

1 provide meal periods or rest breaks (or premium wages in lieu
2 thereof), and provided inaccurate wage statements. (See
3 generally First Amended Complaint ("FAC") (Docket No. 45).)
4 Plaintiffs now move to modify the scheduling order and for leave
5 to amend their complaint. (Mot. for Leave to Amend (Docket No.
6 121).)

7 I. Factual Background

8 Charter is a broadband connectivity company and cable
9 operator serving business and residential customers under the
10 Spectrum brand, among others. Harper and Sinclair worked as
11 small/medium sized business Account Executives ("AEs") at
12 Charter's Redding, California location. Charter classifies AEs
13 as "exempt" employees.

14 Plaintiffs claim that Charter erroneously classified
15 them as exempt employees by mistakenly classifying them as
16 "outside salespersons." See Cal. Code Regs. tit. 8, § 11070.
17 Under California law, "outside salespersons" are exempt from
18 overtime, minimum wage, meal period, and rest period
19 requirements. See Cal. Lab. Code § 1171. Importantly, under
20 California case law, employees are only subject to the outside
21 salesperson exception if their employer actually had an
22 expectation that they spend more than half their time outside the
23 office engaged in sales activities, and if that expectation was
24 reasonable. See Ramirez v. Yosemite Water Co., 20 Cal. 4th 785,
25 790 (Cal. 1999). Plaintiffs' claim is essentially that Charter
26 did not have an expectation that they spend 50% of their time
27 outside of the office both during and after their training weeks,
28 and even if it did, that expectation was unreasonable given the

1 number of tasks Charter expected them to complete that required
2 them to be in the office. (See generally FAC.)

3 Plaintiffs' claims of failure to pay overtime wages,
4 failure to provide meal periods or rest breaks (or premium wages
5 in lieu thereof), and failure to provide accurate wage statements
6 are derivative of their misclassification claim. Because Charter
7 misclassified them, plaintiffs contend, Charter necessarily
8 failed to pay them overtime and failed to provide necessary rest
9 and meal breaks. (See generally FAC.) Plaintiffs further claim
10 that Charter failed to pay them commission wages to which they
11 were entitled, and provided them with inaccurate and misleading
12 wage statements.¹ (Id.)

13 Plaintiffs seek to represent two classes of Charter
14 employees: all California employees who were classified as exempt
15 outside salespersons, and all persons employed by Charter in
16 California who were paid commission wages. (See FAC ¶ 12.)

17 II. Procedural Background

18 Plaintiff Harper filed his initial complaint in Shasta
19 County Superior Court on May 3, 2019. Charter removed the case
20 to this court on May 17, 2019. (Docket No. 1.) Harper sought
21 leave to amend his complaint and add another named plaintiff,
22 Daniel Sinclair, on October 30, 2019. The court granted Harper's
23 request on December 13, 2019. (See FAC (Docket No. 45).)

24 The court issued a pretrial scheduling order on October
25 9, 2019. (Docket No. 34.) The parties amended the scheduling

26 ¹ Plaintiffs also claim that Charter failed to pay them
27 all wages owed upon termination, failed to provide them with
28 employment records, and violated the California UCL and PAGA.
(See generally FAC.)

1 order via stipulation on six occasions: on January 29, May 4,
2 June 25, September 17, and December 11, 2020, and again on
3 January 29, 2021. (Docket Nos. 49, 59, 69, 82, 91, 102.) On
4 December 18, 2020, Charter filed a motion for summary judgment.
5 The court denied most of Charter's motion on February 16, 2021,
6 holding that triable issues of fact existed as to the majority of
7 plaintiffs' claims, including whether plaintiffs were
8 misclassified as "outside salespersons."

9 On April 4, 2021, pursuant to the deadline specified in
10 the court's operative pretrial scheduling order (Docket No. 104),
11 plaintiffs filed a motion for class certification, set for
12 hearing on June 1, 2021. (See Motion for Class Certification
13 (Docket No. 115).) This motion included declarations by three
14 "Direct Sales Reps" ("DSRs") who worked for Charter's Irwindale,
15 Bakersfield, and Anaheim locations--Hassan Turner, Luiz Vazquez,
16 and Pedro Abascal. After receiving the motion, Charter requested
17 plaintiffs provide available dates for Charter to depose the
18 three DSRs. (Decl. of Jamin Soderstrom ("Soderstrom Decl.") ¶ 9
19 (Docket No. 121-1).) The parties agreed that the depositions of
20 the DSRs would go forward on April 22 and 27, 2021. (Id.)

