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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SABAS ARREDONDO et al.,  
Plaintiffs,  
  
v.  
  
DELANO FARMS CO., et al.,  
Defendants.

1:09-cv-01247 MJS  
**ORDER DENYING MOTION FOR LEAVE TO  
AMEND COMPLAINT (Doc. 373)**

On June 17, 2009, Plaintiffs commenced this class action against Defendants on behalf of themselves and those similarly situated. Plaintiffs made various allegations relating to Defendants failure to pay for time spent working before and after shifts, for failure to pay for work performed at home, and failure to reimburse for purchase of equipment. Over six years of extensive litigation have ensued and included significant discovery and discovery disputes, contested motions for class certification and class decertification, and a trial over whether certain Defendants were joint employers. On June 22, 2015, Plaintiffs moved for leave to file a First Amended Complaint ("FAC") under Federal Rule of Civil Procedure 15(a) to add a claim for failure to pay piece-rate

1 workers for rest breaks.<sup>1</sup> (Mot. to Amend, ECF No. 373.) Defendants oppose the motion.

2 Having determined the matter suitable for decision without oral argument, the  
3 Court deemed the matter submitted on August 4, 2015. (ECF No. 391.) For the following  
4 reasons, the Court denies Plaintiff's motion to amend.

5 **I. BACKGROUND**

6 As the parties are familiar with the procedural history of the matter, the Court will  
7 only provide a brief overview of the proceedings to place the present motion to amend in  
8 the proper context of the entire litigation.

9 The matter was initiated by Sabas Arrendondo, Jose Cuevas, Hilario Gomez,  
10 Irma Landeros and Rosalba Landeros (collectively, "Plaintiffs"), on July 17, 2009, and  
11 has been vigorously litigated by the parties ever since.

12 Plaintiffs are current and former agricultural workers employed by Defendants  
13 Cal-Pacific Farm Management, L.P. ("Cal-Pacific"), T&R Bangi's Agricultural Services,  
14 Inc. ("T&R Bangi") and Delano Farms Company ("Delano Farms"). Plaintiffs were non-  
15 exempt employees who worked in agricultural fields around Kern and Tulare Counties,  
16 conducting work in Defendants' table grape vineyards.

17 Plaintiffs originally complained that they, and similarly situated class members,  
18 were not compensated for all time worked, and they sought relief for injuries accrued  
19 during the four years preceding the filing of their complaint. They contend that they were  
20 not compensated for pre-shift work, post-shift work, work performed at home, time  
21 stopped from working during the day, and time spent traveling during the work day, and  
22 that they were not reimbursed for necessary tool purchases. Plaintiffs also alleged that  
23 such failures left them underpaid, including for overtime, and that Defendants were then  
24 liable for failing to provide accurate wage statements and for waiting time penalties  
25 based on the failure to provide correct wages.

26 From 2009 to 2011, the parties engaged in the class certification phase of the

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27 <sup>1</sup> Piece-rate basis is "a method of payment based on units of production or a fraction thereof" as  
28 opposed to compensation based on an hourly rate. Industrial Welfare Commission Order 14-2001.

1 case. The parties conducted discovery relating to certification, and over 250,000 pages  
2 of documents were produced and nearly thirty depositions taken. In early 2011, Plaintiffs  
3 moved for class certification, and the parties provided extensive briefing plus hundreds  
4 of declarations of putative class members. On April 19, 2011, the Court certified four  
5 subclasses of claimants based on four different types of wage and hour violations. (ECF  
6 No. 85.) Notice of same was then mailed to roughly 24,000 potential class members'  
7 addresses later that year.

8 In fall 2011, the case moved into the joint-employer liability issue. Discovery was  
9 re-opened with respect to that topic, and additional depositions were conducted and  
10 written discovery propounded. In early 2012, Defendant Delano Farms moved for  
11 summary judgment with regard to whether Defendants were joint employers, and on  
12 April 12, 2012, the Court denied the motion. (ECF No. 165.) The joint employer issue  
13 was then bifurcated from other issues, and in January 2013, trial was held on the joint-  
14 employer issue alone. On February 2013, the Court ruled that Delano Farms was a joint  
15 employer of Plaintiffs. (ECF No. 259.)

16 Next, in March, 2013, Defendants filed motions for decertification supported by  
17 further declarations and evidence. On February 21, 2014, the Court granted the motion  
18 in part and decertified two of the four subclasses. Since that time the parties have  
19 engaged in further discovery and planning with regard to the merits of the remaining  
20 claims. The Court authorized merits discovery. (ECF No. 330.)

21 On June 30, 2015, the Court issued the operative scheduling order. (ECF No.  
22 377.) That scheduling order requires the Plaintiffs to file a trial plan in November, 2015.  
23 After Defendants are provided an opportunity to respond, a hearing with regard to the  
24 trial plan is scheduled for March 11, 2016. The discovery deadline for merits based  
25 discovery is March 1, 2016.<sup>2</sup> (Id.)

26  
27 <sup>2</sup> On October 5, 2015, Plaintiffs filed a motion modify the scheduling order and extend each of the  
28 above deadlines by roughly four months. (ECF No. 393.) A hearing on the motion is currently set for  
November 13, 2015.

1 A week prior to the filing of the scheduling order, Plaintiffs filed the instant motion  
2 to amend. (ECF No. 373.) Plaintiffs seek to amend the complaint to allege claims for  
3 failure to pay piece-rate workers compensation for time spent during rest breaks. (ECF  
4 No. 373.) These claims were not stated in the complaint filed in 2009.

5 Plaintiffs stated, and the Court originally certified, four subclasses of claims based  
6 on the failure to pay for pre-shift work, post-shift work, work performed washing grape  
7 trays at home, and un-reimbursed tool purchases. The Court later decertified the post-  
8 shift work and tray-washing subclasses. (See Orders, ECF Nos. 89, 310.) Accordingly, at  
9 the time of the filing of this motion to amend this matter had been proceeding since June  
10 2009, and proceeding since February 2014 on the certified claims for pre-shift work<sup>3</sup> and  
11 un-reimbursed tool purchase claims. In the year and half since the order issued on the  
12 motion for decertification on February 20, 2014, the parties have spent significant efforts  
13 conducting discovery and devising methods to efficiently bring the remaining claims to  
14 trial. The parties had disagreed substantially on the procedure for and scope of  
15 discovery, and on August 19, 2014, the Court authorized them to proceed in the manner  
16 authorised by Federal and local rules but otherwise as they saw fit. (ECF No. 330.)  
17 Further, on October 10, 2014, the Court denied Plaintiffs' motion for a protective order  
18 and allowed Defendants to continue to conduct discovery as part of its proposed "pilot  
19 study" by deposing random samples of absent class members.<sup>4</sup> (ECF No. 342.)

20 On June 22, 2015, Plaintiffs filed the instant motion to amend the complaint. The  
21 motion seeks to add another wage and hour claim based on the alleged failure of  
22 Defendants to provide mandatory rest period time for piece-rate workers who worked  
23 shifts of more than three and a half hours a day. (See Am. Compl., ECF No. 373-1 at 5.)

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24  
25 <sup>3</sup> The Court additionally added subclasses based on the derivative wage statement and waiting  
time penalty claims relating to the failure to compensate for pre-shift work.

26  
27 <sup>4</sup> The Court notes, that as of the filing of this motion, discovery has been continuing. With regard to  
discovery, Plaintiffs have filed a second motion for a protective order to discontinue the pilot study with  
28 respect to out-of-state deponents. (See ECF No. 378.) The matter is currently under submission and will  
be ruled upon in a separate order.

1 The claim is based on the holdings of the California Court of Appeal in Bluford v.  
2 Safeway Inc., 216 Cal. App. 4th 864, 872 (Cal. App. 2013).

3 Defendants filed oppositions to the motion to amend on July 24, 2015, and  
4 Plaintiffs filed a reply on July 31, 2015. (ECF Nos. 380, 387, 389.) The matter was taken  
5 under submission on August 4, 2015, and stands ready for adjudication.

## 6 **II. ISSUES PRESENTED**

7 Plaintiffs contend in the motion to amend that leave should be granted under the  
8 liberal standards set forth in Federal Rule of Civil Procedure 15(a), and further, that the  
9 new piece-rate rest break claim should relate back to the filing date of the original  
10 complaint under Rule 15(c). Defendants counter that amending the pleading would  
11 necessarily impact the case schedule and a showing of good cause must be made to  
12 modify the scheduling order under Rule 16(b)(4).

13 Accordingly, to determine which legal standard to apply, the Court must first  
14 determine whether to review the motion as a motion to amend the pleadings or a motion  
15 to amend the scheduling order.

## 16 **III. LEGAL STANDARD**

17 Rule 15(a) of the Federal Rules of Civil Procedure provides that after a  
18 responsive pleading has been served, a party may amend its complaint only with the  
19 opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a). "The court  
20 should freely give leave when justice so requires," and apply this policy with "extreme  
21 liberality." Id.; DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). The  
22 Court considers five factors in assessing a motion for leave to amend: (1) bad faith, (2)  
23 undue delay, (3) prejudice to the opposing party, (4) futility of the amendment, and (5)  
24 whether the plaintiff has previously amended the complaint. Johnson v. Buckley, 356  
25 F.3d 1067, 1077 (9th Cir. 2004); see also Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct.  
26 227, 9 L. Ed. 2d 222 (1962). The party opposing amendment bears the burden of  
27 showing any of the factors above. See DCD Programs, 833 F.2d at 186.

28 However, when a party seeks to amend a pleading after the pretrial scheduling

1 order's deadline for amending the pleadings has expired, the moving party must satisfy  
2 the "good cause" standard of Federal Rule of Civil Procedure 16(b)(4), which provides  
3 that "[a] schedule may be modified only for good cause and with the judge's consent;"  
4 the liberal standard of Federal Rule of Civil Procedure 15(a) does not control. Learjet,  
5 Inc. v. Oneok, Inc. (In re W. States Wholesale Natural Gas Antitrust Litig.), 715 F.3d 716,  
6 737 (9th Cir. 2013); Johnson v. Mammoth Recreations, 975 F.2d 604, 607-608 (9th Cir.  
7 Cal. 1992).

8 "Unlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of  
9 the party seeking to interpose an amendment and the prejudice to the opposing party,  
10 Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking  
11 the amendment." Id. at 737 (quoting Johnson, 975 F.2d at 609.). While a court may take  
12 into account any prejudice to the party opposing modification of the scheduling order,  
13 "the focus of the [Rule 16(b)] inquiry is upon the moving party's reasons for seeking  
14 modification . . . [i]f that party was not diligent, the inquiry should end." Id.

15 If a party moves to amend its complaint instead of moving to amend the  
16 scheduling order, the court may exercise discretion to deny the motion as untimely or  
17 construe the motion as one to amend the scheduling order. See Johnson, 975 F.2d at  
18 608-09 ("[The] court may deny as untimely a motion filed after the scheduling order cut-  
19 off date where no request to modify the order has been made.") (citation omitted).

20 For the sake of judicial efficiency, and in light of the fact that Plaintiffs had notice  
21 and the opportunity to address amendment to the scheduling order in their reply (ECF  
22 No. 389), the Court construes Plaintiffs' motion as a motion to modify the scheduling  
23 order.

24 Accordingly, the Court must first determine whether there is good cause to modify  
25 the scheduling order. If Plaintiffs demonstrate good cause, the Court must then decide if  
26 leave to amend is appropriate under Federal Rule of Civil Procedure 15. Johnson, 975  
27 F.2d at 608.

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1 **IV. DISCUSSION**

2 **A. Plaintiffs' Contentions**

3 Plaintiffs present two main arguments why amendment of the scheduling order is  
4 proper: (1) that the dates set forth in the current scheduling order will not need to be  
5 altered and therefore modification of the scheduling order is not needed; and (2) that  
6 even if the Court considers the motion as necessarily modifying the scheduling order,  
7 Plaintiffs have established the requisite good cause as they were not able to ascertain  
8 the factual basis of the newly proposed claim until they received and reviewed discovery  
9 provided by Defendants in January and March 2015.

10 Plaintiffs contend that amendment of the pleadings will not interfere with the dates  
11 set forth by the Court's June 30, 2015 scheduling order since the current discovery cut-  
12 off is March 1, 2016, over four months away, and subject to extension by court order or  
13 stipulation. (ECF No. 377, p. 2.) Plaintiffs also assert that the new claim can be litigated  
14 on the record previously exchanged during discovery.

15 As to the issue of good cause, Plaintiffs provide a detailed explanation why they  
16 did not move to amend the pleadings to add the new claim sooner. They state that it  
17 was not until their January 2015 review of information from Defendants' expert, Dr.  
18 Joseph Krock, that they realized that Dr. Krock had greater access to source data than  
19 they did. (Decl. of Anna Walther, ECF No. 373-2 at ¶¶ 3-4.) Specifically, they state that  
20 on January 26, 2015, Defendants provided approximately 300,000 digital copies of  
21 documents not previously disclosed. Then, in March 2015, Defendants provided a  
22 spreadsheet of the index and a database containing extracted data from the daily crew  
23 sheets.<sup>5</sup> (Id. at ¶ 5.) The above information was provided in response to Plaintiffs'  
24 specific requests to review the information provided to Dr. Krock.

25 Plaintiffs assert that the index was required to link digital images of the foreman-  
26 prepared daily crew sheets to the resulting payroll information. The daily crew sheets,

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27 <sup>5</sup> According to Plaintiffs, the daily crew sheets made up a substantial part of the roughly 550,000  
28 digital documents produced.

1 while produced earlier, were not provided in chronological order, and Plaintiffs argue that  
2 without the index, it was difficult to determine compensation for the piece-rate workers.  
3 (Walther Decl. at ¶ 8.) Plaintiffs also contend that information in the spreadsheets was  
4 routinely missing. Specifically, as to the newly asserted claim for rest breaks for piece-  
5 rate workers, Plaintiffs point out that the index category "PW/Hours" which is thought to  
6 identify the number of hours worked by piece-rate workers was usually populated with a  
7 "0" or the rate of pay per piece, not the hours worked. (See Walters Reply Decl., ECF  
8 No. 389-1 at ¶ 10.) Based on the incomplete records, Plaintiffs contend that it is  
9 necessary to examine the actual daily crew sheet to determine what information should  
10 have been included on the index. As the crew sheets were not provided in chronological  
11 order and the records were so voluminous, compiling the records without the discovery  
12 provided this year was extremely difficult.

13 Based on Plaintiffs' review of the employment records as they now exist, they can  
14 reasonably extrapolate to determine the hours worked during a particular piece-rate shift  
15 and the piece-rate wage rate for particular shifts wherever the records are incomplete as  
16 to hours worked by piece-rate workers. (Reply at 7-8.) Plaintiffs contend that they acted  
17 promptly to present the instant motion to amend the complaint based upon the  
18 information accessible from the newly provided documents.

### 19 **B. Defendants' Responsive Contentions**

20 Defendants contend that Plaintiffs unduly delayed in filing the motion to amend.  
21 They argue that: (1) the motion to amend was brought nearly two years after issuance of  
22 the judicial decision Plaintiffs rely upon as a legal basis for the claim; (2) that the  
23 discovery produced in 2015 was not necessary to allege the claims, as evidenced by a  
24 proposed amended complaint prepared by Plaintiffs prior to receiving the discovery; and  
25 (3) that the 2015 production of records did not provide new information, but only a new  
26 format for previously produced information.

#### 27 i. Plaintiffs' Knowledge of Amendment Bases

28 First, Defendants note that to the extent Plaintiffs argue that their new claims were



1 only made available in light of Bluford v. Safeway Inc., 216 Cal. App. 4th 864, 872 (Cal.  
2 App. 2013), Plaintiffs waited to move to amend until over two years after the Bluford  
3 decision issued on May 8, 2013. Defendants also argue that Plaintiffs knew of the basis  
4 for the claim and were capable of preparing, and did in fact prepare, an amended  
5 complaint based thereon well before they received the 2015 discovery.

6 Defendants were first placed on notice of the potential claim by statements made  
7 by Plaintiffs in the March 17, 2014 scheduling report. (ECF No. 313 at 5.) There Plaintiffs  
8 stated that they would seek leave of Court to amend the complaint and move to certify  
9 the new claims "pursuant to standard motion procedures." (Id.) Plaintiffs did not file a  
10 motion to amend at that time.

11 The Court ordered the parties to proceed to conduct discovery and develop trial  
12 plans to advance the certified claims to trial.

13 Seven months later, in October 2014, Plaintiffs provided Defendants a copy of a  
14 proposed amended complaint containing a new claim for failure to pay piece-rate  
15 workers for rest break periods and a request that Defendants stipulate to its filing. (See  
16 Bigelow Decl., ECF No. 381, Exs. A-B.) Defendants declined. (Id.) Plaintiffs then raised  
17 the issue of filing an amended complaint with the Court in an informal telephonic  
18 discovery dispute conference on October 31, 2014. (See ECF No. 346.) The Court  
19 indicated that amendment of the complaint was not subject to the Court's rules regarding  
20 discovery disputes, and that Plaintiffs did not need pre-authorization to file a motion to  
21 amend. (Id.) However, no such motion was then filed.

22 Rather, eight months later on June 12, 2015, Plaintiffs again noticed Defendants  
23 and the Court of their intent to move to amend the complaint. (See Status Report, ECF  
24 No. 372 at 15-16.) Shortly thereafter, Plaintiffs filed the instant motion to amend. (ECF  
25 No. 373.)

