LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 12-09012-BRO-(FFMx)**	Date	September 17, 2015
Title	**DUNCAN ROY ET AL. V. COUNTY OF LOS ANGELES ET AL.**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)

ORDER RE PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE SCHEDULING ORDER AND TO AMEND THE PLEADINGS [96]

I. INTRODUCTION

Pending before the Court is Plaintiffs' Motion for Leave to Amend the Scheduling Order and to Amend the Pleadings. (Dkt. No. 96.) Specifically, Plaintiffs' Proposed First Amended Complaint seeks to allege four additional claims: three claims under California Civil Code section 52.1, and one claim for denial of equal protection pursuant to 42 U.S.C. § 1983. (*See* Dkt. No. 96-1.) After considering the papers filed in support of and in opposition to the instant motion, the Court deems this matter appropriate for resolution without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' Motion for Leave to Amend.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Plaintiffs are a group of individuals who were or are currently in the custody of the Los Angeles County Sheriff's Department ("LASD") and who were denied either bail or release on the basis of an immigration hold. Duncan Roy ("Mr. Roy") is a British citizen who Defendants allegedly detained for eighty-nine days pursuant to an immigration hold. (Compl. ¶ 9.) Defendants subsequently refused to allow Mr. Roy to post bail. (*Id.*) Alain Martinez-Perez ("Mr. Martinez-Perez") is a Mexican citizen that Defendants detained for six days after Defendants denied him bail and the district attorney declined

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to file criminal charges. (Compl. ¶ 10.) Annika Alliksoo ("Ms. Alliksoo") is an Estonian citizen who Defendants detained for a total of eighteen days and held for three days after a state court judge ordered Ms. Alliksoo's release. (Compl. ¶ 11.) Clemente De La Cerda ("Mr. De La Cerda") is a Mexican citizen and a lawful permanent resident. (Compl. ¶ 12.) As of the date of filing, Mr. De La Cerda was still in the LASD's custody pursuant to an immigration hold. (Compl. ¶ 12.)[1]

Plaintiffs initiated this putative class action on behalf of themselves and others similarly situated.[2] Collectively, Plaintiffs challenge the legality of the LASD's practice of detaining individuals solely on the basis of immigration holds placed by the federal Immigration and Customs Enforcement ("ICE") agency. (Compl. ¶ 18.) Immigration holds advise local law enforcement agencies that the Department of Homeland Security ("DHS") seeks to arrest or detain an alien in the agency's custody. (Compl. ¶¶ 21–22.) According to Plaintiffs, immigration holds are voluntary administrative requests that are not accompanied by the same procedural protections as a criminal detainer or hold. (Compl. ¶¶ 33–34.) For example, ICE agents may assign an immigration hold without probable cause to believe that a person is removable and without a warrant or court order authorizing a person's deportation. (Compl. ¶¶ 26–27.) Plaintiffs allege that the LASD's practice of honoring immigration holds has resulted in numerous and widespread unlawful detentions, as the issuance of an immigration hold "does not ensure that ICE will assume custody over the detainee or that ICE will take any action against the detainee." (Compl. ¶ 37.)

[1] The Court will refer to these individuals collectively as "Plaintiffs."

[2] Mr. Roy is proceeding on behalf of himself only. Mr. Martinez-Perez and Ms. Alliksoo seek damages on behalf of all individuals injured by Defendants' practice of refusing bail requests and detaining individuals beyond the time permitted by state law. (Compl. ¶¶ 10, 11.) Mr. De La Cerda seeks equitable relief on behalf of all individuals who are currently or who will in the future be in Defendants' custody on the basis of an immigration hold. (Compl. ¶ 12.) Specifically, he seeks to bar Defendants from detaining individuals beyond the time permitted by state law "solely on the basis of an immigration hold not supported by a probable cause determination." (Compl. ¶ 12.) The Complaint also names Christian Michel Varela ("Mr. Varela") as a plaintiff in this case. (Compl. ¶ 13.) The Court has previously dismissed Mr. Varela under Federal Rule of Civil Procedure 41(b). (Dkt. No. 69.) Plaintiffs' Proposed Amended Complaint does not list Mr. Valera as a plaintiff in this case.

