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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SAN DIEGO COUNTY CREDIT
12 UNION,

13 Plaintiff,

14 v.

15 CITIZENS EQUITY FIRST CREDIT
16 UNION,

17 Defendant.

Case No.: 18cv967-GPC(RBB)

**ORDER DENYING DEFENDANT'S
EX PARTE MOTION FOR LEAVE
TO FILE SECOND DISPOSITIVE
MOTION**

[Dkt. No. 261.]

18 Defendant filed an ex parte motion for leave to file a second dispositive motion on
19 the remaining third and fourth causes of action in the second amended complaint arguing
20 that the Court's orders on summary judgment were dispositive of these claims. (Dkt. No.
21 261.) Plaintiff filed an opposition agreeing to dismiss the third cause of action but not the
22 fourth cause of action. (Dkt. No. 264.)

23 On September 29, 2020, the Court issued rulings on Defendant's motion for
24 summary judgment as well as Plaintiff's motion for summary judgment. (Dkt. Nos. 256,
25 259.) Because CEFCU did not move for summary judgment on the third and fourth
26 claims in the second amended complaint, they remain, (Dkt. No. 139, SAC). Since
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1 Plaintiff has agreed to dismiss the third cause of action, the Court considers Defendant’s
2 ex parte request on the fourth case of action.

3 The fourth cause of action seeks declaratory judgment of invalidity of CEFCU’s
4 common law mark “NOT A BANK. BETTER”, challenging its exclusive use to use its
5 common law mark because multiple other credit unions were using similar or identical
6 taglines, CEFCU has not continuously used its common law mark in commerce as a
7 stand-alone mark separate from CEFCU, CEFCU was not the first credit union to use the
8 tagline in connection with credit union services, and the tagline is descriptive and not
9 protectable. (Dkt. No. 139, SAC ¶¶ 97-104.)

10 At this time, the deadline for dispositive motions has passed, (Dkt. No. 68 at 3),
11 and a pre-trial conference is set on January 15, 2021. (Dkt. No. 260.)

12 Once a scheduling order has been filed pursuant to Rule 16, the “schedule may be
13 modified only for good cause and with the judge's consent.” Fed. R. Civ. P. 16(b)(4).
14 “Rule 16(b)'s ‘good cause’ standard primarily considers the diligence of the party seeking
15 the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.
16 1992). If the moving party fails to demonstrate diligence, “the inquiry should end.” *Id.*

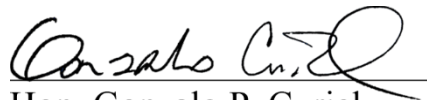
17 The Ninth Circuit has held that “district courts have discretion to permit successive
18 motions for summary judgment,” and that doing so may “foster[] the ‘just, speedy, and
19 inexpensive’ resolution of suits.” *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir.
20 2010) (citations omitted). Due to the potential for abuse, district courts retain discretion
21 to “weed out frivolous or simply repetitive motions.” *Id.* (citation omitted). “[A]
22 successive motion for summary judgment is particularly appropriate on an expanded
23 factual record.” *Id.* (citing *Fernandez v. Bankers Nat'l Life Ins. Co.*, 906 F.2d 559, 569
24 (11th Cir. 1990) (“Two motions for summary judgment may be ruled upon in the same
25 case, particularly when discovery has been extended for good reason”));
26 *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 251 (D.C. Cir.
27 1987) (“A subsequent motion for summary judgment based on an expanded record is
28 always permissible.”); *Kovacevich v. Kent State Univ.*, 224 F.3d 806, 835 (6th Cir. 2000)

1 (“District courts may in their discretion permit renewed or successive motions for
2 summary judgment, particularly when the moving party has expanded the factual record
3 on which summary judgment is sought.”). However, successive summary judgment
4 motions are disfavored. *See Allstate Fin. Corp. v. Zimmerman*, 296 F.2d 797, 799 (5th
5 Cir. 1961) (federal courts “do not approve in general the piecemeal consideration of
6 successive motions for summary judgment because parties ought to be held to the
7 requirement that they present their strongest case for summary judgment when the matter
8 is first raised”).

9 Here, Defendant fails to demonstrate good cause for the filing of a second motion
10 for summary judgment. Because discovery has been closed, it does not appear the
11 motion CEFCU seeks to file is based on new evidence or an expanded record. CEFCU
12 does not explain why it did not or was unable to seek the Court’s ruling on the fourth
13 claim in its initial summary judgment motion. Instead, Defendant presents arguments
14 why the fourth claim should be dismissed. (Dkt. No. 261-1 at 3-4.¹) Therefore, absent a
15 showing of good cause, the Court DENIES CEFCU’s ex parte motion to file a second
16 dispositive motion. *See Peasley v Spearman*, Case No. 15-CV-01769-LHK, 2017 WL
17 5451709, at *3 (N.D. Cal. Nov. 14, 2017) (denying defendants’ successive motion for
18 summary judgment because they failed to demonstrate good cause).

19 IT IS SO ORDERED.

20 Dated: November 10, 2020

21 
22 Hon. Gonzalo P. Curiel
23 United States District Judge
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¹ Page numbers are based on the CM/ECF pagination.