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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PROGRESSIVE DIRECT INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL LAYTHORPE, an Individual; )  
DOES I through X; and ROE )  
CORPORATIONS I through X, inclusive, )  
 )  
Defendant. )  
 )  
MICHAEL LAYTHORPE, )  
 )  
Counter-Claimant, )  
 )  
vs. )  
 )  
PROGRESSIVE DIRECT INSURANCE )  
COMPANY, DOES I through X; and ROE )  
CORPORATIONS I through X, inclusive, )  
 )  
Counter-Defendant. )

CASE NO: 2:22-cv-00822-RFB-EJY

**STIPULATION AND ~~PROPOSED~~  
ORDER TO EXTEND DISCOVERY  
DEADLINES**

**(THIRD REQUEST)**

Defendant/Counter-Claimant, Michael Laythorpe, and Plaintiff/Counter-Defendant, Progressive Direct Insurance Company, by and through their respective counsel of record, do hereby stipulate to extend the remaining deadlines in the current scheduling order and discovery plan in place in this matter for a period of seventy six (76) days for the reasons explained herein. The parties agree to an extension of 76 days in light of the fact that a 60-day continuance would result in the final week of discovery falling on Thanksgiving week and a 90 day continuance would fall

1 on Christmas week. A discovery cut-off of December 17, 2023 (76 days) would avoid the holidays  
2 in that respect.

3 Pursuant to Local Rule IA 6-1(a), the parties hereby aver that this is the third discovery  
4 extension requested in this matter. Discovery is scheduled to close October 2, 2023, and this  
5 Stipulation and [Proposed] Order is thus timely pursuant to Local Rule 26-3.

6 **DISCOVERY COMPLETED TO DATE PURSUANT**  
7 **TO LR 26-3(a) -[CHRONOLOGICAL]**

- 8 1. The parties conducted the FRCP 26(f) Conference on October 10, 2022;
- 9 2. Defendant/Counter-Claimant served its Initial List of Witnesses and Documents on  
10 November 22, 2022;
- 11 3. Plaintiff/Counter-Defendant served by mail its Initial List of Witnesses and  
12 Documents on November 1, 2022. Defendant/Counter-Claimant did not receive the  
13 document and notified Plaintiff/Counter-Defendant by email on December 19, 2022.  
14 The document was re-served via email on December 20, 2022.
- 15 4. Plaintiff/Counter-Defendant served its Initial Expert Disclosure Statement on  
16 February 2, 2023;
- 17 5. Defendant/Counter-Claimant served his Initial Expert Disclosure Statement on  
18 February 2, 2023;
- 19 6. Defendant/Counter-Claimant served his First Supplemental List of Witnesses and  
20 Documents on February 7, 2023;
- 21 7. Deposition of Shabnam Salmani, Progressive adjuster, was taken on February 21,  
22 2023;
- 23 8. Deposition of Jennifer Pearson, Progressive adjuster, was taken on February 22,  
24 2023;
- 25 9. Defendant/Counter-Claimant served his initial set of Interrogatories, Requests for  
26 Admissions, and Requests for Production of Documents on March 3, 2023;
- 27 10. Plaintiff/Counter-Defendant served its initial set of Interrogatories and Requests for  
28 Production of Documents on March 3, 2023;

- 1 11. Defendant/Counter-Claimant served his Second Supplemental List of Witnesses and
- 2 Documents on March 3, 2023;
- 3 12. Deposition of Defendant/Counter-Claimant, Michael Laythorpe, was taken on
- 4 March 6, 2023;
- 5 13. Defendant/Counter-Claimant served his Designation of Rebuttal Expert Witnesses
- 6 on March 6, 2023;
- 7 14. Plaintiff/ Counter-Defendant served its Designation of Rebuttal Expert Witnesses
- 8 on March 6, 2023;
- 9 15. Deposition of Plaintiff/Counter-Defendant's Expert David H. Paige was taken on
- 10 March 21, 2023;
- 11 16. Deposition of Defendant/Counter-Claimant's Expert Hugh Black was taken on
- 12 March 22, 2023;
- 13 17. Defendant/Counter-Claimant served his Third Supplemental List of Witnesses and
- 14 Documents on April 12, 2023;
- 15 18. Plaintiff/ Counter-Defendant served its discovery responses on April 17, 2023;
- 16 19. Defendant/Counter-Claimant served his discovery responses on April 17, 2023;
- 17 20. Defendant/Counter-Claimant served his Fourth Supplemental List of Witnesses and
- 18 Documents on May 15, 2023;
- 19 21. Plaintiff/Counter-Defendant served its First Supplemental List of Witnesses and
- 20 Documents on August 15, 2023;
- 21 22. Defendant/Counter-Claimant served his Fifth Supplemental List of Witnesses and
- 22 Documents August 28, 2023 (medical records relating to recent surgeries in
- 23 Colorado, 297 pages);
- 24 23. Plaintiff/Counter-Defendant served its Second Supplemental List of Witnesses and
- 25 Documents on September 1, 2023 (Progressive Insurance written policies and
- 26 procedures, 380 pages);
- 27 24. Plaintiff/Counter-Defendant served its First Supplemental Answer to
- 28 Defendant/Counter-Claimant's Interrogatories on September 1, 2023;

1 25. Plaintiff/Counter-Defendant served its First Supplemental Responses to  
2 Defendant/Counter-Claimant's Requests for Production of Documents on  
3 September 1, 2023;

4 26. Defendant/Counter-Claimant served his Sixth Supplemental List of Witnesses and  
5 Documents September 7, 2023 (CCMSI workers' compensation ledger showing  
6 current lien in the amount of \$103,321.38, 17 pages).

7 **MOTION PRACTICE COMPLETED TO DATE**

8 1. Plaintiff/Counter-Defendant filed a Motion for Summary Judgment on January 5,  
9 2023. Document 13;

10 2. Defendant/Counter-Claimant filed his Response to Motion for Summary Judgment  
11 on January 26, 2023 and his Counter-Motion for Summary Judgment on January 27,  
12 2023. Document 14 and 15;

13 3. Plaintiff/Counter-Defendant filed its Reply in Support of Motion for Summary  
14 Judgment on February 6, 2023 and its Response to Counter-Motion for Summary  
15 Judgment on February 13, 2023. Document 16 and 17;

16 4. Defendant/Counter-Claimant filed his Reply in support of Counter-Motion for  
17 Summary Judgment on February 27, 2023. Document 19;

18 5. Plaintiff/Counter-Defendant filed a Stipulated Protective Order on August 8, 2023,  
19 which was denied without prejudice, and refiled it on August 22, 2023. Document  
20 28 and 32;

21 6. Plaintiff/Counter-Defendant filed a Motion for Protective Order on July 12, 2023,  
22 which was denied without prejudice, and refiled it on July 27, 2023 which is  
23 pending. Document 25 and 27;

24 7. Defendant/Counter-Claimant filed his Response to Motion for Protective Order on  
25 August 10, 2023. Document 30; and

26 8. Plaintiff/Counter-Defendant filed its Reply in Support of Motion for Protective  
27 Order on August 17, 2023. Document 31.

28 ...

**DISCOVERY TO BE COMPLETED PURSUANT TO  
LR-26-3(b) [ CHRONOLOGICAL ]**

1. Deposition of Progressive’s NRCP 30(b)(6) Person(s) With Knowledge initially scheduled for March 29, 2023 and subsequently re-scheduled for August 29, 2023, which was initially postponed following Plaintiff/Counter-Defendant’s Objection to topics set forth in the Notice of Deposition and again postponed following the pending Motion For Protective Order filed on July 27, 2023
2. Other employees’ depositions thereafter as may be necessary;
3. Depositions of Defendant/Counter-Claimant’s treating physicians, including surgeons who reside in Colorado, for whom records have only recently been provided to the parties;
4. Deposition of Stuart Kaplan, M.D., who performed a medical records review and medical examination of Defendant/Counter-Claimant at the request of CCMSI in connection with the pending workers’ compensation claim, which has been delayed due to Defendant/Counter-Claimant’s recent surgeries and subsequent procurement of related records;
5. Deposition of David J. Oliveri, M.D., who performed a medical records review on behalf of Plaintiff/Counter-Defendant, which has been delayed due to Defendant/Counter-Claimant’s recent surgeries and subsequent procurement of related records;
6. Supplemental written discovery as may be necessary.

