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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AGNES XIE,

 Plaintiff,

 v.

DE YOUNG PROPERTIES, 5418 LP,

 Defendant.

No. 1: 16-cv-01518-DAD-SKO

ORDER DENYING PLAINTIFF’S MOTION
TO AMEND THE COMPLAINT

(Doc. No. 98)

This case is before the court on plaintiff Agnes Xie’s (“plaintiff”) motion to amend her complaint, which was filed on August 7, 2018. (Doc. No. 98.) Defendant De Young Properties 5418 L.P. (“defendant”) filed an opposition on September 4, 2018. (Doc. No. 113.) Plaintiff did not file a reply. On September 12, 2018, the court deemed the motion suitable for decision without oral argument pursuant to Local Rule 230 (g). (See Doc. No. 116.) For the following reasons, plaintiff’s motion to amend her complaint is denied.

BACKGROUND

Plaintiff Agnes Xie (“plaintiff”) filed her initial complaint on October 7, 2016. (Doc. No. 1.) A first amended complaint was filed on January 3, 2017. (Doc. No. 7.) Defendant filed a motion to dismiss plaintiff’s first amended complaint on January 17, 2017. (Doc. No. 8.) Following a hearing on March 21, 2017 (Doc. No. 23), the court granted defendant’s motion to dismiss with leave to amend on April 6, 2017. (Doc. No. 25.) On May 8, 2017, plaintiff filed an

1 in bad faith, and will result in prejudice to defendant.¹ (Doc. No. 113 at 10–12.)

2 “[I]n evaluating undue delay, we inquire ‘whether the moving party knew or should have
3 known the facts and theories raised by the amendment in the original pleading.’”
4 *AmerisourceBergen*, 465 F.3d at 953 (quoting *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388
5 (9th Cir. 1990)). The court construes plaintiff’s motion to amend as identifying four alleged
6 newly discovered facts warranting the granting of leave to amend the complaint.² However, the
7 court concludes that the “new facts” underlying plaintiff’s proposed amendment have all been
8 available to plaintiff previously and do not warrant granting leave to amend the complaint at this
9 late stage of the proceedings. The court discusses each “new fact” relied upon by plaintiff below.

10 First, plaintiff states: “Tina Larson entered agency contract with plaintiff and acted as
11 plaintiff’s buyer’s agent on 6/25/13 prior to plaintiff’s contract1, Plaintiff did not have this
12 information until 6/21/18.” (Doc. No. 98 at ¶ 3.) In support of this contention, plaintiff attaches a
13 copy of the purported agent contract as Exhibit 1 to her motion. (*Id.* at 4.) In its opposition,
14 defendant states that this document was previously produced to plaintiff on October 9, 2017, prior
15 to the November 20, 2017 deadline to amend the pleadings under the court’s scheduling order.
16 (*See* Doc. No. 113 at 9.) Plaintiff did not file a reply. Therefore, this is not a “new fact” and does
17 not warrant granting plaintiff leave to amend the complaint.

18 Next, plaintiff states that she “was not informed that Tina Larson was no longer Defendant
19 DeYoung’s employee until on 3/15/18, which were later confirmed only on 4/11/2018 by
20 defendant in their filing from Defendant’s CFO Ernie’s declaration that Tina no longer employed
21 by De Young.” (Doc. No. 98 at ¶ 5.) Plaintiff does not discuss in what way this “new fact” is
22 relevant to her existing or proposed claims. Further, plaintiff does not explain why, despite
23 knowing this fact since March 15, 2018, she did not move to amend the complaint until nearly
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25 ¹ Defendant also argues that leave to amend should be denied because plaintiff’s proposed
26 amendments are futile. (Doc. No. 113 at 12–17.) Because the court will deny plaintiff’s motion
27 to amend on other grounds, it declines to address the substance of this argument advanced by
28 defendant.

² Plaintiff did not attach a copy of the proposed amended pleading to her motion as required by
Local Rule 137(c).

1 five months later. Thus, even as represented by plaintiff, this is not a “new fact” and does not
2 provide a compelling reason to grant leave to amend the complaint.

3 Plaintiff also argues that “[t]here is existing executed contract1 which were signed by
4 DeYoung which defendant did not produce so far, which plaintiff had filed motion to compel.”
5 (Doc. No. 98 at ¶ 6.) Plaintiff requested that defendant produce a document that she refers to as
6 “contract1” in her motions to compel. (See Doc. Nos. 88, 99.) On August 7, 2018, the magistrate
7 judge issued an order stating that “[c]ontract1’ refers to a document signed by Plaintiff and Mr.
8 Jerry De Young. Defendant has confirmed that it has no document in its possession, custody, or
9 control. Accordingly, Plaintiff’s motion to compel ‘contract1’ is DENIED as moot.” (Doc. No.
10 95 at 2.) On August 13, 2018, the magistrate judge issued a minute order denying plaintiff’s
11 motion to compel as moot, stating that the motion had already been resolved by the court’s
12 previous order. (Doc. No. 106). Given these orders, the court does not find that plaintiff has
13 presented a sufficient reason to grant leave to amend the complaint based on this alleged “new
14 fact,” which is not an evidentiary fact at all.

