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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Oliver Reishus and Roxanne Brinker,
husband and wife,

No. CV-10-0760-PHX-LOA

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Plaintiffs,

ORDER

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vs.

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Efran Almaraz and Alejandra Estrada,
individually as husband and wife, d/b/a EA
Trucking; Paulo Eguisquiza and Jane Doe
Eguisquiza, individually and as husband
and wife, d/b/a Best Tires Distributors;
Eduardo Merino, a single man,

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Defendants.

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Paulo Eguisquiza, individually, d/b/a Best
Tires Distributors,

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Cross-Claimant,

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vs.

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Efren Almaraz, a single man, d/b/a/ EA
Trucking,

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Cross-Defendant.

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This case comes before the Court on Plaintiffs' Motion for Leave to File
Second Amended Complaint, filed on September 10, 2010. (Doc. 42) Defendants Efren
Almaraz, d/b/a EA Trucking, and Paulo Eguisquiza, d/b/a Best Tires Distributors, re-
sponded, indicating they have no objection to Plaintiffs' Motion. (Docs. 45, 47)

Following a May 24, 2010 Rule 16 conference, the Court issued its

1 scheduling order which includes, among others, a October 1, 2010 deadline for amending
2 pleadings. (Doc. 18 at 4) In compliance with the scheduling order, Plaintiffs timely filed
3 the pending Motion because Defendant Efren Almaraz has “advised Plaintiffs that
4 Jane Doe Almaraz’s true name is Alejandra Estrada[.]” and Defendant Efren Almaraz’
5 discovery responses indicate that “Eduardo Merino [w]as the driver of the semi tractor
6 trailer, owned by EA Trucking, involved in the subject incident.” (Doc. 42) Plaintiffs
7 request leave to amend their Complaint to add as additional Defendants, Alejandra
8 Estrada and Eduardo Merino.

9 Federal Rule of Civil Procedure 15 provides that “[t]he court should freely
10 give leave [to amend a pleading] when justice so requires.” Fed.R.Civ.P. 15(a)(2). The
11 Ninth Circuit has directed district courts to consider the presence of bad faith, undue
12 delay, prejudice to the opposing party, and futility, “with all inferences in favor of
13 granting the motion [to amend].” *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th
14 Cir. 1999); *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973). Once the dead-
15 line for amending pleadings established in a pretrial scheduling order passes, however,
16 Federal Rule of Civil Procedure 16, which controls the modification of a district court’s
17 scheduling order, governs the amendment of pleadings. *Coleman v. Quaker Oats Co.*, 232
18 F.3d 1271, 1294 (9th Cir. 2000); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,
19 609 (9th Cir. 1991). Rule 16 provides that “[a] schedule may be modified only for good
20 cause and with the judge’s consent.” Fed.R.Civ.P. 16(b)(4).

21 Here, the liberal amendment standard of Fed.R.Civ.P. Rule 15(a), rather
22 than the “good cause” standard of Fed. R.Civ.16, governs the proposed amendment
23 because Plaintiffs filed the amendment motion within the scheduling order’s deadline for
24 amending pleadings. Because Plaintiffs’ request to amend their Complaint was before the
25 amendment deadline and because Defendants have no objection to the granting of the
26 Motion, the Court will grant Plaintiffs’ Plaintiffs’ Motion for Leave to File Second
27 Amended Complaint.

28 In accordance with the foregoing,

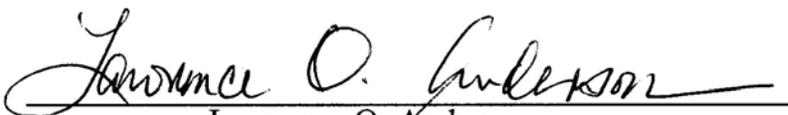
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IT IS ORDERED that Plaintiffs' Motion for Leave to File Second Amended Complaint, docket # 42, is **GRANTED**.

IT IS FURTHER ORDERED that, consistent with LRCiv 15.1 and within fourteen (14) days of the filing of the order granting leave to amend, Plaintiffs shall file their Amended Complaint, which they submitted as Exhibit 1 in support of its Motion to Amend **except it shall contain the double caption used in this order**, and shall promptly serve Defendants Alejandra Estrada and Eduardo Merino pursuant to Rule 4, Fed.R.Civ.P., so as to not unduly delay this litigation. Absent a conflict of interest, counsel for Defendants shall consider waiving service of process for Alejandra Estrada or Eduardo Merino pursuant to Rule 4(d), Fed.R.Civ.P. See, *Darulis v. Garate*, 401 F.3d 1060, 1063-64 (9th Cir. 2005).

IT IS FURTHER ORDERED that counsel and any party, if unrepresented, shall use the above double caption, number and initials on all further pleadings, briefings and other filings herein: to wit: CV-10-0760-PHX-LOA

Dated this 29th day of September, 2010.


Lawrence O. Anderson
United States Magistrate Judge