

1 STEVEN T. JAFFE, ESQ.
Nevada Bar No. 7035
2 sjaffe@lawhjc.com
3 ASHLIE L. SURUR, ESQ.
Nevada Bar No. 11290
4 asurur@lawhjc.com

5 HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
6 Las Vegas, Nevada 89128
(702) 316-4111
7 Fax (702) 316-4114

8 *Attorney for Defendant*
9 *Lowe's Home Centers, LLC*

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 MAURICE MOREHEAD, AND SHERYL
13 MOREHEAD,

14 Plaintiff,

15 vs.

16 LOWE'S HOME CENTERS, LLC, DOES I
17 THROUGH 20; AND ROE BUSINESS
ENTITIES 1-20, INCLUSIVE,

18 Defendants.

Case No.: 2:18-cv-01074-RFB-EJY

**STIPULATION AND ORDER TO
EXTEND DISCOVERY
(6th Request)**

19 Pursuant to Fed R. Civ. P. 6, Fed. R. Civ. P. 26, LR IA 6-1, LR IA 6-2, LR 7-1, and
20 LR 26-4, the parties stipulate and agree that there is good cause to extend the discovery
21 deadlines in the operative discovery plan [ECF No. 26], as set forth below.

22 **1. Pursuant to LR 26-4(a), the parties stipulate that the following discovery was**
23 **completed:**

- 24 • The parties served initial and supplemental disclosures pursuant to Rule 26(a)(1).
- 25 • Lowe's Home Centers, LLC ("Lowes") responded to written discovery served by
- 26 Plaintiffs.
- 27 • Plaintiff Maurice Morehead responded to written discovery served by Lowes.
- 28 • Lowes served about 66 subpoenas to obtain records from Mr. Morehead's prior and

1 current medical providers and his prior employers.

- 2 • Maurice Morehead underwent a Rule 35 examination with a neuropsychologist and a
- 3 neurosurgeon.
- 4 • The parties designated initial and rebuttal experts.
- 5 • Plaintiffs completed the depositions of Charlotte Leslie, Stacie Ford, Michael White,
- 6 Alnisha Grimes/Bloyer
- 7 • Lowes completed the depositions of Maurice Morehead, Sheryl Morehead, Dr. Gregory
- 8 Douds, Dr. Craig T. Tingey, Dr. Daniel Kokmeyer, Stuart Kaplan
- 9 • Lowes started but was unable to complete the deposition of Jeffrey Gross

10 **2. Pursuant to LR 26-4(b), the parties stipulate that they need to complete the following**

11 **discovery:**

- 12 • Lowes needs to complete the depositions of Maurice Morehead's retained and non-
- 13 retained treating experts, including
 - 14 ○ Jeffrey Gross, M.D. (finish the deposition that was started)
 - 15 ○ Eric Biesbroeck, M.D. – scheduled for August 10, 2020
 - 16 ○ Enrico Fazzini, D.O. – scheduled for August 21, 2020 by remote means
 - 17 ○ Avaraham Schweiger, Ph.D. – not available until September 10, October 1,
 - 18 October 8
 - 19 ○ Shawn Lustig
- 20 • Additional discovery as needed if new information is revealed in these remaining
- 21 depositions
- 22 • Any other discovery permitted by the Federal Rules of Civil Procedure, the stipulation
- 23 of the parties, or the order of the court

24 **3. Pursuant to LR 26-4(c), the parties stipulate an extension is needed for the following**

25 **reasons:**

26 This is a personal injury action in which Plaintiff Maurice Morehead is claiming over

27 \$400,000 in past medical specials and over \$1.1 million in future medical expenses (present

28 value). Mr. Morehead claims injuries to his hand, knee, cervical spine, lumbar spine, head,

1 and brain. He has undergone surgeries on the hand, knee, and lumbar spine and claims
2 permanent cognitive deficits. The parties have completed a substantial amount of discovery to
3 date.

4 On April 14, 2020, the parties obtained an order extending discovery to complete
5 remaining, critical expert depositions. ECF No. 28. The extension was obtained because of the
6 impact of the coronavirus pandemic on this discovery. The stipulation and order filed in April
7 2020 outlines specific problems encountered for these experts. Unfortunately and despite best
8 efforts, the parties were unable to complete these depositions before July 31, 2020 for varying
9 reasons stemming from the coronavirus outbreak. These issues are summarized here.

10 Eric Biesbroeck, M.D was served with a deposition subpoena, which prompted him to
11 retain an attorney for purposes of the deposition. Defendant's counsel was actively
12 communicating with the doctor's attorney from February through March about potential
13 depositions dates. Defendant's counsel was then unable to reach the doctor's attorney and
14 learned that she was temporarily out of the office because of close family members directly
15 affected by Covid-19. Defendant's counsel was able to reestablish contact upon her return to
16 the office in July 2020. By then, however, the soonest the witness and counsel were available
17 for deposition was August 10, 2020.

