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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 GINA CARUSO,

12 Plaintiff,

13 v.

14 OFFICER G. SOLORIO, et al.,

15 Defendants.  
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Case No. 1:15-cv-00780-AWI-EPG (PC)

ORDER DENYING MOTION TO  
SUPPLEMENT TO INCLUDE  
RETALIATION AND DUE PROCESS  
CLAIMS

(ECF No. 175)

17 Gina Caruso (“Plaintiff”) is a state prisoner proceeding *in forma pauperis* in this civil  
18 rights action filed pursuant to 42 U.S.C. § 1983.

19 On September 26, 2019, Plaintiff filed a Motion to Supplement to Include Retaliation  
20 and Due Process Claims. (ECF No. 175). Plaintiff seeks to add claims related to her allegedly  
21 illegal transfer in March 2019 from the California Institution for Women (“CIW”) to the  
22 Central California Women’s Facility (“CCWF”) for: “(1) retaliation for enforcing her  
23 constitutional right of access to the courts, in violation of the First Amendment; and (2) [a] due  
24 process violation under the Fourteenth Amendment for transferring Ms. Caruso in violation of  
25 Title 15 regulations and pursuant to an underground regulation.” (*Id.* at 2).

26 Plaintiff’s proposed supplemental claims would be brought against defendants not  
27 currently in this lawsuit, namely Molly Hill, the Warden of CIW, and Ralph Diaz, the Secretary  
28

1 of the California Department of Corrections and Rehabilitation (“CDCR”). The current  
2 defendants have filed an opposition to the Motion. (ECF No. 181). The Court held a hearing  
3 on the motion on November 1, 2019. (ECF No. 191). Plaintiff’s counsel Jenny Huang and  
4 Defendants’ Counsel Derrek Lee were telephonically present.

5 For the reasons set forth below, the Court denies Plaintiff’s motion.

6 **I. Background**

7 Plaintiff filed her first complaint in this action on May 22, 2015. (ECF No. 1). After  
8 several amendments and screening orders, this Court found cognizable claims against  
9 Defendants Ingram, Martinez, Lopez and Solario for excessive force in violation of the Eighth  
10 Amendment and an unreasonable search in violation of the Fourth Amendment. (ECF Nos. 45  
11 & 53). These claims stem from a July 22, 2013 search of Plaintiff and her cell while Plaintiff  
12 was incarcerated at CCWF.

13 After multiple extensions of the schedule, trial is set before District Judge Anthony W.  
14 Ishii on June 16, 2020. (ECF No. 141).

15 Plaintiff now moves to file a supplemental complaint for retaliation and violation of due  
16 process. (ECF No. 175). That supplemental complaint alleges in part:

17 After MS. CARUSO filed this action, she was transferred to the California  
18 Institution for Women (“CIW”) where she was housed from on or around  
19 October 15, 2015 until March 14, 2019. During the course of litigation in this  
20 case, CIW repeatedly denied MS. CARUSO access to the courts and to her  
21 attorney. In response, MS. CARUSO encouraged this Court to impose sanctions  
22 against CIW for violating her First Amendment right of access to the courts. On  
23 March 14, 2019, in retaliation for enforcing her constitutional rights, CIW  
24 transferred MS. CARUSO to CCWF in violation of prison regulations and  
25 pursuant to an underground regulation. Since March 14, 2019, MS. CARUSO  
has been confined at CCWF in Administrative Segregation (“Ad Seg”) to  
protect her from her documents and validated enemy concerns at CCWF. For  
the past six months, due to her Ad Seg status at CCWF, MS. CARUSO has been  
unable to have personal visits or phone communication with her family, who  
reside in Southern California.

26 (ECF No. 175, at p. 5).

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1           **II.     Legal Standards**

2           Federal Rule of Civil Procedure 15(d) provides for supplemental pleadings as follows:

3           On motion and reasonable notice, the court may, on just terms, permit a party to  
4           serve a supplemental pleading setting out any transaction, occurrence, or event  
5           that happened after the date of the pleading to be supplemented. The court may  
6           permit supplementation even though the original pleading is defective in stating a  
7           claim or defense. The court may order that the opposing party plead to the  
8           supplemental pleading within a specified time.

9           Fed. R. Civ. P. 15(d).

10           The Ninth Circuit has provided the following guidance in ruling on motions to  
11           supplement the complaint:

12           Rule 15(d) is intended to give district courts broad discretion in allowing  
13           supplemental pleadings. Fed.R.Civ.P. 15, advisory committee’s note. The rule is  
14           a tool of judicial economy and convenience. Its use is therefore favored. As Judge  
15           Haynsworth observed more than two decades ago:

16                   Rule 15(d) of the Federal Rules of Civil Procedure provides for ...  
17                   supplemental pleading. It is a useful device, enabling a court to  
18                   award complete relief, or more nearly complete relief, in one  
19                   action, and to avoid the cost, delay and waste of separate actions  
20                   which must be separately tried and prosecuted. So useful they are  
21                   and of such service in the efficient administration of justice that  
22                   they ought to be allowed as of course, unless some particular  
23                   reason for disallowing them appears, though the court has the  
24                   unquestioned right to impose terms upon their allowance when  
25                   fairness appears to require them.

26           *New Amsterdam Casualty Co. v. Waller*, 323 F.2d 20, 28–29 (4th Cir.1963), *cert.*  
27           *denied*, 376 U.S. 963, 84 S.Ct. 1124, 11 L.Ed.2d 981 (1964).

28           ...  
29           While some relationship must exist between the newly alleged matters and the  
30           subject of the original action, they need not all arise out of the same transaction.  
31           Professor Moore has explained the principle succinctly:

32                   While the matters stated in a supplemental complaint should have  
33                   some relation to the claim set forth in the original pleading, the fact  
34                   that the supplemental pleading technically states a new cause of  
35                   action should not be a bar to its allowance, but only a factor to be  
36                   considered by the court in the exercise of its discretion, along with  
37                   such factors as possible prejudice or laches.

38           3 J. Moore, *Moore's Federal Practice* ¶ 15.16[3] (1985).

1 . . .  
2 Lower courts have similarly stressed the trial court's discretion in deciding  
3 whether to allow a supplemental pleading, and liberally construe Rule  
4 15(d) absent a showing of prejudice to the defendant.

5 Keith v. Volpe, 858 F.2d 467, 473-75 (9th Cir. 1988). See also William Inglis & Sons Baking  
6 Co. v. ITT Continental Baking Co., Inc. 668 F.2d 1014, 1057 (9th Cir. 1981) (“The purpose of  
7 Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as  
8 possible by allowing the addition of claims which arise after the initial pleadings are filed.”).

9 In the context of leave to amend a complaint, courts “should freely give leave [to  
10 amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is to be applied with  
11 extreme liberality.” Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir.  
12 1990). See also Waldrip v. Hall, 548 F.3d 729, 732 (9th Cir. 2008). “However, liberality in  
13 granting leave to amend is subject to several limitations. Those limitations include undue  
14 prejudice to the opposing party, bad faith by the movant, futility, and undue delay.” Cafasso,  
15 U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (internal  
16 quotation marks and citations omitted). See also Waldrip, 548 F.3d at 732. “[T]he  
17 consideration of prejudice to the opposing party [] carries the greatest weight.” Eminence  
18 Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

### 19 **III. Analysis**

20 Under these legal standards, the Court finds it has jurisdiction to allow the supplemental  
21 pleading. The matters in the supplemental pleading happened after the date of the pleading to  
22 be supplemented. They certainly bear “some relation to the claim set forth in the original  
23 pleading,” because the proposed supplemental pleading alleges retaliation against Plaintiff for  
24 litigating this very case. Specifically, Plaintiff’s supplement alleges that she was transferred in  
25 retaliation for challenging the warden’s interference with her access to the court in this case.  
26 Certainly, a supplemental complaint alleging retaliation for prosecuting a case is sufficiently  
27 related to the initial claim to fall under Rule 15(d).

28 However, allowing a supplemental pleading at this stage in the case would result in

1 prejudice to the current defendants, and would not serve the efficient administrative of justice.

2 This case has been pending since 2015 and involves events taking place in 2013. It is  
3 set for trial in June 2020. Allowing a supplemental pleading would substantially delay the  
4 case. The new defendants would have to be served with the supplemental pleading. They  
5 would have a right to move to dismiss claims against them, take discovery, file motions for  
6 summary judgment, and generally present their defense. Plaintiff's representation that the trial  
7 could remain as set is wholly unrealistic.

8 Although not dispositive, it is also relevant that the claims are being asserted against  
9 new parties. Plaintiff does not allege that the individual defendants in the current lawsuit were  
10 involved in the allegedly retaliatory transfer. Nor does Plaintiff allege that the proposed new  
11 defendants were involved in the allegedly unconstitutional search. Without such a connection,  
12 it is not clear that these claims should or even can be tried before the same jury. Indeed,  
13 Plaintiff's counsel admitted at the hearing on this motion that, without such a connection, the  
14 claims would likely need to be bifurcated for trial.

15 The fact that gives the Court the most pause is the involvement of defense counsel in  
16 both sets of claims. Counsel for the individual defendants in this case, Derrek Lee, submitted  
17 all pleadings related to the warden in this case. See, e.g. ECF No. 55, Declaration of Warden  
18 M. Hill in Response to Court's Order. Moreover, defense counsel submitted such documents  
19 as counsel for "Defendants Solorio, Ingram, Martinez, and Lopez." (Id. at p. 1). Taken at face  
20 value, this would indicate that defense counsel was working with the proposed defendant  
21 warden regarding the issues related to the supplemental pleading on behalf of the individual  
22 defendants. This relationship between the defense of the individual defendants and the alleged  
23 retaliation supports allowing the supplemental pleading. Put another way, if the individual  
24 defendants were indeed working with the warden through their lawyer to prevent Plaintiff's  
25 access to the courts in this case, the two sets of claims become sufficiently intertwined that they  
26 may be tried together, regardless of any delay.

27 However, at oral argument, defense counsel denied that he was acting on behalf of the  
28 individual defendants when he filed pleadings on behalf of the warden. Despite signing those

1 pleadings as “Attorneys for Defendants Solorio, Ingram, Martinez, and Lopez,” Mr. Lee  
2 insisted he was in fact acting on behalf of his “Institutional Client,” presumably the CDCR,  
3 rather than the individual defendants in this case. While Mr. Lee’s concession that he has been  
4 representing an “institutional client” rather than the individual defendants in this case raises  
5 questions regarding the scope of his representation, it supports defendants’ argument that they  
6 were not involved in the allegedly retaliatory conduct and would be unfairly prejudiced by  
7 adding new claims and defendants now.

8 Moreover, allowing Plaintiff to supplement her complaint would not serve the efficient  
9 administrative of justice. As discussed above, allowing the supplement would delay the  
10 resolution of this case. Additionally, Plaintiff’s counsel indicated at oral argument that her  
11 main desire was to most quickly address Plaintiff’s continued retention in Administrative  
12 Segregation without due process. As discussed during the hearing on this motion, it seems this  
13 goal could be accomplished just as efficiently through a separate action, potentially including a  
14 motion for emergency relief, which could be deemed related to this case under Local Rule 123.  
15 Indeed, such a case may be able to proceed more efficiently in a separate action, without delays  
16 due to litigation of the current matter.

17 **IV. Order**

18 For the foregoing reasons, Plaintiff’s Motion to Supplement to Include Retaliation and  
19 Due Process Claims (ECF No. 175) is DENIED.

20 IT IS SO ORDERED.

21  
22 Dated: November 13, 2019

23 /s/ Eric P. Gray  
24 UNITED STATES MAGISTRATE JUDGE  
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