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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 DAVID AND MARTINE MEDNANSKY,  
12  
13 vs. Plaintiff,  
14  
15 U.S.D.A. FOREST SERVICE  
16 EMPLOYEES WILLIAM METZ, OWEN  
17 C. MARTIN, RANDY MOORE, RITU  
Defendant.  
18

CASE NO. 09cv1478-LAB (CAB)

**ORDER REJECTING MOTION  
FOR LEAVE TO AMEND; AND**

**ORDER RE: DECEMBER 14, 2009  
HEARING ON MOTION TO  
DISMISS**

19 **I. Motion for Leave to File Amended Complaint**

20 Currently pending before this Court and scheduled for hearing on December 14, 2009  
21 is Defendants' motion to dismiss the complaint, which was filed September 1, 2009. On  
22 December 3, 2009, Plaintiffs submitted an amended complaint for filing. On December 4,  
23 2009, without obtaining a hearing date, Plaintiffs submitted a noticed motion (the "Motion to  
24 Amend") for leave to file the amended complaint they had submitted the day before. The  
25 Motion to Amend is attached as an appendix to this Order.

26 Civil Local Rule 7.1(b) provides: "All hearing dates for any matters on which a ruling  
27 is required shall be obtained from the clerk of the judge to whom the case is assigned."  
28 Plaintiffs have repeatedly ignored these requirements, and have been warned twice. In the

1 latest instance, the Court's order of November 23, 2009 warned them: "Any future attempted  
2 filings that violate this rule will be rejected or stricken." The Motion to Amend is therefore  
3 **REJECTED** for filing.

4 Future violations of this rule will result in the submitted documents being rejected, **and**  
5 **may be punished by sanctions.** See Civil Local Rule 83.1.

6 Even if the Motion to Amend had been accepted for filing, it would have been denied  
7 as untimely. To the extent Plaintiffs were trying to amend their complaint to avoid dismissal,  
8 they have offered no explanation for their decision to wait nearly three months to do so.  
9 Allowing them to amend at this point would result in needless delay, waste of judicial  
10 resources, and an unfair burden on Defendants. To the extent Plaintiffs expect dismissal  
11 will be granted and are seeking attempting to amend their complaint in anticipation of that,  
12 their motion comes too early. If the motion to dismiss is granted and the complaint can be  
13 saved by amendment, Plaintiffs may seek leave to amend at that point. Until then, however,  
14 Plaintiffs would lack guidance about how to amend.

15 The Motion to Amend argues Plaintiffs have a right under Fed. R. Civ. P. 15 to amend  
16 their complaint because, Plaintiffs contend, no responsive pleading has been filed. Until  
17 December 1, 2009, they would have been correct, but under newly-effective rules, their right  
18 to amend ends after 21 days following service of a motion under Rule 12(b), (e), or (f). See  
19 Rule 15(a)(1)(B).

20 Furthermore, the Motion to Amend does not outline the proposed amendments or  
21 explain the reasons for amendment other than generalized claims that amendment is  
22 necessary. It is therefore not at all clear why allowing an amendment at this point would  
23 serve the interests of justice. The submitted amended complaint is therefore being rejected  
24 by a separate order.

## 25 **II. Hearing on December 14, 2009.**

26 Currently on calendar for Monday, December 14 at 11:15 a.m. is a hearing on  
27 Defendants' motion to dismiss, which is now fully briefed. Pursuant to Civil Local Rule  
28 7.1(d)(1), the Court finds this matter suitable for decision without oral argument. Accordingly,

1 the hearing on this matter is taken off calendar and this matter is taken under submission.

2 No appearances will be required in this matter on Monday, December 14, 2009.

3

4 **IT IS SO ORDERED.**

5 DATED: 12-8-09

*Larry A. Burns*

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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Appendix

1 David and Martine Mednansky  
2 P.O.Box 940  
3 Pine Valley, CA 91962  
4 619-473-7648

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7  
8 United States District Court  
9 Southern District of California  
10

11 David and Martine Mednansky )

12 Plaintiffs, )

13 vs. )

14 William Metz, Owen Martin, )  
15 Randy Moore, Ritu Ahuja, )  
16 Marlene Finley, Donna Grosz )

17 Defendants, )  
18 )  
19 )

Case No.09CV1478 LAB (WVG)

NOTICE OF MOTION AND MOTION TO  
AMEND PLAINTIFFS' ORIGINAL  
COMPLAINT FOR VIOLATION OF  
CONSTITUTIONAL RIGHTS

20 Plaintiffs give notice of motion to amend plaintiffs'  
21 original complaint for violation of constitutional rights.  
22 Motion to amend is accompanied by plaintiffs' memorandum in  
23 support thereof, and is accompanied by First Amended Complaint.  
24

25 Respectfully submitted,

December 2, 2009

26   
27 Plaintiff

  
Plaintiff

28 David Mednansky

Martine Mednansky

Ca

1 David and Martine Mednansky  
P.O.Box 940  
2 Pine Valley, CA 91962  
Phone: 619-473-7648  
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8 United States District Court  
9 Southern District of California  
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11 David and Martine Mednansky )  
12 )

13 Plaintiffs, )

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15 William Metz, Owen C. Martin, )  
16 Randy Moore, Ritu Ahuja, )  
17 Marlene Finley, Donna Grosz )

18 Defendants, )  
19 )

Case No.09CV1478 LAB (WVG)

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION FOR LEAVE TO  
FILE AMENDED PLEADING

20 Plaintiffs request leave of court to file an amended  
21 pleading, First Amended Complaint For: Violation of the United  
22 States Constitution, First, Firth, and Ninth Amendments,  
23 Conspiracy to Interfere with Civil Rights.

