

1 AARON D. FORD
 Attorney General
 2 CHRISTOPHER M. GUY (Bar No. 15239)
 Deputy Attorney General
 3 KATLYN M. BRADY (Bar No. 14173)
 Senior Deputy Attorney General
 4 State of Nevada
 Office of the Attorney General
 5 555 East Washington Avenue
 Suite 3900
 6 Las Vegas, Nevada 89101
 (702) 486-3326 (phone)
 7 (702) 486-3773 (fax)
 Email: cguy@ag.nv.gov

8 *Attorneys for Defendants*
 9 *James Cox, James Dzurenda,*
 10 *Dwight Neven, and Brian Williams*

11
 12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 THAD AUBERT,

15 Plaintiff,

16 v.

17 JAMES DZURENDA, *et al.*,

18 Defendants.

Case No. 2:18-cv-01329-GMN-EJY

**DEFENDANTS' UNOPPOSED MOTION
 TO EXTEND THE DISPOSITIVE
 MOTION DEADLINE
 (FOURTH REQUEST)**

19
 20 Defendants, James Cox, James Dzurenda, Dwight Neven, and Brian Williams
 21 (NDOC Employees), by and through counsel, Aaron D. Ford, Nevada Attorney General, and
 22 Christopher M. Guy, Deputy Attorney General, of the State of Nevada, Office of the
 23 Attorney General, requests this Court to extend the dispositive motion deadline by 75 days
 24 from **January 13, 2021, to March 29, 2021.**

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 Defendants respectfully request this Court grant its unopposed motion to extend the
 28 dispositive motion deadline. Defense counsel recently joined this Office of the Attorney

1 General (OAG) and was assigned the defense of this case. Counsel's efforts to get up to
2 speed on this case have been delayed for several reasons: (1) counsel was only recently
3 appointed to defend this matter and thus needs additional time to review the case, (2) due
4 to Governor Sisolak's Stay at Home 2.0 order, counsel has been required to work from home,
5 which reduced access to case files, and (3) due to the upcoming holiday, the Office of the
6 Nevada Attorney General will be closed.¹

7 Additionally, Aubert stated to counsel that he has experienced delays and
8 restrictions due to COVID-19.² Such events have caused his efforts to pursue his claims to
9 fall behind. More time would be a benefit, as it would allow him to resume his efforts.³
10 Additionally, Aubert believes he may be able to secure an attorney in the first part of 2021
11 and that a brief extension would allow him the time to pursue that possibility.⁴ Accordingly,
12 the parties have agreed to extend the dispositive motion deadline to **March 29, 2021**.⁵

13 **II. BACKGROUND**

14 On November 16, 2020, the Court granted Defendants' third motion for an extension
15 of time, which extended the dispositive motions deadline to January 13, 2021.⁶ Since then,
16 the undersigned counsel joined the OAG.⁷ Recently, undersigned counsel has been assigned
17 the defense of this matter. Counsel was unable to speak with Aubert until 1:00 P.M. on
18 December 23, 2020.⁸ However, the December 23, 2020 call was a promising conversation,
19 which included a discussion about a possible future settlement.⁹ Both sides came to an
20 agreement that an extension of time would be mutually beneficial.¹⁰

21 ///

22 ///

23 ¹The OAG observes the two upcoming Nevada holidays, which will close the office:
24 Christmas on Friday, December 25, and New Years' on Friday, January 1.

25 ² Ex. A (Declaration of Counsel).

26 ³ *Id.*

27 ⁴ *Id.*

28 ⁵ *Id.*

⁶ ECF No. 114.

⁷ Defense counsel joined the OAG on November 30, 2020.

⁸ Ex. A (Declaration of Counsel).

⁹ *Id.*

¹⁰ *Id.*

1 **III. LEGAL STANDARD**

2 **A. Rule 6(b), Fed. R. Civ. Proc.**

3 Rule 6(b)(1), Fed. R. Civ. Pro., governs extensions of time:

4 When an act may or must be done within a specified time, the
 5 court may, for good cause, extend the time: (A) with or without
 6 motion or notice if the court acts, or if a request is made, before
 7 the original time or its extension expires; or (B) on motion made
 8 after the time has expired if the party failed to act because of
 9 excusable neglect.

10 Under Rule 6, good cause is not a rigorous or high standard, and courts have
 11 construed the test broadly. *Ahanchion v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259
 12 (9th Cir. 2010). Rule 6(b) “[is] to be liberally construed to effectuate the general purpose of
 13 seeing that cases are tried on the merits.” *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir.
 14 1983); *Wong v. Regents of the Univ. of Calif.*, 410 F.3d 1052, 1060 (9th Cir. 2005) (“Of course,
 15 courts should not mindlessly enforce deadlines.”). In general, an application for extension
 16 of time under Rule 6(b)(1)(A) will be granted in the absence of bad faith. *Ahanchion*, 624
 17 F.3d at 1259 (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and*
 18 *Procedure* § 1165 (3d ed. 2004)) (internal quotations omitted).

