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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ST. LUKE'S HEALTH SYSTEM, LTD.,

Plaintiff,

v.

RAÚL LABRADOR, Attorney General of
the State of Idaho,

Defendant.

Case No. 1:25-cv-00015-BLW

**DEFENDANT'S BRIEF ON ST.
LUKE'S REQUEST TO SHIFT DEAD-
LINES [DKT. 65]**

INTRODUCTION

“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303, (2012) (alterations in original) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977)). That’s certainly true in this case, as the Attorney General has, since March of this year, been enjoined

from initiating any criminal prosecution against, attempting to suspend or revoke the professional license of, or seeking to impose any other form of liability on, St. Luke’s or any of its medical providers based on their performance of conduct that is defined as an “abortion” under Idaho Code § 18-604(1), but that is necessary to “stabilize” a patient presenting with an “emergency medical condition” as required by EMTALA pursuant to 42 U.S.C. § 1395dd(e)(1)(A), (3)(A).

Dkt. 49 at 60.

In May, this Court issued its scheduling order, setting a dispositive motion deadline for February 2026, with expert discovery and discovery cutoff deadlines from October 2025 through January 2026. Keeping to the fast pace the Court has set for this case, the Attorney General served his first set of discovery on St. Luke’s on July 17. In the three months since, and having granted St. Luke’s a third extension, the Attorney General still has not received a single response, a single document, or even a single objection from St. Luke’s.

Surely St. Luke’s, as the plaintiff in this case, must have known that when it sued the Attorney General and invoked the six pregnant women it purportedly airlifted out of Idaho due to St. Luke’s alleged concerns with Idaho Code § 18-622, that the Attorney General would want—and be entitled to examine—documentation that will allow the Court and the parties to test St. Luke’s assertions. The Attorney General remains hopeful he will finally receive some discovery on Friday, October 31. While an extension to respond to discovery is a professional courtesy often extended in Idaho—as the Attorney General also received one on St. Luke’s first set of discovery served in

September—this lawsuit must also move forward so that the Court can resolve the suit, Idaho can once again start protecting its vulnerable unborn children at every hospital in the state, and either party can seek appropriate appellate relief.

But with the injunction in hand, and without having provided any information to the Attorney General in the three months he has sought discovery, St. Luke's now wants the Court to delay this case and shift all remaining deadlines by four months. Given that this shift of deadlines would cause further irreparable harm to the Attorney General—and, most importantly, to the women and unborn children of Idaho—the Attorney General objects to a blanket four-month shift.

When first approached by Plaintiff about Plaintiff's request to shift deadlines by four months, in order to try to streamline the case and help move it along, the Attorney General offered to St. Luke's to agree to a three-month extension contingent on an agreement to use the model protective order and an agreement to reduce the undue burden on the Attorney General from having to create a privilege log for any attorney-client or work product communications that post-date the filing of the *United States v. Idaho* litigation. Both requests were made in an effort to streamline the discovery process, help move this case along, and avoid possible, large-scale disputes that would involve the Court again. Certainly, if the Court wants to enter the model protective order and order that the Attorney General need not create a privilege log for communications that post-date the *United States v. Idaho* litigation, then the Attorney General will stick to his offer and agree to a three-month extension—simply to move this case along.

Whether an outside observer would assert that St. Luke's requested shift of the deadlines is a delay tactic to prolong the injunction and avoid the conclusion of this legal dispute is immaterial. What is material is that St. Luke's has not shown good cause to shift the remaining deadlines four months. Its request should be denied. In the alternative the Court should take the steps above

to streamline discovery to shepherd this case to its conclusion before this Court.

PROCEDURAL BACKGROUND

St. Luke's seeks to shift the remaining deadlines in this litigation by four months.¹ The remaining deadlines, as set by the Court on May 7, 2025, contemplate discovery through January 2026 and filing dispositive motions in February 2026.

Deadline	Date
Dispositive motion	2/26/2026
Fact discovery cutoff	1/13/2026
Plaintiff's expert disclosure	10/13/2025
Defendant's expert disclosure	11/12/2025
Plaintiff's rebuttal expert disclosure	11/26/2025
Expert discovery cutoff	1/27/2026

Dkt. 59 at 1–3.

Discovery began in this case only a couple months after the scheduling order when, on July 17, the Attorney General sent his first set of discovery to St. Luke's. Counsel Decl. Ex. 1 at 8; *id.* Ex. 2. (St. Luke's first served its discovery requests to the Attorney General about four months after the scheduling conference, on September 2. *See id.* Ex. 3.) Only eight days after the Attorney General sent his discovery, St. Luke's requested a full 30-day extension, or until September 17 to respond. *Id.* Ex. 1 at 7. The Attorney General granted that request “with the understanding that responsive documents will be produced at that time rather than merely being promised for a later date.” *Id.* at 6–7. St. Luke's confirmed it “plan[ned] to begin producing documents by then, and will be happy to reciprocate.” *Id.* at 6. But a few days before its deadline, St. Luke's again reached

¹ This suit began in January 2025 when St. Luke's filed its complaint, a motion to consolidate its action into the then-existing *United States v. Idaho* litigation, a motion for a preliminary injunction, and a motion to expedite the consideration of that preliminary injunction. Dkts. 1, 2, 2-1, 2-2, 3, 4, 4-1. After ordering and receiving briefing from the Attorney General, the Court in March enjoined the Attorney General from enforcing Idaho Code § 18-622 in particular circumstances against St. Luke's. Dkt. 49 at 59–60. Days after the Attorney General filed his answer, the Court ordered a scheduling conference in May 2025. Dkts. 50, 51.

out requesting an extension. *Id.* at 5. The Attorney General granted a further two-week extension. *Id.* at 4. After a conversation between counsel, the Attorney General agreed to a third extension for St. Luke’s until October 31—so long as the Attorney General was also allowed a first extension until October 31 to respond to St. Luke’s first set of discovery to him. *Id.* ¶ 4.

During the conference the parties’ counsel had on September 30, St. Luke’s addressed a request it had raised for the first time a week and a half prior, requesting the Attorney General’s position on shifting the remaining deadlines. *See id.* Ex. 1 at 1, 4. St. Luke’s referenced the fact that it was still preparing to respond to the Attorney General’s discovery and that the parties had not entered a protective order. Since at least May, the parties’ counsel have gone back and forth regarding a protective order for this litigation. Counsel Decl. Exs. 5, 6, 7.² In response to St. Luke’s request to shift the deadlines, the Attorney General advised he could not agree to a four-month shift but would agree to a three-month shift—if the parties could streamline forthcoming discovery disputes through the entry of the model protective order and through an agreement that any privilege log need not disclose attorney-client and work product communications that post-dated the filing of the complaint in *United States v. Idaho*.³ *Id.* Ex. 6 at 2. (The Attorney General would have suggested a two-month shift with these conditions but recognized the Thanksgiving, Christmas, and New Year’s holiday season made it impracticable. *Id.*)

When the Attorney General and St. Luke’s could not agree on St. Luke’s recent request to

² The Attorney General has pushed for the model protective order but in good faith proposed revisions to St. Luke’s proposed protective order—revisions, for example, that account for the vacatur of the illegal provisions of “HIPAA Privacy Rule to Support Reproductive Health Care Privacy.” *See Purl v. U.S. Dep’t of Health & Human Servs.*, No. 2:24-cv-00228-Z, 2025 WL 1708137 (N.D. Tex. June 18, 2025).

³ The Court has preliminarily ruled that the Attorney General would have to list such communications on a privilege log, but the Court made that preliminary ruling without the benefit of the actual discovery requests. *See* Dkt. 64.

shift the discovery deadlines, St. Luke's contacted the Court, and the Court entered an order requiring simultaneous briefing "on the issue of any further deadline extensions." Dkt. 65. The Attorney General submits this brief in response to that order.

LEGAL STANDARD

Because St. Luke's seeks to modify the remaining deadlines set by this Court's scheduling order, Dkt. 59, it must establish good cause. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *see also* Fed. R. Civ. P. 16(b). The party seeking the modification must show that the deadlines "cannot reasonably be met despite the diligence of the party seeking the extension." *Zivkovic*, 302 F.3d at 1087 (cleaned up). Where "the party seeking the modification was not diligent, the inquiry should end and the motion to modify should not be granted." *Id.* (cleaned up). While a court must examine the movant's reasons for seeking the scheduling order's modification, "the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny [the] motion." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (citation omitted).

ARGUMENT

St. Luke's identified to the Attorney General two reasons to shift the deadlines for four months. First, St. Luke's noted that it was still in the process of responding to the Attorney General's discovery requests. Second, St. Luke's expressed that the parties still had not agreed upon a protective order. But neither of these reasons shows that St. Luke's has been diligent. St. Luke's initiated this lawsuit, itself invoked the airlifts of the six women, and itself has refused over the last five months to agree to the District's model protective order, which is a "qualified protective order" for purposes of HIPAA, 45 C.F.R. 164.512(e)(1)(V). Further, St. Luke's could, at any time, have filed a motion asking the Court to impose a protective order, but has also failed to do that. A shift of the deadlines would only harm the people of the State of Idaho. Should the Court

nevertheless grant an extension, any shift of the deadlines should streamline the remaining discovery in this case by entering the model protective order and by reversing course on the Court's earlier blanket ruling regarding assembling a privilege log of attorney-client communications that post-date the filing of *United States v. Idaho*.

I. That it has taken St. Luke's at least three months to collect the information at issue in this suit since St. Luke's filed it is not a reason to shift the deadlines.

The Attorney General served his discovery requests on St. Luke's on July 17. Counsel Decl. Ex. 2. Those requests involved six interrogatories and 45 requests for production—no requests for admission were propounded. *Id.* Since serving them, the Attorney General has allowed St. Luke's a one-month extension, a further two-week extension, and a further one-month extension. Counsel Decl. Ex. 1. St. Luke's has represented that it is taking time to collect the records, but has failed to show that it has been diligent. Although the Attorney General appreciates that it takes time to collect records, nothing has prevented St. Luke's from answering the discovery that it can—or at least interposing the objections it has—so that those could be addressed first through meet-and-confers, then the informal mediation process, and then, if necessary, motions to compel.

St. Luke's initiated this suit. Dkt. 1. St. Luke's also highlighted the six women it airlifted out of state, attributing their airlifts to “the conflict” (alleged) between Idaho Code § 18-622 and EMTALA. *Id.* ¶ 5. St. Luke's filed amicus briefs in the *United States v. Idaho* litigation, both at the Ninth Circuit and the Supreme Court. And, under a subpoena duces tecum, St. Luke's provided documents to the State of Idaho in the *Adkins v. State* case. St. Luke's providers also actively supported the *United States v. Idaho* litigation. *E.g.*, *United States v. Idaho*, Dkt. 17-6, 17-7. And one of its physicians is actively suing a state agency to challenge Idaho's Abortion laws. *See Seyb v. Members of the Idaho Board of Medicine*, Case No. 1:24-cv-00244-BLW. In sum, it could not be a surprise to St. Luke's that the Attorney General would seek information and documents related

to St. Luke’s and its providers’ entry into the fray.

Nothing that St. Luke’s has described has shown that St. Luke’s could not through diligence meet the forthcoming deadlines. St. Luke’s has not shown good cause to modify the scheduling order to shift all remaining deadlines—including expanding the discovery period from six months to ten months—on the basis of the time needed to complete its discovery responses.

II. That St. Luke’s has not agreed to the entry of the District’s model protective order, nor filed its own motion for a protective order, does not constitute good cause.

St. Luke’s also identified to the Attorney General that the fact that the parties have been unable to agree on a protective order is another reason it seeks to shift the remaining deadlines. But this also does not show good cause. While the purpose of this brief is not to litigate *what* or *which* protective order the Court should or will enter, and the reasons for such, *see* Dkt. 65 (requiring “simultaneous briefs . . . on the issue of any further deadline extensions”), that the Attorney General has reasonably offered since May to agree to the District’s model protective order and that nothing has prevented St. Luke’s from separately moving for a protective order, do not show that the remaining deadlines could not reasonably be met.

This District’s model protective order certainly covers the bases the parties need to cover and is, for purposes of HIPAA, a qualified protective order. Such an order must do two things: (1) it must “Prohibit[] the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested” *and* (2) it must “Require[] the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.” 45 C.F.R. 164.512(e)(1)(V)(A)–(B). The District’s model protective order incorporates both of these requirements. *See* Model Protective Order ¶¶ 1, 14. Nothing has prevented St. Luke’s from agreeing to that order.

Nor did anything prohibit St. Luke's from separately moving for entry of a protective order. Though it is certainly appreciated that St. Luke's attorneys have been willing to engage with the Attorney General's counsel over the last several months regarding protective order proposals, St. Luke's, if it was concerned about its ability to meet its deadlines, could have separately moved for a protective order. That it did not—and that it did not reach out to the Attorney General's counsel until September 19 to propose its requested shift in the deadlines—are reasons to conclude that St. Luke's has not shown good cause to shift the deadlines.

III. Shifting the deadlines will prejudice the Attorney General.

There is no doubt that each day the injunction remains in place, the State of Idaho is harmed by its inability to enforce its duly enacted laws. *Maryland*, 567 U.S. at 1303. And Idaho's laws in this case protect women and unborn children—just as EMTALA requires—by, in the context of EMTALA, limiting when abortion is permitted under state law, just as other states do when they limit or authorize particular forms of medical treatment (something that EMTALA respects). With the injunction in place, Idaho's unborn children don't have the same protection of life they would have if Idaho's law were not enjoined.

