

1 \_\_\_\_\_ (Full Name)  
2 \_\_\_\_\_ (Email Address)  
3 \_\_\_\_\_ (Address Line 1)  
4 \_\_\_\_\_ (Address Line 2)  
5 \_\_\_\_\_ (Phone Number)

6 Plaintiff in Pro Per

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 \_\_\_\_\_,  
11 **Plaintiff,**  
12 **vs.**  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_,  
16 **Defendant(s).**  
17  
18  
19  
20  
21

Case No.: \_\_\_\_\_

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
LEAVE TO AMEND COMPLAINT  
PURSUANT TO FED. R. CIV. P.  
15(a)(2)**

**Hearing Date:** \_\_\_\_\_

**Hearing Time:** \_\_\_\_\_

**Judge:** \_\_\_\_\_  
(Judge's name)

**Place:** \_\_\_\_\_  
(courtroom number)

22  
23 Plaintiff respectfully submits this Memorandum of Points and Authorities in  
24 Support of Plaintiff's Motion for Leave to Amend Complaint.

25 //

26 //

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28 //

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1 **I. INTRODUCTION**

2 The Court should grant Plaintiff’s motion for leave to amend complaint  
3 because Plaintiff meets the requirements under Fed. R. Civ. P. 15(a)(2) and  
4 because Plaintiff is a pro se litigant.

5 **II. PROCEDURAL HISTORY**

6 Plaintiff filed an original complaint against Defendant(s) on *(date)*: \_\_\_\_\_  
7 \_\_\_\_\_.

8 Plaintiff filed amended complaint(s) as follows *(write the number of*  
9 *complaints and dates filed)*: \_\_\_\_\_

10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 Defendant(s) filed responsive pleading(s) on *(write the title of responses*  
16 *and dates filed)*: \_\_\_\_\_

17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 **III. ARGUMENT**

23 Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should  
24 freely give leave [to amend a complaint] when justice so requires”. Fed. R. Civ. P.  
25 15(a)(2). The district court has the discretion to decide whether to grant Plaintiff  
26 leave to amend. *See Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir.  
27 1996); *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1324 (9th Cir.1982),  
28 *vacated on other grounds*, 459 U.S. 810 (1982). In its exercise of this discretion,

1 the court applies Rule 15 to “facilitate [a] decision on the merits, rather than on the  
2 pleadings or technicalities.” *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

3 Furthermore, the court interprets the language for granting amendments under Rule  
4 15 with “extreme liberality.” *Id.*

5 **A. Under the Ninth Circuit Standard Plaintiff Should Be Granted**  
6 **Leave to Amend.**

7 When deciding whether to grant leave to amend, a court must consider: (1)  
8 whether the amendment was filed with undue delay; (2) whether the movant has  
9 requested the amendment in bad faith or as a dilatory tactic; (3) whether movant  
10 was allowed to make previous amendments which failed to correct deficiencies of  
11 the complaint; (4) whether the amendment will unduly prejudice the opposing  
12 party and; (5) whether the amendment is futile. *See Eminence Capital, LLC v.*  
13 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 US  
14 178, 182 (1962)).

15 The five factors are not considered equally. Prejudice is the most important  
16 factor and is given the most weight. *Eminence*, 316 F.3d at 1052. Therefore,  
17 “[a]bsent prejudice, or a strong showing of any of the remaining *Foman* factors,  
18 there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.”  
19 *Id.* *See also Talwar v. Creative Labs, Inc.*, No. CV 05-3375, 2007 WL 1723609  
20 (C.D. Cal. June 14, 2006) (finding the plaintiffs should be granted leave to amend  
21 because additional discovery would not unduly prejudice the defendant and the  
22 defendant did not make a strong enough showing of bad faith on the part of the  
23 plaintiffs or that the plaintiffs requested leave to amend as a dilatory tactic, despite  
24 the suspect timing of the filing).

25 The Ninth Circuit has also held that one of the five *Foman* factors alone is  
26 not sufficient to justify the denial of a request for leave to amend. The Ninth  
27 Circuit has found that undue delay alone “is insufficient to justify denying a  
28 motion to amend” and has “reversed the denial of a motion for leave to amend

1 where the district court did not provide a contemporaneous specific finding of  
2 prejudice to the opposing party, bad faith by the moving party, or futility of the  
3 amendment.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

4 In this case, Plaintiff’s amendment will not unduly prejudice Defendant  
5 because \_\_\_\_\_

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 Plaintiff did not file the amendment with undue delay. Rather, Plaintiff filed  
17 the amendment in the following fashion: \_\_\_\_\_

1 Plaintiff does not request leave to amend in bad faith or for dilatory reasons.  
2 Rather, Plaintiff requests leave to amend for the following reasons: \_\_\_\_\_

3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 Plaintiff's amendment is not futile because \_\_\_\_\_

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

19 Plaintiff amended the complaint previously under the following  
20 circumstances: \_\_\_\_\_

21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_

1                   **B. Plaintiff Is a Pro Se Litigant and Should Be Granted Leave to**  
2                   **Amend.**

3                   Courts give special consideration to pro se litigants requesting leave to  
4 amend a complaint. “Courts are particularly reluctant to deny leave to amend to  
5 pro se litigants.” *Flowers v. First Hawaiian Bank*, 295 F.3d 966, 976 (9th Cir.  
6 2002). In particular, “[u]nless it is absolutely clear that no amendment can cure the  
7 defect ... a pro se litigant is entitled to notice of the complaint's deficiencies and an  
8 opportunity to amend prior to dismissal of the action.” *Lucas v. Dept. of*  
9 *Corrections*, 66 F.3d 245, 248 (9th Cir. 1995).

10  
11 **IV. CONCLUSION**

12                   Based on the above reasons, this Court should grant Plaintiff’s motion.

13  
14 DATED: \_\_\_\_\_ By: \_\_\_\_\_

(sign)

15  
16 \_\_\_\_\_  
17 (print name)

18 **Plaintiff in Pro Per**  
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