



1 the Federal Rule of Civil Procedure (“Rule”) 23(b)(3) class to cut off class damages and  
2 membership as of November 30, 2022.” *Id.* at 2.

## 3 **II. LEGAL STANDARD**

4 A party seeking leave to amend pleadings after the deadline specified in the scheduling  
5 order must first satisfy Federal Rule of Civil Procedure 16(b)’s “good cause” standard. *Johnson*  
6 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608–09 (9th Cir. 1992). Rule 16(b)(4) states a  
7 “schedule may be modified only for good cause and with the judge’s consent.” This good cause  
8 evaluation “is not coextensive with an inquiry into the propriety of the amendment under . . .  
9 Rule 15.” *Johnson*, 975 F.2d at 609. Distinct from Rule 15(a)’s liberal amendment policy,  
10 Rule 16(b)’s good cause standard focuses primarily on the diligence of the moving party, *id.*, and  
11 the moving party’s reasons for seeking modification. *Cf. ex rel. Farnan v. Capistrano Unified*  
12 *Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011).

13 If good cause exists, the party next must satisfy Rule 15(a). Federal Rule of Civil  
14 Procedure 15(a)(2) states “[t]he court should freely give leave [to amend pleading] when justice  
15 so requires” and the Ninth Circuit has “stressed Rule 15’s policy of favoring amendments.”  
16 *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (citing *DCD*  
17 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)); *United States v. Webb*, 655 F.2d  
18 977, 979 (9th Cir. 1981). “In exercising its discretion [regarding granting or denying leave to  
19 amend] ‘a court must be guided by the underlying purpose of Rule 15 -- to facilitate decision on  
20 the merits rather than on the pleadings or technicalities.’” *Leighton*, 833 F.2d at 186 (quoting  
21 *Webb*, 655 F.2d at 979 (9th Cir. 1981)). However, “the liberality in granting leave to amend is  
22 subject to several limitations. Leave need not be granted where the amendment of the complaint  
23 would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in  
24 futility, or creates undue delay.” *Ascon Props.*, 866 F.2d at 1160 (citing *Leighton*, 833 F.2d at  
25 186). In addition, a court should look to whether the plaintiff has previously amended the  
26 complaint, as “the district court’s discretion is especially broad ‘where the court has already given  
27 a plaintiff one or more opportunities to amend [its] complaint.’” *Id.* at 1161 (alteration in  
28 original) (quoting *Leighton*, 833 F.2d at 186 n.3).

1 Under Federal Rule of Civil Procedure Rule 23, district judges have an obligation to  
2 “define, redefine, subclass and decertify as appropriate in response to the progression of the case  
3 from assertion to facts.” *Richardson v. Byrd*, 709 F.2d 1016, 1019 (5th Cir. 1983). This is  
4 because “the class certification is usually made early in the case,” and therefore “it may become  
5 necessary to modify the class definition after further discovery or other events which alter the  
6 parameters of the class.” *Moeller v. Taco Bell Corp.*, No. C 02-5849 MJJ, 2004 WL 5669683, at  
7 \*1 (N.D. Cal. Dec. 7, 2004) (citation and internal quotations marks omitted).

### 8 **III. DISCUSSION**

9 Plaintiffs seek leave to amend under Rule 16 because they say they have encountered new  
10 evidence, which they argue affects their request for injunctive relief. During remedies discovery,  
11 plaintiffs learned defendants made some but not all the changes necessary to comply with the  
12 court’s order granting plaintiffs’ motion for summary judgment. *See* Summ. at 9-18, ECF  
13 No. 278; Mot. at 2.

14 Granting leave to amend in response to new evidence attained in discovery is a common  
15 practice. *See Fru-Con Const. Corp. v. Sacramento Mun. Util. Dist.*, No. 05-583, 2006 WL  
16 3733815 (E.D. Cal. Dec. 15, 2006); *Orozco v. Midland Credit Mgmt. Inc.*, No. 12 -02585,  
17 2013 WL 3941318 (E.D. Cal. July 30, 2013). And here, the proposed Sixth Amended Complaint  
18 conforms plaintiffs’ pleadings to the newly discovered evidence. *See* Mot. at 3. Moreover,  
19 plaintiffs have diligently attempted to meet and confer with defendants despite defendants’ record  
20 of non-responsiveness. *See* Mot. at 4-5; *Johnson*, 975 F.2d at 609. Defendants have not opposed  
21 the pending motion. The **court** finds good cause exists.

