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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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E. J. THOMPSON, VALERY  
THOMPSON, MIDSTATE PROPERTIES,  
VIOLET MANOR and CEDARS ROAD,  
LLC,

Plaintiffs,

v.

CITY OF REDDING, DEBORAH WRIGHT,  
WILLIAM NAGEL, and DOES 1 through  
10,

Defendants.

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NO. CIV. 2:09-1609 WBS CMK

ORDER RE: MOTION TO AMEND

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Defendants City of Redding, Deborah Wright, and William  
Nagel seek leave of court to amend their answer to add additional  
defenses based on newly discovered facts. Specifically,  
defendants seek to amend their answer to include estoppel  
defenses in light of their recent realization that plaintiffs  
have filed and been discharged from bankruptcy, but did not list  
this lawsuit as assets in their bankruptcy proceedings even

1 though it was pending when they filed bankruptcy. Plaintiffs  
2 have not opposed defendants' motion to amend their answer.<sup>1</sup>

3 Generally, a motion to amend is subject to Rule 15(a)  
4 of the Federal Rules of Civil Procedure, which provides that  
5 "[t]he court should freely give leave [to amend] when justice so  
6 requires." Fed. R. Civ. P. 15(a)(2). However, "[o]nce the  
7 district court ha[s] filed a pretrial scheduling order pursuant  
8 to Federal Rule of Civil Procedure 16[,] which establishe[s] a  
9 timetable for amending pleadings[,] that rule's standards  
10 control[]." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
11 607-08 (9th Cir. 1992). Here, the court issued a Status  
12 (Pretrial Scheduling) Order on November 13, 2009, which states  
13 that further amendments to the pleadings are prohibited "except  
14 with leave of court, good cause having been shown under Federal  
15 Rule of Civil Procedure 16(b)." (Docket No. 18.)

16 Under Rule 16(b), a party seeking leave to amend must  
17 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s  
18 'good cause' standard primarily considers the diligence of the  
19 party seeking amendment." Johnson, 975 F.2d at 609. "If that  
20 party was not diligent, the inquiry should end." Id. Although  
21 "the focus of the inquiry is upon the moving party's reasons for  
22 seeking modification[,] a court may consider the prejudice to  
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25 <sup>1</sup> Eastern District Local Rule 230(c) required plaintiffs  
26 to file an opposition or statement of non-opposition by June 20,  
27 2011. When plaintiffs failed to file either document, the court  
28 contacted plaintiffs' counsel, and he indicated that plaintiffs  
did not intend to oppose defendants' motion and that a statement  
of non-opposition would be forthcoming. Despite a second  
reminder from the court, plaintiffs have failed to file a  
statement of non-opposition.


1 the other parties when making its determination.<sup>2</sup> See id.

2 In the declaration submitted with defendants' motion to  
3 amend their answer, defendants' counsel details the procedural  
4 and factual background leading to defendants' current request for  
5 leave to amend their answer. The court finds that defendants  
6 have been diligent in seeking amendment and, based on the lack of  
7 opposition from plaintiffs and the fact that discovery is not set  
8 to close until November 30, 2011, it does not appear that  
9 plaintiffs will be prejudiced if defendants are granted leave to  
10 file an amended answer. Accordingly, because defendants have  
11 shown good cause for leave to file the proposed amended answer  
12 (Docket No. 33-2), the court will grant defendants' motion.

13 IT IS THEREFORE ORDERED that defendants' motion to file  
14 an amended answer be, and the same hereby is, GRANTED. The  
15 hearing set for July 5, 2011, at 2:00 p.m. on this motion is  
16 hereby vacated.

17 Defendants shall file their amended answer within five  
18 days of the date of this Order.

19 DATED: June 29, 2011



20 WILLIAM B. SHUBB  
21 UNITED STATES DISTRICT JUDGE

22  
23 <sup>2</sup> If good cause is found, the court should then evaluate  
24 the request to amend the complaint in light of Rule 15(a)'s  
25 liberal standard. Johnson, 975 F.2d at 608. Courts commonly  
26 consider four factors when deciding whether to grant a motion for  
27 leave to amend a complaint under Rule 15(a): bad faith, undue  
28 delay, prejudice, and futility of amendment. Roth v. Marquez,  
942 F.2d 617, 628 (9th Cir. 1991). Because Rule 16(b)'s "good  
cause" inquiry essentially incorporates the first three factors,  
if a court finds that good cause exists, it should then deny a  
motion for leave to amend only if such amendment would be futile.  
Plaintiffs have not suggested that defendants' proposed  
amendments would be futile.