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 11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 San Francisco Division
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| <p>13 FEDERAL TRADE COMMISSION, 14 Plaintiff, 15 v. 16 WELLNESS SUPPORT NETWORK, INC., a corporation, ROBERT HELD, 17 individually and as an officer of Wellness Support Network, Inc., and ROBYN HELD, 18 individually and as an officer of Wellness Support Network, Inc., 19 20 Defendants. 21 22</p> |
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Case No. 3:10-cv-04879-JCS
 STIPULATION AND ~~PROPOSED~~
 ORDER TO EXTEND CONTINUANCE
 AND TO SET NEW SCHEDULE;
 DECLARATION OF LAURA FREMONT
 IN SUPPORT
 Date of next CMC: August 31, 2012
 Time: 1:30 p.m.
 Place: Courtroom G, 15th Floor
 Judge: Hon. Joseph C. Spero

1 Pursuant to L. R. 6-2 and L.R. 7-12, Plaintiff Federal Trade Commission (“FTC”) and
2 defendants Wellness Support Network, Inc., Robert Held, and Robyn Held (“Defendants”)
3 respectfully request that the Court extend the continuance in this case to September 30, 2012
4 to facilitate settlement, and approve the below schedule the parties propose to follow in the
5 event settlement is not achieved.

6 **A. Extension of Continuance to September 30, 2012**

7 With the assistance of the Honorable Magistrate Judge Corley, the parties have agreed
8 in principle to a stipulated judgment and final order that will fully resolve this case. The
9 parties, as a condition of settlement, agreed to consult on certain steps that would be required
10 for Defendants to comply with the order. To facilitate the completion of these steps, the
11 parties stipulated, and on May 21, 2012 this court ordered, that deadlines in this matter be
12 continued three months (Dkt. #74). The parties also agreed to meet for a subsequent
13 settlement conference with Judge Corley towards the end of the process. Due to the need to
14 coordinate the schedules of counsel and Judge Corley, the settlement conference will take
15 place on September 7, 2012 (see *Clerk’s Notice Scheduling Settlement Conference*, entered
16 into the ECF system on July 19, 2012; no document number assigned). Because the existing
17 continuance granted by the Court’s previous Order (Dkt. 74) would expire before the
18 settlement conference, the parties respectfully request the Court to extend the existing
19 continuance until September 30, 2012.

20 Should Defendants sign the stipulated judgment and order, counsel for the FTC will
21 submit the proposed final order to the five members of the Federal Trade Commission, with a
22 recommendation that the Commission approve it. All settlements negotiated by FTC
23 attorneys and signed by defendants must be voted on by the Commission. The approval
24 process takes some time given the number and breadth of matters pending votes of the
25 Commission. The parties are not requesting, however, a continuance past September 30 at
26

1 this time.

2 **B. Proposed Schedule Should Settlement Not be Reached**

3 The parties remain hopeful that the settlement the parties have reached in principle
4 will be finalized. In the event that by September 30 it is obvious that litigation must resume,
5 however, counsel have conferred and stipulated to a proposed schedule.

6 At the time deadlines were continued to provide time for settlement (Dkt. #74), the
7 parties had already propounded lengthy discovery on opponents. Although deadlines were
8 continued, counsel for the parties have nevertheless attempted to resolve known issues so that
9 discovery can continue expeditiously should litigation resume. The parties have, for example,
10 agreed to a protective order (filed concurrently with this Stipulation). The protective order
11 addresses concerns Defendants expressed regarding production of certain documents and
12 information. The protective order will thus enable prompt provision of withheld documents
13 and information at the expiration of the continuance, without resort to motion practice. The
14 parties have also committed to providing all other outstanding discovery responses
15 immediately upon expiration of the continuance.

16 In spite of these good faith efforts to expedite this litigation, after frank discussion
17 both parties believe some discovery motion practice is likely. The proposed schedule reflects
18 a very modest amount of time to account for that likelihood, and to permit provision of any
19 disputed materials in time for use at deposition. In addition, the schedule reflects the
20 unavailability of expert witnesses for deposition over the December holidays (although the
21 schedule does contemplate production of expert reports shortly after the holidays end).
22 Lastly, the proposed schedule provides a slightly longer dispositive motion briefing schedule
23 than provided for motions under the local rules, to allow the parties sufficient time to
24 thoroughly brief the myriad issues in this case and increase the possibility of resolving this
25 matter without need for a trial.

1 Kenneth H. Abbe
2 Attorneys for Plaintiff
3 Federal Trade Commission

4 (The filer attests that concurrence in the filing of this document has been obtained from the
5 other signatories.)

6 DATED: August 21, 2012

7 s/Andrew S. Ittleman____
8 Mitchell Fuerst
9 Andrew S. Ittleman
10 Fuerst Ittleman David & Joseph PL
11 Attorneys for Defendants
12 Wellness Support Network, Inc., Robert Held,
13 and Robyn Held

14 PURSUANT TO STIPULATION, IT IS SO ORDERED. IT IS HEREBY FURTHER
15 ORDERED THAT the further case management conference scheduled for August 31, 2012, at
16 1:30 p.m., has been continued to **October 12, 2012, at 1:30 p.m.** The updated joint case
17 management conference statement shall be due by October 5, 2012.

