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 9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF NEVADA

11 LUIS CERVANTES,
 12 Plaintiff,
 13 vs.
 14 EDDIE SCOTT, et al.,
 15 Defendants.

CASE NO. 2:17-cv-00562-MMD-DJA

**STIPULATION AND ORDER TO
 EXTEND DISPOSITIVE MOTION
 DEADLINE (Second Request)**

16
 17 Pursuant to LR 6-1 and LR 26-4, Plaintiff Luis Cervantes (“Plaintiff”), Defendant Allan
 18 Kirkwood, D.D.S. (“Dr. Kirkwood”), and Defendants Eddie Scott, Kevin Patimeteepom, and
 19 Timothy Dorion (“the LVMPD Defendants”) by and through their respective counsel, hereby
 20 stipulate, agree, and request that this Court extend the dispositive motion deadline from the current
 21 date of April 9, 2020 because Plaintiff filed an Objection to the Magistrate Judge’s Order Denying
 22 Plaintiff’s Motion for Leave to File an Amended Complaint and Denying Plaintiff’s Motion to
 23 Extend the Discovery Deadlines. [ECF No. 73]. Defendant Dr. Kirkwood filed an Opposition to
 24 the Objection [ECF No. 74]. Plaintiff’s Reply is not yet due.

25 The parties previously stipulated to continue the due date for dispositive motions until 30
 26 days after the Court ruled on Plaintiff’s Motion for Leave to File an Amended Complaint and Motion
 27 to Extend the Discovery Deadlines, which resulted in a due date of April 9, 2020. However, the
 28 purpose for extending the due date to April 9, 2020 is now moot in light of Plaintiff’s Objection.

1 Therefore, the parties request a second extension of the due date for dispositive motions until 30
2 following the Court’s ruling on Plaintiff’s Objection, which should provide a final resolution of the
3 two Motions.

4 **A. Discovery Completed to Date**

5 Plaintiff, Dr. Kirkwood, and the LVMPD Defendants have exchanged initial disclosures
6 pursuant to FRCP 26(f). Plaintiff provided first supplemental disclosures. The LVMPD Defendants
7 provided first and second supplemental disclosures. Dr. Kirkwood and the LVMPD Defendants
8 served first sets of written discovery requests on Plaintiff and Plaintiff responded. The LVMPD
9 Defendants served second sets of written discovery requests on Plaintiff and Plaintiff responded.
10 Dr. Kirkwood and the LVMPD Defendants served Initial Expert Disclosures. The deposition of
11 Plaintiff was taken on August 26, 2019.

12 Discovery closed on January 27, 2020.

13 **B. Discovery Remaining to be Completed**

14 If Plaintiff’s Objection to the Court’s denial of his Motion for Leave to File an Amended
15 Complaint (which seeks the addition of two new Defendants) [ECF No. 73] is granted and Plaintiff
16 is permitted to file his proposed amended Complaint , all parties will need additional time to
17 complete discovery. If Plaintiff’s Objection to the Court’s denial of his Motion for Leave to File an
18 Amended Complaint is denied, no additional discovery will be completed.

19 **C. Reason for Request for Extension of Dispositive Motion Deadline**

20 The Court’s Orders on Plaintiff’s Objection to the Magistrate Judge’s Order Denying
21 Plaintiff’s Motion for Leave to File an Amended Complaint and Denying Plaintiff’s Motion to
22 Extend the Discovery Deadlines. [ECF No. 73] may affect the deadline for dispositive motions.

23 **D. Proposed Extended Deadline for Dispositive Motions**

24 Accordingly, the parties respectfully request that this Court enter an order as follows:

25 (1) Dispositive Motions.

26 Dispositive motions may be filed no later than thirty (30) days after the Court files its Orders
27 regarding Plaintiff’s Objection to the Magistrate Judge’s Order Denying Plaintiff’s Motion for
28 Leave to File an Amended Complaint and Denying Plaintiff’s Motion to Extend the Discovery

1 Deadlines. [ECF No. 73].

2 The parties recognize that this request is not being made within twenty-one (21) days of the
3 current dispositive motion deadline, April 9, 2020 pursuant to LR 26-4; however the parties submit
4 that good cause and excusable neglect exists.

5 LR 26-4 states in relevant part:

6 A motion or stipulation to extend a deadline set forth in a
7 discovery plan must be received by the court no later than 21
8 days before the expiration of the subject deadline. A request
9 made within 21 days of the subject deadline must be
10 supported by a showing of good cause. A request made after
11 the expiration of the subject deadline will not be granted
12 unless the movant also demonstrates that the failure to act
13 was the result of excusable neglect.

14 In evaluating excusable neglect, the court considers the following factors: (1) the reason for
15 the delay and whether it was in the reasonable control of the moving party; (2) whether the moving
16 party acted in good faith; (3) the length of the delay and its potential impact on the proceedings; and
17 (4) the danger of prejudice to the nonmoving party. See *Pioneer Inv. Servs. Co. v. Brunswick*
18 *Assocs.*, 507 U.S. 380, 395 S. Ct. 1489, 123 L.Ed.2d 74 (1993).

19 As set forth above, the parties are still unaware of the Court's ruling regarding a potential
20 amendment of the Complaint (which would add two new Defendants) and its ruling regarding
21 Plaintiff's requested extension of the current discovery deadlines. The Magistrate Judge denied both
22 of Plaintiff's requests, however, Plaintiff filed an Objection to the Magistrate's Order. Should the
23 Court grant Plaintiff's Objection regarding either the denial of Plaintiff's Motion for Leave to File
24 an Amended Complaint or the denial of Plaintiff's Motion to Extend Discovery, the current
25 dispositive motion deadline would be moved accordingly.

26 The parties have been diligent; however, they do not exercise control over the date upon
27 which the Court will rule on the pending Objection. The parties are unable to determine their next
28 steps in litigation, including the scope of potential dispositive motions, until such time as the Court

1 has ruled on the pending Objection. As such, the delay in requesting the current extension was
2 outside the control of the parties. The length of the requested extension for dispositive motions
3 should not result in prejudice to any party.

4 The foregoing request and stipulation for an extension of the dispositive motion deadline is
5 made in good faith, jointly by the parties hereto.

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ORDER

23 **IT IS SO ORDERED.**

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26 UNITED STATES MAGISTRATE JUDGE

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Dated: April 9, 2020

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Case No. 2:17-cv-0562-MMD-DJA