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8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR WASHOE COUNTY**

10 NEVADA OSTEOPATHIC MEDICAL
11 ASSOCIATION, a Nevada Domestic
12 Nonprofit Cooperative Corporation; and
13 BRUCE FONG, DO, HMD, an individual,

14 Plaintiffs,

15 vs.

16 THE HONORABLE STEPHEN F.
17 SISOLAK, as Governor of the State of
18 Nevada; STATE OF NEVADA, NEVADA
19 STATE BOARD OF PHARMACY, an
20 administrative agency of the State of
21 Nevada; and STATE OF NEVADA, CHIEF
22 MEDICAL OFFICER, IHSAN AZZAM,
23 Ph.D., M.D.,

24 Defendants.

Case No.: CV20-00653

Dept. No.: 9

**EMERGENCY MOTION FOR LIMITED
EXPEDITED DISCOVERY**

AND

**EX PARTE REQUEST FOR ORDER
SHORTENING TIME
(WDCR 11)**

25 NEVADA OSTEOPATHIC MEDICAL ASSOCIATION ("NOMA") and BRUCE
26 FONG, DO, HMD ("Fong") (NOMA and Fong, collectively "Plaintiffs"), by and through their
27 undersigned attorneys of record, hereby move this Court for an expedited order waiving the
28 requirements of NRCP16.1 and permitting Plaintiffs to conduct expedited discovery in
connection their request for emergency declaratory relief pursuant to NRCP 57.

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Plaintiffs also move, *ex parte*, for an order shortening the time for a hearing on this motion. This *ex parte Motion for Order Shortening Time* is made and based upon the affidavit of Joseph S. Gilbert in support thereof as set forth below.

DATED: April 23rd, 2020.

JOEY GILBERT LAW

By: /s Joseph S. Gilbert
Joseph S. Gilbert, Esq.
Roger O'Donnell, Esq
Attorneys for Plaintiffs/Petitioners

**DECLARATION OF JOSEPH S. GILBERT SUPPORTING EX PART REQUEST
FOR ORDER SHORTENING TIME**

I, JOSEPH S. GILBERT, do hereby affirm under penalty of perjury, that the assertions in this Declaration are true, as follows:

1. I am an attorney at law admitted to practice before the Courts of the State of Nevada and am counsel of record for Plaintiffs NEVADA OSTEOPATHIC MEDICAL ASSOCIATION and BRUCE FONG, DO, HMD (“Plaintiffs”), in Second Judicial District Court Case: CV20-00653.

1. This Declaration is submitted pursuant to Rule 11(3) of the Washoe District Court Rules (“WDCR”) and in support of Plaintiffs’ *Emergency Motion for Limited Expedited Discovery* and *Ex Parte Request for Order Shortening Time*.

2. If called upon to testify to the contents of this Declaration, I could and would competently do so under oath.

3. While all Defendants have been served with the Summons and Complaint, no Defendant has appeared in this case as of the time of this filing. Thus, specific counsel for Defendant is not known. However, immediately upon filing the instant Motion, a copy will be emailed to known General Counsel for Defendant State of Nevada, State Board of Pharmacy, Brett Kandt, Esq., notifying Mr. Kandt of the Motion. A copy will also be emailed to the following: (1) Kyle E. N. George, Interim General Counsel for Governor Sisolak; (2) Nevada Attorney General Aaron Ford at aginfo@ag.nv.gov AND jriherd@ag.nv.gov.

4. Upon entry of any Order Shortening Time, personal service will be made upon all parties who received the Summons and Complaint at the addresses where service was accomplished.

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5. It is my good faith belief that, as set forth on the Motion, good cause exists for the expedited relief sought herein because Nevadans are dying because of the current emergency regulation which I and my client believe are illegal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23rd day of April 2020.



