

1 MARK BRNOVICH  
 2 ARIZONA ATTORNEY GENERAL  
 3 Firm State Bar #14000  
 4 Patricia Cracchiolo LaMagna, Bar #021880  
 5 Aubrey Joy Corcoran, Bar #025423  
 6 Assistant Attorneys General  
 7 Education and Health Section  
 8 2005 N. Central Avenue  
 9 Phoenix, Arizona 85004  
 10 Tel.: (602) 542-8854  
 11 Fax: (602) 542-8308  
 12 EducationHealth@azag.gov

13 STRUCK LOVE BOJANOWSKI &  
 14 ACEDO, PLC  
 15 Daniel P. Struck, Bar #012377  
 16 Nicholas D. Acedo, Bar #021644  
 17 Dana M. Keene, Bar #033619  
 18 3100 West Ray Road, Suite 300  
 19 Chandler, Arizona 85226  
 20 Tel.: (480) 420-1600  
 21 dstruck@strucklove.com  
 22 nacedo@strucklove.com  
 23 dkeene@strucklove.com

*Attorneys for Defendant*

14  
 15  
 16 **UNITED STATES DISTRICT COURT**  
 17 **DISTRICT OF ARIZONA**

18 Helen Roe, a minor, by and through her parent  
 19 and next friend Megan Roe; James Poe, a  
 20 minor, by and through his parent and next  
 21 friend Laura Poe; and Carl Voe, a minor, by  
 22 and through his parent and next friend, Rachel  
 23 Voe,

Plaintiffs,

v.

24 Don Herrington, in his official capacity as  
 25 Interim State Registrar of Vital Records and  
 26 Interim Director of the Arizona Department of  
 27 Health Services,

Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT'S MOTION TO  
 CONTINUE DEADLINES**

(Second Request)

**[Expedited Ruling Requested]**

1 Defendant Don Herrington (“Director Herrington”) moves the Court to continue all  
2 deadlines—including the deadline to depose Plaintiffs’ parents and Lizette Trujillo and to  
3 file an opposition to Plaintiffs’ Motion for Class Certification—until after it rules on  
4 Director Herrington’s pending Motion to Compel Plaintiffs’ Supplemental Responses to  
5 Defendant’s Discovery Requests (Dkt. 122).<sup>1</sup>

6 The Court may modify its scheduling order for “good cause.” Fed. R. Civ. P.  
7 16(b)(4). This “good cause” analysis “primarily considers the diligence of the party seeking  
8 the amendment. The district court may modify the pretrial schedule ‘if it cannot reasonably  
9 be met despite the diligence of the party seeking the extension.’” *Johnson v. Mammoth*  
10 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (quoting Fed. R. Civ. P. 16 advisory  
11 committee’s note). Good cause exists here.

12 On September 15, 2021, the Court commenced class action discovery. (Dkt. 100 at  
13 1.) The parties had 60 days (until November 14, 2021) to conduct class discovery, 30 days  
14 (until October 15, 2021) to propound written discovery, and 30 days from the date of the  
15 last written response to take the depositions of Lizette Trujillo and the parents/next friends  
16 of the named Plaintiffs. (*Id.* at 1-2.) Director Herrington then has 30 days from the date of  
17 the last deposition to prepare and file his response to Plaintiffs’ Motion for Class  
18 Certification. (*Id.* at 2.) On February 3, 2022, the parties filed a stipulation to extend all  
19 deadlines, which the Court granted. (Dkt. 109, 110.) The current fact discovery deadline  
20 is June 24, 2022. (Dkt. 110 at 1.) Plaintiffs’ expert disclosures and reports are due by July  
21 1, 2022, Director Herrington’s expert disclosures and rebuttal reports are due by August 1,  
22 2022, and Plaintiffs’ rebuttal expert disclosures and reports are due by September 1, 2022.  
23 (*Id.*) The parties must file dispositive motions by November 10, 2022 and a joint pretrial  
24 order by December 12, 2022. (*Id.* at 2.)

25 \_\_\_\_\_  
26 <sup>1</sup> On June 7, 2022, Director Herrington sent correspondence to Plaintiffs proposing  
27 that the parties stipulate to an extension of all deadlines pending the Court’s ruling on both  
28 parties’ motions to compel. Plaintiffs responded on June 10, indicating that they would  
agree to stipulate to the extension of all deadlines by one month, but that they would not  
agree to extend the deposition deadline or Director Herrington’s deadline to file an  
opposition to their Motion for Class Certification.

1 As stated more fully in Director Herrington’s Motion to Compel, Director  
2 Herrington has diligently attempted to procure class discovery in this case, particularly with  
3 respect to the avowals made in Lizette Trujillo’s Declaration. (Dkt. 122 at 6-9.) Plaintiffs’  
4 discovery responses are evasive, incomplete, and insufficient, and with respect to certain  
5 requests, they have failed to respond at all. (*Id.* at 10-18.) Plaintiffs have also failed to  
6 produce certain documentation that is relevant to the issues in this case. (*Id.*)

7 The parties communicated for months regarding these deficiencies. (*Id.* at 6-9.)  
8 Plaintiffs objected extensively to all discovery requests, but in correspondence and at  
9 various meet and confers, took the position that they would conduct reasonable searches for  
10 various responsive documents and respond accordingly. (*Id.*) Their representations  
11 regarding what they intended to produce—and what they were not going to produce—have  
12 remained vague, confusing, and circuitous, and their discovery responses are just as  
13 convoluted. Rather than clearly and concisely stating what they will produce, what is in  
14 their possession, or what they will search for, Plaintiffs have offered extensive non-specific  
15 objections, piecemeal responses, and proposals to meet and confer. (*See* Dkt. 122-1 at 4-5,  
16 8, 12-14, 19-20, 22-25, 27-34; *see also* Dkt. 125-126.)

17 Plaintiffs compounded that confusion in January 2022, when they indicated that they  
18 would produce documents on a “rolling” basis without specifying what they were producing  
19 or when these “rolling” productions would occur. (*Id.* at 6.) Plaintiffs produced 19 pages  
20 of documents in November 2021. (*Id.*) They produced additional documents on March 4,  
21 2022, and stated that “more materials” would follow. (*Id.* at 7.) On April 28, 2022, they  
22 produced their third “rolling” production consisting of approximately 2,398 documents,  
23 which was significantly larger than their other two productions to date. (*Id.* at 7.) Plaintiffs  
24 stated that this was their final production and constituted the “last written response”  
25 referenced in Paragraph (1) of the Case Management Order (Dkt. 100), thus triggering the  
26 30-day timeframe for Director Herrington to conduct depositions.<sup>2</sup> (*Id.* at 7.) Director

---

27  
28 <sup>2</sup> Given the large number of documents produced on April 28, and Plaintiffs’  
contention that the 30-day timeframe to conduct depositions would begin on that date,

1 Herrington disagrees that his 30-day timeline to depose Plaintiffs' parents and Lizette  
2 Trujillo has started. (*Id.* at 8-9.)

3 After over a month of attempting to resolve these issues, including requesting that  
4 Plaintiffs supplement their disclosure statement and responses to discovery, Director  
5 Herrington filed his Motion to Compel on June 6, 2022. (*Id.* at 7-9.) Class discovery has  
6 been anything but clear or straightforward thus far, and Director Herrington has been  
7 diligent in attempting to obtain full and complete responses to all his discovery requests.

8 For the reasons stated in Director Herrington's Motion to Compel, and because of  
9 Plaintiffs' incomplete discovery responses, he is unable to depose Plaintiffs' parents or  
10 Lizette Trujillo or respond to Plaintiffs' Motion for Class Certification. Plaintiffs should  
11 be required to provide full discovery responses before Director Herrington takes any  
12 depositions or responds to Plaintiffs' Motion. Therefore, Director Herrington respectfully  
13 requests that the class deposition deadline be continued at least 30 days from the date of the  
14 Court's ruling on his Motion to Compel, *or* 30 days from the date that Plaintiffs supplement  
15 their discovery responses *and* produce all documentation as ordered by the Court,  
16 whichever is later. The deadline to file an opposition to Plaintiffs' Motion for Class  
17 Certification should remain 30 days after the date of the last deposition as contemplated in  
18 the Court's September 15, 2021, Case Management Order. (Dkt. 100 at 2.)

19 Because all other deadlines will be similarly impacted by the outcome of the pending  
20 Motion to Compel, they should be continued as well.<sup>3</sup> For instance, Plaintiffs' deadline to  
21 respond to Director Herrington's Motion to Compel is June 20, 2022, and Director  
22 Herrington's deadline to file a reply memorandum is June 27, 2022, *after* the fact discovery  
23 deadline. (Dkt. 110 at 1.) It is thus impossible for the Court to rule on Director Herrington's  
24

---

25 Director Herrington requested an extension (until July 1) to take depositions, and Plaintiffs  
26 agreed. Director Herrington has not conceded that the 30-day timeframe started on that date.

27 <sup>3</sup> Plaintiffs have also filed a Motion to Compel. (Dkt. 121.) Briefing is not yet  
28 complete on that Motion. (*See* Dkt. 127.) Although Plaintiffs have not moved to extend any  
deadlines, the parties will likewise not be able to proceed on the current schedule if  
Plaintiffs' Motion is granted.