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Plaintiffs challenge two of the LASD's practices related to immigration holds. First, Plaintiffs assert that the LASD has engaged in a pattern and practice of unlawfully denying bail to inmates subject to an immigration hold, thereby preventing these individuals from securing their release pending resolution of the charges against them. (Compl. ¶¶ 1, 38–47.) Pursuant to this practice, the LASD allegedly codes the record of every individual subject to a hold with a "no bail" notation, regardless of the individual's bail eligibility under state law. (Compl. ¶ 40.) Plaintiffs allege that the LASD has "routinely turned away and refused to accept lawfully-tendered bail bonds from bail bondsmen, family members and others when they attempt to lawfully post bail for an inmate." (Compl. ¶ 41.)

Second, Plaintiffs contest the LASD's practice of detaining individuals solely on the basis of an immigration hold and beyond the time or authority permitted under state law to hold an inmate in custody. (Compl. ¶¶ 2, 48–50.) To that end, Plaintiffs allege that the LASD continues to detain inmates subject to immigration holds even when no charges have been filed against them, the inmates have served their sentence, the inmates have posted bail, the inmates are ordered released on their own recognizance, or a jury has acquitted them. (Compl. ¶ 49.) According to Plaintiffs, ICE does not permit local law enforcement agencies to hold an alien for more than forty-eight hours beyond the time he or she would otherwise be released from custody. (Compl. ¶ 23.) Plaintiffs maintain that the LASD nevertheless "regularly" detains individuals beyond this forty-eight hour time frame. (Compl. ¶ 49.)

B. Procedural History

Plaintiffs filed their initial complaint on October 19, 2012, alleging that the LASD's practices constitute false imprisonment and negligence per se, and violate the Fourth and Fourteenth Amendments under 42 U.S.C. § 1983, the California Constitution, article I, sections 7 and 13, California Government Code sections 815.2, 815.6, and the Tom Bane Civil Rights Act, California Civil Code section 52.1. (Dkt. No. 1.) The Court's Civil Jury Trial Order set October 19, 2014 as the deadline for amending pleadings. (Dkt. No. 45.)

On June 8, 2015, Defendants filed a motion for judgment on the pleadings, (Dkt. No. 71), which the Court granted in part and denied in part on July 9, 2015, (Dkt. No.

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88). The Court dismissed Plaintiffs' third and fourth claims for violations of article I, sections 7 and 13 of the California Constitution, to the extent that Plaintiffs sought monetary relief. (Dkt. No. 88 at 22.) The Court also dismissed Plaintiffs' eighth claim for violations of the Bane Act under section 52.1, because Plaintiffs did not allege any facts suggesting that Defendants engaged in any independent wrongful conduct. (Dkt. No. 88 at 19, 22.) Plaintiffs did not request leave to amend as alternative relief in their opposition to Defendants' motion for judgment on the pleadings, (Dkt. No. 80), and the Court's order did not explicitly grant leave to amend, (Dkt. No. 88).

On August 24, 2015, Plaintiffs filed the instant motion seeking to modify the scheduling order and file a first amended complaint to address the pleading defects identified by the Court in Plaintiffs' previously-dismissed Tom Bane Civil Rights Act Claim, (*see* Dkt. No. 91), and allege additional claims as a result of newly-discovered evidence. (Dkt. No. 96.) Plaintiffs' proposed amendments include three alternative claims under California Civil Code section 52.1, and an additional claim for denial of equal protection under 42 U.S.C. § 1983. (Dkt. No. 91.) Defendants opposed Plaintiffs' Motion for Leave to Amend the scheduling order and pleadings on August 31, 2015. (Dkt. No. 98.) Plaintiffs filed an untimely reply on September 9, 2015, (Dkt. No. 99), but the Court granted Plaintiffs' Ex Parte Application for enlargement of time to file their Reply on September 14, 2015, (Dkt. No. 106). Accordingly, the Court has considered Plaintiffs' Reply in its analysis of the merits of Plaintiffs' Motion.

