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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and her children T.S. and S.S.,

Plaintiffs,

v.

BRADFORD HARCOURT, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, NINUS MALAN, an individual; SALAM RAZUKI, an individual; OLIVE TREE PATIENTS ASSOCIATION, a California corporation; ALLIED SPECTRUM, INC., a California corporation; PRODIGIOUS COLLECTIVES, LLC, a limited liability company; and DOES 1 through 50, inclusive,

Defendants

Case No.: 37-2021-00050889-CU-AT-CTL

Related Case Nos.:

37-2017-00010073-CU-BC-CTL
37-2022-0000023-CU-MC-CTL

PLAINTIFFS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Date: January 30, 2026
Time: 9:00 a.m.
Dept.: 75

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This responds to Defendant Stephen Lake's opposition to Plaintiffs' Motion for Leave to File a Second Amended Complaint. Defendant Stephen Lake's opposition underscores why leave to amend should be granted. Rather than identify any concrete prejudice, Lake relies on procedural nitpicking, mischaracterizations of the record, and an effort to litigate evidentiary issues that are not properly before the Court on a motion for leave to amend.

California law is settled: leave to amend is liberally granted in furtherance of justice, particularly where the amendment narrows the case, rests on the same general set of facts, and does not prejudice the opposing party. The proposed Second Amended Complaint ("SAC") does exactly that. It removes claims previously ruled nonviable, conforms the pleadings to this Court's prior rulings, and aligns the operative allegations with evidence long known to Defendants. No trial date has been set, no discovery cutoff exists, and Lake identifies no cognizable prejudice. Under these circumstances, denial of leave would be an abuse of discretion.

II. CALIFORNIA'S STRONG POLICY FAVORING AMENDMENT CONTROLS

California courts apply a strong policy of liberality in permitting amendments to pleadings. As the Supreme Court has explained, "the general rule of liberal construction of pleadings [citations omitted] and of liberal allowance of amendments [citation omitted] should prevail. *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939. That liberal policy is not merely aspirational; it is enforced through appellate review. In *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, the Court of Appeal issued a writ of mandate compelling the trial court to permit an amended pleading, holding that denial of leave under such circumstances was arbitrary and an abuse of discretion. *Morgan* emphasized that while leave to amend is technically discretionary, "the exercise of this discretion must be sound and reasonable and not arbitrary or capricious," and that "[i]t is a rare case in which a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case." *Id.* at 530–531. Where, as here, there is no trial date and the opposing party cannot articulate concrete prejudice, refusal to permit amendment constitutes reversible error.

Morgan further makes clear that courts should not deny amendment merely because the

moving party could have pleaded the facts earlier or because the amendment strengthens or alters the theory of recovery. The court rejected the notion that a party must assert "each and every cause of action" at the outset of litigation, explaining that absent estoppel or prejudice, withholding a claim or theory does not justify denial of leave. *Id.* at 531. Critically, *Morgan* held that denial is especially improper where refusal to amend may substantially prejudice the moving party's ability to present its case, while granting leave would not delay trial or impair the opposing party's defense. *Id.* at 530–531. That reasoning applies with full force here: permitting amendment preserves adjudication on the merits, while denial would improperly elevate procedural objections over California's settled policy favoring liberal amendment.

Lake's opposition turns this policy on its head by urging the Court to deny amendment based on purported pleading and evidentiary disputes. That is not the governing standard.

III. THE SAC ALLEGES THE SAME GENERAL SET OF FACTS

An amendment is proper where it relates to the same general set of facts, even if it clarifies, narrows, or reframes the legal theories asserted. "[T]he fact that plaintiff's proposed amendment as the case in hand rests upon a different legal theory… is irrelevant…." *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490. "Instead, the test is whether the two pleadings relate to the same general set of facts." *Id.*

Here, the SAC arises from the same nucleus of operative facts alleged since the inception of the case: the post-mortem transfer of Michael Sherlock's property interests, the alleged use of forged or unauthorized documents, and Defendants' acquisition and disposition of those interests. The SAC does not inject unrelated claims or surprise theories. It removes antitrust and federal-rights allegations and proceeds only on conversion, conspiracy, declaratory relief, and unfair competition and the precise claims this Court previously held *were legally viable*.

Lake's assertion that the SAC "mirrors" the First Amended Complaint is demonstrably false and ignores the narrowing effect of the proposed pleading. In fact, Plaintiffs removed the most complex claims – claims under the Sherman Anti-Trust Act and other federal claims.

IV. LAKE FAILS TO SHOW PREJUDICE, WHICH IS DISPOSITIVE

The focus is on prejudice, not delay, not procedural nitpicking, and not disagreement with the

merits of the proposed amendment, is the dispositive inquiry on a motion for leave to amend. California courts have repeatedly emphasized that the liberal policy favoring amendment gives way only when the opposing party demonstrates *actual, concrete prejudice*. Absent such a showing, denial of leave constitutes an abuse of discretion.

In *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, the Court of Appeal reaffirmed that although trial courts are bound to apply a policy of great liberality in permitting amendments at any stage of the proceedings, that policy may be curtailed only where "inexcusable delay and probable prejudice to the opposing party" are shown. *Id.* at 487. Critically, *Magpali* did not dilute the liberal standard; it enforced it by contrasting circumstances where prejudice was obvious, an amendment sought on the eve of trial that would require new discovery, new witnesses, and a continuance—with the far more common scenario where amendment merely clarifies or refines claims already known to the defendant. Where prejudice is absent, the liberal rule controls.

The converse principle is illustrated in *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739. There, the trial court denied leave to amend on the ground that the plaintiff was attempting to retool his claims after adverse rulings. The Court of Appeal reversed, holding that even if the proposed amendment advanced alternative legal theories or followed prior motion practice, the "better course" was to permit amendment and allow the parties to test legal sufficiency through subsequent motions. Id. at 760–761. The court squarely held that it is an abuse of discretion to deny leave where the opposing party "was not misled or prejudiced by the amendment," and reiterated that it is irrelevant whether the amendment introduces new theories so long as it relates to the same general set of facts. Id. at 761.

Those principles control here. Lake identifies no trial date, no discovery cutoff, no lost evidence, no unavailable witnesses, and no concrete impairment of his ability to defend this case. The proposed SAC does not add parties, expand the factual universe, or inject surprise claims. To the contrary, it narrows the case, conforms the pleadings to this Court's prior rulings, and proceeds only on claims this Court has already held viable. Under *Magpali* and *Atkinson*, the absence of demonstrable prejudice is fatal to Lake's opposition.

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Lake's reliance on the passage of time is legally insufficient. Delay, standing alone, does not constitute prejudice. Courts consistently reject arguments that equate elapsed time with harm, particularly where— as here—defendants have long been aware of the operative facts and the amendment does not alter the fundamental nature of the case. Where the only asserted "prejudice" is that a defendant prefers the case not proceed on a clarified pleading, California law provides no refuge.

In short, this is not the "rare case" justifying denial of leave to amend. It is the paradigmatic case for granting it.

Lake does not, and cannot, make that showing. There is no trial date. There is no discovery cutoff. The SAC does not add new defendants or expand the scope of the case. Courts routinely reject claims of prejudice under these circumstances. As *Hirsa* observed, where a defendant has long been aware of the underlying facts, "[i]t is difficult to understand how such a defendant can be prejudiced" by amendment. 118 Cal.App.3d at 490.

Lake identifies no lost evidence, unavailable witnesses, or impaired defense. His opposition rests entirely on the passage of time, which is not a legally cognizable basis to deny leave to amend.

V. THE RODER AND ARMOROUS REPORTS ARE NOT "NEWLY INVENTED" FACTS

Lake repeatedly characterizes the forensic evidence as newly asserted or strategically delayed. The record refutes that claim.

The Roder forensic reconstruction report was submitted with Plaintiffs' ***May 31, 2024***, Motion to Vacate and incorporated into an amended declaration filed the same date, with the full report attached. The Armorous report was completed in November 2022. These materials have been disclosed, litigated, and referenced well before the present motion.

More importantly, Lake's attempt to challenge the admissibility or weight of these materials is procedurally improper. A motion for leave to amend is not the forum for evidentiary rulings or merits determinations.

VI. PLAINTIFF SUBSTANTIALLY COMPLIED WITH RULE 3.1324

Lake's reliance on California Rules of Court, rule 3.1324(a), elevates form over substance

and ignores the record actually before the Court. Plaintiffs did not merely attach a proposed pleading; they affirmatively disclosed and explained the nature, scope, and purpose of the amendments in multiple ways that fully satisfied the rule's practical objectives.

First, Plaintiffs submitted the proposed Second Amended Complaint as Exhibit 1 and a detailed redline comparison as Exhibit 2, plainly showing every addition and deletion from the prior operative pleading. This allowed the Court and Defendants to immediately identify what changed, what was removed, and what remained the same—precisely the information rule 3.1324 is designed to elicit.

Second, Plaintiffs' supporting declaration went further and expressly described the amendments in narrative form. The declaration explains the procedural history of the case, identifies the specific claims being removed, confirms that no new defendants or causes of action are being added, and explains that the SAC conforms the pleadings to this Court's August 19, 2022, ruling and to forensic and documentary evidence developed after 2023. It also identifies the newly discovered evidence prompting amendment and explains how that evidence bears directly on the surviving causes of action. In short, the declaration tells the Court exactly why amendment is sought and how the SAC differs from the FAC.

That is substantial compliance. Rule 3.1324 does not require ritualistic incantations or hyper-technical formatting where the substance of the amendment is clear. Courts do not deny leave to amend for minor or technical deficiencies where the moving papers make the nature of the amendment readily ascertainable and no prejudice exists. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565. Here, the proposed pleading, the redline comparison, and the sworn declaration together provide more information than the rule requires and eliminate any conceivable uncertainty about the amendments.

Lake does not, and cannot, identify any confusion, surprise, or prejudice arising from Plaintiffs' presentation. His objection rests entirely on a mechanical reading of the rule divorced from its purpose. California law does not reward that approach. Where, as here, the Court and opposing parties can easily discern the scope and effect of the proposed amendment, substantial compliance is sufficient and denial of leave would be improper.

VII. THE SAC PROMOTES JUDICIAL ECONOMY AND ADJUDICATION ON THE MERITS

The SAC advances the core objectives of amendment: clarity, efficiency, and adjudication on the merits. By eliminating claims previously ruled nonviable and conforming the pleadings to the current evidentiary record, the SAC reduces—not increases—the need for future motion practice. Opposing amendment on the ground that it clarifies the case is contrary to California's liberal amendment policy and serves no legitimate purpose.

VIII. REQUEST FOR SHORTENED TIME TO RESPOND

Given Lake's repeated assertion that delay itself constitutes prejudice, Plaintiffs respectfully request that, if leave is granted, that the Court order a shortened deadline for Lake to file a responsive pleading since Lake's counsel has had the proposed SAC for months. This modest measure eliminates any conceivable claim of further delay while allowing the case to proceed efficiently.

IX. CONCLUSION

Lake has failed to meet his burden to show prejudice or any other basis for denying leave to amend. The proposed SAC narrows the case, conforms the pleadings to this Court's rulings, and rests on the same general set of facts long known to Defendants. Under controlling California authority, leave should be granted.

Plaintiffs respectfully request that the Court grant the Motion for Leave to File the Second Amended Complaint and order a prompt deadline for responsive pleadings.

DATED: January 23, 2026

KELLEY | CLARKE, PC

By 

Matthew M. Clarke
Attorneys for PLAINTIFFS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of Collin, State of Texas. I am over the age of 18 years and not a party to this action. My business address is 603 E. Broadway Street, Prosper, Texas 75078. On January 23, 2026, I served the foregoing document described as **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SAC** on the interested parties in this action:

SEE ATTACHED SERVICE LIST

☐ **BY U.S. POSTAL SERVICE:** This document was served by United States mail. I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Highland Village, Texas, in a sealed envelope with postage fully paid.

☐ **BY FACSIMILE:** The document(s) were served by facsimile. The facsimile transmission was without error and completed prior to 5:00 p.m. A copy of the transmission report is available upon request.

BY OVERNIGHT DELIVERY: The document(s) were served by overnight delivery via FedEx. I enclosed the document in a sealed envelope or package addressed to the person(s) and the address(es) above and placed the envelope(s) for pick-up by FedEx. I am readily familiar with the firm's practice of collection and processing correspondence on the same day with this courier service, for overnight delivery.

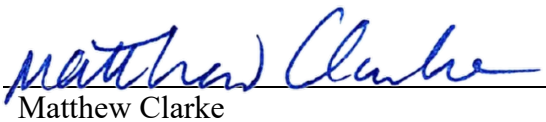
☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY HAND DELIVERY:** The document(s) were delivered by hand during the normal course of business, during regular business hours.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 23, 2026, at Prosper, Texas.



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