



Schoolmaster, Dr. Rob Garnett, Dr. Darron Turner, Russell Mack Leigh Holland and Aaron Chimbel for the discriminatory treatment they faced at TCU and during TCU sanctioned activities because of their race and gender, including TCU and its agents' deliberate indifference with which they responded to Plaintiffs' complaints and those of other African-American women. Plaintiffs sued Defendants for violation of Titles VI and VII of the Civil Rights Act of 1964; Title XI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Title II of the American with Disabilities Act; fraud; negligence; assault; and intentional infliction of emotional distress in connection with the conduct of TCU and its agents. See [Dkt. No.44].

On January 15, 2020, Plaintiff Jane Doe No. 1, filed her Original Complaint against TCU, Dr. Diane Snow, Dr. Frederic W. Gooding Jr., Dr. Rob Garnett, Dr. Darron Turner, Russell Mack, and Aaron Chimbel. *See* [Dkt. No. 1]. Needing time to "investigate" the claims, the Defendants requested, and Plaintiffs agreed, to the extension of Defendants' answer deadline. [Dkt. No. 6].

On March 23, 2020, nearly eleven weeks after Plaintiffs agreed to Defendants' request for additional time to answer, Defendants each moved this Court, in substantially similar motions, to dismiss Jane Doe No.1's claims under the Federal Rule of Civil Procedure 12(b). [Dkt. Nos. 8 through 15]. On April 23, 2020, without extension from the Court, Jane Doe No. 1 amended her Complaint as a matter of right and added Plaintiffs Jane Does Nos. 2 and 3, and Defendants Dr. Andrew Schoolmaster and Leigh Holland and removed Defendant Dr. Frederick W. Gooding, Jr. [Dkt. No. 19]. Again, needing more time to "investigate" the claims, the Defendants requested, and Plaintiffs agreed, to a second extension of Defendants' answer deadline. [Dkt. No. 21].

On May 20, 2020, nearly five weeks after Plaintiffs agreed to Defendants' request for additional time to answer, Defendants again moved to dismiss Plaintiffs' claim under Federal Rule

of Civil Procedure 12(b), again filing substantially similar motions now pending before this Court. [Dkt. Nos. 23 through 36]

On June 17, 2020, Plaintiffs' filed their Opposed Motion for Leave to File Third Amended Complaint, seeking to add the claims of Jane Does Nos. 4 and 5, and a Title VII claim on behalf of Jane Doe No. 1. [Dkt. No. 40]. **On June 26, 2020, this Court granted Plaintiffs' Motion in part, allowing Plaintiffs to add a Title VII claim on behalf of Jane Doe No.1, but to "avoid further delay in resolving Defendants' pending Motions to Dismiss," denied the joinder of Jane Does Nos. 4 and 5.** [Dkt. No. 43] (emphasis added). **This Court, however, simultaneously instructed that if "Plaintiffs wish to join [Jane Does Nos. 4 and 5] as parties to this case, they may move separately for such relief."** *Id.* (emphasis added)

On July 12, 2020, this Court issued a Scheduling Order in this case. [Dkt No. 45]. Pursuant to this Court's Scheduling Order, the parties' deadline to join parties is August 21, 2020. [Dkt. No. 45 at ¶ 2]. On July 13, 2020, Plaintiffs' filed their response to Defendants' various motions to dismiss. [Dkt. No. 46]. On July 27, 2020, Defendants' replied to Plaintiffs' response to Defendants' various 12(b) motions. [Dkt. Nos. 52 through 54]. Thus, the parties' briefing relating to Defendants' pending motions to dismiss has concluded but this Court has not yet issued an Order or otherwise ruled in connection with the same. Plaintiffs' respect this Court's guidance, including its instruction that the parties refrain from filing further motions that may cause delay in the resolution of Defendants' pending Motions to Dismiss. Moreover, the Plaintiffs are mindful that this Court has abated discovery in this case pending resolution of Defendants' Motions to Dismiss, and accordingly neither party has made its initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). Thus, Plaintiffs (and Defendants for that matter) have had neither the

benefit of discovery and disclosure, nor the guidance of this Court to properly join parties or claims within the time provided by the Scheduling Order.

To that end, and in the interest of efficiency, Plaintiffs' counsel conferred with Defendants' counsel regarding extending the deadline for joinder until the Court resolved the pending motions. Although Plaintiffs agreed to extended Defendants answer deadline multiple times, Defendants' counsel informed Plaintiffs that they—under no circumstances—would agree to extend the deadline for joinder set forth in the Scheduling Order. Accordingly, Plaintiffs bring this Opposed Motion to Amend Scheduling Order. Plaintiffs' hereby respectfully request that this Court amend the Scheduling Order in this case to extend the deadline for joinder of additional parties.

### **ARGUMENT**

The Court can modify a Scheduling Order on a showing of good cause. FED. R. CIV. P. 16(b); *S & W Enters v. South Trust Bank*, 315 F. 3d 533, 535 (5th Cir. 2003). The good cause standard requires the “party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.” 6A Charles Alan Wright et al., *Federal Practice and Procedure* § 1522.1 (2d ed. 1990). Here, there is good cause to modify the current Scheduling Order for several reasons, including because of the current abatement on discovery and pending motions to dismiss for which this Court has instructed it seeks to address without any delay caused by the potential joinder of additional parties. [Dkt. Nos. 39 and 43]. Moreover, the on-going Covid-19 pandemic has presented numerous challenges in obtaining information, generally, including information that would give rise to the need for additional parties in this case. First, the need for more time under the Scheduling Order is explained by the abatement of discovery in this case coupled with the Court's directive that pending motions be resolved to avoid any

further delay of the same. [Dkt. No. 43]. Both the abatement of discovery in this case and the Court's June 26, 2020, directive are subject to the Court's resolution of Defendants' Motions to Dismiss. [Dkt. Nos. 39 and 43]. Defendants' Motions to Dismiss have not been resolved by this Court, thus neither Plaintiffs' nor Defendants' have had the benefit of the discovery and disclosures or other guidance from this Court necessary to reasonably meet the August 21, 2020, deadline for joinder because review and disclosure of the same may reasonably reveal the necessity of additional parties to this lawsuit.

Second, without modifying the Scheduling Order Plaintiffs (and Defendants for that matter) will be forced to file motions to join parties prior to reasonable discovery and disclosure between the parties, and prior to the Court's resolution of Defendants' Motions to Dismiss. The result would be that potential parties to the lawsuit, who may only be revealed through discovery and disclosure, including those subject to joinder under Federal Rules of Civil Procedure 19 and 20, may not be properly or timely joined and the resulting judicial inefficiency of subsequent motion practice to cure the same.

Third, Defendants will suffer no prejudice if the Scheduling Order is modified. *Andretti v. Borla Performance Indus., Inc.*, 426 F.3d 824, 830 (6th Cir. 2005). While Defendants' will likely argue that they will be prejudiced and burdened if the Scheduling Order is modified to extend the time for joinder of parties, Defendants must acknowledge that neither party has had the benefit of placing any information other than their allegations and challenges to the same before one another. Moreover, Defendants' cannot seriously claim that they are prejudiced or will otherwise be burdened by an extension of the time for joinder of parties when they may still challenge Plaintiffs' request for joinder if brought 45 days from now or after the Court's resolution of their Motions to

Dismiss. Indeed, the requested extension is well before the close of discovery and almost a year before trial. Moreover, the Defendants have previewed, in part, Plaintiffs' request for joinder of parties (without the benefit of discovery and disclosure and without resolution of the Rule 12 motions) as detailed by the Plaintiffs' Motion for Leave to Amend [Dkt. No. 40]. Accordingly, Defendants will not be prejudiced by the proposed modification of the Scheduling Order. *Id.*

### **CONCLUSION**

For the reasons stated above, Plaintiffs asks this Court to enter the proposed Modified Scheduling Order.

Respectfully Submitted,

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JANE DOE NO. 3**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on August 20, 2020, Plaintiffs' Counsel, Nnamdi Anozie, conferred with Defendants counsel, George Haratsis. Mr. Haratsis indicated that Defendants oppose Plaintiffs' Motion to Modify the Scheduling Order to Extend Deadline for Joinder of Parties.

*/s/ Nnamdi M. Anozie*  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing pleading has been served on counsel identified below in accordance with the Federal Rules of Civil Procedure on the 20<sup>th</sup> day of August, 2020:

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