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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

**PLAINTIFF'S MOTION TO
MODIFY THE SCHEDULING
ORDER (ECF NO. 49) TO EXTEND
THE DISCOVERY CUT-OFF AND
RELATED DEADLINES
(First Request)**

Plaintiff Pastor Steve Smothermon, by and through undersigned counsel, moves this Court under Federal Rule of Civil Procedure 16(b)(4) (NV R USDCT LR IA 6-1) and Local Rules 26-3 and IA 6-1 for an order modifying the Joint Discovery Plan and Scheduling Order (ECF No. 49) to extend the discovery cut-off from September 18, 2026, to December 31, 2026, and to adjust the dispositive-motion and joint-pretrial-order deadlines accordingly. This Motion is supported by the following Memorandum of Points and Authorities, the concurrently filed Declaration of Nicole A. Westbrook and its exhibits, and the papers and pleadings on file.

This is Plaintiff's first request to extend the discovery cut-off deadline set in

1 the Scheduling Order (ECF No. 49).

2 Pursuant to Local Rule IA 6-1, undersigned counsel states that no prior
3 extension of the discovery cut-off has been sought or granted, and that the reasons
4 for the requested extension are set forth in full below.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Good cause exists to extend the discovery cut-off by approximately fourteen
8 weeks. Two independent circumstances — neither the product of any lack of
9 diligence by Plaintiff — make the current September 18, 2026, cut-off impossible to
10 meet.

11 First, Defendants’ document production remains materially incomplete.
12 Defendants’ early responses represented under oath that no responsive documents
13 existed. Even though the discovery requests were served April 22, 2026, only on
14 June 10 and 11, 2026 did Defendants amend those responses to admit that Kevin
15 Hodge conducted the image search “in Google’s incognito mode” and therefore has
16 “no record of the search,” and to produce for the first time the same-day notice
17 (HODGE000136–000138) that the photograph was “INCORRECT” and depicted
18 “Pastor Steve Smothermon.” The native image file with metadata, the Google
19 account/search-activity data, and the Meta/Facebook platform logs central to
20 Plaintiff’s claims have still not been produced. Plaintiff has diligently pursued this
21 material through four sets of written discovery and repeated meet-and-confer
22 correspondence, and will promptly move to compel; the targeted depositions that
23 remain cannot responsibly proceed until that production is resolved.

24 Second, Plaintiff underwent major lumbar spinal-fusion surgery on July 1,
25 2026. His treating physician has confirmed that Plaintiff is on bed rest and pain
26 medication, cannot sit or concentrate, and cannot participate in any proceeding — in
27 person or by video — with the soonest date for renewed activity being early

1 November 2026. That incapacity prevents not only Plaintiff's deposition but his
2 ability to assist counsel in the very case preparation and follow-up that the remaining
3 discovery requires.

4 Plaintiff requests a cut-off of December 31, 2026. That date is deliberately set
5 past Plaintiff's anticipated early-November return so that his deposition and any
6 reasonable follow-up discovery it generates can be completed, and so that the parties
7 are not forced to conduct the case's most important discovery in the compressed
8 weeks of the year-end holiday season. No trial date has been set, and Defendants
9 identify no concrete prejudice from a schedule that simply permits the remaining,
10 already-identified discovery to be completed on a full record.

11 II. RELEVANT PROCEDURAL BACKGROUND

12 The Court entered the Scheduling Order on April 10, 2026, setting a discovery
13 cut-off of September 18, 2026, a dispositive-motion deadline of October 19, 2026,
14 and a joint-pretrial-order deadline of November 18, 2026. Joint Discovery Plan and
15 Scheduling Order at 5. This Motion is filed more than twenty-one days before the
16 discovery cut-off. See LR 26-3. NV R USDCT LR 26-3.

17 Plaintiff has actively prosecuted discovery throughout the period. He served
18 initial disclosures on schedule, propounded four sets of written discovery on
19 Defendants, issued repeated meet-and-confer letters addressing Defendants'
20 deficient responses and preservation obligations, and timely served his expert
21 disclosure. The details are set out in the accompanying Westbrook Declaration.

22 On July 1, 2026, Plaintiff filed his Motion for Leave to File a First Amended
23 Complaint (ECF No. 52), which the Court took under submission following the
24 August 3, 2026, hearing. Minute Order Motion to Amend Hearing at 1. Also on July
25 1, 2026, Plaintiff underwent major lumbar surgery. On August 14, 2026, his treating
26 physician, Dr. Diego Gonzalez, confirmed in writing that Plaintiff cannot travel for
27 at least three months, is confined to bed rest, and — because of pain, lack of sleep,

1 and the effects of his medications — cannot sit, concentrate, or participate in any
2 hearing, deposition, or other proceeding, including by Zoom or other remote means,
3 with the soonest possible date being early November 2026. Westbrook Decl. Ex. A.

4 On August 13, 2026, Defendants filed their own motion to modify the
5 Scheduling Order (ECF No. 66), seeking a limited extension to November 30, 2026,
6 solely to take Plaintiff’s deposition, and a corresponding extension of only their own
7 dispositive-motion deadline. ECF No. 66 at 1. This Motion overlaps with, and
8 responds to, the relief in ECF No. 66.

9 III. LEGAL STANDARD

10 A scheduling order “may be modified only for good cause and with the
11 judge’s consent.” Fed. R. Civ. P. 16(b)(4). The good-cause inquiry “primarily
12 considers the diligence of the party seeking the modification,” and the schedule may
13 be modified where it “cannot reasonably be met despite the diligence of the party
14 seeking the extension.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th
15 Cir. 1992). Diligence is “measured by the movant’s conduct throughout the entire
16 period of time already allowed.” *Ramos v. Sables, LLC*, No. 2:25-CV-00776-APG-
17 BNW, 2026 WL 2099183 (D. Nev. July 21, 2026).