21 On April 16, 2021, plaintiffs filed the instant motion
22 to modify the scheduling order and for leave to file a Second
23 Amended Complaint. (See Mot. for Leave to Amend.) Plaintiffs'
24 motion makes a number of changes to the complaint's factual
25 allegations, amends the class and subclass definitions, and seeks
26 to add Turner, Vazquez, and Abascal as named plaintiffs. (See
27 generally id.) Plaintiffs emphasize that, though their proposed
28 Second Amended Complaint adds three named plaintiffs, it does not

1 materially expand or change the scope of the operative
2 complaint's claims and allegations, as the putative class in the
3 operative complaint already includes all California Charter
4 employees classified as exempt outside salespersons (not just
5 AEs). The proposed complaint adds additional allegations
6 regarding the plaintiffs' required tasks which indicate why they
7 were misclassified as outside salespersons. (See Proposed Second
8 Amended Complaint ("SAC") (Docket No. 121-2).) Evidence of most,
9 if not all, of these tasks was collected in discovery and
10 discussed in the parties' briefs regarding Charter's motion for
11 summary judgment. (See Docket Nos. 93, 98, 103.) The Proposed
12 Second Amended Complaint also offers two additional theories of
13 liability for plaintiffs' claim that Charter's commission wage
14 statements were defective, makes a number of changes to
15 plaintiffs' proposed subclasses, and focuses the outside
16 salesperson class allegations on the employees' training weeks.
17 (See Proposed SAC.)

18 Three days after plaintiffs filed their motion, Charter
19 applied ex parte to stay the court's consideration of plaintiffs'
20 motion for class certification until this motion has been
21 decided. (Docket No. 123.) The court granted Charter's ex parte
22 application, ordering that the hearing date for plaintiffs'
23 motion for class certification be vacated until the court rules
24 on the instant motion. (Docket No. 127.)

25 III. Discussion

26 Once the district court has filed a pretrial scheduling
27 order pursuant to Federal Rule of Civil Procedure 16, which
28 establishes a timetable for amending pleadings, that rule's

1 standards control the court's analysis of whether leave to amend
2 a pleading should be granted. See Johnson v. Mammoth
3 Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992). "A
4 schedule may be modified only for good cause and with the judge's
5 consent." Fed. R. Civ. P. 16(b)(4). Unlike Rule 15(a)'s liberal
6 amendment policy which focuses on the bad faith of the party
7 seeking to interpose an amendment and the prejudice to the
8 opposing party, Rule 16(b)'s good cause standard primarily
9 considers the diligence of the party seeking the amendment. See
10 Johnson, 975 F.2d at 609. If that party was not diligent, the
11 inquiry should end. See id.

12 Plaintiffs argue that good cause exists to amend their
13 complaint because they did not obtain evidence needed to confirm
14 their allegations, as well as the legal and factual basis to join
15 new employees who held different positions (such as DSRs), until
16 recently. Plaintiffs represent that they needed to obtain
17 additional evidence concerning Charter's classification of other
18 positions (including DSRs), training courses, commission
19 agreements, wage statements, and applicable arbitration
20 agreements in order to anticipate the arguments Charter would
21 likely make in opposition to their motion for class
22 certification. (See Soderstrom Decl. ¶ 5.) Because of a long-
23 running series of discovery disputes between the parties, which
24 led to plaintiffs filing five motions to compel (Docket Nos. 47,
25 57, 62, 78, 117) and one motion for sanctions (Docket No. 100),
26 plaintiffs represent that they were unable to obtain documents
27 from Charter related to positions other than Harper and Sinclair
28 until the early part of 2021, and that plaintiffs were unable to

1 schedule depositions of Charter employees who could testify as to
2 Charter's classification of other positions, training, commission
3 agreements, and wage statements until March 2021. (See
4 Soderstrom Decl. ¶¶ 6-9.)

5 Despite Charter's prior representations that it did not
6 possess any relevant documents, Charter finally produced (in
7 response to an order by the magistrate judge) documents
8 pertaining to its training materials and arbitration agreements
9 with other employees, such as DSRs, in February 2021. (Id.;
10 Supplemental Decl. of Jamin Soderstrom ("Soderstrom Supp. Decl.")
11 ¶ 5 (Docket No. 139-1).) Plaintiffs also obtained declarations
12 from four DSRs in early April 2021 which supported plaintiffs'
13 allegations that DSRs were also subject to the same
14 classification, training, and commission-related practices as AEs
15 and "several other positions." (See Soderstrom Decl. ¶¶ 6-9.)
16 Plaintiffs contend that, because they filed their motion for
17 leave to amend shortly thereafter, on April 16, 2021, they acted
18 with sufficient diligence under Rule 16.

