

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Timothy Gall,

No. C 08-00120 JW

Plaintiff,

**ORDER CONSTRUING PLAINTIFF'S
FILING AS A MOTION FOR LEAVE TO
FILE AN AMENDED COMPLAINT;
REQUESTING RESPONSE FROM
DEFENDANT**

v.

City of San Jose,

Defendant.

_____ /

Presently before the Court is a filing by Plaintiff entitled, "Complaint Amendment and Proposed Order." (See Docket Item No. 24.) Plaintiff states that he would like to "amend the original complaint to include" certain claims. In light of Plaintiff's *pro se* status, the Court liberally construes this filing as a Motion for Leave to File an Amended Complaint.

Ruled 15(a) provides that a party may amend his pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P. 15(a). However, when a party can no longer amend a pleading as a matter of right under Rule 15(a), the party must either petition the court for leave to amend or obtain consent from the adverse parties. *Id.*; Keniston v. Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983).

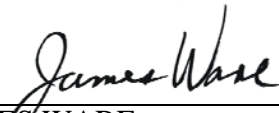
On February 21, 2008, Defendant filed an Answer to Plaintiff's original Complaint. (See Docket Item No. 8.) Defendant's Answer is a responsive pleading within the meaning of Rule 15(a). Thus, Plaintiff must either obtain consent from Defendant or seek leave of Court before filing an Amended Complaint. Here, Plaintiff has done neither. However, in light of Plaintiff's *pro se* status,

1 the Court treats Plaintiff's motion as a motion for leave to file an amended complaint. To avoid
2 prejudice to Defendant, the Court will give Defendant an opportunity to respond.

3 Accordingly, on or before **October 15, 2008**, Defendant shall file its Opposition, if any, to
4 Plaintiff's motion for leave to file an amended complaint. The matter is taken under submission
5 without oral argument. See Civ. L.R. 7-1(b).

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Dated: October 2, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Clifford S. Greenberg cao.main@sanjoseca.gov

3 Timothy L Gall
4 15435 La Jolla Drive
5 Morgan Hill, CA 95037

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7 **Dated: October 2, 2008**

Richard W. Wieking, Clerk

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By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

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