

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROSE DESIO,
Plaintiff(s),

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Defendant(s).

Case No.: 2:20-cv-01486-APG-NJK

ORDER

[Docket No. 40]

Pending before the Court is an amended stipulation to revive the expired deadlines for amending, initial experts, and rebuttal experts, and to extend all deadlines in the scheduling order by 90 days. Docket No. 40.¹ That stipulation is hereby **SET** for a telephonic hearing at 2:00 p.m. on February 22, 2021. Counsel must appear telephonically by calling the Court conference line at 877-402-9757 at least five minutes prior to the hearing. The conference code is 6791056. In order to ensure a clear recording of the hearing, the call must be made using a land line phone. Cell phone calls, as well as the use of a speaker phone, are prohibited.

The Court will not entertain argument at the hearing on the two primary reasons proffered for the parties' failure to conduct any affirmative discovery to date. First, that the parties were engaged in merits-based motion practice is insufficient to justify the failure to conduct any discovery. *See Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) ("The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a

¹ A request to extend deadlines requires a showing of good cause, Local Rule 26-3, which turns on whether those deadlines cannot reasonably be met despite the diligence of the party or parties seeking the extension, *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Requests to reopen already expired deadlines must be supported by an additional showing of excusable neglect. *E.g.*, Local Rule 26-3.

1 potentially dispositive motion is pending”); *see also id.* at 602 (a case-wide stay of discovery is
 2 justified when, *inter alia*, the underlying motion is fully case-dispositive); *Garcia v. Serv. Emps.*
 3 *Int’l Union*, 332 F.R.D. 351, 355 n.6 (D. Nev. 2019) (counsel focusing attention on merits-based
 4 motion practice does not excuse a lack of diligence with respect to discovery matters). Second,
 5 the vague references to pandemic related obstacles does not justify the failure to conduct discovery.
 6 *E.g.*, *Herndon v. City of Henderson*, ___ F. Supp. 3d ___, 2020 WL 7382766, at *8 n.14 (D. Nev.
 7 Dec. 16, 2020) (“The Court appreciates that the current health crisis has created some obstacles to
 8 the practice of law, but litigants remain capable of advancing discovery with diligence . . .” (citing
 9 *Swenson v. GEICO Cas. Co.*, 336 F.R.D. 206, 210 (D. Nev. 2020) and *Chen v. K.O.O. Constr.,*
 10 *Inc.*, 445 F. Supp. 3d 1055, 1057 (S.D. Cal. 2020)). The Court will instead entertain argument on
 11 the assertion that good cause exists because defense counsel has dealt with family health problems
 12 and an associate is recovering from a car accident. *See* Docket No. 40 at 4.²

13 Counsel must also be prepared to explain why three additional months of discovery should
 14 be permitted at this point given that no discovery has been conducted to date.³ Additionally,
 15 counsel must be prepared to explain why the deadline to amend should be revived as there is no
 16 indication of a need to amend and a motion to amend may be filed after the deadline for doing so.
 17 *See, e.g.*, *Novotny v. Outback Steakhouse of Fla., LLC*, 2017 U.S. Dist. Lexis 114672, at *2-3 (D.
 18 Nev. July 21, 2017).

19 IT IS SO ORDERED.

20 Dated: February 17, 2021

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 Nancy J. Koppe
 United States Magistrate Judge

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 25 ² The stipulation does little to explain a basis for excusable neglect, including the reason
 26 why this request was not filed months ago before the expiration of the deadlines at issue. Counsel
 must be prepared to provide robust argument as to excusable neglect.

27 ³ A shorter enlargement of the discovery period may also be appropriate given that the
 28 Court may shorten the deadlines for responding to written discovery requests. *See, e.g.*, Fed. R.
 Civ. P. 33(b)(2).