

1 **BACKGROUND**

2 Plaintiff is a former inmate who was in the custody of Defendant California Department of
3 Corrections and Rehabilitation (“CDCR”). Defendants Lowery and Ladd were correctional officers
4 employed by CDCR at Valley State Prison. Defendant I. Singh, M.D., was a physician/surgeon at
5 Valley State Prison. Defendants Woodward and Phanh were Physician’s Assistants at Valley State
6 Prison. This litigation stems from allegations that Defendants Lowery and Ladd improperly assigned
7 Plaintiff to an upper bunk following his arrival at Valley State Prison on March 27, 2014. On March
8 31, 2014, Plaintiff, whose hand is in a permanently contracted position, submitted a written request for
9 reassignment to a lower bunk. On April 1, 2014, Plaintiff attempted to descend from his upper bunk
10 and fell because he was unable to grasp the frame of the bed. Plaintiff allegedly sustained injuries to
11 his right shoulder, neck, and head, and subsequently experienced recurring right leg and groin
12 numbness. Immediately after the fall, Plaintiff was reassigned to a lower bunk. However, as a result
13 of the leg numbness, Plaintiff fell on May 1, 2014, and further injured his left knee, right leg and
14 abdomen.

15 This litigation also stems from allegations that the defendant health care providers failed to
16 properly diagnose the extent of damage from the fall and denied Plaintiff’s requests for diagnostic
17 studies and treatment. More than a year later, a MRI revealed traumatic injury to Plaintiff’s spine.

18 Plaintiff alleges deliberate indifference to serious medical needs in violation of the Eighth
19 Amendment, negligence, medical negligence and violations of the Americans with Disabilities Act
20 and Section 504 of the Rehabilitation Act.

21 On November 13, 2015, Plaintiff filed a second amended complaint. On January 20, 2016, the
22 Court granted the parties’ stipulation to permit an amendment to the second amended complaint to
23 properly spell the name of Defendant K. Phanh. (Doc. 38).

24 On March 28, 2016, Plaintiff filed the instant motion for leave to amend the operative
25 complaint. By the motion, Plaintiff seeks to add Sgt. Huff as a named defendant responsible for
26 Plaintiff’s housing assignment at issue. (Doc. 55-1). Defendants do not oppose the motion. (Docs.
27 57, 58).

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1 **DISCUSSION**

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

4 [i]n the absence of any apparent or declared reason—such as undue delay, bad faith or
5 dilatory motive on the part of the movant, repeated failure to cure deficiencies by
6 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.”

7 *Foman v. Davis*, 371 U.S. 178, 182 (1962). The intent of the rule is to “facilitate decision on the
8 merits, rather than on the pleadings or technicalities.” *Chudacoff v. Univ. Med. Center of S. Nev.*, 649
9 F.3d 1143, 1152 (9th Cir. 2011). Consequently, the “policy of favoring amendments to pleadings
10 should be applied with ‘extreme liberality.’” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

11 To evaluate a motion to amend the complaint under Rule 15, the Court should consider factors
12 including: (1) undue delay; (2) bad faith; (3) prejudice to the opponent; and (4) futility of amendment.
13 *Loehr v. Ventura County Cmty. Coll. Dist.*, 743 F.2d 1310, 1319 (9th Cir. 1984). These factors are not
14 of equal weight as prejudice to the opposing party has long been held to be the most critical factor in
15 determining whether to grant leave to amend. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
16 1052 (9th Cir. 2003) (“As this circuit and others have held, it is the consideration of prejudice to the
17 opposing party that carries the greatest weight”); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th
18 Cir. 1990). Additionally, “leave to amend will not be granted where an amendment would be futile.”
19 *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1010 (9th Cir. 2008).

20 In this case, the proposed amendment would substitute Sgt. Huff in place of a doe defendant.
21 In responses to interrogatories, Defendant Ladd reportedly indicated that Sgt. Huff was responsible for
22 assigning Plaintiff’s housing upon his arrival at Valley State Prison. As the proposed amendment does
23 not alter the facts alleged against the previously named defendants, there is no prejudice to any
24 opponent.

25 With regard to undue delay, however, the Court notes that Plaintiff waited more than three
26 months after learning of Sgt. Huff’s involvement before filing the instant motion to amend. Plaintiff
27 apparently learned of Sgt. Huff’s involvement after service of Defendant Ladd’s responses to
28 interrogatories on December 15, 2015. (Doc. 55-3; Decl. of Ken Karan at ¶ 3). However, Plaintiff did

1 not file the instant motion for leave to amend until March 23, 2016. (Doc. 55). Plaintiff explains that
2 the delay in bringing the instant motion is attributable to his counsel's focus on serving Defendant
3 Phanh. (Karan Decl. at ¶ 4). Plaintiff's counsel reportedly set aside the discovery responses until after
4 Defendant Phanh appeared in this action on March 18, 2016. (Id. at ¶ 5). Additionally, counsel
5 represents that he has been experiencing serious personal health and safety issues that he continues to
6 address. (Id. at 55-3). Based on counsel's explanation, the Court does not find evidence of undue
7 delay. With regard to the remaining factors, having considered the proposed amendment and
8 Defendants' statements of non-opposition, the Court finds no evidence of futility of amendment or bad
9 faith. Accordingly, the Court concludes that Plaintiff's request for leave to amend should be granted.

10 **CONCLUSION AND ORDER**

11 For the reasons discussed above, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion for leave to file a Third Amended Complaint is GRANTED;
- 13 2. Within seven (7) days of the date of this Order, Plaintiff shall file his Third Amended
14 Complaint;
- 15 3. Upon the filing of the Third Amended Complaint, the Clerk of the Court shall issue
16 summons as to Sgt. Huff; and
- 17 4. Sgt. Huff shall file an answer or other responsive pleading to the Third Amended
18 Complaint in compliance with the time frames of the Federal Rules of Civil Procedure and any
19 relevant Local Rules following Plaintiff's service of the Third Amended Complaint.

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21 IT IS SO ORDERED.

22 Dated: April 20, 2016

23 /s/ Barbara A. McAuliffe
24 UNITED STATES MAGISTRATE JUDGE