December 2014, Plaintiff ***timely*** propounded this written discovery. *See* December 18, 2014 Scheduling Order at ¶ 5. Request for Production/Inspection No. 1 ("RFI 1") sought the inspection of [redacted] electronic devices. On June 29, 2015, Plaintiff received [redacted] responses to the outstanding discovery; however, [redacted] did not respond to RFI 1, opting instead to interpose a number of inapplicable and inappropriate boilerplate objections. *See* **Exhibit "A"** hereto. On July 29, 2015, Plaintiff's counsel ***timely*** delivered a "meet and confer" letter to [redacted] explaining the deficiencies in his discovery responses, asking him to, among other things, withdraw his objections to RFI 1 and comply with the request. *See* Exhibit "A" to Certificate of Moving Counsel re: Good Faith Efforts to Resolve Discovery Dispute at 5. In addition, Plaintiff's counsel ***timely*** set forth the contemplated protocol for imaging and accessing information on [redacted] electronic devices and even offered to "have the protocol in-place by court order prior to having the electronic devices imaged." *Id.* [redacted] did not respond and Plaintiff filed his Motion to Compel.

In resolving the Motion to Compel, the Court first suggested that Plaintiff should have brought [redacted] lack of responses "to the Court's attention no later than two weeks of receiving the responses." Ruling at 2. Respectfully, neither the Rules of Civil Procedure nor the scheduling order in this case establishes any such two-week deadline, even when the discovery cutoff is rapidly approaching. Nor do they take into account other outside factors, including other unrelated cases that Plaintiff's counsel was involved in at the time that prevented compliance with the Court's arbitrarily established two-week deadline. Indeed, until Plaintiff had complied with Rules 26(g) and 37(a)(2)(C), had given [redacted] an opportunity to remedy his discovery deficiencies, and [redacted] failed or refused to do so, Plaintiff was not entitled to bring any discovery issue to the Court's attention.[2]

[2] For example, had Plaintiff ***timely*** propounded discovery on May 29, 2015, as permitted by the scheduling order, the responses would not have even been due until July 13, 2015, leaving a little more than two weeks to satisfy Rules 26(g) and 37(a)(2)(C), Ariz. R. Civ. P., then file a motion to compel if efforts to obtain the discovery were unsuccessful, in order to meet the discovery cutoff date. The scheduling issues in this case clearly are the

See Ariz. R. Civ. P. 26(g) ("No discovery motion will be considered or scheduled" until efforts to resolve the discovery dispute have failed). For the Court to impose, ex post facto, an unwritten "two-week rule," without notice that such time limits would be enforced, violates Plaintiff's due process and warrants reconsideration in this matter.

Further, the timing issues dovetail with the Court's resolution of the issues concerning RFI 1. The Court sustained [redacted] objection to RFI 1 on two grounds: first, the Court found that RFI 1, as written, is overly broad and burdensome, and second, that Mr. [redacted] waited too long to demand inspection of [redacted] electronic devices because the disclosure deadline for expert reports had passed and, thus, the information would not be relevant.[3] Plaintiff respectfully disagrees with the Court's opinion concerning the relevance of an inspection of [redacted] electronic devices. Although Plaintiff was trying to be comprehensive with his RFI, if RFI 1 is overly broad and burdensome, the Court has broad discretion to limit the requested discovery. *E.g.,* Ariz. R. Civ. P. 26(b)(1)(C)(iii); 26(c)(1). As indicated in RFI 1 itself, however, [redacted] has admitted to having two desktop computers and one laptop computer, and he admitted in his response to RFI 1 that he has one smart phone and one USB device. *See* Exhibit "A" at 4:3-4. Given that this is a computer-related/Internet-related tort case, these devices may contain information that is either relevant or lead to admissible evidence directly or circumstantially establishing identity, motive, common plan or scheme, etc., under Rule 404(b), Ariz. R. Evid.

As to the second reason for sustaining [redacted] objection—i.e., the information is not relevant because the "expert reports" deadline has passed—the demand to inspect and image [redacted] electronic devices is ***not*** related to the need for any expert report[4] or even

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result of lack of familiarity with the mechanics of the new scheduling rules and the virtual gutting of Rule 38.1, Ariz. R. Civ. P.

[3] Hindsight is 20/20 and, admittedly, the deadline for disclosing areas of expert testimony and opinions was, by the agreement of Mr. [redacted] then-counsel too early in this case.

[4] It is important to note that neither Rule 16(b)(2), Rule 26.1(a), nor the scheduling order require the preparation of expert witness reports.