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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Harold L. Loveland, Jr., et al.,

Plaintiffs,

vs.

Katia Valencia, et al.,

Defendants.

No. CV-13-02621-PHX-PGR

ORDER

Pending before the Court is the plaintiffs' Motion to Modify Scheduling Order and for Leave to Amend Complaint (Doc. 48), filed September 3, 2014. Having considered the parties' memoranda, the Court, in the exercise of its broad discretion in supervising the pretrial phase of this action, finds that the motion should be granted.¹

Background

This action arises from a multi-vehicle accident on April 20, 2013 in Yuma, Arizona between a car driven by defendant Katia Valencia and four motorcycles, three of which the five plaintiffs were riding on. The plaintiffs' (re-filed) Complaint

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Although the defendants have requested oral argument, the Court concludes that oral argument would not significantly aid the decisional process.

1 (Doc. 7) alleged two negligence claims against Katia Valencia and a negligent
2 entrustment claim against her father, Carlos Valencia. Pursuant to the Scheduling
3 Order (Doc. 28), entered on May 14, 2014, motions to amend the pleadings or to join
4 additional parties were to be filed no later than May 30, 2014. The plaintiffs are now
5 seeking leave to file a second amended complaint that adds four new defendants,
6 Emelia Valencia, Lilliana Valencia, Valencia Rentals, LLC, and Rivera Apartments,
7 LLC, and three new claims, a social joint venture claim against Katia and Carlos
8 Valencia, a fraudulent transfer claim against all of the defendants, and a family
9 purpose liability claim against Carlos Valencia. The parties held an unsuccessful
10 settlement conference on August 25, 2014.

11 Discussion

12 Because the plaintiffs' motion was filed after the deadline set by the
13 Scheduling Order, the motion must be resolved primarily under the "good cause"
14 standard of Fed.R.Civ.P. 16(b)(4) ("A schedule may be modified only for good cause
15 and with the judge's consent.") Johnson v. Mammoth Recreations, Inc., 975 F.2d
16 604, 608 (9th Cir.1992). Under this standard, the Court's primary focus is on the
17 plaintiffs' diligence in seeking to amend their complaint and on their reasons for
18 seeking modification of the Scheduling Order. *Id.*, at 609.

19 The plaintiffs argue that the facts underlying their proposed amendments were
20 not discovered by them until after the May 2014 deadline to amend had passed.
21 They state that in preparation for the August settlement conference, additional
22 research was completed regarding real property belonging to the defendants that
23 had the potential to be offered during settlement negotiations. They state that they
24 learned through an asset investigation report on August 14, 2014, that shortly after
25 the accident occurred the defendants created two limited liability companies and
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1 transferred all but one of their real properties to those companies, and that they sold
2 another real property to a family member for \$10. The creation of these entities and
3 the property transfers form the basis of the proposed fraudulent transfer claim and
4 the proposed addition of the family-owned LLCs and the two additional family
5 members as defendants. The plaintiffs also state that while the title to the
6 defendants' vehicle involved in the accident, which showed that it was jointly owned
7 by Katia and Carlos Valencia, was disclosed to them on June 2, 2014, the vehicle's
8 title was not authenticated and legal title was not confirmed for purposes of their
9 proposed social joint venture and family purpose liability claims until the defendants
10 were deposed on June 30, 2014. The plaintiffs further state that they conducted
11 additional research into the legal and factual sufficiency of their proposed
12 amendments after the settlement conference proved to be unsuccessful.

13 The defendants argue that the plaintiffs have not exercised the due diligence
14 required by Rule 16(b) because all of the facts underlying the proposed amendments
15 were available through Arizona and California public records and reasonable
16 investigation more than nine months prior to the Scheduling Order's deadline for
17 amending pleadings.

18 While the Court recognizes that the plaintiffs could have moved to amend
19 earlier than they did, the Court concludes that their explanation for the delay is
20 sufficiently plausible, including their desire to first see if the settlement conference
21 would be successful, and that under the circumstances they did not unduly delay in
22 filing their motion to amend. The Court also concludes that the plaintiffs' reasons for
23 seeking to add their proposed amendments are appropriate given the
24 circumstances. They have therefore met their burden under Rule 16(b) of showing
25 good cause for the delay.
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1 The Court further concludes that the plaintiffs are entitled to amend their
2 complaint under the liberal standard of Fed.R.Civ.P. 15(a). The record does not
3 establish any undue delay, bad faith or dilatory motive on the plaintiffs' part, and the
4 proposed amendments do not facially constitute an exercise in futility. While the
5 defendants argue that they will suffer "incredible prejudice" if the plaintiffs are
6 allowed to amend their complaint, the Court is not persuaded. See DCD Programs,
7 Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir.1987) (Court noted that Rule 15's "policy
8 of favoring amendments to pleadings should be applied with 'extreme liberality'" and
9 that "[t]his liberality in granting leave to amend is not dependent on whether the
10 amendment will add causes of action or parties.")

11 Although the addition of the new parties and claims will necessarily cause a delay
12 in this action, the Court does not believe that any delay will be unduly excessive,
13 especially since all of the new proposed defendants are closely connected to the
14 existing defendants. Furthermore, the defendants will have to defend against the
15 new claims in any case as the plaintiffs state that if their motion to amend is denied
16 they will just file a separate action containing their proposed amendments and will
17 seek to consolidate it with this one. The Court will mitigate the effects of the delay
18 on the defendants by staying all deadlines in the current Scheduling Order until such
19 time as an amended scheduling order can be entered.

20 While the Court will permit the plaintiffs to file a second amended complaint,
21 the plaintiffs will be required to correct some deficiencies in their proposed amended
22 complaint. First, the caption of the second amended complaint must contain the
23 names of all parties to this action as required by Fed.R.Civ.P. 10(a). Second, the
24 second amended complaint must properly allege the citizenship of the new limited
25 liability company defendants by specifying the citizenship of each of their members.

1 See Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir.
2 2006). Therefore,

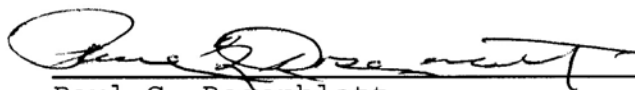
3 IT IS ORDERED that the plaintiffs' Motion to Modify Scheduling Order and for
4 Leave to Amend Complaint (Doc. 48) is granted to the extent that the plaintiffs shall
5 file their second amended complaint no later than **December 29, 2014**. The second
6 amended complaint shall be as proposed in the plaintiffs' motion but with the
7 exception that it corrects the pleading deficiencies noted in this Order. The plaintiffs
8 shall file separate notice of the filing of their second amended complaint in
9 conformity with LRCiv 15.1(b).

10 IT IS FURTHER ORDERED that the plaintiffs shall serve the second amended
11 complaint no later than **January 9, 2015**.

12 IT IS FURTHER ORDERED that the deadlines in the Scheduling Order (Doc.
13 28) are stayed pending further order of the Court.

14 IT IS FURTHER ORDERED that the parties shall file a supplemental Joint
15 Case Management Report proposing new pretrial scheduling deadlines no later than
16 **February 13, 2015**.

17 DATED this 19th day of December, 2014.

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20 Paul G. Rosenblatt
21 United States District Judge
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