22 Additionally, none of Rule 15(b)’s limitations on the policy of liberality in granting leave  
23 to amend applies here. *Ascon Props.*, 866 F.2d at 1160. Defendants are not unduly prejudiced by  
24 permitting plaintiffs to conform their claims to the facts plaintiffs obtained during remedies  
25 discovery, of which defendants were already aware. *See Orozco*, 2013 WL 3941318, at \*4  
26 (finding defendant not prejudiced under Rule 15 limitations when defendant was already aware of  
27 pertinent new information underlying request for leave to amend). Defendants have not  
28 demonstrated plaintiffs seek leave to amend in bad faith. And granting leave to amend will not be

1 futile because it is not “patently obvious that the plaintiff[s] could not prevail on the facts  
2 alleged.” *Cohen v. Longshore*, 621 F.3d 1311, 1314-15 (10th Cir. 2010) (quotation marks and  
3 internal citation omitted). Lastly, there is no indication granting leave would create undue delay.  
4 Though this would be plaintiffs’ sixth amended complaint, the circumstances warrant the  
5 additional amendment. Accordingly, the court finds the plaintiffs’ request satisfies Rule 15(b),  
6 and **grants plaintiff’s motion for leave to amend their complaint.**

7 Plaintiffs also request to set November 30, 2022 as the class cut-off date for damages and  
8 membership. Plaintiffs’ proposed class period definition specifies a reasonable end date in place  
9 of the imprecise existing language: “the final resolution of this matter.” Sixth Am. Compl. Ex.,  
10 Bellows Decl. at 17, ECF 314-1. Plaintiffs’ damages expert recommends the new cut-off date,  
11 which “corresponds to the time period for which the policies underlying the [c]ourt’s summary  
12 judgment decision were in place.” *See* Bellows Decl. at 2, ECF 314-1. In contrast to the  
13 preexisting language, the new cut-off date is ascertainable and in the “interest[] of clarity and  
14 finality.” *Taylor v. Autozone, Inc.*, No. 10-8125, 2011 WL 2357652, at \*1 (D. Ariz. June 14,  
15 2011) (“A specified end date also helps ensure that plaintiff-specific discovery will be completed  
16 in a timely manner.”); *see Blackwell v. Com. Refrigeration Specialists, Inc.*, No. 20-1968,  
17 2022 WL 10626473 (E.D. Cal. Oct. 18, 2022) (defining end date so as to resolve similar  
18 ascertainability issue in defining class period). The court **grants plaintiffs’ request to set**  
19 **November 30, 2022 as the class cut-off date.**

#### 20 **IV. CONCLUSION**

21 Plaintiffs’ motion for leave to file the Sixth Amended Complaint is **granted**. Plaintiffs are  
22 **directed to file the Sixth Amended Complaint within seven days of the filing of this order.**

23 Additionally, the court **grants plaintiffs’ request to set an end date for the Rule 23(b)(3)**  
24 **class**. The certified class for damages or restitution is now defined as follows:

25 All persons who, in the time period starting on April 14, 2011 (four years prior to the  
26 date of filing the initial Complaint in this action) through November 30, 2022, (1) have  
27 been tenants at any of Defendants’ California properties; (2) have participated in the  
28 “Section 8” Housing Choice Voucher Program in connection with their tenancies at the  
29 California properties; and (3) have paid additional charges set forth in Additional

1 Services Agreements in excess of their individual portions of the contract rent set forth  
2 in the HAP Contracts. ECF Nos. 92, 114.

3 This order resolves ECF No. 314.

4 IT IS SO ORDERED.

5 DATED: November 27, 2023.

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CHIEF UNITED STATES DISTRICT JUDGE