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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES ex rel. KARLA  
ABEA,

No. C 18-06296 WHA

Relator,

v.

DEBBIE ODIYE, GODWIN ODIYE and  
DOES 1 through 50, inclusive,

**ORDER GRANTING IN  
PART MOTION FOR  
LEAVE TO AMEND AND  
VACATING HEARING**

Defendants.

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**INTRODUCTION**

In this claim for relief, the plaintiff relator in Section 8 housing alleges that defendant landlords have violated the Federal False Claims Act and various state and local laws. Although a case management order deadline ordered that requests for leave to amend be made by June 28, 2019 — five months ago — plaintiff now requests for leave to amend the complaint. For the reasons stated below, this order holds that plaintiff’s requests are **GRANTED IN PART** and **DENIED IN PART**. The hearing set for November 21, 2019, is **VACATED**.

**STATEMENT**

Plaintiff relator rents a San Francisco residential unit from defendant, residing in the “upper unit” of a single-family home which has been converted into two units. The units share one electricity, gas, and water meter. Plaintiff’s tenancy was subsidized through the Section 8 Housing Choice Voucher Program. The program is administered by the San Francisco Housing

1 Authority, which receives funding from the United States Department of Housing and Urban  
2 Development. In order to be eligible for Section 8 tenant-based housing assistance payments,  
3 landlords are required to enter into an agreement with SFHA entitled Housing Assistance  
4 Payment Contract, referred to as a HAP Contract. Under the HAP Contract, a housing subsidy  
5 is paid directly to the landlord on behalf of the participating family, based on SFHA's calculation  
6 of "reasonable rent." The family then pays the difference between the actual rent charged by the  
7 landlord and the government subsidy. 24 C.F.R. § 982.1(a). Defendant received payments from  
8 SFHA through this program by reason of plaintiff's Section 8 tenancy (First Amd. Compl. ¶¶ 8,  
9 9, 16, 18–20).

10 Throughout plaintiff's tenancy, however, plaintiff and defendant have clashed.  
11 This conflict culminated in October 2018, when plaintiff brought the present action against  
12 defendant. Plaintiff asserts twelve claims against defendant, including violations of the False  
13 Claims Act, 31 U.S.C. § 3729 *et seq.*, and various other violations of state and local law.

14 In February 2019, defendant filed a motion to dismiss (Dkt. No. 15). In March, after  
15 full briefing on the motion to dismiss but before oral argument or ruling, plaintiff filed a first  
16 amended complaint. The undersigned denied the motion to dismiss as moot (Dkt. Nos. 21, 22,  
17 24). Later that month, defendant filed a motion to dismiss several claims in the first amended  
18 complaint (Dkt. No. 29). The undersigned issued both an order denying the motion to dismiss  
19 and an order scheduling case management. The scheduling order provided that leave to amend  
20 pleadings must be sought by June 28, 2019, non-expert discovery must be completed by January  
21 2020, and the trial date to be set for April 2020 (Dkt. Nos. 37, 40). The parties engaged in  
22 mediation in September.

23 Despite the deadline to amend having long since passed, plaintiff now moves to amend  
24 the pleadings. Plaintiff alleges that this delayed amendment is necessary to (1) amend existing  
25 False Claims Act claims to conform to allegedly new evidence, (2) allege a new claim based on  
26 new evidence, and (3) dismiss a claim barred by the statute of limitations. Defendant in turn  
27 makes a motion to strike and a motion for sanctions (Dkt. Nos. 50–52). For the reasons stated  
28

1 below, this order holds that plaintiff’s request to dismiss the claim barred by the statutes of  
2 limitations is **GRANTED**. All other requests are **DENIED**.

3 **ANALYSIS**

4 Leave to amend a complaint shall be freely given when justice so requires under  
5 FRCP 15(a). This standard is applied liberally. FRCP 15(a) does not apply, however, when a  
6 district court has established a deadline for amended pleadings under FRCP 16(b). *Johnson v.*  
7 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). Once a scheduling order has  
8 been entered, the liberal policy favoring amendments no longer applies. Subsequent  
9 amendments are not allowed without a request to first modify the scheduling order. *Id.* at  
10 608–09. At that point, FRCP 16(b)(4) provides that leave to amend following entry of such a  
11 case management order may be granted only upon a showing of “good cause” for the delay and  
12 with the judge’s consent. This good cause standard “primarily considers the diligence of the  
13 party seeking the amendment.” *Coleman v. Quaker Oats*, 232 F.3d 1271, 1294 (9th Cir. 2000).

14 As an initial matter, plaintiff failed to first request to modify the scheduling order.  
15 She merely moved to amend her complaint. Her motion makes no reference to the passed  
16 June deadline. Our court of appeals has generally declined to consider motions to amend the  
17 complaint as motions to amend the scheduling order. *Johnson*, 975 F.2d at 608–09. Even if  
18 this order were to treat plaintiff’s motion as such, the result would not change. As will be shown  
19 below, plaintiff cannot meet the good cause standard under FRCP 16(b).

20 **1. MOTION TO AMEND FACTS RELATING TO FALSE CLAIMS ACT ALLEGATIONS.**

21 Plaintiff first seeks leave to amend so as to square the complaint’s description of the HAP  
22 Contract with new factual developments. Neither party possesses the subject HAP Contract, so  
23 its terms cannot be easily discerned. Instead, plaintiff describes the contents of the HAP  
24 Contract in the first amended complaint. As relevant here, it alleges: (1) defendant entered into  
25 a HAP Contract with the SFHA; (2) the HAP Contract was not signed; (3) defendant entered into  
26 an oral contract with the United States by which defendant understood she would need to comply  
27 with the terms of the HAP Contract; and (4) the HAP Contract provided that defendant would  
28 pay for utilities.

1 Plaintiff argues that two recent developments require this description be adjusted.  
2 *First*, in August 2019 defendant deposed an SFHA employee who explained that “the HAP  
3 Contract must have been *in writing and signed* by [d]efendant in order for any subsidy payments  
4 to be issued” (Hain Decl. ¶ 3, emphasis added). *Second*, SFHA produced the complete file on  
5 plaintiff’s tenancy at the subject residence, and it revealed conflicting indications over who the  
6 HAP Contract listed as responsible for utility payments. Thus, plaintiff argues, “it is no longer  
7 appropriate for the complaint to allege that the HAP Contract was verbal” or that it “must have  
8 provided that defendant would pay all utilities” (Br. at 13). Plaintiff therefore seeks to amend  
9 the complaint to (1) allege the HAP Contract was written and (2) allege three possible theories of  
10 whom the HAP Contract listed as responsible for utilities, pleaded in the alternative.

11 To start, plaintiff cannot show good cause to amend the complaint to allege the HAP  
12 Contract was written. Plaintiff contends she has shown due diligence by seeking to amend soon  
13 after the deposition of the SFHA employee. Yet, given the importance of the HAP Contract in  
14 this matter, and of SFHA’s role generally, plaintiff has given no excuse for delaying to depose an  
15 SFHA employee or otherwise discern the nature of HAP Contracts. Moreover, plaintiff bases  
16 the delayed amendment on circumstantial evidence, namely, the experiences of an SFHA  
17 employee, not the HAP Contract itself which is still apparently amiss. This is not enough to  
18 show good cause under FRCP 16(b).

19 Neither can plaintiff show good cause to amend to allege three alternative theories about  
20 who the HAP Contract listed as responsible for utility payments. Plaintiff was prompted to  
21 make this amendment after defendant, in August, gave plaintiff a hard copy of SFHA’s file on  
22 plaintiff’s tenancy at the subject residence. Plaintiff’s attorney, however, received that file via  
23 email in May 2019, a full month before the June deadline. That plaintiff overlooked the email  
24 and thereafter failed to inquire about the file, despite its importance, is little excuse for a delayed  
25 amendment when the standard is diligence. Moreover, given that the parties do not possess the  
26 subject HAP Contract and so its contents cannot be definitively discerned, plaintiff should have  
27 plead in the alternative to begin with. Accordingly, plaintiff’s motion to amend facts in the  
28 complaint relating to the HAP Contract is **DENIED**.

1           **2.       MOTION TO ADD NEW CLAIM OF TENANT HARASSMENT.**

2           Plaintiff also moves to amend to add an additional claim of tenant harassment under  
3 S.F.A.C. § 37.10B. Plaintiff bases this claim on two alleged facts. *First*, defendant required  
4 plaintiff to pay \$100 for a parking spot in violation of the False Claims Act and then unlawfully  
5 withdrew plaintiff’s parking privileges when she could no longer pay. *Second*, defendant  
6 attempted to extract additional security deposit funds from plaintiff. In both instances, plaintiff  
7 says defendant acted in bad faith, a requisite for a tenant harassment claim under § 37.10B.

8           The events giving rise to these facts occurred before the June 2019 amendment deadline.  
9 Plaintiff, however, says she did not have evidence of defendant’s bad faith in these matters until  
10 recently, and therefore could not state a claim for tenant harassment until now. That evidence  
11 consists of two letters written by defendant. In the first letter, dated April 2016 and “found” by  
12 plaintiff in September 2019, defendant states that plaintiff lost her parking privileges when she  
13 stopped paying the \$100. Plaintiff has presumably been in possession of this letter since 2016.  
14 In the second letter, dated September 2019, defendant states that plaintiff never lost parking  
15 privileges and that defendant was not seeking additional security deposit funds.

16           Plaintiff contends the contradiction in the letters shows defendant has lied and acted in  
17 bad faith regarding the parking space and security deposit. Plaintiff also asserts she acted in due  
18 diligence bringing this claim now, as she did not find the April 2016 letter nor receive the  
19 September 2019 letter until recently, both of which were needed to specifically allege bad faith.  
20 This order disagrees. To repeat, the facts giving rise to the tenant harassment claim occurred  
21 long before the June amendment deadline. The original complaint from October 2018 even  
22 alleges these facts at length as the basis for a different claim. Similarly, defendant wrote and  
23 delivered the 2016 letter to plaintiff years ago. That plaintiff only just found it recently,  
24 when this lawsuit commenced a year ago and the June deadline passed five months ago, is not  
25 persuasive — it was plaintiff’s burden to uncover at least the facts in her own possession at the  
26 outset of this litigation. Thus, the only “new” evidence plaintiff can point to is the 2019 letter.

27           Plaintiff insists the 2019 letter has “changed the facts of this case drastically” (Dkt. No.  
28 52 at 2). Not so. The two letters undoubtedly contradict, but the 2019 letter does not alter the

1 underlying facts so significantly that the claim for tenant harassment could not have been  
2 brought before. It merely adds additional fluff to a near decade-long saga between defendant  
3 and plaintiff. Thus, plaintiff fails to show good cause for this amendment. Accordingly,  
4 plaintiff’s motion to amend the complaint to add a claim of tenant harassment under S.F.A.C. §  
5 37.10B is **DENIED**.

6 **3. MOTION TO WITHDRAW CIVIL CODE § 1942.4 CLAIM.**

7 Finally, plaintiff moves to amend to withdraw her Civil Code § 1942.4 claim, given it is  
8 barred by the statute of limitations. Defendant does not oppose. The motion is **GRANTED**.

9 **4. MOTION TO STRIKE.**

10 In the opposition brief, defendant states plaintiff’s attorney included confidential  
11 settlement discussions in Exhibit M to her motion to amend. Defendant requests the Court either  
12 disregard or strike that evidence from the record. This order does not rely on the referenced  
13 information. Nevertheless, the motion to strike is **GRANTED**. Do not put settlement discussions  
14 in the court files.

15 **5. MOTION FOR SANCTIONS.**

16 Defendant also requests sanctions pursuant to FRCP 16(f) in her opposition. Under  
17 FRCP 16(f), sanctionable conduct includes “a party’s failure to obey a scheduling or pretrial  
18 order . . . .” In addition to sanctions, a party or party’s attorney may be subject to pay the  
19 reasonable expenses incurred because of any noncompliance, including attorney’s fees, unless  
20 noncompliance is substantially justified. Sanctionable conduct requires “conduct amounting to  
21 recklessness, gross negligence, repeated — although unintentional — flouting of court rules, or  
22 willful misconduct.” Imposition of monetary sanctions which “punishes mere negligence on the  
23 part of counsel is not necessary to the orderly functioning of the court system, especially in light  
24 of the availability of alternative remedies.” *Zambrano v. City of Tustin*, 885 F. 2d 1473, 1480  
25 (9th Cir. 1989).

26 Plaintiff’s filing of the instant motion does not amount to recklessness, gross negligence,  
27 repeated flouting of court rules, or willful misconduct. Defendant’s request for monetary  
28 sanctions pursuant to FRCP 16(f) is **DENIED**.

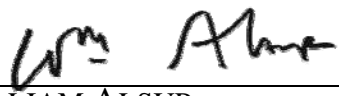
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**CONCLUSION**

To the extent stated above, plaintiff's motion to amend to withdraw the Civil Code § 1942.4 claim only and defendant's motion to strike are **GRANTED**. All other motions are **DENIED**. The hearing set for November 21, 2019, is **VACATED**.

**IT IS SO ORDERED.**

Dated: November 15, 2019.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE