



1           However, once the court has entered a scheduling order setting a deadline for amending  
2 pleadings, plaintiff's ability to amend his complaint is governed by Rule 16(b), and not Rule  
3 15(a). Johnson, 975 F.2d at 607-08; see also Fed. R. Civ. P. 16(b)(4) ("A schedule may be  
4 modified only for good cause and with the judge's consent."). The propriety of amendment under  
5 Rule 15(a) will be considered only when good cause has been shown to modify the scheduling  
6 order pursuant to Rule 16(b). Johnson, 975 F.2d at 608. In this case, the court's October 14,  
7 2016 scheduling order specifically provides, consistent with Rule 16(b), that "[n]o further joinder  
8 of parties or amendments to pleadings will be permitted except with leave of court, good cause  
9 having been shown." (ECF No. 41 at 2.)

10           Here, plaintiff has plainly not shown good cause for modifying the scheduling order.

11           First, and most importantly, the common law negligence and California Unfair  
12 Competition Law claims he now seeks to add in the proposed third amended complaint (ECF No.  
13 65) have already been dismissed with prejudice over a year ago. (ECF Nos. 24, 28.) For the  
14 reasons discussed in detail in the court's prior order (ECF No. 24 at 9-11), those claims are not  
15 legally viable, even if plaintiff alleged additional facts obtained in discovery in support of such  
16 claims. As such, leave to amend would be futile.

17           Second, even if the proposed claims were not futile, the court would not find good cause  
18 to modify the schedule at this late juncture. Discovery in this action already closed on August 3,  
19 2017, and the law and motion completion deadline of September 28, 2017 is fast approaching.  
20 (ECF No. 41.) Allowing amendment at this time would no doubt necessitate the re-opening of  
21 discovery and delay the schedule of this case, which would be unjustified especially given that  
22 plaintiff's motion to amend was filed a mere day before the close of discovery.

23           Third, allowing the proposed amendment would be prejudicial to the defendants, who  
24 have litigated the case through the close of discovery on the reasonable presumption that only a  
25 claim for violation of California Civil Code section 2943 is at issue. Expanding the scope of the  
26 litigation at this time would require additional discovery, including potentially duplicative  
27 depositions, resulting in increased expenses, inefficiency, and wasted time and resources.

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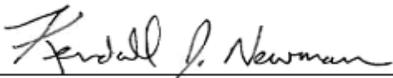
Therefore, the court concludes that plaintiff has failed to show the requisite good cause to modify the scheduling order to permit an amendment of his complaint.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to amend his complaint (ECF Nos. 64, 67), properly construed as a motion to modify the scheduling order, is DENIED.
2. The proposed third amended complaint (ECF No. 65) is STRICKEN.

IT IS SO ORDERED.

Dated: August 28, 2017

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE