

1 **WO**

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8

9 Jon C. Schwartz,

10 Plaintiff,

11 vs.

12 Charles O. Pruitt, et al.,

13 Defendants.

14

15

No. CV 11-08208-PCT-FJM

**ORDER**

16 The court has before it plaintiff's motion for leave to file amended complaint (doc.  
17 36). Defendants did not respond and the time for doing so has passed. Plaintiff seeks to add  
18 his wife as a plaintiff and to add a claim for loss of consortium on his wife's behalf.

19 Plaintiff filed his complaint in the Superior Court of Arizona in Mohave County on  
20 November 10, 2011. Defendants removed this action on December 22, 2011. The court held  
21 a scheduling conference on March 16, 2012, and issued a Rule 16 scheduling order on March  
22 19, 2012, stating that "Motions to Amend the Complaint, and to join additional parties shall  
23 be filed no later than **May 1, 2012**" (doc. 12 at 2 (emphasis in original)). Plaintiff filed the  
24 pending motion on August 8, 2012.

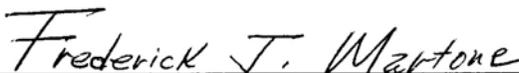
25 Once the district court files a pretrial scheduling order pursuant to Rule 16, Fed. R.  
26 Civ. P., establishing a timetable for amending pleadings, Rule 16's standards control  
27 consideration of a motion to amend. Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th  
28 Cir. 2000). "A schedule may be modified only for good cause and with the judge's consent."

1 Rule 16(b)(4), Fed. R. Civ. P. This "good cause" standard "primarily considers the diligence  
2 of the party seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
3 609 (9th Cir. 1992). "If [the moving] party was not diligent, the inquiry should end." Id.

4 There is no showing of diligence here sufficient to modify the scheduling order.  
5 Plaintiff's request is based on the fact that "[i]t has just recently been brought to [plaintiff's]  
6 counsel's attention, by way of discussion with Plaintiff in preparing his responses to  
7 Defendants (sic) discovery requests, that Plaintiff Dr. Jon Schwartz is not the only person  
8 who suffered injury as a result of Defendants' negligence." (Doc. 36 at 3-4). Plaintiff's  
9 current lawyer is the same lawyer who filed the complaint on his behalf over nine months  
10 ago. It was surely foreseeable that an accident which severely injured plaintiff would  
11 adversely affect his spouse. Plaintiff is not diligent by waiting until three months after the  
12 deadline to amend to discuss the collateral effects of the accident on plaintiff's wife.

13 **IT IS ORDERED DENYING** plaintiff's motion for leave to file amended complaint  
14 (doc. 36).

15 DATED this 19<sup>th</sup> day of September, 2012.

16  
17   
18 \_\_\_\_\_  
19 Frederick J. Martone  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28