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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	Z DEPUTY

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

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JAMES LESLIE READING, CLARE LOUISE
 14 READING, FOX GROUP TRUST
 MIDFIRST BANK, CHASE, FINANCIAL
 LEGAL SERVICES, and STATE OF
 ARIZONA,

15 Defendants.

Civil Number: 2:11-CV-00698-FJM

**DEFENDANTS MOTION TO
 MODIFY RULE 16
 SCHEDULING DEADLINES
 and
 MOTION TO EXTEND TIME
 TO COMPLETE BRIEFING
 SCHEDULE**

**(Expedited Oral Argument
 Requested)**

17 Defendants James Leslie Reading and Clare Louise Reading and Fox Group Trust,
 18 in order to allow sufficient time to for Defendants to obtain a copy of their legal file from
 19 deceased counsel's out-of-state office and to retain new counsel after the unexpected death
 20 of Tom Cryer on June 4, 2012, request a modification of this Court's Rule 16 Scheduling
 21 Order (Dkt. 22¹), specifically, all deadlines subsequent to June 4, 2012. It is Defendants'
 22 position that obligations set by the Rule 16 Order cannot be performed within the time
 23 prescribed.

24 Moreover, in addition to the deadlines set forth in the Rule 16 Scheduling Order,
 25 Defendants' recently deceased attorney had filed a Motion to Dismiss Complainant's
 26 Seventh Claim on Behalf of James Leslie Reading, Clare L. Reading and Fox Group Trust

27
 28 ¹ References to the record will be identified by the Docket Number that appears on the
 Clerk's Index.

1 (Dkt. 50) to which plaintiffs filed their response on May 23, 2012 (Dkt. 67). Under
2 Federal Rules of Civil Procedure, Defendants should have had an opportunity to file a
3 reply supporting their motion, which it is believed, would have been due on or before June
4 4, 2012, the day of Mr. Cryer's death. Before Mr. Cryer passed, it is Defendants' belief
5 that Mr. Cryer was in the process of preparing such a reply in support of that motion.

6 Furthermore, A separate motion to extend the deadline for Defendants' response to
7 Plaintiff's Motion for Summary Judgment (and related documents) (Dkt. 52 through Dkt.
8 65) has been filed under separate cover and is incorporated as if fully restated herein.

9 This motion is supported by the following memorandum of points and authorities.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 "A [Rule 16] Schedule may be modified only for good cause and with the judge's
12 consent." Federal Rules of Civil Procedure, rule 16(b)(4).

13 **I. GOOD CAUSE**

14 Rule 16(b)'s "good cause" standard primarily considers the diligence of the party
15 seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir.
16 1992). The district court may modify the pretrial schedule "if it cannot reasonably be met
17 despite the diligence of the party seeking the extension." Fed. R.Civ.P. 16 advisory
18 committee's notes (1983 amendment); *Harrison Beverage Co. v. Dribeck Importers, Inc.*,
19 133 F.R.D. 463, 469 (D.N.J.1990); *Amcast Indus. Corp. v. Detrex Corp.*, 132 F.R.D. 213,
20 217 (N.D.Ind.1990); *Forstmann*, 114 F.R.D. at 85; 6A Wright, Miller & Kane, *Federal*
21 *Practice and Procedure* § 1522.1 at 231 (2d ed. 1990) ("good cause" means scheduling
22 deadlines cannot be met despite party's diligence).

23 Defendants assert that the unexpected death of counsel and friend, Tom Cryer meets
24 the burden of "good cause" under rule 16 in that Defendants cannot possibly meet the
25 deadlines and requirements set forth in this Court's Rule 16 Scheduling Order, without
26 obtaining their physical file currently located in Louisiana and retaining substitute counsel.

27 **II. EXTRAORDINARY CIRCUMSTANCES**

28 In addition, Defendants feel that the unexpected death of their counsel and friend,

1 Tom Cryer, has resulted in extraordinary circumstances for which Defendants request
 2 consideration of the extension of deadlines in this Court's Rule 16 Scheduling Order and
 3 in the briefing schedule of all outstanding motions.

4 Courts do not often define "extraordinary circumstances" but it is clear that it is not
 5 intended to be a less rigorous standard than good cause. The words belie that possibility. . .
 6 . . . were it a lesser standard, a party would, in effect, be able to obtain an amendment
 7 without a showing of good cause. That would violate the spirit of Rule 16 itself. . . . Thus,
 8 as a practical matter, extraordinary circumstances is a close correlate of good cause.
 9 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604 (9th Cir. 1992). Citing Parkway
 10 Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc., 116 F.R.D. 363, 365-
 11 66 (M.D.N.C.1987) ("Good cause" shown when there are "extenuating circumstances.").

12 We consistently have refused to "set out any specific set of
 13 circumstances that ... qualify as 'extraordinary,' 'unique' or 'compelling'".
 14 Park v. Strick, 137 Ariz. 100, 105, 669 P.2d 78, 83 (1983); accord Davis,
 15 143 Ariz. at 59, 691 P.2d at 1087. We have left this determination to the
 16 sound discretion of our trial courts to be resolved on a case-by-case basis.
 17 Davis, 143 Ariz. at 59, 691 P.2d at 1087; Bickerstaff, 141 Ariz. at 633, 688
 18 P.2d at 641. Trial court discretion, however, is not unlimited. The trial court
 19 may not "misapply law or legal principle[s]," act "arbitrarily or inequitably,
 20 nor ... make decisions unsupported by facts or sound legal policy.

21 Gorman v. City of Phoenix, 152 Ariz. 179, 731 P.2d 74 Citing, City of Phoenix v. Geyler,
 22 144 Ariz. 323, 328-29, 697 P.2d 1073, 1078-79 (1985).

23 It is Defendants' position that the unexpected death of counsel and friend, Tom
 24 Cryer, is an extraordinary circumstance that merits this Court's discretionary extension of
 25 the deadlines set forth in its Rule 16 Scheduling Order, any subsequent orders, and the
 26 briefing schedule of any and all outstanding motions.

27 **III. CONCLUSION**

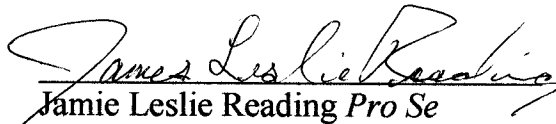
28 Defendants are not oblivious to the fact that courts are inundated with civil and
 criminal cases and that calendar management techniques such as those comprised under
 Rule 16, are an important mechanism in the controlling of court cases.

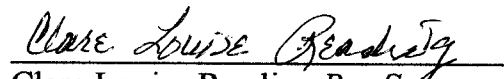
Defendants are also aware that a court's scheduling order "is not a frivolous piece of
 paper, idly entered, which can be cavalierly disregarded by counsel without peril."

1 Gestetner Corp., 108 F.R.D. at 141 and that same is used by the court to control its docket,
2 and keep the agreed-upon course of the litigation. Forstmann, 114 F.R.D. at 85; Financial
3 Holding Corp., 127 F.R.D. at 166; *see also* Riofrio Anda v. Ralston Purina Co., 959 F.2d
4 1149, 1155 (1st Cir.1992). Therefore, Defendants' request does not come lightly, but only
5 at the unexpected death of their counsel and friend, Mr. Cryer, who not only represented
6 Defendants in his office out-of-state, but agreed to represent Defendants on a *pro bono*
7 basis. So not only will Mr. Cryer's "shoes" be difficult to fill, Defendants will have
8 difficulty coming up with the funds to retain new counsel.

9 Therefore, Defendants request that this court grant an extension of all remaining
10 deadlines contained in the Rule 16 Scheduling Order, an extension for Defendants to
11 prepare a reply to the motion to dismiss and (as included under separate motion), an
12 extension to file their response to plaintiff's motion for summary judgment (and affiliated
13 documents); and that any and all oral arguments set as requested in any remaining motions
14 be scheduled after defendants retain substitute counsel.

15 RESPECTFULLY SUBMITTED this 27th day of June, 2012.

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Clare Reading

From: Terry I. Major [tmajor@greytechs.com]
Sent: Wednesday, June 27, 2012 10:43 AM
To: Clare Reading
Subject: Motion to Extend Rule 16 Scheduling Order

Clare,

I have reviewed the motion you have written to request of the court that the Rule 16 Scheduling Order be extended.

It is Fox Group Trust's position that any extensions of time that the Trust can obtain will be beneficial in that the loss of our attorney at this juncture in the case has been devastating! Thus, we would have no objection to your motion and would concur in the request.

Since you are placing the motion, we will not duplicate such a request with a motion of our own.

This email may be attached to your motion to notice the court that Fox Group Trust is in concurrence with this request.

In the interest of justice, additional time is definitely needed to seek counsel and to prepare for trial.

Terry I. Major, Trustee
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **DEFENDANTS MOTION TO MODIFY RULE 16 SCHEDULING DEADLINES and MOTION TO EXTEND TIME TO COMPLETE BRIEFING SCHEDULE** has been made this 27th day of June 2012, by depositing the original to the Clerk of Court and a copy for Judge Martone by Certified Mail # 7010 0290 0002 7944 6063, and one copy thereof in the United States Mail in a postage prepaid envelope addressed to:

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