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Brandon Wolden erroneously named as B Wolden

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 DAINE ANTON CRAWLEY,

Case No.: 2:19-cv-02179-CDS-BNW

11 Plaintiff,

12 vs.

**DEFENDANT BRANDON
 WOLDEN'S MOTION TO EXTEND
 DISCOVERY
 (Third Request)
 (ECF No. 54)**

13 B WOLDEN, et al.

14 Defendants.

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 17 Defendant Brandon Wolden, erroneously sued as B Wolden, ("WOLDEN"), by and
 18 through his counsel, Kaempfer Crowell, respectfully moves for an order extending the discovery
 19 deadlines by 90 days. This Motion is based on the following memorandum of points and
 20 authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

On June 1, 2021, Plaintiff filed his Third Amended Complaint, [ECF No. 28], which was served on Wolden on November 8, 2021. The Court screened the initial Complaint, First Amended Complaint and Second Amended Complaint previously leaving a sole excessive force claim against Wolden. Wolden filed his Answer to the Third Amended Complaint on November 23, 2021. [ECF No. 40].

Wolden filed a Motion to Extend Discovery, which the Court granted. [ECF No. 49]. Wolden and Plaintiff then jointly sought an additional extension of the discovery deadlines which the Court also granted. [ECF No. 54]. This is the current Scheduling Order in place. Wolden attempted to meet and confer with Plaintiff again about extending the current discovery deadlines by forwarding him another proposed Stipulation to Extend Discovery Deadlines and letter on June 14, 2022. As of the date of filing this Motion, neither Wolden nor his Counsel have received a response from Plaintiff.

Wolden has served Plaintiff with his initial Rule 26 Disclosures and two supplements to date. Plaintiff has not yet provided any disclosures to Wolden. Wolden served his First Interrogatories and First Requests for Production of Documents on Plaintiff which Plaintiff responded to. Plaintiff served his first set of Interrogatories, Requests for Admissions and Requests for Production on Wolden which were responded to. Plaintiff served a second set of Interrogatories which were also responded to.

Following receipt of Plaintiff’s signed medical authorization, Wolden served twelve (12) third-party subpoenas to obtain Plaintiff’s medical records from various providers. After much follow-up with third-parties that did not initially respond to the Subpoenas, Wolden has received nearly all responses to the Subpoenas. Wolden is currently reviewing the documents received

1 and is preparing a supplemental disclosure.

2 On June 27, 2022, Wolden, through Counsel, received a Subpoena from Plaintiff directed
3 to LVMPD, Wolden's employer, requesting various documents. The Subpoena requests the
4 documents by July 21, 2022. The Subpoena is not proper, however, as Plaintiff did not have it
5 issued by the Clerk of the Court and Plaintiff should serve a proper Request for Production of
6 Documents on Wolden rather than a Subpoena on LVMPD. Wolden will be preparing
7 correspondence to Plaintiff along those same lines.

8 The discovery that remains to be completed includes providing a response to Plaintiff's
9 improper Subpoena and responding to any proper document requests made by Plaintiff. Wolden
10 will timely disclose his expert report on July 1, 2022. Wolden is currently reviewing materials
11 received in response to Subpoenas and will prepare and forward a supplemental disclosure to
12 Plaintiff. Finally, Wolden will be filing a Motion with the Court seeking an Order to take the
13 deposition of the Plaintiff who is currently incarcerated.

14 **II. AN EXTENSION IS WARRANTED**

15 There is good cause to extend the discovery cut off deadline, rebuttal expert disclosure
16 deadline, dispositive motion deadline, and pretrial order deadline. As shown, the parties have
17 been engaged in discovery and it has been progressing. However, Plaintiff is representing
18 himself in Proper Person which causes delay in communicating with Plaintiff.

19 Next, as the Court is aware, Wolden served numerous third-party Subpoenas which
20 Wolden anticipated responses to the Subpoenas by the date requested; May 25, 2022. However,
21 there were numerous third-parties that did not respond requiring Wolden to contact them and/or
22 send letters requesting compliance with the Subpoenas. The last outstanding Subpoena was
23 responded to recently on June 22, 2022. As shown, there was a thirty day delay in obtaining the
24 records.

