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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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J & J SPORTS PRODUCTIONS,  
INC.,

NO. CIV. 2:12-02899 WBS EFB

ORDER: MOTION TO AMEND ANSWER

Plaintiff,

v.

BLANCA E. MARAVILLA,  
individually and d/b/a LAS  
PALMAS MEXICAN RESTAURANT,

Defendant.

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Plaintiff J & J Sports Productions, Inc., brought suit against defendant Blanca E. Maravilla asserting claims arising from defendant's allegedly wrongful interception of a television program. Currently before the court is defendant's motion to amend her Answer.<sup>1</sup>

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<sup>1</sup> **Error! Main Document Only.** Because oral argument would not be of material assistance, the court orders this matter submitted on the briefs pursuant to Eastern District Local Rule 230(g).

1 I. Factual and Procedural Background

2 The court granted plaintiff's first motion to strike  
3 defendant's affirmative defenses as to defendant's first, second,  
4 third, fourth, and eighth defenses. (May 21, 2013 Order at 6:1-6  
5 (Docket No. 29).) The court granted defendant leave to amend the  
6 third defense and gave her fourteen days to file an amended  
7 answer consistent with its May 21, 2013 Order. (Id.) The court  
8 denied plaintiff's motion as to defendant's fifth, sixth, and  
9 seventh defenses. (Id.)

10 On June 3, 2013, defendant filed an amendment to her  
11 answer. (Docket No. 30.) She amended her fifth and seventh  
12 affirmative defenses and withdrew her sixth affirmative defense.  
13 (Id.) The court struck these amendments as beyond the scope of  
14 amendment permitted by its May 21, 2013 Order, but noted that  
15 defendant could file a motion for leave to amend. (July 24, 2013  
16 Order at 2:24-27, 3:2-6 (Docket No. 41).) The Status (Pretrial  
17 Scheduling) Order ("scheduling order") in this case, issued June  
18 18, 2013, set June 24, 2013 as the final date for amendments to  
19 the pleadings without show of good cause under Federal Rule of  
20 Civil Procedure 16(b). (June 18, 2013 Order at 2:2-6 (Docket No.  
21 33).) Defendant now requests leave to amend her Answer to  
22 improve readability and to add factual allegations to her  
23 affirmative defenses. (Docket No. 42.) For the following  
24 reasons, the court grants the motion.

25 II. Legal Standard

26 Generally, a motion to amend is subject to Rule 15(a)  
27 of the Federal Rules of Civil Procedure, which provides that  
28 "[t]he court should freely give leave [to amend] when justice so

1 requires." Fed. R. Civ. P. 15(a)(2). However, "[o]nce the  
2 district court ha[s] filed a pretrial scheduling order pursuant  
3 to Federal Rule of Civil Procedure 16[,] which establishe[s] a  
4 timetable for amending pleadings[,] that rule's standards  
5 control[]." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
6 607-08 (9th Cir. 1992); see In re W. States Wholesale Natural Gas  
7 Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2013).

8 Under Rule 16(b), a party seeking leave to amend must  
9 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s  
10 'good cause' standard primarily considers the diligence of the  
11 party seeking amendment." Johnson, 975 F.2d at 609. "If that  
12 party was not diligent, the inquiry should end." Id. Although  
13 "the focus of the inquiry is upon the moving party's reasons for  
14 seeking modification[,] a court may make its determination by  
15 noting the prejudice to other parties. Id.

16 If good cause is found, the court must then evaluate  
17 the request to amend in light of Rule 15(a)'s liberal standard.  
18 Id. at 608. Leave to amend should be granted unless amendment:  
19 (1) would cause prejudice to the opposing party, (2) is sought in  
20 bad faith, (3) creates undue delay, (4) or is futile. Chudacoff  
21 v. Univ. Med. Ctr. of S. Nev., 649 F.3d 1143, 1153 (9th Cir.  
22 2011) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).  
23 "Because Rule 16(b)'s 'good cause' inquiry essentially  
24 incorporates the first three factors, if a court finds that good  
25 cause exists, it should then deny a motion for leave to amend  
26 only if such amendment would be futile." Baisa v. Indymac Fed.  
27 Reserve, No. Civ. 2:09-1464 WBS JFM, 2010 WL 2348736, at \*1 (E.D.  
28 Cal. June 7, 2010).

