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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 LYCURGAN, INC., a California  
14 corporation, d/b/a Ares Armor,

15 Plaintiff,

16 vs.

17 B. TODD JONES, as Director of the  
Bureau of Alcohol, Tobacco,  
18 Firearms, and Explosives, EARL  
GRIFFITH, an individual,  
19 UNKNOWN NAMED  
TECHNOLOGIST, an individual,  
20 UNKNOWN NAMED AGENTS I-  
VII, individuals, and DOES I-XI, in  
21 their individual capacities.

Case No.: 14-cv-00548-JLS-BGS

**AMENDED MEMORANDUM OF POINTS**  
**AND AUTHORITIES IN SUPPORT OF**  
**MOTION FOR LEAVE TO FILE**  
**SUPPLEMENTAL/AMENDED**  
**COMPLAINT PURSUANT TO FEDERAL**  
**RULES OF CIVIL PROCEDURE SECTION**  
**15(d)**

Hon.: Judge Janis L. Sammartino  
Dept.: 4A  
Date: October 30, 2014  
Time: 1:30 P.M.

**AMENDED MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PLAINTIFF’S MOTION FOR LEAVE OF COURT  
TO FILE AN AMENDED/ SUPPLEMENTAL COMPLAINT**

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1 **I. INTRODUCTION**

2 The original complaint in this action stems from Defendant's agents' threats to raid  
3 Plaintiff Lycurgan, Inc.'s ("Lycurgan") businesses. Defendant's agents informed  
4 Lycurgan's CEO, Dimitri Karras, that agents of the Bureau of Alcohol, Tobacco,  
5 Firearms, and Explosives ("BATFE") would raid Lycurgan unless Lycurgan turned over  
6 its unfinished lower receiver parts and confidential customer list. In response, Lycurgan  
7 filed the instant action for declaratory judgment that unfinished lower receivers are not  
8 "firearms," or otherwise contraband. Plaintiff also sought a temporary restraining order  
9 and injunctive relief forbidding the BATFE and/or its officers, agents, servants, and  
10 employees from seizing Lycurgan's inventory and customer list.

11 A few days later, Defendants obtained a search warrant and raided Lycurgan,  
12 seizing numerous lawfully owned business inventory and unnecessarily damaging the  
13 stores. The seizure of Lycurgan's inventory and customer list, property damages, and  
14 publicity of the raid devastated Lycurgan's business. Lycurgan spent substantial time and  
15 money recovering some, but not all, of its seized belongings from Defendant's agents.  
16 Lycurgan also instituted an action against the Government to unseal the search warrant  
17 affidavit. After approximately five months, Lycurgan prevailed and the Government  
18 unsealed the affidavit.

19 The affidavit disclosed misrepresentations, omissions, and a lack of probable  
20 cause, which formed the basis of some of the claims in the supplemental/amended  
21 complaint ("Supplemental Complaint"). Lycurgan promptly began working on the  
22 Supplemental Complaint and proposed same within the time allotted by the Court. All  
23 the claims relate back to the initial filing of this action. Also, Lycurgan did not cause any  
24 undue delay or file the Supplemental Complaint with any dilatory motive.

## II. PROCEDURAL AND FACTUAL BACKGROUND

On March 11, 2014, Plaintiff Lycurgan, Inc. (“Lycurgan”) filed the initial complaint in this case for deprivation of Civil Rights against the BATFE, styled as *Lycurgan, Inc. v. B. Todd Jones*. Plaintiff then sought a declaratory judgment that its “EP Arms unfinished lower receiver” is not a firearm. Plaintiff also sought a temporary restraining order and injunctive relief forbidding the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”) and/or its officers, agents, servants, and employees from seizing Lycurgan’s EP Arms unfinished lower receivers and customer list. Defendants did not, and have not, filed an answer to the original complaint. [McMillan Decl. ¶ 3.]

On March 11, 2014, Judge Sammartino, District Judge for the District Court for the Southern District of California, granted Lycurgan’s request for a temporary restraining order. [Id. ¶ 4.]

On March 12, 2014, an ATF agent appeared at Plaintiff’s office with the stated purpose of taking possession of Plaintiff’s unfinished lower receivers and the customer list for those customers that had purchased the EP Arms unfinished lower receivers. [Id. ¶ 5.] At that time, Plaintiff caused the ATF to be served with a copy of the Court’s order issued on March 11, 2014. [Id.]

On March 14, 2014, the United States Attorney’s Office filed an ex parte application challenging the temporary restraining order. [Id. ¶ 6.] Paul J. Ware, the Division Counsel for the Los Angeles Field Division, BATFE supported the ex-parte application with his unverified statement referring to the EP Arms unfinished receivers as both “receivers” and “firearms.” [Id.]

On the same day, Judge Sammartino ruled on the United States’s ex parte application, stating in part: “the Court’s March 11, 2014 TRO DOES NOT ENJOIN

1 lawful criminal proceedings, including the application for or lawfully executed seizure of  
2 evidence and contraband pursuant to a search warrant issued by a sworn United States  
3 Magistrate Judge pursuant to Federal Rule of Criminal Procedure 41 . . .” [McMillan  
4 Decl. ¶ 7.]

5 On or about March 14, 2014, proposed Defendant Unknown Named Agent 1  
6 submitted an affidavit to the Honorable Bernard G. Skomal of this Court for the purpose  
7 of applying for a search warrant (hereinafter referred to as “Warrant”) authorizing the  
8 search of Lycurgan’s four business facilities, all located in San Diego County, California.  
9 [Id. ¶ 8.] Magistrate Skomal relied upon the statements of Unknown Named Agent 1  
10 within the affidavit in making his decision to issue the search warrant.

11 On March 15, 2014, ATF agents conducted their raid. [Id. ¶ 9.] Agents of the  
12 BATFE entered the premises of Plaintiff Lycurgan’s four separate facilities, located at:  
13 (1) 206/208 N. Freeman Street, Oceanside, (2) 416 National City Blvd., National City,  
14 California, (3) 180 Roymar Street, Oceanside, California, and (4) 2420 Industry,  
15 Oceanside, CA. The raid was executed pursuant to the Warrant. [Id.]

16 During the course of the raid at the National City location, the proposed  
17 Defendants Unknown Named Agents II through VII unnecessarily caused property  
18 damage and disarray, confiscated valuable Rudius unfinished pistol frames without  
19 placing the items on the inventory list of seized items, and seized 5,804 unfinished  
20 polymer parts that are not “contraband” and were legally possessed by Lycurgan.

21 The search and seizure of Lycurgan gained substantial public news coverage and  
22 attention. Consequently, there is a cloud over Lycurgan, and some customers are  
23 reluctant to continue engaging in business with Lycurgan. Before the search and seizure,  
24 Lycurgan was a profitable small business. Since the day of the search and seizure,  
25 Lycurgan has been and continues to struggle simply to stay open.

1 Lycurgan seeks to amend or supplement its complaint to account for the new  
2 claims and damages incurred from Defendants' raid of its businesses. [McMillan Decl. ¶  
3 10.]

4 On September 5, 2014, this Court granted Plaintiff's Emergency Ex Parte Motion  
5 for Extension of Time to Seek Leave to File Amended Complaint and further ordered  
6 Plaintiff shall file a motion seeking leave to amend the complaint on or before September  
7 18, 2014. [Id.]

8 On September 18, 2014, Plaintiff filed the supplemental Complaint. [Id. ¶ 11.]  
9 On September 19, 2014, the Court ordered the complaint stricken for failure to comply  
10 with the local rules. Now, Plaintiff submits a revised version of that complaint.

11 **III. LEGAL STANDARD FOR MOTION FOR LEAVE OF COURT TO FILE**  
12 **SUPPLEMENTAL COMPLAINT UNDER FRCP 15(d)**

13 Supplemental pleadings always require leave of court. (*United States v. Hicks*  
14 (D.C. Cir. 2002) 283 F.3d 380, 385.) "On motion and reasonable notice, the court may,  
15 on just terms, permit a party to serve a supplemental pleading setting out any transaction,  
16 occurrence, or event that happened after the date of the pleading to be supplemented."  
17 (Fed. R. Civ. Proc. 15(d).) Rule 15(d) "permits the bringing of new claims in a  
18 supplemental complaint to promote the economical and speedy disposition of the  
19 controversy." (*Keith v. Volpe* (9th Cir. 1988) 858 F.2d 467, 473, collecting cases;  
20 *Cabrera v. City of Huntington Park* (9th Cir. 1998) 159 F.3d 374, 382.) "While some  
21 relationship must exist between the newly alleged matters and the subject of the original  
22 action, they need not all arise out of the same transaction." (*Keith*, 858 F.2d at 473.)  
23 Supplemental pleadings are favored and should be liberally allowed absent a showing of  
24 prejudice to the defendant. (*Id.* at 475, collecting cases.)

1 **IV. ARGUMENT**

2 In determining whether a supplemental or amended complaint should be allowed,  
3 the court may consider factors such as: whether allowing supplementation would serve  
4 the interests of judicial economy; whether there is evidence of delay, bad faith or dilatory  
5 motive on the part of the movant; whether amendment would impose undue prejudice  
6 upon the opposing party; and whether amendment would be futile. (*San Luis &*  
7 *Delta-Mendota Water Auth. v. United States DOI* (E.D. Cal. 2006) 236 F.R.D. 491, 497,  
8 citing *Keith*, 858 F.2d 467, *Foman v. Davis* (1962) 371 U.S. 178, 83 S. Ct. 227, and  
9 *Planned Parenthood of S. Ariz. v. Neely* (9th Cir. 1997) 130 F.3d 400.)

10 Plaintiff Lycurgan filed the original complaint on March 11, 2014. A series of  
11 related transgressions by Defendants ensued, following the filing of the complaint. On  
12 March 14, 2014, Defendant Jones's agents unlawfully obtained a search warrant  
13 ("Warrant") through the use of intentional misrepresentations and omissions. On March  
14 15, 2014, Defendants executed the unlawfully obtained Warrant in an unreasonably  
15 destructive manner. Defendants refused to disclose the Warrant affidavit to Lycurgan, the  
16 victim of the search and seizure.

17 On June 11, 2014, Lycurgan filed a motion to unseal the Warrant affidavit in the  
18 case styled as *In the Matter of the Search of: Ares Armor, 206/208 N Freeman St,*  
19 *Oceanside; Ares Armor, 416 National City Blvd; Ares Armor Warehouse, 180 Roymar St,*  
20 *Suite D; and 2420 Industry, Oceanside, CA*, Case No. 14CV1424 DMS JLB, United  
21 States District Court, Southern District of California. At the conclusion of briefing and  
22 oral arguments by Lycurgan and the Government on this issue, the Government disclosed  
23 a redacted version of the Warrant affidavit On August 14, 2014. The Warrant affidavit  
24 revealed new facts that formed the bases for some of the claims in the Supplemental  
25 Complaint.



1 The Supplemental Complaint relates back to the original claims in this action.  
2 Specifically, Defendants developed a nascent interpretation of Lycurgan's EP Arms  
3 unfinished lower receiver as a "firearm," in direct contradiction to previous  
4 interpretations reported by the BATFE. The BATFE used this nascent interpretation to  
5 unlawfully obtain the Warrant, and conduct an unreasonable search and seizure that  
6 caused significant damages to Lycurgan.

7 Lycurgan did not cause any undue delay. Lycurgan complied with the Court's  
8 September 5, 2014 order that for Plaintiff to file a motion seeking leave to amend the  
9 complaint on or before September 18, 2014. Lycurgan filed its Supplemental Complaint  
10 barely one month after gaining access to the Warrant affidavit, which revealed new facts  
11 to support additional claims against Defendants. The affidavit revealed multiple  
12 misrepresentations, omissions, and a lack of probable cause to search Plaintiff's  
13 businesses. This motion is made in good faith, and the Supplemental Complaint is  
14 supported in both law and fact. (See *San Luis & Delta-Mendota Water Auth.*, 236 F.R.D.  
15 at 500, citing *Miller v. Rykoff-Sexton, Inc.* (9th Cir. 1988) 845 F.2d 209, 214.)

16 In conclusion, supplementation under these circumstances "serves the interest of  
17 judicial economy . . . [by] not having to open a new case, randomly assigning it, going  
18 through the related-case low number analysis, and initiating Rule 16 scheduling . . ."  
19 (Cf. *San Luis & Delta-Mendota Water Auth.*, 236 F.R.D. at 501.) Therefore, the Court  
20 should exercise its broad discretion in permitting Plaintiff Lycurgan to file the  
21 supplemental complaint.

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**V. CONCLUSION**

For the foregoing reasons, Plaintiff Lycurgan, Inc. respectfully request the Court to grant Plaintiff an order for leave to file the attached proposed ‘FIRST AMENDED COMPLAINT FOR DAMAGES; DEPRIVATION OF CIVIL RIGHTS (BIVENS ACTION); INJUNCTIVE AND DECLARATORY RELIEF; JURY TRIAL DEMAND’.

Respectfully submitted:

Dated: September 22, 2014

THE McMILLAN LAW FIRM, APC

/s/ Scott A. McMillan

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