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 13 FRANKLIN RESOURCES, INC.

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

17 JOHN SENDER,  
 18 Plaintiff,  
 19 v.  
 20 FRANKLIN RESOURCES, INC. and DOES  
 1-15,  
 21 Defendants.

CASE NO. 11-cv-3828 EMC  
**STIPULATION AND ~~PROPOSED~~ ORDER  
 EXTENDING DISCOVERY DEADLINES**

22  
 23  
 24 WHEREAS, this Court’s First Amended Case Management and Pretrial Order for Jury Trial  
 25 (“Amended Case Management Order”) (ECF No. 146), entered on October 19, 2015, set a non-expert  
 26 discovery cut-off of February 18, 2016, an expert discovery cut-off of March 31, 2016, and a trial  
 27 date of August 15, 2016;

1           WHEREAS, at the Case Management Conference on December 17, 2015, the Parties  
2 discussed the discovery deadlines and Defendant suggested that a modification of the discovery  
3 schedule may be required. Dec. 17, 2015 Hr’g Tr. at 29:1-31-3 (ECF No. 173). Based on the  
4 information available at the Case Management Conference, the Court declined to modify the  
5 discovery schedule at that time. *Id.*;

6           WHEREAS, since the December 17, 2015 Case Management Conference, there have been  
7 several significant developments the Parties agree warrant certain modifications of the current  
8 discovery deadlines as set forth below;

9           WHEREAS, on December 22, 2015, this Court issued an Order granting Plaintiff’s motion to  
10 take certain discovery on the ERISA claim;

11           WHEREAS, Pursuant to the Court’s instruction at the Case Management Conference, the  
12 Parties promptly met and conferred regarding Defendant’s efforts to identify boxes for review and  
13 production. Defendant has kept Plaintiff’s counsel informed of the ongoing progress of its document  
14 review efforts and the fact that the additional discovery ordered by the Court on the ERISA claim  
15 requires the review and production of at least 50 boxes rather than the 20 boxes discussed at the  
16 hearing on December 17, 2015;

17           WHEREAS, on December 23, 2015, Defendant retained new lead defense counsel, Gibson,  
18 Dunn & Crutcher LLP (“Gibson”), including to help manage the discovery burden, whose lead  
19 attorneys filed their Notices of Appearance on December 29, 2015. Gibson has promptly  
20 commenced an effort to familiarize itself with all the pleading files, administrative record, procedural  
21 history, and relevant facts of the case;

22           WHEREAS, one of the two Trucker ♦ Huss attorneys that has represented Defendant  
23 throughout this litigation is leaving the firm and thus will no longer represent Defendant,  
24 necessitating the addition and education of two new attorneys at Trucker ♦ Huss, both of whom filed  
25 their Notices of Appearance on December 31, 2015;

26           WHEREAS, Defendant’s counsel has continued to work diligently over the ensuing holidays  
27 to comply with outstanding discovery requests, and to review the 50 or more boxes identified so far,  
28 and based on a preliminary review, Defendant has advised Plaintiff’s counsel that all such boxes need

1 to be reviewed—and potentially redacted—for privilege and privacy issues (including personal  
2 financial information of third parties), before they can be produced to Plaintiff on a rolling basis;

3 WHEREAS, Defendant’s counsel has met and conferred with Plaintiff’s counsel regarding the  
4 scope of discovery, the discovery schedule, the rolling production of materials discussed above, and  
5 deposition scheduling, and has proposed a modest modification of the discovery schedule to  
6 accommodate the time necessary for the document review and production, resolution of pending  
7 discovery disputes, depositions, and expert discovery;

8 WHEREAS, the Parties have propounded various discovery requests, have served objections,  
9 have met and conferred since the Case Management Conference, and have determined that there are  
10 certain discovery disputes which will need to be resolved by the assigned Magistrate Judge. One  
11 discovery dispute has already been submitted to the Magistrate Judge on December 24, 2015, but has  
12 not been decided, and an additional dispute will likely be submitted to the Magistrate Judge in early  
13 January regarding the scope of certain depositions and other discovery;

