

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  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

HENRIETTA J. MONDAY, an  
Individual,

NO. CIV. 2:10-989 WBS CMK

Plaintiff,

ORDER RE: MOTION TO AMEND

v.

SAXON MORTGAGE SERVICES, INC,  
a Texas Corporation; OCWEN  
LOAN SERVICING, LLC, a  
Delaware Limited Liability  
Company; U.S. BANK, N.A., AS  
TRUSTEE FOR THE REGISTERED  
HOLDERS OF ABFC 2007-WMC1  
TRUST ASSET BACKED FUNDING  
CORPORATION ASSET BACKED  
CERTIFICATED, SERIES 2007-  
WMC1, an Ohio Business Entity;  
T.D. SERVICE COMPANY, a  
California Corporation; and  
DOES 1 through 10, Inclusive,

Defendants.

\_\_\_\_\_ /

-----oo0oo-----

Presently before the court is plaintiff Henrietta J.  
Monday's motion for leave to amend her First Amended Complaint  
pursuant to Federal Rule of Civil Procedure 15(a)(2). Plaintiff

1 wishes to amend her complaint to include new facts uncovered  
2 during discovery and to allege new causes of action based on  
3 those facts.

4           Because plaintiff moves for leave to amend after the  
5 court has issued its Status (Pretrial Scheduling) Order and the  
6 deadline for amendment of pleadings has expired, a two-step  
7 analysis applies. Johnson v. Mammoth Recreations, Inc., 975 F.2d  
8 604, 607-08 (9th Cir. 1992). Plaintiff must first demonstrate  
9 "good cause" for seeking amendment and modification of the  
10 scheduling order under Rule 16(b). Id. at 607-08. If good cause  
11 is shown, the court must then evaluate the motion for leave to  
12 amend under Rule 15(a). Id. at 608.

13           Whether good cause exists depends heavily on the degree  
14 of diligence exercised by the movant in its attempt to comply  
15 with the deadlines set forth in the court's scheduling order.  
16 Johnson, 975 F.2d at 609; Matrix Motor Co., Inc. v. Toyota  
17 Jidosha Kabushiki Kaisha, 218 F.R.D. 667, 671 (C.D. Cal. 2003).  
18 Because plaintiff moves to amend her complaint based on facts  
19 uncovered during discovery, the court finds that plaintiff has  
20 good cause to seek leave to amend. Plaintiff could not have  
21 exercised a greater degree of diligence in order to amend at an  
22 earlier stage in litigation.

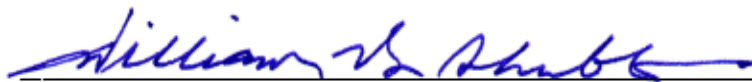
23           Under Rule 15(a), there exists a presumption in favor  
24 of granting leave to amend. Eminence Capital, LLC v. Aspeon,  
25 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003); see Fed R. Civ. P.  
26 15(a)(2) ("The court should freely give leave [to amend] when  
27 justice so requires."). Leave to amend "generally shall be  
28 denied only upon showing of bad faith, undue delay, futility, or

1 undue prejudice to the opposing party." Chudacoff v. Univ. Med.  
2 Ctr. of S. Nev., --- F.3d ----, ----, 2011 WL 2276774, at \*6 (9th  
3 Cir. 2011) (citing Foman v. Davis, 371 U.S. 178 (1962)). Whether  
4 to grant or deny leave to amend is within the discretion of the  
5 district court. Foman, 371 U.S. at 182.

6 Because the court finds no prejudice, undue delay or  
7 bad faith, the court will not deny plaintiff's motion on those  
8 grounds. Defendant argues that the First Amended Complaint  
9 realleges claims which this court has previously dismissed and  
10 contains new claims upon which relief cannot be granted. Those  
11 arguments are better addressed in a motion to dismiss under Rule  
12 12(b)(6) after the amended complaint is filed. The court need  
13 not deny plaintiff's motion for leave to amend based on futility  
14 alone. Duhn Oil Tool, Inc. v. Cooper Cameron Corp., No.  
15 CV-F-05-1411 OWW GSA, 2010 WL 596312, at \*14 (E.D. Cal. Feb. 16,  
16 2010) ("[D]enial on [the ground of futility] is rare and courts  
17 generally defer consideration of challenges to the merits of a  
18 proposed amended pleading until after leave to amend is granted  
19 and the amended pleading is filed.").

20 IT IS THEREFORE ORDERED that plaintiff's motion for  
21 leave to amend her First Amended Complaint be, and the same  
22 hereby is, GRANTED. Plaintiff is ordered to file her Second  
23 Amended Complaint within ten days of the date of this Order.

24 DATED: July 7, 2011

25  
26 

27 WILLIAM B. SHUBB  
28 UNITED STATES DISTRICT JUDGE