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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PCR DISTRIBUTING CO., a California corporation,

Plaintiff,

vs.

JOHN DOES 1–10, d/b/a NHENTAI.NET and NHENTAI.TO; y,

Defendants.

Case No. 2:24-cv-07453-CVD-AJR

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with Declaration of A. Eric Bjorgum and [Proposed] Order]

Hon. Cynthia Valenzuela

Date: December 11, 2026
Time: 1:30 pm
Courtroom: 10B
Felicitas and Gonzalo Mendez Courthouse
350 W. First St.
Los Angeles, CA 90012

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 11, 2026 at 1:30 pm, or as soon thereafter as the matter may be heard, before the Honorable Cynthia Valenzuela of the United States District Court for the Central District of California, in Courtroom 10B of the Felicitas and Gonzalo Mendez Courthouse, 350 W. First St. Los Angeles, CA 90012, Plaintiff PCR Distributing, Co. ("Plaintiff" or "PCR") will and hereby does move the Court, pursuant to Federal Rule of Civil Procedure 15(a)(2), for leave to file the proposed Second Amended Complaint attached as Exhibit 1 to the concurrently filed Declaration of A. Eric Bjorgum.

The proposed Second Amended Complaint adds additional works at issue for Plaintiff's copyright claims, as well as claims for federal trademark infringement, trademark counterfeiting, false designation of origin, and unfair competition under the Lanham Act, together with related claims under California statutory and common law; and it names additional defendants — Neal Akash Palavali, Nikita Nikishin, Michael Kim, X Separator LLC, and Acheron Interactive LLC — whose roles in owning, operating, and controlling the nHentai websites were revealed through discovery.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on May 21, 2026. This Motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the concurrently filed Declaration of A. Eric Bjorgum and its exhibits, the records and files in this action, and any further argument and evidence the Court may consider.

Respectfully submitted,

Dated: November 10, 2026

BJORGUM LAW, PC

By: /s/ A. Eric Bjorgum
A. Eric Bjorgum
Attorneys for Plaintiff
PCR Distributing, Co.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following Defendants' escalating infringement of Plaintiff's copyright-protected Works (the "Works"), along with their recent direct infringement of Defendants' registered trademark for J18, Plaintiff seeks leave to file a Second Amended Complaint to identify the Works and address the trademark infringement. Defendants' brazen behavior is grounded in its highly profitable business model (nhentai.net is within the top 20 adult websites in the world, with millions of visitors each month) and its litigation position that this case is somehow limited to the Works identified in the original Complaint.

No scheduling order has been entered in this case, and no trial date or pretrial conference has been set. Under Federal Rule of Civil Procedure 15(a)(2), leave to amend is to be "freely give[n] when justice so requires," and the Ninth Circuit applies that policy "with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

Each consideration bearing on leave favors amendment. Plaintiff has not delayed; it moved after rebuking all of Defendants' attempts to avoid disclosure of their identities, and after Plaintiff's J18 trademark registration issued. Indeed, it was nearly two years after the case was filed that Defendants finally revealed that the two individuals behind the operative LLC are residents of the United States, and one lives in Los Angeles.

Thus, there is no bad faith, no prior failure to cure, and no futility. Most importantly, there is no prejudice to any party: this case remains in discovery, with no trial date set, and the amendments arise from the same course of infringing conduct already at issue. The Motion should be granted. Although no scheduling order makes Rule 16 applicable, good cause exists in any event, because Plaintiff diligently sought leave once the supporting facts came to light.

II. FACTS

Plaintiff filed this matter on August 30, 2024, and quickly sought early discovery to learn the identities of the operators of nhentai.net. Defendants embarked on an extended campaign to keep their identities secret by, *inter alia*, filing multiple protective orders to hide their identities (including one to litigate as "Doe" Defendants), responding to orders to identify responsible parties by only identifying a Delaware limited liability company, filing multiple motions to dismiss, serving incomplete Initial Disclosures, and waiting until the deposition one principal (a Michigan resident) to reveal that the other principal lives in the Los Angeles in an area he "cannot recall." (Declaration of A. Eric Bjorgum ("Bjorgum Decl."), ¶¶ 4-15.)

The current operative Complaint was filed on January 27, 2025, asserting claims for copyright infringement and related theories arising from the reproduction and public display of Plaintiff's registered works on the websites nHentai.net and nHentai.to. At the time, the persons and entities operating those websites had concealed their identities, and Plaintiff was able to name only John Doe defendants. (Dkt. No. 40.)

As explained in detail in the accompanying Bjorgum Declaration, Defendants were able to avoid providing the identities and addresses of their principals for nearly two years. Initially, Defendants sought to litigate only as "the operators of Nhentai.net." Before a hearing with Magistrate Richlin, they reluctantly revealed they were a Delaware company. (Bjorgum Decl., ¶ 4.) Eventually, following a final order from the District Court that they could not litigate anonymously (Dkt. No. 58), they revealed the company as "X Separator LLC" a Delaware limited liability company. After that, they still did not reveal any individuals, even in their June 17, 2025 Initial Disclosures. (Bjorgum Decl., Exh. C.) It was not until August, 2025, in Supplemental Initial Disclosures, that they identified the principals of X Separator

as Nikita Nikishin and Neal Palavali – although they provided no indication that those individuals resided in the United States. They also identified a new party, "Archeon Interactive LLC." (Bjorgum Decl., Exh. F.)

Finally, in his August, 2026, deposition, Nikita Nikishin admitted that Neal Palavali lives in Los Angeles, but he claimed not be able to describe where or even the topography of the land. He also admitted to having Palavali's phone number, but did not come to the deposition with his phone. (Bjorgum Decl., Exh. D at 69:10 – 72:6.) The deposition testimony further confirmed that Defendants have the technical ability to stop the infringement and to exclude Plaintiff's works from the site. (Bjorgum Dec., Exh D. at 73 – 75.) 72:10 – 75:25.)

Separately, the United States Patent and Trademark Office issued Plaintiff's registration for the J18 mark, Registration No. 8,092,936, on January 6, 2026 — after the First Amended Complaint was filed. The proposed Second Amended Complaint relies on that registration to assert claims for registered-trademark infringement and counterfeiting that were not available when the operative pleading was filed. (Bjorgum Decl., Exh. E.)

Defendants have continued to infringe copyrights throughout this litigation, adding new infringing material to nHentai after being placed on notice. The deposition testimony makes clear that Defendants will continue to do so and that they possess, but decline to exercise, the ability to stop the infringement. Exhibits C and D to the proposed Second Amended Complaint detail the Works originally identified and those later infringed.

No scheduling order has been entered in this action, and the Court has not set any deadline to amend the pleadings, a trial date, or a pretrial conference. A true and correct copy of the proposed Second Amended Complaint is attached as Exhibit 1 to the accompanying Declaration of A. Eric Bjorgum.

III. LEGAL STANDARD

After a responsive pleading is filed, a party may amend its pleading "only with the opposing party's written consent or the court's leave," and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit applies this policy "with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). In deciding a motion for leave to amend, courts consider the factors identified in *Foman v. Davis*, 371 U.S. 178, 182 (1962): undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by prior amendment, undue prejudice to the opposing party, and futility of amendment.

These factors are not weighted equally. "[I]t is the consideration of prejudice to the opposing party that carries the greatest weight," and prejudice is "the touchstone of the inquiry under rule 15(a)." *Eminence Capital*, 316 F.3d at 1052. "Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend," and the party opposing amendment bears the burden of showing prejudice. This liberality "is not dependent on whether the amendment will add causes of action or parties," and "delay, by itself, is insufficient to justify denial of leave to amend." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185–86 (9th Cir. 1987).

Rule 16(b)'s more demanding "good cause" standard applies only after the court has entered a scheduling order setting a deadline to amend and that deadline has passed. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). As the Ninth Circuit has explained, "Rule 16 [does not] trump[] Rule 15" merely because a scheduling order exists; a movant is relegated to the "more stringent" good-cause standard only when it files its motion after the scheduling-order deadline. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 952

(9th Cir. 2006). Where good cause is required, the inquiry "primarily considers the diligence of the party seeking the amendment." *Johnson*, 975 F.2d at 609.

IV. ARGUMENT

A. Leave to Amend Should Be Freely Granted Under Rule 15(a)(2).

Because no scheduling order has been entered, the liberal standard of Rule 15(a)(2) — not Rule 16(b) — governs this Motion. *AmerisourceBergen*, 465 F.3d at 952. Every *Foman* factor favors granting leave.

1. There Is No Undue Delay.

Plaintiff did not delay. It could not have named the new defendants earlier because their identities were concealed and were revealed only through discovery, including deposition testimony taken approximately two months before this Motion. (Bjorgum Decl., ¶¶ 14 – 15.) Likewise, Plaintiff's registered-trademark and counterfeiting claims did not accrue until the USPTO issued Registration No. 8,092,936 on January 6, 2026, and Defendant began to blatantly infringe that mark. (Bjorgum Decl., ¶ 12.) Plaintiff moved promptly after these facts came to light, and, in any event, "delay, by itself, is insufficient to justify denial of leave to amend." *DCD Programs*, 833 F.2d at 186.

2. The Amendment Is Not Sought in Bad Faith.

Plaintiff seeks amendment to conform its pleading to facts developed in discovery and to a trademark registration that issued during this litigation, not for any improper purpose. (Bjorgum Decl., ¶¶ 3 – 12.) Where, as here, a plaintiff "waited until [it] had sufficient evidence of conduct upon which [it] could base claims," there is no basis to find bad faith. *DCD Programs*, 833 F.2d at 187. Further, it was only recently that Plaintiff learned that Defendant Palavali lives in this District, so that he would be subject to process and enforcement of any judgment. Defendants hid his locale in the Initial (Bjorgum Decl., Exh. C.) and

Supplemental Disclosures (Bjorgum Decl., Exh. F), and even Nikishin claimed not to remember exactly where his business partner lived in Los Angeles. (Bjorgum Decl., Exh. D Exh. D at 69:10 – 72:6.)

3. There Has Been No Repeated Failure to Cure.

Plaintiff has not previously sought and failed to cure the matters raised by this amendment. The proposed Second Amended Complaint adds newly discovered parties and newly available claims; it does not re-plead deficiencies the Court has previously identified. In fact, Defendants' Motin to Dismiss was denied.

4. Defendants Will Suffer No Undue Prejudice.

Prejudice is "the touchstone of the inquiry under rule 15(a)," and the party opposing amendment bears the burden of showing it. *Eminence Capital*, 316 F.3d at 1052. There is none here. This case remains in discovery; no trial date has been set and no pretrial conference has been scheduled. In materially identical circumstances, the Ninth Circuit found no prejudice where "this case is still at the discovery stage with no trial date pending, nor has a pretrial conference been scheduled." *DCD Programs*, 833 F.2d at 187–88. The proposed amendments, moreover, arise from the same course of infringing conduct already at the center of this case, so no party must defend against a wholly new factual theory. Although adding parties can heighten prejudice concerns, the newly named defendants are the very persons and entities operating nHentai, and "[a]voiding prejudice to the party to be added" is addressed by naming them now, while discovery is ongoing, rather than later. *Id.* at 187.

5. The Amendment Is Not Futile.

Leave should be granted unless it is clear "beyond doubt" that the proposed pleading could not state a claim. *DCD Programs*, 833 F.2d at 188. The proposed Second Amended Complaint states facially sufficient claims: it alleges Plaintiff's ownership of the federally registered J18 mark, Defendants' unauthorized use of that mark in commerce on the very goods for which it is registered, and a likelihood of

confusion — along with the copyright claims already sustained in this action. The new defendants are alleged, based on discovery, to own, operate, and control nHentai and to direct the infringing conduct. These allegations are more than sufficient to survive the low threshold applied on a motion for leave to amend.

B. Even If Rule 16's Good-Cause Standard Applied, It Is Satisfied.

Rule 16(b) does not apply because the Court has not entered a scheduling order setting a deadline to amend. *Johnson*, 975 F.2d at 607–08; *AmerisourceBergen*, 465 F.3d at 952. But even if good cause were required, Plaintiff has it, because the standard "primarily considers the diligence of the party seeking the amendment," *Johnson*, 975 F.2d at 609, and Plaintiff has been diligent.

First, Defendants concealed their identities for months, and Plaintiff could not name them until their roles were revealed through discovery; Plaintiff learned only at a deposition approximately two months ago that one of the defendants, Neal Akash Palavali, resides in California. (Bjorgum Decl., ¶ 15.) Second, Plaintiff's registered-trademark and counterfeiting claims became available only when the J18 registration issued on January 6, 2026, after the operative pleading was filed. (Bjorgum Decl., Exh. E.) Third, Defendants have continued to infringe and to add new infringing material during this litigation, and the deposition testimony confirmed both that they have the ability to stop the infringement and that they will continue it. (Bjorgum Decl., ¶ 12 and Exh. D.) Plaintiff sought leave promptly after developing this evidence. That diligence establishes good cause under Rule 16(b) to the extent it applies.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to file the proposed Second Amended Complaint attached as Exhibit 1 to the accompanying Declaration of A. Eric Bjorgum, and that Plaintiff be permitted to file that pleading within five (5) days of the Court's order.

Dated: November 10, 2026

Respectfully submitted,

BJORGUM LAW, PC

By: /s/ A. Eric Bjorgum
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PCR Distributing, Co.