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

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

22 Plaintiffs,

23 v.

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

27 Defendant.

NO. 4:20-cv-00484-JAS

**DEFENDANT’S REPLY IN  
 SUPPORT OF MOTION TO  
 EXTEND REMAINING  
 DEADLINES**

1 Defendant submits this Reply in Support of his Motion to Extend Remaining  
2 Deadlines (Dkt. 207). For the following reasons, and for the reasons stated in Defendant’s  
3 Motion, the remaining deadlines should be vacated and reset after the Court rules on  
4 Plaintiffs’ Motion for Class Certification and Motion to Quash. (*See* Dkt. 207 at 4.)

5 **I. Defendant’s Motion to Extend the Remaining Deadlines Should Be Granted.**

6 **A. Plaintiffs’ Motion to Quash is Pending.**

7 Plaintiffs’ Opposition to Defendant’s Motion to Extend Remaining Deadlines (Dkt.  
8 208 at 3) merely rehashes the arguments asserted in their Motion to Quash (Dkt. 206).  
9 Defendant’s deadline to respond to the Motion to Quash is August 8, 2023, and Defendant  
10 will file a Response by that date. In the meantime, the Court should disregard Plaintiffs’  
11 quash arguments, as they have no bearing on whether good cause exists to extend the  
12 remaining deadlines. If anything, the fact that the Motion to Quash has not been fully  
13 briefed and is pending establishes good cause to grant Defendant’s Motion.

14 **B. Good Cause Exists to Extend the Deadlines.**

15 Plaintiffs cite a Sixth Circuit opinion and an unpublished decision in the District  
16 Court for the Western District of Washington to support their contention that the one-way  
17 intervention rule is inapplicable to Rule 23(b)(2) classes.<sup>1</sup> (*See* Dkt. 208 at 3–4.) But  
18 neither of those decisions are binding on this Court, and the Ninth Circuit has never limited  
19 the one-way intervention rule to just Rule 23(b)(3) classes, particularly in cases, like this  
20 one, where there are issues of fairness and judicial economy at play. *See Paxton v. Union*  
21 *Nat. Bank*, 688 F.2d 552, 558–59 (8th Cir. 1982) (“Rule 23(b)(2) suits such as this one,  
22 from which class members cannot ‘opt-out,’ do not present the same problem [as in Rule  
23

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24 <sup>1</sup> In *Gooch v. Life Investors Insurance Company of America*, 672 F.3d 402, 432 (6th  
25 Cir. 2012), the Sixth Circuit was tasked with deciding whether a preliminary injunction, not  
26 a summary judgment motion, was prohibited by the one-way intervention rule. The court  
27 found that the preliminary injunction was not a decision on the merits and could not have  
28 impacted a class member’s decision whether to join or leave the mandatory 23(b)(2) class.  
*Id.* The court also found that defendant failed to demonstrate other issues of judicial  
economy or fairness warranting the application of the one-way intervention rule. *Id.* at 433.  
Here, the parties would be required to submit summary judgment motions for decision *on*  
*the merits* prior to a determination of class certification.

1 23(b)(3) suits]. Even in (b)(2) class actions, however, a deliberate deferral of the (class)  
2 determination until full trial on the merits is fraught with serious problems of judicial  
3 economy, and of fairness to both sides.” (citation and internal quotations omitted).

4 Nevertheless, Defendant provided numerous *other* reasons why the remaining  
5 deadlines should be extended, which Plaintiffs’ Opposition fails to address. As stated in  
6 Defendant’s Motion, a ruling on class-certification impacts the scope of any summary-  
7 judgment motion filed by Plaintiffs or Defendants. (Dkt. 207 at 4.) And Plaintiffs do not  
8 appear to dispute that the parties cannot prepare for trial without knowing whether the class  
9 is certified. (*Id.*) The dispositive motion deadline is less than two weeks away and no  
10 decision has been made on class certification. Even if the Court’s decision is imminent,  
11 less than two weeks is not enough time to prepare a summary judgment motion. And even  
12 if dispositive motions are filed on the August 18 deadline, it is doubtful that the Court will  
13 issue a ruling before the first pretrial order deadline (on September 18), as briefing on  
14 dispositive motions will not be completed. (Dkt. 180.) The only logical cure is to vacate  
15 the remaining deadlines, await the Court’s ruling on class certification, and then reset the  
16 remaining deadlines to allow the parties and the Court sufficient time to address them.

17 Finally, Plaintiffs’ Opposition includes unsupported arguments that accuse  
18 Defendant of employing “dilatatory strategy” and “delay tactics” to “wast[e] Plaintiffs’  
19 resources” and “run[] up the bill.” (Dkt. 208 at 4, n.2.) These accusations are not well-  
20 taken.<sup>2</sup> Defendant’s Motion is grounded in common sense, with an eye towards preserving  
21 party and judicial resources. As is typical in civil litigation (and in class actions), the parties  
22 have requested modifications of the Scheduling Order, most of which have been stipulated  
23 to and/or made via joint submission by the parties. (*See* Dkt. 109, 110, 154, 155, 179, 180.)  
24 This is only Defendant’s second request to extend deadlines in almost three years. (*See*  
25 Dkt. 131, 139.) Plaintiffs’ contention that they will be prejudiced by any further delay of

26 \_\_\_\_\_  
27 <sup>2</sup> Plaintiffs’ contention that Defendant engaged in “unnecessary discovery disputes”  
28 is also unfounded, as Defendant’s Motion to Compel was granted in part and denied in part,  
demonstrating that the Court agreed that the dispute was at least meritorious in part. (*See*  
Dkt. 143 at 3.)

1 this case is equally unavailing. Plaintiffs have not demonstrated how their “resources” have  
2 been purportedly wasted (*see* Dkt. 208 at 4–5), and any extension will ultimately preserve  
3 party resources. Plaintiffs’ position—to rush dispositive motions and pretrial filings  
4 without knowing the scope of the claims and when discovery may not even be finished—is  
5 simply not workable. And rushing the Court to issue rulings is just as untenable.

6 **II. Conclusion.**

7 For the foregoing reasons, and for the reasons stated in Defendant’s Motion to  
8 Extend Remaining Deadlines (Dkt. 207), Defendant respectfully requests that the remaining  
9 deadlines be vacated and reset after the Court rules on Plaintiffs’ Motion for Class  
10 Certification and Motion to Quash.

11 DATED this 7<sup>th</sup> day of August, 2023.

12 STRUCK LOVE BOJANOWSKI & ACEDO, PLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 7, 2023, 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:

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/s/ Dana M. Keene