19 **B. Local Rules 26¹¹**

20 LR 26-3. EXTENSION OF SCHEDULED DEADLINES:

21 A motion or stipulation to extend any date set by the discovery
 22 plan, scheduling order, or other order must, in addition to
 23 satisfying the requirements of LR IA 6-1, be supported by a
 24 showing of good cause for the extension. A motion or stipulation
 25 to extend a deadline set forth in a discovery plan must be received
 26 by the court no later than 21 days before the expiration of the
 27 subject deadline. A request made within 21 days of the subject
 28 deadline must be supported by a showing of good cause. A request
 made after the expiration of the subject deadline will not be
 granted unless the movant also demonstrates that the failure to
 act was the result of excusable neglect. A motion or stipulation to
 extend a discovery deadline or to reopen discovery must include:

///

11 “A motion or stipulation to extend time must state the reasons for the extension
 requested and must inform the court of all previous extensions of the subject deadline the
 court granted.” LR IA 6-1.

- 1 (a) A statement specifying the discovery completed;
- 2 (b) A specific description of the discovery that remains to
3 be completed;
- 4 (c) The reasons why the deadline was not satisfied or the
5 remaining discovery was not completed within the time
6 limits set by the discovery plan; and
- 7 (d) A proposed schedule for completing all remaining
8 discovery.^[12]

7 **IV. LEGAL ANALYSIS**

8 **A. Local Rule 26-3 Requirements**

9 **1. Completed Discovery**

10 All discovery has been completed.

11 **2. Discovery That Remains to Be Completed**

12 No discovery remains to be completed.

13 **3. Reasons Why the Deadlines Were Not Satisfied**

14 As stated above, Defense counsel recently joined the OAG and was assigned the
15 defense of this case. Counsel efforts to get up to speed on this case have been delayed for
16 several reasons: (1) counsel was only recently appointed to defend this matter and thus
17 needs additional time to review the case, (2) due to Governor Sisolak's Stay at Home 2.0
18 order, counsel has been required to work from home, which reduced access to case files, and
19 (3) due to the upcoming holiday, the Office of the Nevada Attorney General will be closed.¹³

20 Additionally, Aubert stated to counsel that he has experienced delays and
21 restrictions due to COVID-19.¹⁴ Such events have caused his efforts to pursue his claims to
22 fall behind. Aubert was transferred from Lovelock to High Desert State Prison.¹⁵ COVID-
23 19 has caused delays in dealing with the law library.¹⁶ More time would be a benefit, as it
24 would allow him to resume his efforts.¹⁷ Additionally, Aubert believes he may be able to

25 ¹² Nevada Local Court Rules 26-4

26 ¹³The OAG observes the two upcoming Nevada holidays, which will close the office:
Christmas on Friday, December 25, and New Years' on Friday, January 1.

27 ¹⁴ Ex. A (Declaration of Counsel).

28 ¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

1 secure an attorney in the first part of 2021 through the aid of his family and that a brief
2 extension would allow him the time to pursue that possibility.¹⁸

3 **4. Proposed Deadlines**

4 Dispositive motion deadline March 29, 2021

5 Joint pretrial order April 28, 2021

6 **5. Good Cause Exists; Thus, The Court Should Grant Defendants'
7 Motion To Extend The Dispositive Motion Deadline**

8 Good cause exists for extending the dispositive motion deadline by 75 days. As laid
9 out above, counsel has diligently been working to defend this matter. However, counsel's
10 recent hiring and admission to the Federal District Court,¹⁹ along with counsel's current
11 caseload have left counsel unable to meet the current deadlines. Complicating the case
12 transition, Nevada's Governor issued multiple stay-at-home directives, which has greatly
13 limited access to case files. While counsel is working diligently to get up to speed and defend
14 this action, a brief extension is required to allow adequate time to review and reflect on the
15 discovery and brief dispositive motions. Similarly, Aubert has experienced COVID-19
16 restrictions that have impacted his ability to prepare for a January 13 dispositive deadline.
17 As mentioned above, Aubert agrees that an extension would be mutually beneficial. Thus,
18 neither party will be prejudiced by the short delay.

19 **V. CONCLUSION**

20 Defendants have shown good cause to extend the dispositive motions deadline to
21 March 29, 2021. Aubert does not oppose this motion. Due to the nature of summary
22 judgment and the time and complexity involved in adequately briefing the Court,

23 ///

24 ///

25 ///

26 ///

27 _____
28 ¹⁸ *Id.*

¹⁹ Counsel was admitted to the Federal District Court on December 3, 2020.

1 Defendants respectfully request an extension of time to file dispositive motions from
2 **January 13, 2021, to March 29, 2021.**

3 DATED this 24th day of December, 2020.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Christopher M. Guy
7 CHRISTOPHER M. GUY (Bar No. 15239)
8 Deputy Attorney General
9 KATLYN M. BRADY (Bar No. 14173)
10 Senior Deputy Attorney General

11 *Attorneys for Defendants*

12 **IT IS SO ORDERED.**

13 
14 DAYNA J. ZEUCHAK
15 UNITED STATES MAGISTRATE JUDGE

16 Dated: December 28, 2020