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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 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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13 Thomas C. Frederick and Christine J.)
Cobb, husband and wife; RBW)
Consultants, Inc., an Arizona corporation;)
14 and Bumaro, L.L.C., an Arizona limited)
liability company,

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Defendants.

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

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Counterclaimants,

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vs.

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

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Counterdefendant.

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25 This matter is before the Court on review of the Affidavit of AZ Holding,
26 L.L.C. ("Plaintiff") for Attorneys' Fees. (dockets # 100, 101) In an August 10, 2009
27 Order, the Court awarded Plaintiff its reasonable attorneys' fees incurred in connection
28 with Defendants' untimely expert disclosure as a sanction pursuant to Fed.R.Civ.P.

1 37(c)(1)(A). (docket # 99) The Court directed Plaintiff to file an Attorneys' Fees
2 Affidavit and permitted a response and a reply. (docket # 99) The parties have fully
3 briefed the attorneys' fees issue and, after review of those materials, the Court will award
4 Plaintiff attorneys' fees in the amount of \$5,924.00.

5 Plaintiff's Attorneys' Fees Affidavit (docket # 101) itemizes Plaintiffs'
6 attorneys' fees related to urging its June 19, 2009 Motion for Telephonic Conference,
7 which the Court construed as a motion to preclude Defendants' expert witness, Linda
8 Decker, from testifying at trial or in response to a dispositive motion. (docket # 99 at 1-2)

9 Defendants filed a response to the Attorneys' Fees Affidavit. (docket #
10 148) Defendants response, however, does not oppose, or even discuss, the substance of
11 Plaintiff's attorneys' fees affidavit. Rather, Defendants raise an issue unrelated to the
12 Court's August 10, 2009 Order and to the Attorneys' Fees Affidavit. Specifically, rather
13 than addressing the substance of Plaintiff's Attorneys' Fees Affidavit, Defendants argue
14 that Plaintiff is not entitled to attorneys' fees because Plaintiff, too, has violated the
15 Scheduling Order by failing to comply with the September 11, 2009 disclosure deadline.
16 (docket # 148) The Court disagrees with Defendants' interpretation of the Scheduling
17 Order.

18 The Scheduling Order directs the parties to disclose "known witnesses,
19 exhibits, and other matters," by September 11, 2009. (docket # 81 at 3) The Scheduling
20 Order notes that this disclosure requirement "supercedes the '30-day before trial'
21 disclosure deadline contained in Fed.R.Civ.P. 26(a)(3)." (docket # 81 at 3) Defendants
22 interpret the Scheduling Order as requiring the parties to file with the Court their final list
23 of witnesses and exhibits by September 11, 2009. Defendants have misinterpreted the
24 Scheduling Order. The Scheduling Order does not require the filing of final witness and
25 exhibit lists by September 11, 2009. Such a requirement would not make sense because
26 the discovery deadline was not scheduled to close for more than 30 days later on October
27 14, 2009 and no trial date has been set.

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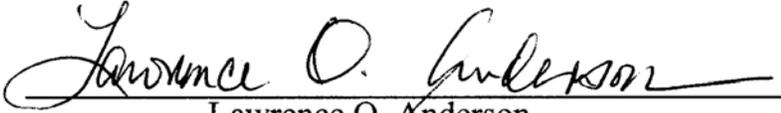
1 Consistent with the Scheduling Order, Plaintiff disclosed all *known* witness-
2 es and exhibits on September 11, 2009 by mailing their Fourth Supplemental Disclosure
3 Statement. (docket # 148, Exh. 1) Because discovery had not yet closed as of September
4 11, 2009, Plaintiff also disclosed certain categories of exhibits which were not yet
5 specifically identified due to the pending discovery. (*Id.*) Contrary to Defendants'
6 assertion, Plaintiff complied with the Scheduling Order's September 11, 2009 disclosure
7 deadline. Accordingly, Defendants' objections lack merit.

8 After review of the relevant briefing, the Court will award Plaintiff its
9 attorneys' fees in the amount of \$5,924.00, which includes the two hours incurred in
10 preparing the reply to Defendants' Objections to Attorneys' Fees Affidavit. (*see* dockets
11 # 101, # 149) Defendants did not raise any objections to the substance of Plaintiffs' fee
12 request and the Court finds those fees are reasonable.

13 Having considered Plaintiff's Attorneys' Fees Affidavit, docket # 101,
14 submitted in response to the Court's August 10, 2009 Order (docket # 99) and the related
15 briefing,

16 **IT IS ORDERED** awarding attorneys' fees in favor of Plaintiff AZ
17 Holding, L.L.C. in the amount of \$5,924.00 and against Defendants, which shall be paid
18 by check made payable to AZ Holding, L.L.C. and delivered to Plaintiff's counsel on or
19 before **Tuesday, January 19, 2010**. Defendants shall pay the attorneys' fees sanction in
20 full by **Tuesday, January 19, 2010**, or Plaintiff may seek further sanctions, including
21 dismissal with prejudice of Defendants' counterclaims.

22 Dated this 19th day of November, 2009.

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24 _____
25 Lawrence O. Anderson
26 United States Magistrate Judge
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