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8 *Attorneys for Defendants*

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA

11 JEREMY KONDRK, an individual,
12 Plaintiff,

13 vs.

14 TOWBIN AUTOMOTIVE HOLDINGS,
15 INC., TOWBIN MANAGEMENT INC.,
16 TOWBIN OF LAS VEGAS, LLC, TOWBIN
17 DODGE, LLC, and DOES I through X and
18 ROE BUSINESS ENTITIES I through X,
19 inclusive,
20 Defendants.

Case No.: 2:15-cv-00330-RFB-NJK

Order Granting
**DEFENDANTS TOWBIN
AUTOMOTIVE HOLDINGS, INC.,
TOWBIN MANAGEMENT INC.,
TOWBIN OF LAS VEGAS, LLC,
TOWBIN DODGE, LLC'S MOTION
FOR AN EXTENSION OF TIME TO
COMPLETE/STAY DISCOVERY
(FIRST REQUEST)**

20 Defendants, Towbin Automotive Holdings, Inc., Towbin Management Inc., Towbin of Las
21 Vegas, LLC, and Towbin Dodge, LLC, (hereinafter "Towbin" or "Defendants"),¹ respectfully
22 request and move this Court to stay and extend all discovery deadlines as contained in the
23 Discovery Plan and Scheduling Order (Dkt #18) for thirty (30) days and stay the proceedings
24

25 ¹ Plaintiff improperly names Towbin Automotive Holdings, Inc., Towbin Management Inc., and Towbin of Las Vegas,
26 LLC in this action. Plaintiff was not an employee at any of these three entities. At all relevant times in this
27 litigation, Plaintiff was an employee of Towbin Dodge, LLC only.
28

1 during that time pending the outcome of settlement negotiations. This motion is being submitted
2 pursuant to LR 6-1, 26-4, and 26-7, the papers and pleadings on file herein, the Memorandum of
3 Points and Authorities attached hereto, the Declaration of Suzanne L. Martin, attached hereto as
4 Exhibit A, and any oral argument the Court may entertain at any hearing on this matter.

5 Dated this 13th day of July, 2015.

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

8 /s/ Suzanne L. Martin

9 Suzanne L. Martin
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15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 Good cause exists to extend the discovery deadlines in this matter and stay this case for
18 thirty (30) days, namely to give the parties the chance to further settlement discussions that
19 commenced at the July 2, 2015, Early Neutral Evaluation Conference (“ENE”). At the ENE, the
20 parties agreed to work in good-faith towards a resolution of various issues in this matter. The
21 additional time is necessary to effectuate the parties’ intentions and in the event the parties’
22 settlement discussions are not successful, to provide adequate time to continue and complete
23 discovery.

24 This is the first request for an extension of time. The parties mutually agree to stay
25 discovery; however, the parties disagree as to how to seek such a request and effectuate the stay
26 and extension of discovery deadlines. Therefore, it is Defendants’ belief that Plaintiff will be
27 submitting competing documents requesting the stay that the parties have agreed upon. In support
28 of Defendants’ request, they state as follows:

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1 **II. LEGAL STANDARD**

2 **A. Extending Discovery Deadlines**

3 This Court has broad discretion when it comes to controlling discovery. *Nelson v. Safeco*
4 *Inc. Co. of Illinois*, 2011 WL 13848, *1 (January 4, 2011) (citing *Little v. City of Seattle*, 863 F.2d
5 681, 685 (9th Cir. 1988)); see also *United Nat. Funding, LLC v. JetDirect Aviation, Inc.*, 2012 WL
6 2514929, *3 (June 28, 2012). A Scheduling Order may be modified for “good cause.” FRCP
7 16(b)(4); see *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). Local Rule 26-4
8 of the United States District Court Rules for the District of Nevada provides that a motion to
9 extend any date in the discovery plan must be supported by a showing of good cause. LR 26-4.
10 Such motion must include: (a) a statement of the discovery that must been completed; (b) a specific
11 description of the discovery that remains to be completed; (c) the reasons why the remaining
12 discovery was not completed within the time limits set by the discovery plan; and (d) a proposed
13 schedule for completing the remaining discovery. *Id.* LR 26-4 further provides that the motion
14 must comply with LR 6-1, which provides that a request to extend time “shall inform the court of
15 any previous extensions granted and state the reasons for the extension requested.” LR 6-1. The
16 motion must also indicate whether it is the first, second, third, etc. request for an extension. *Id.*

17 A motion or stipulation to extend a deadline set forth in a discovery plan shall be received
18 by the Court no later than twenty-one (21) days before the expiration of the subject deadline.
19 Although the Court looks at the possible prejudice that might be caused by the modification to the
20 Scheduling Order, the focus of the inquiry is upon the moving party’s reasons for seeking
21 modification. *Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “If a
22 party was not diligent, the inquiry should end.” *Id.*

23 **B. Staying Discovery Deadlines**

24 A party carries a heavy burden of making a “strong showing” why discovery should be
25 stayed. *Buckwalter v. Nevada Bd. of Medical Examiners*, 2011 WL 841391, *1 (citing *Blankenship*
26 *v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The movant must show a particular and
27 specific need for a discovery stay. *Buckwalter*, 2011 WL 841391 at *1. In determining whether to
28 grant a discovery stay, the Court is guided by the objectives of Rule 1 of the Federal Rules of Civil

1 Procedure to ensure a “just, speedy, and inexpensive determination of every action.” *Kor Media*
2 *Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013) (*quoting Tradebay, LLC v. eBay, Inc.*,
3 278 F.R.D. 597, 602-03 (D. Nev. 2011)).

4 **II. GOOD CAUSE EXISTS TO GRANT DEFENDANTS’ MOTION TO STAY AND**
5 **EXTEND DISCOVERY**

6 The inquiry concerning good cause primarily focuses on the movant’s diligence. *Derosa v.*
7 *Blood Systems, Inc.*, 2013 WL 3975764 at * 1 (August 1, 2013) (*citing Coleman v. Quaker Oats*
8 *Co.*, 232 F.3d 1271, 1294-95 (9th Cir. 2000). Good cause to extend a discovery deadline exists “if
9 it cannot reasonably be met despite the diligence of the party seeking the extension.” *Derosa*, 201
10 WL 3975764, *1 (*quoting Johnson*, 975 F.2d at 609).

11 Here, as stated above, good cause exists to allow the discovery extension and limited stay.
12 The parties would like the chance to further settlement discussions that commenced at the July 2,
13 2015, ENE. At the ENE, the parties agreed to work in good-faith towards a resolution of various
14 issues in this matter. The additional time is necessary to provide the parties with that opportunity
15 and in the event the parties’ settlement discussions are not successful, to provide adequate time to
16 continue and complete discovery.

17 Furthermore, the stay will effectuate the purpose of FRCP Rule 1 in that allowing the
18 parties’ time to further explore settlement will ensure a just, speedy, and inexpensive
19 determination. The parties would be afforded an opportunity to conserve financial resources
20 during the stay but not lose any opportunities to proceed with retaining experts and complete
21 discovery if necessary post-stay. **Importantly, Plaintiff agrees that a stay is necessary.**

22 However, the parties disagree with the way in which the stay and extension of discovery deadlines
23 and to respond to Plaintiff’s recently filed Motion to File Amended Complaint need to be sought
24 from the Court. (*See Declaration of Suzanne L. Martin attached hereto as Exhibit A.*) Unable to
25 reach an agreement as to what document to file, and in light of the pending expert disclosure
26 deadline, which will pass in 21-days, Defendants have elected to move for the relief the parties
27 previously agreed to.

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1 **IV. STATUS OF DISCOVERY PER LR 26-4**

2 **A. Discovery Completed To Date**

3 In April 2015, the parties exchanged Initial Disclosures pursuant Federal Rule of Civil
4 Procedure 26(a)(1). Each party has supplemented their disclosures once: Defendants in June 2015,
5 and Plaintiff in July 2015. In May 2015, Plaintiff propounded Plaintiff's First Set of
6 Interrogatories and First Set of Requests for Production of Documents, to which Defendants timely
7 responded in June 2015. In June 2015, Defendants propounded Defendants' First Set of
8 Interrogatories, First Set of Requests for Documents and First Set of Requests for Admissions, to
9 which, after a brief extension of time, Plaintiff timely responded in July 2015. In June and July
10 2015, Defendants issued two third-party subpoenas, one to Dr. R. J. Kohn and the second to
11 Southwest Medical Associates, both of which Plaintiff identified as treating physicians/providers.
12 Currently, there are no outstanding discovery requests from any party.

13 **B. Remaining Discovery To Be Completed**

14 **1. Defendants' Discovery**

15 Defendants plan to meet and confer with Plaintiff's counsel regarding substantive
16 deficiencies with Plaintiff's discovery responses. This may result in Defendants filing a Motion to
17 Compel. Additionally, Defendants plan to subpoena Plaintiff's employment records, documents
18 from American Fidelity related to Plaintiff's supplemental insurance benefits, and from any other
19 treating physician/medical provider Plaintiff identifies. Defendants intend to issue subpoenas to
20 depose Plaintiff's treating physicians/providers, including but not limited to Dr. R. J. Kohn and
21 Southwest Medical Associates, are considering a person most knowledgeable deposition for
22 American Fidelity, as well as any necessary third party subpoenas for fact witnesses. Defendants
23 determined a need to prepare and serve additional Requests for Production of Documents to
24 Plaintiff for, among other things, his medical records and communications between Plaintiff and
25 the disability insurance provider, American Fidelity. Defendants may also desire to retain an
26 expert to evaluate Plaintiff's claim that he has a "serious health condition."

27 **2. Defendants' Estimation of Plaintiff's Discovery**

28 Defendants believe that Plaintiff plans to depose various employees of Defendants,

1 including the following individuals identified in Plaintiff's initial disclosures and supplement
2 thereto: Martha Martinez; Lloyd Andersen; Rennie Roopchand; John Napoleon; Dr. R. J. Kohn;
3 Jim Akino; Jason (last name unknown); Alonzo Ramirez; and Physician (name unknown at this
4 time) from Southwest Medical Associates. Defendants also believe that Plaintiff may wish to
5 conduct further written discovery.

6 **C. Reasons Discovery Cannot Be Completed Within Original Deadline**

7 The parties spent a significant amount of time at the outset of this matter to try and come to
8 an early resolution. The parties even requested (Dkt. #12) and were granted (Dkt. #14) attendance
9 at an ENE. It was at the ENE that the parties decided that an extension of the existing discovery
10 deadlines and a stay of the proceedings would be beneficial to further additional settlement
11 discussions before proceeding with the remaining discovery. Discovery cannot be completed
12 within the original deadlines if the parties are to devote the agreed upon time and energy to
13 advancing settlement, hence the need for a stay and an extension of time.

14 **D. Revised Proposed Discovery Plan**

15 All discovery in this case will be conducted in accordance with the Federal Rules of Civil
16 Procedure and applicable Local Rules of this District Court. Defendants propose to the Court the
17 following cut-off dates:

- 18 a. **Discovery Cut-off Date:** The discovery cut-off deadline shall be **October 30, 2015**.
- 19 b. **Expert Disclosures:** The expert disclosure deadline shall be **September 3, 2015**, sixty
20 (60) days prior to the discovery cut-off date of October 30, 2015, in accordance with
21 LR 26-1(e)(3). Rebuttal expert disclosures shall be made by **October 2, 2015**, thirty
22 (30) days after the initial disclosure of experts deadline of September 3, 2015, in
23 accordance with LR 26-1(e)(3). The parties shall have until the discovery cut-off date
24 to take the depositions of the experts. Expert discovery will be conducted in
25 accordance with applicable Federal Rules of Civil Procedure and Local Rules of this
26 District Court, specifically, Fed. R. Civ. P. 26(a)(2) and 26(b)(4), and Local Rules 26-
27 1(e)(3).
- 28 c. **Interim Status Report:** In accordance with LR 26-3, the parties shall file the interim

1 status report by **September 3, 2015**, sixty (60) days before the discovery cut-off date of
2 October 30, 2015.

3 d. **Dispositive Motions:** Dispositive motions shall be filed by **November 30, 2015**,
4 thirty-one (31) days after the discovery cut-off date of October 30, 2015, as the 30th day
5 is a Sunday, in accordance with LR 26-1(e)(4).

6 e. **Motions in Limine/Daubert Motions:** Pursuant to LR 16-3(b), any motions in limine,
7 including *Daubert* type motions, shall be filed and served thirty (30) days prior to trial
8 unless the District Judge issues an order with a different deadline or briefing schedule.
9 Oppositions shall be filed and served and the motion submitted for decision fourteen
10 (14) days thereafter. Reply briefs will only be allowed with leave of court.

11 f. **Pretrial Order:** The Pretrial Order shall be filed no later than **December 30, 2015**, in
12 accordance with LR 26-1(e)(5). In the event dispositive motions have been filed, the
13 Pretrial Order shall be suspended until thirty (30) days after a decision of the dispositive
14 motions or further order of the Court.

15 g. **FRCP 26(a)(3) Disclosures:** The disclosures required by FRCP 26(a)(3), and any
16 objections thereto, shall be included in the final pretrial order in accordance with LR
17 26-1(e)(6).

18 h. **Extensions or Modifications of the Discovery Plan and Scheduling Order:** In
19 accordance with LR 26-4, any motion or stipulation to extend a deadline set forth in this
20 Discovery Plan and Scheduling Order shall be received by the Court no later than
21 twenty-one (21) days before the expiration of the subject deadline.

22 **E. Prior Requests for Continuance: None**

23 This is the first request to extend discovery deadlines.

24 **V. CONCLUSION**

25 For all of the foregoing reasons establishing good cause, Defendants request that this Court
26 exercise its sound discretion and grant Defendants' request for a brief extension and stay of
27 discovery deadlines thirty (30) days. These requests are not sought for any improper purpose or
28 other purpose of delay. Rather, the requests are sought solely for the purpose of attempting to reach

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a resolution of this case without incurring further time and expense by each of the parties.

Dated this 13th day of July, 2015.

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

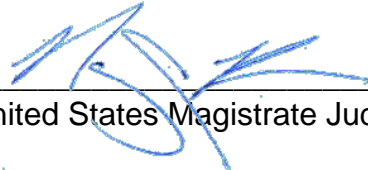
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Plaintiff has filed a notice of non-opposition. Docket No. 24. Defendants' motion is hereby GRANTED. Discovery is stayed for 30 days. The deadlines in the scheduling order are hereby extended as outlined above.

IT IS SO ORDERED.

Dated: July 20, 2015

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United States Magistrate Judge