



1 Vazquez in his official capacity, Plaintiff filed his First Amended Complaint. [Doc. No. 8]. On  
2 October 7, 2009, the Court found Plaintiff’s amended complaint again failed to assert any basis upon  
3 which the Court could exercise subject matter jurisdiction over the claims against the U.S. Coast  
4 Guard and Omar Vazquez in his official capacity. [Doc. No. 10]. Accordingly, the Court dismissed  
5 Plaintiff’s claims against those Defendants with prejudice and ordered service of Plaintiff’s First  
6 Amended Complaint upon Defendant Vazquez in his individual capacity. [Id.]

7 Subsequently, Plaintiff made additional attempts to amend his complaint while still in the  
8 process of serving Defendant Vazquez. On December 2, 2009, the Court denied without prejudice  
9 Plaintiff’s motion to amend, indicating that Plaintiff may renew his motion as long as he attaches his  
10 proposed second amended complaint as an exhibit. [Doc. No. 18]. On December 29, 2009, the Court  
11 again denied Plaintiff’s motion to amend, and directed Plaintiff not to file any additional motions to  
12 amend until such time as service of the First Amended Complaint on Defendant Vazquez has been  
13 completed. [Doc. No. 25]. On January 12, 2010, the summons for Defendant Vazquez were returned  
14 executed, indicating that Defendant was served on January 7, 2010. [Doc. No. 31]. On January 14,  
15 2010, Vazquez filed a Motion to Dismiss and in the Alternative for Summary Judgment, which the  
16 Court scheduled to be heard on March 1, 2010 at 10:30 a.m. [Doc. Nos. 32, 33]. On January 28, 2010,  
17 Plaintiff filed the present document—which the Court now construes as a motion to amend—with a  
18 proposed Second Amended Complaint attached as an exhibit. [Doc. No. 36].

### 19 LEGAL STANDARD

20 Fed. R. Civ. P. 15(a) allows a party to amend its pleading with leave of court after the period  
21 for amendment as a matter of course has expired. See FED. R. CIV. P. 15(a)(2). Pursuant to Rule 15(a),  
22 “[t]he court should freely give leave when justice so requires.” Id. The Ninth Circuit has construed  
23 this broadly, requiring that leave to amend be granted with “extreme liberality.” Morongo Band of  
24 Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (citation omitted); Poling v. Morgan,  
25 829 F.2d 882, 886 (9th Cir. 1987) (noting “the strong policy permitting amendment” (citation  
26 omitted)). This broad discretion “must be guided by the underlying purpose of Rule 15 to facilitate  
27 decision on the merits, rather than on the pleadings or technicalities.” United States v. Webb, 655 F.2d  
28 977, 979 (9th Cir. 1981) (citing Conley v. Gibson, 355 U.S. 41, 47-48 (1957)).



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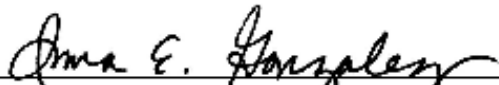
**CONCLUSION**

For the foregoing reasons, the Court construes Plaintiff’s document as a motion to amend and **GRANTS** Plaintiff leave to file second amended complaint. The Clerk of Court is directed to file Plaintiff’s Second Amended Complaint, which is attached as Exhibit 1 to Plaintiff’s document entitled “Table of Contents for Exhibit of 2nd Amended Complaint.” [Doc. No. 36]. In light of this, the Court **DENIES AS MOOT** Defendant’s Motion to Dismiss and in the Alternative for Summary Judgment.

Plaintiff is cautioned, however, that absent exceptional circumstances, no additional leave to amend will be granted until the Court can consider the Second Amended Complaint on its merits,

**IT IS SO ORDERED.**

DATED: February 2, 2010

  
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IRMA E. GONZALEZ, Chief Judge  
United States District Court