

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DANIEL AGER, ET AL.,	)	Case No.: 5:11-CV-6642-EJD
	)	
Plaintiffs,	)	<b>ORDER GRANTING DEFENDANTS'</b>
	)	<b>MOTION TO STRIKE PLAINTIFFS'</b>
v.	)	<b>SECOND AMENDED COMPLAINT</b>
	)	
ANTHONY HEDGPETH, ET AL.,	)	
	)	
Defendants.	)	<b>[Re: Docket No. 38]</b>
	)	
	)	

Presently before the court is Defendants Anthony Hedgepath, Belinda Hendrick, and D. Spencers' (collectively, "Defendants") Motion to Strike Plaintiffs Daniel Ager, Elizabeth Ager, and Kathryn Ager's (collectively, "Plaintiffs") Second Amended Complaint. The court found these matters suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b) and previously vacated the hearing. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Having fully reviewed the parties' briefing, and for the foregoing reasons, the court GRANTS Defendants' Motion

**I. BACKGROUND**

Plaintiffs filed this lawsuit pursuing claims arising under 42 U.S.C. § 1983 on behalf of themselves and their deceased father Dr. Alan Ager. Dkt. No. 1. Plaintiffs' complaint alleges that

1 Defendants violated Plaintiffs' rights when they failed to take reasonable steps to protect Dr. Ager  
2 from an obvious risk of attack from his cellmate and Dr. Ager was ultimately strangled to death by  
3 this cellmate. Defendants moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).  
4 Dkt. No. 17. The court granted-in-part and denied-in-part Defendants' motion to dismiss on  
5 August 24, 2012 and granted leave to amend the complaint within the next thirty days to correct the  
6 infirmities the court had identified. Dkt. No. 32. That same day, the court issued its Case  
7 Management Order, which included an order "that the deadline for joinder of any additional  
8 parties, or other amendments to the pleadings, is October 30, 2012." Dkt. No. 33. Plaintiffs filed a  
9 First Amended Complaint on September 24, 2012, adding defendants Arlene Solis, Robert Burgh,  
10 Benjamin Bloch, D. Garcia, Antonella Aluzri, and J. Martin. Dkt. No. 35. Less than two weeks  
11 later, on October 5, 2012, Plaintiffs filed a Second Amended Complaint adding Carl Warfield as an  
12 additional defendant. Dkt. No. 37.

## 13 II. DISCUSSION

14 Plaintiffs argue that they understood the court's Case Management Order as the court's  
15 granting them leave to join additional parties and further amend their pleadings. This interpretation  
16 of the court's Order is incorrect. The Case Management Order sets the schedule for an individual  
17 case but the Federal Rules of Civil Procedure, the Local Rules of the Northern District of  
18 California, and this court's Standing Orders establish the rules by which any litigation in this court  
19 must proceed. Put simply, the Case Management Order governs when certain steps in the litigation  
20 should occur, but the constellation of rules set forth above set forth how the litigation should  
21 proceed.

22 When the time to amend a pleading as of course has passed, Federal Rule of Civil  
23 Procedure 15(a)(2) requires a party to obtain written consent from the opposing party or leave of  
24 court to file an amended pleading. Here, Plaintiffs' amendment as of course period ended twenty-  
25 one days after Defendants served their Motion to Dismiss, i.e., May 2, 2012. The court's Case  
26 Management Order then set the deadline for seeking any amendment of pleadings as October 20,  
27 2012. Dkt. No. 33. Setting this deadline did not displace Rule 15(a)(2)'s requirement that a party  
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1 obtain consent of the opposing party or leave of the court before filing any amendment, and it was  
2 incumbent upon Plaintiffs to abide by this rule.

3 In requiring adherence to Rule 15, the court is doing more than enforcing a mere  
4 technicality. Rule 15 exists to give the parties and the court notice of what an amended pleading  
5 may contain, and allow the court to consider whether allowing the amendment would be in the  
6 interest of justice. Particularly, the court must consider whether the proposed amendment would  
7 cause the opposing party undue prejudice, is sought in bad faith, is futile, or would create an undue  
8 delay. Foman v. Davis, 371 U.S. 178, 182 (1962). Were the court to permit circumvention of Rule  
9 15, these important factors would not be considered and the risk of harm to the opposing party  
10 would be great.

11 **III. CONCLUSION**

12 For the foregoing reasons, the Court GRANTS Defendants' Motion to Strike. The court  
13 notes that the deadline for Plaintiffs to seek leave of court to amend their complaint under Rule 15  
14 is well past. Thus, should Plaintiffs wish to amend their pleadings, they must seek leave to do so  
15 under Rule 16.

16 **IT IS SO ORDERED**

17 Dated: January 31, 2013



EDWARD J. DAVILA  
United States District Judge