

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLORIA PALACIOS MORALEZ,
Plaintiff,
v.
MIKE YOUNG¹, Acting Secretary, United
States Department of Agriculture,
Defendant.

Case No. 1:16-cv-00282-AWI-BAM
**ORDER DENYING IN PART AND
GRANTING IN PART PLAINTIFF’S
MOTION TO SUPSEND AND RESET
DISCOVERY DEADLINES**
(Doc. 411)
**ORDER SETTING TELEPHONIC STATUS
CONFERENCE**

Currently before the Court is Plaintiff Gloria Palacios Morales’s motion to suspend discovery and reset the discovery deadlines after resolution of her pending motion for reconsideration. (Doc. 411). Defendant Mike Young, Acting Secretary, United States Department of Agriculture (“Defendant”) opposed the motion, and Plaintiff replied. (Docs. 412, 415). The Court heard oral argument on April 7, 2017. Plaintiff’s counsel Brandon Nagy, Phillip Fraas and Michael Tucci appeared by telephone. Defendant’s counsel Joseph Frueh also appeared by telephone.

For the reasons that follow, Plaintiff’s motion to suspend discovery is discovery shall be

¹ Mike Young is now the Acting Secretary of the United States Department of Agriculture. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Mike Young is substituted for Thomas J. Vilsack as the defendant in this action.

1 denied as moot, but her request to reset the deadline for non-expert liability discovery after
2 resolution of the motion for reconsideration shall be granted.

3 **I. Background**

4 On March 1, 2016, Plaintiff's claims were transferred to this Court. (Doc. 376). Pursuant
5 to a stipulation of the parties, Plaintiff filed a fourth amended complaint on May 13, 2016. The
6 amended complaint alleged two claims: (1) a violation of the Equal Credit Opportunity Act
7 ("ECOA"), 15 U.S.C. 1691(a), for alleged discrimination related to loans or loan servicing during
8 the periods January 1, 1981 to December 1, 1996, and October 13, 1998 to October 13, 2000; and
9 (2) a violation of the Administrative Procedure Act ("APA") for alleged discrimination in
10 connection with the denial of crop disaster benefits in 1993. (Doc. 391). Defendant Secretary of
11 the U.S. Department of Agriculture answered the fourth amended complaint on June 13, 2016.
12 (Doc. 392).

13 On July 28, 2016, the Court issued a Scheduling Order, which set the deadline to complete
14 nonexpert/liability discovery as April 14, 2017. (Doc. 396). Thereafter, the parties exchanged
15 initial disclosures and written discovery. (Doc. 411-1 at p. 2 and Doc. 412 at p. 3).

16 On October 3, 2016, Defendant filed a motion to dismiss Plaintiff's first cause of action
17 for violation of the ECOA for lack of subject-matter jurisdiction and, in the alternative, for partial
18 summary judgment. (Doc. 399). On December 21, 2016, the Court denied Defendant's motion
19 to dismiss for lack of subject-matter jurisdiction, but granted Defendant's motion for summary
20 adjudication, allowing the matter to proceed against Defendant only on Plaintiff's second cause of
21 action for violation of the APA. (Doc. 405).

22 On December 30, 2016, Plaintiff filed a motion for reconsideration of the Court's order
23 granting summary adjudication and limiting this action to her second cause of action for violation
24 of the APA. (Doc. 406). On February 1, 2017, the Court deemed the matter suitable for decision
25 without oral argument, and the motion for reconsideration was taken under submission as of
26 February 6, 2017. (Doc. 410).

27 On March 10, 2017, Plaintiff filed the instant motion to suspend discovery and reset the
28 discovery deadlines after the Court rules on the pending motion for reconsideration. (Doc. 411).

1 Defendant opposed the motion, and Plaintiff replied. (Docs. 412, 415).

2 Following oral argument on the motion to suspend discovery and resent deadlines, the
3 District Court denied Plaintiff's motion for reconsideration. Therefore, the case proceeds solely
4 on Plaintiff's claim for violation of the APA based on alleged discrimination in connection with
5 the denial of crop disaster benefits in 1993. (Doc. 420).

