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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Michael Dillman,

10 Plaintiff,

11 v.

12 Mesa, City of, et al.,

13 Defendants.

No. CV-13-02161-PHX-DGC

**ORDER**

14 Plaintiff has filed a motion for leave to amend his complaint pursuant to add  
15 Officer Donald Williams and Jane Doe Williams, husband and wife, as Defendants. Doc.  
16 17. The motion has been fully briefed, and no party has requested oral argument. Docs.  
17 18, 19. For the reasons stated below, the motion will be denied.

18 **I. Background.**

19 Plaintiff brought suit against the City of Mesa for allegations arising out of a  
20 traffic stop on November 26, 2012. Doc. 1, ¶ 7. Plaintiff alleges that Mesa Police  
21 Officer McClellan forcibly pulled him out of his car, slammed him against the car,  
22 applied handcuffs that were too tight, and pushed him into the passenger seat, injuring his  
23 handcuffed wrists. *Id.*, ¶ 8. While deposing Officer McClellan, Plaintiff learned that it  
24 was actually Officer Williams who stopped him, applied the handcuffs, and threw him  
25 into the back seat of the car, allegedly at the direction of Officer McClellan.

26 **II. Legal Standard.**

27 While the decision to grant or deny a motion to amend is within the discretion of  
28 the district court, “Rule 15(a) declares that leave to amend ‘shall be freely given when

1 justice so requires'; this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182  
2 (1962). The liberal policy in favor of amendments, however, is subject to some  
3 limitations. Motions to amend should be granted unless the district court determines that  
4 there has been a showing of: (1) undue delay; (2) bad faith or dilatory motives on the part  
5 of the movant; (3) repeated failure to cure deficiencies by previous amendments;  
6 (4) undue prejudice to the opposing party; or (5) futility of the proposed amendment. *Id.*  
7 at 182.

## 8 **II. Analysis.**

9 Defendants urge the Court to deny the motion to amend because allowing Plaintiff  
10 to add Officer Williams would violate Arizona's notice of claim statute, which requires  
11 that a plaintiff give notice of a claim against a public employee within 180 days of the  
12 date of accrual. Doc. 18 at 2 (citing A.R.S. § 12-821.01). Defendants argue that  
13 Plaintiffs' claims accrued on November 26, 2012, the date of the traffic stop. Doc. 18 at  
14 3. Defendants also contend that Plaintiff knew there were two officers involved in the  
15 stop, but chose to name only one, and that Plaintiff failed to inquire about the names of  
16 both officers. *Id.* at 4-5. Defendants argue that the proposed amendment would be futile  
17 because any claim against Officer Williams is barred by failure to give notice.

18 Plaintiff argues that he contacted the City of Mesa to inquire about the name of the  
19 arresting officer and was given Officer McClellan's name, but not Officer Williams'  
20 name. Doc. 19 at 1. He argues that he was led to believe that he had appropriately  
21 named the officer who caused his injuries.

22 Arizona's notice of claim statute requires that notice be provided to public  
23 employees within 180 days after a cause of action accrues. A.R.S. § 12-821.01(A). A  
24 cause of action accrues "when the damaged parties realized he or she has been damaged  
25 and knows or reasonably should know the cause, source, act, event, instrumentality or  
26 condition that caused or contributed to the damage." A.R.S. § 12-821.01(B). This  
27 knowledge includes the identity of the defendants, as courts have held that "knowledge of  
28 the identity of the defendant is a critical element in determining when a cause of action

1 accrues.” *Lawhon v. L.B.J. Inst. Supply, Inc.*, 765 P.2d 1003, 1005 (Ariz. Ct. App. 1988).

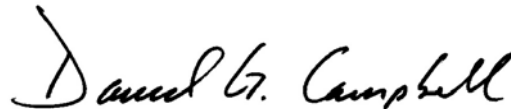
2 Plaintiff does not argue, however, that his claim did not accrue until he learned the  
3 identity of Officer Williams. For this and other reasons, it is not clear when the claim  
4 against Officer Williams accrued.

5 But even if the cause of action did not accrue until Plaintiff discovered the identity  
6 of Officer Williams during a deposition, that discovery would merely shift the date of  
7 accrual of the cause of action. It would not excuse Plaintiff from complying with the  
8 notice of claim statute, which is mandatory under Arizona law. *Travis Scott v. Wenden*  
9 *Domestic Water Imp. Dist.*, CV13-01667-PHX-DGC, 2013 WL 5670920, \*1 (D. Ariz.  
10 Oct. 17, 2013) (citing *Salerno v. Espinoza*, 115 P.3d 626, 628 (Ariz. Ct. App. 2005);  
11 *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 152 P.3d 490 (Ariz. 2007)).

12 Plaintiff has submitted no evidence that he has complied with the notice of claim  
13 statute for Officer Williams. Because Plaintiff cannot assert a claim against Officer  
14 Williams without complying with the statute, his amendment would be futile.

15 **IT IS ORDERED** that Plaintiff’s motion to amend (Doc. 17) is **denied**.

16 Dated this 10th day of July, 2014.

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21 David G. Campbell  
22 United States District Judge  
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