C. Plaintiffs' Proposed Amendments

Plaintiffs' proposed amendments include three alternative claims under California Civil Code section 52.1 and an additional claim for denial of equal protection under 42 U.S.C. § 1983. (Proposed First Am. Compl. ("Proposed FAC") ¶¶ 152–59, 181–210.) Plaintiffs' first amended section 52.1 claim avers violations of equal protection of the laws as the seventh cause of action. This claim alleges that Defendants treated ICE detained individuals differently from similarly-situated inmates without ICE detainers by detaining them and refusing to accept bail without a lawful basis. (Proposed FAC ¶¶ 181–92.) Plaintiffs also seek to add a claim for denial of equal protection of the law under 42 U.S.C. § 1983 as their third cause of action on essentially the same grounds. (Proposed FAC ¶¶ 152–59.) The Court will refer to these causes of action, collectively, as Plaintiffs' "equal protection claims."

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Plaintiffs' second proposed section 52.1 claim alleges violations of inmates' rights to timely release as the eighth cause of action on the grounds that Defendants' data entries treating ICE detainers as mandatory holds were unlawful, coercive acts separate and independent from their subsequent actual detention based on the ICE detainer. (Proposed FAC ¶¶ 193–200.) Similarly, Plaintiffs' third proposed section 52.1 claim alleges that Defendants violated Plaintiffs' right to release on bail as the ninth cause of action on the basis that Defendants' data entries were unlawful, coercive acts, separate and independent from Defendants' failure to accept bail on behalf of inmates with ICE holds. (Proposed FAC ¶¶ 201–10.) The Court will refer to these causes of action, collectively, as Plaintiffs' "section 52.1 claims."

III. LEGAL STANDARD

A. Leave to Amend Scheduling Order Under Federal Rule of Civil Procedure 16

A motion for leave to amend is generally considered under the permissive standard of Federal Rule of Civil Procedure 15(a). *Martinez v. Newport Beach City*, 125 F.3d 777 (9th Cir. 1997). "Liberality in granting a plaintiff leave to amend is subject to the qualification that the amendment not cause undue prejudice to the defendant, is not sought in bad faith, and is not futile." *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).

Once the district court has entered a pretrial scheduling order pursuant to Federal Rule of Civil Procedure 16, however, Rule 16's standard controls where the plaintiff's motion for leave to amend is filed after the deadline imposed by the scheduling order. *See Johnson v. Mammoth Recreations*, 975 F.2d 604, 607 (9th Cir. 1992); *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 952 (9th Cir. 2006). "This is because once the scheduling order is in place, the court must modify the scheduling order to permit an amendment." *Mortg. Indus. Sols., Inc. v. Collabera, Inc.*, No. CV11–4008–CAS (AGRx), 2013 WL 440644, at *2 (C.D. Cal. Feb. 4, 2013).

"A schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. Pro. 16(b)(4). A court determines good cause by evaluating the diligence of the party seeking the amendment. *Johnson*, 975 F.2d at 609. "Although the existence or degree of prejudice to the party opposing the modification might supply additional

reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking modification. If that party was not diligent, the inquiry should end." *Id*. (internal citations omitted). Only if good cause is shown for modifying the scheduling order under Rule 16 does the Court consider whether the plaintiff's amendment is proper under Rule 15. *See Collabera*, 2013 WL 440644, at *2.

B. Leave to Amend Complaint Under Federal Rule of Civil Procedure 15

As discussed, according to Rule 15, when a party requests leave to amend its pleadings the court "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In *Foman v. Davis*, the Supreme Court explained that the objective of Rule 15 is to give a plaintiff "an opportunity to test his claim on the merits." 371 U.S. 178, 182 (1962). Further, the Supreme Court found that a district court should consider the following factors in deciding whether to grant leave to amend: (1) undue delay; (2) bad faith dilatory motive by movant; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; and (5) futility of the amendment. *Id.* Not all factors are accorded the same weight; it is the consideration of prejudice to the opposing party that carries the greatest weight in denying leave to amend. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Further, the burden to demonstrate prejudice falls upon the party opposing the amendment. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).

