

1 **I. DISCOVERY AND FILINGS COMPLETED TO DATE**

2 1. On July 27, 2023, Kohl’s served Requests for Admissions, Requests for Production,
3 and Interrogatories to Plaintiff.

4 2. On July 27, 2023, Kohl’s served its Initial FRCP 26(a)(1) Disclosures;

5 3. On July 31, 2023, SharkNinja served its Initial FRCP 26(a)(1) Disclosures;

6 4. On July 31, 2023, SharkNinja served Requests for Admissions, Requests for
7 Production, and Interrogatories to Plaintiff;

8 5. On July 31, 2023, Plaintiff served its Initial FRCP 26(a)(1) Disclosures;

9 6. On August 11, 2023, Kohl’s noticed an Independent Medical Examination of Plaintiff,
10 scheduled for September 8, 2023.

11 7. On August 22, 2023, Plaintiff requested an extension until September 11, 2023 to
12 respond to Kohl’s Requests for Admissions, Requests for Production, and Interrogatories.

13 8. On September 5, 2023, Plaintiff requested an extension until September 11, 2023 to
14 respond to SharkNinja’s Requests for Admissions, Requests for Production, and Interrogatories.

15 9. On September 6, 2023, Plaintiff served its responses to Kohl’s Requests for
16 Admissions, Requests for Production, and Interrogatories.

17 10. On September 6, 2023, Kohl’s noticed Plaintiff’s deposition for September 26, 2023.

18 11. On September 8, 2023, the Independent Medical Examination was conducted.

19 12. On September 26, 2023, Plaintiff’s deposition was conducted.

20 13. Both before and during Plaintiff’s deposition, SharkNinja’s counsel sought information
21 regarding the exact model number and manufacturing date of the at-issue product.

22 14. Plaintiff’s counsel provided the requested information, through service of amended
23 discovery responses, on or about October 18, 2023.

24 15. Although Plaintiff’s deposition was conducted on September 26, 2023, the transcript
25 did not become available to SharkNinja until October 31, 2023.

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1 **II. DISCOVERY TO BE COMPLETED AND REASONS WHY THE DISCOVERY**
2 **WAS NOT COMPLETED**

3 Plaintiff and Defendants respectfully request an extension of the discovery deadlines to allow
4 time for the following activities to be completed:

- 5 1. **Inspection of the Product and Packaging:** SharkNinja has asked to inspect the Product and
6 Packaging (at issue in this case) under its Rule 34 Requests for Production. Plaintiff initially
7 required more time to respond to SharkNinja’s discovery requests, thus preventing immediate
8 inspection of the Product and Packaging. Upon providing her response, SharkNinja was
9 provided only with photos of the Product and Packaging. SharkNinja requires time to identify
10 exemplars of the Product and Packaging that are consistent with the photographs provided by
11 Plaintiff. An inspection of such Product and Packaging, or at least suitable exemplars, is
12 necessary for the proper evaluation and litigation of this case, and furthermore may be
13 necessary to the extent the Defendants seek an expert opinion on the adequacy of the Product
14 and Packaging.
- 15 2. **Inspection of the Incident Location:** SharkNinja seeks an inspection of the Kohl’s location at
16 which Plaintiff’s injury allegedly occurred. Due to scheduling conflicts with possible experts
17 and the store manager of the subject Kohl’s location, no site visit has yet been scheduled.
- 18 3. **Medical Examination Reports:** The medical examination report due under Rule 35(b) has
19 not been served. The parties scheduled the medical examination for September 8, 2023, which
20 was among the earliest times that it could have been scheduled, per the schedules of Plaintiff
21 and the examining doctor. Moreover, a full collection of medical records for the examining
22 doctor’s review has not yet been obtained, as Defendants are still waiting for responses from
23 medical providers, and such records may be used in the examination report.
- 24 4. **Record Collection:** Plaintiff has had an extensive history of neck and back pain, which
25 directly impacts her allegations of back injury in this case. From the outset of the case,
26 Defendants have sought to collect relevant medical records from Plaintiff’s treating
27 physicians. Some records could not be requested until Plaintiff’s deposition transcript became
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1 available on October 31, 2023, as Plaintiff identified additional medical providers at the time
2 of her deposition.

3 5. **Expert witnesses' reports:** Expert witness reports are currently due on December 7, 2023;
4 given the information listed herein, the Parties agree that the remaining time between now and
5 December 7, 2023 is inadequate to obtain an expert opinion and report, given that medical
6 records are still outstanding, the Kohl's site visit has yet to occur, and an inspection of the
7 Product and Packaging (or suitable examples) has not been completed.