1 Motion to Compel prior to the fact discovery deadline. It is likewise unrealistic to assume  
2 that the Court will rule on Director Herrington's Motion to Compel prior to the parties'  
3 expert disclosure deadlines on July 1, 2022 and August 1, 2022. (Dkt. 110 at 1.) Thus,  
4 Director Herrington respectfully requests a continuance of *all other* remaining deadlines  
5 until his Motion to Compel is resolved.

6 For these reasons, Director Herrington requests the Court to continue all deadlines  
7 and reset them after it rules on his pending Motion to Compel. If the Court grants any part  
8 of that Motion, Director Herrington requests the following: the class deposition deadline is  
9 extended at least 30 days from the date that Plaintiffs supplement their discovery responses  
10 and produce all documentation as ordered by the Court; the deadline to file an opposition  
11 to Plaintiffs' Motion for Class Certification is set 30 days after the date of the last deposition  
12 (as originally ordered); and all other deadlines are vacated and reset until after the Court's  
13 ruling on the Motion to Compel, at which time the parties shall confer and submit new  
14 proposed schedules.

15 If the Court denies Director Herrington's Motion in full, he requests the following:  
16 the class deposition deadline is extended at least 30 days from the date of the Court's ruling;  
17 the deadline to file an opposition to Plaintiffs' Motion for Class Certification is set 30 days  
18 after the date of the last deposition (as originally ordered); and all other deadlines extended  
19 by at least 60 days. This request is made in good faith and not for purposes of delay.

20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED this 13<sup>th</sup> day of June, 2022.

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

By /s/Dana M. Keene

---

Daniel P. Struck  
Nicholas D. Acedo  
Dana M. Keene  
3100 West Ray Road, Suite 300  
Chandler, Arizona 85226

MARK BRNOVICH  
ATTORNEY GENERAL  
Patricia Cracchiolo LaMagna  
Aubrey Joy Corcoran  
1275 West Washington Street  
Phoenix, AZ 85007

*Attorneys for Defendant*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2022, I electronically transmitted the attached 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:

Asaf Orr	<a href="mailto:aorr@nclrights.org">aorr@nclrights.org</a>
Barrett J. Anderson	<a href="mailto:banderson@cooley.com">banderson@cooley.com</a>
Colin M. Proksel	<a href="mailto:cproksel@omlaw.com">cproksel@omlaw.com</a>
Mary R. O'Grady	<a href="mailto:mogrady@omlaw.com">mogrady@omlaw.com</a>
Patrick P. Gunn	<a href="mailto:pgunn@cooley.com">pgunn@cooley.com</a>
Payslie M. Bowman	<a href="mailto:pbowman@omlaw.com">pbowman@omlaw.com</a>

I hereby certify that on this same date, I served the attached document by U.S. Mail, postage prepaid, on the following, who is not a registered participant of the CM/ECF System:

N/A

/s/Dana M. Keene

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Helen Roe, a minor, by and through her parent and next friend Megan Roe; James Poe, a minor, by and through his parent and next friend Laura Poe; and Carl Voe, a minor, by and through his parent and next friend, Rachel Voe,

Plaintiffs,

v.

Don Herrington, in his official capacity as Interim State Registrar of Vital Records and Interim Director of the Arizona Department of Health Services,

Defendant.

NO. 4:20-cv-00484-JAS

**ORDER GRANTING  
DEFENDANT’S MOTION TO  
CONTINUE DEADLINES**

The Court, having reviewed Defendant’s Motion to Continue Deadlines, and good cause appearing,

IT IS ORDERED that Defendant’s Motion is GRANTED.

IT IS FURTHER ORDERED that all deadlines set forth in the Court’s Case Management Order (Dkt. 100) and the Court’s February 4, 2021 Order granting the parties’ Stipulation by the Parties Regarding Extension of Deadlines in the Court’s Scheduling Order (Dkt. 110) are continued.

Defendant shall have 30 days from the date of the Court’s ruling on Defendant’s Motion to Compel to depose Plaintiffs’ parents and Lizette Trujillo, or 30 days from the

1 date that Plaintiffs supplement their discovery responses and produce all documentation as  
2 ordered, whichever is later.

3 The deadline for Defendant to file an opposition to Plaintiffs' Motion for Class  
4 Certification will remain 30 days after the date of the last deposition.

5 Within 30 days of the Court's ruling on Defendant's Motion to Compel, the parties  
6 shall meet, confer, and submit a joint proposed scheduling order outlining their proposed  
7 schedules for the remaining deadlines. Each parties' proposal shall be no more than one (1)  
8 page in length.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28