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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ZEETOGROUP, LLC; TIBRIO, LLC,  
Plaintiffs,  
v.  
NICHOLAS FIORENTINO, an  
individual; SABIHA TUDESCO, an  
individual; INTERNET THINGS, LLC;  
SIMPLY SWEEPS, LLC;  
CREDIREADY, LLC; TWO MINUTE  
MEDIA TOPICS, LLC; and DOES 1-100,  
inclusive,  
Defendants.

Case No.: 19-CV-458 JLS (NLS)

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE FIRST AMENDED  
COMPLAINT**

(ECF No. 56)

Presently before the Court is Plaintiffs’ Motion for Leave to File First Amended Complaint (“Mot.,” ECF No. 56). Also before the Court is Defendants’ Opposition to (“Opp’n,” ECF No. 63) and Plaintiffs’ Reply in Support of (“Reply,” ECF No. 67) the Motion. The Court vacated the hearing and took the Motion under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). See ECF No. 68. After considering the Parties’ arguments and the law, the Court **GRANTS** Plaintiffs’ Motion.

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## BACKGROUND

1  
2 Plaintiffs ZeetoGroup, LLC and Tibrio, LLC are San Diego-based internet lead  
3 generation companies. See Mot. at 5. Defendant Internet Things, LLC is a competing  
4 internet lead generation company. See *id.* Defendant Nicholas Fiorentino is the founder  
5 and CEO of Internet Things. *Id.* at 6. Internet Things, owns and operates multiple  
6 subsidiaries, including Defendants Simply Sweeps, LLC; CrediReady, LLC; and Two  
7 Minute Media Topics (together, the “Entity Defendants”). See ECF No. 30 at 2.

8 Sometime in 2018, Mr. Fiorentino began recruiting Plaintiffs’ employees. Mot. at  
9 6. Among those employees was Rocky Iorio. Mot. at 6–7. Plaintiffs employed Mr. Iorio  
10 until November 1, 2018, when Mr. Iorio accepted a job with Defendant Internet Things.  
11 *Id.* at 6. During Mr. Iorio’s final weeks working for Plaintiffs, Mr. Fiorentino reached out  
12 to Mr. Iorio and asked him for a list of Plaintiffs’ “big buyers.” *Id.* Mr. Iorio complied  
13 with this request and sent Mr. Fiorentino screen shots of Plaintiffs’ big buyers, as well as  
14 “what campaign was working the best for each buyer, the revenue brought in by each  
15 campaign, the price point at which the traffic was being sold, and the competitive  
16 performance metrics.” *Id.* After becoming aware of Mr. Iorio’s actions, Plaintiffs  
17 discovered that many of the campaigns used by the Entity Defendants were the same as the  
18 campaigns Mr. Iorio provided to Mr. Fiorentino. *Id.* at 6. Defendants use of these  
19 campaigns led to damage to Plaintiffs’ reputation, advertisers spending less money with  
20 Plaintiffs, Plaintiffs’ revenue to decline substantially, and ultimately lay-offs of 23 of  
21 Plaintiffs’ employees. *Id.* at 5–6.

22 On March 8, 2019, Plaintiffs filed their Complaint seeking damages caused by  
23 Defendants’ misappropriation of trade secrets and confidential information. See ECF No. 1  
24 at 6–8. In October 2019, Plaintiffs sent Defendants interrogatories and document requests.  
25 Declaration of Jacob A. Gillick, Esq. (“Gillick Decl.”) ¶ 1; Mot. Ex. 2 at 11–239, ECF No.  
26 56-2; Mot. at 9. Plaintiffs complained that Defendants’ responses were evasive and  
27 included no documentation; consequently, the Parties met and conferred in December 2019  
28 and Defendants’ agreed to supplement the responses. Gillick Decl. ¶¶ 3, 4; Mot. at 9; Mot.

1 Ex. 2. Instead of providing supplemental discovery responses, however, in late December  
2 or early January, Defendants informed Plaintiffs that the Entity Defendants had all gone  
3 out of business. Gillick Decl. ¶ 5; Mot. at 9.

4 On March 19, 2020, Plaintiffs provided a notice to compel discovery to Defendants.  
5 See Gillick Decl. ¶ 12; Mot. Ex. 6, ECF No. 56-2 at 253–58. In response, counsel for the  
6 Entity Defendants claimed the entities were “defunct” and had ceased operating. See  
7 Gillick Decl. ¶ 13. Plaintiffs’ counsel then checked the California Secretary of State’s  
8 website and discovered that, three weeks after Plaintiffs served the Complaint, the Entity  
9 Defendants had been converted into new limited partnerships: Internet Things, LP; Simply  
10 Sweeps, LP; Crediready, LP; and Two Minute Media Topics, LP (together, the “New  
11 LPs”). See Mot. at 10; Gillick Decl. ¶ 13.

12 Plaintiffs also discovered the conversions were initiated by Marc Barmazel through  
13 Premier Realty Management, Inc. See Gillick Decl. ¶ 13; Opp’n at 2. Mr. Barmazel is an  
14 investor in the Entity Defendants and owner of Premier Realty Holdings, LP; Premier  
15 Realty Management, Inc.; and Sunrise Self-Storage Management, Inc. (together, the  
16 “Premier Entities”). See *id.* After presenting Defendants with this newly discovered  
17 information, on April 27, 2020, Plaintiffs received supplemental discovery from  
18 Defendants. Gillick Decl. ¶¶ 13–14; Opp’n at 3. This new discovery included a litany of  
19 emails showing Mr. Barmazel’s involvement in the Entity Defendants’ day-to-day business  
20 affairs. See Reply at 4–7. Plaintiffs allege that Mr. Barmazel not only knew that  
21 Mr. Fiorentino was misappropriating trade secrets, but that he was “deeply involved” in  
22 the affair. Mot. at 13. Further, Plaintiffs allege that Mr. Barmazel was, in fact, “running  
23 the show” when the misappropriation occurred and is therefore liable for the  
24 misappropriation of trade secrets. See Reply at 2.

25 During discovery, Plaintiffs also discovered that Mr. Fiorentino’s ownership interest  
26 in the Entity Defendants and the New LPs is through Fiorentino Holdings, LLC—  
27 Mr. Fiorentino’s “suspected alter-ego.” Mot. at 10.

28 After making these discoveries, Plaintiffs filed their motion to amend.

1 **LEGAL STANDARDS**

2 **I. Rule 16**

3 Federal Rule of Civil Procedure 16(b)(4) provides that “[a] schedule may be  
4 modified only for good cause and with the judge’s consent.” Civil Local Rule 16.1(b)  
5 requires all counsel and parties to “proceed with diligence to take all steps necessary to  
6 bring an action to readiness for trial.” In determining whether there is “good cause” under  
7 Rule 16(b), the Court “primarily considers the diligence of the party seeking the  
8 amendment” and the “moving party’s reasons for seeking modification.” *Johnson v.*  
9 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

10 **II. Rule 15**

11 Pursuant to Federal Rule of Civil Procedure 15(a), a plaintiff may amend his  
12 complaint once as a matter of course within specified time limits. Fed. R. Civ. P. 15(a)(1).  
13 “In all other cases, a party may amend its pleading only with the opposing party’s written  
14 consent or the court’s leave. The court should freely give leave when justice so requires.”  
15 Fed. R. Civ. P. 15 (a)(2).

16 While courts exercise broad discretion in deciding whether to allow amendment,  
17 they have generally adopted a liberal policy. See *U.S. for Benefit & Use of Ehmcke Sheet*  
18 *Metal Works v. Wausau Ins. Cos.*, 755 F. Supp. 906, 908 (E.D. Cal. 1991) (citing *Jordan*  
19 *v. Cty. of L.A.*, 669 F.2d 1311, 1324 (9th Cir.), *rev’d* on other grounds, 459 U.S. 810  
20 (1982)). Accordingly, leave is generally granted unless the court harbors concerns “such  
21 as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
22 cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
23 party by virtue of allowance of the amendment, futility of the amendment, etc.” *Foman v.*  
24 *Davis*, 371 U.S. 178, 182 (1962).

25 **ANALYSIS**

26 Plaintiffs seek to amend their Complaint to add the New LPs; Fiorentino Holdings,  
27 LLC; Mr. Barmazel; and the Premier Entities as Defendants in this case. Mot. at 5.  
28 Plaintiffs allege that without their addition in this case, the responsible parties will avoid

1 liability and “set a precedent which would make litigation fruitless.” *Id.* at 17. Because  
2 Plaintiffs seek to amend their Complaint after the scheduling order deadline to amend  
3 pleadings, see *id.* at 15, Plaintiffs must meet both the Rule 16 standard to amend the  
4 scheduling order, as well as the Rule 15 standard to amend pleadings.

#### 5 **I. Rule 16**

6 To amend a pleading after a scheduling order deadline, the party seeking amendment  
7 must first satisfy the Rule 16(b) “good cause” standard to amend the scheduling order. See  
8 *Johnson*, 975 F.2d at 609. Rule 16’s good cause standard primarily considers the due  
9 diligence of the party seeking to amend. *Id.* Pretrial scheduling orders can only be  
10 amended where the orders could not “reasonably [have been] met despite the diligence of  
11 the party seeking the extension.” *Id.*

12 The deadline to amend the pleadings as set forth in the scheduling order was  
13 September 16, 2019. *Mot.* at 15. Plaintiffs contend that the timeline of events show they  
14 could not have met this deadline. See *id.* Although the Entity Defendants were converted  
15 out and re-established as limited partnerships on March 28, 2019—three weeks after this  
16 lawsuit was originally filed—Plaintiffs did not become aware of the New LPs until March  
17 2020. *Mot.* at 10. This is because, rather than providing Plaintiffs with this information,  
18 Defendants led Plaintiffs to believe that the Entity Defendants had all gone out of business.  
19 *Gillick Decl.* ¶¶ 4–5. Once this information was learned, however, Plaintiffs diligently  
20 sought discovery from Defendants. See *id.* at 9–10. Through that discovery, Plaintiffs  
21 discovered Fiorentino Holdings, LLC’s, Mr. Barmazel’s, and the Premier Entities’  
22 involvement in this case. See *id.* at 10, 16. Plaintiffs allege that the identities and  
23 involvement of the proposed defendants could have been discovered only after the  
24 production of documents in April 2020, despite Plaintiffs’ due diligence. See *id.* at 10–13.

25 Because the entire proposed amendment is based on information that was not readily  
26 available to Plaintiffs prior to the scheduling order deadline—despite Plaintiffs’ due  
27 diligence—the deadline could not reasonably have been met. Therefore, the Court finds  
28 good cause present to amend the scheduling order. Because the Court finds good cause to

1 amend the scheduling order under Rule 16, the Court next looks to whether amendment of  
2 the Complaint is proper under Rule 15. See Johnson, 975 F.2d at 608.

## 3 **II. Rule 15**

4 Under Rule 15, leave is generally granted unless the court harbors concerns “such  
5 as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
6 cure deficiencies by amendments previously allowed, undue prejudice to the opposing  
7 party by virtue of allowance of the amendment, futility of the amendment, etc.” Foman,  
8 371 U.S. at 182. The Court considers Plaintiffs’ requests to add the New LPs; Fiorentino  
9 Holdings, LLC; Mr. Barmazel; and the Premier Entities as defendants in turn.

10 Plaintiffs first request to add the New LPs as defendants. Mot. at 15, 18. In their  
11 Opposition, Defendants consent to the addition of the New LPs. See Opp’n at 3–4.  
12 According to Rule 15(a)(2), a party may amend their complaint with the opposing party’s  
13 written consent. Accordingly, the Court **GRANTS** Plaintiffs leave to amend their  
14 complaint to add the New LPs as defendants.

15 Plaintiffs also request to add Fiorentino Holdings, LLC as a defendant. See Mot. at  
16 5. Although Defendants do not consent to the addition of Fiorentino Holdings, they also  
17 do not present any arguments against adding Fiorentino Holdings, LLC. See generally  
18 Opp’n. Because the Court harbors no concerns regarding amendment as to this party, the  
19 Court **GRANTS** Plaintiffs’ Motion as to Fiorentino Holdings, LLC.

20 Next, Plaintiffs seek to amend the complaint to add Mr. Barmazel as a defendant.  
21 See Mot. at 5. Defendants dispute the addition of Mr. Barmazel, claiming there is no legal  
22 basis to add him as an individual defendant. Opp’n at 4. Defendants challenge the addition  
23 of Mr. Barmazel on the grounds of futility. Id. at 4–5. Defendants contend that under  
24 California law, Mr. Barmazel cannot be liable as an individual investor for the actions of  
25 the Entity Defendants, and he cannot be liable for the New LPs actions because he is not a  
26 general partner. See id. at 5–6. In response, Plaintiffs contend that Mr. Barmazel is liable  
27 as an individual because the entities are nothing more than Barmazel’s alter ego and,  
28 therefore, the corporate veil has been pierced. Reply at 2–3. In support of this theory of

1 liability, Plaintiffs offer documents and emails that purportedly prove this theory of  
2 liability. See generally Gilleck Decl.

3 Under the alter ego doctrine, “a corporation’s acts and obligations can be legally  
4 recognized as those of a particular person, and vice versa.” See *Temple v. Bodega Bay*  
5 *Fisheries, Inc.*, 180 Cal. App. 2d 279, 283 (1960). Plaintiffs have provided arguments and  
6 evidence enough to show that Mr. Barmazel could potentially be liable under an alter-ego  
7 theory. Thus, adding him as a defendant is not futile. See *Miller v. Rykoff-Sexton, Inc.*,  
8 845 F.2d 209, 214 (9th Cir. 1988) (an amendment is futile when “no set of facts can be  
9 proved under the amendment to the pleadings that would constitute a valid and sufficient  
10 claim”), implied overruling on other grounds by *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).  
11 The Court therefore **GRANTS** Plaintiffs’ Motion to add Mr. Barmazel.

12 Finally, Plaintiffs seek to amend their Complaint to add the Premier Entities. Mot.  
13 at 5. Defendants dispute the addition of the Premier Entities, arguing (1) that granting  
14 leave “would irreparably prejudice” the Premier Entities, Opp’n at 5; (2) that Plaintiffs’  
15 Motion is brought in bad faith, *id.* at 6; and (3) that adding the Premier Entities as  
16 Defendants would be futile. *Id.* at 5–6.

17 First, Defendants challenge the addition of the Premier Entities on the grounds that  
18 the addition “would irreparably prejudice” the Premier Entities. See *id.* at 5. Defendants  
19 only claim of prejudice is that the Premier Entities are “totally unrelated to the facts alleged  
20 [in the complaint] and their business is purely real estate ventures.” *Id.* Defendants,  
21 however, fail to show why that would cause any actual prejudice. The case is in its early  
22 stages and discovery is ongoing. See *DCD Programs, Ltd. V. Leighton*, 833 F.2d 183, 188  
23 (9th Cir. 1987) (finding no prejudice where the case was still at the discovery stage of  
24 proceedings). Moreover, Plaintiffs have alleged connections among the Premier Entities  
25 and the Entity Defendants, see Reply at 8, as well as Mr. Barmazel, who Plaintiffs allege  
26 “regularly failed to recognize any corporate formalities between himself and [the Premier  
27 Entities].” *Id.* at 2. The Court therefore finds the Premier Entities would not be prejudiced.

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1 Second, Defendants argue that Plaintiffs’ Motion was brought in bad faith,  
2 “designed primarily to harass and drain the financial resources of the opposing party” and  
3 delay proceedings. See Opp’n at 6. The Court finds no persuasive evidence that Plaintiffs’  
4 request was brought in bad faith. Allowing Plaintiffs to amend their complaint will not  
5 cause undue delay to Defendants. And any delay can be attributed to the Defendants failure  
6 to provide information about the Entity Defendants’ reorganizations. Thus, the Court finds  
7 no bad faith. See DCD Programs, 833 F.2d at 187 (finding no bad faith where there is a  
8 satisfactory explanation for the delay and no other evidence to indicate a wrongful motive).

9 Third, Defendants challenge the addition of the Premier Entities on the grounds of  
10 futility, asserting that the Premier Entities have no interest in or connection to the Entity  
11 Defendants. Opp’n at 5–6. In response, Plaintiffs assert that the Premier Entities belong  
12 in the case because they are “inextricably intertwined” with Mr. Barmazel such that they  
13 are his alter egos, and they have a relevant interest in the Entity Defendants. Reply at  
14 2–3, 6. Defendants’ arguments do not clearly foreclose Plaintiffs’ claims and, therefore,  
15 at this point it is not clear that the addition of the Premier Entities would be futile. See  
16 Miller, 845 F.2d at 214.

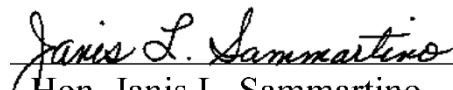
17 Because the Court does not harbor concerns over undue delay, bad faith, undue  
18 prejudice, or futility, the Court **GRANTS** Plaintiffs’ Motion to add the Premier Entities.

19 **CONCLUSION**

20 For the reasons stated above, the Court **GRANTS** Plaintiffs’ Motion to Amend the  
21 Complaint. Plaintiffs **SHALL FILE** their amended complaint within seven days of the  
22 electronic docketing of this Order.

23 **IT IS SO ORDERED.**

24 Dated: July 22, 2020

25   
26 Hon. Janis L. Sammartino  
27 United States District Judge  
28