

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 CATHERINE CORTEZ MASTO
Nevada Attorney General
2 DENISE S. BALBONI
Deputy Attorney General
3 Nevada State Bar No. 10507
Public Safety Division
4 Office of the Attorney General
555 E. Washington Avenue, Suite 3900
5 Las Vegas, NV 89101
Telephone: (702) 486-3267
6 Fax: (702) 486-3773
Attorneys for Defendants
7

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

10 JIMMY EARL DOWNS,)

11 Plaintiff,)

12 v.)

13 DAVID GRUSMAN, HAROLD WICKHAM,
GLEN WHORTEN, AND THE STATE OF
14 NEVADA,)

15 Defendants.)

Case No. 2:07-cv-000116-JCM-LRL

JOINT MOTION FOR EXTENSION OF TIME
TO FILE JOINT PRETRIAL ORDER
(SECOND REQUEST)

16 JIMMY EARL DOWNS, pro se, and Defendants DAVID GRUSMAN, HAROLD WICKHAM,
17 and THE STATE OF NEVADA (hereinafter "Defendants"), by and through legal counsel,
18 CATHERINE CORTEZ MASTO, Nevada Attorney General, and DENISE S. BALBONI, Deputy
19 Attorney General, hereby submit a second request for a 30-day extension of time in which to file the
20 Joint Pre-Trial Order. The Joint Pre-Trial Order is currently due May 20, 2011.

21 DATED this 19th day of May, 2011.

22 Respectfully submitted,

23 CATHERINE CORTEZ MASTO
24 Attorney General

25
26 By: /s/ Denise S. Balboni
DENISE S. BALBONI
27 Deputy Attorney General
Public Safety Division
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. Procedural History

Plaintiff commenced the instant action via a Civil Rights Complaint filed December 29, 2006, in the Eighth Judicial District Court. (Dkt. #1). Defendants removed the action on January 29, 2007. (Dkt. #1). On October 30, 2008, this Court executed a Scheduling Order which, among other things, set the deadline for the filing of a Joint Pre-Trial Order as five days after the denial of the parties' motions for summary judgment. (Dkt. #33). After a number of motions and stipulations between the parties to extend discovery, discovery ended on December 28, 2009. (Dkt. #51). On January 28, 2010, Plaintiff's motion for leave to file an Amended Complaint was granted; Plaintiff's Amended Complaint included four additional defendants and five new causes of action (Dkt. # 49). Plaintiff has not effectuated service on any of the newly-named defendants.

Defendants filed a Motion to Dismiss or in the Alternative for Summary Judgment of Plaintiff's Amended Complaint on March 9, 2010. (Dkt. #65). Plaintiff opposed and filed a Counter Motion for Summary Judgment. (Dkt. # 71). Defendants filed an opposition thereto (Dkt. # 78) and Plaintiff filed a reply in support. (Dkt. # 81). This Court issued an Order on January 27, 2011, denying both motions in full. (Dkt. #82). Plaintiff filed a Motion for Reconsideration on February 16, 2011, (Dkt. # 83) Defendants filed an opposition thereto (Dkt. #84), and Plaintiff filed a reply in support (Dkt. #85). This Court denied Plaintiff's Motion for Reconsideration in full on March 28, 2011 (Dkt. #86). Plaintiff then filed a Motion to Amend or Make Additional Findings of Fact, essentially seeking reconsideration of the March 28, 2011, order denying Plaintiff's Motion for Reconsideration. (Dkt. # 88). Defendants opposed (Dkt. # 90), and that motion is presently pending.

On April 11, 2011, Defendants moved for the first 45-day extension of time to file a Joint Pre-Trial Order. (Dkt. # 89). The Court granted the motion and ordered the Joint Pre-Trial Order due **May 20, 2011**.¹

¹ In fact, the Order signed by the Court on April 8, 2011, did not state a deadline for the filing of the Joint Pre-Trial Order, but 45 days from the signature date is May 23, 2011. The docket entry for the Order stated that the Joint Pre-Trial Order was due May 20, 2011. Out of an abundance of caution, the parties state here that the deadline for the filing of the Joint Pre-Trial Order is May 20, 2011, but it can be construed to be May 23, 2011.

