

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:12-CV-23097-O'SULLIVAN

[CONSENT]

OMAR DEL CARMEN VALLE CENTENO
and all other similarly situation under
29 U.S.C. 216(B),

Plaintiff

vs.

I&C EARTHMOVERS CORP., LEONEL
GARCIA and CARLOS M. GARCIA,

Defendants

_____ /

ORDER

THIS MATTER is before the Defendant's Motion for Extension of Time/Motion for Stay to File Supplementary Evidence in Support of Summary Judgment (DE# 68, 8/28/13). The discovery cutoff and the deadline to file summary judgment motions was July 27, 2013. See Order Granting Joint Motion for Enlargement of Time to Complete Discovery and to File Summary Judgment Motions Nunc Pro Tunc (DE# 49, 6/21/13). In their motion, the defendants state that they requested records from the Florida Department of Transportation ("FDOT") beginning in June 2013. See Defendant's Motion for Extension of Time/Motion for Stay to File Supplementary Evidence in Support of Summary Judgment (DE# 68, 8/28/13). The earliest date on the documents attached to the instant motion is an email dated June 20, 2013. The June 20, 2013 email is from the defendants' counsel to an individual named "Stan Ford" requesting to set up an interview. From the body of the email it appears that Mr. Ford supervised construction workers at the defendants' job sites. There is also an email dated June 26,

2013 from the defendants' counsel to Alicia Trujillo, counsel for FDOT, stating, in part: "I will probably be sending you a subpoena for deposition duces tecum shortly." On June 27, 2013, the defendants sent a public records request to FDOT. The remaining documents attached to the instant motion are dated July and August 2013.

Rule 16 of the Federal Rules of Civil Procedure states that: "[e]xcept in categories of actions exempted by local rule, the district judge – or a magistrate judge when authorized by local rule – must issue a scheduling order" Fed. R. Civ. P. 16(b)(1). The rule further provides that: "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "This good cause standard precludes modification unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" Sosa v. Airprint Sys., Inc., 133 F.3d 1417, 1419 (11th Cir.1998) (citing Fed. R. Civ. P. 16 advisory committee's note).

The Court entered its scheduling order on November 30, 2012. See Order Setting Pretrial Conference and Trial Date (DE# 33, 11/30/12). The Court extended the discovery cutoff twice. See Order Granting Plaintiffs' Unopposed Motion for Enlargement of Time to Complete Discovery (DE# 43, 5/28/13); Order Granting Joint Motion for Enlargement of Time to Complete Discovery and to File Summary Judgment Motions Nunc Pro Tunc (DE# 49, 6/21/13).

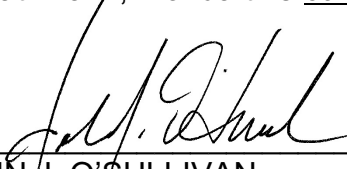
Since the inception of this lawsuit, the defendants knew that FDOT maintains records related to the hours worked by the plaintiffs on FDOT construction projects. The defendants knew or should have known that FDOT records would be relevant to their defense that the plaintiffs were not owed any overtime. The defendants failed to obtain the records from FDOT before the discovery cutoff. The defendants did not file the

instant motion until after the summary judgment motions were fully briefed. The Court finds that the defendants have failed to show that they acted diligently in seeking to obtain records from FDOT. Accordingly, it is

ORDERED AND ADJUDGED that the Defendant's Motion for Extension of Time/Motion for Stay to File Supplementary Evidence in Support of Summary Judgment (DE# 68, 8/28/13) is **DENIED**. Assuming the defendants are able to obtain the records from the FDOT, the Court reserves ruling on whether the FDOT records are admissible at trial. It is further

ORDERED AND ADJUDGED that the hearing previously set for September 12, 2013 before the undersigned is CANCELLED.

DONE AND ORDERED in Chambers at Miami, Florida this **6th** day of September, 2013.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
All counsel of record