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 8 *Attorneys for Defendants*
James Cox, Brian Williams, Romeo Aranas,
 9 *Francisco Sanchez, Frank Dressen,*
Benedicto Guitierrez, Fred Richardson
 10 *and Cheryl Dressler*

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

14
 15 GUY R. WOODARD,
 16 Plaintiff,
 17 v.
 18 JAMES COX, *et al.*
 19 Defendants.

Case No.: 2:14-cv-00272-RFB-NJK

**DEFENDANTS' UNOPPOSED MOTION TO
 EXTEND DISCOVERY AND REMAINING
 SCHEDULING DEADLINES**

(FIFTH REQUEST)

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 21 Defendants James Cox, Brian Williams, Romeo Aranas, Francisco Sanchez, Frank
 22 Dreesen, Benedicto Guitierrez, Fred Richardson, and Cheryl Dressler, by and through
 23 counsel, Adam Paul Laxalt, Nevada Attorney General, and Jared M. Frost, Senior Deputy
 24 Attorney General, hereby move to extend the remaining discovery and scheduling deadlines
 25 for an additional thirty (30) days for settlement negotiation purposes.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 This is a civil action that has been pending for more than twenty-six (26) months.
4 Plaintiff, a former inmate, filed his original civil rights complaint on February 21, 2014. See
5 ECF No. 4. On August 26, 2015, Plaintiff filed a third-amended complaint. ECF No. 49. On
6 September 9, 2015, the Court approved the parties' stipulated discovery plan and proposed
7 scheduling order. ECF No. 53). Pursuant to the discovery plan, all discovery must have been
8 completed by February 15, 2016. *Id.* at 2.

9 On September 23, 2015, Defendants filed a motion to dismiss Plaintiff's third-amended
10 complaint in part. ECF No. 54.

11 On February 15, 2016, Plaintiff filed a motion for extension of discovery deadlines for
12 120 days. ECF No. 57. On February 19, 2016, the Court granted Plaintiff's motion. ECF No.
13 61.

14 On March 8, 2016, the parties filed a joint motion to reopen and extend the expert
15 deadlines until April 19, 2016. ECF No. 65. The Court granted the parties' motion the following
16 day. ECF No. 66.

17 On April 19, 2016, the parties filed a stipulation to extend the expert report deadline
18 until June 14, 2016. ECF No. 72. The Court granted the parties' request to extend the expert
19 report deadline on April 20, 2016. ECF No. 73.

20 On May 6, 2016, Defendants filed a motion to extend discovery and scheduling
21 deadlines. ECF No. 78. On May 9, 2016, the Court denied Defendants motion without
22 prejudice because Defendants had failed to include a certification that they had met and
23 conferred with Plaintiff about the proposed extension. ECF No. 79. On May 12, 2016,
24 Defendants filed a renewed, unopposed motion to extend discovery and scheduling deadlines.
25 ECF No. 80. The Court's granted Defendants' renewed motion on May 13, 2016. ECF No. 85.

26 On August 10, 2016, the parties filed a stipulation to stay the case for settlement
27 purposes. ECF No. 91. Therein, the parties "inform[ed] the Court that they have reached a
28 tentative agreement to settle the case." *Id.* The parties further indicated that they "need an

1 additional thirty (30) days to finalize the agreement and wish to avoid any unnecessary
2 litigation costs that arise in connection with the Court's upcoming case management
3 deadlines." *Id.*

4 On August 11, 2016, the Court entered a minute order instructing the parties to file
5 settlement documents or a status report regarding the settlement in 30 days and denying the
6 stipulation to stay the case. ECF No. 92.

7 On August 12, 2016, Defendants filed a fourth motion to extend discovery and the
8 remaining scheduling deadlines for thirty (30) days for settlement purposes. ECF No. 93.

9 On August 15, 2016, Plaintiff filed a joinder to Defendants' fourth motion to extend the
10 remaining deadlines. ECF No. 94. Plaintiff's counsel also filed a motion to withdraw from the
11 case. ECF No. 93.

12 On August 19, 2016, the Court granted Defendant's fourth motion to extend the
13 remaining deadlines, and discovery is currently set to close on September 12, 2016. ECF No.
14 97.

15 On September 1, 2016, the Court held a hearing on Plaintiff counsel's motion to
16 withdraw. ECF No. 98. Plaintiff did not appear at the hearing. *Id.* At the conclusion of the
17 hearing, the Court continued the hearing until September 19, 2016, and directed Plaintiff to
18 appear by telephone. *Id.* This fifth motion to extend the discovery period and remaining
19 scheduling deadlines follows.

