

1 motion. (Doc. No. 62.) On April 25, 2017, plaintiff filed a reply. (Doc. No. 63.) On May 5,
2 2017, plaintiff's motion for leave to amend came before the court for hearing.¹ (Doc. No. 65.)
3 Attorney John Drooyan appeared telephonically on behalf of plaintiff and attorney Alison Lippa
4 appeared telephonically on behalf of defendant Bank of America, N.A. Following oral argument
5 plaintiff's motion to amend was taken under submission. (*Id.*) For the reasons that follow,
6 plaintiff's belated motion for leave to amend will be denied.

7 **Background**

8 Plaintiff's claims in this action all relate to the mortgage on her property located at 4040
9 West Iris Avenue, Visalia, California. (Doc. No. 25 at 3.) In her first amended complaint
10 plaintiff generally alleges that defendants acted improperly in connection with a loan
11 modification process and unlawfully put her home in foreclosure. (*Id.* at 2–18.) On June 30,
12 2016, the court issued a scheduling order setting the non-dispositive motion deadline as March
13 28, 2017 and the dispositive motion deadline as April 11, 2017. (Doc. No. 50.) The non-expert
14 discovery deadline was set for March 28, 2017 and the expert discovery deadline was set for
15 April 11, 2017. (*Id.*) The scheduling order noted that:

16 The parties do not anticipate any amendments to the pleadings at
17 this time. The parties are advised that filing motions and/or
18 stipulations requesting leave to amend the pleadings does not reflect
19 the propriety of the amendment or imply good cause to modify the
20 existing schedule, if necessary. All proposed amendments must (A)
21 be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the
22 amendment requires any modification to the existing schedule, *see*
Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.
1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an
amendment is not (1) prejudicial to the opposing party, (2) the
product of undue delay, (3) proposed in bad faith, or (4) futile, *see*
Foman v. Davis, 371 U.S. 178, 182 (1962).

23 (*Id.* at 2.) On April 11, 2017, the final day to do so under the scheduling order, defendants filed a
24 motion for partial summary judgment and noticed that motion hearing on May 16, 2017. (Doc.
25 No. 61.) Jury trial is set for August 15, 2017. (Doc. No. 50.)

26 ¹ The court continued a mandatory settlement conference scheduled for April 11, 2017 to May
27 23, 2017 after the parties stipulated to that continuance “to enable the Court to have heard and
28 possibly ruled on Plaintiff's Motion for Leave to file a Second Amended Complaint prior to the
mandatory settlement conference.” (Doc. Nos. 59; 60.)

1 Rule 16(b), “the focus of the inquiry is upon the moving party’s reasons for seeking
2 modification” and their diligence in doing so. *Id.* at 607–08, 609. *See also Noyes v. Kelly*
3 *Services*, 488 F.3d 1163, 1174 n. 6 (9th Cir. 2007) (“Rule 16(b) provides that a district court’s
4 scheduling order may be modified upon a showing of ‘good cause,’ an inquiry which focuses on
5 the reasonable diligence of the moving party.”) (citing *Johnson*, 975 F.2d at 609).

6 Here, plaintiff’s stated reason for seeking leave to amend and a modification of the
7 scheduling order is the discovery of new evidence. Plaintiff, however, has failed to point to any
8 relevant facts that were in fact unavailable to plaintiff and her counsel. Plaintiff alleges she
9 learned for the first time at Ms. Chatman’s deposition of an alleged delayed credit to principal on
10 March 3, 2010 of plaintiff’s December 2009, January 2010, and February 2010 payments, which
11 plaintiff now wishes to allege constituted an unlawful conversion. (Doc. Nos. 57 at 17–18; 57-1
12 at 84–85, 95–96.) Plaintiff also alleges that at the same time she learned of a variety of “new”
13 facts regarding the reporting and crediting of specific loan payments. (Doc. No. 57 at 18–20.)
14 However, attached as an exhibit to plaintiff’s motion to amend is the payment history on the
15 mortgage provided to plaintiff by Bank of America, N.A. on July 16, 2014. (Doc. No. 57-1 at
16 251–259.) This payment history has long been available to plaintiff, was provided to her by
17 defendant by at least July 16, 2014, and reflects the very facts that plaintiff now claims were just
18 discovered by her for the first time at the March 16, 2017 deposition of Ms. Chatman. Plaintiff’s
19 only explanation is that the payment history was not comprehensible to her or her attorney prior
20 to the Chatman deposition. (Doc. No. 63 at 5.) The court is persuaded that plaintiff was clearly
21 on notice of the facts at issue long before March 16, 2017.

22 Plaintiff also alleges she learned for the first time at Ms. Chatman’s deposition of the
23 recordation of the partial claim deed of trust to HUD by defendants, which plaintiff claims
24 supports her fraud claim. (Doc. Nos. 57 at 18; 57-1 at 90–93.) At deposition, Ms. Chatman
25 actually testified that “[b]ased upon my research, it appears that it was recorded on behalf of Bank
26 of America.” (Doc. No. 57-1 at 17.) However, this information was available to plaintiff when
27 she filed her original complaint in July of 2014. Indeed, the partial claim deed of trust was
28 attached as an exhibit to that complaint. This document includes a notation that it was prepared

1 by “Bank of America Home Loans.” (Doc. No. 1-2 at 33.) Plaintiff now argues that before the
2 deed of trust was recorded, defendants did not contact HUD to request payment of \$15,064.12.
3 (Doc. No. 57 at 18.) The recorded documents, however, reflect that the partial claim deed of trust
4 was reconveyed on March 10, 2013. (Doc. No. 62-6 at 2.) Plaintiff therefore has known, or at
5 least been on notice, that HUD had not funded the partial claim since at least March 10, 2013.

6 Finally, plaintiff appears to claim that she just recently learned

7 Defendants determined that Plaintiff DOWLING and her husband
8 did not qualify for the PARTIAL CLAIM and AGREEMENT
9 because of a communication from the IRS to Plaintiff DOWLING
10 and her husband that states that Plaintiff and her husband made tax
11 overpayment, and the IRS would be refunding \$4,293.62 unless
12 other obligations were owed [Ex. “4”]; and an ABSTRACT OF
13 JUDGMENT – CIVIL AND SMALL CLAIMS in the amount of
14 \$5,696.00, for which Plaintiff’s husband Brent Dowling is the
15 Judgment Creditor [Ex. “5”].

12 (Doc. No. 57 at 19.) Plaintiff has not explained how this alleged fact supports any of her
13 proposed new causes of action. Moreover, it is clear that plaintiff was aware since at least July 7,
14 2010, when she signed a negotiation agreement and partial claim agreement, that the partial claim
15 was conditional upon Bank of America, N.A. conducting a title search and resolving any
16 questions concerning potential liens or encumbrances. (Doc. No. 57-1 at 132.) Plaintiff was also
17 aware, or should have been aware, of a notice from the IRS to her involving payment of past due
18 taxes dated March 1, 2010, and a recorded abstract of judgment against her husband Brent
19 Dowling dated January 18, 2008. (*Id.* at 47–52.) Accordingly, none of these facts can fairly be
20 characterized as recently discovered.

21 Plaintiff and her counsel simply waited until the end of discovery to conduct the
22 deposition of Ms. Chatman on March 16, 2017. Moreover, the court cannot identify any new
23 facts that were first learned by plaintiff at that deposition that would support a finding of good
24 cause for plaintiff’s belated, last-minute motion to amend. Clearly, amendment to the pleadings
25 at this late stage of the litigation would require that an entirely new scheduling order be issued.
26 Under these circumstances, the court cannot conclude that plaintiff was diligent in seeking
27 amendment. Good cause has not been shown. Therefore, plaintiff’s motion for leave to amend
28 must be denied.

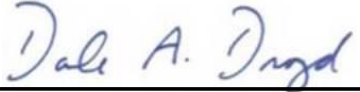
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Conclusion

For all of the reasons set forth above, plaintiff's motion for leave to amend (Doc. No. 57) is denied.

IT IS SO ORDERED.

Dated: May 17, 2017



UNITED STATES DISTRICT JUDGE