Shifting the deadlines in this case will only extend the harm that the State of Idaho has suffered since March, which is further exacerbated by St. Luke's failure thus far to respond to discovery. As discovery in a related case has shown, any alleged injury in this case has not been caused by Idaho's laws, but has instead been caused by St. Luke's failure to properly train its physicians on the correct application of Idaho law.

Dr. Stacy Seyb, a St. Luke's maternal fetal medicine specialist, has separately sued to challenge Idaho Code § 18-622. *Seyb v. Members of the Idaho Bd. of Medicine*, 1:24-cv-00244-BLW (D. Idaho). In his recent deposition in that case, Dr. Seyb, who is one of the doctors who made the decision to airlift some of the six women out of state that St. Luke's heavily relies on to support

its allegations of harm, testified that:

- St. Luke’s has not given him any training or advice on the meaning of the phrases “necessary to prevent the death of the mother” or “good faith medical judgment” in § 18-622. *Id.* Dkt. 75-3 at 53;
- St. Luke’s has not published any guidance for its doctors on how to comply with § 18-622. *Id.*;
- St. Luke’s has not given him any guidance on the Idaho Supreme Court’s opinion in *Planned Parenthood Great Northwest v. State*, 171 Idaho 374 (2023), so that he was not aware that the Court said that death need not be imminent, that a doctor does not need to be certain that death will occur before making the decision that an abortion is necessary to prevent the death of the mother, or that good faith medical judgment is a subjective standard. *Id.* at 75, 77–78; and
- It is “very, very important” for doctors to have a correct understanding of the law so they can provide needed care to women when they need care. *Id.* at 79-80.

Any alleged harm to St. Luke’s, in light of this testimony, cannot be attributed to the State of Idaho, but is of St. Luke’s own design. Further, St. Luke’s failure to thus far provide any discovery responses, and its request to further shift discovery deadlines, shows a lack of good faith on the part of St. Luke’s. Any extension of deadlines will further exacerbate the harms and prejudice to the Attorney General and the people of the State of Idaho.

A. If the Court considers shifting the deadlines, it should ensure that the remaining discovery processes can be streamlined and large disputes avoided.

In an effort to streamline this case, the Attorney General had suggested a three-month extension if the parties agreed to two points to head off possible significant discovery disputes. The Court, if it does plan to shift the remaining deadlines, should adopt the Attorney General’s two suggestions to help streamline this case and avoid significant discovery disputes.

First, entering the model protective order between the parties will avoid having the parties’ attorneys devote further time to the protective order issue; will save the parties and the Court’s staff the time and resources necessary to participate in informal conference; and will not tax the Court with further briefing and the time it would take to render a decision. The model protective order incorporates the necessary protections, such that it is presumptively adequate here.

Second, the Attorney General anticipates significant discovery disputes will arise regarding the scope of the discovery and the undue burden on the Attorney General to log privileged communications that post-date the filing of the *United States v. Idaho* litigation. When the Court initially ruled on this issue, Dkt. 64, it did not have the benefit of the actual discovery requests so that it could judge the actual burden—nor did it consider that “trial counsel” have a statutory duty to and do provide legal advice for the State and its agencies and officials and employees in their official capacity. *See* Dkt. 64 at 6; Idaho Code § 67-1401. Nor did that order recognize that the Attorney General speaks on behalf of the State in court and that he is being sued as an officer of the party to the earlier litigation, the State of Idaho, through the *Ex parte Young* legal fiction.

But now, Plaintiff wants “all communications about enforcement [of] or intent to enforce” Idaho Code § 18-622 and Idaho Code § 18-8801, and wants “all your communications with the Idaho Department of Health and Welfare relating to or referring to the Defense of Life Act (Idaho Code § 18-622), EMTALA (42 U.S.C. § 1395dd), and/or the Fetal Heartbeat Preborn Child Protection Act (Idaho Code § 18-8801).” Counsel Decl. Ex. 3 (RFPs 2, 3, 16). While the Attorney General will address these requests—and the many other similar requests—with appropriate responses, the parties can avoid significant disruption and involvement of the Court by simply having the Court reconsider its decision and not require the Attorney General to pointlessly list on a privilege log those post-*United States v. Idaho* communications subject to privilege.

Adopting these suggestions will streamline the discovery process, such that the parties can still proceed to summary judgment in an orderly and timely fashion.

CONCLUSION

For the foregoing reasons, the Court should either deny the requested shift of the deadlines or if the Court shifts the deadlines, streamline the remaining discovery in this litigation.

DATED: October 16, 2025

STATE OF IDAHO
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on October 16, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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