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9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 SHONDELL PITTS, individually and as legal
 12 guardian of P.P.,

13 Plaintiffs,

14 vs.

15 LAS VEGAS METROPOLITAN POLICE
 DEPARTMENT, a political subdivision of Clark
 16 County, Nevada; JOSEPH LOMBARDO,
 Sheriff of Clark County, Nevada; DAVID
 17 NESHEIWAT, individually and in his official
 capacity; FUELZONE MART 2, LLC, a Nevada
 18 limited liability company; DOE CLERK, an
 individual and DOES 1 through 10,

19 Defendants.

CASE NO.: 2:19-cv-01974-JCM-VCF

**STIPULATION AND ORDER REGARDING
 DISCOVERY EXTENSION**

21 COME NOW Plaintiff SHONDELL PITTS, individually and as legal guardian of P.P., by and
 22 through her attorney MITCHELL S. BISSON, ESQ. of LAW OFFICES OF MITCHELL S. BISSON;
 23 Defendant FUELZONE MART 2, LLC, by and through its attorneys STEVEN T. JAFFE, ESQ. and
 24 KEVIN S. SMITH, ESQ. of HALL JAFFE & CLAYTON, LLP; and Defendants LAS VEGAS
 25 METROPOLITAN POLICE DEPARTMENT and DAVID NESHEIWAT, by and through their attorney
 26 CRAIG R. ANDERSON, ESQ. of MARQUIS AURBACH COFFING; and hereby stipulate pursuant to
 27 **FRCP 16(b)(4)** and **LR 26-4** that good cause warrants an extension of the discovery deadlines set by
 28 the Court’s Discovery Plan and Scheduling Order, entered on May 12, 2020 (ECF No. 28).

The parties jointly request that discovery be extended for the reasons set forth below.

I. INTRODUCTION AND PROCEDURAL POSTURE

Plaintiffs Shondell Pitts, individually and as the legal guardian of P.P., a minor, filed the instant lawsuit on November 11, 2019 by filing the Complaint, naming the Las Vegas Metropolitan Police Department (“Metro”), Sheriff Joseph Lombardo, Officer David Nesheiwat and FuelZone Mart 2, LLC as named Defendants. The Plaintiffs also sued “DOE Clerk.” (ECF No. 1).

The parties held a discovery conference via telephone on May 8, 2020, in compliance with FRCP 26(f) and LR 26-1. The Court entered the Discovery Plan and Scheduling Order on May 12, 2020, setting the following deadlines:

- Last day to file a motion to amend pleadings or to add parties: February 8, 2021
 - Last day to file Interim Status Report: March 8, 2021
 - Last day for disclosures concerning experts: March 8, 2021
 - Last day for disclosures concerning rebuttal experts: April 8, 2021
 - Last day for filing dispositive motions: June 8, 2021
 - Last day to file Joint Pretrial Order: July 8, 2021
- (ECF No. 28).

II. STATEMENT SPECIFYING THE DISCOVERY COMPLETED

A. Written Discovery

PROPOUNDED BY	DATE SERVED	DOCUMENT	PARTY PROPOUNDED UPON
FuelZone Mart 2, LLC	06/18/2020	First Set of Requests for Admissions	Plaintiff Shondell Pitts, individually (Responses served 08/21/2020)
FuelZone Mart 2, LLC	06/18/2020	First Set of Interrogatories	Plaintiff Shondell Pitts, individually (Responses served 09/02/2020)
FuelZone Mart 2, LLC	06/18/2020	First Set of Requests for Production of Documents	Plaintiff Shondell Pitts, individually (Responses served 10/12/2020)

PROPOUNDED BY	DATE SERVED	DOCUMENT	PARTY PROPOUNDED UPON
FuelZone Mart 2, LLC	06/18/2020	First Set of Requests for Admissions	Plaintiff Shondell Pitts as legal guardian of P.P. (Responses served 08/21/2020)
FuelZone Mart 2, LLC	06/18/2020	First Set of Interrogatories	Plaintiff Shondell Pitts as legal guardian of P.P. (Responses served 09/02/2020)
FuelZone Mart 2, LLC	06/18/2020	First Set of Requests for Production of Documents	Plaintiff Shondell Pitts as legal guardian of P.P. (Responses served 10/12/2020)
Las Vegas Metropolitan Police Department		First Set of Interrogatories	Plaintiff Shondell Pitts, individually (Responses served 08/19/2020)
Las Vegas Metropolitan Police Department		First Set of Requests for Production of Documents	Plaintiff Shondell Pitts, individually (Responses served 10/13/2020)
Las Vegas Metropolitan Police Department		First Set of Interrogatories	Plaintiff Shondell Pitts as legal guardian of P.P. (Responses served 08/19/2020)
Las Vegas Metropolitan Police Department		First Set of Requests for Production of Documents	Plaintiff Shondell Pitts as legal guardian of P.P. (Responses served 10/13/2020)

B. FRCP 26 Disclosure Statements

PARTY	DISCLOSURE	DATE SERVED
Plaintiff Shondell Pitts individually and as legal guardian of P.P.	Initial Disclosure	08/31/2020

	PARTY	DISCLOSURE	DATE SERVED
1			
2			
3	Plaintiff Shondell Pitts	Initial Disclosure	08/31/2020
4	individually and as legal		
5	guardian of P.P.		
6	Defendant FuelZone Mart 2, LLC	Second Supplemental Disclosure	07/09/20
7	Defendants Las Vegas	Third Supplemental Disclosure	08/20/20
8	Metropolitan Police Department		
9	and Officer David Nesheiwat		
10	Plaintiff	Initial Disclosure	10/15/19
11			

C. Depositions

The parties completed the depositions of Plaintiff Shondell Pitts and Portia Pitts on December 21, 2020.

III. SPECIFIC DESCRIPTION OF DISCOVERY THAT REMAINS TO BE COMPLETED

Defendants have been continuing to obtain additional medical records, as it is Defendants' understanding that Plaintiffs are continuing to undergo medical treatment. Therefore, the parties seek additional time to identify and obtain the pertinent medical records. Further, Defendants are currently investigating whether any additional appropriate parties should be added to this action. The parties also anticipate the following discovery will be necessary:

1. Identification of and obtaining additional medical treatment records from additional providers for Plaintiffs not identified in Plaintiffs disclosures to date;
2. Depositions of percipient witnesses to the incident, including the police officers involved;
3. Depositions of the parties, including representatives of LVMPD and FuelZone Mart 2, LLC;
4. Identification and disclosure of the parties' respective expert/rebuttal expert witnesses;

1 5. Depositions of Plaintiff's treating physicians and the parties respective designated
2 experts;

3 6. Further Discovery as needed, which may not have been specifically addressed herein.

4
5 **IV. LEGAL AUTHORITY FOR REOPENING AND CONTINUING DISCOVERY
6 DEADLINES**

7 Pursuant to FRCP 16(b), a movant must establish "good cause" for amending any scheduling
8 order, including the deadline for the close of discovery. *See Johnson v. Mammoth Recreations, Inc.*,
9 975 F.2d 604, 608-09 (9th Cir. 1992); *see also Local Rule 26-4; Werbicky v. Green Tree Servicing,*
10 *LLC*, No. 2:12-CV-01567-JAD, 2014 WL 5470466, at *1 (D. Nev. Oct. 27, 2014). When the deadline
11 has already expired, a movant must also demonstrate that the failure to act was the result of excusable
12 neglect. *See Local Rule 26-4; Werbicky, supra (citing Nunez v. Harper*, 2014 U.S. Dist. Lexis 84287,
13 *6, 2014 WL 2808985 (D. Nev. June 20, 2014)).

14 In determining whether "good cause" exists, the Court "[p]rimarily considers the diligence of the
15 party seeking the amendment." *Johnson*, 975 F.2d at 609. "The district court may modify the pretrial
16 schedule "[i]f it cannot reasonably be met despite the diligence of the party seeking the extension." *Id.*
17 (quoting Fed. R. Civ. P. 16). The Court may also consider the prejudice the party will suffer as a result
18 of not obtaining that discovery, although such a factor is secondary to due diligence. *Id.* The district
19 court has discretion in making such a determination. *Id.*

20 Should the Court find "good cause" exists, it must then consider whether there is a showing of
21 excusable neglect as to why the deadline was not completed before it passed. *Nunez, supra*. "Excusable
22 neglect encompasses situations in which the failure to comply with a filing deadline is attributable to
23 negligence." *Id. (citing Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9th Cir. 2009). "There are at least four
24 factors in determining whether neglect is excusable: (1) the danger of prejudice to the opposing party; (2)
25 the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)
26 whether the movant acted in good faith." *Id. (citing Bateman v. U.S. Postal Serv.*, 231 F.2d 1220, 1223-24
27 (9th Cir. 2000)). "The determination of whether neglect is excusable is ultimately an equitable one, taking
28 account of all relevant circumstances surrounding the party's omission." *Id. (citing Pioneer Inv. Servs. Co.*
 v. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 395 (1993)) (emphasis added). The circumstances in this

1 case meet each requirement and merit reopening the expired discovery deadlines and continuing the
2 remaining dates. For the reasons set forth below, as well as an examination of the *Bateman* factors weighs
3 in favor of granting the parties' stipulation to reopen and extend the discovery deadlines.

4 **1. *The Dangers of Prejudice to the Opposing Party***

5 In the instant circumstance there is no danger to the opposing party. All parties are in agreement
6 to extend all the deadlines in this case. It appears Plaintiffs continue to treat, and additional medical
7 records and providers will need to be identified and obtained. It would be prejudicial, especially where
8 both sides agree that additional discovery is necessary in this case, and when the parties have acted
9 diligently and promptly since discovery has opened. Moreover, the Court recently allowed the Plaintiffs
10 to substitute Allen Jackson as a named Defendant in the place of "DOE Clerk." (ECF No. 44). The
11 parties respectfully submit it would be prejudicial to this new Defendant if he is not permitted sufficient
12 time to become familiar with the facts and allegations of this case, and to conduct discovery in his
13 defense.

14 **2. *The Length and Reason for the Delay and Its Potential Impact on the Proceedings.***

15 The parties have exercised reasonable diligence and are moving forward with the discovery
16 process. The Court only recently allowed the substitution of Defendant Jackson. Indeed, Defendant
17 Jackson has not yet been served with the summons and complaint, the Plaintiffs having until May 30,
18 2021 to effect service of process in compliance with the Court's Order. Therefore, the length of delay is
19 necessary, but for the bases set forth herein, would not be a burden to either the Court or to the parties.
20 The potential impact on the proceedings is also minimal, as there is no trial date set in this case yet, and
21 the parties all are in complete agreement that the instant extension is necessary.

22 **3. *Whether the Movants Acted in Good Faith***

23 There is no other motion pending before the Court, as all parties to the case have agreed a
24 stipulation to continue the discovery deadlines are necessary and warranted. The parties agree that in the
25 absence of a stipulation, the parties would equally prejudiced in terms of being unable to conduct the
26 necessary discovery to both prosecute and defend the case at bar.

27 Therefore, the parties jointly submit the length of the delay in seeking the extension (although
28 less than twenty-one (21) days before the expiration of the deadline to designate expert witnesses and

1 after the deadline to amend pleadings and add parties) as required by Local Rule 26-4 was negligible
 2 and that the negative impact on the parties in granting the jointly sought extension is not an issue at this
 3 time. Therefore, the parties respectfully submit that as joint movants, who are continuing to actively
 4 obtain records and discovery, have acted in good faith in seeking the extension requested herein. For
 5 these reasons, the parties jointly submit that the failure to request a discovery extension within the 21
 6 days prior to the expiration of the deadline requested to be extend has sufficient good cause and was
 7 caused by excusable neglect sufficient for this Court to extend the deadlines as requested herein.

8 **V. CURRENT AND PROPOSED DISCOVERY SCHEDULE AND TRIAL DATE:**

9 The current discovery schedule is as follows:

10	Last day to file a motion to amend pleadings or to add parties:	February 8, 2021
11	Last day to file Interim Status Report:	March 8, 2021
12	Last day for disclosures concerning experts:	March 8, 2021
13	Last day for disclosures concerning rebuttal experts:	April 8, 2021
14	Last day for filing dispositive motions:	June 8, 2021
15	Last day to file Joint Pretrial Order:	July 8, 2021
16	(ECF No. 28).	

17 The parties propose the following Discovery Schedule:

18	Last day to file a motion to amend pleadings or to add parties:	June 8, 2021
19	Last day to file Interim Status Report:	July 8, 2021
20	Last day for disclosures concerning experts:	July 8, 2021
21	Last day for disclosures concerning rebuttal experts:	August 9, 2021
22	Last day for filing dispositive motions:	October 8, 2021
23	Last day to file Joint Pretrial Order:	November 8, 2021

24 (or thirty (30) days after the Court's
 25 ruling the parties' final dispositive motion)

26 Said request is not being made for the purpose of unduly delaying discovery or the trial of this
 27 matter. Further, given the recent addition of Defendant Jackson as a named Defendant in place of "DOE
 28

1 Clerk,” the parties respectfully submit that an additional discovery extension may be required to permit
2 Defendant Jackson the opportunity to participate fully in discovery in this action.

3 Accordingly, based on the foregoing, the Parties respectfully request this Court grant the instant
4 Stipulation.

5 **IT IS HEREBY STIPULATED:**

6 DATED this 2nd day of March, 2021.

DATED this 2nd day of March, 2021.

7 **HALL JAFFE & CLAYTON, LLP**
8 */s/ Kevin S. Smith*

LAW OFFICES OF MITCHELL S. BISSON
/s/ Mitchell s. Bisson

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individually and as legal guardian of P.P.*

13 DATED this 2nd day of March, 2021.

14 **MARQUIS AURBACH COFFING**
15 */s/ Craig R. Anderson*

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19 *Attorneys for Defendants Las Vegas Metropolitan
Police Department and Officer David Nesheiwat*

[PROPOSED] ORDER

In accordance with the stipulation of the parties, the Court orders as follows:

IT IS ORDERED that the discovery deadlines are continued as follows:

Last day to file a motion to amend pleadings or to add parties: ~~June 8, 2021~~ Expired

~~Last day to file Interim Status Report: July 8, 2021~~

Last day for disclosures concerning experts: July 8, 2021

Last day for disclosures concerning rebuttal experts: August 9, 2021

Last day for filing dispositive motions: October 8, 2021

Last day to file Joint Pretrial Order: November 8, 2021

(or thirty (30) days after the Court's ruling the parties' final dispositive motion)

IT IS SO ORDERED.

Dated: 3-10-2021

UNITED STATES MAGISTRATE JUDGE

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