

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Catherine Johnson,

)

No. CV-10-2690-PHX-FJM

10

Plaintiff,

)

**ORDER**

11

vs.

)

12

Wyeth LLC; Pfizer Inc., Wyeth  
Pharmaceuticals,

)

13

Defendants.

)

14

)

15

)

16

Before the court is plaintiff's motion for leave to file a first amended complaint (doc. 28) and memorandum in support (doc. 29), defendants' response (doc. 32) and plaintiff's reply (doc. 33).

20

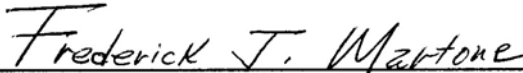
Plaintiff moves to amend her complaint in order to affirmatively plead the discovery rule and the fraudulent concealment doctrines. Plaintiff anticipates that defendants will argue that the statute of limitations has run and that the discovery rule and fraudulent concealment defenses are not available unless affirmatively pled. Defendants argue that the amendment would be futile because neither the discovery rule nor the fraudulent concealment doctrine would toll the statute of limitations. But these arguments go to the merits of the statute of limitations defense, which we do not decide at this time. Defendants do not suggest that the amendment would cause undue delay or unfair prejudice.

28

Given that leave to amend should be freely given when justice requires, Fed. R. Civ.

1 P. 15(a)(2), **IT IS ORDERED GRANTING** plaintiff's motion for leave to file a first  
2 amended complaint (doc. 28). Plaintiff shall file and serve the first amended complaint  
3 within 14 days of the entry of this order.

4 DATED this 22<sup>nd</sup> day of August, 2011.

5  
6   
7 \_\_\_\_\_  
8 Frederick J. Martone  
9 United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28