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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TIFFANY NICHOLS,

Plaintiff,

v.

STEWART TITLE OF PLACER, a  
California corporation, STEWART TITLE  
GUARANTY COMPANY, a Texas  
corporation, RACHEL SIDERS, LEAH  
ISOM and DOES 1–50, inclusive,

Defendants.

No. 2:15-cv-00977-TLN-AC

**ORDER**

This matter is before the Court on Plaintiff Tiffany Nichols’s (“Plaintiff”) Motion to Amend the Complaint (ECF No. 24) and Defendant Stewart Title of Placer’s (“Defendant” or “STP”) Motion to Dismiss and Motion for Summary Judgment (ECF Nos. 7 & 8). For the reasons stated below, Plaintiff’s Motion to Amend is GRANTED. In consideration of said ruling, Defendant’s Motion to Dismiss and Motion for Summary Judgment are DENIED AS MOOT.

**I. Background and Procedural History**

A. Factual Allegations in the Complaint

The Complaint was filed on May 6, 2015. Therein, Plaintiff alleges that beginning on or about January, 2008, Defendants engaged in a scheme to obtain funds from financial institutions, including Washington Mutual Bank, NA., and U.S. Bank, N.A. (ECF No. 1 ¶ 13.) As part of the

1 scheme, Plaintiff was named on home equity lines of credit; various real estate documents were  
2 signed or notarized in Plaintiff's name; and fraudulent tax returns were submitted in Plaintiff's  
3 name, among other acts, without Plaintiff's knowledge. (ECF No. 1 ¶¶ 17, 19, 25.)

4 Non-party Theo Adams committed these acts; Plaintiff discovered she was a victim in the  
5 scheme during her divorce proceedings from Mr. Adams. Plaintiff later discovered the  
6 participation of the named parties in this suit upon receiving notice from the Department of  
7 Justice in connection with the criminal prosecution of the scheme. (ECF No. 1 ¶ 31.)

8 Of particular relevance to the instant motion to amend, Plaintiff alleges specifically: "On  
9 or about April 21, 2008, Defendant Rachel Siders notarized various real estate closing documents  
10 in Plaintiff's name without Plaintiff's presence, knowledge or consent." (ECF No. 1 ¶ 19.) "On  
11 or about September 24, 2008, Defendant Leah Isom, at the direction of Defendant Rachel Siders,  
12 signed and notarized a deed of trust, secured by the Mariposa Avenue property, in Plaintiff's  
13 name, without Plaintiff's knowledge or consent." (ECF No. 1 ¶ 26.) "Defendant Stewart Title of  
14 Placer was at certain times relevant herein the employer of Defendants Rachel Siders and Leah  
15 Isom." (ECF No. 1 ¶ 52.)

16 The Complaint brings six causes of action:

- 17 • Fraud – Concealment against all Defendants
- 18 • Negligent Hiring and Supervision against Defendants Stewart Title of Placer  
19 and Stewart Title Guaranty
- 20 • Breach of Fiduciary Duty against all Defendants
- 21 • Civil RICO violations against all Defendants, 18 U.S.C. § 1962 et seq.
- 22 • Constructive Fraud – Concealment against all Defendants
- 23 • Violations of California's Unfair Competition Law, Cal. Bus. and Prof. Code §  
24 17200

25 B. Defendant's Motion to Dismiss and Motion for Summary Judgment

26 Defendant filed the motion to dismiss and motion for summary judgment on June 22,  
27 2015. Both Defendant's motion to dismiss and motion for summary judgment rely heavily on the  
28 following argument (taken here from the motion to dismiss): "In the instant action, the key

1 allegations concerning the potential liability of STP under all six causes of action in the  
2 Complaint pertain to a discrete time frame in 2008. At the time Defendants Siders and Isom  
3 allegedly became involved in the scheme with Adams to improperly use Plaintiff's forged  
4 information to secure loan proceeds, Siders and Isom were not employees of STP. There is no  
5 factual allegation in the Complaint that remotely links STP to the alleged torts. Further, there is  
6 no allegation of fact stating that Siders and Isom were actually employed by STP in 2008 ... The  
7 Complaint's conspicuous failure to allege that Siders and Isom were employed by STP in 2008 is  
8 fatal to Plaintiff[s] causes of action where there are no other facts to connect the conduct of  
9 Siders and Isom to STP." (ECF No. 7-1 at 6-7; *see also* ECF No. 8-1 at 9.)

10 Although Defendant's motions raise other arguments, the foregoing is an important issue  
11 in both of said motions, and is the main issue raised relative to Plaintiff's motion to amend the  
12 complaint.

13 C. Plaintiff's Motion to Amend

14 Following the filing of Defendant's dismissal/summary judgment motions, Plaintiff filed  
15 the instant motion to amend the complaint, on December 14, 2015. The supporting declaration  
16 states that the amended complaint identifies three additional DOE defendants: Theo Adams, U.S.  
17 Bank, N.A., and First American Financial Corp. And, the amended complaint "contains factual  
18 allegations relevant to those new Defendants and factual allegations concerning existing  
19 Defendants which were uncovered during Plaintiff's Opposition to [Defendant's] Motion to  
20 Dismiss." (Clinton Decl., ECF No. 24-1 ¶¶ 3-4.)

21 The most relevant change (as highlighted by Defendant) appears to be the following: the  
22 original Complaint stated that Siders and Isom conducted fraudulent conduct at various points in  
23 2008. (*See e.g.* ECF No. 1 ¶¶ 19, 26.) The proposed amended complaint states: "Beginning some  
24 time prior to November 2, 2007," Defendants (apparently including Siders and Isom) conducted  
25 fraudulent conduct.<sup>1</sup> (Prop. Amend. Compl., ECF No. 24-1, Ex. A ¶¶ 16, 19.)

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28 <sup>1</sup> It appears that the majority of fraudulent conduct, and the specific date of November 2, 2007, is alleged relative to Defendant Siders rather than Defendant Isom in the amended complaint.

1           **II. Legal Standard**

2           The parties agree that the instant motion is subject to Fed. R. Civ. P.’s 15(a)’s requirement  
3 that amendment occur only by leave of court or by written consent of both parties. Defendant  
4 does not consent to amendment. Rule 15 provides that “leave shall be freely given when justice  
5 so requires.” This policy is “to be applied with extreme liberality.” *Owens v. Kaiser Found.*  
6 *Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001).

7           Factors to consider in deciding whether to grant leave to amend include: “undue delay,  
8 bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
9 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of  
10 the amendment, futility of amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

11           “Not all of the factors merit equal weight. As [the Ninth Circuit] and others have held, it is  
12 the consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence*  
13 *Capital, LLC v. Aspeon, Inc.* 316 F.3d 1048, 1052 (9th Cir. 2003).

14           **III. Analysis**

15           A. Defendant’s arguments

16           Defendant opposes amendment. Defendant argues: “Plaintiff proposed the instant  
17 Amendment only when she realized Siders and Isom were not employed by STP at the time the  
18 events of the alleged claim took place.” (ECF No. 25 at 4.) Defendant argues that Plaintiff’s  
19 motion to amend conceals the fact that she actually intends to alter dates from her original  
20 complaint that bear directly on when Siders and Isom were employed, thus supporting a finding  
21 of bad faith. (ECF No. 25 at 4.)

22           Defendant argues that Plaintiff has unduly delayed because she proposed to Defendant  
23 that they stipulate to amend the complaint in August 2015. Defendant declined to stipulate, and  
24 then Plaintiff did not file the instant motion until mid-December 2015. (ECF No. 25 at 4.)

25           Defendant argues that requiring the parties to conduct continued litigation with additional  
26 discovery due to amendment would cause undue prejudice. Defendant would also have to  
27 prepare new motions to dismiss and for summary judgment based on any additional discovery.  
28 Plaintiff would gain an advantage by being able to plead new facts specifically to overcome

1 Defendant's motion to dismiss/motion for summary judgment. (ECF No. 25 at 4–5.)

2 Defendant argues that Plaintiff has been provided with the employment files of Siders and  
3 Isom, and Plaintiff has already had an opportunity to dispute the dates the alleged fraud occurred  
4 in her opposition to the motion to dismiss/ motion for summary judgment. Defendant argues  
5 Plaintiff did not dispute these dates in her opposition. (ECF No. 24 at 4–5.)

6 Defendant argues that judicial estoppel should be applied to prevent Plaintiff from taking  
7 inconsistent positions in the original complaint and the proposed amended complaint. (ECF No.  
8 25 at 5–6.)

9 B. Plaintiff's arguments

10 Plaintiff responds that during the process of opposing Defendant's dismissal/summary  
11 judgment motions, she "discovered facts which related to new defendants and existing defendants  
12 which were not contained in the original Complaint." (ECF No. 28 at 2.) Plaintiff responds that  
13 the proposed amendments "do not require Defendant STP to engage in any additional discovery."  
14 (ECF No. 28 at 3.) Regarding delay, Plaintiff responds that she "waited to file her motion to see  
15 whether the Court would rule on Defendant's Motion to Dismiss," and subsequently decided to  
16 file the motion to amend. (ECF No. 28 at 3.)

17 Plaintiff disputes that her motion seeking leave to amend attempts to conceal from the  
18 Court the actual proposed amendments (namely the dates of employment of Siders and Isom).  
19 Plaintiff states that at the time she sought a stipulation from Defendant regarding amendment,  
20 during the briefing on the motion to dismiss, she had discovered the instant dates she now seeks  
21 to include and had so noticed Defendant at the time she sought the stipulation. (*See* ECF No. 24-  
22 ¶¶ 4–7, Ex. A.) Plaintiff also argues that judicial estoppel is inapplicable.

23 C. Conclusion

24 Factors to consider in deciding whether to grant leave to amend include: "undue delay,  
25 bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
26 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of  
27 the amendment, futility of amendment, etc." *Foman*, 371 U.S. at 182.

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1           The Court finds there was not unduly delay and/or dilatory motive, or bad faith, on  
2 Plaintiff's part. Plaintiff waited about four months after seeking a stipulation to amend the  
3 complaint to file the instant motion. However, it is not disputed that Plaintiff provided a copy of  
4 the proposed amended complaint to Defendant at the time she sought the stipulation. Defendant  
5 (and it appears Plaintiff) have filed with the Court that proposed amended complaint, which  
6 contains the same change in dates now at issue. (ECF No. 24-1, Ex. A; Jensen Decl., ECF No.  
7 25-1 ¶ 5, Ex. C.) The fact that Plaintiff apparently waited to see if the Court would rule on the  
8 pending motions to dismiss/motions for summary judgment is not particularly relevant. If a  
9 ruling on those motions were not in Plaintiff's favor, it would be expected (in accordance with  
10 Rule 15) that Plaintiff be given leave to amend. Thus, Plaintiff would have the opportunity to  
11 make the same amendments at that point. Further, there does not appear to be any advantage  
12 Plaintiff would gain by filing the motion to amend now as opposed to in August, 2015, when she  
13 sought a stipulation. At that point, the briefing on the pending dismissal/summary judgment  
14 motions had been completed. Defendant's argument that in her opposition Plaintiff did not  
15 dispute the original dates in the complaint is not accurate. On page 3 of her opposition, Plaintiff  
16 stated that Siders committed fraudulent activity on November 2, 2007. (ECF No. 12 at 6; *see also*  
17 Pl.'s Statement of Disp. Facts, ECF No. 12-4.) Therefore, the proposed amended complaint  
18 Plaintiff provided to Defendant in August, 2015, as well as Plaintiff's filing with this Court  
19 relative to the dismissal/summary judgment motions, contained the November 2, 2007 date which  
20 Defendant takes issue with now. For those reasons, the Court finds that the factors of bad faith  
21 and undue delay do not favor denying the instant motion to amend.

22           The Court finds that permitting amendment does not unduly prejudice Defendant.  
23 Defendant argues that Plaintiff's motion to amend will require additional discovery, while also  
24 arguing that Plaintiff already has the employment files of Siders and Isom and thus could have  
25 already disputed the dates the alleged fraud occurred. It appears the additional discovery that  
26 Defendant says will be required, would have to take place if amendment occurred after a ruling  
27 on the pending motions.

28           Defendant has not shown in the briefing on the instant motion that the new dates proposed

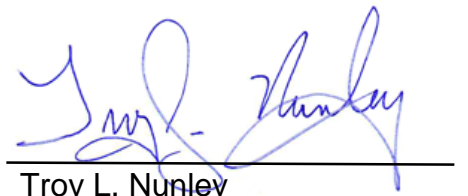
1 by Plaintiff are so unsupported by the evidence that amendment would be futile. This is the first  
2 time Plaintiff has sought to amend the Complaint. Thus, “repeated failure to cure deficiencies by  
3 amendments previously allowed” is not present. *Foman*, 371 U.S. at 182.

4 Defendant’s arguments regarding judicial estoppel are also not availing because it is not  
5 clear that Plaintiff sought to mislead the Court by taking inconsistent positions, nor has Plaintiff  
6 succeeded in any way by maintaining any particular position. *See New Hampshire v. Maine*, 532  
7 U.S. 742, 750 (2001) (internal quotation marks omitted) (“Under the judicial estoppel doctrine,  
8 where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that  
9 position, he may not thereafter, simply because his interests have changed, assume a contrary  
10 position”; “courts regularly inquire whether the party has succeeded in persuading a court to  
11 accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later  
12 proceeding would create the perception that either the first or the second court was misled”).

13 Neither party cites authority discussing whether a motion to amend must be denied in light  
14 of a pending motion to dismiss and/or motion for summary judgment. *MV American Queen v.*  
15 *San Diego Marine Construction Corp.*, 708 F.2d 1483, 1492 (9th Cir. 1983), cited by Defendant,  
16 considered the fact that a summary judgment motion was pending, but that was one among  
17 numerous factors favoring denial of leave to amend. Although judicial economy or expediency is  
18 not cited as a factor in *Foman*, supra, it appears that the fastest route to resolution of challenges  
19 under Rules 12(b)6) and 56(a) in this case, is to get the amended complaint on the table now, and  
20 then rule on Defendant’s challenges after taking into consideration these amendments.

21 In consideration of the foregoing factors, Plaintiff’s motion to amend is GRANTED.  
22 Since the proposed amendments will alter the facts at issue in the pending motion to dismiss and  
23 motion for summary judgment, it would be inappropriate for the Court to rule on said motions  
24 based on the earlier complaint. Therefore, both Defendant’s motion to dismiss and motion for  
25 summary judgment are DENIED AS MOOT. Plaintiff shall file the amended complaint within  
26 fourteen days of entry of this Order.

27 Dated: February 22, 2016

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Troy L. Nunley  
United States District Judge