

1 amendments to her complaint, the case is now proceeding against four individual officers:
2 defendants Hansen, Jurado,¹ Jenson, and Escherman. *See generally* Third Am. Compl..

3 Discovery has closed. *See* Mins. & Bench Order, ECF No. 29. Porter now asks for
4 permission to amend her complaint once more. She would substitute two police officers, Sowles
5 and Bisland, for two Doe defendants. Mot. to Am., ECF No. 49. She explains that she only
6 confirmed the two officers' involvement in her arrest during a recent deposition. *See id.* at 2.
7 The defendants oppose her motion, arguing that the initial disclosure materials, which Porter
8 received seven months ago, established the officers' involvement. Opp'n, ECF No. 50. Porter
9 replied. Reply, ECF No. 51.

10 The court held an in-person hearing on the motion on September 9, 2022.² William Bitner
11 appeared for the defense. Stanley Goff did not appear. The court had planned to ask Mr. Goff to
12 explain precisely what information he obtained through depositions that plaintiff could not have
13 gleaned from the police incident reports defendants provided during initial discovery. The court
14 typically would issue an order to show cause based on Mr. Goff's nonappearance, but exercises
15 its discretion here merely to caution Mr. Goff that a future failure to appear may result in
16 sanctions.

17 **II. LEGAL STANDARD**

18 Once a scheduling order is issued, a motion to amend the pleadings is governed by
19 Rule 16's "good cause" requirement. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 608 (9th
20 Cir. 1992); Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with
21 the judge's consent."). That requirement "primarily considers the diligence of the party seeking
22 ////

¹ Defendant Jurado's name has been misspelled by the parties and the misspelling is reflected on the court's docket. As confirmed by the incident reports, *see* Inc. Rep. at 4, Opp'n, ECF No. 50-1, and at the September 9 hearing, the correct spelling is Jurado. The parties are **directed** to use the correct spelling in future filings, and the court **requests** the Clerk of Court correct the spelling of the defendant's name on the docket.

² The court for some time now has been holding all hearings in person, as its published calendars indicate. It will entertain timely requests for videoconference hearings if those requests comply with the court's published procedures for making such requests.

1 the amendment.” *Johnson*, 975 F.2d at 609. To prove diligence, the moving party must establish:

2 (1) that she was diligent in assisting the [c]ourt in creating a workable Rule 16
3 order; (2) that her noncompliance with a Rule 16 deadline occurred or will occur,
4 notwithstanding her diligent efforts to comply, because of the development of
5 matters which could not have been reasonably foreseen or anticipated at the time
6 of the Rule 16 scheduling conference; and (3) that she was diligent in seeking
7 amendment of the Rule 16 order, once it became apparent that she could not
8 comply with the order.

9 *Martinez-Sanchez v. Anthony Vineyards, Inc.*, No. 19-1404, 2020 WL 7360579, at *3 (E.D. Cal.
10 Dec. 15, 2020). This inquiry focuses on “the moving party’s reasons for seeking modification. If
11 that party was not diligent, the inquiry should end.” *Johnson*, 975 F.2d at 609 (internal citation
12 omitted). Ordinarily, a party cannot meet this standard if it has long been aware “of the facts and
13 law” that support its motion. *Lambey v. California Dept. of Ins.*, No. 11-2392, 2013 WL
14 3992132, at *2 (E.D. Cal. Aug. 1, 2013).

15 **III. ANALYSIS**

16 Porter argues that she could not have sought leave to amend before a recent deposition
17 was complete. *See* Mot. at 5. Before that deposition, she explains, she could not “determine
18 exactly how both Sowles and Bisland were involved in the violation of [her] rights.” *Id.* In
19 response, the defendants argue that Porter received sufficient information about Sowles and
20 Bisland from their initial disclosures. Opp’n at 2–3. Those initial disclosures included incident
21 reports from both Sowles and Bisland. *Id.* at 2. But Porter argues that the two officers’ “exact
22 role” was unclear despite those reports. Reply at 3. She claims that their roles remained unclear
23 until after she reviewed a video of her arrest with the defendants during their depositions. *Id.*

24 This explanation is unpersuasive after comparing the incident reports with Porter’s
25 proposed amendments. In the absence of a more specific explanation, these amendments are the
26 only concrete explanation of what she learned during discovery. In her proposed fourth amended
27 complaint, Porter alleges that Sowles (1) “knocked [her] phone from her hand to prevent her from
28 continu[ing] to record the officers,” (2) announced she was under arrest, (3) “shut off the dash
29 camera manually,” (4) “grabbed [her] exposed breasts without her consent and placed them in her
30 shirt,” and (5) used “unreasonable and excessive force” to drag her to the ground. Proposed

1 Fourth Am. Compl. at 5, 6, & 9, Mot., ECF No. 49-1. But the incident reports identify Sowles as
2 the person responsible for several of these actions. Sowles' report states that he identified an
3 issue with the in-car camera, forced Porter to the ground, handcuffed her, and requested
4 permission to pull her shirt over her exposed breast. Inc. Rep. at 15, 16, Opp'n, ECF No. 50-1.

5 Next, Porter's proposed fourth amended complaint alleges Bisland "intentionally applied"
6 force to the side of her face "to purposely cause her pain, despite the fact that she was not
7 resisting." Proposed Fourth Am. Compl. at 5, 9. But Bisland's incident report discloses that he
8 "implemented a hypoglossal pressure point (a pressure point located behind the jaw) until pain
9 compliance was met." Inc. Rep. at 8.

10 In sum, Porter points to no significant differences between what she learned during the
11 recent depositions and what the officers disclosed to her seven months ago. As a result, she has
12 not shown that she diligently sought leave to amend her complaint.

13 **IV. CONCLUSION**

14 The court **denies the motion to amend (ECF No. 49).**

15 IT IS SO ORDERED.

16 DATED: September 14, 2022.


CHIEF UNITED STATES DISTRICT JUDGE