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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AAA NORTHERN CALIFORNIA,
NEVADA & UTAH INSURANCE
EXCHANGE,

Plaintiff,

v.

AUDELINO MELGAR, ET AL.,

Defendants.

CASE NO. 1:13-cv-00562-AWI-MJS

**ORDER GRANTING MOTION FOR
LEAVE TO FILE FIRST AMENDED
CROSS-COMPLAINT**

(ECF NO. 46)

**FIRST AMENDED CROSS-COMPLAINT
DUE WITHIN TEN (10) DAYS**

AND RELATED CROSS-ACTIONS

I. INTRODUCTION

Before this Court is a motion for leave to file a first amended cross-complaint by Defendant, Cross-Defendant and Cross-Complainant Federal National Mortgage Association (“FNMA”) and Cross-Defendant Central Mortgage Company (“CMC”) (“Cross-Complainants”). (Mot., ECF No. 46.) Cross-Complainants seek to add a claim for loan origination fraud against Defendants Audelino Melgar and Bertila Melgar. (Mot. at 2.) This claim is based upon newly discovered facts obtained during the February 27,

1 2014 and February 28, 2014 deposition of Mr. Melgar. (Mot. at 3.) Specifically, Mr.
2 Melgar testified that his annual income for the year 2007 was between \$100,000 and
3 \$200,000, but stated in his loan application that his annual income for 2007 was
4 \$318,975. (Mot. at 3.)

5 **II. LEGAL STANDARD**

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7 The decision to grant or deny leave to amend pleadings is within the trial court's
8 discretion. Swanson v. U.S. Forest Serv., 87 F.3d 339, 343 (9th Cir. 1996); United States
9 v. Cnty. of San Diego, 53 F.3d 965, 969 n.6 (9th Cir. 1995).

10 A party seeking leave to amend pleadings after the deadline specified in the
11 Court's scheduling order must first satisfy Federal Rule of Civil Procedure 16(b)'s "good
12 cause" standard. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608-09 (9th Cir.
13 1992). This standard focuses primarily on the diligence of the party seeking the
14 amendment. Id. at 609. "[C]arelessness is not compatible with a finding of diligence and
15 offers no reason for a grant of relief." Id. "Although the existence or degree of prejudice
16 to the party opposing the modification might supply additional reasons to deny a motion,
17 the focus of the inquiry is upon the moving party's reasons for seeking modification." Id.

18
19 If good cause is shown, then the moving party must demonstrate that amendment
20 is proper under Federal Rule of Civil Procedure 15. Cf. id. at 608 (citing approvingly to
21 Forstmann v. Culp, 114 F.R.D. 83, 85 (M.D.N.C. 1987)). Under Rule 15(a)(2), the court
22 should freely give leave to amend a pleading "when justice so requires." The Court
23 should apply this policy "with extreme liberality." Owens v. Kaiser Found. Health Plan,
24 Inc., 244 F.3d 708, 712 (9th Cir. 2001) (quoting Morongo Band of Mission Indians v.
25 Rose, 893 F. 2d 1074, 1079 (9th Cir. 1990)). "If the underlying facts or circumstances
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1 relied upon by a [party] may be a proper subject of relief, he ought to be afforded an
2 opportunity to test his claim on the merits.” Forman v. Davis, 371 U.S. 178, 182 (1962).

3 However, a district court may deny leave to amend where there is “any apparent
4 or declared reason’ for doing so, including undue delay, undue prejudice to the opposing
5 party or futility of the amendment.” Lockman Found. v. Evangelical Alliance Mission, 930
6 F.2d 764, 772 (9th Cir. 1991) (quoting Forman, 371 U.S. at 182). These factors are not
7 to be given equal weight. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052
8 (9th Cir. 2003). Prejudice to the opposing party must be given the greatest weight. Id.
9 “Absent prejudice, or a strong showing of any of the remaining Forman factors, there
10 exists a presumption under Rule 15(a) in favor of granting leave to amend.” Id.

11 **III. ANALYSIS**

12 Cross-Complainants argue that leave to amend is proper under Rule 15(a)(2) and
13 that little or no actual prejudice will result from their proposed amendment. (Mot. at 3-5.)
14 Cross-Complainants anticipate only a “very short” extension of the discovery cut-off and
15 “no significant continuance” of the October 21, 2014 trial date. (Mot. at 5.) Additionally,
16 Cross-Complainants point out that their request is based on newly discovered evidence,
17 the conduct at issue is significant, and their motion was filed within a short time of
18 discovering the facts relevant to their claim. (Mot. at 5.)

19 Defendants argue that Cross-Complainants have not demonstrated “good cause”
20 as required under the Court’s scheduling order and Rule 16. (Opp’n, ECF 56.)

21 Defendants also argue that Cross-Complainants’ nearly two month delay in seeking
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1 leave to amend was “intentional and deliberate.” (Opp’n at 5.) Finally, Defendants argue
2 that the proposed claim is not factually supported and is time barred.¹ (Opp’n at 5-8.)

3 **A. Good Cause under Rule 16**

4 This Court issued a scheduling order on October 18, 2013, which stated, “No
5 motions to amend the Pleadings are anticipated. None will be permitted except for good
6 cause shown.” (ECF. No. 22 at 2.) Accordingly, Cross-Complainants’ motion is subject to
7 the “good cause” standard set out in Rule 16(b).

8
9 Cross-Complainants do not argue good cause, nor do they seek to modify the
10 Court’s scheduling order. A court may deny a motion to amend pleadings after a
11 scheduling order deadline has passed on the ground that the movant did not request
12 modification of the scheduling order as well. Johnson, 975 F.2d at 608. However, this
13 Court will exercise its discretion to construe the instant motion as a request to modify the
14 scheduling order to allow leave to amend. Cf. id. at 607 (noting “the district court is given
15 broad discretion in supervising the pretrial phase of litigation,” including its consideration
16 of the “preclusive effect of a pretrial order”).

17
18 The facts discovered by Cross-Complainants during Mr. Melgor’s deposition
19 constitute good cause for granting leave to amend. There is no indication these facts
20 were known to Cross-Complainants prior to the deposition or that they went unnoticed
21 due to Cross-Complainants’ lack of diligence. Cf. id. at 606-09 (finding no good cause to
22 join an additional party where defendant’s answer to the complaint and response to
23 interrogatories “amply indicated” potential liability of another entity); In re W. States
24 Wholesale Natural Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2013) (finding no
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27 ¹ Defendants also argue that Cross-Complainant FNMA, which is identified as the moving party, is no
28 longer a real party in interest. (Opp’n at 2.) The Court will disregard this argument in light of Cross-
Complainants’ pending motion to substitute CMC for Fannie Mae in the interpleader action (ECF No. 45),
which Defendants do not oppose. (ECF No. 57.)

1 good cause to amend where plaintiff was aware of the facts and theories supporting
2 amendment since the inception of the action). Although it would have been prudent for
3 Cross-Complainants to file their motion immediately following Mr. Melgor's deposition
4 rather than waiting until the deadline for filing non-dispositive motions, see Local Rule
5 144(d) ("Requests for Court-approved extensions brought on the required filing date for
6 the pleading or other document are looked upon with disfavor."), their two month delay
7 does not reflect the level of carelessness that would defeat a showing of good cause.

9 **B. Amendment under Rule 15**

10 Defendants have not argued that Cross-Complainants' proposed amendment
11 would be prejudicial, and the Court finds that no substantial prejudice will result.
12 Additionally, Cross-Complainants have provided a reasonable explanation for their delay
13 in seeking to amend. SAES Getters S.p.A. v. Aeronex, Inc., 219 f. Supp. 2d 1081, 1086
14 (S.D. Cal. 2002) ("[C]ourts will permit amendment provided the moving party has a
15 reasonable explanation for the delay."). Finally, although Defendants argue that the
16 proposed claim is not factually supported and is time barred, they have not established
17 that the claim is futile. "While courts will determine the legal sufficiency of a proposed
18 amendment using the same standard as applied on a Rule 12(b)(6) motion, such issues
19 are often more appropriately raised in a motion to dismiss rather than in an opposition to
20 a motion for leave to amend." Id. (citations omitted). Thus, leave to amend should be
21 granted "unless it appears beyond doubt" that the proposed claim would be dismissed
22 for failure to state a claim. DCD Programs, Ltd. V. Leighton, 833 F.2d 183, 188 (9th Cir.
23 1987) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

24 There being no strong showing of any of the Forman factors, the Court will apply
25 the presumption under Rule 15(a) in favor of granting leave to amend.
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1 **IV. ORDER**

2 For the reasons stated herein, the Court ORDERS as follows:

3 1. Cross-complainants' motion for leave to file a first amended cross-complaint is
4 GRANTED; and

5 2. The scheduling order is amended to permit Cross-Complainants to file an
6 amended cross-complaint within ten (10) days of service of this order.
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9 IT IS SO ORDERED.

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11 Dated: June 27, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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