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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

No. 2:15-cv-02537-TLN-CKD

MARIA VARGAS, MARTIN VARGAS,  
ANGELICA VARGAS, AUGUSTIN  
VARGAS, ARNULFO BERMUDEZ,  
JORGE VARGAS, and PEDRO GARCIA,

Plaintiffs,

v.

COUNTY OF YOLO, YOLO COUNTY  
SHERIFF’S OFFICE, EDWARD PRIETO,  
HECTOR BAUTISTA, REIKO  
MASTSUMARA, and GARY  
HALLENBECK,

Defendants.

**ORDER GRANTING MOTION FOR  
LEAVE TO SUPPLEMENT THE FIRST  
AMENDED ANSWER**

This matter is before the Court pursuant to Defendants County of Yolo, Yolo County Sheriff’s Office, Edward Prieto, Hector Bautista, Reiko Matsumura, and Gary Hallenbeck’s (collectively, “Defendants”) Motion for Leave to Supplement the First Amended Answer (“FAA”). (Mot. for Leave, ECF No. 48.) Plaintiffs Maria Vargas, Martin Vargas, Angelica Vargas, Augustin Vargas, Arnulfo Bermudez, Jorge Vargas, and Pedro Garcia (collectively, “Plaintiffs”) filed an opposition (Opp’n to Mot. for Leave, ECF No. 49), and Defendants filed a reply, (Reply to Mot. for Leave,

1 ECF No. 50). For the reasons set forth below, the Court hereby GRANTS Defendants’ motion.  
2 (ECF No. 48.)

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 On December 8, 2015, Plaintiffs filed a complaint against Defendants for various  
5 violations of civil and constitutional rights arising out of an incident occurring at the Vargas  
6 family home on March 8, 2015. (ECF No. 1.) Specifically, Plaintiffs alleged the following  
7 causes of action: (1) Excessive Force in Violation of the Constitution; (2) False Arrest in  
8 Violation of the Constitution; (3) Unlawful Suppression/Prior Restraint in Violation of the  
9 Constitution; (4) Failure to Intervene; (5) Inadequate Policies, Customs, or Practices; (6)  
10 Inadequate Training, Supervision, or Discipline; (7) Battery; (8) False Arrest in Violation of  
11 California Law; (9) Unlawful Suppression/Prior Restraint in Violation of California Law; (10)  
12 Negligence; (11) Intentional Infliction of Emotional Distress; and (12) Violation of the Bane Act.  
13 (ECF No. 1.) The allegations underlying this case were addressed at great length in this Court’s  
14 prior order and are incorporated herein by reference. (*See* ECF No. 32.)

15 On January 28, 2016, Defendants filed an answer, asserting eleven affirmative defenses,  
16 including collateral estoppel and res judicata based on ongoing criminal proceedings against  
17 Plaintiffs. (ECF No. 12 at 10–11.) On February 17, 2016, Defendants filed an ex parte  
18 application for an order staying proceedings pending the resolution of Plaintiffs Jorge Vargas  
19 (“Jorge”) and Maria (“Maria”) Vargas’s criminal cases. (ECF No. 14.) Defendants argued the  
20 Court should stay the proceedings because the outcome of the criminal cases could bar some of  
21 Plaintiffs’ claims under collateral estoppel and the *Heck* doctrine. (ECF No. 14 at 4–6.) On  
22 March 21, 2016, the Court denied Defendants’ motion to stay, holding a stay was not warranted  
23 and explaining that collateral estoppel and the *Heck* doctrine did not yet apply because there were  
24 no final judgments. (ECF No. 21 at 3.)

25 On February 28, 2016, Plaintiffs filed a motion to strike all affirmative defenses in  
26 Defendants’ answer. (ECF No. 16.) On July 20, 2016, the Court granted in part and denied in  
27 part Plaintiffs’ motion to strike Defendants’ affirmative defenses with leave to amend. (ECF No.  
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1 32.) The Court specifically struck Defendants’ collateral estoppel and res judicata defenses,  
2 holding these defenses were premature because there were no final judgments in Plaintiffs’  
3 criminal cases. (ECF No. 32 at 15–16.) However, the Court noted that Defendants’ could assert  
4 these defenses, to the extent they applied, if final judgments were reached in Plaintiffs’ criminal  
5 cases. (ECF No. 32 at 16.) On August 3, 2016, Defendants filed the FAA, which alleged six  
6 affirmative defenses, none of which included defenses based on Plaintiffs’ criminal cases. (ECF  
7 No. 33.) On August 24, 2016, Plaintiffs filed a motion to strike the affirmative defenses in  
8 Defendants’ FAA. (ECF No. 34.) On June 7, 2018, the Court granted in part and denied in part  
9 Plaintiffs’ motion to strike Defendants’ affirmative defenses without leave to amend. (ECF No.  
10 73.)

