UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 23-0481 JGB (SHKx)**	Date	January 2, 2025
Title	***Ligaya Ronduen, et al. v. The Geo Group, Inc.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Plaintiffs' Motion to Amend Complaint (Dkt. No. 122); and (2) VACATING the January 6, 2025 Hearing (IN CHAMBERS)**

Before the Court is a motion to amend the complaint filed by Plaintiffs Ligaya Ronduen, Carlos Castillo, Mariam Scheetz, Wilfredo Gonzalez Mena, Somboon Phaymany, and Yolanda Mendoza (collectively, "Plaintiffs") pursuant to Federal Rules of Civil Procedure 15(a)(2).[1] ("Motion," Dkt. No. 122.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court **GRANTS** the Motion. The Court **VACATES** the January 6, 2025 hearing.

I. BACKGROUND

On March 20, 2023, Plaintiffs filed a putative class action complaint against Defendant the Geo Group, Inc. ("Geo" or "Defendant"). ("Complaint," Dkt. No. 1.) The Complaint asserts six causes of action on behalf of Plaintiffs and the putative class: (1) negligence, pursuant to Cal. Civ. Code § 1714(a); (2) battery; (3) premises liability, pursuant to Cal. Civ. Code § 1714(a); (4) concealment, pursuant to Cal. Civ. Code § 1710(3); (5) intentional misrepresentation, pursuant to Cal. Civ. Code § 1710(1); and (6) negligent misrepresentation, pursuant to Cal. Civ. Code § 1710(2). (See id.)

[1] All subsequent references to "Rule(s)" refer to the Federal Rules of Civil Procedure, unless otherwise noted.

On July 20, 2023, Defendant filed a third-party complaint ("TPC," Dkt. No. 35) against third-party defendant Spartan Chemical Company, Inc. ("TP Defendant" or "Spartan") and Roes 1-10. The TPC asserts six causes of action: (1) breach of contract; (2) negligence; (3) implied indemnity; (4) equitable indemnity; (5) contribution; and (6) declaratory relief. (See TPC.)

On June 28, 2024, Geo and Spartan filed a motion to continue the trial and related pre-trial deadlines. ("Motion to Continue," Dkt. No. 95.) On August 26, 2024, the Court granted the Motion to Continue and set November 4, 2024 as the deadline for filing a motion to amend pleadings or add new parties and March 28, 2025 as the all discovery cut-off (including hearing of discovery motions) deadline. ("Motion to Continue Order," Dkt. No. 104.)

On November 4, 2024, Plaintiffs timely filed the Motion. (Motion.) In support of the Motion, Plaintiffs filed a declaration of attorney Marjorie Menza alongside exhibits A-G. ("Menza Decl. for Motion," Dkt. No. 122-1-8.) On November 6, 2024, Plaintiffs filed a notice of errata to the Motion, which added a table of contents and table of authorities for the memorandum in support of the Motion, and corrected issues related to Exhibit E and the proposed order for the Motion. ("Notice of Errata," Dkt. No. 123-1-3.)

On November 11, 2024, Geo filed a notice of non-opposition to the Motion. ("Non-Opp.," Dkt. No. 125.) On November 12, 2024, Spartan opposed the Motion.[2] ("Opposition," Dkt. No. 127.) In support of the Opposition, Spartan filed a declaration from attorney David Mesa alongside an exhibit. ("Mesa Decl.," Dkt. No. 127-1.)

On November 18, 2024, Plaintiffs replied. ("Reply," Dkt. No. 131.) In support of the Reply, Plaintiffs filed a declaration from attorney Marjorie Menza. ("Menza Decl. for Reply," Dkt. No. 131-1.)

II. FACTUAL ALLEGATIONS

A. Complaint

This case seeks justice and accountability for individuals who were systematically poisoned, ignored, and left to suffer by a multi-billion-dollar corporation profiting from human captivity. (Complaint ¶ 1.) Seven individuals currently and formerly detained at Adelanto Detention Center ("Adelanto" or "the Facility") bring this lawsuit on their behalf and on behalf of the more than 1,300 other detained people harmed by GEO's improper use of a toxic chemical at Adelanto. (Id. ¶ 1.) GEO is a private company that manages and operates the Immigration and Customs Enforcement ("ICE") detention and processing facility in Adelanto, California. (Id. ¶¶ 3, 29.) Plaintiffs and the putative class are or were civil immigration detainees held at

[2] Spartan's Opposition utilizes a smaller font size than is permitted by the Local Rules. See L.R. 11-3.1.1. Spartan is warned that future violations of the Local Rules may result in sanctions.

Adelanto pending the outcome of their immigration proceedings. (Id. ¶ 30.) Plaintiffs include two individuals currently detained at Adelanto and five individuals who are former detainees of the Facility. (Id. ¶¶ 22-28.)

After the onset of the COVID-19 pandemic, between February 2020 and April 2021, GEO staff sprayed a red/pink toxic chemical called HDQ Neutral throughout Adelanto. (Id. ¶¶ 8, 56.) GEO had also used HDQ Neutral as a cleaning disinfectant before the COVID-19 pandemic had started, but beginning in February 2020, Geo significantly changed the manner and increased the frequency of its use to a startling degree. (Id. ¶ 7.) GEO's chemical spraying was a near-constant and invasive presence at Adelanto. (Id. ¶ 8.) GEO staff sprayed HDQ Neutral every 15 to 30 minutes from vats strapped to their backs and from smaller spray bottles. (Id.) GEO staff sprayed this chemical into the air and onto all surfaces, including food contact surfaces, telephones, rails, door handles, bathrooms, showers, and sinks. (Id.) GEO staff sprayed when people were eating, and the chemical mist would fall on their food. (Id.) GEO staff sprayed at night, on or around the bunk beds and cells where people slept. (Id.) And on at least one occasion, GEO staff sprayed individuals as a disciplinary measure. (Id.)

Due to their incessant, months-long exposure to HDQ Neutral, Plaintiffs and others detained at Adelanto experienced acute symptoms, including but not limited to persistent cough, irritation of the throat and nasal passages, skin irritation and rashes, and headaches. (Id. ¶ 9.) The named Plaintiffs' experiences capture the horrific, but all too common, effects of exposure to HDQ Neutral. (Id. ¶ 10.) Various Plaintiffs had nosebleeds or found blood in their mouth and saliva. (Id.) Others had debilitating headaches or felt dizzy and lightheaded. (Id.) Several Plaintiffs have chronic, long-term health effects. (Id.) All of them suffered anxiety during the months in which the chemical was sprayed at Adelanto. (Id.)

HDQ Neutral is a highly toxic chemical that is particularly dangerous because its two active components, DDAC and ADBAC1, have been linked to numerous, serious acute and chronic health effects. (Id. ¶ 37.) The Environmental Protection Agency ("EPA") classifies five types of acute toxicity data (oral, dermal, inhalation, skin irritation, and eye irritation) into four Toxicity Categories, with Category 1 being the highest hazard. (Id. ¶ 38.) The EPA has categorized acute toxicity data for DDAC and ADBAC, the active components in HDQ Neutral, as Category 1 toxicity for skin and eye irritation, Category 2 for oral ingestion and inhalation, and Category 3 for dermal exposure. (Id.) HDQ Neutral's manufacturer, Spartan, acknowledges that inhalation of HDQ Neutral can result in nasal discomfort, nasal bleeding, coughing, sore throat, trouble breathing, and damage to the mucosal membrane of the respiratory tract. (Id. ¶ 39.) Skin contact can result in redness, blistering, and rashes. (Id.) Ingestion can result in burns to the digestive tract, pain, nausea, vomiting, and diarrhea. (Id.) Eye exposure can result in irritation, pain, redness, itchiness, swelling, and worsened vision. (Id.) Reputable scientific sources have documented how DDAC and ADBAC are correlated with severe skin irritation that can lead to skin sensitization or dermatitis, respiratory irritation and inflammation, chronic obstructive pulmonary disease, reproductive and developmental effects (including decreased fertility, disruption of hormone-regulated processes like ovulation, late-term fetal death, and birth

defects, such as neural tube defects), and genotoxicity—a serious hazard characterized by DNA damage and disrupted cellular function and regulation. (Id. ¶¶ 40-41.)

Spartan provides usage regulations, safety information, and other warnings regarding the use of HDQ Neutral, including Spartan's HDQ Neutral Safety Data Sheet (the "Safety Data Sheet") and HDQ Neutral's Container Label (the "Container Label"). (Id. ¶ 42.) These include specific instructions for use and a warning issued pursuant to EPA pesticide requirements of harms from improper use. (Id. ¶¶ 42-43.) Geo has used HDQ Neutral for at least 10 years at Adelanto. (Id. ¶ 45.) As manager and operator of Adelanto, GEO is responsible for ensuring its staff follows regulations, guidelines, and manufacturer safety warnings for the use of chemicals at the Facility to safeguard the health and welfare of the people in its custody. (Id. ¶ 46.) Geo had access to all of this publicly available safety information, including instructions for proper use and the potential consequences of using HDQ Neutral without protective equipment or without following its directions for use, and therefore knowingly poisoned Plaintiffs and the putative class by ignoring these warnings and instructions. (Id. ¶¶ 45-57.) The EPA supports the instructions of the Safety Data Sheet and the Container Label by requiring users of chemicals intended to kill COVID-19 cells to use said chemicals on surfaces, not humans. (Id. ¶ 52.) Additionally, the EPA warns that fumigation and wide-area spraying of chemicals intended to kill COVID-19 cells are not appropriate. (Id.) GEO was required to know and follow these EPA guidelines. (Id.)

Geo's use of HDQ Neutral went against its manufacturer's and regulators' safety guidelines, including through constant spraying indoors, improper dilution (diluting and applying HDQ neutral with a ratio of 2 ounces per gallon, when all available information indicated that it should be diluted with a ratio of 1 ounce per gallon, except for when used in animal pens as a virucidal disinfectant), failing to provide Personal Protective Equipment ("PPE"), and failing to train detained individuals on its proper use. (Id. ¶¶ 59, 63-93.) Plaintiffs were not aware that Geo's use of HDQ Neutral went against these safety guidelines. (Id.) Plaintiffs and putative class members had no control or say over where, how, or how often the chemical mixture was sprayed. (Id. ¶ 57.)

Plaintiffs reported to GEO and medical staff concerns about the frequency and manner in which GEO staff sprayed HDQ Neutral and the symptoms Plaintiffs experienced. (See, e.g., id. ¶¶ 97-99, 130, 155.) GEO staff ignored Plaintiffs' concerns, continued the constant spraying of HDQ Neutral, and repeatedly told Plaintiffs and other detained individuals that HDQ Neutral was necessary and required to prevent the spread of COVID-19. (Id. ¶¶ 94, 98, 136, 174, 201, 211.) Medical staff at Adelanto either ignored or failed to provide information and adequate medical care for the symptoms Plaintiffs experienced. (Id. ¶¶ 155-57, 180.)

As news of COVID-19 reached the people detained at Adelanto—through their loved ones or their limited access to news sources—GEO placed the Facility in full lock down. (Id. ¶ 6.) Outside visitors (including attorneys) were banned, and movement within the Facility was severely curtailed. (Id.) Even though Plaintiffs and other people detained at Adelanto were fully reliant on GEO for COVID-19 related updates, safety measures, and care, GEO provided little or

no information to them. (Id.) Plaintiffs and others detained at Adelanto, alarmed at the amount and frequency in which HDQ Neutral was being sprayed, began complaining. (Id. ¶ 11.) But with little information about the pandemic, Plaintiffs and others had to rely on the assurances made by GEO that HDQ Neutral was a necessary and safe protective measure against COVID-19. (Id.) Detained people at Adelanto have no internet access in their dormitory or cell blocks, and access to the internet in the law library is limited to legal resources. (Id. ¶ 55.) Detained people must rely on GEO staff to provide newspapers to their block, or to turn on the television to a news channel. (Id.) Several of the Plaintiffs and the putative class speak limited or no English. (Id.) For these reasons, they heavily relied on the information GEO staff was willing to share about COVID-19. (Id.) Geo did not provide Plaintiffs with safety information for HDQ Neutral, such as container labels, safety data sheets, or regulatory guidelines. (Id. ¶¶ 98, 102, 105.)

On July 29, 2020, the EPA conducted an inspection of Adelanto via videoconference due to concerns that GEO staff may have been using HDQ Neutral in an improper manner. (Id. ¶ 59.) The EPA documented its findings from its inspection in the EPA July 2020 Final Inspection Report ("EPA Report"). (Id.) Following its inspection, the EPA issued a Notice of Warning to GEO, formalizing its findings and noting multiple violations of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"). (Id.) The EPA Report and Notice of Warning were not made public until March 21, 2021, and were the first governmental and scientific finding publicly available about GEO's improper use of HDQ Neutral. (Id. ¶ 60.) Despite the EPA's July 2020 inspection and warnings, GEO continued its dangerous and indiscriminate use of HDQ Neutral. (Id. ¶ 61.) Geo never shared any of the EPA's findings regarding HDQ Neutral with Plaintiffs or members of the putative class. (Id. ¶ 105.)

Geo lied about and obscured its use of HDQ Neutral and its adverse health effects to Plaintiffs and members of the putative class, in that GEO—through its employees, supervisors, officers, and/or directors— instructed GEO staff to use and represent to Plaintiffs and the putative class that HDQ Neutral was safe and necessary to prevent COVID-19. (Id. ¶ 94.) When Plaintiffs and putative class members raised concerns, GEO staff's responses to these concerns were all the same: refraining from providing any information at all regarding the dangers of exposure to HDQ Neutral, intentionally dismissing valid concerns, and misrepresenting HDQ Neutral as the only safe available disinfectant against COVID-19. (Id. ¶ 96.) For example, Plaintiffs Scheetz and Gonzalez Mena asked GEO staff to stop spraying the chemical when people were eating or sleeping in their cells. (Id. ¶ 97.) Their requests were ignored, and GEO staff told them that GEO had to continue spraying during every round to prevent the spread of COVID-19. (Id.) Plaintiff Hernandez asked GEO staff about the safety of spraying the chemical mixture. (Id. ¶ 98.) GEO staff refused to provide information and misrepresented to him that the constant spraying was necessary to prevent the spread of COVID-19. (Id.) Plaintiff Hernandez even raised his concerns to a GEO supervisor but, like Plaintiffs Sheetz and Gonzalez Mena, he was dismissed and told only that the frequent spraying was due to COVID-19. (Id.)

Instead of warning Plaintiffs and the putative class that HDQ Neutral was dangerous, GEO concealed the dangers of HDQ Neutral and GEO's wrongful use of the product. (Id. ¶

100.) GEO staff would provide spray bottles of HDQ Neutral with no labeling, meaning that Plaintiffs and the putative class were not informed of the risk posed by the chemical mixture or how to ameliorate its harm. (Id. ¶ 101.) GEO also stored large HDQ Neutral containers which they used to fill up the smaller spray bottles. (Id.) GEO staff at times removed the HDQ Neutral container label from these larger containers. (Id. ¶ 102.) When containers had a label, it was only in English, which many Plaintiffs and putative class members did not understand. (Id.) GEO never provided translations of the labels. (Id. ¶ 103.) Plaintiffs and putative class members witnessed multiple inspections at Adelanto during which GEO staff would hide bottles of HDQ Neutral. (Id. ¶ 104.)

Like the rest of the staff at Adelanto, medical staff disregarded the concerns of the putative class members about HDQ Neutral. (Id. ¶ 107.) For example, Plaintiff Castillo was told by a medical staff member that they had no knowledge of the chemical spray, even though it was being used throughout the entire facility. (Id. ¶ 108.) On at least one other occasion, a member of the putative class was mocked by the medical staff over his concerns regarding the chemical spray. (Id.) Medical staff also knowingly and incorrectly attributed putative class members' symptoms to causes not involving HDQ Neutral, such as allergies. (Id. ¶¶ 108, 156.) Plaintiffs and putative class members' access to outside medical care was even more restricted during the pandemic, forcing them to rely on the statements and actions of the Adelanto medical staff to assess the risk of HDQ Neutral exposure. (Id. ¶ 110.)

B. First Amended Complaint

Plaintiffs move for leave to file a first amended complaint ("FAC," Dkt. No. 122-7-8), which include the following proposed amendments:

- Narrowing the temporal scope of the proposed class to February 2020 through November 2020 (originally through April 2021) to reflect evidence Plaintiffs obtained during discovery regarding the use of HDQ Neutral at Adelanto. (See FAC ¶¶ 19, 63, 142, 147, 248.)
- Removing former Plaintiff Hernandez Carrillo from the case caption and body of the Complaint to conform with the parties' stipulated dismissal of his claims against GEO without prejudice. (See Dkt. Nos. 108, 119; FAC.)
- Updating Plaintiffs Ronduen and Castillo's location to reflect their transfer to a different immigration detention facility and deportation from the United States, respectively. (See FAC ¶¶ 24–25, 150, 170.)
- Removing factual allegations regarding Plaintiffs' emotional distress resulting from Geo and Spartan's conduct to conform to those Plaintiffs' stipulation that they are seeking garden variety emotional distress damages and are not making a claim for specific mental or psychiatric injury or disorder, or for unusually severe emotional distress. (See FAC ¶¶ 11, 169, 185, 210, 213, 218, 222-23, 273, 281, 291, 304, 314, 324.)
- Incorporating non-substantive, stylistic edits to improve the flow and readability of the proposed FAC. (See FAC ¶¶ 1, 3, 6–7, 11–13, 16, 19, 30, 32, 35, 50–51, 53–54, 56–57, 61, 65–68, 78, 81, 91, 97, 102, 161, 214–15, 234, 274, 316.)

- Naming Spartan as a defendant with four direct claims against it ("Spartan Amendments") that are consistent with GEO's allegations against Spartan in the TPC and are based on new evidence Plaintiffs obtained during discovery regarding Spartan's actions and omissions with respect to HDQ Neutral. (See FAC; TPC.) The proposed new claims against Spartan are: (1) negligence (first cause of action); (2) design defect—strict liability (seventh cause of action); (3) failure to warn—strict liability (eighth cause of action); and (4) failure to warn—negligence (ninth cause of action). (See FAC ¶¶ 9, 15, 19, 22–23, 31, 38–43, 46, 49, 89, 93–96, 124-126, 130–146, 259–66, 270–73, 326–330, 331–344.)

(See Motion at 1-3.)

III. LEGAL STANDARD

Rule 15 provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The Ninth Circuit has held that "[t]his policy is to be applied with extreme liberality." Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). Leave to amend is not automatic, however. The Ninth Circuit considers a motion for leave to amend under five factors: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint. Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). Further, the Ninth Circuit "differentiate[s] between pleadings attempting to amend claims from those seeking to amend parties. Amendments seeking to add claims are to be granted more freely than amendments adding parties." Union Pac. R. Co. v. Nevada Power Co., 950 F.2d 1429, 1432 (9th Cir. 1991) (emphasis in original).

Under Rule 15(a)(2), amendment may be futile if the amended pleading would fail to state a claim upon which relief can be granted. See Blantz v. Cal. Dept. of Corr. & Rehab., 727 F.3d 917, 927 (9th Cir. 2013) (affirming denial without leave to amend because "the new allegations [plaintiff] envisions would merely be additional conclusory allegations of the sort that are insufficient under Iqbal and Twombly"); Sweany v. Ada County, Idaho, 119 F.3d 1385, 1393 (9th Cir. 1997) (explaining futility exists "only if no set of facts can be proved under which the amendment to the pleadings that would constitute a valid and sufficient claim"); see generally J. Moore, Moore's Federal Practice ¶ 15.08[4] (2d ed. 1974) (noting that the proper test to be applied when determining the legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6)). A proposed amendment may also be futile if "no set of facts can be proved under the amendment that would constitute a valid claim or defense." Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988).

"The party opposing amendment bears the burden of showing prejudice, unfair delay, bad faith, or futility of amendment." United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL–CIO, CLC v. ConocoPhillips Co., 2009 WL

650730, at *2 (C.D. Cal. Mar. 12, 2009) (citing Eminence Capital, 316 F.3d at 1052; DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186–87 (9th Cir. 1987)).

IV. DISCUSSION

The Opposition solely focuses on the Spartan Amendments. (See Opposition at 3-8.) As such, the Court finds that the following proposed amendments will not unduly prejudice Geo or Spartan, were diligently sought, are not futile, and are not sought in bad faith: (1) narrowing the temporal scope of the class definition; (2) removing former Plaintiff Hernandez Carrillo; (3) updating Plaintiffs Ronduen and Castillo's location; (4) removing certain factual allegations regarding Plaintiffs' emotional distress; and (5) incorporating stylistic edits. (See Motion; FAC); Hernandez v. Swift Transportation Co., 2023 WL 10371352, at *3 (C.D. Cal. June 22, 2023) (granting leave to amend to "clarify [plaintiff's] claims before trial" where defendant had known the basis for plaintiff's claims and conducted related discovery); Est. of Niroula v. Riverside County Sheriffs Dep't, 2024 WL 4403895, at *1-2 (C.D. Cal. Aug. 28, 2024) (granting leave to amend to update caption and summons to reflect changes defendants had originally stipulated to). Accordingly, the Court **GRANTS** the Motion as to these amendments.

