

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

WILLIAM L. ROBERTS, II p/k/a RICK)	Civil Action No. 1:13-cv-24700-KMW
ROSS and ANDREW HARR and JERMAINE)	
JACKSON collectively p/k/a THE)	
RUNNERS,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STEFAN KENDAL GORDY and SKYLER)	
AUSTEN GORDY collectively p/k/a LMFAO,)	
KOBALT MUSIC PUBLISHING AMERICA,)	
INC., a Delaware corporation, and KIA)	
MOTORS AMERICA, INC., a California)	
Corporation,)	
)	
Defendants.)	
)	

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION TO EXTEND DATE TO
ADD PARTIES AND AMEND PLEADINGS**

Defendants Stefan Kendal Gordy, Skyler Austen Gordy, Kobalt Music Publishing America, Inc., and Kia Motors America, Inc. (“Defendants”), by and through their undersigned counsel, hereby oppose Plaintiffs’ Motion to Extend Date to Add Parties and Amend Pleadings.

1. This action was filed December 31, 2013, about 8.5 months ago. On April 14, 2014, the Court entered its Order Setting Schedule, Requiring Mediation, Referring Certain Matters to Magistrate Judge, and Establishing Pre-Trial Procedures, setting July 15, 2014, as the deadline to amend pleadings or join parties. Docket 19.

2. On July 14, 2014, Plaintiffs requested and the parties agreed to continue the July 15 deadline to amend pleadings for 23 days until August 7, 2014.

Good Cause Is Required to Amend Scheduling Order

3. To justify extending the date for Plaintiffs to amend their Complaint, Plaintiffs must demonstrate “good cause,” as required by Fed. R. Civ. P. 16(b). See *Jacob v. Korean Air Lines Co., Ltd.*, 12-62384-CIV, 2014 WL 243150, *4 (S.D. Fla. Jan. 13, 2014) (denying motion to amend after the date set forth in the court’s scheduling order). “Good cause exists when evidence supporting the proposed amendment would not have been discovered in the exercise of reasonable diligence until after the amendment deadline passed.” *Id.* at 5 (internal quotations omitted). Plaintiffs cannot meet this requirement because to the extent they claim not to have necessary information it is a result of their own delay in taking discovery from Defendants.

4. Plaintiffs did not serve any written discovery on Defendants until June 5, 2014. At that time, Plaintiffs served requests for production to all Defendants and interrogatories only to Skyler and Stefan Gordy. Defendants’ responses were due ten days before the court-mandated deadline to amend pleadings or join parties. Since June 5, 2014, Plaintiffs have served no additional written discovery and have deposed on witness, Stefan Gordy.

5. Defendants served written responses to all of Plaintiffs’ discovery on July 3, 2014, and on July 14 Defendants served a CD containing nearly 20,000 pages of documents responsive to Plaintiffs’ requests for production of documents. These documents included (but are not limited to) (1) songwriter agreements for *Party Rock Anthem*, the Defendants’ work at issue in this lawsuit; (2) agreements with Kobalt Music, the administrator of the composition of *Party Rock Anthem* in the United States and other territories; (3) agreements with Interscope Records, the record label under which *Party Rock Anthem* was released; and (4) royalty statements identifying the sources of revenue from *Party Rock Anthem* and the entities to which royalties were paid.

6. Plaintiffs have not asserted any deficiencies in the interrogatory responses and have not requested any meet and confer conference regarding any of Defendants' responses and production.

7. Plaintiffs have had 23 days in which to review the documents produced by Defendants to either (a) determine whether to join additional parties; or (b) to propound additional written discovery on Defendants seeking the information Plaintiffs now deem necessary to amend their Complaint.

8. Although Plaintiffs' counsel has not specified the information they intend to seek from Defendants' former business managers, Defendants do not believe Plaintiffs requested this information in their first set of interrogatories. Moreover, the identity of these business managers were disclosed on May 1, 2014 as part of Defendants' disclosure of fact witnesses pursuant to the Scheduling Order [Docket 19].

9. Plaintiffs' counsel has not raised any deficiencies in Defendants' production relating to Plaintiffs' ability to determine whether they deem it necessary to join additional parties.

10. Defendants maintain their position that the documents they produced more than three weeks ago, in addition to publicly available copyright registrations for *Party Rock Anthem*, should be sufficient for Plaintiffs to determine whether they need to amend their Complaint to add any parties.

Plaintiffs' Dilatory Tactics Do Not Justify Leave To Amend

11. Even if Plaintiffs were to establish good cause (which they cannot), "leave to amend is not automatic" under Fed. R. Civ. P. 15(a). *Id.* Even though Fed. R. Civ. P. 15 states that leave to amend should be "freely given," the Eleventh Circuit has stated that a Court may

deny amendment if the moving party has shown “undue delay, bad faith or dilatory motive.” *Id.* citing *Hargett v. Valley Fed. Sav. Bank*, 60 F.3d 754, 761 (11th Cir. 1995). This motion is an attempt for Plaintiffs to further delay this litigation after months of dilatory tactics in their own discovery obligations.

12. Plaintiffs’ delay in complying with their discovery obligations has been egregious. On April 24, Defendants served requests for production of documents, requests for admission, and interrogatories. On June 2, Plaintiffs served responses to Defendants’ requests for production and requests for admission and requested a ten-day extension to answer Defendants’ interrogatories, which Defendants granted. Plaintiffs’ responses either stood on objection or failed to provide any substantive information to Defendants. The parties met and conferred regarding these responses and Plaintiffs agreed to amend their responses. On July 18—**85 days after Defendants served their written discovery requests**—Plaintiffs provided unverified answers to Defendants’ interrogatories and amended responses to Defendants’ requests for admission and requests for production of documents. Defendants have still yet to receive **one document** from Plaintiffs.

13. Plaintiffs’ discovery tactics have required Defendants to schedule a hearing with Magistrate Judge Simonton to compel Plaintiffs to comply with their discovery obligations [Dkt. 26], which will be heard on September 24, 2014.

14. Plaintiffs’ 45-day extension would allow Plaintiffs to introduce new parties to this litigation almost ten months after the complaint was filed and more than five months since the Court entered its scheduling order. The proposed September 22 response date is nearly ten weeks after the Court’s original July 15 deadline.

15. Plaintiffs' months of delay tactics in discovery should not be rewarded with additional time in which to introduce additional parties to this matter.

WHEREFORE, Defendants request that Court deny Plaintiffs' request to extend the date for Plaintiffs to amend pleadings or add parties.

Dated: August 11, 2014

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND DATE TO ADD PARTIES AND AMEND PLEADINGS was electronically filed and served via CM/ECF upon all counsel of record, on August 11, 2014.

By: s/Barry Rothberg
BARRY L. ROTHBERG