11 On October 6, 2015, Plaintiff Arnulfo Bermudez (“Arnulfo”) pled no contest to charges  
12 relating to possession of methamphetamines, possession of methamphetamine paraphernalia, and  
13 a probation violation in connection with the incident alleged in the complaint. (ECF No. 49 at 6.)  
14 On November 22, 2016, nearly a year before the close of discovery, Defendants deposed Arnulfo  
15 and discovered his no contest plea. (ECF No. 48-1 at 3.) On November 1, 2016, Jorge and Maria  
16 were convicted of California Penal Code § 148(a) by a jury in Yolo County, as a result of the  
17 same incident alleged in the complaint. (ECF No. 48-1 at 3.)

18 On December 15, 2016, after unsuccessful attempts with Plaintiffs to stipulate to  
19 Defendants amending the FAA, Defendants filed the instant motion, seeking to supplement the  
20 FAA with the affirmative defenses of res judicata, collateral estoppel, and the *Heck* doctrine  
21 against Jorge and Maria, and the *Heck* doctrine only against Arnulfo. (ECF No. 48-1 at 2–3.)

## 22 II. STANDARD OF LAW

23 Federal Rule of Civil Procedure (“Rule”) 15(d) governs supplemental pleadings. Under  
24 Rule 15(d), “[o]n motion and reasonable notice, the court may, on just terms, permit a party to  
25 serve a supplemental pleading setting out any transaction, occurrence, or event that happened  
26 after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d); see also *Eid v. Alaska*  
27 *Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir. 2010) (“Rule 15(d) provides a mechanism for parties to  
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1 file additional causes of action based on facts that didn't exist when the original [pleading] was  
2 filed.”). A trial court has broad discretion in deciding whether to permit a supplemental pleading.  
3 *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). In deciding whether to permit a supplemental  
4 pleading, a court's focus is on judicial efficiency. See *Planned Parenthood v. Neely*, 130 F.3d  
5 400, 402 (9th Cir. 1997). “Supplementation is generally favored because it promotes judicial  
6 economy and convenience.” *Lyon v. U.S. Immigration & Customs Enf't*, 308 F.R.D. 203, 214  
7 (N.D. Cal. 2015) (citing *Keith*, 858 F.2d at 473).

8 The five factors used to evaluate a motion for leave to amend are commonly used to  
9 evaluate a motion for leave to supplement. *Id.* These factors include “(1) undue delay, (2) bad  
10 faith or dilatory motive on the part of the movant, (3) repeated failure of previous amendments,  
11 (4) undue prejudice to the opposing party, and (5) futility of the amendment. *Id.* (citing *Foman*  
12 *v. Davis*, 371 U.S. 178, 182 (1962)). “[T]he consideration of prejudice to the opposing party  
13 carries the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th  
14 Cir. 2003). “Absent prejudice or a ‘strong showing’ of any other . . . factor, there is a  
15 presumption in favor of granting leave to supplement.” *Lyon*, 308 F.R.D. at 214.

### 16 **III. ANALYSIS**

17 Defendants move to supplement the FAA to add the affirmative defenses of collateral  
18 estoppel, res judicata, and the *Heck* doctrine against all of Jorge and Maria's claims, and the *Heck*  
19 doctrine only against Arnulfo's claims for False Arrest<sup>1</sup> and Failure to Intervene. Defendants  
20 argue they have satisfied all five factors pursuant to Rule 15(d), and thus, should be granted leave  
21 to file a supplemental answer. (ECF No. 48-1 at 4–6.) Plaintiffs, conversely, contend Defendants  
22 have not met the good cause requirement of Rule 16(b), which they argue is required once the  
23 scheduling order's deadline for amendment of the pleadings has passed. (ECF No. 49 at 7–11.)  
24 Plaintiffs further maintain Defendants have not satisfied any of the five factors pursuant to Rule  
25 15(d). (ECF No. 49 at 11–19.) The Court will address each of Plaintiffs' arguments in turn.

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27 <sup>1</sup> The parties stipulated to dismiss Jorge and Arnulfo's claims for False Arrest on February 7, 2018. (ECF No.  
28 61.) The Court dismissed these claims with prejudice on February 12, 2018. (ECF No. 62 at 3.)

1                   A. Rule 16(b) Good Cause Requirement

2                   Plaintiffs argue that Defendants failed to demonstrate good cause, which they contend is  
3 required by Rule 16(b) once the scheduling order's deadline for amendment of the pleadings has  
4 passed. (ECF No. 49 at 7–11.) As the scheduling order's deadline for amending the pleadings  
5 has passed in this case, Plaintiffs argue Rule 16(b) precludes Defendants from supplementing the  
6 FAA. (ECF No. 49 at 7–11.)

7                   Plaintiffs are correct that when the Court issues a pretrial scheduling order that establishes  
8 a timetable to amend the pleadings, Rule 16(b) governs any amendments to the pleadings.  
9 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). To allow for amendment  
10 under Rule 16(b), a party must demonstrate good cause for not having amended the pleading  
11 before the time specified in the pretrial scheduling order. *Id.* However, Defendants' proposed  
12 defenses relating to Jorge and Maria's jury trials occurred after the filing of the FAA, and are  
13 therefore requests to supplement, rather than amend the FAA. Rule 16 does not require courts to  
14 set a deadline for supplemental pleadings, which cover transactions, occurrences, or events that  
15 happen after a pleading is filed, and the Court did not set such a deadline in the scheduling order.  
16 *See Ohio Valley Envtl. Coal. v. United States Army Corps of Eng'rs*, 243 F.R.D. 253, 256 (S.D.  
17 W. Va. 2007) ("Rule 16 does not require courts to set a deadline for supplemental pleadings and  
18 the Court did not set such a deadline in the Scheduling Order."); *Fremont Inv. & Loan v.*  
19 *Singleton*, No. 2:03-CV-1406-PMP-RJJ, 2007 U.S. Dist. LEXIS 30234, at \*20-21 (D. Nev. Apr.  
20 20, 2007) (same). Accordingly, Rule 16(b) is inapplicable to Defendants' proposed defenses  
21 relating to Jorge and Maria's jury trials, and Defendants need not demonstrate good cause in  
22 order to supplement the FAA with these defenses.

23                   Even if a showing of good cause was required for supplemental defenses, it is clear  
24 Defendants have demonstrated it. The good cause standard primarily considers the diligence of  
25 the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th  
26 Cir. 1992). The focus of the inquiry is on the reasons why the moving party seeks to modify the  
27 complaint. *Id.* The Court explicitly instructed Defendants to bring their res judicata and  
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1 collateral estoppel defenses in a Rule 15 motion, if and when there were final judgments that  
2 could be used as the bases for such defenses. (ECF No. 32 at 16.) Defendants did just this. They  
3 brought the instant Rule 15 motion within sixty days of Jorge and Maria’s convictions.<sup>2</sup> (See  
4 ECF No. 48-2 ¶ 4.) No amount of diligence would have allowed Defendants to discover these  
5 facts sooner, as Jorge and Maria’s trials had not yet occurred. Therefore, Defendants are merely  
6 acting in accordance with the Court’s prior order, and have demonstrated good cause to assert res  
7 judicata, collateral estoppel, and the *Heck* doctrine defenses based on Jorge and Maria’s jury  
8 trials.

9 The majority of Plaintiffs’ opposition focuses on the argument that Defendants should be  
10 precluded from asserting a *Heck* doctrine defense based on Arnulfo’s no contest plea because it is  
11 not “new and previously unavailable information.”<sup>3</sup> (ECF No. 49 at 9.) Plaintiffs argue  
12 Defendants should have known of Arnulfo’s plea at some earlier unidentified date prior to  
13 Arnulfo’s deposition because of their receipt of Arnulfo’s JUS 8715 form, and therefore should  
14 have pled defenses related to Arnulfo’s plea at some earlier unidentified date. (ECF No. 49 at 9.)  
15 However, Plaintiffs fail to explain, even generally, when Defendants received the JUS 8715 form  
16 and subsequently when would have been an appropriate time to plead a defense related to  
17 Arnulfo’s plea. Plaintiffs also fail to explain what information the form contains, and the Court  
18 has been provided with an illegible copy. (See ECF No. 49-1 at 12.) Therefore, it is unclear  
19 whether Defendants should have discovered Arnulfo’s plea prior to his deposition, and if so, how  
20 long before his deposition they should have discovered it. However, it is clear that Defendants  
21 discovered Arnulfo’s plea nearly a year before the close of discovery, and then proposed a related  
22 defense within thirty days of this discovery. (See ECF No. 48-2 ¶ 5.) On this basis, the Court  
23 finds Defendants acted diligently. Accordingly, the Court finds Defendants have demonstrated  
24 good cause to assert a *Heck* doctrine defense based on Arnulfo’s no contest plea.