19 In response, Charter points out that plaintiff's
20 counsel has represented one of the proposed new named plaintiffs,
21 Hassan Turner, since at least April 8, 2020, when counsel
22 requested Turner's employment records from Charter. As for the
23 other proposed plaintiffs, Vazquez and Abascal, Charter argues
24 that plaintiffs have known of their identities since at least
25 December 2020, and their failure to move for leave to amend the
26 complaint to add them as plaintiffs until April 2021, two weeks
27 after filing a motion for class certification and after Charter
28 had requested to depose the proposed named plaintiffs,

1 demonstrates a lack of diligence.

2 While Charter correctly suggests that plaintiffs should
3 have moved to amend their complaint before moving to certify the
4 class, the court has already delayed consideration of plaintiffs'
5 motion for class certification until this motion is resolved.
6 Plaintiffs also point out that, had they moved to amend their
7 complaint prior to the resolution of Charter's motion for summary
8 judgment (filed in December 2020, and decided on February 16,
9 2021), they would have been subject to a higher standard under
10 Ninth Circuit law. See PowerAgent Inc. v. U.S. Dist. Ct., 210
11 F.3d 385 (9th Cir. 2000) (courts "may require a showing of
12 substantial and convincing evidence supporting the proposed
13 amendment before allowing leave to amend [while a motion for
14 summary judgment is pending], because a court may be concerned
15 that a plaintiff may simply be maneuvering to stave off
16 termination of the lawsuit").

17 According to plaintiffs' counsel, though he requested
18 Turner's employment records in April 2020, Turner did not want to
19 join a publicly filed class action as a named plaintiff at that
20 time, and did not agree to serve as a class representative until
21 April 2021. (Soderstrom Supp. Decl. ¶ 8.) Because plaintiffs
22 have only recently obtained documentary and testimonial evidence
23 related to other positions at Charter, including DSRS, and
24 represent that counsel was only recently able to obtain
25 supporting declarations and agreement from the three proposed
26 plaintiffs to represent them as class representatives, the court
27 finds that plaintiffs have provided sufficient evidence of their
28 diligence to satisfy Rule 16's good cause standard. See Johnson,

1 975 F.2d at 609.

2 Charter next argues that plaintiffs cannot show that
3 there is good cause to amend the complaint because their proposed
4 amendments are unnecessary. Specifically, Charter argues that
5 (1) amendments to allegations that are merely meant to "clarify"
6 or "update" existing claims, without adding new substantive
7 claims, are unnecessary, (2) amendments to the class definitions
8 are unnecessary because the court will determine the proper class
9 definition when evaluating plaintiffs' motion for class
10 certification, and (3) that there is no need to add three
11 additional class representatives when the two existing class
12 representatives would suffice.

13 In similar situations where a plaintiff's proposed
14 amendments would not add any additional claims against a
15 defendant, but rather merely set forth additional evidence of
16 existing claims, some courts have held that good cause to amend
17 does not exist under Rule 16 because such amendments are
18 "unnecessary."² See, e.g., In re Rocket Fuel Inc. Securities
19 Litigation, No. 14-cv-03998-PJH, 2017 WL 344983, *3 (N.D. Cal.
20 Jan. 24, 2017). Here, plaintiffs do not explain why or how the
21 proposed amendments to their factual allegations would materially
22 advance their case, besides stating that they have an obligation

23
24 ² Other courts have considered the necessity of proposed
25 amendments under Rule 15's "futility" factor. See, e.g.,
26 Allergan, Inc. v. Athena Cosms., Inc., No. SACV 07-1316 JVS, 2012
27 WL 12898000, at *2 (C.D. Cal. Dec. 5, 2012). Regardless of which
28 Rule the court considers necessity under, because both Rules 15
and 16 must be satisfied to grant leave to amend, a showing that
an amendment is unnecessary would be sufficient to deny leave to
amend. See, e.g., In re Rocket Fuel, 2017 WL 344983, at *3;
Allergan, 2012 WL 12898000, at *2.

