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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

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12 DELIA WILSON, on behalf of
13 herself and all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 CONAIR CORPORATION,

18 Defendant.

CIV. NO. 1:14-00894 WBS SAB

MEMORANDUM AND ORDER RE:
PLAINTIFF'S APPLICATION TO
SHORTEN TIME ON PLAINTIFF'S
MOTION FOR LEAVE TO FILE A FIRST
AMENDED COMPLAINT AND TO
CONTINUE CLASS CERTIFICATION

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21 Plaintiff Delia Wilson brought this putative class
22 action against Conair Corporation, asserting violations of the
23 Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq., the
24 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, and
25 breach of implied warranty for allegedly misrepresenting the
26 safety of Conair's Curling Irons, Straightening Irons, and
27 Curling Brushes. Plaintiff now applies to shorten the time on
28 her motion for leave to file a First Amended Complaint ("FAC"),

1 requesting that the court move the hearing date from February 22,
2 2016 to February 1, 2016. (Docket No. 108.) Plaintiff also
3 seeks an extension of thirty days to file her motion for class
4 certification, requesting that the court move the deadline from
5 February 5, 2016 to March 7, 2016. (Id.) Defendant opposes
6 plaintiff's application to shorten time on the motion to amend
7 and to extend time on the motion for class certification.
8 (Def.'s Opp'n (Docket No. 109).)

9 I. Shortening Time on Motion to Amend

10 Under Local Rule 144(e), "applications to shorten time
11 shall set forth by affidavit of counsel the circumstances claimed
12 to justify the issuance of an order shortening time." E.D. Cal.
13 Local R. 144(e).

14 Plaintiff requests shortened time because the statute
15 of limitations on her proposed personal injury claims expires on
16 February 12, 2016, before the current hearing date of February
17 22, 2016. (Pl.'s Appl. at 1; MacPherson Decl. ¶ 21 (Docket No.
18 108-1).) Plaintiff is now pursuing individual personal injury
19 claims because of her "ongoing problems attributed to the initial
20 injury." (Pl.'s Appl. at 3.) Plaintiff alleges that she was
21 injured by a Conair Styling Iron when the power cord crackled and
22 emitted sparks that hit the right side of her face and chest.
23 (MacPherson Decl. ¶ 20.) She suffered a corneal abrasion for
24 which she continues to see her eye doctor and which continues to
25 require eye medication. (Id.) In addition, plaintiff's proposed
26 FAC adds a class action claim regarding Conair's alleged failure
27 to report complaints of power cord ruptures on styling irons.
28 (Id.) Plaintiff seeks to include this new allegation in her

1 motion for class certification, which must be filed by February
2 5, 2016. (Id. at 2.)

3 Defendant opposes shortening time because defendant
4 already stipulated to shortened time when plaintiff moved to
5 continue the motion for class certification by sixty days in
6 December 2015. (Def.'s Opp'n at 2.) In addition, defendant
7 argues that if the court shortens time it will not have enough
8 time to serve plaintiff with a Rule 11 motion for sanctions and
9 provide plaintiff with the required 21 day safe-harbor period.

10 (Id. at 7.) Defendant seeks sanctions because it argues
11 plaintiff's underlying motion to amend was filed for improper
12 purposes and the new allegations plaintiff proposes are not
13 supported by facts or existing law. (Id. at 6.) For example,
14 plaintiff stated in her original Complaint that though she
15 "suffered physical harm from use of the Styling Iron, plaintiff
16 is not seeking the recovery of her personal injury damages" or
17 "any personal injury damages on behalf of class members."

18 (Compl. at 2 (Docket No. 1).) Defendant argues that plaintiff is
19 now contradicting this affirmative representation by seeking to
20 allege individual personal injury claims in her FAC.

21 The court finds that the statute of limitations for
22 plaintiff's personal injury claims is a satisfactory reason for
23 shortening time on plaintiff's motion to amend. Defendant's
24 desire to file Rule 11 sanctions does not justify denying
25 plaintiff's motion. Accordingly, the court grants plaintiff's
26 application to shorten time on her motion for leave to file a FAC
27 and moves the hearing to February 8, 2016.

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1 II. Extending Time on Motion for Class Certification

2 On December 4, 2014, this court issued a Status
3 (Pretrial Scheduling) Order that required all motions to certify
4 or decertify a class be filed on or before January 5, 2016. In
5 December 2015, plaintiff requested a sixty-day extension in order
6 to resolve outstanding discovery issues before filing her motion
7 for class certification. Magistrate Judge Boone found that
8 plaintiff had not shown good cause for a sixty-day extension of
9 time as the seven discovery issues plaintiff raised had largely
10 been resolved. However, Magistrate Judge Boone granted plaintiff
11 a thirty day extension because the parties had only resolved
12 outstanding discovery disputes on December 22, 2015 and needed
13 time to exchange and review the agreed upon disclosures. (Docket
14 No. 106.) Magistrate Judge Boone therefore moved the filing
15 deadline to February 5, 2016. (Id.) Plaintiff now seeks an
16 additional thirty-day extension.

17 Amendments of the scheduling order are governed by
18 Federal Rule of Civil Procedure 16, which provides that a
19 scheduling order "may be modified only for good cause and with
20 the judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s
21 'good cause' standard primarily considers the diligence of the
22 party seeking amendment." Johnson, 975 F.2d at 609. "If that
23 party was not diligent, the inquiry should end." Id. Although
24 the focus of the inquiry is on the moving party's diligence, "the
25 existence or degree of prejudice to the party opposing the
26 modification might supply additional reasons to deny a motion."
27 Id.; see also Fed. R. Civ. P. 6(b) ("When an act may or must be
28 done within a specified time, the court may, for good cause,

1 extend time.”).

2 Plaintiff contends that she needs an additional thirty
3 days to file her motion for class certification because at the
4 December 2, 2015 deposition of Conair’s witness, Pam Keegan,
5 plaintiff learned that Conair does not report complaints of power
6 and cord ruptures on Conair styling irons to the federal Consumer
7 Product Safety Commission. (Pl.’s Appl. at 3; MacPherson Decl.
8 ¶¶ 16-19.) Plaintiff argues that this failure to report is an
9 unfair and deceptive business practice and seeks to add this
10 allegation to her Complaint. (Id.) She argues that this new
11 allegation is critical to supporting her motion for class
12 certification. (Id.) As a result, she seeks to have her motion
13 for leave to file a FAC decided prior to the date on which she
14 must file her motion for class certification.

15 While Pam Keegan was deposed prior to plaintiff’s
16 December 16, 2015 application for a sixty-day extension,
17 plaintiff had not yet filed her motion to amend the Complaint.
18 Further, plaintiff did not identify Conair’s alleged failure to
19 report as a justification in her prior application for an
20 extension. (See Docket Nos. 97, 106.) The court therefore finds
21 that plaintiff was sufficiently diligent in seeking to
22 incorporate the reporting failure into her Complaint and motion
23 for class certification, even though she technically could have
24 raised this issue in her prior motion for an extension.


25 In addition, the extension of time will not prejudice
26 defendant as it will not cause additional changes to the
27 scheduling order--the pre-trial conference will remain on
28 November 7, 2016 with trial set for January 10, 2017. Granting

1 an extension also will not interfere substantially with
2 discovery, which remains open until July 1, 2015.

3 IT IS THEREFORE ORDERED that plaintiff's application
4 for an Order shortening the time on the motion to amend and
5 extending the time in which to file the motion for class
6 certification be, and the same hereby is, GRANTED.

7 The hearing for plaintiff's motion to amend shall be
8 moved to February 8, 2016 at 1:30 p.m. Defendant's opposition or
9 statement of non-opposition must be filed by February 1, 2016.
10 Plaintiff's reply must be filed by February 3, 2016. All motions
11 to certify or decertify a class shall be filed on or before March
12 7, 2016.

13 Dated: January 25, 2016


14 WILLIAM B. SHUBB
15 UNITED STATES DISTRICT JUDGE
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