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United States District Court  
Northern District of California

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**ALAN STRICKLAND AND KELLY STRICKLAND,**  
  
Plaintiffs,  
  
v.  
  
**MASAI UJIRI; TORONTO RAPTORS; MAPLE  
LEAF SPORTS & ENTERTAINMENT;  
NATIONAL BASKETBALL ASSOCIATION,**  
  
Defendants.

**Case No. 20-cv-981-YGR**  
  
**ORDER GRANTING LEAVE TO FILE AN  
AMENDED JOINT ANSWER AND  
COUNTERCLAIM; DENYING ADMINISTRATIVE  
MOTION TO SEAL**  
  
**DKT. No. 35, 38**

Pending before the Court is the Motion of defendants Masai Ujiri and Toronto Raptors/Maple Leaf Sports & Entertainment for Leave to File an Amended Joint Answer and Counterclaim. (Dkt. No. 35.) The only proposed amendment asserts a counterclaim on defendant Ujiri’s behalf against plaintiff Alan Strickland for excessive force pursuant to 42 U.S.C. § 1983, assault, battery, and intentional infliction of emotional distress, based upon recently obtained discovery in this matter. In all other respects, defendants’ original Joint Answer remains unchanged. Per the Court’s scheduling order (Dkt. No. 30), any motions to amend pleadings at this point in the proceedings require a showing of good cause pursuant to Rule 16(b)(4). The Court finds such good cause and the motion is **GRANTED**.<sup>1</sup>

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES** the hearing set for **September 22, 2020**.

1 Defendants bring their motion pursuant to Rules 15 and 16(b)(4). A request to amend a  
2 pleading after the Court’s deadline for doing so implicates both Rule 15 and 16.<sup>2</sup> Rule 16(b)  
3 governs the issuance and modification of pretrial scheduling orders, and Rule 15(a) governs  
4 amendment of pleadings. Fed. R. Civ. P. 16(b) and 15(a). “Rule 16(b)’ s ‘good cause’ standard  
5 primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth*  
6 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Under Rule 15(a), “[t]he four factors  
7 commonly used to determine the propriety of a motion for leave to amend are bad faith, undue  
8 delay, prejudice to the opposing party, and futility of amendment.” *Abels v. JBC Legal Group,*  
9 *P.C.*, 229 F.R.D. 152, 155-56 (N.D. Cal. 2005) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

10 Based upon the timing of the discovery responses giving rise to the proposed amendment,  
11 the Court finds good cause to permit the filing of the proposed amended joint answer and  
12 counterclaim pursuant to Rule 16(b)(4). The record indicates no failure of diligence by defendants  
13 in seeking leave to amend at this time. On July 21, 2020, plaintiffs served their first document  
14 production, which contained several pieces of video footage including that of plaintiff Alan  
15 Strickland’s body camera, capturing the alleged encounter from his viewpoint. The motion to  
16 amend was filed with reasonable diligence thereafter.

17 The Court further finds no reason to alter the current scheduling order beyond permitting  
18 this amendment. Trial is over fourteen months away, beginning on December 13, 2021, and fact  
19 and expert discovery deadlines are also several months away, on April 2, 2021 and June 4, 2021,  
20 respectively. While plaintiffs suggest that the proposed amendment will require pushing out  
21 discovery deadlines and the trial, they do so in only the most conclusory manner.

22 Further, considering the factors applicable to leave to amend under Rule 15, the Court does  
23 not find bad faith, undue delay, prejudice to plaintiff, or futility of the proposed amendment. That  
24 defendant Ujiri did not file a counterclaim immediately against plaintiff Strickland does not imply  
25 bad faith. Strickland does dispute that the video upon which the counterclaim is based was recently

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27 <sup>2</sup> See Phillips, J. and Stevenson, J., FED. CIV. PRO. BEFORE TRIAL (Rutter Group Prac.  
28 Guide) § 15:32 (“Once the scheduling order deadline has passed, Rule 16(b)(4) requires a party to  
show ‘good cause’ before being granted leave to amend the pleadings, *in addition to* the showing  
required under Rule 15.”) (emphasis in original).

1 produced in discovery. Filing the request to amend thereafter suggests neither bad faith nor undue  
2 delay. Further, no prejudice has been shown. Discovery is in its early stages, the discovery  
3 deadlines are several months away, and no depositions apparently have been taken by any party.  
4 The proposed amendment does not fail on its face to state a claim. The merits analysis Strickland  
5 urges is not appropriate on a motion to amend the pleadings. Defendants meet the objective factors  
6 for granting leave to amend.

7 With respect to the administrative motion to seal (Dkt. No. 38), the motion is **DENIED AS**  
8 **MOOT**. Plaintiffs seek to seal documents designated by defendant NBA as confidential pursuant to  
9 the protective order entered in this case. Defendant NBA filed a response to the motion (Dkt. No.  
10 40) withdrawing the confidentiality designation as to the document identified as Exhibit 4 to  
11 plaintiffs' administrative motion. Thus, the administrative motion as to Exhibit 4 is moot.  
12 Plaintiffs further seek to seal two-and-a-half pages of proposed supplemental briefing based on that  
13 document, identified as Exhibit 5 to the administrative motion. The Court has considered the  
14 arguments therein and finds that they do not alter the analysis. Plaintiffs are directed to file an  
15 unredacted version of the documents on the public docket **within 7 days** of issuance of this Order.  
16 *See* Civil L. R. 79-5(f)(2).

17 Defendants shall file their proposed amended joint answer and counterclaim within **3 court**  
18 **days** of issuance of this Order.

19 Plaintiffs shall file their response to the counterclaim within **21 calendar days** thereafter.

20 This Order terminates Docket Nos. 35 and 38.

21 **IT IS SO ORDERED.**

22 Date: September 15, 2020

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE

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