

1 shown under Federal Rule of Civil Procedure 16(b).” (Docket No.
2 27.) On August 20, 2015, the court granted plaintiffs leave to
3 file a First Amended Complaint (“FAC”). (Docket No. 41.)
4 Plaintiffs now seek leave to file a Second Amended Complaint
5 (“SAC”). (Docket No. 55.)

6 Plaintiffs’ proposed SAC differs from their FAC in
7 several respects. In the first cause of action for denial of
8 full and equal access to public facilities in a public
9 accommodation under California Health and Safety Code section
10 19955, plaintiffs allege in greater detail the involvement of
11 defendant Coastal Breeze Limousine, LLC (“Coastal Breeze”) and
12 the difficulties plaintiffs faced in recovering their towed car.
13 (See Docket No. 55-2 ¶¶ 17, 21-25.) More importantly, plaintiffs
14 identify a number of new interior barriers that were not
15 previously alleged in the original Complaint or FAC. (Id. ¶¶ 20,
16 27.) For example, the proposed SAC alleges for the first time
17 that within the amphitheater “the slope up to the lawn was too
18 steep” to manage and had no accessible seating; the accessible
19 route of travel through public areas within the amphitheater
20 contained slope areas exceeding 2.0% and grates with openings
21 greater than one-half inch wide; the semi-ambulatory toilet
22 stall, toilet, and toilet paper dispenser were not in compliance;
23 and the slope of the ramps between levels of the amphitheater
24 exceeded 8.33% slope and 2.0% cross-slope, had non-compliant
25 handrails, and landings more than thirty feet apart. (Id.)

26 The proposed SAC also restricts the third cause of
27 action for violation of Title III of the ADA to defendant Live
28 Nation Entertainment, Inc. and adds two separate causes of action

1 for violations of Title III and Title IV of the ADA against
2 defendant Coastal Breeze.¹ (Id. ¶¶ 43-60.)

3 Generally, a motion to amend is subject to Federal Rule
4 of Civil Procedure 15(a), which provides that the "court should
5 freely give leave [to amend] when justice so requires." Fed. R.
6 Civ. P. 15(a)(2). However, "[o]nce the district court ha[s]
7 filed a pretrial scheduling order pursuant to Federal Rule of
8 Civil Procedure 16[,], which establishe[s] a timetable for
9 amending pleadings[,], that rule's standards control[]." Johnson
10 v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir.
11 1992). Here, the Scheduling Order controls and plaintiffs must
12 meet the requirements of Rule 16(b).

13 A party seeking leave to amend under Rule 16(b) must
14 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s
15 'good cause' standard primarily considers the diligence of the
16 party seeking amendment." Johnson, 975 F.2d at 609. "If that
17 party was not diligent, the inquiry should end." Id. Although
18 the focus of the inquiry is on the moving party's diligence, "the
19 existence or degree of prejudice to the party opposing the
20 modification might supply additional reasons to deny a motion."
21 Id.

22 Although defendants Live Nation Entertainment, Inc. and
23 The Sleep Train, Inc. argue plaintiffs were careless in not
24 alleging interior barriers earlier, plaintiffs contend they were
25

26 ¹ According to plaintiffs' motion, plaintiffs and
27 defendant Live Nation Entertainment, Inc. agreed to stipulate to
28 the dismissal without prejudice of defendant The Sleep Train,
Inc. but defendant has not yet filed the stipulation. (Pls.'
Mot. at 3.)

1 unable to confirm the interior barriers until reviewing the 1,124
2 pages of the building records they received from the Yuba County
3 Building Department. (Pls.' Mot. at 3; see Defs.' Opp'n at 6
4 (Docket No. 56).) These records were given to plaintiffs
5 pursuant to subpoena on July 8, 2015 but the County allegedly
6 failed to certify that the records were complete until August 20,
7 2015--after the Scheduling Order had been issued and plaintiffs
8 had already filed their motion for leave to file the FAC. (Id.)
9 Given that plaintiffs discovered new information regarding
10 interior barriers from the County records and that they have an
11 obligation to identify all underlying barriers in their
12 complaint, the court finds that plaintiffs have sufficiently
13 demonstrated "good cause" for modifying the Scheduling Order.
14 See Oliver v. Ralphs Grocery Co., 654 F.3d 903, 908-09 (9th Cir.
15 2011) ("[A] plaintiff must identify the barriers that constitute
16 the grounds for a claim of discrimination under the ADA in the
17 complaint itself.").

18 With respect to the two new causes of action against
19 Coastal Breeze, plaintiffs diligently sought to amend their FAC
20 as soon as the court denied plaintiffs' motion for default
21 judgment against Coastal Breeze due to plaintiffs' failure to
22 sufficiently allege a violation of the ADA or UCRA by Coastal
23 Breeze. (Pls.' Mot. at 4; see Docket No. 54.) Within two days
24 of the Order, plaintiffs asked defendants to stipulate to their
25 filing of the SAC. Within nine days, plaintiffs filed this
26 motion. (Id.) Given this timeframe, the court is satisfied the
27 plaintiffs were reasonably diligent in alerting Coastal Breeze of
28 their intentions and proceeding with a formal motion.

1 If good cause is found, the court must then evaluate
2 the request to amend the complaint in light of Rule 15(a)'s
3 liberal standard. Johnson, 975 F.2d at 608. Under Rule 15(a),
4 "leave to amend should be granted unless amendment would cause
5 prejudice to the opposing party, is sought in bad faith, is
6 futile, or creates undue delay." Id. at 607.

7 Defendants argue they would be prejudiced by expanding
8 the scope of the case to include interior barriers--issues about
9 which no discovery has been performed and no investigation
10 conducted. (Defs.' Opp'n at 2, 4.) Defendant Coastal Breeze
11 will not be prejudiced by the amendments given that it is in
12 default and has yet to answer plaintiffs' original Complaint or
13 FAC. (See Docket No. 22.) In order to avoid undue prejudice to
14 the other defendants by broadening the scope of potential
15 discovery, the court will extend the discovery cutoff date and
16 corresponding dates for expert disclosure as well as the deadline
17 for dispositive motions.

18 IT IS THEREFORE ORDERED that plaintiffs' motion for
19 leave to file a Second Amended Complaint be, and the same hereby
20 is, GRANTED.

21 Plaintiffs shall have three days from the date this
22 Order is signed to file the proposed SAC. The Scheduling Order
23 is modified as follows:


24 (1) Discovery shall be completed by March 15, 2016.

25 (2) The parties have until April 15, 2016 to disclose
26 experts and produce expert reports.

27 (3) All motions, except motions for continuances,
28 temporary restraining orders, or other emergency applications,

1 shall be filed on or before June 15, 2016.

2 Dated: January 12, 2016



3 **WILLIAM B. SHUBB**
4 **UNITED STATES DISTRICT JUDGE**

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28