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11 IN THE UNITED STATES DISTRICT COURT
12 IN AND FOR THE DISTRICT OF ARIZONA
13

Terrence Bressi, Plaintiff,	Case No. 4:18-cv-00186-DCB
vs.	MOTION FOR LEAVE TO AMEND COMPLAINT
Mark Napier, <i>et al.</i> , Defendants.	

14 Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Terrence Bressi moves for
15 leave to amend his First Amended Complaint. As required by L. R. Civ.
16 15.1(a), a comparison of proposed Second Amended Complaint to the
17 currently-operative First Amended Complaint (Doc. 8) is attached hereto as
18 Exhibit A. The Exhibit indicates in what aspects the Proposed Second
19 Amended Complaint differs from the First Amended Complaint.
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21 The Second Amended Complaint adds federal defendants and claims
22 relating to the federal defendants. Additionally, the Second Amended
23 Complaint slightly alters allegations found in the First Amended Complaint. If

1 this motion is granted, Plaintiff will file the Second Amended Complaint
2 within fourteen days of this Court’s order. This motion is supported by the
3 following memorandum.

4 Argument

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6 The Federal Rules of Civil Procedure provide that courts should “freely
7 give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). Courts
8 must apply Rule 15(a) with “extreme liberality.” *Eminence Capital, LLC v.*
9 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). This presumption may be
10 overcome only by a showing of undue prejudice, bad faith, undue delay, or
11 futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). As shown
12 below, the strong presumption in favor of leave to amend applies here, and the
13 proposed amendment should be allowed.

14 First, the Proposed Second Amended Complaint trims the scope of this
15 lawsuit by eliminating one of the claims for monetary damages found in the
16 First Amended Complaint. Moreover, it clarifies the various claims by
17 indicating which claims are brought against which defendants. Consequently,
18 the proposed amendments will have the effect of reducing both the costs of
19 litigation and scarce judicial resources.

20 The Defendants who are currently parties to this action will not be
21 prejudiced by the proposed amendments, as this case is still in its earliest

1 stages and Defendants have ample time to take discovery and defend. Indeed,
2 Defendant Napier and the other county defendants have yet to propound any
3 written discovery or notice a deposition. As such, this amendment does not
4 delay or prejudice the manner in which they will conduct discovery.

5 This motion is unquestionably timely. In September 2018, Plaintiff's
6 counsel received from the federal government a notice of denial of its Notice
7 of Claim pursuant to the Federal Tort Claims Act. Under the terms of the
8 denial letter, Plaintiff was given a maximum of six (6) months to bring suit
9 against the United States. Plaintiff seeks to do so through this Proposed
10 Second Amended Complaint, almost three months (3) prior to expiration of
11 the deadline.

12 These proposed amendments are not "futile"; indeed, they serve to
13 clarify some of the existing allegations and streamline the discovery process
14 by bringing in all Defendants that Plaintiff contends are responsible for his
15 constitutional deprivations and other harms stemming from the events
16 described in the First Amended Complaint.

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1 In sum, the heavy presumption in favor of liberally granting leave to
2 amend applies fully here, and the Motion for Leave to Amend should be
3 granted.

4 Dated this 31st day of December 2018.

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6 Ralph E. Ellinwood, Attorney at Law, PLLC
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8
9 /s/ Ralph E. Ellinwood

10 Ralph E. Ellinwood
11 Attorney for Plaintiff
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