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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

VALVOLINE INSTANT OIL CHANGE  
FRANCHISING, INC.; ASHLAND  
CONSUMER MARKETS, a commercial  
unit of ASHLAND, INC.; ASHLAND  
LICENSING AND INTELLECTUAL  
PROPERTY LLC; HENLEY  
ENTERPRISES, INC.; HENLEY PACIFIC  
LLC; HENLEY PACIFIC LA LLC; and  
HENLEY PACIFIC SD LLC,

Plaintiffs,

vs.

RFG OIL, INC.,

Defendant,

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RFG OIL, INC.,

Counter-Claimant,

vs.

VALVOLINE INSTANT OIL CHANGE  
FRANCHISING, INC.; ASHLAND  
CONSUMER MARKETS, a commercial  
unit of ASHLAND, INC.; ASHLAND  
LICENSING AND INTELLECTUAL  
PROPERTY LLC; HENLEY  
ENTERPRISES, INC.; HENLEY PACIFIC  
LLC; HENLEY PACIFIC LA LLC; and  
HENLEY PACIFIC SD LLC,

Counter-Defendants.

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CASE NO. 12-cv-2079-GPC-KSC

**ORDER DENYING  
PLAINTIFFS/  
COUNTERCLAIMANTS'  
MOTION FOR JUDGMENT  
ON THE PLEADINGS**

[Dkt. No. 124.]

1 Plaintiffs Valvoline Instant Oil Change Franchising, Inc. (“VIOCF”), Ashland  
2 Consumer Markets, a commercial unit of Ashland, Inc. (“Ashland”)<sup>1</sup>, Ashland Licensing  
3 and Intellectual Property LLC (“ALIP”), Henley Enterprises, Inc., Henley Pacific, LLC,  
4 Henley Pacific LA LLC, and Henley Pacific SD LLC filed a complaint against  
5 Defendant RFG Oil, Inc. (“RFG”) on February 8, 2012 in the United States District  
6 Court for the Eastern District of Kentucky and the case was transferred to this Court on  
7 August 22, 2012 pursuant to 28 U.S.C. § 1404(a). (Dkt. No. 42.) On September 5,  
8 2012, RFG filed a counterclaim against all Plaintiffs. (Dkt. No. 47.) On October 10,  
9 2012, all Plaintiffs filed a first amended complaint. (Dkt. No. 59.) On October 11,  
10 2012, the case was transferred to the undersigned judge. (Dkt. No. 60.) On August 5,  
11 2013, the Court granted in part and denied in part Counter Defendants VIOCF, Ashland  
12 and ALIP’s motion to dismiss RFG’s counterclaim with leave to amend. (Dkt. No. 74.)  
13 On August 26, 2013, RFG filed an amended counterclaim. (Dkt. No. 75.) On June 4,  
14 2014, the Court denied Plaintiffs VIOCF and Ashland’s motion for partial summary  
15 judgment and Counter Defendants VIOCF, Ashland and ALIP’s motion for summary  
16 judgment on the amended counterclaim. (Dkt. No. 96.) A pretrial conference was held  
17 on September 22, 2014 where the Court set a trial date on February 9, 2015 with  
18 motions in limine to be heard on January 16, 2015. (Dkt. No. 120.) The pretrial order  
19 was filed on September 23, 2014. (Dkt. No. 122.)

20 On October 10, 2014, Plaintiffs VIOCF, Ashland, and ALIP (“Plaintiffs”) filed  
21 a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure  
22 12(c) on certain counts and allegations in the first amended counterclaim. (Dkt. No.  
23 124.) Defendant filed an opposition on October 24, 2014. (Dkt. No. 126.) Plaintiffs  
24 filed a reply on October 29, 2014. (Dkt. No. 127.)

### 25 Discussion

26 In its opposition, Defendant argues that the motion is untimely and Plaintiffs have  
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28 <sup>1</sup>Ashland is otherwise known as “Valvoline” and does business as “Valvoline  
Instant Oil Change.”

1 failed to show “good cause” to justify modification of the scheduling order. In reply,  
2 Plaintiffs argue that their motion is timely because under Rule 12(c), a motion for  
3 judgment on the pleadings may be brought at any time as long as it will not delay trial.  
4 Both parties apply the incorrect standard.

5       Once a scheduling order is filed, the “good cause” standard under Federal Rule  
6 of Civil Procedure 16 governs any modification of the scheduling order. Fed. R. Civ.  
7 P. 16(b) (a district judge must enter a scheduling order and that the “schedule may be  
8 modified only for good cause and with the judge’s consent.”); Johnson v. Mammoth  
9 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). However, after a pretrial  
10 conference and a pretrial order has been filed, the court “may modify the order issued  
11 after a final pretrial conference only to prevent manifest injustice.” Fed. R. Civ. P.  
12 16(e); see Galdamez v. Potter, 415 F.3d 1015, 1020 (9th Cir. 2005) (plaintiff failed to  
13 demonstrate manifest injustice by filing a motion to add a retaliation claim at trial after  
14 the close of evidence where plaintiff had all the evidence well before the pretrial order  
15 and the defendant would be deprived of any opportunity to present additional evidence  
16 or examine witnesses on this issue); see also Johnson, 975 F.2d at 608.

