

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TYSHEIA GARVIN,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 02-2214
	:	
CITY OF PHILADELPHIA, and	:	
POLICE OFFICER JOHN DOE,	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM**

ROBERT F. KELLY, Sr. J.

DECEMBER 6, 2002

Presently pending before this Court is the Plaintiff Tysheia Garvin’s (“Garvin”) Motion to Amend the Complaint and Motion for Enlargement of Time to Conduct Depositions of Newly Added Defendants. In this Motion, Garvin requests that the Court allow her to replace the “John Doe” defendant with the names of the four police officers actually involved in the underlying factual situation. For the reasons that follow, we must deny the Motion.

**I. BACKGROUND**

Garvin alleges in her Complaint that on April 24, 2000, at approximately 11:00 a.m., Garvin and another woman began an altercation with one another while in front of the Criminal Justice Center in the City of Philadelphia. Shortly after this event, a second altercation erupted between the two women. Garvin further alleges that as a result of the second altercation, an unnamed police officer handcuffed and arrested her. Garvin avers that when she attempted to walk towards her crying child, the unnamed officer grabbed and jerked the handcuffs, throwing Garvin face first onto the ground, causing serious injury. On April 18, 2002, Garvin filed her

Complaint which alleges that the City of Philadelphia (“the City”) and the unnamed “John Doe” officer violated 42 U.S.C. § 1983 and the Fourth Amendment; and that the “John Doe” officer also committed assault and battery and intentionally inflicted emotional distress upon her.

On May 13, 2002, the City filed its Answer to the Complaint. The “John Doe” defendant was never identified, sued, or served with the Complaint. Therefore, no appearance was entered nor was a responsive pleading filed on “John Doe’s” behalf. On May 31, 2002, this Court entered a Scheduling Order which stated that discovery should be completed by October 31, 2002. On July 17, 2002, Garvin requested that the City provide Initial Disclosures so that she could identify the officers involved in the factual scenario described above and amend the Complaint to include their names. The City served Garvin with its Initial Disclosures on July 24, 2002. The Initial Disclosures and attendant documents list all of the police officers present at the event and specifically name the arresting officer. Garvin filed the present Motion to Amend the Complaint and Motion for Enlargement of Time to Conduct Depositions of Newly Added Defendants on October 29, 2002, two days before the close of discovery and seventy-four days after the time limit proscribed by Federal Rule of Civil Procedure 4(m) for adding new parties.

## **II. DISCUSSION**

### **A. THE APPLICABLE LAW**

Under Federal Rule of Civil Procedure 15(a), leave to amend shall be freely given, in the absence of circumstances such as undue delay, bad faith or dilatory motive, undue prejudice to the opposing party or futility of amendment. Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988)(citing Foman v. Davis, 371 U.S. 178, 182 (1962)). If the relief sought by the amendment would be barred by the applicable statute of limitations, then the

amendment is futile and the motion to amend should be denied. Id.

Here, Garvin proposes to amend the Complaint by replacing the “John Doe” defendant with the names of the four police officers allegedly involved in the situation. Garvin alleges that these four newly named defendants subjected her to excessive force in violation of 42 U.S.C. § 1983 and the Fourth Amendment. Claims of constitutional violations are governed by the state statute of limitations for personal injury claims. See Wilson v. Garcia, 471 U.S. 261 (1985). Based on Pennsylvania law, the applicable statute of limitations in this case is two years from the date of the alleged injury.<sup>1</sup> 42 Pa. C.S.A. § 5524; Bougher v. Univ. of Pitt., 882 F.2d 74, 78 (3d Cir. 1989). Because the statute of limitations ran on April 24, 2002 (two years after the alleged event), Garvin may not now amend the Complaint and add these newly named defendants and claims unless the amendment relates back to the original Complaint. Urrutia v. Harrisburg County Police Dept., et al., 91 F.3d 451, 457 (3d Cir.1996)(citing Nelson v. County of Allegheny, 60 F.3d 1010, 1015 (3d Cir.1995)).

When the original complaint includes “John Doe” defendants and the plaintiff proposes to replace them, after the statute of limitations has run, with newly named defendants in an amended complaint, the Third Circuit has looked to Federal Rule of Civil Procedure 15(c)(3) in determining whether the amendment relates back to the initial complaint. Singletary v. Pa. Dept. of Corr., 266 F.3d 186, 189 (3d Cir. 2001); Urrutia, 91 F.3d at 457. In Singletary, the Third Circuit explained that Federal Rule of Civil Procedure 15(c)(3) imposes three conditions which must be met before an amended complaint seeking to substitute newly named defendants

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<sup>1</sup> Garvin’s other claims against the “John Doe” officer, assault and battery and intentional infliction of emotional distress, share this same two year statute of limitations. 42 Pa. C. S. A. § 5524(7).

will relate back to the filing of the original complaint. Id. at 194. The first condition is that “the claim against the newly named defendants must have arisen ‘out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.’” Id. (quoting FED. R. CIV. P. 15(c)(2)). Here, the City does not dispute that this condition has been met.

The second and third conditions, found in Rule 15(c)(3)(A) & (B) respectively, “must be met ‘within the period provided by Rule 4(m) for service of the summons and complaint,’ FED. R. CIV. P. 15(c)(3), which is ‘120 days after the filing of the complaint.’” Id. (quoting FED. R. CIV. P. 4(m)). The second condition is “that the newly named party must have ‘received such notice of the institution of the action [within the 120 day period] that the party will not be prejudiced in maintaining a defense on the merits.’” Id. (quoting FED. R. CIV. P. 15(c)(3)(A)). The third condition “is that the newly named party must have known, or should have known, (again, within the 120 day period) that ‘but for a mistake’ made by the plaintiff concerning the newly named party’s identity, ‘the action would have been brought against’ the newly named party in the first place.” Id. (quoting FED. R. CIV. P. 15(c)(3)(B)). Therefore, in order for the amendment to be proper, Garvin must show that the four officers which she proposes to substitute for “John Doe” had notice of the action by August 16, 2002 so that they will not be prejudiced; and knew by August 16, 2002 that, but for a mistake, the action should have been brought against them. See Colbert v. City of Phila., 931 F. Supp. 389, 392 (E.D. Pa. 1996)(stating that the plaintiff bears the burden of proof on this issue).

The second condition, requiring notice in order to avoid prejudice, is the heart of the relation back analysis. Id. (citing Schiavone v. Fortune, 477 U.S. 21, 31 (1986)). Notice to the newly named defendants may either be actual or constructive. Singletary, 266 F.3d at 195;

Lockwood v. City of Phila., 205 F.R.D. 448, 452 (E. D. Pa. 2002). For example, if an employee with reason to expect his or her potential involvement hears of the lawsuit through informal means, he or she has sufficient notice. See Varlack v. SWC Caribbean, Inc., 550 F.2d 171, 175 (3d Cir. 1977)(holding that a newly named defendant had adequate notice under Rule 15(c)(3) when, within the relevant period, the defendant happened to see a copy of the complaint naming both the place where he worked and an “unknown employee” as a defendant, which he knew referred to himself). However, the notice must be that the lawsuit has been brought, not simply that the event giving rise to the cause of action occurred. Lockwood, 205 F.R.D. at 451-52 (citing Singletary, 266 F.3d at 195). Here, there is no evidence of actual notice. Therefore, we must analyze whether the four newly named defendants had constructive notice.

The Singletary court described two methods from which a newly named defendant may receive constructive notice: (1) the “shared attorney” method, where the newly named defendant and an originally named party are represented by the same counsel; and (2) the “identity of interest” method, where the newly named defendant enjoys some relationship with an originally named defendant strong enough to permit an inference that notice to one effectively provides notice to the other. Singletary, 266 F.3d at 196-200.

Under the “shared attorney” method, notice will be imputed to the newly named defendants if they are represented by the same attorney as an originally named defendant. Lockwood, 205 F.R.D. at 452. Under this theory “notice is based on the notion that, when an originally named party and the party who is sought to be added are represented by the same attorney, the attorney is likely to have communicated to the latter party that he may very well be joined in the action.” Singletary, 266 F.3d at 196. “The relevant inquiry under this method is

whether notice of the institution of this action can be imputed to [the newly named defendant] within the relevant 120 day period . . . , by virtue of representation [the newly named defendant] shared with a defendant originally named in the lawsuit.” Id.

Under the “identity of interest” method, the newly named defendants and the original defendant must be “so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other[s].” Id. at 197 (quoting 6A Charles A. Wright et al., *Federal Practice And Procedure* § 1499, at 146 (2d ed. 1990)). “The relevant question for purposes of this inquiry is whether there is a sufficient identity of interest for notice to be imputed.” Lockwood, 205 F.R.D. at 452-53 (citing Singletary, 266 F.3d at 198). However, the court in Singletary specifically found that absent other circumstances showing constructive notice, a staff level, non-management employee, with no administrative or supervisory duties “does not share a sufficient nexus of interests with his or her employer so that notice given to the employer can be imputed to the employee for Rule 15(c)(3) purposes.” Singletary, 266 F.3d at 200. Such an employment position alone cannot serve as a basis for finding an identity of interest because the employee is “clearly not highly enough placed in the [employer’s] hierarchy” to conclude that such an employee’s interests are identical to the employer’s interests. Id. at 199. The Singletary court concluded that a non-managerial employee and his or her employer “are not so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other.” Id. (internal quotations omitted). In Lockwood, the court stated that the Third Circuit had “adopted the position that Rule 15(c)(3) notice cannot be imputed to non-management employees under the identity of interest method, at least in the absence of additional factors such as

continued close contact [with the plaintiff] or a shared attorney.” Lockwood, 205 F.R.D. at 453.

## **B. APPLICATION OF THE LAW TO THE FACTS**

As mentioned above, the city does not dispute that the new claims arise out of the conduct, transaction, or occurrence set forth in Complaint. Therefore, the first condition is met and further discussion on this point is not warranted. However, because Garvin is not able to show that the four newly named defendants had sufficient notice, she is not able to meet the second condition. Because the second condition is not met, and therefore filing an Amended Complaint would be futile, it is unnecessary to discuss the third condition.<sup>2</sup> Therefore, the discussion below will only focus on the second condition concerning constructive notice to the officers.

Neither of the two methods that may be used to impute constructive notice to the newly named defendants applies in this case. First, the four newly named defendants were not and are not currently represented by the City’s attorney. Garvin argues that the “shared attorney” method of imputing notice is met in this case because “the same attorney . . . will be representing” the four newly named defendants. (Mot. to Amend, 6). The Court notes that the applicable test is not whether new defendants *will* be represented by the same attorney, but rather whether the new defendants *are* being represented by the same attorney. Also, Garvin’s presumption is not correct as an officer is not required to accept representation by the City Law Department and the City Law Department does not represent every police officer in every

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<sup>2</sup> However, the Court notes that since there is no evidence that the four newly named defendants had any notice of the suit, it would be impossible to find that they knew or should have known that, but for a mistake made by the plaintiff concerning the newly named parties’ identities, the action would have been brought against them.

lawsuit.

There is simply no evidence of shared representation between the City and the four newly named defendants. The City's counsel specifically entered her appearance and filed an Answer to the Complaint only on behalf of the City. In fact, according to the City's counsel, she "has not informed the proposed defendants that this lawsuit is pending, nor have the proposed defendants been advised that they might be named as defendants. Undersigned counsel is unaware of any other manner through which the proposed defendants would have learned that this lawsuit is pending." (Resp. to Mot. to Amend, 9 n.2). This case is analogous to Lockwood in which the court found that the individual newly named officers did not have constructive notice of the action based upon the City's representation. Lockwood, 205 F.R.D. at 452. The newly named defendants and the City are not represented by the same attorney. Therefore, Garvin has failed to meet her burden of proof in establishing that notice of the lawsuit should be imputed to the newly named defendants based on the "shared attorney" method.

Second, it would be improper to impute the City's notice of the action to the four newly named defendants based upon some identity of interest. Garvin argues that because the four officers were named in the City's Initial Disclosures as persons with knowledge of the incident, then notice of the lawsuit may be imputed to them. Garvin cites three cases which she states support her position. None of these cases remotely hold that being named in Initial Disclosures is sufficient to impute notice of the action to the four officers. See Varlack, 550 F.2d 171; Advanced Power Sys., Inc. v. Hi-Tech Sys., Inc., 801 F. Supp. 1450 (E.D. Pa. 1992); Heinly v. Queen, 146 F.R.D. 102 (E.D. Pa. 1993), aff'd 26 F.3d 122 (3d Cir. 1994). As stated above, in order for the amendment to relate back, the newly named defendants must have had notice that

the lawsuit had been brought. Lockwood, 205 F.R.D. at 451-52. It is not enough for Garvin to show that the newly named defendants are persons with knowledge of the events giving rise to the lawsuit. Id.

Furthermore, the Singletary court directly dealt with the issue of imputing notice to non-management employees via the “identity of interest” method. Absent other circumstances showing constructive notice, a staff level, non-management employee, with no administrative or supervisory duties “does not share a sufficient nexus of interests with his or her employer so that notice given to the employer can be imputed to the employee for Rule 15(c)(3) purposes.” Singletary, 266 F.3d at 200. Garvin has not provided any evidence that other circumstances exist that would make it just to impute notice to the four newly named defendants. Likewise, Garvin has not provided any evidence that the four newly named defendants were anything but low level, non-management employees. Therefore, notice of the lawsuit should not be imputed to the four newly named defendants via the “identity of interests” method.

Garvin has had the City’s Initial Disclosures that list every officer involved in this matter since July 24, 2002. Garvin was given an opportunity to conduct discovery and develop evidence that the newly named defendants shared representation with the City, were management-level employees, or that there were other circumstances such as continued close contact with Garvin after the incident. Garvin has failed to meet her burden of proof in establishing that notice should be imputed to the newly named defendants via the “shared attorney” method or the “identity of interest” method. Therefore, Garvin’s Motion to Amend the Complaint must be denied as futile.

Lastly, because amending the Complaint would be futile, it would also be futile to

allow for additional discovery in order to take the depositions of the four newly named defendants. The Court provided a sufficient discovery period, and the names of all the officers involved have been known by Garvin since July 24, 2002. An extension of discovery would unfairly expose the four officers “to further factual inquiry aimed at justifying litigation against them [over two and a half years] after the underlying incident is alleged to have occurred.” Lockwood, 205 F.R.D. at 450. There is no sufficient reason why discovery should be extended.

### **III. CONCLUSION**

Garvin’s Motion to Amend the Complaint and Motion for Enlargement of Time to Conduct Depositions of Newly Added Defendants must be denied as it would be futile to grant the relief requested in the Motion. The statute of limitations has run on the claims made against the newly named defendants and these claims do not relate back to the original Complaint because the four newly named officers did not have notice of the lawsuit.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TYSHEIA GARVIN,	:	
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Plaintiff,	:	
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v.	:	NO. 02-2214
	:	
CITY OF PHILADELPHIA, and	:	
POLICE OFFICER JOHN DOE,	:	
	:	
Defendants.	:	
	:	

**ORDER**

AND NOW, this 6th day of December, 2002, upon consideration of the Plaintiff's Motion to Amend the Complaint and Motion for Enlargement of Time to Conduct Depositions of Newly Added Defendants (Dkt. No. 6), and the Response thereto, it is hereby ORDERED that the Motion is DENIED.

It is hereby further ORDERED that all claims asserted against "John Doe" are dismissed with prejudice. The "John Doe" defendant shall be stricken from the Complaint.

BY THE COURT:

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Robert F. Kelly,

Sr. J.