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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Greg Moore, et al.,

10 Plaintiffs,

11 v.

12 Sean Garnand, et al.,

13 Defendants.
14

No. CV-19-00290-TUC-RM (LAB)

ORDER

15 Pending before this Court is Plaintiffs Greg and Patricia Moore's Consolidated
16 Objection to Magistrate Judge's Orders. (Doc. 367.) Defendants Sean Garnand and Dain
17 Salisbury filed a Response in opposition. (Doc. 368.) For the following reasons, the
18 Consolidated Objection will be granted.¹

19 **I. Background**

20 Plaintiffs filed their Complaint in this action on May 24, 2019, raising 42 U.S.C. §
21 1983 claims asserting First and Fourth Amendment violations arising from Defendants'
22 criminal investigation of Plaintiffs. (Doc. 1.) Plaintiffs allege that Defendants
23 unlawfully seized and arrested them, used excessive force in seizing Greg Moore,
24 obtained and executed invalid search warrants, and retaliated against Plaintiffs for Greg
25 Moore's constitutionally protected expression, in connection with an arson investigation
26 into the destruction of the Forgeus Apartments. (*Id.*)²

27 ¹ The Court finds the Consolidate Objection is suitable for resolution without oral
argument.

28 ² Counts Six, Seven, and Nine of the Complaint, along with all Defendants other than
Defendants Sean Garnand and Dain Salisbury and all Plaintiffs other than Greg and

1 On September 24, 2019, Defendants filed a Motion asserting the law enforcement
2 investigatory privilege (“LEIP”) over Tucson Police Department (“TPD”) files related to
3 the TPD’s criminal investigation of Plaintiffs. (Doc. 23.) Both Magistrate Judge Leslie A.
4 Bowman and this Court found that the LEIP was applicable. (Docs. 74, 113.)
5 Application of the LEIP significantly limited Plaintiffs’ scope of discovery until
6 December 13, 2021, when this Court lifted the privilege. (Doc. 306.) The deadline for
7 completion of discovery expired on February 9, 2022. (Doc. 289.)

8 In March 2021, Defendants moved for leave to file a Motion for Summary
9 Judgment (“MSJ”) in excess of the standard page limits (Doc. 274), lodged a proposed
10 MSJ asserting qualified immunity (Doc. 275), and moved to stay discovery pending
11 resolution of the MSJ (Doc. 279; *see also* Docs. 287, 295, 296). In support of their
12 request to stay discovery, Defendants argued that qualified immunity is an immunity
13 from suit and thus an issue that should be decided as early as possible. (Doc. 279.) In
14 opposition, Plaintiffs argued that, due to the application of the LEIP, they had been
15 denied a full and fair opportunity to discover facts of relevance to Defendants’ MSJ.
16 (Doc. 283.) In reply, Defendants argued that Plaintiffs had everything necessary to
17 respond to the MSJ because the Motion was built not on LEIP information but “primarily
18 on the testimony of Greg Moore, Patricia Moore, their retained expert David Smith, and
19 other witnesses introduced by the Moores themselves.” (Doc. 284 at 6-7.)

20 On December 13, 2021, after this Court lifted the LEIP, Magistrate Judge
21 Bowman granted Defendants leave to file a summary judgment motion in excess of the
22 page limit (Doc. 307), and the Clerk of Court docketed Defendants’ MSJ (Doc. 308).
23 Plaintiffs thereafter filed a Motion to Stay Summary Judgment Briefing pursuant to
24 Federal Rule of Civil Procedure 56(d) (Doc. 311), along with a 45-page supporting
25 declaration by attorney Michael Moore averring that Plaintiffs had been unable to obtain
26 evidence necessary to oppose Defendants’ MSJ, despite their diligence, because of
27 Defendants’ assertion of the LEIP (Doc. 310). In the declaration, Michael Moore further

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Patricia Moore, have been dismissed. (Doc. 38.)

1 averred that Plaintiffs needed (1) to depose Defendants and other TPD officers, and (2) to
2 obtain evidence regarding the entirety of Defendants’ investigation of Greg and Patricia
3 Moore, including the facts known to Defendants, when Defendants learned of those facts,
4 Defendants’ motives and state of mind, and Defendants’ investigatory conduct and
5 findings. (*Id.*)

6 In addition to filing a Rule 56(d) Motion, Plaintiffs filed a Motion to Continue the
7 Case Schedule, seeking a four-month extension of the then-pending deadlines set forth in
8 Magistrate Judge Bowman’s Revised Scheduling Order. (Doc. 312.) In support,
9 Plaintiffs argued that they needed additional time to obtain discovery previously shielded
10 by the LEIP. (*Id.*)

11 In a combined Response to the Rule 56(d) Motion, Motion to Continue Case
12 Schedule, and other Motions, Defendants argued that none of the evidence sought by
13 Plaintiffs is necessary to defend against Defendants’ assertion of qualified immunity and,
14 under United States Supreme Court precedent, discovery should not be allowed until the
15 qualified immunity issue is resolved. (Doc. 340.)

16 On January 13, 2022, third party State Farm Fire & Casualty Company (“State
17 Farm”) filed a Motion for Clarification, seeking direction regarding whether it should
18 produce to Plaintiffs subpoenaed documents previously withheld pursuant to the LEIP.
19 (Doc. 335.)

20 On February 3, 2022, Defendants filed an Amended Motion for Summary
21 Judgment (“Amended MSJ”). (Doc. 348.) In the Amended MSJ, Defendants argue that
22 (1) it was reasonable for them to seek and execute the two search warrants at issue in this
23 case because, based on the facts known to them, they believed the warrants were based
24 on probable cause; (2) Plaintiffs cannot prove that Defendants made deliberate falsehoods
25 or acted with reckless disregard for the truth in securing the warrants, and none of
26 Plaintiffs’ alleged deceptions negate probable cause; (3) Plaintiff Greg Moore’s excessive
27 force claim fails because Greg Moore suffered no demonstrable injury from being
28 handcuffed and Defendants addressed his complaints about the handcuffs being too tight;

1 (4) Defendants had a categorical right to detain Patricia Moore for the duration of the
2 search of the Moores' residence; and (5) Plaintiffs' First Amendment retaliation claims
3 fail because no clearly established law gave Plaintiffs a First Amendment right to prevent
4 the police from pursuing a probable-cause-based criminal investigation of them, and
5 Plaintiffs cannot prove the requisite elements of the claims. (*Id.*) In support of their
6 Amended MSJ, Defendants rely upon declarations and affidavits of TPD Detective
7 Garnand, TPD Sergeant Salisbury, Tucson Fire Department investigator Jorge Loya, TPD
8 crime scene specialist supervisor Edwin Arnaud, TPD Sergeant Ericka Stropka,
9 Defendants' retained expert Edward Nordskog, attorney Sarah Pace, attorney James
10 Wadleigh, and Tricia Jochum; transcripts of videotaped recordings; depositions; various
11 pleadings and filings; and various items of evidence, including subpoenaed records,
12 search warrant documents, insurance claim documents, and reports by the TPD and
13 Tucson Fire Department. (Docs. 349-2 to 349-10.)

14 After Defendants filed their Amended MSJ, Plaintiffs renewed their Rule 56(d)
15 Motion. (Doc. 353.) Defendants responded in opposition, arguing that Plaintiffs had not
16 met the requirements for discovery in the face of a summary judgment motion based on
17 qualified immunity. (Doc. 354.) Plaintiffs filed a Reply, arguing that no case law
18 supports deciding a motion for summary judgment based on facts secured through
19 discovery when the nonmovant has not had meaningful access to the facts necessary to
20 oppose the motion. (Doc. 355.)

21 On March 9, 2022, Magistrate Judge Leslie A. Bowman partially granted
22 Plaintiffs' Rule 56(d) Motion and Defendants' request to stay discovery. (Doc. 356.)
23 Specifically, Magistrate Judge Bowman ordered Defendants to produce unredacted
24 photographs of an incendiary arrangement found in the Forgeus Apartments, ordered
25 Plaintiffs to respond to Defendants' Amended MSJ within sixty days of service of that
26 discovery, and stayed any further discovery pending resolution of the Amended MSJ.
27 (*Id.*)

28 On March 16, 2022, in light of the stay of discovery, Magistrate Judge Bowman

1 denied without prejudice Plaintiffs’ request to extend the pending deadlines set forth in
2 the Scheduling Order. (Doc. 359.) On March 18, 2022, Magistrate Judge Bowman
3 granted State Farm’s Motion for Clarification, instructing State Farm that it was no
4 longer precluded from disclosing subpoenaed documents previously withheld pursuant to
5 the now-lifted LEIP, but further instructing State Farm to delay disclosing the documents
6 until the stay of discovery has been lifted and the parties have agreed to a protective
7 order. (Doc. 362.)

