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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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John and Miranda Brooks,

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No. CV-08-1731-PHX-LOA

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Plaintiffs,

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ORDER

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vs.

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Eclipse Recreational Vehicles, Inc., and
Robert Crist and Company d/b/a

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Worldwide RV,

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Defendants.

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Eclipse Recreational Vehicles, Inc.,

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Third-Party Plaintiff,

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vs.

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Generac Power Systems, Inc.,

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Third-Party Defendant.

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Plaintiffs seek leave of Court to amend their Complaint to allege “a breach of implied warranties claims (sic) against Defendant Robert Crist and Company dba Worldwide RV (“Defendant Crist”)[].” (docket # 38 at 1-2) Defendant Crist opposes the requested amendment, arguing good cause to allow amendment is absent from Plaintiffs’ motion, and citing, *inter alia*, the express language of the Rule 16 scheduling order (“Settlement negotiations . . . do not constitute good cause.”) and *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). (docket # 41) The Court will deny Plaintiffs’ Motion. Because the parties’ briefings are adequate and oral argument would not aid the Court, the

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1 Court will also deny Defendant Crist’s request for oral argument. *Mahon v. Credit Bur. of*
2 *Placer County, Inc.*, 171 F.3d 1197, 1200 (9th Cir. 1999).

3 **BACKGROUND**

4 On September 9, 2008, Plaintiffs filed their Complaint, alleging a violation of
5 the Magnuson-Moss Warranty Act and the Arizona Uniform Commercial Code (“U.C.C.”)
6 due to a defective new, 2006 Eclipse Attitude motor home purchased by Plaintiffs on March
7 28, 2007 from Defendant Crist for \$70,110.00, inclusive of financing, and manufactured by
8 Defendant Eclipse Recreational Vehicles, Inc. (“Defendant Eclipse”), a California
9 corporation. (docket ## 1, 23) Crossclaims have been asserted between Defendants, and on
10 October 24, 2008, Defendant Eclipse filed a Third-Party Complaint against Generac Power
11 Systems, Inc., the motor home’s generator manufacturer, seeking indemnification or
12 contribution for any liability to Plaintiffs due to the generator. (docket # 12) Specifically,
13 the Complaint alleges in Count I a Magnuson-Moss breach-of-warranty claim pursuant to 15
14 U.S.C. §2310(d) against Defendant Eclipse and in Count II a U.C.C. claim for revocation of
15 acceptance¹ pursuant to A.R.S. § 47-2608 against Defendant Crist. (docket # 1 at 5-6)

16 On October 17, 2008, the Hon. David G. Campbell, United States District
17 Judge, issued an order setting the Rule 16 Case Management Conference. (docket # 9) In
18 that Order, under paragraph 6, the parties were specifically ordered to make:

19 A statement of whether any party expects to add additional parties to this
20 case or otherwise to amend or supplement pleadings (the Court will set a
21 deadline of not later than sixty days after the case management conference
of joint parties and amend or supplement pleadings).

22 (*Id.* at 2) In their December 30, 2008 Joint Case Management Report, however, Plaintiffs
23 (and all other parties) denied any desire to amend their Complaint and stated “N/A” (not

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25 ¹ Plaintiffs’ describe this claim in the Joint Case Management Report as “Plaintiffs’
26 rescission claim under the Uniform Commercial Code (A.R.S. § 47-2608).” (docket # 23 at
27 3) See, *IMA North America, Inc. v. Maryln Nutraceuticals, Inc.*, 2008 WL 4737888 (D.Ariz.
28 2008) for the relationship in Arizona between the common law remedy of rescission with the
U.C.C. concepts of rejection and revocation of acceptance.

1 applicable) to “whether any party expects to add additional parties to the case or *otherwise*
2 *to amend or supplement pleadings.*” (docket # 23 at 5) (emphasis added). On January 29,
3 2009, all parties consented to magistrate-judge jurisdiction pursuant to 28 U.S.C. §636(c).
4 (docket # 29) The Rule 16 scheduling conference was conducted on February 20, 2009
5 before the undersigned Magistrate Judge. (docket # 33)

