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

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) Lead Case No. CV-09-8162-PCT-GMS

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) Consolidated with:
) Case No. CV-09-8174-PCT-GMS

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In re: Allstate Life Insurance Company
Litigation

) **ORDER**

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16 Pending before the Court are three motions: 1) Joint Motion of Allstate Life Insurance
17 Company, Covin Plaintiffs and Counterclaimant Wells Fargo Bank, N.A. Requesting
18 Modification of Case Management Order (Doc. 373); 2) the Town of Prescott Valley's
19 Motion for Leave to File Amended Counterclaims (Doc. 377); and 3) the Underwriters'
20 Motion to Amend Third-Party Complaint and Counterclaim (Doc. 443). As set forth below,
21 the Joint Motion of Allstate Life Insurance Company, the Covin Plaintiffs, and Wells Fargo
22 is denied. The Town's Motion for Leave to Amend is granted. The Underwriters' Motion to
23 Amend is denied.

24 **BACKGROUND¹**

25 On February 10, 2011, the Court issued a Case Management Order which stated that

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28 ¹ For a more detailed description of the background and facts, see the Court's Order
of November 4, 2010. (Doc. 212).

1 “[t]he deadline for joining parties, amending pleadings, and filing supplemental pleadings
2 is **June 17, 2011.**” (Doc. 257) (emphasis in original). On June 17, 2011, Allstate Life
3 Insurance Company, the Covin Plaintiffs, and Wells Fargo moved to modify the Case
4 Management Order to extend the deadline for amending pleadings from June 17 to October
5 31, 2011. (Doc. 373). Also on June 17, the Town of Prescott Valley moved for leave to
6 amend its Counterclaims against Wells Fargo to include newly discovered factual
7 information. (Doc. 377). On December 9, 2011, the Underwriters moved for leave to amend
8 their Third-Party Complaint and Counterclaim to add a new cause of action against Wells
9 Fargo. (Doc. 443).

10 **DISCUSSION**

11 **1. Legal Standard**

12 Although the decision whether to grant or deny a motion to amend is within the
13 “sound discretion of the trial court,” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.
14 1981), Rule 15(a)(2) instructs the Court to “freely give leave [to amend] when justice so
15 requires.” The Court may consider the following factors in determining whether to grant a
16 motion to amend: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)
17 futility of amendment and (5) whether [the party] has previously amended [the] complaint.”
18 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

19 Where a scheduling order is in place, Rule 16(b) of the Federal Rules of Civil
20 Procedure controls. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir.
21 1992). Rule 16(b)(4) states that a “schedule may be modified only for good cause and with
22 the judge’s consent.” *See also Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir.
23 2000). “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad faith of the
24 party seeking to interpose an amendment and the prejudice to the opposing party, Rule
25 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the
26 amendment.” *Johnson*, 975 F.2d at 609. “[C]arelessness is not compatible with a finding of
27 diligence and offers no reason for a grant of relief. . . . If [the party seeking to amend] was
28 not diligent, the inquiry should end.” *Id.*

1 **2. Legal Analysis**

2 **A. Joint Motion for Modification of Scheduling Order**

3 Allstate, the Covin Plaintiffs, and Wells Fargo (collectively “Plaintiffs”) move to
4 modify the Case Management Order to extend the deadline for amending pleadings from
5 June 17, 2011 to October 31, 2011. (Doc. 373). In connection with their motion, Plaintiffs
6 did not propose any specific amendments. Rather, Plaintiffs requested that the Court extend
7 the deadline for amending pleadings because Plaintiffs “believe they may discover additional
8 factual information supporting their claims when document production is complete and initial
9 depositions are taken.” (Doc. 373 at 3). Their requested deadline of October 31, 2011 has
10 passed, and Plaintiffs still have not proposed any specific amendments. Plaintiffs’ motion to
11 modify the scheduling order is therefore denied as moot.

12 **B. Town’s Motion for Leave to Amend**

13 The Town of Prescott Valley moves for leave to amend its Counterclaim against Wells
14 Fargo to include newly discovered factual information. (Doc. 377). The Town’s motion and
15 proposed amendment were submitted by the June 17, 2011 deadline set by the Court for
16 amending pleadings, and the Wells Fargo has expressly stated that it does not oppose the
17 amendment. (Doc. 401) (“Wells Fargo . . . does not oppose the Motion of the Town of
18 Prescott Valley to amend its purported counterclaim against the Trustee. Wells Fargo
19 concedes the proposed amendment does not add new claims.”). The Court therefore gives the
20 Town leave to file its proposed amended Counterclaims. The new factual allegations do not,
21 however, affect the Court’s determination in its November 18, 2011 Order that the Town has
22 failed to state a claim for contribution. (*See* Doc. 433).

23 **C. Underwriters’ Motion for Leave to Amend**

24 The Underwriters move for leave to amend their First Amended Complaint to add a
25 securities violation claim against Wells Fargo. (Doc. 443). The sole claim in the
26 Underwriters’ initial complaint against Wells Fargo was a contribution claim. On March 24,
27 2011, the Underwriters moved to amend this complaint to add a negligent misrepresentation
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1 proposed amended counterclaims.

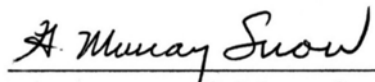
2 **IT IS THEREFORE ORDERED:**

3 1. The Joint Motion of Allstate Life Insurance Company, Covin Plaintiffs and
4 Counterclaimant Wells Fargo Bank, N.A. Requesting Modification of Case Management
5 Order (Doc. 373) is **DENIED**.

6 2. The Town of Prescott Valley's Motion for Leave to File Amended
7 Counterclaims (Doc. 377) is **GRANTED**.

8 3. The Underwriters' Motion to Amend Third-Party Complaint and Counterclaim
9 (Doc. 443) is **DENIED**.

10 DATED this 23rd day of January, 2012.

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13 G. Murray Snow
14 United States District Judge

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