

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State  
of Florida, et al.,

Defendants.

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**DEFENDANT LESTER SOLA'S UNOPPOSED MOTION FOR LEAVE  
TO FILE AMENDED ANSWER**

Defendant Lester Sola, Miami-Dade County Supervisor of Elections, ("Supervisor Sola") responded to the Third Amended Class Action Complaint ("TAC") on March 28, 2007 denying Plaintiffs' allegations that he violated their constitutional rights and that he is liable for alleged constitutional violations resulting from compliance with state law. Supervisor Sola's Answer, however, inadvertently omitted the defense that the Plaintiffs have failed to join an indispensable party under Rule 19 of the Federal Rules of Civil Procedure. Accordingly, Supervisor Sola, pursuant to Rule 15 of the Federal Rules of Civil Procedure and Local Rule 7, hereby moves for leave to file an Amended Answer and Defenses, attached hereto as Exhibit A, to include this additional defense.

Rule 15(a) provides that a party may amend its pleading by leave of court "and leave shall be freely given when justice so requires." In accordance with the express terms of the Rule, the courts have held that leave to amend should generally be granted absent a substantial reason for denial. *See, e.g., Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988). The courts

have specifically allowed the amendment of an answer to add an affirmative defense, even at the summary judgment stage. *See, e.g., Hargett v. Valley Fed. Sav. Bank*, 60 F.3d 754, 762 (11th Cir. 1995) (approving grant of leave to amend answer to add statute of limitations defense in an employment discrimination action); *Anthony v. City of New York*, 339 F.3d 129, 138 n.5 (2d Cir. 2003) (affirming district court's discretion in construing plaintiff police officers' motion for summary judgment as a motion to amend their answer to assert a qualified immunity defense because "there was no showing of bad faith or undue prejudice").

Plaintiffs have consented to the proposed amendment and would suffer no prejudice by the granting of this Motion. Discovery is only just beginning in this matter and Plaintiffs therefore will have ample opportunity to explore this issue. The trial in this matter is not scheduled to begin until February 4, 2008.

WHEREFORE, Supervisor Sola respectfully moves this Court for leave to file an Amended Answer and Defenses, attached hereto as Exhibit A.

Respectfully submitted,

MURRAY A. GREENBERG  
MIAMI-DADE COUNTY ATTORNEY

By: s/ Oren Rosenthal

Jeffrey P. Ehrlich  
Oren Rosenthal  
Assistant County Attorneys  
Florida Bar No. 51561 & 86320  
Miami-Dade County Attorney's Office  
111 N.W. 1st Street, Suite 2810  
Miami, Florida 33128  
Telephone: (305) 375-5744  
Facsimile: (305) 375-5611  
Email: ehrlich@miamidade.gov

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1.A(3), I certify that undersigned counsel conferred with counsel for Plaintiffs, who indicated that Plaintiffs consent to the relief sought through this motion.

**s/ Oren Rosenthal**  
Assistant County Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2007 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

**s/ Oren Rosenthal**  
Assistant County Attorney

**SERVICE LIST**

Mary Jill Hanson  
Hanson, Perry & Jensen, P.A.  
400 Executive Center Drive, Suite 207  
West Palm Beach, Florida 33401  
Phone: 561-686-6550  
Fax: 561-686-2802  
email: [mjhanson@hpjlaw.com](mailto:mjhanson@hpjlaw.com)  
***Via ECF***

Judith A. Browne  
Sheila Y. Thomas & Elizabeth Westfall  
Advancement Project  
1730 M. Street, NW, Suite 910  
Washington, DC 20036  
Phone: 202-728-9557  
Fax: 202-728-9558  
email: [ewestfall@advancementproject.org](mailto:ewestfall@advancementproject.org)  
***Via U.S. Mail***

Judith A. Scott  
John J. Sullivan  
SEIU, 1313 L. Street, NW  
Washington, DC 20005  
Phone: 202-898-3453  
Fax: 202-898-3323  
email: [sullivaj@seiu.org](mailto:sullivaj@seiu.org)  
***Via U.S. Mail***

Michael Halberstam, Esq.  
Brian L. Urbano  
Adam Skaggs  
Paul, Weiss, Rifkind, Wharton, Garrison, LLP  
1255 Avenue of the Americas  
New York, NY 10019-6064  
Phone: 212-373-3000  
Fax: 202-492-0111  
e-mail: [mhalberstam@paulweiss.com](mailto:mhalberstam@paulweiss.com)  
***Via U.S. Mail***

Elliot Mincberg  
People for the American Way Foundation  
2000 M. Street, Suite 400  
Washington, FC 20036  
Phone: 202-467-2392  
Fax: 202-293-2672  
email: [eminberg@pfaw.org](mailto:eminberg@pfaw.org)  
***Via U.S. Mail***

Jonathan P. Hiatt  
AFL-CIO  
815 Sixteenth Street, NW  
Washington, DC 20006  
Phone: 202-637-5053  
Fax: 202-637-5323  
email: [jhiatt@aficio.org](mailto:jhiatt@aficio.org)  
***Via U.S. Mail***

Manny Anon, Jr.  
Florida Public Employees Council 79  
3064 Highland Oaks Terrance  
Tallahassee, Florida 32301  
Phone: 222-0842  
Fax: 224-6926  
email: [m\\_anon@afscmeffl.org](mailto:m_anon@afscmeffl.org)  
***Via U.S. Mail***

Tracey I. Arpen, Jr.  
Deputy General Counsel  
Duval County  
City Hall, St. James Building  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202  
Phone: 904-630-1700  
Fax: 904-630-2388  
email: [tarpen@coj.net](mailto:tarpen@coj.net)  
***Via ECF***

Mike Cirullo  
Orange County Attorney's Office  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Phone: 954-771-4500  
Fax: 954-771-4923  
email: [mcirullo@cityatty.com](mailto:mcirullo@cityatty.com)  
**Via ECF**

Burnadette Norris-Weeks  
100 S.E. 6<sup>th</sup> Street  
Ft. Lauderdale, Florida 33301-3422  
Phone: 954-768-9770  
Fax: 954-768-9790  
e-mail: [bnorris199@aol.com](mailto:bnorris199@aol.com)  
**Via ECF**

Ernst Mueller  
Office of City Attorney  
117 W. Duval Street, Ste. 480  
Jacksonville, FL 32202-3700  
Phone: 904-630-1700  
Fax: 904-630-1731  
email: [emueller@coj.net](mailto:emueller@coj.net)  
**Via U.S. Mail**

Stephanie Alexander  
Alexis Marie Yarbrough  
Edward Joseph Pozzuoli, III  
Tripp Scott  
110 Se 6<sup>th</sup> Street  
15<sup>th</sup> Floor P.O. Box 14245  
Ft. Lauderdale, Florida 33302  
**Via ECF**

Richard Perez  
Department of State  
R.A. Gray Building  
The Capitol  
PL-01  
Tallahassee, FL 32301  
**Via U.S. Mail**

Jeffrey P. Ehrlich  
Oren Rosenthal  
Miami-Dade County Attorney's Office  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128  
Phone: 305-375-5151  
Fax: 305-375-5634  
email: [ehrich@miamidade.gov](mailto:ehrich@miamidade.gov)  
**Via ECF**

Ronald A. Labasky  
Young Van Assenderp, P.A.  
225 S. Adams Street, Suite 200  
P.O. Box 1833  
Tallahassee, FL 32302  
Phone: 850-222-7206  
Fax: 850-561-6834  
email: [rlabasky@yvlaw.net](mailto:rlabasky@yvlaw.net)  
**Via ECF**

Peter V. Antonacci  
George N. Meros  
GRAY ROBINSON P.A.  
301 South Bronough Street  
Suite 600 P.O.Box 11189 (32302-3189)  
Tallahassee, Florida, 32301  
Phone 850-577-9090  
Fax 850-577-3311  
**Via ECF**

S. Gale Dick  
Steven S. Michaels  
Eliza Sporn  
Debevoise & Plimpton  
919 3rd Avenue  
New York, NY 10022  
**Via U.S. Mail**