

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

SUSAN PARISI,)	
)	
Plaintiff,)	
v.)	Case No. CIV-23-115-R
)	
(1) OKLAHOMA WINDOWS AND)	
DOORS, LLC d/b/a RENEWAL BY)	
ANDERSON OF OKLAHOMA)	
AND (2) BMO HARRIS)	
BANK, NA d/b/a GREENSKY, LLC,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff Susan Parisi’s Motion for Leave to Amend the Petition and File Second Amended Class Action Complaint [Doc. No. 105]. Defendants Oklahoma Windows and Doors, LLC d/b/a Renewal by Anderson of Oklahoma and Greensky, LLC responded [Doc. Nos. 109 & 110]. Plaintiff did not reply. The matter is now at issue.

FACTUAL BACKGROUND

This litigation arises from a purported loan agreement to finance the installation of new windows in Plaintiff’s home [Doc. No. 36].¹ Greensky, LLC² works with merchants to provide consumer loans to consumers who need to finance their purchases. *Id.* ¶ 43.

¹ The Court described the events of this case at length in a previous Order [Doc. No. 66] and therefore limits its recitation of the facts only to those alleged in the Amended Complaint (the current operative pleading) which are pertinent to the Motion.

² Plaintiff improperly conflates Greensky, LLC and BMO Harris Bank as the same entity in her Complaint. She seeks to correct this in her Second Amended Complaint by adding BMO Harris as a defendant. The Court will allow Plaintiff to amend her complaint for the limited purpose of adding BMO Harris as a defendant and correcting the case caption to reflect the proper names of the parties.

Anderson is one such merchant, with whom customers deal directly by providing information to an Anderson representative via the representative's iPad to apply for a loan from GreenSky. *Id.* ¶¶ 43-48, 65. Once a consumer is approved for a loan, Greensky activates a Shopping Pass, which functions like a credit card, for the consumer's account. *Id.* ¶ 51. Merchants may use the Shopping Pass number to apply directly to GreenSky for disbursement of funds to themselves. *Id.* ¶¶ 52-53.

On or around November 23, 2021, Plaintiff met with Russell Kelley, an Anderson representative. *Id.* ¶ 59. Kelley informed Plaintiff she could purchase nine windows for her home from Anderson with zero money down and no interest or payments for two years. *Id.* ¶ 61. Kelley showed Plaintiff his iPad to evidence Greensky's approval for the Zero-Interest Loan, but neither the loan's financial terms nor contract were visible or reviewable by Plaintiff. *Id.* ¶ 65. Kelley told Plaintiff a contract would be mailed to her. *Id.* ¶ 66. Plaintiff alleged she never received a copy of the contract or accurate disclosures about the interest she would be paying on the credit extension. *Id.* ¶ 68.

The Shopping Pass associated with Plaintiff's account was later charged in the amount of \$8,871.50. *Id.* ¶ 69. Plaintiff then discovered GreenSky had approved a loan agreement with different terms than those requested, requiring payments in six months with a high interest rate. *Id.* Plaintiff contacted GreenSky to dispute the loan agreement multiple times. *Id.* ¶¶ 73, 79, 86. Despite this, GreenSky billed Plaintiff in accordance with the High-

Interest Loan and continued reporting the loan under her name and credit history. *Id.* ¶¶ 77, 83, 88, 96, 99.³

PROCEDURAL BACKGROUND

Plaintiff first brought this lawsuit in state court against Defendants Oklahoma Windows and Doors, LLC d/b/a Renewal by Anderson of Oklahoma⁴ and Greensky, LLC on November 22, 2022 [Original Pet., Doc. No. 1-1]. Although the first paragraph of her Original Petition contained a single reference to class action claims, the rest of the petition revolved around Plaintiff individually. *Id.* at p. 1. On December 22, 2022, Plaintiff filed an Amended Petition [Doc. No. 1-3] in which she (1) more fully alleged class action claims against Defendants based on the same underlying facts of her Original Petition and (2) more clearly alleged violations by all Defendants of the Oklahoma Consumer Credit Code, OKLA. STAT. tit. 14A, § 2-301, *et seq.* Defendant Greensky properly removed the case to this Court on February 2, 2023 [Doc. Nos. 1, 25].

