

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

Herrera v. County of San Benito

No. 24-cv-01133-NC (N.D. Cal. Aug. 11, 2025) · No. 24-cv-01133-NC · Decided August 11, 2025

OPINION

Herrera v. County of San Benito

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9 10 ROSARIO HERRERA, Case No. 24-cv-01133-NC 11 Plaintiff, ORDER GRANTING

12 PLAINTIFF'S MOTION FOR

v. LEAVE TO FILE A FOURTH

13 AMENDED COMPLAINT

COUNTY OF SAN BENITO,

14 Re: ECF 81 Defendant. 15 16 17 Plaintiff Rosario Herrera brings this action against Defendant
County of San Benito 18 on behalf of herself and her deceased son, Jessie Andrew Barrientos,
following Barrientos' 19 death by suicide while held as a pre-trial detainee at the San Benito
County Jail. About six 20 weeks after the close of fact discovery, Plaintiff filed this motion for
leave to file a fourth 21 amended complaint, which would add three claims she argues are
supported by facts that 22 she first learned of at the end of or after fact discovery. Defendant
opposes, arguing 23 Plaintiff unduly delayed, and that amending the pleadings after the close of
discovery and 24 while summary judgment is pending would cause it undue prejudice. As
discussed below, 25 the Court finds Plaintiff's motion meets the good cause standard of Federal
Rule of Civil

26 Procedure 16(b) and the liberal amendment standard of Federal Rule of Civil Procedure

27 15(a). Accordingly, the Court GRANTS Plaintiff leave to file a fourth amended 1 I. Procedural
Background 2 Plaintiff initiated this action in San Benito County Superior Court. Defendant 3
removed to this Court. ECF 1. The Court granted motions to dismiss the first amended 4 and
second amended complaints. ECF 17, 34. Plaintiff filed a third amended complaint. 5 ECF 35.
The Court denied Defendant's motion to strike and granted in part and denied in 6 part
Defendant's motion to dismiss the third amended complaint. ECF 45. The Court 7 dismissed two
claims, including a claim under 42 U.S.C. § 1983 for Inadequate and 8 Reckless Training, with
leave to amend, but Plaintiff filed a notice indicating she would 9 not seek to amend the two
claims at that time, but might in the future. ECF 48. 10 Plaintiff filed the present motion for leave

to amend on July 18, 2025. ECF 81 11 (Mot.). The sole claim in the current operative third amended complaint is a § 1983 claim 12 for Unconstitutional Policy of Understaffing the Jail. Plaintiff's proposed fourth amended 13 complaint, ECF 81-1, seeks to add the following second, third, and fourth claims for: (2) 14 § 1983 Unconstitutional Policy of Failure to Protect Inmates; (3) § 1983 Inadequate and 15 Reckless Training; and (4) Violation of Title II of the Americans with Disabilities Act 16 (ADA) and the Rehabilitation Act (RA). Defendant filed an opposition to the motion, ECF 17 83 (Opp'n), and Plaintiff replied, ECF 87 (Reply). 18 A week before Plaintiff filed her motion, Defendant filed a motion for summary 19 judgment on the third amended complaint, which is now fully briefed. ECF 78, 84, 86. 20 Both parties have consented to magistrate judge jurisdiction under 28 U.S.C. § 636(c). 21 ECF 10, 11. 22 II. Federal Rule of Civil Procedure 16(b) 23 Neither party recognizes nor discusses the relevance of Rule 16(b) to the present 24 motion. "Once the district court ha[s] filed a pretrial scheduling order pursuant to Federal 25 Rule of Civil Procedure 16 which establishe[s] a timetable for amending pleadings that 26 rule's standards control[]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 27 (9th Cir. 1992). Rule 16(b) requires a showing of "good cause" to modify the scheduling 1 party moves to amend the pleadings after the scheduling order has been issued, it must 2 show good cause for amendment. *Johnson*, 975 F.2d at 608–09. Only after a court is 3 satisfied that there is good cause under Rule 16(b) does it assess whether amendment is 4 proper under Rule 15. See *id.* at 608; *Skillz Platform Inc. v. AviaGames Inc.*, No. 21-cv- 5 02436-BLF, 2023 WL 7308385, at *1 (N.D. Cal. Nov. 6, 2023). 6 The good cause inquiry under Rule 16(b) "primarily considers the diligence of the 7 party seeking the amendment" and "the moving party's reasons for seeking modification." 8 *Johnson*, 975 F.2d at 609. "Although the existence or degree of prejudice to the party 9 opposing the modification might supply additional reasons to deny a motion," if the 10 moving party "was not diligent, the inquiry should end." *Id.* 11 Here, the Court issued a pretrial scheduling order on December 17, 2024, which 12 stated, "[t]he date to amend the pleadings or add parties without leave of the Court has 13 passed." ECF 59. As a result, the Court must first assess whether Plaintiff establishes 14 good cause under Rule 16(b) to file a fourth amended complaint. The Court finds she 15 does. 16 The parties exchanged initial disclosures on January 13, 2025. Mot. 7; Opp'n 5. 17 Plaintiff served requests for production of documents and written discovery on Defendant 18 two days later, again one month later in February, and again two months later in April.

19 Mot. 7–8; Opp'n 6. Plaintiff served deposition notices and subpoenas in early April and 20 May in advance of the June 4, 2025, fact discovery cut-off. Mot. 8; Opp'n 6. Plaintiff 21 contends she first learned of facts to support her fourth amended complaint through 22 depositions and document productions that occurred from late May to mid-June. Mot. 8– 23 10, 13–14. She then provided a copy of her proposed amended complaint to Defendant on 24 June 30, 2025, and requested to meet and confer before filing the present motion to amend 25 on July 18, 2025. Mot. 11. On this timeline, the Court concludes Plaintiff acted diligently 26

and thus establishes good cause under Rule 16(b). 27 III. Federal Rule of Civil Procedure 15(a) 1 whether leave to amend is appropriate under Rule 15. See Johnson, 975 F.2d at 608. 2 Under Rule 15(a), “a party may amend its pleading once as a matter of course,” after 3 which time “a party may amend its pleading only with the opposing party’s written consent 4 or the court’s leave.” Fed. R. Civ. P. 15(a). Rule 15(a) instructs that courts “should freely 5 give leave when justice so requires”—a policy that is “to be applied with extreme 6 liberality.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) 7 (citations omitted); Fed. R. Civ. P. 15(a)(2). Courts consider five factors in determining 8 whether to grant leave to amend: (1) undue delay; (2) bad faith; (3) prior amendments; (4) 9 undue prejudice; and (5) futility. *Eminence*, 316 F.3d at 1052 (citing *Foman v. Davis*, 371 10 U.S. 178 (1962)). “[T]he consideration of prejudice to the opposing party [] carries the 11 greatest weight. . . . Absent prejudice, or a strong showing of any of the remaining Foman 12 factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.” 13 *Id.* “The party opposing amendment bears the burden of showing prejudice.” *DCD 14 Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). 15 The Court briefly addresses each of the five Foman factors. Defendant does not meet 16 its burden of establishing undue prejudice, and the factors and policy favoring amendment 17 support granting leave to amend. 18 A. Undue Delay 19 In assessing undue delay, courts evaluate “whether the moving party knew or 20 should have known the facts and theories raised by the amendment in the original 21 pleading.” *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1388 (9th Cir. 1990). “[D]elay alone 22 is not sufficient to justify the denial of a motion requesting leave to amend.” *DCD*, 833 23 F.3d at 187. Here, the Court does not find undue delay. 24 Plaintiff contends that she seeks to amend “to conform the pleadings to the evidence 25 that has been developed,” much of which she learned from Defendant after the close of 26 discovery. Mot. 5. Defendant, in turn, argues the fact that certain information “came to 27 light very late in the litigation . . . is a situation of Plaintiff’s own making” because she 1 issues. Opp’n 12. The Court already concluded that Plaintiff acted diligently and is not 2 persuaded that noticing depositions in the second half of discovery, by itself, undermines 3 that conclusion. See *Skillz*, 2023 WL 7308385, at *3 (considering diligence when 4 evaluating undue delay); *Dunbar v. Google, Inc.*, No. 12-cv-003305-LHK, 2012 WL 5 6202797, at *15 (N.D. Cal. Dec. 12, 2012) (same). 6 Moreover, the correct inquiry for undue delay under Rule 15 is not whether Plaintiff 7 could have conducted depositions sooner in discovery, but rather “how quickly the motion 8 for leave to amend was filed after the moving party knew of the necessary facts and 9 theories to support the proposed amendment.” See *DNA Genotek Inc. v. Spectrum Sols. 10 L.L.C.*, No. 21-cv-00516-RSH-DDL, 2023 WL 3442085, at *8 (S.D. Cal. May 12, 2023) 11 (citing *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 953 (9th Cir. 12 2006)). Plaintiff’s motion points to specific facts she “gleaned” from depositions and 13 document productions on June 4, 6, 10, 11, 18, and 19, 2025, that support her new 14 allegations and claims. See *Jackson*, 902 F.2d at 1388; Mot. 13–14. Within two weeks of 15 June 19, 2025, Plaintiff sent Defendant a copy of the fourth amended complaint, and

