

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

DAVID J. RADICH and LI-RONG RADICH, )

Plaintiffs, )

v. )

Case No. 1:14-CV-20

JAMES C. DELEON GUERRERO, in his )

official capacity as Commissioner of the )

Department of Public Safety of the )

Commonwealth of Northern Mariana )

Islands, and LARRISA LARSON, in her )

official capacity as Secretary of the )

Department of Finance of the )

Commonwealth of Northern Mariana )

Islands, )

Defendants. )

Hearing Date: May 14, 2015

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED  
COMPLAINT**

Plaintiffs David J. Radich and Li-Rong Radich, by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 15 (F.R.Civ.P. 15) and Local Rule 15.1, hereby move the Court for leave to file a Second Amended Complaint.

This motion is based on this notice of motion, the accompanying memorandum of points and authorities, the proposed Second Amended Complaint filed with this motion, and upon any matters brought out at the hearing on this motion.

Dated: April 13, 2015

Respectfully submitted,

By:           /s/ David G. Sigale            
One of the Attorneys for Plaintiffs

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **INTRODUCTION**

Through this motion, Plaintiffs David and Li-Rong Radich seek to amend the First Amended Complaint. (ECF No. 27). David and Li-Rong's Second Amended Complaint, attached to this motion as Exhibit A, clarifies that the Plaintiffs are challenging the ammunition ban, consolidates Count II and Count III (Plaintiffs' FFL claim), and adds a new Fourteenth Amendment equal protection challenge to the Weapons Control Act, among other things. The Plaintiffs' request does not prejudice the Defendants and is well within the Court's discretion.

### **STATEMENT OF FACTS**

1. On March 10, 2015, the Court dismissed David J. Radich and Li-Rong Radich's Complaint without prejudice. ECF No. 26 at 5:11. The Court granted "leave to amend the Complaint to include the handgun import ban and serve process on any necessary parties." ECF No. 26 at 5:15-16. This order appears to preclude substantive revisions to the Complaint other than what the Court expressly permitted in that Order.

2. Since learning of the Court's March 10, 2015 Order, the Plaintiffs determined that the Defendant's opposition to the Plaintiffs' summary judgment motion necessitates amendments the Complaint beyond those authorized in the Court's March 10, 2015 Order.

3. Plaintiffs' counsel contacted the Defendant's attorney to seek a stipulation that would allow Plaintiffs to alter the First Amended Complaint beyond

what was permitted by the Court's March 10 Order. Defendant's counsel declined to consent to the proposed changes.

4. Accordingly, the Plaintiffs complied with the Court's Order and filed a First Amended Complaint on March 21. ECF No. 27. For the purpose of addressing all issues anticipated in this case, including issues already raised by Defendant Deleon Guerrero, the Plaintiffs now seek leave to file a Second Amended Complaint with alterations beyond those permitted in the Court's March 10, 2015 Order.

## ARGUMENT

### **Leave to amend is freely granted.**

5. Federal Rule of Civil Procedure 15(a) states that "[t]he court should freely give leave [to amend] when justice so requires." The Ninth Circuit affirms that Rule 15(a) is to be applied with "extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). Factors justifying denial of a motion for leave to amend include unreasonable delay, dilatory tactics and bad faith, repeated failures to cure deficient pleadings, unreasonable prejudice caused to the party opposing the amendment, and futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Ninth Circuit uses these factors when considering the propriety of a Rule 15(a) motion. *See, e.g., Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387-89 (9th Cir.1990) (considering the *Foman* factors).

**The Court should grant Plaintiffs motion for leave to amend.**

6. The Plaintiffs' proposed amendments are well within the liberal pleading standards adopted by the Ninth Circuit. Through the Second Amended Complaint, the Plaintiffs are: (1) challenging the ammunition ban as it pertains to handguns; (2) adding a new Fourteenth Amendment equal protection claim, based on immigration laws that Defendant Deleon Guerrero raised in his Summary Judgment Response, that is inextricably intertwined with Plaintiffs' Weapons Control Act challenge; (3) merging the Plaintiffs' FFL challenge with Count II; and (4) clarifying that the Plaintiffs are suing the Defendants in their official, and not individual capacities. The Second Amended Complaint also contains a number of other textual edits.

7. There is no prejudice to the Defendants. The bulk of the additions to the proposed Second Amended Complaint concern a Fourteenth Amendment equal protection challenge that arises out of legal arguments advanced by the Defendant Deleon Guerrero in his opposition to the Plaintiffs' summary judgment motion. Although this claim adds a new legal dimension to the lawsuit, it addresses an issue already known and briefed by Defendant Deleon Guerrero. Moreover, because this case is almost purely legal, leave to amend will not generate discovery issues. Accordingly, the Defendant will not be prejudiced if the Court were to permit the amendments in the proposed Second Amended Complaint.

8. These amendments will not cause undue delay. Because the issues

raised in this case are legal issues, they will not create “meaningful case management issues” nor will these amendments “infringe on the efficient adjudication” of this litigation. *C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011) (quoting *C.F. v. Capistrano Unified Sch. Dist.*, 656 F. Supp. 2d 1190, 1195 (C.D. Cal. 2009)).

9. In short, none of the *Foman* factors which support denial of leave to amend are present. The Court should grant the Plaintiffs’ motion for leave to amend.

### CONCLUSION

For the reasons stated above, the Plaintiffs respectfully ask that the Court grant the Plaintiffs leave to file the proposed Second Amended Complaint.

Dated: April 13, 2015

Respectfully submitted,

By:                   /s/ David G. Sigale                    
One of the Attorneys for Plaintiffs

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