claim in the Amended Complaint is a claim for civil conspiracy. *See* Ex. 1, ¶¶ 404-09. That claim would be futile only if it did not satisfy the standards of Rule 12 of the Federal Rules of Civil Procedure.

¹ On January 17, 2017, Plaintiffs served discovery responses on Defendant Monsanto and produced hundreds of pages of documents, as well as interrogatory responses. In addition, on January 27 and January 28, 2017, Defendant Monsanto and eleven (11) Monsanto experts and investigators conducted two day-long physical inspections of Plaintiffs' property.

26. “Likelihood of success on the new claim is no basis for denying an amendment unless the claim asserted therein is clearly frivolous.” *Gamma-10 Plastics, Inc.*, 32 F.3d at 1256.

27. Based on facts similar to the original Petition and also Plaintiffs’ discovery of relevant facts and allegations previously unavailable to them prior to filing their Petition, including but not limited to testimony from a Missouri farmer – who resides and owns farmland in Dunklin County, Missouri – before the Arkansas State Plant Board that Defendant Monsanto told the farmer to spray dicamba herbicides illegally on his Xtend crops (*see* Ex. 1, ¶¶ 124-26), without the aid of proper discovery or even a complete evidentiary record in this case, Plaintiffs’ civil conspiracy claim is clearly not frivolous.

28. Further, the additional allegations and any new legal issues can be fleshed out in discovery.

29. Plaintiffs seek to add the following paragraphs to their original Petition: ¶¶ 14, 23-24, 26, 36, 77, 80, 94, 107, 124-26, 138, 177, 184-85, 189-95, 199, 202, 206-207, 225, 269, 400, 404-409. *See id.*

30. Plaintiffs’ Amended Complaint also makes several minor technical corrections to its original Petition in paragraphs 37, 43, 117, 302, 335, 342, 350, 357, 365, 375, 383 and 393. *See id.*

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Leave to File Amended Complaint (attached as Ex. 1), and for any further relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Angela Splittgerber

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2017, the foregoing document was served on the following attorneys of record via email:

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