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United States District Court  
Central District of California  
Western Division

STEPHANIE ESCOBAR, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

JUST BORN, INC.,

Defendant.

CV 17-01826 TJH (PJWx)

Order

[107]

The Court has considered Plaintiff Stephanie Escobar’s motion for leave to amend her complaint, together with the moving and opposing papers.

Escobar filed this class action against Defendant Just Born, Inc. [“Just Born”], alleging that the packaging of two of Just Born’s candy products; (1) Mike and Ikes; and (2) Hot Tamales, contained 46% empty space that had no function or lawful purpose. On January 11, 2018, the Court approved the parties’ stipulated deadlines for, *inter alia*, amending the pleadings [“Scheduling Order”]. Pursuant to the Scheduling Order, the deadline to amend pleadings or add parties was March 16, 2018.

1 On May 3, 2018, Escobar moved for class certification. On March 25, 2019,  
2 the Court certified the class as to both Mike and Ikes and Hot Tamales. However, after  
3 reconsideration, on June 19, 2019, the Court issued an amended order, denying class  
4 certification as to Escobar's claims regarding Hot Tamales because there were no  
5 allegations or evidence that she purchased Hot Tamales and her claims were, therefore,  
6 atypical of the putative class.

7 Escobar, now, moves for leave to amend her complaint to add two new plaintiffs  
8 who, allegedly, purchased Hot Tamales.

9 Because Escobar seeks leave to amend after the deadline set forth in the  
10 Scheduling Order, she must, first, establish good cause to amend the Scheduling Order.  
11 *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Good  
12 cause is shown through the diligence of the party seeking the amendment. *Johnson*,  
13 975 F.2d at 609. The Court may modify the deadlines if they "cannot reasonably be  
14 met despite the diligence of the party seeking the extension." *Johnson*, 975 F.2d at  
15 609.

16 Here, Escobar failed to establish that she acted diligently and has, therefore,  
17 failed to establish good cause to modify the deadline. *See Johnson*, 975 F.2d at 609.  
18 Escobar knew when she filed her complaint that she had not purchased Hot Tamales  
19 and, therefore, could not represent a putative class of individuals that did purchase that  
20 product. There was no reason why Escobar could not have joined an appropriate  
21 plaintiff who could represent the interests of the Hot Tamales putative class from the  
22 initiation of this action in 2017 through the March 16, 2018, deadline. Rather, Escobar  
23 waited more than 16 months after the March 16, 2018, deadline to seek leave to join  
24 additional name plaintiffs.

25 Escobar's argument that she filed this motion shortly after the Court's amended  
26 order denying class certification as to her Hot Tamales claims is meritless. The Court's  
27 amended order did not change the fact that Escobar was aware that she lacked standing  
28 to represent a putative class of Hot Tamales purchasers from the outset of this action.

