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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Michael Blemaster,)
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 Plaintiff,)
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 vs.)
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 Horatiu Cornelius Sabo, Rare Cornel)
 Sabo, et al.,)
)
 Defendants.)
)
 Horatiu Cornelius Sabo & Rare)
 Cornel Sabo,)
)
 Counterclaimants,)
)
 vs.)
)
 Michael Blemaster,)
)
 Counterdefendant.)
)

**2:16-cv-04557 JWS
ORDER AND OPINION
[Re: Motions at Dockets 53 & 56]**

I. MOTIONS PRESENTED

At docket 53 plaintiff and counterdefendant Michael Blemaster (“Blemaster”) moves to compel defendants and counterclaimants Horatiu Cornelius Sabo and Rare Cornel Sabo (collectively, “the Sabos”) to provide further responses to his discovery requests pursuant to Federal Rule of Civil Procedure 37(a) and moves for an order

1 extending his discovery deadline pursuant to Rule 16(b). The Sabos oppose at
2 docket 54. Blemaster replies at docket 55.

3
4 At docket 56 Blemaster moves for an order extending the deadline for filing a
5 motion for leave to amend his complaint pursuant to Rule 16(b). The Sabos oppose at
6 docket 61. Blemaster replies at docket 62.

7 Oral argument was not requested and would not assist the court.

8
9 **II. BACKGROUND**

10 This action presents a dispute regarding the ownership of real property in
11 Phoenix formerly owned by Ana Viorica Tataru (“Tataru”). Tataru executed a
12 beneficiary deed in 2014 under which the property would be conveyed to her sons, the
13 Sabos, upon her death.¹ Tataru died on May 18, 2016.

14 Blemaster asserts that approximately two weeks before Tataru’s death a
15 company called RCU, Inc. (“RCU”) entered into a \$420,000 purchase option contract
16 with Tataru.² RCU describes itself as a “licensed Arizona Real Estate agent who buys
17 and sells property for a profit.”³ On May 3 an “affidavit and memorandum of agreement
18 concerning real estate” executed by RCU and Tataru was recorded with Maricopa
19 County Recorder’s office.⁴ Blemaster alleges that on May 15 he entered into a real
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¹Doc. 1-3 at 49–50.

26 ²*Id.* at 14–16.

27 ³*Id.* at 14.

28 ⁴*Id.* at 18.

1 estate purchase contract with RCU under which he acquired RCU's interest in Tataru's
2 property for \$490,000.⁵

3
4 Before these real estate transactions closed, Blemaster alleges that he "was
5 informed that Horatiu was going back to Romania, and intended to wait a year before
6 coming back to Arizona to decide whether to sell the Property to Blemaster."⁶

7 Blemaster filed this two-count action in the Arizona Superior Court seeking (1) specific
8 performance of the purchase contract and (2) breach-of-contract damages.⁷ The
9 Sabos removed the case to this court pursuant to 28 U.S.C. § 1332⁸ and have asserted
10 quiet title counterclaims against Blemaster.⁹

11
12 Blemaster served the Sabos with 17 requests for admission ("RFAs"), 9
13 interrogatories, and 6 requests for production of documents ("RFPs").¹⁰ Blemaster's
14 present motion challenges the Sabos' responses to all of these discovery requests
15 except for RFA No. 2.
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22 ⁵*Id.* at 20–23.

23 ⁶Doc. 1-1 at 8 ¶ 13.

24 ⁷Doc. 1-3 at 2–27.

25 ⁸Doc. 1.

26 ⁹Doc. 4, 5.

27 ¹⁰Doc. 53 at 17–55.

1 **III. STANDARDS OF REVIEW**

2 **A. Rule 37**

3
4 If a party fails to cooperate in discovery, the requesting party may move to
5 compel.¹¹ “The party who resists discovery has the burden to show that discovery
6 should not be allowed, and has the burden of clarifying, explaining, and supporting its
7 objections.”¹² “Broad discretion is vested in the trial court to permit or deny
8 discovery[.]”¹³

9
10 **B. Rule 16(b)(4)**

11 Rule 16(b)(4) provides that a scheduling order “may be modified only for good
12 cause and with the judge’s consent.” District courts are “given broad discretion in
13 supervising the pretrial phase of litigation, and [their] decisions regarding the preclusive
14 effect of a pretrial order . . . will not be disturbed unless they evidence a clear abuse of
15 discretion.”¹⁴ “Unlike Rule 15(a)’s liberal amendment policy which focuses on the bad
16 faith of the party seeking to interpose an amendment and the prejudice to the opposing
17 party, Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party
18 seeking the amendment.”¹⁵ “Courts within this Circuit ‘have articulated and undertaken
19 [a] three-step inquiry in resolving the question of ‘diligence’ in the context of
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23 ¹¹Fed. R. Civ. P. 37(a)(1).

24 ¹²*DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002).

25 ¹³*Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

26 ¹⁴*Johnson*, 975 F.2d at 607 (omission in original) (internal quotation marks omitted).

27 ¹⁵*Id.* at 609. See also 6A Charles Alan Wright & Arthur R. Miller, *et al.*, *Fed. Prac. &*
28 *Proc. Civ.* § 1522.2 (3d ed. 2017).

1 determining good cause under Rule 16[.]”¹⁶ Under that inquiry the movant may be
2 required to show (1) that “he was diligent in assisting the court in creating a workable
3 Rule 16 order”; (2) that “his noncompliance with a Rule 16 deadline occurred or will
4 occur, notwithstanding his diligent efforts to comply, because of the development of
5 matters which could not have been reasonably foreseen or anticipated at the time of the
6 Rule 16 scheduling conference”; and (3) that “he was diligent in seeking amendment of
7 the Rule 16 order, once it became apparent that he could not comply with the order.”¹⁷
8
9 “While a court may take into account any prejudice to the party opposing modification of
10 the scheduling order, ‘the focus of the [Rule 16(b)] inquiry is upon the moving party’s
11 reasons for seeking modification . . . [i]f that party was not diligent, the inquiry should
12 end.’”¹⁸
13

14 **IV. DISCUSSION**

15 **A. Requests for Admission**

16 Rule 36(a)(4) prescribes the following standards for RFA answers:

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18 If a matter is not admitted, the answer must specifically deny it or state in
19 detail why the answering party cannot truthfully admit or deny it. A denial
20 must fairly respond to the substance of the matter; and when good faith
21 requires that a party qualify an answer or deny only a part of a matter, the
22 answer must specify the part admitted and qualify or deny the rest. The
23 answering party may assert lack of knowledge or information as a reason
24 for failing to admit or deny only if the party states that it has made

24 ¹⁶*Morgal v. Maricopa Cnty. Bd. of Sup’rs*, 284 F.R.D. 452, 460 (D. Ariz. 2012) (quoting
25 *Grant v. United States*, No. 2:11-CV-00360 LKK, No. 2011 WL 5554878, at *4 (E.D. Cal.
26 Nov. 15, 2011), adopted, 2012 WL 218959 (E.D. Cal. Jan. 23, 2012)).

27 ¹⁷*Id.*

28 ¹⁸*In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir.
2013) (quoting *Johnson*, 975 F.2d at 609).

1 reasonable inquiry and that the information it knows or can readily obtain
2 is insufficient to enable it to admit or deny.”¹⁹

3 If a party believes that another party’s answers or objections fail to satisfy these
4 standards, it “may move to determine the sufficiency of an answer or objection.”²⁰ A
5 party does not comply with Rule 36 by offering evasive denials, which do “not
6 ‘specifically deny the matter,’” or responses that do “not set forth ‘in detail’ the reasons
7 why the answering party cannot truthfully admit or deny the matter.”²¹ If the court finds
8 that an answer does not comply with Rule 36, it “may order either that the matter is
9 admitted or that an amended answer be served.”²² Generally speaking, “[p]arties may
10 not view requests for admission as a mere procedural exercise requiring minimally
11 acceptable conduct. They should focus on the goal of the Rules, full and efficient
12 discovery, not evasion and word play.”²³

15 Blemaster challenges the Sabos’ responses to 16 RFAs.²⁴ In response, the
16 Sabos only specifically address their response to RFA No. 12.

