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 DAMERON HOSPITAL ASSOCIATION

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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SACRAMENTO DIVISION

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DAMERON HOSPITAL ASSOCIATION,)

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Plaintiff,)

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vs.)

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USI ADMINISTRATORS, INC. and DOES 1)
 through 50, inclusive,)

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Defendants.)

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Case No.: 2:01 CV 1788 JAM GGH

**STIPULATION AND AMENDED SCHEDULING
ORDER CONTINUING EXPERT DISCLOSURE AND
DISCOVERY DEADLINES, ONLY**

Assigned to Hon. Judge Mendez

Expert Witness Designation: June 12, 2009

Discovery Cut-Off: August 13, 2009

Trial Date: January 11, 2010

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TO THE HONORABLE COURT AND TO ALL INTERESTED PARTIES AND
THEIR COUNSEL OF RECORD:

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I. INTRODUCTION:

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Plaintiff Dameron Hospital Association (“Dameron”) filed a motion seeking a nine
month continuance of the trial and all pre-trial deadlines in order to complete preparation of

1 this matter for trial. [Document 48.] On March 16, 2009, the Court issued an order
2 denying the motion and vacating the hearing. [Document 51.] On March 19, 2009,
3 Dameron and defendant USI Administrators, Inc. (“USI”) filed a joint stipulation seeking a
4 six month continuance of the trial and all pre-trial deadlines to complete preparation of this
5 matter for trial. [Document 52.] On March 20, 2009, the Court issued a minute order
6 declining to sign the proposed order submitted with the stipulation. [Document 52.]

7 Based on the decision of the Court not to continue the trial date, the parties to this
8 action hereby stipulate to and request that the Court enter an order modifying the current
9 scheduling order to allow the parties additional time to exchange expert disclosure and
10 reports and to complete discovery. The parties seek a modified order that would set the
11 initial expert disclosure deadline 90 days prior to trial pursuant to FRCP 26, sub. (2)(C), a
12 rebuttal expert disclosure deadline 70 days prior to trial, and the discovery cut-off
13 approximately 55 days prior to trial. The parties stipulate and agree that this modified
14 scheduling order will not change the current deadlines for the filing and hearing of
15 dispositive motions, the final pre-trial conference, and trial. The parties support this
16 stipulation and proposed order with the good cause detailed below.

17 **II. GOOD CAUSE FOR A MODIFIED SCHEDULING ORDER**

18 Dameron seeks to recover damages for money it claims that defendant USI caused it to
19 overpay for its employee health benefits program.

20 The Court’s file will reveal that this matter was filed in January 2001 in the
21 California Superior Court for San Joaquin County, Stockton Branch. [Document 1 on
22 Court Docket.] Soon thereafter USI removed to this Court based on diversity jurisdiction.
23 The Court set an initial trial date of June 23, 2003. [Document 7 on Court Docket.]
24 In late 2002, the parties agreed to enter into a protracted mediation effort. As part of the
25 agreement to mediate, the parties agreed to informally share documents and data
26 concerning claims and to cease formal discovery. This protracted mediation effort took
27 place between approximately late 2002 and March 2007. During this period there were
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1 three mediations at J.A.M.S. and numerous trial continuances to allow the parties to
2 continue mediating. The last of the mediations took place in March, 2007.

3 In August, 2007 Dameron retained trial counsel (Hatton, Petrie & Stackler APC) to
4 prepare this case for trial. Between January and March of 2008, Dameron and USI engaged
5 in a meet and confer process regarding production of claims documents by USI. USI
6 rigorously objected to Dameron's attempt to recover claims overpayments for years
7 preceding 1999, and initially refused to produce documents from years preceding 1999.
8 Dameron filed a motion to compel on February 11, 2008. Dameron and USI then met to
9 discuss a joint statement of the discovery dispute. This meeting led to USI's agreement to
10 provide to Dameron all of USI's and its predecessor, Beckwith Hightower & Renberg
11 Insurance Services, Inc. ("Beckwith") claims-based documents (for all of their clients)
12 between approximately 1995 and 2001. Culminating on March 24, 2008, some 1,200-plus
13 bankers boxes of USI documents were transferred to Dameron's Stockton storage facility.
14 Thereafter, on April 9, 2001, USI filed a Motion in Limine seeking an order limiting the
15 claims at issue to 1999 and 2000. [Document 29.] On May 13, 2008, the Court denied the
16 motion without prejudice to its renewal closer to trial. [Document 42.]

17 Dameron engaged in a "first cut" review of the 1,200-plus boxes in its warehouse to
18 eliminate boxes that did not appear to contain any "Dameron relevant" documents. This "first
19 cut" resulted in a reduction of the "at issue" boxes to 800 or so. Dameron completed this "first
20 cut" on or around June 2008.

21 Following completion of this "first cut," Dameron's counsel engaged in a "second cut"
22 review to segregate the boxes containing claims documents and to organize the claims boxes by
23 year. In August 2008 Dameron was finally in a position for its counsel to review the claims
24 documents. The claims documents were stored by date of claims adjustment, with sub-folders
25 broken down by individual claims adjusters containing all claims that the adjuster processed on
26 the given day. Importantly, the Dameron self-funded health plan claims were mixed with claims
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1 that USI had processed for several other clients. Dameron health plan claims had to be located
2 and extracted from several tens of thousands of non-Dameron claims forms *by hand*.

3 As a result, Dameron's representatives have had to individually review every claims
4 form, separate out the Dameron claims and scan and store those claims. Dameron's document
5 review project *for just 1999 and 2000 claims documents* lasted between approximately August
6 2008 and January 2009.

7 Dameron and USI are now having experts perform respective audits of the claims for
8 1999 and 2000. A preliminary review of scanned documents indicates there are approximately
9 50,000 claims for just 1999 and 2000. Dameron's and USI's experts conservatively estimate that
10 they will each be able to complete a partial audit of the 1999 and 2000 claims sometime in June
11 or July 2009. Depending on the outcome of the audit, Dameron and USI may need to engage in
12 another lengthy document review and/or further audit process. It is estimated that this additional
13 audit would be completed in mid to late September 2009.

14 Dameron intends to use the results of its audit as its means of proving its damages at trial.
15 USI intends on using its own audit as a defense to the liability and damages issues. Dameron
16 and USI anticipate that their respective audits will be completed in mid to late September, 2009,
17 at which time they will be in a position to prepare and produce voluminous expert reports and
18 engage in expert witness discovery.

19 The current expert designation deadline is June 15, 2009. Accordingly, both USI and
20 Dameron attest that they will not be in position to produce the detailed expert witness reports
21 required under the FRCP and local rules at that time. They anticipate being able to make such
22 disclosures in mid-October 2009, and therefore pray that the Court will grant them relief and
23 extend the expert disclosure deadline into mid-October 2009.

24 The parties will need to perform additional discovery in the way of expert and non-expert
25 depositions following their audits. The parties anticipate that they will be in a position to engage
26 in and complete this discovery between September and November 2009. Because the parties
27 will not be in a position to make expert disclosures until mid-October 2009, the parties stipulate
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1 and agree that the current discovery cut-off should be extended until mid-November 2009
2 (approximately 55 days before trial).

3 Additionally, the parties have agreed to pursue further settlement/mediation negotiations
4 once a substantial portion of the audits have been conducted. The parties stipulate and agree that
5 if the current expert disclosure and discovery deadlines are not extended, that they will be forced
6 to focus all of their resources and attention on preparing this matter for trial. The time
7 constraints would substantially frustrate, if not make impossible, the parties' ability to take time
8 out to meaningfully mediate and/or settle this matter prior to trial. Thus, the parties stipulate and
9 agree that judicial resources would be benefitted by the continuance sought herein, as it would
10 allow the parties to engage in mediation, and potentially avoid burdening the Court with a trial.

11 **III. THE RELIEF SOUGHT**

12 The current trial and pre-trial schedule in this matter sets the following deadlines
13 regarding expert disclosure and the discovery cut-off:

14 Expert Disclosure:	June 12, 2009
15 Rebuttal Expert Disclosure:	July 13, 2009
16 Discovery Cut-Off:	August 13, 2009.

17 Thus, with expert disclosure and the discovery cut-off looming, the parties stipulate and
18 agree that a continuance of the expert disclosure and discovery deadlines to a date closer to trial
19 is necessary. As illustrated above, the parties have been diligently pursuing discovery and
20 investigation of this matter and preparing it for trial.

