

1 Typically, leave to amend should be "freely given" where
2 there is no "undue delay, bad faith or dilatory motive on the
3 part of the movant,...undue prejudice to the opposing party by
4 virtue of allowance of the amendment, [or] futility of the
5 amendment...." Foman v. Davis, 371 U.S. 178, 182 (1962);
6 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th
7 Cir. 2003) (listing the Foman factors as those to be considered
8 when deciding whether to grant leave to amend). Not all of these
9 factors merit equal weight. Rather, "the consideration of
10 prejudice to the opposing party...carries the greatest weight."
11 Eminence Capital, 316 F.3d at 1052 (citing DCD Programs, Ltd. v.
12 Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without
13 leave to amend is proper only if it is clear that "the complaint
14 could not be saved by any amendment." Intri-Plex Techs. v. Crest
15 Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (internal
16 citations and quotations omitted). In addition, pursuant to the
17 Court's own Pretrial Scheduling Order ("PTSO"), amendments to the
18 pleadings will be permitted upon a showing of good cause. PTSO,
19 1:23-25.

20 In this case, Plaintiffs explain that Defendant City of
21 Stockton "refus[ed] to release information concerning this case
22 to Plaintiff's counsel prior to the filing of the instant
23 lawsuit." Motion, 4:15-17. Plaintiffs consequently filed their
24 original Complaint, after which the parties engaged in discovery.
25 Through this discovery, Plaintiffs uncovered the additional facts
26 underlying their proposed FAC.

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1 No prejudice to the parties will result from amendment as ample
2 time remains prior to the cutoff of fact discovery, and this case
3 is not scheduled for trial until 2013.

4 Accordingly, given Defendants' lack of opposition to
5 Plaintiffs' Motion, and good cause appearing therefor,
6 Plaintiffs' Motion for Leave to Amend the Complaint (ECF No. 9)
7 is GRANTED.² Plaintiffs are directed to file and serve their
8 proposed First Amended Complaint within five (5) days of the date
9 this Order is electronically filed.

10 IT IS SO ORDERED.

11 Dated: October 14, 2011

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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27 ² Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefing. E.D.
Cal. Local Rule 230(g). The hearing currently set for 2:00 p.m.
on Thursday, October 20, 2011, is hereby vacated.