"Absent prejudice, or a strong showing of any of the remaining factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Eminence Capital*, 316 F.3d at 1052 (citation omitted). Inferences are generally to be performed in favor of granting the motion when assessing the *Foman* factors. *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999) (citing *DCD Programs, Ltd.*, 833 F.2d at 186). Courts retain the discretion to deny leave for amendments, but must provide a justification. *DCD Programs, Ltd.*, 833 F.2d at 183.

IV. ANALYSIS

Plaintiffs' proposed section 52.1 claims attempt to amend Plaintiffs' prior causes of action under the same statute. Plaintiffs' proposed equal protection causes of action, on the other hand, are new claims altogether. As such, the Court will separately analyze

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whether it will grant leave to amend with regard to Plaintiffs' proposed section 52.1 claims and Plaintiffs' proposed equal protection claims.

A. The Court Grants Plaintiffs Leave to Amend Their Section 52.l Claims for Violations of Plaintiffs' Right to Timely Release and Right to Release on Bail

Plaintiffs seek leave to amend their complaint to allege alternative violations of Plaintiffs' right to timely release and right to release on bail under California Civil Code section 52.1. (Mot. at 2–4.) Granting Plaintiffs leave to file an amended complaint first requires the Court to contemplate modifications to the scheduling order. The Court cannot consider whether Plaintiffs' amendments are proper under Rule 15 if they do not first demonstrate good cause to modify the scheduling order under Rule 16. *See Collabera*, 2013 WL 440644, at *2.

The Civil Jury Trial Order designated October 19, 2014, as the last day for filing amended pleadings. (Dkt. No. 45.) As such, granting leave to amend first requires the Court to inquire whether good cause is shown to amend the scheduling order. Should the Court grant leave to allow Plaintiffs to file a first amended complaint, the Court would also be required to modify the scheduling order to permit the Defendants time to file responsive pleadings. Pursuant to the parties' stipulation to continue trial and pretrial deadlines, the discovery cut-off date in this case is May 31, 2016, and trial is scheduled for August 9, 2016. (Dkt. No. 73.) Because the deadline for discovery is over eight months away, the Court would not need to adjust the discovery cut-off date or the trial date.

1. Plaintiffs Have Demonstrated Good Cause to Warrant Amendment of the Scheduling Order

To determine whether good cause exists to modify the scheduling order, the Court must first determine if the party seeking the modifications acted with diligence. *Johnson*, 975 F.2d at 609. As explained below, the Court finds that Plaintiffs acted with diligence with respect to its request to amend the scheduling order regarding Plaintiffs' proposed section 52.1 claims for violations of Plaintiffs' right to timely release and right to release on bail.

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Plaintiffs claim they delayed in seeking this amendment because they first learned of the deficiencies in their section 52.1 claim on July 9, 2015, when the Court granted in part Defendants' 12(c) Motion for Judgment on the Pleadings. (Mot. at 4; *see* Dkt. No. 88.) Less than a month after the Court's order, Plaintiffs filed the present motion for leave to amend the scheduling order and complaint. (*See* Dkt. No. 96.)

"Motions for judgment on the pleadings under Fed. R. Civ. P. 12(c) and motions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) are 'functionally identical,' and [the Ninth Circuit] has held that in 12(b)(6) dismissals, leave to amend should be granted even if no request is made unless amendment would be futile." *Pac. W. Grp., Inc. v. Real Time Sols., Inc.*, 321 F. App'x 566, 569 (9th Cir. 2008) (quoting *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir.1989)). Under this reasoning, district courts in this Circuit regularly grant leave to amend a complaint after granting a 12(c) motion. *See, e.g., Serpa v. SBC Telecomms., Inc.*, 318 F. Supp. 2d 865, 875 (N.D. Cal. 2004); *Robinson v. Fred Meyers Stores, Inc.*, 184 F. Supp. 2d 968, 972 (D. Ariz. 2002); *Moran v. Peralta Cmty. Coll. Dist.*, 825 F. Supp. 891, 893 (N.D. Cal. 1993).

