

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

STATE OF TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 7:15-cv-00151-O
	§	
UNITED STATES OF AMERICA, et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Plaintiffs’ Motion for Leave to File Second Amended Complaint (ECF No. 105), filed September 7, 2018; Defendants’ Response (ECF No. 110), filed September 12, 2018; and Plaintiffs’ Reply (ECF No. 111), filed September 13, 2018. The motion is ripe for review. Having considered the motion and applicable law, the Court finds that Plaintiffs’ motion (ECF No. 105) should be and is hereby **DENIED**.

After the time to amend has passed, “ordinarily, Federal Rule of Civil Procedure 15(a) governs the amendment of pleadings.” *Filgueira v. U.S. Bank Nat’l Ass’n*, 734 F.3d 420, 422 (5th Cir. 2013); *S&W Enters., LLC v. SouthTrust Bank of Ala., N.A.*, 315 F.3d 533, 535 (5th Cir. 2003). It provides that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” FED. R. CIV. P. 15(a). However, “if an amendment would require the modification of a previously entered scheduling order,” Rule 16(b) applies. *Filgueira*, 734 F.3d at 422. Rule 16(b) provides that a scheduling order “may be modified only for good cause and with the judge’s consent.” FED. R. CIV. P. 16(b)(4). If a litigant shows good cause for missing the deadline, then the Court will apply the “more liberal standard of Rule 15(a).” *Filgueira*, 734 F.3d at 422.

To determine whether good cause exists under Rule 16(b)(4), the court considers: “(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.” *Id.*; see also *Valcho v. Dall Cnty. Hosp. Dist.*, 658 F. Supp. 2d 802, 814 (N.D. Tex. 2009) (Fitzwater, C.J.).

If good cause exists, the court will then weigh relevant factors to determine whether leave to amend should be granted under Rule 15(a). *Filgueira*, 734 F.3d at 422. Factors relevant to a Rule 15(a) determination include: (1) undue delay in filing the motion for leave; (2) whether the movant acted in bad faith or with a dilatory motive; (3) failure to cure deficiencies by previous amendments; (4) the possibility of undue prejudice to adverse parties; and (5) whether the amendment is futile. *Cent. Laborers’ Pension Fund v. Integrated Elec. Servs. Inc.*, 497 F.3d 546, 556 (5th Cir. 2007) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The scheduling order in this case required amended pleadings be filed by April 26, 2016. Sched. Order 2, ECF No. 23. The Court finds that the significant delay in filing this motion weighs against both a showing of good cause under Rule 16(b) and permitting an amendment under the more lenient Rule 15(a). There has been a full and thorough disposition of Plaintiffs’ claims on the merits, and the case is on the verge of a final judgment. Plaintiffs explain they could not amend in time because they did not know the 2018 HIPF would be imposed. Yet future imposition of the HIPF was always a factual possibility in this lawsuit, and there is no bar to Plaintiffs filing a new suit within the appropriate time period. At this point—nearly three years after this suit was filed and after a full and thorough disposition of Plaintiffs’ claims on the merits—allowing an amendment would prejudice Defendants. Plaintiffs failed to show good cause to bring new claims at this juncture and the Court finds that justice does not require an amendment due to the posture

of this case. For the foregoing reasons, Plaintiffs' Motion for Leave to File a Second Amended Complaint (ECF No. 105) is **DENIED**.

SO ORDERED on this **20th day of September, 2018**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE