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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 LAUSTEVEION JOHNSON,

11 Plaintiff,

12 v.

13 JAMES DZURENDA; FRANK DREESEN;
REGINA BARRETT; JOSEPH LEWIS;
14 TIMOTHY KNATZ; DAVID WILLIS AND
JO GENTRY,

15 Defendants.

16 CASE NO. 2:17-cv-01671-APG-EJY

17 **JOINT STIPULATION AND ORDER**
TO PRELIMINARILY EXTEND
DEADLINES AND REQUEST FOR
STATUS CONFERENCE ON ORDER
SHORTENING TIME
(FIRST REQUEST)

18 Plaintiff, Lausteveion Johnson (“Plaintiff”), by and through his appointed counsel, Frank
19 M. Flansburg, III, Esq., Emily A. Ellis, Esq., and Troy P. Domina, Esq., of the law firm Brownstein
20 Hyatt Farber Schreck, LLP, and Defendants, James Dzurenda, Frank Dreesen, Regina Barrett,
Joseph Lewis, Timothy Knatz, David Willis, and Jo Gentry (“Defendants”) by and through their
21 counsel Aaron D. Ford, Esq., and Austin T. Barnum, Esq., hereby submit this Joint Stipulation and
22 Order to Preliminarily Extend Deadlines and Request for Status Conference on Order Shortening
23 Time. Pursuant to Local Rule IA 6-1 and Local Rule 7-1, the Parties request the deadline for
24 motions in *limine* be extended from May 9, 2022 to **May 23, 2022**.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. RELEVANT BACKGROUND**

27 On May 4, 2022, this Court entered an order (the “Order”) appointing Frank M. Flansburg,
28 Emily A. Ellis, and Troy P. Domina as pro bono counsel for Plaintiff, Lausteveion Johnson (“Pro
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1 Bono Counsel").¹ Pro Bono Counsel entered their notices of appearance on May 5, 2022.² The
 2 Order stated the scope of Pro Bono Counsel's representation was limited to "preparing a joint
 3 pretrial order and advising Plaintiff in the course of preparing for and conducting trial."³

4 This matter is set for a jury trial on the stacked calendar on June 6, 2022, at 9:00am, and the
 5 corresponding calendar call is scheduled for May 31, 2022, at 9:00am.

6 Just before and just after the time Pro Bono Counsel was appointed, the Plaintiff, acting pro
 7 se, filed various motions to which Defendants must respond. These motions include:

- 8 • ECF No. 165 – Motion for jury to visit the prison;
- 9 • ECF No. 166 – Motion for a diverse jury;
- 10 • ECF No. 167 – Emergency Writ of Habeas Corpus Ad Testificandum;
- 11 • ECF No. 180- Motion in *Limine*;
- 12 • ECF No. 181- Motion in *Limine*;
- 13 • ECF No. 182- Motion in *Limine*;
- 14 • ECF No. 183- Motion in *Limine*;
- 15 • ECF No. 184- Motion in *Limine*;
- 16 • ECF No. 185- Motion in *Limine*; and
- 17 • ECF No. 186- Motion in *Limine*

18 In addition, the deadline to file motions in *limine* expires May 9, 2022.

19 **II. LEGAL DISCUSSION**

20 **A. EXTENDING TIME.**

21 (1) In General. When an act may or must be done within a specified time, the
 22 court may, for good cause, extend the time:

23 (A) with or without motion or notice if the court acts, or if a request
 24 is made, before the original time or its extension expires; or

25 (B) on motion made after the time has expired if the party failed to act
 26 because of excusable neglect.

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 28 ¹ See ECF No. 177, at 1, filed herein.

² See ECF No. 178, at 1, filed herein.

³ See ECF No. 177, at 1:13-15.

1 Fed.R.Civ.P. 6(b)(1).⁴

2 The United States Supreme Court has recognized, “Rule 6(b) gives the court *extensive*
 3 *flexibility* to modify the fixed time periods found throughout the rules, whether the enlargement is
 4 sought before or after the actual termination of the allotted time.” *Lujan v. Nat'l Wildlife Fed.*, 497
 5 U.S. 871, 906 n. 7 (1990) (internal quotation marks and citation omitted) (emphasis added); *see*
 6 *also Perez-Denison v. Kaiser Found. Health Plan of the Nw.*, 868 F. Supp. 2d 1065, 1079 (D. Or.
 7 2012) (citing and quoting *Lujan*, 497 U.S. at 906). Further, this rule, like all the Federal Rules of
 8 Civil Procedure is to be liberally construed to effectuate the general purpose of seeing that cases
 9 are tried on the merits. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010).
 10 Regarding “good cause,” it is a non-rigorous standard that has been construed broadly across
 11 procedural and statutory contexts. *Id.* (citing several circuits *Venegas-Hernandez v. Sonolux*
 12 *Records*, 370 F.3d 183, 187 (1st Cir.2004); *Thomas v. Brennan*, 961 F.2d 612, 619 (7th Cir.1992);
 13 *Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 954 (4th Cir.1987)).

14 Consequently, requests for extensions of time made before the applicable deadline has
 15 passed should “normally ... be granted in the absence of bad faith on the part of the party seeking
 16 relief or prejudice to the adverse party.” *Ahanchian*, 624 F.3d at 1259 (quoting 4B Charles Alan
 17 Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (3d ed. 2004)).

18 Pro Bono Counsel was appointed on May 4, 2022, and they entered their appearances on
 19 May 5, 2022. Pro Bono Counsel needs adequate time to review the filings in this matter and
 20 properly assess and analyze the needs of the case. Pro Bono Counsel also needs adequate time to
 21 make contact with Plaintiff to discuss strategy. As such, the Parties submit that good cause exists
 22 for the extension requested herein, which is not brought for delay or any other improper purpose.

23 Therefore, the Parties hereby stipulate and request the Court grant a short, two-week,
 24 preliminary extension of the deadline for motions in *limine* and the deadlines to respond to the
 25 following ECF numbered documents to provide Pro Bono Counsel the time to accomplish the tasks

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 27 ⁴ LR IA 6-1(a): “A motion or stipulation to extend time must state the reasons for the
 28 extension requested and must inform the court of all previous extensions of the subject deadline the
 court granted.” Further, a “stipulation or motion seeking to extend the time to file an opposition or
 reply to a motion, or to extend the time fixed for hearing a motion, must state in its opening
 paragraph the filing date of the subject motion or the date of the subject hearing.” LR IA 6-1(c).
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1 described above: ECF No. 165 – Motion for jury to visit the prison, ECF No. 166 – Motion for a
 2 diverse jury, ECF No. 167 – Emergency Writ of Habeas Corpus Ad Testificadum, ECF No. 180-
 3 Motion in *Limine*, ECF No. 181- Motion in *Limine*, ECF No. 182- Motion in *Limine*, ECF No. 183-
 4 Motion in *Limine*, ECF No. 184- Motion in *Limine*, ECF No. 185- Motion in *Limine*, ECF No. 186-
 5 Motion in *Limine*.

6 **B. REQUEST FOR STATUS CONFERENCE.**

7 The order appointing Pro Bono Counsel states their representation is limited to “preparing
 8 a joint pretrial order and advising Plaintiff in the course of preparing for and conducting trial.”⁵
 9 Trial is scheduled to commence on a trial stack beginning on June 6, 2022, and calendar call is
 10 scheduled for May 31, 2022.

11 The Parties seek clarification on the extent of Pro Bono Counsel’s representation regarding
 12 advising Plaintiff in the course of preparing for and conducting trial.⁶ More specifically, the Parties
 13 seek clarification whether the advisory role of Pro Bono Counsel includes preparing for and
 14 conducting opening and closing arguments, direct and cross examination of witnesses, and
 15 introducing exhibits into evidence at trial on Plaintiff’s behalf.⁷ Because of the compressed time
 16 frame before trial, the Parties seek a status conference on order shortening time to receive this
 17 clarification.⁸

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26 ⁵ See ECF No. 177, at 1:13-15; see also Decl. of T. Domina, at ¶ 5, May 9, 2022, attached as
 27 **Exhibit 1**.

28 ⁶ See Ex. 1, at ¶ 8.

7 *Id.* at ¶ 9.

8 *Id.* at ¶¶ 10, 11.

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1 **III. CONCLUSION**

2 For the reasons stated above, the Parties request this Court grant a two-week extension of
 3 the deadline to file motions in *limine* (to May 23, 2022) and for Defendant to respond to the
 4 documents identified herein. The Parties also request a status conference to specify the parameters
 5 of Pro Bono Counsel's representation on an order shortening time.

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DATED this 9 th day of May, 2022 BROWNSTEIN HYATT FARBER SCHRECK, LLP BY: <u>/s/ Emily A. Ellis</u> FRANK M. FLANSBURG III, ESQ., EMILY A. ELLIS, ESQ., TROY P. DOMINA, ESQ., Attorneys for Plaintiff Lausteveion Johnson	DATED this 9 th day of May, 2022 STATE OF NEVADA OFFICE OF ATTORNEY GENERAL BY: <u>/s/ Austin T. Barnum</u> AARON D. FORD, Attorney General AUSTIN T. BARNUM Deputy Attorney General Attorneys for Defendants <i>Regina Barrett, Frank Dreesen, James Dzurenda, Timothy Knatz, Joseph Lewis, and David Willis</i>
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17 IT IS SO ORDERED.

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 20 UNITED STATES DISTRICT JUDGE

21 DATE: May 10, 2022