

1 HONORABLE RONALD B. LEIGHTON  
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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 MARK WILLIAMS, as Personal  
12 Representative of the Estate of Shane P.  
13 Williams, and MARK WILLIAMS, a married  
14 man as his separate property,

15 Plaintiff,

16 v.

17 KITSAP COUNTY, et. al,

18 Defendants.

Case No. C08-05430RBL

ORDER GRANTING LEAVE TO FILE  
SECOND AMENDED COMPLAINT

19 THIS MATTER comes before the Court on Plaintiff Mark Williams's Motion for Leave to File  
20 Second Amended Complaint [Dkt. # 50]. For the reasons stated below, the Court GRANTS this motion.

21 **Background**

22 On May 16, 2006, Kitsap County Sheriff's Deputies Ben Herrin and Paul Woodrum responded to a  
23 911 call directing them to a residence. After a confrontation, they ultimately shot and killed a resident, Shane  
24 Williams. This action followed. Plaintiff Mark Williams, the representative of the estate of Shane Williams,  
25 filed his complaint in Pierce County Superior Court on May 13, 2008, suing Kitsap County, Deputy Herrin,  
26 and Deputy Woodrum ("Defendants"). He amended his complaint on June 11, 2008. Defendants served their  
27 answer to the amended complaint of July 7, 2008, and removed the case to this Court on July 9, 2008.  
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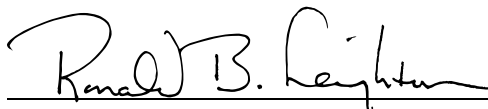
1 Plaintiff now seeks to file a second amended complaint to clarify facts upon which his claims rest, state  
2 the federal court's jurisdictional basis, correct typographical and scrivener's errors, and assert additional bases  
3 supporting his request for damages premised on pain and suffering as well as on disruption of his familial  
4 relationship with Shane Williams. [Dkt. # 50].  
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6 **Discussion**

7 Federal rule of Civil Procedure 15(a) permits a party to amend its pleading with leave of the court,  
8 which "shall be freely given when justice so requires." The strong policy of deciding cases on the merits  
9 counsels strongly in favor of granting leave. *See DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th  
10 Cir. 1987). Factors that counsel against leave to amend include undue prejudice to the opposing party, bad  
11 faith, undue delay, futility of amendment, and the repeated failure to cure deficiencies by amendments  
12 previously allowed. *Eminence Capital, LLC, v. Aspeon Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing  
13 *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The factor of prejudice to the opposing party carries the greatest  
14 weight, and the party opposing amendment "bears the burden of showing prejudice." *Id.*  
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16 Here, the opposing party has not responded to the plaintiff's motion seeking leave to amend.  
17 Regardless, the defendants would not face prejudice because Plaintiff's second amended complaint seeks the  
18 same relief based on the same facts as the first amended complaint; it merely adds another cause of action  
19 under the Fourteenth Amendment, corrects minor errors, and asserts a jurisdictional basis for the suit.  
20 Therefore, the court GRANTS Plaintiff's Motion for Leave to File Second Amended Complaint.  
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22 Dated this 14<sup>th</sup> day of May, 2009.

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25 RONALD B. LEIGHTON  
26 UNITED STATES DISTRICT JUDGE  
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