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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Sunfire Glass, Inc., an Arizona
Corporation,

Defendant.

Tineke Meyer, an adult woman; and
Karina Mercado, an adult woman,

Intervenors.

vs.

Sunfire Glass, Inc., an Arizona
Corporation,

Defendant.

No. CV-08-1784-PHX-LOA

ORDER

This matter is before the Court on the motions of Intervenors Tineke Meyer and Karina Meracdo (the "Intervenors") to Enlarge Time for Amending Judgment and to Amend Judgment. (dockets # 54, # 55) The Court will deny both motions for the reasons set forth below.

1 **I. Background**

2 This matter commenced on September 29, 2008, when the Equal
3 Employment Opportunity Commission (“EEOC”) filed a Complaint against Defendant
4 Sunfire Glass, Inc. (“Sunfire”) alleging violations of Title VII of the Civil Rights Act of
5 1964, Title I of the Civil Rights Act of 1991, and 42 U.S.C. § 1981a “to correct unlawful
6 employment practices on the bases of sexual harassment and to provide appropriate relief
7 to Tineke Meyer, Karina Mercado, and a class of female employees who [were] adversely
8 affected by such practices.” (docket # 1) With leave of Court, Intervenor, through their
9 counsel Robert S. Martinez, filed a Complaint in Intervention on January 20, 2009.
10 (docket # 16) Again, only Sunfire was named as a Defendant. All parties consented in
11 writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). (dockets # 6,
12 # 12)

13 Defendant Sunfire was properly served with the Complaints, but failed to
14 answer or otherwise appear in this action. On January 27 and February 27, 2009, the
15 Clerk of Court entered default against Sunfire pursuant to Fed.R.Civ.P. 55(a). (dockets #
16 22, # 28) Thereafter, the Court conducted a default damages hearing pursuant to
17 Fed.R.Civ.P. 55(a)(2). On April 10, 2009, the Court entered default judgment against
18 Defendant Sunfire in favor Intervenor Meyer and Mercado. (docket # 51 at 21; docket #
19 52)

20 Nearly three months later, attorney Charles Leftwich filed a Motion to
21 Reopen Case seeking to amend the judgment pursuant to Fed.R.Civ.P. 52(b) to include
22 Mr. Paul McBride as a judgment creditor. (docket # 55) Mr. Leftwich also filed a
23 separate Motion to Enlarge Time for Amending Judgment, and a Notice of Appearance.
24 (dockets # 54, # 53)

25 **II. Failure to Comply with Court Order and Local Rule 83.3**

26 The pending motions were filed on the Intervenor’s behalf by attorney
27 Charles Leftwich. (dockets # 54, # 55) Mr. Leftwich is not an attorney of record in this
28 matter and does not represent the Intervenor. (*see* docket # 53) Rather, the Intervenor

1 are represented by attorney Robert Steven Martinez. (dockets # 13, # 15) On July 16,
2 2009, Mr. Leftwich filed a purported “Notice of Appearance” identifying himself as
3 counsel for the Intervenors. However, because the Intervenors are currently represented
4 by a different attorney, Mr. Leftwich should have identified his Notice as an Application
5 for Substitution of Counsel. As the Court noted in a July 20, 2009 Order, Mr. Leftwich’s
6 filing does not comply with Local Rule of Civil Procedure 83.3 governing substitution of
7 counsel because, *inter alia*, it does not include the signatures of his clients consenting to
8 his representation. (docket # 56 at 1-2; docket # 53) Local Rule of Civil Procedure 83.3
9 provides that:

10 **(a) Attorney of Record; Duties of Counsel.** Except as provided
11 below, no attorney shall appear in any action or file anything in
12 any action without first appearing as counsel of record. In any
13 matter, *even if it has gone to judgment*, there must be a formal
substitution or association of counsel before any attorney, who
is not an attorney of record, may appear. . . .