18 Local Rule 26-3 requires that a motion to extend a discovery deadline, filed
19 (as this one is) more than twenty-one days before the deadline, show good cause,
20 and include: (a) a statement of the discovery completed; (b) a specific description of
21 the discovery that remains; (c) the reasons the deadline cannot be met; and (d) a
22 proposed schedule for completing the remaining discovery. NV R USDCT LR 26-
23 3. Each element is addressed below.

24 This Court applied these same standards weeks ago in *Ramos v. Sables, LLC*,
25 2026 WL 2099183 (D. Nev. July 21, 2026), where it granted a limited extension for
26 remaining depositions. The moving party there had conducted little discovery over
27 a long, twice-extended period, yet the Court found good cause because a genuine

1 impediment largely outside the party’s control (counsel’s illness) explained the delay
 2 and the remaining discovery was limited in scope. *Ramos v. Sables, LLC*, No. 2:25-
 3 CV-00776-APG-BNW, 2026 WL 2099183 (D. Nev. July 21, 2026). Plaintiff’s
 4 showing here is stronger: he has diligently pursued discovery throughout, the
 5 impediment is his own documented, post-surgical incapacity, and the remaining
 6 discovery is defined and finite.

7 IV. ARGUMENT

8 *A. Good Cause Exists Because the Deadline Cannot Be Met Despite Plaintiff’s* 9 *Diligence*

10 Plaintiff has been diligent throughout the discovery period. As detailed in the
 11 Westbrook Declaration, he served four sets of written discovery, pressed Defendants
 12 through successive meet-and-confer letters on their deficient production and
 13 preservation failures, and timely disclosed his expert. The reason the remaining
 14 discovery cannot be completed by September 18 is not inaction — it is (1)
 15 Defendants’ still-incomplete production of the native file, Google activity data, and
 16 Meta logs, which are prerequisites to the remaining depositions, and (2) Plaintiff’s
 17 medically confirmed incapacity. Where the delay is caused by the opposing party’s
 18 production and by an impediment outside the movant’s control, good cause is
 19 satisfied. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992);
 20 *Ramos v. Sables, LLC*, No. 2:25-CV-00776-APG-BNW, 2026 WL 2099183 (D.
 21 Nev. July 21, 2026).

22 *B. Plaintiff’s Post-Surgical Incapacity Prevents Both His Deposition and His* 23 *Participation in the Case*

24 Dr. Gonzalez’s letter establishes that Plaintiff is not merely unavailable to
 25 travel. He is confined to bed rest, is in pain, is sleep-deprived, and is taking
 26 medications that make it difficult for him “to sit, concentrate, or remain wakeful.”
 27 Ex A at 1. He is directed not to sit “in front of a computer/camera for any period of

1 time,” is managing nausea and other symptoms, and “should not be enduring any
2 added stress.” *Id.* The physician’s opinion is unequivocal that Plaintiff “is unable to
3 attend any hearings by Zoom, or other type of video, audio or in-person proceeding
4 whether involving court or deposition testimony or any interview, or otherwise be
5 interviewed for any reason.” *Id.* at 2. The soonest he may resume activity is early
6 November 2026. *Id.*

7 This is why Defendants’ proposed accommodations do not solve the problem.
8 Defendants offered to take Plaintiff’s deposition remotely, in shortened sessions, or
9 at a location of his choosing. ECF No. 66 at 4. Each of those accommodations
10 assumes a witness who can sit, focus, and testify reliably — and Plaintiff cannot. A
11 deposition taken while Plaintiff is medicated, sleep-deprived, in pain, and unable to
12 concentrate would not produce reliable testimony and would not be fair to either
13 side. The same incapacity that prevents his testimony also prevents him from
14 meaningfully assisting counsel in preparing for his deposition and in evaluating the
15 discovery that must precede it. The accommodations address logistics; they do not
16 address Plaintiff’s medical inability to participate at all until he recovers.

17 *C. The Requested December 31, 2026 Date Is Tailored, Not Open-Ended*

18 Plaintiff does not seek an indefinite or wholesale reopening of the case. He
19 seeks a defined extension calibrated to the two obstacles identified above. Because
20 Plaintiff is not expected to be able to participate until early November 2026, a cut-
21 off at or near that date — as Defendants propose — would leave no room to (1) take
22 Plaintiff’s deposition once he is able, (2) complete the individual and Rule 30(b)(6)
23 depositions that depend on Defendants’ outstanding production, and (3) conduct any
24 limited follow-up that Plaintiff’s deposition or the supplemental production
25 reasonably generates. December 31, 2026, provides a realistic and modest window
26 for that sequence to occur, and accounts for the year-end holiday period, during
27 which counsel, parties, and third-party witnesses are frequently unavailable. Setting

1 the date at year-end avoids the near-certainty of a second extension motion that a
 2 November cut-off would invite. This is the tailored, scope-limited relief this Court
 3 found appropriate in *Ramos*. *Ramos v. Sables, LLC*, No. 2:25-CV-00776-APG-
 4 BNW, 2026 WL 2099183 (D. Nev. July 21, 2026).

5 *D. No Party Is Prejudiced and Judicial Economy Is Served*

6 No trial date has been set, and the Scheduling Order already provides that the
 7 joint-pretrial-order deadline is suspended while dispositive motions are pending.
 8 Joint Discovery Plan and Scheduling Order at 5. The requested extension therefore
 9 requires no continuance of any trial setting and prejudices no one. Defendants
 10 themselves concede that Plaintiff's deposition should occur once he is able and that
 11 their own dispositive-motion deadline should move to accommodate it. ECF No. 66
 12 at 1. Extending the schedule for both sides — rather than only for Defendants —
 13 ensures the case is decided on a complete record and avoids the piecemeal,
 14 successive-motion practice that a narrower extension would produce.