This Court later granted Plaintiff's Motion to Amend the Petition to properly name Anderson as a Defendant and to correct the case caption [Doc. Nos. 16 & 35]. Plaintiff filed her Amended Complaint—the third iteration of her pleadings—on August 21, 2023. Doc. No. 36. The parties thereafter engaged in extensive motion practice. In December of

³ This Court later determined [Doc. No. 66], and the Tenth Circuit affirmed [Doc. No. 94], that Plaintiff and GreenSky never entered a valid loan agreement because there was no mutual assent to the material terms of the loan.

⁴ In her two state court Petitions, Plaintiff improperly named C Cashion Windows, LLC d/b/a Renewal by Anderson of Oklahoma as a Defendant instead of the intended entity Oklahoma Windows and Doors, LLC d/b/a Renewal by Anderson of Oklahoma. Plaintiff's Amended Complaint [Doc. No. 36] corrected this misidentification and for clarity's sake, the court refers to the intended entity only.

2023, this Court denied Defendant Greensky’s Motion to Compel Arbitration [Doc. No. 17] and Motion to Dismiss All Claims Pursuant to Federal Rule of Civil Procedure 12(b)(3) [Doc. No. 46], a decision the Tenth Circuit later affirmed. Doc. Nos. 66 & 94.

Defendants Greensky and Anderson thereafter filed Motions to Dismiss [Doc. Nos. 99, 100, 101].⁵ Instead of responding, Plaintiff filed a Motion for Leave to Amend the Petition and File a Second Amended Class Action Complaint. Doc. No. 105. Defendants oppose this motion, arguing that (1) amendment would be futile and (2) Plaintiff’s proposed Second Amended Complaint is untimely and unduly prejudicial.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 15(a)(2), “[t]he court should freely give leave [to amend] when justice so requires.” The Tenth Circuit has emphasized:

In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be “freely given.”

Foman v. Davis, 371 U.S. 178, 182 (1962) (quoting FED. R. CIV. P. 15(a)(2)). Still, “the grant or denial of an opportunity to amend is within the discretion of the District Court.” *Id.*

⁵ Plaintiff’s deadlines to respond to the Motions to Dismiss have been suspended until the Court rules on her Motion to Amend [See Doc. No. 106].

DISCUSSION

Defendant urges the Court to deny Plaintiff leave to amend because her Second Amended Complaint—which would become her *fourth* operative pleading—is untimely. “Undue delay,” or untimeliness, is one justification for denying a motion to amend. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 (10th Cir. 2006) (citation omitted). “Lateness does not of itself justify the denial of [an] amendment.” *Id.* (citation and quotation marks omitted). “However, [a] party who delays in seeking an amendment is acting contrary to the spirit of [Rule 15] and runs the risk of the court denying permission because of the passage of time.” *Id.* (citation and quotation marks omitted). In analyzing undue delay/untimeliness, the focus is “primarily on the reasons for the delay.” *Id.* at 1206. The Tenth Circuit has “often found untimeliness alone a sufficient reason to deny leave to amend, ‘especially when the party filing the motion has no adequate explanation for the delay.’” *Pallottino v. City of Rio Rancho*, 31 F.3d 1023, 1027 (10th Cir. 1994) (quoting *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365-66 (10th Cir. 1993)).

“Furthermore, ‘[w]here the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial.’” *Frank*, 3 F.3d at 1366 (quoting *L.V. Ice & Cold Storage Co. v. Far W. Bank*, 893 F.2d 1182, 1185 (10th Cir. 1990)). *See also Llacua v. W. Range Ass’n*, 930 F.3d 1161, 1188-90 (10th Cir. 2019) (upholding district court’s denial of leave to amend where information in proposed third amended complaint was known or reasonably should have been known to plaintiffs at the time of the second amended complaint); *Zisumbo v. Ogden Reg’l Med. Ctr.*, 801 F.3d 1185, 1196 (10th

Cir. 2015) (upholding district court’s denial of leave to amend where plaintiff possessed all facts necessary to assert an additional claim when he filed his first amended complaint); *Price v. Driscoll*, No. CIV-21-100-GLJ, 2025 WL 1912756, at *3 (E.D. Okla. July 8, 2025) (denying leave to amend over two years after the original complaint where plaintiff purported to add a claim based on facts he was aware of long before).

