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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GWEN KRAUSE,  
  
                                Plaintiff,  
  
                                v.  
  
HAWAIIAN AIRLINES, INC.,  
  
                                Defendant.

No. 2:18-cv-00928-JAM-AC

**ORDER DENYING PLAINTIFF'S MOTION  
TO AMEND COMPLAINT TO ADD  
DEFENDANTS DELTA ENGINEERING AND  
HEATH TECNA AND AMEND PRE-TRIAL  
SCHEDULING ORDER**

On February 26, 2018, Gwen Krause filed a suit against Hawaiian Airlines, Inc. ("Hawaiian") in Sacramento County Superior Court alleging negligence. Compl., ECF No. 1-1. Defendant removed the case to federal court. Notice of Removal, ECF No. 1. Plaintiff now moves to amend her complaint and modify the pretrial scheduling order. Mot., ECF No. 37. Defendant opposes Plaintiff's motion. Opp'n, ECF No. 38.

For the reasons set forth below, the Court DENIES Plaintiff's motion to amend.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 8, 2019

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 On March 27, 2016, an interior panel on Defendant's aircraft  
3 fell from the ceiling and struck Plaintiff on the head. Compl.  
4 ¶ 12. Plaintiff contends Defendant failed to: (1) maintain the  
5 aircraft in a condition reasonably safe under the circumstances;  
6 (2) reasonably inspect the aircraft; and (3) observe due care and  
7 precaution. Compl. ¶ 15.

8 Plaintiff filed suit two years later. Defendant removed the  
9 case to federal court. Through the course of discovery,  
10 Plaintiff received the initial disclosure of Defendant's expert.  
11 Mot. at 4. This April 2019 disclosure revealed that Defendant  
12 was attempting to shift liability to Delta Engineering, Inc.  
13 ("Delta Engineering") and Heath Tecna, Inc. ("Heath Tecna") for  
14 the design and manufacture of the panel and the panel's latch.  
15 Mot. at 4. Five months later, Plaintiff filed a motion to amend  
16 the complaint to add Delta Engineering and Heath Tecna as  
17 defendants and amend the pretrial scheduling order to allow  
18 Plaintiff and the new potential defendants to conduct discovery.  
19 Mot. at 11.

20  
21 II. OPINION

22 A. Legal Standard

23 Once the Court has filed a pretrial scheduling order, a  
24 party's motion to amend is not solely governed by Federal Rule  
25 of Civil Procedure 15. Rather, the moving party must satisfy  
26 Rule 16(b)'s "good cause" requirement before the Court will  
27 assess the propriety of the amendment under Rule 15. Johnson v.  
28 Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992).

1 This requirement primarily looks to "the diligence of the party  
2 seeking the amendment." Johnson, 975 F.2d at 609. "[T]he  
3 existence or degree of prejudice to the party opposing the  
4 modification might supply additional reasons to deny a motion."  
5 Id. But, unlike the Rule 15 analysis, "the focus of the [Rule  
6 16] inquiry is upon the moving party's reasons for seeking  
7 modification [of the schedule]." Id. If the "[moving] party  
8 was not diligent, the inquiry should end." Id.

9 B. Analysis

10 1. Rule 16(b)

11 The "good cause" requirement is typically not met "where  
12 the party seeking to modify the pretrial scheduling order has  
13 been aware of the facts and theories supporting amendment since  
14 the inception of the action." Id. at 737. Indeed,  
15 "carelessness is not compatible with a finding of diligence and  
16 offers no reason for a grant of relief." Johnson, 975 F.2d at  
17 610.

18 The motion to amend at issue here bears striking  
19 similarities to the one before the Ninth Circuit in Johnson. In  
20 Johnson, the plaintiff sued Mammoth Recreations, Inc. after a  
21 ski-lift accident. 975 F.2d at 606. On two occasions prior to  
22 the scheduling order's deadline for joining additional parties,  
23 the defendant told plaintiff that Mammoth Mountain Ski, not  
24 Mammoth Recreations, owned and operated the ski lift. Id. at  
25 606-07. Mammoth Recreations even offered to stipulate to a  
26 substitution of the proper party. Id. at 607. Nonetheless,  
27 Johnson failed to file a motion to amend his complaint until  
28 four months after the scheduling order's deadline for joining

1 parties. Id. at 607. The Court denied Johnson's motion to  
2 amend, finding that his failure to "heed clear and repeated  
3 signals that not all necessary parties had been named in the  
4 complaint [did] not constitute diligence." Id. at 609.

5 Like the defendant in Johnson, Hawaiian Airlines  
6 unambiguously alerted Plaintiff to the existence of an  
7 alternative defendant. And like the plaintiff in Johnson,  
8 Plaintiff failed to amend her complaint in a timely manner. In  
9 April 2019, Defendant timely served expert disclosures on  
10 Plaintiff. Opp'n, ECF No. 38 at 4. A quick scan over page one  
11 of Defendant's liability expert's report should have placed  
12 Plaintiff on notice of the two potential installation and  
13 manufacturer defendants. Exh. A to Opp'n at 1. The second  
14 paragraph of the report plainly states that Delta Engineering is  
15 the "[Supplemental Type Certificated "STC"] holder for the  
16 interior installation" and that Heath Tecna is the "designer and  
17 manufacturer of the components used in the installation." Id.  
18 An STC is a certificate issued when an applicant has received  
19 Federal Aviation Administration ("FAA") approval to modify an  
20 aeronautical product from its original design. Supplemental  
21 Type Certificates, Federal Aviation Administration (Oct. 7,  
22 2019, 12:30 PM), [https://www.faa.gov/aircraft/air\\_cert/](https://www.faa.gov/aircraft/air_cert/design_approvals/stc/)  
23 [design\\_approvals/stc/](https://www.faa.gov/aircraft/air_cert/design_approvals/stc/).

24 The report goes on to allege the following significant  
25 facts: (1) Hawaiian Airlines did not manufacture or design the  
26 replacement interior; (2) The interior was installed by Delta  
27 Engineering; (3) As the STC holder, Delta Engineering is  
28 responsible for, among other things, the design of the interior,

1 reporting of problems to the FAA, and the creation and  
2 maintenance of inspection requirements for the interior; and  
3 (4) Heath Tecna manufactured the parts, created the parts  
4 catalog and maintenance manual, and issued service letters and  
5 bulletins. Exh. A to Opp'n at 4. Thus, the report, in no  
6 uncertain terms, attempts to shift liability from Defendant to  
7 Delta Engineering and Heath Tecna for the design, manufacture,  
8 and maintenance of the panel latch at issue.

9 Plaintiff argues her "attempt[s] to gather further  
10 information under Defendant's theory of liability as to the  
11 manufacture and design of the panel" caused her five-month  
12 delay. Mot. at 5. The Court finds this argument unconvincing  
13 given all the information provided to Plaintiff in Defendant's  
14 expert report. Beyond the information mentioned above, the  
15 report goes on to explain that Delta Engineering produced  
16 Instructions for Continued Airworthiness and Heath Tecna  
17 produced a Maintenance Manual. Id. at 4. It alleges that  
18 Defendant complied with all the requirements set forth by Delta  
19 Engineering and Heath Tecna. Id. at 5.

20 Put simply, the expert report contained more than enough  
21 information to allow Plaintiff to "state a claim for relief that  
22 [was] plausible on its face." See Ashcroft v. Iqbal, 556 U.S.  
23 662, 678 (2009) (A claim has facial plausibility when the  
24 plaintiff pleads "factual content that allows the court to draw  
25 the reasonable inference that the defendant is liable for the  
26 misconduct alleged."). No additional discovery was needed, as  
27 evidenced by the fact that Plaintiff did not, in the end,  
28 acquire any additional discovery prior to filing her motion to

1 amend.

2 In sum, Plaintiff knew Delta Engineering was responsible  
3 for installing the interior of the airplane, and that Health  
4 Tecna designed and manufactured the components used in the  
5 installation, as early as April 2019. Further, Plaintiff  
6 received enough information about these potential defendants to  
7 make out plausible allegations against them in an amended  
8 complaint. But Plaintiff waited until September of 2019 to file  
9 her motion to amend the original complaint. Five months of  
10 inaction without a valid reason for the delay prevent Plaintiff  
11 from making the requisite showing of "good cause." Accordingly,  
12 the Court finds that Plaintiff has not satisfied Rule 16(b)'s  
13 requirements.

14 Because Plaintiff failed to show good cause to amend the  
15 pretrial scheduling order under Rule 16(b), the Court need not  
16 address whether the amendment to the complaint is proper under  
17 Rule 15.

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19 III. ORDER

20 For the reasons set forth above, the Court DENIES  
21 Plaintiff's Motion to Amend the Complaint and the Pretrial  
22 Scheduling Order.

23 IT IS SO ORDERED.

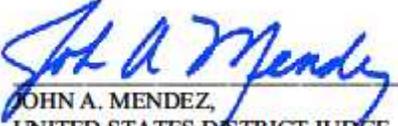
24 Dated: October 11, 2019

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE