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14 Attorneys for Plaintiff and Counter-Defendant
 15 XEROX CONSULTANT COMPANY, INC.

16
 17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **(SAN FRANCISCO DIVISION)**

20 XEROX CONSULTANT COMPANY,
 21 INC., a Michigan corporation,

22 Plaintiff,

23 v.

24 MARIN GENERAL HOSPITAL
 CORPORATION, a California non-profit
 25 public benefit corporation,

26 Defendant.

27 AND RELATED COUNTERCLAIM.
 28

CASE NO. C 12-04948 EMC

**STIPULATED REQUEST FOR
 ORDER CHANGING TIME TO
 CONTINUE TRIAL AND PRE-TRIAL
 DATES**

JOINT DECLARATION

~~[PROPOSED]~~ ORDER

1 Pursuant to Civ. L.R. 6-2(a) and 7-12, Defendant and Counter-Claimant
2 Marin General Hospital Corporation (“MGHC”) and Plaintiff and Counter-Defendant
3 Xerox Consulting Company, Inc. (“Xerox”), by and through their attorneys of record,
4 respectfully submit their Stipulated Request For Order Changing Time To Continue Trial
5 And Pretrial Dates.

6 **STIPULATED JOINT REQUEST**

7 In support thereof, the parties state the following:

8 1. At the Status Conference on June 6, 2013, the Court set the schedule for the
9 case. (Dkt. # 36.) Among other dates, March 6, 2014 is the last date for completion of
10 non-expert discovery and the date for exchange of expert reports.

11 2. At the Status Conference on December 12, 2013, the Court did not modify
12 the case schedule, directed the parties to “accelerate the discovery process,” referred the
13 case to a Magistrate Judge for discovery, and extended the date for completion of
14 mediation to February 28, 2014. (Dkt. # 43.) Magistrate Judge Cousins was appointed to
15 handle discovery.

16 3. Since the Status Conference on December 12, 2014:

17 a. The parties finalized and the Court entered the Stipulated Protective
18 Order on December 18, 2013. (Dkt. # 45.) Entry of the Stipulated Protective Order was
19 necessary for the parties’ document productions to begin as they contain data and
20 information covered by HIPAA.

21 b. On December 27, 2013, Xerox made an initial production to MGHC
22 of almost 50,000 unique records in electronic form.¹

23 c. On January 22, 2014, MGHC has made an initial production to Xerox
24 of more than 290,000 unique records in electronic form.

25
26 _____
27 ¹ The parties agreed to produce documents to one another in native format. As a
28 result, it is only possible to count the number of unique records produced, not the total
number of pages produced (which is a multiple of the unique records produced).

1 d. On January 13, 2014, the parties' submitted their Joint Report on
2 Discovery to Judge Cousins. (Dkt. # 46.)

3 e. On January 16, 2014, the parties attended the initial Discovery
4 Conference before Judge Cousins. (Dkt. # 47.)

5 f. On January 23, 2014, counsel for the parties and their respective
6 technical staff and consultants participated in a telephone conference call to discuss the
7 technical issues relating to access to MGHC's electronic data relating to its patient
8 accounts receivable that are the bases for its damages alleged in MGHC's Counterclaim.
9 The parties each recognize that this is a challenging task as there are more than 400,000
10 individual A/R files with potentially hundreds of data fields in each file. Xerox needs to
11 understand how the data files are organized in order to be able to analyze these data and
12 evaluate MGHC's damages claim. The parties and their technical teams will be engaging
13 in a series of such conversations over the coming weeks.

14 g. On January 24, 2014, MGHC served Xerox with its Second
15 Supplemental Interrogatory Responses. Under Judge Cousins' Civil Motion Minutes (Dkt.
16 # 47), the adequacy of these further responses will be addressed at the next Discovery
17 Conference on February 13, 2014.

18 h. The parties have scheduled a full-day mediation for Thursday,
19 February 20, 2014, with Hon. James Warren (Ret.) at JAMS.²

20 i. Counsel for the parties have met and conferred on an on-going basis
21 (in person, by telephone and e-mail) regarding the status of their respective document
22 productions to one another. At present, the parties anticipate substantial completion of
23

24 _____
25 ² The Court's Case Management and Pretrial Order did not permit deposition
26 discovery prior to mediation. (Dkt. # 36.) However, despite that limitation, the parties are
27 not ready to commence deposition discovery in light of the fact that they are still
28 producing responsive documents to one another. The parties note that given the large
number of individuals involved in the underlying consulting project, the number of fact
witnesses to be deposed by each side may exceed the number of witnesses permitted in
Rule 30. The parties expect to be able to work out a joint schedule for these depositions.

1 their productions by mid-February 2014. Given the size of these productions, it is
2 expected that there will be some follow up, as well as the exchange of privilege logs.

3 j. Counsel for the parties have also met and conferred regarding the
4 challenges of completing all non-expert discovery, and exchanging opening expert reports,
5 by the March 6, 2014 deadline. (Dkt. # 36.)

6 4. Based on the current state of discovery, particularly document discovery, the
7 parties have concluded that they require additional time to allow for the completion of
8 document discovery, evaluation and analysis of same, meaningful deposition discovery of
9 a large number of fact witnesses and preparation of expert reports.

10 5. The parties each agree that their ability to investigate, prepare their claims
11 and defenses, and prepare for trial will be prejudiced if the current case schedule is not
12 substantially modified.

13 6. There have been no prior continuances requested or granted.

14 7. Counsel for the parties have met and conferred regarding a possible
15 modification of the current case schedule, and have taken their respective trial
16 commitments in other matters into account. Counsel for Xerox has a firm date for a
17 Phase II jury trial on October 20, 2014, which is expected to last three to four weeks.
18 Counsel for MGHC has a firm date (the five year statute expires in early November 2014)
19 for a Fresno County Superior Court jury trial beginning October 27, 2014 which is
20 scheduled to last one to two weeks.

21 8. Taking into account all these factors, the parties agree to a proposed
22 modification of the current case schedule as follows (subject to the Court's availability on
23 the dates listed below):

- | | | |
|----|---|--------------------------------------|
| 24 | 1. <u>Trial Date:</u> | 2/23/15 or 3/2/15 |
| 25 | 2. <u>Trial Length:</u> | Sixteen (16) court days. |
| 26 | 3. <u>Final Pretrial Conference:</u> | 2/10/15 at 2:30 p.m. |
| 27 | 4. <u>Dispositive Motions:</u> | Last day to be <i>heard</i> 11/20/14 |
| 28 | 5. <u>Non-Expert Discovery Cut-Off:</u> | 8/18/14 |

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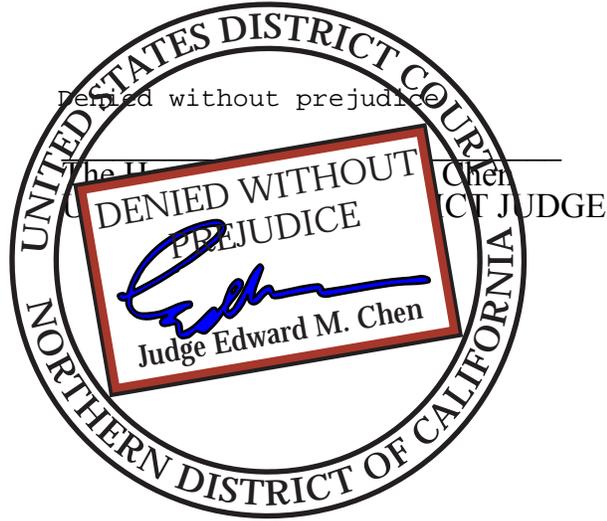
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ORDER

Having considered the foregoing Stipulated Request and Joint Declaration, and good cause appearing in support thereof, the Court grants the parties' request to continue the trial date and modify the other pre-trial dates accordingly. The Court will issue a separate Order regarding same.

2/6/14

Dated: _____



Denied without prejudice
The Honorable _____
District Judge