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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MOHAMMAD NASSIRI, *et al.*  
Plaintiff,

Plaintiffs,

v.

CAROLYN W. COLVIN,  
Commissioner of Social Security,  
Social Security Administration; SSA  
AGENT NICK; SSA-AGENT 2;  
MARY HAGAR; DUKE DUC TRAN;  
and STATE and/or LOCAL AGENTS  
CDI DOES 21-40,

Defendants.

CASE NO. 15cv0583-WQH-NLS

ORDER

HAYES, Judge:

The matter before the Court is the Motion for Leave to Amend the Complaint filed by Plaintiffs Mohammad Nassiri, et al. (ECF No. 92).

**I. Background**

On March 14, 2015, Plaintiffs commenced this action by filing a Class Action Complaint in this Court. (ECF No. 1). Among other named Defendants, Plaintiffs brought suit against unknown “SSA Agents Nick, [and] SSA-Agent 2.” *Id.* On May 12, 2015, Plaintiffs filed the First Amended Class Action Complaint (“FAC”). (ECF No. 15). Among other named Defendants, Plaintiffs brought suit against unknown “SSA Agent[s] Nick, SSA-Agent 2, and other SSA Armed Agents[.]” *Id.*

On May 26, 2015, Defendant Colvin filed a motion to dismiss the FAC. (ECF

1 No. 19). On August 31, 2015, the Court issued an Order granting in part and denying  
2 in part Defendant Colvin's motion to dismiss. (ECF No. 46). The Court ordered that  
3 the motion to dismiss was "denied with respect to Plaintiffs Thai, Nassiri, Diep Nguyen,  
4 Ha, Huynh, Doan, and Tommy Nguyen's First Amendment claim and Plaintiff Thai's  
5 Fourth Amendment unreasonable search claim. *Id.* at 22. The Court ordered that "[a]ll  
6 other claims asserted in the FAC against Defendant Colvin are dismissed without  
7 prejudice." *Id.*

8 On December 27, 2015, Plaintiffs filed the Second Amended Class Action  
9 Complaint ("SAC"). (ECF No. 63). Among other named Defendants, Plaintiffs also  
10 brought suit against "SSA Agent[s] Nick, SSA-Agent Does 1-20, [and] State and/or  
11 Local Agents CDI Does 21-40." *Id.* On January 29, 2016, Defendants filed a motion  
12 to dismiss the SAC. (ECF No. 69).

13 On August 18, 2016, the Court issued an order granting in part and denying in  
14 part Defendants' motion to dismiss the SAC. (ECF No. 79). The Court denied the  
15 motion to dismiss as to the sixth [Equal Protection], eleventh [First Amendment], and  
16 thirteenth [Fourth and Fourteenth Amendment]<sup>1</sup> causes of action filed by Plaintiffs Anh  
17 Van Thai, Diep Thi Nguyen, Huynh, Trai Chau, and Hoi Cuu Quan Nhan VHCH, and  
18 granted the motion to dismiss as to all other claims. *Id.* at 18. The Court dismissed all  
19 claims by Plaintiffs Tho Van Ha, Tommy Nguyen, and Don Doan with prejudice. *Id.*

20 The Court further ordered that this action would be dismissed without prejudice  
21 as to Defendants Duke Tran and Mary Hagar<sup>2</sup> if Plaintiffs did not file proof of service  
22 by August 31, 2016 that the SAC was effectuated upon those Defendants. *Id.* On  
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24 <sup>1</sup> In their motion to dismiss (ECF No. 69), Defendants moved to dismiss  
25 Plaintiffs' sixth cause of action for Equal Protection violations. (ECF No. 69-1 at 18-  
26 19). Defendants did not move to dismiss Plaintiffs' eleventh cause of action for First  
27 Amendment violations or Plaintiffs' thirteenth cause of action for Fourth and  
28 Fourteenth Amendment violations.

<sup>2</sup> The Court and parties have referred to Ms. Hagar using various spellings  
throughout this litigation. Ms. Hagar is identified by her proper name in the September  
23, 2016 letter sent from Assistant United States Attorney Daniel E. Butcher. (ECF No.  
91-1 at 5-6).

1 December 9, 2016, the Court issued an order dismissing Defendants Duke Tran and  
2 Mary Hagar without prejudice. (ECF No. 95). On December 13, 2016 Plaintiffs filed  
3 proof of summons returned executed by Duke Tran and Mary Hagar. (ECF Nos. 96,  
4 97). On December 15, 2016, Plaintiffs filed a motion for reconsideration of this Court’s  
5 December 9, 2016 Order dismissing Defendants Duke Tran and Mary Hagar without  
6 prejudice. (ECF No. 98). On December 16, 2016, Defendants filed an ex parte motion  
7 for extension of time to respond to the motion for reconsideration. (ECF No. 99).

