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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM L. MAGERS,

 Plaintiff,

 v.

SUZANNE M. JONES,

 Defendant.

No. 2:14-CV-1184-GEB-EFB

**ORDER DENYING DEFENDANT'S MOTION
FOR LEAVE TO FILE A FIRST
AMENDED ANSWER AND COUNTERCLAIMS**

Defendant filed a motion seeking leave to file eight counterclaims sixty-eight days after expiration of the pleading leave period prescribed in the scheduling order filed October 17, 2014. The amended pleading deadline portion of the scheduling order states:

Defendant states in the [Joint Status Report] . . . that she "anticipates filing a cross complaint on or before October 31, 2014." (JSR 2:3-4.)

Defendant has until October 31, 2014, to file the referenced pleading.

No further service, joinder of parties, or amendments to the pleadings is permitted, except with leave of Court for good cause shown.

(Status (Pretrial Scheduling) ("Scheduling Order") Order 3:3-9,

1 ECF No. 12.)

2 Defendant's motion to amend is in essence a de facto
3 motion to amend all dates prescribed in the scheduling order that
4 would have to be amended if Defendant's amended pleading motion
5 is granted: specifically, the April 30, 2015 discovery completion
6 date, the June 15, 2015 last hearing date for motions, and the
7 August 10, 2015 final pretrial conference. (Scheduling Order
8 3:11; 3:23; 4:2-3.)

9 Defendant argues her motion should be granted for the
10 following reasons:

11 At the time of the Joint Scheduling Report
12 and this Court's order, Defendant and her
13 counsel did not have all of the facts
14 sufficient to plead the counterclaims
15 contained in the [proposed amended pleading].
16 However, Defendant and her counsel were
17 working diligently to obtain the necessary
18 information and documents, including police
19 reports and court documents from prior
20 proceedings. Defendant and her counsel did
21 not anticipate the length of time it would
22 take to receive the documents and information
23 requested from other institutions, despite
24 their best efforts to gather the information
25 before the deadline. Defendant recently
26 obtained the facts to plead her counterclaims
27 with sufficient specificity to show that
28 Defendant is entitled to relief.

(Mot. 1:26-2:6, ECF No. 13) (citations omitted.)

21 Plaintiff opposes the motion arguing:

22 Defendant offers no compelling reason why the
23 proposed new pleading could not have been
24 presented earlier. Defendant clearly knew the
25 alleged facts on which the counterclaims are
26 based at the time of filing the original
27 answer, but did not assert them before the
28 [s]cheduling [o]rder's deadline.
Motions for leave to add new claims are not
reviewed favorably when the facts supporting
the claims have been known to the party since
before the pleading deadline The
counterclaims are unquestionably based on

1 conduct and events that allegedly occurred
2 from approximately July 2012 to February
3 2013. Presumably these are the same
4 counterclaims that Defendant "anticipated"
5 filing in the Joint Status Report dated
6 October 10, 2014. Yet, in her motion,
7 Defendant points to no specific facts that
8 she could not have alleged before the
9 pleading deadline. She fails to explain what
10 necessary information was contained in
11 "police reports and court documents" that she
12 previously lacked. Presumably the information
13 contained in the police reports was obtained
14 directly from Defendant, given that she
15 herself reported the alleged thefts on
16 December 20, 2012, December 24, 2012 and
17 February 8, 2013. It is questionable whether
18 obtaining "police reports and court
19 documents" was indeed necessary for Defendant
20 "to plead her counterclaims with sufficient
21 specificity," but even if that were the case,
22 the Rule 16(b)(4) inquiry focuses on
23 diligence. Defendant reasonably should have
24 foreseen or anticipated the issue at the time
25 of the Rule 16 scheduling conference.
26 Defendant's failure to raise the issue or
27 seek modification of the Scheduling Order
28 until December 15, 2014, nearly two months
after the Scheduling Order issued, reinforces
the conclusion that Defendant has not been
diligent.

(Opp'n to Mot. 1:24-27; 3:27-28; 4:21-5:8, ECF No. 14.)

Defendant rejoins: "she was not aware of all the facts
to support her counterclaims at the time of filing her original
answer and . . . [that the information she obtained] include[s]
the details of the" events forming the basis of her counterclaims
including "the dates of the alleged events [and] the estimated
amounts of . . . stolen property," which are "necessary [for her
counterclaims] to survive a Rule 12(b)(6) motion to dismiss,"
given that she "did not wish to rely solely on her recollection
of the events to craft her counterclaims." (Def.'s Reply 3:1-10,
ECF No. 15.)