15 V. STATEMENT REQUIRED BY LOCAL RULE 26-3

16 (a) Discovery completed. Plaintiff disclosed Rule 26(a)(1) initial disclosures
 17 on or before April 10, 2026; Defendants did not disclose any document or category
 18 of documents in their possession contrary to Rule 26. Plaintiff served four sets of
 19 written discovery (interrogatories, requests for production, and requests for
 20 admission) on Defendants and responded to Defendants' multiple sets of written
 21 discovery. Plaintiff served his expert disclosure on July 16, 2026. Defendants have
 22 taken the depositions of non-parties Thomas Carroll (July 21, 2026), Krisha Mason
 23 (August 11, 2026), and Michael Morin (August 11, 2026), and of Plaintiff's expert,
 24 Robert Fisher (August 6, 2026). The parties have engaged in extensive meet-and-
 25 confer correspondence regarding Defendants' production. Plaintiff attempted to
 26 serve a subpoena on non-party Nathan Hughes, who Defendants allege actually
 27 removed the offending post for the Hodgetwins. Defendants' counsel offered to

1 accept and waive service of the subpoena for Mr. Hughes, but when undersigned
 2 counsel sent it over to Defendants' counsel – they withdrew their agreement to
 3 accept service. Counsel is still trying to obtain the cooperation of the third-party
 4 witnesses who worked directly for the Defendants but have not received responses
 5 to subpoenas served on Kylie Howerton, and Blake Rynders or obtained discovery
 6 or dates certain for the deposition of Nathan Hughes. Additional detail is set out in
 7 the Westbrook Declaration.

8 (b) Discovery remaining. (1) The depositions of the individual Defendants
 9 Keith Hodge and Kevin Hodge; (2) the depositions of Defendants' agents Nathan
 10 Hughes and Kylie Howerton (or a Bigly representative); (3) a Rule 30(b)(6)
 11 deposition of Hodgetwins, LLC on electronically-stored-information systems,
 12 preservation practices, and agent authority; (4) the deposition of Plaintiff Pastor
 13 Steve Smothermon; (5) Defendants' production of the native photograph file with
 14 metadata, the Google "My Activity"/Takeout data (or a verified statement that none
 15 exists), and the Meta activity/audit logs and any remaining Insights data; and (6) any
 16 supplemental production ordered on Plaintiff's forthcoming motion to compel,
 17 together with limited follow-up arising from that production or from Plaintiff's
 18 deposition.

19 (c) Reasons the deadline cannot be met. As set forth above, the remaining
 20 discovery cannot be completed by September 18, 2026 because (1) Defendants'
 21 production of the native file, Google activity data, and Meta logs remains incomplete
 22 despite Plaintiff's diligent meet-and-confer efforts and a forthcoming motion to
 23 compel, and the remaining depositions cannot responsibly proceed until that material
 24 is produced; and (2) Plaintiff is medically incapacitated following July 1, 2026
 25 lumbar surgery and cannot be deposed or assist in case preparation before, at the
 26 earliest, early November 2026.

27 (d) Proposed schedule. Plaintiff proposes the following, with corresponding

adjustments to the dependent deadlines:

Event	Current	Proposed
Discovery cut-off	September 18, 2026	December 31, 2026
Dispositive motions	October 19, 2026	February 1, 2027
Joint pretrial order	November 18, 2026	March 1, 2027 (or, if dispositive motions are pending, 30 days after their resolution per ECF No. 49 ¶ 7)

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court modify the Scheduling Order (ECF No. 49) to extend the discovery cut-off to December 31, 2026, extend the dispositive-motion deadline to February 1, 2027, and extend the joint-pretrial-order deadline to March 1, 2027 (subject to the suspension provision in ECF No. 49 ¶ 7). A proposed order is submitted herewith.

Respectfully submitted this 17th day of August, 2026.

/s/ Nicole A. Westbrook

Nicole A. Westbrook

G. Michael Jackson Esq.

JONES, DAVIS & JACKSON, P.C.

Attorneys for Pastor Steve

Smothermon

CERTIFICATION OF CONFERRAL (LR IA 1-3(f) and LR 26-6)

Undersigned counsel certifies that, after personal consultation and a sincere effort to resolve the matter, counsel for the parties have been unable to agree on the relief requested. Counsel for Plaintiff conferred with counsel for Defendants regarding an extension of the discovery cut-off and related deadlines. Defendants

1 oppose the relief requested in this Motion. This is Plaintiff's first request to modify
2 the deadlines set in the Scheduling Order (ECF No. 49).

3 /s/ Nicole A. Westbrook

4
5 **CERTIFICATE OF SERVICE**

6
7 I HEREBY CERTIFY that on August 17, 2026, I caused the foregoing
8 document to be electronically filed with the Clerk of the Court using CM/ECF. I
9 further certify that a true and correct copy of the foregoing document was served
10 on all counsel of record via transmission of Notices of Electronic Filing generated
11 by CM/ECF.

12 Marc J. Randazza, NV Bar No. 12265
13 Ronald D. Green, NV Bar No. 7360
14 Alex J. Shepard, NV Bar No. 13582
15 RANDAZZA LEGAL GROUP, PLLC
16 8991 W. Flamingo Rd., Ste. B
17 Las Vegas, NV 89147

18 *Attorneys for Defendants*
19 *Keith Hodge, Kevin Hodge, and Hodgetwins, LLC*

20 /s/ Nicole A. Westbrook

G. Michael Jackson, State Bar No. 1894
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Attorneys for Plaintiff Pastor Steve Smothermon

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

**DECLARATION OF NICOLE A.
WESTBROOK IN SUPPORT OF
PLAINTIFF'S MOTION TO
MODIFY THE SCHEDULING
ORDER**

I, Nicole A. Westbrook, declare as follows:

1. I am an attorney admitted pro hac vice in this action and counsel of record for Plaintiff Pastor Steve Smothermon. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would testify competently to them. I make this Declaration in support of Plaintiff's Motion to Modify the Scheduling Order.