1 Wolden recognizes that this request is being made fewer than twenty-one days before the
2 current deadline to complete discovery, July 1, 2022, however he submits that good cause and
3 excusable neglect exist for the delay.

4 LR 26-3 states in relevant part:

5 A motion or stipulation to extend a deadline set forth in a discovery plan
6 must be received by the court no later than 21 days before the expiration
7 of the subject deadline. A request made within 21 days of the subject
8 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.

9 In evaluating excusable neglect, the court considers the following factors: (1) the reason
10 for the delay and whether it was in the reasonable control of the moving party, (2) whether the
11 moving party acted in good faith, (3) the length of the delay and its potential impact on the
12 proceedings, and (4) the danger of prejudice to the nonmoving party. *See Pioneer Inv. Servs. Co.*
13 *v. Brunswick Assocs.*, 507 U.S. 380, 395 S. Ct. 1489, 123 L.Ed.2d 74 (1993).

14 As noted in the Parties' previous requests and above, Plaintiff is currently incarcerated
15 and is representing himself in proper person. Because of this, communication between the
16 Parties – such as communicating about extending discovery – must be done in writing and by
17 mail. This causes delay. In addition, the first request to extend discovery only sought a short
18 extension of time as to the deadline to disclose experts. At that time, Wolden did not anticipate
19 that so many of the medical providers Plaintiff treated with would not respond to Subpoenas;
20 causing further delay. Wolden submits that excusable neglect is shown in the delay in requesting
21 the extension.

22 Wolden did make a good faith effort to meet and confer with Plaintiff about extending
23 the discovery deadlines prior to filing this Motion. Although Plaintiff did not respond to
24 Wolden's request, given that Plaintiff is still attempting to obtain documents from Wolden's

1 employer, it could easily be assumed that Plaintiff is not yet finished conducting discovery
 2 himself. No party will be prejudiced if the discovery deadlines are extended. The parties have
 3 been actively engaged in discovery. Due to various delays additional time is needed. This
 4 extension will give the parties the time needed to complete discovery.

5 **III. PROPOSED DATES**

6 Wolden requests that the Scheduling Order be amended to reflect the following extension
 7 of 90 days:

<u>Activity</u>	<u>Current Date</u>	<u>Proposed Date</u>
Discovery Cut-Off	July 1, 2022	September 29, 2022
Rebuttal Expert Disclosure	July 5, 2022	August 31, 2022
Dispositive Motions	September 1, 2022	October 31, 2022
Proposed Joint Pretrial Order	September 8, 2022	November 30, 2022

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1 **IV. CONCLUSION**

2 Wolden is not attempting to delay the conclusion of this matter; rather he is requesting an
3 extension to complete necessary discovery. Based upon the foregoing, Wolden respectfully
4 requests the Court enter a new Scheduling Order with the dates proposed above.

5 DATED this 29th day of June, 2022.

6 KAEMPFER CROWELL

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8 By: /s/ Lyssa S. Anderson
9 LYSSA S. ANDERSON (Nevada Bar No. 5781)
10 RYAN W. DANIELS (Nevada Bar No. 13094)
11 1980 Festival Plaza Drive, Suite 650
12 Las Vegas, Nevada 89135

13 *Attorneys for Defendant*
14 *Brandon Wolden erroneously named as B Wolden*

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16 **ORDER**
17 Good cause shown, IT IS ORDERED that
18 ECF No. 59 is GRANTED.

19 IT IS SO ORDERED
20 DATED: 4:07 pm, June 30, 2022
21 
22 BREND A WEKSLER
23 UNITED STATES MAGISTRATE JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of KAEMPFER CROWELL, and that on the date below, I caused the foregoing **DEFENDANT BRANDON WOLDEN’S MOTION TO EXTEND DISCOVERY (Third Request) (ECF No. 54)** to be served via CM/ECF and/or First Class Mail (where indicated) addressed to the following:

Daine Anton Crawley, #1167447
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

Plaintiff, Pro Se

DATED this 29th day of June, 2022.

/s/ Luisa M. Cota
an employee of Kaempfer Crowell