17       An amendment to a pretrial order requires a showing that the amendment is  
18 necessary to prevent “manifest injustice.” Galdamez, 415 F.3d at 1020. The Court  
19 looks at four factors “(1) the degree of prejudice or surprise to the defendants if the  
20 order is modified; (2) the ability of the defendants to cure the prejudice; (3) any impact  
21 of modification on the orderly and efficient conduct of the trial; and (4) any willfulness  
22 or bad faith by the party seeking modification.” Id. The district court has discretion in  
23 making this determination. Id.

24       Rule 16 requires that the scheduling order must “limit the time to join other  
25 parties, amend the pleadings, complete discovery and file motions.” Fed. R. Civ. P.  
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1 16(b)(3)(A). In this case, the case management order<sup>2</sup> states that all “other pretrial  
2 motions . . . must be filed on or before March 31, 2014.” (Dkt. No. 73.) This  
3 constitutes a deadline to file motions by a party, which includes dispositive motions  
4 such as a motion for judgment on the pleadings. (Dkt. No. 73.) Plaintiffs creatively  
5 argue that the “all other pretrial motions” deadline does not really apply to “all” motions  
6 because motions in limine are to be filed in January 2014.<sup>3</sup> The Court rejects their  
7 argument.

8 In this case, a pretrial conference was held on September 19, 2014 and a pretrial  
9 order was filed on September 23, 2014. (Dkt. Nos. 120, 122.) Trial is scheduled on  
10 February 9, 2015 with motions in limine to be heard on January 16, 2015. (Dkt. No.  
11 121.) The motion for judgment on the pleading was filed on October 10, 2014. (Dkt.  
12 No. 124.) Therefore, since the pretrial conference has passed and pretrial order filed,  
13 the “manifest injustice” standard applies as to whether the Court should modify the  
14 pretrial order and allow the late filing of Plaintiffs’ motion for judgment on the  
15 pleadings. See Galdamez, 415 F.3d at 1020.

16 The instant motion comes late in the case after conclusion of discovery, after  
17 rulings on dispositive motions, and after a pretrial conference where a trial date has been  
18 scheduled and a pretrial order filed. Plaintiffs provide no reasons why the pretrial order  
19 should be amended to prevent “manifest injustice.” In fact, Plaintiffs minimize the  
20 requirements under the Federal Rules of Civil Procedure and as analyzed by the Ninth  
21 Circuit. In their reply, Plaintiffs write, “Plaintiff’s motion complies with Rule 12, is a  
22 productive means of streamlining this case before trial, does not run afoul of the explicit  
23 terms of any Scheduling Order, and imposes no prejudice on any party. If there were  
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25 <sup>2</sup>The Magistrate Judge issued new dates, pursuant to the parties’ joint motion,  
26 entitled “Order Granting Joint Motion to Continue Fact Discovery Completion Date.”  
27 (Dkt. No. 73.) The original pretrial motions deadline was January 20, 2014. (Dkt. No.  
71.)

28 <sup>3</sup>The Court sets the schedule for filing motions in limine at the pretrial  
conference. (Dkt. Nos. 120, 121.)

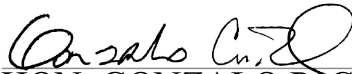
1 any argument that a prior Scheduling Order required the earlier filing of this motion, the  
2 court has the authority to amend that requirement now, and should exercise its discretion  
3 to do so.” (Dkt. No. 127 at 3.) Plaintiffs provide no explanation why the court should  
4 amend the pretrial order to allow their late filing in order to prevent manifest injustice.  
5 Contrary to Plaintiffs’ argument, the filing of Plaintiffs’ motion at this late stage is in  
6 direct contravention of the requirements under the Federal Rules of Civil Procedure,  
7 Ninth Circuit law and even the Pretrial Order where it states that, “[t]he foregoing  
8 admissions having been made by the parties, and the parties having specified the  
9 foregoing issues of fact and law remaining to be litigated, this order must supplement  
10 the pleadings and govern the course of the trial of this cause, unless modified to prevent  
11 *manifest injustice.*” (Dkt. No. 122 at 25) (emphasis added). Thus, the Court concludes  
12 that Plaintiffs has not demonstrated that an amendment to the pretrial order to allow the  
13 late filing of a dispositive motion is necessary to prevent “manifest injustice.” See  
14 Galdamez, 415 F.3d at 1020. Accordingly, the Court DENIES Plaintiffs/  
15 Counterdefendants’ motion for judgment on the pleadings.

### 16 **Conclusion**

17 Based on the above, the Court DENIES Plaintiffs/Counterdefendants’ motion for  
18 judgment on the pleadings. To the extent Defendant does not challenge or oppose  
19 dismissal as to certain issues, parties, or causes of actions in Plaintiffs’ motion, the  
20 Court directs the parties to file a joint motion to dismiss these allegations, party and/or  
21 causes of action. The hearing set for November 21, 2014 shall be **vacated**.

22 IT IS SO ORDERED.

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24 DATED: November 7, 2014

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26 HON. GONZALO P. CURIEL  
27 United States District Judge  
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