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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Ken Gazian, et al.,

10 Plaintiffs,

11 v.

12 Wells Fargo Bank NA, et al.,

13 Defendants.

No. CV-13-01312-PHX-DGC

**ORDER**

14 Plaintiffs Ken Gazian, Pierre Investments, Inc., and Aragadz Foods, Inc. d/b/a  
15 Devanche Jewelers, along with cross-defendants Hubert Kelly and Kelly & Kelly, P.C.  
16 (collectively the “Kelly Defendants”), have filed a motion to strike Defendant Wells  
17 Fargo Bank NA’s answer and crossclaim (Doc. 56). Doc. 76. Plaintiffs have also filed a  
18 second motion for leave to file a second amended complaint. Doc. 77. The motions are  
19 fully briefed.<sup>1</sup>

20 **I. Motion to Strike.**

21 Plaintiffs and the Kelly Defendants argue that the Court should strike Wells  
22 Fargo’s answer and crossclaim because it was filed after the October 28, 2013 deadline  
23 for joining parties, amending pleadings, and filing supplemental pleadings. Doc. 76 at 3.  
24 The answer and crossclaim was filed on November 15, 2013 (Doc. 56), was a timely  
25 response to Plaintiff’s amended complaint filed on October 28, 2013 (Doc. 51), and was  
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28 <sup>1</sup> Plaintiffs’ request for oral argument is denied because the issues have been fully  
briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P. 78(b);  
*Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 not an amended or supplemental pleading. The October 28, 2013 deadline therefore did  
2 not apply and Wells Fargo was not required to show good cause.

3 **II. Motion to Amend.**

4 The Court denied Plaintiffs' previous motion to amend because it was filed after  
5 the deadline for amending pleadings and Plaintiffs failed to address the good cause  
6 requirement of Rule 16 for extending a case management deadline. Doc. 73. Plaintiffs'  
7 renewed motion to amend does address the good cause standard. It asserts that Plaintiffs  
8 had no need to amend and narrow their claims until Wells Fargo asserted a crossclaim  
9 against the Kelly Defendants on November 15, 2013.

10 Rule 16's good cause standard primarily considers the diligence of the party  
11 seeking the amendment. *Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 609 (9th  
12 Cir. 1992). "The district court may modify the pretrial schedule 'if it cannot reasonably  
13 be met despite the diligence of the party seeking the extension.'" *Id.* (quoting Fed. R.  
14 Civ. P. 16 advisory committee notes (1983 amendment)).

15 The Court is persuaded that Plaintiffs' need to amend their complaint arose from  
16 Wells Fargo's crossclaim. Plaintiffs sought leave to file a responsive second amended  
17 complaint three weeks later (Doc. 59), which was reasonably diligent. The fact that  
18 Plaintiffs waited four weeks after the Court denied their motion to amend before filing  
19 the present motion does not alter this conclusion; the Court is not persuaded that a delay  
20 of four weeks shows a lack of diligence sufficient to defeat good cause.

21 **IT IS ORDERED** that Plaintiffs' and the Kelly Defendants' motion to strike  
22 (Doc. 76) is **denied** and Plaintiffs' motion for leave to file a second amended complaint  
23 (Doc. 77) is **granted**. Plaintiffs shall file their amended complaint on or before  
24 **June 4, 2014**.

25 Dated this 29th day of May, 2014.

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David G. Campbell  
United States District Judge