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11 **IN THE UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 EDWARD PERUTA,
14 Plaintiff,
15 v.
16 COUNTY OF SAN DIEGO,
WILLIAM D. GORE,
17 INDIVIDUALLY AND IN HIS
CAPACITY AS SHERIFF,
18 Defendants.
19

CASE NO. 09-CV-2371 IEG (BLM)
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR
LEAVE TO AMEND COMPLAINT

Date: June 1, 2010
Time: 10:30 a.m.
Courtroom: 1, Fourth Floor
Hon. Irma E. Gonzales

20 **I. INTRODUCTION**

21 Through this motion, Plaintiff seeks leave to file a First Amended Complaint
22 pursuant to FRCP 15(a). Plaintiff’s First Amended Complaint, attached to
23 Plaintiff’s Notice of Motion as Exhibit “A,” adds claims that Defendant’s conduct
24 violates Penal Code section 12050, the requirements of Due Process, and the
25 Privileges and Immunities Clause of the United States Constitution based on new
26 information Plaintiff has learned and on theories developed since the filing of its
27 original Complaint. Plaintiff’s Amended Complaint also joins four (4) individual
28 plaintiffs and one (1) organizational plaintiff.

1 Plaintiff's First Amended Complaint is timely, does not cause any prejudice to
2 Defendants, and should therefore be permitted by this Court.

3 **II. STATEMENT OF FACTS**

4 Plaintiff filed this lawsuit on October 9, 2009. Defendant, Sheriff William D.
5 Gore, filed a motion to dismiss Plaintiff's complaint on November 12, 2009. This
6 Court denied Defendant's motion on January 14, 2010. Since filing the Complaint,
7 Plaintiff has discovered additional information and developed new legal theories
8 necessitating the filing of the an amended complaint. (Plaintiff's First Amended
9 Complaint is attached to Plaintiff's Notice of Motion as Exhibit "A.")

10 Plaintiff has learned the identities of other individuals who were unlawfully
11 denied issuance of concealed weapons permits by Defendants, and who wish to be
12 included as plaintiffs in this suit. (See Declaration of C.D. Michel, "Michel Decl."
13 at ¶¶ 4-5.) Through ongoing informal discovery efforts and further research on
14 behalf of plaintiffs joining in this suit, plaintiffs have determined and allege that
15 Defendant's conduct violates the requirements set forth in Penal Code section
16 12050, the Privileges and Immunities Clause of the United States Constitution, and
17 the requirements of Due Process. (Michel Decl. at ¶ 4-5.) Plaintiffs also seek a
18 declaration from the Court that the right to self defense constitutes "good cause"
19 for the issuance of a concealed carry weapons permit. (See Exhibit "A.")

20 Plaintiff's counsel has contacted Defendants' counsel to seek Defendants'
21 written consent to the amendment pursuant to FRCP 15. (Michel Decl. at ¶ 6.)
22 However, Defendants have not consented to the filing of this First Amended
23 Complaint as of the time of filing due to objections to Plaintiffs' amended claims
24 (Michel Decl. at ¶ 6.) Accordingly, Plaintiff seeks an order permitting Plaintiff to
25 file the First Amended Complaint attached to Plaintiff's Notice of Motion as
26 Exhibit "A."

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1 **III. ARGUMENT**

2 **A. Leave Should Be Granted To Amend the Complaint**

3 FRCP 15(a) provides that leave to amend a pleading “shall be freely given
4 when justice so requires.” The United States Supreme Court and the Ninth Circuit
5 courts have repeatedly reaffirmed that leave to amend is to be granted with
6 “extreme liberality.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.
7 1987) (citation omitted); see, e.g., *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct.
8 227, 230 (1962) (leave to amend should be freely given); *Eminence Capital, LLC v.*
9 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“Absent prejudice, or a strong
10 showing of any of the remaining *Foman* factors, there exists a *presumption* under
11 Rule 15(a) in favor of granting leave to amend.”) (emphasis in original); *United*
12 *States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (courts should be guided by
13 policy favoring decisions on the merits “rather than on the pleadings or
14 technicalities”). This liberality in granting leave to amend is not dependent on
15 whether the amendment will add new parties. *DCD Programs v. Leighton*, 833 F.2d
16 183, 186 (9th Cir. 1987). Rather, the primary factors relied upon by the Supreme
17 Court and the Ninth Circuit in denying a motion for leave to amend are “bad faith,
18 undue delay, prejudice to the opposing party, and futility of amendment.” *Id.* None
19 of these factors are present in this case.

20 **B. Amendment Should Be Permitted**

21 Plaintiff’s First Amended Complaint is timely and should be allowed. Plaintiff
22 falls well within the liberal standard for freely allowing the amendment of
23 pleadings. See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (“In the absence of . . .
24 undue delay, bad faith or dilatory motive on the part of the movant . . . undue
25 prejudice to the opposing party by virtue of allowance of the amendment . . . the
26 leave sought should, as the rules require, be ‘freely given.’”)

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1 Moreover, Defendants will not be prejudiced by the filing of Plaintiff's First
2 Amended Complaint. Plaintiff's First Amended Complaint does not change the
3 nature of the lawsuit, nor are Defendants precluded from seeking discovery in
4 relation to the First Amended Complaint. Accordingly, Defendants will not be
5 prejudiced by an order granting leave to file Plaintiffs' First Amended Complaint.

6 Plaintiff offers its Amended Complaint in good faith and without undue delay.
7 Since filing its original complaint, Plaintiff has discovered new information
8 regarding Defendants' policies and practices. Specifically, Plaintiff has learned
9 that Defendants' unlawful policies regarding the issuance of concealed carry
10 weapons permits have been applied beyond Plaintiff Peruta's individual case to
11 other residents of San Diego County. These residents now joining as plaintiffs in
12 this suit have determined and allege that Defendant's conduct violates the
13 requirements set forth in Penal Code section 12050, the Privileges and Immunities
14 Clause of the United States Constitution, and the requirements of Due Process.

15 This information supports Plaintiff's new claims as well as Plaintiff's
16 assertion of additional details in support of its previously asserted claims. *See*
17 *Coilcraft, Inc. v. Inductor Warehouse*, 2000 U.S. Dist. LEXIS 6097, *8-9 (no bad
18 faith where plaintiff made "reasonable inquiry" into facts supporting new claim,
19 introduced relevant evidence, and "has never mis-characterized the nature of the
20 lawsuit").

21 In sum, Plaintiff's First Amended Complaint is submitted for filing timely and
22 in good faith, contains claims similar to those originally asserted and does not
23 prejudice Defendants. Consequently, none of the factors on which courts base
24 denial of motions for leave to amend are present here. Thus, Plaintiff's motion for
25 leave should be granted.

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V. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff leave to file the First Amended Complaint attached to Plaintiff’s Notice of Motion as Exhibit “A”

DATED: April 22, 2010

MICHEL & ASSOCIATES, PC

By: / s / C.D. Michel
C.D. Michel
Attorney for Plaintiff

DATED: April 22, 2010

PAUL NEUHARTH, JR., APC

By: / s / Paul Neuharth, Jr.
Paul Neuharth, Jr.
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDWARD PERUTA,
Plaintiff,

v.

COUNTY OF SAN DIEGO,
WILLIAM D. GORE,
INDIVIDUALLY AND IN HIS
CAPACITY AS SHERIFF,
Defendants.

CASE NO. 09-CV-2371 IEG (BLM)
CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 22, 2010

/S/ C.D. Michel
C. D. Michel
Attorney for Plaintiffs