

1 providers stemming from surgeries performed in January 2011. (Doc. 1, pgs. 3-8). More
2 specifically, the complaint alleges that Dr. Farhady and other defendant health care providers
3 negligently performed a laparoscopic-assisted vaginal hysterectomy on January 5, 2013, which
4 resulted in an injury to Plaintiff's bladder. It is further alleged that there was a failure to timely
5 discover and treat the bladder injury. During a subsequent surgery performed on January 13, 2011
6 to repair the injured bladder, a JP drain with a metal trocar was allegedly negligently placed
7 causing three small bowel injuries. Plaintiff contends these bowel injuries necessitated a bowel
8 resection that required an additional twenty-seven days in the hospital, and resulted in pain and
9 suffering. Plaintiff seeks special, economic and non-economic damages, prejudgment interests,
10 and costs.
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12 The United States removed this action pursuant to the Federally Supported Health Centers
13 Assistance Act on April 19, 2013 because Dr. Farhady is an employee of the Public Health
14 Service, and she was acting within the scope of her employment at the time of the alleged
15 incident. (Doc. 1). Through this motion, Plaintiff seeks to amend the pleading pursuant to
16 Federal Rule Civil Procedure 15 (a) to substitute Robert S. Julian M.D., the true name of Doe
17 Defendant 1 because it was recently discovered that Dr. Julian allegedly performed the bladder
18 surgery resulting in Plaintiff's bowel injury. Plaintiff also seeks to relate the amended complaint
19 back to the date the original pleading was filed pursuant to Rule 15(c) and Cal. Civ. Proc. Code §
20 474.
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22 **DISCUSSION**

23 Under Rule 15(a), a plaintiff may amend his complaint once "as a matter of course," and
24 without leave of court, before a response has been filed. Fed.R.Civ.P. 15(a)(1); *Bonin v.*
25 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). However, a party can only amend the pleading with
26 the opposing party's written consent or the court's leave once a responsive pleading has been
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1 filed. Fed.R.Civ.P. 15(a)(2). Here, Defendants filed a responsive pleading to Plaintiffs' FAC so
2 leave of the court is required. However, the United States filed a non-opposition to the motion.

3 Fed. R. Civ. Proc. 15(a) provides that a court "should freely give leave [to amend] when
4 justice so requires." The United States Supreme Court has stated:

5 [i]n the absence of any apparent or declared reason – such as undue delay, bad faith or
6 dilatory motive on the part of the movant, repeated failure to cure deficiencies by
7 amendments previously allowed, undue prejudice to the opposing party by virtue of
8 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).

9 This policy is "to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon*,
10 Inc., 316 F. 3d 1048, 1052 (9th 2003) (citations omitted). The Ninth Circuit has summarized these
11 factors to include the following: (1) undue delay; (2) bad faith; (3) prejudice to the opponent; and
12 (4) futility of amendment. *Loehr v. Ventura County Cmty. Coll. Dist.*, 743 F.2d 1310, 1319 (9th
13 Cir. 1984).

14 The Court has examined all of the factors listed above. Plaintiff's amendments appear
15 reasonable and there is no evidence that the amendment will cause undue delay or that it will
16 cause prejudice to Defendants. Similarly, there is nothing to suggest that the amendment is made
17 in bad faith as it is based on newly discovered information. Accordingly, permitting the
18 substitution of the Doe Defendant is appropriate.

19 Notwithstanding the above, the Court denies Plaintiff's Motion to Relate Back without
20 prejudice. Federal Rule of Civil Procedure 15 (c) permits relation back under certain
21 circumstances. Moreover, under California law, a plaintiff who names a Doe defendant in the
22 complaint and alleges that the defendant's true name is unknown, has three years from the
23 commencement of the action to discover the identity of the Doe defendant and amend the
24 complaint. Cal. Civ. Pro. Code § 474. However, because the Motion to Relate Back is
25 intertwined with a statute of limitations defense, the Court will not rule on this issue without
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1 giving Defendant Julian an opportunity to be heard.¹ As such, Plaintiff may renew this motion
2 again after Defendant Julian is served, or alternatively, Plaintiff may raise this issue in response to
3 any subsequent motion to dismiss if the issue is raised.

4 **CONCLUSION**

5 Accordingly, for the above reasons, IT IS HEREBY ORDERED :

6 1) Plaintiff's Motion Amend the Complaint is GRANTED;

7 2) Plaintiff's Motion to Relate Back is DENIED WITHOUT PREJUDICE;

8 2) Plaintiff shall file the FAC no later than September 20, 2013, and serve Defendant
9 Julian within thirty days of the filing of the FAC;

10 3) Defendants' Answers are due 21 days after service;

11 4) A status conference will be held on December 18, 2013 at 10:00 a.m. to discuss the
12 scheduling issues in this case. Five days prior to the hearing, the parties shall file a joint status
13 report indicating whether the dates in the existing scheduling order need to be modified. If so, the
14 parties shall include proposed dates for any requested modification. The report shall also include
15 any other issues the parties believe are significant given the recent amendment to the pleadings.
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21 IT IS SO ORDERED.

22 Dated: September 5, 2013

/s/ Gary S. Austin
23 UNITED STATES MAGISTRATE JUDGE

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¹ Counsel for the United States has advised the Court that she is not representing Dr. Julian.