## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

SAMUEL K. LIPARI,	)	
Plaintiff,	)	
,	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	
	)	No. 07-2146-CM
US BANCORP NA and	)	
US BANK NA,	)	
	)	
Defendants.	)	
	)	

## MEMORANDUM AND ORDER

Plaintiff Samuel K. Lipari brings this action against defendants US Bancorp NA and US Bank NA. On April 30, 2008, plaintiff filed a Motion for Time to Extend Discovery (Doc. 74). Defendant responded on May 15, 2008. Magistrate Judge Waxse denied plaintiff's motion on June 3, 2008. This matter is before the court on plaintiff's Objection to the Magistrate's Order Denying Extension of Discovery (Doc. 94).

The standard of review under which a district court reviews a magistrate judge's decision on a nondispositive motion is the "clearly erroneous or contrary to law standard." *First Union Mortgage Corp. v. Smith*, 229 F.3d 992, 995 (10<sup>th</sup> Cir. 2000) (citing 28 U.S.C. § 636(b)(1)(A)). This standard requires the district court to affirm the magistrate judge's decision unless it is "left with the definite and firm conviction that a mistake has been committed." *Burton v. R.J. Reynolds Tobacco Co.*, 200 F.R.D. 661, 667 (D. Kan. 2001) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Under Federal Rule of Civil Procedure 16(b), "A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a

magistrate judge." When considering whether there is "good cause" the court considers the diligence of the party seeking the amendment. *Deghand v. Wal-Mart Stores, Inc.*, 904 F.Supp. 1218, 1221 (D. Kan. 1995) (citations omitted). "The party seeking an extension must show that despite due diligence it could not have reasonably met the scheduled deadlines." *Id.* Here, the magistrate denied plaintiff's motion for failure to show the requisite good cause for amending the scheduling order. After reviewing the record, the court finds that Magistrate Judge Waxse applied the appropriate standard when considering plaintiff's motion. Furthermore, the decision is supported by the record. Judge Waxse's decision is not clearly erroneous or contrary to law. Accordingly, plaintiff's motion is overruled.

**IT IS THEREFORE ORDERED** that plaintiff's Objection to the Magistrate's Order Denying Extension of Discovery (Doc. 94) is overruled.

Dated this 11<sup>th</sup> day of July 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge