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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 COLLECTORS UNIVERSE, INC., a  
18 Delaware corporation,

19 Plaintiff,

20 vs.

21 AL ROSSMAN, an individual; RICK  
22 WESSELINK, an individual; SILVANO  
23 DIGENOVA, an individual; GREG  
24 KRILL, an individual; ROBERT  
25 LEHMANN, an individual; DOES 1-10,  
26 individuals and/or entities whose  
27 identities are currently unknown,

28 Defendants.

**NO. CV10-03602 SJO(MLGX)**

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
LEAVE TO FILE SECOND  
AMENDED COMPLAINT**

[Proposed Second Amended  
Complaint filed concurrently herewith]

**DATE: September 13, 2010**  
**TIME: 10:00 a.m.**  
**COURTROOM No. 1- 2<sup>nd</sup> Floor**  
Honorable S. James Otero

1 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE SECOND**  
2 **AMENDED COMPLAINT**

3 **PLEASE TAKE NOTICE** that on **September 13, 2010 at 10:00 a.m.**,  
4 or as soon thereafter as the matter can be heard, in the courtroom of the  
5 Honorable S. James Otero, located at 312 N. Spring Street, Los Angeles, CA  
6 90012, Plaintiff, Collectors Universe, Inc. ("Collectors") will, and hereby does,  
7 move for an order granting Collectors leave to file its Second Amended  
8 Complaint and ordering that the Second Amended Complaint submitted with  
9 this motion be deemed filed.

10 The motion will be based on this Notice of Motion and Motion, the  
11 Memorandum of Points and Authorities, Collectors' [Proposed] Second  
12 Amended Complaint, and the [Proposed] Order filed herewith, on all of the files  
13 and records of this action, and on any additional material that may be elicited at  
14 the hearing of this motion.

15  
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 Through this motion, Collectors seeks leave to file its Second Amended  
19 Complaint pursuant to Federal Rule of Civil Procedure 15(a). Collectors  
20 Second Amended Complaint adds factual allegations against each of the  
21 Defendants including three (3) additional coins which Plaintiff contends are part  
22 and parcel of Defendants' doctoring ring as well as allegations of continuing  
23 doctoring efforts by Defendants Krill and Wesselink in July of 2010. Collectors  
24 Second Amended Complaint is timely, does not cause any prejudice to  
25 Defendants and should be permitted.

26 ///

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28 ///

1 **II. STATEMENT OF FACTS**

2 Collectors filed this lawsuit on May 13, 2010 and later amended the  
3 Complaint on May 28, 2010, to add additional defendants. Prior to serving the  
4 First Amended Complaint, Collectors discovered additional facts and evidence  
5 in support of its case. Specifically, Collectors identified three (3) new coins  
6 which it contends were involved in Defendants' "doctoring" scheme. (SAC,  
7 ¶16(l) – (n)) Additionally, in July of 2010, Collectors obtained evidence that  
8 Defendants were continuing to engage in doctoring:

9 17. Defendants continue to engage in "doctoring" activities. On  
10 July 1, 2010, well after initiation of this Lawsuit, Defendant Krill  
11 sent a package of coins to Defendant Wesselink with written  
12 instructions to "doctor" those coins to achieve certain changes in  
the coins' appearance:

13 (a) 1861 \$5 gold piece. Defendant Krill instructed  
14 Wesselink to perform a "very light clean-up" to make the  
15 coin, which no longer merited a grade of "uncirculated"  
16 because of wear on its surfaces "look new" (uncirculated)  
17 thereby increasing the value of the coin from \$700 to \$1,600  
- \$3,300.

18 (b) 1909 \$5 gold piece. Defendant Krill initially  
19 instructed Defendant Wesselink to keep the coin "fresh with  
20 just a light clean up." However, Defendant Krill was  
21 unhappy with the work performed by Defendant Wesselink  
22 and sent the coin back asking Defendant Wesselink  
"[w]here'd the luster go? Looking flat, reddish mono-look."

23 (c) 1854 \$3 gold piece. Defendant Krill instructed  
24 Defendant Wesselink to keep the coin "fresh" with a "light  
25 rub."

