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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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AZ Holding, L.L.C., a North Dakota) limited liability company,

No. CV-08-0276-PHX-LOA

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Plaintiff,

ORDER

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vs.

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Thomas C. Frederick and Christine J.) Cobb, husband and wife; RBW) Consultants, Inc., an Arizona corporation;) and Bumar, L.L.C., an Arizona limited liability company,

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Defendants.

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Thomas C. Frederick and Christine J.) Cobb, husband and wife; RBW) Consultants, Inc., an Arizona corporation;) Bumar, L.L.C., an Arizona limited liability company,

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Counterclaimants,

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vs.

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AZ Holding, L.L.C., a North Dakota) limited liability company,

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Counterdefendant.

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This matter arises on yet another request to modify the March 17, 2009 Scheduling Order, docket # 81, and extend the deadlines to respond to certain pending issues. (docket # 142) Specifically, the parties' Stipulated Joint Motion requests leave of the Court to: "(a) Extend[] the deadline for Defendants/Counterclaimants to file their brief in objection

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1 to Plaintiff/Counterdefendant's Application for Attorneys' Fees from October 9, 2009 to
2 October 15, 2009; (b) Extend[] the deadline for Defendants/Counterclaimants to respond to
3 Plaintiff/Counterdefendant's Second Amended Complaint from October 9, 2009 to
4 October 15, 2009; (c) Extend[] the deadline for Defendants/Counterclaimants to conduct a
5 deposition of third-party witness, Sheila Hunter; and (d) Extending the deadline for
6 Plaintiff/Counterdefendant to conduct a deposition of Defendants' Rebuttal Expert Witness,
7 Linda Decker to October 19, 2009." (*Id.* at 2) The Court will address each request
8 separately.

9 **I. Extension to file objection to Plaintiff's award to attorneys' fees**

10 In ruling upon Plaintiff's motion for an order precluding Defendants' expert
11 witness, Linda Decker, docket #99, the Court awarded Plaintiff its reasonable attorneys' fees
12 and ordered:

13 [P]laintiff shall timely file with the Clerk of the Court an Attorney's Fees
14 Affidavit, consistent with LRCiv 54.2(d)(4) and (e), by **Friday, September**
15 **18, 2009**. Defendants may file Objections to Plaintiff's Affidavit by **Friday,**
16 **October 9, 2009**. Plaintiff may file a Reply by **Monday, October 19, 2009**.
Absent good cause shown, the failure to timely file the subject Affidavit or
Objections may result in the summary denial or award of the requested
attorneys' fees.

17 *Id.* at 11. Plaintiff timely filed its Notice and Affidavit on August 21, 2009. (docket ## 100-
18 101) The parties have stipulated that Defendants' deadline to file their objections to
19 Plaintiff's Affidavit may be extended from October 9, 2009 to October 15, 2009. The
20 October 8, 2009 Stipulated Motion indicates "there are five (5) depositions that remain to be
21 taken in this case over the dates of October 8, October 9, October 12, October 13, and
22 October 14." (docket # 142 at 2)

23 Since this responsive deadline is unrelated to the Rule 16 Scheduling Order and
24 considering the high volume of last-minute depositions scheduled before the October 14,
25 2009 discovery deadline, the Court will grant this part of the Stipulated Motion.

26 **II. Extension to respond to Plaintiff's Second Amended Complaint**

27 Likewise, since this extension does not implicate the Rule 16 Scheduling
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1 Order, the Court will grant the parties' Stipulated Motion in this regard.

2 **III. Extension to conduct deposition of Sheila Hunter**

3 The discovery deadline in this case is, and has been since the Scheduling Order
4 was agreed-upon by all counsel, October 14, 2009. (docket # 81 at 4) The Court has
5 consistently refused several invitations to modify the March 17, 2009 Rule 16 Scheduling
6 Order. Rule 16, Fed.R.Civ.P., and the Scheduling Order in this case make clear that
7 "[c]ontinuances of these deadlines may be granted only upon a showing of good cause and
8 by leave of the assigned trial judge." (*Id.* at 2) The parties' Stipulated Joint Motion to
9 extend the deadline for Defendants/Counterclaimants to conduct a deposition of third-party
10 witness, Sheila Hunter, provides no reason, much less good cause, to extend the discovery
11 deadline. Because the parties waited until the last minute, late-September and early to mid-
12 October, to conduct the bulk of their deposition discovery does not constitute good cause to
13 extend the discovery deadline. This aspect of the parties' Stipulated Motion will be denied.

14 **IV. Extension to conduct deposition of Linda Decker**

15 The Court's file reflects that on September 8, 2009, Plaintiff noticed Ms.
16 Decker's deposition for September 25, 2009, nearly three weeks before the discovery
17 deadline. (docket # 109) The Stipulated Joint Motion represents "Ms. Decker, Defendants'
18 Rebuttal Expert Witness, was ill on the day of her deposition, and that [her] deposition had
19 to be rescheduled. Ms. Decker is not available until October 19, 2009, due to travel and other
20 commitments, and her deposition is scheduled for that day." (docket # 142 at 3)

21 While arguably it is foreseeable that an adverse witness may not be available
22 due to illness and would not be available to be deposed before the deadline for discovery
23 passes, the Court finds that Ms. Decker's illness, travel and other commitments are beyond
24 the control of Plaintiff's counsel and constitute good cause to allow her deposition to be
25 taken on or before, but no later than, October 19, 2009. This aspect of the parties' Stipulated
26 Motion will be granted.

27 Accordingly,

28 **IT IS ORDERED** that the parties' Stipulated Joint Motion, docket # 142, is

1 **GRANTED in part and DENIED in part** as follows:

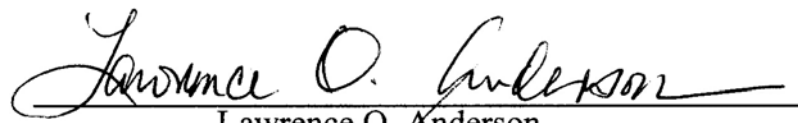
2 a. Defendants shall file their objections to Plaintiff's Attorneys' Fees Affidavit
3 on or before **Thursday, October 15, 2009**. Plaintiff's optional reply deadline is extended to
4 **Monday, October 26, 2009**. Absent good cause shown, Defendants' failure to timely file
5 their objections may result in the summary award of the requested attorneys' fees.

6 b. Defendants shall file their Answer or otherwise respond to Plaintiff's Second
7 Amended Complaint on or before **Thursday, October 15, 2009**.

8 c. the Stipulated Joint Motion to extend the deadline for Defendants/
9 Counterclaimants to conduct a deposition of third-party witness, Sheila Hunter, is **DENIED**.

10 d. the Stipulated Joint Motion to extend the deadline for Plaintiff to take the
11 deposition of Defendants' Rebuttal Expert Witness, Linda Decker, is **GRANTED**. The Rule
12 16 Scheduling Order's deadline for completing discovery is hereby modified as to Ms.
13 Decker only. Her deposition shall be taken on or before, but no later than, **October 19, 2009**.
14 Defendants shall exercise their best efforts to ensure their expert witness, Linda Decker,
15 remains available and cooperates with Plaintiff's counsel so her deposition may proceed and
16 be completed as scheduled.

17 Dated this 13th day of October, 2009.

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20 Lawrence O. Anderson
21 United States Magistrate Judge
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