8 Plaintiffs challenge Magistrate Judge Bowman’s March 9, March 16, and March
9 18 Orders in the pending Consolidated Objection to Magistrate Judge’s Orders. (Doc.
10 367.) Plaintiffs argue that Defendants’ Amended MSJ is premised not on purely legal
11 issues but on arguments that, based on Defendants’ selected version of the facts,
12 Defendants did not violate Plaintiffs’ constitutional rights. (*Id.* at 5.) Plaintiffs further
13 argue that, because Defendants’ Amended MSJ turns on factual questions concerning
14 probable cause, judicial deception, and retaliatory intent, the Amended MSJ cannot be
15 resolved without allowing Plaintiffs a fair opportunity to conduct discovery related to
16 those factual questions. (*Id.* at 8-16.) Plaintiffs also argue that Magistrate Judge
17 Bowman erred in finding their Rule 56(d) declaration insufficient. (*Id.* at 16-21.)

18 In response to Plaintiffs’ Consolidated Objection, Defendants argue that Plaintiffs
19 “simply refuse to acknowledge that this is now a qualified immunity” case. (Doc. 368 at
20 1.) Defendants contend that no further discovery is necessary to resolve the qualified
21 immunity issue because Plaintiffs have failed to identify any instance in which the
22 actions Defendants claim they took differ from those alleged by Plaintiffs. (*Id.* at 1-4.)
23 Defendants further argue that Magistrate Judge Bowman correctly ruled that discovery
24 concerning Defendants’ motives has no bearing on the issue of qualified immunity and
25 that she correctly found that Plaintiffs failed to satisfy the requirements of Rule 56(d).
26 (*Id.* at 6-11.)

27 On June 3, 2022, Defendants filed a Notice informing the Court that a state grand
28 jury issued an eight-count felony indictment charging Plaintiff Greg Moore with arson of

1 an occupied structure, fraudulent schemes and artifices, fraudulent fire insurance
2 application or claim, and illegally conducting an enterprise. (Doc. 369 at 3.) In the
3 Notice, Defendants ask the Court to take judicial notice of the fact of the indictment, and
4 they argue that the indictment “has a direct relation to matters that will become ‘at issue’
5 if Defendants do not prevail on their” Amended MSJ, because a grand jury indictment is
6 prima facie evidence of probable cause for a criminal investigation. (*Id.* at 3-5.)
7 Defendants further argue that “[t]o the extent that criminal discovery was ever needed”
8 for Plaintiffs to respond to Defendants’ Amended MSJ, Plaintiffs now “have it in spades”
9 because 6,339 pages of material from the criminal investigation were disclosed to Greg
10 Moore by the State of Arizona in connection with the criminal case. (*Id.* at 5.)

11 Plaintiffs responded to Defendants’ Notice. (Doc. 371.) Plaintiffs argue that the
12 indictment against Greg Moore does not affect Patricia Moore’s retaliatory investigation
13 claim, does not affect Plaintiffs’ judicial deception claims or Plaintiffs’ First Amendment
14 retaliation claims premised on the seizures under the search warrants at issue, and does
15 not affect Greg Moore’s false arrest and excessive force claims. (*Id.* at 1-2.) Plaintiffs
16 also argue that they have not received as part of the criminal case the entire files of the
17 arson investigations at issue, and that discovery of those files, as well as depositions of
18 Defendants and other witnesses, are crucial to their ability to oppose Defendants’
19 Amended MSJ. (*Id.* at 2-3.)

20 Defendants filed a Reply, disputing contentions made in Plaintiffs’ Response and
21 arguing that Plaintiffs fail to “justify any exemption from the narrow limits on discovery”
22 that exist in the qualified immunity context. (Doc. 373.)

23 **II. Legal Standard**

24 A district judge may designate a magistrate judge to hear and determine certain
25 pretrial matters. 28 U.S.C. § 636(b)(1)(A). The district judge may reconsider any
26 referred non-dispositive pretrial matter “where it has been shown that the magistrate
27 judge’s order is clearly erroneous or contrary to law.” *Id.*; *see also* Fed. R. Civ. P. 72(a).
28 “The clearly erroneous standard, which applies to a magistrate judge’s findings of fact, is

1 significantly deferential, requiring a definite and firm conviction that a mistake has been
2 committed.” *Jones v. Corr. Corp. of Am.*, No. CIV-10-2769-PHX-RCB(JRI), 2011 WL
3 1706838, at *4 (D. Ariz. May 5, 2011) (internal quotation marks omitted). The contrary
4 to law standard “permits independent review of purely legal determinations by the
5 magistrate judge.” *Id.* (internal quotation marks omitted).

6 Federal Rule of Civil Procedure 56(d) allows a district court to defer considering
7 or deny a summary judgment motion and allow time to take additional discovery if the
8 nonmovant “shows by affidavit or declaration that, for specified reasons, it cannot present
9 facts essential to justify its opposition.” A party invoking Rule 56(d) must show: “(1)
10 that they have set forth in affidavit form the specific facts that they hope to elicit from
11 further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are
12 ‘essential’ to resist the summary judgment motion.” *California ex rel. Cal. Dep’t of*
13 *Toxic Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). If the party
14 fails to meet these requirements, the district court may properly deny further discovery
15 and proceed to summary judgment. *See id.* Rule 56(d) motions should be granted “fairly
16 freely” when a party has not “had any realistic opportunity to pursue discovery relating to
17 its theory of the case.” *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of*
18 *Fort Peck Rsrv.*, 323 F.3d 767, 773 (9th Cir. 2003).

19 Pursuant to Federal Rule of Civil Procedure 16(b)(4), a scheduling order “may be
20 modified only for good cause and with the judge’s consent.” To satisfy this “good cause”
21 standard, a party must show that the pretrial schedule “cannot reasonably be met
22 despite” her diligence. *Johnson v. Mammoth Recs., Inc.*, 975 F.2d 604, 609 (9th Cir.
23 1992) (quoting Fed. R. Civ. P. 16 advisory committee’s notes to 1983 amendment).
24 “Although the existence or degree of prejudice to the party opposing the modification
25 might supply additional reasons to deny a motion, the focus of the inquiry is upon the
26 moving party’s reasons for seeking modification” and whether the moving party was
27 diligent. *Id.*

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1 **III. Discussion**

2 In her March 9, 2022 Order, Magistrate Judge Bowman found that Plaintiffs had,
3 in substantial part, failed to satisfy the requirements of Federal Rule of Civil Procedure
4 56(d) with respect to the items and categories of evidence they sought, and that the
5 extensive discussion in Plaintiffs’ Rule 56(d) declaration “of why the defendants’ motion
6 for summary judgment lacks merit” did little to support Plaintiffs’ request to stay the
7 summary judgment briefing. (Doc. 356 at 5-7.) Magistrate Judge Bowman also
8 recognized that the issue of qualified immunity should be resolved “at the earliest
9 possible stage in litigation in order to preserve the doctrine’s status as a true immunity
10 from suit rather than a mere defense to liability,” and she noted that early determination
11 of the issue of qualified immunity “is often possible because qualified immunity most
12 often turns on legal determinations” rather than “disputed facts.” (*Id.* at 4 (internal
13 quotation marks and citation omitted).) Furthermore, she found that evidence of
14 Defendants’ motives is irrelevant to the qualified immunity issue. (*Id.* at 6.)

15 The Court agrees with Magistrate Judge Bowman that Plaintiffs’ Rule 56(d)
16 declaration inappropriately focuses on arguing the merits of Plaintiffs’ opposition to
17 Defendants’ Amended MSJ. The declaration is also, at times, difficult to follow. Despite
18 these shortcomings, however, the declaration sets forth facts that Plaintiffs hope to elicit
19 from further discovery and shows that most of those facts, such as investigatory files,
20 exist. Accordingly, the Court’s inquiry turns primarily on whether the facts sought by
21 Plaintiffs are essential to their ability to oppose Defendants’ Amended MSJ. *See*
22 *California ex rel. Cal. Dep’t of Toxic Substances Control*, 138 F.3d at 779. With respect
23 to that inquiry, the Court finds that Magistrate Judge Bowman did not fully analyze how
24 the limits on discovery in qualified immunity cases affect the case at hand. Furthermore,
25 Magistrate Judge Bowman erred in finding that evidence regarding Defendants’ motives
26 is entirely irrelevant to Plaintiffs’ opposition to Defendants’ Amended MSJ.

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1 **A. Qualified Immunity**

2 The doctrine of qualified immunity “balances two important interests—the need to
3 hold public officials accountable when they exercise power irresponsibly and the need to
4 shield officials from harassment, distraction, and liability when they perform their duties
5 reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity
6 shields government officials “from liability for civil damages insofar as their conduct
7 d[id] not violate clearly established . . . constitutional rights of which a reasonable person
8 would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). For a
9 constitutional right to be clearly established, “existing precedent must have placed the . . .
10 constitutional question beyond debate.” *Reichle v. Howards*, 566 U.S. 658, 664 (2012)
11 (internal quotation marks omitted).

12 Qualified immunity is “an immunity from suit rather than a mere defense to
13 liability.” *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (internal quotation marks omitted),
14 *receded from on other grounds by Pearson*, 555 U.S. 223. As such, the doctrine protects
15 government officials not only from liability but also from “the costs of trial” and “the
16 burdens of broad-reaching discovery in cases where the legal norms the officials are
17 alleged to have violated were not clearly established at the time.” *Mitchell v. Forsyth*,
18 472 U.S. 511, 526 (1985) (internal quotation marks omitted).

19 The “qualified immunity question [of] whether [an] official’s alleged conduct
20 violated clearly established law” is “an essentially legal question,” *Crawford-El v.*
21 *Britton*, 523 U.S. 574, 589 (1998) (internal quotation marks omitted), and it “should be
22 made early in the proceedings,” *Saucier*, 533 U.S. at 200. No discovery is necessary to
23 resolve the qualified immunity question when assuming the truth of the plaintiff’s
24 allegations. *Crawford-El*, 523 U.S. at 598. However, if the actions alleged by the
25 plaintiffs are not “actions that a reasonable officer could have believed lawful,” or if the
26 actions that the defendants claim they took differ from the actions alleged by the
27 plaintiffs, “then discovery may be necessary” before a “motion for summary judgment on
28 qualified immunity grounds can be resolved.” *Anderson v. Creighton*, 483 U.S. 635, 646

1 n.6 (1987).

2 When a defendant argues that his or her conduct did not violate clearly established
3 statutory or constitutional rights of which a reasonable person would have known, the
4 qualified immunity defense cannot “be rebutted by evidence that the defendant’s conduct
5 was malicious or otherwise improperly motivated.” *Crawford-El*, 523 U.S. at 588.
6 Because the qualified immunity standard is objective, “[e]vidence concerning the
7 defendant’s subjective intent is simply irrelevant” to the qualified immunity defense. *Id.*
8 Some constitutional claims, however, require a plaintiff to prove that a defendant’s
9 conduct was improperly motivated. *Id.* “Thus, although evidence of improper motive is
10 irrelevant on the issue of qualified immunity, it may be an essential component of the
11 plaintiff’s affirmative case.” *Id.* at 589.

12 **B. Defendants’ Amended MSJ**

13 Defendants’ Amended MSJ is not limited to arguments concerning whether
14 Defendants’ alleged conduct violated clearly established law of which a reasonable
15 officer would have known. Nor does the Amended MSJ assume the truth of Plaintiffs’
16 allegations. Instead, the Amended MSJ makes fact-intensive arguments regarding the
17 merits of Plaintiffs’ affirmative claims and relies upon Defendants’ selected version of
18 the facts.

