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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANAKAREN LOPEZ, as personal
representative of SALOMON
RODRIGUEZ,

Plaintiff,

v.

UNITED STATES OF AMERICA, et. al.

Defendants.

Case No.: 15cv00180 JAH-WVG

**ORDER DENYING PLAINTIFF’S
MOTION TO AMEND CASE
MANAGEMENT CONFERENCE
ORDER AND FOR LEAVE TO FILE
FOURTH AMENDED COMPLAINT
[Doc. No. 106]**

AND RELATED CROSS CLAIM.

Pending before the Court is Plaintiff’s motion to amend the case management conference order and for leave to file a fourth amended complaint to include additional allegations and a new claim. Defendants oppose the motion.

The filing of an amended complaint or counterclaim after a responsive pleading has been filed may be allowed by leave of court. Fed.R.Civ.P. 15(a). Granting leave to amend rests in the sound discretion of the trial court. International Association of Machinists & Aerospace Workers v. Republic Airlines, 761 F.2d 1386, 1390 (9th Cir. 1985). This discretion must be guided by the strong federal policy favoring the disposition of cases on

1 the merits. DCD Programs Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). Because
2 Rule 15(a) favors a liberal policy, the nonmoving party bears the burden of demonstrating
3 why leave to amend should not be granted. Genetech, Inc. v. Abbott Laboratories, 127
4 F.R.D. 529 (N.D. Cal. 1989).

5 Once a pretrial scheduling order has issued pursuant to Rule 16(b) the Federal Rules
6 of Civil Procedure, however, a party must show “good cause” to amend its pleadings.
7 United States v. Dang, 488 F.3d 1135, 1142 (9th Cir. 2007); Johnson v. Mammoth
8 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). “A court’s evaluation of good cause
9 is not coextensive with an inquiry into the propriety of the amendment under ... Rule 15.”
10 Johnson, 975 F.2d at 609 (internal quotations omitted). Unlike Rule 15’s liberal
11 amendment policy, Rule 16’s “good cause” standard primarily considers the diligence of
12 the party seeking the amendment. Johnson, 975 F.2d at 609. A court must consider
13 “whether the moving party knew or should have known the facts and theories raised by the
14 amendment in the original pleading.” AmerisourceBergen Corp. v. Dialysist West, Inc.,
15 465 F.3d 946, 953 (9th Cir. 2006) (internal quotations omitted). Where a movant “[has]
16 failed to show diligence, ‘the inquiry should end.’” Coleman v. Quaker Oats Co., 232 F.3d
17 1271, 1294 (quoting Johnson, 975 F.2d at 609).

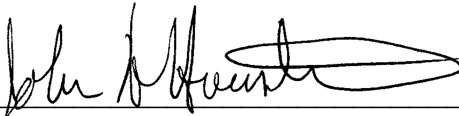
18 Plaintiff contends good cause exists to permit amendment because she diligently
19 sought leave to amend following the deposition of Defendant United States’ safety
20 specialist on February 27, 2018, during which he testified Defendant NASSCO was
21 required to perform inspections under NAVSEA Standard Items. Defendant NASSCO
22 argues Plaintiff’s motion is untimely and she fails to show good cause to modify the
23 scheduling order which set a deadline of May 23, 2016, for seeking leave to amend.
24 Defendant contends Plaintiff had knowledge of the relevant NAVSEA Standard Items no
25 later than April 2016, when the parties exchanged initial disclosures, but delayed amending
26 her complaint to include the additional allegations.

27 The Court finds Plaintiff knew about the significance of the NAVSEA Standard
28 Items long before the February 2018 deposition. She does not dispute Defendant

1 NASSCO's contention that she was aware of the relevant NAVSEA Standard Items as
2 early as April 2016, and, in fact, states in her motion that the NAVSEA Standard Items
3 were part of Defendant NASSCO's initial disclosures. Additionally, Plaintiff previously
4 sought and was granted leave to amend her complaint in which she included allegations
5 that Defendant NASSCO was required to perform inspections under NAVSEA Standard
6 Items. Plaintiff fails to demonstrate diligence in seeking leave to amend her complaint for
7 the fourth time.

8 Accordingly, IT IS HEREBY ORDERED Plaintiff's motion for leave to file a fourth
9 amended complaint is **DENIED**.

10 DATED: September 24, 2018

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14 JOHN A. HOUSTON
15 United States District Judge
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