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 SOUTHERN DISTRICT OF CALIFORNIA  
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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF RUBEN NUNEZ, et al.,  <p style="text-align: right;">Plaintiffs,</p> v. COUNTY OF SAN DIEGO, et al.,  <p style="text-align: right;">Defendants.</p>	Case No.: 3:16-cv-1412-BEN-MDD  <b>ORDER:</b>  <b>1) GRANTING PLAINTIFFS’          MOTION FOR          RECONSIDERATION;</b>  <b>2) GRANTING PLAINTIFFS’ LEAVE          TO AMEND THE FIRST AMENDED          COMPLAINT;</b>  <b>3) DENYING DEFENDANTS’          MOTION TO DISMISS</b>
COUNTY OF SAN DIEGO, et al.,  <p style="text-align: right;">Cross Claimants,</p> v. CORRECTIONAL PHYSICIANS MEDIAL GROUP, INC., et al.,  <p style="text-align: right;">Cross Defendants.</p>	

Before the Court are the Motion to Dismiss the First Amended Complaint (Docket No. 41) filed by Defendants State of California, Patton State Hospital, Harry Oreol, Kayla Fisher, Marcy Moon, Theresa Baroi and Wilda D. Ramos (collectively “State Defendants”), and the Motion for Reconsideration of the *Ex Parte* Motion to Amend the First Amended Complaint (Docket No. 78) filed by Plaintiffs. The motions are fully

1 briefed. The Court finds the motions suitable for determination on the papers without  
2 oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, the  
3 State Defendants' Motion to Dismiss is **DENIED**, Plaintiffs' Motion for Reconsideration  
4 is **GRANTED**.

### 5 **BACKGROUND<sup>1</sup>**

6 This case arises out of the death of pre-trial detainee Ruben Nunez ("Ruben") on  
7 August 13, 2015 at the San Diego Central Jail ("Central Jail"), which is operated and  
8 managed by Defendant County of San Diego ("County"). At the time of his death,  
9 Ruben was forty-six years old and had suffered from schizophrenia his entire adult life.

10 In 2014, Ruben was off of his medication, became homeless, and was arrested for  
11 allegedly throwing a rock through a car window. A San Diego Superior Court judge  
12 found Ruben incompetent to stand trial, committed him to Defendant Patton State  
13 Hospital ("PSH"),<sup>2</sup> and ordered he be involuntarily medicated.

14 At PSH, Ruben was diagnosed with psychogenic water intoxication, also known as  
15 psychogenic polydipsia. People who suffer from this condition drink water  
16 uncontrollably, which can result in their death. It is estimated that up to 20% of people  
17 with schizophrenia also suffer from psychogenic polydipsia.

18 When patients are transferred from PSH to other facilities, a discharge form, which  
19 lists the patient's diagnoses, medical risks, and any special needs, is required to be sent to  
20 the other facilities. The discharge form is faxed to the facility before the patient's arrival,  
21 and a second copy is included with the documents that travel with the patient. There is an  
22 additional form that "lays out a strict protocol for monitoring water intake and blood  
23 levels" for psychiatric patients who have a problem with water intoxication. (Docket No.  
24 15, First Amended Complaint ¶ 34.)

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27 <sup>1</sup> The following overview of the facts are drawn from the allegations of Plaintiffs' First  
28 Amended Complaint. (Docket No. 15.) The Court is not making findings of fact.

<sup>2</sup> PSH is one of Defendant State of California's inpatient psychiatric hospitals.

1 On August 8, 2015, Ruben was transferred from PSH to the Central Jail to attend a  
2 competency hearing. Defendants Theresa Baroi (“Baroi”), Wilma D. Ramos (“Ramos”),  
3 and Doe 41<sup>3</sup> generated and checked Ruben’s discharge document, and it was sent to the  
4 Central Jail. The discharge document referenced “water intoxication = weight  
5 adjustment.” (*Id.* ¶ 33.) The additional form with instructions for monitoring water  
6 intake and blood levels was not generated for Ruben. “Ruben’s [Central Jail] medical  
7 records showed he had ‘a history of . . . hyponatremia’ – ‘which required water  
8 restriction.’” (*Id.* ¶ 36.) Central Jail staff did not limit or restrict Ruben’s access to  
9 water.

10 On August 13, 2015, a deputy saw Ruben vomiting in his cell and called a nurse.  
11 Defendant Doe 1 arrived at the unit and gave Ruben his medication. Doe 1 did not alert  
12 medical staff and left Ruben in his cell. Approximately one hour later, a deputy found  
13 Ruben on the floor of his cell. He was not breathing. Ruben’s death was determined to  
14 be caused by cerebral edema due to excess consumption of water.

15 Ruben was found with his clothing soiled with vomit and urine. A Medical  
16 Examiner’s Office investigator noted that Ruben’s cell “smelled of urine and vomit.” (*Id.*  
17 ¶ 40.) Vomit was also observed in the sink, on a table, the floor, and the cell’s lower  
18 bunk; bloody vomit was splattered on the wall. The Medical Examiner also found vomit  
19 in Ruben’s nasal cavity, and dried vomit on both of his hands. Plaintiffs further allege  
20 that the “medical and jail staff left Ruben in an unsanitary condition in his own vomit and  
21 urine.”

## 22 PROCEDURAL HISTORY

23 On June 8, 2016, Plaintiffs filed a Complaint against Defendants County of San  
24 Diego, William Gore, Bruce Leicht (“Leicht”), Alfred Joshua (“Joshua”), Harry Oreol  
25 (“Oreol”), Kayla Fisher (“Fisher”), Marcy Moon (“Moon”), and Does 1-50. (Docket No.  
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28 <sup>3</sup> At all relevant times to the Complaint, Baroi, Ramos, and Doe 41 were PSH nurses.

1 1.) Defendant County filed its Answer on July 5, 2016. (Docket No. 7.) On August 29,  
2 2016, this Court granted the joint motion to amend complaint filed by Plaintiffs and  
3 Defendant County. (Docket Nos. 10, 14.)

4 On August 30, 2016, Plaintiffs filed the operative First Amended Complaint  
5 ("FAC"), which added Defendants State of California, Patton State Hospital, Theresa  
6 Baroi, and Wilda D. Ramos. (Docket No. 15.) On September 19, 2016, Defendant  
7 County filed its Answer. (Docket No. 19.) On October 31, 2016, Defendants Joshua,  
8 Gore, and Leicht filed a joint Answer (Docket No. 28.), and a Motion for Leave to File a  
9 Third-Party Complaint (Docket No. 29), which the Court granted. (Docket No. 40.)

10 On December 6, 2016, Defendants State of California, Patton State Hospital,  
11 Oreol, Fisher, Moon,<sup>4</sup> Baroi, and Ramos filed the instant Motion to Dismiss the FAC.  
12 (Docket No. 41.) On December 12, 2016, Defendants/Third-Party Plaintiffs County,  
13 Joshua, Gore, and Leicht (collectively, "County Defendants") filed their Third-Party  
14 Complaint against Third-Party Defendants Correctional Physicians Medical Group, Inc.  
15 ("CPMG"), Jorge Naranjo ("Naranjo"), Sara Hansen ("Hansen"), and Roes 1-10.  
16 (Docket No. 43.) CPMG filed its Answer to the Third-Party Complaint on January 5,  
17 2017. (Docket No. 48.)

18 On February 14, 2017, Plaintiffs filed an *Ex Parte* Motion to Amend the FAC  
19 (Docket No. 58, "*Ex Parte* Motion"), which the Court denied on February 28, 2017.  
20 (Docket No. 72.) Plaintiffs timely moved for reconsideration. (Docket No. 78.)

## 21 DISCUSSION

### 22 A. Plaintiffs' Motion for Reconsideration of *Ex Parte* Motion to Amend

23 The Court previously denied Plaintiffs' *Ex Parte* Motion for two reasons: 1)  
24 contrary to Plaintiffs' assertion otherwise, a majority of the Defendants filed oppositions  
25 to the *Ex Parte* Motion indicating they did not consent to amendment of the FAC; and  
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28 <sup>4</sup> The Court granted the parties' joint motion to dismiss Defendant Moon on June 13,  
2017. (Docket No. 118.)

1 2) Plaintiffs failed to explain why justice required the Court to grant them leave. (Docket  
2 No. 72.)

3 Plaintiffs' Motion for Reconsideration argues that the Court should grant them  
4 leave to file a Second Amended Complaint because: 1) Defendants reneged on their  
5 agreement to permit Plaintiffs to amend the FAC, and 2) they are "entitled" to amend the  
6 FAC. (See Docket No. 78, "Recon. Mot.") The State Defendants and Third-Party  
7 Defendant CPMG each filed oppositions arguing they had only agreed to an extension of  
8 time for Plaintiffs to file a motion to amend the FAC and that Plaintiffs have not shown  
9 new or different facts to warrant reconsideration. (Docket Nos. 81-82.) Although the  
10 County Defendants did not oppose Plaintiffs' *Ex Parte* Motion, they filed an opposition  
11 to the reconsideration motion claiming it asserts "numerous and critical factual  
12 inaccuracies" regarding Plaintiffs' investigative diligence. (Docket No. 83 at 1.)

13 In this District, an application for reconsideration of a judge's prior order should  
14 identify "what new or different facts or circumstances are claimed to exist which did not  
15 exist, or were not shown, upon such prior application." CivLR 7.1.i. Plaintiffs represent  
16 that the State Defendants and CPMG improperly opposed their motion to amend after  
17 Plaintiffs obtained their written consent to amend the FAC. Plaintiffs further contend that  
18 due to the State Defendants' and CPMG's multiple requests for continuances of other  
19 case-related deadlines, their prior arguments regarding the alleged prejudice they would  
20 suffer if Plaintiffs were granted leave to amend no longer hold water. The State  
21 Defendants and CPMG maintain that they never provided Plaintiffs with written consent  
22 to amend the FAC, that they will suffer prejudice if Plaintiffs are granted leave, and that  
23 Plaintiffs have not satisfied Civil Local Rule 7.1.i. While the Court is not convinced by  
24 any of the parties' positions, it finds Plaintiffs complied with Civil Local Rule 7.1.i.

25 Plaintiffs rely on the "Joint Motion to Continue Scheduling Order to Amend the  
26 Complaint [Docket 47]" ("Joint Motion," Docket No. 52) as evidence of the State  
27 Defendants' and CPMG's written agreement to allow them to amend the FAC. The Joint  
28 Motion states that the named parties stipulate, agree and jointly apply to the Court for "a

1 *continuance of the date set out in the Scheduling Order* Regulating Discovery and other  
2 Pre-Trial Proceedings [Docket No. 47] (Amended Scheduling Order) with respect to the  
3 deadline to join other parties, amend the pleadings, or file additional pleadings currency  
4 [sic] set for January 27, 2017.”<sup>5</sup> (Docket No. 52 at 2) (emphasis added.) However, the  
5 Amended Scheduling Order (Docket No. 47) does not provide a deadline to file amended  
6 pleadings. Rather, it clearly states: “*Any motion* to join other parties, to amend the  
7 pleadings, or to file additional pleadings shall be filed by January 27, 2017.” (Docket  
8 No. 47 at 1) (emphasis added.) Thus, Plaintiffs cannot rely on the Joint Motion as  
9 incontrovertible evidence of the State Defendants’ and CPMG’s written consent.  
10 Moreover, the Joint Motion supports State Defendants’ and CPMG’s representation that  
11 they only consented to an extension of time in which Plaintiffs could file a motion to  
12 amend their complaint. As a result, Plaintiffs have failed to demonstrate they obtained all  
13 of the opposing parties’ written consent to amend their complaint, and the Court is not  
14 required to grant them leave to amend. Fed. R. Civ. P. 15(a)(2).

15 With respect to Plaintiffs argument that post-*Ex Parte* Motion events indicate the  
16 prejudice claimed by the State Defendants and CPMG “dissipated or changed over seven  
17 days” or did not exist at the time they filed their *Ex Parte* Motion oppositions, this  
18 argument misses the mark. The Court denied Plaintiffs’ *Ex Parte* Motion for the dual  
19 reasons that they did not obtain written consent *and* did not include any briefing  
20 whatsoever as to why the Court should grant them leave to amend.<sup>6</sup> Nevertheless, the  
21 Court finds Plaintiffs satisfied Civil Local Rule 7.1.i. because their Motion for  
22 Reconsideration includes what their *Ex Parte* Motion to Amend lacked: an independent  
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25 <sup>5</sup> Similarly, Plaintiffs’ Motion for Reconsideration states that “the parties filed a Joint  
26 Motion for continuance of the date set in the Scheduling Order with respect to the  
27 deadline to amend the pleadings.” (Docket No. 78 at 3.)

28 <sup>6</sup> Understandably, Plaintiffs may not have realized an independent basis was necessary  
due to their apparent mistaken belief that the State Defendants and CPMG consented to  
amendment of the FAC.

1 explanation of why the Court should grant them leave to amend. *See* CivLR 7.1.i (an  
2 application for reconsideration should include “what new or different facts and  
3 circumstances are claimed to exist which did not exist, *or were not shown*, upon such  
4 prior application”) (emphasis added). Additionally, the Civil Local Rules are subordinate  
5 to the Federal Rules of Civil Procedure,<sup>7</sup> which directs courts to construe, administer, and  
6 employ the procedural rules “to secure the just, speedy, and inexpensive determination of  
7 every action and proceeding.” Fed. R. Civ. P. 1; *see also* CivLR 1.1.c (same).

8 Therefore, Plaintiffs’ Motion for Reconsideration is **GRANTED**.

9 **B. Plaintiffs’ Motion for Leave to Amend**

10 Before trial, and after the time has elapsed for which a party may amend its  
11 pleading as a matter of course, Rule 15(a)(2) of the Federal Rules of Civil Procedure  
12 provides that: “a party may amend its pleading only with the opposing party's written  
13 consent or the court's leave.” Fed. R. Civ. P. 15(a). Leave to amend under Rule 15(a)(2)  
14 should be “freely give[n] . . . when justice so requires.” Fed. R. Civ. P. 15(a)(2). The  
15 Ninth Circuit “has noted on several occasions . . . that the Supreme Court has instructed  
16 the lower federal courts to heed carefully the command of Rule 15(a), . . . by freely  
17 granting leave to amend when justice so requires.” *DCD Programs, Ltd. v. Leighton*, 833  
18 F.2d 183, 186 (9th Cir. 1987). “This policy is ‘to be applied with extreme liberality.’”  
19 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting  
20 *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)).

21 As discussed above, the Court finds Plaintiffs have not demonstrated they obtained  
22 written consent from all opposing parties. Therefore, the Court must determine whether  
23 justice requires granting Plaintiffs leave to amend. Fed. R. Civ. P. 15(a). Courts consider  
24 “undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous  
25 amendments, undue prejudice to the opposing party, and futility of the proposed  
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28 <sup>7</sup> *See* CivLR 1.1.c. (“These rules supplement the Federal Rules of Civil Procedure[.]”).

1 amendment” in deciding whether justice requires granting leave to amend under Rule 15.  
2 *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (citing  
3 *Foman v. Davis*, 370 U.S. 178, 182 (1962)). Although each factor may warrant  
4 consideration, “prejudice to the opposing party . . . carries the greatest weight.”  
5 *Eminence Capital*, 316 F.3d at 1052.

6 Although the Court disagrees that Plaintiffs are “entitled” to amend their pleading  
7 (Recon. Mot. at 14.), it finds that none of the Defendants’ various claims of undue delay,  
8 bad faith, prejudice or futility weigh against granting leave. Specifically, the Court notes  
9 the record supports Plaintiffs’ assertion that they were diligent in attempting to ascertain  
10 all potential defendants based on available discovery. The State Defendants’ and County  
11 Defendants’ argument that Plaintiffs’ possessed information regarding the additional  
12 claims and defendants in the proposed Second Amended Complaint is speculative at best.  
13 With respect to CPMG’s claim that it would suffer undue prejudice of having to defend  
14 42 U.S.C. § 1983, wrongful death, and medical negligence claims, this claim is  
15 outweighed by the prejudice to Plaintiffs if they are not permitted to assert claims against  
16 potentially responsible parties, particularly in light of the Court’s directive to liberally  
17 grant leave to amend in the interests of justice.

18 Accordingly, the Court grants Plaintiffs’ request for leave to amend the FAC.  
19 Plaintiffs may file a Second Amended Complaint within seven (7) days of the date of this  
20 Order.<sup>8</sup>

21 **B. State Defendants’ Motion to Dismiss FAC**

22 Because the Court grants Plaintiffs leave to amend the FAC, the State Defendants’  
23 Motion to Dismiss is **DENIED as moot**.

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26 <sup>8</sup> The Court notes Plaintiffs did not comply with CivLR 15.1.b when they filed their *Ex*  
27 *Parte* Motion to Amend. (Docket No. 58.) The Court reminds all parties that they are  
28 expected to comply with both the Federal Rules of Civil Procedure and the Civil Local  
Rules.




1 **CONCLUSION**

2 For the reasons set forth above, Plaintiffs' Motion for Reconsideration is  
3 **GRANTED** and the State Defendants' Motion to Dismiss is **DENIED as moot**. The  
4 Court grants Plaintiffs leave to file a Second Amended Complaint ("SAC") within **seven**  
5 **(7) days** of the date of this Order.

6 **IT IS SO ORDERED.**

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8 DATED: July 10, 2017

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10 HON. ROGER T. BENITEZ  
11 United States District Judge  
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