

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 This case arises out of Plaintiff’s arrest by Vallejo police officers on April 15, 2019,
3 during which she alleges the officers used excessive force in violation of the United States
4 Constitution and California law. (See ECF No. 1.) Plaintiff filed this action on September 18,
5 2019, alleging violations of the Fourth Amendment, California Civil Code § 52.1, and multiple
6 common law torts. (ECF No. 1 at 16–20.) The Court issued its Initial Pretrial Scheduling Order
7 on September 19, 2019, requiring all amendments to the complaint within sixty days of service.
8 (ECF No. 3 at 2.) Defendants were served on October 9, 2019. (ECF No. 5.) Defendants filed
9 their motion to dismiss on February 21, 2020. (ECF No. 11.) Plaintiff filed her motion to amend
10 on August 20, 2021. (ECF No. 25.)

11 **II. STANDARD OF LAW**

12 Granting or denying leave to amend a complaint rests in the sound discretion of the trial
13 court. *Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). When the Court issues a
14 pretrial scheduling order that establishes a timetable to amend the complaint, Rule 16 governs any
15 amendments. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). To allow for
16 amendment under Rule 16, a plaintiff must show good cause for not having amended the
17 complaint before the time specified in the pretrial scheduling order. *Id.* The good cause standard
18 primarily considers the diligence of the party seeking the amendment. *Johnson v. Mammoth*
19 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Moreover, carelessness is not compatible
20 with a finding of diligence and offers no reason for a grant of relief.” *Id.* The focus of the inquiry
21 is on the reasons why the moving party seeks to modify the complaint. *Id.* If the moving party
22 was not diligent, then good cause cannot be shown and the inquiry should end. *Id.*

23 Even if the good cause standard is met under Rule 16(b), the Court has the discretion to
24 refuse amendment if it finds reasons to deny leave to amend under 15(a). *Johnson*, 975 F.2d at
25 610. Under Rule 15(a)(2), a party may amend its pleading only with the opposing party’s written
26 consent or the Court’s leave. Fed. R. Civ. P. 15(a)(2). However, “[t]he court should freely give
27 leave [to amend] when justice so requires,” bearing in mind “the underlying purpose of Rule 15 . .
28 . [is] to facilitate decision on the merits, rather than on the pleadings or technicalities.” *Lopez v.*

1 *Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). Courts consider the following factors to
2 determine whether leave to amend should be granted: (1) undue delay; (2) bad faith or dilatory
3 motive on the part of the movant; (3) repeated failure to cure deficiencies by amendments
4 previously allowed; (4) undue prejudice to the opposing party by allowing amendment; and (5)
5 futility of amendment. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Allen v. City of Beverly*
6 *Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Of these, “the consideration of prejudice to the
7 opposing party . . . carries the most weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d
8 1048, 1052 (9th Cir. 2003) (per curiam). The party opposing leave to amend bears the burden of
9 showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).
10 “Absent prejudice, . . . there exists a presumption under Rule 15(a) in favor of granting leave to
11 amend.” *Id.*

12 A proposed amendment is futile “only if no set of facts can be proved under the
13 amendment to the pleadings that would constitute a valid and sufficient claim or defense.” *Miller*
14 *v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). However, the denial of leave to amend
15 on this ground is rare. *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003).
16 “Ordinarily, courts will defer consideration of challenges to the merits of a proposed amended
17 pleading until after leave to amend is granted and the amended pleading is filed.” *Id.*

18 **III. ANALYSIS**

19 Plaintiff seeks to amend her Complaint to name two of the officers who arrested her on
20 April 15, 2019. (ECF No. 25 at 4.) Plaintiff argues good cause exists because Defendants (1) did
21 not produce police reports identifying the arresting officers until February 24, 2021; (2) did not
22 produce additional requested documents “that would allow Plaintiff to evaluate the extent of
23 liability the involved officers had”; and (3) did not respond to Plaintiff’s July 1, 2021 request to
24 stipulate to an amendment until August 10, 2021. (ECF No. 25 at 3–4.) In opposition,
25 Defendants argue (1) Plaintiff misrepresents the extent of the changes in her Proposed First
26 Amended Complaint (“PFAC”), filed as an exhibit to her motion; (2) Plaintiff has failed to
27 demonstrate good cause to amend or compliance with Rule 15(c); and (3) amendment would
28 prejudice Defendants. (ECF No. 27 at 3–7.) In reply, Plaintiff argues she has demonstrated good

1 cause, need not comply with Rule 15(c), and Defendants are not prejudiced by amendment. (ECF
2 No. 28 at 3–8.)

3 A. Rule 16

4 As Defendants note, the deadline for amendment set out in the Initial Pretrial Scheduling
5 Order was December 9, 2019. (ECF No. 3 at 2; ECF No. 27 at 2.) Defendants admit they did not
6 provide the reports requested by Plaintiff which identified the arresting officers until two and a
7 half months after the deadline for amendment expired. (ECF No. 27 at 2.) Therefore, Plaintiff
8 had no way of amending within the deadline set by the Court.

