

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 //

27 //

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)

(print name)

Plaintiff in Pro Per