

1 Maria Crimi Speth (012574)
JABURG & WILK, P.C.
 2 3200 N. Central Avenue, Suite 2000
 Phoenix, Arizona 85012
 3 mcs@jaburgwilk.com
 (602) 248-1000

4
 5 David S. Gingras (021097)
Gingras Law Office, PLLC
 4072 E Mountain Vista Dr.
 6 Phoenix, AZ 85048
 Tel.: (480) 668-3623
 7 David.Gingras@webmail.azbar.org

8 Attorneys for Plaintiffs

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 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF ARIZONA**

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 13 XCENTRIC VENTURES, LLC, an
 Arizona limited liability corporation, and
 14 JABURG & WILK, P.C., a professional
 corporation,

15 Plaintiffs,

16 v.

17 SHAWN RICHESON,

18 Defendant.

Case No.: 2:10-cv-1931-PHX-NVW

**RESPONSE TO DEFENDANT SHAWN
 RICHESON’S MOTION FOR LEAVE
 OF COURT TO CROSS CLAIM
 AGAINST MARIA CRIMI SPETH &
 ED MAGEDSON**

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 20 Plaintiffs hereby respond to Defendant Shawn Richeson’s pending “Motion for
 21 Leave of Court to Cross Claim Against Maria Crimi Speth & Ed Magedson” (hereinafter
 22 “Motion for Leave”) (Doc. 49). Richeson’s Motion for Leave must be denied because it
 23 is procedurally improper, as Defendant Richeson has failed to attach a copy of the
 24 proposed amended pleading as an exhibit. By omitting a copy of the proposed amended
 25 pleading, Defendant Richeson has failed to comply with the requirements of Rule 15(a),
 26 Fed.R.Civ.P., and, more particularly, local rule LRCiv. 15.1, which provides in material
 27 part:
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A party who moves for leave to amend a pleading . . . must attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation, which must indicate in what respect it differs from the pleading which it amends, by bracketing or striking through the text to be deleted and underlining the text to be added. The proposed amended pleading is not to incorporate by reference any part of the preceding pleading, including exhibits.

The grant or denial of a motion to amend a pleading is within the discretion of the district court and is reversed only if there is an abuse of discretion. *International Ass'n of Machinists and Aerospace Workers v. Republic Airlines*, 761 F.2d 1386, 1390 (9th Cir. (Ariz.) 1985). Among the factors that may justify denial to amend a pleading are undue delay, bad faith, dilatory motive, prejudice to opposing party, and futility. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Additionally, a court may deny a request for leave to amend pleadings if the movant fails to provide a draft amended pleading, and this is particularly true if the local rule requires submission of the proposed amended pleading. *Waters v. Weyerhaeuser Mortg. Co.*, 582 F.2d 503, 507 (9th Cir. 1978) (upholding district court's discretion to deny motion to amend due to failure to comply with local rule requiring attachment of proposed amended pleading); *Ward v. Circus Circus Casinos, Inc.*, 473 F.3d 994 (9th Cir. 1978) (“[The plaintiffs’] motion to amend violated the local rules, and the district court may in its discretion deny their motion on that basis alone.”); see also, *Wolgin v. Simon*, 722 F.2d 389, 395 (8th Cir. 1983) (“[T]o preserve the right to amend a complaint a party must submit a proposed amendment along with its motion. This holding is in keeping with the relevant precedent in this court and in a majority of the circuits.”) “[T]he factors which are to be weighed in deciding whether to allow the amendment cannot be judged without reference to the proposed [amendment] Without the proposed amendment, a court cannot ascertain the reason for the delay, the likely prejudice or whether the amendment would be futile.” *Clonlara, Inc. v. Runkel*, 722 F.Supp. 1442, 1449 (E.D.Mich.,1989).

1 In addition to being a nondiscretionary local rule requirement, it is fundamental
2 that Defendant Richeson must file a copy of the proposed amended pleading with his
3 Motion for Leave. Without the benefit of a proposed amended pleading, the Court cannot
4 evaluate the merits of his request for leave to amend his pleading or any of the factors
5 relevant to denying or granting the Motion. Moreover, without a proposed pleading,
6 Plaintiffs cannot properly raise all objections that they may – and likely will – have
7 against the proposed amendment.

8 For these reasons, Plaintiffs respectfully request that the Court deny Defendant
9 Richeson’s Motion for Leave.

10 DATED this 9th day of November, 2010.

11 **JABURG & WILK, P.C.**

12
13 s/Maria Crimi Speth
14 Maria Crimi Speth
15 David S. Gingras
16 Attorneys for Plaintiffs

17 *Certificate of Service*

18 I hereby certify that on the 9th day of November, 2010, I electronically transmitted the
19 attached document to the Clerk’s Office using the CM/ECF System for filing.

20 I have also caused to be delivered to Defendant, who is not registered with the CM/ECF
21 System, a copy of the attached document by First Class Mail and E-Mail:

22 Shawn Richeson
23 1906 Twilight Drive
24 Killeen, Texas 76543
25 Shawn@ClickaNerd.com
26 Defendant Pro Per

27 s/Debra Gower