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8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
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11	ROCKY MEL CONTRERAS,	CASE NO. 09-CV-1267 - IEG (CAB)
12	Plaintiff,	ORDER:
13	VS.	(1) GRANTING LEAVE TO AMEND [Doc. No. 36]; and
14 15	OMAR VAZQUEZ; and USCG SECTOR SAN DIEGO,	(2) DENYING AS MOOT MOTION TO DISMISS AND IN THE ALTERNATIVE FOR SUMMARY
16	Defendants.	JUDGMENT [Doc. Nos. 32, 33].
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19	Currently before the Court is Plaintiff's document, received on January 28, 2010, which has	
20	a proposed Second Amended Complaint attached as an exhibit. [Doc. No. 36]. The Court construes	
21	the document as Plaintiff's motion for leave to file second amend complaint. For the reasons set forth	
22	below, the Court GRANTS leave to amend and accordingly DENIES AS MOOT Defendant's	
23	pending Motion to Dismiss and in the Alternative for Summary Judgment.	
24	BACKGROUND	
25	Plaintiff initially commenced this action on June 10, 2009, alleging Defendants Omar Vazquez	
26	(acting in both his individual and official capacities) and the U.S. Coast Guard, Sector San Diego,	
27	violated his due process rights under the Fifth Amendment. [Doc. No. 1]. On September 21, 2009,	
28	after the Court sua sponte dismissed Plaintiff's claims against the U.S. Coast Guard and Omar	
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Vazquez in his official capacity, Plaintiff filed his First Amended Complaint. [Doc. No. 8]. On
October 7, 2009, the Court found Plaintiff's amended complaint again failed to assert any basis upon
which the Court could exercise subject matter jurisdiction over the claims against the U.S. Coast
Guard and Omar Vazquez in his official capacity. [Doc. No. 10]. Accordingly, the Court dismissed
Plaintiff's claims against those Defendants with prejudice and ordered service of Plaintiff's First
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 executed, indicating that Defendant was served on January 7, 2010. [Doc. No. 31]. On January 14, 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].

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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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The Supreme Court has articulated five factors that the court should consider in deciding 1 2 whether to grant leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the party has previously amended its pleadings. Forman v. Davis, 371 U.S. 178, 182 (1962); see also Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir. 2003). Not all factors merit equal weight, however. Eminence Capital, 316 F.3d at 1052. "Prejudice is the 'touchstone of the inquiry under rule 15(a)" and "carries the greatest weight." 7 Id. (citations omitted). Nevertheless, "[f]utility of amendment can, by itself, justify the denial of a 8 motion for leave to amend." Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995).

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DISCUSSION

10 No prejudice will result in allowing Plaintiff to amend his complaint. In considering the 11 potential prejudice of the amendment, the Court considers whether the amended complaint would 12 "greatly change the parties' positions in the action, and require the assertion of new defenses." See Phoenix Solutions, Inc. v. Sony Elec., Inc., 637 F. Supp. 2d 683, 690 (N.D. Cal. 2009) (citing 13 Morongo Band of Mission Indians, 893 F.2d at 1079). Notably, "where a defendant is on notice of the 14 15 facts contained in an amendment to a complaint, there is no serious prejudice to defendant in allowing 16 the amendment." Sierra Club v. Union Oil Co. of Cal., 813 F.2d 1480, 1493 (9th Cir. 1987), vacated 17 on other grounds by 485 U.S. 931 (1988). In the present case, although the amended complaint adds 18 two more causes of action, those causes of action stem from the same operative facts as the rest of the 19 complaint. The addition of these claims would not require assertion of new defenses by Defendant.

20 Moreover, Defendant Vazquez cannot claim prejudice because he was on notice that Plaintiff 21 has been trying to amend his complaint since December 1, 2009. [See Doc. No. 17]. Although the 22 Court denied Plaintiff's two prior attempts to amend, the Court expressly noted that Plaintiff may 23 renew his motion as long as he waits until Defendant Vazquez is served and as long as he attached the 24 proposed second amended complaint as an exhibit. [See Doc. Nos. 18, 25]. Plaintiff followed the 25 Court's directions, and now seeks to amend his complaint to make it more coherent.

26 Finally, there is no indication that the present motion to amend was filed in bad faith, or that 27 it would result in undue delay. Apart from the Defendant's motion to dismiss, which was filed only 28 two weeks ago, there have been no other major developments in this case.

1	CONCLUSION	
2	For the foregoing reasons, the Court construes Plaintiff's document as a motion to amend and	
3	GRANTS Plaintiff leave to file second amended complaint. The Clerk of Court is directed to file	
4	Plaintiff's Second Amended Complaint, which is attached as Exhibit 1 to Plaintiff's document entitled	
5	"Table of Contents for Exhibit of 2nd Amended Complaint." [Doc. No. 36]. In light of this, the Court	
6	DENIES AS MOOT Defendant's Motion to Dismiss and in the Alternative for Summary Judgment.	
7	Plaintiff is cautioned, however, that absent exceptional circumstances, no additional leave to	
8	amend will be granted until the Court can consider the Second Amended Complaint on its merits,	
9	IT IS SO ORDERED.	
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11	DATED: February 2, 2010 Ama E. Sanalen	
12	IRMA E. GONZALEZ, Orief Judge United States District Court	
13	United States District Court	
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