

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM, individually and as father to  
CHILD A and CHILD B,

**PLAINTIFF**

**-against-**

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM;  
BLUMA TENNENBAUM; DAVID RUBENSTEIN;  
KIRYAS JOEL COMMUNITY AMBULANCE  
CORPORATION; ATTY. MARIA A. PATRIZIO;  
CHILDREN'S RIGHTS SOCIETY, INC;  
ATTY. KIM PAVLOVIC; ATTY JOHN FRANCIS X.  
BURKE; COUNTY OF ORANGE ; CHRISTINE BRUNET;  
ATTY. STEPHANIE BAZILE; DAVID HOLLANDER;  
MIRIAM TEITELBAUM; JOHN DOES 1 THROUGH 95;  
JANE DOES 1 THROUGH 20,

**DEFENDANTS**

**CIVIL ACTION NO.  
12 CV 02858 (VB)**

**SECOND MOTION  
FOR LEAVE TO FILE  
MODIFIED SECOND  
AMENDED AND  
SUPPLEMENTAL  
COMPLAINT**

PLAINTIFF JACOB TEITELBAUM, appearing Pro Se, seeks leave to file the attached modified second amended and supplemental complaint (the "modified SASC") (docket #178) which asserts new, but related causes of action based on occurrences and events that have

happened subsequent to the filing of the previously submitted first amended complaint (the "FAC"), which is sought to be supplemented pursuant to FRCP Rule 15 (a)(2) and Rule 15(d).

The supplemental pleadings set forth new assertions, new facts and new causes of action in the modified SASC, that are new and independent, and have never been asserted before, nor addressed to in the prior motions to dismiss the original complaint, and were never opposed by any Defendant, as this is the first time the Plaintiff has asserted them.

The supplemental pleadings set out plausible concrete facts and causes of action in the modified SASC that on their own, and/or in conjunction with the originally stated causes of action and facts, present the case in a different way, and reflects the prior causes of action in a better and different light and can withstand any motion to dismiss.

Plaintiff further seeks leave to file the modified SASC in order to reflect the U.S.C. §1983 and §1985 conspiracy claims by showing a meeting of the minds of the Defendants and by showing a clear pattern of their intent to harm the Plaintiff and to interfere with his freedom and Civil Rights, which would be better reflected in light of the new facts set forth in supplemental pleadings.

Plaintiff also seeks leave to file the modified SASC so as to amend and supplement the FAC as to all the Defendants to demonstrate that his claims are independent of the prior Family Court action, and independent of any prior rulings or actions by or in any state court. Such amendment and supplemental pleadings will show clearly how the Defendants, acting in concert and separately, have, by a meeting of the minds, conspired to harm Plaintiff, also using the judicial system as a cover up for their unlawful acts that were performed under color of law.

Plaintiff further requests to be permitted to amend his claims by filing the modified SASC pursuant to the applicable laws granting this Court the powers and jurisdiction to allow such filing. Plaintiff asserts that allowing him to supplement the FAC with the new facts and assertions, and allowing the Plaintiff to further amend the FAC by filing the supplemental pleadings set out in the modified SASC to cure any defects in light of this Court's February 11, 2013 memorandum decision is fully consistent with the text and intent of FRCP Rule 15 (a)2 and Rule 15(d).

As explained below, Plaintiff meets the standards for the grant of leave to file an amended and supplemental complaint, and justice would be served by allowing Plaintiff to litigate the merits of the dismissal of his original complaint against some of the Defendants in this action rather than being required to initiate a new proceeding.

## **ARGUMENT**

### **The Grant of Leave to File an Amended and Supplemental Complaint to Assert Additional Causes of Action Would Promote the Objectives of the Federal Rules and Facilitate a Disposition of this Matter on the Merits.**

#### **1. Plaintiff meets the standard for filing an amended complaint.**

Pursuant to recently amended Rule 15 of the Federal Rules of Civil Procedure, a party can amend its original pleading as a matter of course within twenty-one days after serving the original complaint or from the opposition's response. Fed. R. Civ. Pro. 15(a)(1)(A)-(B). If the twenty-one day time period to amend as a matter of course expires, a party may still amend the complaint with either the permission of the opposing party or leave of court. Fed. R. Civ. Pro. 15(a)(2). The Supreme Court has directed that "Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Leave should be granted unless certain circumstances exist, including the

moving party's undue delay, bad faith, or dilatory motive, or where the amendment is futile, unnecessary, or prejudicial. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 996) (quoting *Foman*, 371 U.S. at 182). While the decision to grant or deny leave to amend is within the trial court's discretion, refusal to grant leave without a justifying reason is an abuse of discretion and "inconsistent with the spirit of the Federal Rules." *Foman*, 371 U.S. at 182.