Defendant has not responded to Plaintiff's assertion

1 that Defendant herself is the source of "the information
2 contained in the police reports." (Opp'n 4:26-28.) Defendant
3 failed to state when she first realized she could not file an
4 amended pleading before the deadline expired, failed to explain
5 why she did not seek to amend the scheduling order before she
6 filed her motion sub judice, and failed to "specify what new and
7 previously unavailable information [she] obtained that leads
8 [her] to believe that [her counterclaims]" could not have been
9 filed on or before the pleading amendment deadline. Eckert Cold
10 Storage, Inc. v. Behl, 943 F. Supp. 1230, 1233
11 (E.D.Cal.1996) (emphasis added).

12 Since Defendant did not comply with "the [amended
13 pleading] deadline established in the scheduling order, . . .
14 [she is] required to demonstrate 'good cause' pursuant to Federal
15 Rule of Civil Procedure 16, justifying [her] . . . untimely
16 request [for leave to file] . . . an amended pleading."
17 Izaguirre v. Greenwood Motor Lines, Inc., 523 Fed. App'x. 482,
18 483 (9th Cir. 2013) (unpublished) (citing Johnson v. Mammoth
19 Recreations, Inc., 975 F.2d 604, 608-09 (9th Cir. 1992)).

20 A court's evaluation of good cause is not
21 coextensive with an inquiry into the
22 propriety of the amendment under . . .
23 [Federal] Rule [of Civil Procedure] 15.
24 Unlike Rule 15(a)'s liberal amendment policy
25 which focuses on the bad faith of the party
26 seeking to interpose an amendment and the
27 prejudice to the opposing party, Rule 16(b)'s
28 "good cause" standard primarily considers the
diligence of the party seeking the amendment.
The district court may modify the pretrial
schedule "if it cannot reasonably be met
despite the diligence of the party seeking
the extension." Moreover, carelessness is not
compatible with a finding of diligence and
offers no reason for a grant of relief.

Johnson, 975 F.2d at 609 (citations omitted). Prejudice from a

1 delayed motion to amend "is not required" to deny a motion for
2 leave to file an amended pleading under Rule 16. Coleman v.
3 Quaker Oats Co., 232 F.3d 1271, 1295 (9th Cir. 2000).

4 "Careful review of [Defendant's] motion to amend . . .
5 reveals that [she] . . . did not [demonstrate] . . . with any
6 specificity the good cause [she allegedly] . . . had for untimely
7 moving to" file counterclaims after the amended pleading
8 deadline. Smith v. Sch. Bd. of Orange Cnty., 487 F.3d 1361, 1367
9 (11th Cir. 2014). Specifically, Defendant fails to explain "what
10 [previously unknown] facts support[] [her counterclaims] . . .
11 and why those facts previously were undiscoverable" or unknown
12 before the amended pleading deadline. Id. Defendant indicates she
13 was aware of certain unspecified facts supporting her
14 counterclaims before the amended pleading deadline and that she
15 "did not wish to rely solely on her recollection of the events to
16 craft her counterclaims;" however, conjecture is required
17 concerning precisely what facts Defendant references and whether
18 she had personal knowledge of the essential facts necessary to
19 plead the counterclaims before the amended pleading deadline
20 expired. (Reply 3:9-10.) "'The good cause standard typically will
21 not be met where the party seeking to modify the scheduling order
22 has been aware of the facts and theories supporting amendment
23 since the inception of the action.'" In re W. States Wholesale
24 Natural Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2014)
25 (determining the district court's use of this language was not an
26 abuse of discretion); Acri v. International Ass'n of Machinists &
27 Aerospace Workers, 781 F.2d 1393, 1398 (9th Cir. 1986) ("[L]ate
28 amendments to assert new theories are not reviewed favorably when

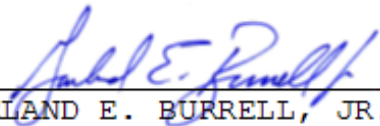
1 the facts and theories have been known to the party seeking
2 amendment since the inception of the action.”)

3 Lastly, Defendant’s conclusory and unsupported
4 assertions of diligence do not satisfy her burden to demonstrate
5 precisely what she did that she opines constitutes diligence
6 under the circumstances.

7 Since “the focus of the [the good cause] inquiry is
8 upon the moving party's reasons for seeking modification,” and
9 Defendant has not shown non-conclusory facts justifying the
10 amendments to the scheduling order she seeks, she has not
11 established that good cause justifies granting her motion. See
12 Johnson, 975 F.2d at 609 (holding that even “carelessness is not
13 compatible with a finding of diligence and offers no reason for a
14 grant of relief.”) Therefore, Defendant’s motion is DENIED.

15 Dated: February 25, 2015

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GARIAND E. BURRELL, JR.
Senior United States District Judge