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8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 PATRICK STEPHEN DAVIS,
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Plaintiff,

v.

STATE OF NEVADA ET AL.;

Defendants.

Case No.: **3:13-cv-00559-MMD-WGC**

OPPOSITION TO CYNTHIA DAVIS'
MOTION FOR PERMISSIVE JOINDER
AND MOTION TO AMEND

Defendants the State of Nevada, Nevada Board of Parole Commissioners, Nevada Department of Public Safety, Nevada Division of Parole and Probation, Connie Bisbee, James Wright, Bernard Curtis, Claudia Steiber, Natalie Wood, Claudia Cole, Aaron Evans, James Gothan, James Sackett and Nevada Attorney General Catherine Cortez Masto, through their attorneys, CATHERINE CORTEZ MASTO, Attorney General, and LORI M. STORY, Deputy Attorney General, oppose Cynthia Davis' motion for permissive joinder and motion to amend (dkt no. 11) pursuant to Fed.R.Civ.P. 15, 19 and 20 and LR 15-1.

The Defendants' opposition is based on the above-referenced rules of civil procedure, the attached Points and Authorities and all other papers and pleadings filed therein.

I. BACKGROUND

On or about October 4, 2013, Patrick S. Davis, as the sole plaintiff appearing in *pro se*, filed a civil complaint against the aforementioned Defendants alleging violations of The First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, of 42 U.S.C. §§ 1981, 1985, 1986 and 1988 and various state laws. Plaintiff seeks monetary damages including compensatory,

1 punitive and exemplary damages in an amount of at least \$100,000.00. Plaintiff also seeks
2 declaratory and injunctive relief. Defendants moved to dismiss the complaint on various
3 theories including immunity from suit, expiration of the applicable statute of limitations, lack of
4 standing to raise certain claims, and failure to state a justiciable claim. The motion was fully
5 briefed and ready for decision on or about December 4, 2013, when the reply was filed with
6 this Court (dkt. no. 9).

7 On January 29, 2014, Defendants sought a stay of discovery pending resolution of the
8 motion to dismiss (dkt. no. 10) which remains unopposed. On March 10, 2014, Cynthia Davis
9 (Mrs. Davis) filed the instant combined motion for permissive joinder and to amend complaint.
10 This is the Defendants' response to that motion.

11 **II. ARGUMENT**

12 **A. Motions are Fatally Flawed.**

13 Mrs. Davis' combined motions are so vague on their terms as to be fatally flawed. Mrs.
14 Davis' arguments for permissive joinder are misplaced, vague and untimely in consideration of
15 representations made to the Court in the original complaint. Moreover, much of the motion for
16 joinder consists of arguments already put forth by her husband in his opposition to the motion
17 to dismiss. Mrs. Davis's improper reiteration of the Plaintiff's arguments should be
18 disregarded. Mrs. Davis has no standing to argue against dismissal of a complaint to which
19 she is not a party. Her belated attempt to join the action now that Defendants have raised
20 righteous and legally sufficient arguments against the complaint should be rejected by the
21 Court.

22 Finally, Mrs. Davis has failed to comply with the Local Rules of Practice, LR 15-1,
23 which require a moving party seeking to amend a complaint to provide a copy of the proposed
24 amendment with any such motion.

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1 1. Motion for Permissive Joinder.

2 Mrs. Davis moves to join the action under Fed. R. Civ. P. 19, 20 and 21. She requests
3 leave to “join this action based on various causes of action that are similar to or are based on
4 the same or similar arguments and sets of circumstances as Plaintiff 1....” Motion (dkt. no.
5 11), p. 2, lines 21-23 (emphasis added). Mrs. Davis professes to bring her action against
6 Defendants “based on various statutes, directives, Policy and Procedure, custom and usage,
7 and occurrences as applied to her as the spouse of an offender....” *Id.* at 3, lines 2-4. But,
8 Mrs. Davis fails to advise the Court or the Defendants of the causes of action she believes are
9 similar or what “various” statutes, directives, Policy and Procedure, custom and usage, and
10 occurrences she contends have been improperly applied to her.

11 The Federal Rules of Civil Procedure allow for permissive joinder of parties if two
12 specific requirements are met. *Visendi v. Bank of America, N.A.*, 733 F.3d 863, 870 (9th Cir.
13 2013). In cases such as this, the rule requires that each proposed plaintiff assert a right to
14 relief relating to or arising out of the same transaction or occurrence or series of transactions
15 or occurrences pled in the complaint; and second, some question of law or fact common to all
16 parties must arise in the action. Fed. R. Civ. P. 20(a); *id. citing Desert Empire Bank v.*
17 *Insurance Co. of North America*, 623 F.2d 1371, 1375 (9th Cir. 1980); see generally Wright &
18 Miller, *Federal Practice and Procedure: Civil* § 1653.

19 Even if Mrs. Davis had provided some specifics about her claims or interests in the
20 action, the Court should also examine other relevant factors in order to determine whether the
21 permissive joinder of a party will support the principles of fundamental fairness. *Visendi*, 733
22 F.3d at 870; *Desert Empire Bank*, 623 F.3d at 1375.

23 For example, when making a decision whether to allow the permissive joinder of a
24 party, a court should consider such factors as the possible prejudice that may result to any of
25 the parties in the litigation, the delay of the moving party in seeking an amendment to his
26 pleadings to add parties, the motive that the moving party has in seeking such amendment,
27 the closeness of the relationship between the new and the old parties, the effect of an
28 amendment on the court's jurisdiction, and the new party's notice of the pending action. *Id.*

1 Relevant to this motion, the Court should consider the close relationship between Mrs.
2 Davis and the original Plaintiff. This close spousal relationship provided her with ample
3 opportunity to join the action at its beginnings. Additionally, because Mrs. Davis knew of the
4 original claims and the complaint at the time it was filed and because the Plaintiff made
5 representations to this Court that his wife and his daughter were not parties to the action, the
6 timing of this motion raise important questions in evaluating the fairness to the Defendants.

7 Plaintiff and the Movant herein, Mrs. Davis, share a residence and were both present
8 and fully aware of the events alleged in the original complaint at the time the complaint was
9 filed. Thus, if Mrs. Davis had a true interest in the proceedings, she could have and should
10 have joined in the complaint at its inception. Moreover, this apparent change of heart on her
11 part flies in the face of sworn representations made to this Court and to Defendants in the
12 original complaint. Cf. Complaint (dkt. no. 1), p. 26, paragraph 134 (“Plaintiff states that his
13 wife and daughter are not part of this Complaint with him jointly as Plaintiff’s [sic]...”). These
14 factors should weigh heavily against allowing the permissive joinder of Mrs. Davis in this
15 action at this time. Mrs. Davis’ proposed belated entry into the action smacks of bad faith and
16 will prejudice the Defendants who have expended significant resources in opposing the
17 complaint as it was originally filed. Moreover, the petty nature of the claim raised by Plaintiff
18 about the screen-swipe “search” of a cellphone within his residence and under his control
19 permitted by the terms of his lifetime supervision as a sex offender, militates in favor of
20 rejecting the motion to join. Belated joinder of this proposed plaintiff should be soundly
21 rejected.

22 2. Motion to Amend.

23 Mrs. Davis moves to amend a complaint to which she is not a party. The motion should
24 be denied on that basis alone. However, even if she were granted leave to join as a plaintiff in
25 this action, the motion is deficient.

26 “Leave to amend should be granted unless the pleading ‘could not possibly be cured by
27 the allegation of other facts,’ and should be granted more liberally to *pro se* plaintiffs.”
28 *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir.2003) (*quoting Lopez v. Smith*, 203 F.3d 1122,

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1 1130 (9th Cir. 2000). In order to facilitate a rational review of a motion to amend a complaint,
2 Local Rules of Civil Practice (LR) require the moving party to attach a copy of the proposed
3 amended pleading to the motion. LR 15-1. Mrs. Davis has failed to provide a proposed
4 amended complaint and has offered virtually no clue as to what amendments she seeks to
5 make. This deficiency prevents the Defendants from offering cogent arguments against the
6 amendment and the Court from being able to give the motion proper consideration.

7 In addition, the motion is premature given that the Court is currently entertaining the
8 Defendants' motion to dismiss which raises a variety of strong, possibly fatal defenses to the
9 claims raised. At this juncture, it is impossible for either party to know what claims the Court
10 may conclude should be allowed to proceed and which might be dismissed with prejudice or
11 with leave to amend. Rather than grant the pending motion, which is fatally flawed for its lack
12 of the proposed amended pleading, the Court should deny the motion without prejudice to be
13 renewed once the motion to dismiss has been decided. At that time, the Plaintiff will be in a
14 better position to know how to appropriately craft his amended complaint and Defendants will
15 then be afforded a fair opportunity to object, if an objection is appropriate.

16 **III. CONCLUSION**

17 Mrs. Davis, who is not a party to this action, has failed to provide a copy of her
18 proposed amended complaint in conformance with the Local Rules of Civil Practice, thereby
19 preventing the Court and the Defendants from discerning what claims she may wish to amend
20 or add to this action. Mrs. Davis has further failed to provide any specific information about
21 alleged common occurrences or shared claims which would justify granting the motion for
22 joinder. The Court should be leery of such vague representations and should deny these
23 insufficiently supported motions.

24 DATED this 26th day of March, 2014.

25 CATHERINE CORTEZ MASTO
26 Attorney General

27 By: /s/ Lori M. Story
28 LORI M. STORY
Deputy Attorney General
Attorneys for Defendants

