

1 Stephen F. Von Till (State Bar No. 47217)
 2 Ondrej Likar (State Bar No. 260199)
 3 VON TILL & ASSOCIATES
 4 152 Anza St., Suite 200
 5 Fremont, California 94539
 6 Telephone: (510) 490-1100
 Fax: (510) 490-1102
 Email: vontill@gmail.com
 likarondrej@gmail.com

7 Attorneys for Plaintiff
 8 Gary Reynolds

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 GARY V. REYNOLDS)	Case No.: CV 10 4893 SI
)	
12 Plaintiff,)	
)	PLAINTIFF GARY REYNOLDS' EX
13 vs.)	PARTE MOTION TO CONTINUE
)	TRIAL AND OTHER PRETRIAL
14)	DEADLINES (Civil L.R.s 6-3, 7-10, 40-1)
15 ALLSTATE INSURANCE COMPANY,)	
16 JANICE L. COSTANZO, and DOES ONE)	
through TWENTY, inclusive,)	
)	
17 Defendants.)	
18)	

19 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

20 YOU ARE HEREBY NOTIFIED THAT plaintiff GARY REYNOLDS hereby moves,
 21 on an ex parte basis, for a continuance of the trial date, currently scheduled to begin in the
 22 above-entitled Court on November 14, 2011, as well as a continuance of the date reserved for a
 23 summary judgment hearing (and related pleading schedule), currently scheduled to be heard in
 24 the above-entitled Court on September 2, 2011.

25 Plaintiff has good cause to bring said ex parte Motion before the Court and for the Court
 26 to grant said Motion, as set forth in this Motion and the accompanying supporting declaration of
 27 Stephen Von Till, in that plaintiff's lead counsel has recently suffered medical setbacks
 28

1 restricting his ability to represent Mr. Reynolds. (Declaration of Stephen Von Till (“Von Till
2 Decl.”) ¶4.)

3 Counsel for Allstate has been advised of plaintiff’s need for a continuance and has
4 agreed to a continuance per the terms in the attached stipulation. (Declaration of Ondrej Likar
5 (“Likar Dec.”) ¶5.)

6 Plaintiff requests a brief three-month continuance of the trial date to January 30, 2012, or
7 a date thereafter amendable to this Court and all parties, and a brief three month-continuance of
8 the summary judgment schedule as set forth in the attached stipulation. (Likar Decl. ¶5.)

9 This ex parte Motion is based upon this Notice, a supporting Memorandum of Points and
10 Authorities, the supporting Declarations Ondrej Likar and Stephen Von Till, and all pleadings,
11 records, and documents on file with the Court.

12
13 Dated: August 4, 2011

14
15 VON TILL & ASSOCIATES

16 /S/ Ondrej Likar
17 Ondrej Likar
18 Attorney for plaintiff Gary Reynolds

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I. INTRODUCTION

19 This suit arises from an underlying action entitled *Costanzo v. Reynolds*, Superior Court
20 of the State of California for the County of Alameda, Case No. VG08407660, filed on
21 September 3, 2008 (the “Underlying Action”), in which Janice Costanzo seeks damages for
22 injuries she sustained in a September 4, 2006, accident while riding as a passenger on a
23 motorcycle driven and owned by Gary Reynolds, the plaintiff in this action.

24 Defendant Allstate is defending Reynolds in the Underlying Action under a reservation
25 of rights to contest coverage based on a claimed exclusion in the policy. By this action,
26 Reynolds seeks a judicial declaration that the exclusion does not apply to Ms. Costanzo’s
27 injuries or that Allstate has waived, or is estopped, from relying on the exclusion.

1 4. The reason for the requested continuance is the health of plaintiff's counsel, Stephen
2 Von Till, which has suffered in recent months and has restricted Mr. Von Till's ability to
3 represent Gary Reynolds.

4 5. Defendant Allstate was contacted about plaintiff's need for a continuance and has agreed
5 to a continuance of the dates in this case per the terms in the stipulation attached hereto as
6 **Exhibit A.**

7 6. If the Court does not grant a continuance, plaintiff's counsel will be unable to participate
8 in and oversee the deposition of plaintiff and the deposition of Janice Costanzo. Additionally,
9 plaintiff's counsel will be unable to oversee the drafting of the summary judgment pleadings,
10 which pleadings will likely determine the outcome of this action. Without the oversight of Mr.
11 Von Till, plaintiff Reynolds' case will suffer irreparable prejudice.

12 7. The following previous modifications to deadlines have occurred in this action via
13 stipulation and court order:

- 14 • ORDER ADJUSTING CERTAIN DEADLINES AND HEARING Entered: 06/29/2011
15 which extended the time to complete the summary judgment briefing schedule and
16 discovery cutoff by 5 weeks.
- 17 • ORDER EXTENDING DISCOVERY Entered: 04/18/2011 which extended the
18 discovery deadlines from May 12, 2011 to June 30, 2011.

19 8. The effect of the requested time modification on this case will be a brief, three month
20 continuance of all upcoming deadlines, excluding the discovery cut-off as is detailed in the
21 **Exhibit A.**

22 I declare under the penalty of perjury under the laws of the United States that the
23 foregoing is true and correct of my own personal knowledge, except as to those matters stated
24 upon information and belief, and as to those matters I believe them to be true and correct.

25 Executed on August 4, 2011, at Fremont California.

26
27 _____
28 /s/ Ondrej Likar
Ondrej Likar
Attorney for plaintiff Gary Reynolds

1 **DECLARATION OF STEPHEN VON TILL IN SUPPORT OF EX PARTE MOTION**

2 I, STEPHEN VON TILL, declare and state as follows:

3 1. I am an attorney licensed to practice before the Courts in the State of California,
4 including the U.S. District Court for the Northern District of California.

5 2. I am the attorney for plaintiff Gary Reynolds in the above-entitled action.

6 3. I am familiar with the facts and circumstances in the current action and submit this
7 declaration in support of Gary Reynolds' ex parte motion to continue.

8 4 I am currently totally disabled from legal work due to the following medical conditions:

- 9 • Bulging discs in the neck with attendant severe right-sided radiculopathy which was
10 diagnosed within the last 30 days. This condition causes severe pain in my right arm
11 which makes it impossible to use a keyboard for more than a minute or two. (Attorney
12 Ondrej Likar is writing this declaration at my request.)
- 13 • Significant fatigue and balance issues, increased risk of falling, residuals from a brain
14 hemorrhage in 2004 and a triple bypass heart surgery in October 2010.
- 15 • Recent hospitalization over the weekend of July 29-30 as a result of a bacterial infection.

16 5. Due to the above, I have undergone MRIs, CT scans (brain and abdomen), EKGs, and
17 other tests, all within the last 35 days.

18 6. I am currently receiving treatment for the above from the following healthcare
19 providers: Dr. Amit Jha, M.D., internist; Dr. Wu, physical medicine and rehabilitation; Dr.
20 Desai, neurologist; Dr. Timothy Tsoi, M.D., cardiologist; David Severson, RPT, Physical
21 therapist.

22 7. Over the next 30 days I have follow-up appointments with all of the above healthcare
23 providers to develop a treatment plan for my pain and fatigue.

24 8. Due to the above, I have been prescribed narcotic pain relievers and other medications.
25 The prescriptions are still being adjusted by the physicians as to the type and dose because none
26 have been sufficiently effective.

27 9. I continue to suffer residual fatigue from the triple bypass heart surgery I had in October
28 2010, superimposed on residuals from my brain hemorrhage. I am returning to cardiac therapy

1 **CERTIFICATE OF SERVICE**

2 I am employed in the City of Fremont, County of Alameda, California in the office of a
3 member of the bar of this Court at whose direction the following service was made. I am over
4 the age of eighteen years and not a party to the within action. My business address is Von Till
& Associates, 152 Anza Street, Suite 200, Fremont, California, 94539.

5 On this date I served the below listed documents on all parties in this action by placing
6 true copies thereof in sealed envelopes addressed as shown below.

7 **DOCUMENTS**

8 **PLAINTIFF GARY REYNOLDS' EX PARTE MOTION TO CONTINUE TRIAL AND
9 OTHER PRETRIAL DEADLINES (Civil L.R.s 6-3, 7-10, 40-1)**

10 **ADDRESSES**

11 Michael Barnes
12 Sonia Martin
13 Cynthia Liu
14 SNR DENTON US, LLP
2121 N. California Blvd., Suite 800
Walnut Creek, California 94596

15 XXX (U.S. MAIL SERVICE) I placed each such sealed envelope, with postage thereon fully
16 prepaid for first-class mail, for collection and mailing at Von Till & Associates in Fremont,
17 California, following ordinary business practices. I am personally familiar with the practice of
18 the law firm for collection and processing of correspondence, said practice being that in the
ordinary course of business, correspondence is deposited with the United States Postal Service
the same day as if placed for collection.

19 I declare under penalty of perjury under the laws of the United States that the foregoing
20 is true and correct. Executed this day at Fremont, California.

21
22
23 **Dated: August 4, 2011**

/s/ Sheryl Klingenfuss
Sheryl Klingenfuss

EXHIBIT A

1 Stephen F. Von Till (State Bar No. 47217)
2 Ondrej Likar (State Bar No. 260199)
3 VON TILL & ASSOCIATES
4 152 Anza St., Suite 200
5 Fremont, California 94539
6 Telephone: (510) 490-1100
7 Fax: (510) 490-1102
8 Email: vontill@gmail.com
9 likarondrej@gmail.com
10 Attorneys for Plaintiff
11 GARY REYNOLDS

8 Michael Barnes (State Bar No. 121314)
9 Sonia Martin (State Bar No. 191148)
10 Cynthia Liu (State Bar No. 263270)
11 SNR DENTON US LLP
12 2121 N. California Blvd., Suite 800
13 Walnut Creek, California 94596
14 Telephone: (925) 949-2600
15 Facsimile: (925) 949-2610
16 Email: michael.barnes@snrdenton.com
17 sonia.martin@snrdenton.com
18 cynthia.liu@snrdenton.com
19 Attorneys for Defendant
20 ALLSTATE INSURANCE COMPANY

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 GARY V. REYNOLDS) Case No.: CV 10 4893 SI
20)
21 Plaintiff,)
22) **STIPULATION AND [PROPOSED]**
23 vs.) **ORDER CONTINUING TRIAL AND**
24) **OTHER PRETRIAL DEADLINES**
25)
26 ALLSTATE INSURANCE COMPANY,)
27 JANICE L. COSTANZO, and DOES ONE)
28 through TWENTY, inclusive,)
29)
30 Defendants.)
31)
32)

27 ///
28 ///

1 The parties, by and through their respective counsel of record, hereby stipulate and agree as
2 follows and respectfully request that the Court approve and give effect to their stipulation:

3 WHEREAS the Court has set the following deadlines and hearing schedule:

4	Expert and Non-Expert Discovery cutoff:	August 4, 2011
5	Plaintiff's 1st Summary Judgment filing:	August 12, 2011
6	Defendant's 1st Opp./X-Mo.:	August 26, 2011
7	Plaintiff's Reply/Opp.:	September 9, 2011
8	Defendant's Reply:	September 16, 2011
9	Summary Judgment Hearing:	October 7, 2011
10	Trial Papers Due:	October 18, 2011
11	Pretrial Conference:	November 1, 2011
12	Trial Date:	November 14, 2011

13 IT IS HEREBY STIPULATED AND AGREED that the trial and related pretrial
14 deadlines should be continued for approximately three months as set forth below:

15	Expert and Non-Expert Discovery cutoff:	August 4, 2011 ¹
16	Plaintiff's 1st Summary Judgment filing:	November 7, 2011
17	Defendant's 1st Opp./X-Mo.:	November 21, 2011
18	Plaintiff's Reply/Opp.:	December 2, 2011
19	Defendant's Reply:	December 9, 2011
20	Summary Judgment Hearing	January 2 ¹³ , 2012 (or a date amenable with the Court's calendar)

21		_____
22		
23	Trial Papers Due:	January 4 ¹⁸ , 2012 (or a date amenable with the Court's calendar)
24		_____
25		
26		

27 _____
28 ¹ With the exception of the deposition of Gary Reynolds and Janice Costanzo which are to be completed prior to November 4, 2011.