19 For example, with respect to Plaintiffs’ First Amendment retaliation claims,
20 Defendants argue that: (1) no clearly established law gave Plaintiffs a right to be free
21 from an allegedly retaliatory investigation that was supported by probable cause, (2)
22 Plaintiffs cannot establish the requisite elements of a First Amendment retaliation claim,
23 and (3) Plaintiffs cannot demonstrate that Defendants lacked probable cause to
24 investigate. (Doc. 348 at 32-41.) The first argument relates to the qualified immunity
25 inquiry, but it rests upon a characterization of Defendants’ conduct that differs from the
26 conduct alleged by Plaintiffs, as Plaintiffs allege that Defendants lacked probable cause
27 for their investigation and for the search warrants at issue. The latter two arguments
28 relate to the merits of Plaintiffs’ First Amendment claims. Due to the application of the

1 LEIP until shortly before the close of discovery, Plaintiffs have not had a full and fair
2 opportunity to discover evidence relevant to the existence of probable cause for
3 Defendants’ investigation or to discover evidence relevant to the elements of their First
4 Amendment retaliation claims—including evidence regarding retaliatory intent, which is
5 relevant to the merits of those claims. *See Crawford-El*, 523 U.S. at 588-89.

6 With respect to Plaintiffs’ judicial deception claims, the Ninth Circuit has
7 repeatedly held that “no reasonable officer could believe that it is constitutional to act
8 dishonestly or recklessly with regard to the basis for probable cause in seeking a
9 warrant.” *Butler v. Elle*, 281 F.3d 1014, 1024 (9th Cir. 2002) (per curiam). Accordingly,
10 if a plaintiff successfully establishes a judicial deception claim, the defendant is not
11 entitled to qualified immunity. *Chism v. Washington*, 661 F.3d 380, 393 (9th Cir. 2011).
12 Defendants’ Amended MSJ argues that Plaintiffs cannot establish the requisite elements
13 of their judicial deception claims. (Doc. 348 at 12-16, 25-28.) But Plaintiffs have not,
14 due to the application of the LEIP, had a full and fair opportunity to discover evidence
15 relevant to the merits of those claims, including evidence of “deliberate falsehood[s]” or
16 “reckless disregard for the truth.” *Id.* at 386.

17 Other arguments in Defendants’ Amended MSJ are more properly focused on the
18 qualified immunity standard, but even with respect to those arguments, further discovery
19 is essential to Plaintiffs’ ability to oppose the Amended MSJ. For example, Defendants
20 argue that they are entitled to qualified immunity for securing the search warrants at issue
21 because they could reasonably have believed the warrants were based on probable cause.
22 (Doc. 348 at 3-12, 19-25.) A defendant is entitled to qualified immunity on a Fourth
23 Amendment claim premised on an alleged lack of probable cause to support a search
24 warrant unless “the warrant was based on an affidavit so lacking in indicia of probable
25 cause as to render official belief in its existence entirely unreasonable.” *Messerschmidt v.*
26 *Millender*, 565 U.S. 535, 547 (2012) (internal quotation marks omitted). Though the
27 inquiry turns largely on the contents of the search warrant affidavits themselves and the
28 magistrate’s issuance of the warrant, evidence regarding review of the warrant

1 applications by superiors or prosecutors is also relevant to the objective reasonableness of
2 an officer's belief that the warrants were supported by probable cause. *See id.* at 548-
3 555. Plaintiffs have not had a full opportunity to develop facts related to Defendant
4 Garnand's consultation with Pima County Attorney Malena Acosta, which Plaintiffs aver
5 occurred before Garnand swore out the affidavit for search warrant 17SW1037. (*See*
6 Doc. 310 at 43-44; Doc. 367 at 9.)

7 **C. Rule 56(d) Relief**

8 As discussed above, Defendants' Amended MSJ is not limited to qualified
9 immunity arguments that can be resolved without discovery. Rather, the Amended MSJ
10 relies upon Defendants' selected version of the facts to dispute Plaintiffs' allegations and
11 to argue that Plaintiffs cannot prove the merits of their constitutional claims. Due to the
12 application of the LEIP until shortly before the close of discovery, Plaintiffs have not had
13 a full and fair opportunity to discover evidence relevant to opposing the arguments
14 contained in the Amended MSJ. Accordingly, the Court finds that Plaintiffs have shown
15 that Rule 56(d) relief is appropriate.