21 Despite the parties' best efforts, however, the reality is that, based on the large volume of
22 documents at issue, and the extensive pre-trial investigation, expert analysis and discovery
23 necessary to prepare this matter for trial, the continuance sought here is in order. Accordingly,
24 for the reasons stated above, the parties hereby stipulate and request that the Court issue an Order
25 amending the Court's previous Status (Pre-trial Scheduling) Order of May 29, 2008, as follows:

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1		<i>OLD DATES:</i>	<i>NEW DATES:</i>
2	Expert Disclosure:	June 12, 2009	October 13, 2009
3	Rebuttal Expert Disclosure:	July 13, 2009	November 2, 2009
4	Discovery Cut-Off:	August 13, 2009	November 16, 2009

5 The parties stipulate and agree that this modified scheduling order will not change the
6 current deadlines for the filing and hearing of dispositive motions, the final pre-trial
7 conference, and trial.

8 **IV. CONCLUSION**

9 In conclusion, the parties to this stipulation request that the Court enter the proposed
10 order submitted herewith. If, however, the Court is concerned with the progress of this
11 matter, and wishes more information than contained in this stipulation before entering such
12 an order, the parties pray that the Court set a Status Conference either in court or
13 telephonically so that counsel can discuss these issues with the Court.

14 A proposed order is concurrently submitted herewith.

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16 **IT IS SO STIPULATED.**

17 DATED: March 31, 2009 HATTON, PETRIE & STACKLER, APC

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20 _____/s/_____
21 By: GREGORY M. HATTON
22 Attorneys for DAMERON HOSPITAL
ASSOCIATION

23 DATED: March 31, 2009 CARROLL, BURDICK & McDONOUGH, LLP

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25 _____/s/_____
26 By: JAMES W. HENDERSON, JR.
27 Attorneys for USI ADMINISTRATORS, INC.

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

DAMERON HOSPITAL ASSOCIATION,)	Case No.: 2:01 CV 01 788 JAM GGH
)	AMENDED SCHEDULING ORDER CONTINUING
Plaintiff,)	EXPERT DISCLOSURE AND DISCOVERY
)	DEADLINES, ONLY
vs.)	
)	
USI ADMINISTRATORS, INC. and DOES 1))	
through 50, inclusive,)	
)	
Defendants.)	
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The Court, having reviewed the stipulation between Plaintiff Dameron Hospital Association and Defendant USI Administrators, Inc., to continue pretrial expert disclosure and discovery deadlines, and finding good cause therefore, **IT IS HEREBY ORDERED** that the pre-trial expert disclosure and discovery deadlines dates in this matter are continued as follows:

1 *OLD DATES:*
2 **Expert Disclosure:** **June 12, 2009**
3 **Rebuttal Expert Disclosure:** **July 13, 2009**
4 **Discovery Cut-Off:** **August 13, 2009**

5 *NEW DATES:*
6 **Expert Disclosure:** **October 13, 2009**
7 **Rebuttal Expert Disclosure:** **November 2, 2009**
8 **Discovery Cut-Off:** **November 16, 2009**
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12 **IT IS SO ORDERED.**

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15 Dated: April 1, 2009

/s/ John A. Mendez _____
**HON. JUDGE JOHN A. MENDEZ,
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA**

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1 *Dameron Hospital Association v. USI Administrators, Inc.*
2 U.S.D.C., Eastern Dist. of California, No. 2:01 CV-01-1788 JAM GGH

3 **CERTIFICATE OF SERVICE BY CM/ECF**

4 I hereby certify that on April 2, 2009, I electronically filed the foregoing
5 **STIPULATION AND [PROPOSED] AMENDED SCHEDULING ORDER CONTINUING**
6 **EXPERT DISCLOSURE AND DISCOVERY DEADLINES, ONLY** with the Clerk of Court
using the CM/ECF system which will send notification of such filing to the following e-
mail addresses:

7 James W. Henderson, Jr.
8 jhenderson@cbmlaw.com, acruickshank@cbmlaw.com

9 Gregory M. Hatton
10 g_hatton@hattonpetrie.com

11 John McMahon
12 j_mcmahon@hattonpetrie.com

13 I declare under penalty of perjury that the foregoing is true and correct, and that
14 this declaration was executed on April 2, 2009, at Sacramento, California.

15 _____/s/_____
16 AJ Cruickshank

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