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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lynne Korff,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendants.
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No. CV-13-02317-PHX-ESW

ORDER

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16 At the February 21, 2018 status conference, Defendants requested that the Court
17 revisit two motions (Docs. 278, 298) that the Court denied as moot when it entered
18 summary judgment in favor of Defendants. (Doc. 304). The Court affirms the denial of
19 Defendants' "Joint Motion for Leave to Respond to Plaintiff's Notice of Appointment of
20 Personal Representative and Plaintiff's Amended/Supplemental Response to Defendants'
21 Statement of Facts (Doc. 296)" (Doc. 298) on mootness grounds.

22 The Court will vacate the denial of Defendants' "Joint Motion to Quash Expert
23 Subpoenas and Request for Attorneys' Fees" (Doc. 278). Plaintiff does not dispute that
24 Defendants disclosed their expert witnesses on January 12, 2015. (Docs. 112, 113). The
25 discovery deadline expired on June 5, 2015.¹ (Doc. 210). It is undisputed that on
26 October 27, 2015, Plaintiff issued subpoenas duces tecum on Defendants' expert

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28 ¹ The Court, however, extended the discovery deadline for the limited purpose of
allowing the parties to complete certain depositions. (Docs. 239, 257). September 30,
2015 was the deadline for completing the final deposition. (Doc. 257).

1 witnesses Michael Kuzel, Charles Huth, Jeff Smith, and Pamela E. Potter, Ph.D. (Doc.
2 278 at 3; Doc. 281 at 1). Because the Court finds that these subpoenas were untimely
3 issued, the Court grants Defendants’ request to quash them.

4 In their Motion (Doc. 278 at 9-10), Defendants request an award of attorneys’ fees
5 under Federal Rule of Civil Procedure 16(f). The Court has broad discretion to impose
6 sanctions under Rule 16(f). *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1397 (9th
7 Cir. 1993). “The imposition of sanctions under Rule 16(f) does not require a finding of
8 bad faith; rather, a negligent failure to comply with Rule 16 can justify sanctions.”
9 *Arambula v. City of Phoenix*, No. CV 09-2103-PHX-NVW, 2010 WL 11437113, at *1
10 (D. Ariz. June 22, 2010). Yet, “[c]ourts do not invoke Rule 16(f) to enforce their orders
11 for sport.” *U.S. Bank N.A. v. SFR Investments Pool 1, LLC*, Case No. 2:16-cv-00576-
12 GMN-NJK, 2018 WL 701816, at *3 (D. Nev. Feb. 2, 2018) (citing *Dela Rosa v.*
13 *Scottsdale Mem’l Health Sys., Inc.*, 136 F.3d 1241, 1244 (9th Cir. 1988) (“We prefer not
14 to spend time lecturing and cajoling violators into compliance through the imposition of
15 sanctions.”). The Court finds that it would be unjust to grant Defendants’ request for
16 attorneys’ fees. Plaintiff’s issuance of the subpoenas at issue did not cause delay in the
17 case. *See Martin Family Trust v. Heco/Nostalgia Enters. Co.*, 186 F.R.D. 601, 603 (E.D.
18 Cal. 1999) (noting that violations of Rule 16 scheduling orders “involve a matter most
19 critical to the court itself: management of its docket and the avoidance of unnecessary
20 delays in the administration of its cases”). Further, the docket does not reflect that
21 Defendants obtained leave of Court before filing their Motion (Doc. 278) as required by
22 the Court’s Scheduling Order. (Doc. 34 at 3) (“The parties shall not file written
23 discovery motions without leave of Court.”). The Court denies Defendants’ request for
24 attorneys’ fees as set forth in their Motion (Doc. 278).

25 The Court will set a Final Pretrial Conference by separate order.

26 Based on the foregoing,

27 **IT IS ORDERED** affirming the denial of Defendants’ “Joint Motion for Leave to
28 Respond to Plaintiff’s Notice of Appointment of Personal Representative and Plaintiff’s

1 Amended/Supplemental Response to Defendants' Statement of Facts (Doc. 296)" (Doc.
2 298).

3 **IT IS FURTHER ORDERED** vacating the denial of Defendants' "Joint Motion
4 to Quash Expert Subpoenas and Request for Attorneys' Fees" (Doc. 278) as set forth in
5 the Court's May 6, 2016 Order (Doc. 304).

6 **IT IS FURTHER ORDERED** granting in part and denying in part Defendants'
7 "Joint Motion to Quash Expert Subpoenas and Request for Attorneys' Fees" (Doc. 278)
8 as set forth herein.

9 **IT IS FURTHER ORDERED** quashing the subpoenas duces tecum served on
10 Defendants' expert witnesses Michael Kuzel, Charles Huth, Jeff Smith, and Pamela E.
11 Potter, Ph.D.

12 **IT IS FURTHER ORDERED** directing the parties to file a joint status report no
13 later than **July 24, 2018** advising the Court as to (i) whether the parties have participated
14 in private mediation and (ii) whether the parties request the matter to be referred to a
15 Magistrate Judge for a settlement conference.

16 Dated this 3rd day of July, 2018.

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20 Eileen S. Willett
21 United States Magistrate Judge
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