

1 STEPTOE & JOHNSON LLP
2 Collier Center
3 201 East Washington Street
4 Suite 1600
5 Phoenix, Arizona 85004-2382
6 Telephone: (602) 257-5200
7 Facsimile: (602) 257-5299

8 David J. Bodney (06065)
9 dbodney@steptoe.com
10 Peter S. Kozinets (019856)
11 pkozinets@steptoe.com
12 Karen J. Hartman-Tellez (021121)
13 khartman@steptoe.com
14 Isaac P. Hernandez (025537)
15 ihernandez@steptoe.com

16 Attorneys for Plaintiff

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA

19 Manuel de Jesus Ortega Melendres,
20
21 Plaintiff,

22 vs.

23 Joseph M. Arpaio, et al.,
24
25 Defendants.

26) No. CV 07-02513-PHX-MHM
27) **MOTION FOR LEAVE TO**
28) **AMEND COMPLAINT**

29 Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Manuel de Jesus Ortega
30 Melendres moves for leave to amend the Complaint. As required by L. R. Civ. 15.1(a),
31 a comparison of the Complaint and proposed First Amended Complaint is attached
32 hereto as Exhibit A, indicating in what respects the amended pleading differs from the
33 Complaint. Additionally, an original First Amended Complaint is being lodged with the
34 Clerk of the Court to be filed if and when this Motion is granted. This Motion is
35 supported by the following Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Preliminary Statement

3 Following the recent substitution of counsel of record and the appearance
4 of additional new counsel, Plaintiff seeks leave to file the proposed First Amended
5 Complaint to simplify the pleadings and expedite the litigation of this case on the merits.
6 The First Amended Complaint simplifies and focuses the litigation in several ways: It
7 eliminates all demands for monetary damages, reduces the number of the claims for
8 relief, and narrows the scope of the definition of the proposed class. Through these
9 changes, the First Amended Complaint moots the pending Motion to Dismiss.
10 Moreover, because this case is still in its earliest, pre-discovery stages, the proposed
11 pleading is timely and will not prejudice Defendants. Under the liberal policy of Rule
12 15(a), the Motion should be granted.

13 Argument

14 The Federal Rules of Civil Procedure provide that courts should “freely
15 give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). Courts must
16 apply Rule 15(a) with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316
17 F.3d 1048, 1051 (9th Cir. 2003); *see also Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir.
18 1999) (reviewing denial of leave to amend “strictly in light of strong public policy
19 permitting amendment”). As such, Rule 15(a) establishes a strong presumption in favor
20 of allowing a party to amend. *Eminence Capital*, 316 F.3d at 1052. This presumption
21 may be overcome only by a showing of undue prejudice, bad faith, undue delay or
22 futility of amendment. *Id.* (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). As
23 shown below, the strong presumption in favor of leave to amend applies here, and the
24 proposed amendment should be allowed.

25 First, the lodged First Amended Complaint significantly trims the scope of
26 this lawsuit by eliminating all claims for monetary damages, narrowing the class
27 definition, and omitting three claims for relief (Counts III, IV and V of the pending
28 Complaint). Moreover, it clarifies the allegations by more closely focusing on

1 Defendants' alleged unlawful conduct, and by illustrating that conduct with the
2 experiences of four additional individual representative plaintiffs and a membership
3 organization.

4 Defendants Joseph Arpaio and Maricopa County (collectively,
5 "Defendants") will not be prejudiced by the proposed amendment. *See Eminence*
6 *Capital*, 316 F.3d at 1052 ("[I]t is the consideration of prejudice to the opposing party
7 that carries the greatest weight."). This case is still in its earliest stages and Defendants
8 have ample time to take discovery and defend. Indeed, the parties have not yet
9 exchanged initial disclosures or discovery, or participated in a case-management
10 conference pursuant to Rule 26(f). Rather, Defendants have merely filed an Answer and
11 a Motion to Dismiss, but their Motion remains pending – and they have not even filed a
12 Reply. By clarifying and focusing the pleadings, the proposed amendments will
13 facilitate this litigation for both Plaintiff and Defendants.

14 Second, the Motion is unquestionably timely. Plaintiff's counsel recently
15 assumed the representation, officially appearing as counsel of record by the Court's May
16 1, 2008 Order. Since then, counsel has engaged in the necessary investigation to name
17 additional class representatives and to amend the Complaint as outlined above. In
18 addition, counsel has associated with additional lawyers having expertise in this type of
19 litigation, including attorneys from the American Civil Liberties Union and the
20 Mexican-American Legal Defense and Educational Fund. At this point, the Court has
21 not set a deadline for amendments, and the pending Motion to Dismiss has not been
22 decided. Accordingly, the Motion is timely.

23 Third, the proposed amendments are not "futile"; indeed, they effectively
24 moot the arguments in Defendants' pending Motion to Dismiss. That Motion is largely
25 based on sovereign immunity. It is inapplicable to the First Amended Complaint, which
26 alleges municipal liability by attacking official policies and practices, and which seeks
27 only prospective injunctive and declaratory relief, not money damages.

28

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 granted.

3 Conclusion

4 For the foregoing reasons, plaintiff respectfully requests that the Court
5 grant the Motion for Leave to Amend Complaint.

6 RESPECTFULLY SUBMITTED this 16th day of July, 2008.

7 STEPTOE & JOHNSON LLP

8
9 By /s/ David J. Bodney

10 David J. Bodney
11 Peter S. Kozinets
12 Karen J. Hartman-Tellez
13 Isaac P. Hernandez
14 Collier Center
15 201 East Washington Street
16 Suite 1600
17 Phoenix, Arizona 85004-2382

18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of July, 2008, I caused the attached
3 document to be electronically transmitted to the Clerk's Office using the CM/ECF
4 System for filing and transmittal of a Notice of Electronic Filing to the following
5 CM/ECF Registrant:

6 Timothy James Casey
7 timcasey@azbarristers.com

8
9 I further certify that I caused a copy of the attached document to be mailed
10 on the 16th day of July, 2008 to:

11
12 Hon. Mary H. Murguia
13 United States District Court
14 Sandra Day O'Connor U.S. Courthouse
15 Suite 525
16 401 West Washington Street, SPC53
17 Phoenix, Arizona 85003-2154

18 /s/ Monica Medlin
19 Legal Secretary

20
21
22
23
24
25
26
27
28 560692