

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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CIV -02-0170 MV/LFG

ANTHONY J. SANDOVAL,  
  
Plaintiff,

v.

JAMES LOPEZ, PETER KOEPPE,  
PHILLIP MARES, NEW MEXICO  
CORRECTIONAL DEPARTMENT,  
  
Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT  
ADDING OTHER DEFENDANTS AND PLAINTIFFS AND CLASS  
ALLEGATIONS, AND SEEKING REMEDIAL ORDERS AND OTHER RELIEF**

I. INTRODUCTION

Plaintiff Anthony Sandoval's motion to amend his complaint to add class action allegations should be granted. Mr. Sandoval, whom the defendants have diagnosed with several mental disorders, filed his complaint *pro se* in federal court on February 12, 2002. The defendants filed an answer on May 31, 2002. After that time, Mr. Sandoval retained counsel to represent him regarding the numerous violations of his federal rights occurring in the Special Control Facility ("SCF") in which the Department of Corrections ("DOC") has incarcerated him. On October 21, 2002, counsel for Mr. Sandoval filed a separate case in state court as a class action on behalf of Mr. Sandoval, five other named plaintiffs, and all similarly situated individuals. That case is styled *Ayers et al. v. Perry et al.*, No. CIV -02-1438 BB/WWD. The class action seeks damages for Mr. Sandoval and the five other named plaintiffs, as well as institutional changes on behalf of the proposed class. Counsel did not learn until recently that the *pro se* matter had been filed.

The *Ayers* proposed class action includes allegations regarding the very same violations of Mr. Sandoval's federal rights which are the subject of the instant case and seeks, *inter alia*, many of the same remedies sought herein. Both this case and *Ayers* involve constitutional challenges to the conditions of extreme sensory deprivation and social isolation in the SCFs operated by the DOC, particularly as those conditions affect prisoners like Mr. Sandoval, who have mental disabilities. The proposed Amended Complaint is entirely congruent with Mr. Sandoval's original *pro se* complaint and would add other claims on Mr. Sandoval's behalf, as well as class action allegations based on the conduct and practices of the DOC and various agents thereof.

## II. LEGAL ARGUMENT

Federal Rule of Civil Procedure 15(a) provides that where an answer to a complaint has been filed "a party may amend the party's pleading only by leave of court . . . and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). A motion for leave to amend a complaint may be denied "when there is undue delay, bad faith, dilatory motive, undue prejudice to opposing party, or when the amendment would be futile. *Bethany Pharmacal, Inc. v. QVC, Inc.*, 241 F.3d 854, 861 (7<sup>th</sup> Cir. 2001). If there is no "undue prejudice to the opposing party by virtue of allowance of the amendment" then "leave should, as the rules require, be 'freely given.'" *Forman v. Davis*, 371 U.S. 178, 181 (1962).

In the instant case, the Defendants will suffer no undue prejudice in adding class action allegations. Defendants are already received fair notice that the conduct pled in the complaint could include class action and injunctive relief. In Mr. Sandoval's complaint against the "New Mexico Correctional Department", he made allegations that the NMCD "deliberately permitted a *pattern of excessive force*" [Italics added] *Sandoval February 12, 2002 Complaint*, Pg. 5, ¶ 24. The Plaintiff further pled in his complaint that the DOC "has instituted a *custom* to encourage all

its employees to use excessive force against inmates 'persons' including the Plaintiff." [Italics added] *Sandoval Complaint*, Pg. 6, ¶ 29. In addition, Plaintiff stated that the DOC "did not effectively supervise and prohibit the other Defendants' use of excessive force against the Plaintiff and other inmates (person)(s)." [Italics added] *Sandoval Complaint*, Pg. 7, ¶ 34. The complaint further stated, in relation to other inmates, that this practice has been "*longstanding, pervasive, well-documented, and expressly noted by prison officials in the past.*" [Italics added] *Sandoval Complaint*, Pg. 7, ¶ 35. Additionally, the "Request for Relief" in Mr. Sandoval's *pro se* complaint sought, in addition to actual damages, "future medical costs; and treble punitive damages; and any other relief deemed just and proper." *Sandoval Complaint*, Pg. 6. Under these circumstances, the Defendants had fair notice that this case involves alleged systemic violations of the federal rights of many residents of the SCFs and that the facts regarding similar violations of the federal rights of other prisoners are at issue in the instant case.

Additionally, this case is still in its early stages. Mr. Sandoval received his initial production of discovery documents from the DOC within the past month and no dispositive motions have yet been filed. There has been no undue delay, bad faith or dilatory motive on Plaintiff's part and no repeated failure to cure deficiencies. Therefore, allowing leave to amend will not cause the defendants undue prejudice. In fact, allowing both cases to be combined in the Amended Complaint would increase the efficiency of the cases.

In a very recent case with similar facts, the court in *Lopez v. City of Chicago et al*, 2002 WL 31415767 (N.D. Ill.), granted a Plaintiff's request to amend his individual complaint to add class action allegations. The plaintiff sought to amend his complaint to make class action allegations against the City of Chicago for detaining people after arrest for more than forty-eight hours. In determining to grant the motion, the Court found that the class action allegations arose

out of the same conduct or occurrence as the individual claim; defendants were on 'fair notice' of the class claim; and that the addition of the class action would not cause the defendants prejudice. *Lopez v. City of Chicago* at 2. The Court based its finding on the fact that the claims were the based upon the City of Chicago's "policy," of detaining arrestees and that policy was "in violation of the individual's Constitutional rights." *Lopez* at 2. Mr. Sandoval has made claims based on the DOC's practices and policies, pleading that the DOC "has instituted a custom to encourage all its employees to use excessive force" *Sandoval Complaint*, Pg. 6, ¶ 29; and "deliberately permitted a pattern of excessive force" *Sandoval Complaint*, Pg. 5, ¶ 24. Also, as in *Lopez*, Mr. Sandoval's case is still in the initial stages, with discovery just begun, and will not case the defendants more burden or expense. The possibility that a party's exposure to liability might be increased does not constitute prejudice. Rather it is an unavoidable result when amendments are granted. *Adair v. Hunt Int'l. Resources Corp.*, 526 F.Supp.736, 739 (N.D. Ill. 1981). As in *Lopez*, the plaintiff's motion to amend to add class action allegations, in this case, should be granted.

Even the cases in which amendments to add class action allegations were not permitted support the principle that such a motion should be freely granted. Very strong facts are required to justify such a denial. In *Lusted v. San Antonio Independent School District*, 741 F.2d 817 (5th Cir. 1984), the plaintiff's motion to amend to add class action allegations was denied where the motion was made six months after a trial on the merits and two months after the district court had issued its memorandum opinion and order, violating the ten day deadline in Rule 59(e). In *Lusted*, the individual action "neither showed nor alleged that the suit met the prerequisites of a class action and she prayed for relief solely on her own behalf" *Lusted* at 821.

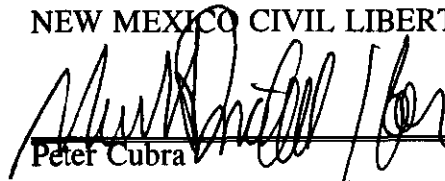
In the instant case, Mr. Sandoval has raised the violations of the rights of other inmates. He stated that defendants use of excessive force against the Plaintiff *and other inmates* (person)(s).” [Italics added] *Sandoval Complaint*, Pg. 7, ¶ 34. The Defendants have demonstrated their awareness of the allegations made on behalf of similarly situated inmates. in the *Defendant’s Answer*, they stated that the “Plaintiff lacks standing to assert claims for injuries sustained by other inmates as the complaint purports to do.” *Defendant’s Answer*, Pg. 6, ¶ 13. In *Lusted*, the Defendant’s were not put on notice because the facts and evidence pled was insufficient. Furthermore, they would not grant an “eleventh hour motion for class certification.” *Lusted* at 821. The motion in the present case is being made at the beginning of the case, and the defendants have notice of potential class action allegations. Because the instant motion to amend to add class allegations in this case does not raise any of the concerns regarding notice, timeliness, prejudice or fairness to the defendants as in *Lusted*, the motion to amend should be granted.

### III. CONCLUSION

For the reasons set forth in this memorandum and the motion filed herewith, the court should enter its ordering permitting the filing of the Amended Complaint in this cause. Alternatively, the Court should grant the motion to consolidate case No. CIV -02-1438 BB/WWD with this action.

Respectfully submitted,

NEW MEXICO CIVIL LIBERTIES FOUNDATION



Peter Cubra

122 Tulane Drive, S.E.

Albuquerque, New Mexico 87106

(505) 256-7690

ROTHSTEIN, DONATELLI, HUGHES,  
DAHLSTROM, SCHOENBURG & FRYE, LLP  
Mark H. Donatelli  
1215 Paseo de Peralta  
Post Office Box 8180  
Santa Fe, NM 87504-8180  
(505) 988-8004

Lawrence Kronen  
122 Tulane Drive, S.E.  
Albuquerque, New Mexico 87106  
(505) 256-7690

Edwin Macy  
Morgan Law Office, Limited  
500 Tijeras, NW  
Albuquerque, New Mexico 87102  
(505) 842-1905

Nancy Simmons  
122 Tulane Drive, S.E.  
Albuquerque, New Mexico 87106  
(505) 232-2575

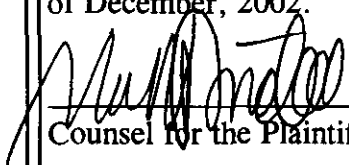
Cooperating Attorneys for the New Mexico Civil Liberties  
Foundation

Philip B. Davis  
Co-Legal Director, American Civil Liberties Union  
of New Mexico  
814 Marquette, N.W.  
Albuquerque, New Mexico 87102  
(505) 242-1904  
*Attorneys for the Plaintiff and the Plaintiff Class*

**CERTIFICATE OF SERVICE:**

I hereby certify that a copy of the foregoing  
pleading was mailed by first class U.S. mail  
to Ms Ida Lujan, counsel for the defendants  
herein, and to Robert Tabor Booms,

counsel for the Defendants in *Ayers et al.*  
v. *Perry et al.*, on this 20<sup>th</sup> day  
of December, 2002.

  
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Counsel for the Plaintiff