

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

MARY JOHNSON and  
JAMES JOHNSON,  
  
Plaintiffs,

vs.

RON WALL, JESS CARSON, and  
BRUCE BARNETT,  
  
Defendants.

Case No. 4:09-cv-0031-RRB

**ORDER DENYING MOTION  
TO DISMISS**

**I. BACKGROUND**

This matter arises from the execution of a search warrant at the home of the Plaintiffs on November 28, 2005. Plaintiffs have alleged assault and battery, false imprisonment, intentional or reckless infliction of emotional distress, trespass, negligent use of excessive force, and civil rights violations under 42 U.S.C. § 1983. They seek punitive damages. The case was originally filed in Alaska State Court on March 21, 2007. Defendants named in the original Complaint were the State of Alaska and "John Does & Jane Does 1-6."

The State of Alaska was dismissed pursuant to Alaska State Court motion practice. Subsequently, Plaintiffs amended their Complaint to substitute individually named officers for the "Doe" Defendants. The First Amended Complaint was filed in State Court on February 12, 2009. On June 17, 2009, the State removed the matter to Federal Court.

## **II. MOTION TO DISMISS**

Defendants argue that the Plaintiffs' claims against the officers are precluded by the applicable statutes of limitations. Whether a two-year or three-year statute of limitations is applied, the Amended Complaint was filed more than three years after the execution of the search warrant. Defendants argue that the First Amended Complaint should not relate back to the original Complaint under Federal Rule 15(c)(1)(C)(ii). Although the Ninth Circuit has not addressed the issue, Defendants argue that other circuits have confronted this issue and are "in near-unanimity that lack of knowledge (i.e. John Doe pleading) is not a mistake and that therefore the amended pleading that substitutes the name of a known individual cannot relate back and cannot avoid preclusion by statutes of limitations." Defendants summarize several cases from other circuits that generally state that a plaintiff's lack of knowledge of a defendant's identity cannot be considered a

"mistake" under Rule 15 and therefore there cannot be relation back.

In opposition, Plaintiffs argue that all claims raised by the Defendants were ruled on in a final decision in their favor by the Superior Court and, therefore, Defendants are precluded by *res judicata* from relitigating these claims.<sup>1</sup> The Superior Court judge noted at oral argument that "there was no prejudice to the state. He found that attorney general Gustafson was on constructive notice and was in a better position than Plaintiffs' counsel to know who the Does were since he represented them."<sup>2</sup> Plaintiffs further argue that Alaska Civil Rule 15(c) is significantly different than its Federal counterpart and that relation back of amendments is permitted in these circumstances. Furthermore, in *Farmer v. State*, 788 P.2d 43 (Alaska 1990), the Alaska Supreme Court noted that where the new and old party share the same attorney, imputed notice can be readily found. Plaintiffs suggest Defendants are merely forum shopping.

In reply, Defendants argue that the doctrines of *res judicata* and law of the case do not preclude this Court from ruling on their Motion to Dismiss, because 28 U.S.C. A. § 1450 allows the Federal

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<sup>1</sup> Docket 38.

<sup>2</sup> Docket 38 at 3.

Court to dissolve or modify any orders issued by the State Court upon removal.<sup>3</sup>

Defendants are correct that § 1450 allows for reconsideration of State Court orders upon removal. However, the Court finds that Plaintiffs correctly note that it is Alaska Civil Rule 15 that is applicable here, not Federal Rule 15. The Ninth Circuit has clearly decided that the relation back provisions of state law, rather than Federal Civil Rule 15(c), govern a federal cause of action pursuant to 42 U.S. C. § 1983.<sup>4</sup> State relation back provisions constitute a substantive state policy that is applicable in federal civil rights actions in which a state statute of limitations governs.<sup>5</sup> Furthermore, the Alaska Supreme Court has clearly stated that "the touchstone of the relation back doctrine is fairness."<sup>6</sup> "[T]he rules should be liberally construed to insure that no plaintiff is deprived of his day in court solely because of the intricacies and technical limitations of pleading. Rather, our policy remains that decisions should be rendered on the merits of

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<sup>3</sup> Docket 43.

<sup>4</sup> *Merritt v. County of Los Angeles*, 875 F.2d 765, 768 (9th Cir. 1989).

<sup>5</sup> *Id.* at fn. 5.

<sup>6</sup> *Farmer v. State*, 788 P.2d 43, 47 (1990).

the case."<sup>7</sup> In *Farmer*, the plaintiff alleged an unreasonable government seizure, naming the State of Alaska and two State Troopers, one named and one unnamed. The plaintiff had no knowledge of the true identity of the second Trooper and used the "John Doe" mechanism. The facts of *Farmer* are sufficiently similar to the facts of this case to warrant a similar finding. Notice was given constructively where the additional party brought in by amendment is represented by the same attorney as the existing parties.<sup>8</sup> Furthermore, "[t]he doctrine of imputed notice, under the identity of interest rubric, is especially compelling in suits similar to *Farmer's*, wherein a citizen is seeking redress against the government and its agents."<sup>9</sup> Although the *Farmer* Court did not specifically discuss the element of "mistake" as it relates to "John Doe" pleadings, it concluded that "through no fault of the plaintiff the defendant's true identity was unknown at the time of pleading."<sup>10</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 49.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 49-50.

**III. CONCLUSION**

For the foregoing reasons, the Motion to Dismiss at **Docket 33** is **DENIED**. Oral argument scheduled for April 16, 2010, is **VACATED**.

ENTERED this 16<sup>th</sup> day of March, 2010.

S/RALPH R. BEISTLINE  
UNITED STATES DISTRICT JUDGE