

1 MARC S. CWIK
 Nevada Bar No. 006946
 2 Marc.Cwik@lewisbrisbois.com
 VIVIENNE RAKOWSKY
 3 Nevada Bar No. 9160
VivienneRakowsky@lewisbrisbois.com
 4 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
 6385 S. Rainbow Boulevard, Suite 600
 5 Las Vegas, Nevada 89118
 Telephone: 702.893.3383
 6 Facsimile: 702.893.3789
Attorneys for Defendant Lowe’s Home Centers,
 7 *LLC*

8
 9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 ***

11 DENNIS SIETE, an individual,
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 Plaintiff,
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 vs.
 14
 LOWE’S HOME CENTERS, LLC, a foreign
 15 limited-liability company; DOE
 INDIVIDUALS I-X, inclusive; and ROE
 16 CORPORATION I-X inclusive,
 17
 Defendant.

CASE NO. 2:22-cv-00445-JCM-VCF

**STIPULATION AND ORDER TO
 EXTEND DISCOVERY PLAN AND
 SCHEDULING ORDER**

[FOURTH REQUEST]

18
 19 Pursuant to LR IA 6-1, LR 7-1 and LR 26-3, Plaintiff Dennis Siete (“Plaintiff”) and
 20 Defendant Lowe’s Home Centers, LLC (“Lowe’s”) (collectively the “Parties”), through their
 21 respective counsel of record, stipulate to extend the dates set forth in the parties’ Stipulation and
 22 Order to Extend Discovery Plan and Scheduling Order (Third Request) [ECF No. 17] by one-
 23 hundred-twenty (120) days (hereinafter the “Stipulation”). This Stipulation is the Parties’ fourth
 24 requested extension of dates. In support of this Stipulation, the parties state the following to
 25 demonstrate good cause exists to extend the dates set forth in the current Discovery Plan and
 26 Scheduling Order:

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1 **A. PROCEDURAL HISTORY.**

2 1. Plaintiff Dennis Siete (“Plaintiff”) filed his Complaint in the Clark County District
3 Court, State of Nevada, on February 3, 2022.

4 2. Lowe’s filed its Answer to Plaintiff’s Complaint on March 1, 2022.

5 3. On March 10, 2022, Defendant Lowe’s Home Centers, LLC (“Lowe’s”) timely filed
6 a Notice of Removal to this Court [ECF No. 1].

7 4. On April 8, 2022, the Parties filed a Joint Status Report Regarding Removal [ECF
8 No. 6].

9 5. On April 15, 2022, the Parties, through their respective counsel of record, attended
10 the Early Case Conference.

11 6. On May 6, 2022, the Parties submitted their Proposed Joint Discovery Plan and
12 Scheduling Order [ECF No. 7].

13 7. On May 10, 2022, this Court entered as an Order the Parties’ Joint Discovery Plan
14 and Scheduling Order [ECF No. 8].

15 8. On August 30, 2022, this Court entered the Parties’ Agreed Order of Protection [ECF
16 No. 10].

17 9. On October 13, 2022, the Parties submitted their [proposed] Stipulation and Order to
18 Extend Discovery Plan and Scheduling Order (First Request) [ECF No. 12].

19 10. On October 14, 2022, this Court entered as an Order the Parties’ Stipulation and
20 Order to Extend Discovery Plan and Scheduling Order (First Request) [ECF No. 13].

21 11. On February 8, 2023, the Parties submitted their [proposed] Stipulation and Order
22 to Extend Discovery Plan and Scheduling Order (Second Request) [ECF No. 14].

23 12. On February 9, 2023, this Court entered as an Order the Parties’ Stipulation and
24 Order to Extend Discovery Plan and Scheduling Order (Second Request) [ECF No. 15].

25 13. On May 9, 2023, Lowe’s filed a Notice of Association of Counsel, associating
26 attorney Vivienne Rakowsky of Lewis Brisbois Bisgaard & Smith LLP as counsel of record for
27 Lowe’s, along with existing counsel of record Marc S. Cwik of Lewis Brisbois Bisgaard & Smith
28 LLP, to assist with discovery needing to be completed, as discussed below.

1 14. On May 12, 2023, the Parties submitted their [proposed] Stipulation and Order to
2 Extend Discovery Plan and Scheduling Order (Third Request) [ECF No. 17].