1 **II. Legal Argument**

2 Fed. R. Civ. Proc. 6(b)(1) provides, in pertinent part:

3 When by these rules or by notice given thereunder or by the order of
4 court an act is required or allowed to be done at or within a specified
5 time, the court for cause shown may at any time in its discretion (1) with
6 or without motion or notice order the period enlarged if request therefore
7 is made before the expiration of the period originally prescribed or as
8 extended by a previous order.

9 FED. R. CIV. P. 6(b)(1) allows a party to move for and the court to grant an enlargement of time.
10 Judges have wide discretion in managing their dockets. *See Hernandez v. City of El Monte*, 138 F.3d
11 393, 399 (9th Cir. 1998); *see also* FED. R. CIV. P. 6(b) (advisory committee note, 1946) (“Rule 6(b) is a
12 rule of general application giving wide discretion to the court to enlarge these time limits or revive them
13 after they have expired...”). Pursuant to LR 6-1, “A request [to extend time] made after the expiration
14 of the specified period shall not be granted unless the moving party, attorney, or other person
15 demonstrates that the failure to act was the result of excusable neglect.”

16 The parties jointly move for a second, 30-day extension of time to file their Joint Pre-Trial Order in
17 this case. Today, Defendants’ counsel contacted Plaintiff via telephone to ask for his half of the
18 information to be included in the Joint Pre-Trial Order, and Plaintiff informed Defendants’ counsel that he
19 was unaware of his obligation under LR 16-3(c) to initiate the creation of the Joint Pre-Trial Order and he
20 did not know what type of information the Order was supposed to contain; accordingly, Plaintiff stated that
21 he had done no preparation of any information to be included in the Order. Declaration of Denise S.
22 Balboni, Esq. attached hereto as **Exhibit A**. Plaintiff further informed Defendants’ counsel that he was
23 under the impression that the Amended Complaint was still waiting for screening and thus that the
24 submission of a Joint Pre-Trial Order was premature. **Exhibit A**. Finally, Plaintiff also informed
25 Defendants’ counsel that he did not believe the parties were ready to go to trial since none of the 4 newly-
26 named parties in his Amended Complaint had been served. **Exhibit A**. Defendants’ counsel informed
27 Plaintiff that he had to seek separate relief regarding those issues, and Plaintiff stated that he intended to.
28 **Exhibit A**. The parties respectfully submit to this Court that Plaintiff’s misunderstanding of his obligations
under the Joint Pre-Trial Order constitute good cause for this second requested extension of time. Plaintiff
was not able to sign this motion because the unit in which he is presently housed at Southern Desert

1 Correctional Center was scheduled to be locked down at 3:15 p.m. on May 19, 2011, and this document
2 was not prepared in enough time before then. Plaintiff expressly authorized Defendants' counsel to
3 represent that he is a joint participant in this motion and agrees with its contents. **Exhibit A.**

4 The parties respectfully request a 30-day extension to allow them to prepare and file their Joint
5 Pretrial Order.

6 DATED this 19th day of May, 2011.

7
8 Respectfully submitted,

9 CATHERINE CORTEZ MASTO
10 Attorney General

11 By: /s/ Denise S. Balboni
12 DENISE S. BALBONI
13 Deputy Attorney General
14 Nevada State Bar No. 10507
15 Attorneys for Defendants

16 **ORDER**

17 IT IS SO ORDERED. The Joint Pre-Trial Order is due June 20, 2011.

18
19 

20 _____
21 United States Magistrate Judge
22 5-23-11
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Kimie Beverly, hereby certify that I am an employee of the Office of the Attorney General and that on the 20th day of May, 2011, I served the foregoing **JOINT MOTION FOR EXTENSION OF TIME TO FILE JOINT PRETRIAL ORDER (SECOND REQUEST)** by causing a true and correct copy thereof to be filed with the Clerk of the Court using the CM/ECF system and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

JIMMY EARL DOWNS #63678
SOUTHERN DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS NV 89070

/s/ Kimie Beverly
An employee of the Office of the Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28