18 Dr. Gross's deposition was started on July 22, 2020. The parties considered conducting
19 this deposition by remote means but given the nature and scope of this retained expert's
20 testimony, Defendant needed to conduct the deposition in person. Dr. Gross is Plaintiff's
21 specially retained expert who is opining on future spinal surgeries and a life care plan
22 exceeded \$1 million. Though not issued by or applicable in this court, Clark County Nevada
23 courts suspended in person depositions from March 20, 2020 through July 1, 2020. *See*
24 *Administrative Order 20-17*, available at [http://www.clarkcountycourts.us/general/court-rules-](http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders)
25 [and-administrative-orders/#Administrative%20Orders](http://www.clarkcountycourts.us/general/court-rules-and-administrative-orders/#Administrative%20Orders). Many witnesses in Las Vegas, like Dr.
26 Kaplan and Dr. Gross, agreed to participate in person after July 1, 2020 so the deposition was
27 scheduled for July 22, 2020. Dr. Kaplan (whose deposition was completed) and Dr. Gross
28 needed to be deposed in person to the extent practicable because of the importance and

1 breadth of their treatment and opinions. Defendant therefore scheduled these depositions for
2 after July 1 in accordance with the witness's agreements to appear in person after that date.
3 Dr. Gross's deposition was planned for 2 hours but was unable to be completed in that period.
4 The parties agree that Dr. Gross's deposition should be completed, but this witness and
5 counsel are not available to complete it until September 24 or 25, 2020.

6 Shawn Lustig is an EMT in Henderson, Nevada. Defendant's counsel has been in
7 contact with the Henderson City attorney about arranging a date and time for this deposition,
8 which is being sought through a deposition subpoena. The Henderson City attorney agreed to
9 make arrangements for service of the deposition subpoena on Mr. Lustig at an agreed upon
10 place, date and time. We are still working with the Henderson City attorney and expect to
11 have a deposition dates secured for August or September 2020.

12 Enrico Fazzini, D.O. (a neurologist) and Avaraham Schweiger, Ph.D. (a
13 neuropsychologist) are in New York, New York. These treating physician experts have been
14 disclosed as medical experts for Plaintiff's traumatic brain injury claim. Given the nature of
15 scope of these witnesses' role, Defendant preferred to take these depositions in person in New
16 York. Defendant briefly delayed obtaining new deposition dates as restrictions in certain
17 places started to ease with the plan to schedule these depositions in person. But when it started
18 to become more evident restrictions were being lifted at a slower pace or reimplemented,
19 Defendant agreed that Dr. Fazzini could be deposed by remote means. But Dr. Fazzini was not
20 available until August 21, 2020. Given the scope and nature of his opinions and testimony, the
21 file materials and expected deposition exhibits associated with the neuropsychological testing,
22 and also because (unlike with Dr. Fazzini) Defendant has never deposed Dr. Schweiger
23 before, Defendant needs to take Dr. Schweiger's deposition in person. His deposition also
24 needs to take place after Dr. Fazzini's deposition. Dr. Schweiger will not agree to an in person
25 deposition until restrictions in New York are lifted. He will agree to a remote deposition while
26 restrictions remain in place and provided us with deposition dates in September and October
27 2020 as he is only available on Thursdays for deposition.

28 This constitutes good cause to extend the discovery deadlines. Since the last extension,

1 Defendant completed the deposition of a Las Vegas based expert and started (but did not
2 finish) the deposition of another expert in Las Vegas. The other two Las Vegas based
3 witnesses were not able to be deposed because of pandemic-related problems, including the
4 witnesses' attorney's extended unavailability because of family members affected by the
5 virus. Completing the New York based expert witnesses' depositions also became impossible
6 due to the witnesses' very limited availability (including availability only after July 31) and
7 the changing nature of restrictions in Nevada and New York.

8 The parties can also demonstrate excusable neglect for the timing of this submission.
9 While aware of the need to extend discovery to complete several of these depositions due to
10 the unavailability of these witnesses until August , September, or October 2020, the parties
11 delayed submitting this stipulation until firm dates could be obtained (and to the extent firm
12 dates have been obtained). Dr. Gross's deposition was started on July 22, 2020 and the parties
13 have been working to obtain a date for his continued deposition since then. They obtained a
14 date for the continued deposition today and proceeded to finalize this stipulation. The parties
15 reasonably delayed in submitting this stipulation in part because they wanted to provide the
16 court a realistic time frame for completion of these depositions and were unable to calculate
17 new deadlines until they obtained dates from all outstanding witnesses; and in part because
18 they were not aware of the need to include Dr. Gross's deposition in this request until July 22,
19 2020 (the date his deposition started but was not completed).

20 This extension is made in good faith and will not unreasonably delay the resolution of
21 this action.

22 **4. Pursuant to LR 26-4(d), the parties stipulate to the following proposed schedule for**
23 **completing all remaining discovery:**

- 24 1. Extend the discovery cut-off deadline from 7/31/2020 to 10/16/2020;
- 25 2. Extend the date to file dispositive motions from 8/31/2020 to 11/16/2020; and
- 26 3. Extend the date to file the Joint Pre-Trial Order from 9/30/2020 to 12/16/2020. If
27 dispositive motions are filed, the joint pretrial order is due thirty (30) days from the entry of the
28 court's ruling on the motions.

4. Fed. R. Civ. P. 26(a)(3) Disclosures must be included in the Joint Pre-Trial Order.

Dated: August 3, 2020. HALL JAFFE & CLAYTON, LLP By: <u>/s/Ashlie L. Surur</u> Steven T. Jaffe, Esq. Nevada Bar No. 7035 Ashlie L. Surur, Esq. Nevada Bar No. 11290 425 Peak Drive Las Vegas, Nevada 89128 <i>Attorney for Lowe's Home Centers, LLC</i>	Dated: August 3, 2020. STUCKI INJURY LAW By: <u>/s/ Kyle A. Stucki</u> Kyle A. Stucki, Esq. Nevada Bar No. 12646 1980 Festival Plaza Dr., Ste. 300 Las Vegas, Nevada 89135 <i>Attorneys for Maurice Morehead & Sheryl Morehead</i>
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ORDER

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

DATED: August 3, 2020