14 WHEREAS, both Parties anticipate that each side may take up to ten depositions as set forth  
15 in the Federal Rules of Civil Procedure and the Court’s Amended Case Management Order. Many of  
16 the witnesses are former employees of Defendant or third parties who live out of state, and whose  
17 depositions may need to be taken in various locations around the country. The Parties have contacted  
18 witnesses in order to determine availability and work out a deposition schedule that is mutually  
19 convenient to the witnesses and counsel, but that effort is not fully complete due in part to the  
20 holidays;

21 WHEREAS, the Parties have met and conferred regarding all of the foregoing, and agree that  
22 under the circumstances there is good cause to extend the deadlines for non-expert and expert  
23 discovery to accommodate new counsel’s entry into the case, the review and production of the  
24 recently identified additional boxes of documents, the resolution of pending discovery disputes, a  
25 number of out of state depositions, and the additional discovery contemplated under the Court’s  
26 December 22, 2015 Order;

27 WHEREAS, the Parties are not requesting any continuance of the August 15, 2016 trial date;  
28 (ECF No. 146);

1 WHEREAS, this Court denied Defendant's motion to dismiss Plaintiff's claim under  
2 California Corporation Code § 419 (ECF No. 167) on December 22, 2015, and therefore Defendant's  
3 Answer to the Third Amended Complaint is currently due on January 5, 2016. Defendant's counsel  
4 has requested a short extension of the deadline for the Answer from January 5 to January 8, 2016 in  
5 light of the intervening holidays, and subject to the Court's approval, Plaintiff's counsel has agreed to  
6 the requested extension of the date to answer the Third Amended Complaint.

7 THEREFORE, good cause existing, IT IS HEREBY STIPULATED AND AGREED, by and  
8 between the Parties hereto, through their counsel of record, that they jointly request a modification of  
9 the deadlines for fact and expert discovery in the Court's Amended Case Management Order of  
10 October 19, 2015 (ECF. No. 146), and request the Court to adopt the following new deadlines:

11 1. The Parties respectfully request that the deadline for non-expert discovery be extended  
12 from February 18, 2016 to April 30, 2016;

13 2. The Parties respectfully request that the deadline for disclosing expert opening reports be  
14 extended from February 18, 2016 to April 15, 2016;

15 3. The Parties respectfully request that the deadline for disclosing expert rebuttal reports be  
16 extended from March 10, 2016, to May 6, 2016; and

17 4. The Parties respectfully request that the deadline for expert discovery be extended from  
18 March 31, 2016 to May 25, 2016.

19 5. Defendant respectfully requests, and Plaintiff does not oppose, extension of the deadline  
20 for Defendant to file an Answer to the Third Amended Complaint from January 5, 2016, to January 8,  
21 2016.

22 Dated: January 4, 2016

23 CERA LLP

GIBSON, DUNN & CRUTCHER LLP

24  
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~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, the First Amended Case Management and Pretrial Order for Jury Trial (“Amended Case Management Order”) (ECF No. 146) is amended as follows: (1) the non-expert discovery cut-off is extended from February 18, 2016, to April 30, 2016; (2) the deadline for disclosing expert opening reports is extended from February 18, 2016, to April 15, 2016; (3) the deadline for disclosing expert rebuttal reports is extended from March 10, 2016, to May 6, 2016; and (4) the expert discovery cut-off is extended from March 31, 2016, to May 25, 2016. All other dates established by the Amended Case Management Order are unchanged. Defendant’s deadline for filing an Answer to the Third Amended Complaint is extended from January 5, 2016, to January 8, 2016.

IT IS SO ORDERED.

1/5/2016

Dated: \_\_\_\_\_

Hon. Edward M. Chen  
United States District Judge

