

1 ADAM PAUL LAXALT  
Attorney General  
2 Frank A. Toddre II (Bar. No. 11474)  
Deputy Attorney General  
3 State of Nevada  
Office of the Attorney General  
4 555 E. Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
5 (702) 486-3149 (phone)  
(702) 486-3773 (fax)  
6 [ftoddre@ag.nv.gov](mailto:ftoddre@ag.nv.gov)

7 Attorneys for Defendants Isidro Baca,  
Renee Baker, Julio Calderin, James Cox,  
8 Brandon Lawrence, Luis Lopez, Dwight Neven,  
Brian Williams and Johnny Youngblood  
9

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 Lausteveion Johnson,  
13 Plaintiff,

14 vs.

15 Northern Nevada Correctional Center, et  
16 al.,  
17 Defendants.

CASE NO. 2:15-cv-00884-JAD-NJK

**MOTION TO EXTEND DISCOVERY  
DEADLINES  
(SECOND AND FINAL REQUEST)**

18 Defendants, Isidro Baca, Renee Baker, Julio Calderin, James Cox, Brandon  
19 Lawrence, Luis Lopez, Dwight Neven, Brian Williams, and Johnny Youngblood, by and  
20 through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Frank  
21 A. Toddre II, Deputy Attorney General, hereby move for a final extension of the  
22 remaining discovery and scheduling deadlines for an additional seventy-five (75) days.  
23 Defendants' motion is based on Federal Rule of Civil Procedure 7 and Local Rules 7-2 and  
24 26-4, the following memorandum of points and authorities, the pleadings and papers on  
25 file and the attached Declaration of Counsel.

26 ///

27 ///

28 ///

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2    **I.       INTRODUCTION AND RELEVANT PROCEDURAL HISTORY**

3                This is an inmate civil rights action brought pursuant to 42 U.S.C. § 1983.  
4    Plaintiff Lausteveion Delano Johnson (Plaintiff) is an inmate in the custody of the  
5    Nevada Department of Corrections (NDOC), currently housed at Southern Desert  
6    Correctional Center (SDCC). That the causes of action took place while incarcerated at  
7    Northern Nevada Correctional Center (NNCC), SDCC, Ely State Prison (ESP), and High  
8    Desert State Prison (HDSP). The Original Complaint alleged six discrete claims for  
9    Eighth Amendment Deliberate indifference to medical needs, First Amendment Religious  
10   exercise violations, First Amendment retaliation claims, First Amendment access to the  
11   Courts, and Fourteenth Amendment equal protection claims. (ECF No. 2). The initial  
12   Screening Order dismissed certain First and Eighth Amendment claims. (ECF No. 11).

13              The parties' Early Mediation Conference was initially set for May 27, 2016, but  
14   was vacated for global settlement negotiations. The parties conducted two global  
15   settlement conferences, the final conference occurring on July 22, 2016. No settlement  
16   was reached and Judge Foley found that all of Johnson's cases should be returned to the  
17   normal litigation track and lifted the associated global stay. (ECF No. 19).

18              An inmate early mediation conference was set for October 7, 2016. (ECF No. 21).  
19   A settlement was not reached. (ECF No. 24). The Court has entered its initial  
20   Scheduling Order regarding representation and responsive pleadings. (ECF No. 26).

21              Johnson filed a Motion for Appointment of Counsel on October 27, 2016. (ECF No.  
22   28). Defendants opposed on November 9, 2016. (ECF No. 29). The Court denied the  
23   motion finding that Johnson had not demonstrated "exceptional circumstances" to  
24   support an appointment. (ECF No. 33).

25              Defendants filed an Answer on December 16, 2016. (ECF NO. 34). The Court  
26   issued its scheduling Order, with a discovery deadline of March 20, 2017. (ECF No. 36).  
27   Johnson has propounded discovery to all Defendants and it has been answered.

28   ///

1 Defendants propounded discovery upon Johnson on February 9, February 15, and  
2 March 15, 2017. Johnson advised that he had lost the discovery requests. *See Ex. A*  
3 “Declaration of Counsel”. Parties agreed to a 60 day extension, Defendants filed said  
4 request on March 16, 2017. (ECF No. 43). Johnson subsequently advised that he need a  
5 new copy of all discovery. *Ex. A*.

6 Parties had an additional meet and conferred and agreed upon another extension  
7 of time. *Ex. A*. On May 8, 2017, Defendants received Johnson’s answered parts of the  
8 discovery in undated correspondence. The discovery responses do not comply with FRCP  
9 30 or 36 in form and Johnson has not responded to any of the Requests for Production.

10 In attempting contact with Johnson, it was discovered that Johnson has been  
11 placed in Disciplinary Segregation for an unrelated matter.

12 With the additional discovery time, Defendants will seek to cure written discovery  
13 defects through an oral deposition in an effort to conserve judicial resources and avoid  
14 unnecessary motion practice over problems that are likely rooted in procedural  
15 inefficiency and prison litigation logistical concerns rather than willful disregard of the  
16 written discovery.

## 17 **II. APPLICABLE LEGAL STANDARD**

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

19 A motion or stipulation to extend any date set by the discovery plan,  
20 scheduling order, or other order must, in addition to satisfying the  
21 requirements of LR IA 6-1, be supported by a showing of good cause for the  
22 extension. A motion or stipulation to extend a deadline set forth in a  
23 discovery plan must be received by the court no later than 21 days before the  
24 expiration of the subject deadline. A request made within 21 days of the  
25 subject deadline must be supported by a showing of good cause. A request  
26 made after the expiration of the subject deadline will not be granted unless  
27 the movant also demonstrates that the failure to act was the result of  
28 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 and excusable neglect to extend the remaining discovery and scheduling deadlines for an additional seventy-five (75) days. Defendants have propounded significant discovery to Plaintiff which remains substantially unanswered. Plaintiff answered parts of the discovery in an undated correspondence, post marked on May 5, 2017, which Defendants received on May 8, 2017. In reviewing the responses, it was discovered that responses do not comply with FRCP 30 or 36 in form and Plaintiff did not respond to any of the Requests for Production.

In attempting contact with Plaintiff to conduct a third meet and confer, it was discovered that Plaintiff has been placed in Disciplinary Segregation for an unrelated matter, and was not immediately available for the shortened timeframe required by Counsel.

In an effort to conserve judicial resources and avoid unnecessary motion practice over problems that are likely rooted in procedural inefficiency and prison litigation logistical concerns rather than willful disregard of the written discovery, Defendants now seek to take an oral deposition of Plaintiff. Defendants provide the following information pursuant to Local Rule 26-4.

#### A. Discovery Completed

As of the filing of this motion, the following written discovery has been completed. The time of receipt and time of response is provided.

Propounding Party	Answering Party	Written Discovery	Date of Service	Responsive Date
Johnson	Baca	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Lopez	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Lawrence	ROG Set One	Jan. 13, 2017	Feb. 14, 2017
Johnson	Youngblood	ROG Set One	Jan. 13, 2017	Feb. 9 2017
Johnson	Williams	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Neven	ROG Set One	Jan. 13, 2017	Feb. 13, 2017
Johnson	Calderin	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Baker	ROG Set One	Jan. 13, 2017	Feb. 14, 2017

Johnson	"Defendants"	RPD Set One	Jan. 13, 2017	Feb. 9, 2017
Baker	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
Williams	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
Cox	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
Neven	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
Baca	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
Baker	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
Calderin	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
Youngblood	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
Baker	Johnson	RFA Set Two	Feb. 9, 2017	Feb. 14, 2017
Calderin	Johnson	RFA Set One	Feb. 9, 2017	Feb. 14, 2017
Youngblood	Johnson	RFA Set One	Feb. 9, 2017	Feb. 14, 2017

## **B. Discovery That Remains to be Completed**

The following discovery has been propounded but not yet satisfactorily answered:

<b>Propounding Party</b>	<b>Answering Party</b>	<b>Written Discovery</b>	<b>Date of Service</b>	<b>Substantially Unresponsive Date</b>
Baker	Johnson	RPD Set One	Feb. 9, 2017	n/a
Calderin	Johnson	RPD Set One	Feb. 9, 2017	n/a
Youngblood	Johnson	RPD Set One	Feb. 9, 2017	n/a
Cox	Johnson	RPD Set One	Feb. 15, 2017	n/a
Cox	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
Williams	Johnson	RPD Set One	Feb. 15, 2017	n/a
Williams	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
Baca	Johnson	RPD Set One	Feb. 15, 2017	n/a
Baca	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
Neven	Johnson	RPD Set One	Feb. 15, 2017	n/a
Neven	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
Lawrence	Johnson	RPD Set One	Feb. 15, 2017	n/a
Lawrence	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
Lawrence	Johnson	RFA Set One	Feb. 15, 2017	May 5, 2017
Baker	Johnson	ROG Set Two	Feb. 17, 2017	May 5, 2017
Baker	Johnson	RPD Set Two	Feb. 17, 2017	n/a
Baker	Johnson	RFA Set Three	Feb. 17, 2017	May 5, 2017
Lopez	Johnson	ROG Set One	Feb. 17, 2017	May 5, 2017
Lopez	Johnson	RPD Set One	Feb. 17, 2017	n/a
Lopez	Johnson	RFA Set One	Feb. 17, 2017	May 5, 2017
Neven	Johnson	ROG Set 2	March 14, 2017	May 5, 2017

///

1           **C.     Reasons why the Deadlines Were not Satisfied**

2           During the first meet and confer, Plaintiff expressed confusion on how and why to  
3 respond to discovery requests. Plaintiff also initially requested a one year extension of  
4 discovery. Parties instead agreed upon a 60 day extension, and that if the 60 day was not  
5 sufficient it would likely be amenable to further requests so long as Mr. Johnson did  
6 provide sufficient notice for this office to draft a motion and conduct meet and confers  
7 under the local rules.

8           During the second meet and confer, Plaintiff stated that he needed all the  
9 unanswered discovery to be resent. Parties also agreed to an additional extension. This  
10 motion contemplates this agreed upon extension request. Prior to Defendants requesting  
11 said extension, Plaintiff answered parts of the discovery. The deadline to file discovery  
12 motions is currently June 2, 2017.

13           Plaintiff was unavailable for a third meet and confer to discuss deposition due to  
14 disciplinary issues and Counsel only had a limited window to discuss the same. Rather  
15 than file a motion to compel, Defendants, optimistically, believe that recent discovery  
16 problems are likely rooted in procedural inefficiency and prison litigation logistical  
17 concerns rather than willful disregard of the written discovery. Accordingly, Defendants  
18 now seek to take an oral deposition of Plaintiff.

19           **D.     Proposed Schedule for Remaining Scheduling Deadlines**

20           Defendants propose the following remaining discovery and scheduling deadlines  
21 which are based upon a request for a seventy-five day extension.

22           August 2, 2017	Close of Discovery.
23           August 16, 2017	Discovery Motion Deadline.
24           August 19, 2017	Dispositive Motion Deadline.
25           September 19, 2017	Joint Pretrial Order due (suspended until 30 days after
26	the Court resolves dispositive motions).

27   ///

28   ///

1 **IV. CONCLUSION**

2 There is good cause and excusable neglect to extend the remaining discovery and  
3 scheduling deadlines, and accordingly Defendants' motion should be granted.

4 DATED this 25th day of May, 2017.

5 Respectfully submitted,

6 ADAM PAUL LAXALT  
7 Attorney General

8 By: /s/ Frank A. Toddre II  
9 Frank A. Toddre II (Bar. No. 11474)  
Deputy Attorney General

10 Attorneys for Defendants Isidro Baca,  
11 Renee Baker, Julio Calderin, James Cox,  
Brandon Lawrence, Luis Lopez, Dwight Neven,  
12 Brian Williams and Johnny Youngblood

13 IT IS SO ORDERED.

14 Dated: May 26, 2017.

15   
16 \_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28