8 6. **Expert witnesses' depositions:** Expert witness depositions are expected to be completed after
9 the disclosure of expert witnesses pursuant to this Court's order. The Parties will likely retain
10 multiple expert witnesses. It will take additional time to coordinate, prepare for, and take the
11 depositions.

12 7. **Possible supplemental discovery:** More supplemental discovery may be required depending
13 on the answers to Plaintiff's discovery responses, including but not limited to her deposition
14 testimony. This may also include the identification and deposition of fact witnesses. Moreover,
15 the extension will allow the parties to do any necessary follow up discovery after responses to
16 initial rounds of written discovery are served, deposing later-identified witnesses and experts,
17 and obtaining any additional medical records.

18 **III. GOOD CAUSE EXISTS FOR A DISCOVERY EXTENSION**

19 The parties have been diligently conducting discovery in this matter, as evidenced by the
20 prompt exchange of written discovery, the scheduling of independent medical examinations, the
21 cooperation with respect to written discovery, and the scheduling of depositions.

22 The primary reason for seeking this extension is the difficulty in obtaining expert opinions and
23 reports by the December 7 deadline. Seeking such an extension at this time is necessary and prudent,
24 in order to ensure that such a request is made in advance of the deadline. A number of things still must
25 occur before the Parties can produce expert disclosures, especially in light of the qualification and
26 reliability standards imposed by Rule 702. For example:

- 27 • Defendants must conduct a site inspection of the alleged incident location;
- 28 • Defendants must inspect the Product and its Packaging, per its Rule 34 request;

- 1 • Defendants must collect medical records of Plaintiff predating the incident;
- 2 • the examination doctor must prepare his Rule 35(b) report.

3 The Parties have been diligently working to accomplish these tasks, all of which are necessary before
 4 an expert witness could obtain an opinion on the issues in the case, let alone prepare a report meeting
 5 the requirements of Rule 26(a)(2)(B).

6 In light of the above, the Parties have agreed to extend the current discovery deadlines by
 7 approximately 30 days. This additional time will permit the Parties to accomplish the above tasks in
 8 sufficient time for experts to prepare the necessary opinions and reports. All Parties agree with the
 9 proposed extension. As such, neither party is prejudiced by the additional time necessary for the time
 10 to prepare expert witness disclosures. Counsel for the parties have been diligently working together to
 11 prepare this stipulation and obtain an extension of the current discovery and litigation deadlines.

12 All of the aforementioned circumstances constitute good cause to extend the remaining
 13 discovery deadlines, and the parties jointly in good faith request this Court enter an Order extending
 14 the discovery deadlines in accordance with their stipulation.

15 **PROPOSED REVISED DISCOVERY PLAN**

16 A. Summary of Proposed Changes

17 The parties hereby stipulate to continue the discovery deadlines and dispositive motion
 18 approximately 30 days, which the parties estimate to be necessary for the discovery listed above.

	Present Date	Proposed New Date
19 Initial expert disclosure for all parties:	12/7/23	1/11/24
20 Rebuttal expert disclosure for all parties:	1/8/24	2/8/24
21 Discovery cutoff:	3/6/24	4/3/24
Dispositive motions:	3/6/24	4/3/24
22 Joint proposed pretrial order:	4/5/24	5/6/24, or 30 days after resolution of dispositive 23 motion.

24 B. Discovery cut-off date: April 3, 2024.

25 C. Dispositive Motions: Dispositive motions may be filed no later than April 3, 2024, which is
 26 twenty-eight (28) days from the discovery cut-off date. In the event that the discovery period is
 27 extended from the discovery cut-off date set forth in this Stipulation and Order to Extend Discovery
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1 Deadlines and Scheduling Order (First Request), the date for filing dispositive motions shall likewise
2 be extended, to be no later than thirty (30) days from the subsequent discovery cut-off date.

3 E. Pretrial Order: The pretrial order shall be filed by May 6, 2024, or 30 days after resolution
4 of dispositive motions. In the event dispositive motions are filed, the date for filing the joint pretrial
5 order shall be suspended until thirty (30) days after the decision of the dispositive motions or until
6 further order of the Court.

7 Dated: November 16, 2023.

8 **EVANS FEARS SCHUTTERT MCNULTY**
9 **MICKUS**

DEAVER & CRAFTON

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25 **IT IS SO ORDERED.**

26 
UNITED STATES MAGISTRATE JUDGE

27 DATED: November 17, 2023

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