14 **(b) Withdrawal and Substitution: No Attorney.** No attorney shall be
15 permitted to withdraw or be substituted as attorney of record in any
16 pending action except by formal written order of the Court, supported
by written application setting forth the reasons therefor together
with the name, last known residence, and last known telephone number
of the client

17 LRCiv 83.3 Rule 83.3 further provides that an application for substitution of counsel
18 must include “the written approval of the client. . . .” LRCiv 83.3. In view of the failure
19 of the Notice of Appearance, deemed an Application for Substitution of Counsel, to
20 comply with the Local Rule of Civil Procedure 83.3, the Court struck Mr. Leftwich’s
21 Notice of Appearance. (docket # 56 at 4) The Court directed Mr. Leftwich to file a
22 proper “Motion for Substitution of Counsel that bears the signature and written approval
23 of his clients and otherwise complies with LRCiv 83.3 **on or before Thursday, July 30,**
24 **2009.**” (docket # 56 at 3-4) (emphasis in original) The Court warned that failure to
25 comply with the July 20, 2009 Order may result in summary denial of the Intervenors’
26 Motions. (docket # 56 at 4)

27 Despite the Court’s warning, Mr. Leftwich has not filed a Motion for
28 Substitution of Counsel or otherwise responded to the Court’s Order. Mr. Leftwich’s

1 disregard for the Local Rules of Civil Procedure, and his failure to comply with the
2 Court's July 20, 2009 Order, provide sufficient grounds for the Court to deny the
3 Intervenor's pending motions. Moreover, as discussed below, the Motion to Amend
4 Judgment is untimely and this Court has no discretion to extend the time for filing such a
5 motion. *See* Fed.R.Civ.P. 6(b).

6 **III. Motion to Enlarge Time for Amending Judgment**

7 As previously stated, the Court entered judgment in this matter on April 10,
8 2009. (docket # 52) Specifically, the Court entered judgment awarding Tineke Meyer
9 and Karina Mercado monetary damages against Defendant Sunfire Glass, Inc. (docket #
10 52) Over three months later, on July 16, 2009, Mr. Leftwich filed a Motion to Enlarge
11 Time for Amending Judgment and a Motion to Amend Judgment pursuant to
12 Fed.R.Civ.P. 52(b), seeking to amend the judgment to include Paul McBride, the owner
13 and president of Sunfire Glass, as a judgment debtor. The Court may not consider the
14 merits of the pending untimely motions.

15 Federal Rules of Civil Procedure 52 allows the court, upon timely motion,
16 to amend its findings or make additional findings, and to amend the judgment
17 accordingly. Fed.R.Civ.P. 52(b). Whether to grant a motion to amend or enlarge the
18 findings is within the discretion of the trial court. 9C Wright & Miller, *Federal Practice*
19 *and Procedure*: Civil 3d § 2582, at 352 (3d ed. 2008). A post-judgment motion under
20 Rule 52(b) "permits counsel to ask the court to correct, on the non-jury record before it,
21 any errors of law, mistakes of fact or oversights that require correction." *U.S. Gypsum Co.*
22 *v. Schiavo Bros., Inc.*, 668 F.2d 172, 180 (3d Cir.1981); *Granat v. Schoepski*, 272 F.2d
23 814, 815 (9th Cir. 1959) (stating that trial court's findings of fact may not be set aside
24 unless clearly erroneous.). "Motions under Rule 52(b) are primarily designed to correct
25 findings of fact which are central to the decision and are not intended to serve as a vehicle
26 for a rehearing." *United States v. Oregon*, 666 F.Supp. 1461, 1466 (D.Or.1987). Federal
27 Rule of Civil Procedure 52(b) provides that a motion to amend the judgment must be
28 "filed no later than 10 days after the entry of judgment. . . ." Fed.R.Civ.P. 52(b).

1 Federal Rule of Civil Procedure 6 governs the computation and extension of
2 time. Rule 6(b)(1) provides that, in general, “[w]hen an act may or must be done within a
3 specified time, the court may, for good cause shown, extend the time.” Rule 6(b)(2)
4 contains exceptions to the general rule of Rule 6(b)(1), and explicitly states that a district
5 court “*must not* extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e)
6 and 60(b), except as those rules allow.” *Id.* (emphasis added). Here, the pending motion
7 to amend judgment is brought pursuant to Fed.R.Civ.P. 52(b), and thus, the Court must
8 not extend the 10-day limit for bringing such a motion, unless Rule 52(b) itself provides
9 for such an extension. Fed.R.Civ.P. 6(b)(1). Rule 52(b) states no exception to the
10 ten-day limitation. Fed.R.Civ.P. 52(b). The Supreme Court has explained that the
11 “guiding principle of the Federal Rules of Civil Procedure,” is that “procedural rules
12 should be construed pragmatically, so as to ensure the just and efficient resolution of legal
13 disputes. Some provisions of the Rules strip the district courts of discretion, and the
14 courts have no choice but to enforce these requirements with scrupulous precision.” *Lujan*
15 *v. National Wildlife Federation* 497 U.S. 871, 912 n. 14 (1990). As an example of a Rule
16 of Civil Procedure which “strip[s] the district courts of discretion,” the Supreme Court
17 cited Federal Rule of Civil Procedure 6(b), “which generally gives the district court broad
18 authority to grant enlargements of time, [but] establishes the limitation that the court ‘may
19 not extend the time for taking any action under Rules 52(b) and . . . 59(e) except to the
20 extent and under the conditions stated in them.’” *Id.*¹ Because the 10-day limitation in
21 Rule 52(b) is strictly construed, this Court lacks discretion to consider the Intervenor’s
22 motion to enlarge time for amending judgment and motion to amend judgment which
23 were filed three months after the entry of judgment. *See Scott v. Younger*, 739 F.2d 1464,

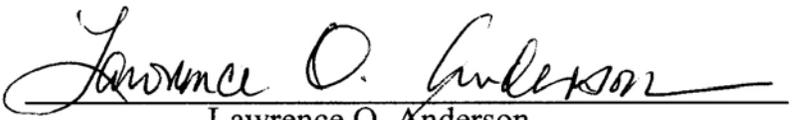
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25 ¹ After *Lujan* was decided, in 2007, the language of Rule 6(b) was “amended as part
26 of the general restyling of the Civil Rules to make them more easily understood”
27 Fed.R.Civ.P. 6(b), Advisory Committee Notes for 2007 Amendments (West 2008). Rule
28 6(b) remains the substantively the same as when cited in *Lujan*, but now reads as follows:
“A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e),
and 60(b), except as those rules allow.” Rule 6(b)(2) (West 2008).

1 1467 (9th Cir.1984) (ten-day time period “is jurisdictional and cannot be extended by the
2 court”); *see also Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1155 (9th Cir.1988)
3 (ten-day time period is to be strictly construed).² Because the motion to amend judgment
4 pursuant to Rule 52(b) is untimely, this Court has no authority to consider Plaintiff’s
5 Motion to Amend Judgment. The Court, therefore, will not address the merits of that
6 motion.

7 Accordingly,

8 **IT IS HEREBY ORDERED** that the Motion to Enlarge Time for
9 Amending Judgment and Motion to Amend Judgment (dockets # 54, # 55) are **DENIED**
10 as untimely.

11 DATED this 11th day of August, 2009.

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15 Lawrence O. Anderson
16 United States Magistrate Judge
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26 ² *Scott* and *Northern Cheyenne Tribe* involve Fed.R.Civ.P. 59(e) which, like Rule
27 52(b), requires that a motion to amend a judgment be made within ten days of entry of
28 judgment. Also, Rule 6(b)(2) provides that the 10-day deadlines in Rules 59(e) and 52(b)
must not be extended. Fed.R.Civ.P. 6(b)(2).