

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

JOANNE KOEGEL,

Plaintiff,

v.

GOVERNMENT EMPLOYEES  
INSURANCE COMPANY,

Defendant.

No. 2:14-CV-00256-TLN-EFB

**ORDER**

This matter is before the court pursuant to Defendant Government Employees Insurance Company's ("Defendant") Motion for Judgment on the Pleadings. (ECF No. 33.) Plaintiff Joanne Koegel ("Plaintiff") opposes Defendant's motion. (ECF No. 35.) Plaintiff has replied. (ECF No. 36.) The Court has carefully considered the arguments raised by the parties. For the reasons set forth below, Defendants' Motion for Judgment on the Pleadings is hereby DENIED.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff was injured in a traffic accident in February 2010 with an underinsured motorist. (ECF No. 1 ¶ 10.) In December 2010, the third party insurer tendered payment to Plaintiff to the extent of its policy limits. (ECF No. 1 ¶ 10.) Plaintiff had an insurance policy with Defendant which included underinsured motorist coverage. (ECF No. 1 ¶ 7.) Plaintiff timely notified Defendant of her claim for the uncovered expenses. (ECF No. 1 ¶ 11.)

1 During negotiations, Defendant offered to settle for \$50,000, then \$100,000, and finally  
2 \$180,000, which Plaintiff declined. (ECF No. 1 ¶¶ 13, 14, 15.) In May 2013, an arbitration panel  
3 awarded Plaintiff \$353,808.91, later increased to \$354,779.61. (ECF No. 1 ¶¶ 16, 17.) Defendant  
4 completed payment in full to Plaintiff in August 2013. (ECF No. 1 ¶¶ 18, 19.)

5 On January 27, 2014, Plaintiff filed suit asserting bad faith breach of implied covenant of  
6 good faith and fair dealing. (ECF No. 1 ¶¶ 24–30.) An August 26, 2014, pretrial scheduling  
7 order provided a dispositive motions deadline of October 22, 2015. (ECF No. 8 at 4.) On July 7,  
8 2015, the Court extended several deadlines, re-setting the dispositive motion deadline to January  
9 14, 2016, and the jury trial to June 6, 2016. (ECF No. 15.) The dates for the final pretrial  
10 conference and jury trial moved twice more, with the final pretrial conference now set for July 27,  
11 2017, and the jury trial set to begin on August 28, 2017, but the dispositive motions deadline  
12 remained January 14, 2016. (ECF Nos. 23, 25, 29.)

## 13 II. STANDARD OF LAW

14 Federal Rule of Civil Procedure 12(c) permits a party to move for judgment on the  
15 pleadings “[a]fter the pleadings are closed — but early enough not to delay trial.” Fed. R. Civ. P.  
16 12(c); *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005). A motion under Rule 12(c) is  
17 “functionally identical” to a motion to dismiss under Rule 12(b)(6) for failure to state a claim.  
18 *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). “The principal  
19 difference between motions filed pursuant to Rule 12(b) and Rule 12(c) is the time of filing.” *Id.*

20 After a district court issues a scheduling order pursuant to Federal Rule of Civil Procedure  
21 16, “[the] schedule may be modified only for good cause and with the judge’s consent.” Fed. R.  
22 Civ. Pro. 16(b)(4). A court determines good cause primarily by considering the diligence of the  
23 movant. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). “[T]he existence  
24 or degree of prejudice to the [non-movant] might supply additional reasons to deny a motion,  
25 [but] the focus of the inquiry is upon the moving party’s reasons for seeking modification. If that  
26 party was not diligent, the inquiry should end.” *Id.* (citation omitted) (affirming the district  
27 court’s decision to deny the plaintiff leave to amend to join a necessary party four months after  
28 the deadline when the plaintiff had the information needed by the deadline but did not amend).



1 Defendant argues the drafters of the Federal Rules of Civil Procedure did not include  
2 qualifying language in Rule 12(c) making it “subject to the pre-trial order under FRCP Rule 16.”  
3 (ECF No. 36 at 3–4.) Defendant cites *Gen. Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119 (6th  
4 Cir. 1990), which does not support its position. (ECF No. 36 at 3.) The defendant in *General*  
5 *Electric* filed a motion in limine to exclude privileged statements made in anticipation of  
6 litigation. *Id.* at 1129–31. The district court concluded the exclusion would be so devastating to  
7 the plaintiff’s case “that granting the motion would amount to a judgment on the pleadings.” *Id.*  
8 at 1131. The Sixth Circuit found the law was unclear as to whether privilege was an affirmative  
9 defense, which would require leave to amend, or an evidentiary matter, which could be addressed  
10 by the defendant’s motion in limine, and reversed on that basis. *Id.* at 1130–31.

11 The Sixth Circuit noted the plaintiff “dramatically changed the nature of [the] suit” to  
12 plead injurious falsehood more than three years after it filed its claim. *Gen. Elec. Co.*, 916 F.2d at  
13 1131 n.5. The defendant filed its motion in limine several months later to exclude privileged  
14 statements that supported the plaintiff’s new theory. *Id.* The court found no prejudice to the  
15 plaintiff which had so dramatically altered the suit. *Id.* at 1131.

16 Plaintiff has never amended its January 2014 complaint. Defendant’s motion is based on  
17 a pleading filed three and one-half years ago. “The district court may modify the pretrial  
18 schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’”  
19 *Johnson*, 975 F.2d at 609 (citing Fed. R. Civ. P. 16 advisory committee’s notes (1983  
20 amendment)). Defendant never moved to modify the scheduling order nor offered a reason why  
21 it could not have filed this motion in January 2016. Defendant has failed to show good cause for  
22 its late motion or for modifying the scheduling. Accordingly, the Court DENIES Defendant’s  
23 motion.

24 ///

25 ///

26 ///

27 ///

28 ///

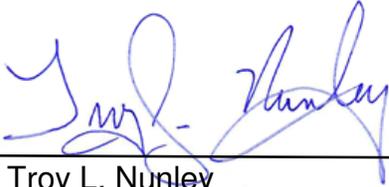
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. CONCLUSION**

For the reasons set forth above, Defendant’s Motion for Judgment on the Pleadings (ECF No. 33) is hereby DENIED.

IT IS SO ORDERED.

Dated: July 24, 2017



---

Troy L. Nunley  
United States District Judge