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 Stephen Powers, Ruben Vidaurri  
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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

12 KEITH A. WARREN,

13 Plaintiff,

14 vs.

15 NEVADA DEPARTMENT OF  
 CORRECTIONS, et al.,

16 Defendants.  
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Case No. 3:17-cv-00228-MMD-WGC

**ORDER GRANTING MOTION FOR  
 EXTENSION OF TIME TO  
 RESPOND TO PLAINTIFF'S  
 "ORDER OF CONTEMPT"  
 (REQUEST NO. 2)  
 (ECF No. 110, 132, 142, and 143)  
 (ECF No. 160) AND  
 MOTION FOR ORDER TO SHOW  
 CAUSE (ECF No. 161)  
 (FIRST REQUEST)**

19 Defendants, Quentin Byrne, Sheryl Foster, Joshua Kelly, Stephen Powers, Ruben  
 20 Vidaurri, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada,  
 21 and Jeffrey A. Cogan, Deputy Attorney General, submits this Motion for Extension of Time  
 22 to Respond Plaintiff Keith Allen Warren's "Order of Contempt of Court," (ECF No. 159) and  
 23 Motion for Order to Show Cause (ECF No. 161).  
 24

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. PROCEDURAL BACKGROUND**

27 Plaintiff Keith Allen Warren (Warren) seeks an Order of Contempt (ECF 159) for  
 28 allegations that Defendants' counsel failed to provide discovery previously ordered by this

1 Court. This Court set a hearing for February 17, 2021, at 1:30 p.m. to address Plaintiff's  
2 Motion for Reconsideration re (ECF No. 154), Order (ECF No. 155), Motion to Add Evidence  
3 (ECF no. 159), Motion for Order of Contempt of Court re discovery (ECF No. 160), Motion  
4 to Show Cause (ECF 165) and Plaintiff's Motion for Order to Show Cause for TRO (ECF  
5 No. 161). ECF 167 and ECF 171.

## 6 **II. BACKGROUND FACTS RELATING TO DEFENSE COUNSEL'S HEALTH**

7 On January 29, 2020, the undersigned, Deputy Attorney General Jeffrey A. Cogan,  
8 suffered a heart attack diagnosed on January 30, 2020, by an EKG. After a stress test  
9 and angiogram, the undersigned had triple bypass surgery on June 29, 2020.

10 Following the surgery, the undersigned was prescribed two anticoagulants: Clopidogrel,  
11 commonly known as Plavix and Eliquis. Also prescribed was 81 mg aspirin, a blood  
12 thinner.

13 Because of his diminished health, the undersigned closed his private practice of 28  
14 years and obtained a job with the Office of the Attorney General, commencing on October  
15 12, 2020, moving from Las Vegas, Nevada, to Reno, Nevada. On December 17, 2020, the  
16 undersigned suffered a vitreous hemorrhage. On December 18, 2020, the undersigned saw  
17 ophthalmologist Hardeep S. Dhinda, M.D., F.A.C.S., who scheduled surgery for December  
18 21, 2020, to repair the bleeding eye blood vessels and retina.

19 However, on December 21, 2020, Dr. Dhinda determined that there needed  
20 additional healing before performing surgery. Dr. Dhinda excused the undersigned from  
21 work due to his inability to see well enough to read pleadings or a computer screen. Surgery  
22 was continued to February 3, 2021. In the interim, the undersigned continued his work as  
23 a deputy attorney general, including responding to discovery requests and motions in this  
24 case. The undersigned's ability to perform his job duties was significantly reduced,  
25 resulting from the loss of vision, requiring twice as long to perform any task.

26 On February 3, 2021, the undersigned saw Dr. Dhinda for the scheduled surgery,  
27 but Dr. Dhinda determined that the trauma to the eye was too great to perform the surgery  
28 and set the surgery for March 19, 2021. Dr. Dhinda signed a second note excusing the

1 undersigned from work until March 19, 2021. The undersigned desires to continue his  
2 work as a deputy attorney general but requires enlargement of time to respond to  
3 complicated matters such as Warren’s motions.

4 **III. LEGAL STANDARD**

5 “For good cause, the court may extend the time prescribed by these rules or by its  
6 order to perform any act, or may permit an act to be done after that time expires.” Fed. R.  
7 Civ. P. 26(b). “The proper procedure, when additional time for any purpose is needed, is to  
8 present to the Court a timely request for an extension before the time fixed has expired  
9 (*i.e.*, a request presented before the time fixed for the purpose in question has expired).

10 *Pickett v. Valdez*, Case No. 3:17-cv-00567-MMD-WGC, 2019 WL 2570524, \*2 (D. Nev. June  
11 21, 2019) citing *Canup v. Miss. Valley Barge Line Co.*, 31 F.R.D. 282, 283 (D. Pa. 1962).  
12 The *Canup* Court explained that the “practicalities of life” (such as an attorney’s  
13 “conflicting professional engagements” or personal commitments such as vacations, family  
14 activities, illnesses, or death) often necessitate an enlargement of time to comply with a  
15 court deadline. *Id.* Extensions of time “usually are granted upon a showing of good cause,  
16 if timely made.” *Id.* citing *Creedon v. Taubman*, 8 F.R.D. 268, 269 (D. Ohio 1947). The good  
17 cause standard considers a party’s diligence in seeking the continuance or extension. *See*  
18 *In re Western States Wholesale Natural Gas Antitrust Litigation*, 715 F.3d 716, 737 (9<sup>th</sup> Cir.  
19 2013) citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9<sup>th</sup> Cir. 1992).

20 **IV. ARGUMENT**

21 The undersigned has not been intentionally dilatory in responding to Warren’s  
22 discovery and the associated motions. The vitreous hemorrhage has made preparing  
23 discovery responses and pleadings much more difficult and consumes much more time. The  
24 undersigned is doing the best that he can in light of his illness and seeks additional time  
25 to respond to Warren’s “Order for Contempt” (ECF No. 160) and Plaintiff’s Motion for Order  
26 to Show Cause for TRO (ECF No. 161). The response to Warren’s motions require charting  
27 what discovery was propounded, what responses were provided, case authority and legal  
28 analysis to rebut Warren’s contentions, and legal argument.

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2 The undersigned is aware of the February 17, 2021, and does not desire to delay the  
3 hearing. Therefore, Defendants respectfully request that the Court grant this Motion for  
4 Extension of Time to February 8, 2021. This deadline would allow Warren to prepare and  
5 file replies to Defendants' responses and provide the Court with sufficient time to review  
6 all pleadings.

7 DATED this 3<sup>rd</sup> of February, 2021.

8 AARON D. FORD  
9 Attorney General

10 By: /s/ Jeffrey A. Cogan  
11 JEFFREY A. COGAN, Bar No. 4569  
12 Deputy Attorney General  
13 *Attorney for Defendants*

14 IT IS SO ORDERED.

15 DATED: February 4, 2021.

16 William G. Cobb  
17 UNITED STATES MAGISTRATE JUDGE  
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