Though it was proper for Defendants to file a 12(c) motion for judgment on the pleadings rather than a 12(b)(6) motion to dismiss, the timing of Defendants' 12(c) Motion was such that Plaintiffs' pleading deficiencies were not apparent until after the deadline for amending pleadings passed. District courts in the Ninth Circuit have held that when need for amendment only becomes apparent after a ruling on the pleadings, parties perform diligently if they promptly seek leave to amend upon entry of the order. *See, e.g., C.F. Capistrano Unified Sch. Dist.*, No. SACV 07–1434 JVS (ANx), 656 F. Supp. 2d 1190, 1194 (C.D. Cal. 2009) (finding that defendants performed diligently in seeking leave to amend when the success of a defense only became apparent after a court ruling[3]); *Tech. Licensing Corp. v. Technicolor USA, Inc.*, No. CIV. 2:03–1329 WBS EFB, 2010 WL 4070208, at *3 (E.D. Cal. Oct. 18, 2010) (granting leave to amend where plaintiff sought amendment in response to defendant filing a 12(c) motion). Therefore,

[3] In *C.F. Capistrano Unified School District*, the parties filed a proposed briefing schedule on May 22, 2009, (*C.F. Capistrano Unified Sch. Dist.*, No. 8:07-cv-01434, ECF No. 89), 21 days after the court's order regarding summary judgment. Defendants did not file a motion for leave to file an amended answer until June 8, 2009, over a month after the court's order. (*See id.*, ECF No. 92.)

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"any delay in amendment stems from [Defendants'] decision to file a motion for judgment under Rule 12(c) after the pleadings closed instead of a motion to dismiss under Rule 12(b)(6) when the [complaint] was originally filed."[4] *Tech. Licensing Corp.*, 2010 WL 4070208, at *3. In light of the foregoing, the Court finds that Plaintiffs performed diligently and good cause exists to grant leave to amend.[5]

2. Amendment is Proper Under Rule 15

Having found good cause to amend the Court's scheduling order, the Court turns to the issue of whether Plaintiffs' proposed amendment is proper under Rule 15(a)'s liberal standard. As discussed, under Rule 15, a district court should consider the following five factors in deciding whether to grant leave to amend: (1) undue delay; (2) bad faith dilatory motive by movant; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; and (5) futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Because the Court has already found that Plaintiffs' performed diligently absent undue delay, there is no evidence in this case to suggest that Plaintiffs acted with a bad faith dilatory motive, and Plaintiffs have

[4] The Court notes that courts in other circuits have held that a plaintiff's ignorance of pleading deficiencies until after a motion to dismiss has been filed does not warrant granting leave to amend. *Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011) ("[P]laintiff argues chiefly that he had no reason to know that his complaint was deficient until the defendants filed their motions to dismiss the complaint. That explanation does not pass muster."); *Wooton v. CL, LLC*, 2010 WL 5477192, at *3 (E.D.N.C. Dec. 29, 2010) *aff'd*, 504 F. App'x 220 (4th Cir. 2013) ("Plaintiff primarily argues that any delay in seeking leave to amend was justified because he required the analysis in the court's dismissal order to rectify the deficiencies in his first amended complaint. This argument is insufficient."). The Court declines to adopt this approach in favor of the more lenient standards employed by courts in this Circuit.

[5] Plaintiff also argues that good cause exists to warrant leave for amend based on newly-obtained evidence unearthed during discovery supporting their California Civil Code section 52.1 claims. (Mot. at 8.) Because the Court finds good cause to warrant amending the scheduling order as a result of Plaintiffs' diligence in response to the Court's Order, the Court need not address Plaintiffs' argument regarding newly-obtained evidence at this juncture. (*But see* discussion *infra* Section IV(B) (discussing Plaintiffs' lack of diligence in pleading their equal protection claims in light of allegedly newly-discovered evidence).)