1 III. Analysis

2 A. Good Cause Under Rule 16(b)

3 Because defendant seeks leave to amend her Answer after  
4 the court's June 24, 2013 deadline for amending pleadings, the  
5 court's threshold inquiry is under Rule 16(b). Defendant,  
6 however, seeks only to amend her Answer, not also to amend the  
7 scheduling order. While a court may deny as untimely a motion to  
8 amend after a scheduling order deadline has passed simply because  
9 the moving party did not additionally request a modification of  
10 the scheduling order, the court here declines to do so. See  
11 Johnson, 975 F.2d at 608. Instead, the court exercises its  
12 discretion to construe the present motion as one to amend the  
13 scheduling order. See Orozco v. Midland Credit Mgmt. Inc., 2:12-  
14 CV-02585-KJM, 2013 WL 3941318, at \*3 (E.D. Cal. July 30, 2013)  
15 (citing Johnson, 975 F.2d at 608) (construing the plaintiff's  
16 request to amend the complaint as a request to amend the  
17 scheduling order).

18 Neither party addressed whether defendant has shown  
19 good cause to amend the scheduling order. Although defendant now  
20 requests to make additional changes to the Answer, including to  
21 her affirmative defenses, defendant's attempt to amend her Answer  
22 before the scheduling order deadline indicates that she has been  
23 diligent in seeking to amend her Answer. Defendant could not  
24 have foreseen that the court would grant plaintiff's request to  
25 strike her amendment after the deadline to amend had passed.  
26 Further, plaintiff does not contend that it would now be  
27 prejudiced by defendant's proposed changes to her Answer. See  
28 Johnson, 975 F.2d at 609. The court finds, therefore, that

1 defendant has shown good cause to amend the scheduling order.

2 B. Limitations on Amendment Under Rule 15(a)

3 Plaintiff does not oppose defendant's amendments to the  
4 Answer that go to readability, but objects to defendant's  
5 alterations to her two affirmative defenses on the ground that  
6 the amendments are futile. (Opp'n at 1:25-27, 3:3-16 (Docket No.  
7 45).)

8 Defendant's proposed First Amended Answer amends her  
9 fifth and seventh affirmative defenses, renumbering them,  
10 respectively, affirmative defenses one and two. Her proposed  
11 first defense states:

12 1. FOR A FIRST AFFIRMATIVE DEFENSE to Counts I, II and  
13 III of Plaintiff's complaint, DEFENDANT alleges that  
14 on December 2, 2011, DEFENDANT purchased from Dish  
15 Network the right to view live a boxing match between  
16 Miguel Angel Cotto and Antonio Margarito, herein "the  
17 FIGHT," to be held the next day. The purchase was  
18 made for a reasonable price, was intended for  
19 recreational viewing, and without any knowledge on the  
20 part of DEFENDANT of who the Plaintiff was or whether  
the Plaintiff had any rights to the broadcast of the  
fight. DEFENDANT thus became a good faith purchaser,  
for value, and who was not aware and had no reason to  
believe that her acts constituted a violation of 47  
U.S.C. [§] 553 and 47 U.S.C. [§] 605 and is therefore  
not liable to Plaintiff under either 47 U.S.C. [§] 553  
and 47 U.S.C. [§] 605, or on the basis of conversion.

21 (Def.'s Proposed Am. Answer at 4:14-25 (Docket No. 42).)

