

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KEEN MARKETING AND
MANUFACTURING, LLC and KEEN II,
LLC,

Plaintiffs,

v.

Case No: 6:17-cv-2189-Orl-37TBS

SHAWN SWEENEY, JOHN MORAN,
PIADINA INCORPORATED and M
CREATIVE SOLUTIONS, LLC,

Defendants.

ORDER

This case comes before the Court without oral argument on Plaintiffs' Unopposed Motion for Extension of the Deadline for Rule 26 Conference (Doc. 40). Plaintiffs seek an enlargement of time, until March 13, 2018 to conduct the parties' initial Rule 26 case management conference (Id., ¶ 16). As grounds Plaintiffs note that portions of their complaint were filed under seal, Defendants have only recently gained access to the sealed information, and not all Defendants have responded to the amended complaint (Id., ¶ 15). The motion also argues that the enlargement should be granted because not all parties "are properly joined," and holding the conference now "would not be as productive as a Rule 26 conference held after all parties have responded to the Amended Complaint." (Id.).

Absent a finding of good cause, FED. R. CIV. P. 16(b)(2) requires the Court to issue the scheduling order "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." The "good cause"

standard as used in Rule 16(b) “... precludes modification unless the schedule cannot ‘be met despite the diligence of the party seeking the extension.’” Sosa v. Airprint Systems, Inc., 133 F.3d 1417, 1418 (11th Cir. 1998) (quoting FED. R. CIV. P. 16 advisory committee note). “If [a] party was not diligent, the [good cause] inquiry should end.” Id. (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

Plaintiffs represent that their amended complaint was first served on Defendant Piadina Inc. on January 10, 2018 (Id., ¶ 3). Counsel for Piadina, Inc. appeared on January 24, 2018 (Doc. 20). Relying on these dates, the scheduling order is due to be entered no later than March 25, 2018. On this record, the Court does not find good cause, and, if the motion is granted, the Court will not have sufficient time to comply with Rule 16(b)(2). For these reasons, the motion is **DENIED**.

DONE and ORDERED in Orlando, Florida on February 27, 2018.


THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties