

Nos. 23-35097 & 23-35130

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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BRUCE GILLEY,  
*Plaintiff-Appellant/Cross-Appellee,*

v.

TOVA STABIN, ET AL.,  
*Defendants-Appellees/Cross-Appellants.*

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On Appeal from the United States District Court  
for the District of Oregon  
Hon. Marco A. Hernandez  
Case No. 3:22-cv-01181-HZ

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**DEFENDANTS-APPELLEES' MOTION FOR EXTENSION  
OF TIME TO FILE COMBINED ANSWERING BRIEF AND  
OPENING BRIEF ON CROSS-APPEAL**

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Defendants-Appellees/Cross-Appellants tova stabin<sup>1</sup> and the Communication Manager of the Division of Equity and Inclusion at the University of Oregon (collectively, “Defendants”) move pursuant to Ninth Circuit Rule 31-2.2(b) for an extension of 14 days to file their combined answering brief on appeal and opening brief on cross-appeal. Defendants have not sought any prior extensions of time. Plaintiff-Appellant/Cross-Appellee Bruce Gilley (“Gilley”) opposes this Motion.

### **PROCEDURAL HISTORY**

Gilley filed his notice of appeal for appeal No. 23-35097 on February 3, 2023. (Declaration of Jeremy A. Carp in Support of Appellees’ Motion for Extension of Time to File Combined Answering Brief and Opening Brief on Cross-Appeal (“Carp Decl.”) ¶ 3.) Defendants filed their notice of appeal for cross-appeal No. 23-35130 on February 16, 2023. (*Id.* ¶ 4.)

The original briefing schedule for both appeal No. 23-35097 and cross-appeal No. 23-35130 was as follows: Gilley’s opening brief on appeal was due by March 3, 2023. (*Id.* ¶ 5.) Defendants’ combined answering brief on appeal and opening brief on cross-appeal was due by March 31, 2023. (*Id.*) Gilley’s reply on appeal and answering brief on cross-appeal was due by April 28, 2023. (*Id.*) Defendants’ optional reply on cross-appeal was due 21 days after service of Gilley’s reply on

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<sup>1</sup> Ms. stabin spells her name using all lowercase letters.

appeal and answering brief on cross-appeal. (*Id.*)

On February 21, 2023, however, Gilley moved to dismiss Defendants' cross-appeal, which automatically stayed the briefing schedule. Ninth Cir. R. 27-11. (*Id.* ¶ 7.) Three days later, on February 24, the Court entered an order vacating the original briefing schedule, with the exception of the March 3 deadline for Gilley to file his opening brief on appeal because Gilley would need to file an opening brief on appeal regardless of the disposition of his motion to dismiss the cross-appeal. (*Id.* ¶ 8.) On March 3, 2023, Gilley filed his 70-page opening brief on appeal. (*Id.* ¶ 9.)

On March 29, 2023, the Court denied Gilley's cross-appeal without prejudice and set a new briefing schedule as follows: Defendants' combined answering brief on appeal and opening brief on cross-appeal is due by April 26, 2023. (*Id.* ¶ 10.) Gilley's reply on appeal and answering brief on cross-appeal is due by May 24, 2023. (*Id.*) Defendants' optional reply on cross-appeal is due 21 days after service of Gilley's reply on appeal and answering brief on cross-appeal. (*Id.*)

This remains the operative briefing schedule, which means that Defendants' combined answering and opening brief is currently due on April 26, 2023. (*Id.* ¶ 11.)

## **DISCUSSION**

Defendants move for an extension of 14-days to file their combined answering brief on appeal and opening brief on cross-appeal. Undersigned counsel, Jeremy A. Carp, has primary brief drafting responsibilities for appeal No. 23-35097 and cross-

appeal No. 23-35130. (*Id.* ¶ 12.) Mr. Carp has been working diligently on Defendants’ combined answering and opening brief—which in part responds to Gilley’s 70-page opening brief on appeal—since the Court set the new briefing schedule on March 29, 2023.<sup>2</sup> (*Id.* ¶ 13.) *See* Ninth Cir. R. 31-2.2(b).

However, the timing of the Court’s resolution of Gilley’s motion to dismiss Defendants’ cross-appeal and the new briefing schedule conflict with existing work obligations that Mr. Carp cannot reschedule. (*Id.* ¶ 15.) Specifically, Mr. Carp has been preparing to argue another appeal before this Court, *Hebrard v. Nofziger*, No. 22-35327, on April 17, 2023. (*Id.* ¶ 16.) Preparations for that argument have been particularly time consuming because the issues in the case are complex, involving several questions of first impression in the Ninth Circuit, as well as several current or potential circuit splits. It is also the first appeal that Mr. Carp has argued. (*Id.*)

Mr. Carp also moved his practice to a new law firm in mid-March and has been diligently attending to time sensitive discovery and case management needs for clients in other existing cases, many of which arose unexpectedly during that transition process. (*Id.* ¶ 17.) Mr. Carp had already taken on responsibility for resolving those issues while awaiting the Court’s resolution of Gilley’s motion to

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<sup>2</sup> In the interest of efficiency, Mr. Carp waited for the motion to dismiss to be resolved—and a new briefing schedule to be set with a defined scope for the issues on appeal and cross-appeal—before commencing work in earnest on Defendants’ combined brief. (Carp Decl. ¶ 14.)

dismiss and before a new briefing schedule had been set by the Court. (*Id.*)

Although Gilley's appeal is formally about his request for a preliminary injunction, there is no actual exigency at issue in the case, as the district court found. (*See* 1-ER-32 (“Plaintiff has . . . failed to show that enforcement (i.e., blocking) is reasonably likely to occur.”).) This case is a free speech challenge to the blocking of Gilley from interacting with a public university Twitter channel. Gilley was blocked for a period of several weeks, until he was unblocked on August 12, 2022. He has not been blocked at any time since then and is free to interact with the Twitter channel. Accordingly, a two-week extension creates no prejudice.

### **CONCLUSION**

For the foregoing reasons, the Court should grant Defendants an additional 14 days – up to and including May 10, 2023 – to file their combined answering brief on appeal and opening brief on cross-appeal.

DATED: April 14, 2023.

Respectfully submitted,

*/s/ Jeremy A. Carp*

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## CERTIFICATE OF COMPLIANCE

This motion's page-length complies with Fed. R. App. P. 27(d)(1)). This motion's type size and typeface comply with Fed. R. App. P. 27(d)(1) and 32(a)(5).

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(1).

DATED: April 14, 2023.

Respectfully submitted,

/s/ Jeremy A. Carp

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: April 14, 2023.

Respectfully submitted,

/s/ Jeremy A. Carp

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