3 15. On May 15, 2023, this Court entered as an Order the Parties' Stipulation and Order
4 to Extend Discovery Plan and Scheduling Order (Third Request) [ECF No. 18].

5 16. On July 7, 2023, the Parties submitted their proposed Stipulation and Order to
6 conduct a Rule 35 Examination of the Plaintiff [ECF No. 19].

7 16. On July 11, 2023, the United States Magistrate signed a stipulation approving a Rule
8 35 Examination of Plaintiff [ECF No. 20].

9 17. On July 24, 2023, the Rule 35 Examination of Plaintiff was held before Dr. Clive
10 Segil in Las Vegas, Nevada.

11 18. On August 23, 2023, Lowe's produced the Report of Dr. Clive Segil pertaining to
12 the Rule 35 Examination of the Plaintiff.

13 **B. SUMMARY OF DISCOVERY COMPLETED TO DATE AND MEET-AND-**
14 **CONFERENCE EFFORTS CONCERNING SAME**

15 1. On April 28, 2022, Plaintiff served his Initial Disclosure Statement (pursuant to
16 FRCP 26(a)(1)).

17 2. On May 6, 2022, by agreement of the parties, Lowe's served its Initial Disclosures
18 Pursuant to FRCP 26(a)(1).

19 3. On May 10, 2022, Plaintiff served his First Supplemental Disclosure Statement
20 (pursuant to FRCP 26(a)(1)).

21 4. On May 20, 2022, Lowe's served its First Set of Interrogatories to Plaintiff.

22 5. On May 20, 2022, Lowe's served its First Set of Requests for Production to Plaintiff.

23 6. On June 17, 2022, Plaintiff served his Answers to Lowe's First Set of Interrogatories.

24 7. On June 17, 2022, Plaintiff served his Responses to Lowe's First Set of Requests for
25 Production of Documents.
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27 8. On July 1, 2022, Plaintiff served his Second Supplemental Disclosure Statement
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1 (pursuant to FRCP 26(a)(1)).

2 9. On July 22, 2022, counsel for Lowe's sent a meet-and-confer letter to counsel for
3 Plaintiff to address certain responses of Plaintiff to Lowe's First Sets of Interrogatories and Requests
4 for Production of Documents which counsel for Lowe's deemed to be deficient.

5 10. On August 2, 2022, the Parties' respective counsel attended a telephone conference
6 to formally meet-and-confer concerning the issues raised in the July 22, 2022 letter.

7 11. On August 3, 2022, Lowe's counsel sent a letter to Plaintiff's counsel setting forth
8 the agreements reached between the Parties for Plaintiff to supplement his answers/responses to
9 Lowe's First Set of Interrogatories and Requests for Production of Documents.

10 12. On August 4, 2022, Plaintiff served his Third Supplemental Disclosure Statement
11 (pursuant to FRCP 26(a)(1)).

12 13. On August 22, 2022, Plaintiff served his Fourth Supplemental Disclosure Statement
13 (pursuant to FRCP 26(a)(1)).

14 14. On August 23, 2022, the Parties' respective counsel attended another telephone
15 conference to formally meet-and-confer concerning the issues raised in the July 22, 2022 letter and
16 issues which have arisen since the August 2, 2022 meet-and-confer conference.

17 15. On August 23, 2022, Plaintiff's counsel sent an email to Lowe's counsel
18 memorializing the agreements reached during the meet-and-confer telephone conference of the same
19 day.

20 16. On September 5, 2022, Plaintiff served his First Supplemental Answers to Lowe's
21 First Set of Interrogatories.

22 17. On September 6, 2022 Plaintiff served his First Set of Requests for Production to
23 Lowe's.

24 18. On September 6, 2022 Plaintiff served his First Set of Interrogatories to Lowe's.

25 19. On October 6, 2022, the Parties' respective counsel attended a telephone conference
26 to formally meet-and-confer concerning Plaintiffs' First Supplemental Answers to Lowe's First Sets
27

1 of Interrogatories and Requests for Production of Documents.

2 20. On October 6, 2022, Lowe’s counsel sent an email to Plaintiff’s counsel setting forth
3 the further agreement reached between the Parties to resolve outstanding issues concerning
4 Plaintiffs’ answers/responses and supplemental answers/responses to Lowe’s First Set of
5 Interrogatories and Requests for Production of Documents. These pending discovery issues need to
6 be resolved before a decision can be made on whether Lowe will seek to schedule an independent
7 medical examination of the Plaintiff.

