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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jill S. Frederick,

10 Plaintiff,

11 v.

12 Irma O. Frederick, *et al.*,

13 Defendants.
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No. CV-17-00368-PHX-JJT

ORDER

15 At issue are Plaintiff's Motion for Entry of Default and Default Judgment (as to
16 Amended Complaint) or, Alternatively, to Strike Defendant's Affirmative Defenses to
17 Initial Complaint (Doc. 60), to which Defendant filed a Response (Doc. 66); and
18 Plaintiff's Motion for Modification of Scheduling Order and for Leave to Amend Prayer
19 for Relief in First Amended Complaint by Interlineation (Fifth Request for Modification
20 of Scheduling Order) (Doc. 82), to which Defendant filed a Response (Doc. 86) and
21 Plaintiff filed a Reply (Doc. 87).

22 In the former Motion (Doc. 60), Plaintiff asks the Court to enter default against
23 Defendant as to the Amended Complaint (Doc. 51), or at least to strike the Affirmative
24 Defenses raised in Defendant's Answer (Doc. 18) to Plaintiff's original Complaint
25 (Doc. 1), because Defendant failed to timely file an Answer to Plaintiff's Amended
26 Complaint. Although untimely, Defendant did file an Answer (Doc. 62) to Plaintiff's
27 Amended Complaint on the same day as Plaintiff filed this Motion, and in her Response
28 (Doc. 66), Defendant explained that the failure to timely file the Answer was due to

1 inadvertence on the part of Defendant’s counsel and that Defendant filed the Answer as
2 soon as she realized she had neglected to file it. The Court finds Defendant’s failure to
3 timely file the Answer to the Amended Complaint was due to excusable neglect and did
4 not substantially prejudice Plaintiff. Moreover, Defendant’s filing of an Answer to the
5 Amended Complaint moots Plaintiff’s request for the Court to strike Affirmative
6 Defenses in the original Answer. For these reasons, the Court will deny Plaintiff’s first
7 Motion (Doc. 60).

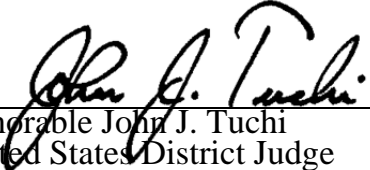
8 In the latter Motion (Doc. 82), Plaintiff requests that the Court amend the
9 Scheduling Order to allow Plaintiff to amend the Amended Complaint to add a prayer for
10 attorney’s fees. Under Federal Rule of Civil Procedure 16(b)(4), the deadlines in the
11 Scheduling Order “may be modified only for good cause and with the judge’s consent.”
12 “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party
13 seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th
14 Cir. 1992). Here, Plaintiff contends she was diligent during the period specified in the
15 Scheduling Order for amending pleadings, but that counsel for Plaintiff’s research at the
16 beginning of this action indicated that Plaintiff would not be entitled to seek attorney’s
17 fees under Arizona law. Upon further research, Plaintiff now believes she may be entitled
18 to seek attorney’s fees and requests leave to add a prayer for fees in the Amended
19 Complaint.

20 Plaintiff seeks to change the Scheduling Order deadline for amending pleadings
21 from September 1, 2017—almost a year ago—to the present time. But Plaintiff’s
22 proffered reason—that further legal research changed Plaintiff’s mind—does not indicate
23 diligence during the allotted period. Furthermore, discovery is now closed, and Defendant
24 will be prejudiced if Plaintiff is now allowed to seek a new form of damages for which
25 Defendant had no opportunity to conduct discovery. Accordingly, the Court does not find
26 Plaintiff has demonstrated the requisite good cause for the Court to extend the deadline
27 for amending pleadings. *See Johnson*, 975 F.2d at 609.

1 IT IS THEREFORE ORDERED denying Plaintiff's Motion for Entry of Default
2 and Default Judgment (as to Amended Complaint) or, Alternatively, to Strike
3 Defendant's Affirmative Defenses to Initial Complaint (Doc. 60).

4 IT IS FURTHER ORDERED denying Plaintiff's Motion for Modification of
5 Scheduling Order and for Leave to Amend Prayer for Relief in First Amended Complaint
6 by Interlineation (Fifth Request for Modification of Scheduling Order) (Doc. 82).

7 Dated this 7th day of August, 2018.

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11 Honorable John J. Tuchi
12 United States District Judge
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