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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN HAGERTY,

Plaintiff,

VS.

AMERICAN AIRLINES LONG TERM
DISABILITY PLAN,

Defendant.

CASE NO: CV 09-3299 BZ

STIPULATION AND ~~PROPOSED~~
ORDER THAT (1) THE PARTIES BE
EXCUSED FROM PRETRIAL
REQUIREMENTS; (2) THE
PRETRIAL CONFERENCE BE
TAKEN OFF CALENDAR; AND (3)
A BRIEFING SCHEDULE BE SET

Trial Date:

Date: November 3, 2010
Time: 9:00 a.m.
Place: Courtroom G

Pretrial Conference:

Date: October 26, 2010
Time: 4:00 a.m.
Place: Courtroom G

Plaintiff, Brian Hagerty (“Plaintiff”), and Defendant American Airlines Long
Term Disability Plan (“Defendant”), through their respective counsel of record,
hereby stipulate as follows:

1. This Court has set a Pretrial Conference for November 3, 2010 at 4:00 p.m.
Further, in its Order of February 2, 2010, the Court has tasked the parties with a number

1 of duties to be preformed prior to the Pretrial Conference, such as filing a pretrial
2 statement and exchanging and submitting exhibits;

3 2. The parties bring this stipulation to respectfully ask the Court to excuse them
4 from these pretrial requirements. Instead, for the reasons shown below, the parties
5 request the Court to set a briefing schedule, and to conduct the trial as it would a Motion
6 for Summary Judgment;

7 3. This case results from the denial of long term disability benefits to Plaintiff
8 under an employee benefit plan administered and funded by Defendants and therefore,
9 is governed by the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C.
10 Section 1001, *et seq.*;

11 4. In the case of *Kearney v. Standard Ins. Co.*, 175 F. 3d 1084 (9th Cir. 1999)
12 (en banc), the Ninth Circuit determined that a District Court’s review of a fiduciary’s
13 benefits decision under ERISA should - with some exceptions - be conducted solely on
14 the administrative record which was before the fiduciary at the time it made its decision.
15 As the *Kearly* Court held:

16 Although Rule 43(a) requires that “testimony” be taken in open court, the
17 record should be regarded as being in the nature of exhibits, in the nature of
18 documents, which are routinely a basis for findings of fact even though no
19 one reads them out loud. We have affirmed bench trials on records in other
20 cases. *See Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777, 779 (9th
21 Cir.1992). A majority of us conclude that, in its discretion guided by
22 *Mongeluzo [Mongeluzo v. Baxter Travenol Disability Benefit Plan]*, 46 F.3d
23 938, 942 (9th Cir.1995), the district court may try the case on the record
24 that the administrator had before it. This is vastly less expensive to all
25 parties, accomplishes the policies enacted as part of the statute, and also
26 gives significance, which would otherwise largely evaporate, to the
27 administrator's internal review procedure required by the statute.

28 *Kearney*, 175 F.3d at 1094 -1095 (footnote omitted);

5. This administrative record has already been filed. The parties do not intend
to introduce any other evidence, or to present any witnesses at the trial of this matter;

6. The parties further agree that, given the applicable law, this matter will be
tried to the Court;

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ORDER

BASED ON THE STIPULATION OF THE PARTIES and for Good Cause shown, the following is hereby ORDERED:

- 1. That the Pretrial Conference previously set for October 26, 2010 be taken off calendar;
- 2. That the parties be excused from the pretrial requirements of this Court's February 2, 2010 Order;
- 3. That the parties will file opening Memoranda of Fact and Law no later than October 6, 2010; and
- 4. Each party may file a Trial Brief opposing the other party's Memorandum no later than October 20, 2010.

IT IS SO ORDERED

DATED: September 21, 2010



The Honorable Bernard Zimmerman
United States Magistrate Judge