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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

STAN SEVERI, et al.	)	Case No.: 1:17-cv-0931 - AWI - JLT
	)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS’ MOTION TO
	)	AMEND THE COMPLAINT <sup>1</sup>
v.	)	(Doc. 23)
	)	
COUNTY OF KERN, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

Stan Severi and Miranda Severi seek leave to file an amended complaint to add a new claim against several defendants. (Doc. 23) The defendants have not opposed the motion. For the reasons set forth below, Plaintiff’s motion for leave to amend the complaint is **GRANTED**.

**I. Background and Procedural History**

Plaintiffs allege that in December 2016, Kern County Sheriff’s Deputies “responded to a call in that Plaintiffs’ minor son was either missing or had run away.” (Doc. 23-1 at 4) Among the responding officers was defendant Gabriel Romo. (*Id.*) According to Plaintiffs, after the officers were “informed that Plaintiffs’ son had been located and retrieved by his mother,” Romo “wrongfully, without a warrant, probable reasonable suspicion, or justification demanded that Plaintiffs minor daughter, be turned over to him.” (*Id.*) Plaintiffs allege that Mr. Severi asked to speak to his wife,

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<sup>1</sup> Because the Court finds the matter is suitable for decision without oral argument and because there was no opposition to the motion filed, the hearing on the motion is VACATED.

1 Myranda, and the request was refused. (*Id.* at 4-5) Plaintiffs assert Mr. Severi was then shot by a  
2 deputy, which was witnessed by Myranda. (*Id.* at 5)

3 According to Plaintiffs, Romo also dug his knee into the side of Mr. Severi’s chest, and placed  
4 him in handcuffs “despite the fact ... [he] had just been shot and suffered a severe and life threatening  
5 wound.” (Doc. 23-1 at 5) Plaintiffs contend the deputies’ wrongful actions also included: “(i)  
6 ordering Plaintiff MYRANDA SEVERI not to take pictures of the incident, not to talk to the media,  
7 and to put her cell phone away; and (ii) threatening her with arrest, confiscating her cell phone and the  
8 use of force if she did not fully and completely comply with said orders.” (*Id.* at 6) Plaintiffs assert  
9 that once Mr. Severi was transported to the hospital, Mrs. Severi was not permitted to see her husband  
10 “for approximately four-and-one-half hours.” (*Id.*)

11 Based primarily upon the foregoing facts, Plaintiffs filed a complaint in Kern County Superior  
12 Court on June 28, 2017. (Doc. 1 at 5) Plaintiffs asserted against the County of Kern, Kern County  
13 Sheriff Donny Youngblood, and Deputy Romo were liable for the following causes of action: (1)  
14 violation of civil rights arising under the Fourth and Fourteenth Amendments to the United States  
15 Constitution and state law, (2) failure to intervene, (3) municipal liability for the constitutional  
16 violations, (4) battery, and (5) negligence. (*See* Doc. 1 at 5) Defendants filed a Notice of Removal on  
17 July 13, 2017, thereby initiating the action before this Court.

18 On July 25, 2017, the defendants filed their answer. (Doc. 7). In addition, the defendants filed  
19 a motion to strike portions of Plaintiffs’ complaint pursuant to Rule 12(f) of the Federal Rules of Civil  
20 Procedure, asserting several allegations regarding the County and its sheriff’s department were  
21 “scandalous, misleading, redundant, immaterial, impertinent, unduly prejudicial, and not relevant.”  
22 (Doc. 6 at 4) On December 20, 2017, the Court granted the motion in part, and struck several  
23 paragraphs from the complaint. (Doc. 14)

24 On January 23, 2018, the Court issued its scheduling order, setting forth the deadlines governing  
25 the action. (Doc. 16) Pursuant to the terms of this order, the parties were directed to make their initial  
26 disclosures no later than March 26, 2018. (*Id.* at 3) In addition, the Court ordered: “Any requested  
27 pleading amendments are ordered to be filed, either through a stipulation or motion to amend, no later  
28 than April 25, 2018.” (*Id.* at 3, emphasis omitted) Plaintiffs timely filed a request for leave to amend

1 the complaint on April 25, 2018, seeking to:

- 2 1. Add a cause of action against three new individual Defendants, identified as Defendant  
3 Detective A. Warmerdam, Defendant Danae Wiitala, and Defendant Cummings, for  
4 unlawful search of Plaintiffs' home and vehicles and unlawful search and seizure  
5 Plaintiffs' personal items, including but not limited to two computer towers, pursuant to  
6 42 U.S.C. § 1983; and
- 7 2. Delete Paragraphs 34(i), 34(ii), 34(iv), 34(v), 34(vi), and 34(vii) of Plaintiffs' original  
8 complaint pursuant to the Court's December 20, 2017 Order.

