

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PRISON LEGAL NEWS, a Project of
the Human Rights Defense Center,

Plaintiff,

-V-

Case No. 11-cv-13460-DPH-MAR
Hon. Denise Page Hood

LIVINGSTON COUNTY SHERIFF
BOB BEZOTTE, individually and
officially, and LIVINGSTON COUNTY,

Defendants.

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**MOTION FOR LEAVE TO FILE PLAINTIFFS
SUPPLEMENTAL COMPLAINT
AND
BRIEF IN SUPPORT**

Pursuant to Fed. R. Civ. P. 15(d), Prison Legal News (PLN) respectfully requests leave to file a supplemental complaint, and states the following in support:

1. Pursuant to local court rules, concurrence was sought; however, Defendant has neither concurred nor denied.
2. The standard for granting leave to file a supplemental complaint under Rule 15(d) is the same as the standard for granting leave to file an amended complaint under Rule 15(a). *See Glatt v. Chicago Park District*, 87 F.3d 190, 194 (7th Cir.1996).

3. Fed.R.Civ.P.15(a) mandates that leave to amend “be freely given when justice so requires.”
4. In *Forman v. Davis*, 371 U.S. 178 (1962), the Supreme Court offered several factors for district courts to consider in deciding whether to grant a motion to amend under Rule 15(a). The leave sought should, as the rules require, be freely given in absence of any of the following factors:
 - a) undue delay
 - b) bad faith or dilatory motive on the part of the movant
 - c) repeated failure to cure deficiencies by amendments previously allowed
 - d) undue prejudice to the opposing party by virtue of allowance of the amendment
 - e) futility of amendment
5. The court has “broad discretion” in ruling on a request to supplement the complaint. *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir.1988).
6. Rule 15(d) permits the filing of a supplemental complaint when there is a cause of action that arises after the original complaint was filed. *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir.1998) (internal quotations omitted).

7. “The purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible by allowing the addition of claims which arise after the initial pleadings are filed.” *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co., Inc.*, 668 F.2d 1014, 1057 (9th Cir.1982).
8. Plaintiff asks the Court to grant this motion, and states the following reasons in support:
 - a) Granting Plaintiff leave to file this supplemental complaint will require a modification of the scheduling order to extend discovery for 30 days only to complete deposition and an entry on land, but it will not delay trial or trial related matter. Extended discovery would be limited to the claim in the supplemental complaint.
 - b) There is no bad faith or dilatory motive on the part of Plaintiff because the facts supporting this supplement occurred in December of 2013.
 - c) Plaintiff has not repeatedly failed to cure deficiencies with other amendments
 - d) Defendants will not be unduly prejudiced by the filing of this supplemental complaint.

e) Plaintiff's supplement is not futile. Plaintiff seeks to file a supplemental complaint because events have occurred (See attached supplemental complaint) since plaintiff filed its original complaint. Such events are directly related to the violations alleged in the complaint filed on August 9, 2011.

9. Fed. R. Civ. P. 15(a)(2) provides in pertinent part, "[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

10. The interests of justice will be served by this Court hearing all of the allegations contained in the complaint and supplemental complaint at one trial.

11. In the case at bar, there exists no good reason to deny Plaintiff's motion for leave to file a Supplemental Complaint.

WHEREFORE, Plaintiff respectfully requests this Court grant his motion for leave to file a first supplemental complaint complaint.

Respectfully submitted,

/s/ Daniel E. Manville
Daniel E. Manville (P39731)
Director, Civil Rights Clinic

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PROOF OF SERVICE

I, Daniel E. Manville certify, under penalty of perjury, that on 1/10/2014, I caused a copy of the above document to be served by the ECF system on Defendant CMS's Attorney.

/s/ Daniel E. Manville
Daniel E. Manville