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not previously amended their complaint, the Court finds that the first three *Foman* factors are not present here. The Court will thus examine the last two *Foman* factors.

i. The Proposed Amendments Would Not Unduly Prejudice the Defendants

Prejudice carries the greatest weight of the *Foman* factors. *Eminence Capital*, 316 F.3d at 1052 ("Prejudice is the 'touchstone of the inquiry under rule 15(a).'") (citations omitted). Undue prejudice exists where the claims sought to be added "would have greatly altered the nature of the litigation and would have required defendants to have undertaken, at a late hour, an entirely new course of defense." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Similarly, "[p]rejudice results when an amendment would unnecessarily increase costs or would diminish the opposing party's ability to respond to the amended pleading." *Fresno Unified Sch. Dist. v. K.U. ex rel. A.D.U.*, 980 F. Supp. 2d 1160, 1177 (E.D. Cal. 2013) (citing *Morongo Band of Mission Indians*, 893 F.2d at 1079). Courts have also found prejudice when a motion to amend seeks to change a party's claim in close proximity to trial, therefore prejudicing the opposition's ability to prosecute its case. *See Hill v. Opus Corp.*, 841 F.Supp.2d 1070, 1103–04 (C.D.Cal.2011); *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir.1999) ("A need to reopen discovery and thereby delay the proceedings supports a district court's finding of prejudice from a delayed motion to amend.").

Defendants argue they will be prejudiced by the additional work they must undertake to respond to Plaintiffs' new claims. (Opp'n at 17.) Though it may be true that Defendants will need to gather and present additional evidence and legal arguments, the additional theories of relief for violations of Plaintiffs' right to timely release and release on bail do not represent a radical shift in the theory of Plaintiffs' case. Plaintiffs premised their section 52.1 claim in their initial complaint upon the basic allegation that Defendants unlawfully detained Plaintiffs by either refusing to release inmates with ICE holds or denying them bail. (Compl. ¶¶ 174–76.) Plaintiffs' proposed amended section 52.1 claims for violations of Plaintiffs' right to timely release and release on bail allege essentially the same underlying facts. (*Compare* Compl. ¶¶ 174–76, *with* Proposed FAC ¶¶ 193–210.) Further, given that the discovery cut-off date is not until May 31, 2016, and trial is not scheduled until August 9, 2016, Defendants have ample time to conduct

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discovery and prepare a response to Plaintiffs' added claims. Accordingly, the Court finds that Plaintiffs' proposed amendment does not unduly prejudice the Defendants.

ii. Plaintiffs' Proposed Amendments to Their Section 52.1 Claims Adequately State a Claim for Relief

"A motion for leave to amend may be denied if it appears to be futile or legally insufficient." *Miller v. Rykoff–Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.1988). "Leave to amend need not be given if a complaint, as amended, is subject to dismissal." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). "[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Id.*

In the Court's order in response to Defendants' 12(c) Motion for Judgment on the Pleadings, the Court ruled that Plaintiffs must "allege facts demonstrating that Defendants engaged in wrongful conduct or employed threats, intimidation, or coercion independent of the detention." (Dkt. No. 88 at 18.) Defendants argue that Plaintiffs' proposed FAC is futile in that Plaintiffs have not alleged that Plaintiffs were intentionally over-detained "by use of threats, intimidation, or coercion."

Plaintiffs' proposed FAC differs from the originally-filed complaint in that it alleges that Defendants engaged in coercion by maintaining record-keeping and data entry systems that treated ICE detainers as mandatory holds despite the fact that Defendants knew or should have known that an ICE detainer was a voluntary request. (Proposed FAC ¶ 196.) According to Plaintiffs, these were unlawful, coercive acts separate and independent from the inmates' subsequent actual detention based on the ICE detainer. (*Id.* ¶ 197.)

In *Shoyoye v. County of Los Angeles*, the court found that the plaintiff failed to adequately plead "threat, intimidation, or coercion" where a computer error resulted in the unlawful detention of a prisoner that had been ordered released and "the coercion was not carried out in order to effect a knowing interference with [plaintiff]'s constitutional rights." 203 Cal. App. 4th 947, 961 (Cal. Ct. App. 2012.) This Court's order granting Defendants' 12(c) Motion with respect to Plaintiffs' section 52.1 claim discussed *Shoyoye* in great detail and contrasted *Shoyoye* with the California Supreme Court's holding in *Venegas v. County of Los Angeles*, 32 Cal. 4th 820 (Cal. 2004). (Dkt. No. 88

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at 20.) In *Venegas*, an officer stopped the plaintiffs' vehicle and arrested and detained the plaintiffs based on law enforcement's erroneous conclusion that the stopped vehicle was stolen. 32 Cal. 4th at 827–828. The court in *Venegas* found that the plaintiffs offered sufficient evidence suggesting the probable cause initially justifying the stop eroded over time, "such that the officers' conduct became intentionally coercive and wrongful, i.e., a knowing and blameworthy interference with the plaintiffs' constitutional rights." *Shoyoye*, 203 Cal. App. 4th at 961.

According to this Court's July 9, 2015 order, Plaintiffs' originally-filed complaint did not "allege any facts to suggest that Defendants knew or should be presumed to know the [ICE holds] were legally insufficient to justify Plaintiffs' continued detention." (Dkt. No. 88 at 20.) Plaintiffs' proposed FAC remedies this problem by alleging that Defendants engaged in wrongful, coercive conduct independent from the detention by knowingly marking ICE holds as mandatory in their record-keeping system, which "falsely communicated to employees and agents that ICE holds authorized and required class members to be detained." (Proposed FAC ¶¶ 197, 204.) As such, Plaintiffs' proposed FAC alleges that Defendants knowingly interfered with Plaintiffs' constitutional rights.

To support Plaintiffs' contention that Defendants knew or should have known that ICE holds are voluntary, Plaintiffs further assert that:

> In 2010, ICE submitted communications to Congress explaining that ICE holds are voluntary requests; that ICE had an office in LASD where inquires about ICE's view of their authority was readily available; that the ICE detention forms on their face were requests and not orders or mandatory detainers; that the relevant federal regulations state that an ICE detainer is a "request"; and that an ICE detainer was not accompanied by a judicial warrant or judicial determination of probable cause.

(Proposed FAC ¶¶ 199, 207.) Accordingly, the Court finds that Plaintiffs sufficiently pleaded that Defendants acted coercively by knowingly interfering with Plaintiffs' constitutional rights and the proposed amendment would not be futile.

In light of Plaintiffs' diligence and satisfaction of Rule 15, the Court finds it appropriate to grant Plaintiffs leave to amend their section 52.1 claims.

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B. The Court Denies Plaintiffs Leave to Amend Their Complaint to Add Their Equal Protection Claims Under California Civil Code Section 52.1 and 42 U.S.C. § 1983

Plaintiffs also seek leave to add claims for denial of equal protection under California Civil Code section 52.1 and 42 U.S.C. § 1983. (Mot. at 4.) As discussed previously, the Court is willing to amend its scheduling order to extend the deadline for filing an amended complaint pursuant to Rule 16, having found good cause with respect to Plaintiffs' section 52.1 claims for violations of Plaintiffs' right to timely release and right to release on bail. (*See* discussion *supra* Section IV(A)(1).) But with respect to Plaintiffs' equal protection claims, the Court finds that Plaintiffs have failed to show their diligence in making these amendments.

Unlike the section 52.1 claims for violations of the right to timely release and release on bail previously alleged by Plaintiffs, the equal protection claims under section 52.1 and § 1983 were not brought to Plaintiffs' attention as a result of pleading deficiencies exposed after Defendants' 12(c) Motion was filed. Instead, Plaintiffs contend that newly-obtained evidence through discovery warrants leave to amend. (Mot. at 8.) Plaintiffs allege that they discovered new information, including: (1) the fact that the ICE had an office in the LASD where inquiries about ICE's view of their authority was readily available to the LASD; (2) from at least 2010 until at least May 2014, inmates with ICE holds were denied participation in LASD's community-based alternatives to custody programs, available to other inmates; (3) the LASD denied inmates with ICE holds early release due to overcrowding, which LASD afforded to other inmates; and (4) the LASD processed persons with ICE detainers differently from inmates with criminal warrants and subjected them to different release procedures. (Mot. at 8–9.)

In response, Defendants argue that the allegedly new evidence is either immaterial or not actually new.[6] (Opp'n at 7.) To support the contention that the purportedly new

[6] Defendants' Opposition raises evidentiary objections in an effort to exclude the allegedly new information. (Opp'n at 6–7.) The Court declines to address these objections in the context of Plaintiffs' Motion to Amend their pleadings. The Court analyzes only Plaintiffs' *allegations*, based on information discovered since the filing of Plaintiffs' initial complaint. The proposed allegations are not offered or considered as facts in substantive support of Plaintiffs' Motion to Amend.

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 12-09012-BRO-(FFMx)**	Date	September 17, 2015
Title	**DUNCAN ROY ET AL. V. COUNTY OF LOS ANGELES ET AL.**		

facts were known to the Plaintiffs when the complaint was filed, Defendants claim that Plaintiffs' counsel had access to "detailed information regarding ICE's access to the Los Angeles County jails and the relationship between ICE and the LASD . . . since at least 2008, because such information was produced in discovery in *Peter Guzman v. Michael Chertoff, et. al*, U.S.D.C. Case No. CV 07-03746 GHK (SS)," a matter in which the plaintiffs were represented by Plaintiffs' counsel in the instant case. (Opp'n at 8.) The plaintiffs in *Guzman* asserted claims for alleged violations of equal protection and discovery involved the production of various documents related to the relationship between ICE and the LASD. (*Id.*)

Defendants also note a number of publicly available articles that feature quotations from Plaintiffs' counsel and discuss ICE's activities in the Los Angeles County jail system and the *Guzman* case. (Opp'n at 9–10.) Finally, Defendants contend that many of Plaintiffs' allegedly newly-discovered facts were included in Plaintiffs' initial complaint. For example, Plaintiffs claim to have discovered that inmates subject to ICE detainers are "processed . . . differently from inmates with criminal warrants . . . ," (Battles Decl. in Supp. of Mot. ¶ 2), but Plaintiffs' initial complaint included the information that, "[u]nlike criminal detainers or holds, an immigration hold is not a judicial order or warrant. Rather, it is solely an administrative request," (Compl. ¶ 34). (Opp'n at 10.)

The Court agrees with Defendants and finds that the "new" facts cited by Plaintiffs were likely available to them at the time Plaintiffs filed their first complaint on October 19, 2012—almost three years ago. (*See* Dkt. No. 1.) Plaintiffs' Motion fails to provide sufficient details associated with this new evidence for the Court to independently determine whether the facts are new. Though Plaintiffs' Reply includes additional details about the allegedly "new" evidence, including specifics as to how the information was revealed during discovery and by whom, Plaintiffs did not address the publicly-available sources suggesting Plaintiffs' counsel was familiar with the details of ICE's interaction with LASD, or the ways Plaintiffs' initial complaint alludes to facts they claim to have newly discovered. (Reply at 8–9.) The Court therefore finds that Plaintiffs have not met their burden to show they were diligent in seeking leave to amend with regard to Plaintiffs' equal protection claims. *See Johnson*, 975 F.2d at 609 ("[C]arelessness is not compatible with a finding of diligence and offers no reason for a grant of relief. . . . If [the moving] party was not diligent, the inquiry should end.").

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Because Plaintiffs have not shown diligence in asking this Court to modify the scheduling order to amend their Complaint with respect to their equal protection claims, the Court need not consider whether the Plaintiffs' proposed amendments with regard to their equal protection claims are proper under Rule 15. *See Collabera*, 2013 WL 440644, at *2. The Court therefore **DENIES** Plaintiffs' Motion for Leave to Amend with respect to Plaintiffs' equal protection claims.[7]

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' Motion to for Leave to Amend. Plaintiffs must file a First Amended Complaint, pursuant to this Court's Order, no later than **4 p.m. on Friday, October 2, 2015**. The hearing set for September 21, 2015 is hereby **VACATED**.

IT IS SO ORDERED.

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[7] Defendants also argue that Plaintiffs failed to comply with Local Rule 7-3 and Federal Rule of Civil Procedure 7 with respect to Plaintiffs' request to add a new claim under 42 U.S.C. § 1983. (Opp'n at 11–12, 17–18.) Although this argument is now moot, given the Court's findings, the Court notes that Plaintiffs' counsel provided a draft of the proposed FAC to Defendants thirteen days prior to filing the instant motion, well within the seven day meet and confer requirement outlined by Local Rule 7-3, and provided notice of the claims sufficient to meet the standards of Federal Rule of Civil Procedure 7. (Battles Decl. in Supp. of Pls.' Reply ¶ 2, Ex. A; *see* Reply at 11.)