26 ii. Plaintiffs Possessed Sufficient Discovery to Amend Earlier

27 Defendants also dispute that Plaintiffs had insufficient discovery to allege the  
28 piece-rate rest break claims before the present motion. Payroll data had been produced

1 on at least six occasions, and the 2015 productions either duplicated or supplemented  
2 prior productions or it consisted of work-product summarization of data previously  
3 produced. (See Opp'n at 7-8.) Defendants argue further that Plaintiffs ability to actually  
4 draft an amended complaint prior to receiving the additional discovery is proof positive  
5 that the additional information was not necessary to amend.

6 According to Defendants, payroll data from the relevant period had been  
7 produced six times or more beginning in July, 2010. (Id.) The handwritten daily crew  
8 sheets of over fifty workers were provided to the Plaintiffs in 2010, and Plaintiffs agreed  
9 that electronic records were sufficient for the rest of the class members at that time.  
10 (Opp'n at 9; see also, ECF No. 42 at 19-20.) Plaintiffs did not possess the DataTech  
11 software that was used to compile the payroll data, so Defendants exported the  
12 DataTech records into Microsoft Excel spreadsheets which were then produced. (Id.)  
13 However, later in 2010, Plaintiffs obtained the DataTech software and Defendants  
14 provided the records in the native DataTech format in September 2010. (Id.)

15 Defendants argue that the additional production provided in early 2015 was not  
16 relevant to or necessary to establish the piece-rate rest break claim, because  
17 Defendants had earlier provided copies of all electronic payroll data except a small set of  
18 data relating to work performed by foremen. (Opp'n at 10.) Plaintiffs do not contend that  
19 the failure to have the latter data prevented them from seeking amendment to allege the  
20 piece-rate rest break claim. (Id.)

21 Defendants did review and manually enter the information from crew sheets and  
22 payroll reports into a database in connection with their pilot study, but, because this  
23 database could not be filtered to isolate piece-rate work, it could not assist in asserting a  
24 piece-rate work claim. (Opp'n at 10, 11.) According to Defendants, the payroll data  
25 previously provided could have been filtered to isolate piece rate work. (Id.)

### 26 **C. Analysis**

#### 27 i. Is Modification of the Scheduling Order Required?

28 The first issue before the Court is whether the proposed amendment requires

1 modification of the Court's scheduling order.

2 The Court has issued several scheduling orders without specifically providing a  
3 deadline for amendments to the complaint. Plaintiffs argue that its proposed amendment  
4 will not necessitate modifying the present scheduling order because the parties will have  
5 sufficient time to conduct discovery into the new claim before the currently set March 1,  
6 2016 discovery deadline. Defendants, however, respond that notwithstanding the lack of  
7 a specific deadline for amendment, amendment after certification would require a further  
8 motion for certification as to the newly added claims and therefore necessitate  
9 modification of the previous scheduling orders. Plaintiffs do not respond to this  
10 argument or suggest how the scheduling order could avoid modification to allow for a  
11 certification motion as to the newly added claim.<sup>6</sup>

12 Defendants have the better argument. While the Court has not specifically set a  
13 deadline for amendments to the pleadings, adding an additional claim will require  
14 modification of the scheduling order and a revisit to class certification as to the additional  
15 claim.

16 The parties were provided the opportunity to conduct discovery relating to  
17 certification prior to the January 2011 deadline for filing a motion for certification. Now,  
18 over four years later, Plaintiffs seek to amend the complaint to add a claim that would  
19 effectively force the Court to grant relief from the original January 2011 certification  
20 motion deadline. The need for such modification of the Court's prior scheduling orders to  
21 facilitate the proper litigation of the proposed new claim necessitates Plaintiffs showing  
22 good cause to modify the scheduling order. See e.g., Gonzales v. Comcast Corp., 2011  
23 U.S. Dist. LEXIS 51469 (E.D. Cal. May 12, 2011) (construing motion for leave to amend  
24 as a motion to modify scheduling order because it necessarily required modification of  
25 the certification motion deadline.).

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26 <sup>6</sup> Based on the language of the proposed amended complaint and statements of the parties, the  
27 Court assumes that Plaintiffs intend to present the new claim on behalf of class members, as opposed to  
28 presenting the claim as an individual claim on behalf of the named class members. Since the claim is  
presented on behalf of class members, it is without question that certification would be required.