1 to re-evaluate their pleadings in light of prior court orders
2 that have been issued since their complaint was last amended (the
3 court has not ordered plaintiffs to amend or alter their
4 complaint in any way). (See Pls.' Reply at 13 (Docket No. 139).)
5 Nor do plaintiffs explain why their proposed amendments to their
6 class definitions are necessary. However, for its part, Charter
7 does not explain what harm there would be in allowing plaintiffs
8 to amend their class definitions, when the question will
9 ultimately be evaluated at the class certification stage anyway.

10 As for the addition of the three proposed plaintiffs,
11 Charter points to a statement from plaintiffs' motion in which
12 they seemingly admit that they "do not need to substitute class
13 representatives in order for the court to certify their proposed
14 classes and subclasses." (See Mot. for Leave to Amend at 12
15 (emphasis in original).) Plaintiffs clarify in their reply,
16 however, that evidence provided by Charter in February 2021
17 showing certain differences in Charter's training materials and
18 wage statements for AEs and DSRs has revealed a "potential" need
19 to add DSRs as class representatives. (See Soderstrom Supp.
20 Decl. ¶ 6.) Plaintiffs' counsel also noted at oral argument that
21 the proposed DSR plaintiffs may be more typical representatives
22 of certain members of the putative class because they were
23 purportedly subject to different arbitration agreements than
24 Harper and Sinclair.

25 While Charter does not contend that Sinclair was
26 subject to any arbitration agreements, and, as the court has
27 previously held, Harper's claims in this matter were governed by
28 the JAMS arbitration agreement (Docket No. 24), Charter contends

1 that the proposed plaintiffs were subject to the "Solutions
2 Channel" arbitration agreement. (See Charter's Opp'n at 11, 23
3 (Docket No. 138).) Therefore, although plaintiffs believe that
4 they are adequate and typical class representatives, they contend
5 that adding three additional DSR class representatives would
6 allow them to prospectively address arguments Charter is likely
7 to raise in opposition to their class certification motion,
8 including that Harper and Sinclair are not adequate or typical
9 representatives of putative class members who were subject to the
10 Solutions Channel arbitration agreement. See Morgan v. Laborers
11 Pension Trust Fund for N. Cal., 81 F.R.D. 669, 673 (N.D. Cal.
12 1979) (granting leave to amend to add additional class
13 representatives "to provide the court with both a broader and a
14 more representative sample of factual situations relating to the
15 class allegations").

16 The court agrees with plaintiffs that adding the three
17 proposed plaintiffs would seem to advance their case by allowing
18 the court to evaluate whether the three proposed plaintiffs are
19 adequate and typical representatives of the class. These
20 amendments are therefore not "unnecessary," see In re Rocket Fuel
21 Inc. Securities Litigation, 2017 WL 344983, at *3, and good cause
22 exists to amend the complaint by adding the three proposed named
23 plaintiffs. Because Charter has not shown that plaintiffs' other
24 proposed amendments would prejudice it, the court will also
25 permit plaintiffs to amend the complaint's factual allegations
26 and class definitions. See Johnson, 975 F.2d at 609 ("the
27 existence or degree of prejudice to the party opposing the
28 modification [to the scheduling order] might supply additional

1 reasons to deny a motion").

2 For the same reasons, discussed above, that the court
3 finds good cause to allow the proposed amendments under Rule 16,
4 the court also finds that the liberal standards set forth in
5 Ahlmeyer v. Nevada System of Higher Education, 555 F.3d 1051,
6 1055 n.3 (9th Cir. 2009), support granting leave to amend under
7 Rule 15.

8 IT IS THEREFORE ORDERED that plaintiffs' motion to
9 modify the scheduling order and for leave to file a Second
10 Amended Complaint (Docket No. 121) be, and the same hereby is,
11 GRANTED. Plaintiffs are directed to file the Proposed Second
12 Amended Complaint attached to their motion (Docket No. 121-2)
13 within five days of the issuance of this Order.

14 IT IS FURTHER ORDERED THAT plaintiffs withdraw their
15 motion for class certification (Docket No. 115) and file a new
16 motion which reflects the addition of Hassan Turner, Luis
17 Vazquez, and Pedro Abascal as named plaintiffs and class
18 representatives on or before July 12, 2021. If the parties wish
19 to stipulate to a briefing schedule and/or hearing date for
20 plaintiffs' motion for class certification, as well as further
21 modifications to the court's Status (Pretrial Scheduling) Order
22 (see Docket Nos. 34, 104), they may submit a stipulation for the
23 court's approval on or before June 28, 2021.

24 Dated: June 3, 2021


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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