17
18 **1. RFA Nos. 1, 4, 5, 7, 8, 10, 11, 15, 16, and 17**

19 Blemaster argues that the Sabos’ denials to RFA Nos. 1, 4, 5, 7, 8, 10, 15, 16,
20 and 17 are deficient because Interrogatory No. 1 requires them to identify the factual
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22 ¹⁹Fed. R. Civ. P. 36(a)(4).

23 ²⁰Fed. R. Civ. P. 36(a)(6).

24 ²¹*Asea, Inc. v. S. Pac. Transp. Co.*, 669 F.2d 1242, 1245 (9th Cir. 1981).

25 ²²Fed. R. Civ. P. 36(a)(6).

26 ²³*Marchand v. Mercy Med. Ctr.*, 22 F.3d 933, 936 (9th Cir. 1994).

27 ²⁴Doc. 53 at 98–106.

1 basis of their denials and they did not do so. This deficiency relates to Interrogatory
2 No. 1, not these RFAs. The Sabos' answers to these RFAs are sufficient.

3
4 **2. RFA Nos. 3, 6, and 9**

5 RFA Nos. 3, 6, and 9 ask the Sabos to admit that Tataru signed various
6 documents. For each, the Sabos admit that the documents speak for themselves and
7 deny "any other matter not specifically and expressly admitted."²⁵ Rule 36 requires
8 answering parties to "specifically deny" all matters not admitted. The Sabos turn this
9 requirement on its head, specifically admitting a non-responsive matter and then
10 generally denying all other matters. The Sabos shall amend their answers to these
11 RFAs.
12

13 **3. RFA Nos. 12, 13**

14 RFA No. 12 asks the Sabos to admit that "no probate proceedings had been
15 commenced with respect to [Tataru] or her property as of April 25, 2017."²⁶ The Sabos
16 respond by objecting that "probate proceedings" is vague and ambiguous. RFA No. 13
17 asks the Sabos to admit that they "are the sole members of Ana's Assisted Living,
18 LLC."²⁷ The Sabos respond by objecting that the question is irrelevant and vague and
19 ambiguous.²⁸
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25 ²⁵*Id.* at 98, 100, 101–02.

26 ²⁶*Id.* at 103.

27 ²⁷*Id.* at 64.

28 ²⁸*Id.*

1 These objections are not justified. With regard to RFA No. 12, the Sabos argue
2 that “probate proceedings” is vague and ambiguous because that phrase can refer to
3 either formal or informal probate proceedings.²⁹ Maybe so, but this objection misses
4 the mark because the Sabos do not assert that this distinction would make any
5 difference to their answer. With regard to RFA No. 13, Blemaster argues that the
6 request is relevant because the members of Ana’s Assisted Living, LLC likely possess
7 knowledge of facts relevant to the claims at issue in this case.³⁰ Because the Sabos fail
8 to respond to this explanation, their relevancy objection is overruled. Further, their
9 “vague and ambiguous” objection is also overruled, as they offer no explanation as to
10 how the request is vague or ambiguous. The Sabos shall amend their answers to these
11 RFAs.
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14 **4. RFA No. 14**

15 RFA No. 14 asks the Sabos to admit that “Ana’s Assisted Living, LLC has
16 operated the Property as an assisted living facility since [Tataru’s] death.”³¹ The Sabos
17 respond by objecting that the question is irrelevant and admitting that “Ana’s Assisted
18 Living Home, LLC operated *a business* on the premises *for a period of time* after
19 [Tataru] died” and then denying “any other matter not specifically and expressly
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26 ²⁹*Id.* at 3.

27 ³⁰*Id.* at 104.

28 ³¹*Id.* at 64.

1 admitted.”³² This answer is clearly evasive. The Sabos shall amend their answer to
2 this RFA.

3 **B. Interrogatories & RFPs**

4
5 In response to each of Blemaster’s 9 interrogatories and 6 RFPs, the Sabos
6 copied-and-pasted the following nonsensical boilerplate objection:

7 These discovery requests are intended to harass Defendant and
8 unnecessarily increase the legal fees and expenses incurred by
9 Defendant; Defendant objects to each request insofar as it seeks
10 information that is protected from disclosure by the attorney-client
11 privilege, investigative privilege, or any other privilege; Defendant objects
12 to each request insofar as it seeks information that is protected from
13 disclosure by the litigation work-product doctrine; Defendant objects to
14 each request insofar as it seeks information that is protected from
15 disclosure by federal law or Arizona law; Defendant objects to the
16 instructions and definitions in Plaintiff’s requests insofar as they seek to
17 impose obligations on Defendant that exceed those prescribed by the
18 applicable rules of procedure; Defendant objects to each request to the
19 extent the request seeks documents or information available from public
20 records readily accessible to Plaintiff; Plaintiff objects to each request to
21 the extent the request seeks information that is not relevant to the subject
22 matter of this action and is not reasonably calculated to lead to the
23 discovery of admissible evidence; Defendant objects to each request to
24 the extent the request seeks documents or information for which the
25 burden of deriving or ascertaining is substantially the same for the Plaintiff
26 as for the Defendant; Defendant objects to each request to the extent the
27 request seeks documents or information for which the burden of deriving
28 or ascertaining is substantially higher for Defendant as for Plaintiff;
Defendant objects to each request to the extent the request is unduly
burdensome for Defendant; Defendant objects to each request to the
extent the request seeks documents or information already in the
possession, custody, or control of Plaintiff; Defendant objects to each
request to the extent the request is vague, ambiguous, overbroad,
compound, or incomprehensible; Defendant objects to each discovery
request to the extent the request seeks information that is not in Plaintiff’s
possession, custody, or control; Defendant’s response to any discovery
request (1) is not an admission or acknowledgment that such request calls
for information or documents relevant to the subject matter of this

³²Doc. 56 at 64 (emphasis added).

1 proceeding, (2) is without prejudice to Defendant's right to contend at a
2 hearing or in any other proceeding in this action, or in any other action or
3 proceeding, that such response is inadmissible, irrelevant, immaterial, or
4 not a proper basis for discovery, (3) and is without prejudice to or waiver
5 of any objection to any future use of such discovery that Defendant may
6 make; Defendant continues to investigate the facts and issues in this
7 litigation and reserves the right to rely, at a hearing or any other
8 proceeding in this litigation, or any other action or proceeding, upon
9 documents and information in addition to that provided in response to the
10 requests; Defendant reserves teh [sic] right to amend, explain, change,
11 amplify, and otherwise supplement these responses as required by the
12 rules of procedure.³³

9 This is a flagrant violation of the discovery rules. Rule 33(b)(4) requires that “the
10 grounds for objecting to an interrogatory must be stated with specificity” and cautions
11 that “[a]ny ground not stated in a timely objection is waived, unless the court, for good
12 cause, excuses the failure.” Similarly, Rule 34(b)(2)(B) requires that “[f]or each item or
13 category,” an objecting party must “state with specificity the grounds for objecting to the
14 request, including the reasons.” The Sabos’ boilerplate objections are inappropriate,
15 tantamount to no objection at all.³⁴ The Sabos shall serve amended answers to
16 Blemaster’s interrogatories and RFPs that respond to each specific discovery request.

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19 In addition, sanctions are mandatory under Rule 26(g). Rule 26(g) states that
20 every objection to a discovery request must be signed by an attorney or party (if
21 unrepresented) who, “[b]y signing, certifies that to the best of the person’s knowledge,
22 information, and belief formed after a reasonable inquiry” the objection is
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26 ³³Doc. 53 at 69–81.

27 ³⁴See *Walker v. Lakewood Condo. Owners Ass’n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999)
28 (“Boilerplate, generalized objections are inadequate and tantamount to not making any
objection at all.”).

1 (i) consistent with these rules and warranted by existing law or by a
2 nonfrivolous argument for extending, modifying, or reversing existing law,
3 or for establishing new law;
4 (ii) not interposed for any improper purpose, such as to harass, cause
5 unnecessary delay, or needlessly increase the cost of litigation; and
6 (iii) neither unreasonable nor unduly burdensome or expensive,
7 considering the needs of the case, prior discovery in the case, the amount
8 in controversy, and the importance of the issues at stake in the action.³⁵

9 The duty to certify discovery responses “requires the lawyer to pause and consider the
10 reasonableness of his request, response, or objection.”³⁶ Courts have held that the act
11 of making boilerplate objections is prima facie evidence of a Rule 26(g) violation,
12 “because if the lawyer had paused, made a reasonable inquiry, and discovered facts
13 that demonstrated the burdensomeness or excessive cost of the discovery request, he
14 or she should have disclosed them in the objection, as both Rule 33 and 34 responses
15 must state objections with particularity, on pain of waiver.”³⁷

16 Rule 26(g)(3) requires the court to impose an “appropriate” sanction against the
17 signer of a discovery response, “the party on whose behalf the signer was acting, or
18 both” when the certification violates the rule “without substantial justification.” The
19 sanction “may include an order to pay the reasonable expenses, including attorney’s
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21 _____
22 ³⁵Fed. R. Civ. P. 26(g)(1).

23 ³⁶Fed. R. Civ. P. 26(g) advisory committee’s note to 1983 amendment.

24 ³⁷*Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 359 (D. Md. 2008). See also
25 *Liguria Foods, Inc. v. Griffith Labs., Inc.*, 320 F.R.D. 168, 189 (N.D. Iowa 2017) (“The ‘natural
26 and probable consequences’ of ‘boilerplate’ objections is delay and impediment of discovery,
27 not the narrowing of issues and the avoidance of expense and delay toward which the
28 discovery rules are aimed. Ordinarily, I would also likely find that the impropriety of employing
such frivolous objections in every single discovery response also demonstrates the parties’
obstructionist attitude toward discovery and would further confirm suspicions that the responses
were interposed for an improper purpose.”).

1 fees, caused by the violation.”³⁸ The court finds that the Sabos’ boilerplate objections
2 are objectively unreasonable, asserted without a reasonable inquiry into the facts. In
3 light of this discovery violation, the court will order the Sabos’ counsel to pay the
4 reasonable attorney’s fees and costs that Blemaster incurred in challenging these
5 objections.
6

7 **C. Motion to Extend Blemaster’s Discovery Deadline**

8 On August 10, Blemaster filed his present motion to extend “all unexpired
9 deadlines for him to complete discovery and to make any required disclosures” until 90
10 days after the date the Sabos serve responses to his written discovery requests that
11 comply with the discovery rules.³⁹ He states that this extension is necessary because
12 he needs those responses in order to prepare for “any witness depositions and to
13 provide potential experts.”⁴⁰ Blemaster has shown that he has not been able to satisfy
14 his discovery obligations because of the Sabos’ inadequate discovery responses, not
15 because of any lack of diligence on his part, and that he promptly sought amendment of
16 the scheduling order. His motion will be granted.
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19 **D. Motion to Extend Blemaster’s Deadline to Amend His Complaint**

20 At docket 16, defendant Horatiu Cornelius Sabo (“Horatiu”) moved for judgment
21 on the pleadings due to Blemaster’s failure to allege or attach to his complaint a
22 contract bearing the Sabos’ signatures, in violation of Arizona’s statute of frauds. The
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26 ³⁸Fed. R. Civ. P. 26(g)(3).

27 ³⁹Doc. 53 at 13–14.

28 ⁴⁰*Id.* at 13.

1 court denied the motion because the Sabos were in possession of the purchase
2 contract signed by Tataru.⁴¹ Horatiu moved for reconsideration, arguing that the
3 contract is irrelevant because Tataru “is not a defendant in this case, and neither is her
4 estate.”⁴² The court denied Horatiu’s reconsideration motion because the complaint
5 adequately alleges that Tataru transferred her legally enforceable obligations under the
6 contract to the Sabos at death via the beneficiary deed.⁴³

8 Based on Horatiu’s argument in his reconsideration motion that Tataru’s estate is
9 the proper defendant,⁴⁴ Blemaster wants to amend his complaint to add the estate as a
10 defendant. He cannot do so at the present, however, because a personal
11 representative (“PR”) for Tataru’s estate has not yet been appointed. Thus, Blemaster
12 now moves for an extension of the September 1, 2017 deadline for adding parties until
13 the shorter of either “(a) 90 days; or (b) 14 days from the appointment of a personal
14 representative” of Tataru’s estate.⁴⁵ In response, the Sabos assert that Blemaster’s
15 request shows “carelessness, if not intentional delay,” because when the scheduling
16 order was entered Blemaster “knew about Mrs. Tataru’s death, knew about her sons
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21 ⁴¹Doc. 43.

22 ⁴²Doc. 44 at 2.

23 ⁴³Doc. 46. See A.R.S. § 33-405(A) (“A deed that conveys an interest in real property . . .
24 to a grantee beneficiary designated by the owner and that expressly states that the deed is
25 effective on the death of the owner transfers the interest to the designated grantee beneficiary
26 effective on the death of the owner *subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges and other encumbrances made by the owner or to which the owner was subject during the owner’s lifetime.*”) (emphasis added).

27 ⁴⁴Doc. 56 at 9.

28 ⁴⁵*Id.* at 1.

1 and their ownership of the property left to them by their mother, and knew about the
2 LLC.”⁴⁶

3
4 Given that a beneficiary deed is an instrument that transfers title to real property
5 to the grantee outside of probate,⁴⁷ it is not clear to the court why Tataru’s estate must
6 be added as a defendant in this case. That said, the merits of Blemaster’s proposed
7 amendment is not currently before the court. All the court must decide now is whether
8 Blemaster has been diligent in seeking to amend the scheduling order. Blemaster
9 states that the need to amend his complaint arose when he realized, from Horatiu’s
10 reconsideration motion, that one of the Sabos’ defenses is that Tataru’s estate is the
11 only proper defendant. Horatiu filed that motion on May 17, 2017. Blemaster filed a
12 petition for probate and for appointment of a PR on July 19, 2017, and the present
13 motion for an extension of time on September 1. Blemaster has shown that he
14 promptly sought amendment of the scheduling order. His motion will be granted.
15
16

17 **V. CONCLUSION**

18 Based on the preceding discussion, the motion at docket 53 is GRANTED IN
19 PART AND DENIED IN PART as follows: the Sabos must amend their answers to
20 Blemaster’s interrogatories, RFPs, and RFA Nos. 3, 6, 9, 12, 13, and 14. The Sabos
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⁴⁶Doc. 61 at 2.

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25 ⁴⁷See A.R.S. § 14-6101(B); 12 Darren T. Case, Brent W. Nelson & T.J. Ryan, *Arizona*
26 *Estate Planning and Probate Handbook* § 4:2 (12th ed. 2017) (“The probate process generally
27 does not cover assets passing outside of the decedent’s estate, either by contract or operation
28 of law. This may include assets with designated beneficiaries other than the decedent’s estate
. . . , joint accounts, property passing by rights of survivorship, *real property passing by*
beneficiary deed, or assets titled in the name of a trustee that are not payable to the decedent
or his or her estate.”) (emphasis added).

1 must do so no later than December 1, 2017. All unexpired discovery deadlines as of
2 August 10, 2017, are hereby extended until 90 days after the Sabos serve the discovery
3 responses compelled by this order; in all other respects, the motion is denied. The
4 motion at docket 56 is GRANTED. Blemaster may have until the shorter of (a) 90 days
5 from the date of this order or (b) 14 days after the appointment of a personal
6 representative for the Tataru estate to file a motion to amend his complaint. The
7 Sabos' counsel are ordered to pay Blemaster's reasonable expenses for challenging
8 their boilerplate objections to his interrogatories and RFPs. If the parties cannot
9 stipulate to the amount of expenses that the Sabos' counsel must pay Blemaster, then
10 within 14 days from the date of this order Blemaster shall file a properly supported
11 motion showing his reasonable expenses, and the Sabos shall respond within 7 days
12 after the motion is filed. No reply may be filed unless requested by the court.
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16 DATED this 25th day of October 2017.

17
18 /s/ JOHN W. SEDWICK
19 SENIOR JUDGE, UNITED STATES DISTRICT COURT
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