

1 STEPHEN M. HAYES (SBN 83583)  
[shayes@hayesscott.com](mailto:shayes@hayesscott.com)  
2 STEPHEN P. ELLINGSON (SBN 136505)  
[sellingson@hayesscott.com](mailto:sellingson@hayesscott.com)  
3 HAYES SCOTT BONINO ELLINGSON & McLAY, LLP  
203 Redwood Shores Parkway, Suite 480  
4 Redwood City, California 94065  
Telephone: 650.637.9100  
5 Facsimile: 650.637.8071

6 Attorneys for Defendant  
STATE FARM GENERAL INSURANCE COMPANY  
7

8 CRAIG A. MILLER (SBN 116030)  
[cmiller@craigmillerlaw.com](mailto:cmiller@craigmillerlaw.com)  
9 PATRICK A. CALHOON (SBN 249149)  
[pcalhoon@craigmillerlaw.com](mailto:pcalhoon@craigmillerlaw.com)  
10 225 Broadway, Suite 1310  
11 San Diego, CA 92101  
Telephone: (619) 231-9449  
12 Facsimile: (619) 231-8638

13 Attorneys for Plaintiffs  
14 HAROLD and DOROTHY BENNETT and  
DOROTHY PICKERING as Conservator of the Person  
15 and Estate of Harold Bennett

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA (FRESNO DIVISION)  
18

19 HAROLD and DOROTHY BENNETT,  
20 Plaintiffs,  
21 vs.  
22 STATE FARM GENERAL INSURANCE  
23 COMPANY, and DOES 1 through 100,  
inclusive,  
24 Defendant.  
25

CASE NO. 1:14-CV-01377 DAD-JLT

**AMENDED STIPULATION AND  
[PROPOSED] ORDER TO PARTIALLY  
REVISE THE COURT'S SCHEDULING  
ORDER**

**(Doc. 44)**

1 Plaintiffs and State Farm General Insurance Company (“State Farm”), by and through their  
2 respective counsel, hereby stipulate to revise the Court’s January 11, 2016 Amended Status (Pretrial  
3 Scheduling) Order (Dkt. 37) as follows:

4 **I.**  
5 **RECITALS**

6 1. The parties recently submitted a Stipulation and [Proposed] Order to Revise the  
7 Court’s Scheduling Order. (Dkt. 42.) The Court denied the stipulation. (Dkt. 43.) The parties  
8 hereby submit a revised stipulation to address the comments in the Court’s denial order.

9 2. This matter arises out of a fire at a business premises owned by plaintiffs Harold and  
10 Dorothy Bennett. Bennett Optical Research, Inc. (“BOR”), a corporation wholly owned by plaintiffs,  
11 operated its business at the insured premises. State Farm paid insurance policy benefits to plaintiffs  
12 following the fire, but the parties disputed the proper amount of the loss. Among other issues,  
13 plaintiffs contend they are entitled to loss of business income for a potential contract with the Missile  
14 Defense Agency, a division of the United States Department of Defense.

15 3. Plaintiff Dorothy Bennett is deceased. Plaintiff Harold Bennett became the subject of  
16 a disputed conservatorship proceeding in October 2014 based on his advanced dementia and  
17 Alzheimer’s disease. Mr. Bennett’s grandson, Matthew Bennett, and daughter, Dorothy Picking,  
18 both sought to be appointed conservator. Ms. Picking was appointed conservator in March 2015.

19 4. BOR’s corporate status has been suspended by the California Secretary of State, and  
20 the company has ceased operations. Harold Bennett still is listed as its agent for service of process,  
21 but he has been unavailable since at least late 2014. The parties only recently were able to locate  
22 BOR’s documents. Counsel for plaintiffs currently is reviewing those documents for privacy and  
23 privilege, especially since a large volume of BOR’s business involved contracts with the DOD.

24 5. During State Farm’s investigation of plaintiffs’ claim, Mr. Bennett authorized  
25 Matthew Bennett to handle his claim for benefits arising out of the BOR fire. Matthew Bennett lived  
26 in the San Diego area until approximately early 2015 when he relocated to the Boston area to receive  
27 treatment for brain cancer, which included surgery and extensive chemotherapy. These issues  
28 impaired plaintiffs’ ability to locate documents and witnesses.

1           6.       State Farm recently discovered that BOR had its own insurance through Allied  
2 Insurance, purchased through Darrell Silberberg at IWV Insurance Agency. The Allied policy may  
3 have provided additional coverage for damages related to the fire, but it was canceled shortly before  
4 the BOR fire. State Farm issued subpoenas to Allied and IWV, but they have not yet produced  
5 documents. State Farm is currently engaged in meet and confer efforts with both entities. Mr.  
6 Silberberg recently represented that he will produce his firm's and Allied's documents.

7           7.       State Farm has been attempting to locate Arnold Danielson, a former employee of  
8 BOR who was involved in BOR's DOD contracts. State Farm has attempted service at two  
9 addresses identified on documents produced by plaintiffs, but has not been able to perfect service on  
10 him. One of these addresses appears to be an abandoned building in Ridgecrest, CA.

