

1 Thereafter, on November 8, 2017, the parties filed a joint stipulation for leave to allow
2 plaintiff to file a first amended complaint no later than November 20, 2017. (ECF No. 25.) At a
3 November 9, 2017 pretrial scheduling conference, Judge Mueller advised the parties that she was
4 prepared to adopt the November 8, 2017 stipulation. (See Minutes for Scheduling Conference,
5 ECF No. 26.) In a subsequent pretrial scheduling order, filed on December 22, 2017, Judge
6 Mueller noted:

7 The court approved the parties' November 8, 2017 joint stipulation
8 to allow plaintiff to file a First Amended Complaint. (ECF No. 25).
9 An amended complaint was due by November 20, 2017. No further
10 joinder of parties or amendments to pleadings is permitted without
leave of court, good cause having been shown. *See* Fed. R. Civ. P.
16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th
Cir. 1992).

11 (ECF No. 27 at 1-2.) No first amended complaint was filed by November 20, 2017.

12 The pretrial scheduling order required all discovery to be completed by April 2, 2018.
13 (ECF No. 27 at 2.) The term “completed” was defined to mean that “all discovery shall have
14 been conducted so that all depositions have been taken and any disputes relative to discovery
15 shall have been resolved by appropriate order if necessary and, where discovery has been ordered,
16 the order has been obeyed.” (Id.) Additionally, Judge Mueller emphasized that “the magistrate
17 judge cannot change the schedule set in this order, except that the magistrate judge may modify a
18 discovery cutoff to the extent such modification does not have the effect of requiring a change to
19 the balance of the schedule.” (Id.) Finally, according to the pretrial scheduling order, all
20 dispositive motions are required to be heard no later than July 27, 2018. (Id. at 4.) No final
21 pretrial conference or trial date was set.

22 Subsequently, on February 12, 2018, Judge Mueller permitted Mr. Shumaker to withdraw
23 as counsel for plaintiff, leaving plaintiff to represent himself, and referred the case to the
24 undersigned for further pretrial management. (ECF Nos. 29, 30.) That same day, the
25 undersigned issued a minute order stating:

26 In light of the 02/12/2018 referral order, it is hereby clarified that
27 the scheduling dates and provisions set forth in Judge Mueller's
28 12/22/2017 pretrial scheduling order (ECF No. 27) are
CONFIRMED and REMAIN OPERATIVE in this case.

1 (ECF No. 31.)

2 On March 23, 2018, plaintiff filed a motion for leave to amend his complaint before Judge
3 Mueller. (ECF No. 32.) In a March 26, 2018 minute order, Judge Mueller directed plaintiff to re-
4 notice the motion before the undersigned. (ECF No. 33.) On April 12, 2018, after plaintiff failed
5 to re-notice the motion, the undersigned denied the motion without prejudice for improper notice.
6 (ECF No. 34.) Plaintiff then filed the instant motion on April 19, 2018. (ECF No. 35.)

7 LEGAL STANDARD

8 Generally, leave to amend should be freely given “when justice so requires.” Fed. R. Civ.
9 P. 15(a)(2); see also Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)
10 (noting that Rule 15(a)(2) is “to be applied with extreme liberality”). “Five factors are taken into
11 account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice
12 to the opposing party, futility of amendment, and whether the plaintiff has previously amended
13 the complaint.” Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004).

14 However, once a court has entered a pretrial scheduling order, motions to amend the
15 complaint brought after the applicable deadline in the pretrial scheduling order are controlled by
16 Rule 16(b). Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992).
17 Under Rule 16(b), a case schedule “may be modified only for good cause and with the judge’s
18 consent.” Fed. R. Civ. P. 16(b)(4); see also Mammoth Recreations, Inc., 975 F.2d at 608
19 (explaining that a party seeking to amend a pleading after the date specified in the scheduling
20 order must first show good cause for amendment under Rule 16(b); then, if good cause is shown,
21 the party must demonstrate that amendment is proper under Rule 15(a)(2)).

22 As the Ninth Circuit Court of Appeals has explained:

23 A court’s evaluation of good cause is not coextensive with an
24 inquiry into the propriety of the amendment under Rule 15. Unlike
25 Rule 15(a)’s liberal amendment policy which focuses on the bad
26 faith of the party seeking to interpose an amendment and the
27 prejudice to the opposing party, Rule 16(b)’s “good cause” standard
28 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.
Although the existence or degree of prejudice to the party opposing

1 the modification might supply additional reasons to deny a motion,
2 the focus of the inquiry is upon the moving party's reasons for
3 seeking modification. If that party was not diligent, the inquiry
4 should end.

