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 8 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

9 Michele Mullins and Cassandra Holland,) Case No.: 2:21-cv-01294-RFB-BNW
 10 Plaintiffs,)
 11 vs.)
 12 Las Vegas Metropolitan Police Department a)
 13 political subdivision of the State of Nevada;)
 14 Nevada Property 1, LLC, a foreign Limited)
 Liability Company, d/b/a The Cosmopolitan of)
 15 Las Vegas; LVMPD Employees, DOES 1-10, Does)
 11-20, and Security Officers/Employees)
 16 DOES 21-30,)
 17 Defendants.)
 18

19 **PLAINTIFFS' MOTION FOR LEAVE TO EXTEND DATES OR**
 20 **ALTERNATIVELY, FILE FIRST AMENDED COMPLAINT**

21 NOW COME Plaintiffs, and herewith moves to extend the deadlines stated in the
 22 Stipulated Discovery Plan and Scheduling Order (Doc # 17) or alternatively file a First Amended
 23 Complaint pursuant to Fed. R. Civ. P. 15. This motion is based on the pleadings and papers on
 24 file to date, the attachments hereto, any oral argument the court deems pertinent, and the
 25 following memorandum of points and authorities.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. BACKGROUND AND FACTS**

1 This action was originally filed in the Clark County District Court. On The first threshold
2 date in the scheduling order. On July 8, 2021, prior to any actions in the Clark County District
3 Court, Defendant, Las Vegas Metropolitan Police Department (“LVMPD”) removed the matter
4 to this Court on the basis of a federal question being presented (a claim under 42 U.S.C. 1983).
5 As of August 13, 2021, Plaintiff had served initial discovery on LVMPD. As of August 13, 2021,
6 Plaintiff had served initial discovery on Nevada Property 1, LLC (“Cosmopolitan). In the
7 interim, LVMPD had filed, and Plaintiff filed an opposition to, a motion for partial dismissal
8 filed by the LVMPD. A reply was filed by the LVMPD on August 3, 2021, and this motion
9 remains pending. Initial disclosures were also supplied by the Defendants in the second week of
10 August, 2021. Responses to Plaintiff’s initial discovery were received from the LVMPD on
11 September 21, 2021 (served by mail per the proof of service on 9/15/21). Responses to Plaintiff’s
12 initial discovery were received from Cosmopolitan the Cosmopolitan on September 16, 2021
13 (served by mail per the proof of service on 9/15/21).
14

15 These responses were disingenuous, and Plaintiffs will be seeking to address the
16 deficiencies. For example, Plaintiff requested any “SCOPE” information regarding each plaintiff.
17 The response from the LVMPD is that the question is vague, ambiguous, and unintelligible. This
18 is a singularly bizarre response as that is a term of art specific to the LVMPD, and certainly, in
19 using such term, they are the single entity in the world that could not colorably claim this status
20 to the request. See exhibit 1. The Cosmopolitan responded that they have no written records
21 regarding the incident. From experience, Plaintiffs’ attorney can state that, at a minimum, the
22 Cosmopolitan would have surveillance logs and photo captures of detained individuals regarding
23 the incidents. Unless this can be resolved, Plaintiffs will be presenting motions to compel. As
24 another indicia, the LVMPD also referred to the policies and practices of its vice operations as
25 not calculated to lead to the discovery of evidence and irrelevant. See Defendants’ responses,
26
27
28

1 exhibits 2-4. *Accord Goodman v. Las Vegas Metro. Police Dep't*, 963 F. Supp. 2d 1036, 1043 (D.
2 Nev. 2013), *affirmed in part, reversed in part, and remanded* 613 Fed. Appx. 610 (2015).

3 Considering the prerequisites of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 1(978) liability
4 which the Plaintiff must crest, this response is baseless.

5 Further, as soon as practicable, on August 26, 2021, after arranging dates with LVMPD
6 counsel, Plaintiffs have noticed the deposition of Detective Tyler Gower (Doe 1 in the
7 Complaint) for October 6, 2021. Exhibit 5. This is expected to elicit further information
8 conducive to proper pleading under the Federal Rules of Civil Procedure. As an example, exhibit
9 6 is a capture of video showing a Cosmopolitan security officer filling out paperwork while
10 interrogating Plaintiffs. Plaintiffs can surmise this individual being either John Leong or Alan
11 Davidson, employees of Cosmopolitan. Nonetheless, without further discovery this cannot be
12 known for sure.

14 The complaint originally filed by the Plaintiffs expected the disclosure of certain
15 individuals participating in the torts alleged and anticipated an amendment to add these
16 individuals. Some of these prospective Doe Defendants have been identified through the
17 disclosures and discovery to date, yet the list in no where near complete. Despite moving
18 forward with appropriate diligence, it will require further discovery or disclosure to reveal the
19 full scope of these proper defendants. As such, a proposed Amended Complaint is attached as
20 exhibit 6 incorporating these now known individuals. Incidentally, in the response to LVMPD's
21 a conditional motion for leave to amend the Complaint is also included. Also, despite
22 Cosmopolitan's reference to certain documents together with Bates Stamp numbers, no such
23 documents have been provided to date.

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II. ANALYSIS

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2 This matter has been proceeding appropriately. On August 13, 2021, this Court entered
3 the current scheduling order in this matter. The proposed amended complaint is attached as
4 exhibit 6, and Plaintiff seeks leave to file this proposed amended complaint pursuant to Fed. R.
5 Civ. P. 15. The purpose for the amendment is to add new parties identified in the
6 Complaint by actions although their names were unknown at the time. The new parties are in the
7 caption of exhibit 6, and were identified in the original complaint as Does 1-2 and Does 21-23.

8
9 The rule with respect to amendment is stated in *Foman v. Davis*, 371 U.S. 178 (1962), as
10 follows:

11 Rule 15(a) declares that leave to amend “shall be freely given when
12 justice so requires”; this mandate is to be heeded. If the underlying
13 facts or circumstances relied upon by a plaintiff may be a proper
14 subject of relief, he ought to be afforded an opportunity to test his
15 claim on the merits. In the absence of any apparent or declared reason
16 – such as undue delay, bad faith, or dilatory motive on the part of the
17 movant, repeated failure to cure deficiencies by amendments
18 previously allowed, undue prejudice to the opposing party by virtue of
19 allowance of the amendment, futility of the amendment, etc. – the
20 leave sought should, as the rules require, be “freely given.” Of
21 course, the grant or denial of an opportunity to amend is within the
22 discretion of the District Court, but outright refusal to grant the leave
23 without any justifying reason appearing for the denial is not an
24 exercise of discretion; it is merely abuse of that discretion and
25 inconsistent with the spirit of the Federal Rules.

26 *Foman*, 371 U.S. at 182.

27 The case law in the Ninth Circuit states that absent prejudice, or a “strong showing” of
28 the other factors, such as undue delay, bad faith, or dilatory motive, “there exists a *presumption*
under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital, LLC v. Aspeon, Inc.*,
316 F.3d 1048, 1052 (9th Cir.2003) (per curiam); *see also Allwaste, Inc. v. Hecht*, 65 F.3d 1523,
1530 (9th Cir.1995) (stating that, although the denial of leave to amend after a responsive
pleading has been filed is reviewed for an abuse of discretion, “we strictly review such denial in

light of the *strong policy* permitting amendment” (emphasis added)). Furthermore,
 “[a]mendments are to be permitted liberally because, as the Supreme Court observed many years
 ago, “[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject
 of relief, he ought to be afforded an opportunity to test his claim on the merits.””
AmerisourceBergen Corp v. Dialysist West, Inc., 465 F.3d 946, 957 (9th Cir. 2006)(quoting
Foman, 371 U.S. at 182). None of the contrary factors appear in this instance. Absent an
 extension of deadlines, Plaintiffs respectfully request that this court grant their motion for leave
 to file a first amended complaint.

More preferable, nonetheless, would be an extension of the deadlines with the allowance
 of amendment in order that the newly named Defendants can be brought within this litigation
 while the opportunity to join the yet unknown and undiscovered remaining Doe Defendants is
 further acted upon. Still, the matter has been proceeding, and Plaintiffs have propounded
 discovery and began scheduling depositions. As it currently appears, this process will require
 time in excess of that contemplated by the scheduling order. This has also been exacerbated by
 the Covid protocells affecting the practice of law in Nevada for the first few months following
 the filing of the Complaint. Preferable to amending the current Complaint as above stated, it
 would appear that extending the dates to allow for a later motion to file an amended complaint
 may well prove more economical and fulfilling in moving this litigation forward. Thus, Plaintiff
 proposes the following schedule:

| | | |
|--|----------|-----------------|
| Motion to Amend Pleadings or Add Parties | 9/27/21 | 12/24/21 |
| Initial Expert Disclosure Deadline | 10/25/21 | 1/21/22 |
| Rebuttal Expert Disclosure Deadline | 11/24/21 | 2/21/22 |
| Discovery Cutoff | 12/24/21 | 3/24/22 |
| Dispositive Motion Deadline | 1/21/22 | 4/22/22 |

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2 Evincing that the Plaintiffs have been actively pursuing this matter, all parties have
3 provided their initial Rule 26(f) Disclosures. LVMPD served their supplemental disclosures on
4 September 15, 2021. Plaintiff, Mullins, served LVMPD with her First Request for Production of
5 Documents and Things on August 13, 2021. LVMPD served their responses on September 15,
6 2021. Plaintiff, Mullins, served Cosmopolitan with Interrogatories and Request for Production
7 of Documents and Things on August 17, 2021. Cosmopolitan served its responses on September
8 13, 2021.

9 Plaintiffs have also scheduled the deposition of a third-party disclosed in LVMPD's
10 initial disclosures for October 6, 2021. If Plaintiffs are granted leave to amend the Complaint,
11 once the newly named Defendants have made an appearance in the case, the parties anticipate
12 serving and responding to additional written discovery, coordinating depositions, disclosing
13 initial and rebuttal experts, and supplementing Rule 26 Disclosures.

14 WHEREFORE, Plaintiffs request leave to file their first amended complaint together with
15 an extension of the deadlines in the scheduling order.
16

17 DATED this 27th day of September, 2021.
18

19 **NERSESIAN & SANKIEWICZ**

20 /s/ Robert A. Nersesian

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21 **Order**

22 IT IS ORDERED that
23 ECF No. 19 is DENIED
24 without prejudice for
25 failure to meet and confer
26 under the Local Rules.

25 **IT IS SO ORDERED**

25 **DATED:** 6:13 pm, September 28, 2021

26 

27 **BRENDA WEKSLER**
28 **UNITED STATES MAGISTRATE JUDGE**

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), the undersigned, an employee of Nersesian & Sankiewicz, hereby certifies that on the 27th day of September, 2021, a copy of the foregoing **PLAINTIFFS' MOTION FOR LEAVE TO EXTEND DATES OR ALTERNATIVELY, FILE FIRST AMENDED COMPLAINT** was served via this Court's electronic-filing system to the parties on the current service list as follows:

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