

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SILVIA P. VALDEZ, individually and as successor-of-interest on behalf of OMAR PASILLAS; ALBERADO PASILLAS, individually and as successor-of-interest on behalf of OMAR PASILLAS.

Plaintiff,

V.

STATE OF CALIFORNIA, a government entity; CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, a government entity, and DOES 1 through 10,

Defendants.

Case No. 1:17-CV-00712-DAD-EPG

ORDER DENYING DEFENDANTS STATE OF CALIFORNIA AND CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION MOTION TO DISMISS; AND GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT TO DISMISS DEFENDANTS STATE OF CALIFORNIA AND CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND TO SUBSTITUTE DOE DEFENDANTS

(ECF Nos. 9, 14)

On May 22, 2017, Plaintiffs filed the complaint in this action alleging: (1) deliberate indifference to a serious medical condition in violation of the Eighth and Fourteenth Amendments against all defendants; (2) cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments against all defendants; (3) municipal liability against the State of California (“the

1 State"); (4) negligence against all defendants; (5) failure to train against California Department of
2 Corrections and Rehabilitation ("CDCR") and the State; and (6) wrongful death against all
3 defendants. (ECF No. 1.) On June 27, 2017, CDCR and the State moved to dismiss this action on
4 the ground that the Court lacks subject matter jurisdiction because CDCR and the State are
5 immune from suit under the Eleventh Amendment. (ECF No. 9.) On August 4, 2017, Plaintiffs
6 filed a motion for leave to amend the complaint to dismiss the State and CDCR. (ECF No. 14.)
7 Plaintiff also seeks to substitute R. N. N. J. Milburn as Doe no. 1, LPT Brady as Doe no. 2, R.N.
8 Bucaro as Doe no. 3, Dr. Savage as Doe no. 4, Correctional Officer Boone as Doe no. 5, and
9 Correctional Officer Vasquez as Doe no. 6. *Id.* On August 18, 2017, CDCR and the State filed a
10 notice of non-opposition to Plaintiffs' motion. (ECF No. 16.) Now before the Court are Plaintiffs'
11 and Defendants' respective motions.

12 Federal Rule 15(a) provides that leave to file an amendment shall be freely given when
13 justice so requires. Federal policy strongly favors determination of cases on their merits. This
14 policy is to be applied with "extraordinary liberality." *Morongo Bank of Mission Indians v. Rose*,
15 893 F.2d 1074, 1079 (9th Cir. 1990). The role of pleadings is limited and leave to amend the
16 pleadings is freely given unless the opposing party makes a showing of undue prejudice or bad
17 faith or dilatory motive on the part of the moving party. *Foman v. Davis*, 371 U.S. 178, 182
18 (1962). Furthermore, pursuant to Fed. R. Civ. P. 41(a)(1), a plaintiff may voluntarily dismiss an
19 action without a court order before the opposing party serves either an answer or a motion for
20 summary judgment. *See Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) ("Even if the
21 defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing
22 a notice of dismissal under Rule 41(a)(1).").

23 Defendants do not oppose Plaintiffs' motion. Accordingly, based on the foregoing, IT IS
24 ORDERED THAT:

- 25 1. Plaintiffs' motion for leave to file a First Amended Complaint is granted;
- 26 2. No later than fourteen (14) days from the date this Order is filed, Plaintiffs shall file the
27 proposed First Amended Complaint which is attached to the instant motion;
- 28 3. Defendants State of California and California Department of Corrections and

Rehabilitation are voluntarily dismissed from this action;

4. Defendants State of California and California Department of Corrections and Rehabilitation's motion to dismiss is denied as moot;
 5. No later than sixty (60) days from the date this Order is filed, Plaintiffs shall serve process upon Defendants R. N. N. J. Milburn, LPT Brady, R.N. Bucaro, Dr. Savage, Correctional Officer Boone, and Correctional Officer Vasquez.

IT IS SO ORDERED.

Dated: October 2, 2017

/s/ Enri P. Grisj
UNITED STATES MAGISTRATE JUDGE