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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

**PLAINTIFF’S MOTION FOR
LEAVE TO FILE FIRST
AMENDED COMPLAINT AND TO
MODIFY SCHEDULING ORDER**

**(First Request to Extend Amendment
Deadline)**

Plaintiff Pastor Steve Smothermon (“Plaintiff”), by and through his counsel of record, respectfully moves this Court for an order modifying the current Joint Discovery Plan and Scheduling Order (ECF No. 49) to extend the deadline to amend pleadings and add parties, and for leave to file his First Amended Complaint pursuant to Federal Rules of Civil Procedure 15(a)(2), 16(b)(4), 6(b)(1)(B), and District of Nevada Local Rules 26-3 and IA 6-1. Good cause and excusable neglect exist to support this request because the critical, game-changing facts supporting Plaintiff’s proposed amendments—which establish a direct commercial-nexus required for a Right of Publicity claim and prove actual malice through a reckless

‘incognito’ search—were actively concealed by Defendants and were only revealed in staggered supplemental disclosures served immediately prior to, or after, the June 16, 2026 amendment deadline.

I. RELEVANT PROCEDURAL AND DISCOVERY BACKGROUND

On April 10, 2026, the Court approved the parties’ Joint Discovery Plan and Scheduling Order (ECF No. 49), establishing June 16, 2026, as the deadline to amend pleadings or add parties. Discovery remains active and is scheduled to close on September 18, 2026. Prior to the June 16, 2026, deadline, Plaintiff engaged in extensive diligence to develop the factual record. However, Defendants repeatedly delayed and slow-rolled the disclosure of discoverable materials, creating a compressed timeline that made filing a motion to amend before the deadline procedurally impossible.

1. Defendants’ Empty Initial Disclosures (April 9, 2026):

Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendants served Initial Disclosures listing 16 broad categories of documents. However, Defendants did not disclose or produce a single page of documents. Defendants instead listed categories of documents they believed were in the possession of the Plaintiff in direct contravention of Rule 26. As of June 30, 2026, Defendants served their *fourth* supplemental disclosure.

2. Defendants’ Deficient Discovery Responses and Zero Document Production (May 22, 2026):

On April 22, 2026, Plaintiff served his First Set of Interrogatories, Requests for Production (RFPs), and Requests for Admission (RFAs) seeking native electronic files and internal communications regarding the creation and removal of the defamatory post. On May 22, 2026, Defendants served written responses asserting that they possessed absolutely zero (0) responsive documents. Defendants swore under penalty of perjury that they possessed no documents – no native image

1 file, no internal communications regarding the post's drafting, no communications
 2 concerning the notice of misidentification, and no social media or page analytics.

3 3. Staggered Disclosures of Nathan Hughes and Kylie Howerton (May 29 and June
 4 5, 2026):

5 On May 29, 2026, Defendants served First Supplemental Disclosures
 6 identifying Kylie Howerton as a witness but still produced zero documents.
 7 Following a meet-and-confer insisted on by Plaintiff's counsel on June 4, 2026,
 8 Defendants served Second Supplemental Disclosures on June 5, 2026, formally
 9 identifying web manager Nathan Hughes and confirming that a phone call and
 10 written email exchange occurred on August 22, 2025, between Legacy Church
 11 employee Krisha Mason and customer support representative Kylie Howerton
 12 regarding the incorrect photograph.

13 4. The Incognito Search Admission (June 10, 2026):

14 On June 10, 2026—only six calendar days prior to the amendment deadline—
 15 Defendant Kevin Hodge served a Second Amended Response to Interrogatory No.
 16 5. In this response, Kevin Hodge admitted for the first time under oath that he
 17 performed his Google image search in 'Google's incognito mode' and therefore
 18 possesses 'no record of the search.' This admission provides critical, direct evidence
 19 of actual malice, establishing that Defendants deliberately chose a research method
 20 that bypasses standard visual and source verification history.

21 5. The Late Production of the Right of Publicity Nexus (June 11, 2026):

22 On June 11, 2026—just three business days before the June 16, 2026,
 23 amendment deadline—Defendants served Amended Responses to Plaintiff's First
 24 Set of RFPs. Defendants' based their responses on a document from August 22,
 25 2025, which was an email exchange between Krisha Mason and Kylie Howerton
 26 (Bates HODGE000136–000138). This email exchange reveals that the entire
 27 misidentification, complaint, and deletion process ran directly through the customer

1 service account for Defendants’ commercial merchandising operation. This late-
 2 produced email provides the commercial-use connection required to plead a
 3 statutory Right of Publicity claim (NRS 597.770–.810) and a claim for Unjust
 4 Enrichment, which Plaintiff could not have pleaded in good faith based on the blank
 5 initial disclosures.

6 6. Ongoing Discovery Disputes (June 30, 2026):

7 Plaintiff has continued to participate in meet-and-confer efforts to obtain the
 8 missing Google activity logs, Meta page analytics, and email mailbox exports. On
 9 June 30, 2026, Plaintiff’s counsel sent another comprehensive deficiency letter under
 10 Rule 37 and Local Rule 26-6. As of the filing of this Motion, Defendants’ document
 11 production remains highly deficient and actively disputed.

12 **II. APPLICABLE LEGAL STANDARDS**

13 *A. Modification of the Scheduling Order Under Rule 16(b)(4) and Local Rule 26-3*

14 A scheduling order may be modified only for ‘good cause’ and with the
 15 judge’s consent. Fed. R. Civ. P. 16(b)(4); LR 26-3. The Ninth Circuit has established
 16 that the ‘good cause’ standard primarily focuses on the diligence of the party seeking
 17 the modification. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th
 18 Cir. 1992). If the party was diligent but could not reasonably meet the scheduled
 19 deadline due to delayed disclosures or newly discovered facts, good cause is
 20 established. *Id.*

21 Furthermore, under Local Rule 26-3 and LR IA 6-1, a request to extend a
 22 scheduled deadline made after the expiration of that deadline must be supported by
 23 a showing of ‘excusable neglect.’ In determining excusable neglect, courts in the
 24 Ninth Circuit apply the equitable framework set forth in *Pioneer Investment Services*
 25 *Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993), which
 26 considers: (1) the danger of prejudice to the non-moving party; (2) the length of the
 27 delay and its potential impact on judicial proceedings; (3) the reason for the delay,

1 including whether it was within the reasonable control of the movant; and (4)
2 whether the movant acted in good faith.

3 *B. Leave to Amend Under Rule 15(a)(2)*

4 Federal Rule of Civil Procedure 15(a)(2) mandates that the Court ‘should
5 freely give leave [to amend] when justice so requires.’ Under this rule, there is a
6 strong presumption in favor of granting leave to amend, which is applied with
7 extreme liberality. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Leave should be
8 denied only upon a strong showing of bad faith, undue delay, prejudice to the
9 opposing party, or futility of the amendment. *Id.*

10 **III. LEGAL ARGUMENT**

11 *A. Good Cause and Excusable Neglect Exist to Extend the Amendment Deadline*

12 Plaintiff has demonstrated classic diligence in pursuing discovery and
13 developing the factual record. The sole reason Plaintiff could not file this Motion
14 prior to the June 16, 2026, deadline is that Defendants withheld the critical facts and
15 documents that form the basis of the new claims. Defendants initially certified under
16 penalty of perjury on May 22, 2026, that they possessed absolutely no responsive
17 documents, a representation that was flatly untrue. Defendants did not produce the
18 Krisha Mason email confirming the commercial merchandising link until June 5,
19 2026, and Kevin Hodge did not disclose his reckless ‘incognito’ search until June
20 10, 2026.

21 Receiving these game-changing disclosures only three to four business days
22 prior to the June 16, 2026, deadline left Plaintiff with no viable avenue to draft a
23 First Amended Complaint, review it with the client, and conduct the required meet-
24 and-confer sessions before the deadline expired. Thus, the deadline could not have
25 been met despite Plaintiff’s diligence, satisfying Rule 16’s good cause requirement.
26 Moreover, an evaluation of the *Pioneer* factors confirms that Plaintiff’s 15-day delay
27 in filing this Motion constitutes excusable neglect:

1 The delay was entirely outside of Plaintiff's control and was directly caused
 2 by Defendants' failure to honestly disclose their electronic files and communications
 3 in their initial disclosures or their first discovery responses. Plaintiff acted
 4 immediately upon receiving the late-produced documents and admissions.

5 Defendants suffer zero prejudice from this amendment. Discovery remains
 6 open until September 18, 2026, and affirmative expert disclosures are not due until
 7 July 16, 2026. The new claims arise out of the identical nucleus of operative facts
 8 (the August 22, 2025, post) and require no new discovery tracks. In addition,
 9 Defendants have already subpoenaed Krisha Mason and Michael Morin for
 10 depositions on July 23, 2026, meaning they are already actively litigating these
 11 precise issues.

12 Today is July 1, 2026. A delay of merely 15 days is completely negligible. It
 13 will have zero impact on the scheduled close of discovery, the dispositive motion
 14 deadline (October 19, 2026), or any trial date, as no trial has been scheduled.

15 Plaintiff's counsel has acted in complete good faith, immediately initiating
 16 meet-and-confer dialogues and serving three comprehensive discovery deficiency
 17 letters, the last of which was served June 30, 2026, to resolve these matters without
 18 unnecessary court intervention.

19 *B. Leave to Amend Should Be Freely Granted Under Rule 15(a)(2)*

20 Applying the liberal standard of Rule 15(a)(2), there is no bad faith, undue
 21 delay, or futility in Plaintiff's proposed First Amended Complaint, which adds four
 22 highly viable claims based directly on the newly uncovered facts:

23 1. Statutory Right of Publicity / Likeness Appropriation (NRS 597.770-.810):
 24 The newly produced email chain (Bates HODGE000136-000138) establishes that
 25 the defamatory post and the subsequent takedown process ran directly through the
 26 Hodgetwins' commercial merchandising operation. This commercial nexus satisfies
 27 the statutory commercial use element. Because the Nevada Right of Publicity is a

1 strict liability statute, this claim is strong, providing statutory damages, injunctive
2 relief, and attorney's fees.

3 2. False Light Invasion of Privacy: Nevada recognizes false light as a separate
4 tort protecting a plaintiff's subjective interest in freedom from mental and emotional
5 distress. Kevin Hodge's sworn admission that he performed his search in 'incognito
6 mode'—deliberately bypassing standard record-keeping—coupled with their
7 admission that they performed no reverse image search or visual verification,
8 establishes the necessary standard of reckless disregard and actual malice.

9 3. Unjust Enrichment and a Punitive Damages Prayer: Adding a punitive
10 damages prayer is critical to Plaintiff's procedural rights. Defendants have actively
11 objected to producing their audited financial statements (RFP No. 9) expressly
12 because 'Plaintiff's Complaint does not request an award of punitive damages.'
13 Pleading punitive damages based on the newly uncovered evidence of reckless
14 disregard completely dismantles this objection and unlocks the highly guarded
15 financial records.

16 C. Clean and Redline Proposed Complaints as Exhibits

17 Pursuant to Local Rule 15-1(a), the proposed First Amended Complaint is
18 attached hereto as Exhibit 1. Consistent with the Rule, Exhibit 1 is complete in and
19 of itself without reference to the superseded pleading. Furthermore, to assist the
20 Court in immediately identifying individual changes, Plaintiff has attached a
21 complete redline comparison (showing all insertions and deletions) as Exhibit 2,
22 satisfying the local custom and practices of this District.

23 **IV. CERTIFICATE OF COMPLIANCE AND CONFERRAL UNDER** 24 **LOCAL RULES IA 1-3(f) AND 26-6(c)**

25 Pursuant to Local Rules IA 1-3(f) and 26-6(c), Plaintiff's counsel hereby
26 certifies that Plaintiff has made sincere, diligent, and good-faith efforts to resolve
27 and narrow the issues presented in this Motion through direct communication with

1 Defendants' counsel prior to seeking judicial intervention. Specifically, on June 30,
2 2026, Plaintiff's counsel transmitted a detailed Rule 37 discovery deficiency letter
3 to Defendants' counsel addressing the substantial ESI, Google server-side logs, and
4 commercial merchandising communications that underpin this amendment, and
5 requested an immediate telephonic meet-and-confer conference. Plaintiff's letter
6 expressly requested that Defendants respond by July 1, 2026, to schedule the
7 conference.

8 Defendants' counsel failed to respond to the June 30, 2026 letter or to
9 coordinate a conference by today's deadline. Consequently, on July 1, 2026,
10 Plaintiff's counsel Nicole Westbrook sent a follow-up electronic communication to
11 Defendants' counsel, specifically requesting to know whether Defendants opposed:
12 (a) the modification of the scheduling order to extend the pleading amendment
13 deadline, and (b) the filing of the proposed First Amended Complaint. Defendants'
14 counsel failed to respond to this follow-up inquiry as well. Because Defendants have
15 refused to participate in the meet-and-confer process or state their position, Plaintiff
16 has exhausted all available administrative avenues and must respectfully file this
17 Motion as opposed. Court intervention is necessary to resolve these critical
18 scheduling and pleading matters.

19 **V. CONCLUSION AND REQUESTED RELIEF**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court modify
21 the Joint Discovery Plan and Scheduling Order to extend the amendment deadline,
22 and grant Plaintiff leave to file his First Amended Complaint. A proposed order is
23 submitted herewith.

1 Respectfully submitted this 1st day of July, 2026.

2
3 /s/ Nicole A. Westbrook

4 Nicole A. Westbrook

5 G. Michael Jackson Esq.

6 **JONES, DAVIS & JACKSON, P.C.**

7 *Attorneys for Pastor Steve*

8 *Smothermon*

9 **CERTIFICATE OF SERVICE**

10
11 I HEREBY CERTIFY that on July 1, 2026, I caused the foregoing document
12 to be electronically filed with the Clerk of the Court using CM/ECF. I further
13 certify that a true and correct copy of the foregoing document was served on all
14 counsel of record via transmission of Notices of Electronic Filing generated by
15 CM/ECF.

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24
25
26
27 /s/ Nicole A. Westbrook