



1 motion is deemed submitted for review without oral argument. Local Rule 230(l). For the reasons  
2 discussed below, Plaintiff’s motion to amend is granted.

3 **II.**

4 **DISCUSSION**

5 Plaintiff seeks leave to amend the complaint to identify and substitute Dr. Patel as a Doe  
6 Defendant. Plaintiff’s proposed amended complaint is attached to his motion.

7 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s  
8 pleading once as a matter of course twenty-one days after serving, or if a response was filed, within  
9 twenty-one days after service of the response. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may  
10 amend only by leave of the court or by written consent of the adverse party. Fed. R. Civ. P. 15(a)(2).  
11 Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so requires.’”  
12 AmerisourceBergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R.  
13 Civ. P. 15(a)). “This policy is to be applied with extreme liberality.” C.F. v. Capistrano Unified Sch.  
14 Dist., 654 F.3d 975, 985 (9th Cir. 2011). “This liberality in granting leave to amend is not dependent  
15 on whether the amendment will add causes of action or parties.” DCD Programs, Ltd. v. Leighton,  
16 833 F.2d 183, 186 (9th Cir. 1987). However, courts “need not grant leave to amend where the  
17 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay  
18 in the litigation; or (4) is futile.” AmerisourceBergen Corp., 465 F.3d at 951.

19 Here, Defendants Duran and Johal answered the first amended complaint in this action on July  
20 31, 2017. Plaintiff’s second amended complaint was not filed within twenty-one days of that date.  
21 Therefore, Plaintiff requires leave of court to file an amended complaint.

22 Plaintiff filed the initial and first amended complaint pro se, and counsel did not appear until  
23 after service of the amended complaint was ordered. In the first amended complaint, Plaintiff alleged,  
24 that a riot took place on August 31, 2017 while he was housed at Wasco State Prison, and although  
25 Plaintiff was not involved in the riot he was shot by Defendant Duran. (First Amd. Compl. (FAC), at  
26 7-8.) After the shooting, Plaintiff was taken to the medical facility and was released within hours.  
27 (FAC at 16.) Plaintiff was not provided a CT scan or a mandatory 24 hour evaluation even though he  
28 was rendered unconscious by the projectile. (Id.) The next morning, Plaintiff woke up with a large

1 amount of blood and vomit on his bed. (Id.) Plaintiff was admitted to the hospital for a CT-scan and  
2 MRI on September 1, 2014. (Id.) After release from the hospital, Plaintiff received no medical  
3 treatment from medical staff for approximately ten days. (Id.) During the ten days, Plaintiff  
4 submitted several medical forms requesting evaluation by a doctor. (Id.) When Plaintiff finally went  
5 to the medical department he complained of dizziness, nausea and vomiting; however, Dr. Johal  
6 and/or John Doe told Plaintiff he was lying and making a big thing out of nothing. (Id.) The doctor  
7 did not send Plaintiff to a specialist for his injuries. (Id.) On October 5, 2014, Plaintiff had a seizure  
8 in the dayroom of his building, and he was admitted to the hospital. (Id.) Prior to being shot in the  
9 head, Plaintiff did not have seizures and he has no prior history of seizures. (Id.) In March 2015,  
10 Plaintiff blacked out in the central kitchen where he worked. (Id.)

11 Defendants oppose Plaintiff's motion and argue that the proposed amendment is futile because  
12 the Court has already dismissed the claims against all Doe Defendants and he failed to timely identify  
13 Dr. Patel.

14 In its screening order, the Court construed Plaintiff's first amended complaint as alleging a  
15 claim of deliberate indifference against only Defendant Dr. Johal. However, upon further review and  
16 as set forth by Plaintiff, it is reasonable to interpret the claim to include a cognizable allegation of  
17 deliberate indifference against the Doe Defendant, now identified as Dr. Patel. In addition, although  
18 the Court has subsequently dismissed the Doe Defendants, such fact does not negate against a finding  
19 that the interest of justice is served by allowing Plaintiff the opportunity to amend the complaint to  
20 reinstate and identify a Doe Defendant, at this time.

21 Defendants contend that Plaintiff knew of the identity of Dr. Patel when he filed the original  
22 and first amended complaints because he was identified in Plaintiff's medical records.

23 Plaintiff submits that Defendant Dr. Johal was deposed on December 18, 2017, and it was  
24 discovered for the first time that Doctor Patel is the John Doe Doctor, and the only Doctor available to  
25 provide care for Plaintiff in September 2014.<sup>1</sup> (Conlogue Decl. ¶ 3.) Further, Plaintiff's counsel  
26 propounded a Request for Production of Documents to Defendants on September 11, 2017, and

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28 <sup>1</sup> The Court notes that although Defendants were not required to provide initial disclosures, Plaintiff indicates initial disclosures were requested but denied which resulted in the necessity for formal discovery. (Conlogue Decl. ¶ 5.)

1 Defendants provided responses with documents on October 26, 2017. (Conlogue Decl. ¶ 6.) Upon  
2 review of the documents, Plaintiff noticed the deposition of Defendant Johal so that Plaintiff’s counsel  
3 could obtain a better understanding of the medical documents produced. (Conlogue Decl. ¶ 7.)  
4 The Court has reviewed Plaintiff’s proposed second amended complaint, and finds that it simply  
5 substitutes Dr. Patel for the previously identified Doe Defendant in the first amended complaint, but  
6 does not seek to add any additional unrelated claims, allegations, or events. Thus, the notice  
7 provisions of Federal Rule of Civil Procedure 15(c) appear to be satisfied. The Court finds that  
8 Plaintiff does not seek leave to amend in bad faith. See Leon v. IDX Sys. Corp., 464 F.3d 951, 961  
9 (9th Cir. 2006) (“A party ‘demonstrates bad faith by delaying or disrupting the litigation or hampering  
10 enforcement of a court order.’”) (citing Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 649  
11 (9th Cir. 1997)). Plaintiff’s motion to amend is timely; under the existing schedule, and discovery  
12 does not close until April 1, 2018.<sup>2</sup> Based on the fact that Plaintiff was pro se at the time the original  
13 and first amended complaints were filed,<sup>3</sup> the fact that counsel did not appear in the action until May  
14 2017, and discovery did not open until August 2017, the Court finds Plaintiff’s counsel exercised  
15 reasonable diligence in conducting his own investigation into identifying the appropriate Defendants.  
16 See DCD Programs, Ltd., 833 F.2d at 187-88 (the prejudice to a non-movant is mitigated if discovery  
17 is still open and there is no evidence the non-movant would be prejudiced by the timing of the  
18 proposed amendment). Thus, given the circumstances of this case, the Court finds that there was no  
19 undue delay in naming the Doe Defendant. Defendants have not made a sufficient showing to  
20 overcome the presumption in favor of granting leave to amend under Rule 15 in this instance.  
21 Accordingly, Plaintiff’s motion for leave to amend the complaint will be granted.

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25 <sup>2</sup> The time necessary for service and a response to the second amended complaint may require a schedule modification, but  
it is premature to address that matter now.

26 <sup>3</sup> See Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (noting “Supreme Court precedent that instructs federal  
27 courts to liberally construe the “inartful pleading” of pro se litigants”); Draper v. Coombs, 792 F.2d 915, 924 (9th Cir.  
28 1986) (holding that pro se litigants should be treated with great leniency when evaluating compliance with the technical  
rules of civil procedure).

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**III.**  
**ORDER**

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's motion to amend the complaint is granted;
2. The Clerk of the Court will is directed to file Plaintiff's proposed second amended complaint, attached to the motion to amend (ECF No. 25);
3. The Clerk of Court is further DIRECTED to issue Plaintiff a summons for Defendant Dr. Patel; and
4. Plaintiff must complete service of process and file proof thereof with the Court within ninety days pursuant to Federal Rule of Civil Procedure 4(m), or request that the United States Marshal serve a copy of the summons and complaint.

IT IS SO ORDERED.

Dated: February 7, 2018

  
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UNITED STATES MAGISTRATE JUDGE