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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Leanna Smith,

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No. CV 10-1632-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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Barrow Neurological Institute et al,

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Defendant.

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The court has before it Defendants' Joint Motion for Time Enlargement (doc. 178), Defendants' Joint Motion for Case Management Conference (doc. 179), and the Barrow defendants' Supplement to Request for Time Enlargement (doc. 180).

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This action is now almost two years old. Judge Campbell's Case Management Order of January 17, 2012 (doc. 104) noted that it needed to be fully resolved "within three years of the August 2010 removal to this Court". Order of Jan 17, 2012 at 1. His order set forth generous and reasonable deadlines: Discovery-October 26, 2012; Expert Disclosures- July 6, 2012, August 17, 2012 and September 14, 2012; and, Dispositive Motions- November 16, 2012. The order then advised the parties that "The Deadlines are Real". Order of Jan. 17, 2012 at 5.

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On March 16, 2012, the case was reassigned to the undersigned. (Doc. 124). Concerned about the age of the case, on March 21, 2012, we entered an order that advised

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1 the parties that because Judge Campbell's case management order was more than adequate
2 to bring this case to a conclusion, there would "be no extensions granted to the deadlines in
3 the order." Order of Mar. 21, 2012 at 2 (doc. 125).

4 Defendants contend they need more time because plaintiff has failed to comply with
5 the expert witness deadline. But the remedy for that is exclusion of expert witnesses. If the
6 Rule 16 Order were subject to amendment every time a party failed to comply with it, the
7 order would be worthless. Defendants contend that plaintiff has disclosed 250 treating
8 physicians as potential experts and they need to know now what they must respond to. Of
9 course, plaintiff has an obligation to very accurately identify who will actually be called.
10 Judge Campbell's Order limits each side to one retained or specially employed expert per
11 issue. Order of Jan. 17, 2012 at 3. And counsel for plaintiff has an obligation of candor to
12 opposing counsel with respect to the witnesses and exhibits that will actually be used. This
13 court will limit the parties to a limited number of trial days. See Rule 16(c)(2)(O), Fed. R.
14 Civ. P. This alone will require counsel to realistically assess their witness lists. It is absurd
15 to think that 250 witnesses will be called. They will not be allowed.

16 Defendants argue that plaintiff intends to disclose "years" worth of medical records
17 that need to be assessed. But if plaintiff has failed to comply with her disclosure or discovery
18 obligations, sanctions, up to dismissal of the claim, are available. Again, a non-compliant
19 party or lawyer has no right to upset the schedule. They just expose themselves to potential
20 dismissal, default, exclusion and the like.

21 Defendants argue that they have a motion for summary judgment pending. But it was
22 just ripe on June 22, 2012. It will be decided in due course.

23 Finally, counsel for the Barrow defendants advise us of surgery which will take her
24 out of action for a few weeks in August. We are, of course, sensitive to medical issues. But
25 a few weeks in a case this old is not significant. Moreover, the Barrow defendants are
26 represented by more than one lawyer—the other lawyer or lawyers can cover during the
27 affected weeks.

28 Counsel need to cooperate with each other in a professional way. If they do so, the