9 Plaintiff explains the delay between February 24, 2019 — when Defendants produced the
10 police reports — and the email to Defendants’ counsel requesting to stipulate to an amended
11 complaint on July 1, 2019, by contending Defendants had not produced documents that would
12 allow Plaintiff’s counsel to flesh out the liability of each officer named in the reports. (ECF No.
13 28 at 3.) This explanation fails to explain why, after months of being unable to discern the level
14 of liability of each officer in the police reports, Plaintiff’s counsel was suddenly able to do so
15 without any additional information produced by Defendants. Regardless, Plaintiff has shown
16 good cause why the scheduling order deadline of December 9, 2019, should be modified and the
17 additional delay, as discussed below, does not prejudice Defendants.

18 *Johnson*, on which Defendants rely, is easily distinguishable. (See ECF No. 27 at 4.)
19 There, the plaintiff’s counsel ignored multiple attempts by defense counsel — *within the*
20 *amendment deadline* — to explain they were the wrong party to sue. 975 F.2d at 607. Only after
21 defense counsel informed plaintiff’s counsel they would be moving for summary judgment did
22 the plaintiff move to amend. *Id.* The Ninth Circuit held the plaintiff’s complete disregard for the
23 discovery responses and letters by defense counsel did not constitute good cause. “The burden
24 was on Johnson to prosecute his case properly. He cannot blame [defendants] for his failure to do
25 so. The simple fact is that his attorneys filed pleadings and conducted discovery but failed to pay
26 attention to the responses they received.” *Id.* at 610. Here, on the other hand, Defendants did not
27 provide Plaintiff with the names of the arresting officers until *well after* the expiration of the
28 amendment deadline and the case is still in its initial stages. Therefore, Plaintiff has shown good

1 cause to alter the Initial Pretrial Scheduling Order.

2 B. Rule 15

3 Of the five *Foman* factors, Defendant contends amendment should be denied because of
4 undue delay and prejudice. (ECF No. 6–7.)¹ The federal rules favor amendment, and the Ninth
5 Circuit applies those rules liberally. *Johnson*, 975 F.2d at 607; *Morongo Band of Mission Indians*
6 *v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). For the reasons set forth in the previous section,
7 Plaintiff’s delay is not undue. Plaintiff’s PFAC does not add any causes of action, although it
8 does expand the allegations under California Civil Code § 52.1, misnumbers the claims, and
9 contain numerous typographical mistakes. (See ECF No. 25-3.) While these additions may be
10 inconvenient and burdensome to sort through, Defendants have not shown they are prejudicial.
11 The amendment is not a surprise. Defendants were aware Plaintiff intended to name the officers
12 who arrested her because her Complaint states so. (ECF No. 1 at 2 (“Plaintiff will amend this
13 complaint to allege their true names and capacities when ascertained.”).) Defendants do not
14 contend they will have to materially alter their defense as a result of the proposed amendments in
15 the PFAC. See *Rose*, 893 F.2d at 1079 (affirming denial of leave to amend where “[t]he new
16 claims set forth in the amended complaint would have greatly altered the nature of the litigation
17 and would have required defendants to have undertaken, at a late hour, an entirely new course of
18 defense”). Therefore, Defendants have failed to carry their burden to show they will be
19 prejudiced by amendment and leave to amend is appropriate.

20 Once Plaintiff files an amended complaint, “the new complaint is the only operative
21 complaint before the . . . [C]ourt.” *Askins v. U.S. Dept. of Homeland Security*, 899 F.3d 1035,
22 1043 (9th Cir. 2018). Accordingly, Defendants’ Motion to Dismiss the Complaint (ECF No. 11)

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24 ¹ Defendants also contend Plaintiff must satisfy Rule 15(c) in order to amend her
25 Complaint. (ECF No. 27 at 5–6.) However, Defendants do not argue the statute of limitations
26 ran on Plaintiff’s claims before she moved to alter the scheduling order. Therefore, it is unclear
27 why Plaintiff’s claims against the named officers would need to relate back to the filing date of
28 the original Complaint. Regardless, the first page of Plaintiff’s Complaint identifies the suit as
one arising from her arrest on April 15, 2019. (ECF No. 1 at 1.) Defendant’s contention the
arresting officers are not transactionally related to Plaintiff’s allegations is wholly without merit.
See Fed. R. Civ. P. 15(c).

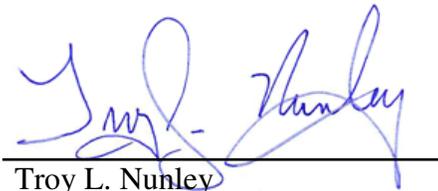
1 is moot, and the Court does not reach its merits. In a new responsive pleading, Defendants may
2 address the additional allegations in Plaintiff's PFAC.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Leave to Amend
5 (ECF No. 25) and DENIES Defendants' Motion to Dismiss (ECF No. 11) as moot. Plaintiff shall
6 file the amended complaint within fourteen days of the electronic filing date of this Order.

7 IT IS SO ORDERED.

8 **DATED: January 10, 2022**

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12 Troy L. Nunley
13 United States District Judge
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