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

14 FREDERIC GREEN,  
 15 Plaintiff,  
 16 v.  
 17 HIGH DESERT STATE PRISON MEDICAL  
 DEPARTMENT, et al.,  
 18  
 19 Defendants.

Case No. 2:17-cv-00090-JAD-DJA

**STIPULATION AND ORDER TO  
 EXTEND DISCOVERY  
 (Fourth Request)**

20 Pursuant to LR IA 6-1 and LR 26-3, Plaintiff Frederic Green (“Plaintiff”), by and  
 21 through Kristen T. Gallagher, Esq., and Jason Sifers, Esq., as well as Defendants Gregory  
 22 Bryan, Romeo Aranas, Alberto Buencamino and George Leaks (collectively, “Defendants”),  
 23 by and through, Aaron D. Ford, Nevada Attorney General, and Austin T. Barnum, Deputy  
 24 Attorney General, of the State of Nevada, Office of the Attorney General, hereby stipulate  
 25 and agree to extend discovery deadlines by approximately 60 days. This is the fourth  
 26 request by the parties.  
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1 The next discovery deadline affected by this stipulation is the June 2, 2020 rebuttal  
2 expert deadline. With the exception of the rebuttal expert deadline, this stipulation will be  
3 received by the Court “no later than 21 days before the expiration of the subject deadline,”  
4 as is required by LR 26-3. With respect to the rebuttal expert deadline, the parties set forth  
5 a statement of excusable neglect below

6 Pursuant to LR IA 6-1 and LR 26-3, and good cause appearing therefor, the parties  
7 hereby make the following required statements:

8 **I. Discovery Completed.**

9 In June and July 2018, Plaintiff served written discovery on Defendants to which  
10 Defendants timely responded.

11 Since pro bono counsel was appointed, Plaintiff served three subpoenas duces tecum  
12 on non-parties to the case. Plaintiff recently received documents and is preparing them for  
13 disclosure.

14 On May 4, 2020, Plaintiff timely served Defendants with his expert disclosures.

15 **II. Discovery that remains to be completed.**

16 Plaintiff intends on conducting a deposition and issuing written discovery.  
17 Defendants intend on disclosing a rebuttal expert with disclosures. Defendants intend on  
18 determining the need for depositions and will respond to Plaintiff’s written discovery.

19 **III. The reasons why the discovery will not be completed within the time**  
20 **set by the Scheduling Order**

21 Discovery in this matter closed on August 24, 2018. ECF No. 37. On September 25,  
22 2019, the Court granted Plaintiff’s request for appointment of pro bono counsel. ECF No.  
23 67. The Parties stipulated to reopen discovery for 120 days, and this Court issued an order  
24 reopening discovery on November 8, 2019. ECF No. 71. Subpoenas were served and the  
25 time needed for responses prevented Plaintiff from having sufficient time to complete and  
26 submit expert disclosures. Therefore, this Court granted the current extension setting the  
27 due date for expert disclosures on May 4, 2020. ECF No. 78. Rebuttal experts are currently  
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1 due on June 2, 2020. *Id.* Defendants secured a rebuttal expert, but the time remaining to  
2 submit rebuttal expert disclosures is insufficient.

3 **IV. Statement of Excusable Neglect Pursuant to LR 26-3:** Requests to  
4 extend a discovery deadline filed less than 21 days before the expiration of that particular  
5 deadline must be supported by a showing of excusable neglect. *Derosa v. Blood Sys., Inc.*,  
6 2:13-cv-0137-JCM-NJK, 2013 WL 3975764, \*1 (D. Nev. Aug. 1, 2013). The determination  
7 of whether excusable neglect exists turns on four factors: (1) the danger of prejudice to the  
8 opposing party; (2) the length of the delay and its potential impact on the proceedings; (3)  
9 the reason for the delay; and (4) whether the movant acted in good faith.” *Bateman v. U.S.*  
10 *Postal Service*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citing *Pioneer Investment Services*  
11 *Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993)). Excusable neglect also  
12 encompasses negligence, carelessness, and inadvertent mistake. *Id.* at 1224.

13 Here, all four of the *Bateman* considerations weigh in favor of a finding of excusable neglect  
14 in connection with the parties’ request to extend the rebuttal expert deadline: (i) neither  
15 party will be prejudiced as both have stipulated to the requested extension; (ii) the length  
16 of the delay is negligible and the stipulation will be filed 14 days before the current  
17 deadline; (iii) the reason for the delay is that Defendants need additional time to finalize  
18 their rebuttal expert report because of the logistical difficulties of retaining a rebuttal  
19 expert, and preparing and disclosing a rebuttal expert report in 30 days given the current  
20 COVID-19 closures; and (iv) contrary to the circumstances in *Derosa*, the parties are  
21 actively conducting discovery. Accordingly, the parties respectfully request that the Court  
22 finds excusable neglect exists with respect to the rebuttal expert deadline. With respect to  
23 the other discovery deadlines, the parties submit this stipulation more than 21 days prior  
24 to the expiration of those deadlines.

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**V. Proposed Scheduling Order**

Therefore, Defendants request and Plaintiff stipulates to the following deadlines:<sup>1</sup>

EVENT	CURRENT DEADLINE (ECF No. 78)	PROPOSED DEADLINE
Rebuttal Expert Disclosures	June 2, 2020	July 3, 2020
Close of Discovery	July 6, 2020	September 4, 2020
Dispositive Motions	August 3, 2020	October 5, 2020
Pretrial Order <sup>2</sup>	September 1, 2020	November 4, 2020

DATED this 19th day of May, 2020.

McDONALD CARANO LLP



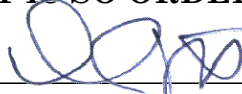
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 George Leaks

**IT IS SO ORDERED.**



UNITED STATES MAGISTRATE JUDGE

Dated: May 20, 2020

<sup>1</sup> Parties are not seeking an extension the following at this time, and are left out of the above dates as a result: (1) the deadline to amend the pleadings or add parties, (2) Expert disclosures.

<sup>2</sup> If dispositive motions are filed, then the pre-trial order shall be due 30 days after the ruling on the motions.