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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF COLUMBIA**
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5
6 MANOUCHER MOHAMMADI, REZA)
7 MOHAMMADI, SIMIN MOHAMMADI)
8 AND NASRIN MOHAMMADI, ON)
9 BEHALF OF THEMSELVES AND ON)
10 BEHALF OF AKBAR MOHAMMADI,)
11 AND DOES 1 THROUGH UNKNOWN,)
12 c/o Freedom Watch, Inc.)
13 P.O. 2789)
14 Washington, D.C. 20013)
15 And Other Class Members)

16 **Lead Plaintiffs ,**)

17 **v.**)

18 ISLAMIC REPUBLIC OF IRAN)
19 c/o Mohammad Khazae)
20 Permanent Representative of Iran)
21 to the United Nations)
22 East 46th Street)
23 New York, New York 10017)

24 **and**)

25 MAHMOUD AHMADINEJAD)
26 c/o President's Office)
27 Pasteur Avenue)
28 Postal Office 1423-13185)
Tehran, Iran 13168-43311)

and)

29 AYATOLLAH SAYID ALI)
30 HOSEYNI KHAMENEI)
31 c/o Mohammad Khazae)
32 Permanent Representative of Iran)

**MOTION TO SEEK LEAVE TO
FILE SECOND AMENDED
CLASS ACTION COMPAIN
UNDER THE ALIEN TORT
CLAIMS ACT AND ANTI-
TERRORISM LAWS**

1 to the United Nations)
2 East 46th Street)
3 New York, New York 10017)
4 and)
5 ARMY OF THE GUARDIANS OF THE)
6 ISLAMIC REVOLUTION)
7 c/o Mohammad Khazaei)
8 Permanent Representative of Iran)
9 to the United Nations)
10 East 46th Street)
11 New York, New York 10017)

12
13 Defendants

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 Through this motion, the above captioned class of Plaintiffs seeks leave to file their
17 Second Amended Class Action Complaint pursuant to Federal Rule of Civil Procedure 15.
18 Plaintiffs' Second Amended Class Action Complaint, attached hereto as Exhibit 1, adds
19 additional allegations which have recently come to light with regard to Defendants'
20 involvement in funding the murders of United States Servicemen stationed in the Middle East
21 (in particular Iraq and Afghanistan) by and through payment of \$1000 to the murderers of the
22 American Servicemen for each murdered individual. In addition, and based of the foregoing
23 newly discovered information, the Complains adds an additional group of as Doe Plaintiffs and
24 Members of the Class of Plaintiffs. The Second Amended Complaint is timely, as there has not
25 been a responsive pleading filed by the Defendants and does not cause any prejudice to the
26 Defendants and should be permitted. Plaintiffs respectfully request that the court grant leave to
27 file this Second Amended Complaint as they are attempting to serve it on Thursday, September
28 23, 2010, while the President of Iran, Defendant Ahmadinejad, and his government entourage,
are visiting the United States for the General Assembly meeting of the United Nations. Last

1 year, at this time and place, he was served with the original Complaint at his hotel, the Barclay
2 International in New York City.

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7 **II. ARGUMENT**

8 **A. Leave Should Be Granted To Amend the Complaint.**

9 **1. Leave Is Freely Granted.**

10 Federal Rule of Civil Procedure 15(a) provides that leave to amend a pleading "shall be
11 freely given when justice so requires." The United States Supreme Court, multiple District
12 Courts have repeatedly reaffirmed that leave to amend is to be granted with "extreme liberality."
13 *DCDPrograms, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation omitted); *see, e.g.,*
14 *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962) (leave to amend should be freely
15 given); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("Absent
16 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a
17 *presumption* under Rule 15(a) in favor of granting leave to amend.") (emphasis in original);
18 *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (courts should be guided by policy
19 favoring decisions on the merits "rather than on the pleadings or technicalities"); *see also*
20 *Moore, 3-15 Moore's Federal Practice - Civil* §15.14 ("A liberal, pro-amendment ethos
21 dominates the intent and judicial construction of Rule15(a).").

22 The primary factors relied upon by the Supreme Court and other courts in denying a
23 motion for leave to amend are "bad faith, undue delay, prejudice to the opposing party, and
24 futility of amendment." *DCD Programs*, 833 F.2d at 186. None of these factors are present here.
25 Plaintiffs seek to amend the Complaint and add additionally discovered facts. Moreover,
26 Plaintiffs would like to take advantage of the opportunity presented to serve several of the
27 Defendants this week when Defendants are scheduled to be in the United States for a United
28 Nations meeting.

1 **B. Amendment Should Be Permitted.**

2 The Second Amended Complaint is timely and should be allowed and this request falls within
3 the liberal standard for freely allowing the amendment of pleadings. See *Foman v. Davis*, 371
4 U.S. 178, 182 (1962) (“In the absence of . . . undue delay, bad faith or dilatory motive on the
5 part of the movant . . . undue prejudice to the opposing party by virtue of allowance of the
6 amendment . . .the leave sought should, as the rules require, be ‘freely given.’”) There is no
7 prejudice to Defendants here. Additionally, the Second Amended Complaint does not change
8 the nature of the lawsuit. Accordingly, Defendants will not be prejudiced by an order granting
9 leave to file the Second Amended Complaint.

10 Moreover, Plaintiffs offer their Second Amended Complaint in good faith and without
11 undue delay. Plaintiff’s amendments and additional details in support of its previously asserted
12 claims and new claims are not in bad faith. See *Coilcraft, Inc. v. Inductor Warehouse*, 2000 U.S.
13 Dist. LEXIS 6097, 8-9 (no bad faith where plaintiff made "reasonable inquiry" into facts
14 supporting new claim, introduced relevant evidence, and "has never mischaracterized the nature
15 of the lawsuit").

16 In sum, Plaintiffs’ Second Amended Complaint was filed timely and in good faith,
17 contains claims similar to those originally asserted and does not prejudice Defendants.
18 Consequently, none of the factors on which courts base denial of motions for leave to amend are
19 present here and the Motion should be granted.

20 **III. CONCLUSION**

21 For the reasons discussed above, plaintiff respectfully seeks leave of this Court to file
22 the Proposed Second Amended Class Action Complaint.

23 Respectfully Submitted,
24 **FREEDOM WATCH, INC.**
25 P.O. 2789
26 Washington, D.C. 20013

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 LARRY KLAYMAN, ESQ.
 General Counsel and Chairman

Counsel for Lead Plaintiffs and Other
Members of the Class

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