



August 21, 2020, the deadline in the Scheduling Order [Doc. 45] for adding parties, when they filed a motion for leave to join Does 4 and 5 to this action as well as adding two TCU faculty members as defendants. [Doc. 58] Defendants submit that no additional time to extend the deadline for joinder of parties is needed. Plaintiffs' Motion should be denied.

**The August 21, 2020 joinder deadline was requested by Plaintiffs**

2. On June 10, 2020, the parties submitted to the Court their Joint Report [Doc. 37], which included the parties' report and respective positions as to deadlines in a proposed scheduling order. In the Joint Report, Plaintiffs proposed "a deadline of August 21, 2020" for all motions requesting joinder of additional parties to be filed. [Doc. 37, p. 18] Defendants proposed a joinder deadline of no later than July 15, 2020. [Id.]. When the Court ultimately entered the Scheduling Order, the joinder of parties deadline was set for August 21, 2020; thus the Plaintiffs were granted the additional time they proposed and received their preferred date. [Doc 45, ¶ 2] Plaintiffs have not offered any compelling reasons, much less shown good cause, to modify this deadline at the eleventh hour or for the need for an additional forty-five (45) days to join additional parties.

**Argument**

3. A scheduling order may be modified only upon a showing of good cause and with the consent of the district judge. FED. R. CIV. P. 16(b)(4). "The primary measure of Rule 16's 'good cause' standard is the moving party's diligence in attempting to meet the case management order's requirements." *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002)(internal citations omitted). What constitutes good cause can be discerned from the Fifth Circuit's analysis of good cause when a party seeks an untimely extension of a scheduling order's deadline to amend pleadings. In *S & W Enters., L.L.C. v.*

*SouthTrust Bank of Alabama, N.A.*, 315 F.3d 533 (5th Cir. 2003), the court explains that once a scheduling order is entered, a party seeking modification of a deadline must demonstrate good cause. *Id.* at 536. The good cause standard generally requires a showing that the party seeking relief from a deadline could not meet the deadline despite due diligence. See *Fahim v. Marriott Hotel Servs., Inc.* 551 F.3d 344, 348 (5th Cir. 2008).

Factors a court analyzes in determining good cause under Rule 16(b) are:

- (1) explaining the need for leave for the failure to timely move to extend the deadline;
- (2) the importance of the amendment or in this case, extending the joinder deadline;
- (3) potential prejudice to the opposing party; and
- (4) the availability of a continuance to cure such prejudice.

*Id.* at 348, (citing *S&W Enters.*, 315 F.3d at 536). Defendants suggest that one or more of these factors should apply to the analysis of good cause when, as here, Plaintiffs ask that the joinder deadline for which they advocated should be extended.

**The explanations offered by Plaintiffs are insufficient to support an extension of the joinder deadline**

4. Plaintiffs offer no specific examples or adequate reasons for extra time. Surely, the fact that they were prepared to add and did add two additional plaintiffs, Does 4 and 5, to the suit in early June of 2020 undermines any necessity or urgency for their purported need for modification of the scheduling order (parties they again sought to add on August 21, 2020—the date they selected to be the deadline to join additional parties). Nor have the Plaintiffs shown good cause to support their request—the proffered reasons are conclusory and general. For example, there is no assertion or explanation as to what discovery is needed by Plaintiffs to identify potential plaintiffs or defendants, or how the

Covid-19 pandemic has prevented them from gathering information since last October, when Doe 1 first advised TCU of her claims.<sup>1</sup>

5. Defendants dispute any contention that the Court's June 26, 2020 Order [Doc. 43] has prevented Plaintiffs from identifying additional parties or necessitates the need for extending the joinder deadline. Plaintiffs appear to argue that they have refrained from filing further motions that may cause delay in the resolution of Defendants' pending motions to dismiss and are simply following the instructions of this Court. [Doc. 56, pp. 4-5] However, the Court has never given such instruction. In the Court's June 26, 2020 Order, the Court granted Plaintiffs' Motion for Leave to Amend with respect to the addition of Doe. 1's Title VII claim, and denied it with respect to the attempted joinder of Doe 4 and Doe 5. The Court specifically stated that "[i]f Plaintiffs wish to join Jane Doe No. 4 and No. 5 as parties to this case, they may move separately for such relief." [Id.] The Court did not bar Plaintiffs from filing an earlier motion to seek to extend the joinder deadline or take other action to assert Doe 4 and 5's legal rights in this or a separate action. This alleged explanation is nonsensical. Defendants also note that any motion to join additional plaintiffs would be unrelated to Defendants' pending motions to dismiss, which were filed with respect to the claims asserted by Does 1, 2 and 3.

6. Plaintiffs have had eight months since the suit was filed to join additional parties. They were given their preferred date for setting a deadline for filing any motions requesting joinder of additional parties. Plaintiffs have shown no specific reason as to why they are unable to timely add parties. Since their Motion was filed, Plaintiffs have now filed their Opposed Memorandum in Support of Motion to Join under Federal Rules of

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<sup>1</sup> Doe 1's attorneys first contacted TCU by sending a document preservation notice in early October 2019.

Civil Procedure 20 [Doc. 58], which seeks to add four additional parties to this suit. Plaintiffs have demonstrated an ability to meet the joinder deadline set in the Court's Scheduling Order.

**Plaintiffs do not articulate why an extended joinder deadline is important to Does 1, 2, or 3.**

7. Plaintiffs do not articulate any support for the second element, i.e., why it is important for the any of the Doe plaintiffs to be given extra time to join more parties. They do not explain why adding more plaintiffs (or defendants) is crucial in having Does 1, 2, or 3's respective claims fully and fairly adjudicated. If Plaintiffs are contending they need more time to add still as yet unnamed parties<sup>2</sup>, their Motion is woefully short on demonstrating why it is important to have more time. If their argument is that more time is needed to identify parties through discovery, it is not meritorious. Discovery would not have any bearing on whether Plaintiffs would be in a better position to add additional parties to this case. Initial disclosures primarily call for a party to identify each individual "likely to have discoverable information . . . that the disclosing party may use to support its claims or defenses," along with a "copy—or description by category and location—of all documents . . . that the disclosing party . . . may use to support its claims or defenses." FED. R. CIV. P. 26(a). It is unlikely that the witnesses and documents Defendants will identify in their initial disclosures that "support its claims or defenses" will lead to the discovery of additional aggrieved parties to add to this case. And surely, Plaintiffs

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<sup>2</sup> Plaintiffs' counsel says that since the filing of the suit in January 2020, he has talked to and/or been contacted by many African-American women who are alleged to have reported instances of discrimination at TCU. [Doc. 58, p. 3]. If such individuals are potential plaintiffs, their identities are presumably known to one or more of the Plaintiffs or their counsel, and such persons would know the actor engaging in alleged discriminatory conduct. Any or all of them could have sought joinder in this case before the August 21, 2020 deadline.

themselves, are now in the best position to determine if they have additional causes of actions to assert against additional defendants.

**Additional time to add parties is not in the interest of judicial economy and results in prejudice to Defendants**

8. The Defendants will be prejudiced by giving the Doe plaintiffs more time to join parties. Adding more parties would overly complicate an already complicated case, expand the scope of discovery and the disputed issues and slow down the litigation. Adding new plaintiffs will inject new factual allegations in a case replete with a myriad of factual allegations pertaining to the existing Doe plaintiffs. Further, it will increase the cost and complexity of discovery, generate more motion practice, likely require additional hearings, and ultimately, delay the efficient and orderly resolution of the existing dispute. Plaintiffs have asserted serious allegations against Defendants. Despite Plaintiffs' assertions to the contrary, Defendants would like to proceed with litigation and get to the merits of the case. But so far this summer, Plaintiffs have sought to add plaintiffs whose claims are unrelated to Does 1, 2 and 3, and now seek even more time to join other additional parties. Frankly, Plaintiffs seem more interested in expanding the scope of an already broad and complex case over proceeding to the merits of this suit. Such tactics are highly prejudicial to Defendants, who are incurring substantial time and expense with the defense of the main action. Furthermore, additional parties will not be prevented from seeking their own day in court. They remain free to bring their own suits or, if proper, seek independently to intervene into this one. It is not proper for Plaintiffs to fish around in discovery and try to include as many parties and issues into this one case, as seems to be the current strategy.

**All extensions have been of mutual benefit and given Plaintiffs’  
even more time to identify parties**

9. Finally, Defendants disagree with Plaintiffs’ implication that Defendants are somehow acting inappropriately by not agreeing to their request to extend the joinder deadline given that Plaintiffs granted extensions to TCU and/or the individual Defendants to respond to their original and amended complaints. [Doc. 56, pp. 2-3, 4] The fact of the matter is that the extensions agreed on, initially by Doe 1 and then all of the Doe plaintiffs after the original complaint was amended, were in exchange for the Plaintiffs not having to formally serve the various Defendants with summons and the complaint. The original Defendants and then the later added Defendants waived formal service. Plaintiffs agreed to a period of time for Defendants to file responsive pleadings for a lesser amount of time Defendants would have been entitled to under Rule 4(d)’s waiver of summons procedure. Defendants contend this was a reasonable exchange under the circumstances and disagree that Defendants’ decision not to agree to an extension of the joinder of parties deadline is unprofessional or discourteous.<sup>3</sup> However, Defendants have—and will continue to—oppose those efforts by Plaintiffs that expand the scope of this litigation, including those efforts by Plaintiffs to add additional plaintiff parties whose claims do not arise out of the same transaction, occurrence or series of transactions or occurrences and rely on separate and independent factual allegations. [See Doc. 42, Defendants’ Response and Brief in Opposition to Plaintiffs’ Motion for Leave to File Third Amended

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<sup>3</sup> It should be noted that when Plaintiffs’ counsel asked Defendants for an extension of the joinder of parties deadline, Plaintiffs’ counsel also asked for an extension of time to designate experts under paragraphs 5 and 6 of the Scheduling Order. Counsel for Defendants agreed to the extension to designate experts and asked counsel for Plaintiffs to prepare the appropriate documentation to modify this deadline so that it could be filed with the Court.

Complaint] What is clear is that extensions have given Plaintiffs even more time to identify and join potential parties by the deadline.

### Conclusion

Allowing Plaintiffs an additional forty-five (45) days to add parties is not justified in the circumstances present here. Plaintiffs were given their preferred deadline for joinder of parties, have had more than eight months to investigate additional parties, and have given no specific or reasonable explanations establishing good cause as to why this deadline should be modified. It is not in the interest of justice to modify the Scheduling Order to extend the deadline for joinder of parties. Defendants ask the Court to deny Plaintiffs' Motion.

DATED: August 25, 2020.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that the above and foregoing Defendants' Response and Brief to Plaintiffs' Motion to Modify Scheduling Order to Extend Deadline for Joinder of Parties was served on all counsel of record receiving electronic notice from the court's ECF notification system on August 25, 2020.

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