**REASONS FOR EXTENSION PURSUANT TO LR 26-3(c)**

As the Court is aware, Defendant/Counter-Claimant underwent a spinal fusion on March 10, 2023. On April 14, 2023 Defendant/Counter-Claimant underwent a right shoulder arthroscopic surgery with extensive debridement. Medical records were ordered and recently received and supplemented on August 28, 2023. Following receipt of the relevant records, Plaintiff’s Counsel has indicated Plaintiff wishes to depose those treating physicians. The depositions of Dr. Kaplan and Dr. Oliveri have been delayed in light of the recent medical activity.

1 In addition, the parties are currently involved in a discovery dispute and Plaintiff/Counter-  
2 Defendant has filed a Motion For Protective Order regarding the timely noticed Rule 30(b)(6)  
3 deposition of Progressive’s Person With Knowledge relating topics listed in the Rule 30(b)(6)  
4 notice, to which Plaintiff/Counter-Defendant has objected. In connection therewith,  
5 Plaintiff/Counter-Defendant produced an updated Privilege Log on August 15, 2023. The Motion  
6 is currently pending.

7 **~~PROPOSED~~ NEW DISCOVERY DEADLINES PURSUANT TO LR 26-3(d)**

|    |                                      |  |
|----|--------------------------------------|--|
| 8  | EXPERT DISCLOSURE DEADLINE.....      | PASSED   |
| 9  | REBUTTAL DISCLOSURE DEADLINE.....    | PASSED   |
| 10 |                                      | <b><u>CURRENT</u></b>                            |
| 10 |                                      | <b><u><del>PROPOSED</del></u></b>                |
| 11 | <b>DISCOVERY DEADLINE</b>            | <b>October 2, 2023</b>                           |
| 11 |                                      | <b>December <sup>18</sup><del>17</del>, 2023</b> |
| 12 | <b>DISPOSITIVE MOTION DEADLINE</b>   | <b>November 1, 2023</b>                          |
| 12 |                                      | <b>January 16, 2024</b>                          |
| 13 | <b>JOINT PROPOSED PRETRIAL ORDER</b> | <b>December 1, 2023</b>                          |
| 13 |                                      | <b>February 15, 2024</b>                         |

14 If this extension is granted, all anticipated additional discovery should be concluded  
15 within the stipulated extended deadlines. This request is made in good faith and not for the  
16 purpose of delay.

|    |   |   |
|----|---|---|
| 17 | DATED this <u>8<sup>th</sup></u> day of September, 2023 | DATED this <u>8<sup>th</sup></u> day of September, 2023 |
| 18 | MOUNTAIN WEST LAWYERS                                   | KEATING LAW GROUP                                       |

|    |  |  |
|----|--|--|
| 20 | BY: <u>/s/ Jeffrey R. Gomel</u>                | BY: <u>/s/ John T. Keating</u>                   |
| 20 | JEFFREY R. GOMEL, ESQ.                         | JOHN T. KEATING, ESQ.                            |
| 21 | Nevada Bar No. 3067                            | Nevada Bar No. 6373                              |
| 21 | 2470 St. Rose Parkway, Suite 311               | 9130 W. Russell Road, Suite 200                  |
| 22 | Henderson, Nevada 89074                        | Las Vegas, Nevada 89148                          |
| 22 | <i>Attorney for Defendant/Counter-Claimant</i> | <i>Attorneys for Plaintiff/Counter-Defendant</i> |

24 **IT IS SO ORDERED:**

25 

26 **UNITED STATES MAGISTRATE JUDGE**

27 **DATED: September 8, 2023**