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| DISTRICT COURT, DENVER COUNTY, COLORADO  DATE  Denver County Court FILIN  1437 Bannock St., Room 256 CASE  Denver, CO 80202  (720) 865-8301  Plaintiffs: ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a Colorado limited liability company;  v.  Defendants: SHAWN BEESON | FILED: January 6, 2017 4:33 PM G ID: BFED654E430FC NUMBER: 2015CV31709  **COURT USE ONLY** |
| Attorneys for Plaintiffs: Nathan Silver  Silver Law Firm, LLC  700 17th Street, Suite 650  Denver, Colorado 80202  Phone: (303) 328-8510  E-m[ail: nathan@silverlawdenver.com](mailto:nathan@silverlawdenver.com) Atty. Reg. # 28836  ABRAMS & ASSOCIATES, LLC  Robert Abrams, Atty. Reg. # 37950 700 17th St., Suite 650  Denver, CO 80202  Phone #: (303) 322-4115  Fax #: (303) 333-0708  E-mail: [Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net) | Case Number: 2015CV31709  Division: 275 |
| **PLAINTIFFS’ MOTION FOR ENLARGEMENT OF TIME TO DISCLOSE EXPERT WITNESS PURSUANT TO C.R.C.P. 6** | |

COMES NOW, Plaintiffs, Robert Abrams and Abrams & Associates, LLC, through their attorneys at Silver Law Firm, LLC and hereby submit their Motion for Enlargement of Time to Disclose Expert Witness, Pursuant to C.R.C.P. 6. In support thereof, Plaintiffs state and allege as follows:

C.R.C.P. 121 § 1-15(8) Certification. Counsel for the plaintiffs contacted defendant concerning the Defendant’s position with respect to this Motion. Defendant’s counsel is opposed to the relief requested herein.

# INTRODUCTION

1. Trial in this matter is set for May 1, 2017.
2. On December 30, 2016, the Court ordered new deadlines for discovery on the limited issue of future damages pertaining to defendant’s shoulder, arising out of Defendant’s claim of battery, in light of the continued trial date. Prior to this ruling, Plaintiffs believed that discovery had already closed in the matter, by the prior court’s orders in the two prior to hearings of April 29 and May 20, 2016. *See hearing transcripts.*
3. Pursuant to the aforementioned Order, Plaintiffs must disclose their expert witness by January 23, 2017.
4. Pursuant to the same Order, the parties have until February 6, 2017 to serve written discovery. The limited discovery shall close on March 13, 2016.
5. Plaintiffs respectfully request the Court extend their deadline to disclose their expert until after they are able to receive their discovery responses. Plaintiffs’ expert is anticipated to testify only within that limited scope of discovery currently open and in rebuttal of Defendant’s expert, but cannot adequately select an expert and generate an expert report necessary to defend against Defendant’s claim in this matter until their discovery responses are received.
6. Specifically, Plaintiff cannot be expected to designate an expert on such short notice with no discovery on Defendant’s pre-existing conditions, a topic on which Plaintiffs believed discovery had closed until the Court’s order of December 30, 2016. Plaintiffs are well aware of defendant’s preexisting conditions, as to shoulder and back injuries, which remain undisclosed in this matter.
7. The relief requested herein will not prejudice any party to this action, is necessary for Plaintiffs to accurately and completely rebut Defendant’s expert testimony, and is authorized under C.R.C.P. Rule 6. Further, the relief requested herein is the only way to avoid prejudice to Plaintiffs.

# LEGAL AUTHORITY

1. C.R.C.P. Rule 6 gives this Court the authority to enlarge time for good cause shown and otherwise within the Court’s discretion. “[T]he court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period to permit the act to be done where the failure to act was the result of excusable neglect.” C.R.C.P. 6(b). Here, because plaintiffs’ expert is due before they have evidence from defendant to review, the timing of plaintiffs’ expert is moot. The expert would have no prior medical records to base his opinion.

# ARGUMENT

1. On December 30, 2016, the Court ordered new deadlines for discovery on the limited issue of future damages to defendant’s shoulder, arising out of Defendant’s claim of battery, in light of the continued trial date.
2. Pursuant to the aforementioned Order, Plaintiffs must disclose their expert witness by January 23, 2017. Pursuant to the same Order, the parties shall have until February 6, 2017 to serve written discovery. The limited discovery shall close on March 13, 2016.
3. Plaintiffs respectfully request the Court extend its deadline to disclose their expert until after the close of discovery, as Plaintiffs expert is anticipated to testify only within that limited scope of discovery currently open and in rebuttal of Defendant’s expert.
4. To force Plaintiffs to disclose their expert prior to the date they are able to receive discovery responses puts Plaintiffs at a prejudicial disadvantage in litigation. Plaintiffs’ expert would not be able to fully form his rebuttal opinion by January 23, 2017, when Defendant could disclose additional medical records and other information necessary for an accurate rebuttal well after Plaintiffs’ expert would be required to disclose his report.
5. Further, Plaintiffs understanding from the prior judges Orders stated at the April 29 and May 20 hearings, was discovery had closed except for the issue of future damages relating to Defendant’s alleged shoulder injury. Plaintiffs did not serve discovery requests on Defendant relating to pre-existing shoulder injuries or back injuries because defendant never endorsed an expert witness, until right now, to talk about defendant’s alleged medical claims.
6. The Court’s order of December 30, 2016, clarified that discovery was to be open to Plaintiffs on that issue. Further, defendant put into evidence an M.R.I. claiming damages from his preexisting back injury and plaintiffs should be able to inquire about those injuries in the event defendant claims those damages in the instant matter.
7. Plaintiff cannot be expected to designate an expert on such short notice with no discovery on Defendant’s pre-existing conditions, a topic on which Plaintiffs believed discovery had closed until the Court’s order of December 30, 2016.
8. Plaintiffs anticipate serving discovery requests on Defendant relating to his pre- existing conditions forthwith, the responses to which would not be due until after Plaintiffs’ expert disclosure deadline. Plaintiffs need Defendant’s discovery responses to determine both who their expert should be and about which issues he should generate a report. It is impossible for Plaintiffs’ expert to create a report without discovery having been completed on defendant’s pre-existing conditions.
9. As such, the current deadline for expert disclosures is impractical and prejudicial to Plaintiffs’ ability to adequately address Defendant’s claim. Plaintiffs respectfully request the Court grant this Motion for Extension to allow Plaintiffs additional time to serve, receive, and evaluate discovery and subsequently disclose their expert and his report.
10. The relief requested herein will not prejudice any party to this action, is necessary for Plaintiffs to accurately and completely address Defendant’s claims and rebut Defendant’s expert testimony, and is authorized under C.R.C.P. Rule 6. Further, the relief requested herein is the only way to avoid prejudice to Plaintiffs.

WHEREFORE, Plaintiffs Robert Abrams and Abrams & Associates, LLC, respectfully request this Court enter an order granting Plaintiffs two weeks after the close of discovery or until March 27, 2017, to disclose their expert witness and report thereto.

RESPECTFULLY SUBMITTED this 6th day of January, 2017.

SILVER LAW FIRM

*/s/ Nathan Silver*

Nathan Silver, Attorney for Plaintiffs

*(Original signature on file at Silver Law Firm, LLC pursuant to C.R.C.P. 121§ 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 6th day of January, 2017, via ICCES, served a true and correct copy of the foregoing PLAINTIFF’S MOTION FOR ENLARGEMENT OF TIME TO DISCLOSE EXPERT WITNESS, PURSUANT TO C.R.C.P. 6 upon:

Wadi Muhaisen

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Michael A. Gubiotti*

Michael A. Gubiotti, Law Clerk

*(Original signature on file at Silver Law Firm, LLC pursuant to C.R.C.P. 121§ 1-26)*