

DISTRICT COURT OF ADAMS COUNTY, STATE OF COLORADO 1100 Judicial Center Drive Brighton, CO 80601	<p style="text-align: right;"> <small>DATE FILED</small> <small>January 15, 2025 3:35 PM</small> <small>FILED ID: CDDC33813A708</small> <small>CASE NUMBER: 2023CV30537</small> </p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p> <i>Plaintiffs: Edie Apke et al, derivatively on behalf of Todd Creek Farms Homeowners' Association, a Colorado nonprofit corporation</i> </p> <p>v.</p> <p> <i>Defendants: TODD CREEK FARMS HOMEOWNERS' ASSOCIATION, a Colorado nonprofit corporation; Jason Pardikes, in their official capacity as Director of Todd Creek Farms Homeowners' Association; Wendi Setchfield, in their official capacity as Director of Todd Creek Farms Homeowners' Association; Maryjo Montoya, in their official capacity as Director of Todd Creek Farms Homeowners' Association; Ben Cooper, in their official capacity as Director of Todd Creek Farms Homeowners' Association; Sean Holdren, in their official capacity as Director of Todd Creek Farms Homeowners' Association.</i> </p>	
ROBINSON & HENRY, P.C. Peter L. Towsky, #55556 Boyd A. Rolfson, #40035 Joseph P. Sanchez, #20975 1805 Shea Center Drive, #180 Highlands Ranch, CO 80129 P: 303-688-0944 F: 303-284-2942 peter@robinsonandhenry.com boyd@robinsonandhenry.com joseph.sanchez@robinsonandhenry.com <i>Attorneys for Plaintiffs</i>	<p style="text-align: center;">Case Number: 2023CV30537</p> <p style="text-align: center;">Division: C</p>
PLAINTIFFS' FORTHWITH MOTION TO CONTINUE TRIAL AND RESET DEADLINES	

Plaintiffs, by and through their attorneys, Robinson & Henry, P.C., hereby file the following Forthwith Motion to Continue Trial and Reset Deadlines (“Motion”). In support thereof, Plaintiffs state as follows:

CERTIFICATION of C.R.C.P. 121, § 1-15(8) COMPLIANCE

Undersigned counsel certifies pursuant to C.R.C.P. 121 § 1-15(8) that he has conferred with counsel for all Defendants regarding the relief requested in this motion and Defendants' do not oppose the requested relief. However, Defendants do contest the stated basis for the requested relief.

RELIEF REQUESTED

Plaintiffs respectfully request that this Court continue the 6-day trial in this matter, which is scheduled to commence on April 28, 2025, and request a new Case Management Order be required and new deadlines be set. Good cause exists for the requested relief, and substantial justice can only be achieved if Plaintiffs are granted such reprieve.

BRIEF PROCEDURAL HISTORY

The lawsuit was filed on April 14, 2023, and was at issue on February 20, 2024. On November 15, 2024, Defendants filed a motion for summary judgment, and a motion to stay discovery. Plaintiffs' filed their response in opposition to the motions for summary judgment and motions to stay discovery on December 6, 2024, and Defendants filed their replies in support of the motions to stay discovery on December 12, 2024. On December 20, 2024, Defendants filed their replies in support of the motion for summary judgment. The motions to stay discovery and motions for summary judgment have all been fully briefed and pending for the Court's ruling.

Prior to the Defendants' filing their motions to stay discovery, Plaintiffs served all of the Defendants written discovery requests on October 10, 2024. Defendants' responses to Plaintiffs' written discovery requests were due on or before November 14, 2024, one day before Defendants

filed their motions to stay discovery. Despite requests being made from Plaintiffs counsel to Defense counsel, Defendants have refused to provide responses to Plaintiffs' written discovery requests, arguing that the filing of Defendants' motion to stay discovery negated their requirement to comply with Plaintiffs' written discovery requests.

MOTION

Continuances should be granted for good cause. C.R.C.P. 121 § 1-11. "The decision to grant or deny a continuance lies within the sound discretion of the trial court and will not be set aside on appeal absent a clear abuse of that discretion." *Bithell v. W. Care Corp.*, 762 P.2d 708, 711 (Colo. App. 1988) (citing *Butler v. Farner*, 704 P.2d 853 (Colo. 1985)). When making the decision to grant or deny a motion for continuance, "the trial court should consider the circumstances of the particular case, weighing the right of the party requesting the continuance to a fair hearing against the prejudice that may result from delay." *Id.*

A "trial court's legitimate concern for the prevention of delay in the trial of cases should not prejudice the substantial rights of parties by forcing them to go to trial without being able to fairly present their case." *Gonzales v. Harris*, 542 P.2d 842, 844 (Colo. 1975); see *Lane v. Gooding*, 166 P. 245, 246 (Colo. 1917). This is particularly true when "[t]he entire record, taken as a whole, fairly indicates that the continuance was not sought for the purpose of hindrance or delay." *Lane*, 166 P. at 246.

Here there is good cause for continuing the trial and requiring a reset of the Case Management Order deadlines. This case has literally been stayed pending the Court's ruling on the motions for summary judgment and motions to stay discovery. As a result, Plaintiffs have been unable to take any action to prosecute their claims since Defendants filed their motions on November 15, 2024. To date, two months of inactivity have been forced upon Plaintiffs because

the Defendants have refused to engage in any type of discovery until the Court issues its rulings. This inactivity makes it impossible for the Plaintiffs to obtain necessary discovery to obtain an expert report and comply with the current expert disclosure requirements; engage in meaningful mediation as required by court order; or obtain evidence through discovery to support their potential dispositive motions before the current deadline.

The request made by this motion is not made to delay this lawsuit and will not prejudice the other parties, since Defendants do not oppose the relief being requested. *Lane*, 166 P. at 246. Moreover, allowing a reset of the Case Management Order deadlines will not prejudice the Defendants, particularly where they have already requested a stay of discovery and have filed their dispositive motions. Plaintiffs on the other hand stand to be substantially prejudiced as stated above. When deciding whether to grant a motion to continue a trial, the court shall consider the circumstances of the particular case and weigh the rights of the party requesting the continuance against the prejudice that may result from any delay. *Bighell v. Western Care Corp.*, 762 P.2d 708, 711 (Colo. App. 1988).

CONCLUSION

Good cause exists to grant the relief requested in this Motion. Defendants cannot point to any real prejudice in continuing the trial and resetting the Case Management Order deadlines, particularly where it is amenable to the other relief requested in the Defendants' motions to stay discovery. Defendants' decision to oppose this Motion is a strategic move only.

Plaintiffs, however, stand to be severely prejudiced if the full relief requested in this Motion is not granted. Due to no fault of their own, Plaintiffs are left without the ability to continue meaningful discovery, and no expert testimony to prove their case three months prior to trial.

WHEREFORE, Plaintiffs respectfully ask the Court for a continuance of the trial in this case and require the parties to submit a revised Case Management Order with new expert, discovery and dispositive motions deadlines.

Dated: January 15, 2025

Respectfully submitted,

ROBINSON & HENRY, P.C.

/s/ Joseph P. Sanchez

Joseph P. Sanchez, Esq. #20975

Peter L. Towsky, Esq., #55556

Boyd A. Rolfson, Esq., #40035

1805 Shea Center Drive, Suite 180

Highlands Ranch, CO 80129

D: (720) 541-9247

O: (303) 688-0944

joseph.sanchez@robinsonandhenry.com

peter@robinsonandhenry.com

boyd@robinsonandhenry.com

Attorneys for Plaintiffs Edie Apke, et al

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 15, 2025, a copy of the **PLAINTIFFS' MOTION TO CONTINUE TRIAL AND RESET DEADLINES** was filed with the Court via Colorado Court E-Filing System, and served to the following parties:

ORTEN CAVANAGH HOLMES & HUNT LLC

Jonah G. Hunt, #34379
Marcus T. Wile, #49471
1445 Market Street, Suite 350
Denver, CO 80202
JHunt@ochhoalaw.com
MWile@ochoalaw.com

JACHIMIAK PETERSON KUMMER LLC

Joseph R. Kummer, No. 39984
Chrysovalantou G. Hoppe, No. 44218
Taylor A. Clapp, No. 52800
860 Tabor Street, Suite 200
Lakewood, Colorado, 80401
jkummer@jpk.law
choppe@jpk.law
taclapp@jpk.law

ROBINSON & HENRY, P.C.

By: /s/ Joyce M. Vigil
Joyce M. Vigil | Senior Paralegal

Pursuant to C.R.C.P. 121 a true and correct copy of the foregoing with original or scanned signatures is maintained at the offices of Robinson & Henry, P.C. and will be made available for inspection or review upon request.