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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

8 BRANDI DAVIES,

9 Case No.: 1:16-CV-1219-AWI-MJS

10 Plaintiff,

11 vs.
12 **STIPULATION TO ALLOW PLAINTIFF
13 TO FILE SECOND AMENDED
14 COMPLAINT PURSUANT TO FED. R.
15 CIV. P. 15(A)(2)**16 LOWE'S HOME IMPROVEMENT, LLC
17 and DOES 1 through 20, inclusive,

18 Defendant(s).

19 **STIPULATION TO ALLOW PLAINTIFF TO FILE SECOND AMENDED
20 COMPLAINT PURSUANT TO FED. R. CIV. P. 15(A)(2)**21 WHEREAS, on May 25, 2016, BRANDI DAVIS ("Plaintiff") filed her Complaint
22 which causes of action include Premises Liability, Willful Failure to Warn and Negligence in
23 this action against LOWES HOME IMPROVEMENT, LLC ("Defendant") in the Superior
24 Court of California in Tuolumne County.25 WHEREAS, on June 29, 2016, having discovered the true name of Defendant to be
26 Lowes Home Centers, LLC, and recognizing count two in the original complaint, Willful27 STIPULATION TO ALLOW PLAINTIFF TO FILE SECOND AMENDED COMPLAINT PURSUANT TO FED.
28 R. CIV. P. 15(A)(2) - PAGE 1 OF 5

1 Failure to Warn, as not applicable to this particular situation, Plaintiff filed the Amendment to
2 Complaint to Correct Name of Defendant and to Strike Count Two of the First Cause of Action
3 in the Superior Court of California in Tuolumne County.

4 WHEREAS, on August 16, 2016, Defendants removed this action to the United States
5 District Court Eastern District of California-Fresno Division.

6 WHEREAS, when counsel for Plaintiff was preparing the Joint Schedule Report in
7 November 2016, it was discovered that the Complaint erroneously indicated that Plaintiff had
8 injured her right proximal humerus, when Plaintiff's injury was in fact to her left proximal
9 humerus. This error was made in one location of the Complaint, on page 4, Prem L-1.

10 WHEREAS, immediately after discovery of the clerical error, Plaintiff's counsel on
11 November 7, 2016, corresponded with defense counsel to both alert defense counsel to the
12 error, and to inform counsel that an amendment might be necessary to correctly identify the
13 injury as a left-sided injury.

14 WHEREAS, on November 17, 2016, the parties engaged in a telephonic status
15 conference with US Magistrate Michael J. Seng to review the litigation schedule and at this
16 status conference, Plaintiff's counsel advised that a scrivener's error had been discovered in the
17 complaint, wherein the injury was described as a right shoulder injury instead of a left shoulder
18 injury.

19 WHEREAS, at the November 17, 2017 status conference, Plaintiff's counsel advised
20 that an amended complaint might be necessary to which Magistrate Seng stated in essence that
21 it was not a big deal and that it might not even be necessary, but did suggest that counsel might
22 want to correct the error anyway.

1 WHEREAS, Plaintiff's counsel, through various emails with opposing counsel from
2 December 8, 2017 through January 12, 2017, attempted to correct error prior to January 17,
3 2017 deadline to amend pleadings by filing a Stipulation with opposing counsel.

4 WHEREAS, on January 31, 2017, Plaintiff filed a Notice of Errata to Plaintiff's
5 Complaint and Amendment to Plaintiff's Complaint.

6 WHEREAS, on February 13, 2017 Defendant filed their Objection to the Notice of
7 Errata of Plaintiff's Complaint and Amendment to Complaint.

8 WHEREAS, on February 14, 2017, Honorable Judge Anthony W. Ishii issued an Order
9 Setting Briefing Schedule setting deadlines for Plaintiff's opposition and Defendant's reply
10 briefs.

11 WHEREAS, on February 22, 2017, Plaintiff filed an Opposition to Defendant's
12 Objection to Notice of Errata of Plaintiff's Complaint and Amendment to Complaint.

13 WHEREAS, on February 27, 2017, the parties met and conferred and agreed to
14 stipulate to the following:

15 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
16 captioned matter through their respective counsel for record as follows:

17 1. Plaintiff should be granted leave to amend to file the Notice of Errata of Plaintiff's
18 Complaint and Amendment to Complaint which is attached as "Exhibit A."
19 2. Defendant will withdraw its Objection to the Notice of Errata of Plaintiff's
20 Complaint and Amendment to Complaint.

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3. Plaintiff will withdraw her Opposition to Defendant's Objection to Notice of Errata of Plaintiff's Complaint and Amendment to Complaint.

Dated: 3/2/2017

CHENAULT LAW

/s/ Sally K. Chenault
SALLY K. CHENAULT
Attorney for Plaintiff
BRANDI DAVIES

Dated: 3/2/2017

THARPE AND HOWELL, LLP

/s/ Diana M. Riviera
CHARLES D. MAY
DIANA M. RIVIERA
Attorneys for Defendant
LOWES HOME CENTERS, LLC

ORDER

The Court has considered the above Stipulation, but is unable to determine its meaning and intent, and so cannot accept it.

The Stipulation purports to be a Stipulation to File a Second Amended Complaint, but no proposed Second Amended Complaint is attached and, as best of the Court can tell, the Stipulation as worded simply authorizes the filing of errata to a state Court pleading, not the filing of a Second Amended Complaint.

If the parties are in agreement that Plaintiff may file a Second Amended Complaint (a seemingly reasonable proposition under the circumstances described in the Notice of Errata), they may do so with a simple stipulation to the filing of a Second Amended Complaint, attaching

1 a copy of the proposed Second Amended Complaint to the Stipulation, and setting forth the time
2 Defendant will have to respond to the Second Amended Complaint once filed.

3
4 IT IS SO ORDERED.

5 Dated: March 13, 2017

/s/ *Michael J. Seng*

6 UNITED STATES MAGISTRATE JUDGE