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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sunny Anthony,

10 Plaintiff,

11 v.

12 Trax International Corporation,

13 Defendant.
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No. CV-16-02602-PHX-ESW

ORDER

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16 Pending before the Court is Defendant's fully briefed Motion to Amend
17 Scheduling Order and Motion for Leave to Amend Answer and Memorandum of Points
18 and Authorities in Support (Docs. 48, 49, 54, 56). Defendant seeks leave to amend the
19 Joint Rule 16 Case Management Order to extend the time to amend pleadings previously
20 set for January 8, 2017 (Doc. 13 at 2) to allow Defendant leave to amend its Answer
21 (Doc. 7) to add the affirmative defense of failure to mitigate. Plaintiff asserts that (i)
22 Defendant has failed to show good cause to justify the untimely amendment, (ii) Plaintiff
23 would be prejudiced by the amendment, and (iii) amendment would be futile in this case.

24 As previously noted, the deadline for amendment of pleadings was January 8,
25 2017. Fact discovery closed on August 15, 2017 (Doc. 33). It is undisputed that
26 Defendant deposed Plaintiff on April 19, 2017. Cross motions for summary judgment are
27 currently fully briefed and pending before the Court (Docs. 44, 46). The Complaint filed
28 August 2, 2016 was preceded by an EEOC investigation in which all parties participated

1 (Doc. 1 at 2). Defendant knew or should have known of the existence of the failure to
2 mitigate affirmative defense issue well before the filing of this Motion. Defendant did
3 not file this Motion until after Plaintiff asserted in her Motion for Summary Judgment
4 that Defendant waived the affirmative defense of failure to mitigate by failing to plead it
5 in the Answer (Doc. 46 at 14-15).

6 Under Fed. R. Civ. P. 16(b), a district court has the authority to establish a
7 schedule that sets pretrial deadlines, including a deadline for motions to amend pleadings.
8 A Rule 16 scheduling order may be “modified only for good cause and with the judge’s
9 consent.” Fed. R. Civ. P. 16(b)(4). This is because “[a] scheduling order is not a
10 frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel
11 without peril.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)
12 (citation and internal quotations marks omitted). “Disregard of the order would
13 undermine the court’s ability to control its docket, disrupt the agreed-upon course of the
14 litigation, and reward the indolent and the cavalier.” *Id.*

15 Once a district court has filed a Rule 16 scheduling order setting a deadline for
16 amending pleadings, a motion seeking to amend pleadings is governed first by Rule 16(b)
17 and only secondarily by Rule 15(a). *Johnson*, 975 F.2d at 607-09 (“A court’s evaluation
18 of good cause is not coextensive with an inquiry into the propriety of the amendment
19 under . . . Rule 15.”); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000).
20 “If [the court] considered only Rule 15(a) without regard to Rule 16(b), [it] would render
21 scheduling orders meaningless and effectively would read Rule 16(b) and its good cause
22 requirement out of the Federal Rules of Civil Procedure.” *Sosa v. Airprint Systems, Inc.*,
23 133 F.3d 1417, 1419 (11th Cir. 1998).

24 The standards of review under Rules 15 and 16 are markedly different. “Unlike
25 Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the party
26 seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s
27 ‘good cause’ standard primarily considers the diligence of the party seeking the
28 amendment.” *Johnson*, 975 F.2d. at 609. Although prejudice to the opposing party can

1 be an additional reason to deny a motion to amend under Rule 16, the focus of the inquiry
2 is on the movant's reasons for seeking modification. *Id.* If the movant "was not diligent,
3 the inquiry should end." *Id.*

4 The Court finds that Defendant has failed to show the diligence and good cause
5 necessary for the Court to deviate from its Joint Rule 16 Case Management Order.
6 Because Defendant has not acted diligently, the inquiry ends.

7 Accordingly,

8 **IT IS ORDERED** denying Defendant's Motion to Amend Scheduling Order and
9 Motion for Leave to Amend Answer and Memorandum of Points and Authorities in
10 Support (Doc. 48).

11 Dated this 5th day of March, 2018.

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16 Honorable Eileen S. Willett
17 United States Magistrate Judge
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