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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff,

v.

BAYONE REAL ESTATE INVESTMENT CORPORATION, et al.,

Defendants.

Case No. 15-cv-02248-BLF

**ORDER GRANTING MOTION TO
EXTEND DISCOVERY CUT-OFF**

[Re: ECF 75]

Plaintiff Federal Deposit Insurance Corporation (“FDIC”), as Receiver for BankUnited, FSB, brings this suit, alleging that Defendants breached a written Mortgage Broker Agreement that set forth terms by which BankUnited would purchase or fund loans and Defendant Bayone Real Estate Investment Corporation (“Bayone”) would originate, sell, or assign loans. Compl. ¶ 9, ECF 1. According to FDIC, the loan documents for three loans submitted by Bayone to BankUnited—including a loan to borrower Lydia Fangon (the “Fangon Loan”)—contained inaccuracies, misrepresentations, and fraudulent statements. *Id.* ¶ 39. Defendants have denied liability. Answer, ECF 18. Defendants Bayone and Jinsong Guo have also filed counterclaims against FDIC and a third-party complaint, alleging that BankUnited approved loan applications submitted by third-parties without their consent and without conducting the required review and verification. Am. Countercl. ¶ 7-9, ECF 25; Am. Third-party Compl. ¶¶ 14-17, ECF 33.

Before the Court is FDIC’s motion to enlarge time for discovery so that it can depose third parties Yung-Ming Chou and Sarah C. Huang. ECF 75. This motion is unopposed by any party. For reasons set forth below, the Court GRANTS the motion.

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I. BACKGROUND

Discovery closed on March 6, 2017, except for the deposition of Bayone, which took place on March 9, 2017. ECF 60; Gibbs Decl. ¶ 8-13. At Bayone’s deposition, FDIC first learned that Bayone had been sued in 2009 by borrower Lydia Fangon, regarding the Fangon Loan at issue in this matter. *Id.* ¶ 14. Bayone’s 30(b)(6) witness, Defendant Jinsong Guo, was unable to testify regarding the allegations or positions Bayone took in this previously undisclosed Fangon action and stated that all related documents would be in the possession of Bayone’s former attorney Yung-Ming Chou. *Id.* ¶¶ 15-17.

As to Sarah C. Huang, FDIC was unable to take her deposition prior to the discovery cut-off because difficulties in scheduling the deposition and personally serving Ms. Huang. *Id.* ¶¶ 25-32. Defendants allege that Sarah C. Huang, the appointed manager of Bayone’s Cupertino office, submitted the loans at issue without Defendants’ knowledge or consent. Mot. 5. Defendants further allege Ms. Huang forged Ms. Guo’s signature. *Id.* This Court recently granted FDIC’s request to serve Ms. Huang with a deposition subpoena via certified mail and with a copy of the subpoena served by certified mail on Ms. Huang’s attorney, Kent Tierney. ECF 66.

II. LEGAL STANDARD

Pretrial deadlines “may be modified only for good cause and with the judge’s consent. Fed. R. Civ. P. 16(b)(4). In determining whether there is good cause to re-open discovery, courts consider the following factors:

- 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that discovery will lead to relevant evidence.

U.S. ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995) *vacated on other grounds*, 520 U.S. 939 (1997) (citing *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987)).

“Rule 16(b)’s ‘good cause’ standard primarily concerns the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); *see also* Fed. R. Civ. P. 16 Advisory Committee’s Notes (1983 amendment) (noting district court may

1 modify pretrial schedule “if it cannot reasonably be met despite the diligence of the party seeking
2 the extension.”). “If [the party seeking the modification] was not diligent, the inquiry should end
3 there.” *See Johnson*, 975 F.2d at 609. “The district court is given broad discretion in supervising
4 the pretrial phase of litigation, and its decisions regarding the preclusive effect of a pretrial order .
5 . . will not be disturbed unless they evidence a clear abuse of discretion.” *Id.* at 607 (internal
6 quotation marks and citation omitted).

7 **III. DISCUSSION**

8 The Court finds that there is good cause to extend discovery specifically for the
9 depositions of Yung-Ming Chou and Sarah C. Huang. Given that trial is not imminent and about
10 five months away, extending the discovery cut-off for 30 days only for these two depositions
11 would not affect the trial schedule. The extension of the cut-off is also specific for the purpose of
12 these two depositions and would not open up discovery of other issues. In addition, FDIC’s
13 motion is unopposed by Defendants and there is no showing of prejudice to Defendants by a
14 significant delay of the proceedings or loss of evidence.

15 The depositions sought by FDIC are also relevant and are delayed despite FDIC’s
16 diligence. With respect to Yung-Ming Chou, Defendant Bayone did not reveal the Fangon action
17 until Bayone’s 30(b)(6) deposition was taken on March 9, 2017. The Fangon action is relevant
18 because it relates to one of the loans at issue in this case and the parties’ statements or admissions
19 in that action regarding Bayone’s role in the origination the Fangon Loan would be important.
20 Although several of FDIC’s requests for production would have required production of documents
21 relating to the Fangon action, Bayone failed to produce any documents related to the Fangon
22 action and failed to disclose Yung-Ming Chou as custodian of these documents. Gibbs Decl. ¶¶
23 15-16.


24 Similarly, Sarah C. Huang has relevant information to this case. Defendants allege in their
25 counterclaims that as the appointed manager of Bayone Cupertino office, Ms. Huang submitted
26 the loans at issue without Defendants’ knowledge or consent. Defendants further allege that she
27 forged Ms. Guo’s signature. As such, Ms. Huang’s testimony would be relevant to this case.
28 FDIC also could not timely schedule her deposition due to difficulties in scheduling and service of

1 the subpoena. Her attorney represented that he would not assist in scheduling the deposition and
2 was not authorized to accept service. Gibbs Decl. ¶ 30. FDIC then made approximately ten
3 unsuccessful attempts at personal service of Ms. Huang, who has been avoiding service. *Id.* ¶ 31.
4 Even though Ms. Huang’s attorney was served with a deposition subpoena, she did not appear for
5 the scheduled deposition on March 6, 2017. *Id.* ¶ 32.

6 Based on the showing made by FDIC, the Court finds that the depositions of Yung-Ming
7 Chou and Sarah C. Huang are reasonably calculated to lead to the discovery of admissible
8 evidence. The Court also finds that FDIC has demonstrated that it was not able to take these two
9 depositions within the discovery cut-off despite its diligence. Based on these and other reasons
10 discussed above, the Court GRANTS FDIC’s motion to reopen discovery for an additional thirty
11 (30) days for the purposes of the depositions of third parties Yung-Ming Chou and Sarah C.
12 Huang.

13 **IT IS SO ORDERED.**

14
15 Dated: April 4, 2017

16 
17 BETH LABSON FREEMAN
18 United States District Judge