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9 Elan and Reverend Oracle

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SANTA CRUZ**

12 ELAN AND REVEREND ORACLE,  
13  
14 Plaintiffs and Petitioners

15 vs.

16 SANTA CRUZ COUNTY PLANNING  
17 DEPARTMENT; TOM BURNS; and DOES 1-25,  
18 inclusive,  
19 Defendants and Respondents

Case No. CV160213

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

Date: January 21, 2009

Time: 8:30 a.m.

Dept: 5

20 **I. INTRODUCTION**

21 Plaintiffs and Petitioners Elan and Reverend Oracle ("Plaintiffs") seek to amend their  
22 complaint to add claims, parties and allegations. Plaintiffs seek to add claims for Failure to  
23 Perform Mandatory Duty, Excessive and Improper Fees, Violation of Civil Rights, Inverse  
24 Condemnation and Injunctive Relief. Plaintiffs seek to add as defendants Santa Cruz County  
25 Planning Department and members of the Board of Supervisors of Santa Cruz County, namely,  
26 Ellen Pirie, Jan Beautz, Neal Coonerty, Tony Compas and Mark W. Stone. And Plaintiffs seek  
27 to add allegations to support these additional claims against these additional parties.

28 Granting the motion would further the interests of justice and result in no prejudice  
whatsoever to Defendants/Respondents. The parties have not begun written or oral discovery,  
have not engaged in alternative dispute resolution, and no trial date has been set. If the motion

1 were denied, Plaintiff would forfeit valuable claims or be forced to file separate action against  
2 the same defendants involving the same facts.

3 Accordingly, Plaintiffs respectfully request that the Court grant this Motion for Leave to  
4 File Amended Petition and Complaint.

5 **II. FACTS**

6 In May 2008, Plaintiffs filed the original Petition for Administrative Mandamus and  
7 Petition for Writ of Mandate, and Complaint for Cancellation of Instrument and Declaratory  
8 Relief against Defendants/Respondents Santa Cruz County Planning Department and Tom Burns.  
9 In June 2008, Defendants filed an Answer and a Demurrer. In or about August 2008, the Court  
10 issued an order overruling the Demurrer and allowing Plaintiffs to proceed with all claims.

11 (Declaration of Scott A. Berman in Support of Motion for Leave to Amend (“Berman Dec.”) ¶ 2.

12 The Amended Petition/Complaint seeks to add claims for Failure to Perform Mandatory  
13 Duty, Excessive and Improper Fees, Violation of Civil Rights, Inverse Condemnation and  
14 Injunctive Relief. It further seeks to add as parties Santa Cruz County Planning Department and  
15 members of the Board of Supervisors of Santa Cruz County, namely, Ellen Pirie, Jan Beautz,  
16 Neal Coonerty, Tony Compas and Mark W. Stone. Also, it seeks to add allegations to support  
17 these additional claims against these additional parties, which are identified in the Notice of  
18 Motion. (Berman Dec. ¶ 3)

19 **III. DISCUSSION**

20 Cal. Civ. Proc. § 473(a)(1) allows the Court to grant leave to amend a complaint “upon  
21 any terms as may be just.” California law establishes an exceedingly liberal policy for amending  
22 complaints. Courts may grant leave to amend at any stage of the action. “That trial courts are to  
23 liberally permit such amendments at any stage of the proceeding has been established policy in  
24 the state ... resting on the fundamental policy that cases should be decided on their merits.”

25 *Hirsa v. Superior Court (Vickers)* (1981) 118 Cal.App.3d 486.

26 Judicial policy favors resolution of all disputed matters between the parties in the same  
27 lawsuit. *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Mabie v. Hyatt* (1998) 61 Cal.App.4th

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581, 596. Delay alone cannot justify denying a motion to amend. Indeed, a party may amend on the eve of trial if it would not materially prejudice the other side. “Where no prejudice is shown to the adverse party, the liberal rule of allowance prevails.” *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565. The reason behind the policy is clear – denying “leave to amend would in many cases be an absolute denial of justice, and is directly opposed to the policy of the law that cases should be tried and decided on the merits.” *MacIsaac v. Pozzo*, 26 Cal.2d 809, 815-16.

Here, granting this motion will not prejudice Respondents because no trial date has been set, discovery has not begun, none of the parties have been deposed, nor have the parties participated in any form of alternative dispute resolution in this matter. (Berman Dec. ¶ 4) In contrast, denial of the opportunity to file a First Amended Petition and Complaint would greatly prejudice Plaintiffs. They would forfeit valuable claims or be forced to file a separate action against the same parties based on the same facts. (Berman Dec. ¶ 4)

Accordingly, Plaintiffs respectfully request that the Court grant this Motion for Leave to File Amended Petition and Complaint.

PIERCE & SHEARER LLP

Dated: December 11, 2008

By Scott A. Berman  
Scott A. Berman