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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

TAYLOR GUNDY,  
  
                    Plaintiff,  
  
          v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS & REHABILITATION, et  
al.,  
  
                    Defendants.

Case No. 1:12-cv-01020-MJS  
  
**ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND FIRST AMENDED  
COMPLAINT**  
  
**(ECF Nos. 62, 65)**  
  
**ORDER MODIFYING SCHEDULING  
ORDER**  
  
**(ECF No. 45)**

**I. PROCEDURAL BACKGROUND**

Plaintiff Taylor Gundy, a former state prisoner, initiated this action on June 21, 2012 pursuant to 42 U.S.C. § 1983. This matter proceeds on a First Amended Complaint claim of medical indifference against Defendants Lopez, Arambula, and DOES 1-50.

Deadlines for discovery and pretrial motions have passed. (ECF No. 45.) The pretrial conference is set for April 15, 2014. (Id.) Trial is set for June 3, 2014. (Id.)

Before the Court is Plaintiff's Motion to Amend (ECF Nos. 62, 65) the First Amended Complaint "to substitute-in the name MARTA SPAETH for Doe Number 3 and to add said name alongside Defendant Sherry Lopez's name to the allegations contained in Plaintiff's First Amended Complaint, paragraphs 25, 26, 32, 34, and 121(b)." (ECF No. 65 at 1:26-2:1.)

1 **II. LEGAL STANDARD**

2 A party may amend his pleading, after a responsive pleading is served, only by  
3 leave of the court, or by written consent of the adverse party, and leave shall be freely  
4 given when justice so requires. Fed. R. Civ. P. 15(a); Amerisource Bergen Corp. v. Dialysis  
5 West, Inc., 465 F.3d 946, 951 (9th Cir. 2006), quoting Fed. R. Civ. P. 15(a).

6 “In determining whether to grant leave to amend, the court considers five factors: (1)  
7 bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment;  
8 and (5) whether the plaintiff has previously amended his complaint. Bolbol v. City of Daly  
9 City, 754 F.Supp.2d 1095, 1119 (N.D. Cal. 2010), citing Nunes v. Ashcroft, 375 F.3d 805,  
10 808 (9th Cir. 2004). Prejudice to the opposing party carries the greatest weight, and absent  
11 prejudice, or a strong showing of any of the remaining factors, there exists a presumption in  
12 favor of granting leave to amend. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048,  
13 1052 (9th Cir. 2003).

14 A motion to amend must satisfy the terms of the court’s scheduling order. NAS  
15 Electronics, Inc., v. Transtech Electronics PTE Ltd., 262 F.Supp.2d 134, 150 (S.D.N.Y.  
16 2003). Any modification of the scheduling order requires good cause and the judge’s  
17 consent. Fed. R. Civ. P. 16(b)(4); Johnson v. Mammoth Recreation, Inc., 975 F.2d 604, 609  
18 (9th Cir. 1992) (requiring a showing of good cause under Rule 16 to amend complaint  
19 beyond scheduling order deadline).

20 “The good cause standard ‘primarily considers the diligence of the party seeking the  
21 amendment’ . . . ‘carelessness is not compatible with a finding of diligence and offers no  
22 reason for a grant of relief.’ ” C.F. v. Capistrano Unified School Dist., 656 F.Supp.2d 1190,  
23 1194 (C.D. Cal. 2009). “[I]n determining good cause [under Rule 16 the court] considers  
24 four factors: ‘(1) the explanation for the failure to timely move for leave to amend; (2) the  
25 importance of the amendment; (3) potential prejudice in allowing the amendment; and (4)  
26 the availability of a continuance to cure such prejudice.’ ” (Id. at 1196.)

27 Once a responsive pleading has been served, a motion to add a new party is within  
28 discretion of court. Boyd v. District of Columbia, 465 F.Supp.2d 1, 3 (D.D.C. 2006).

1 **III. ARGUMENTS**

2 **A. Plaintiff's Position**

3 Dr. Spaeth held ultimate decision making authority over issues central to Plaintiff's  
4 case. The addition of Dr. Spaeth is crucial to Plaintiff's case. Despite diligence and good  
5 faith, and in part due to reliance upon Defendants' representations, Plaintiff only recently  
6 learned of the need to add Dr. Spaeth and then promptly moved to amend.

7 Defendants are not prejudiced by the addition of Dr. Spaeth. There is no substantive  
8 change to claims in issue. Sufficient time for trial preparation remains notwithstanding the  
9 addition of Dr. Spaeth.

