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3 In essence, the Court gave Gonzalez a second chance at the bat notwithstanding her failure to
4 comply with the amend pleadings deadline.

5 That same day, Gonzalez filed her amended complaint to include additional facts
6 showing that she was Hurley's exclusive sales representative. On April 29, 2011, Hurley
7 renewed its motion to dismiss, which this court denied, ruling that "[L]ara's amended complaint
8 provide[d] enough facts to make her Law 21 claims viable." Gonzalez v. Hurley Intern., Inc.,
9 No. 10-1919, 2011 WL 4856454, at *4 (D.P.R. Oct. 13, 2011).

10 As particularly relevant here, Gonzalez's deposition was taken on September 1, 2011
11 (Docket # 83). And, after repeated discovery hurdles and successive extensions of time, Dockets
12 # 77 & 57, discovery concluded on February 29, 2012. Then, on March 7, 2012—about three
13 weeks before the dispositive motions deadline *and over a year* past the last day to amend
14 pleadings—Gonzalez sought leave to file a second amended complaint (Docket # 84). She filed
15 her motion for leave "[p]ursuant to Rule (15)(a)(2), seek[ing] to conform [her] pleadings to the
16 facts and circumstances obtained through discovery." Id., p. 1.

17 Seeking to avoid any further delays, the Court gave Hurley until March 13, 2012 to
18 respond to Gonzalez's motion (Docket # 85). Hurley timely opposed, correctly arguing that,
19 since the deadline to amend the pleadings expired on March 4, 2011, Gonzalez had failed to
20 cite and consequently apply the correct, more stringent standard: good cause for her untimely
21 request for leave to amend as required by Fed. R. Civ. P. 16(b). It also alleged that the facts
22 obtained through discovery were at her disposal since Gonzalez's September 1, 2011 deposition,
23 and that she failed to show good cause why she waited in excess of six months to request leave
24 to file a second amended complaint. Id., p. 4.

25 The Court agreed with Hurley's reasoning and therefore denied the motion for leave
26 (Docket # 87). Undeterred, Gonzalez filed the instant motion for reconsideration, accusing the

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3 Court of failing to “balance [the] pertinent and equitable considerations,” *id.*, 2, in denying her
4 motion for leave. In support of her contention, she maintains that (1) there existed no current
5 case management order containing a deadline for filing amended pleadings; (2) she was justified
6 in awaiting until the conclusion of discovery to file her motion; (3) the amendments bring
7 nothing new to the case and represent factual pleadings that have long been a part of her theory;
8 and (4) the amendments will not affect the prosecution of this case. Although Hurley failed to
9 oppose, the Court nonetheless addresses and, for the reasons laid out below, rejects Gonzalez’s
10 unavailing contentions.

11 **Standard of Review**

12 Interlocutory orders such as the one Gonzalez is seeking reconsideration from, ‘remain
13 open to trial court reconsideration’ until the entry of judgment.” *Nieves-Luciano v.*
14 *Hernandez-Torres*, 397 F.3d 1, 4 (1st Cir. 2005) (quoting *Geffon v. Micrion Corp.*, 249 F.3d 29,
15 38 (1st Cir. 2001) (quoting in turn *Perez v. Crespo-Guillen*, 25 F.3d 40, 42 (1st Cir.1994))). In
16 other words, “[R]ule 59(e) does not apply to motions for reconsideration of interlocutory
17 orders.” *Nieves-Luciano*, 397 F.3d at 4.

18 For its part, Rule 16(b)’s “good cause” standard, as opposed to Rule 15(a)’s “freely
19 given” standard, “[g]overns motions to amend filed after scheduling order deadlines.”
20 *O’Connell v. Hyatt Hotels*, 357 F.3d 152, 154 (1st Cir. 2004) (collecting cases); *Trans-Spec*
21 *Truck Serv. v. Caterpillar Inc.*, 524 F.3d 315, 327 (1st Cir. 2008) (“[R]ule 16(b) establishes a
22 different standard when a motion to amend comes late in the case.”). And this makes sense:
23 “[l]iberally granting motions to amend the pleadings—filed after a party has disregarded the
24 scheduling order deadline—would effectively ‘nullify the purpose of Rule 16(b)(1).’” *Id.* at 155
25 (quoting *Riofrio Anda v. Ralston Purina Co.*, 959 F.2d 1149, 1155 (1st Cir. 1992)); see also
26 3-16 Moore’s Federal Practice - Civil § 16.13.

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3 It is well-settled law in this circuit that, in contrast to Rule 15(a)'s "'freely given'
4 standard, which focuses mostly on the bad faith of the moving party and the prejudice to the
5 opposing party, Rule 16(b)'s 'good cause' standard emphasizes the diligence of the party
6 seeking the amendment." Id. (citations omitted); see also e.g., *Steir v. Girl Scouts of the USA*,
7 383 F.3d 7, 12 (1st Cir. 2004) ("This standard focuses on the diligence (or lack thereof) of the
8 moving party more than it does on any prejudice to the party-opponent.") (footnote omitted).

9 **Applicable Law and Analysis**

10 Plaintiff first argues that there was no "current" case management order containing a
11 deadline for filing amended pleadings. See Docket # 90, p. 5. This argument is beyond the pale,
12 bordering on Rule 11 sanctions. As said, it is incontrovertible that, in the case management
13 order, this court set a deadline to file amended pleadings. Oddly, plaintiff accuses this court of
14 failing to "address" the period to file amended pleadings. Docket # 90, p. 5. But it should go
15 without saying that duty to request an extension of time to file amended pleadings rests squarely
16 on the plaintiff, not on the Court. See Fed. R. Civ. P. 16(b)(4) ("[A] schedule may be modified
17 only for good cause and with the judge's consent."); cf. *Torres-Vargas v. Pereira*, 431 F.3d 389,
18 393 (1st Cir. 2005) ("[A] party flouts a court order at his peril."); *Rosario- Diaz v. Gonzalez*,
19 140 F.3d 312, 315 (1st Cir. 1998) (discussing a party's "unflinching duty to comply with clearly
20 communicated case management orders"). "For Rule 16(b) to operate effectively, litigants
21 cannot be permitted to treat a scheduling order as a "frivolous piece of paper idly entered, which
22 can be cavalierly disregarded without peril." O'Connell 357 F.3d at 155 (citations and internal
23 quotation marks omitted). This is exactly what plaintiff is purporting to do.

24 Further, it is important to underscore that, notwithstanding Gonzalez's lack of diligence
25 in failing to request an extension of time to amend her pleadings, this court, in the interest of
26 justice, *made an exception* and granted her leave to amend her complaint back in April 2011.

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3 It defeats logic to say, as plaintiff suggests, that because her leave to amend was granted a year
4 ago, the Court is now somehow bound by its previous liberal determination. Simply put,
5 plaintiff's argument does not carry the day, as it runs contrary to Rule 16(b)'s purpose, i.e.,
6 "[a]ssur[ing] that at some point both the parties and the pleadings will be fixed." *Id.* at 154
7 (quoting Advisory Committee Notes to the 1983 Amendments to Fed. R. Civ. P. 16(b)).

8 Next, plaintiff alleges that she was justified in awaiting until the conclusion of discovery
9 to file her motion. This contention also misses the mark. As a threshold matter, Gonzalez's
10 second motion for leave—which, again, was incorrectly predicated on Rule 15(a)—fails to
11 address her untimeliness. And instead she merely blames such noncompliance on this court's
12 extensions of the discovery deadline. The overwhelming majority of the proposed amendments,
13 moreover, are based on plaintiff's testimony at the September 1, 2011 deposition. Indeed, the
14 allegations that Gonzalez "[s]eeks to add to [her] amended complaint are based on information
15 that [she] had or *should have had* from the outset of the case." Trans-Spec Truck Serv., 524
16 F.3d at 327 (emphasis added); see also Sosa v. Airprint Sys., Inc., 133 F.3d 1417, 1419 (11th
17 Cir. 1998) (*per curiam*) (affirming district court's refusal to find good cause where "information
18 supporting the proposed amendment to the complaint was available [to plaintiff] even before
19 she filed suit"). Gonzalez tries to blunt the force of this conclusion by reminding this court that
20 "[s]he did not make a habit of retaining documents pertaining to her relationship with Hurley
21" Docket # 90, p. 8 (citation and internal quotation marks omitted). The Court, however,
22 is unpersuaded by this convenient explication.

23 The Courts adds a coda. Although she was (or should have been) aware of her duty to
24 move to amend, Gonzalez procrastinated for over six months after her deposition, and waited
25 more than *a year* after the deadline to amend pleadings to act. Hurley correctly concludes that
26 "[s]uch a long and unexplained delay undoubtedly demonstrates that the [plaintiff] has not

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2 diligently pursued this litigation.” Docket # 86, p. 4. See Trans-Spec Truck Serv., 524 F.3d at
3 328 (holding that filing of motion to amend eleven months after deadline established by
4 scheduling order was unjustifiable, absent issues of estoppel); Grochowski v. Phoenix Constr.,
5 318 F.3d 80, 86 (2d Cir. 2003) (finding that plaintiffs failed to establish good cause when they
6 had delayed more than a year before seeking leave to amend and discovery had been
7 completed).

8 Because the plaintiff has been *far* from diligent in moving to amend, thereby failing to
9 show good cause, the Court need not address her remaining but unavailing contentions.
10 “‘Indifference’ by the moving party ‘seals off this avenue of relief’ irrespective of prejudice
11 because such conduct is incompatible with the showing of diligence necessary to establish good
12 cause.” O’Connell, 357 F.3d at 155 (quoting Rosario-Diaz, 140 F.3d at 315).

13 **Conclusion**

14 For the reasons stated, plaintiff’s motion for reconsideration is **DENIED**.

15 **IT IS SO ORDERED.**

16 In San Juan, Puerto Rico, this 4th day of May, 2012.

17 *S/ Salvador E. Casellas*
18 SALVADOR E. CASELLAS
U.S. Senior District Judge