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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

No. 2:10-cv-03149-MCE-EFB

ISABEL BELMONTEZ, et al.,

Plaintiffs,

MEMORANDUM AND ORDER V.

CITY OF STOCKTON, et al.,

Defendants.

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Presently before the Court is Plaintiffs' unopposed Motion to Amend Complaint. Plaintiffs originally filed their Complaint on November 19, 2010, alleging various causes of action arising out of the death of Decedent Joseph Garcia while in the custody of the City of Stockton Police Department. Plaintiffs now seek leave to file a First Amended Complaint ("FAC") to add much more detailed factual allegations and to modify their causes of action.

¹ According to Plaintiffs' moving papers, "Defendants counsel does not oppose Plaintiffs filing the attached proposed First Amended Complaint." Motion, 5:1-3. Consistent with this assertion, Defendants have filed no opposition.

Typically, leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant,...undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment...." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party...carries the greatest weight." Eminence Capital, 316 F.3d at 1052 (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (internal citations and quotations omitted). In addition, pursuant to the Court's own Pretrial Scheduling Order ("PTSO"), amendments to the pleadings will be permitted upon a showing of good cause. PTSO, 1:23-25.

In this case, Plaintiffs explain that Defendant City of Stockton "refus[ed] to release information concerning this case to Plaintiff's counsel prior to the filing of the instant lawsuit." Motion, 4:15-17. Plaintiffs consequently filed their original Complaint, after which the parties engaged in discovery. Through this discovery, Plaintiffs uncovered the additional facts underlying their proposed FAC.

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No prejudice to the parties will result from amendment as ample time remains prior to the cutoff of fact discovery, and this case is not scheduled for trial until 2013.

Accordingly, given Defendants' lack of opposition to Plaintiffs' Motion, and good cause appearing therefor, Plaintiffs' Motion for Leave to Amend the Complaint (ECF No. 9) is GRANTED.² Plaintiffs are directed to file and serve their proposed First Amended Complaint within five (5) days of the date this Order is electronically filed.

IT IS SO ORDERED.

Dated: October 14, 2011

MORRISON C. ENGLAND, (R.)
UNITED STATES DISTRICT JUDGE

 $^{^2}$ Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefing. E.D. Cal. Local Rule 230(g). The hearing currently set for 2:00 p.m. on Thursday, October 20, 2011, is hereby vacated.