1           ii.       Good Cause and Diligence in Seeking Modification

2           For the sake of argument, the Court will assume that the piece-rate rest break  
3 claim could have only been asserted after the 2013 issuance of Bluford v. Safeway Inc.,  
4 on May 18, 2013. 216 Cal. App. 4th at 872. The Bluford decision describes the legal  
5 basis for separate compensation of rest breaks for piece-rate workers under California  
6 wage and hour laws. The Bluford decision was issued more than over two years after the  
7 class certification deadline passed, and, more importantly here, more than two years  
8 ago. Rather than move to amend the complaint and modify the scheduling order  
9 promptly, or even within a reasonable time, Plaintiffs waited until June 22, 2015, a delay  
10 of more than two years after Bluford, and four years after the deadline for certification.

11           Even recognizing that it may have been impractical to move to amend the  
12 complaint until after the Court adjudicated Defendants' motion for decertification on  
13 February 21, 2014 (ECF No. 310), Plaintiffs still delayed sixteen months before moving  
14 to assert the new claims.

15           When Plaintiffs first stated an intent to file an amended petition following the  
16 Court's ruling on decertification, Defendants gave clear notice of their intent to oppose  
17 such an amendment. (ECF No. 313 at 5-6.) In the joint scheduling report filed March 17,  
18 2014, Defendants noted that allowing Plaintiffs to amend the complaint would cause  
19 large delays and require further motions. Specifically, Defendants stated:

20                     Plaintiffs acknowledge that their proposed amendment, if allowed,  
21                     would require new certification-related discovery and another motion to  
                       certify. This will entail significant delay.

22                     First, Defendants obviously must see the claims, as pled, to  
23                     determine the scope of certification discovery that is necessary;  
24                     Defendants are not obliged to accept the Plaintiffs assertions as to what  
25                     discovery is appropriate. Furthermore, it is unclear how merits-based  
26                     discovery could proceed before all of the claims whose merits are the  
27                     subject of discovery have been determined. Finally, even if a plan were  
28                     formulated to allow two separate merits-discovery phases of the case (one  
                       for the current claims and then one later for any claims that might later be  
                       certified), it would be sure to create inefficiencies and undue expense.  
                       Defendants will address these issues and additional grounds for denying  
                       leave to amend in their response to Plaintiffs' motion, if filed. The  
                       discovery plan addressed herein below by Defendants assumes that the  
                       action proceeds as currently pled.

1 (Id.) These March 2014 statements made Plaintiffs well aware of Defendants concern  
2 that adding new claims would require additional discovery and motions and likely delay  
3 the litigation. Rather than responding by immediately moving to amend, Plaintiffs waited  
4 six months more before again inquiring as to whether Defendants might have unilaterally  
5 changed their minds and become willing to stipulate to the filing of an amended  
6 complaint. (Bigelow Decl., ECF No. 381, Exs. A-B.) Defendants remained unwilling to  
7 stipulate to amend, and referred Plaintiffs back to the reasons stated in the March 2014  
8 scheduling report.

9         The record before the Court makes it clear Plaintiffs were aware of the claim and  
10 intended to present it in this action long before, too long before, this motion was finally  
11 filed. Bluford put Plaintiffs on notice of the potential claim two years before seeking  
12 amendment. After first indicating the intent to add the piece-rate rest break claim,  
13 Plaintiffs delayed another fifteen months before filing a formal motion to do so. Even  
14 after learning in 2014 that Defendants opposed amendment, Plaintiffs waited another six  
15 months to ask, without any apparent basis for optimism, whether Defendants had  
16 changed their minds. Even taking into account a reasonable time to attempt to seek a  
17 stipulation from Defendants, there are large and unaccounted for gaps when Plaintiffs  
18 could have so moved. After confirming Defendants would not stipulate to the filing of the  
19 amended pleading and being advised that they did not need the Court's formal  
20 authorization to proceed with a formal motion, Plaintiffs delayed another seven months  
21 before formally moving for leave to amend.

22         Plaintiff's actions do not evidence good cause for delay; they show a lack of  
23 diligence in moving forward. They show Plaintiff's inexplicably delayed filing the motion  
24 until such a time that, if now granted, would necessitate taking the parties and the Court  
25 back to square one in a case otherwise about ready for presentation of Plaintiffs' trial  
26 plan and approaching the end of discovery.

27         In the context of this litigation, an additional year and a half delay is meaningful.  
28 During that time the parties have set about to attempt to conduct merits discovery as to

1 the claims remaining certified. Even though the discovery deadline is not until March 1,  
2 2016, Plaintiffs are currently scheduled to file their proposed trial plan within the next  
3 month, on November 24, 2015. (Sched. Order, ECF No. 377.) It is not realistic to think  
4 Plaintiffs will be able to present a cogent trial plan that would include time for certification  
5 discovery and briefing on an entirely new claim. Plaintiffs' lack of diligence would  
6 inevitably result in further delays if the amendment were now allowed. Additional delays  
7 in a matter that has been pending for over six years and has been fraught with difficulties  
8 arising from the unique nature of class members would be particularly troublesome.  
9 Further delay would only increase the tremendous difficulty experienced in locating class  
10 members and further impair witnesses' abilities to recall the six to ten year old events at  
11 issue in these claims.

12 iii. Whether Amendment was Possible Without Recent Discovery

13 Plaintiffs do not address why they did not move to amend earlier, especially after  
14 twice notifying the Court and Defendants of their intent to do so. Instead, Plaintiffs claim  
15 that amendment was not possible until after they obtained and analyzed the additional  
16 information produced by Defendants in 2015. The Court will address whether Plaintiffs  
17 could have amended prior to the production of further information, and whether delay in  
18 moving to amend to allow time for additional discovery and review of the new data would  
19 qualify as good cause for failing to amend earlier.

20 The records presented to the Court indicate that Plaintiffs had already drafted an  
21 amended petition setting forth the piece-rate rest break claim before obtaining the  
22 additional records in 2015. The proposed amended complaint Plaintiffs provided  
23 Defendants in October, 2014, set forth in the seventh cause of action the piece-rate rest  
24 break claim that is now present as claim five of the proposed FAC. (See FAC, ECF No.  
25 373-1; Bigelow Decl., ECF No. 381, Exs. A-B.) While the language of the claims are not  
26 identical, they are substantially similar. Both claims state a cause of action for the failure  
27 to compensate for rest breaks for piece-rate workers. Both claims allege that Defendants  
28 failed to compensate piece-rate workers at an hourly rate during required ten minute rest

1 breaks for every four hours worked on shifts lasting over 3 1/2 hours. (Id.) While Plaintiffs  
2 further refined and modified the language of the claim before presenting it to the Court in  
3 this motion to amend, the draft complaint shows that Plaintiffs were capable, and had  
4 already drafted, an amended complaint to allege this cause of action prior to the  
5 additional exchange of information in 2015. There is no legitimate argument that the  
6 amended complaint, as drafted, had to await discovery and analysis of employment  
7 records in 2015. Thus, Plaintiffs attribution of the delay to the need for the 2015  
8 information is unavailing. They give no other reason for waiting from October 2014 until  
9 June 2015 to move to amend.

10 Plaintiffs devote significant effort to describing in detail how the information  
11 provided in March 2015 assisted in amending the complaint to add the piece-rate rest  
12 break claims.<sup>7</sup> That the new information was helpful to Plaintiffs is not at issue. The  
13 relevant inquiry is whether, after they were aware of the new claim, Plaintiffs can  
14 establish good cause and show diligence in presenting the claim to the Court in a timely  
15 manner. Learjet, Inc., 715 F.3d at 737. Plaintiffs argue that "The fact that plaintiffs did not  
16 act to amend the complaint by way of a contested motion before being able to  
17 sufficiently analyze and understand the content of the productions by defendants does  
18 not show undue or unreasonable delay. Rather, given the manner discovery unfolded,  
19 this case is only now postured to permit adjudication of defendants' liability under the  
20 Bluford case." (O'ppn at 2.) Plaintiffs describe how the previously provided information  
21 was produced in a chaotic order, that the payroll information did not consistently record  
22 work performed by piece rate workers, that previously provided grower codes were  
23 inaccurate, and that the new production of information allows for the calculation of piece-

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24 <sup>7</sup> They claim: "Plaintiffs were not provided reasonable access to information needed to bring a  
25 contested motion to amend. The Declaration of Anna K. Walther, filed and served concurrently herewith,  
26 makes plain that the crew sheet images needed to understand, verify and supplement the DataTech  
27 information were not produced in a manner that permitted efficient identification and indexing. Further,  
28 contrary to representations of defendants, use of the DataTech information alone was not sufficient to  
undertake the necessary analysis. It was only after the 2015 production by defendants of the index used in  
connection with the Pilot Study (the Crew Sheet Index) that the universe of documents could be marshaled  
for analysis." (Opp'n at 3.)