Joseph S. Gilbert, Esq.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

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4 On April 20, 2020, Plaintiffs filed their *Complaint for Emergency Declaratory Relief*
5 (“Complaint”) against Defendants, the Honorable Stephen F. Sisolak; State of Nevada,
6 Nevada State Board of Pharmacy, and State of Nevada, Chief Medical Officer, Ihsan Azzam,
7 Ph.D., M.D. seeking expedited declaratory relief under NRCP 57 asking the Court to declare
8 the Nevada State Board of Pharmacy’s March 23, 2020, Emergency Regulation restricting the
9 use of hydroxychloroquine and/or chloroquine is void and invalid and enter and order either
10 prohibiting its enforcement or mandating that the Board of Pharmacy amend it. All
11 Defendants were served with the Summons and Complaint on April 23, 2020. *See* Affidavits
12 of Service filed on April 23, 2020.
13

14 Expedited discovery is necessary because the national COVID-19 outbreak poses an
15 immediate and serious threat to public health and the Defendants’ actions have exacerbated
16 the problem. Nevada’s Governor, Stephen F. Sisolak, declared a State of Emergency and the
17 BOP issued an emergency regulation restricting the issuance, filling, and dispensing of
18 chloroquine and hydroxychloroquine for COVID-19 patients outside of a hospital setting. As
19 alleged in the Complaint, the Emergency Regulation enacted impermissibly prohibits licensed
20 physicians from providing care to Nevada patients at a critical time.
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22 Under such circumstances, Plaintiffs’ discovery efforts into the basis for the Emergency
23 Regulation and the circumstances surrounding its enactment should be afforded the necessary
24 urgency prompted by the Emergency Regulation. Lives are literally at stake due to the
25 Emergency Regulation and expedited discovery is justified and supported under Nevada law.
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1 **II. ARGUMENT**

2 **A. Good Cause Exists to Waive NRCP 16.1's Requirements.**

3 **1. *No Emergency Exists Justifying the BOP's Enactment of the Emergency***
4 ***Regulation under NRS Chapter 233B 's Emergency Provisions; or for the***
5 ***BOP's blind eye to Nevada's Open Meeting Law.***

6 Good cause exists to accelerate treatment of this matter under NRCP 57, waive the
7 requirements of Rule 16.1, and authorize expedited discovery because this action involves
8 “complex issues, multiple parties, difficult legal questions, or unusual proof problems.”
9 NRCP 16.1(f). Here, Plaintiffs seek expedited discovery due to the public health threat
10 resulting from the COVID-19 pandemic.

11 Trial judges are afforded discretion in control the conduct of pretrial discovery. *Jones*
12 *v. Bank of Nevada*, 91 Nev. 368, 370 (1975). This Court has the discretion to direct
13 appropriate discovery procedures where justice requires—including by fast-tracking
14 discovery.
15

16 Expedited discovery is warranted so that Plaintiffs can expeditiously obtain additional
17 facts and evidence necessary supporting their claims. If normal discovery procedures are
18 followed, the Plaintiffs will not be able to even begin seeking discovery for at least several
19 months, resulting in not only Plaintiffs suffering irreversible harm—but also causing great
20 harm to Nevada's citizens, including needless suffering and, ultimately, the loss of life.

21
22 As of April 23, 2020, at 1:30 p.m., there were nearly 4,000 confirmed cases of
23 COVID-19, and 163 confirmed deaths in Nevada. It is believed that the majority of the
24 confirmed cases are under the care of private physicians and are either suffering or recovering
25 at home, and not in a hospital. If this Court does not grant expedited discovery, then the
26 physicians treating these outpatients will be denied the ability to competently provide medical
27 services in accordance with the standard of care required of them by the sacred Hippocratic
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1 Oath they have taken. Additionally, because these physicians are unable to prescribe approved
2 drugs chloroquine and hydroxychloroquine, it is even more likely that many of these patient's
3 symptoms will become substantially worse. Not only will this burden already overtaken
4 hospitals, but it may result in these patients missing the therapeutic window—it may be too
5 late to save them. These patients do not have the luxury of waiting—their very lives are at
6 stake. The Plaintiffs are only asking expedited discovery to be had to determine whether the
7 Emergency Regulation was premised on accurate and sound information and complies with
8 applicable law. If it wasn't, then the Emergency Regulation should be withdrawn so that
9 physician can, if appropriate and based on their professional judgment, treat their patients with
10 approved drugs chloroquine and hydroxychloroquine.
11