18 DATED: August 23, 2012

19 /s/ Joseph C. Spero_____
20 JOSEPH C. SPERO
21 UNITED STATES MAGISTRATE JUDGE

1 parties filed a stipulation (Dkt #5) to extend that deadline to December 29, 2010; to set the
2 deadline for Plaintiff to file its opposition to any papers filed by Defendants responsive to the
3 Complaint to January 14, 2011; and to set the hearing on such matters for February 4, 2011.
4 The Court so ordered on November 29, 2010 (Dkt #6).

5 On December 15, 2010, the parties filed a stipulation (Dkt #7) to modify the times set
6 in the Court's *Order Setting Initial Case Management Conference and ADR Deadlines* (Dkt
7 #3). The Court so ordered on December 15, 2010 (Dkt #8).

8 On January 26, 2011, the parties filed a *Second Stipulation to Revise Schedule* (Dkt
9 #21) to modify the times set in the Court's *Order Setting Initial Case Management
10 Conference and ADR Deadlines* (Dkt #3). The Court so ordered on January 27, 2011 (Dkt
11 #22).

12 On April 4, 2011, the Court entered an Order (Dkt #24) granting in part and denying in
13 part Defendants' *Motion to Dismiss Complaint*. As a result of this Order, the parties filed a
14 Joint Stipulation (Dkt # 25) on April 18, 2011 to provide time frames for Plaintiff to re-plead
15 its Complaint in part and for Defendants to file responsive papers. The Court so ordered on
16 April 18, 2011 (Dkt #26).

17 On May 12, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #28) to
18 extend by 20 days the time for Defendants to file pleadings responsive to Plaintiff's *First
19 Amended Complaint* (Dkt. #27), and to extend by 20 days the deadlines for the parties to
20 perform the tasks required by the Court's case management orders. The Court so ordered on
21 May 16, 2011. (Dkt. #29).

22 On June 15, 2011, the parties filed a *Joint Stipulation* (Dkt. #32) to extend the
23 deadlines for the Plaintiff to file its opposition to Defendants' *Motion to Dismiss*, the
24 Defendants' reply, and the deadlines for the parties to perform the tasks required by the
25 Court's case management orders. The Court so ordered on June 16, 2011. (Dkt. #33).

1 On June 28, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #34) to
2 extend the deadlines for the Defendants to file their *Reply* to Plaintiff's *Opposition to*
3 *Defendants' Motion to Dismiss*. The Court so ordered on June 29, 2011. (Dkt. #36).

4 On September 7, 2011, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt.
5 #42) to extend the deadlines for the parties to exchange initial disclosures. The Court so
6 ordered on September 29, 2011. (Dkt. #43).

7 On November 8, 2011, the parties filed a *Joint Stipulation to Revise Schedule Re:*
8 *Exchange of Reports and Settlement Conference* (Dkt. #53) to extend deadlines for the
9 exchange of expert reports for settlement purposes only and to reschedule the case settlement
10 conference in this matter. The Court so ordered on November 9, 2011. (Dkt. #54).

11 On January 18, 2012, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #62)
12 to extend deadlines for the exchange of expert reports for settlement purposes only, to
13 reschedule the case management conference in this matter, and to reschedule the case
14 settlement conference in this matter. The Court so ordered on January 23, 2012. (Dkt. # 63).

15 On March 13, 2012, the parties filed a *Joint Stipulation to Revise Schedule* (Dkt. #65)
16 to reschedule the Settlement Conference before the Honorable Judge Corley from May 4 to
17 May 11, 2012. The Court so ordered on March 15, 2012 (Dkt. #66).

18 On May 18, 2012, the parties filed a *Stipulation and Proposed Order Continuing*
19 *Deadlines for Three Months Pending Settlement Review* (Dkt. #73), to give the parties the
20 opportunity to take certain steps agreed to at the May 11, 2012 settlement conference with
21 Judge Corley. The Court so ordered on May 21, 2012 (Dkt.#74).

22 A subsequent settlement conference is scheduled to take place on September 7, 2012
23 (No document number; see *Clerk's Notice Scheduling Settlement Conference*, entered into the
24 ECF system on July 19, 2012).

25 **4. Description of the effect the requested time modification would have on**

1 **the schedule for the case (Local Rule 6-2(a)(3)):** The proposed time modifications would
2 (1) extend the current continuance to September 30, 2012; and (2) set a schedule for
3 resumption of litigation should settlement not be reached.

4 I declare under penalty of perjury under the laws of the United States of America that
5 the foregoing is true and correct, and that this Declaration was executed on August 21, 2012, at
6 San Francisco, California.

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8 _____s/ Laura Fremont_____

9 Laura Fremont
10 Attorney for Plaintiff
11 Federal Trade Commission
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