

1 Kathleen E. Brody
Molly Brizgys
2 **ACLU Foundation of Arizona**
3707 North 7th Street, Suite 235
3 Phoenix, AZ 85014
Phone: 602-650-1854
4 kbrody@acluaz.org
mbrizgys@acluaz.org

5 Joshua A. Block
6 Leslie Cooper
American Civil Liberties Union Foundation
7 125 Broad Street, Floor 18
New York, NY 10004
8 Phone: (212) 549-2650
jblock@aclu.org
9 lcooper@aclu.org

10 James Burr Shields
Heather A. Macre
11 Natalie B. Virden
Aiken Schenk Hawkins & Ricciardi P.C.
12 2390 East Camelback Road, Suite 400
Phoenix, AZ 85016
13 Phone: (602) 248-8203
burr@aikenschenk.com
14 ham@aikenschnek.com
nbv@aikenschenk.com
15 *Attorneys for Plaintiff*

16 C. Christine Burns #017108
Kathryn Hackett King #024698
17 Sarah N. O'Keefe #030131
BURNSBARTON PLC
18 2201 E. Camelback Rd.
Suite 360
19 Phoenix, AZ 85016
Phone: (602) 753-4500
20 christine@burnsbarton.com
kate@burnsbarton.com
21 *Attorneys for Defendants State of Arizona,*
Gilbert Davidson, and Paul Shannon

22
23 IN THE UNITED STATES DISTRICT COURT
24 FOR THE DISTRICT OF ARIZONA

25
26 **Russell B. Toomey,**
Plaintiff,

27 v.

28 **State of Arizona; Arizona Board of**

Case No. CV-19-00035-TUC-RM (LCK)

Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as Chair of the Arizona Board of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson**, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

**JOINT MOTION AND
STIPULATION TO STAY BRIEFING
ON PLAINTIFF’S MOTION FOR
CLASS CERTIFICATION PENDING
RULING ON DEFENDANTS’
MOTION TO DISMISS**

Plaintiff Russell Toomey (“Plaintiff”) and Defendants State of Arizona, Arizona Board of Regents d/b/a University of Arizona, Ron Shoopman, Larry Penley, Ram Krishna, Bill Ridenour, Lyndel Manson, Karrin Taylor Robson, Jay Heiler, Fred Duval, Gilbert Davidson, and Paul Shannon (collectively “Defendants”) stipulate and jointly move the Court to stay briefing on Plaintiff’s Motion for Class Certification (Dkt. 28). Currently pending before the Court is Defendants State of Arizona, Gilbert Davidson, and Paul Shannon’s Motion to Dismiss the Complaint pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6) (Dkt. 24), which may be dispositive of Plaintiff’s claims. The Motion to Dismiss is not fully briefed with Plaintiff’s response due on May 1, 2017 (Dkt. 27). Because a decision on the merits may render all class certification issues moot, the Court may properly refuse to consider motions for class certification and related discovery until the dispositive motion has been resolved. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir.

1 1997) (holding that “in some cases, it may be appropriate in the interest of judicial
2 economy to resolve a motion for summary judgment or motion to dismiss prior to ruling
3 on class certification). *Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984) (same).
4 Accordingly, in the interest of judicial economy, the Parties respectfully request that this
5 Court stay the briefing of the Motion for Class Certification until it rules on the Motion to
6 Dismiss. The Parties further stipulate and agree that if the Court denies the Motion to
7 Dismiss, they will submit to the Court a joint proposed discovery and briefing schedule
8 with respect to Plaintiff’s Motion for Class Certification within ten (10) days of the ruling
9 on the Motion to Dismiss.

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11 A proposed form of order consistent with the relief requested is attached.

12 RESPECTFULLY SUBMITTED this 18th day of April, 2019.

13 **BURNSBARTON PLC**

14
15 By /s/ C. Christine Burns
16 C. Christine Burns
17 Kathryn Hackett King
18 Sarah N. O’Keefe

19 **ACLU FOUNDATION OF ARIZONA**

20 By /s/ Kathleen G. Brody (w/permission)
21 Kathleen G. Brody
22 Molly Brizgys

23 **AMERICAN CIVIL LIBERTIES UNION
24 FOUNDATION**

25 By /s/ Joshua A. Block (w/permission)
26 Joshua A. Block
27 Leslie Cooper

28 **AIKEN SCHENK HAWKINS & RICCIARDI P.C.**

By /s/ James Burr Shields (w/permission)
James Burr Shields
Heather A. Macre
Natalie B. Virden

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2019, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants.

A COPY was also e-mailed on this 18th day of April, 2019, to:

Kathleen E. Brody
Molly Brizgys
ACLU Foundation of Arizona
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
kbrody@acluaz.org
mbrizgys@acluaz.org

Joshua A. Block
Leslie Cooper
American Civil Liberties Union Foundation
125 Broad Street, Floor 18
New York, NY 10004
jblock@aclu.org
lcooper@aclu.org

James Burr Shields
Heather A. Macre
Natalie B. Virden
Aiken Schenk Hawkins & Ricciardi P.C.
2390 East Camelback Road, Suite 400
Phoenix, AZ 85016
burr@aikenschenk.com
ham@aikenschnek.com
nbv@aikenschenk.com
Attorneys for Plaintiff

s/ Carolyn Galbreath

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, d/b/a University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as Chair of the Arizona Board of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Gilbert Davidson**, in his official capacity as Interim Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

Case No. CV-19-00035-TUC-RM (LCK)

[PROPOSED] ORDER GRANTING JOINT MOTION AND STIPULATION TO STAY BRIEFING OF PLAINTIFF’S MOTION FOR CLASS CERTIFICATION PENDING RULING ON DEFENDANTS’ MOTION TO DISMISS

In consideration of the parties’ Stipulation and Joint Motion to Stay Briefing on Plaintiff’s Motion for Class Certification Pending Ruling on Defendants’ Motion to Dismiss (“Joint Motion”) (Dkt. 33) and good cause appearing therefore,

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IT IS HEREBY ORDERED granting the Joint Motion and staying the briefing of the Motion for Class Certification until after the Court has ruled on Defendants’ Motion to Dismiss (Dkt. 24).

IT IS FURTHER ORDERED that in the event the Court denies the Motion to Dismiss, the parties will file with the Court a joint proposed discovery and briefing schedule with respect to Plaintiff’s Motion for Class Certification no later than ten (10) calendar days following the Court’s ruling on the Motion to Dismiss.