12
13 Courts in Nevada and around the country routinely order expedited discovery in
14 connection with emergency actions and injunction type proceedings. Although NRCP 16.1
15 does not set out a specific standard for granting expedited discovery, courts interpreting the
16 federal corollary have. For example, “[c]ourts in the Ninth Circuit apply a good cause test in
17 deciding whether to permit expedited discovery before the Fed. R. Civ. P. 26(f) conference...
18 Good cause exists where the need for expedited discovery, in consideration of the
19 administration of justice, outweighs the prejudice to the responding party...in light of the
20 entirety of the record and ... in light of all the surrounding circumstances.” *First Time*
21 *Videos, LLC v. Doe*, No. CIV S-11-3478 GEB EFB, 2012 U.S. Dist. LEXIS 15810, at *1
22 (E.D. Cal. Feb. 7, 2012).
23

24 The Emergency Regulation prevents physicians from practicing medicine and
25 providing complete and adequate care to their patients during an unprecedented health crisis.
26 In particular, the Emergency Regulation prevents physicians from prescribing approved drugs
27 chloroquine and hydroxychloroquine before a patient is hospitalized. What this means is,
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1 before a patient can receive this potentially lifesaving medication, their condition must
2 progress to the point of hospitalization—when the condition is far more dangerous. Not only
3 does this prevent many patients from being treated in the safety of their home, and without
4 placing a greater burden on hospitals, but also prevents their access to approved drugs during
5 the therapeutic window.

6 Here, the need for expedited discovery heavily outweighs any prejudice to Defendants.

7
8 ***b. Plaintiffs Seek Reasonable Discovery***

9 The discovery requested by Plaintiffs is reasonable and directly related to Plaintiffs'
10 claims. Plaintiffs are seeking documents and information directly related to the creation and
11 implementation of the Emergency Regulation and is in line with the types of expedited
12 discovery permitted by many federal courts addressing their corollary rules.¹

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16 ¹ See, e.g., *Tribal Casino Gaming*, 2016 WL 3450829 at *2, 4 (ordering one week of load
17 testing of a hotel garage, requiring partial closure of the garage and potentially causing
18 damage to structure); *Chryso*, 2015 WL 12600175, at *6 (seven interrogatories and six
19 requests for production directed for each of four defendants); *Malon*, 2014 WL 5795730, at
20 *3-4 (five broad classes of documents); *JTH Tax, Inc. v. M & M Income Tax Serv., Inc.*, No.
21 6:13-cv-00265-GRA, 2013 WL 460316, at *3 (D.S.C. Feb. 6, 2013) (depositions as well as
22 written discovery); *Nutrition & Fitness, Inc. v. Progressive Emu, Inc.*, No. 5:12-CV-192-F,
23 2012 WL 1478734, at *5 (E.D.N.C. Apr. 27, 2012) (five depositions including one Rule
24 30(b)(6) deposition, 20 document requests, and 10 interrogatories); *Laboratory Corp. of Am.*
25 *Holdings*, 2010 WL 3945111, at *2-3 (seven broad classes of documents and a Rule 30(b)(6)
26 deposition); *U.S. Commodity Futures Trading Comm'n v. Smith*, No. 1:10CV00009, 2010 WL
27 1759542, at *4–5 (W.D. Va. Feb. 23, 2010) (allowing more than 10 depositions and broad
28 discovery to identify wrongdoing, assets, customers, and customers and Defendants' sources
of funds); *Asheboro Paper and Packaging*, 599 F. Supp. 2d at 676-77 (at least one deposition,
in addition to paper discovery); *Physicians Interactive v. Lathian Systems, Inc.*, No. CA 03-
1193-A, 2003 WL 23018270, at *10 (document requests, interrogatories, and physical access
to multiple computer systems for the purpose of forensic mirroring); see also, e.g., *Doe v.*
Johnson, CV 15-250 TUC DCB (D. Az. Aug. 14, 2015) (granting Plaintiffs and their experts
access to detention facilities for physical inspection and documentation via video and
photography footage); *Bremson v. United States*, 459 F. Supp. 121, 124 (W.D. Mo. 1978)
(deposition of IRS agent and interrogatories).

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THE LIMITED DISCOVERY PLAINTIFFS SEEK:

Plaintiffs’ request for expedited discovery should involve little additional burden on the Defendants. The documents and information Plaintiffs seek are directly tied to the substance of Plaintiffs’ claims against the Emergency Regulation, have recently been created and/or used by Defendants, should not require extensive searches, and should be in the Defendants’ possession, custody, or control, and should not require an extensive search.

Given the time sensitive nature of this action, Plaintiffs request that the Court grant expedited discovery and order the Defendants to respond on a shortened schedule. Plaintiffs anticipate conducting the following discovery, to be propounded and answered on an expedited basis:

REQUESTS FOR PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES (NRCP 34)

Plaintiffs seek an order authorizing Plaintiffs to propound fifteen (15) substantively identical Requests for Production on each Defendant pursuant to NRCP 34 specifically requesting documents, communications, and electronically stored information related to and/or concerning the declarations of emergency, drafting and enactment of the Emergency Regulation, and/or how and why Governor Sisolak and the Nevada State Board of Pharmacy made and/or supported the decision to limit the prescribing and dispensing of hydroxychloroquine sulfate or chloroquine phosphate to treat or prevent COVID-19 disease as set forth in the Emergency Regulation.

INTERROGATORIES (NRCP 33)

Plaintiffs seek an order authorizing Plaintiffs to propound fifteen (15) substantively identical Interrogatories to each Defendant pursuant to NRCP 33 related to and/or concerning the declaration of emergency, drafting and enactment of the Emergency Regulation and/or how and why Governor Sisolak and the Nevada State Board of Pharmacy made and/or supported their decision to limit the prescribing or dispensing of hydroxychloroquine sulfate

1 or chloroquine phosphate to treat or prevent COVID-19 disease as set forth in the Emergency
2 Regulation

3 **REQUESTS FOR ADMISSION (NRCP 36)**

4 Plaintiffs seek an order authorizing Plaintiffs to propound fifteen (15) substantively
5 identical Requests for Admission on each Defendant pursuant to NRCP 36 related to and/or
6 concerning the declaration of emergency, drafting and enactment of the Emergency Regulation
7 and/or how and why Governor Sisolak and the Nevada State Board of Pharmacy made and/or
8 supported their decision to limit the prescribing or dispensing of hydroxychloroquine sulfate or
9 chloroquine phosphate to treat or prevent COVID-19 disease as set forth in the Emergency
10 Regulation

11 **DEPOSITIONS (NRCP 30)**

12 Plaintiffs seek an order authorizing Plaintiffs to take five (5) depositions related to the
13 claims asserted in the Complaint.

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully request that this Court grant this
16 motion, authorize and set parameters for expedited discovery, and waive the requirements of
17 Rule 16.1.

18 **AFFIRMATION**

19 The undersigned does hereby affirm that this document does not contain the social
20 security number of any person

21 DATED: April 23rd, 2020.

22
23 **JOEY GILBERT LAW**

24
25 By/s Joseph S. Gilbert
26 Joseph S. Gilbert, Esq.
27 Roger O'Donnell, Esq.
28 *Attorneys for Plaintiffs/Petitioners*