

1 Rebecca Grey (State Bar No. 194940)  
grey@greylaw-sf.com  
2 THE GREY LAW FIRM, P.C.  
235 Montgomery Street, Suite 1101  
3 San Francisco, California 94104  
4 Telephone: (415) 262-9926  
Facsimile: (415) 262-9981

5 Attorney for Plaintiff and Counterdefendant  
6 DEVRA BOMMARITO

7 Sean P. Nalty (State Bar No. 121253)  
sean.nalty@ogletreedeakins.com  
8 Shivani Nanda (State Bar No. 253891)  
shivani.nanda@ogletreedeakins.com  
9 Cara F. Barrick (State Bar No. 303107)  
cara.barrick@ogletreedeakins.com  
10 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
11 Steuart Tower, Suite 1300  
12 One Market Plaza  
San Francisco, CA 94105  
13 Telephone: (415) 442-4810  
Facsimile: (415) 442-4870

14 Attorneys for Defendant and Counterclaimant  
15 THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA  
18 SACRAMENTO

19  
20 DEVRA BOMMARITO, an individual, ) Case No. 2:15-cv-01187-WBS-DB  
21 )  
22 Plaintiff and Counterdefendant, ) **JOINT STIPULATION AND REQUEST**  
23 v. ) **TO MODIFY THE DECEMBER 28, 2016**  
24 ) **PRETRIAL SCHEDULING ORDER;**  
25 THE NORTHWESTERN MUTUAL LIFE ) **[PROPOSED] ORDER**  
26 INSURANCE COMPANY and MARK )  
27 MAJEWSKI, ) Complaint Filed: June 1, 2015  
28 ) Trial Date: February 28, 2017  
Defendant and Counterclaimant. ) Judge: Hon. William B. Shubb  
)  
)

1 Plaintiff and Counterdefendant DEVRA BOMMARITO and Defendant and Counterclaimant  
2 THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, through their undersigned  
3 counsel hereby request that the Court adopt the stipulated modifications to the Scheduling Order in this  
4 matter set forth below based on the following:

5 **A. Current Status**

6 WHEREAS, Plaintiff filed the complaint in this matter on June 1, 2015. She alleges claims for  
7 relief for breach of contract and breach of the covenant of good faith and fair dealing (“bad faith”)  
8 based on the alleged wrongful denial of her claim for disability benefits by Defendant.

9 WHEREAS, on October 7, 2015, the Honorable William B. Shubb issued a Pretrial Scheduling  
10 Order setting forth the discovery deadlines, motion hearing schedule, final Pretrial Conference, and  
11 trial date in this matter. Due to the Plaintiff’s substitution of counsel, and difficulties created by a  
12 criminal investigation, the Court in a May 27, 2016 order modified the scheduling order as follows:  
13 Date for initial expert disclosures cut-off: February 10, 2017; Rebuttal expert disclosures cut-off:  
14 March 10, 2017; Date for discovery cut-off: April 7, 2017; Date for last day to hear discovery motions:  
15 April 7, 2017; Date for last day to hear all motions, except for motions for continuances, temporary  
16 restraining orders, or other emergency applications: June 26, 2017, 1:30 p.m. Final Pretrial  
17 Conference: September 11, 2017 at 1:30 p.m.; and Jury Trial date: October 24, 2017 at 9:00 a.m. On  
18 December 28, this Court granted a joint stipulation, with modification, establishing the following:  
19 Date for initial expert disclosures cut-off: June 12, 2017; Rebuttal expert disclosures cut-off: July 10,  
20 2017; Date for discovery cut-off: August 10, 2017; Date for last day to hear discovery motions: August  
21 10, 2017; Date for last day to hear all motions, except for motions for continuances, temporary  
22 restraining orders, or other emergency applications: September 18, 2017, 1:30 p.m. Final Pretrial  
23 Conference: December 4, 2017 at 1:30 p.m.; and Jury Trial date: February 6, 2018 at 9:00 a.m.  
24 (Docket 31.)

25 **B. The Criminal Action**

26 WHEREAS, on February 22, 2016, Plaintiff was charged with making a fraudulent claim for  
27 insurance payment, insurance fraud, grand theft of personal property, and making false entries in  
28 records by the San Joaquin County District Attorney’s Office. Plaintiff is charged with felony

1 insurance fraud with regard to the claim for disability benefits submitted to Defendant, the same claim  
2 for disability benefits that is the subject of Plaintiff's claims for relief for breach of contract and bad  
3 faith in this action.

4 **C. The Preliminary Hearing was Moved A SECOND TIME in the Criminal Action**

5 WHEREAS, the preliminary hearing in the criminal action, originally set December 13, 2016,  
6 had been rescheduled to April 18, 2017. On April 18, 2017, the hearing was called, however the  
7 District Attorney failed to produce a single witness and asked for a short delay to locate and subpoena  
8 witness(es). One week later the District Attorney again appeared without a witness, reporting that his  
9 witness was temporarily unavailable. The Hon. Lauren Thomasson continued the matter to  
10 September 5, 2017.

11 The Parties agree that the criminal continuance significantly impacts the prosecution of this  
12 matter. Before the Parties must disclosure experts, currently June 12, 2017, and comply with the other  
13 deadlines in the current scheduling order, the Parties need to know if Plaintiff is going to be criminally  
14 indicted for insurance fraud. A criminal indictment for insurance fraud will have a significant impact  
15 on her claims for breach of contract and bad faith. The claim for relief for bad faith will be presented to  
16 the Court in an entirely different fashion depending on whether she is indicted or the charges are  
17 dismissed. The existence of an indictment impacts the evaluation of whether Defendant's claim  
18 decision was reasonable.

19 In addition, for the same reason, before the Court becomes more actively involved in this  
20 matter through law and motion, pre-trial, and trial proceedings, the Parties and the Court need to know  
21 if Plaintiff has been indicted and, if so, when the criminal trial will take place. The determination of the  
22 criminal action plays a significant role on how the claims for relief for breach of contract and bad faith  
23 will be presented to this Court.

24 **D. Plaintiff's Counsel's Battle with Cancer**

25 Previous continuances have been ordered as a result of Plaintiff's counsel's cancer diagnosis in  
26 October of 2016. WHEREAS, for much of the fall, counsel for Plaintiff was undergoing treatment for  
27 cancer. Gratefully, she now has recovered and the Parties once again are able to move forward in this  
28 matter. Due to Plaintiff's battle with cancer, the Parties stopped prosecuting this matter altogether for

1 much of the winter of 2016/17. Now, Plaintiff's counsel has recovered fully and the Parties are again  
2 prosecuting this matter.

3 Under the current scheduling order, the Parties had planned to complete in September through  
4 November a significant document production and the significant depositions in this matter. The parties  
5 have undertaken several key depositions, including those of Plaintiff, and several participants in the  
6 claims decision at Northwestern. The parties have exchanged thousands of pages of documents.

7 The outcome of the September 2017 criminal hearing, which will result in either a dismissal or  
8 an indictment, will fundamentally alter the direction the final stages of discovery, trial preparation and  
9 any settlement discussions.

10 **E. Requested Modifications to the Scheduling Order**

11 Therefore, based on the status of the criminal action, and counsel for Plaintiff's battle with  
12 cancer, the Parties to this matter, through their counsel of record, hereby stipulate to the following  
13 modifications to the Scheduling Order in this matter and respectfully request that the Court issue an  
14 order modifying the Scheduling order as requested. With these modifications to the Scheduling Order,  
15 the determination of whether Plaintiff will be indicted will be determined before this Court has to  
16 address law and motion, pre-trial, and trial proceedings in this matter. At the same time the schedule  
17 compels the Parties to complete discovery and prepare for trial.

- 18 • Proposed date for initial expert disclosures cut-off: December 15, 2017
- 19 • Proposed date for rebuttal expert disclosures cut-off: January 19, 2018
- 20 • Proposed date for discovery cut-off: February 16, 2018
- 21 • Proposed date for last day to hear discovery motions: February 16, 2018
- 22 • Proposed date for last day to hear all motions, except for motions for continuances,  
23 temporary restraining orders, or other emergency applications: March 23, 2018
- 24 • Proposed Final Pretrial Conference: May 7, 2018
- 25 • Proposed trial date: July 9, 2018

26 ///

27 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: May 16, 2017

THE GREY LAW FIRM, P.C.

3 By: /s/ Rebecca Grey

4 Rebecca Grey  
5 Attorney for Plaintiff and Counterdefendant  
6 DEVRA BOMMARITO

6 Dated: May 16, 2017

OGLETREE, DEAKINS, NASH, SMOAK &  
7 STEWART, P.C.

8 By: /s/ Sean P. Nalty

9 Sean P. Nalty  
10 Attorneys for Defendant and Counterclaimant  
11 THE NORTHWESTERN MUTUAL LIFE  
12 INSURANCE COMPANY

12 For the reasons set forth in section D. above, and only for those reasons, pursuant to stipulation of the  
13 parties, IT IS SO ORDERED. The dates and deadlines are modified as follows:

- 14
- 15 • Date for initial expert disclosures cut-off: December 15, 2017
- 16 • Date for rebuttal expert disclosures cut-off: January 19, 2018
- 17 • Date for discovery cut-off: February 16, 2018
- 18 • Date for last day to hear discovery motions: February 16, 2018
- 19 • Date for last day to **file** all motions, except for motions for continuances, temporary  
20 restraining orders, or other emergency applications: March 23, 2018
- 21 • Final Pretrial Conference: **May 7, 2018 at 1:30 p.m.**
- 22 • Trial date: **July 17, 2018 at 9:00 a.m.**

23 Dated: May 17, 2017



24 WILLIAM B. SHUBB  
25 UNITED STATES DISTRICT JUDGE  
26  
27  
28