8 On September 2, 2016, Defendants filed a motion to dismiss the SAC as moot.  
9 (ECF No. 82). On October 3, 2016, Plaintiffs filed an emergency motion for discovery.  
10 (ECF No. 87). In the emergency motion for discovery, Plaintiffs request

11 an order allowing immediate discovery of the real names and locations of  
12 the currently unknown defendants named (i) unknown Social Security  
13 Administration [ ] Agents, who performed searches upon plaintiffs Duc  
14 Huynh and Diep Nguyen in January and February 2015 and (ii) SSA- CDI  
Armed Agents who include State and local law enforcement agents who  
carried visible weapons and searched plaintiffs Anh Thai, Don Doan and  
Tommy Nguyen at their home in January to April 2014.

15 *Id.* at 1.

16 On October 21, 2016, Plaintiffs filed the Motion for Leave to Amend the  
17 Complaint. (ECF No. 92). On October 26, 2016, the Court issued a minute order  
18 stating that any opposition to Plaintiffs’ motion must be filed by November 4, 2016, and  
19 that any reply must be filed by November 11, 2016. (ECF No. 93). On November 4,  
20 2016, Defendants filed a response in opposition. (ECF No. 94). Plaintiffs have not  
21 filed a reply to their Motion for Leave to Amend the Complaint.

## 22 **II. Contentions of the Parties**

23 Plaintiffs request leave to amend the SAC “to substitute the unknown defendants  
24 for known defendants, whose identities were provided to plaintiffs by defendant  
25 subsequent to the Court’s denial of defendant Colvin’s Motion to Dismiss on August  
26 18, 2016.” (ECF No. 92 at 1-2). Plaintiffs contend that on September 23, 2016,  
27 Defendants disclosed “the identities of four unknown federal defendants, Supervisor  
28 Hagar and employee Duke Tran, Sundeep Patel and Nicholas Pilcher represented by the

1 defendant's San Francisco and Baltimore offices." (ECF No. 92-1 at 2). Plaintiffs  
2 contend that "[o]n October 5, 2016, defendant disclosed to plaintiffs the identities of an  
3 additional two state defendants, Dulce Sanchez and William Villasenor." *Id.* Plaintiffs  
4 contend they "need to substitute the names of the individual defendants in the Second  
5 Amended Complaint to replace the Does Defendants in the Second Amended Complaint  
6 and seek leave of court to file a Third Amended Complaint which is identical to the  
7 SAC, except for the substitution of correct names in bold characters in paragraphs 10,  
8 11, 13, 15, 16, 19, 20, 21 and 22." *Id.*

9 Plaintiffs further contend they "need to substitute their names for the Does names  
10 in order to effect service of process by the U.S. Marshall [sic] Service[.]" (ECF No. 92  
11 at 2). Plaintiffs contend that the U.S. Marshal notified Plaintiffs "on or about October  
12 18, 2016 that no delivery would be effected, but that service would be accomplished by  
13 certified mail, with returned receipt under California law." (ECF No. 92-1 at 6).  
14 Plaintiffs request the Court

15 authorize the U.S. Marshall [sic] Service to serve each such individually  
16 named defendant pursuant to California [Civ. Proc.] Code § 415.30, since  
17 the [U.S. Marshals] Service does not serve by delivery under Rule  
18 4(e)(2)(c), but only under Rule 4(e)(1) mandating service under California  
19 [Civ. Proc.] Code § 415.30 by certified mail.

18 *Id.* at 7.

19 Defendants contend that Plaintiffs' proposed Third Amended Complaint "adds  
20 back in three plaintiffs and fourteen claims for relief that this Court dismissed from the  
21 Second Amended Complaint." (ECF No. 94 at 2). Defendants contend that Plaintiffs'  
22 deadline to complete service pursuant to Federal Rule of Civil Procedure 4(m) has  
23 passed, and "the docket reflects that Plaintiffs still have not completed service on any  
24 individual defendant." *Id.* at 6, 7. Defendants contend that "Plaintiffs have made no  
25 motion under Rule 4(m) establishing any good cause for further extending the deadline  
26 for service." *Id.* at 7. Defendants further contend that Plaintiffs' motion should be  
27 denied because Plaintiffs' proposed Third Amended Complaint is "subject to dismissal"  
28 and is unduly delayed. *Id.* at 7, 8.

1 **III. Analysis**

2 Federal Rule of Civil Procedure 15 mandates that courts “should freely give leave  
3 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “This policy is to be  
4 applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d  
5 1048, 1051 (9th Cir. 2003) (quotation omitted). In *Foman v. Davis*, 371 U.S. 178  
6 (1962), the Supreme Court offered several factors for district courts to consider in  
7 deciding whether to grant a motion to amend under Rule 15(a):

8 In the absence of any apparent or declared reason—such as undue delay,  
9 bad faith or dilatory motive on the part of the movant, repeated failure to  
10 cure deficiencies by amendments previously allowed, undue prejudice to  
11 the opposing party by virtue of allowance of the amendment, futility of  
12 amendment, etc.—the leave sought should, as the rules require, be ‘freely  
13 given.’

14 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Props. Dev. Co.*, 358 F.3d 1097, 1101  
15 (9th Cir. 2004). “Not all of the [*Foman*] factors merit equal weight. As this circuit and  
16 others have held, it is the consideration of prejudice to the opposing party that carries  
17 the greatest weight.” *Eminence Capital*, 316 F.3d at 1052 (citations omitted). “The  
18 party opposing amendment bears the burden of showing prejudice.” *DCD Programs,*  
19 *Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). “Absent prejudice, or a strong  
20 showing of any of the remaining *Foman* factors, there exists a presumption under Rule  
21 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

22 After review of the Motion for Leave to Amend the Complaint and all related  
23 filings, the Court concludes that Defendants have not made a sufficiently strong  
24 showing of the *Foman* factors to overcome the presumption of Rule 15(a) in favor of  
25 granting leave to amend to add the identities of the previously-unknown SSA Agents.  
26 *Eminence Capital*, 316 F.3d at 1052.

27 In the original Complaint, the FAC, and the SAC, Plaintiffs named “unknown  
28 SSA Agent[s].” (ECF Nos. 1, 15, 63). Plaintiffs have now learned the names and  
addresses of these SSA Agents, and the Court grants Plaintiffs’ request for leave to  
amend only as to these now-known SSA Agents.

1 On August 18, 2016, the Court ordered that all claims brought by Plaintiffs Tho  
2 Van Ha, Tommy Nguyen, and Don Doan were dismissed with prejudice. (ECF No. 79  
3 at 18). The Court finds that it would be futile to name these Plaintiffs in the Third  
4 Amended Complaint.

5 On December 9, 2016, the Court ordered that Defendants Duke Tran and Mary  
6 Hagar are dismissed without prejudice because “Plaintiffs have not filed proof that  
7 service of the Complaint was effected upon Defendants Duke Tran and Mary Hagar, or  
8 otherwise shown cause as to why this case should not be dismissed as to those  
9 Defendants.” (ECF No. 95 at 2). On December 13, 2016, Plaintiffs filed proof that  
10 Duke Tran and Mary Hagar were served with the Complaint and Summons on  
11 September 28, 2016.<sup>3</sup> (ECF Nos. 96 at 3; 97 at 3). The Court does not find that it  
12 would be futile to name these Defendants in the Third Amended Complaint.<sup>4</sup>

13 The Court further finds that following Defendants’ disclosure of unknown  
14 defendants, Plaintiffs’ request for expedited discovery of the names and locations of  
15 unknown defendants (ECF No. 87) is moot.

#### 16 **IV. Conclusion**

17 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Leave to Amend the  
18 Complaint (ECF No. 92) is GRANTED in part. Plaintiffs may file a Third Amended  
19 Complaint, naming only the remaining Defendants Carolyn Colvin, Nicholas Pilcher,  
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21 <sup>3</sup> In Plaintiffs’ reply to their motion for expedited discovery, Plaintiffs filed a  
22 letter from Assistant United States Attorney Daniel E. Butcher stating that if Plaintiffs  
23 wished to proceed against Duke Tran or Mary Hagar, those individuals could be served  
24 through the Office of the General Counsel, Region IX, Attn: Deborah Stachel. (ECF  
25 No. 91-1 at 5). On December 13, 2016, Plaintiffs filed proof that a copy of the  
Summons and Complaint was mailed through certified mail on September 28, 2016 to  
Deborah Stachel, at the address provided by Assistant United States Attorney Butcher.  
(ECF Nos. 96 at 3; 97 at 3).

26 <sup>4</sup> The Court denies Plaintiffs’ motion for reconsideration of this Court’s  
27 December 9, 2016 Order dismissing Defendants Duke Tran and Mary Hagar without  
28 prejudice (ECF No. 98), and Defendants’ ex parte motion for extension of time to  
respond (ECF No. 99) as moot. The Court does not rule on the sufficiency of the  
service upon Defendants Duke Tran and Mary Hagar at this time. Defendants may  
challenge the sufficiency of the service upon Defendants Duke Tran and Mary Hagar  
at a later time.

1 Sundeep Patel, William Villasenor, Dulce Sanchez, Duke Tran and Mary Hagar – and  
2 only including the sixth [Equal Protection], eleventh [First Amendment], and thirteenth  
3 [Fourth and Fourteenth Amendment] causes of action alleged in Plaintiffs’ Proposed  
4 Third Amended Complaint. (ECF No. 92-4 at 45, 48-49, 49-50).

5 IT IS FURTHER ORDERED that the Third Amended Complaint, limited to the  
6 Court’s ruling in the immediately preceding paragraph, shall be filed by January 10,  
7 2017.

8 IT IS FURTHER ORDERED that Plaintiffs’ request for leave to amend to add  
9 claims asserted by Plaintiffs Tho Van Ha, Tommy Nguyen, and Don Doan who have  
10 been previously dismissed with prejudice is DENIED.

11 IT IS FURTHER ORDERED that Plaintiffs’ Emergency Motion for Expedited  
12 Discovery (ECF No. 87) is denied as moot.

13 IT IS FURTHER ORDERED that Plaintiffs’ Motion for Reconsideration (ECF  
14 No. 98) and Defendants’ Ex Parte Motion for Extension of Time to File Response (ECF  
15 No. 99) are denied as moot.

16 DATED: December 21, 2016

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18 **WILLIAM Q. HAYES**  
19 United States District Judge  
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