

1 for joining additional parties, plaintiffs filed a stipulation and proposed order requesting
2 extension of the trial and certain pretrial deadlines. Dkt. #27. As part of this proposed order
3 however, plaintiffs did not seek extension of the deadline for joining additional parties. The
4 order was granted on May 30, 2006. Dkt. #29.

5 On July 12, 2006, plaintiffs took the deposition of defendant Dawnell Leadbetter's
6 fiancé, Alan Pitcher. See Motion at 5; Exhibit F. Plaintiffs claim they did not identify Alan
7 Pitcher as a probable defendant until they took his deposition. See Motion at 8 ("Further, it was
8 only after Plaintiffs went to the time and expense of traveling to Seattle for depositions that they
9 learned that Ms. Leadbetter's fiancé Alan Pitcher, was also a direct infringer, along with her son,
10 Donald Leadbetter."). On September 8, 2006, plaintiffs filed another stipulated motion and
11 proposed order to extend certain deadlines by ninety days. Dkt. #35. The Court granted this
12 order on September 12, 2006. Dkt. #38. This order did not extend the deadline for joining
13 additional parties. On November 9, 2006, Plaintiffs filed their motion to amend joining Alan
14 Pitcher as a defendant almost four months after Alan Pitcher's deposition because "it took
15 almost two months after the depositions before Plaintiffs received the deposition transcripts."
16 Reply at 3.

17 **B. Analysis**

18 **1. Rule 41(a)(2) Dismissal**

19 Under Fed. R. Civ. P. 41(a)(2), plaintiffs seek dismissal of defendant Dawnell Leadbetter.
20 See Motion at 6. Defendant does not oppose dismissal. See Response at 1 ("Plaintiffs are free
21 to take a voluntary non-suit of the unsupportable claims against Dawnell Leadbetter at any
22 time."). Accordingly, the Court finds defendant will not be prejudiced by dismissal and
23 therefore plaintiffs' claims against defendant Dawnell Leadbetter are dismissed without
24 prejudice.

25 In response to plaintiffs' motion, defendant has not requested fees and costs. See

1 Response at 2 (“There should be no surprise that Ms. Leadbetter may elect to pursue a claim for
2 fees when the action against her is appropriately dismissed.”) (emphasis added). Therefore, the
3 Court does not consider an award for fees and costs at this point. See Stevedoring Servs. of Am.
4 v. Armilla Int’l B.V., 889 F.2d 919, 921 (9th Cir. 1989) (“Although costs and attorney fees are
5 often imposed upon a plaintiff who is granted a voluntary dismissal under Fed. R. Civ. P.
6 41(a)(2), no circuit court has held that payment of the defendant’s costs and attorney fees is a
7 prerequisite to an order granting voluntary dismissal.”). However, the Court retains jurisdiction
8 in this case to hear collateral issues like the imposition of costs and fees at a later date after the
9 voluntary dismissal this action. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395-96
10 (1990).

11 **2. Motion for Leave to Amend and to Extend Deadlines**

12 Plaintiffs also move to amend their complaint to add Alan Pitcher as an additional
13 defendant relying on Fed. R. Civ. P. 15(a). See Motion at 9. Rule 15, however, is not the
14 appropriate threshold standard here. Plaintiffs’ motion for leave to amend is governed by Fed.
15 R. Civ. P. 16(b), not Rule 15(a), because once the Court files a pretrial scheduling order
16 pursuant to Fed. R. Civ. P. 16, that Rule’s standards for amending pleadings controls. See
17 Johnson v. Mammoth Recreations Inc., 975 F.2d 604, 607-08 (9th Cir. 1992). Under Rule
18 16(b), a party seeking to amend a pleading after the expiration of the time period specified in the
19 scheduling order must show “good cause” for amendment. See Fed. R. Civ. P. 16(b). The
20 diligence of the party seeking amendment is the touchstone of the “good cause” analysis. See
21 Johnson, 975 F.2d at 609 (“If the [moving party] was not diligent, the inquiry should end.”). Id.
22 Even if the moving party can show “good cause” under Rule 16(b), the movant still must
23 demonstrate that amendment is warranted under Fed. R. Civ. P. 15. Id. at 608.

24 Plaintiffs have failed to demonstrate good cause for their belated motion to amend joining
25 Alan Pitcher as a defendant. Plaintiffs filed their motion to amend on November 9, 2006, over a

1 year after the October 27, 2005 deadline for joining additional parties. See Dkt. #12. Plaintiffs
 2 allege that they obtained testimony from Alan Pitcher at his deposition on July 12, 2006
 3 supporting a claim for direct infringement. Despite this discovery in July, plaintiffs waited
 4 nearly five months to seek joinder of Alan Pitcher. Furthermore, plaintiffs requested, and were
 5 granted, two extensions to the scheduling order. See Dkt. #29, #37. Despite these requests,
 6 plaintiffs never sought extension of the cutoff for joining additional parties, even in their
 7 September 8, 2006 stipulation and proposed order that was filed almost two months after Mr.
 8 Pitcher's deposition on July 12, 2006 when they discovered his involvement in this case.

9 Based on these actions, plaintiffs have failed to show sufficient diligence supporting
 10 "good cause" modification of the September 29, 2006 scheduling order setting October 27, 2005
 11 as the deadline for joinder of additional parties. Accordingly, the Court need not reach the issue
 12 of the whether amendment is justified under Rule 15. Because the Court DENIES the motion
 13 for leave to file an amended complaint to add Alan Pitcher as a defendant,¹ the Court also
 14 DENIES the accompanying request to extend the discovery and dispositive deadlines as moot.

15 III. CONCLUSION

16 For all of the foregoing reasons, it is hereby ORDERED that "Plaintiffs' Motion to
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18 ¹ In their motion, plaintiffs stated: "were this Court to deny the Plaintiffs' motion for leave to
 19 amend their Complaint, Plaintiffs would file an additional lawsuit against Alan Pitcher; that would not be
 20 in the interests of judicial economy, nor would it be in the best interest of the parties, where, as here, all
 21 of the issues can be heard in one forum." See Motion at 9. Plaintiffs did not even give the Court the
 22 opportunity to consider this argument, however, because contrary to the "interests of judicial economy,"
 23 they went ahead and filed an action against Alan Pitcher on December 1, 2006, styled Capitol Records,
 Inc., et al. v. Alan Pitcher, No. C06-1728RSL, the same date plaintiffs noted their motion to amend.
 Plaintiffs also did not reference the lawsuit against Alan Pitcher in their reply (Dkt. #44), which was also
 filed on December 1, 2006.

24 In the "Notice of Related Case" in the Capital Records, Inc., et al., v. Pitcher matter, plaintiffs
 25 stated that "[i]f Plaintiffs' motion to add Alan Pitcher is denied, Plaintiffs anticipate moving to consolidate
 this lawsuit with the lawsuit, currently pending before the Court." Dkt. #1. The Court awaits the filing
 of this motion.

26 ORDER GRANTING PLAINTIFFS'
 MOTION TO DISMISS AND DENYING PLAINTIFFS'
 MOTION FOR LEAVE TO AMEND

1 Dismiss Defendant Dawnell Leadbetter Without Prejudice, For Leave to File an Amended
2 Complaint and to Extend the Discovery and Dispositive Motion Deadlines” (Dkt. #39) is
3 GRANTED in part and DENIED in part. Plaintiffs’ claims against Dawnell Leadbetter are
4 DISMISSED without prejudice. Plaintiffs’ motion for leave to file an amended complaint and to
5 extend discovery and dispositive motion deadlines is DENIED.
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7 DATED this 29th day of December, 2006.
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10 Robert S. Lasnik
11 United States District Judge
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