

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

8 STRUCK LOVE BOJANOWSKI &
ACEDO, PLC
Daniel P. Struck, Bar #012377
9 Nicholas D. Acedo, Bar #021644
Dana M. Keene, Bar #033619
10 3100 West Ray Road, Suite 300
Chandler, Arizona 85226
11 Tel.: (480) 420-1600
dstruck@strucklove.com
12 nacedo@strucklove.com
dkeene@strucklove.com
13

Attorneys for Defendant

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

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

21 Plaintiffs,

22 v.

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

26 Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT'S MOTION TO
EXTEND DEADLINE RE:
RESPONSE TO MOTION FOR
CLASS CERTIFICATION**

[First Request]

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1 Defendant Don Herrington respectfully requests an extension of time in which to file
2 his Response to Plaintiffs' Motion for Class Certification (Dkt. 89). The Response is
3 currently due on December 12, 2022. (Dkt. 153 at 3.)¹ This is Defendant's first request to
4 extend this deadline.

5 Additional time is needed to complete the Response largely as a matter of
6 professional courtesy. The 30-day period following the relevant class-certification
7 depositions included the Thanksgiving holiday and the bustle, travel, and ailments that
8 come with it. And of course, work in other matters persisted and filled up time.
9 Unfortunately, undersigned counsel, who is primarily responsible for preparing the
10 Response, also experienced a death in his family during this same period, which further set
11 back progress. Finally, Defendant did not receive the final transcripts for two of the three
12 depositions until the night of December 7, 2022, despite being assured by the court reporter
13 that they would be completed by November 23, 2022. Those final transcripts are necessary
14 to support arguments in Defendant's Response.

15 Defendant maintains this constitutes "good cause" for an extension of time. *See* Fed.
16 R. Civ. P. 6(b)(1). When defense counsel approached Plaintiffs to see if they would object
17 to an extension of time, Plaintiffs' California counsel would only agree to an additional *two*
18 *days*. (Exhibit 1.) Because Defendant needs more time and anticipates Plaintiffs will file a
19 formal objection to this request, he will address their objections here.

20 Plaintiffs' counsel first objected on the grounds that the Motion for Class
21 Certification has been pending for nearly 16 months. (*Id.*) While that is true, the Motion
22 has been pending so long because Plaintiffs elected to file it *before* allowing Defendant to
23 conduct class discovery. The Court permitted class discovery and set the response deadline
24 after the close of that discovery. Defendant has complied with the Court's schedule. More

25
26 ¹ The Court ordered the response to be filed within 30 days of the conclusion of the
27 last deposition taken for purposes of class discovery. (Dkt. 153 at 3.) The last deposition
28 was taken on November 10, 2022. (Dkt. 158.) Thirty days falls on Saturday, December 10,
2022, and the parties agree that the deadline rolls forward to Monday, December 12, by
operation of Civil Rule 6(a)(1)(C).

1 importantly, Plaintiffs have not suffered any prejudice by the length of time their Motion
2 has been pending, nor will they suffer any prejudice if the Response deadline is briefly
3 extended. Indeed, the case has moved forward since its inception and Plaintiffs have
4 engaged in extraordinary merits discovery contemporaneously with class discovery. A
5 ruling on class certification is not a condition predicate to the case's Schedule or any other
6 deadline. (Dkt. 155.) Thus, an extension of the Response deadline will not disrupt the case
7 in any way or extend its resolution.

8 Plaintiffs' counsel next objected on the grounds that it was "not Plaintiffs' fault"
9 that the final transcripts were not completed by the date promised. (Exhibit 1.) Defendant
10 does not disagree. But it wasn't Defendant's fault either. Defense counsel ordered the
11 transcripts from a reputable company that does not have a history of tardiness and requested
12 a turn-around time that would have allowed two weeks before the Response deadline.²
13 Extensions of time to accommodate transcript issues (and court reporters) such as this are
14 commonplace.

15 Plaintiffs' counsel last objected on the grounds that an extension would "force"
16 Plaintiffs' counsel to "work over the holidays." (*Id.*) Naturally, defense counsel did not
17 want that result either and offered to agree to extend the Reply deadline until after the
18 holidays. Plaintiffs' counsel rejected that offer, stating: "We have other work obligations
19 in January 2023 that we cannot move." (*Id.*)

20 Frankly, Defendant would like a two-week extension of time, until **December 27,**
21 **2022**, to allow sufficient flexibility to work around the issues that come with the December
22 holidays. That is a reasonable request and seemingly comports with this Court's directives
23 that "the deadlines in the Scheduling Order are flexible" and to seek extensions if necessary
24 to ensure that the parties have "a full and fair opportunity to support or defend their
25 positions." (Dkt. 87 at 11.) But, at a minimum, Defendant requests an extension of at least
26 one week, until December 19, 2022.

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28 ² The court reporter apologized for the tardiness due to her own unexpected delays.

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DATED this 8th day of December, 2022.

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

By /s/ Nicholas D. Acedo

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

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 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	aorr@nclrights.org
Barrett J. Anderson	banderson@cooley.com
Colin M. Proksel	cproksel@omlaw.com
Mary R. O’Grady	mogradey@omlaw.com
Patrick P. Gunn	pgunn@cooley.com
Payslie M. Bowman	pbowman@omlaw.com

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/ Nicholas D. Acedo

EXHIBIT 1

EXHIBIT 1

From: [Anderson, Barrett](#)
To: [Nick Acedo](#); [Asaf Orr](#); [esavoia@nclrights.org](#); [Colin Proksel](#); [Payslie Bowman](#); [Gunn, Patrick](#); [Martin, Christopher L.](#); [Taylor, Jessica L.](#); [Ainbinder, Stephanie](#)
Cc: [Corcoran, Aubrey Joy](#); [Patriaic Cracchiolo LaMagna](#); [Dan Struck](#); [Dana Keene](#); [Andrea Bartles](#); [Brenna Bull](#)
Subject: RE: Roe v. Herrington - Response to Motion for Class Certification Deadline
Date: Wednesday, December 7, 2022 5:43:08 PM
Attachments: [image001.png](#)

Nick:

Plaintiffs do not agree, for the reasons we've already explained. Our offer stands, which we believe is generous considering the circumstances.

Barrett

From: Nick Acedo <NAcedo@strucklove.com>
Sent: Thursday, December 8, 2022 9:29 AM
To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AOrr@nclrights.org>; esavoia@nclrights.org; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>
Cc: Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Patriaic Cracchiolo LaMagna <Patricia.LaMagna@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Brenna Bull <bbull@strucklove.com>
Subject: RE: Roe v. Herrington - Response to Motion for Class Certification Deadline

[External]

Barrett,

Before we file our request with the Court, would you agree to a December 16 deadline (4 days)? With an extension of your reply deadline.

Nick

From: Anderson, Barrett <banderson@cooley.com>
Sent: Wednesday, December 7, 2022 5:23 PM
To: Nick Acedo <NAcedo@strucklove.com>; Asaf Orr <AOrr@nclrights.org>; esavoia@nclrights.org; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>
Cc: Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Patriaic Cracchiolo LaMagna <Patricia.LaMagna@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Brenna Bull <bbull@strucklove.com>

Subject: RE: Roe v. Herrington - Response to Motion for Class Certification Deadline

Nick:

We are unable to agree to that even longer extension request. We have other work obligations in January 2023 that we cannot move, and the motion has been pending long enough.

We note that Defendant has the rough transcripts from both depositions, so receiving the official transcripts should only require you to adjust citations. We do not think that that will require 11 days in all.

Plaintiffs are still willing to agree to our offer below, for the opposition on December 14 and the reply on December 23, respectively.

Barrett

From: Nick Acedo <NAcedo@strucklove.com>

Sent: Thursday, December 8, 2022 9:18 AM

To: Anderson, Barrett <banderson@cooley.com>; Asaf Orr <AORr@nclrights.org>; esavoia@nclrights.org; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>

Cc: Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Patriaic Cracchiolo LaMagna <Patricia.LaMagna@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Brenna Bull <bbull@strucklove.com>

Subject: RE: Roe v. Herrington - Response to Motion for Class Certification Deadline

[External]

Barrett,

We certainly do not want you or your staff working over the holidays. But the solution there is an easy one: we have no problem agreeing to an extension of time for you to file your reply until after the holidays (one or even two weeks). Would you then agree to a 1 week extension?

