UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-21199-CIV-ALTONAGA/O'Sullivan

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN, *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on the Motion for Extension of Pretrial Deadlines ("Motion") [ECF No. 118], filed January 13, 2017 by Defendants, Thomas Darden; John T. Vaughn; Industrial Heat, LLC; IPH International B.B.; and Cherokee Investment Partners, LLC (collectively, "Defendants"). Defendants request a sixty-day extension of all pretrial deadlines and the trial date.

The Complaint [ECF No. 1] in this case was filed on April 5, 2016, and on July 1, 2016, the Court entered the Order Setting Trial . . . ("Scheduling Order") [ECF No. 23]. The Scheduling Order established a February 27, 2017 deadline to complete discovery, and set trial for the two-week trial period beginning June 26, 2017. Defendants state they "have been diligent in their efforts to ready this case for trial," but have been "hampered" by: the other parties' failure to produce all requested documents (*see* Mot. 2–3), and to provide dates for depositions (*see id.* 3); and by the relocation outside of the country of one defendant, Fulvio Fabiani (*see id.* 2). (*Id.* 3).

Under Federal Rule of Civil Procedure 16(b)(4), a scheduling order "may be modified only for good cause and with the judge's consent." FED. R. CIV. P. 16(b)(b). This good cause

standard precludes modification unless the schedule cannot be met despite the diligence of the parties seeking the extension. *See, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) ("If [a] party was not diligent, the [good cause] inquiry should end." (alterations added)); *Roberson v. BancorpSouth Bank, Inc.*, Civ. Act. No. 12-0669-WS-N, 2013 WL 4870839, at *2 (S.D. Ala. Sept. 12, 2013) ("Diligence, not lack of prejudice, is the touchstone of the Rule 16(b)(4) inquiry.").

Defendants state that on October 14, 2016, they served a first request for production of documents on Third-Party Defendants[1] and a second request for production of documents on Plaintiffs.[2] (*See* Mot. 1). It was not until October 13, 2016 – some four months after the Scheduling Order – that the parties submitted a Joint Motion for Entry of Protective Order [ECF No. 64] to specify the parameters under which they would exchange information deemed confidential. To date, Defendants have not received a single document from Plaintiffs, nor is it apparent what Defendants have done in an effort to timely receive them in keeping with the Scheduling Order's deadlines. Defendants do not provide any reason for why they waited more than three months after the Scheduling Order to propound the referenced discovery, or why they have waited until now to alert the Court to the non-production of documents by the described parties. The measures to obtain discovery information from Plaintiffs and Third-Party Defendants described in the Motion do not sufficiently demonstrate Defendants' diligence when Defendants did not propound discovery until months after the Scheduling Order and do not provide reasons for this delay.

Accordingly, it is

[1] The Third-Party Defendants are: J.M. Products, Inc.; Henry Johnson; James A. Bass; United States Quantum Leap, LLC; and Fulvio Fabiani.

[2] The Plaintiffs are Andrea Rossi and Leonardo Corporation.

ORDERED AND ADJUDGED that the Motion **[ECF No. 118]** is **DENIED**. While the deadlines in the Scheduling Order will not be extended, the parties are free to continue engaging in discovery beyond the discovery deadline, if they agree to do so and are so inclined.

DONE AND ORDERED in Miami, Florida this 17th day of January, 2017.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record