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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**GER CHONG ZE CHANG, MAI NOU VANG,
RUSSELL MATHIS, YING SUSANNA VA, and**
all others similarly situated,

Plaintiffs,

v.

**COUNTY OF SISKIYOU and JEREMIAH
LARUE, in his official capacity as Sheriff,**

Defendants.

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CASE NO.: 2:22-cv-01378-KJM-AC

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: September 13, 2024

Time: 10:00 AM

Judge: Kimberly J. Mueller (KJM)

Courtroom: 3

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION 1

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. BACKGROUND 2

III. LEGAL STANDARD..... 3

IV. ARGUMENT 3

 A. The Court Should Grant Plaintiffs Leave to File a Supplemental Complaint. 3

 1. Supplementation Promotes Judicial Efficiency. 4

 2. Supplementation Would Not Cause Undue Prejudice to Defendants..... 5

 3. The Remaining Factors Weigh in Favor of Granting Leave to Supplement
 or Do Not Apply. 5

 B. The Court Should Allow Plaintiffs to File the Supplemental Complaint without
 Superseding the FAC. 6

V. CONCLUSION..... 7

TABLE OF AUTHORITIES

Page(s)

Cases

Foman v. Davis,
371 U.S. 178 (1962).....3

Food & Water Watch, Inc. v. U.S. Env’t Prot. Agency,
2021 WL 1893063 (N.D. Cal. May 11, 2021).....4

Keith v. Volpe,
858 F.2d 467 (9th Cir. 1988)3, 4

Lyon v. U.S. Immigr. & Customs Enf’t,
308 F.R.D. 203 (N.D. Cal. 2015).....3

New Amsterdam Cas. Co. v. Waller,
323 F.2d 20 (4th Cir. 1963)3, 4

Paralyzed Veterans of Am. v. McPherson,
2008 WL 4183981 (N.D. Cal. Sept. 9, 2008)3

Schmaus v. Jacquez,
2012 WL 8009669 (C.D. Cal. Mar. 21, 2012).....6

Williamson v. Sacramento Mortg., Inc.,
2011 WL 4591098 (E.D. Cal. Sept. 30, 2011), *as amended* (Oct. 11, 2011)6

Other Authorities

Civil L.R. 2201, 6

Fed. R. Civ. P. 15(d)1, 3, 4

NOTICE OF MOTION AND MOTION

1
2 **PLEASE TAKE NOTICE THAT** on at 10:00 a.m. on September 13, 2024, or as soon as the
3 parties may be heard before the Honorable Kimberly Mueller in the District Court for the Eastern District
4 of California in Courtroom 3, 15th Floor, 501 I Street, Sacramento, CA 95814, Plaintiffs Ger Chong Ze
5 Chang, Mai Nou Vang, Russell Mathis, and Ying Susanna Va (“Plaintiffs”) will and hereby do move for
6 leave to file a supplemental complaint pursuant to Rule 15(d) of the Federal Rules of Civil Procedure.
7 This motion is supported by the attached memorandum of points and authorities; the attached
8 Supplemental Complaint; the First Amended Complaint (“FAC”); Plaintiffs’ Motion for Preliminary
9 Injunction (“PI Motion”) and the supporting declarations filed contemporaneously herewith; by the
10 pleadings and papers on file; any subsequent briefing; and any evidence and oral argument that may be
11 requested or permitted by the Court.

12 Pursuant to the Court’s Standing Order, Plaintiffs’ counsel reached out to Defendants’ counsel
13 requesting a time to meet and confer on Plaintiffs’ intent to file this motion on both August 2 and August
14 5, 2024. Mr. Donald refused to meet and confer until the week of August 19 due to scheduling conflicts.
15 Given the urgent nature of the preliminary relief Plaintiffs are seeking, Plaintiffs’ counsel requested a
16 timely meet and confer with any of the other attorneys who have appeared on behalf of Defendants and
17 provided a brief written summary of the intended motions, but Defendants’ counsel did not respond.
18 Plaintiffs therefore believe that meet and confer efforts have been exhausted. There are no pending
19 settlement discussions in this matter.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 Plaintiffs seek leave to file a supplemental complaint (“Supplemental Complaint,” attached
23 hereto), pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, setting forth allegations and claims
24 related to Defendants’ recent application of the Siskiyou County Zoning Ordinance to restrict water to
25 Asian Americans. Plaintiffs add these claims now in order to pursue urgent preliminary relief enjoining
26 Defendants from using zoning enforcement to foment another humanitarian disaster for Asian Americans
27 in Siskiyou County. *See* Motion for Preliminary Injunction (“PI Mot.”), filed concurrently herewith.
28 Plaintiffs further request approval from the Court, pursuant to Local Rule 220, to file the Supplemental

1 Complaint as a separate supplement to the First Amended Complaint (“FAC”), rather than a superseding
2 pleading, without retyping the allegations contained in the FAC. As explained below, Plaintiffs make this
3 request in order to avoid raising questions about the pending Motion to Dismiss by altering the allegations
4 in the FAC.

5 **II. BACKGROUND**

6 On August 3, 2022, Plaintiffs filed this action, alleging Defendants Siskiyou County (“County”)
7 and Sheriff Jeremiah LaRue have carried out a campaign to harass and intimidate Asian Americans in
8 Siskiyou County, in violation of the U.S. Constitution and California law, through, for example: (1) racial
9 profiling in traffic stops, (2) the discriminatory enactment of water restrictions, including three water
10 ordinances; and (3) the application of unauthorized liens and threatened foreclosure for unpaid fines and
11 penalties. Dkt. 1. The Complaint sought declaratory and injunctive relief. *Id.* The case was stayed from
12 December 28, 2022, to December 31, 2023, for settlement discussions. Dkts. 19, 24, 29, 32, 35, 38, 43.
13 After the stay was lifted, Defendants filed a motion to dismiss, Dkt. 46, which was mooted prior to being
14 heard when Plaintiffs filed the FAC on February 20, 2024, Dkt. 47. The FAC added facts that predated
15 the filing of the Complaint as well as a request for nominal damages as to the claim challenging the
16 County’s illegal liens. *Id.* On March 5, 2024, Defendants filed an essentially identical motion to dismiss
17 the FAC (“Motion to Dismiss” or “MTD”), Dkt. 52, and oral argument on the Motion to Dismiss was held
18 on May 17, 2024, Dkt. 68. The Motion to Dismiss is still pending before the Court.

19 Following oral argument on the Motion to Dismiss, Plaintiffs’ counsel learned that Defendants
20 had further sought to enforce previously enjoined and now repealed water ordinances, adding to
21 Defendants’ troubling history of violating Court orders. *See* Dkt. 79. In June of this year, Plaintiffs’
22 counsel learned of recent zoning enforcement activity against well owners in and around the Shasta Vista
23 subdivision. Verner-Crist Decl. ¶ 4.¹ Plaintiffs’ counsel investigated this activity, discovered a flurry of
24 recent zoning warnings and citations against well owners, *see* Moua Decl. Exs. A, C–E; B. Yang Decl.
25 Exs. A, B; Vue Decl. Ex. A; Verner-Crist Decl. Ex. A, and now seek to supplement the FAC to enjoin
26

27 ¹ All declaration citations refer to the declarations filed in support of the Motion for Preliminary
28 Injunction filed herewith.

1 Defendants from using the Zoning Ordinance to restrict water access to Asian Americans. Defendants’
2 adoption of this novel interpretation and application of the Zoning Ordinance has a similar—but even
3 more restrictive—effect to the water ordinances challenged in the FAC in that it bars *all* off-parcel
4 distribution of water from the large majority of properties.

5 **III. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 15(d) permits a party, “[o]n motion and reasonable notice, . . . to
7 serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the
8 date of the pleading to be supplemented.” Parties may also bring new claims in a supplemental complaint.
9 *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). The Ninth Circuit has recognized that, as a “tool of
10 judicial economy and convenience[,]” the use of Rule 15(d) is favored. *Id.* As such, supplemental
11 pleadings “ought to be allowed as of course, unless some particular reason for disallowing them
12 appears[.]” *Id.* (quoting *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28–29 (4th Cir. 1963)).

13 “The legal standard for granting or denying a motion to supplement under Rule 15(d) is the same
14 as for amending one under 15(a).” *Lyon v. U.S. Immigr. & Customs Enf’t*, 308 F.R.D. 203, 214 (N.D.
15 Cal. 2015) (quoting *Paralyzed Veterans of Am. v. McPherson*, 2008 WL 4183981, at *25 (N.D. Cal. Sept.
16 9, 2008)). Courts thus consider whether there has been (1) undue delay; (2) bad faith or dilatory motive
17 on the part of the movant; or (3) repeated failure of previous amendments; (4) whether supplementation
18 would cause undue prejudice to the opposing party; and (5) whether supplementation would be futile. *Id.*
19 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Courts also consider (6) whether allowing leave to
20 supplement would promote judicial efficiency, which is the primary goal of Rule 15(d). *Id.*

21 **IV. ARGUMENT**

22 **A. The Court Should Grant Plaintiffs Leave to File a Supplemental Complaint.**

23 Plaintiffs should be permitted to supplement their complaint because leave to supplement should
24 be granted “as of course” absent some particular reason to the contrary, *Keith*, 858 F.2d at 473, and no
25 such reason exists here. Each of the factors considered by courts ruling on a Rule 15(d) motion weighs in
26 favor of allowing supplementation (or does not apply).

1 **1. Supplementation Promotes Judicial Efficiency.**

2 The purpose of Rule 15(d) is to promote judicial efficiency by “enabling a court to award complete
3 relief . . . in one action, and to avoid the cost, delay and waste of separate actions which must be separately
4 tried and prosecuted.” *Id.* (quoting *New Amsterdam Cas. Co.*, 323 F.2d at 28); *see also Food & Water*
5 *Watch, Inc. v. U.S. Env’t Prot. Agency*, 2021 WL 1893063, at *7 (N.D. Cal. May 11, 2021) (“Judicial
6 efficiency is achieved where the entire controversy between the parties could be settled in one action.”)
7 (internal quotation marks omitted). In *Keith*, the Ninth Circuit upheld an order permitting the filing of a
8 supplemental complaint in an action seeking to halt the construction of a freeway until replacement
9 housing for displaced residents was made available. *Id.* at 470. Some of the original plaintiffs and other
10 individuals sought to file a supplemental complaint over a decade after the case was filed and after the
11 parties had entered into a consent decree requiring the provision of replacement housing for certain
12 households. *Id.* The supplemental complaint sought injunctive relief against the City of Hawthorne,
13 which was one of the plaintiffs in the original action. *Id.* The panel concluded that allowing
14 supplementation furthered judicial economy because the original action, consent decree, and supplemental
15 complaint all shared the same goal of ensuring replacement housing. *Id.* at 474, 476.

16 Likewise, here, it would be more efficient to consider in a single action the claims asserted in the
17 FAC and those asserted in the Supplemental Complaint. The FAC challenges the County’s campaign to
18 cut off water to Asian Americans, including through the passage and enforcement of three water
19 ordinances. *See* FAC ¶¶ 21, 123–83, 254–73. The claims Plaintiffs assert in the Supplemental Complaint
20 address the latest iteration of this campaign: Defendants’ use of the Zoning Ordinance to restrict well
21 owners from providing water to Asian Americans. *See* Supp. Compl. Even more so than in *Keith*, it is
22 appropriate to consider Plaintiffs’ additional claims in the same case because they are brought by the same
23 plaintiffs against the same defendants and because Plaintiffs’ original claims have not been resolved.
24 Further, the evidence supporting Plaintiffs’ new claims will substantially overlap with the evidence of
25 Claims One and Six through Nine, alleged in the FAC, because Defendants’ prior conduct and history
26 regarding the water ordinances are relevant to the intent behind the current zoning practices. Allowing
27 the Supplemental Complaint would therefore further judicial efficiency by enabling the Court and parties
28 to “avoid the cost, delay and waste” of a separate action. *See Keith*, 858 F.2d at 473.

1 **2. Supplementation Would Not Cause Undue Prejudice to Defendants.**

2 Allowing the Supplemental Complaint would not prejudice Defendants because Defendants still
3 have ample opportunity to mount a defense to the new claims. First, Plaintiffs’ new claims are closely
4 related to the original claims and seek similar relief. From the Complaint and FAC, Defendants were
5 already on notice of the general nature of Plaintiffs’ claims challenging Defendants’ conduct restricting
6 water access to Asian Americans and that Plaintiffs sought to enjoin that conduct. Moreover, the
7 Complaint and FAC contain allegations regarding the County’s lawsuit against well owner Steve Griset,
8 who provided water to Asian Americans including Plaintiff Mathis. That lawsuit included a claim for
9 violation of the Zoning Ordinance. Defendants were therefore on notice that enforcement of the Zoning
10 Ordinance was one part of the conduct Plaintiffs alleged limited water to Plaintiff Mathis and the Water
11 Subclass. In addition, the discovery is identical or substantially overlaps.

12 Second, the litigation is still in relatively early stages. The Motion to Dismiss is still pending, the
13 parties are still in the early stages of discovery, no dispositive motions have been filed, and no final
14 scheduling order has been issued. Any minor delay for Defendants to respond to the Supplemental
15 Complaint does not justify denial of leave to supplement.

16 **3. The Remaining Factors Weigh in Favor of Granting Leave to Supplement or**
17 **Do Not Apply.**

18 The remaining factors—undue delay, bad faith or dilatory motive, repeated failure of previous
19 amendments, and futility—either support granting leave to supplement or are inapplicable. First, Plaintiffs
20 have not delayed in seeking to supplement the FAC. In early June of 2024, Plaintiffs’ counsel learned
21 that the County had recently escalated enforcement of its Zoning Ordinance against well owners. Verner-
22 Crist Decl. ¶ 4. Since then, Plaintiffs’ counsel have worked diligently to investigate the County’s zoning
23 enforcement and prepare the present motion, the Supplemental Complaint, and the accompanying Motion
24 for Preliminary Injunction and Motion for Provisional Class Certification. Nor have Plaintiffs acted with
25 bad faith or dilatory motive.

26 The final factors—failure of previous amendments to cure deficiencies and futility—are
27 inapplicable. The Court has not dismissed any of Plaintiffs’ claims, so no deficiencies have been identified
28

1 for Plaintiffs to cure. The Supplemental Complaint does not modify Plaintiffs’ original claims, but instead
2 asserts new, viable claims.

3 **B. The Court Should Allow Plaintiffs to File the Supplemental Complaint without**
4 **Superseding the FAC.**

5 Civil Local Rule 220 provides:

6 *Unless prior approval to the contrary is obtained from the Court, every pleading to which*
7 *an amendment or supplement . . . has been allowed by court order shall be retyped and filed*
8 *so that it is complete in itself without reference to the prior or superseded pleading.*

9 (emphasis added). The rule thus contemplates that the Court may grant approval to a party to file a
10 supplemental pleading that does not reproduce allegations contained in an earlier pleading. In doing so,
11 the Court may treat the supplemental pleading as adding to, rather than superseding, the operative
12 pleading. *Cf. Schmaus v. Jacquez*, 2012 WL 8009669, at *2 n.3 (C.D. Cal. Mar. 21, 2012) (construing a
13 request to amend as a supplemental petition “that presents further pleading and supplements, but does not
14 supersede” the operative petition), *report and recommendation adopted*, 2013 WL 1858608 (C.D. Cal.
15 May 2, 2013), *aff’d*, 733 F. App’x 339 (9th Cir. 2018).

16 Plaintiffs request that the Court allow them to file the Supplemental Complaint without re-alleging
17 the facts in the FAC and treat the Supplemental Complaint as supplementing, not superseding, the FAC.
18 Plaintiffs make this request in order to avoid raising questions about the pending Motion to Dismiss by
19 altering the allegations in the FAC. The Supplemental Complaint asserts additional claims relating to
20 Defendants’ zoning enforcement conduct and alleges facts in support of those claims; it *does not* add
21 allegations related to the claims contained in the FAC or modify the allegations contained in the FAC.
22 Because the Supplemental Complaint makes no changes to the claims Defendants moved to dismiss, it
23 has no effect on the pending motion. *Cf. Williamson v. Sacramento Mortg., Inc.*, 2011 WL 4591098, at
24 *2 (E.D. Cal. Sept. 30, 2011), *as amended* (Oct. 11, 2011) (pending motion to dismiss not moot as to
25 claims in amended complaint that were substantially similar to claims in original complaint). The Court
26 therefore can and should decide the pending Motion to Dismiss based on the previously filed First
27 Amended Complaint and motion and response papers.

28 Granting Plaintiffs’ request will further judicial efficiency. The parties have fully briefed the
Motion to Dismiss, argued it before the Court, and now await the Court’s decision. The Supplemental

1 Complaint, if Defendants are so inclined, may be the subject of its own separate motion to dismiss, without
2 altering or otherwise disturbing the status of the pending Motion to Dismiss the FAC. There is no need
3 for the parties to re-brief the arguments for and against dismissal of the claims asserted in the FAC, given
4 the absence of any change to the allegations underlying those claims. This would unnecessarily burden
5 both the parties and the Court.

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court grant the instant Motion
8 for Leave to File a Supplemental Complaint and permit Plaintiffs to file the Supplemental Complaint
9 without reproducing the allegations contained in the FAC and without superseding the FAC.

10
11 Dated: August 8, 2024

Respectfully submitted,

12
13 **AMERICAN CIVIL LIBERTIES UNION**
14 **FOUNDATION OF NORTHERN**
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