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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ERIC WRIGHT, individually and in
8 his capacity as personal representative
9 of the ESTATE OF STEVEN O.
WRIGHT; and AMY SHARP,
individually,

10 Plaintiffs,

11 v.
12 UNITED STATES OF AMERICA,
d/b/a THE DEPARTMENT OF
13 VETERANS AFFAIRS; MEDFORD
CASHION, M.D.; SHEA McMANUS,
14 M.D.; ESKRIDGE ENTERPRISES,
LLC.; and DOES 1-5, Inclusive,

15 Defendants.

16 NO: 2:15-CV-0305-TOR

17 ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
18 AMENDED COMPLAINT AND
DENYING GOVERNMENT'S
MOTION TO DISMISS AS MOOT

19 BEFORE THE COURT are the United States' Motion to Dismiss (ECF No.
20) and Plaintiffs' Motion for Leave to File an Amended Complaint (ECF No. 27).
These motions were submitted for consideration without oral argument. The Court
has reviewed the motions and the file therein, and is fully informed.

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22 DENYING MOTION TO DISMISS AS MOOT ~ 1

1 BACKGROUND

2 On November 3, 2015, Plaintiffs commenced this action for damages
3 alleging medical malpractice and wrongful death. ECF No. 1. The United States
4 moved to dismiss contending that Drs. Cashion and McManus were not its
5 employees, but rather independent contractors for whom the United States'
6 sovereign immunity from suit has not been waived. ECF No. 20. Plaintiffs then
7 conceded that the physicians were independent contractors, not employees for
8 which the United States could be liable for their negligence. ECF No. 25.
9 However, Plaintiffs contended that their Complaint was not limited solely to the
10 actions of these physicians, other bases of liability were alleged against the United
11 States. *Id.* Thereafter, Plaintiffs sought to file an amended complaint in order to
12 clarify their allegations. ECF No. 27.

13 The United States opposes Plaintiffs' motion. ECF No. 30. The remaining
14 Defendants have not responded.

15 DISCUSSION

16 The United States contends Plaintiffs' motion is governed by the standards
17 of Fed. R. Civ. P. 16(b) (for good cause). The United States is mistaken. The
18 good cause standard for amendment of pleadings only applies if the party seeks to
19 amend a pleading after the date specified in the scheduling order. *See Johnson v.*
20 *Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) ("party seeking to

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1 amend pleading after date specified in scheduling order must first show ‘good
2 cause’ for amendment under Rule 16(b), then, if ‘good cause’ be shown, the party
3 must demonstrate that amendment was proper under Rule 15”) (citation omitted).

4 The instant motion to amend is well within the deadline to amend pleadings
5 established by the Court in its Scheduling Order. ECF No. 19 at 2 (“Any motion to
6 amend the pleadings . . . shall be filed no later than September 30, 2016.”).

7 Next, the United States contends amendment would be futile. The United
8 States has raised serious questions concerning the sufficiency of the proposed
9 amended complaint as it is currently drafted. As drafted the proposed amended
10 complaint may very well be deficient.

11 Federal Rule of Civil Procedure 15(a) provides that, except in circumstances
12 not present here, “a party may amend its pleading only with the opposing party’s
13 written consent or the court’s leave,” which “[t]he court should freely give . . .
14 when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has directed
15 that this policy be applied with “extreme liberality.” *Eminence Capital, LLC v.*
16 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted). In ruling
17 upon a motion for leave to amend, a court must consider whether the moving party
18 acted in bad faith or unduly delayed in seeking amendment, whether the opposing
19 party would be prejudiced, whether an amendment would be futile, and whether
20 the movant previously amended the pleading. *United States v. Corinthian Colleges*,

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1 655 F.3d 984, 995 (9th Cir. 2011). “Absent prejudice, or a strong showing of any
2 of the remaining [factors], there exists a *presumption* under Rule 15(a) in favor of
3 granting leave to amend.” *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654
4 F.3d 975, 985 (9th Cir. 2011) (citation omitted).

5 The Court finds amendment is permissible. The Court finds there is no
6 indication that Plaintiffs’ move to amend is made in bad faith nor that a *properly*
7 *worded amendment* would be futile. Additionally, Plaintiffs have not previously
8 moved for leave to amend.¹ Finally, at this early stage in the proceedings, the
9 Court finds neither undue delay nor that Defendants would be prejudiced by the
10 requested amendment. Plaintiffs’ motion is granted.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

12 1. Plaintiffs’ Motion for Leave to File Amended Complaint (ECF No. 27) is
13 **GRANTED**. Plaintiffs are permitted to file and serve an amended
14 complaint within **fourteen (14) days** of entry of this order.
15 2. The telephonic hearing on Plaintiff’s motion (ECF No. 27) which is set for
16 June 16, 2016, is **VACATED**.

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¹ Plaintiffs are reminded that all Doe defendants must be identified by a timely
19 motion to amend the Complaint, as well. *See* ECF No. 19 at 2, Jury Trial
20 Scheduling Order.

3. The United States' Motion to Dismiss (ECF No. 20) is **DENIED** as moot as the Plaintiffs have now abandoned their first complaint.

The District Court Clerk is directed to enter this Order and provide copies to counsel.

DATED June 13, 2016.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

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