

1 JOHN FRIEDEMANN, P.C. (#3607)  
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Attorney for Exeter Trinity Properties

4 **IN THE UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF ARIZONA**

<p>7 UNITED STATES OF AMERICA,</p> <p>8 Plaintiffs,</p> <p>9 vs.</p> <p>10 JOSEPH J. LIPARI, EILEEN H. LIPARI and EXETER TRINITY PROPERTIES, 11 L.L.C.,</p> <p>12 Defendants.</p>	<p>No. 3:10-CV-08142 JWS</p> <p>SUPPLEMENT TO MOTION TO EXTEND THE TIME TO PERMIT A CROSS-MOTION FOR SUMMARY JUDGMENT BY DEFENDANT EXETER TRINITY PROPERTIES, L.L.C.</p> <p>Honorable John W. Sedwick</p>
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13 Defendant Exeter Trinity Properties, L.L.C., respectfully Supplements its  
14 request that the Court extend the deadline within which it may file a Cross-Motion for  
15 Summary Judgment. The purpose of this Supplement is to correct an oversight in the Motion.

16 In retrospect, the undersigned realized that the Motion could be construed to  
17 give the impression that the undersigned knowingly missed the deadline. However, that is not  
18 what happened. The truth is that the deadline was not entered in the undersigned's calendar,  
19 so I was not aware of the deadline.

20 As a courtesy to Plaintiff, the undersigned prepared the joint stipulation by  
21 which the deadline for dispositive motions was extended to December 1, 2011, but,  
22 nevertheless, it was not entered in my calendar and I did not retain an independent  
23 recollection of the deadline. Therefore, it is respectfully submitted that missing the deadline  
24 was the result of excusable neglect.

25 This Supplement is verified by the undersigned and is supported by the  
26 Affidavit of Nancy O'Leary, legal secretary for the undersigned.

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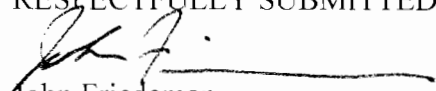
1 The undersigned has an absolute rule in my office that all deadlines must be  
2 calendared. In the past I have tried computer calendars, but over my 37 years of practice the  
3 best approach has been a calendar kept at my secretary's desk. It is routinely reviewed by me  
4 several times each day. Nancy O'Leary has been my secretary (and only office employee), for  
5 about 20 years and I can recall only one instance near the beginning of her tenure in which a  
6 deadline was not calendared. I believe this simple system has worked well because I am a  
7 sole practitioner and Nancy and I are able to review the calendar daily.

8 Although scheduling orders should always be followed, there are instances  
9 where the failure to meet a deadline is understandable and extending the deadline will not  
10 seriously impact the litigation. This is such a case. In addition, there are strong equitable  
11 reasons to permit the filing of Defendant Exeter's Cross-Motion for Summary Judgment,  
12 because it will be the Defendant's only opportunity for a ruling on the merits. It is recognized  
13 that procedural safeguards make it difficult to prevail on on a motion for summary judgment,  
14 but even a slim chance would be better than none.

15 The statements in this Supplement do not contradict the statements in the  
16 Motion to Extend the Time to Permit a Cross-Motion for Summary Judgment by Defendant  
17 Exeter Trinity Properties, L.L.C. The undersigned had not expected the Plaintiff to file its  
18 Motion for Summary Judgment on the last day, and had expected to have enough time to file a  
19 timely cross-motion for Exeter. Also, from the parties' prior dealings, a stipulation to file a  
20 cross-motion for summary judgment was anticipated by the undersigned, notwithstanding the  
21 deadline.

22 Dated: December 23, 2011.

23 RESPECTFULLY SUBMITTED,

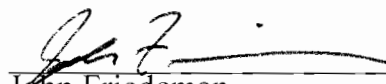
24   
25 John Friedeman  
26 5103 E. Thomas Road  
Phoenix, AZ 85018  
Attorney for Exeter Trinity Properties, LLC

1 STATE OF ARIZONA )  
2 County of Maricopa ) ss. VERIFICATION

3 I, John Friedeman, being first duly sworn upon my oath, depose and state:

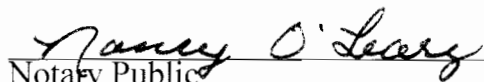
4 I have read the foregoing Supplement to Motion to Extend the Time to Permit a  
5 Cross-motion for Summary Judgment by Defendant Exeter Trinity Properties, L.L.C., and  
6 know the contents thereof to be true and correct to the best of my knowledge, except matters  
7 alleged upon information and belief, and those matters I believe to be true.

8 DATED this 23 day of Dec., 2011.

9  
10   
John Friedeman

11 SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of  
12 December, 2011, by John Friedeman.

13 My Commission Expires:

14   
Notary Public



15 NANCY O'LEARY  
16 Notary Public - Arizona  
17 Maricopa County  
18 Expires on 05/13/2015

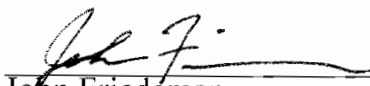
19 CERTIFICATE OF SERVICE

20 I HEREBY CERTIFY that on this December 22, 2011, I electronically filed the  
21 foregoing with the Clerk of Court and served the following attorney of record using the  
22 CM/ECF system:

23 Charles M. Duffy  
24 P.O. Box 683  
25 Ben Franklin Station  
26 Washington, D.C. 20044-0683

I further certify that on the same day I mailed by U.S. Postal Service the  
foregoing to the following party who is not represented by counsel.

Eileen Lipari  
156 Johnson Hill Drive  
Waynesville, NC 28786  
Defendant, pro per

  
John Friedeman

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 6 Attorney for Exeter Trinity Properties

7 **IN THE UNITED STATES DISTRICT COURT**  
 8 **DISTRICT OF ARIZONA**

7 UNITED STATES OF AMERICA. 8 Plaintiffs, 9 vs. 10 JOSEPH J. LIPARI, EILEEN H. LIPARI 11 and EXETER TRINITY PROPERTIES. 12 L.L.C., Defendants.	No. 3:10-CV-08142 JWS  AFFIDAVIT OF NANCY O'LEARY  Honorable John W. Sedwick
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13 STATE OF ARIZONA     )  
 14 County of Maricopa    ) ss.

15 I, Nancy O'Leary, being first duly sworn upon my oath, depose and state:

16 1. I make this affidavit of my personal knowledge.

17 2. I am the secretary for John Friedeman and have been his secretary for about  
 18 20 years.

19 3. One of my duties is to calendar all deadlines. In addition, all deadlines that  
 20 require preparation, such as motions and pleadings, receive advance tickles.

21 4. We use one calendar which is kept at my desk and Mr. Friedeman and I refer  
 22 to it frequently during each day.

23 5. Mr. Friedeman has advised me that the stipulation by which the deadline for  
 24 dispositive motions was set for December 1, 2011, is #35 in the Court docket. That document  
 25 would have been copied for the Defendants Lipari and mailed out by me, yet the deadline was  
 26 not entered in our calendar, nor were there any advance tickles.

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1 6. Mr. Friedeman is insistent that all deadlines be entered in the calendar,  
2 almost to the point of fanatical. Thus, I pay particular attention to everything that crosses my  
3 desk to make sure all deadlines are noted in the calendar. I can recall only one time when  
4 something was not calendared, and I believe that was over 15 years ago.

5 7. I have no explanation for why I did not enter the deadline of December 1,  
6 2011, in Mr. Friedeman's calendar. Because I mailed the stipulation, Mr. Friedeman is  
7 correct in believing that under standard office practice it would have been calendared.

8 FURTHER AFFIANT SAYETH NOT.

9 DATED this 23<sup>rd</sup> day of December, 2011.

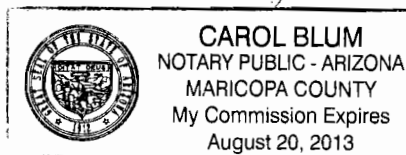
10  
11 Nancy O'Leary  
Nancy O'Leary

12 SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of Dec,  
13 2011, by Nancy O'Leary.

14 My Commission Expires:

8/20/2013

15 Carol Blum  
Notary Public



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