9 (Doc. 21 at 3; Doc. 23 at 3) Defendants did not oppose the motion.

## 10 **II. Legal Standards**

11 Under Fed. R. Civ. P. 15(a), a party may amend a pleading once as a matter of course within  
12 21 days of service, or if the pleading is one to which a response is required, 21 days after service of a  
13 motion under Rule 12(b), (e), or (f). "In all other cases, a party may amend its pleading only with the  
14 opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Here, the defendants  
15 filed their answer on July 25, 2017 (Doc. 6). Therefore, Plaintiffs require either consent of the  
16 defendants or leave of the Court to file an amended complaint.

17 Granting or denying leave to amend a complaint is in the discretion of the Court, *Swanson v.*  
18 *United States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996), though leave should be "freely give[n]  
19 when justice so requires." Fed. R. Civ. P. 15(a)(2). "In exercising this discretion, a court must be  
20 guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the  
21 pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Consequently,  
22 the policy to grant leave to amend is applied with extreme liberality. *Id.*

23 There is no abuse of discretion "in denying a motion to amend where the movant presents no  
24 new facts but only new theories and provides no satisfactory explanation for his failure to fully  
25 develop his contentions originally." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); *see also*  
26 *Allen v. City of Beverly Hills*, 911 F.2d 367, 374 (9th Cir. 1990). After a defendant files a responsive  
27 pleading, leave to amend should not be granted where "amendment would cause prejudice to the  
28 opposing party, is sought in bad faith, is futile, or creates undue delay." *Madeja v. Olympic Packers*,  
310 F.3d 628, 636 (9th Cir. 2002) (citing *Yakima Indian Nation v. Wash. Dep't of Revenue*, 176 F.3d  
1241, 1246 (9th Cir. 1999)).

1 **III. Discussion and Analysis**

2 In evaluating a motion to amend under Rule 15, the Court may consider (1) whether the  
3 plaintiff has previously amended his complaint, (2) undue delay, (3) bad faith, (4) futility of  
4 amendment, and (5) prejudice to the opposing party. *Foman v. Davis*, 371 U.S. 178, 182 (1962);  
5 *Loehr v. Ventura County Cmty. Coll. Dist.*, 743 F.2d 1310, 1319 (9th Cir. 1984). These factors are not  
6 of equal weight as prejudice to the opposing party has long been held to be the most critical factor in  
7 determining whether to grant leave to amend. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
8 1052 (9th Cir. 2003) (“As this circuit and others have held, it is the consideration of prejudice to the  
9 opposing party that carries the greatest weight”); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th  
10 Cir. 1990).

11 The amendment sought is the first for Plaintiffs. The plaintiffs learned of the additional  
12 allegations in the initial disclosures served by the defendants and sought to amend immediately  
13 thereafter. (See Doc. 23 at 5) In addition, the request to amend was filed in compliance with the  
14 deadline ordered by the Court. (Doc. 16 at 3) Notably, the burden of establishing prejudice is on the  
15 party opposing an amendment to the complaint. *DCD Programs*, 833 F.2d at 187; *Beeck v. Aquaslide*  
16 *‘N’ Dive Corp.*, 562 F.2d 537, 540 (9th Cir. 1977). However, as noted above, the defendants have not  
17 opposed the motion and it does not appear that amendment would pose any prejudice to the  
18 defendants.

19 **IV. Conclusion and Order**

20 Based upon the foregoing, the factors set forth by the Ninth Circuit weigh in favor of allowing  
21 Plaintiffs to amend the complaint. See *Madeja*, 310 F.3d at 636. Therefore, the Court is acting within  
22 its discretion in granting the motion to amend. See *Swanson*, 87 F.3d at 343. According, the Court  
23 ORDERS:

- 24 1. Plaintiffs’ motion to amend the complaint (Doc. 23) is **GRANTED**;

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2. Plaintiffs **SHALL** file the First Amended Complaint within three days of the date of service of this Order.

IT IS SO ORDERED.

Dated: May 23, 2018

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE