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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JUAN ROMERO, FRANK  
TISCARENO, and KENNETH  
ELLIOT, on behalf of themselves  
and all others similarly situated,  
Plaintiffs,  
v.  
SECURUS TECHNOLOGIES,  
INC.,  
Defendant.

Case No.: 16cv1283-JM-MDD

**ORDER DENYING MOTION TO  
MODIFY PLAINTIFF'S DEADLINE  
TO AMEND PLEADINGS**

**[ECF No. 69]**

Before the Court is a Joint Motion for Determination of Application to Modify Plaintiffs’ Deadline to Amend Pleadings. (ECF No. 69). Specifically, Plaintiffs seek to extend the filing deadline for a motion to amend the complaint to substitute in or add another named plaintiff whose claims arise out of the same set of general facts that are at issue in the current operative complaint. (*Id.* at 8). Defendant opposes Plaintiffs’ request for failure to demonstrate good cause or excusable neglect in “seeking to modify the Court’s scheduling order four months after the passing of the deadline to amend the

1 pleadings.” (*Id.* at 9). For the reasons stated herein, Plaintiffs’ request to  
2 extend the deadline to amend the pleadings is **DENIED**.

### 3 Relevant Procedural History

4 The Complaint was filed on May 27, 2016. (ECF No. 1). On July 26,  
5 2016 Plaintiffs filed their First Amended Complaint. (ECF No. 8). Following  
6 a ruling on Defendant’s motion to dismiss and motion to strike, Plaintiffs  
7 filed a Second Amended Complaint on November 7, 2016. (ECF No. 22).  
8 Following Defendant’s motion to dismiss and ruling thereon, Plaintiffs filed a  
9 Third Amended Complaint on February 8, 2017. (ECF No. 30). Defendant  
10 filed a motion to dismiss Plaintiffs’ Third Amended Complaint. (ECF No. 31).  
11 The District Court granted in part and denied in part Defendant’s motion and  
12 stated “the court’s order is without leave to amend” making the Third  
13 Amended Complaint the operative complaint for the case. (ECF No. 37). An  
14 ENE/CMC was held May 26, 2017 and a Case Management Order was issued  
15 May 30, 2017. (ECF Nos. 45, 46). The Order provided that the deadline to  
16 “join other parties, to amend the pleadings, or to file additional pleadings  
17 shall be filed on or before June 26, 2017.” (ECF No. 46 at 1).

### 18 Legal Standard

19 Rule 16(a)(4), Fed. R. Civ. P., provides that a schedule may be modified  
20 “only for good cause.” “Rule 16(b)'s ‘good cause’ standard primarily considers  
21 the diligence of the party seeking the amendment.” *Johnson v. Mammoth*  
22 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); *Sharp v. Covenant Care*  
23 *LLC*, 288 F.R.D. 465, 467 (S.D. Cal. 2012). Rule 1, Fed. R. Civ. P., provides  
24 that the Federal Rules of Civil Procedure “should be construed, administered,  
25 and employed by the court and the parties to secure the just, speedy, and  
26 inexpensive determination of every action and proceeding.” As one court has  
27 stated:

1 Pleadings cannot be a continuously moving target for obvious reasons.  
2 The amendment deadline serves to frame the issues at a fixed point in  
3 time so that the parties have an adequate opportunity to prepare their  
4 respective positions moving forward. Even so, the deadline will not  
entirely foreclose amendments, so long as the standard of good cause is  
met to warrant the amendment.

5  
6 *Stephens v. Idaho Dept. of Parks and Recreation*, 2011 WL 6150641 \*3, No.  
7 1:10-cv-00267-REB (D. Idaho December 12, 2011).

8 Discussion

9 According to Plaintiffs, Defendant was served with a subpoena duces  
10 tecum on August 1, 2017. In response, Defendant produced 30 pages of  
11 stored emails with seven electronically stored call detail spreadsheets.  
12 Plaintiff contends that a review of the call reports reveal that detainee John  
13 Wiederkehr's phone conversation with his attorney was improperly recorded.  
14 (ECF No. 69 at 2-3). Plaintiff asserts "[a]s a result . . . Mr. Wiederkehr has  
15 agreed to serve as an additional or substitute lead plaintiff in the case." (*Id.*  
16 at 3). Plaintiffs maintain that "Mr. Wiederkehr was unaware of his claims  
17 against Defendant until after the deadline to amend the pleadings." (*Id.*)  
18 Plaintiffs' filed their motion to certify the class and to appoint class counsel  
19 on October 10, 2017. (ECF No. 62). And, Plaintiffs contend they "have  
20 submitted more than sufficient admissible evidence . . . to make a prima facie  
21 case for class certification." (ECF No. 69-9).

22 The pertinent inquiry is whether pursuant to Rule 16(b), Plaintiffs have  
23 shown "good cause" to modify the court's case schedule. "[T]he focus of the  
24 inquiry is upon the moving party's reasons for seeking modification."  
25 *Johnson v. Mammoth Recreations, Inc.*, 975 F2d 604,609 (9th Cir. 1992). In  
26 Plaintiff's own words "[a]t this time Plaintiff propose an amendment to the  
27 deadline which would allow them to merely add or substitute a new plaintiff


1 with claims which fall within the narrower class set forth in Plaintiffs'  
2 Motion for Class Certification. . . ." (*Id.* at 8). Plaintiffs' have not explained  
3 the necessity of adding an additional plaintiff at this time nor the prejudice to  
4 be suffered if this motion is denied.

5 Defendant argues that "[t]here are already three named plaintiffs, and  
6 while Plaintiffs state that they would like to amend their pleadings to add  
7 Mr. Werhderkehr, they do not describe any importance of adding an  
8 additional plaintiff." (ECF No. 69 at 11). The Court agrees with Defendant  
9 that if the class is certified, Mr. Wiederkehr can opt in as a member of the  
10 class or opt out and file his own action against Defendants.<sup>1</sup>

11 The Court finds that Plaintiffs have failed to show the requisite  
12 diligence and good cause. The motion is **DENIED**.

13 IT IS SO ORDERED.

14 Dated: November 20, 2017

15   
16 Hon. Mitchell D. Dembin  
17 United States Magistrate Judge

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25 <sup>1</sup> On October 31, 2017, the district court denied a motion to intervene by another  
26 individual (Pedro Rodriguez) seeking to be added as a named plaintiff. (ECF No. 73). As  
27 the district court pointed out "[i]f the class is certified, Rodriguez can either remain in the  
class or opt out. . . . If the class is not certified or Rodriguez does not qualify as a class  
member, then the outcome of this action will have no effect on his interests." (*Id.* at 4). Mr.  
Werhderkehr appears to be in a similar position.

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