4 Mammoth Recreations, Inc., 975 F.2d at 609 (internal citations and punctuation omitted).

5 DISCUSSION

6 Plaintiff moves for leave to file a first amended complaint naming additional defendants
7 and asserting additional claims. In this case, the pretrial scheduling order plainly provides that
8 any amended complaint was due November 20, 2017, and that no further joinder of parties or
9 amendments to pleadings would be permitted without leave of court, good cause having been
10 shown. (ECF No. 27 at 1-2.) Because plaintiff's present motion for leave to amend was filed on
11 April 19, 2018, months after the applicable amendment deadline, it is controlled by Rule 16(b).

12 According to plaintiff,² he did not discover the additional defendants and claims until
13 about July 2017, when his attorney received documents from Navient in discovery. (ECF No. 35
14 at 10.) As such, the parties stipulated to an amended complaint to be filed no later than
15 November 20, 2017. (Id.) However, an amended complaint was never filed, because plaintiff
16 represents that defendant's counsel purportedly opened up discussions regarding a possible
17 remand to state court. (Id.) After those discussions fell through, the parties renewed discussions
18 regarding an amended complaint, and around December 27, 2017, plaintiff's attorney submitted a
19 proposed amended complaint to Navient's counsel for review. (Id.) Subsequently, Navient
20 refused to stipulate to the filing of the proposed amended complaint, and plaintiff's attorney
21 substituted out of the case on February 12, 2018. (Id.; ECF No. 29.) On March 1, 2018, plaintiff
22 himself directly spoke with Navient's counsel regarding a new stipulation to file an amended
23 complaint, but no agreement was reached. (ECF No. 35 at 10.)

24 In light of the above, plaintiff has not shown good cause for modifying the scheduling
25 order, because he has not been diligent in seeking leave to amend his complaint. As an initial
26 matter, the discovery that serves as the basis for his proposed amended complaint has been in his

27 ² The court accepts plaintiff's representations regarding the timeline of events as true only for the
28 limited purpose of resolving the instant motion.

1 possession for approximately 9 months since July 2017. Furthermore, he provides no legitimate
2 reason for why he was unable to meet the November 20, 2017 amendment deadline. Although
3 plaintiff asserts that the parties were discussing a potential remand to state court, he was
4 represented by counsel at the time who should have been well aware that such informal
5 discussions between the parties did not obviate the need for compliance with court-ordered
6 deadlines. Additionally, when the remand discussions concluded and Navient refused to again
7 stipulate to an amended complaint in December 2017/January 2018, plaintiff's counsel failed to
8 move to modify the scheduling order and amend the complaint prior to his withdrawal on
9 February 12, 2018.³ Moreover, even after his counsel withdrew, plaintiff did not seek leave to
10 amend his complaint until March 23, 2018, even though the undersigned's February 12, 2018
11 minute order expressly confirmed the pretrial scheduling order's deadlines. (ECF Nos. 31, 32.)
12 And even then, despite being promptly notified regarding the proper way to notice his motion,
13 plaintiff did not appropriately notice the motion for a hearing until April 19, 2018, almost five (5)
14 months after the amendment deadline.

15 Consequently, the court finds that plaintiff was plainly not diligent, and the inquiry should
16 end there. Mammoth Recreations, Inc., 975 F.2d at 609-10 (“A scheduling order is not a
17 frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without
18 peril.”); see also Hardin v. Wal-Mart Stores, Inc., 2012 WL 2921226, at *4 (E.D. Cal. Jul. 17,
19 2012) (“To allow a modification of the scheduling order without good cause would render
20 scheduling orders essentially meaningless, and directly interfere with courts’ attempts to manage
21 their dockets.”); Singh v. Arrow Truck Sales, Inc., 2006 WL 1867540, at *2 (E.D. Cal. Jul. 5,
22 2006) (“Rules are rules—and the parties must play by them. In the final analysis, the judicial
23 process depends heavily on the judge’s credibility. To ensure such credibility, a district judge
24 must often be firm in managing crowded dockets and demanding adherence to announced

25
26 ³ Although plaintiff was represented until February 12, 2018, he claims to have been well aware
27 of the conduct of the litigation during the time of representation: “Preliminarily, although I am no
28 longer represented by Counsel, I was closely involved in the handling of my case when I was
represented. As such, I was privy to conversations between counsels and do in fact have personal
knowledge of all facts attested to herein.” (ECF No. 35 at 9.)

