

1 ANTHONY L. MARTIN
 Nevada Bar No. 8177
 2 anthony.martin@ogletreedeakins.com
 CHRISTOPHER M. PASTORE
 3 Nevada Bar No. 11436
 christopher.pastore@ogletreedeakins.com
 4 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
 Wells Fargo Tower
 5 Suite 1500
 3800 Howard Hughes Parkway
 6 Las Vegas, NV 89169
 Telephone: 702.369.6800
 7 Fax: 702.369.6888

8 *Attorneys for Defendants Home Depot U.S.A., Inc.,*

9
 10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF NEVADA**

12 STEPHANIE GORDON,
 Plaintiff,
 13 vs.
 14 HOME DEPOT,
 Defendant.

Case No.: 2:13-cv-01072-JCM-GWF

**MOTION AND ORDER MODIFYING
 DATES CONTAINED IN THE
 DISCOVERY PLAN AND
 SCHEDULING ORDER
 AND REQUEST FOR STATUS
 CONFERNECE
 (Second Request)**

18 Pursuant to FRCP 26, LR 6-1, 6-2, 7-1 and 26-4, Defendant Home Depot, U.S.A., Inc.,
 19 (“Defendant”) by and through its undersigned counsel, hereby files this Motion for an extension of
 20 the discovery cut-off period and related deadlines as contained in the Amended Stipulated
 21 Discovery Plan and Scheduling Order (Doc. # 44) and requests that the Court schedule a status
 22 conference. This second request for an extension of time and request for a status conference is
 23 based upon the inability to communicate with Plaintiff in connection with this matter, as set forth
 24 in detail below:

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OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
 WELLS FARGO TOWER
 SUITE 1500, 3800 HOWARD HUGHES PARKWAY
 LAS VEGAS, NV 89169
 TELEPHONE: 702.369.6800

1 **I. DISCOVERY COMPLETED TO DATE**

2 The parties have exchanged initial disclosures. Defendant has served supplemental
3 disclosures. Defendant also served written interrogatories, requests for production and requests
4 for admission on Plaintiff on January 22, 2016.

5 **II. REMAINING DISCOVERY TO BE COMPLETED**

6 Defendant has noticed Plaintiff's deposition. As discussed in more detail below, because
7 Plaintiff has not responded to any communications from Defendant, it is unclear what, if any,
8 discovery Plaintiff intends to complete.

9 **III. REASONS DISCOVERY CANNOT BE COMPLETED WITHIN THE**
10 **ORIGINAL DEADLINE**

11 Immediately following the entry of the Court's Order granting the parties joint request for
12 an extension of discovery, the parties spoke on one (1) or two (2) occasions before January 1, 2016
13 regarding potential settlement, discovery and scheduling Plaintiff's deposition. Unfortunately,
14 since those telephone communications in December 2015, undersigned counsel has been unable to
15 speak with Plaintiff despite making numerous phone calls, leaving numerous voice mail messages,
16 sending emails to Plaintiff and sending a letter to Plaintiff via U.S. Mail.

17 In early January 2016, Plaintiff sent an email to undersigned counsel and Home Depot
18 employees indicating that she had to replace her cell phone and was having difficulties getting the
19 phone working. Undersigned counsel responded to this email requesting that Plaintiff call
20 undersigned counsel and undersigned counsel also responded to this email and made phone calls to
21 Plaintiff after receiving this email. Despite multiple calls and email initiated in January 2016 by
22 undersigned counsel, Plaintiff never answered the phone call(s), returned any phone call(s) or
23 replied to any email(s).

24 Having not heard from Plaintiff for a month, undersigned counsel was unable to work with
25 Plaintiff to schedule her deposition. Accordingly, in order to ensure that Plaintiff had proper notice
26 of a deposition, Defendant unilaterally set Plaintiff's deposition for March 1, 2016. The notice of
27 deposition was served via U.S. Mail on February 2, 2016. Because Plaintiff has only provided a
28 P.O. Box, Defendant cannot confirm whether Plaintiff has received this notice or whether she is

1 available on this date. Along with the notice of deposition, undersigned counsel sent a letter to
2 Plaintiff reiterating the message contained in previous voicemails that it was imperative that the
3 parties discuss, among other things, her availability for a deposition, the Court's order dismissing
4 the individual Defendants, pending written discovery and filing a stipulated protective order
5 regarding the confidentiality of certain documents to be produced by Defendant and requested
6 from Plaintiff in Defendant's written discovery.

7 On February 3, 2016, Plaintiff emailed undersigned counsel asking for his contact
8 information because she had lost her phone and did not have any contact information on her new
9 phone. Plaintiff's email also indicated that she was having difficulty receiving phone calls on her
10 phone. Immediately after receiving this email, undersigned counsel replied via email and provided
11 Plaintiff with his office number and personal cell phone number and asked her to call as soon as
12 possible. Undersigned counsel also called Plaintiff that afternoon in hopes of reaching her, but,
13 once again, could only leave a voicemail. Since this February 3, 2016 email from Plaintiff,
14 undersigned counsel has made multiple phone calls to Plaintiff, but has only been able to leave
15 voicemails and has not received a response from Plaintiff.

16 Due to the Plaintiff's inability or failure to respond to any substantive communication (and
17 the fact that her only address is a P.O. Box), undersigned counsel is unable to confirm whether
18 Plaintiff has received Defendant's deposition notice or whether Plaintiff is even available on the
19 date scheduled for the deposition. Furthermore, the parties have been unable to discuss a potential
20 protective order which is necessary before certain confidential documents can be produced. A
21 copy of a proposed protective order was sent to Plaintiff in January, but undersigned counsel has
22 received no response.

23 In light of the parties' inability to communicate regarding this matter during approximately
24 the last forty-five (45) days, Defendant requests that the Court set a status conference and extend
25 the discovery deadlines in order to give the parties an opportunity to confer regarding Plaintiff's
26 availability for her deposition and schedule a deposition at a mutually convenient time, confer
27 regarding a protective order, complete outstanding written discovery and further discuss
28 settlement.

1 **IV. REVISED PROPOSED DISCOVERY PLAN**

2 All discovery in this case will be conducted in accordance with the Federal Rules of Civil
3 Procedure and applicable Local Rules of this District Court. The parties propose to the Court the
4 following cut-off dates:

- 5 A. **Discovery Cut-off Date: May 11, 2016.**
- 6 B. **Dispositive Motions:** Dispositive motions shall be filed thirty (30) days after the
7 completion of discovery, or by **June 10, 2016.**
- 8 C. **Motions In Limine/Daubert Motions:** Pursuant to LR 16-3(b), any motions in
9 limine, including Daubert type motions, shall be filed and served thirty (30) days
10 prior to the commencement of trial and oppositions shall be filed and served fifteen
11 (15) days thereafter. Reply briefs will only be allowed with leave of court.
- 12 D. **Pretrial Order:** The Pretrial Order shall be filed thirty (30) days after the deadline
13 for filing dispositive motions, or by **July 11, 2016**, unless dispositive motions have
14 been filed, in which case the Pretrial Order will be due 30 days after a decision or
15 further order of the Court.
- 16 E. **FRCP 26(a)(3) Disclosures:** The disclosures required by FRCP 26(a)(3) and any
17 objections thereto shall be included in the final pretrial order.

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F. **Extensions or Modifications of the Discovery Plan and Scheduling Order:** In accordance with LR26-4, any motion or stipulation to extend a deadline set forth in the discovery plan and scheduling order shall be received by the Court no later than 21 days before the expiration of the deadline.

DATED this 17th day of February, 2016.

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/ Christopher M. Pastore

Anthony L. Martin
Christopher M. Pastore
Wells Fargo Tower, Suite 1500
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Telephone: 702.369.6800

*Attorneys for Defendant Home Depot,
U.S.A., Inc.*

ORDER

IT IS SO ORDERED.



U.S. MAGISTRATE JUDGE

February 18, 2016

DATE

CERTIFICATE OF SERVICE

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I hereby certify that on the 17th day of February, 2016, I electronically transmitted the attached **MOTION TO MODIFY DATES CONTAINED IN THE DISCOVERY PLAN AND SCHEDULING ORDER AND REQUEST FOR STATUS CONFERENCE** to the Clerk's Office using the CM/ECF System for filing.

Pursuant to Fed. R. Civ. P. 5(b), I hereby further certify that service of **MOTION TO MODIFY DATES CONTAINED IN THE DISCOVERY PLAN AND SCHEDULING ORDER AND REQUEST FOR STATUS CONFERENCE** was made by depositing a copy for mailing, first class mail, postage prepaid, at Tucson, Arizona to the following:

Stephanie Gordon
P.O. Box 11121
Las Vegas, Nevada 89111-1121

DATED this 17th day of February, 2016.

/s/ Carol Essig
An Employee of Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.