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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Megan Torrie,

10 Plaintiff,

11 v.

12 Goodman Law Offices PC, et al.,

13 Defendants.

No. CV-13-02659-PHX-DGC

ORDER

14 Plaintiff has filed a motion to amend her complaint. Doc. 32. Plaintiff seeks to
15 include additional claims for violations of the Fair Debt Collection Practices Act
16 (“FDCPA”). Specifically, Plaintiff alleges that Defendants inflated and misrepresented
17 their fees and costs in connection with debt-collection activity. *See* Doc. 32-1 at 5-6.

18 This is not the first time Plaintiff has attempted to amend her complaint to include
19 claims of this nature. On October 2, 2014, after the briefing for Defendants’ motion for
20 summary judgment had been completed, Plaintiff filed a “motion to supplement” her
21 response to include these claims. *See* Doc. 27. In its summary judgment ruling, the
22 Court stated:

23 On October 2, 2014, Plaintiff moved to supplement her response to include
24 an additional claim under the FDCPA. Doc. 27. Specifically, Plaintiff
25 claims that Defendants violated § 1692e(2) because they “falsely inflated
26 their attorneys’ fees and costs in connection with the default judgment they
27 obtained” in the 2013 foreclosure action. *Id.* at 1. Plaintiff has submitted
28 court documents showing that Defendants may have inflated their fees and
costs in connection with the 2013 foreclosure action (Doc. 27 at 32), but
her complaint does not allege that Defendants fabricated or inflated their
attorneys’ fees and costs. . . . The Court, therefore, will treat Plaintiff’s
motion to supplement as a motion to amend her complaint.

1 On July 11, 2014, the Court entered a Case Management Order. Doc. 14.
2 This order stated that the “deadline for . . . amending pleadings . . . is 60
3 days from the date of this Order.” *Id.* Plaintiff filed her motion to
4 supplement on October 2, more than eighty days later. Doc. 27. Under the
Federal Rules of Civil Procedure, a case management schedule “may be
modified only for good cause and with the judge’s consent.” Fed. R. Civ.
P. 16(b)(4). . . .

5 Plaintiff’s motion does not address Rule 16(b)(4) or the good cause
6 standard. Nor does it explain her lack of diligence in raising this new
7 claim. The relevant documents supporting Plaintiff’s new claim were most
8 likely on file at Pima County’s Superior Court, or at the very least in the
9 possession of Defendants. Doc. 27 at 15. Thus, they were readily available
10 for Plaintiff’s discovery from the inception of this case. The Court
11 concludes that Plaintiff has not shown good cause to extend the deadline for
12 amending pleadings and will deny her request to add a new claim[.].

13 Doc. 31 at 10-11.

14 Plaintiff argues that the Court was incorrect in concluding that “the relevant
15 documents supporting Plaintiff’s new claim were most likely on file at Pima County’s
16 Superior Court.” Doc. 31 at 11. Plaintiff asserts that a key document – Defendants’
17 March 2013 fee application – was not on file with the Superior Court. Rather, Plaintiff
18 did not receive this document until Defendants responded to Plaintiff’s motion to
19 supplement on October 20, 2014.

20 The Court is not persuaded. Plaintiff’s initial complaint in this case, filed more
21 than one year ago, was based in substantial part on a “Second Lawsuit” that Defendants
22 filed against her in Pima County Superior Court, and in which Defendants purported to
23 obtain a default judgment. Doc. 1 at 3-4. Plaintiff’s amended complaint, filed more than
24 ten months ago, noted that the default judgment in the Second Lawsuit included
25 \$1,423.05 in attorneys’ fees. Doc. 6 at 4. In both complaints, Plaintiff alleged various
26 FDCPA violations arising from the Second Lawsuit.

27 When Plaintiff sought in October 2014 to add new FDCPA claims to this case, she
28 based the new claims on the Second Lawsuit and her new allegation that the attorneys’
fees obtained in the April 2013 default judgment were overstated. Plaintiff claimed that a
fee application filed in the Second Lawsuit on November 11, 2013, showed that
Defendants had overstated their fees. Doc. 27. This fee application was found by

1 Plaintiff in the court file for the Second Lawsuit. Indeed, Plaintiff argued that her new
2 FDCPA claims were “[b]ased solely on Defendants’ own pleadings in the underlying
3 matter” – the Second Lawsuit. *Id.* at 3.

4 Thus, the fee discrepancies Plaintiff asserted in October, and now asserts again,
5 were evidenced in the court file for the Second Lawsuit – a lawsuit that has been a
6 primary basis for her FDCPA claims from the beginning of this case. The Court cannot
7 conclude that Plaintiff was diligent in finding this fee discrepancy when its evidence was
8 found in the file of the very case upon which she has sued. Plaintiff asserts that she
9 subsequently obtained a second fee application dated March 2013 that was not included
10 in the file of the Second Lawsuit, but if Plaintiff had discovered the alleged fee
11 discrepancy through reasonable diligence in reviewing the court file, she would have had
12 ample reason to conduct discovery into the attorneys’ fees sought by Defendants in the
13 Second Lawsuit.

14 The amendment deadline in this case may be extended upon a showing of “good
15 cause.” Fed. R. Civ. P. 16(b)(4). This good cause standard primarily considers the
16 diligence of the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*,
17 975 F.2d 604, 609 (9th Cir. 1992). “The district court may modify the pretrial schedule
18 ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’”
19 *Id.* (quoting Fed. R. Civ. P. 16 advisory committee’s notes (1983 amendment)).

20 The Court again concludes that Plaintiff has failed to show that the deadline for
21 amending pleadings could not have been satisfied through reasonable diligence. Because
22 Plaintiff has failed to show good cause, the Court will deny her motion.

23 **IT IS ORDERED** that Plaintiff’s motion to amend (Doc. 32) is **denied**.

24 Dated this 5th day of February, 2015.

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28 David G. Campbell
United States District Judge