

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA**

WE THE PEOPLE FOUNDATION INC.,  
et al.,

Plaintiffs,

No. 104-cv-01221 EGS

v.

UNITED STATES, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

Plaintiffs, Robert L. Schulz, *pro se*, and all other plaintiffs by and through their undersigned counsel, and pursuant to Fed. R. Civ. P.15, and LCvR 7(i) and LCvR 15.1, respectfully seek leave of the court to file an amended complaint.

Pursuant to LCvR 7(m) counsel for the plaintiffs met and conferred with counsel for the defendants on November 2, 2004, explaining the reason for the anticipated motion in a good faith effort to determine whether there is any opposition to the relief sought and in order to include in this motion a statement that the discussion occurred and to represent to the court the response of counsel for the defendants. Counsel for the defendants said that he, "would probably," oppose the motion.

Of course, Fed. R. Civ. P. 15 states that a motion for leave to amend a complaint, "shall be freely given when justice so requires." It is well-settled law that leave to amend

the complaint is rarely denied and may be denied only where there is a demonstrable showing of prejudice to an opposing party. In fact, it may be an abuse of discretion for the court to deny leave to amend absent a demonstrable showing of prejudice. *Forman v. Davis*, 371 U.S.178, 83 S.Ct.227, 9 L.Ed. 2d 222 (1962); *Jackson v. Bank of Hawaii*, 902 F 2d 1385 (9<sup>th</sup> Cir. 1990); *Harkless v. Sweeny Independent School District*, 544 F 2d 1353 (5<sup>th</sup> Cir.1977) cert. Denied 434 U.S. 966; *United Steelworkers of America v. Mesker Bros. Industries, Inc.*, 457F2d 91 (8<sup>th</sup> Cir. 1971).

Leave to amend may be denied, for example, if it is sought during trial and would so alter the case that the opposing party would be required to seek new evidence and additional witnesses. *Ibid.* Leave may be denied if the amended pleading is offered only after the death of a crucial witness who would be required by the opposing party to rebut the new allegations.

However, it is well-settled law that the court may grant leave to amend the complaint during trial; indeed the court may permit a complaint to be amended even after completion of the trial. *Brown v R. & R Engineering Co.*, F Supp. 315 (D. Del.1958) reversed on other grounds 264 F.2d 219 (3d Cir.1959); *Hemmer–Miller Dev. Co. v. Hudson Ins. Co.*, 63 S.D. 109, 256 N.W. 798 (1934)

A party may be given the right to amend the pleadings after trial to conform to the proof at trial. *Fed. R. Civ. P. 15 (b)*; *West’s Ann. Cal. Code Civ. Proc. Section 469, 470*; *NY-McKinney’s CPLR 3025 (c)*.

Further a number of federal courts have held that the court should not even consider the legal sufficiency of the substance of the proposed amendment in granting leave to file the amended complaint.

The facts in this matter demonstrate beyond cavil that the proposed amendment is offered in good faith and for good reasons, that it is the first motion made by the plaintiffs to amend the complaint (the initial complaint was amended before the defendants had responded with an answer or a dispositive motion, and therefore was filed in accordance with the rules as a matter of right) and that it is offered to narrow the issues and to resolve matters raised by defendants' motion to dismiss and in the interests of justice.

Clearly, the defendants may not assert that their rights have been prejudiced; no answer as been filed by the defendants and no discovery has been initiated.

An example of the reasons for the motion for leave to file an amended complaint is that one listed plaintiff, Sherry P. Jackson, a certified public accountant and a former agent of the defendant, Internal Revenue Service (IRS), was, upon information and belief, subjected to a raid by agents of the IRS who seized substantial property, all after Ms. Jackson participated as a plaintiff in this case. Ms. Jackson retained counsel to assist her in that matter; counsel instructed her to withdraw from this case and to refrain from associating with anyone who is associated with this case. Counsel for Ms. Jackson requested of undersigned counsel that her name be removed from this case. Counsel for the plaintiff immediately notified counsel for the defendants that Ms. Jackson wished to withdraw from the case and stated that he would take appropriate action to accomplish that. In the proposed Second Amended Complaint, submitted herewith, Ms. Jackson, who had appeared as a plaintiff in the Amended Complaint (page 69, paragraph numbered 16) does not appear in the Second Amended Complaint.

In the motion to dismiss the defendants assert:

The amended complaint lists over 1,450 plaintiffs in the caption, but does not identify these individuals as plaintiffs within the body of the complaint. Because the caption is not regarded as containing any part of the claim, it is not determinative of the parties. (Citations omitted). Thus only the eight named plaintiffs named in paragraphs 3-5 and 14-18 of the amended complaint are proper party plaintiffs in this case.

Defendants' Motion to Dismiss, page 5.

However, the plaintiffs, in the amended complaint, not only identified all of the plaintiffs listed in the caption and incorporated the first 64 pages of the complaint, the lengthy caption, by reference, but in paragraphs 6-13, described the actions of those plaintiffs relevant to this case. The plaintiffs not inappropriately listed the names and addresses of each of the plaintiffs by listing all of them by devoting 64 pages to that effort, and in an effort for economy incorporated them in the complaint. However, out of an abundance of caution and in an effort to narrow the issues, the plaintiffs have listed each of the plaintiffs in the body of the Second Amended Complaint and have also submitted affidavits from those plaintiffs regarding issues relevant to this case, to demonstrate that the defendants' claim that only conclusions, not facts were cited, although questionable, has been confronted and resolved.

In addition, the plaintiffs have amended the complaint to respond to other issues raised by the defendants in their motion to dismiss.

## CONCLUSION

For the reasons set forth above, plaintiffs respectfully request that leave to file the Second Amended Complaint, submitted herewith pursuant to LCvR 15.1, be granted.

Respectfully submitted,

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