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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOIS ILICH KOHO,

Plaintiff,

v.

FOREST LABORATORIES, INC., *et al.*,

Defendants.

No. C05-667RSL

ORDER DENYING MOTION FOR  
LEAVE TO AMEND ANSWERS

This matter comes before the Court on the “Defendants’ Motion for Leave to Amend Answers.” Dkt. # 73. Defendants seek leave to amend their comparative fault affirmative defenses to identify the people and entities that they allege are at fault under RCW 4.22.070.

**BACKGROUND**

This is a products liability case arising out of the suicide of Ray Ilich just days after he began taking Celexa in August 2002. Compl. (Dkt. # 1) ¶¶ 6-8. Plaintiff, the widow of Ray Ilich and personal representative of his Estate, filed her complaint in the above-captioned case in April 2005. Compl. (Dkt. #1). The case was transferred to the Eastern District of Missouri in 2006 for consolidated pre-trial proceedings. See Transfer Order (Dkt. #26) at 1. The parties engaged in discovery during the multi-district litigation proceedings and on August 28, 2013, the case was remanded to this Court to complete case-specific discovery and other pre-trial proceedings. Remand Order (Dkt. # 28) at 1. The Court entered a scheduling order in October

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1 2013, setting May 7, 2014 as the deadline for amended pleadings. Scheduling Order (Dkt. # 38).  
2 On May 7, 2014, defendants filed amended answers. Am. Answers (Dkt. # 65, 66)). However,  
3 because more than 21 days had passed since defendants served their answers on plaintiff and  
4 they did not seek leave of court or obtain plaintiff's consent, see Fed. R. Civ. P. 15(a), the Court  
5 issued an order to show cause why the amended answers should not be stricken. Order to Show  
6 Cause (Dkt. # 68). In response to the Court's order, defendants filed the motion presently before  
7 the Court. Dkt. # 73. The deadline for completing discovery is July 6, 2014, and trial is  
8 scheduled to begin November 3, 2014. Scheduling Order (Dkt. # 38).

### 9 DISCUSSION

10 Fed. R. Civ. P. 15 ("Rule 15") and Fed. R. Civ. P. 16 ("Rule 16") govern amendments to  
11 pleadings. Although Rule 15(a) is based upon a "strong policy in favor of allowing  
12 amendment," Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994), Rule 15(a) does not control  
13 after a court has entered a pretrial scheduling order and the deadline for amendments of  
14 pleadings has passed. Precor Inc. v. Fitness Quest, Inc., No. C05-0993L, 2007 WL 136749, at  
15 \*1 (W.D. Wash. Jan. 12, 2007). When a party seeks to amend a pleading after the date set forth  
16 in the scheduling order, that party "must first show good cause for amendment under Rule 16,  
17 then if good cause be shown, the party must demonstrate that amendment was proper under Rule  
18 15." Paz v. City of Aberdeen, No. C13-5104 RJB, 2013 WL 6163016, at \*2 (W.D. Wash. Nov.  
19 25, 2013) (citing Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608 (9th Cir. 1992)).

20 Rule 16 requires "good cause" and "the judge's consent" in order to modify a scheduling  
21 order and allow amended pleadings after the deadline. The "good cause" standard focuses on  
22 the diligence of the party requesting amendment. Johnson, 975 F.2d at 609. If a party has acted  
23 diligently yet still cannot reasonably meet the scheduling deadlines, the district court may allow  
24 modification of the pretrial schedule. Id. However, "if that party was not diligent, the inquiry  
25 should end" and the motion to modify should not be granted. Id.; Millenkamp v. Davisco Foods  
26 Intern., Inc., 448 Fed. Appx. 720, 721 (9th Cir. 2011); Zivkovic v. Southern Cal. Edison Co.,

1 302 F.3d 1080, 1087 (9th Cir. 2002). This Court’s local rules further instruct that the dates in  
2 the scheduling order are binding and that the provisions of Local Civil Rule 16 “will be strictly  
3 enforced” in order to “accomplish effective pretrial procedures and avoid wasting the time of the  
4 parties, counsel, and the court.” LCR 16(b)(4), (m). While prejudice to the party opposing the  
5 modification may provide an additional reason for denying the motion, it is not required to deny  
6 a motion to amend under Rule 16(b). Coleman v. Quaker Oats Co., 232 F.3d 1271, 1295 (9th  
7 Cir. 2000) (citing Johnson, 975 F.2d at 609).

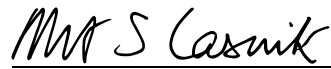
8 Defendants seek leave to amend their answers to supplement their affirmative defenses to  
9 identify “Randall K. Gould, M.D., Mill Creek Family Practice, P.L.L.C., Mill Creek Family  
10 Practice Clinic, Mill Creek Family Medicine, Inc., Peter Moore, Psy.D., and John Zimburean,  
11 M.D.” as the entities they contend are at fault and among whom fault should be apportioned  
12 under RCW 4.22.070. Dkt. # 73-1 at 5; Dkt. # 73-2 at 5. Defendants argue that they “simply  
13 seek to make the non-parties’ at fault identities clear for the November 3, 2013, trial,” id. at 3,  
14 but nothing in the record suggests that defendants have been diligent in seeking these  
15 amendments. This case was originally filed in 2005 and the parties have been engaged in  
16 discovery since nearly that time. Defendants took plaintiff’s deposition more than five years ago  
17 and they deposed Dr. Gould in December 2013. Dkt. # 85 at 37, 40. The amendments  
18 defendants seek are not based on new facts. Moreover, defendants do not argue that there were  
19 circumstances that prevented them from moving to amend their answers between the original  
20 filing of their answers in May 2005 and the amendment deadline. Despite ample time and  
21 opportunity to amend their answers, defendants did not attempt to supplement their affirmative  
22 defenses before the deadline and they provide no reason for their failure to comply with the  
23 deadlines set by the Court. Because defendants have not demonstrated that they acted diligently,  
24 they have not satisfied Rule 16’s good cause standard. Johnson, 975 F.2d at 609.

## 25 CONCLUSION

26 For all of the foregoing reasons, defendants’ motion for leave to amend (Dkt. # 73) is

1 DENIED. Defendants' amended answers (Dkt. # 65, 66) are hereby STRICKEN.

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3 DATED this 1st of July, 2014.

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7 Robert S. Lasnik  
8 United States District Judge  
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