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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Helen Doe, et al.,

10 Plaintiffs,

11 v.

12 Thomas C Horne, et al.,

13 Defendants.
14

No. CV-23-00185-TUC-JGZ

ORDER

15 On June 20, 2024, this Court granted Plaintiffs’ Motion to Compel Discovery and
16 ordered Intervenor-Defendants to produce certain documents and sit for depositions. (Doc.
17 211.) On June 21, 2024, Intervenor-Defendants filed a Motion for Stay Pending Appeal
18 stating their intention to seek a Writ of Mandamus from the Ninth Circuit Court of Appeals.
19 (Doc. 212.) If their Motion for Stay is denied, Intervenor-Defendants request this Court
20 grant a 21-day administrative stay to allow time for the Ninth Circuit to consider a motion
21 for stay and request for administrative stay. (*Id.*) Plaintiffs oppose the Motion. (Doc. 214.)
22 For the following reasons, the Court will deny Intervenor-Defendants’ Motion for Stay
23 Pending Appeal and Request for Administrative Stay.

24 Mandamus is a “drastic” remedy reserved for “extraordinary situations.” *Bauman v.*
25 *U.S. Dist. Ct.*, 557 F.2d 650, 654 (9th Cir. 1977). A petitioner must demonstrate that the
26 “right to issuance of the writ is clear and indisputable.” *Bozic v. U.S. Dist. Ct. (In re Bozic)*,
27 888 F.3d 1048, 1052 (9th Cir. 2018). The Ninth Circuit considers five factors when
28 examining a petition for issuance of a writ of mandamus: whether (1) Petitioners have “no

1 other adequate means, such as a direct appeal, to attain the relief ... desire[d]”; (2)
2 Petitioners “will be damaged or prejudiced in a way not correctable on appeal”; (3) the
3 “district court's order is clearly erroneous as a matter of law”; (4) the “order is an oft-
4 repeated error, or manifests a persistent disregard of the federal rules”; and (5) the “order
5 raises new and important problems, or issues of law of first impression.” *Bauman*, 557 F.2d
6 at 654-55. The absence of factor three will always defeat a petition for mandamus. *Sussex*
7 *v. U.S. Dist. Ct. (In re Sussex)*, 781 F.3d 1065, 1071 (9th Cir. 2015).

8 When considering whether to grant a stay pending appeal, “a court considers four
9 factors: (1) whether the stay applicant has made a strong showing that he is likely to
10 succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;
11 (3) whether issuance of the stay will substantially injure the other parties interested in the
12 proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426
13 (2009) (internal quotation omitted). “[A] movant’s failure to satisfy the stringent standard
14 for demonstrating a substantial likelihood of success on the merits is an arguably fatal flaw
15 for a stay application.” *M.M.V. v. Barr*, 459 F. Supp. 3d 1, 4 (D.D.C. 2020).

16 The Intervenor-Defendants have not made a substantial showing that they are likely
17 to succeed on a request for the extraordinary relief of mandamus. In granting Plaintiffs’
18 Motion to Compel, the Court concluded that: (1) the Intervenor-Defendants waived their
19 legislative privilege by intervening in this litigation and putting their motives at issue, and
20 (2) the *Morgan* Doctrine, which protects high ranking government officials from being
21 unduly entangled in civil litigation, does not apply to prevent Intervenor-Defendants from
22 being deposed where they voluntarily intervened. (*See* Doc. 211.) The Intervenor-
23 Defendants disagree, re-urging the arguments presented in their Objection to Plaintiffs’
24 Motion to Compel. (*See* Docs. 198, 212.) These arguments have been addressed by the
25 Court and found to be without merit.

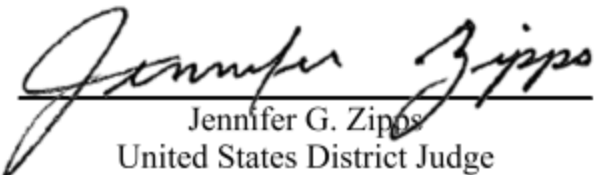
26 Intervenor-Defendants are unlikely to succeed on their claim that Legislative
27 Privilege shields Intervenor-Defendants from producing certain documents and being
28 deposed. As Intervenor-Defendants acknowledge, (Doc. 212 at 3 nt. 1), in a similar case

1 brought by the same Intervenor-Defendants, the Ninth Circuit ultimately concluded that
 2 the district court did not clearly err in determining that the legislators waived their
 3 legislative privilege by intervening in the action. *See In re Toma*, 2023 WL 8167206, at *1
 4 (9th Cir. Nov. 24, 2023) (unpublished) (reasoning that the district court could not clearly
 5 err where no Ninth Circuit authority prohibited the course taken by the district court).

6 Intervenor-Defendants are unlikely to succeed on their claim that the *Morgan*
 7 *Doctrine* shields Intervenor-Defendants from being deposed. The *Morgan* doctrine serves
 8 to protect high ranking officials from being “unduly entangled” in civil litigation. *In re*
 9 *Gold King Mine Release in San Juan Cnty.*, 2021 WL 3207351, at *2 (D.N.M. Mar. 20,
 10 2021). The underlying rationale of protecting high ranking officials from being forced to
 11 participate in litigation is not applicable where the high ranking officials request to and
 12 voluntarily insert themselves as a party to a litigation and actively request discovery from
 13 other parties. Though Intervenor-Defendants argue that intervention does not affect the
 14 *Morgan* doctrine’s application, they cite no relevant caselaw that would suggest this Court
 15 clearly erred in reaching its conclusion. *See In re U.S. Dep’t of Educ.*, 25 F.4th 692, 698
 16 (9th Cir. 2022) (“[T]he district court has erred when [the Ninth Circuit] has already directly
 17 addressed the question at issue or when similar cases from [the Ninth Circuit], cases from
 18 the Supreme Court, cases from other circuits, the Constitution, or statutory language
 19 definitively show us that a mistake has been committed.”). Accordingly,

20 **IT IS ORDERED** that Intervenor-Defendant’s Motion for Stay Pending Appeal
 21 and Request for Administrative Stay (Doc. 212) is **denied**.

22 Dated this 12th day of July, 2024.

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 26 Jennifer G. Zippo
 27 United States District Judge
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