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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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David K. Everson and Patricia M.)
Everson,

No. CV-08-1980-PHX-GMS

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Plaintiff,

ORDER

11

vs.

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David D. Everson, Individually and as)
President and Director of Mandalay)
Homes, Inc.; Kristy Everson, aka Kristy)
Dryja, wife of David D. Everson; and)
Mandalay Homes Inc., ,

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Defendant.

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This afternoon the Court had a lengthy discovery conference with all parties to this
19 suit. After hearing disputes regarding the Everson’s failure to timely or completely answer
20 requests for admission, requests for production, and non-uniform interrogatory requests, and
21 issuing its tentative rulings on them, the matter turned to the Everson’s failure to appear at
22 their depositions that had been previously scheduled for December 17, 2010. After having
23 raised this matter, counsel for Defendant indicated that factual discovery closed on December
24 17, 2010, thus the Court’s Scheduling Order would need to be modified to permit Defendants
25 to re-notice the depositions of Plaintiffs.

26

This Court’s Scheduling Order (Doc. 100), issued July 9, 2010 specifies a deadline
27 for fact discovery on December 17, 2010. Immediately thereafter it specifies that “[a]ll
28 depositions shall be scheduled to commence at least **five working days** prior to the discovery

1 deadline. A deposition commenced five days prior to the deadline may continue up until the
2 deadline, as necessary.” Doc. 100 at ¶ 4(a) (emphasis added). Thus, Plaintiffs’ depositions
3 should have been scheduled by Defendants no later than December 10, 2010. Defendants
4 scheduled Plaintiffs’ depositions for one week, or five working days, after the actual
5 deadline.


6 The Scheduling Order also specifies that “[a]bsent extraordinary circumstances, the
7 Court will not entertain fact discovery disputes after the deadline for completion of fact
8 discovery.” *Id.* at ¶ 6(c).

9 On January 13, 2011, Defendants’ counsel called because Plaintiffs (who are
10 representing themselves) were not returning calls or responding to e-mails or correspondence
11 concerning their failure to respond to discovery. In response, the Court set-up a discovery
12 dispute resolution conference for today, January 18, 2011. During that conference, the Court
13 learned that the deadline for fact discovery expired more than a month ago.

14 Pursuant to the Scheduling Order, fact discovery is closed. At this point, Defendants
15 have not established the “extraordinary circumstances” necessary for the Court to entertain
16 Defendants’ pending fact discovery disputes with Plaintiffs.

17 **IT IS THEREFORE ORDERED** denying Defendants’ oral Motion to Compel
18 Discovery without prejudice to Defendants seeking to establish the extraordinary
19 circumstances necessary for the Court to take up this motion. The Court notes, however, that
20 in addition to the extraordinary circumstances, Defendants will also have to establish their
21 own diligence in conducting discovery to obtain an amendment to the Case Management
22 Order. *See, e.g. Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608-9 (9th Cir. 1992).
23 Otherwise the expert phase of discovery is under way, with a pending dispositive motion
24 deadline. The parties are advised to pay strict attention to the Case Management Order
25 because as the Order itself notes, **“the Court intends to enforce the deadlines set forth in
26 this Order, and should plan their litigation activities accordingly.”**

27 DATED this 18th day of January, 2011.

28 

G. Murray Snow
United States District Judge