8 21. On October 10, 2022, the Parties’ respective counsel attended a telephone conference
9 to discuss additional discovery-related issues and general case planning, and to reach agreement
10 concerning expansion of the current scheduling order set forth in this Stipulation due to the issues
11 set forth above, as well as preexisting calendar commitments in other cases through the end of the
12 current discovery cut-off date.

13 22. On October 12, 2022, Lowe’s served a Notice of Deposition of Plaintiff, scheduled
14 for November 15, 2022. Due to third-party delays in obtaining Plaintiff’s outstanding medical
15 records and identified SSA records that are pertinent to Plaintiff’s allegations, this deposition did
16 not move forward and will be rescheduled.

17 23. On November 22, 2022, Lowe’s served its First Supplement to FRCP 26 Disclosures.

18 24. On December 6, 2022, Lowe’s served its Response to Plaintiff’s First Set of
19 Requestion for Production.

20 25. On December 6, 2022, Lowe’s served its Answers to Plaintiff’s First Set of
21 Interrogatories.

22 26. On December 19, 2022, counsel for Lowe’s received a letter from its medical records
23 retrieval service (ABI Document Support Services) that Nevada Health Centers is the medical center
24 to tender a medical records request to obtain medical records from “Cambridge Family Health
25 Center,” one of Plaintiff’s disclosed medical providers. Counsel promptly complied with this
26 request.

27 27. On December 21, 2022, Plaintiff served his Fifth Supplemental Disclosure Statement
28 (pursuant to FRCP 26(a)(1)).

1 28. On January 4, 2023, counsel for Lowe’s received a letter from Las Vegas Surgery
2 Center, one of Plaintiff’s disclosed medical providers, indicating it found no matching records. The
3 Parties are evaluating if a different surgery center may have pertinent medical records.

4 29. On January 12, 2023, Plaintiff served Notices of Taking Deposition of the following
5 witnesses: Christine Batson; Craig Ogden; and Robert Boyd.

6 30. On January 13, 2023, counsel for Lowe’s received a letter from the Social Security
7 Administration requesting that Lowe’s request for SSA records of the Plaintiff be redirected to a
8 different one of its offices located in Las Vegas, Nevada. Counsel for Lowe’s promptly complied.

9 31. On January 20, 2023, counsel for Lowe’s sent a meet-and-confer letter to counsel for
10 Plaintiff regarding Walgreen’s and Banner Goldfield Medical Center’s rejection of the initial
11 HIPAA Releases provided by Plaintiff and requested new HIPAA Release be provided by Plaintiff
12 which would comply with the requested information from these medical providers.

13 32. On January 26, 2023, Lowe’s served its Second Supplement to FRCP 16.1
14 Disclosures (pursuant to FRCP 26(a)(1)).

15 33. On February 6, 2023, Lowe’s served its Third Supplement to FRCP 16.1 Disclosures
16 (pursuant to FRCP 26(a)(1)).

17 34. On February 6, 2023, counsel for the Parties attended a meet-and-confer telephone
18 conference to discuss ongoing joint efforts to complete the obtainment of Plaintiffs’ remaining
19 medical records and work through remaining third-party issues, and to work out the proposed dates
20 in the present Stipulation being submitted to the Court.

21 35. On February 6, 2023, counsel for Lowe’s requested updated HIPAA authorizations
22 for newly identified medical records of the Plaintiff.

23 36. On February 7, 2023, Lowe’s served its Third Supplement to FRCP 16.1 Disclosures
24 (pursuant to FRCP 26(a)(1)).

25 37. On February 8, 2023, counsel for Plaintiff followed up with counsel for Lowe’s to
26 request additional information for providing updated HIPAA authorizations.

27 38. On February 8, 2023, Plaintiff served his Sixth Supplemental Disclosure Statement
28 (pursuant to FRCP 26(a)(1)).

1 39. On February 8, 2023, Plaintiff served his Designation of Expert Witnesses (pursuant
2 to FRCP 26(a)(1)).

3 40. On February 24, 2023, counsel for Plaintiff reached out to counsel for Lowe's to
4 provide a status on efforts to provide additional HIPAA authorization, due to ongoing efforts to
5 make contact with Plaintiff.

6 41. On March 9, 2023, Plaintiff served his First Supplemental Designation of Expert
7 Witnesses (pursuant to FRCP 26(a)(1)).

8 42. On March 23, 2023, Plaintiff served his Seventh Supplemental Disclosure Statement
9 (pursuant to FRCP 26(a)(1)).

10 43. On March 2, 2023, counsel for Plaintiff served Notices to Vacate the witness
11 depositions which he had set for March 2, 2023, due to calendar conflicts which developed for both
12 sides of the case.

13 44. On March 2, 2023, counsel for Plaintiff submitted updated HIPAA authorization to
14 Lowe's medical records retrieval service to obtain Plaintiff's medical records from Walgreens
15 Pharmacy and Banner Goldfield Medical Center (located in Arizona).

16 45. On March 15, 2023, counsel for the parties met and conferred on continuing efforts
17 to reschedule witness depositions.

18 46. On March 21, 2023, counsel for Lowe's attempted to communicate with the Social
19 Security Administration to resolve ongoing delays in its production of Plaintiff's disability records
20 which had been requested.

21 47. On April 6, 2023, Plaintiff served Amended Notices of Deposition for Lowe's
22 witnesses Christine Batson, Robert Boyd, and Craig Ogden. The depositions were noticed for May
23 26, 2023, 9:00 a.m., May 26, 2023, 1:00 p.m., and May 29, 2023, 9:00 a.m., respectively. These
24 depositions, however, will not be able to move forward as noticed, due to unexpected trial
25 commitments of Plaintiff's counsel in another matter. Counsel for the parties are working to
26 reschedule these depositions.

27 48. On April 19, 2023, Plaintiff served his Eighth Supplemental Disclosure Statement
28 (pursuant to FRCP 26(a)(1)).

1 49. On April 27, 2023, counsel for Lowe’s sent a letter to Plaintiff’s counsel to request
2 a HIPAA authorization for newly identified EMT records pertaining to Plaintiff.

3 50. On May 2, 2023, counsel for Plaintiff provided HIPAA authorizations for the Las
4 Vegas Fire Department and the Henderson Fire Department related to Plaintiff.

5 51. On May 3, 2023, counsel for Lowe’s received a letter from the Social Security
6 Administration regarding some of Plaintiff’s disability records which have now been made available
7 for download pertaining to Plaintiff. Counsel for the parties are conferring on efforts to obtain
8 additional outstanding disability records of the Plaintiff from the Social Security Administration.

9 52. On May 8, 2023, Plaintiff’s counsel reached out to counsel for Lowe’s to set a new
10 schedule for witness depositions.

11 53. On May 9, 2023, counsel for Lowe’s reached out to Plaintiff’s counsel to obtain an
12 updated HIPAA authorization to obtain additionally identified medical records from one of
13 Plaintiff’s medical providers.

14 54. On May 17, 2023, the City of Henderson provided an initial response to Lowe’s
15 request for EMT records.

16 55. On May 23, 2023, Plaintiff served his Ninth Supplement to Rule 26 Disclosures.

17 56. On May 23, 2023, Walgreens provided a response to Lowe’s request for Plaintiff’s
18 pharmacy records.

19 57. On or about May 23, 2023, Plaintiff’s counsel vacated the depositions which had
20 been set for late May 2023, due to calendar conflicts which arose due to the upcoming Memorial
21 Day Holiday.

22 58. On May 25, 2023, the Social Security Administration requested fees for production
23 of documents requested pursuant to Plaintiff’s Release of disability records.

24 59. On June 6, 2023, Walgreens provided an additional response to Lowe’s request for
25 Plaintiff’s pharmacy records.

26 60. On July 7, 2023, counsel for the parties reached agreement for Plaintiff to undergo
27 an Rule 35 Examination with Dr. Clive Segil in Las Vegas, Nevada on July 24, 2023.

28 61. On July 11, 2023, the City of Henderson provided an additional response to Lowe’s

1 request for EMT records.

2 62. On June 26, 2023, Plaintiff sent Amended Notices for the depositions of Christine
3 Batson, Robert Boyd, and Craig Ogden. The depositions were noticed for November 2, 2023, 9:00
4 a.m., November 2, 2023, 1:00 p.m., and November 3, 2023, 9:00 a.m., respectively.

5 63. On July 24, 2023, pursuant to a signed stipulation, Defendant's expert, Dr. Clive
6 Segil performed a Rule 35 exam of Plaintiff.

7 64. On July 26, 2023, Plaintiffs served their Tenth Supplemental Disclosures pursuant
8 to FRCP 26(a)(1).

9 65. On July 28, 2023, Lowe's received Plaintiff's available medical records from Banner
10 Goldfield Medical Center (after multiple attempts to receive any such records).

11 66. On August 1, 2023, Lowe's served their Fourth Supplemental Disclosures pursuant
12 to FRCP 26(a)(1).

13 67. On August 16, 2023, the City of North Las Vegas provided a response to Lowe's
14 request for records pertaining to Plaintiff.

15 68. On August 23, 2023, Lowe's served their Fifth Supplemental Disclosures containing
16 the additional medical records pursuant to FRCP 26(a)(1) and report from the Rule 35 Examination
17 performed by Dr. Clive Segil pursuant to Stipulation and Order signed by this Court. ECR No. 20.

18 69. On August 23, 2023, Lowe's served their Initial Designation of Expert Witness
19 pursuant to FRCP 26(a)(2).

20 70. On September 8, 2023, after reviewing additional documents which had come in
21 from Plaintiff's medical providers, counsel for Lowe's discovered additional and new medical
22 providers of Plaintiff pertinent to evaluation of Plaintiff's claims and Lowe's defenses. As a result,
23 additional HIPAA releases were formally requested from Plaintiff's counsel pertaining to these
24 additional, new medical providers.

25 71. On September 12, 2023, Plaintiff provided additional authorizations pertaining to the
26 newly identified medical providers of Plaintiff to enable Lowe's to obtain additional medical records
27 regarding pre-existing injuries and treatments of the Plaintiff.

28 72. On September 13, 2023, Plaintiff's counsel indicated to Lowe's counsel that Plaintiff

1 agrees to dismiss his wage loss/loss of earning capacity claims. A stipulation to this effect is
2 presently being prepared by the parties and will be submitted to the Court in the very near future to
3 be entered as a formal Order.

4 73. On September 22, 2023, Plaintiff served the following amended notices of
5 depositions: (1) Christine Batson for November 8, 2023; (2) Robert Boyd for November 8, 2023;
6 and (3) Craig Ogden for November 9, 2023.

7 74. Lowe's is in the process of serving an Amended Notice of Deposition of Plaintiff.

8 **C. DESCRIPTION OF DISCOVERY THAT REMAINS TO BE COMPLETED**

9 The following discovery remains to be completed in the present action:

10 1. Deposition of the Plaintiff (in the process of being set, likely prior to the end of 2023,;
11 the parties are currently awaiting production of key medical records concerning prior accidents and
12 pre-existing injuries from East Valley Rheumatology and Osteoporosis, Phoenix Neurological &
13 Pain Institute, Arizona Orthopedic, and Loyola University Medical Center).

14 2. Depositions of Percipient Witnesses.

15 3. Depositions of Lowe's employees (currently set prior to end of 2023, as noted
16 above).

17 4. Possible Disclosure of Additional Defense Expert Witness Disclosures (after
18 completion of the depositions noted above).

19 6. Rebuttal Expert Witness Disclosures.

20 7. Expert Witness Depositions.

21 **D. REASONS WHY DISCOVERY HAS NOT BEEN COMPLETED**

22 As noted in the prior requests to enlarge the Discovery Plan and Scheduling Order [ECF No.
23 12, 14 and 17], the ongoing focus to date by the parties in this case has been completing discovery
24 not just related to Plaintiff's alleged injuries and ongoing medical care, but to several prior
25 injuries/accidents involving the Plaintiff which have been identified as discovery has been
26 performed which naturally relate to Plaintiff's claims and Lowe's defenses. Plaintiff has an
27 extensive history of prior medical treatment and injuries which has required an extensive amount of
28 time to evaluate, due to the slow pace of former medical providers in retrieving and producing

1 pertinent medical records (e.g., records located in other states). Many of the relevant medical
2 records which have become the subject of discovery pre-date the date of the subject incident by
3 several years and have required additional time to obtain, despite the best efforts of counsel to obtain
4 them in a timely fashion. In many cases thus far, the parties have been able to obtain Plaintiff's
5 older, relevant medical records. Lowe's is currently utilizing a medical record retrieval service in
6 attempts to more rapidly obtain medical records. Moreover, counsel for the Parties have
7 experienced delays from third-party sources in obtaining information requested in discovery, despite
8 the best efforts of counsel to obtain them in a timely fashion. Furthermore, it took time for the
9 parties to complete discovery for Plaintiff to evaluate and determine whether he planned to proceed
10 with claims for loss of wages/loss of earning capacity and earning capacity. As noted above, the
11 parties plan to submit an agreed-upon stipulation to dismiss Plaintiff's loss of wages and earning
12 capacity claim in the very near future.

13 As noted in prior filings, there have also been availability issues of counsel for the Parties
14 this year, due to commitments which occurred in other cases, and unexpected absences of staff
15 members on both sides of the case. Counsel for both of the Parties have also dealt with personal
16 matters outside of the office which has delayed further progress on discovery in this matter,
17 including illness of family members or issues which arose with family members which have required
18 time away from work. Counsel for Lowe's has also unfortunately been dealing with a lingering
19 personal illness which began in October 2022, requiring ongoing medical assessment and care,
20 which has taken time away from law practice, and which has not yet resolved. Because of the above
21 issues and to help prevent any unnecessary delays in the prosecution of this case, counsel for Lowe's
22 brought associate attorney Vivenne Rakowsky into the case to assist with further discovery (see
23 ECF No. 16), which has helped to keep this case moving in a forward direction.

24 In light of all of the above, the Parties believe good cause exists for extending the dates set
25 forth in the current Discovery Plan and Scheduling Order. Counsel for the Parties have diligently
26 been working together to further this case along and have been able to avoid to date any discovery
27 disputes which would require court involvement. Counsel for the parties have been in regular
28 communication with each other regarding their continuing good-faith efforts to move discovery

1 forward. The parties are also considering schedule within the next few months a private mediation
 2 in this matter.

3 **E PROPOSED SCHEDULE FOR COMPLETING REMAINING DISCOVERY**

EVENT	CURRENT DEADLINE (ECF No. 37)	PROPOSED NEW DATES (extended 120 days)
Amend Pleadings/Add Parties	(no change)	(no change)
Initial Expert Disclosures	October 9, 2023	February 6, 2024
Rebuttal Expert Disclosures	November 9, 2023	March 8, 2024
Close of Discovery	December 7, 2023	April 5, 2024
Dispositive Motions	January 8, 2024	May 7, 2024
Pre-Trial Order	February 7, 2024	June 6, 2024

14 This fourth request for an extension of time is not sought for delay or any other improper
 15 purpose. As the Court will note, as this case has progressed, the Parties have incrementally
 16 requested only 120 day extensions in good faith attempt to keep this case moving forward. The
 17 Parties seek this extension to allow sufficient time to complete remaining discovery and to prepare
 18 their respective cases for trial, should private mediation not resolve this litigation. The Parties
 19 stipulate and submit that the reasons set forth above constitute excusable neglect and/or good cause
 20 for the extension.
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Accordingly, the Parties respectfully request that this Court extend the operative discovery plan and scheduling order by one-hundred twenty (120) days as indicated in the above table.

DATED this 6th day of October, 2023.

DATED this 6th day of October, 2023.

THE POWELL LAW FIRM

**LEWIS BRISBOIS BISGAARD & SMITH
LLP**

/s/ Ryan O'Malley

/s/ Vivienne Rakowsky

Paul D. Powell, Esq.
Nevada State Bar No. 7488
Ryan T. O'Malley, Esq.
Nevada Bar No. 12461
Traysen N. Turner, Esq.
Nevada Bar No. 16017
Thomas W. Stewart, Esq.
Nevada State Bar No. 14280
8918 Spanish Ridge Avenue, Suite 100
Las Vegas, Nevada 89148
Attorneys for Plaintiff

Marc S. Cwik, Esq.
Nevada Bar No. 006946
Vivienne Rakowsky
Nevada Bar No. 9160
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
*Attorney for Defendant Lowe's Home
Centers, LLC*

ORDER

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

Dated: 10-12-2023