1 rate wage claims. (Id. at 5-7.) Plaintiffs make no attempt to explain why the evidence  
2 previously provided was insufficient to allow them to seek amendment to assert the  
3 claim.

4       Upon review, the Court finds that while the new information may help prove  
5 liability and/or damages, it was not essential to bringing the claim in the first place. Thus  
6 Plaintiffs go to great effort to explain how the records allow the newly asserted wage  
7 claims to be quantified, damages to be calculated, and "the universe of [payroll]  
8 documents [to] be marshalled for analysis." (Opp'n at 3.) They do not explain how such  
9 information was necessary to bring the claim in in a manner that would meet federal  
10 pleading standards. As noted, Bluford set forth the legal theory of the claim. Plaintiffs do  
11 not show how the lack of the 2015 documents left them unable to determine whether the  
12 alleged wage violations occurred. Plaintiffs fail to respond to Defendants claim that  
13 information to support the claim was available to Plaintiffs simply by talking to the named  
14 Plaintiffs. Even if not sufficient to prove the claim on a class-wide basis, such informal  
15 discovery should have been justified Plaintiffs timely motion to amend the complaint.  
16 Plaintiffs have posited nothing to suggest that the records produced in 2015 were the  
17 only available source of evidence of the potential claims. Further, by their own  
18 admission, the records were produced in relation to discovery as to already-certified  
19 claims. That discovery could have been done earlier.

20       All else aside, it is apparent that Plaintiffs were aware of the piece-rate claim and  
21 thought to assert it over a year and a half ago; they actually did so in a draft proposed  
22 amendment which, for some inexplicable reason, they then waited 18 months to move to  
23 file.

24       By delaying to move to amend, the ability of the Court to control the scheduling of  
25 discovery and motions, including potential certification of newly added claims, was  
26 frustrated. If modification were permitted, the Court would have to provide Defendants  
27 opportunity to research and conduct discovery into the new claims, necessitating even  
28 further delays. The case would in some ways return to square one.



1 Plaintiffs contend that the present case cannot be differentiated from Gonzales v.  
2 Comcast Corp., a class action in this district. 2011 U.S. Dist. LEXIS 51469 (E.D. Cal.  
3 May 12, 2011). In Gonzales as here, there was no express deadline in the scheduling  
4 order for amendment, but the court treated the motion to amend as one to modify the  
5 scheduling order because amendment necessarily required modification of class  
6 discovery and certification motion deadlines. The Gonzales Court allowed the  
7 amendment. But there, plaintiffs had moved to amend within three weeks of discovering  
8 information giving rise to the new claims. Id. at \*18-19. The Court concluded that such  
9 diligence on the part of plaintiffs showed a good faith basis to allow modification. Id.  
10 There was no such diligence here. Here Plaintiffs delayed 18 months after recognizing  
11 the need for the new claim to move to file it. Plaintiffs' actions are not analogous to those  
12 of the plaintiffs in Gonzales.

13 While Plaintiffs attribute the delay to the failure of Defendants to provide payroll  
14 information in a specific format until March 2015, the record is clear that Plaintiffs were  
15 capable of preparing an amendment – they in fact did prepare such an amendment -  
16 and moving to amend before then, but did not do so. Despite Plaintiffs claim that the  
17 present scheduling order would not need to be modified if the amended complaint were  
18 granted, the Court finds that past deadlines, including those for class certification which  
19 passed in 2011, would necessarily be implicated by allowing the amended claims.

20 In summary, the Court finds that Plaintiffs have not acted diligently to move to  
21 amend the complaint and do not show good cause for modifying the scheduling order  
22 under Federal Rule of Civil Procedure 16(b)(4). In re W. States Wholesale Natural Gas  
23 Antitrust Litig., 715 F.3d 716 at 737. As Plaintiffs have not demonstrated good cause to  
24 modify the scheduling order, the Court need not determine whether leave to amend is  
25 appropriate under Federal Rule of Civil Procedure 15. Johnson, 975 F.2d at 608.

## 26 **V. CONCLUSION & ORDER**

27 In light of the foregoing, the Court construes the motion for leave to file an  
28 amended complaint as a motion to modify the scheduling order and for leave to file an

1 amended complaint. Plaintiffs have not established good cause to modify the scheduling  
2 order under Federal Rule of Civil Procedure 16(b)(4). Accordingly, Plaintiff's motion for  
3 leave to file an amended complaint (ECF No. 373) is DENIED.

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IT IS SO ORDERED.

Dated: October 20, 2015

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE