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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

YOLANDA FOSTER,  
Plaintiff,

v.

BANK OF AMERICA, N.A., *et al.*,  
Defendants.

Case No. 1: 13-cv-1188-LJO-BAM

**ORDER ON PLAINTIFF'S MOTION TO  
AMEND (Doc. 14)**

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Plaintiff Yolanda Foster filed a motion to amend the complaint on February 5, 2014. (Doc. 14.) Defendant Bank of America, National Association filed an opposition to the motion on February 25, 2014. No reply was filed. The Court deemed the matter suitable for decision without oral argument pursuant to Local Rule 230(g) and vacated the hearing scheduled for March 14, 2014. Having considered the moving and opposition papers, and the entire file in this matter, the Court rules as follows.

**FACTUAL BACKGROUND**

In her complaint removed to this Court on July 30, 2013, plaintiff alleges that she was terminated from her employment with defendant on December 23, 2011. Plaintiff alleges she was on medical leave from April 12, 2010 until her termination. She alleges her termination was based on her medical leave and in violation of state law. Plaintiff alleges state law causes of action for (1) failure to engage in the interactive process to determine a reasonable accommodation for disability, (2) failure to

1 make reasonable accommodation for disability, (3) discriminatory discharge based on a physical  
2 disability, (4) termination in violation of public policy, and (5) retaliation. Plaintiff seeks  
3 compensatory damages, interest on lost earnings, exemplary damages, attorneys' fees, and costs of  
4 suit.

5 In the motion for leave to amend, plaintiff seeks leave to amend to add a Sixth Cause of Action  
6 for "Injunctive Relief" and seeks to add the remedy of "Injunctive Relief" to the Prayer in each cause  
7 of action. Defendant opposes the request for leave to amend. Defendant contends that the time for  
8 request for leave to amend has passed. The Scheduling Order set the deadline to amend pleadings for  
9 January 31, 2014. Defendant also argues there is no good cause to modify the scheduling order.  
10 Defendant argues that even if good cause exists, the amendment would be futile, and therefore, should  
11 be denied.

## 12 ANALYSIS

### 13 **Modifying the Scheduling Order**

14 Pursuant to the Court's Scheduling Order issued on December 2, 2013, the deadline to file any  
15 motion for leave to amend was January 31, 2014. Plaintiff filed her motion on February 5, 2014, after  
16 the deadline.

17 Fed.R.Civ.P. 15(a) provides that after service of a responsive pleading, "a party may amend the  
18 party's pleading only by leave of court or by written consent of the adverse party; and leave shall be  
19 freely given when justice so requires." Granting or denying leave to amend rests in the trial court's  
20 sound discretion and will be reversed only for abuse of discretion. *Swanson v. United States Forest*  
21 *Service*, 87 F.3d 339, 343 (9th Cir. 1996). In exercising discretion, "a court must be guided by the  
22 underlying purpose of Rule 15 to facilitate decision on the merits rather than on the pleadings or  
23 technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

24 However, where a case management scheduling order pursuant to Rule 16 sets a deadline for  
25 amending pleadings and the deadline has passed, the liberal policy regarding amendment of pleadings  
26 no longer applies. To allow the amendment, the scheduling order must be modified which requires  
27 leave of court and a showing of "good cause." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th  
28 Cir. 2000), *cert. denied*, 533 U.S. 950 (2001).

1 Pursuant to Rule 16(b), a scheduling order “may be modified only for good cause and with the  
2 judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily considers the  
3 diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
4 609 (9th Cir. 1992). The district court may modify the scheduling order “if it cannot reasonably be met  
5 despite the diligence of the party seeking the extension.” *Id.* If the party was not diligent, the inquiry  
6 should end. *Id.*

7 Here, plaintiff’s motion is untimely because it was filed after the Scheduling Order deadline.  
8 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d at 608–609 (motions filed after the deadlines set in a  
9 scheduling order are untimely and may be denied solely on this ground). Plaintiff fails to argue or  
10 show good cause for modifying the Scheduling Order. Plaintiff requests leave to amend, but does not  
11 argue that plaintiff was diligent in attempting to meet the Scheduling Order deadlines or otherwise  
12 explain her failure to comply with the deadline. Accordingly, leave to amend is denied.

### 13 **Factors for Amendment**

14 While the Court need not reach the merits of plaintiff’s request, the Court considers, briefly,  
15 whether the amendment is meritorious. Ninth Circuit Court of Appeals has enumerated factors to  
16 consider on a motion to amend: (1) undue delay; (2) bad faith; (3) prejudice to the opponent; and/or  
17 (4) futility of the proposed amendment. *Loehr v. Ventura County Community College District*, 743  
18 F.2d 1310, 1319 (9th Cir. 1984).

19 Defendant argues that the amendment would be futile. Defendant argues that the injunctive  
20 relief requested includes restraining Defendant from maintaining policies permitting harassment,  
21 discrimination, or retaliation related to disability; and affirmatively requiring Defendant to train its  
22 employees, post laws; and develop policies related to harassment, discrimination, or retaliation.  
23 Defendant argues that defendant no longer employs plaintiff, and she therefore lacks standing to seek  
24 the requested injunctive relief.

### 25 **Futility**

26 Denial of leave to file an amended complaint is appropriate where an amendment is futile.  
27 *Saul v. United States*, 928 F.2d 829, 843 (9<sup>th</sup> Cir. 1991). A “proposed amendment is futile only if no  
28 set of facts can be proved under the amendment to the pleadings that would constitute a valid and

1 sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9<sup>th</sup> Cir. 1988). An  
2 amendment is futile when it lacks legal foundation. *Shermoen v. United States*, 982 F.2d 1312, 1319  
3 (9<sup>th</sup> Cir. 1992), *cert. denied*, 509 U.S. 903, 113 S.Ct. 2993 (1993); *Johnson v. District 2 Marine*  
4 *Engineers Beneficial Assoc.*, 857 F.2d 514, 518 (9<sup>th</sup> Cir. 1988).

5 Plaintiff seeks leave to amend to add a claim for injunctive relief. An injunction is an equitable  
6 remedy. “The basis for injunctive relief (preliminary or permanent) in the federal courts has always  
7 been irreparable injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barcelo*, 456  
8 U.S. 305, 312, 102 S.Ct. 1798, 1803 (1982). Injunctive relief is “an extraordinary remedy that may  
9 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural*  
10 *Resources Defense Council, Inc.*, 555 U.S. at 22, 129 S.Ct. at 375–376. There must be a substantial  
11 likelihood that the relief sought, if granted, will redress the plaintiff’s injury. *Lujan v. Defenders of*  
12 *Wildlife*, 504 U.S. 555, 559–560, 112 S.Ct. 2130, 2136 (1992). The relief must redress plaintiff’s  
13 injury; it is not enough that a favorable judgment will benefit the public at large or punish defendant.  
14 *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 107, 118 S.Ct. 1003, 1019 (1998).

15 Here, plaintiff has an adequate remedy at law. Monetary damages for termination of  
16 employment are generally an adequate remedy at law.

17 Further, plaintiff seeks prospective relief which will not redress any injury suffered by  
18 plaintiff. Plaintiff is no longer employed with defendant and does not seek reinstatement of  
19 employment. The proposed injunctive relief includes restraining Defendant from maintaining policies  
20 permitting harassment, discrimination, or retaliation related to disability; and affirmatively requiring  
21 Defendant to train its employees and post laws; and develop policies related to harassment,  
22 discrimination, or retaliation. None of the requested relief will remedy any injury to plaintiff because  
23 she is not employed with defendant and does not seek reinstatement such that she may be re-exposed  
24 to defendant’s policies. Therefore, injunctive relief will not redress plaintiff’s injury. Accordingly,  
25 the Court finds that amendment would be futile.

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**CONCLUSION**

For the foregoing reasons, plaintiff's motion for leave to amend the complaint is DENIED.

IT IS SO ORDERED.

Dated: April 18, 2014

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE