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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robert William Dutcher,  
10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,  
13 Defendants.  
14

No. CV-15-01079-PHX-ROS (ESW)

**ORDER**

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16 Pending before the Court are (i) Defendants Corizon Health, Inc. (“Corizon”),  
17 Nurse Shields, and Stowe’s “Joint Motion to Extend Dispositive Motion Deadline” (Doc.  
18 118) and (ii) Defendants Corizon and Shields “Motion for Leave to File Motion for  
19 Summary Judgment on the Merits” (Doc. 123), which Defendant Stowe has joined (Doc.  
20 124).

21 In November 2016, Defendants Corizon and Stowe moved to stay their obligations  
22 to respond to Plaintiff’s Requests for Production of Documents pending disposition of the  
23 Motion to Dismiss (Doc. 69) and Motion for Summary Judgment (Doc. 71). (Docs. 70,  
24 73). The Court granted the request. (Doc. 93). In April 2017, upon Defendants’ Joint  
25 Motion (Doc. 110), the Court extended the dispositive motion deadline to July 7, 2017.  
26 (Doc. 111).

27 On June 7, 2017, Defendants Corizon, Shields, and Stowe jointly requested (Doc.  
28 118) the Court to extend the dispositive motion deadline by sixty days from the date of

1 any Court order that denies the Motion to Dismiss (Doc. 69) or the Motion for Summary  
2 Judgment (Doc. 71). On June 8, 2017, the Court denied Defendant Corizon's Motion to  
3 Dismiss and Defendants Stowe and Shields' Motion for Summary Judgment. (Docs. 119,  
4 120). In his Response (Doc. 121) opposing Defendants' request to extend the dispositive  
5 deadline motion, Plaintiff states that "this Court's bar to discovery pending the Court's  
6 ruling on the now resolved procedural motions should now be ended." (Doc. 121 at 3).

7 In their Reply (Doc. 122), Defendants explain:

8 This is precisely what the Defendants contemplated when  
9 they requested that the dispositive motion deadline be  
10 extended for 60 days after the resolution of their then-pending  
11 dispositive motions; i.e., the parties would have 60 days to  
12 complete discovery before they would have an opportunity to  
13 file dispositive motions directed to the merits of Dutcher's  
14 claims.

15 (Doc. 122 at 2). However, in their "Motion for Leave to File Motion for Summary  
16 Judgment on the Merits," Defendants Corizon and Shields state that the "Corizon  
17 Defendants believe that the undisputed evidence in this case supports disposition on the  
18 merits and intend to set forth compelling arguments for the same in such a motion."  
19 (Doc. 123 at 2). Defendants Corizon and Shields have lodged their Motion for Summary  
20 Judgment on the Merits (Docs. 126, 128). As Defendant Corizon has not previously filed  
21 a motion for summary judgment, the Motion for Leave (Doc. 123) is unnecessary as to  
22 Defendant Corizon.<sup>1</sup> Because Defendant Shields and Stowe's Motion for Summary  
23 Judgment rested solely on the issue of exhaustion of administrative remedies, the Court  
24 will grant the Motion for Leave (Doc. 123) as to Defendants Shields and Stowe.  
25 However, given that the Court stayed discovery in this matter and Plaintiff has asserted  
26 that he has not obtained discovery necessary to oppose summary judgment on the merits,  
27 the Court finds that Defendants Corizon and Shields' Motion for Summary Judgment  
28 (Doc. 126) and Separate Statement of Facts (Doc. 128) were lodged prematurely. The

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<sup>1</sup> Defendant Corizon's Motion to Dismiss (Doc. 69) was filed pursuant to Fed. R. Civ. P. 12(b)(6) and asserted that Plaintiff's claims against Corizon should be dismissed as time-barred. The Court's Scheduling Order (Doc. 54) does not require leave of court before filing a motion for summary judgment following the denial of a motion to dismiss.

1 Court will grant Defendants’ “Joint Motion to Extend Dispositive Motion Deadline”  
2 (Doc. 118). The deadline for completing discovery is **October 2, 2017**. The deadline for  
3 filing motions for summary judgment on the merits is **November 1, 2017**.

4 Based on the foregoing,

5 **IT IS ORDERED** granting Defendants Corizon, Nurse Shields, and Stowe’s  
6 “Joint Motion to Extend Dispositive Motion Deadline” (Doc. 118).

7 **IT IS FURTHER ORDERED** granting Defendants Corizon and Shields “Motion  
8 for Leave to File Motion for Summary Judgment on the Merits” (Doc. 123) and  
9 Defendant Stowe’s Joinder (Doc. 124). However, the Clerk of Court is directed to  
10 withdraw the Motion for Summary Judgment (Doc. 126) and Separate Statement of Facts  
11 (Doc. 128) as the Court finds that they were lodged prematurely.

12 **IT IS FURTHER ORDERED** that the deadline for completing discovery is  
13 **October 2, 2017**. The deadline for filing motions for summary judgment on the merits is  
14 **November 1, 2017**.

15 Dated this 25th day of July, 2017.

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19 Eileen S. Willett  
20 United States Magistrate Judge  
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