Delay is not sufficient justification to deny an amendment where there is no prejudice to the opposing party and no statute of limitations has run. *Caribbean Broad Sys. v. Cable & Wireless PLC*, 148 F.3d 1080, 1084 (D.C. Cir. 1998).

The opposing party bears the burden of persuading the court to deny leave to amend. *Nwachukwu v. Karl*, 222 F.R.D. 208, 211 (D.D.C. 2004). Amendment of the original complaint serves to promote judicial expediency, particularly where, as here, the amendment pertains to recent actions of the Defendants and new transactions that have occurred as a part of their continued, persistent efforts on the issue underlying the original complaint. *See Natural Resources Defense Council v. Evans*, 2004 U.S. Dist. LEXIS 20122, at \*13-14 (N.D. Cal. 2004) ("[A]mendment of the complaint will in fact obviate delay.... This would be more efficient than requiring all parties to start from the beginning with a new lawsuit ...").

In the present case, none of the circumstances supporting denial of leave to amend exist. There has been no undue delay, bad faith, or dilatory motive, and the amendment is not futile, unnecessary, or prejudicial. Furthermore, the amendment is based upon a change of circumstances precipitated by the actions of Defendants.

Plaintiff's proposed modified second amended and supplemental complaint alleges new causes of action based on the changed circumstances of Defendants PEER's proposed amended

and supplemental complaint alleges new causes of action based on the changed circumstances of Defendants' decision to deny the Plaintiff his fundamental rights, as well as his legal right to pursue this action. Granting leave to amend the FAC will also further the purpose of the Federal Rules by facilitating an adjudication of this matter on the merits.

**2. Plaintiff meets the standard for filing a supplemental complaint.**

A party may file a supplemental pleading when merited by an event that occurs after the date of the original pleading. Fed. R. Civ. Pro. 15(d). The party seeking to make the supplemental pleading must make a motion and provide reasonable notice. *Id.*<sup>2</sup>

The purpose of the Federal Rules and provisions such as 15(d) is to "secure the just, speedy, and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986), quoting Fed. Rule Civ. Proc. 1. *See also Foman*, 371 U.S. at 181-82 (articulating the purpose of the Federal Rules as to dispose of cases on the merits rather than on procedural technicalities). Much like motions to amend complaints, motions to file supplemental pleadings "are to be 'freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any of the other parties to the action.'" *Hall v. Cent. Intelligence Agency*, 437 F.3d 94, 101 (D.C. Cir. 2006), quoting 6A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1504, at 186-87 (2d ed. 1990). *See also Wildearth Guardians v. Kempthorne*, 592 F. Supp. 2d 18, 23 (D.D.C. 2008) (quoting *Willoughby v. Potomac Elec. Power Co.*, 100 F.3d 999, 1003 (D.C. Cir. 1996) (noting that leave to supplement under Rule 15(d) "should be freely given unless there is a good reason, such as futility, to the contrary").

Here, the proposed modified SASC pertains to events that arose after the original filing. Grant of leave to file the modified SASC will promote the economic and speedy disposition of the entire controversy between the parties and will not cause undue delay or prejudice Defendants' rights.

Nor would supplementation be futile. Even though this Court has granted the Motions to Dismiss filed by some of the Defendants named in this action on the ground that the Plaintiff's claims against them "would be dismissed under the Rooker Feldman Doctrine" and/or "for failure to state a claim" against them; however, the Supreme Court instructs that the supplemental filings may serve to cure deficiencies with subject-matter jurisdiction. *Matthews v. Diaz*, 426 U.S. 67, 75 (1976). Also, see *Haines v. Kerner*, 404 U.S. 519 (1972) and *Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085 (2<sup>nd</sup> Cir. 1993).

### CONCLUSION

The Court should grant Plaintiff leave to provide a supplemental pleading to assert new, but related causes of action, against all the Defendants, and to facilitate an expedient resolution to this matter. Plaintiff respectfully requests the Court grant leave to file the attached modified SASC, and to allow the Plaintiff time as needed, and if necessary, to comply with the procedures as well as directions of this Court and the requirements of law.

Respectfully Submitted,



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Dated; Monroe, New York  
May 9, 2013