16 within a month she filed it with this Court. Mot. 10–11. There was no undue delay. See 17 *Zoe Mktg., Inc. v. Impressons, LLC*, No. 14-cv-1881-AJB (WVG), 2015 WL 12216341, at 18 *4 (“[T]he Court finds no undue delay on the part of Plaintiff as Plaintiff sought 19 amendment within a month of learning potential grounds for amendment.”). 20 Defendant also emphasizes that Plaintiff unduly delayed because she could have 21 subpoenaed or deposed Wellpath—a third-party nonlitigant contracted with Defendant that 22 Plaintiff for months knew provided medical care to the jail and to Barrientos—to obtain 23 Barrientos’s medical record and other relevant information. Opp’n 10–11. But the Court 24 is persuaded by Plaintiff’s argument on reply that Defendant had ample opportunity, if not 25 obligation, to provide comparable information that was in its possession, custody, and 26 control, as evidenced by Defendant’s ultimate production of Barrientos’s medical record to 27 Plaintiff, in response to specific discovery requests. See Reply 3–4. It’s not clear, then, 1 Defendant, who did in fact have such information, rather than from third parties. See 2 *Dunbar*, 2012 WL 6202797, at *13–14 (finding plaintiff did not act with undue delay in 3 part because the defendant had “been less than forthcoming” in producing relevant 4 documents, so its “own strategic choices may have contributed to Plaintiff’s delay in 5 moving to amend”). And nowhere does Defendant argue that any of the facts Plaintiff 6 alleges she relies on in seeking amendment can be found in their disclosures, responses, or 7 productions from earlier in discovery. The Court therefore does not find undue delay on 8 the theory that Plaintiff knew or should have known pertinent facts sooner. 9 B. Bad Faith 10 In evaluating whether a movant seeks leave to amend in bad faith, courts consider 11 evidence of bad faith including whether the motion was brought “to gain a strategic 12 advantage” or avoid dismissal. *Dep’t of Fair Emp. and Housing v. Law Sch. Admission 13 Council, Inc.*, No. 12-cv-1830 EMC, 2013 WL 485830, at *6 (N.D. Cal. Feb. 6, 2013) 14 (DFEH). Defendant argues Plaintiff’s bad faith is evidenced “by failing to provide proper 15 notice of her motion and by ignoring and omitting” facts and evidence that undermine her 16 new allegations and claims. Opp’n 7–10. Plaintiff noticed a hearing on her motion for two 17 days earlier than required by the Local Rules, for the same day Defendant’s motion for 18 summary judgment is to be heard, and for the day before mediation. See Opp’n 7–8. The 19 Court does not find, as Defendant contends, that this rises to evidence of Plaintiff’s intent 20 to “cause unnecessary delay, to push back the trial in this matter and/or to needlessly 21 increase the cost of this litigation with pending expert discovery.” See Opp’n 8; see also

22 Reply 2 (“Plaintiff’s counsel concedes a calendaring error in filing the instant motion.”).

23 As discussed below with regards to futility, Defendant’s argument that Plaintiff’s amended 24 allegations and claims are undermined by discovery amounts to a challenge to the strength 25 of the evidence and is more appropriate for a merits’ determination. See Opp’n 9–10. As 26 a result, bad faith does not weigh against amendment here. 27 1 C. Prior Amendments 2 As part of the Foman factors, courts consider any “repeated failure to cure 3 deficiencies by amendments previously allowed.” 371 U.S. at 182. Defendant argues 4 Plaintiff should not be afforded an