11          8.       Despite these issues, the parties have engaged in extensive discovery to date:

- 12           • Comprehensive interrogatories and responses;
- 13           • Voluminous demands and production of documents;
- 14           • Engaged a private investigator to locate former BOR employees with knowledge of its  
15 DOD contracts;
- 16           • Issued document subpoenas to third parties IWV Insurance Brokers, James Lyle,  
17 CPA, LevitZacks CPA, United States Department of Defense, Arnold Danielson  
18 (former BOR employee), Cordell Construction, Herman Construction, architect Kiran  
19 Mehra, the Law Offices of Steven Boster, Dake, Braun & Monje, LLP, Ullakko  
20 Muranishi & Co., Bank of America and RA Capital Advisors;
- 21           • The parties scheduled the depositions of State Farm agents Roger Dorman and Lisa  
22 MacMillan in Ridgecrest, CA in April 2016. Mr. Dorman's deposition could not  
23 proceed because he fell ill the day before. Plaintiff's counsel was en route from San  
24 Diego to Ridgecrest when his car broke down, so Ms. MacMillan's deposition could  
25 not proceed.

26          9.       The parties anticipated that they would be able to comply with previous deadlines  
27 proposed to and adopted by the Court. However, the parties did not sufficiently appreciate how their  
28 ability to complete discovery would be impacted by Harold Bennett's conservatorship proceeding,

1 BOR's effective dissolution and Matthew Bennett's cancer treatment in Boston.

2 10. In addition to the depositions of Mr. Dorman and Ms. MacMillan, plaintiffs currently  
3 anticipate taking the depositions of the State Farm claim representative and manager primarily  
4 responsible for handling the claim. State Farm currently anticipates taking the depositions of  
5 Matthew Bennett (assuming his health permits), Ms. Picking, Mr. Silberberg, Charles Cordell  
6 (Cordell Construction) and Steve Smidt (Herman Construction).

7 11. The current dates and deadlines are as follows:

- 8 • Initial expert witness disclosures is May 27, 2016;
- 9 • Rebuttal expert disclosures is June 17, 2016;
- 10 • Deadline for all discovery to be completed is July 19, 2016;
- 11 • Deadline for hearing of dispositive motions is July 19, 2016;
- 12 • Final pre-trial conference is August 22, 2016;
- 13 • The trial date is October 18, 2016.

14 12. The parties have agreed to submit this matter to Scott Dickinson at ADR Services for  
15 mediation. The parties have obtained several dates when Mr. Dickinson is available in June 2016  
16 and are in the process of reconciling client and attorney schedules.

17 13. The parties believe they have been reasonably diligent given the unusual factors  
18 outlined above, which have impacted the ability to complete discovery. The parties also respectfully  
19 submit that the additional time they seek for expert disclosures and discovery will not impact the  
20 remaining dates and deadlines in the current Scheduling Order, including the dispositive motion  
21 deadline, pretrial conference or trial.

22  
23 **II.**  
**STIPULATION**

24 The parties hereby stipulate to the following revisions to the court's Scheduling Order:

- 25 1. Expert Disclosure July 8, 2016  
(currently May 27, 2016)
- 26 2. Expert Rebuttal July 22, 2016

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(currently June 17, 2016)

3. Deadline to complete all discovery

August 8, 2016  
(currently July 19, 2016)

Dated: May 10, 2016

LAW OFFICES OF CRAIG A. MILLER

By /S/ Craig A. Miller  
CRAIG A. MILLER  
PATRICK A. CALHOON  
Attorneys for Plaintiffs  
HAROLD and DOROTHY BENNETT

Dated: May 10, 2016

HAYES SCOTT BONINO ELLINGSON & McLAY, LLP

By /S/ Stephen P. Ellingson  
STEPHEN M. HAYES  
STEPHEN P. ELLINGSON  
Attorneys for Defendant  
STATE FARM GENERAL INSURANCE  
COMPANY

**[PROPOSED] ORDER**

Pursuant to the parties' stipulation<sup>1</sup>, the Pretrial Schedule is revised as follows:

- 1. Expert Disclosure July 8, 2016  
(currently May 27, 2016)
- 2. Expert Rebuttal July 22, 2016  
(currently June 17, 2016)
- 3. Deadline to complete all discovery August 8, 2016  
(currently July 19, 2016)

<sup>1</sup> The Court notes that the stipulation is still unsatisfactory. For example, Mr. Bennett has been the subject of conservatorship proceedings since one month after this matter was removed to this Court. Likewise, Mr. Matthew Bennett has been undergoing treatment for his grave medical condition, sadly, for 14-16 months. The onset of both of these events occurred well *before* the Court issued its initial scheduling order on May 29, 2015. (Doc. 19) Moreover, it would seem that impediments to pursuing this case posed by these tragedies should have been known by that time but neither situation was mentioned as in impediment to completing the case. (Doc. 18) Matthew Bennett was not mentioned at all. *Id.* Likewise, neither situation was discussed in the other stipulations to amend the case schedules. (Docs. 29, 31, 32, 38, 42) Though counsel noted in the initial joint scheduling report that they did not know whether Mr. Bennett's conservatorship might impact the case (Doc. 13 at 4-5), apparently, became confident it would not do so because by the time counsel filed the amended status report they did not mention any concern. (Doc. 18)

1 **Absolutely no further extensions of time as to any deadline are contemplated and counsel are**  
2 **admonished to redouble their efforts to meet the deadlines now in place.**

3  
4 IT IS SO ORDERED.

5 Dated: May 12, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28