A. Spartan Amendments

Spartan argues that the Motion should be denied because of futility of amendment, undue delay, prejudice, and Plaintiffs' failure to comply with the meet-and-confer requirements outlined by Local Rule 7-3.[3] (See Opposition at 2.) The Court addresses these arguments in turn.

1. Futility – Statute of Limitations

Spartan asserts that amendment is futile because the proposed causes of action are barred by California's two-year statute of limitations for personal injury claims. (See Opposition at 3-6.) Specifically, the four new claims arise from Plaintiffs' alleged injuries that occurred between February 2020 and November 2020, and "inquiry notice was triggered for these causes of action" when the EPA Report was made public on March 21, 2021. (See id. at 6.)

The statute of limitations for a personal injury claim in California is two years. See Wallace v. Kato, 549 U.S. 384, 387 (2007); Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd., 509 F.3d 1020, 1026 (9th Cir. 2007); Cal. Code Civ. Proc. § 335.1. "Generally, a personal injury claim accrues[,] and the period of limitations commences when a

[3] Spartan concedes that Plaintiffs did not seek leave to amend the Complaint in bad faith because it does not address Plaintiffs' arguments on this point in its Opposition. (See Opposition); See Tyler v. Travelers Com. Ins. Co., 499 F. Supp. 3d 693, 701 (N.D. Cal. 2020) ("Plaintiff concedes these arguments by failing to address them in her opposition."); Conservation Force v. Salazar, 677 F. Supp. 2d 1203, 1211 (N.D. Cal. 2009) ("Where plaintiffs fail to provide a defense for a claim in opposition, the claim is deemed waived.").

wrongful act takes place." Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 882 n.1 (9th Cir. 1983) (citation omitted). In California, a personal injury action would ordinarily accrue "on the date of the injury" and therefore would have to be brought within two years of that date, unless the statute of limitations is tolled. See Goldrich v. Natural Y Surgical Specialties, Inc., 25 Cal. App. 4th 772, 779 (1994).

However, California's delayed discovery rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 807 (2005). Where the rule applies, the statute of limitations does not begin to run until the plaintiff "suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her," whereafter she is "held to her actual knowledge as well as knowledge that could reasonably be discovered through investigation of sources open to her." Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1109-10 (1988). If a reasonable investigation would not reveal the factual basis for a cause of action, the claim does not accrue. Fox, 35 Cal. 4th at 803. Moreover, discovery of the ***factual*** cause of a plaintiff's injury does not trigger the statute of limitations by itself; an investigation must reveal a ***tortious*** cause. See Jolly, 44 Cal. 3d at 1109, 1109 n.4 (explaining that the plaintiff must be aware of both injury and negligent cause). A plaintiff that invokes the delayed discovery rule "must specifically plead facts to show (1) the time and manner of discovery; and (2) the inability to have made earlier discovery despite reasonable diligence." Fox, 35 Cal. 4th at 808 (internal quotations and citation omitted). Whether the delayed discovery rule applies is a question of fact, while a court cannot decide as a matter of law at what point an investigation would have revealed the factual basis for a claim unless the allegations in a complaint can support only one reasonable conclusion. See E-Fab, Inc. v. Accountants, Inc. Servs., 153 Cal. App. 4th 1308, 1320, 1325-26 (2007); Broberg v. The Guardian Life Ins. Co. of Am., 171 Cal. App. 4th 912, 921 (2009).

This Court has previously held that Plaintiffs were first on inquiry notice of Geo's allegedly tortious conduct when the EPA Report was publicly released on March 21, 2021. ("MTD Order," Dkt. No. 32 at 9.) Although the EPA Report disclosed that Spartan installed, inspected, perform system checks on, and set the concentration of the chemical in the HDQ Neutral dispensers, the Court finds that it did not reveal Spartan's allegedly tortious conduct—including, but not limited to, its knowledge of GEO's dangerous overuse of HDQ Neutral; its failure to stop the known, unsafe use of its product; and its deliberate adjustment of the flow rate of HDQ Neutral to deliver a knowingly higher concentration of the chemical. (See Reply at 2-6; Opposition at 5-6; FAC ¶¶ 40, 94-95, 124, 132, 146, 261-66, 271, 328, 340.)

