1	JULIAN M. BAUM (CA State Bar No. 130892 JULIAN M. BAUM & ASSOCIATES	2)	
2	9 Tenaya Lane		
3	Novato, California 94947 Telephone: (415) 892-3152		
4	Facsimile: (888) 452-3849		
5	E-Mail: <u>JMB@JMBLawGroup.Com</u>		
6	C. JUDITH JOHNSON (CA State Bar No. 104557) CAMERLENGO & JOHNSON		
7	500 Airport Boulevard, Suite 350 Burlingame, California 94010		
8	Telephone: (650) 579-2911		
9	Facsimile: (650) 579-7975 E-Mail: CANDJLAW@IX.NETCOM.COM		
10	Attorneys for Plaintiff Sharon Bardill		
11			
12	UNITED STATES DISTRICT COURT		
13	NORTHERN DISTRICT OF CALIFORNIA		
14			
15	SHARON BARDILL, an individual,	) 	
16	Plaintiff,	) Case No. C 09-03025 CRB	
17		) STIPULATION AND [Proposed]	
18	v.	<ul><li>) ORDER RE PLAINTIFF'S SECOND CLAIM</li><li>) FOR RELIEF</li></ul>	
19	THE LINCOLN NATIONAL LIFE	)	
20	INSURANCE COMPANY; JEFFERSON PILOT FINANCIAL INSURANCE	)	
20	COMPANY; CAMINAR	)	
	COMPREHENSIVE HEALTH AND WELFARE BENEFIT PLAN; and	)	
22	CAMINAR, in its capacity as Plan	)	
23	Administrator of the Caminar Comprehensive Health and Welfare Benefit Plan,	)	
24	Defendants.	)	
25		-	
26			
27			
28			
	STIPULATION AND PROPOSED ORDERPage 1 of 3Case No. C 09-03025 CRBRE SECOND CLAIM FOR RELIEF		
		Dockets Justia co	

1	1. <i>Whereas</i> this is an action seeking recovery of disability benefits and related relief under		
2	the Employee Retirement Security Act ("ERISA"), 29 U.S.C. §§ 1001 et seq; and		
3	2. <i>Whereas</i> by this Stipulation and Proposed Order the parties seek to simplify the		
4	pleadings, and to further judicial economy by avoiding potential technical pleadings motions		
5	regarding proper parties defendant under ERISA. Specifically, the parties stipulate that plaintiff		
6	shall dismiss her second claim for relief for breach of fiduciary duty, and defendant Lincoln		
7	National Life Insurance Company, in addition to the defendant ERISA "plan," shall bear		
8	responsibility for any relief awarded by the Court to plaintiff;		
9	3. <i>Whereas</i> , current Ninth Circuit jurisprudence provides that a plaintiff may <i>not</i> assert an		
10	ERISA claim for disability benefits under 29 U.S.C. §1132(a)(1)(B) against the group disability		
11	insurance company that issued and administered the disability insurance policy at issue, but may		
12	assert such a claim only against the ERISA "plan" as an entity, without respect to whether that		
13	plan has assets or may otherwise be subject to an enforceable money judgment. Ford v. MCI		
14	Communications Corp. Health and Welfare Plan, 399 F.3d 1076, 1081 (9th Cir. 2005). Rather, a		
15	plaintiff may plead a claim against said insurer for breach of fiduciary duty under 29 U.S.C. §		
16	1132(a)(3) and seek to establish that she has no adequate legal remedy under 29 U.S.C.		
17	§1132(a)(1)(B). Ehrman v. Standard Ins. Co., 2007 WL 1288465 at *4-5 (N.D. Cal.		
18	2007)(plaintiff may plead claim against insurer for breach of fiduciary duty under 29 U.S.C.		
19	§1132(a)(3).);		
20	Wherefore,		
21	The parties stipulate and respectfully request the Court order as follows:		
22	a. Plaintiff's Second Claim for Relief is dismissed without prejudice;		
23	b. Defendant Lincoln National Life Insurance Company shall bear responsibility for any		
24	relief ordered by the Court to plaintiff in this action;		
25	c. For so long as the Court's judgment remains unsatisfied in whole or in part,		
26	defendants waive any statute of limitations defense to assertion by plaintiff of the claim for relief		
27	dismissed by this Stipulation and Proposed Order.		
28	///		
	STIPULATION AND PROPOSED ORDERPage 2 of 3Case No. C 09-03025 CRBRE SECOND CLAIM FOR RELIEF		

1 2 3 4 5 6 7 8 9	Dated: January 4, 2010 Dated: October 16, 2009	Respectfully submitted, JULIAN M. BAUM & ASSOCIATES /s/ by Julian M. Baum by JULIAN M. BAUM Attorneys for Plaintiff GORDON & REES LLP /s/ by Tad A. Devlin by TAD A. DEVLIN
<ol> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	The parties having stipulated as set forth all IT IS SO ORDERED. March 05, 2010 DATED: January, 2010	Atomeys for Defendants
28	STIPULATION AND PROPOSED ORDER RE SECOND CLAIM FOR RELIEF	Page 3 of 3 Case No. C 09-03025 CRB