16 Plaintiffs ask in their Rule 56(d) Motion that their deadline to respond to
17 Defendants' Amended MSJ be deferred until after further discovery is completed. (Docs.
18 311, 353.) Pursuant to Rule 56(d), the Court may instead deny a summary judgment
19 motion, and the Court finds that denying Defendants' Amended MSJ without prejudice
20 and with leave to re-file is the most judicially efficient course of action here, given that
21 the Amended MSJ is not limited to qualified immunity issues but instead also addresses
22 the merits of Plaintiffs' constitutional claims. In addition, denial of the Amended MSJ
23 with leave to re-file is appropriate because the indictment of Greg Moore is likely to
24 substantially affect the parties' summary judgment arguments.

25 **D. Stay of Discovery**

26 Because the Court is denying without prejudice Defendants' Amended MSJ
27 pending further discovery, Defendants' Motion to Stay Discovery pending resolution of
28 the Amended MSJ will be denied as moot, and the stay imposed by Magistrate Judge

1 Bowman in her March 9, 2022 Order (Doc. 356) will be lifted.

2 **E. Motion to Continue Case Schedule**

3 The Court will grant Plaintiffs' Motion to Continue Case Schedule. (Doc. 312.)
4 The Court finds that Plaintiffs have shown good cause for an extension of the discovery
5 deadline because, despite their due diligence, the application of the LEIP hindered their
6 ability to conduct discovery until shortly before the discovery deadline expired.

7 **F. State Farm's Motion for Clarification**

8 Because the Court is lifting the stay of discovery imposed by Magistrate Judge
9 Bowman, the Court instructs State Farm that it should produce subpoenaed documents
10 previously withheld pursuant to the LEIP. However, the Court will provide Defendants
11 with an opportunity to seek a protective order prior to State Farm's production of those
12 documents.

13 **IT IS ORDERED** that Plaintiff's Consolidated Objection (Doc. 367) is **granted**.

14 **IT IS FURTHER ORDERED** that Magistrate Judge Bowman's March 9, 2022
15 Order (Doc. 356) is **overruled**, as follows:

- 16 1. Plaintiffs' Rule 56(d) Motion (Doc. 311) and Renewed Rule 56(d) Motion
17 (Doc. 353) are **granted**, as set forth above.
- 18 2. Defendants' Motion to Stay Discovery (Doc. 279) is **denied**.
- 19 3. The stay of discovery imposed in the March 9, 2022 Order (Doc. 356) is
20 **lifted**.

21 **IT IS FURTHER ORDERED** that Magistrate Judge Bowman's March 16, 2022
22 Order (Doc. 359) is **overruled**, as follows:

- 23 1. Plaintiffs' Motion to Continue the Case Schedule (Doc. 312) is **granted**.
- 24 2. The deadline for completion of discovery is extended to **November 29,**
25 **2022**.
- 26 3. The deadline for dispositive motions is extended to **December 29, 2022**.
- 27 4. The parties shall file a Joint Proposed Pretrial Order within **thirty (30) days**
28 following the resolution of dispositive motions filed after the close of

1 discovery or, if no such motions are filed, on or before **January 30, 2023**.

2 **IT IS FURTHER ORDERED** that Magistrate Judge Bowman’s March 18, 2022
3 Order (Doc. 362) is **partially overruled**, as follows:

- 4 1. State Farm’s Motion for Clarification (Doc. 335) is **granted**, as follows:
- 5 2. Defendants may file a motion for a protective order within **fourteen (14)**
6 **days** of the date this Order is issued.
- 7 3. If Defendants fail to file a motion for a protective order within fourteen
8 days, State Farm should produce to Plaintiffs the subpoenaed documents
9 previously withheld pursuant to the LEIP.
- 10 4. If Defendants file a motion for a protective order within fourteen days,
11 State Farm should await resolution of that motion prior to disclosing the
12 subpoenaed documents previously withheld pursuant to the LEIP.
- 13 5. Plaintiffs shall ensure that State Farm promptly receives a copy of this
14 Order.

15 **IT IS FURTHER ORDERED** that Defendants’ Amended Motion for Summary
16 Judgment (Doc. 348) is **denied without prejudice and with leave to re-file** after the
17 completion of discovery.

18 Dated this 29th day of July, 2022.

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Honorable Rosemary Márquez
United States District Judge