Plaintiffs learned of Spartan's allegedly tortious conduct during fact discovery, which did not start in earnest until May 2024—due in part to Spartan's delay in responding to Plaintiffs regarding the protective order and ESI protocol. (See Menza Decl. for Motion ¶¶ 4, 6.) For instance, during the October 11, 2024 deposition of Tarren Wethington, a West Coast Divisional Manager for Spartan, he confirmed that Spartan supplied incorrect labels for HDQ Neutral and affixed hdqC2 labels to dispensers and spray bottles at Adelanto. (See id. ¶¶ 12-13.) Based on documents produced by Spartan, Plaintiffs allege that there are several key differences between HDQ Neutral and hdqC2, including a drastically different recommended dilution rate and

materially different warnings on the product labels. (See id.) Plaintiffs further allege that discovery has revealed that Spartan posted promotional materials about HDQ Neutral in lieu of health warnings and instructions for use in the locations where GEO staff and detainees who were involved in cleaning accessed HDQ Neutral at Adelanto. (See id.) As such, the Court applies the delayed discovery rule and finds that Plaintiffs have plead in significant detail how and why they were unable to discover the nature and extent of Spartan's allegedly tortious conduct prior to Geo and Spartan's document productions starting in June 2024 and the depositions conducted in September and October 2024. (See id. ¶¶ 3-16; FAC ¶¶ 40, 94-95, 124, 132, 146, 261-66, 271, 328, 340.) Accordingly, the four proposed claims against Spartan are not barred by California's two-year statute of limitations.

2. Undue Delay

As discussed above, Plaintiffs' proposed claims against Spartan are based on facts only recently revealed through discovery, and thus the Court finds that Plaintiffs did not unduly delay in requesting leave to amend the Complaint. Moreover, the Motion was timely filed per the Court's scheduling order. (See Motion to Continue Order; Motion at 16-17); Regalado v. Riverside County, 2021 WL 6752218, at *4 (C.D. Cal. Dec. 1, 2021) ("[B]ecause the Motion ultimately meets the Scheduling Order deadline, the Court concludes that Mr. Regalado did not unduly delay—even if 'one might ask why Plaintiff waited so long' to file the Motion").

Spartan argues that because the Motion concedes that the proposed claims are consistent with Geo's claims against it in the TPC, which was filed on July 20, 2023, Plaintiff delayed for over a year in seeking to amend the Complaint. (See Opposition at 7.) The Court disagrees. At best, the TPC notified Plaintiffs that Spartan may have violated a contractual duty and a duty of care to Geo to ensure the appropriate ratio of HDQ Neutral was dispensed and provide proper training, but it did not alert Plaintiffs of Spartan's other allegedly tortious conduct discussed in the FAC—including, but not limited to, incorrectly labeling HDQ Neutral. (See TPC at 3-4; Menza Decl. for Motion ¶¶ 12-13.) Nevertheless, "[t]he passage of time is not, in and of itself, undue delay . . . delay alone does not provide sufficient grounds for denying leave to amend." Johnson v. Serenity Transportation, Inc., 2015 WL 4913266, at *5 (N.D. Cal. Aug. 17, 2015); United States v. Webb, 655 F.2d 977, 980 (9th Cir. 1981) ("delay alone no matter how lengthy is an insufficient ground for denial of leave to amend"); Regalado, 2021 WL 6752218, at *4 (rejecting defendants' argument that the plaintiff should have filed the motion earlier, based on evidence in the plaintiff's possession at that time, because the motion met the scheduling order deadline). Accordingly, this factor weighs in favor of amendment.

3. Prejudice

Spartan argues that it will be prejudiced if Plaintiffs are granted leave to amend because it "could result in substantially protracted litigation and additional, burdensome discovery." (See Opposition at 7.) Specifically, "the addition of new, never alleged claims based on product liability theories against Spartan would require additional discovery, thereby delaying the proceedings and increasing litigation costs." (See id.)

Plaintiffs argue that Spartan has been on notice of the substance of Plaintiffs' proposed claims for over a year based on GEO's allegations in the TPC, and Plaintiffs have already sought discovery from Spartan relevant to Plaintiffs' proposed claims. (See TPC; Motion at 15; Menza Decl. for Motion ¶¶ 4-5.) Plaintiffs further argue that Spartan has ample time to respond to Plaintiffs' proposed claims as fact discovery will not close until March 25, 2025, and trial is not set to begin until August 2025. (See Motion at 15; Motion to Continue Order.)

The Court agrees with Plaintiffs. Courts routinely grant leave to file an amended complaint when, as here, the proposed claims will expand, but not entirely alter the course of the litigation. See DCD Programs, 833 F.2d at 186 ("This liberality in granting leave to amend is not dependent on whether the amendment will add causes of action or parties."); Lindsey v. Elsevier Inc., 2017 WL 3492151, at *9 (S.D. Cal. Aug. 15, 2017) (no prejudice to counterclaims that will "expand" but not "entirely alter the course of" litigation even when depositions would have to be retaken); Regalado, 2021 WL 6752218, at *6 (finding no undue prejudice because "granting the Motion will not radically shift the nature of the case or require Defendants to engage in substantial new discovery or to undertake an entirely new course of argument") (quotations omitted). Moreover, the Court determines that Spartan will not be prejudiced because it has been involved in this litigation for over a year, has produced documents to Plaintiffs, has participated in depositions, and the parties have three months to complete discovery. (See Menza Decl. for Motion; Motion to Continue Order.) Accordingly, this factor weighs in favor of amendment.

4. Failure to Properly Meet and Confer

Finally, Spartan argues that the Motion should be denied because Plaintiffs did not properly comply with the meet-and-confer requirements outlined in Local Rule 7-3. (See Opposition at 8.) Namely, Spartan and Plaintiffs met and conferred fours days, instead of seven days, before the Motion was filed, and Plaintiffs did not adequately discuss the Spartan Amendments. (See id.)

Local Rule 7-3 provides, in part: "[C]ounsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference shall take place at least seven (7) days prior to the filing of the motion." L.R. 7-3.

Although the Court admonishes Plaintiffs for not meeting and conferring with Spartan seven days before filing the Motion, it finds that Plaintiffs have substantially satisfied the requirements of Local Rule 7-3. To the extent the substantive discussion of the issues raised by the Motion was not thorough, that could be explained by Spartan's contention during the meet and confer that there are no amended claims that Plaintiffs could plead against it which it would not oppose. (See Menza Decl. for Reply ¶ 4; Mesa Decl. ¶¶ 2-3.) Moreover, Spartan suffered no prejudice from any inadequacy in the meet-and-confer process, so even if Plaintiffs had not complied with Local Rule 7-3, the Court would proceed to the merits of the Motion. See Reed v.

Sandstone Properties, L.P., 2013 WL 1344912, at *6 (C.D. Cal. Apr. 2, 2013) ("Because Reed suffered no real prejudice as a result of the late conference, however, the court elects to consider the motion on the merits."); De Walshe v. Togo's Eateries, Inc., 567 F. Supp. 2d 1198, 1205 (C.D. Cal. 2008) ("[T]he Court finds that any potential violation of Local Rule 7-3 did not prejudice Plaintiff and the Court exercises its discretion to evaluate Defendant's motion on its merits."); Wilson-Condon v. Allstate Indem. Co., 2011 WL 3439272, at *1 (C.D. Cal. Aug. 4, 2011) ("[Defendant] does not appear to have suffered any prejudice from Plaintiff's failure to meet and confer sufficiently in advance, and [Defendant] was able to prepare and submit an opposition. Thus, it appears that no prejudice will result if the Court considers the motion to remand on the merits notwithstanding Plaintiff's failure to comply with Local Rule 7–3."); CarMax Auto Superstores California LLC v. Hernandez, 94 F. Supp. 3d 1078, 1088 (C.D. Cal. 2015) ("Failure to comply with the Local Rules does not automatically require the denial of a party's motion, . . . particularly where the non-moving party has suffered no apparent prejudice as a result of the failure to comply") (collecting cases).

V. CONCLUSION

For the reasons above, and because Plaintiffs have never amended the Complaint, the Court **GRANTS** the Motion. Plaintiffs are **ORDERED** to file the FAC by **January 17, 2024**. The January 6, 2025 hearing is **VACATED**.

IT IS SO ORDERED.