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13 Attorneys for Defendants  
 Nouveau Vision, Inc., a Washington  
 14 corporation, and Timothy J. Sutich, an  
 individual

15 **UNITED STATES DISTRICT COURT**  
 16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

18 VISION SERVICE PLAN, a California  
 not-for-profit corporation,

19 Plaintiff,

20 v.

21 NOUVEAU VISION, INC., a  
 22 Washington corporation, TIMOTHY J.  
 SUTICH, an individual and DOES 1  
 23 through 50, inclusive,

24 Defendants.  
 25

CASE NO.: 2:16-CV-01049-TLN-KJN

**STIPULATED ORDER  
 CONTINUING DISCOVERY  
 CUTOFF AND EXPERT WITNESS  
 DISCLOSURE DATES SET FORTH  
 IN SECTIONS IV AND V OF THE  
 PRETRIAL SCHEDULING ORDER**

26  
 27 The parties hereby submit this proposed stipulated order to request a ninety  
 28 (90) day extension of the discovery cutoff and expert witness disclosure dates

1 contained in Sections IV and V of the Pretrial Scheduling Order, dated August 25,  
2 2016, in the above-entitled action:

3 This Stipulation is submitted by Plaintiff Vision Service Plan (“VSP”  
4 herein) and Defendants Nouveau Vision, Inc. (“Nouveau” herein) and Timothy J.  
5 Sutich (“Sutich” herein) (collectively referred to as “Defendants”), through their  
6 respective counsel of record, for approval of an approximate ninety (90) day  
7 extension to the discovery cutoff and expert witness disclosure dates. This request  
8 for an extension is made with reference to the following:

9 1. WHEREAS, the present discovery cutoff date in this Action is  
10 scheduled for August 28, 2017 and the expert witness disclosure date is October  
11 26, 2017. The parties are not seeking by this Stipulation to extend the motion  
12 cutoff date, the Pretrial Conference, or the Trial dates. The extension sought  
13 herein will not impact these other dates.

14 2. WHEREAS, the parties have been diligently working together to  
15 complete discovery, including attempting to meet and confer to limit and resolve  
16 discovery issues. However, several factors have contributed to it being  
17 impractical to complete discovery by the scheduled discovery cutoff and expert  
18 witness disclosure dates. The parties therefore believe that good cause exists for a  
19 ninety (90) day extension to continue the discovery cutoff and expert witness  
20 disclosure dates contained in the Pretrial Scheduling Order.

21 3. Given the issues in this action, Plaintiff VSP has essentially  
22 approached discovery in three (3) phases: (1) obtain the records from Defendants;  
23 (2) to the extent Defendants do not have certain records, obtain the records from  
24 third parties; and (3) take the depositions of necessary parties and third parties.

25 4. WHEREAS, Plaintiff VSP served its initial discovery requests,  
26 containing interrogatories, requests for admissions, and document demands, upon  
27 Defendants Nouveau and Sutich on September 9, 2016, seeking information and  
28 records regarding, inter alia, Defendants’ dealings with various third parties,

1 including various out-of-state optical laboratories.

2 5. WHEREAS, Defendants served their initial discovery responses on  
3 December 5, 2016 and their amended responses on February 27, 2017 and are still  
4 in the process of gathering additional information which had been requested by  
5 Plaintiff VSP in its First Set of Requests for Production. In connection therewith,  
6 Defendants asserted they did not have or were having a difficult time obtaining  
7 certain records relating to billing and payment information with third parties.

8 6. WHEREAS, Plaintiff VSP has issued various third party subpoenas  
9 to seek billing and payment information regarding their dealings with Defendants.  
10 Many of the third parties are located in Texas and Pennsylvania and there have  
11 been delays. For example, various delays have been encountered due to their out  
12 of state locations or their business having closed down. The delays include, but  
13 are not limited to, the following:

14 (a) Dr. Gordon Epstein, O.D., has since moved to Magnolia, Texas.  
15 Service was effectuated on May 2, 2017, but there has been a delay in him  
16 producing the relevant records which Plaintiff believes will be resolved shortly.

17 (b) Subpoenas were issued to Joseph Kasyan, Sue Kasyan, and Gary  
18 Burkett, who operated third party optical laboratories in Pennsylvania. However,  
19 there have been complications in effectuating service and amended Subpoenas  
20 were served.

21 (c) Salvatore Deluca, a principal of Opti-Rex, Inc., has claimed the  
22 business closed down and all of the medical records were removed and destroyed  
23 and that a new optical business was operating at that location. As such, Plaintiff  
24 will be issuing a deposition subpoena to Mr. Deluca. However, he has indicated  
25 he will not be cooperative.

26 7. WHEREAS, the parties have been cooperating to address these  
27 issues, and other discovery issues which have arisen.

28 8. WHEREAS, the parties are also exploring settlement possibilities.

1           9.     WHEREAS, no previous continuance has been requested and the  
2 parties believe that the interests of justice will be served, and no parties will be  
3 prejudiced, by the granting of this continuance.

4           IT IS THEREFORE STIPULATED by and between Plaintiff VSP and  
5 Defendants Nouveau and Sutich, through their attorneys of record, that the  
6 discovery cutoff date be continued from August 28, 2017 to November 30, 2017  
7 and the expert witness disclosure date be continued from October 26, 2017 to  
8 January 31, 2018.

9           IT IS SO STIPULATED.

10  
11  
12 Dated: June 13, 2017

Respectfully submitted,  
STERN & GOLDBERG

13  
14 By: s/ Alan N. Goldberg  
15 ALAN N. GOLDBERG  
16 PETER TRAN  
17 Attorneys for Plaintiff  
Vision Service Plan, a California not-for-  
profit corporation

18  
19 Dated: June 13, 2017

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21 By: s/ Stephen M. Duvernay  
22 BRADLEY A. BENBROOK  
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24 Attorneys for Defendants  
Nouveau Vision, Inc., a Washington  
25 corporation, and Timothy J. Sutich, an  
26 individual  
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**ORDER**

The Court accepts the foregoing Stipulation. The discovery cutoff and expert witness disclosure dates set forth in Sections IV and V of the Pretrial Scheduling Order, dated August 25, 2016, shall be continued as follows:

1. The discovery cutoff date shall be continued from August 28, 2017 to November 30, 2017.
2. The expert witness disclosure date shall be continued from October 26, 2017 to January 31, 2018.
3. No other dates are being continued by this Order.

Dated: June 15, 2017

  
\_\_\_\_\_  
Troy L. Nunley  
United States District Judge