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**UNITED STATES DISTRICT COURT
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; et al.,

Defendants.

Case No.19-cv-00035-TUC-RM (LAB)

**JOINT MOTION FOR
TEMPORARY SUSPENSION OF
SCHEDULING ORDER DATES**

The parties respectfully move the Court to temporarily suspend the current Scheduling Order dates. In support of this motion, the parties state as follows:

1. Per this Court’s Scheduling Order dated May 12, 2021 (Doc. 192), as amended by joint proposal in the Court’s August 10, 2021 Order extending Scheduling Order dates (Doc. 234) (the “Amended Scheduling Order”), dispositive motions are currently scheduled to be filed no later than November 12, 2021.

2. On September 21, 2021, the District Court issued an order affirming Magistrate Judge Bowman’s Order granting Plaintiff’s motion to compel documents withheld by State Defendants on the basis of attorney client privilege (Doc. 241) (the “District Court Order to Produce”). The District Court Order to Produce directed State Defendants to produce the subject documents on or by October 5, 2021. (*Id.*) On October 1, 2021, State Defendants

1 filed a motion to stay the District Court Order to Produce pending resolution of their Writ
2 of Mandamus to the Ninth Circuit Court of Appeals (Doc. 242). On October 21, 2021, the
3 District Court granted State Defendants’ motion to stay, ordering a stay of the District Court
4 Order to Produce “pending resolution of the Defendants’ Writ of Mandamus to the Ninth
5 Circuit Court of Appeals.” (Doc. 251). A ruling on the Writ of Mandamus is pending as of
6 the filing of this joint motion.

7 3. Plaintiff also filed a motion to compel documents withheld by the Governor’s
8 Office on the basis of executive communications privilege and deliberative process privilege
9 on June 4, 2021 (Doc. 202). On August 27, 2021, Magistrate Judge Bowman issued an order
10 granting Plaintiff’s motion, and compelling production of the subject documents (Doc. 238)
11 (the “Governor’s Office Order”). On September 10, 2021, the Governor’s Office filed
12 Objections to the Governor’s Office Order. The District Court’s ruling on these Objections
13 is pending as of the date of this joint motion.

14 4. In light of the aforementioned pending discovery motions, the parties have
15 agreed to wait for a ruling on the State Defendants’ Petition for a Writ of Mandamus before
16 conducting outstanding depositions of fact witnesses and filing dispositive motions. To that
17 end, the parties have agreed that a suspension of the current Scheduling Order dates is
18 appropriate.

19 5. As such, the parties respectfully request that this Court issue an order directing
20 the following:

- 21 • Except for bi-monthly joint letters to the Court regarding settlement
22 discussions, all deadlines contemplated by the Court’s Amended Scheduling
23 Order (Doc. 234) are hereby suspended.
- 24 • Within 30 days of a ruling from the Ninth Circuit Court of Appeals on the State
25 Defendants’ Writ of Mandamus regarding the District Court Order to Produce,
26 the parties will request a scheduling conference with the Court to address a
27 briefing schedule for dispositive motions. The parties will confer in good faith
28 prior to a scheduling conference in an effort to submit a mutually agreeable

1 briefing schedule to the Court for dispositive motions that will consider the
2 Ninth Circuit's ruling and any ruling by this Court regarding the Governor's
3 Office Order.

- 4 • This stipulation and order shall not affect this Court's ability to rule on the
5 Governor's Office's Objections to the Governor's Office Order, which are still
6 pending as of the date of this joint motion.

7 Respectfully submitted this 2nd day of November, 2021.

8 **FENNEMORE CRAIG**

9
10 /s/ Ryan Curtis (with permission)

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20 /s/ Austin C. Yost (with permission)

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26 of Regents, d/b/a University of Arizona;
27 Ron Shoopman; Larry Penley; Ram
28 Krishna; Bill Ridenour; Lyndel Manson;
Karrin Taylor Robson; Jay Heiler; and
Fred Duval*

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2021, I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing. Notice of this filing will be sent by email to all parties by operation of the Court’s electronic filing system.

/s/ Christine K. Wee
Christine K. Wee

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**UNITED STATES DISTRICT COURT
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; **Andy Tobin,** in his official capacity as 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.

4:19-cv-00035-TUC-RM (LAB)

[PROPOSED] ORDER

1 This matter before the Court on the Joint Motion for Temporary Suspension of
2 Scheduling Order Dates (Doc. ____),

3 IT IS HEREBY ORDERED that the Joint Motion is GRANTED and the Court
4 directs the following:

- 5 • Except for bi-monthly joint letters to the Court regarding settlement discussions, all
6 deadlines contemplated by the Court's Amended Scheduling Order (Doc. 234) are
7 hereby suspended.
- 8 • Within 30 days of a ruling from the Ninth Circuit Court of Appeals on the State
9 Defendants' Writ of Mandamus regarding the District Court Order to Produce, the
10 parties will request a scheduling conference with the Court to address a briefing
11 schedule for dispositive motions. The parties will confer in good faith prior to a
12 scheduling conference in an effort to submit a mutually agreeable briefing schedule
13 to the Court for dispositive motions that will consider the Ninth Circuit's ruling and
14 any ruling by this Court regarding the Governor's Office Order.
- 15 • This stipulation and order shall not affect this Court's ability to rule on the
16 Governor's Office's Objections to the Governor's Office Order, which are still
17 pending as of the date of this joint motion.

18
19 Dated this ____ day of _____, 2021.

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