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*David Mar, and Marsha Johns*  
 7

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10 TODD EVANS,  
 11 Plaintiff,  
 12 v.  
 13 JAMES DZURENDA, et al.,  
 14 Defendants.

Case No. 3:18-cv-00283-RCJ-CSD  
**ORDER APPROVING**  
**PROPOSED JOINT PRETRIAL ORDER**

15 Following pretrial proceedings in this case,

16 IT IS ORDERED:

17 **I. NATURE OF ACTION AND CONTENTIONS OF THE PARTIES**

18 **A. NATURE OF ACTION**

19 This is a *pro se* prisoner civil rights action brought by Todd Evans, (Plaintiff), asserting claims  
 20 arising under 42 U.S.C. § 1983. Plaintiff alleges an Eighth Amendment claim for deliberate  
 21 indifference to serious medical needs.

22 Plaintiff sued multiple defendants for events that took place while he was incarcerated at  
 23 Northern Nevada Correctional Center (“NNCC”). (ECF No. 1-1 at 2). He sued James Dzurenda,  
 24 Romeo Aranas, Dr. Johns, and Dr. Mar. (Id. at 2-3.) Plaintiff alleged three counts.

25 This Court granted summary judgment to the Defendants, Aranas and Dzurenda. The Court  
 26 allowed the other Eighth Amendment Counts to proceed against the remaining Defendants. Therefore,  
 27 this matter is proceeding on Plaintiff’s Count III, where he claims Defendants were deliberately

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1 indifferent to his medical condition. The Court held, in summary judgment, that Plaintiff could proceed  
2 only on his claims of deliberate indifference prior to the MRI in May of 2018. (ECF No. 145 at 2:28)

3 **B. CONTENTIONS OF THE PARTIES**

4 **1. Plaintiff's Contentions**

5 In his third cause of action, Plaintiff alleges he began suffering pain in his neck, head and back  
6 in 2017. (ECF No. 60 at 11). He alleges balance issues and falls. Plaintiff alleges that on or about July  
7 7, 2017 he filed a grievance requesting medical care for these symptoms. The symptoms worsened and  
8 he continued to request medical care. (Id.) <sup>AMEND (MRI 9-25-18 Pituitary Tumor Discovered)</sup> On or about May, 2018 he received an MRI which revealed  
9 a pituitary tumor. The tumor was removed in April, 2019. Plaintiff alleges the delay was due to the  
10 cost of the procedure. (Id.) He further alleges that Dr. John and Dr. Mar were aware of his condition  
11 and intentionally interfered with the treatment due to the cost of the treatment. He alleges the delay  
12 was medically unacceptable and made in conscious disregard of an excessive risk to his health. (Id.)  
13 The Court allowed him to proceed on a claim of violation of his Eighth Amendment rights. (ECF No.  
14 65)

15 **2. Defendants' Contentions**

16 Defendants contend that the evidence does not support Plaintiff's allegations. Defendants  
17 incorporate any Affirmative Defenses from the Answer as it pertains to Defendants. Defendants deny  
18 that Plaintiff's constitutional rights have been violated.

19 **C. RELIEF SOUGHT**

20 Plaintiff seeks compensatory and punitive damages.

21 **II. STATEMENT OF JURISDICTION**

22 This is a civil action commenced under 42 U.S.C. § 1983. This Court has jurisdiction pursuant  
23 to 28 U.S.C. § 1331.

24 **III. UNCONTESTED FACTS ADMITTED BY THE PARTIES WHICH REQUIRE NO PROOF**

25  
26 1. Mr. Evans, in this matter has filed a Complaint alleging violations of his  
27 constitutional rights under the Eighth Amendment. (ECF No.60).

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1           2.       At all times relevant in the Complaint, Plaintiff was in lawful custody of the Nevada  
2 Department of Corrections (“NDOC”) housed at Northern Nevada Correctional Center (NNCC) (ECF  
3 No. 60 at 3).

4           3.       Defendant Marsha Johns was previously employed by the NDOC as a senior physician.

5           4.       Defendant David Mar was previously employed by the NDOC as a senior physician.

6           5.       Plaintiff claims there was a delay in surgical treatment for his pituitary tumor due to the  
7 cost of the treatment. (ECF No. 60 at 11)

8           6.       Plaintiff received an MRI and surgical treatment for the tumor.

9           7.       Plaintiff does feel the cost and delays were part of this lawsuit and was “told so”.

10 **IV.   FACTS UNADMITTED THAT WILL NOT BE CONTESTED**

11       The following facts, though not admitted, will not be contested at trial by evidence to the  
12 contrary: NONE.

13 **V.    CONTESTED ISSUES OF FACT TO BE TRIED AND DETERMINED UPON TRIAL**

14 **A.    PLAINTIFF’S CONTESTED FACTS**

15 *See* Complaint.

16 **B.    DEFENDANTS’ CONTESTED FACTS**

17       1.       Whether Plaintiff has met his burden of producing evidence supporting the facts set  
18 forth above, i.e. whether he can prove that the individual defendants violated his Eighth Amendment  
19 rights?

20       2.       Whether any form of damages is available to Plaintiff for any alleged failures?

21 **VI.   CONTESTED ISSUES OF LAW TO BE TRIED AND DETERMINED UPON TRIAL**

22 **A.    PLAINTIFF**

23       1.       Whether or not the claim against Defendants, violates Plaintiff’s Constitutional rights,  
24 and do the facts warrant a damage award?

25 **B.    DEFENDANT**

26       1.       Did Defendant individually violate Plaintiff’s constitutional rights?

27       2.       Did Mr. Evans prove the elements of a violation of his Eighth Amendment rights? To  
28 sustain an Eighth Amendment claim based on deficient medical treatment, a Plaintiff must show that

1 the defendants were deliberately indifferent to the Plaintiff's serious medical needs. *Estelle v. Gamble*,  
2 429 U.S. 97, 104 (1976). Deliberate indifference requires proof of two elements: (1) a serious medical  
3 need and (2) the defendant's deliberate indifference in response. *McGuckin v. Smith*, 974 F.2d 1050,  
4 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Techs, Inc. v. Miller*, 104 F.3d 1133, 1136  
5 (9th Cir. 1997). The second element requires proof that the defendants knew of the excessive  
6 risk to an inmate's health and disregarded the risk. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

7 A difference of opinion between an inmate and medical staff as to the appropriate medical  
8 treatment for his condition is insufficient to establish deliberate indifference as a matter of law. *See*  
9 *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). Likewise, a difference of opinion between  
10 medical professionals concerning the appropriate course of treatment generally does not amount to  
11 deliberate indifference to serious medical needs. *Toguchi*, 391 F.3d at 1059–60. “[T]o prevail on a  
12 claim involving choices between alternative courses of treatment, a prisoner must show that the chosen  
13 course of treatment ‘was medically unacceptable under the circumstances,’ and was chosen ‘in  
14 conscious disregard of an excessive risk to the prisoner’s health.’” *Toguchi*, 391 F.3d at 1058.

15 Other Courts have held likewise. Courts have held; “a simple difference in medical opinion  
16 between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment [fails  
17 to] support a claim of cruel and unusual punishment.” *Harris v Thigpen*, 941 F.2d 1495 at 1505 (11<sup>th</sup>  
18 Cir. 1991); accord, e.g., *Lamb v. Norwood*, 899 F.3d 1159, 1162 (10th Cir. 2018) (“We have  
19 consistently held that prison officials do not act with deliberate indifference when they provide medical  
20 treatment even if it is subpar or different from what the inmate wants.”); *Kosilek v. Spencer*, 774 F.3d  
21 63, 82 (1st Cir. 2014) (en banc) (“[The Eighth Amendment] does not impose upon prison  
22 administrators a duty to provide care that is ideal, or of the prisoner's choosing.”). See also, *King v*  
23 *Calderwood*, 2016 WL 4771065 (D. Nev. 2016) aff'd sub nom. *King v. Cox*, 692 F. App'x 398 (9th Cir.  
24 2017) where District Judge Navarro granted summary judgment finding no evidence of deliberate  
25 indifference on the part of NDOC physicians for failure to treat an inmate's hepatitis condition with a  
26 specific medication.

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1 **VII. EXHIBITS**

2 **A. STIPULATED EXHIBITS AS TO AUTHENTICITY AND ADMISSIBILITY**

- 3 1. Administrative Regulation 613  
4 2. Administrative Regulation 740 (March, 2017).  
5 3. Administrative Regulation 639

6 **B. STIPULATED EXHIBITS AS TO AUTHENTICITY BUT NOT ADMISSIBILITY**

7 None.

8 **C. PLAINTIFF'S EXHIBITS SUBJECT TO OBJECTIONS**

- 9 1. All records supplied *(DOC 147) 2ND AMENDED COMPLAINT (J.P.O)*  
10 2. All Medical records *LAST PAGE WAS SUPPOSED TO BE ADDED*  
11 3. Discovery Responses from all parties. *IN (AMENDED) SHOULD OF BEEN LISTED*  
12 4. All documents disclosed by Defendants *ATTACHED PAGE LIST OF EVIDENCE PROVIDED AS DECUSED*

13 **D. DEFENDANTS' EXHIBITS SUBJECT TO OBJECTIONS**

- 14 1. Plaintiff's Movement History Report;  
15 2. Plaintiff's Housing History Report;  
16 3. Plaintiff's Grievance file, including all relevant grievances;  
17 4. Certified Judgment(s) of Conviction of Plaintiff for underlying offense (only if needed  
18 for impeachment);  
19 5. Plaintiff's Institutional File ("I-File");  
20 6. Plaintiff's NDOC Central File ("C-File");  
21 7. Law Library Logs;  
22 8. Legal Mail Logs for relevant time period;  
23 9. Law Library Brass Slips;  
24 10. Plaintiff's Case Notes as maintained on the NDOC NOTIS system from 2014 to Present.  
25 11. All prison logs, registers, documents, or other form of data pertaining to any and all of  
26 Plaintiff's claims.  
27 12. Plaintiff's relevant medical records and kites.  
28 13. Emails relating to this issue.

1 14. Any and all other exhibits that may support the statements of fact and law cited herein  
2 and to rebut Plaintiff's statements, claims, and testimony.

3 15. Any and all other exhibits that rebut witnesses that might be called to respond to claims  
4 made by either Plaintiff or any of his proposed witnesses;

5 **E. DEPOSITIONS**

6 1. None.

7 **VIII. WITNESSES**

8 **A. PLAINTIFF'S WITNESSES:**

9 Plaintiff wishes to reserve the right to call the following persons:

10 David Mar, M.D. (NNCC) (RMF)

11 Marsha Johns, M.D. (NNCC) (RMF)

12 Ronald Santos, #46019 (NNCC)

13 Any other treating physicians.

14 Jeramiah Parks

15 George Cooper

16 James McCallum

17 John Miller

18 Robert Spark

19 Country Joe Stevens

20 Jeffery Hosmer

21 Richard Milborn

22 John Redman

23 Mitch Goodrum

24 Steven Ohlson

25 **B. DEFENDANT'S WITNESSES:**

26 Defendants wish to reserve the right to call the following persons:

27 1. Plaintiff Todd Evans, Inmate, Northern Nevada Correctional Center;

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*AMENDED*  
*SNSB*  
*DR TOIBERT MARSHAL, DR WOLFF SEINRA EYE*  
*CENTER OF NEVADA, JOHN SUTTON (S.E.N.C.)*

1           2.       Marsha Johns, Defendant, c/o Douglas R. Rands, Office of Attorney General, 100 N.  
2 Carson St. Carson City, Nevada 89701-4717.

3           3.       David Mar, Defendant, c/o Douglas R. Rands, Office of Attorney General, 100 N.  
4 Carson St. Carson City, Nevada 89701-4717.

5           4.       Harold Wickham, Defendant, c/o Douglas R. Rands, Office of Attorney General, 100 N.  
6 Carson St. Carson City, Nevada 89701-4717.

7           5.       Joseph Benson or medical director, c/o Douglas R. Rands, Office of Attorney General,  
8 100 N. Carson St. Carson City, Nevada 89701-4717.

9           6.       Theresa Wickham, Patty Smith or other Director of Nursing, c/o Douglas R. Rands,  
10 Office of Attorney General, 100 N. Carson St. Carson City, Nevada 89701-4717.

