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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

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11 SORYA JOHNSON, ) Case No.: 1:18-cv-01674-JLT  
12 Plaintiff, )  
13 v. ) ORDER DENYING MOTION TO AMEND  
14 KNIGHT TRANSPORTATION, INC., et al., ) COMPLAINT  
15 Defendants. ) (Doc. 33)  
16 )

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17 Plaintiff seeks leave to file a first amended complaint. (Doc. 33.) Defendants oppose the  
18 request. (Doc. 34.) For the following reasons, Plaintiff’s motion for leave to amend is **DENIED**.

19 **I. Factual Allegations and Background**

20 Plaintiff filed an action for personal injuries as a result of a motor vehicle collision that  
21 occurred on July 14, 2018. (Doc. 1 at 18-19.) Plaintiff alleged that the acts of Defendants were  
22 negligent and caused his injuries. (Doc. 1 at 18-19.) Plaintiff initiated this action by filing a complaint  
23 on November 7, 2018, in the Superior Court of the State of California in and for the County of Kern,  
24 entitled Sorya Johnson v. Knight Transportation, Inc., et al., Case No. BCV-18-102791. (Doc. 1 at 10-  
25 20.) Defendant Knight Transportation, Inc. filed an answer on November 26, 2018. (Doc. 1 at 22-29.)  
26 Defendant Thomas Earl Gossard filed an answer on December 7, 2018. (Doc. 1 at 31-40.) On  
27 December 10, 2018, Defendants filed a notice of removal to the Eastern District of California. (Doc.  
28 1.) This Court held a scheduling conference with the parties on March 11, 2019. (Docs. 10, 11.)

1 At the request of counsel, the Court held an informal telephonic conference regarding  
2 discovery disputes on August 16, 2019. (Docs. 19, 20.) By that time, little discovery had occurred, and  
3 the parties were mired in disputes. (Doc. 21)

4 Soon thereafter, on September 4, 2019, the parties filed a stipulation to amend the case  
5 schedule to extend all deadlines by about four months. (Doc. 24.) The Court denied the stipulation  
6 because they failed to demonstrate they had acted diligently in completing discovery. (Doc. 26.) On  
7 September 10, 2019, the parties again filed a stipulation to amend the case schedule. (Doc. 27.) Much  
8 of the need for the amendment to the case schedule was due to the fact that the plaintiff had failed to  
9 disclose her January 2019 surgery until July 2019. *Id.* at 2-3. The Court granted in part the stipulation  
10 to amend the case schedule and emphasized that counsel cooperate to schedule depositions and to take  
11 them immediately and to complete all needed discovery expeditiously. (Doc. 30.)

12 On September 27, 2019, Plaintiff took the deposition of Thomas Gossard. Plaintiff claims that  
13 it was at this deposition that she learned facts supporting an independent negligence claim against  
14 Knight Transportation and justification for a punitive damage award was first revealed. (Doc. 33 at 6,  
15 15.) Plaintiff alleges that she learned that the vehicle operated by Gossard had been damaged in a prior  
16 collision, nearly a year before the collision at issue, resulting in structural damage to the front of the  
17 cab and knocking off a “spot mirror” that helps the operator visualize blind spots and manage space  
18 along the passenger side of the vehicle. (Doc. 33 at 2.) nevertheless, since the case was filed, Plaintiff  
19 had taken the position that Knight had “negligently and carelessly . . . repair[ed] and maintain[ed] a  
20 motor vehicle so as to cause the same to crash into a vehicle driven by plaintiff . . .” (Doc. 1 at 19)  
21 Despite this, Plaintiff did not seek punitive damages. (Doc. 1 at 17) The Court noted this omission in  
22 its order issued on August 2019 when it considered whether disputed discovery should be permitted  
23 “related to other accidents to other accidents or other bad acts [to determine] whether the plaintiff is  
24 entitled to punitive damages.” (Doc. 21 at 1-2) However, the Court found the discovery to be  
25 “irrelevant because the plaintiff has not sought punitive damages in this case.” *Id.* at 2.

26 At his deposition, Gossard reported that Knight was aware of the loss of his spot mirror  
27 because he had been documented it during pre-trip inspections as a safety defect in need of repair.  
28 (Doc. 33 at 2.) It is undisputed that at the time of the accident, Knight had not made this repair and the

1 spot mirror was not in place. (Doc. 33 at 2.)

2 On October 21, 2019, Plaintiff filed a motion for leave to file a first amended complaint now  
3 before the Court. (Doc. 33.) Defendants filed their opposition to the motion on November 18, 2019  
4 (Doc. 34), to which Plaintiff filed a reply on November 25, 2019 (Doc. 35).

## 5 **II. Legal Standards**

### 6 **A. Scheduling Orders**

7 Districts courts must enter scheduling orders in actions to "limit the time to join other parties,  
8 amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b)(3). In addition,  
9 scheduling orders may "modify the timing of disclosures" and "modify the extent of discovery." *Id.*  
10 Once entered by the court, a scheduling order "controls the course of the action unless the court  
11 modifies it." Fed. R. Civ. P. 16(d). Scheduling orders are intended to alleviate case management  
12 problems. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). As such, a  
13 scheduling order is "the heart of case management." *Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3rd  
14 Cir. 1986).

15 Further, scheduling orders are "not a frivolous piece of paper, idly entered, which can be  
16 cavalierly disregarded by counsel without peril." *Johnson*, 975 F.2d at 610 (quoting *Gestetner Corp. v.*  
17 *Case Equip. Co.*, 108 F.R.D. 138, 141 (D. Maine 1985)). Good cause must be shown for modification  
18 of the scheduling order. Fed. R. Civ. P. 16(b)(4). The Ninth Circuit explained:

19 Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking  
20 the amendment. The district court may modify the pretrial schedule if it cannot  
21 reasonably be met despite the diligence of the party seeking the extension. Moreover,  
22 carelessness is not compatible with a finding of diligence and offers no reason for a  
23 grant of relief. Although existence of a degree of prejudice to the party opposing the  
24 modification might supply additional reasons to deny a motion, the focus of the inquiry  
25 is upon the moving party's reasons for modification. If that party was not diligent, the  
26 inquiry should end.

24 *Johnson*, 975 F.2d at 609 (internal quotation marks and citations omitted). Therefore, parties must  
25 "diligently attempt to adhere to the schedule throughout the course of the litigation." *Jackson v.*  
26 *Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999). The party requesting modification of a  
27 scheduling order has the burden to demonstrate:

1 (1) that she was diligent in assisting the Court in creating a workable Rule 16 order; (2)  
2 that her noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding  
3 her diligent efforts to comply, because of the development of matters which could not  
4 have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling  
conference; and (3) that she was diligent in seeking amendment of the Rule 16 order,  
once it became apparent that she could not comply with the order.

5 *Id.* at 608 (internal citations omitted).

6 **B. Pleading Amendments**

7 Under Fed. R. Civ. P. 15(a), a party may amend a pleading once as a matter of course within  
8 21 days of service, or if the pleading is one to which a response is required, 21 days after service of a  
9 motion under Rule 12(b), (e), or (f). "In all other cases, a party may amend its pleading only with the  
10 opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Because Defendants do  
11 not consent to the filing of an amended complaint, Plaintiff seeks the leave of the Court.

12 Granting or denying leave to amend a complaint is in the discretion of the Court, *Swanson v.*  
13 *United States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996), though leave should be "freely give[n]  
14 when justice so requires." Fed. R. Civ. P. 15(a)(2). "In exercising this discretion, a court must be  
15 guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the  
16 pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Consequently,  
17 the policy to grant leave to amend is applied with extreme liberality. *Id.*

18 There is no abuse of discretion "in denying a motion to amend where the movant presents no  
19 new facts but only new theories and provides no satisfactory explanation for his failure to fully  
20 develop his contentions originally." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995); *see also*  
21 *Allen v. City of Beverly Hills*, 911 F.2d 367, 374 (9th Cir. 1990). After a defendant files an answer,  
22 leave to amend should not be granted where "amendment would cause prejudice to the opposing party,  
23 is sought in bad faith, is futile, or creates undue delay." *Madeja v. Olympic Packers*, 310 F.3d 628, 636  
24 (9th Cir. 2002) (citing *Yakama Indian Nation v. Washington Dep't of Revenue*, 176 F.3d 1241, 1246  
25 (9th Cir. 1999)).

26 **III. Discussion and Analysis**

27 The scheduling order set a pleading amendment deadline of June 10, 2019, whether this should  
28 occur by stipulation or a formal motion. (Doc. 11 at 2.) Plaintiff filed her current motion months after

1 the expiration of this deadline. (Doc. 33.) Thus, Plaintiff is required to demonstrate good cause under  
2 Rule 16 for filing an amended pleading out-of-time. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271,  
3 1294 (9th Cir. 2000) (explaining the question of whether the liberal amendment standard of Rule 15(a)  
4 or the good cause standard of Rule 16(b) applies to a motion for leave to amend a complaint depends  
5 on whether a deadline set in a Rule 16(b) scheduling order has expired). Accordingly, the Court  
6 examines Plaintiff's diligence to determine whether amendment of the Scheduling Order is proper.

7 Plaintiff reports that at the deposition of Thomas Gossard on September 27, 2019, that the facts  
8 supporting independent negligence allegations against Defendant Knight Transportation and punitive  
9 damages were first revealed<sup>1</sup>. (Doc. 33 at 6, 15.) Plaintiff states that on the eve of this deposition, that  
10 counsel for Defendant produced a portion of the Knight Employee Handbook. (Doc. 33 at 6, 15.)  
11 Plaintiff contends that it made diligent efforts to conduct discovery, but acknowledges that an  
12 extensive discovery dispute resulted in delay in progress of this case. (Doc. 33 at 5.) In reply, Plaintiff  
13 explained that she chose to pursue live deposition testimony rather than move forward with conducting  
14 written discovery. (Doc. 35 at 2.)

15 On the other hand, Defendants argue that there is no newly discovered evidence as alleged by  
16 Plaintiff. (Doc. 34 at 10.) Specifically, they contend that Plaintiff's complaint already contemplated  
17 allegations against Defendant Knight Transportation for its alleged failure to maintain and repair the  
18 truck/trailer at issue and Defendant Gossard's alleged negligent operation of the truck/trailer. (Doc. 34  
19 at 10.) Defendants claim that Plaintiff's allegation that Defendants delayed the discovery process and  
20 failed to make witnesses available for deposition is false. (Doc. 34 at 11.) They claim that Plaintiff did  
21 not serve notices for depositions of Defendant Gossard or Knight Transportation's Person Most  
22 Knowledgeable until July 2, 2019. (Doc. 34 at 11.) Additionally, Defendants contend that Plaintiff  
23 never served written discovery either on the issues of vehicle maintenance or repair prior to the  
24 deadline to amend pleadings. (Doc. 34 at 11.) They state that Plaintiff only served requests for  
25 production of documents on May 24, 2019, and those requests related to witness statements,  
26 photographs/videos, Gossard's personnel file, Knight policies and procedures and insurance

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28 <sup>1</sup> The Court received no adequate explanation how this can be true given Plaintiff has alleged since the onset of this case that Knight had negligently failed to repair or maintain the truck Gossard drove at the time of the collision.

1 information, but not the alleged vehicle maintenance issue. (Doc. 34 at 11.) Defendants further argue  
2 that Plaintiff fails to explain why she waited over two weeks after obtaining the newly discovered  
3 evidence before attempting to meet and confer regarding a desire to amend the complaint. (Doc. 34 at  
4 11.)

5       Significantly, it appears the parties have not been diligent in pursuing discovery in this action.  
6 Notably, multiple stipulations have been filed seeking to modify the scheduling order. (See Docs. 24,  
7 27.) Scheduling orders "are the heart of case management," *Koplove v. Ford Motor Co.*, 795 F.2d 15,  
8 18 (3d Cir. 1986), and are intended to alleviate case management problems. *Johnson v. Mammoth*  
9 *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). A "scheduling conference order is not a frivolous  
10 piece of paper, idly entered, which can be cavalierly disregarded without peril." *Id.* at 610. If a  
11 scheduling order could be so easily set aside, considerations of prejudice would hardly be serious  
12 concerns in evaluating a motion to amend. As set forth in the scheduling order, "[t]he dates set in this  
13 order are firm and will not be modified absent a showing of good cause even if the request to modify  
14 is made by stipulation." (Doc. 11 at 7, emphasis omitted.)

15       The parties filed their first stipulation to extend the scheduling order deadlines on September 4,  
16 2019. (Doc. 24.) As noted by the Court in its order denying this stipulation, "the parties [had] failed to  
17 demonstrate they have acted diligently in completing discovery," and consequently the Court could  
18 not find good cause for amending the case schedule. (Doc. 26 at 1-2.) On September 10, 2019, the  
19 parties again submitted a joint stipulation to extend the scheduling order deadlines, in which the  
20 parties jointly stated that "[d]ue to the number of expert and lay witness depositions, and despite the  
21 diligence of the Parties, the Parties have been unable to schedule all depositions in this case to occur  
22 by the afore-mentioned deadline." (Doc. 27 at 7.) The Court granted in part the stipulation to amend  
23 the case schedule, noting that the attorneys were allowing discovery to lag and relying on "the Court  
24 [to] bail them out with amendments to the case schedule." (Doc. 30 at 1-2.) The Court ordered counsel  
25 to schedule and take the depositions immediately and "to complete all needed discovery  
26 expeditiously." (Doc. 30 at 2.) The Court additionally assured the parties "that the Court will be  
27 extremely unlikely to consider with favor any future requests to amend the case schedule." (Doc. 30 at  
28 2.) Importantly, the pleading amendment deadline set by the scheduling order was June 10, 2019, and

1 this date was not adjusted by the Court’s subsequent orders. (See Doc. 11 at 2.) However, the Plaintiff  
2 now seeks to file an amended pleading well beyond the pleading amendment deadline of June 10,  
3 2019.

4 Plaintiff contends that her motion to amend is timely because it is filed prior to the deadline for  
5 filing non-dispositive motions, set at February 10, 2020. (Doc. 35 at 2.) However, Plaintiff cites the  
6 incorrect deadline, as the scheduling order sets the pleading amendment deadline at June 10, 2019.  
7 (Doc. 11 at 2.) The scheduling order specifically states that, “[a]ny requested pleading amendments  
8 are ordered to be filed, either through a stipulation or motion to amend, no later than **June 10, 2019.**”  
9 (Doc. 11 at 2.) Accordingly, the deadline for amending the pleadings set in the scheduling order has  
10 expired, and Plaintiff’s motion to amend is untimely.

11 Plaintiff reports that certain facts were revealed for the first time during the deposition of  
12 Thomas Gossard on September 27, 2019. She does not explain her decision to delay a month to file  
13 her motion to amend. Plaintiff’s delay in seeking leave to amend fails to support a determination that  
14 she has acted diligently in seeking leave to file an amended complaint. See *Schwerdt v. Int’l Fidelity*  
15 *Ins. Co.*, 28 F. App’x 715, 719 (9th Cir. 2002) (delay of one month after learning of facts from a  
16 witness’ deposition did not constitute diligence under Rule 16 in seeking leave to amend); *Sako v.*  
17 *Wells Fargo Bank, Nat. Assoc.*, 2015 U.S. Dist. LEXIS 111834, 2015 WL 5022326, at \*2 (S.D. Cal.  
18 2015) (“Courts have held that waiting two months after discovering new facts to bring a motion to  
19 amend does not constitute diligence under Rule 16”).

20 The Court notes that the original complaint already includes allegations that Defendants did  
21 “negligently and carelessly own, rent, lease, bail, entrust, operate, **repair, and maintain** a motor  
22 vehicle.” (Doc. 1 at 19, emphasis added.) With its amended complaint, the Plaintiff is attempting to  
23 include a second claim against Knight Transportation for negligent maintenance and failure. (See Doc.  
24 33.) To the extent that Plaintiff is seeking to add a claim regarding negligence against Defendants,  
25 there is no need for an amended complaint in that regard.

26 According to Defendants, the parties have already engaged in discovery, including written  
27 discovery, document production and expert discovery. (Doc. 34 at 24.) The deadline of November 11,  
28 2019 for non-expert discovery, which was already extended once by the Court, has already passed.

1 (Doc. 30 at 2.) Although Plaintiff states on the one hand that she does not anticipate further non-expert  
2 discovery, she also notes that Plaintiff would have no objection if the Court were to allow discovery to  
3 proceed. (Doc. 35 at 3.) Indeed, the Ninth Circuit determined that "[a] need to reopen discovery and  
4 therefore delay the proceedings supports a district court's finding of prejudice from a delayed motion  
5 to amend the complaint." *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th  
6 Cir. 1999). Allowing the amendment would result in further discovery and additional modifications of  
7 the deadlines set forth by this Court and the proceedings to be further prolonged.

8 On the other hand, allowing the amendment now, would impact the timely completion of  
9 expert discovery given the affirmative reports were ordered to be produced by November 22 and  
10 rebuttal expert disclosures will occur in nine days (Doc. 30 at 1-2)

11 **IV. Conclusion and Order**

12 The Court finds Plaintiff has not been diligent in seeking leave to amend and has not met  
13 the good cause requirement of Rule 16. As a result, the inquiry ends, and the Court does not consider  
14 whether leave to amend is appropriate under Rule 15. *See Johnson*, 975 F.2d at 609; *see also Zivkovic*  
15 *v. Southern California Edison, Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) ("If the party seeking the  
16 modification was not diligent, the inquiry should end and the motion to modify should not be  
17 granted") (internal quotation marks omitted). Accordingly, the Court **ORDERS** that Plaintiff's motion  
18 to amend (Doc. 33) is **DENIED**.<sup>2</sup>

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20 IT IS SO ORDERED.

21 Dated: December 4, 2019

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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28 <sup>2</sup> The Court finds there is little prejudice to Plaintiff by the denial of this motion. First, Plaintiff may pursue her original claim against Knight for the failure to properly repair and maintain the vehicle. Second, Fed.R.Civ.P. 15(b) may provide her relief at trial related to punitive damages, assuming she can meet the Rule's standards.