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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

18 MARGARET HALL, 19 Plaintiff, 20 vs. 21 PROVIDENT LIFE AND ACCIDENT INSURANCE COMPANY, 22 Defendant) Case No.: CV 08 0114 CRB)) STIPULATION REGARDING THE) DEPOSITIONS OF DR. E. GARY STARR) AND MARY FULLER AND PROPOSED) ORDER THEREON
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 25 Plaintiff Margaret Hall and defendant Provident Life and Accident Insurance Company
 26 (“Provident”), through their respective counsel, stipulate with respect to the following facts:
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1 1. Dr. E. Gary Starr is a physiatrist with an office in Reno, Nevada. On October 1,
2 2007, Dr. Starr performed an independent medical examination of Plaintiff at the request of
3 Provident. Provident relied upon Dr. Starr's report of the examination in deciding to terminate
4 Plaintiff's disability benefits.

5 2. Plaintiff served a deposition subpoena on Dr. Starr scheduling his deposition for
6 January 19, 2010.

7 3. Prior to the deposition, Dr. Starr's office demanded a deposition fee of \$2,500 per
8 hour. Plaintiff's counsel contend that they negotiated an agreement with Dr. Starr's office
9 whereby he would appear for his deposition for a deposition fee of \$1,000 per hour. Prior to the
10 deposition, Plaintiff's counsel paid Dr. Starr \$1,000 for the first hour of the deposition.

11 4. On January 19, 2010, counsel for Plaintiff and Provident traveled to Reno,
12 Nevada, for Dr. Starr's deposition. Dr. Starr appeared for his deposition, but left after thirty
13 minutes stating:

14 You purchased a half an hour of my time. So we made arrangements in the office
15 that I would have patients after that. So, when you sent us a check for a thousand
16 dollars, that was your request to buy a half an hour. So we have patients. So I
17 need to go.

18 (January 19, 2010 Deposition of Edward Gary Starr, M.D., at 17:14-17.)

19 5. Plaintiff then filed a Petition and Application for an Order to Show Cause
20 Regarding the Deposition of Dr. E. Gary Starr with the United States District Court for the
21 District of Nevada, which was assigned Case No. 3:10-cv-00075 ("the OSC Action"). In the
22 OSC Action, plaintiff seeks an order compelling Dr. Starr to appear for a deposition at a date and
23 time set by the Court and awarding Plaintiff her actual losses incurred as a result of Dr. Starr's
24 failure to comply with the deposition subpoena.

25 6. On February 19, 2010, Magistrate Judge Valerie P. Cooke entered an order in the
26 OSC Action directing Dr. Starr to appear on March 29, 2010, to show cause why he should not
27 be held in contempt for his violation of the deposition subpoena and why Plaintiff should not be
28 awarded compensatory damages, including costs and expenses incurred in connection with the

1 January 19, 2010 deposition and the costs and expenses incurred in bringing the OSC Action.

2 The hearing on the order to show cause has been continued to April 12, 2010.

3 7. On February 23, 2010, Provident designated Dr. Starr as an expert witness in this
4 action.

5 8. The deposition of Mary Fuller, one of Plaintiff's designated expert witnesses, was
6 originally scheduled for March 19, 2010 in Portland, ME. The parties have agreed to reschedule
7 that deposition for a mutually convenient date that may be after the expert discovery cut-off date
8 of April 1, 2010.

9 THEREFORE, Plaintiff and Provident, through their respective counsel, stipulate as
10 follows:

11 1. Provident will notice Dr. Starr's deposition at his office or another location in
12 Reno, Nevada on a date that is mutually convenient for counsel for Plaintiff and Provident.

13 2. The deposition of Dr. Starr may be taken after the expert discovery cut-off date of
14 April 1, 2010.

15 3. Provident will pay Dr. Starr's deposition fee for a four hour deposition at a rate
16 not to exceed a maximum of \$6,000.

17 4. Plaintiff's counsel will exam Dr. Starr first and will have up to three hours to
18 complete the examination. Plaintiff's counsel may reserve a portion of the three hours for
19 additional questions after the examination by Provident's counsel.

20 5. Provident's counsel will then depose Dr. Starr for up to one hour.

21 6. Provident will videotape the deposition and the parties agree that the deposition
22 can be used at trial in lieu of live testimony, subject to evidentiary objections.

23 7. Plaintiff will promptly dismiss the OSC Action.
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1 8. The deposition of Mary Fuller may be taken after the expert discovery cut-off
2 date of April 1, 2010.

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4 Dated: April 6, 2010

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP

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 /s/ Thomas M. Herlihy
By: _____
 Thomas M. Herlihy
 Francis J. Torrence
 Lisa S. Passalacqua
 Attorneys for Defendant
 Provident Life and Accident Insurance Company

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Dated: April 6, 2010

KANTOR & KANTOR LLP

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 /s/ J. David Oswalt
By: _____
 J. David Oswalt
 Attorneys for Plaintiff Margaret Hall

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ORDER

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PURSUANT TO STIPULATION, IT IS ORDERED that:

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1. Provident will notice Dr. Starr's deposition at his office or another location in
21 Reno, Nevada on a date that is mutually convenient for counsel for Plaintiff and Provident.

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2. The deposition of Dr. Starr may be taken after the expert discovery cut-off date of
23 April 1, 2010.

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3. Provident will pay Dr. Starr's deposition fee for a four hour deposition at a rate
25 not to exceed a maximum of \$6,000.

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4. Plaintiff's counsel will exam Dr. Starr first and will have up to three hours to
27 complete the examination. Plaintiff's counsel may reserve a portion of the three hours for
28 additional questions after the examination by Provident's counsel.

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5. Provident's counsel will then depose Dr. Starr for up to one hour.

6. Provident will videotape the deposition and the parties agree that the deposition can be used at trial in lieu of live testimony, subject to evidentiary objections.

7. Plaintiff will promptly dismiss the OSC Action.

8. The deposition of Mary Fuller may be taken after the expert discovery cut-off date of April 1, 2010.

Date: April 8, 2010

