

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 _____
12 _____
13 Plaintiff(s),
14 vs.
15 _____
16 _____
17 _____
18 _____
19 _____,
20 Defendant(s).

Case No.: _____

**NOTICE OF MOTION AND
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)

23 **TO THE HONORABLE COURT AND TO ALL PARTIES:**

24 PLEASE TAKE NOTICE that on _____ at _____,
25 (date) (time)

26 or as soon thereafter as this matter may be heard in the above-entitled Court

27 located at _____,
28 (address of the Court in which the motion is being made)

1 _____, the plaintiff in this case will
2 (your name)
3 move this Court for leave to amend the complaint:

4 _____
5 (describe the nature of your motion)
6 _____
7 _____
8 _____
9 _____.

10 This motion is based upon the Memorandum of Points and Authorities, and the
11 following documents:
12

13 _____
14 (list any other documents, such as a Declaration, that support your motion)
15 _____.

16 the complete files and records in this action, and upon such oral and documentary
17 evidence as may be allowed at the hearing of this motion.

18 This motion is made following the conference of counsel pursuant to L.R.
19 7-3 which took place on _____.
20 (date)
21

22
23 DATED: _____ By: _____
24 (sign)

25 _____
26 (print name)

27 Plaintiff in Pro Per
28

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

10
11 _____
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13 Plaintiff(s),
14 vs.
15 _____
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18 _____
19 _____,
20 Defendant(s).
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 //

27 //

28 //

I. INTRODUCTION

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

II. PROCEDURAL HISTORY

Plaintiff filed an original complaint against Defendant(s) on (date):

☐ Plaintiff filed amended complaint(s) as follows (*write the number of complaints and dates filed*):

☐ Defendant(s) filed responsive pleading(s) on (write the title of responses and dates filed): _____

III. ARGUMENT

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

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

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

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

(print name)

If you have prepared this memorandum on a computer, complete the following:

☐ complies with the word limit of L.R. 11-6.1.
☐ complies with the word limit set by court order dated _____.

(date, your name, and your signature)

1 _____ (Full Name)
2 _____ (Email Address)
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5 _____ (Phone Number)

6 Plaintiff in Pro Per

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 _____
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13 Plaintiff(s),
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19 Defendant(s).
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Case No.: _____

**DECLARATION 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 I, _____, declare as follows:
23 (print name)

24 1. I am the plaintiff in the above-entitled case.

25 2. I have personal knowledge of the following facts, and, if called as a witness,

26 I could and would competently testify thereto.

27 3. I discussed and attempted to resolve the issues raised in this motion with the
28

opposing counsel in this case on: _____.
(date)

4. Opposing counsel and I were not able to resolve the following issues during
our discussion: _____

5. _____
(describe unresolved issues)

6. _____

7. _____

8. _____

9. _____

10. _____

11.

12.

13.

14.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, in _____.
(date of signing) (city, state of signing)

(signature)

(print name)

Plaintiff in Pro Per

1
2
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 _____
12 _____
13 Plaintiff(s),
14 vs.
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19 Defendant(s),
20 _____
21 _____

Case No.: _____

**(PROPOSED) ORDER GRANTING
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 Having considered _____'s Motion and finding good cause therefore,
23 (indicate Plaintiff or Defendant)

24 IT IS HEREBY ORDERED that _____'s Motion
25 (indicate Plaintiff or Defendant)
26 to Amend the Scheduling Order pursuant to Fed. R. Civ. P. 16 is GRANTED.

27 Dated: _____ Signed: _____

28 Hon. : _____
(Judge's name)

1 _____ (Full Name)
2 _____ (Email Address)
3 _____ (Address Line 1)
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5 _____ (Phone Number)

6 Plaintiff in Pro Per

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

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20 Defendant(s).

Case No.: _____

PROOF OF SERVICE BY MAIL

21
22
23 I, _____, declare as follows:
24 (name of person serving documents)

25 My address is _____
26 _____, which is located in the
27 county where the mailing described below took place.

28 //

On _____, I served the documents described as:
(date of mailing)

(list the names of any additional documents you are mailing)

on all interested parties in this action by placing a true and correct copy thereof
in a sealed envelope, with first-class postage prepaid thereon, and deposited said
envelope in the United States mail at or in _____,
(city and state of mailing)

addressed to:

(name)

(name)

(address)

(address)

(address)

(address)

(address)

(address)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____.
(date) (city and state of signing)

(sign)

(print name)