26 (d) 1851 \$1 gold piece. Defendant Krill instructed  
27 Defendant Wesselink to perform a "light clean up."  
28

1 One of the coins in the shipment was in a PCGS holder, and two  
2 others had been removed from PCGS holders prior to shipment.  
3 Plaintiff is informed and believes and based thereon alleges that  
4 Defendants' intent was for Wesselink to "doctor" the coins in  
5 accordance with Krill's instructions, and then resubmit the coins to  
6 PCGS to obtain higher grades than the coins had previously  
7 received from PCGS. (SAC, ¶17)

8 As a result of these new facts, Collectors also amended its 7<sup>th</sup> cause of  
9 action for Declaratory Relief asking the Court to declare that Collectors  
10 maintain possession of the coins pending trial or to provide them to this Court  
11 for safekeeping as evidence.

12 Based upon the foregoing, Collectors seeks an order permitting Collectors  
13 to file the proposed Second Amended Complaint.

### 14 **III. ARGUMENT**

#### 15 **A. Leave Should Be Granted To Amend the Complaint.**

##### 16 **1. Leave Is Freely Granted.**

17 Federal Rule of Civil Procedure 15(a) provides that leave to amend a  
18 pleading "shall be freely given when justice so requires." The United States  
19 Supreme Court, the Ninth Circuit, and this Court have repeatedly reaffirmed  
20 that leave to amend is to be granted with "extreme liberality." *DCD Programs,*  
21 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation omitted); *see, e.g.,*  
22 *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962) (leave to amend  
23 should be freely given); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
24 1052 (9th Cir. 2003) ("Absent prejudice, or a strong showing of any of the  
25 remaining *Foman* factors, there exists a presumption under Rule 15(a) in  
26 favor of granting leave to amend.") (emphasis in original); *United States v.*  
27 *Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (courts should be guided by policy  
28 favoring decisions on the merits "rather than on the pleadings or technicalities");

1 *Cooper Development Co. v. Employers Insurance of Wausau*, 765 F.Supp.  
2 1429, 1432 (N.D. Cal. 1991) (courts have been "quite liberal" in granting leave  
3 to amend); *Building Service Employees Pension Trust v. Horsemen's Quarter*  
4 *Horse Racing Association*, 98 F.R.D. 458, 459 (N.D. Cal. 1983) (same); *see*  
5 *also* Moore, 3-15 *Moore's Federal Practice - Civil* §15.14 ("A liberal, pro-  
6 amendment ethos dominates the intent and judicial construction of Rule 5(a).").  
7 The primary factors relied upon by the Supreme Court and the Ninth Circuit in  
8 denying a motion for leave to amend are "bad faith, undue delay, prejudice to  
9 the opposing party, and futility of amendment." *DCD Programs*, 833 F.2d at  
10 186. None of these factors are present here.

11 **B. Amendment Should Be Permitted.**

12 Collectors' Second Amended Complaint is timely and should be allowed.  
13 Collectors falls well within the liberal standard for freely allowing the  
14 amendment of pleadings. See *Foman v. Davis*, 371 U.S. 178, 182 (1962) ("In  
15 the absence of . . . undue delay, bad faith or dilatory motive on the part of the  
16 movant . . . undue prejudice to the opposing party by virtue of allowance of the  
17 amendment . . . the leave sought should, as the rules require, be 'freely given.'")

18 There is no prejudice to Defendants here as Collectors has not even  
19 served a Complaint nor has a Case Management Order been created.  
20 Accordingly, Defendants will not be prejudiced by an order granting leave to  
21 file Collectors' Second Amended Complaint.

22 Moreover, Collectors offers its Second Amended Complaint in good faith  
23 and without undue delay. In sum, Collectors' Second Amended Complaint was  
24 filed timely and in good faith, contains claims similar to those originally  
25 asserted, asserts additional factual allegations and does not prejudice Defendants.  
26 Consequently, none of the factors on which courts base denial of motions for  
27 leave to amend are present here. Thus, Collectors' motion for leave should be  
28 granted.

1 **IV. CONCLUSION**

2 For the reasons discussed above, Plaintiff respectfully seeks leave of this  
3 Court to file the proposed Second Amended Complaint.

4  
5 Dated: August 10, 2010

Respectfully submitted,  
6 ATTLESEY | STORM, LLP

7  
8 By: /S/ Suzanne S. Storm  
9 Suzanne S. Storm  
10 Attorney for Plaintiff

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