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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BHOPINDER DHILLON, ET AL.,)	Case No. 2:20-CV-11661-DDP-GJS
)	
Plaintiffs,)	ORDER DENYING PLAINTIFFS'
)	MOTION FOR LEAVE TO AMEND
v.)	COMPLAINT AND MODIFY THE
)	SCHEDULING ORDER UNDER
PRINCESS CRUISE LINES, LTD., ET)	RULE 16(b)(4)
AL.,)	
)	[Dkt. 54]
Defendants.)	
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Presently before the court is Plaintiffs' Motion for Leave to Amend Complaint and Modify the Scheduling Order Under Rule 16(b)(4). (Dkt. 54.) Having considered the parties' submissions, the court adopts the following order.

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1 **I. BACKGROUND**

2 Bhopinder Dhillon, Reena Dhillon, Anita Pampalon, Richard Pampalon, Sangita
3 Lal, Raj Lal, Jack Sekhon, and Praveena Giannoulis (collectively, “Plaintiffs”) are former
4 passengers of the *Grand Princess*, a cruise ship operated by Princess Cruise Lines Ltd.
5 (“Defendant”). On February 11, 2020, the *Grand Princess* departed out of San Francisco to
6 Puerto Vallarta, Mexico (the “Mexican Riviera Cruise”). (Dkt. 19, Second Amended
7 Compl. (“SAC”) ¶ 6.) On February 21, 2020, the *Grand Princess* anchored off the coast of
8 San Francisco due to an outbreak of COVID-19. (*Id.*) Plaintiffs generally allege that while
9 aboard the *Grand Princess*, Plaintiffs were exposed to and contracted COVID-19. (*Id.* ¶
10 64.) On December 12, 2020, Plaintiffs filed this action against Defendant, asserting
11 claims for negligence and gross negligence in connection to the alleged COVID-19
12 outbreak on the *Grand Princess*. (Dkt. 1.)

13 Plaintiffs now move to amend the SAC and to modify the court’s September 28,
14 2020 Scheduling Order (Dkt. 45, Scheduling Order) and November 30, 2021 Order to
15 Extend Certain Pretrial Deadlines, (Dkt. 50, Modified Scheduling Order). (*See* Dkt. 54,
16 Mot.)

17 **II. LEGAL STANDARD**

18 When a motion for leave to amend necessitates modifications to the court’s
19 scheduling order, the party seeking leave to amend must first show good cause under
20 Rule 16(b). *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); Fed.
21 R. Civ. P. 16(b)(4). If good cause is shown, the moving party must then demonstrate that
22 the amendment is proper under Rule 15(a)(2). *Johnson*, 975 F.2d at 608.

23 “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of
24 the party seeking to interpose an amendment and the prejudice to the opposing party,
25 Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking
26 the amendment.” *Id.* at 609. “Although the existence or degree of prejudice to the party
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1 opposing the modification might supply additional reasons to deny a motion, the focus
2 of the inquiry is upon the moving party's reasons for seeking modification." *Id.*

3 **III. DISCUSSION**

4 Plaintiffs move to amend the SAC to join two of Defendant's parent companies as
5 defendants and to add two new causes of action for misrepresentation/fraud and
6 negligent misrepresentation. (Mot. at 1:2-6.) Plaintiffs contend that despite reasonable
7 diligence in pursuing discovery, the basis for these claims were only recently discovered
8 a month after the close of fact discovery on November 30, 2021. (Dkt. 54-2, Lal
9 Declaration ("Decl.") ¶ 15.) Specifically, Plaintiffs claim that information pertaining to
10 Defendant's corporate structure was unknown to Plaintiffs at the time they filed the SAC,
11 including the identities of Defendant's parent companies, Carnival Corporation and
12 Carnival plc (the "Parent Entities"). (Mot. at 1:8-16; Lal Decl. ¶ 4.) Moreover, Plaintiffs
13 claim they only recently discovered documents that purport to show that the Parent
14 Entities "actively direct[ed]" Defendant's employees to conceal "Covid 19 issues" from
15 passengers who were aboard the *Grand Princess*. (Mot. 4:11-18; Lal Decl. ¶ 13, 15.)

16 Under the circumstances, Plaintiffs have not provided a sufficient basis to modify
17 the Scheduling Orders. First, Plaintiffs ascribe their inability to possess this information
18 until the close of fact discovery to Defendant's purported discovery abuse. Plaintiffs
19 specifically complain that Defendant provided inadequate responses to written discovery
20 requests, failed to timely produce documents, and failed to provide available dates for
21 various deposition witnesses. However, when a party is frustrated by discovery
22 compliance, the proper remedy is not a motion to modify a scheduling order or a motion
23 seeking leave to amend. The proper remedy is a motion to compel—a remedy Plaintiffs
24 did not timely seek. Thus, it appears that Plaintiffs contributed to the delay in discovery
25 by failing to seek the proper remedy for the alleged discovery disputes.

26 Second, Plaintiffs were on notice of Defendant's relationship to Carnival
27 Corporation and Carnival plc months before the close of discovery. Defendant identified

1 Carnival Corporation in its notice of interested parties filed on March 11, 2020, (Dkt. 26),
2 in its Joint Rule 26 Report filed on June 14, 2021, (Dkt. 32), and in response to Plaintiffs’
3 discovery requests served on September 30, 2021 (Dkt. 54-4, Ex. 2 at 9-10.) The Parent
4 Entities are also named defendants (in addition to Princess Cruise Lines Ltd.) in several
5 other related lawsuits filed in this district that all concern the alleged COVID-19
6 outbreaks on the *Grand Princess*. (See Opp. at 2, n.1.)

7 Moreover, Plaintiffs contend that they only recently discovered documents that
8 suggest Defendant (as well as the proposed Parent Entities) knew “of the [p]resence of
9 outbreak of Influenza Like Symptoms . . . and Acute Respiratory Symptoms . . . including
10 that of possible Covid 19 disease on its Prior Voyage of Grand Princess dated January 29,
11 2020, through February 11th, 2020, commonly known as Grand Princess Hawaii Cruise
12 AOO4.” (Mot. at 4.) Plaintiffs specifically contend that Defendant knew and
13 intentionally concealed that a passenger on the Hawaiian cruise “was airlifted and died
14 later from shortness of breath and Covid 19” and that at least one crew member from the
15 *Diamond Princess* that had experienced an outbreak of COVID-19 in early February 2020
16 when it was in Japanese territorial waters, transferred to *Grand Princess* while carrying
17 COVID-19. (*Id.* at 5-6.) Plaintiffs further contend that Defendant intentionally concealed
18 that “it allowed several international crew members who flew through commercial
19 airlines via China” on the *Grand Princess* and that one particular crew member had
20 Covid-19. (*Id.* at 6.)

21 However, with respect to the proposed claims against Defendant, it appears that
22 Plaintiffs were aware of the substance of these claims throughout discovery. In October
23 2021, some Plaintiffs testified during their depositions that they learned from crew
24 members during their voyage about the “critically ill passenger” who was airlifted from
25 the *Grand Princess* Hawaiian cruise, and testified that they were concerned the passenger
26 had died from COVID-19. (See, e.g., Dkt. 57-12, Dhillon Depo. at 51:6-86:22, 231:22-232:6;
27 Giannoulis Depo. at 111:20-112:112:14.) Plaintiffs also testified that certain crew members

1 stated they were sharing rooms with other sick crew members who had been transferred
2 to the *Grand Princess* from the *Diamond Princess*. (*Id.* at 51:17-86:22; Giannoulis Depo. at
3 85:22-86:1; 90:17-91:22.) Plaintiffs do not explain why they did not seek leave to amend
4 after learning of these facts in October, nearly two months before the filing of this
5 motion.

6 Third, Plaintiffs contend that Defendant's production of thousands of pages of
7 documents limited their reviewing time to six weeks before the discovery cutoff on
8 October 31, 2021. However, Plaintiffs do not sufficiently explain why they waited two
9 months after the parties' Rule 26(f)(1) conference to begin formal discovery. According
10 to the parties' Joint Rule 26 Report, the parties conferenced on May 25, 2021. (Dkt. 32.)
11 Thereafter, Plaintiffs and Defendant were permitted to begin formal discovery absent any
12 conflicting court order or stipulation. *See* Fed. R. Civ. P. 26(d)(1)-(3). Instead, Plaintiffs
13 waited over two months, on August 5, 2021 and August 21, 2021, to serve Defendant six
14 sets of written discovery requests, including requests for production of documents. (*See*
15 Dkt. 57-1, Scott Decl. ¶ 2.) The burden fell on Plaintiffs to promptly seek the discovery it
16 deemed essential, to supplement discovery requests, and to the extent Defendant
17 unreasonably delayed or refused to fully satisfy its discovery obligations, to seek judicial
18 intervention if necessary. Had Plaintiffs propounded discovery sooner than August
19 2021, they likely would have obtained the information they needed to seek leave to
20 amend and to modify the scheduling orders without the risk of significant delay.

21 Although the dispositive factor in determining whether a court should modify a
22 scheduling order is the diligence of the moving party, in this instance, the degree of
23 prejudice to Defendant should also be considered, as it supplies additional reasons for
24 the denial of Plaintiffs' motion. *See Johnson*, 975 F.2d at 609; *Coleman v. Quaker Oats Co.*,
25 232 F.3d 1271, 1294-95 (9th Cir. 2000), *cert. denied*, 533 U.S. 950 (2001) ("This prejudice to
26 Quaker, although not required under Rule 16(b), supplies an additional reason for
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1 denying the motion []” to amend filed after the deadline to amend pleadings had
2 expired).

3 Here, Defendant seeks to add two new defendants and two new causes of action
4 two months after the close of fact discovery and three weeks before the deadline for filing
5 dispositive motions, (*see* Dkt. 49, Court’s Order of October 22, 2021) (extending
6 dispositive motion deadline to January 7, 2021). Allowing Plaintiffs to amend their
7 pleading at this stage will likely cause delay as well as cause the parties to incur
8 significant fees and costs. The court will need to re-open discovery and allow motions to
9 dismiss and motions for summary judgment with respect to the new claims and
10 defendants. *See Coleman*, 232 F.3d at 1295 (explaining that on a Rule 16(b) motion, the
11 court may also consider prejudice to the non-moving party, including the fact that
12 amending the complaint “would likely have required reopening discovery so that
13 [defendant] could develop its evidence to prepare its defenses to this theory.”); *c.f.*
14 *Lockheed martin Corp. v. Network Solut., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (affirming
15 denial of Rule 15 motion to amend and holding that “[a] need to reopen discovery and
16 therefore delay the proceedings supports a district court’s finding of prejudice from a
17 delayed motion to amend the complaint.”). Defendant contends it will need to re-depose
18 Plaintiffs on their new allegations and file a second motion for summary judgment since
19 the motion Defendant filed on January 7, 2021, (*see* Dkt. 64), will be rendered moot if the
20 court permits Plaintiffs to file the TAC. Under these circumstances, the addition of two
21 defendants and two causes of action would be highly prejudicial to Defendant.

22 Given the above findings regarding Plaintiffs’ lack of diligence, the court finds
23 that Plaintiffs have not demonstrated good cause. The court therefore need not address
24 Plaintiffs’ arguments under Rule 15(a).

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IV. CONCLUSION

For the reasons stated above, the court DENIES Plaintiffs' Motion for Leave to Amend Complaint and Modify the Scheduling Order Under Rule 16(b)(4).

IT IS SO ORDERED.

Dated: January 21, 2022



DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE