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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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RODOLFO B. BAISA and BELLA G.
BAISA,

Plaintiffs,

v.

INDYMAC FEDERAL RESERVE; AEGIS
WHOLESALE CORPORATION; BALDWIN
MORTGAGE, INC.; C21 FUNDING,
INC.; ORHAN TOLU; MYRNA D. BAESA;
and DOES 1-20, inclusive,

Defendants.

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Plaintiffs Rodolpho B. Baisa and Bella G. Baisa filed
this lawsuit against defendants Indymac Federal Reserve, Aegis
Wholesale Corporation, Baldwin Mortgage, Inc., C21 Funding, Inc.,
Orhan Tolu, and Myrna Baesa asserting a number of claims in
regard to a loan and foreclosure affecting their property.
Before the court is plaintiffs' motion for leave to file a Third
Amended Complaint.

Plaintiffs' initial Complaint was filed on May 28,
2009, against defendants Indymac Federal Bank, Aegis Wholesale

1 Corporation, Mortgage Electronic Registration Systems, Inc.
2 ("MERS"), Baldwin Mortgage, Inc., C21 Funding, Inc., Orhan Tolu
3 and Myrna D. Baesa. (Docket No. 1.) Plaintiffs amended their
4 original complaint once as a matter of course and filed a First
5 Amended Complaint ("FAC") on August 3, 2009. (Docket No. 13.)
6 MERS subsequently filed a motion to dismiss the FAC, which the
7 court granted with leave to amend. (Docket No. 61.) Plaintiffs
8 submitted a Second Amended Complaint ("SAC"), which MERS again
9 moved to dismiss. (Docket No. 65.) MERS's motion to dismiss the
10 SAC was granted with prejudice as to the claims against MERS.
11 (Docket No. 72.) Plaintiffs now move to file a Third Amended
12 Complaint ("TAC") to eliminate a cause of action, remove the
13 claims against MERS, and add additional facts to their remaining
14 claims.

15 Generally, a motion to amend is subject to Rule 15(a)
16 of the Federal Rules of Civil Procedure, which provides that
17 "[t]he court should freely give leave [to amend] when justice so
18 requires." Fed. R. Civ. P. 15(a)(2). However, "[o]nce the
19 district court ha[s] filed a pretrial scheduling order pursuant
20 to Federal Rule of Civil Procedure 16[,] which establishe[s] a
21 timetable for amending pleadings[,] that rule's standards
22 control[]." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
23 607-08 (9th Cir. 1992). Here, the court issued a Status
24 (Pretrial Scheduling) Order on October 30, 2009, which states
25 that further amendments to the pleadings are prohibited "except
26 with leave of court, good cause having been shown under Federal
27 Rule of Civil Procedure 16(b)." (Docket No. 60.)

28 Under Rule 16(b), a party seeking leave to amend must

1 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s
2 'good cause' standard primarily considers the diligence of the
3 party seeking amendment." Johnson, 975 F.2d at 609. "If that
4 party was not diligent, the inquiry should end." Id. Although
5 "the focus of the inquiry is upon the moving party's reasons for
6 seeking modification[,] a court may make its determination by
7 noting the prejudice to other parties. See id. (finding that
8 "the existence or degree of prejudice to the party opposing the
9 modification might supply additional reasons to deny a motion" to
10 amend).

11 If good cause is found, the court should then evaluate
12 the request to amend the complaint in light of Rule 15(a)'s
13 liberal standard. Id. at 608. Courts commonly consider four
14 factors when deciding whether to grant a motion for leave to
15 amend a complaint under Rule 15(a): bad faith, undue delay,
16 prejudice, and futility of amendment. Roth v. Marquez, 942 F.2d
17 617, 628 (9th Cir. 1991). Because Rule 16(b)'s "good cause"
18 inquiry essentially incorporates the first three factors, if a
19 court finds that good cause exists, it should then deny a motion
20 for leave to amend only if such amendment would be futile.

21 In their proposed TAC, plaintiffs state eight causes of
22 action against defendants. The proposed TAC eliminates
23 plaintiffs' previous cause of action for violation of the Real
24 Estate Settlement Procedures Act, 12 U.S.C. § 2605, removes the
25 claims against MERS, and adds additional facts that state the
26 remaining seven causes of action with greater specificity.

27 Plaintiffs have shown good cause for leave to amend.
28 Plaintiffs were sufficiently diligent in requesting leave to file

1 their proposed TAC. Although plaintiffs' original complaint was
2 filed nearly a year ago, plaintiffs have continued to respond to
3 motions in the interim and most recently filed their SAC just
4 over six months ago. Plaintiffs' delay in requesting leave to
5 amend is no so substantial as to warrant concluding that they
6 were not diligent in filing this motion, given that discovery is
7 not set to close until September 16, 2010, and trial is set for
8 March 8, 2011. Any delay on the part of plaintiffs is also
9 largely mitigated by the fact that the proposed TAC does not
10 introduce new legal theories; on the contrary, it either removes
11 or clarifies the claims in the SAC. See Ho v. Ernst & Young LLP,
12 No. C 05-04867 JF, 2007 U.S. Dist. LEXIS 54034, at *5 (N.D. Cal.
13 July 17, 2007) (stating that delay is less likely to be
14 considered unreasonable when "proposed amendments do not alter
15 significantly the thrust of Plaintiff's case").

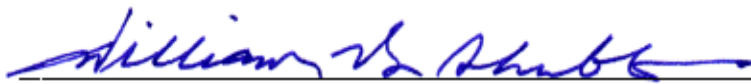
16 Plaintiffs' good faith is undisputed. Plaintiffs state
17 that their reasons for seeking leave to amend are to remove
18 causes of action, reduce issues, clarify parties, and correct
19 typographical errors. The TAC's proposed changes are consistent
20 with these reasons. Granting plaintiffs' motion would also not
21 come at the cost of prejudice to defendants. A proposed
22 amendment is prejudicial only when it unfairly affects the
23 defendants' ability to prepare a defense to the amended pleading.
24 See Minter v. Prime Equip. Co., 451 F.3d 1196, 1208 (10th Cir.
25 2006). Here, the risk of prejudice to defendants is low because
26 plaintiffs are not introducing new claims and discovery is far
27 from over. Plaintiffs have accordingly left defendants ample
28 time to respond to the changes in the proposed TAC. Finally,

1 there is no reason to believe that plaintiffs' proposed
2 amendments will be futile.

3 IT IS THEREFORE ORDERED that plaintiffs' motion for
4 leave to file a Third Amended Complaint be, and the same hereby
5 is, GRANTED.

6 Plaintiffs shall file their Third Amended Complaint
7 within fourteen days of the date of this Order.

8 DATED: June 7, 2010

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11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
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