2. Plaintiff has been diligent in discovery. Since the entry of the Scheduling Order on April 10, 2026, Plaintiff has actively pursued discovery. Plaintiff timely disclosed Rule 26(a)(1) initial disclosures; followed up on Defendants' failure to make any disclosure of document or category of document in

1 their possession; served four sets of interrogatories, requests for production, and
2 requests for admission on Defendants beginning April 22, 2026; responded to
3 Defendants' several sets of written discovery; and served his expert disclosure on
4 July 16, 2026.

5 3. Throughout the period, I and co-counsel sent Defendants repeated
6 meet-and-confer correspondence identifying deficiencies in their document
7 production, their initial representations that no responsive documents existed, and
8 their preservation obligations, and requesting production of the native photograph
9 file with metadata, Google account/search-activity data, and Meta/Facebook
10 platform logs. Copies of the principal meet-and-confer correspondence are attached
11 collectively as Exhibit B.

12 4. Defendants' early written-discovery responses stated under oath that no
13 responsive documents existed. Only on June 10 and 11, 2026 did Defendants amend
14 those responses to admit that Kevin Hodge performed the image search in "Google's
15 incognito mode" and has "no record of the search," and to produce for the first time
16 the same-day notice (Bates HODGE000136–000138) that the photograph was
17 "INCORRECT" and depicted "Pastor Steve Smothermon." As of the date of this
18 Declaration, Defendants have not produced the native photograph file with intact
19 metadata, the Google "My Activity"/Takeout data, or the Meta activity/audit and
20 Insights logs. Plaintiff intends to move to compel that production. The individual,
21 agent, and Rule 30(b)(6) depositions that remain cannot responsibly be taken until
22 that material is produced.

23 5. On July 1, 2026, Plaintiff underwent major lumbar spinal-fusion
24 surgery (removal and vertebra-replacement fusion of L5–S1 with nerve
25 decompression). On August 14, 2026, Plaintiff's treating physician, Dr. Diego
26 Gonzalez of New Mexico Pain Associates, provided a written statement regarding
27 Plaintiff's condition and restrictions, a true and correct copy of which is attached as

1 Exhibit A. As set forth in Exhibit A, Plaintiff is confined to bed rest, is in significant
2 pain, is sleep-deprived, and is taking medications that make it difficult for him to sit,
3 concentrate, or remain wakeful; he cannot sit in front of a computer or camera; and
4 he is unable to attend any hearing, deposition, or other proceeding, whether in person
5 or by video or audio means, with the soonest possible date for renewed activity being
6 early November 2026.

7 6. Based on Exhibit A and on my firm's communications with Plaintiff
8 since his surgery, Plaintiff is presently unable to assist counsel in the preparation of
9 his case. Because of his pain, lack of sleep, and medication, he cannot review
10 materials, focus on case matters for any sustained period, or prepare for or give
11 reliable deposition testimony. For the same reasons, the accommodations
12 Defendants have proposed — a remote deposition, shortened sessions, or a
13 deposition at a location of Plaintiff's choosing — would not enable Plaintiff to
14 participate meaningfully or to testify reliably. The obstacle is not the logistics of the
15 deposition; it is Plaintiff's medical inability to participate at all until he recovers.

16 7. I conferred with counsel for Defendants regarding an extension of the
17 discovery cut-off and the related deadlines. Defendants oppose the extension
18 requested in this Motion. On August 13, 2026, after attempting to confer with
19 Defendants on an extension, Defendants filed their own motion (ECF No. 66)
20 seeking a narrower extension limited to Plaintiff's deposition and to their own
21 dispositive-motion deadline.

22 8. This is Plaintiff's first request to extend the discovery cut-off deadline
23 set in the Scheduling Order (ECF No. 49).
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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed on August 17, 2026, at Jefferson County, Colorado.

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7 Nicole A. Westbrook
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Diego Gonzalez, M.D

8100 Wyoming Blvd NE, Suite M4 #308
Albuquerque, NM 87122
(505) 633-4141

August 14, 2026

Re: Pastor Steve Smothermon Medical Excuse

To Whom It May Concern:

Pastor Steve Smothermon had major back surgery on July 1, 2026 at the Barrow Brain and Spine in Gilbert, Arizona. The back surgery involved removal and vertebra replacement fusion of L5-S1; with nerve decompression.

As a result of the back surgery, he will not be able to travel for at least three (3) months, at which time he will be evaluated to determine his recovery. Pastor Steve continues to have limited mobility with strict physical limitations during the convalescent period.

His movements are significantly restricted, and he is limited to bed rest.

1. Pastor Steve should not be sitting upright in front of a computer/camera for any period of time this close in time to surgery;
2. Pastor Steve will be suffering from pain and lack of sleep as his body is healing;
3. Pastor Steve is on medications that would make it difficult to sit, concentrate, or remain wakeful;
4. Pastor Steve remains nauseous or managing other symptoms that would prevent him from sitting still during a court hearing, deposition, or meeting;
5. Pastor Steve should not be enduring any added stress; and
6. As a result of Pastor Steve's medical condition, he is unable to attend any hearings by ZOOM, or other type of video, audio or in-person proceeding whether involving court or deposition testimony or any interview, or otherwise be interviewed for any reason.
7. The soonest Pastor Steve may be able to travel would be early November, subject to re-evaluation.

As Pastor Steve's treating doctor managing his care my opinions are based as to a reasonable degree of medical probability. Should you have any questions, please call my cell at 505-250-7361.

Best,


Diego Gonzalez, M.D.

JONES, DAVIS & JACKSON, PC

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April 21, 2026

VIA EMAIL: mjr@randazza.com

Marc Randazza
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8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

***Re: Meet and Confer Regarding Defendants' Deficient Rule 26 Initial Disclosures
Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-01858-APG-BNW.***

Dear Mr. Randazza,

We write to initiate the meet-and-confer process regarding Defendants' Rule 26(a)(1) Initial Disclosures, which your office served on April 9, 2026. Upon review, the disclosures are facially deficient and fail to comply with the Federal Rules of Civil Procedure. We ask that your clients promptly supplement these disclosures to cure the defects outlined below.

1. Improper and Deficient Document Disclosures (Rule 26(a)(1)(A)(ii)).

In Section 2.0 of your disclosures, you state that "Plaintiff has the following documents, ESI, or tangible things in their possession, custody, or control that they may use to support their defenses...." Federal Rule of Civil Procedure 26(a)(1)(A)(ii) requires the Defendants to disclose documents and ESI in the Defendants' possession, custody, or control that the Defendants may use to support their claims or defenses.

Furthermore, the 16 items listed are almost exclusively a collection of public internet links, Legacy Church's annual report, media articles, and Pastor Smothermon's published books. Conspicuously absent from your disclosure is any mention of internal documents, ESI, or communications actually in the Defendants' possession. For example, your clients' primary defense hinges on a Google image search that allegedly caused an innocent misidentification. Yet, the disclosures fail to identify any native browser histories, search logs, internal emails, text messages, or Slack communications regarding the drafting, publication, and eventual removal of the defamatory Facebook post. Please supplement this section to identify the actual internal ESI and documents your clients possess and intend to use.

April 21, 2026

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2. Failure to Conduct a Reasonable Inquiry Regarding Insurance (Rule 26(a)(1)(A)(iv)).

In Section 4.0, your disclosures state that “Defendants are unaware of any insurance policy relevant to this lawsuit.” Hodgetwins, LLC operates a highly monetized media platform with over 6.3 million Facebook followers and nearly 3.5 million YouTube subscribers. It strains credulity that a sophisticated corporate media entity operating at this scale lacks Commercial General Liability (CGL), media liability, or errors and omissions (E&O) insurance coverage. Rule 26 requires a party to make a reasonable inquiry before making its initial disclosures. Please confirm that a diligent search for applicable insurance policies has been conducted and, if any policies exist that may satisfy part or all of a judgment, produce them immediately.

3. Vague Witness Disclosures (Rule 26(a)(1)(A)(i)).

The descriptions of the subjects of information for Keith Hodge, Kevin Hodge, and the Hodgetwins, LLC Person Most Knowledgeable are identical, boilerplate copy-paste paragraphs. Simply stating that these witnesses have knowledge regarding “the allegedly defamatory Facebook post...the affirmative defenses asserted...and the other facts and circumstances surrounding this matter” fails to provide the required specificity. Please supplement these descriptions to provide meaningful detail about the specific subjects each witness will testify to, particularly regarding their respective roles in the editorial, verification, and publication process.

Meet and Confer Request Under Local Rule IA 1-3(f) of the District of Nevada, the meet-and-confer requirement “may only be satisfied through direct dialogue and discussion in a face-to-face meeting, telephone conference, or video conference. The exchange of written, electronic, or voice-mail communications does not satisfy this requirement.”

Accordingly, please let me know your availability for a brief telephone or video conference this Thursday, April 23, 2026, to discuss these deficiencies. It is our hope that we can resolve this without burdening the Court with a motion to compel.

We look forward to hearing from you.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC

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Nicole A. Westbrook
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Licensed in Colorado

May 26, 2026

VIA EMAIL: mjr@randazza.com

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8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

***Re: Meet and Confer Regarding Outstanding Rule 26 Disclosures and Deficient
Discovery Responses Smothermon v. Hodgetwins, LLC, et al., Case No. 2:25-cv-
01858-APG-BNW.***

Dear Mr. Randazza,

I write to meet and confer regarding several deficiencies in your clients' discovery responses and outstanding disclosure obligations. We ask that your clients cure each of the items below.

1. **Failure to Supplement Initial Disclosures.** We sent you a letter on April 21, 2026, detailing the deficiencies in your Rule 26 disclosures. You refused to engage in a conferral conference until April 28, 2026. On that day, I called your office and was told you were not available. We rescheduled for May 4. On May 4, we held a Zoom conference meet-and-confer regarding the facial deficiencies in Defendants' Rule 26 Initial Disclosures. During that meeting, Mr. Green expressly agreed to supplement the disclosures within one week. More than two weeks have passed since that conferral; more than five weeks since our letter; and more than six weeks have passed since your initial disclosures were due, and we have yet to receive any supplementation.

These documents and any applicable insurance policies are squarely within your clients' disclosure obligations. We ask that you provide the promised supplemental disclosures by no later than Friday, May 29, 2026. If we do not receive them, we will move to compel and seek the fees incurred in doing so.

2. **Inconsistent and Contradictory Discovery Responses.** Several of your clients' responses are internally inconsistent and bear on their duty to preserve evidence.

May 26, 2026

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The Google Search and Metadata (RFAs 1, 2, 9 vs. RFP 1): In response to Requests for Admission Nos. 1 and 2, your clients state that they “located the image after searching for an image of Steve Smotherman” and “simply performed a Google image search.” In response to Request for Production No. 1, which seeks the native image file, search logs, and browser history, your clients state that they “are in possession of no documents responsive to this request.” A Google image search of the kind your clients describe generates records. We cannot reconcile the admission that the search occurred with the position that no record of it exists. Please confirm what was searched for and produced, and if responsive records no longer exist, please explain what became of them.

In response to Request for Admission No. 9, regarding the photograph’s metadata, your clients state that they “have not reviewed the metadata for the photograph.” That a party has not reviewed metadata suggests the underlying file remains in its possession. If so, it is responsive to Request for Production No. 1 and should have been produced. Please produce the native file and its metadata or confirm in writing that the file no longer exists.

Concealment of Internal Communications (ROG 3 vs. RFPs 2-4): In their verified Amended Response to Interrogatory No. 3, your clients state that Nathan Hughes “learned of the post through an email sent to the customer service account,” and that “Defendants had informed Mr. Hughes that they had been sued over a post that had an incorrect picture.” That sworn answer describes at least one email and one or more communications between Defendants and Mr. Hughes. In response to Requests for Production Nos. 2, 3, and 4, however, your clients produced nothing and state that they possess no internal or third-party communications. The sworn interrogatory answer and the production responses cannot both be complete. Please produce the customer-service email and the Hughes communications, or confirm in writing what became of them.

3. **Evasive and Non-Responsive Interrogatory Answers.** Three interrogatory responses are non-responsive and require supplementation:

Interrogatory No. 4 asked your clients to describe the editorial standards, verification processes, and fact-checking policies used before publishing to their audience. The response—that they “post material to Facebook that they believe their subscribers will find interesting”—does not address verification or fact-checking and is non-responsive. Please supplement.

Interrogatory No. 5 asked your clients to identify any other “Steve Smotherman” or “Steve Smothermon” in the search results and to explain why those individuals were ruled out. The response—that “most, if not all” images appeared to be the same person and that Defendants “did not ‘rule out’ any individuals”—again relies on the results of a search that has not been produced. Please supplement, and produce the search results on which the answer relies.

Interrogatory No. 7 asked your clients to describe the decision-making process used to verify the identity of the person in the photograph, including any alternative visual verification steps taken. The response restates that Kevin Hodge searched Google and decided to post the image, but does not address what verification steps, if any, were taken beyond the text search. Please supplement.

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4. **Refusal to Produce Financial Statements.** (RFP 9) Your clients objected to producing financial statements on the grounds that Plaintiff has not pleaded punitive damages and that the information is proprietary. We disagree that the objection forecloses production. Defendants' revenue from the Hodgetwins platform is relevant to motive—the monetization of content—and to Plaintiff's damages. To the extent confidentiality is a genuine concern, the parties can address it through a stipulated protective order, and we are willing to negotiate one. Please confirm whether your clients will produce these documents subject to such an order.

Pursuant to District of Nevada Local Rules IA 1-3(f) and 26-6(c), please let me know your availability for a telephone or video conference next week to discuss these issues. We would prefer to resolve them by agreement.

If we are unable to resolve these matters through conferral, we will move to compel and, where the record warrants, will seek relief under Federal Rule of Civil Procedure 37(e).

I look forward to hearing from you.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC

Attorneys + Counselors

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June 30, 2026

VIA EMAIL: mjr@randazza.com

Marc Randazza
Ron Green
Randazza Legal Group
8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

Re: Meet-and-confer regarding deficient responses to Plaintiff's First Set of Requests for Production and Interrogatories, demand for production of Google account activity data and forensic preservation.

Dear Counsel,

I write pursuant to Fed. R. Civ. P. 37(a) and Local Rule IA 1-3(f) / LR 26-6 to confer (again) regarding deficiencies in Defendants' responses to Plaintiff's First Set of Requests for Production (served April 22, 2026) and to demand specific electronically stored information and preservation steps. This letter also gives notice that Plaintiff will serve a Second Set of Requests for Production and Interrogatories directed to the items below.

1. The admitted facts. Defendants have admitted, under oath, that Kevin Hodge performed a Google image search using the text query "Steve Smotherman" that he "copied the photograph from the Google search results and pasted it" into the August 22, 2025 Facebook Post, and that no reverse-image search was performed before publication (Resp. to RFA No. 7; Resps. to Interrogatory Nos. 2 and 5; Resp. to RFP No. 1). In their June 10, 2026, Second Amended Response to Interrogatory No. 5, Defendants asserted for the first time that the search was conducted "in incognito mode" and that, "[b]ecause the search was performed in incognito mode, Defendants have no record of the search."

2. The "incognito" response does not answer the request, because it addresses only local browser history. Private/Incognito mode governs only what the browser writes to the local device; it does not suppress server-side logging by the user's account. When a user is signed in to a Google account, Google's Web & App Activity records the user's searches to the account's "My Activity" regardless of Incognito mode, and that record is exportable by the account holder through Google Takeout. Defendants' representation that they have no record of the search

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speaks only to local browser artifacts; it does not address the account-side activity data, which is within Defendants' possession, custody, and control under Rule 34 because Defendants can retrieve it from their own Google account. Defendants' "no documents" responses to Requests for Production Nos. 1, 2, and 7 are, accordingly, incomplete, and Plaintiff requests that they be supplemented.

3. Demand. To resolve this dispute without motion practice, Plaintiff demands that Defendants, within seven (7) days, produce or provide the following, and supplement their First Set responses accordingly:

a. Google Takeout export for each Google account that was signed in on the device used to conduct the August 22, 2025 search, covering the period August 1, 2025 through September 30, 2025, and including, at minimum, Search history, Image Search activity, Web & App Activity ("My Activity"), and YouTube history.

b. Identification of (i) each Google account and associated email address used to perform or in connection with the search; (ii) the device(s) used; and (iii) whether Web & App Activity (or equivalent activity logging) was enabled on each such account on August 22, 2025. (This supplements Interrogatory No. 2.)

c. The original photograph file depicting Plaintiff as used in the Post, in its Native Format with all EXIF and system Metadata intact (including the Source URL), consistent with RFP No. 1.

d. Preservation of, and an agreed protocol for forensic imaging of, each device (mobile phone and/or computer) used to conduct the search, draft, or publish the Post — including memory/pagefile and hibernation files, browser cache, DNS cache, and file-system artifacts — by a mutually acceptable neutral examiner under an appropriate protective order.

e. Chrome sync data and any signed-in browser-profile activity associated with the device or account used.

f. Meta/Facebook account data for the Hodgetwins page, exported by Defendants from their own account, including the native Post data and the page activity/audit log reflecting the creation, any edits, and the removal of the Post (with timestamps and the acting administrator).

g. Router, modem, or internet-service-provider records reflecting the August 22, 2025 activity.

4. Consent to release if Defendants maintain they cannot produce. If Defendants contend they cannot themselves produce the Google account data described in Paragraph 3(a), Plaintiff demands that each individual Defendant execute a written consent directive authorizing Google LLC to release the records to the parties. A subscriber's consent removes any Stored Communications Act bar to the provider's disclosure, and a party's ability to authorize that release is itself a "legal right to obtain" the records within the meaning of Rule 34. Plaintiff will, if necessary, move for an order compelling Defendants to execute such a directive.

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5. Preservation notice (Fed. R. Civ. P. 37(e)). Defendants remain under a duty to preserve all of the foregoing, which arose no later than August 22, 2025, when Plaintiff's counsel demanded immediate removal of the photograph and a retraction. Defendants are instructed not to delete, disable, or allow the auto-deletion of any Google account activity, device data, browser data, or Meta account data, and to suspend any auto-delete settings on the relevant Google account(s). Plaintiff reserves the right to seek relief under Rule 37(e), including curative measures and an adverse-inference instruction, and to move to compel under Rule 37(a) with an award of fees, should Defendants fail to cure these deficiencies.

6. Conferral. Please advise by July 1, 2026, of your availability for a telephonic conference under LR 26-6, and whether Defendants will produce the items in Paragraph 3 and execute the consents in Paragraph 4.

Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC

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July 9, 2026

VIA EMAIL: mjr@randazza.com

Ron Green
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8991 West Flamingo Road, Suite B
Las Vegas, NV 89147

***Re: Smothermon v. Hodgetwins, LLC, et al., No. 2:25-cv-01858-APG-BNW (D. Nev.)
— Response to Your July 1, 2026 Letter; First-Set Discovery Deficiencies and
Notice of Intent to Move for a Protective Order***

Dear Mr. Green,

We write in response to your letter of July 1, 2026. The letter mischaracterizes our June 30 correspondence and declines to cure discovery deficiencies that your clients' own sworn responses place squarely at issue. Plaintiff remains willing to confer under Local Rule 26-6 and provides availability below. But if your clients stand on the positions in your letter, Plaintiff will move to compel under Rule 37(a) and will oppose any motion for a protective order.

1. **Our June 30 letter requested a conferral, not a 24-hour response.** Your letter states that we “demand[ed] that we agree to respond to discovery within 24 hours.” We did not. The June 30 letter (a) requested a Local Rule 26-6 conferral by July 1, (b) asked your clients to produce voluntarily within seven days to avoid motion practice, and (c) gave notice of a forthcoming Second Set. The 30-day response periods of Rules 33, 34, and 36 are not in dispute, and we have not asked you to shorten them. We ask that you engage with what the letter actually requested.
2. **Your clients' “no documents exist” position cannot be reconciled with their own sworn interrogatory answer or with their own production.** Your clients' verified Amended Response to Interrogatory No. 3 states that Nathan Hughes “learned of the post through an email sent to the customer service account,” and that “Defendants had informed Mr. Hughes that they had been sued over a post that had an incorrect picture.” That sworn answer describes at least one email and one or more communications with Mr. Hughes. Your clients nonetheless responded to Requests for Production Nos. 1, 2, and 7 that no responsive documents exist — and then produced more than 100 pages after representing they had

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none. These positions are irreconcilable. We ask that your clients either (a) supplement their responses to RFP Nos. 1, 2, and 7 and produce the customer-service email and the Hughes communications their interrogatory answer describes, or (b) state under oath what became of those materials. A publisher's editorial and verification process and state of mind are proper subjects of discovery in a public-figure defamation case. *Herbert v. Lando*, 441 U.S. 153, 158, 170 (1979).

3. **Preservation.** Your letter addresses only Mr. Carroll's Facebook message and omits the notice that matters: the August 22, 2025 email from Krisha Mason to your clients' representative, Kylie Howerton — sent to your clients' own merchandise customer-service channel — stating that the post used an "INCORRECT photo" of "Pastor Steve Smothermon" (HODGE000136-000138). Your letter itself acknowledges that your clients "took it down immediately after getting word that they got the wrong 'Smotherman,'" which confirms your clients received that word. The duty to preserve attaches upon the objective reasonable anticipation of litigation; it does not depend on whether a particular message was opened. On this record, that duty attached no later than August 22, 2025. Plaintiff reiterates the preservation demands in the June 30 letter — including the immediate suspension of any auto-deletion setting on the relevant Google account(s) — and expressly reserves all rights and remedies under Rule 37(e).
4. **The account data is within your clients' control, and Plaintiff seeks it from your clients — not by subpoena to the provider.** In the Ninth Circuit, "control" under Rule 34 is the legal right to obtain the documents on demand. *In re Citric Acid Litig.*, 191 F.3d 1090, 1107-08 (9th Cir. 1999); *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989). Your clients have that right as to their own Google and Meta account data, which they can export or authorize for release. *See Flagg v. City of Detroit*, 252 F.R.D. 346 (E.D. Mich. 2008); *Matthew Enter., Inc. v. Chrysler Grp. LLC*, 2015 WL 8482256 (N.D. Cal. Dec. 10, 2015). Plaintiff therefore seeks this material from your clients under Rule 34, not by subpoena to Google or Meta, which the Stored Communications Act would bar. If your clients contend they cannot produce it, Plaintiff will ask the Court to direct each Defendant to execute a consent directive under 18 U.S.C. § 2702(b)(3); court-ordered consent is "lawful consent." *Negro v. Superior Court*, 230 Cal. App. 4th 879 (2014).
5. **Proportionality — and a good-faith narrowing offer.** Plaintiff does not agree that the requests are disproportionate. The party seeking a protective order bears the burden of showing specific prejudice or harm; broad, generalized assertions do not satisfy Rule 26(c), and boilerplate objections are inadequate. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36-37 (1984); *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992); *Burlington N. & Santa Fe Ry. v. U.S. Dist. Court*, 408 F.3d 1142, 1149 (9th Cir. 2005); *FTC v. AMG Servs., Inc.*, No. 2:12-cv-536-GMN-VCF (D. Nev.). Nonetheless, in the spirit of conferral, Plaintiff offers to narrow:
 - a. The native photograph file with all metadata, the account-side "My Activity"/Takeout data for the relevant dates, the Meta page activity/audit log, and the internal communications are targeted and low-burden, and should be produced.

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b. As to device examination, Plaintiff will agree to a **neutral, court-appointed forensic examiner** operating under a mutually acceptable protocol and a stipulated protective order — the approach this Court approved in *United Factory Furniture Corp. v. Alterwitz*, No. 2:12-cv-00059-KJD-VCF (D. Nev. Apr. 6, 2012). Where a party's discovery responses contain discrepancies or inconsistencies, forensic imaging is warranted. *Ameriwood Indus. v. Liberman*, 2006 WL 3825291 (E.D. Mo. Dec. 27, 2006).

c. Plaintiff will withdraw or defer the router/modem/ISP request and will narrow any browsing-activity request to search-related activity.

Plaintiff also renews its offer to enter a **stipulated protective order** to address any genuine confidentiality concern, including as to the financial records.

6. **“New requests” versus supplementation — both apply.** Your clients' First-Set responses to RFP Nos. 1, 2, and 7 and to Interrogatory Nos. 4, 5, and 7 are deficient and must be supplemented now, independent of the Second Set. That the Second Set separately requests related material does not relieve your clients of their obligation to correct incomplete First-Set responses. Your clients may, of course, respond to the Second Set within the ordinary Rule 34 period.
7. **Conferral and next steps.** Plaintiff is available to confer under Local Rule 26-6 on Monday, June 13 and Wednesday June 15, 2026. If your clients maintain their refusal, Plaintiff will (a) move to compel under Rule 37(a) and seek the fees incurred, and (b) oppose any motion for a protective order and, as appropriate, cross-move to compel so the Court may consider both sets of issues together.

Nothing in this letter waives, and Plaintiff expressly reserves, all rights and objections.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

JONES, DAVIS & JACKSON, PC

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July 28, 2026

VIA EMAIL: mjr@randazza.com

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*Re: Response re Meet and Confer — Discovery Responses and Metadata;
Smothermon v. Hodgetwins, LLC, et al., No. 2:25-cv-01858-APG-BNW*

Dear Mr. Green,

Thank you for your July 24, 2026, letter. I write to correct the record on several points and to keep our conferral on what is actually at issue.

The conferral is not premature. The deficiencies we raised concern Defendants' responses to Plaintiff's First Set of written discovery, served April 22, 2026. Defendants served those responses on May 22, 2026, and amended them on June 10 and 11, 2026. They are served, and they are deficient. They also still omit the supplementation you agreed at our May 4 conference to provide "within one week," which I noted was overdue in my May 26 letter and which remains outstanding. Those served responses and that overdue supplementation are the subject of our conferral, not Defendants' responses to Plaintiff's later sets, which are not yet due. The "premature" characterization does not fit the sequence.

Metadata. Your letter devotes several paragraphs to explaining that email headers record transmission and delivery rather than the moment a message is opened. We have not contended otherwise, and we have not asked for a field showing when a message was "read." Plaintiff seeks the native files and their metadata to establish the source of the photograph, the authenticity of the documents, and the completeness of the notice chain, including the field your own definition calls the image file's "Source URL."

I say "your own definition" deliberately. Defendants' Sixth Set of Requests for Production (June 25, 2026) and Seventh Set (served July 27, 2026) each adopt, verbatim, Plaintiff's definition of "Metadata" from Plaintiff's First Set, including its "IPTC Metadata" and "System Metadata" categories and the image file's "Source URL," and each demands that

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Plaintiff produce documents with that metadata. The importance of metadata is therefore common ground: Defendants define it exactly as Plaintiff does and seek it from Plaintiff. That leaves the one question your letter does not reach, which is why Defendants decline to produce, in native form with that metadata, the same category they define and demand. Defendants cannot maintain both that metadata is not probative and that Plaintiff must produce it under Defendants' own definition.

The technical review you describe. I welcome your statement that Defendants are engaging someone with greater technical facility to locate further responsive data. That review should reach the native file and metadata of the August 22, 2025, notice email, produced to date only as a flattened image, and the records of the image search that sourced the photograph. The offer also acknowledges that further data may exist and be recoverable, which is difficult to reconcile with the position that the search left "no record."

Your stipulation proposal. A stipulation that the notice email was delivered does not substitute for the native file and its metadata, which go to source, authenticity, and completeness rather than delivery alone. If Defendants will stipulate to specific facts that would narrow the native and metadata production, I am glad to consider them; a stipulation limited to "delivery" does not.

The July 22 conference. I did not raise my voice during our July 22 conference, and I do not accept your characterization of it. I will not litigate tone by letter, and I would rather keep our attention on the substance above.

Please confirm by Friday, July 31, 2026, whether Defendants will (1) produce the native files and metadata for the August 22, 2025 notice email and the responsive image and search materials, and (2) provide the supplementation agreed on May 4. I remain available to confer.

Sincerely yours,

JONES, DAVIS & JACKSON, PC



By:

Nicole A. Westbrook

CC: Pastor Steve Smothermon

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PASTOR STEVE
SMOTHERMON,**

Plaintiff,

v.

KEITH HODGE, an individual;
KEVIN HODGE, an individual;
HODGETWINS, LLC, a Nevada
limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

[PROPOSED] ORDER
MODIFYING SCHEDULING
ORDER

Having considered Plaintiff's Motion to Modify the Scheduling Order (ECF No. 49), the concurrently filed Declaration of Nicole A. Westbrook and its exhibits, any opposition and reply, and good cause appearing, IT IS HEREBY ORDERED that the Motion is GRANTED. The deadlines in the Scheduling Order (ECF No. 49) are modified as follows:

Event	Prior Deadline	New Deadline
Discovery cut-off	September 18, 2026	December 31, 2026
Dispositive motions	October 19, 2026	February 1, 2027
Joint pretrial order	November 18, 2026	March 1, 2027

If dispositive motions are pending, the joint-pretrial-order deadline is suspended until 30 days after the decision on those motions, as provided in ECF No. 49 ¶ 7. All other provisions of the Scheduling Order remain in effect.

IT IS SO ORDERED.

Dated: _____

THE HON. BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE