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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 CHRISTOPHER UPHAM,)
12 Plaintiff,)
13 vs.)
14 HELENA F. FOX, Individually and as the)
Personal Representative of the Estate of)
15 Peter M. Fox, Deceased, and as Guardian)
Ad Litem for REBECCA H. FOX and)
16 ROBERT G. FOX, Minors,)
17 Defendants.)

CASE NO. C 08-1859 MMC
**EX PARTE APPLICATION FOR
LEAVE TO AMEND; AND FOR
REQUEST FOR COURT TO RULE
WITHOUT APPEARANCE OF
COUNSEL; MEMORANDUM OF
POINTS & AUTHORITIES;
~~PROPOSED~~ ORDER THEREON**

DATE :
TIME :
CTRM: 7

19
20 **APPLICATION FOR LEAVE TO AMEND**

21 Plaintiff Christopher Upham hereby applies ex parte to this court for an order granting
22 leave to file a second amended complaint. The proposed second amended complaint is being
23 delivered to chambers for review. This application is made on the grounds that such an
24 amendment would be in the furtherance of justice and more particularly as follows.

25 Following a court trial ending October 30, 2008, wherein plaintiff herein was the
26 prevailing party in case number: 2002ES0700012, venued in the Probate Court for the County of
27 Beaufort, State of South Carolina, plaintiff timely filed his first amended complaint on
28 November 7, 2008.

1 However, the filing of the first amended complaint appears now to have been precipitous.

2 The Probate Court Order Granting Petition for Subsequent Administration was not signed and
3 filed until December 5, 2008 and not received by plaintiff's counsel until December 9, 2008. A
4 copy of the order is attached hereto as Exhibit "A". Further, defendant Helena F. Fox was not
5 appointed personal representative of Peter Marlin Fox, deceased, until December 5, 2008. A
6 copy of the Certificate of Appointment is attached hereto as Exhibit "B".

7 The proposed amended complaint adds or modifies new paragraphs 45, 91, 146 and 156.

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9 Dated: *2/26/09*

LAW OFFICE OF DOUGLAS STENZEL

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11 By: *Douglas Stenzel*
12 DOUGLAS STENZEL
13 Attorney for Plaintiff
14 CHRISTOPHER UPHAM
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2 I

3 Amended and Supplemental Pleadings

4 *Federal Court Rule 15(a)(2)* states in pertinent part:

5 “(2) *Other Amendments*. In all other cases, a party may amend its
6 pleading only with the opposing party’s written consent or the
7 court’s leave. The court should freely give leave when justice so
8 requires.” (Emphasis in original.)

9 DATED: 2/26/09

Respectfully submitted,

10 LAW OFFICE OF DOUGLAS STENZEL

11 By: 

12 DOUGLAS STENZEL
13 Attorney for Plaintiff
14 CHRISTOPHER UPHAM

ORDER

no later than March 10, 2009,

GOOD CAUSE APPEARING, plaintiff is hereby allowed leave to file his proposed
second amended complaint.

Dated: March 4, 2009


MAXINE M. CHESNEY