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11 Attorneys for Defendant
12 UPS GROUND FREIGHT, INC.
erroneously named as United Parcel Service, Inc.

14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

17 TYRONE DOUTHERD,
18
19 Plaintiff,
20
21 v.

22 DORIS MARIE MONTESDEOCA, ESTATE
OF LUCILLE J. SMITH, DECEASED,
23 UNITED PARCEL SERVICE, INC., LIBERTY
MUTUAL INSURANCE COMPANY, AND
DOES 1-30,
24
25 Defendants.

CASE NO. 2:17-CV-02225-MCE-EFB

**STIPULATION AND ORDER REGARDING
EXPERT DISCOVERY AND FACT
DISCOVERY DISPUTE DEADLINES**

Complaint Filed: August 25, 2018
Judge: Hon. Morrison C. England, Jr.

1 **I. INTRODUCTION**

2 The Parties, Plaintiff Tyrone Doutherd, (“Plaintiff”) and Defendants Harmony Home Care,
3 Inc., Estate of Lucille J. Smith, UPS Ground Freight, Inc. and Liberty Mutual Insurance Company,
4 (collectively “Defendants”), through their respective attorneys of record, hereby jointly stipulate to,
5 and request the Court’s approval of, the following extended deadlines:

- 6 • Discovery motions to be filed by December 21, 2018;
- 7 • Expert disclosures to be made by March 22, 2019; and
- 8 • Expert rebuttal disclosures to be made by April 12, 2019.

9 **II. RECITALS/GROUNDS FOR RELIEF**

10 Pursuant to Rule 16, a party may seek modification of a scheduling order, including
11 modification of a discovery cut-off date, “only for good cause and with a judge’s consent.” Fed. R.
12 Civ. P. 16(b)(4). “Good cause” exists only when a scheduling deadline “cannot reasonably be met
13 despite the diligence of the party seeking the extension.” *Schafferner v. Crown Equipment*
14 *Corporation*, No. C09-00284 SBA, 2011 WL 6303408, at *2 (N.D. Cal. Dec. 16, 2011) (*citing*
15 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609, (9th Cir. 1992). A party may establish
16 good cause by showing:

17 that [he or she] was diligent in assisting the court in creating a workable Rule
18 16 order; (2) that [he or she] noncompliance with a Rule 16 deadline occurred or will
19 occur, notwithstanding [his or her] diligent efforts to comply, because of the
20 development of matters which could not have been reasonable foreseen or anticipated
21 at the time of the Rule 16 scheduling conference; and (3) that [he or she] was diligent
22 in seeking amendment of the Rule 16 order, once it became apparent that he or she
23 could not comply with the order.

24 *Hood v. Hartford Life & Accident Inc., Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal. 2008)
25 (citation omitted).

26 WHEREAS on October 25, 2017, this Court issued a scheduling order setting certain case
27 deadlines.

28 WHEREAS October 10, 2018, the Court adopted the parties’ Stipulation to Extend
Discovery Cut-Off Dates which extended the non-expert discovery deadline to December 14, 2018;

1 WHEREAS the parties have scheduled depositions on November 30, and December 3-5 and
2 anticipate completing discovery by the December 14, 2018 deadline;

3 WHEREAS the parties anticipate they may need the Court's assistance to rule on a few fact
4 discovery disputes provided they cannot resolve them;

5 WHEREAS the Initial Pretrial Scheduling Order provided that expert designations should be
6 served no later than 60 days after the close of fact discovery and rebuttal expert designations should
7 be served within 30 days after the initial expert designations;

8 WHEREAS the Parties believe that some or all matters on which they may designate expert
9 testimony may be impacted by the Court's ruling on one or more Defendants' forthcoming motion(s)
10 for summary judgment. As a result, the parties agree that in the interest of efficiency and to save
11 costs that may be mooted by the Court's rulings, expert designations and expert discovery should be
12 extended to allow for the possibility that a party may file a dispositive motion prior to the date expert
13 disclosure is required, but may also wait to file a dispositive motion until after expert designations
14 have been made;

15 WHEREAS under the Court's Initial Scheduling Order and the October 10, 2018 Order,
16 dispositive motions must be filed by June 12, 2019;

17 WHEREAS the extensions stipulated to and requested herein will not impact the dispositive
18 motion deadline.

19 THEREFORE, THE PARTIES STIPULATE AND AGREE TO THE FOLLOWING:

- 20 1. To set the deadline by which all fact discovery motions must be filed to December 21,
21 2018;
- 22 2. To set the deadline for expert designations to March 22, 2019;
- 23 3. To set the deadline for designations of rebuttal experts to April 12, 2019; and
- 24 4. To set the deadline for completion of expert discovery to September 30, 2019.

25 The parties respectfully request that the Court adopt the parties stipulation and extend the
26 motion to compel and expert disclosure deadlines as set forth herein.

27 **SO STIPULATED.**

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Dated: November 20, 2018

**BERMAN, BERMAN, BERMAN,
SCHNEIDER & LOWARY, LLP**

/s/ Amanda F. Riley
Amanda F. Riley
Attorney for Defendant
Harmony Home Care, Inc.

Dated: November 20, 2018

POWERS MILLER
/s/ Eric F. Della Santa
(as authorized on Nov. 20, 2018)
Eric F. Della Santa
R. James Miller
Attorney for Defendants
Estate of Lucille J. Smith

Dated: November 20, 2018

HUNTON & WILLIAMS, LP
/s/ Emily Burkhardt Vicente
Emily Burkhardt Vicente
D. Andrew Quigley
Attorney for Defendant
United Parcel Service, Inc.

Dated: November 20, 2018

MCCURDY & MILLER, LLP
/s/ Kevin G. McCurdy
(as authorized on Nov. 20, 2018)
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Robert J. Scott, Jr.
Attorney for Defendant
Liberty Mutual Insurance Co.

Dated: November 20, 2018

LAW OFFICES OF ELLEN DOVE
/s/ Ellen C. Dove
(as authorized on Nov. 20, 2018)
Ellen C. Dove
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Tyrone Doutherd

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ORDER

The Stipulation of the Parties (ECF No. 53) is accepted and the deadline by which any discovery motion should be filed is extended up to and including **December 21, 2018**. The deadline for discovery motions to be heard is extended up to and including **January 9, 2019**. The deadline for expert designations is extended up to and including **March 22, 2019**. The deadline for designations of rebuttal experts is extended up to and including **April 12, 2019**. The deadline for expert discovery is extended up to and including **September 30, 2019**.

IT IS SO ORDERED.

Dated: November 26, 2018


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE