



1 to the Motion on March 5, 2015. (Doc. 77). The Motion was referred to this Court pursuant to 28  
2 U.S.C. § 636(b)(1)(B) and Local Rule 302. (Doc. 82). The Court deemed the matter suitable for  
3 decision without oral argument pursuant to Local Rule 230(g), and vacated the hearing scheduled for  
4 March 27, 2015. (Doc. 83). Having considered the moving papers, as well as the Court’s file, the  
5 motion is GRANTED.

### 6 **BACKGROUND**

7 On April 15, 2013, Plaintiffs filed this civil rights action pursuant to Title 42 of the United  
8 States Code section 1983, alleging failure to provide adequate protection and medical care to the  
9 decedent, Troy Phillips. See Pl’s Complaint, Doc. 1. The Complaint names various Defendants  
10 including “John Doe and Richard Doe, individually and in their capacities as correctional officers and  
11 classification officers for the Fresno County Sheriff’s Department, the identities and exact numbers of  
12 whom are unknown to Plaintiffs at this time.” *Id.* On March 2, 2015, Plaintiffs filed a motion to  
13 substitute Defendant John and Richard Doe as Classification Officer Cinthya Diaz. (Doc. 73). In the  
14 motion, Plaintiffs allege that recently discovered evidence revealed that Officer Diaz was involved  
15 with the care of Troy Phillips shortly before his death at the Fresno County Jail. (Doc. 73). On March  
16 5, 2015, Defendants opposed the motion. Defendants argue that Officer Diaz had little involvement  
17 with the death of Troy Phillips, and as a result, Diaz will face substantial prejudice by being named as  
18 a Defendant in this action.

### 19 **DISCUSSION**

20 Federal Rule of Civil Procedure 15(a) provides that a court “should freely give leave [to  
21 amend] when justice so requires.” The United States Supreme Court has stated:

22 [i]n the absence of any apparent or declared reason—such as undue delay, bad faith or  
23 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
24 amendments previously allowed, undue prejudice to the opposing party by virtue of  
allowance of the amendment, futility of amendment, etc.—the leave sought should, as  
the rules require, be “freely given.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

25 The intent of the rule is to “facilitate decision on the merits, rather than on the pleadings or  
26 technicalities.” *Chudacoff v. Univ. Med. Center of S. Nev.*, 649 F.3d 1143, 1152 (9th Cir. 2011).  
27 Consequently, the “policy of favoring amendments to pleadings should be applied with ‘extreme  
28 liberality.’” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). To evaluate a motion to amend

1 the complaint under Rule 15, the Court should consider factors including: (1) undue delay; (2) bad  
2 faith; (3) prejudice to the opponent; and (4) futility of amendment. *Loehr v. Ventura County Cmty.*  
3 *Coll. Dist.*, 743 F.2d 1310, 1319 (9th Cir. 1984).

4 As a basis for amendment, Plaintiffs allege that they were aware of the identities of some, but  
5 not all, of the officer Defendants involved in the events leading up to Troy Phillips' death. See First  
6 Amended Complaint, Doc. 39. Plaintiffs knew that other officers were likely involved, but that the  
7 identities of these officers would remain unknown until discovery had taken place, and therefore  
8 Plaintiffs named these unknown officers as "John Doe and Richard Doe" in the Complaint. Plaintiffs  
9 intended to substitute the names as they became available through discovery. When Defendants  
10 rolling document production began on December 11, 2014, Plaintiffs received, for the first time,  
11 documents identifying Cinthya Diaz as a classification officer involved in the care of Troy Phillips at  
12 the Fresno County Jail. Plaintiffs claim that after reviewing documents produced through discovery,  
13 they "became aware that Classification Officer Cynthia (sic) Diaz was responsible for removing Troy  
14 Phillips from segregated housing, one day after he was placed in segregated housing, and just days  
15 before his death." (Doc. 73). As early as January 15, 2015, Counsel for Plaintiffs requested that  
16 opposing counsel stipulate to the substitution of Officer Diaz as a Defendant in place of John and  
17 Richard Doe. Defense counsel would not agree to do so. (Doc. 73).

18 In opposing Plaintiffs' Motion, Defendants do not dispute Plaintiffs' ignorance of  
19 Classification Officer Diaz's involvement at the time the Complaint was filed. Instead, Defendants  
20 argue that the Court should deny the amendment because "Plaintiffs fail to allege sufficient facts to  
21 constitute a valid cause of action against Officer Diaz." (Doc. 77 at 1-2). Further, naming Officer  
22 Diaz will cause her substantial prejudice in having to defend against this suit.

23 The Court has examined all of the factors listed above. There is no evidence that the  
24 amendment was unduly delayed, that the substitution was brought in bad faith, or that there will be  
25 any unusual prejudice to Officer Diaz in having to defend against this action. As conceded by  
26 Defendants, the record does not support a conclusion that Plaintiffs were dilatory in seeking  
27 substitution after discovering Officer Diaz's identity. Indeed, any delay, if at all, does not lie with  
28 Plaintiffs. Defendants did not identify Officer Diaz in its initial disclosures. Defendants then did not

1 stipulate to the substitution of Officer Diaz and instead opposed the substitution arguing that the  
2 amendment is futile. However, the amendment is not futile. While Defendants challenge Plaintiffs'  
3 factual basis for naming Officer Diaz as a potentially responsible party, the Court should determine  
4 factual sufficiency under these circumstances on a motion to dismiss rather than a motion to substitute  
5 a doe defendant. Accordingly, the Court will grant Plaintiffs request for substitution.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiffs' Motion to Substitute Classification Officer Cinthya Diaz for "John and  
8 Richard Doe" is GRANTED;
- 9 2. Plaintiffs shall file a Second Amended Complaint, consistent with this order, within  
10 seven days of service of this Order;
- 11 3. Plaintiffs' shall serve Classification Officer Cinthya Diaz with the Second Amended  
12 Complaint no later than May 14, 2015.

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14 IT IS SO ORDERED.

15 Dated: April 14, 2015

16 /s/ Barbara A. McAuliffe  
17 UNITED STATES MAGISTRATE JUDGE  
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