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26 <sup>2</sup> Defendants claim they would have filed this motion sooner, but attempted to first obtain a stipulation in an  
effort to avoid expending judicial time and resources on a formal motion. (ECF No. 48-2 ¶¶ 6–9.)

27 <sup>3</sup> The Court notes this is technically an amendment under Rule 15(a) rather than a supplement under Rule  
28 15(d), and therefore Defendants must first demonstrate good cause. However, Defendants’ misnaming of the  
amendment does not affect the Court’s ruling.

1                   B. Rule 15 Factors

2                   Plaintiffs argue Defendants have failed to demonstrate they are entitled to leave to file a  
3 supplemental answer because they have not met any of the five factors pursuant to Rule 15(d).  
4 (ECF No. 49 at 11–19.) The Court disagrees. In considering whether a party should be granted  
5 leave to supplement a pleading, the Court considers the following factors: “(1) undue delay, (2)  
6 bad faith or dilatory motive on the part of the movant, (3) repeated failure of previous  
7 amendments, (4) undue prejudice to the opposing party, and (5) futility of the amendment.”  
8 *Lyon*, 308 F.R.D. at 214. “[T]he consideration of prejudice to the opposing party carries the  
9 greatest weight.” *Eminence Capital, LLC*, 316 F.3d at 1052. “Absent prejudice or a ‘strong  
10 showing’ of any other . . . factor, there is a presumption in favor of granting leave to  
11 supplement.” *Lyon*, 308 F.R.D. at 214.

12                   First, there has been no undue delay as Defendants’ instant motion was brought less than  
13 sixty days since Jorge and Maria were convicted, and less than thirty days since Defendants  
14 deposed Arnulfo and learned of his plea.<sup>4</sup> (*See* ECF No. 48-2 ¶¶ 4–5.) Plaintiffs have failed to  
15 demonstrate how the inclusion of such defenses would require any further discovery or cause any  
16 delay in the proceedings. Second, there is no bad faith or dilatory motive on behalf of  
17 Defendants, who are merely reasserting the crux of the same affirmative defenses stated in their  
18 original answer and following the Court’s instructions to bring these defenses following final  
19 judgments. Third, there is no repeated failure of previous amendments as Defendants only  
20 asserted some of these defenses once, and the Court directed Defendants they may later reassert  
21 these defenses. Fourth, Plaintiffs have demonstrated no undue prejudice. They have been well  
22 aware since Defendants filed their original answer that Defendants sought to assert defenses  
23 based on Plaintiffs’ criminal proceedings. Fifth, the proposed affirmative defenses are not futile.  
24 *Res judicata*, collateral estoppel, and the *Heck* doctrine may be used to prevent civil causes of  
25 action where criminal convictions are obtained based on the same incident. *See Smithart v.*

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28 <sup>4</sup> As discussed above, Plaintiffs fail to explain why Defendants should have become aware of Arnulfo’s plea earlier than this time. *See supra* Section III.A.

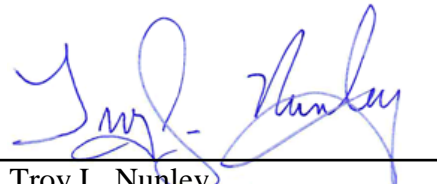
1 *Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (“*Heck*, in other words, says that if a criminal  
2 conviction arising out of the same facts stands and is fundamentally inconsistent with the  
3 unlawful behavior for which section 1983 damages are sought, the 1983 action must be  
4 dismissed.”); *see, e.g., Ewing v. Superior Court of Cal.*, 90 F. Supp. 3d 1067, 1075 (S.D. Cal.  
5 2015) (holding the plaintiff’s claims were barred by res judicata, collateral estoppel, and the *Heck*  
6 doctrine based on his criminal conviction). Plaintiffs have not demonstrated why these defenses  
7 would not be applicable here. Therefore, all five factors weigh in favor of Defendants, and the  
8 Court finds Defendants are entitled to supplement the FAA.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court hereby GRANTS Defendants’ Motion for Leave to  
11 Supplement the First Amended Answer. (ECF No. 48.)

12 IT IS SO ORDERED.

13 Dated: June 29, 2018

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18 Troy L. Nunley  
19 United States District Judge  
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