opportunity to amend the complaint for a fifth time at 5 this phase of the case. This factor leans in favor of Defendant's stance against amendment. 6 Nonetheless, the Court does not find this factor particularly persuasive, especially where 7 many courts do not even consider it. See, e.g., Skillz, 2023 WL 7308385, at *2–3; DNA 8 Genotek, 2023 WL 3442085, at *4–9. The Court is also cognizant that one of Plaintiff's 9 prior amendments occurred while she was still proceeding pro se, and that the Court 10 previously granted Plaintiff leave to amend her claim for Inadequate and Reckless 11 Training, which she opted not to do at the time. ECF 81-2 ¶¶ 1–3; ECF 48. 12 D. Undue Prejudice 13 Defendant argues that amendment would cause it undue prejudice because the 14 matter is already ripe for summary judgment and “discovery would need to be reopened 15 due to Plaintiff's failure to join necessary, indispensable parties which would require 16 costly extensive new preparations for trial by the parties.” Opp'n 14. The Court first 17 addresses Defendant's arguments as to indispensable parties before turning to the issue of 18 undue prejudice more broadly. The Court finds any prejudice to Defendant is not undue. 19 Defendant identifies seven parties it contends are indispensable to Plaintiff's added 20 claims. Opp'n 15. Defendant argues the parties are indispensable “given that they were 21 directly involved in the medical and mental health treatment of Decedent at all times 22 during his incarceration” and “are all separate entities and persons that . . . could have been 23 added under Plaintiff's existing 42 U.S.C. §1983 claims.” Opp'n 15. It is not clear why 24 contracted medical providers should have been joined in Plaintiff's existing claim for 25 understaffing the jail, or why these parties are indispensable just because they could have 26 been joined. Defendant cites *West v. Atkins* in support, which held only that “a physician 27 employed . . . to provide medical services to state prison inmates” could be held liable 1 based on inadequate care. 487 U.S. 42, 54 (1988); see Opp'n 15. *West* instead recognized 2 that “[c]ontracting out prison medical care does not relieve the State of its constitutional 3 duty to provide adequate medical treatment to those in its custody.” 487 U.S. at 56. 4 Defendant does not argue it is not responsible for the actions of contracted medical 5 providers and offers no other case law or analysis to support its argument that medical 6 providers are indispensable parties to the types of claims Plaintiff's fourth amended 7 complaint alleges. See also Reply 4 (stating Defendant testified “that it actively 8 supervises” medical provider Wellpath). Even if Defendant, as it repeatedly notes, 9 believes this case should be “a straightforward medical negligence matter” presumably 10 against Wellpath or its employees, Plaintiff has not brought it as one—a strategy decision 11 within their purview for which they bear the risk or benefit. See Opp'n 4. 12 As to Defendant's remaining arguments of undue prejudice, some courts find that 13 the timing of a motion for leave to amend at the end of discovery or during summary 14 judgment effectively causes undue prejudice. See *Mixt Greens v. Sprout Café*, No. 08-cv- 15 5175 EMC, 2010 WL 2794388, at *2 (N.D. Cal. July 15, 2010) (citing Ninth Circuit 16 cases). Defendant argues such is the case here because amendment would require 17 additional expert retention, extensive discovery, issuing of belated subpoenas, and 18 “drastic[]” modification of the case schedule, especially because of the need to add 19 indispensable parties

that would be “percipient witnesses.” Opp’n 4, 15. 20 But courts considering the practical effect of amendment on the nonmoving party 21 also consider whether amendment would change the nature of the case, the need for and 22 scope of additional discovery, and the nonmoving party’s role in any late discovery of 23 facts. For example, in *Genentech, Inc. v. Abbott Laboratories*, the court found that the 24 need for additional discovery, depositions, and postponement of a trial date did “not 25 constitute undue prejudice” where “facts came to light only after the original complaint 26 was filed and during the course of” limited discovery. 127 F.R.D. 529, 531 (N.D. Cal. 27 1989). Here, Plaintiff argues, and Defendant does not deny, that she discovered certain 1 in delaying the timing of Plaintiff’s motion, it is difficult to argue any resulting prejudice is 2 undue. 3 Courts also decline to find undue prejudice where the amendment would not change 4 the nature of the case through new theories or parties. See *Allen v. Bayshore Mall*, No. 12- 5 cv-02368-JST, 2013 WL 6441504, at *4 (N.D. Cal. Dec. 9, 2013) (“The basic fact pattern 6 will remain the same. All that is being added is another legal string to the same old bow.”) 7 (citation omitted). Two of Plaintiff’s added claims are also § 1983 claims, and all three of 8 the added claims relate to Plaintiff’s core theory that the jail was not adequately prepared 9 to care for Barrientos, whether because of understaffing, lack of safety checks, or lack of 10 training, and as a result did not do so. Cf. Opp’n 16 (conceding “issues relating to the 11 adequacy of Decedent’s medical care were made known to Defendant through the filing of 12 an earlier version of the complaint”). Therefore, the fourth amended complaint does not 13 appear to “advance different legal theories and require proof of different facts” that so 14 depart from Plaintiff’s existing claim as to prejudice Defendant. See *AmerisourceBergen*, 15 465 F.3d at 953 & n.10; *DNA Genotek*, 2023 WL 3442085, at *9 (finding undue prejudice 16 where moving party sought to shift theory of who was responsible for inequitable 17 conduct). 18 Finally, although the fourth amended complaint may require additional discovery, 19 the Court does not find that any resulting prejudice would be undue. The discovery taken 20 to date is relevant to the added claims, as evidenced in part by Plaintiff bringing this 21 motion after learning new facts during and after discovery. See *Zoe Mktg.*, 2015 WL 22 12216341, at *4 (finding no undue prejudice where new parties were already involved in 23 litigation and “a significant amount of information related to” a new claim had “already 24 been exchanged through discovery”); *Skillz*, 2023 WL 7308385, at *3 (finding no undue 25 prejudice where discovery on new allegations had already been conducted and the new 26 allegations were “facially relevant” to existing claims). Any additional information that 27 may be relevant to the added claims is also more likely in Defendant’s possession, custody, 1 details as to how much additional discovery they would need to take if amendment is 2 granted, “[t]he burden of having to defend a new claim alone is not undue prejudice under

3 Rule 15” even if doing so “may entail some additional discovery.” *DFEH*, 2013 WL 4 485830, at *5–6. Even if Defendant will need to seek additional information from its 5 contracted medical providers, the Court is not convinced that any burden in doing so is 6 undue. 7

E. Futility 8 Leave to amend is futile and may properly be denied if “no set of facts can be 9 proved under the amendment to the pleadings that would constitute a valid claim or 10 defense.” Skillz, 2023 WL 7308385, at *3; DCD, 833 F.2d at 188. “The merits or facts of 11 a controversy are not properly decided in a motion for leave to amend and should instead 12 be attacked by a motion to dismiss for failure to state a claim or for summary judgment.” 13 Allen, 2013 WL 6441504, at *5 (citation omitted). As such, courts ordinarily “defer 14 consideration of challenges to the merits of a proposed amended pleading until after leave 15 to amend is granted and the amended pleading is filed.” Netbula, LLC v. Distinct Corp., 16 212 F.R.D. 534, 539 (N.D. Cal. 2003). The Court cannot conclude the added claims are 17 futile and preclude amendment here. 18 Defendant argues that Plaintiff’s new claim under the ADA and RA is futile 19 because “Plaintiff is alleging [] purportedly inadequate or inappropriate medical treatment, 20 not a failure to accommodate a disability.” Opp’n 17.1 However, because of nuances as to 21 when a plaintiff can state a claim under the ADA and RA related to medical care, the Court 22 is disinclined to conclude from the face of the fourth amended complaint that “no set of 23 facts can be proved” to support Plaintiff’s ADA and RA claim. See Skillz, 2023 WL 24 7308385, at *3; Merino v. Cnty. of Santa Clara, No. 18-cv-02899-VKD, 2019 WL 25 2437176, at *9–10 (N.D. Cal. June 11, 2019); Razon v. Cnty. of Santa Clara, No. 17-CV- 26 1 Defendant’s heading for the futility section of its opposition brief argues the proposed 27 claims are futile for failure to join necessary parties and for Plaintiff’s lack of standing 1 || 00869-LHK, 2018 WL 405010, at *10 (N.D. Cal. Jan. 12, 2018). The validity of 2 || Plaintiff’s ADA and RA claim is better decided upon full briefing of a motion on the 3 || merits. 4 Defendant’s remaining arguments as to futility contend that Plaintiff’s added claims 5 || are undermined by contrary evidence Defendant has presented on summary judgment. 6 || Although a claim may be futile if it would not survive summary judgment, this is not a 7 || case in which the moving party has failed to present any affirmative evidence in support of 8 its amended claims. See DNA Genotek, 2023 WL 3442085, at *7. Rather, both sides point 9 || to affirmative evidence in support of or against Plaintiff’s added claims. Therefore, it is 10 || more appropriate to weigh the evidence in the context of a motion for summary judgment. 11 Because Defendant does not establish undue prejudice or a strong showing of the 12 other Foman factors, the Court finds Plaintiff’s motion meets the liberal amendment 13 standards of Rule 15(a). See Eminence, 316 F.3d at 1052. C 14 || IV. Conclusion 3 15 Because Plaintiff meets the amendment standards of Federal Rules of Civil 16 || Procedure 16(b) and 15(a), the Court GRANTS Plaintiff’s motion for leave to file a fourth 17 || } amended complaint. 18 Plaintiff must file the fourth amended complaint at ECF 81-1 and its exhibits as a 19 || separate docket entry by August 14, 2025. The parties are further ordered to, by August 20 || 18, 2025, meet and confer and file a joint statement of no more than 5 pages on the impact 21 || of the fourth amended complaint on the pending motion for summary judgment, ECF 78, 22 || and a joint proposal for any changes to the case schedule as a result of this Order. 23 IT IS SO ORDERED. 24 25 || Dated: August 11, 2025 he ——— _ 26 United States Magistrate Judge 27 28