Thanks,

Nick

From: Anderson, Barrett <banderson@cooley.com>

Sent: Wednesday, December 7, 2022 5:05 PM

To: Nick Acedo <NAcedo@strucklove.com>; Asaf Orr <AORr@nclrights.org>; esavoia@nclrights.org; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Gunn, Patrick

<pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>

Cc: Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Patriaic Cracchiolo LaMagna <Patricia.LaMagna@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Brenna Bull <bbull@strucklove.com>

Subject: RE: Roe v. Herrington - Response to Motion for Class Certification Deadline

Nick:

Thank you for your email. Monday will be December 12, not December 13, but we otherwise agree with your calculation of Defendant's deadline for his opposition to the motion for class certification.

Unfortunately, we cannot agree to your request. The motion has been pending nearly 16 months, since August 2021. Further, Defendant deposed both Laura Poe and Megan Roe on November 3, 2022, over a month ago. It was Defendant's choice of which court reporter to hire and to not to order transcripts from that reporter on a faster turnaround time, and it is not Plaintiffs' fault that you have not received them yet. Finally, a week extension for Defendant's opposition would put Plaintiffs' reply brief due on December 26, which means my team would be forced to work over the holidays. That is unacceptable, as I'm sure you'd agree.

That being said, we are willing to offer you an extension of Defendant's deadline to Wednesday, December 14, which should be sufficient time for you to incorporate anything you need from the deposition transcripts. In exchange, we request that you agree that Plaintiffs' reply brief will be due on Friday, December 23. Let us know if you agree.

Barrett

From: Nick Acedo <NAcedo@strucklove.com>

Sent: Thursday, December 8, 2022 8:10 AM

To: Asaf Orr <AORr@nclrights.org>; esavoia@nclrights.org; Colin Proksel <cproksel@omlaw.com>; Payslie Bowman <pbowman@omlaw.com>; Anderson, Barrett <banderson@cooley.com>; Gunn, Patrick <pgunn@cooley.com>; Martin, Christopher L. <cmartin@cooley.com>; Taylor, Jessica L. <jtaylor@cooley.com>; Ainbinder, Stephanie <sainbinder@cooley.com>

Cc: Corcoran, Aubrey Joy <AubreyJoy.Corcoran@azag.gov>; Patriaic Cracchiolo LaMagna <Patricia.LaMagna@azag.gov>; Dan Struck <DStruck@strucklove.com>; Dana Keene <dkeene@strucklove.com>; Andrea Bartles <abartles@strucklove.com>; Brenna Bull <bbull@strucklove.com>

Subject: Roe v. Herrington - Response to Motion for Class Certification Deadline

[External]

Counsel,

We calculate our deadline to file our Response to the Motion for Class Certification to be Monday, December 13 (since 30 days from the last deposition on 11/10 falls on Saturday, it rolls forward). However, we have not yet received the transcripts for Laura Poe or Megan Roe, despite being assured that we would have them by November 23. The court reporter told us today that she should have them for us tomorrow. Since those transcripts are necessary for our response, we would like to extend our deadline by 1 week so that we have time to review and incorporate them. A few additional days are also needed as a professional courtesy. Do you have any objection? Or can we prepare and file a stipulation?

Thanks,

Nick

Nicholas D. Acedo

Partner

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

3100 West Ray Road | Suite 300 | Chandler AZ 85226

480.420.1609 | nacedo@strucklove.com | STRUCKLOVE.COM

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**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
EXTEND DEADLINE RE:
RESPONSE TO MOTION FOR
CLASS CERTIFICATION**

The Court, having reviewed Defendant’s Motion to Extend Deadline Re: Response to Motion for Class Certification, and good cause appearing,

IT IS ORDERED that Defendant’s Motion is GRANTED.

IT IS FURTHER ORDERED that Defendant may file his Response to Plaintiffs’ Motion for Class Certification by December 27, 2022.