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6   **UNITED STATES DISTRICT COURT**
                          DISTRICT OF NEVADA
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EDWARD NEIDERT,   )   3:10-cv-0479-RCJ (RAM)
9   )
                      Plaintiff,   )   **ORDER**
10   )
        vs.   )
11   )
HOWARD SKOLNIK, an individual,   )
12   STATE OF NEVADA, ex rel., its   )
     DEPARTMENT OF CORRECTIONS,   )
13   a political subdivision of the State of)
     Nevada,   )
14   )
                      Defendants.   )
15   _____)

16   Defendants have filed an Objection to Jury Demand (Doc. #15). Plaintiff has responded

17   to Defendants' Objection (Doc. #16) and Defendants have replied (Doc. #17).

18   Plaintiff filed his Complaint in the First Judicial District Court of the State of Nevada

19   in and for Carson City without accompanying the Complaint with a jury demand.

20   On August 3, 2010, Defendants removed the case to the federal district court and on

21   September 2, 2010, Defendants answered the Complaint. Defendants did not demand a jury.

22   On September 22, 2010, Plaintiff filed a Jury Demand (Doc. #12).

23   In the state court in Nevada a party need not file a jury demand until the entry of the

24   order first setting the case for trial. NRCP 38. This scenario is not covered by Fed. R. Civ. P.

25   81(c). It is, however, similar to New York where jury demands may be made shortly before

26   trial. It has been held that in that scenario, the court will have discretion to allow a late jury

27   demand. *See* Rule 38(b); *Felix-Hernandez v. American Airlines, Inc.*, 539 F.Supp.2d 511, 512

28   (D.P.R. 2007); *Ajnoha v. JC Penney Life Ins. Co.*, 480 F.Supp.2d 663, 676-77 (E.D.N.Y. 2007);

Dreedlove v. Cabou, 296 F.Supp.2d 253, 278 (N.D.N.Y. 2003).

Under the circumstances of this case, the court exercises its discretion and allows the jury demand filed by the Plaintiff.

Defendants' Objection to Jury Demand (Doc. #15) is **<u>DENIED</u>**.

DATED: November 16, 2010.

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UNITED STATES MAGISTRATE JUDGE