6 Federal Rule of Civil Procedure 16(b)(4) provides that a scheduling order “may
7 be modified *only* for good cause and with the judge’s consent.” Rule 16(b)(4), FED.R.CIV.P.
8 (emphasis added). Consistent with Rule 16, at the February 20, 2009 scheduling conference
9 and in its Rule 16 scheduling order, the Court made clear to counsel that the Rule 16
10 deadlines are firm and the Court intended to enforce the deadlines set forth in the scheduling
11 order. (docket # 34) “Stipulations extending the time for the doing of any act required by the
12 Court or the Rules of Civil Procedure will be treated as a joint motion subject to Court
13 approval. LRCiv. 7.3; *Gestetner Corp. v. Case Equipment Company*, 108 F.R.D. 138 (D.
14 Maine 1985) (good cause not shown to amend scheduling order); *Janicki Logging Co. v.*
15 *Mateer*, 42 F.3d 561, 566 (9th Cir.1994) (Federal Rule of Civil Procedure 16 is to be taken
16 seriously). Continuances of these deadlines may be granted only upon a showing of good
17 cause and by leave of the assigned trial judge. **Settlement negotiations, however, do not**
18 **constitute good cause.**” (*Id.* at 2) (emphasis added) (internal quotation marks omitted).

19 Notwithstanding that no party expressed a desire to amend a pleading in their
20 Joint Case Management Report, the Court set a deadline of **Thursday, April 30, 2009**, over
21 two months after the Rule 16 scheduling conference, to file motions to amend pleadings or
22 motions to join additional parties. (*Id.*) (emphasis in original) In footnote 1, the Court also
23 noted for counsels’ benefit that after the scheduling conference, the good cause standard for
24 amendment controls over the Rule 15(a), FED.R.CIV.P., amendment standard, citing *Coleman*
25 *v. Quaker Oats Company*, 232 F.3d 1271, 1294 (9th Cir. 2000). Moreover, the Rule 16
26 scheduling order further indicated the importance that “counsel . . . comply with the Rules
27 of Practice for the United States District Court for the District of Arizona.” (*Id.* at 5) Local
28 Rule 83.10 makes clear that “[a]lternative dispute resolution shall not be offered as a reason

1 and establish deadlines to foster the efficient treatment and resolution of cases.” *Wong v.*
2 *Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir.2005). “As the torrent of civil and
3 criminal cases unleashed in recent years has threatened to inundate the federal courts,
4 deliverance has been sought in the use of calendar management techniques. Rule 16 is an
5 important component of those techniques.” *Johnson*, 975 F.2d at 611.

6 The Ninth Circuit, other judges from this District Court, and the undersigned
7 have consistently demonstrated in writing and orally at scheduling conferences that Rule 16’s
8 deadlines are firm, real and are to be taken seriously by the parties and their counsel. *Janicki*,
9 42 F.3d at 566; *Hostnut.Com, Inc.v. Go Daddy Software, Inc.*, 2006 WL 2573201 * 3 (D.
10 Ariz. 2006) (evidence not disclosed until more than two months after the discovery deadline
11 precluded at trial); *Schwartz v. Home Depot U.S.A., Inc.*, CV-06-2168-PHX-FJM (party’s
12 first request to extend expert witness disclosure deadline denied) (docket # 83 at 2 in
13 CV-06-2168-PHX-FJM); *Hazelwood v. United States*, 2006 WL 1599344, * 7 (D.Ariz. 2006)
14 (“Plaintiff has presented no evidence she was diligent in seeking to amend her complaint.
15 Finding no good cause to modify the Scheduling Order, Plaintiff’s Motion to Amend is
16 untimely and will be denied.”).

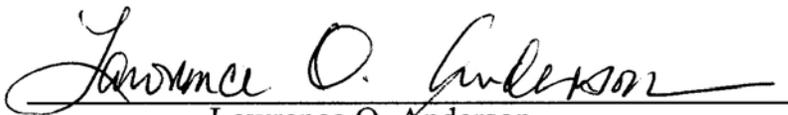
17 In the Court’s view, it is neither reasonable diligence nor justifiable reliance
18 for Plaintiffs’ counsel to wait for a settlement offer that may never come (and apparently
19 never did), do nothing as the amendment deadline approaches, and voluntarily permit the
20 deadline to pass without moving to amend before the April 30, 2009 deadline, knowing in
21 advance such deadlines would be enforced by the trial court and the ease within which
22 motions may be electronically filed. Whether prejudice exists to the adverse party in allowing
23 amendment is irrelevant to modify Rule 16 deadlines. Good cause and the trial judge’s
24 consent are the only standards for Rule 16 deadline modifications. Rule 16(b)(4),
25 FED.R.CIV.P. Plaintiffs were not diligent in seeking to amend their Complaint, have not
26 demonstrated good cause to do so, and have not persuaded the undersigned to authorize
27 amendment under the circumstances presented.

28 Accordingly,

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IT IS ORDERED that Plaintiffs' Motion to Amend Complaint, docket # 38,
is **DENIED**.

DATED this 9th day of June, 2009.


Lawrence O. Anderson
United States Magistrate Judge