15 Finally, plaintiff states that she seeks to add DeYoung Realty Inc. and DeYoung Mortgage
16 as parties to this action because these entities are separate from DeYoung Properties, 5418 LP.
17 (Doc. No. 98 at 1.) Defendant states that it produced documents to plaintiff on October 9, 2017
18 identifying DeYoung Realty Inc. and DeYoung Mortgage. (See Doc. No. 114 at 12–13.) Further,
19 plaintiff’s second amended complaint, filed on June 13, 2017, identifies De Young Mortgage as a
20 separate entity. (See Doc. No. 33 at 10.) All of these documents were available to plaintiff prior
21 to the November 20, 2017 deadline to amend the pleadings established by the court’s scheduling
22 order. Again, information regarding the separate nature of these entities is not a “new fact” and
23 plaintiff has failed to present any basis to grant leave to amend her complaint related to these
24 facts.

25 Courts have found prejudice to the opposing party where the motion to amend is filed near
26 the close of discovery or when there is a pending motion for summary judgment, and when
27 adding new claims or parties would require additional discovery. See, e.g., *Zivkovic v. S.*
28 *California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (noting that the district court did not

1 abuse its discretion in denying leave to amend because the motion was filed several days before
2 the discovery cut off, defendant would have had a limited time to respond, and granting leave to
3 amend would have required additional discovery prejudicing the defendant); *Sclacter-Jones v.*
4 *Gen. Tel. of California*, 936 F.2d 435, 443 (9th Cir. 1991), *abrogated by Cramer v. Consol*
5 *Freightways, Inc.*, 255 F.3d 683 (9th Cir. 2001) (“The timing of the motion, after the parties had
6 conducted discovery and a pending summary judgment motion had been fully briefed, weighs
7 heavily against allowing leave.”).

8 Here, given the timing of its filing, the granting of plaintiff’s motion to amend would
9 result in prejudice to defendant.³ Plaintiff filed her motion to amend the complaint after the close
10 of discovery and while defendant’s motion for summary judgment was pending before the court.
11 Permitting plaintiff to add new parties and claims at this advanced stage of litigation would result
12 in prejudice to defendants, who have committed resources and filed a motion for summary
13 judgment in reliance on the scheduling order. *See, e.g., Lockheed Martin Corp. v. Network Sols.*
14 *Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (finding that seeking leave to amend in light of a pending
15 summary judgment motion not only indicated bad faith on the party of the moving party, but
16 would also prejudice the opposing party); *Solomon v. N. Am. Life & Cas. Ins. Co.*, 151 F.3d 1132,
17 1139 (9th Cir. 1998) (“Allowing the motion would have required re-opening discovery, thus
18 delaying the proceedings.”); *see e.g., Muench Photography, Inc. v. Pearson Educ., Inc.*, No. 12-
19 CV-01927-WHO, 2013 WL 4426493, at *3 (N.D. Cal. Aug. 15, 2013) (noting that seeking leave
20 to amend two weeks before the close of discovery where amendment would require additional
21 discovery would cause prejudice and undue delay); *see, e.g., Bookhamer v. Submeam Prod. Inc.*,
22 No. C-09-6027 EMC DMR, 2012 WL 6652414, at *5–6 (N.D. Cal. Dec. 20, 2012) (noting that
23 adding an additional defendant who would need to conduct discovery and file its own dispositive
24 motions was not a brief postponement).

25 For all of the reasons set forth above, plaintiff’s motion to amend the complaint will be
26 denied.

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28 ³ Indeed, the filing of the motion at this late stage of the litigation and just prior to hearing on
defendant’s motion for summary judgment may even suggest bad faith on the part of plaintiff.

1 Finally, the court notes that plaintiff has not filed an opposition to defendant's pending
2 motion for summary judgment (Doc. No. 70), which is currently set for hearing before this court
3 on October 2, 2018. (See Doc. No. 104.) Local Rule 230 provides that an opposition to a motion
4 shall be filed and served not less than fourteen days preceding the noticed or continued hearing
5 date. It is conceivable that, given her *pro se* status, plaintiff mistakenly believed that she was not
6 required to file an opposition to defendant's motion for summary judgment until after the court
7 issued an order on her pending motion to amend her complaint. Out of an excess of caution, the
8 court will continue the hearing on defendant's motion for summary judgment to October 16,
9 2018, at 9:30 a.m. to allow plaintiff time to file a timely opposition to that motion. No party will
10 be entitled to be heard in opposition to the motion at hearing if opposition to defendant's motion
11 for summary judgment has not been timely filed by that party. See L.R. 135.

12 Accordingly,

- 13 1. Plaintiff's motion to amend the complaint (Doc. No. 98) is denied;
- 14 2. The hearing for defendant's motion for summary judgment (Doc. No. 70) is
15 continued to October 16, 2018 at 9:30 a.m. in the courtroom of the undersigned.

16 IT IS SO ORDERED.

17 Dated: September 27, 2018

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19 _____
20 UNITED STATES DISTRICT JUDGE