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

10 PATRICK STEPHEN DAVIS,
11 Plaintiff,
12 v.
13 STATE OF NEVADA ET AL.;
14 Defendants.

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

OPPOSITION TO PLAINTIFF'S MOTION
FOR PERMISSIVE JOINDER AND
MOTION TO AMEND

15 Defendants the State of Nevada, Nevada Board of Parole Commissioners, Nevada
16 Department of Public Safety, Nevada Division of Parole and Probation, Connie Bisbee, James
17 Wright, Bernard Curtis, Claudia Steiber, Natalie Wood, Claudia Cole, Aaron Evans, James
18 Gothan, James Sackett and Nevada Attorney General Catherine Cortez Masto, through their
19 attorneys, CATHERINE CORTEZ MASTO, Attorney General, and LORI M. STORY, Deputy
20 Attorney General, oppose Plaintiff's motion for permissive joinder and motion to amend (dkt
21 no. 12) pursuant to Fed.R.Civ.P. 15, 19 and 20 and LR 15-1.

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

24 **I. BACKGROUND**

25 On or about October 4, 2013, Patrick S. Davis, as the sole plaintiff appearing in proper
26 person, filed a civil complaint against the aforementioned Defendants alleging violations of
27 The First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, of 42 U.S.C. §§ 1981,
28 1985, 1986 and 1988 and state and federal law. Plaintiff seeks monetary damages including

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1 compensatory, punitive and exemplary damages in an amount of at least \$100,000.00.
2 Plaintiff also seeks declaratory and injunctive relief. Defendants moved to dismiss the
3 complaint on various theories including immunity from suit, expiration of the applicable statute
4 of limitations, lack of standing to raise certain claims, and failure to state a justiciable claim.
5 The motion was fully briefed and ready for decision on or about December 4, 2013, when the
6 reply was filed with 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). Plaintiff did not oppose the motion. On March 10, 2014,
9 Plaintiff filed the instant motion along with a motion for protective order to preserve evidence
10 (dkt. no. 13) a motion for notice of deficiency (dkt. no. 14) and a motion for discovery plan and
11 scheduling order with special scheduling requested (dkt. no. 15). Also filed that day was a
12 motion for permissive joinder and motion to amend (dkt. no. 11) by Plaintiff's spouse, Cynthia
13 Davis. The Defendants' responses to those various other motions are being filed concurrently
14 herewith.

15 **II. ARGUMENT**

16 **A. Motions are Fatally Flawed.**

17 Plaintiff's combined motions are so vague on their terms as to be fatally flawed. First,
18 Plaintiff has not identified the proposed plaintiffs that might be appropriately joined or the
19 claims which justify such joinder. Second, Plaintiff has failed to comply with the Local Rules of
20 Practice, LR 15-1, which requires a moving party to provide a copy of the proposed amended
21 complaint with any motion seeking leave to amend.

22 1. Motion for Permissive Joinder.

23 Without identifying who the desired additional plaintiffs might be and without identifying
24 what claims those new plaintiffs might raise or have in common with the claims already
25 presented, Plaintiff argues that he should be permitted to join "all additional Plaintiffs based on
26 various causes of action that are similar to or are based on the same or similar arguments and
27 sets of circumstances as the original Plaintiff...." Motion, p. 2. The motion should be denied.
28

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

8 In his motion, Plaintiff has failed to identify the additional plaintiffs that he seeks to have
9 joined in this action and he has not provided the Court with any clear inkling of what common
10 transaction or occurrence the plaintiffs might share or what questions of law or fact the
11 proposed plaintiffs might have in common with the issues presented in his complaint.¹
12 Plaintiff's broad assertion that Defendants have policies that "override[] the conditions as set
13 by the Board of Parole Commissions on Plaintiff, and override[] the United States and Nevada
14 Constitutions on additional Plaintiffs to be joined..." (Motion for Permissive Joinder (Motion), p.
15 8, lines 11-13), makes no sense and fails to provide Defendants or the Court with any notion
16 of who might be proposed by way of "additional Plaintiffs" or why those plaintiffs must join this
17 action.

18 Even if Plaintiff provided some adequate nexus between the unidentified "additional
19 Plaintiffs" and the transactions or occurrences complained of, the Court should also examine
20 other relevant factors in order to determine whether the permissive joinder will support the
21 principles of fundamental fairness. *Desert Empire Bank*, 623 F.3d at 1375.

22 For example, when making a decision whether to allow the permissive joinder of a
23 party, a court should consider such factors as the possible prejudice that may result to any of
24 the parties in the litigation, the delay of the moving party in seeking an amendment to his
25

26 ¹ Defendants acknowledge that, by separate motion, Plaintiff's wife Cynthia Davis seeks joinder in the action and
27 that she is likely one of the "additional" plaintiffs to which Plaintiff refers. See dkt. no. 11. However, as
28 presented, the motion is vague and arguably an attempt to obtain blanket leave from this Court to add other
plaintiffs who may have no direct connection to the specific allegations contained in the complaint but who may
have some tangential connection or grievance with the Defendants due to their status as probation or supervising
officers for sex offenders.

1 pleadings, the motive that the moving party has in seeking such amendment, the closeness of
2 the relationship between the new and the old parties, the effect of an amendment on the
3 court's jurisdiction, and the new party's notice of the pending action. *Id.*

4 Relevant to this motion, the Court should consider the close relationship between the
5 original Plaintiff, Patrick Davis and the one other person currently seeking joinder, Mr. Davis's
6 wife, Cynthia Davis. Mrs. Davis's presumed knowledge of the original claims and the
7 commencement of this action, Plaintiff's original representations to this Court that his wife and
8 daughter were not parties to the action, together with the timing of this motion, raise important
9 questions in evaluating the fairness of granting joinder of additional plaintiffs.

10 According to the complaint and the representations made in the instant motion and Ms.
11 Davis's own motion for permissive joinder (dkt. no. 11), Plaintiff and his wife, Cynthia, the one
12 known party seeking joinder, share a residence and were both present or fully aware of the
13 events alleged in the original complaint at the time the complaint was filed. Thus, if Cynthia
14 Davis had a true interest in the proceedings, she could have and should have joined in the
15 complaint at its inception. Moreover, this apparent change of heart on the part of Mrs. Davis
16 flies in the face of sworn representations made to this Court and to Defendants in the original
17 complaint. *Cf.* Complaint (dkt. no. 1), p. 26, paragraph 134 ("Plaintiff states that his wife and
18 daughter are not part of this Complaint with him jointly as Plaintiff's [sic]..."). These factors
19 should weigh heavily against allowing the permissive joinder of new plaintiffs at this time.
20 Cynthia Davis's proposed late entry into the action smacks of bad faith and will prejudice the
21 Defendants who have expended significant resources in opposing the complaint as it was
22 originally crafted. Joinder of other, unidentified "additional plaintiffs" should be soundly
23 rejected based on Plaintiff's failure to identify those individual or their interests in these
24 proceedings.

25 2. Motion to Amend.

26 Plaintiff also seeks leave to amend his complaint. "Leave to amend should be granted
27 unless the pleading 'could not possibly be cured by the allegation of other facts,' and should
28 be granted more liberally to *pro se* plaintiffs." *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th

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1 Cir.2003) (citation omitted). However, in order to facilitate a rational review of a motion to
2 amend a complaint, Local Rules of Civil Practice (LR) require the moving party to attach a
3 copy of the proposed amended pleading to the motion. LR 15-1. Plaintiff has failed to provide
4 his proposed amended complaint and has, therefore, prevented proper consideration of his
5 motion because neither the Defendants nor the Court know what the proposed amended
6 claims might be.

7 In addition, the motion is premature given that the Court is currently entertaining the
8 Defendants' motion to dismiss. It is impossible for either party to know what claims the Court
9 may conclude should be allowed to proceed and which might be dismissed with prejudice or
10 with leave to amend. Rather than grant the pending motion, which is fatally flawed for its lack
11 of the proposed amended pleading, the Court should deny the motion without prejudice to be
12 renewed if necessary once the motion to dismiss has been decided. At that time, Plaintiff will
13 be in a better position to know how to appropriately craft his amended complaint.

14 **III. CONCLUSION**

15 Plaintiff has further failed to provide any specific information about the "additional
16 Plaintiffs" he proposed to join in the action. Defendants are leery of such vague
17 representations, as the Court should be. Plaintiff has failed to provide a copy of the proposed
18 amended complaint in conformance with the Local Rules of Civil Practice, thereby preventing
19 the Court and the Defendants from discerning what claims he may wish to amend or add to
20 this action. Denial of these insufficiently supported motions is appropriate.

21 DATED this 26th day of March, 2014.

22 CATHERINE CORTEZ MASTO
23 Attorney General

24 By: /s/ Lori M. Story
25 LORI M. STORY
26 Deputy Attorney General
27 *Attorneys for Defendants*
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