20 **II. APPLICABLE LAW**

21 Local Rule 26-4 (revised May 1, 2016) provides as follows:

22 A motion or stipulation to extend any date set by the discovery
23 plan, scheduling order, or other order must, in addition to satisfying
24 the requirements of LR IA 6-1, be supported by a showing of good
25 cause for the extension. A motion or stipulation to extend a
26 deadline set forth in a discovery plan must be received by the court
27 no later than 21 days before the expiration of the subject deadline.
28 A request made within 21 days of the subject 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:

- (a) A statement specifying the discovery completed;
- (b) A specific description of the discovery that remains to be completed;
- (c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and,
- (d) A proposed schedule for completing all remaining discovery.

III. ARGUMENT

Defendants submit that there is good cause to extend the remaining discovery and scheduling deadlines for an additional thirty (30) days. Defendants provide the following information pursuant to Local Rule 26-4.

A. Discovery Completed

As of the filing of this motion, Defendants have provided Plaintiff with three sets of production of documents pursuant to their disclosure obligations under Federal Rule of Civil Procedure 26 and in response to Plaintiff's informal discovery requests. Plaintiff has provided Defendants with two sets of production documents pursuant to his disclosure obligations.

On February 9, 2016, Defendants took Plaintiff's deposition.

On February 25, 2016, Defendants served Plaintiff with requests for production of documents. Defendants' requests included authorization forms to obtain an independent set of Plaintiff's medical records.

On March 15, 2016, Plaintiff served Defendants with one set of interrogatories and one set of requests for admissions for each of the following three Defendants: Brian Williams, Romeo Aranas, and Benedicto Gutierrez.

On March 29, Plaintiff served Defendants with one set of interrogatories and one set of requests for admission for Defendant Francisco Sanchez.

On April 7, 2016, Defendants served Plaintiff with responses to the interrogatories and requests for admissions for Defendants Williams, Aranas, and Gutierrez.

On April 19, 2016, Defendants served their initial expert witness disclosures.¹

¹ Defendants did not provide Plaintiff with an expert report as part of their disclosure. See ECF No. 72 (explaining that lack of disclosure was due to an oversight and that additional time was needed to prepare the reports).

1 On April 22, 2016, Defendants served supplemental expert witness disclosures.

2 On May 3, 2016, Plaintiff provided Defendants with notarized copies of two record
3 release authorization forms.

4 On May 4, 2016, Plaintiff provided Defendants with responses to their requests for
5 production of documents.

6 On June 14, 2016, Defendants served Plaintiff with responses to the interrogatories for
7 Dr. Sanchez.

8 On July 11, 2016, Defendants served Plaintiff with two discs containing medical
9 imaging and copies of Plaintiff's medical records received from Plaintiff's third-party medical
10 providers. Defendants also served Plaintiff with one set of interrogatories.

11 **B. Discovery That Remains To Be Completed**

12 Plaintiff has not yet responded to Defendants' interrogatories.

13 Defendants have not yet served their expert reports.

14 **C. Reasons Why The Deadlines Were Not Satisfied**

15 On August 5, 2016, the parties reached a tentative agreement to settle the case as
16 indicated in their stipulation. See ECF No. 91. However, on August 11, 2016, Plaintiff sent
17 Defendants an email suggesting that he would not agree to settle unless Defendants also paid
18 Plaintiff's past and future medical expenses, a condition that could add tens of thousands of
19 dollars to the settlement figure Defendants had proposed. Exhibit 1 (declaration of counsel).

20 On August 15, 2016, Plaintiff's counsel filed a motion to withdraw as counsel. ECF No.
21 95. Following the filing of the motion to withdraw, Plaintiff's counsel communicated to
22 Defendants that Plaintiff may yet agree to sign a settlement agreement if the parties could
23 resolve the issue of reimbursement of government insurance benefits. Exhibit 1.

24 On August 31, 2016, the undersigned forwarded Plaintiff's counsel a draft settlement
25 agreement for review. *Id.*

26 On September 1, 2016, the Court held a hearing on Plaintiff counsel's motion to
27 withdraw. ECF No. 98. Plaintiff did not appear at the hearing. *Id.* At the conclusion of the
28 hearing, the Court continued the hearing until September 19, 2016, and directed Plaintiff to

1 appear by telephone. *Id.* Plaintiff's counsel indicated at that time that he would continue
2 researching and discussing the insurance benefits reimbursement issue with Plaintiff to
3 determine if the issue can be resolved. Exhibit 1. The parties are both actively working to
4 address the insurance benefits reimbursement issue prior to the continued hearing on
5 Plaintiff's motion to withdraw in an effort to resolve the case and avoid any unnecessary
6 discovery and litigation costs. *Id.* However, the parties need additional time to obtain needed
7 information and discuss the issue in greater depth. Defendants therefore submit this fifth
8 request to extend the remaining discovery and scheduling deadlines for an additional thirty
9 (30) days. Plaintiff does not oppose Defendants' request. *See id.*

10 **D. Proposed Schedule For Remaining Discovery And Scheduling Deadlines**

11 Defendants propose the following remaining discovery and scheduling deadlines.

12	September 23, 2016	Joint status report regarding settlement due
13	October 12, 2016	Close of discovery and last day to serve expert reports
14	November 14, 2016	Motions for summary judgment due
15	December 12, 2016	Joint pretrial order due (suspended until 30 days after the 16 Court resolves dispositive motions)

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1 **IV. CONCLUSION**

2 There is good cause to extend the remaining discovery and scheduling deadlines for an
3 additional thirty (30) days and Defendants' unopposed request should be granted.

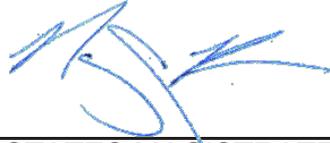
4 DATED September 12th, 2016.

5 ADAM PAUL LAXALT
6 Nevada Attorney General

7
8 By: /s/ Jared M. Frost
9 Jared M. Frost (Bar No. 11132)
10 Senior Deputy Attorney General
11 *Attorneys for Defendants*

12 IT IS SO ORDERED.

13 DATED this _ 13th _ day of September, 2016.

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16 NANCY J. KOPPE
17 United States Magistrate Judge
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 12th day of September, 2016, I served the foregoing, **DEFENDANTS' UNOPPOSED MOTION TO EXTEND DISCOVERY AND REMAINING SCHEDULING DEADLINES (FIFTH REQUEST)** by causing a true and correct copy thereof to be filed with the Clerk of the Court, using the electronic filing 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:

John George, Esq.
600 S. 8th Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

/s/ Mary Pizzariello
An employee of:
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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

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EXHIBIT 1

DECLARATION OF COUNSEL

EXHIBIT 1

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 Nevada Attorney General
 2 JARED M. FROST
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 Email: jfrost@ag.nv.gov
 7 *Attorneys for Defendants*
James Cox, Brian Williams, Romeo
 8 *Aranas, Francisco Sanchez, Frank*
Dreesen, and Benedicto Gutierrez
 9

10
 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 GUY R. WOODARD,
 14 Plaintiff,
 15 vs.
 16 JAMES COX, et al.,
 17 Defendants.

Case No. 2:13-cv-01379-RFB-PAL

DECLARATION OF COUNSEL

18
 19 I, JARED M. FROST, hereby declare, based on personal knowledge and/or information and
 20 belief, that the following assertions are true:

21 1. I am a Senior Deputy Attorney General employed by the Nevada Attorney General in
 22 the Litigation Division, and I make this declaration on behalf of Defendants' motion to extend
 23 discovery and remaining scheduling deadlines.

24 2. By this motion, I am requesting a thirty (30) day extension of the remaining discovery
 25 and scheduling deadlines. This is the fifth request to extend the discovery and scheduling
 26 deadlines filed in this matter.

27 3. On August 5, 2016, the parties reached a tentative agreement to settle the case as
 28 indicated in their stipulation. However, on August 11, 2016, Plaintiff sent Defendants an email

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1 suggesting that he would not agree to settle unless Defendants also paid Plaintiff's past and future
2 medical expenses, a condition that could add tens of thousands of dollars to the settlement figure
3 Defendants had proposed.

4 4. On August 15, 2016, Plaintiff's counsel filed a motion to withdraw as counsel. ECF
5 No. 95. Following the filing of the motion to withdraw, Plaintiff's counsel communicated to
6 Defendants that Plaintiff may yet agree to sign a settlement agreement if the parties could resolve
7 the issue of reimbursement of government insurance benefits.

8 5. On August 31, 2016, the undersigned forwarded Plaintiff's counsel a draft settlement
9 agreement for review.

10 6. On September 1, 2016, the Court held a hearing on Plaintiff counsel's motion to
11 withdraw. Plaintiff did not appear at the hearing. At the conclusion of the hearing, the Court
12 continued the hearing until September 19, 2016, and directed Plaintiff to appear by telephone.
13 Plaintiff's counsel indicated at that time that he would continue researching and discussing the
14 insurance benefits reimbursement issue with Plaintiff to determine if the issue can be resolved.

15 7. The parties are both actively working to address the insurance benefits
16 reimbursement issue prior to the continued hearing on Plaintiff's motion to withdraw in an effort to
17 resolve the case and avoid any unnecessary discovery and litigation costs. However, the parties
18 need additional time to obtain needed information and discuss the issue in greater depth.

19 8. On September 12, 2016, I sent an email to John Georege, Esq., Plaintiff's counsel,
20 regarding Defendants' fifth motion to extend the discovery period and remaining scheduling
21 deadlines. Mr. George replied and indicated that he did not oppose the motion.

22 Pursuant to 28 U.S.C. section 1746 Declarant certifies, under penalty of perjury, that the
23 foregoing is true and correct.

24 DATED this 12th day of September, 2016.

25 ADAM PAUL LAXALT
26 Nevada Attorney General

27 By: /s/ Jared M. Frost
28 JARED M. FROST (Bar No. 11132)
Senior Deputy Attorney General

Attorneys for Defendants