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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Carol Wenzel, an individual,

No. CV-09-1979-PHX-DGC

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Plaintiff,

ORDER

11

vs.

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Thomas and King, Inc., a South Carolina
corporation,

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Defendant.

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Plaintiff has filed a motion for leave to file an amended complaint. Doc. 36. The motion is fully briefed. Docs. 37, 39. For reasons stated below, the motion will be denied.

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Plaintiff seeks leave to amend pursuant to Rule 15 of the Federal Rules of Civil Procedure, noting that under this rule leave to amend should be freely given when justice so requires. Doc. 36 at 1-2. Although Rule 15 embodies a liberal amendment policy, that is not the standard to be applied in this case. The Court has issued an order establishing case management deadlines. Doc. 13. Rule 16 provides that deadlines established in a case management order may “be modified only for good cause[.]” Fed. R. Civ. P. 16(b)(4). “Good cause” exists when a deadline “cannot reasonably be met despite the diligence of the party seeking the extension.” Fed. R. Civ. P. 16 Advisory Comm.’s Notes (1983 Am.). Thus, “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); *see Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000).

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1 In this case, the Court's Case Management Order established a deadline for amending
2 pleadings:

3 2. Deadline for Joining Parties, Amending Pleadings, and Filing
4 Supplemental Pleadings. The deadline for joining parties, amending pleadings,
and filing supplemental pleadings is **60 days** from the date of this Order.

5 Doc. 13 at 1. The order was entered on December 22, 2009, creating an amendment deadline
6 of February 20, 2010. Plaintiff's motion for leave to amend is more than five months late,
7 and Plaintiff does not provide good cause for the tardiness.

8 Plaintiff seeks to dismiss her negligence claim, asserting that she promptly filed the
9 instant motion following new discovery, including the July 8, 2010 deposition of her
10 husband, which developed issues of negligence. Doc. 36 at 1-2. Plaintiff had two months
11 to conduct discovery on her negligence claim before the time to amend pleadings expired.
12 The Court cannot conclude that Plaintiff was unable to meet the amendment deadline through
13 reasonable diligence. Plaintiff therefore has not established good cause to extend the
14 deadline.

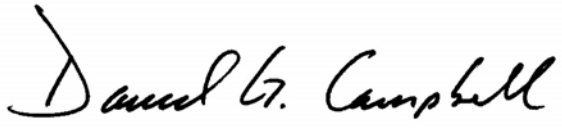
15 Plaintiff asserts that leave to amend would pose no prejudice to Defendant. Doc. 36
16 at 2. But good cause, rather than prejudice, is the relevant inquiry. "Although the existence
17 or degree of prejudice to the party opposing the modification [of the amendment deadline]
18 might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving
19 party's reasons for seeking modification." *Johnson*, 975 F.2d at 609. Where that party has
20 not been diligent, the inquiry ends and the motion is denied. *Id.*; see *Zivkovic v. S. Cal.*
21 *Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

22 This suit is more than one year old. Discovery is complete and a motion for summary
23 judgment has been filed (Doc. 42). The Court will not permit the filing of amended
24 pleadings at this late stage of the litigation. Plaintiff's request for leave to amend will be
25 denied. If Plaintiff wishes to dismiss her negligence claim, and Defendant does not object,
26 Plaintiff may file a stipulation of dismissal pursuant to Rule 41(a)(1).

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IT IS ORDERED that Plaintiff's motion for leave to file amended complaint (Doc. 36) is **denied**.

DATED this 18th day of October, 2010.



David G. Campbell
United States District Judge