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2 NOT FOR PUBLICATION

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

8
9 Tristan Young,

10 Plaintiff,

11 v.

12 Arizona Summit Law School LLC, et al.,

13 Defendants.

No. CV-16-03490-PHX-DJH

ORDER

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15 Before the Court is Plaintiff's Motion for Leave to File an Amended Complaint
16 (Doc. 64). Defendants filed a Response (Doc. 67); Plaintiff did not file a Reply, and the
17 time to do so has expired. *See* LRCiv. 7.2(c).¹ Additionally, before the Court is the parties'
18 Notice of Discovery Dispute (Doc 69).

19 **I. BACKGROUND**

20 Plaintiff, a former Arizona Summit Law School student, initiated this action on
21 October 12, 2016. (Doc. 1). Plaintiff's Complaint contained three counts: Count One
22 accused Defendants of failing to provide appropriate accommodations for her disabilities
23 while she was a student at Arizona Summit Law School, Count Two accused Defendants
24 of negligent misrepresentation, and Count Three accused Defendants of common law
25 fraud. (*Id.* ¶¶ 104-130). Plaintiff's first counsel filed a Motion to Withdraw as Counsel on
26 February 1, 2017 (Doc. 10), which the Court granted on March 1, 2017. (Doc. 18). On

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28 ¹ Plaintiff's request for oral argument is denied because the parties have had an opportunity
to adequately brief the issues and oral argument will not aid the Court's resolution of the
motion. *See* Fed. R. Civ. P. 78(b); LRCiv. 7.2(f)

1 April 17, 2017, Plaintiff notified the Court that she retained new counsel, Mr. David
2 Rosenberg-Wohl and Mr. Patrick Cooper, who remain Plaintiff’s counsel to date.
3 (Doc. 28).

4 On May 31, 2017, Defendants filed a Motion to Dismiss Counts Two and Three of
5 Plaintiff’s Complaint. (Doc. 34). The Court granted Defendants’ Motion; thus, the only
6 claim remaining is Count One. (Doc. 39). On July 23, 2018, the Court issued a Rule 16
7 Scheduling Order, which provided that “[t]he deadline for joining parties, amending
8 pleadings, and filing supplemental pleadings is 60 days from the date of this Order.”
9 (Doc. 44). Sixty days later, on September 21, 2018, Plaintiff filed her First Amended
10 Complaint, without seeking leave to do so. (Doc. 50). Defendants moved to strike
11 Plaintiff’s First Amended Complaint for failure to comply with Federal Rule of Civil
12 Procedure (“Rule”) 15. The Court granted Defendants’ Motion to Strike. (Doc. 63). On
13 February 6, 2019, Plaintiff filed the instant Motion for Leave to File an Amended
14 Complaint. (Doc. 64). The parties have also filed a Notice of Discovery Dispute, in which
15 Plaintiff requests that all discovery deadlines be extended by one year. (Doc. 69).
16 Defendants argues that “[t]here are no extraordinary circumstances justifying Plaintiff’s
17 request for a year extension of discovery deadlines.” (*Id.* at 2).

18 **II. DISCUSSION**

19 **A. Plaintiff’s Motion for Leave to File Amended Complaint**

20 In her Motion, Plaintiff provides that “[t]his is Plaintiff’s first motion to seek leave
21 to amend her complaint, and it comes **shortly** after she switched attorneys in this
22 matter” (Doc. 64 at 2). Moreover, Plaintiff provides that her proposed Amended
23 Complaint “reshapes the complaint somewhat (as is to be expected under new attorneys),
24 but it principally seeks to allow plaintiff to assert her claims on behalf of others similarly
25 situated as well as on behalf of herself.” (*Id.* at 2). Additionally, Plaintiff states that her
26 request for leave to amend “comes early in the case” (*Id.* at 5). Defendants argue that
27 the deadline for Plaintiff to amend her complaint passed on September 21, 2018, that
28 Plaintiff switched attorneys in April 2017, and that Plaintiff has failed to demonstrate good

1 cause for the requested leave to amend. (Doc. 67).

2 Plaintiff erroneously argues that Rule 15’s liberal amendment procedure applies to
3 her Motion. Plaintiff requests leave to amend her Complaint well after the expiration of
4 the Rule 16 Scheduling Order deadline for doing so; thus, Plaintiff must “satisfy the *more*
5 *stringent* ‘good cause’ showing required under Rule 16.” *AmerisourceBergen Corp. v.*
6 *Dialysist W., Inc.*, 465 F.3d 946, 952 (9th Cir. 2006) (emphasis in original); *see also*
7 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (“Unlike Rule
8 15(a)’s liberal amendment policy which focuses on the bad faith of the party seeking to
9 interpose an amendment and the prejudice to the opposing party, Rule 16(b)’s ‘good cause’
10 standard primarily considers the diligence of the party seeking the amendment.”). Rule
11 16(b)(4) expressly states that “[a] schedule may be modified only for good cause and with
12 the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The district court is given broad discretion
13 in supervising the pretrial phase of litigation, and its decisions regarding the preclusive
14 effect of a pretrial order . . . will not be disturbed unless they evidence a clear abuse of
15 discretion.” *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th
16 Cir. 2011), *cert. denied sub nom. C.F. v. Corbett*, 565 U.S. 1200 (2012) (citations and
17 internal quotation marks omitted) (omission in original). Accordingly, the Court will first
18 evaluate Plaintiffs’ Motion under Rule 16, and then, if necessary, under Rule 15(a). *See*
19 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir. 2000) (finding plaintiffs’
20 failure to show diligence should end the inquiry).

21 In the context of a request to modify a scheduling order, “good cause” means the
22 scheduling order’s deadlines cannot be met despite the party’s diligence. *Johnson*, 975
23 F.2d at 609 (citation omitted). “Although the existence or degree of prejudice to the party
24 opposing the modification might supply additional reasons to deny a motion, the focus of
25 the inquiry is upon the moving party’s reasons for seeking modification.” *Id.* “If the party
26 seeking the modification was not diligent, the inquiry should end and the motion to modify
27 should not be granted.” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087
28 (9th Cir. 2002) (citation and internal quotation marks omitted).

1 Federal courts in Arizona and within the Ninth Circuit “have articulated and
2 undertaken [a] three-step inquiry in resolving the question of diligence in the context of
3 determining good cause under Rule 16[.]” *Morgal v. Maricopa County Bd. of Sup’rs*, 284
4 F.R.D. 452, 460 (D. Ariz. June 6, 2012) (quoting *Grant v. United States*, 2011 WL
5 5554878, at *4 (E.D. Cal. Nov. 15, 2011), *adopted by*, 2012 WL 218959, at * 1 (E.D. Cal.
6 Jan. 23, 2012)). Under this three-step inquiry:

7 [T]o demonstrate diligence under Rule 16’s “good cause” standard, the
8 movant may be required to show the following: (1) that [she] was diligent in
9 assisting the [c]ourt in creating a workable Rule 16 order; (2) that [her]
10 noncompliance with a Rule 16 deadline occurred or will occur,
11 notwithstanding [her] diligent efforts to comply, because of the development
12 of matters which could not have been reasonably foreseen or anticipated at
13 the time of the Rule 16 scheduling conference; and (3) that [she] was diligent
14 in seeking amendment of the Rule 16 order, once it became apparent that
15 [she] could not comply with the order.

16 *Morgal*, 284 F.R.D. at 460 (quoting *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D.
17 Cal.1999)) (other citations omitted).

18 Plaintiff argues that the Court should grant leave to Amend her Complaint because
19 there is no prejudice to the Defendants and that she “tried to amend her complaint diligently
20 following the Court’s order on Defendant’s motion to dismiss dated 6/12/18[.]” (Doc. 64
21 at 4). Plaintiff’s argument misses the point. First, as discussed above, the focus of the
22 Rule 16(b) inquiry is not on the prejudicial effects on the responding party, rather it is on
23 the movant’s diligence in seeking leave to amend. Here, the Court finds that this second
24 attempt to amend her complaint does not come “shortly” after Plaintiff switched attorneys
25 in this matter. In fact, Plaintiff’s first attempt to file an amended complaint on September
26 21, 2018—which was filed approximately seventeen months after Plaintiff notified the
27 Court on April 17, 2017, that she had retained her current counsel—could not be accurately
28 described as filed “shortly” after Plaintiff retained new counsel. Thus, the instant Motion,
which was filed fifteen days after the Court issued its Order striking Plaintiff’s improper
amended complaint, was also not made “shortly” after Plaintiff’s counsel began
representing her in this matter. Moreover, Plaintiff has not provided any evidence of her

1 diligence in attempting to amend her Complaint.

2 Additionally, Plaintiff claims that “[s]ubstitution of counsel is reason enough to
3 permit an amendment to allow plaintiff the advocacy she has chosen, even where the
4 amendment introduces class claims.” (Doc. 64 at 4). Plaintiff supports this proposition by
5 citing out of circuit, *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008), in which the
6 court, applying the liberal requirements of Rule 15, held that it was not an abuse of
7 discretion for the court to grant a motion to amend a complaint to add class allegations
8 when the plaintiff’s first counsel “dropped the ball” However, the facts of this case
9 are easily distinguishable from *Arreola*. In *Arreola*, shortly after Plaintiff’s first counsel
10 withdrew, plaintiff obtained new counsel on March 29, 2005. *Id.* at 793. Within
11 approximately eight months thereafter, plaintiff’s new counsel filed a motion for leave to
12 file a second amended complaint, which the court granted, finding that it was
13 understandable that plaintiff’s new counsel would need some time “to get up to speed”. *Id.*
14 Here, Plaintiff’s current counsel waited approximately seventeen months before
15 improperly filing her first amended complaint and Plaintiff does not argue that it took
16 seventeen months “to get up to speed” in this case. Thus, the Court finds Plaintiff’s citation
17 to *Arreola* unpersuasive.

18 Plaintiff also cites to a District of Arizona case in which the court there granted
19 leave to amend a complaint. *See* Order at 1-2, *E.E.O.C. v. Collegeville/Imagineering Ent.*,
20 2:05-cv-03033-PHX-DGC (D. Ariz. July 13, 2006), ECF No. 34. There, the court stated
21 “that Plaintiff’s motion to amend is timely under the Court’s Case Management Order
22 (Doc. #20) and leave to amend is to be liberally granted.” *Id.* That case is inapposite to
23 the facts here. In this case, Plaintiff’s request was not timely under the Scheduling Order;
24 therefore, the leave to amend is not liberally granted. Thus, the Court also finds Plaintiff’s
25 citation to *Collegeville/Imagineering Ent.* unpersuasive.

26 Plaintiff has not provided any evidence of her diligence in attempting to amend her
27 Complaint. Despite Plaintiff’s claims that this request “comes early in the case” and
28 “shortly after she switched attorneys in this matter[;]” the record does not so reflect. The

1 Court finds Plaintiff has not met her burden of showing good cause under Rule 16 and the
2 inquiry will end here. *See Morgal*, 284 F.R.D. at 463.

3 **B. Parties' Notice of Discovery Dispute**

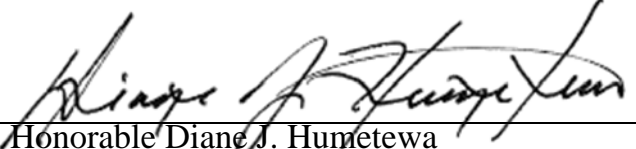
4 The parties filed a notice of Discovery Dispute on March 5, 2019, in which Plaintiff
5 requests that all discovery deadlines of the Court's Rule 16 Scheduling Order should be
6 extended by one year. (Doc. 69). Defendant opposes this request. (*Id.*) The Court has
7 denied Plaintiff's Motion for Leave to File an Amended Complaint; thus, the Court finds
8 there is not good cause to extend the discovery deadlines.

9 Accordingly,

10 **IT IS ORDERED** that Plaintiff's Motion for Leave to File an Amended Complaint
11 (Doc. 64) is **DENIED**; and

12 **IT IS FURTHER ORDERED** affirming all deadlines contained in the Court's
13 Rule 16 Scheduling Order (Doc. 44).

14 Dated this 6th day of March, 2019.

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18 Honorable Diane J. Humetewa
19 United States District Judge
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