

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY MITCHELL, SR. and PAULETTE
MITCHELL, individually and as successors in
interest to TIMOTHY MITCHELL, JR.,

No. C 09-00794 SI

**ORDER GRANTING PLAINTIFFS’
MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

Plaintiffs,

v.

CITY OF PITTSBURG, et al.,

Defendants.

Plaintiffs have filed a motion for leave to file an amended complaint. This matter is currently set for hearing on November 13, 2009. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court GRANTS plaintiffs’ motion.

BACKGROUND

This civil rights action arises from the 2008 shooting death of Timothy Mitchell, Jr. by City of Pittsburg police officer Lester Galer while Galer and other officers were attempting to execute a search warrant for marijuana at Mitchell’s home in Antioch, California. According to plaintiffs, after finding the front door ajar, Officer Galer “rushed through the doorway with his weapon extended before him” and shot Mitchell immediately upon entering the apartment. Complaint ¶ 11. Plaintiffs allege that Mitchell was standing immediately inside the front door when he was shot, apparently having opened the door for the officers. *Id.* Mitchell was allegedly unarmed and only partly clothed. *Id.*

On February 24, 2009, plaintiffs, Mitchell’s mother and father, filed a 42 U.S.C. § 1983 and

1 wrongful death action against Galer, the City of Pittsburg, and Pittsburg Police Chief Aaron Baker,
2 claiming violations of the Fourth Amendment, Fourteenth Amendment, and California law. After
3 defendants answered the complaint, plaintiffs informed the Court that they intended to file a motion
4 seeking leave to file an amended complaint adding new defendants and a new cause of action. Presently
5 before the Court is plaintiffs’ motion for leave to file an amended complaint.

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7 **LEGAL STANDARD**

8 Under Federal Rule of Civil Procedure 15, leave to amend a complaint should be freely given
9 “when justice so requires.” This rule reflects an underlying policy that disputes should be determined
10 on their merits, and not on the technicalities of pleading rules. *See Foman v. Davis*, 371 U.S. 178,
11 181-82 (1962). Accordingly, the Court should granted leave to amend with “extreme liberality.” *See*
12 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (leave to amend granted
13 with “extreme liberality”).

14 However, there are several accepted reasons to deny leave to amend, including the presence of
15 bad faith on the part of the plaintiff, undue delay, prejudice to the defendant, futility of amendment, and
16 that the plaintiff has previously amended the complaint. *See Ascon Properties, Inc. v. Mobil Oil Co.*,
17 866 F.2d 1149, 1160 (9th Cir. 1989); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 809 (9th Cir. 1988).
18 Courts ordinarily do not consider the validity of a proposed amended pleading in deciding whether to
19 grant leave to amend, but leave may be denied if the proposed amendment is futile or would be subject
20 to dismissal. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

21
22 **DISCUSSION**

23 Plaintiffs seek leave to amend their complaint in order to add the following new defendants: (1)
24 the Central Contra Costa Narcotics Enforcement Taskforce (“CCCNET”), which plaintiffs describe as
25 “a multi-agency drug task force” of which Officer Galer was a part; (2) CCCNET’s Commander Norm
26 Wielsch; (3) Sergeants Sean Dexter and Louis Lombardi, members of the CCCNET force alleged to
27 have been involved in executing the warrant in question; and (4) the City of Walnut Creek and the City
28 of San Ramon. Plaintiffs also seek to add a new cause of action under the Fourteenth Amendment.

1 Defendants have gone to little effort to identify a valid reason to deny leave to amend the
2 complaint. First, defendants contend that leave to amend should be denied because prior to filing the
3 present motion, “plaintiffs did not seek modification of the pre-trial scheduling order as required by
4 FRCP 16(b).” Federal Rule of Civil Procedure 16(b) sets forth no such requirement. To the extent
5 defendants’ argument can be understood as an assertion that granting leave to amend will cause undue
6 delay or unfair prejudice, the Court is unpersuaded. Second, defendants contend that leave to amend
7 should be denied because plaintiffs were aware of the identities of the newly proposed defendants before
8 filing their original complaint. Absent any indication of bad faith on plaintiffs’ part, however, the Court
9 is not inclined to deny plaintiffs’ motion on this basis.


10 In short, none of the factors that may weigh against granting leave to amend a complaint is
11 present in this case. Defendants have not shown that plaintiffs’ motion is made in bad faith, that
12 amendment of the complaint will cause undue delay or prejudice, or that amendment would be futile;
13 moreover, plaintiffs have not previously amended the complaint. Accordingly, the Court GRANTS
14 plaintiffs leave to file an amended complaint.

15
16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown, plaintiffs’ motion to file an amended
18 complaint is GRANTED. (Docket No. 25). Plaintiffs are ordered to file their amended complaint no
19 later than **November 11, 2009**.

20
21 **IT IS SO ORDERED.**

22
23 Dated: November 4, 2009



SUSAN ILLSTON
United States District Judge