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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAUL BASHKIN,

Plaintiff,

vs.

SAN DIEGO COUNTY; HOWARD
KLUGE, individually and in his official
capacity; BRET GARRETT, individually
and in his official capacity; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. 08cv1450-WQH-WVG

ORDER

HAYES, Judge:

The matter before the Court is Plaintiff's Motion for an Order: (1) Modifying the Court's Scheduling Order; and (2) Granting Him Leave to Amend His Complaint ("Motion for Leave to Amend"). (ECF No. 66).

BACKGROUND

On August 8, 2008, Plaintiff, proceeding pro se, initiated this action by filing a Complaint. (ECF No. 1). The second cause of action in the Complaint alleged a "conspiracy to interfere with civil rights [42 U.S.C. § 1985]." *Id.* at 5.

On January 4, 2010, Defendants filed a Motion for Summary Judgment. (ECF No. 39). Defendants moved for the dismissal of Plaintiff's § 1985 cause of action on the basis that "Plaintiff does not allege facts in his Complaint that establish the Defendants conspired to deprive him of equal protection of the laws. None of Plaintiff's conspiracy allegations relate to Plaintiff's race, religion, political affiliation or any protected class, nor do they show any hint of invidious discriminatory motive." (ECF No. 39-1 at 9).

1 On May 20, 2010, the Court issued an Order granting Defendants’ Motion for Summary
2 Judgment as to Plaintiff’s § 1985 cause of action on the basis that “Plaintiff has not alleged in
3 the Complaint or produced evidence that any of the alleged conspirators were motivated by
4 racial or other class-based ‘invidiously discriminatory animus.’” (ECF No. 53 at 14-15
5 (quoting *Orin v. Barclay*, 272 F.3d 1207, 1217 (9th Cir. 2001)).

6 On August 23, 2010, Plaintiff filed the Motion for Leave to Amend. (ECF No. 66).
7 Plaintiff “seeks an order modifying the Court’s scheduling order for the purpose of granting
8 him leave to amend his Complaint to properly allege his second cause of action for Conspiracy
9 to Interfere with Civil Rights pursuant to 42 U.S.C. § 1985.” (ECF No. 66-1 at 2).

10 On September 13, 2010, Defendants filed an opposition to the Motion for Leave to
11 Amend. (ECF No. 69).

12 On September 20, 2010, Plaintiff filed a reply brief. (ECF No. 71).

13 DISCUSSION

14 Federal Rule of Civil Procedure 16(b) “provides that a district court’s scheduling order
15 may be modified upon a showing of ‘good cause,’ an inquiry which focuses on the reasonable
16 diligence of the moving party.” *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1174 (9th Cir. 2007)
17 (citation omitted). Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely
18 given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with
19 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.
20 2003) (quotation omitted). In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme Court
21 offered several factors for district courts to consider in deciding whether to grant a motion to
22 amend under Rule 15(a):

23 In the absence of any apparent or declared reason—such as undue delay, bad faith
24 or dilatory motive on the part of the movant, repeated failure to cure deficiencies
25 by amendments previously allowed, undue prejudice to the opposing party by
virtue of allowance of the amendment, futility of amendment, etc.—the leave
sought should, as the rules require, be ‘freely given.’

26 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101 (9th Cir.
27 2004) (citing *Forman* factors). “Absent prejudice, or a strong showing of any of the remaining
28 *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to
amend.” *Eminence Capital*, 316 F.3d at 1052.

