



1 Scheduling Order on May 6, 2015, which states that further  
2 amendments to the pleadings are prohibited "except with leave of  
3 court, good cause having been shown under Federal Rule of Civil  
4 Procedure 16(b)." (Docket No. 27.) Plaintiffs now move to modify  
5 the court's Scheduling Order so that they may file a First  
6 Amended Complaint ("FAC").

7           Generally, a motion to amend is subject to Rule 15(a)  
8 of the Federal Rules of Civil Procedure, which provides that  
9 "[t]he court should freely give leave [to amend] when justice so  
10 requires." Fed. R. Civ. P. 15(a)(2). However, "[o]nce the  
11 district court ha[s] filed a pretrial scheduling order pursuant  
12 to Federal Rule of Civil Procedure 16[,], which establishe[s] a  
13 timetable for amending pleadings[,], that rule's standards  
14 control[ ]." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
15 607-08 (9th Cir. 1992). Here, the Scheduling Order controls and  
16 plaintiffs must meet the requirements of Rule 16(b).

17           A party seeking leave to amend under Rule 16(b) must  
18 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s  
19 'good cause' standard primarily considers the diligence of the  
20 party seeking amendment." Johnson, 975 F.2d at 609. "If that  
21 party was not diligent, the inquiry should end." Id. Although  
22 the focus of the inquiry is on the moving party's diligence, "the  
23 existence or degree of prejudice to the party opposing the  
24 modification might supply additional reasons to deny a motion."  
25 Id.

26           Plaintiffs seek to amend the Complaint to ensure that  
27 the allegations give defendants fair notice of the barriers that  
28 are grounds for their ADA claim, as required by the Ninth

1 Circuit. (Pl.'s Mot. at 2 (Docket No. 34)); see Oliver v. Ralphs  
2 Grocery Co., 654 F.3d 903 (9th Cir. 2011). After gaining access  
3 to the site for an inspection, plaintiffs now seek to amend ¶ 17  
4 of the Complaint so that it alleges barriers to disabled access  
5 with greater specificity. (See McGuinness Decl. Ex. A ("Proposed  
6 FAC") ¶ 17 (Docket No. 35-1).) Defendants have not indicated how  
7 the amendment of a single paragraph of the Complaint will  
8 prejudice defendants. In fact, it would appear that plaintiffs'  
9 proposed amendment may actually benefit defendants by providing  
10 them with better notice regarding the alleged barriers.

11 Turning to plaintiffs' diligence, plaintiffs conducted  
12 the site inspection on May 11, 2015, six days after the court  
13 issued its Scheduling Order. (Pl.'s Mot. at 2.) On June 8,  
14 plaintiffs received their access consultant's preliminary draft  
15 findings, which included measurements relevant to establishing  
16 barriers. (Pl.'s Reply at 3 (Docket No. 39).) Plaintiffs  
17 represent that it was not until the inspection and receipt of the  
18 findings that they learned of several key facts relating to the  
19 access barriers at the site. (Id.) Their proposed amendment to  
20 ¶ 17 of the Complaint incorporates those new facts.

21 Plaintiffs asked defendants twice to stipulate to their  
22 filing of the FAC on July 13 and 14, before defendants answered  
23 the Complaint. (McGuinness Decl. Ex. A.) Defendants never  
24 replied and filed an Answer. (Id. Ex. B.) Plaintiffs then filed  
25 the present motion for leave to amend on July 23, 2015.

26 Approximately five weeks elapsed between the receipt of  
27 the consultant's draft findings and the request for a stipulation  
28 from defendants. Considering that time frame, the court is

1 satisfied that plaintiffs were reasonably diligent in alerting  
2 defendants of their intentions and proceeding with a formal  
3 motion.

4 If good cause is found, the court must then evaluate  
5 the request to amend the Complaint in light of Rule 15(a)'s  
6 liberal standard. Id. at 608. Under Rule 15(a), "leave to amend  
7 should be granted unless amendment would cause prejudice to the  
8 opposing party, is sought in bad faith, is futile, or creates  
9 undue delay." Johnson, 975 F.2d at 607. None of those  
10 circumstances are present here.

11 IT IS THEREFORE ORDERED that plaintiffs' motion to  
12 modify the scheduling order and for leave to file an amended  
13 complaint be, and the same hereby is, GRANTED.

14 Plaintiffs shall have twenty days from the date this  
15 Order is signed to file an amended complaint consistent with this  
16 Order.

17 Dated: August 20, 2015



18 **WILLIAM B. SHUBB**  
19 **UNITED STATES DISTRICT JUDGE**  
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