10 **B. Defendants' Position**

11 There is no good cause to modify the Scheduling Order. Plaintiff was not diligent in  
12 discovering the need for amendment and alerting the court thereto. Plaintiff participated in  
13 preparation of the Scheduling Order which makes no provision for amendment and  
14 affirmatively states that no amendment was then anticipated. Plaintiff's discovery efforts  
15 have been procedurally deficient, and untimely, through no fault of Defendants. Readily  
16 available information regarding Dr. Spaeth was overlooked. Plaintiff did not seek the instant  
17 relief promptly upon identifying Dr. Spaeth.

18 Defendants will be prejudiced if the Motion is granted. Additional discovery and  
19 dispositive motion work will be required. Work invested in Defendants' (recently filed)  
20 Motion for Summary Judgment, in reliance upon the current Scheduling Order, may be lost.  
21 Dates scheduled in this action may be delayed.

22 **IV. DISCUSSION**

23 The Court having reviewed the record and the parties' arguments and authorities,  
24 concludes that Plaintiff's Motion shall be granted upon the following rationale, terms and  
25 conditions.

- 26 1. Although the Court believes a reasonably conscientious attorney could have  
27 determined Dr. Spaeth's identity early enough to have sought amendment in  
28 a timely manner, there is no evidence the delay reflected bad faith or a

1 dilatory motive, and the Court is unwilling to find it to have been such as to  
2 necessarily fall within the range of sanctionable lack of diligence. See e.g.,  
3 Elysian Fed'l Savings Bank v. First Interreg. Equity Corp., 713 F.Supp. 737,  
4 751, n.19 (D.N.J. 1989) (the complaint may be amended to substitute the  
5 name of the real defendant when discovered, as long as there is no  
6 unreasonable delay).

7 2. The Court finds at most negligence, not culpability, on the part of the Plaintiff  
8 in causing the delay and also finds a lack of irremediable prejudice. These  
9 findings militate against holding Plaintiff rigidly responsible for not anticipating  
10 the need for a motion to amend and not seeking leave to amend the  
11 Scheduling Order which was silent on the possibility of amending.

12 Accordingly the Court finds good cause to, and does *sua sponte*, modify the  
13 Scheduling Order so as to allow the requested amendment as provided  
14 herein.

15 3. Except as discussed below, the Court is unable to find or even anticipate any  
16 prejudice to Defendants by allowing the Motion. The proposed addition of Dr.  
17 Spaeth should not change the nature of the case, the nature of the defenses  
18 to it, or the discovery or trial preparation required on Defendants' part. (To the  
19 extent the Court is mistaken and Defendants need more time for any such  
20 matters, the Court would be liberal in allowing it.)

21 4. However, Defendants, timely and diligently following the rules and deadlines  
22 imposed in this case, have filed a timely Motion for Summary Judgment which  
23 likely will no longer be complete and comprehensive if Dr. Spaeth is added as  
24 a Defendant. To the extent the addition of Dr. Spaeth as a Defendant  
25 necessitates additional work on the Motion for Summary Judgment,  
26 Defendants will have been prejudiced; Plaintiff's delay will have caused  
27 duplication of effort. Plaintiff, not Defendants, should suffer that prejudice.  
28 See The Development Group, LLC v. Franklin Twp. Bd. of Sup'rs, 2004 WL

1 1773720, \*3 (E.D.Pa. August 5, 2004) (allowing amendments once dispositive  
2 motions have been filed can prejudice the other party).

3 5. Accordingly, **granting this Motion shall be conditioned** upon Plaintiff  
4 compensating Defendants for all time reasonably and in good faith spent by  
5 Defendants in modifying the Motion for Summary Judgment in response to  
6 the addition of Dr. Spaeth.

7 6. Anticipating the inevitable -- i.e., Plaintiff seeking to depose Dr. Spaeth in  
8 order to respond to Defendants' Motion for Summary Judgment -- the Court,  
9 having allowed the amendment, will for the same reasons allow a deposition  
10 of Dr. Spaeth at a place convenient to Defendants and on a date within 30  
11 days of entry of this Order (or such additional time as Defendants reasonably  
12 need to make Dr. Spaeth available) and Defendants will have 30 days  
13 thereafter to amend their Motion for Summary Judgment. Except for these  
14 modifications, the Scheduling Order filed April 24, 2013 shall continue in  
15 effect.

16 **V. ORDER**

17 Accordingly, and for the reasons and subject to the conditions above, it is HEREBY  
18 ORDERED THAT Plaintiff's Motion to Amend (ECF Nos. 62, 65) is GRANTED.

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21 IT IS SO ORDERED.

22 Dated: January 27, 2014

23 /s/ Michael J. Seng  
24 UNITED STATES MAGISTRATE JUDGE  
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