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13 **DONALD V. RYAN and BARBARA RYAN**

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

17 **NATIONWIDE MUTUAL INSURANCE**
18 **COMPANY,**

19 Plaintiff,

20 v.

21 **DONALD V. RYAN, an individual, and**
DOES 1 through 10,

22 Defendants.

23
24 **AND RELATED COUNTER-CLAIM**

Case No. 3:12-CV-5000-JST

STIPULATION and [PROPOSED] ORDER
re: REQUESTED REVISIONS TO
COURT'S SCHEDULING ORDER

25
26 Plaintiff **NATIONWIDE MUTUAL INSURANCE COMPANY** (hereinafter "Nationwide")
27 and Defendants **DONALD V. RYAN, BARBARA RYAN and MICHAEL RYAN** ("the Ryans"),
28 and collectively referred to hereinafter as "the Parties," by and through their respective counsel,

1 hereby stipulate as follows:

2 **RECITALS**

3 1. The Parties, by and through their respective counsel, attended the initial case
4 management conference on January 17, 2013, the Honorable William Alsup, Judge, presiding. As
5 a result of that conference, the Court issued the following scheduling order:

- 6 • January 22, 2013: Last day to make initial disclosures
- 7 • February 28, 2013: Last day to add new parties or amend pleadings
- 8 • October 25, 2013: Last day to serve list of issues on which expert
9 testimony will be offered
- 10 • November 22, 2013: Non-expert discovery cut-off
- 11 • November 22, 2013: Last day for disclosure of experts and expert reports
- 12 • December 6, 2013: Last day to submit rebuttal expert reports
- 13 • December 13, 2013: Last day to submit expert reply reports
- 14 • December 19, 2013: Last day to file motions for summary judgment
- 15 • December 27, 2013: Expert discovery cut-off
- 16 • February 10, 2014: Final Pre-Trial Conference
- 17 • February 18, 2014: Trial (by jury)

18 2. In reliance on the above-referenced scheduling order, the Parties postponed various
19 discovery efforts while they pursued and prepared for private mediation. That mediation took
20 place on April 30, 2013, with Vivien Williamson acting as mediator; the case did not settle. Since
21 that time, the Parties, by and through their respective counsel, have been cooperating in the effort
22 to set dates for the depositions of the Parties and percipient witnesses; some written discovery has
23 been propounded and further written discovery is anticipated, particularly in follow-up to the
24 depositions that will be taken. The effort to set deposition dates has taken into account the
25 summer holiday season as well as the professional calendars of counsel and the Parties are certain
26 that necessary depositions will be accomplished by the non-expert discovery cut-off date
27 originally set by the Court.

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1 3. On Friday, July 5, 2013, counsel for the Parties received the Court’s electronically-
2 sent minute order vacating the case management conference that had been scheduled for July 10
3 and noting that the Court had already set “appropriate deadlines” in the case.

4 4. On Monday, July 8, at 9:40 a.m., counsel for the Parties received the Court’s
5 electronically-sent minute order confirming the dates set for non-expert discovery cut-off
6 (November 22), disclosure of expert witnesses (November 22), the deadline for filing motions for
7 summary judgment (December 19) and trial (February 18, 2014). The Court set a date of
8 January 28, 2014, for the submission of a proposed pretrial order and changed the date for the final
9 pre-trial conference to February 7, 2014.

10 5. Then, later on Monday, July 8, at 1:13 p.m., counsel for the Parties received the
11 Court’s electronically-sent minute order that revised the scheduling order as follows:

- 12 • August 16, 2013: Non-expert discovery cut-off
- 13 • September 20, 2013: Last day for disclosure of experts and expert reports
- 14 • October 4, 2013: Last day to submit rebuttal expert reports
- 15 • October 18, 2013: Expert discovery cut-off
- 16 • November 8, 2013: Last day to file motions for summary judgment
- 17 • January 21, 2014: Last day to submit proposed pretrial order
- 18 • January 31, 2014: Final Pre-Trial Conference
- 19 • February 18-20, 2014: Trial (by jury).

20 6. On Tuesday, July 9, counsel for Nationwide, with the approval of counsel for the
21 Ryans, placed a telephone call to Judge Tigar’s clerk, William Noble, who confirmed that the
22 second order issued on July 8 was not in error, but reflected the Judge Tigar’s conclusion that
23 certain dates previously set did not accommodate his calendar.

24 7. The Parties, by and through their respective counsel, had relied on the deadlines
25 originally set by the Court and the new deadlines, particularly those made effective during the next
26 60 to 90 days present a hardship for the Parties, and for that reason, the Parties present the Court
27 with this Stipulation and Proposed Order.

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1 NOW, THEREFORE, the Parties, by and through their respective counsel of record, do
2 hereby stipulate as follows as request that the Court issue an order in accordance therewith:

3 **STIPULATION**

4 1. The Parties, by and through their respective counsel request that the Court issue a
5 new scheduling order as follows:

- 6 • September 30, 2013: Non-expert discovery cut-off
- 7 • September 30, 2013: Last day for disclosure of experts and expert reports
- 8 • October 15, 2013: Last day to submit rebuttal expert reports
- 9 • October 31, 2013: Expert discovery cut-off
- 10 • November 27, 2013: Last day to file motions for summary judgment
- 11 • January 21, 2014: Last day to submit proposed pretrial order
- 12 • January 31, 2014: Final Pre-Trial Conference
- 13 • February 18-20, 2014: Trial (by jury).

14 2. If the Court is unable to accommodate the Parties' requested revisions to the
15 scheduling order, the Parties request that the Court re-schedule a case management conference so
16 that other adjustments may be made in the scheduling order.

17 Respectfully submitted,

18 DATED: July 9, 2013

LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20 By: /s/ Stephen J. Liberatore

21 Julian J. Pardini
22 Stephen J. Liberatore
23 Attorneys for Plaintiff/Counter-defendant
24 NATIONWIDE MUTUAL INSURANCE COMPANY

25 DATED: July 9, 2013

WILSON, ELSER, MOSKOWITZ, EDELMAN & DECKER

26 By: /s/ John T. Burnite

27 John T. Burnite
28 Attorneys for Plaintiff/Counter-defendant
NATIONWIDE MUTUAL INSURANCE COMPANY