24 A. Introduction

25 1. Plaintiffs are David Mednansky and Martine Mednansky;  
26 defendants are William Metz, Owen C. Martin, Randy Moore, Ritu  
27 Ahuja, Marlene Finley, and Donna Grosz, federal employees.  
28

1        2. Plaintiffs sued defendants for violation of their  
2 constitutional rights and conspiracy to interfere with  
3 constitutional rights.

4        3. Defendants have not filed a responsive pleading.

5        4. Defendants have filed a motion to dismiss.

6        5. Plaintiffs have filed opposition to motion to dismiss.

7        6. Plaintiffs seek to amend their pleading to correct  
8 allegations and clarify issues, and add and withdraw matters.

9                                    B. Argument

10        7. Unless the opposing party can show prejudice, bad faith,  
11 or undue delay, a court should grant leave to file an amended  
12 pleading. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230  
13 (1962). Leave to amend should be freely given when justice so  
14 requires. Fed.R.Civ.P. 15(a)(2)' *Foman*, 371 U.S. at 182, 83 S.  
15 Ct. at 230, *Nebraska v. Wyoming*, 515 U.S. 1,8, 115 S.Ct. 1933,  
16 1938 (1995).

17        8. The court should allow the filing of plaintiffs' amended  
18 pleading because it is appropriate and necessary. See *Gamma-10*  
19 *Plastics, Inc. v. Am. President Lines, Ltd.*, 32 F.3d 1244, 1255-  
20 56 (8th Cir. 1994). The amendment is appropriate and necessary  
21 because plaintiffs are pro se litigants and therefore not  
22 educated to perfect a professional pleading in the manner and  
23 form required by federal courts. Moreover, as plaintiffs had  
24 noted, they are under extreme duress due to the impending threat  
25 to seize their home and property, as well as ongoing acts by  
26 defendants that have intimidated and put fear into plaintiffs  
27 during the course of this court proceeding. For these reasons  
28

1 plaintiffs cognitive abilities have been interfered with and  
2 thus hampered in perfecting their complaint.

3 9. Defendants will not be prejudiced by plaintiffs' amended  
4 pleadings because they have not filed a responsive pleading to  
5 plaintiffs' complaint, and because the nature of amendment is to  
6 clarify issues and correct allegations. *Phelps v. McClellan*, 30  
7 F.3d 658, 662-63 (6th Cir. 1994).

8 10. Adverse party will not be prejudiced by any delay that  
9 plaintiffs' amended pleading may cause. *Auster Oil & Gas, Inc.*  
10 *v. Stream*, 764 F.2d 381, 391-92 (5th Cir. 1985). Delay could  
11 not cause prejudice because defendants have shown no interest in  
12 the ENE the court suggested, nor interest in answering the  
13 complaint, but have shown interest in delaying procedure to take  
14 vacation for personal benefit.

15 11. Plaintiffs diligently moved to amend as soon it became  
16 apparent that the amended pleading was necessary. Plaintiffs  
17 became aware of the need to amend on or around the time of  
18 Thanksgiving, therefore its submission now is timely.

19 12. A party may amend its pleadings once as a matter of  
20 course before being served with a responsive pleading, F.R.C.P.  
21 15(a)(1)(A); *Barbara v. New York Stock Exch., Inc.*, 99 F.3d  
22 49,56 (2d Cir. 1996). Defendants have not filed a responsive  
23 pleading therefore plaintiffs have a right as a matter of law to  
24 amend their complaint at this time.

25 13. Plaintiffs are filing their amended pleading along with  
26 this motion.

C. Conclusion

14. Plaintiffs submit this motion to amend, correct, clarify, add, and withdraw matters in an effort to perfect a pleading that will better reveal the issues, and in an effort to prevent motion to dismiss, so that due process may proceed without further delay. For these reasons, plaintiffs ask the court to grant leave to file the amended pleading.

Respectfully submitted,

December 2, 2009

Plaintiff

David Mednansky

Plaintiff

Martine Mednansky

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA  
3

4 DAVID MEDNANSKY et al., ) Case No.: 09CV1478 LAB (WVG)  
5 Plaintiffs, ) DECLARATION OF SERVICE  
6 vs. ) Person served: U.S. Attorney  
7 William Metz et al., ) Southern District of California  
8 Defendants, ) Date: December 2, 2009  
9

10 I, the undersigned declare under penalty of perjury that I am  
11 over the age of eighteen years and not a party to this action;  
12 that I served the above defendant, the following documents:  
13 Plaintiffs' notice motion and memorandum in support of Amended  
14 Complaint and First Amended Complaint, by placing in the U.S.  
15 mail, with postage fully prepaid, at San Diego California on  
16 December 2, 2009 addressed to: U.S. Attorney Southern District  
17 of California, Federal Office Building 880 Front Street, Room  
18 6293, San Diego, CA 92101-8893.

19 Dated this day: December 2, 2009  
20

21 David F. Reed  
22  
23

24 Jim Jackson  
25 6035 Lake Murray Blvd.  
26 La Mesa, CA 91942-2506  
27  
28

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3  
4 DAVID MEDNANSKY et al., ) Case No.: 09CV1478 LAB (WVG)  
5 Plaintiffs, )  
6 vs. ) DECLARATION OF SERVICE  
7 William Metz et al., ) Person served: Clerk of the  
8 Defendants, ) Court Southern District of  
9 ) California  
10 ) Date: December 2, 2009

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16 mail, with postage fully prepaid, at San Diego California on  
17 December 2, 2009 addressed to: Clerk of the Court Southern  
18 District of California, 880 Front Street, Room 4290, San Diego,  
19 CA 92101-8900.

20 Dated this day: December 2, 2009

21  
22 David I need

23  
24 Jim Jackson  
25 6035 Lake Murray Blvd.  
26 La Mesa, CA 91942-2506  
27  
28