22 Plaintiff first argues that the reference to  
23 "recreational viewing" is irrelevant because nothing in the  
24 piracy statutes create an exception for "recreational viewing."  
25 (Opp'n at 3:26-28.) Plaintiff is correct that while 47 U.S.C. §  
26 605 includes exceptions for "private viewing," these exceptions  
27 only apply to viewings in "an individual's dwelling unit," which  
28 are not at issue here. See 47 U.S.C. §§ 605(b), (d)(4).

1 Defendant, however, explains that “[t]he essence of [her] defense  
2 is that [she] was a good faith purchaser for value without notice  
3 of who the plaintiff was or whether the plaintiff had any rights  
4 to the broadcast . . . .” (Reply at 2:26-3:1 (Docket No. 47).)  
5 The purpose of adding the allegation is to show that she had no  
6 reason to believe that her acts constituted a violation of the  
7 piracy statutes. (Id. at 2:15-18.)

8 As the court explained in its prior Order on  
9 plaintiff’s first motion to strike, it did not strike this  
10 affirmative defense because even if it does not apply to allow  
11 defendant to escape liability altogether, it may be relevant to  
12 determining plaintiff’s damages. (May 21, 2013 Order at 5:20-22  
13 (Docket No. 29).) The court cannot find, therefore, that her  
14 addition of the phrase “was intended for recreational viewing” is  
15 irrelevant or futile.

16 Defendant’s proposed second defense states:

17 2. FOR A SECOND AFFIRMATIVE DEFENSE to Counts I and II  
18 of Plaintiff’s complaint, DEFENDANT alleges that she  
19 did not willfully violate either 47 U.S.C. [§] 553 or  
20 47 U.S.C. [§] 605 as Plaintiff had no contract with  
21 DEFENDANT, DEFENDANT had no idea that anybody other  
than Dish Network had rights to the broadcast of the  
FIGHT, and the showing of the FIGHT was not intended  
for commercial or private financial gain.

22 (Def.’s Proposed Am. Answer at 5:1-6.)

23 Plaintiff argues that “[t]his defense misstates the  
24 law. There is no requirement of a contract between [p]laintiff  
25 and [d]efendant before she can be liable for a willful  
26 violation.” (Opp’n at 4:15-17.) Defendant, however, does not  
27 suggest that a contract is required before she can be liable for  
28 a violation of the piracy statutes. Rather, as defendant argues,

1 the addition of the allegation that defendant did not have a  
2 contract with plaintiff appears to have been added to bolster her  
3 defense that she did not willfully violate the piracy statutes  
4 because she had no knowledge that any entity besides Dish Network  
5 had rights to the broadcast of the fight. (See Reply at 3:3-5.)  
6 Because defendant's addition of this allegation bolsters her  
7 defense, it is not futile.

8 Finally, plaintiff argues that defendant limited this  
9 defense to 47 U.S.C. § 553 in her Answer, but provides no reason  
10 why she has now expanded it to include 47 U.S.C. § 605.  
11 Defendant explains, however, that extending the defense to cover  
12 plaintiff's § 605 claim is to correct a mistake made by her prior  
13 counsel. (Reply at 3:9-17; see Mitterling Decl. at 1:22-2:2  
14 (Docket No. 48).) Plaintiff has not otherwise argued that this  
15 amendment or the addition of the allegation regarding the lack of  
16 contract would prejudice plaintiff, create undue delay, or is  
17 sought in bad faith. Indeed, discovery in this case is not set  
18 to close until June 1, 2014. (June 18, 2013 Order at 2:25.)  
19 Accordingly, leave to amend the Answer will not be denied on the  
20 ground that any of defendant's proposed changes are futile.

21 IT IS THEREFORE ORDERED that defendant's motion for  
22 leave to amend her Answer be, and the same hereby is, GRANTED.

23 Dated: September 5, 2013

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25 **WILLIAM B. SHUBB**  
26 **UNITED STATES DISTRICT JUDGE**  
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