Plaintiff attempts to explain her delay by contending she is adding factual specificity to clarify her allegations and to bolster her opportunity to have her claims decided on the merits. Plaintiff argues she was previously focused on Defendants’ attempts to remove the case and compel arbitration and that the substantive case is only just now beginning.

But Plaintiff is not merely clarifying her claims—she is adding entirely new ones based on facts she has known for years.⁶ Her proposed Second Amended Complaint adds claims for violations of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, the Oklahoma Consumer Protection Act, OKLA. STAT. tit. 15, § 751 *et seq.*, and the Electronic Fund Transfer Act. 15 U.S.C. § 1693i. Plaintiff does not assert that she did not know or could not have known of the potential to assert these additional claims against Defendants until recently. In fact, the claims in the proposed Second Amended Complaint stem from the same business model used by GreenSky and Anderson and Plaintiff’s personal experience with that business model several years ago. Moreover, the claims arise from Defendants’ alleged failure to provide adequate disclosures regarding her credit transaction and the

⁶ Plaintiff’s proposed Second Amended Complaint also seeks to change the definition of the proposed class. The Court has focused its analysis upon the claims Plaintiff seeks to add but notes that this other proposed change is also based on facts Plaintiff was aware of long before her Motion.

allegedly unauthorized electronic transfer of funds related to that transaction. Plaintiff's excuses that her focus was elsewhere and that she is merely adding factual specificity do not adequately explain her years-long delay in bringing these claims regarding facts she has known for years.

Furthermore, Plaintiff waited until after Defendants' new Motions to Dismiss to seek leave to amend her complaint for a third time. "[C]ourts properly deny motions to amend when the plaintiff 'is using Rule 15 to make the complaint a moving target, to salvage a lost case by untimely suggestion of new theories of recovery, [or] to present theories seriatim in an effort to avoid dismissal'" *Hedger v. Kramer*, No. CIV-13-0654-HE, 2015 WL 13357593, at *5 (W.D. Okla. Sept. 24, 2015) (quoting *Minter*, 451 F.3d at 1206). *See also Pallottino*, 31 F.3d at 1027 (finding district court did not abuse its discretion in denying leave to amend five months after previous amended complaint where the amendment was not based on previously unavailable evidence but rather proposed a theory plaintiff only advanced after dismissal of his primary theory).

"Liberality in amendment is important to assure a party a fair opportunity to present [her] claims . . . , but equal attention should be given to the proposition that there must be an end [] to a litigation." *Id.* (quoting *Freeman v. Cont'l Gin Co.*, 381 F.2d 459, 469 (5th Cir. 1967)) (internal citations and quotation marks omitted). Plaintiff's request to file a fourth pleading to make claims she has failed to assert for at least three years despite having the facts to do so is untimely.

Because the Court finds that leave to amend should be denied due to untimeliness, the Court does not reach a determination as to the futility of the amendments or whether allowing the amendments would prejudice Defendants.⁷

Accordingly, Plaintiff's Motion for Leave to Amend the Petition and File Second Amended Class Action Complaint is DENIED. However, within fourteen days of this Order, the Plaintiff may file a Second Amended Complaint with amendments limited to naming the proper parties and correcting the case caption. This will not moot Defendants' Motions to Dismiss [Doc. Nos. 99, 100, & 101]. The stay of Plaintiff's deadlines to respond to Defendants' Motions to Dismiss is lifted. Plaintiff has 21 days from the date of this Order to respond to Defendants' motions.

IT IS SO ORDERED this 25th day of November, 2025.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

⁷ The Tenth Circuit has indicated that prejudice to Defendants, while an important consideration when deciding whether to grant leave to amend, is *not* required when denying amendments for undue delay. *Minter*, 451 F.3d at 1205-06; *Durham v. Xerox Corp.*, 18 F.3d 836, 840 (10th Cir. 1994) (“[U]nexplained delay alone justifies the district court’s discretionary decision.”). Whether or not Defendants would be prejudiced by allowing Plaintiff to file her Second Amended Complaint, it would not change this Court’s decision to deny Plaintiff leave to amend due to untimeliness.