11           7.       Evan's outside medical providers, c/o Douglas R. Rands, Office of Attorney General,  
12 100 N. Carson St. Carson City, Nevada 89701-4717.

13           8.       Nethanjah Breitenbach, Warden, NNCC, c/o Douglas R. Rands, Office of Attorney  
14 General, 100 N. Carson St. Carson City, Nevada 89701-4717.

15           9.       John Keast, Director of Nursing, NNCC, c/o Douglas R. Rands, Office of Attorney  
16 General, 100 N. Carson St. Carson City, Nevada 89701-4717.

17           10.      Custodian(s) of Record for any exhibits identified above, c/o Douglas R. Rands, Office  
18 of the Attorney General, 100 N. Carson Street, Carson City, NV 89701-4717, and (775) 684-1100.

19           11.      Any and all rebuttal witnesses that might be called to respond to claims made by either  
20 Plaintiff or any of his witnesses.

21           12.      Any and all other witnesses that have personal knowledge supporting Defendant's  
22 statements of fact or law cited herein.

23           13.      All witnesses identified by Plaintiff, whether or not called to testify at trial.  
24 Plaintiff and Defendants reserve the right to interpose objections to the calling of any named  
25 witness listed above prior to or at trial.

26 **IX. AVAILABLE TRIAL DATES**

27           Plaintiff and Defendants' Counsel expressly understand that the Clerk shall set the trial of this  
28 matter at the convenience of the Court's calendar. A jury has been requested.

The following are three weeks in which both parties are available:

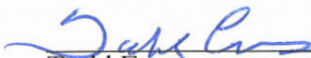
April 2, 2024

April 15, 2024

April 29, 2024

DATED this 24th day of August, 2023.

AARON D. FORD  
Attorney General

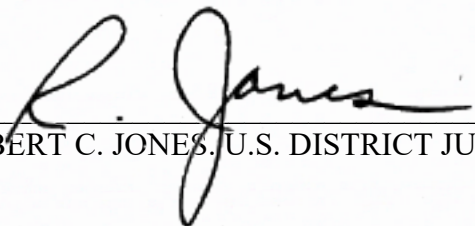
  
\_\_\_\_\_  
Todd Evans  
Plaintiff  
*AMENDED  
PRELIMINARY ORDER*

By: /s/ Douglas R. Rands  
DOUGLAS R. RANDS, Bar No. 3572  
Senior Deputy Attorney General  
  
*Attorneys for Defendants*

It is ordered that Calendar Call is set for April 1, 2024, at 10:00 a.m. by video before Judge Robert C. Jones.

It is further ordered that Jury Trial is set for April 29, 2024, at 8:30 a.m. in Reno Courtroom 3 before Judge Robert C. Jones.

Dated this 28th day of August 2023.

  
\_\_\_\_\_  
ROBERT C. JONES, U.S. DISTRICT JUDGE



### EVIDENCE PROVIDED

- 1.) EVANS 283 PROVIDED TO COURT UNDER SEAL 1-283
- 2.) EVANS 283 DEF SUPP RULE 26 DISCLOSURE 1-441
- 3.) EVANS 283 DEF RESP TO REFD 1-631  
AND OR ALL OTHER PRODUCED UNDER MOTION TO COMPEL
- 4.) DOCTORS ORDERS
- 5.) PROGRESSIVE NOTES
- 6.) DOC 2500 MEDICAL NOTES SEVERE PAIN
- 7.) X-RAYS
- 8.) MRIS
- 9.) Blood Work
- 10 URINE TEST KIDNEY ISSUES
- 11.) EYE DOCTORS
- 12) ENDOCRINOLOGY REPORTS DR SUTTON
- 13.) NEUROLOGIST REPORTS DR TOLBERT
- 14) NEUROLOGIST REPORTS DR DOYAL SEIZURES
- 15) EVIDENCE PROVIDED AS EXHIBITS RULE 56(E)(FRCP)  
ADMISSIBLE EVIDENCE REGARDING PITUITARY
- 16.) GRIEVANCE LIST
- 17.) AFFIDAVIT'S
- 18.) ADMISSION & INTERROGATORIES (DR MAR/DR JOHNS)
- 19.) STATUTES, NRS, AR'S WITHIN THE N.D.O.G.