6 **II. Legal Standard**

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

13 **III. Discussion**

14 **A. Parties' Positions**

15 **1. Plaintiff's Position**

16 Plaintiff contends that discovery has been hindered by uncertainty regarding her
17 entitlement to pursue her ECOA claim. Plaintiff asserts that while there is some overlap between
18 her claims, the scope of discovery regarding the ECOA claim is significantly broader. If the
19 motion for reconsideration is granted and she is allowed to pursue her ECOA claim, it will be
20 impossible to complete necessary discovery on this claim by the current April 14, 2017 deadline.
21 Plaintiff asserts that no party has noticed or taken any depositions (except for Plaintiff's) since the
22 filing of the motion to dismiss, and there are a number of potential deponents located throughout
23 the United States. However, the parties have continued to complete written discovery and
24 supplement their disclosures.

25 **2. Defendant's Position**

26 Defendant argues that Plaintiff has not conducted diligent discovery, asserting that despite
27 Plaintiff's representations regarding ongoing discovery in her motion for reconsideration, she has
28 not taken a single deposition or conducted other formal discovery except a first set of

1 interrogatories and document requests. (Doc. 412 at p. 3.) Defendant further argues that (1) the
2 filing of a motion for reconsideration does not toll discovery or establish good cause, (2) Plaintiff
3 has not identified the specific discovery she requires or how any obstacle prevented her from
4 conducting discovery, (3) there is no basis to suspend and reset discovery on the APA claim, and
5 (4) even if her motion for reconsideration is granted, she would not be entitled to further
6 discovery based on her representations in that motion that discovery was ongoing.

7 **3. Plaintiff's Reply**

8 In her reply, Plaintiff argues that because her ECOA has been dismissed, she currently is
9 not entitled to discovery regarding her ECOA claim under Federal Rule of Civil Procedure 26.
10 As a result, she has been prevented from noticing the deposition of U.S. Department of
11 Agriculture officials and other identified knowledgeable persons that only have ECOA
12 information. Plaintiff also argues that she has been conducting written discovery, including
13 writing multiple letters to Defendant addressing deficiencies in responses to her interrogatories
14 and requests for production. Finally, Plaintiff asserts that written discovery has revealed that
15 depositions will be necessary to complete fact discovery, given Defendant's failure or inability to
16 provide records. Plaintiff reasserts that depositions are needed of the knowledgeable individuals
17 identified in the parties' disclosure statements, including Defendant's supplemental disclosures.
18 (Doc. 415 at p. 4). Plaintiff concludes that the uncertainty of whether she is entitled to conduct
19 ECOA-specific discovery prevents her from noticing and scheduling depositions of these
20 knowledgeable individuals and completing non-expert discovery by the April 14, 2017 deadline.

21 **B. Analysis**

22 As noted above, Plaintiff's pending motion for reconsideration has been resolved by the
23 Court. Accordingly, her request to suspend discovery pending resolution of that motion is now
24 moot. However, given the previous period of uncertainty regarding the scope of discovery, the
25 Court finds good cause for a brief extension of the deadline to complete non-expert liability
26 discovery on the APA claim. Plaintiff has been diligent in pursuing written discovery, and has
27 not required the parties to expend resources on potentially unnecessary depositions. Further, a
28 brief extension to complete non-expert liability discovery on Plaintiff's APA claim will not result

1 in prejudice to either party.

2 During oral argument, the parties disputed whether Plaintiff was entitled to discovery on
3 the discrimination component of her APA claim, with Plaintiff asserting that she could not rely on
4 agency records alone and will require depositions to fill any gaps in those records. The parties
5 also dispute the scope of and entitlement to comparator records. The Court will not resolve the
6 disputes at this time, and finds that a brief extension of the relevant discovery deadline will permit
7 the parties to resolve the disputed scope of discovery, by formal motion or other means, and
8 complete additional discovery, if any, on Plaintiff's APA claim.

9 **IV. Conclusion and Order**

10 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 11 1. Plaintiff's motion to suspend discovery pending resolution of her motion for
12 reconsideration is DENIED as moot;
- 13 2. Plaintiff's request to extend the non-expert liability discovery deadline following
14 resolution of the motion for reconsideration is GRANTED.
- 15 3. The deadline to complete non-expert liability discovery is EXTENDED sixty (60)
16 days after service of this order; and
- 17 4. The Court SETS a telephonic status conference regarding non-expert liability
18 discovery for **May 18, 2017, at 9:30 a.m. in Courtroom 8 (BAM)** before the
19 undersigned. The parties may appear telephonically at the conference with each party
20 using the following dial-in number and passcode: **dial-in number: 1-877-411-9748;**
21 **passcode: 3190866.**

22
23 IT IS SO ORDERED.

24 Dated: April 12, 2017

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
27
28