

1 MICHAEL J. STORTZ (SBN 139386)
 michael.stortz@dbr.com
 2 MARSHALL L. BAKER (SBN 300987)
 marshall.baker@dbr.com
 3 DRINKER BIDDLE & REATH LLP
 50 Fremont Street, 20th Floor
 4 San Francisco, CA 94105-2235
 Telephone: (415) 591-7500
 5 Facsimile: (415) 591-7510

6 STEPHEN C. BAKER (pro hac vice)
 stephen.baker@dbr.com
 7 TIMOTHY J. O'DRISCOLL (pro hac vice)
 timothy.odriscoll@dbr.com
 8 DRINKER BIDDLE & REATH LLP
 One Logan Square, Ste. 2000
 9 Philadelphia, PA 19103-6996
 Telephone: (215) 988-2700
 10 Facsimile: (215) 988-2757

11 Attorneys for Defendant
 THE NORTHWESTERN MUTUAL LIFE
 12 INSURANCE COMPANY

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

17 SANFORD J. WISHNEV, individually and
 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 THE NORTHWESTERN MUTUAL LIFE
 21 INSURANCE COMPANY, a Wisconsin
 corporation, and DOES 1-10, inclusive,

22 Defendants.
 23

Case No. 3:15-CV-03797-EMC

**STIPULATION AND ~~[PROPOSED]~~
 ORDER TO CONTINUE STAY AND CASE
 MANAGEMENT CONFERENCE;
 DECLARATION OF MICHAEL STORTZ**

1 WHEREAS, on June 9, 2016, the Ninth Circuit Court of Appeals granted Defendant The
2 Northwestern Mutual Life Insurance Company’s (“Northwestern Mutual”) petition to appeal this
3 Court’s Order denying Northwestern Mutual’s motion to dismiss;

4 WHEREAS, this action has been stayed since June 30, 2016, when this Court issued an
5 order (Dkt. No. 69) staying the action “pending completion of the appellate review or further
6 order”;

7 WHEREAS, appellate briefing in Northwestern Mutual’s appeal has been complete since
8 January 27, 2017, and oral argument is set for October 16, 2017;

9 WHEREAS, in addition to Northwestern Mutual’s appeal, there are two other appeals
10 presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No. 16-
11 15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir. Aug.
12 9, 2016);

13 WHEREAS, appellate briefing in *Martin* and *Lujan* is also complete, and oral argument
14 is also set for October 16, 2017 in those cases;

15 WHEREAS, on March 10, 2017, this Court issued an Order (Dkt. No. 73) (1) continuing
16 the next Case Management Conference from March 28, 2017 to September 28, 2017 at 10:30
17 a.m.; and (2) staying the action through the date of the Conference, September 28, 2017, “or
18 pending further Order of the Court”;

19 WHEREAS, the Parties through counsel have met and conferred and agree that given the
20 status of Northwestern Mutual’s appeal, as well as the *Martin* and *Lujan* appeals, all of which are
21 fully-briefed and awaiting oral argument, (1) the existing stay in this action should continue for
22 six more months, unless earlier terminated by the Court upon request of one or both of the
23 parties; and (2) the September 28, 2017 CMC should be continued for six months, unless earlier
24 scheduled by the Court;

25 WHEREAS, the requested continuance will not impact any other deadlines already set by
26 the Court.

27 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties through
28 their respective counsel as follows:

1 1. This action should remain stayed through March 29, 2018 or pending further
2 Order of the Court; and

3 2. The Case Management Conference currently scheduled for September 28, 2017
4 should be continued to March 29, 2018 at 10:30 a.m., or such other date as the Court deems
5 proper.

6 3. The parties shall file a Case Management Statement on or before March 22, 2018
7 or as hereafter ordered by the Court.

8 IT IS SO STIPULATED.

9 Dated: September 14, 2017

DRINKER BIDDLE & REATH LLP

11 By: /s/ Michael J. Stortz

12 Michael J. Stortz
13 Marshall L. Baker

14 Attorneys for Defendant
15 THE NORTHWESTERN MUTUAL LIFE
16 INSURANCE COMPANY

16 Dated: September 14, 2017

BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP

18 By: /s/ Robert M. Bramson

19 Robert M. Bramson

20 Attorneys for Plaintiff
21 SANFORD J. WISHNEV

22 **Attestation Pursuant to Civil Local Rule 5-1(i)**

23 Pursuant to Civil Local Rule 5-1(i), I, Michael J. Stortz, hereby attest that I have
24 obtained concurrence in the filing of this document from the other signatory to this document.

25 I declare under penalty of perjury under the laws of the United States of America that
26 the foregoing is true and correct. Executed this 14th day of September, 2017 in Charleston,
27 South Carolina.

28 /s/ Michael J. Stortz

Michael J. Stortz

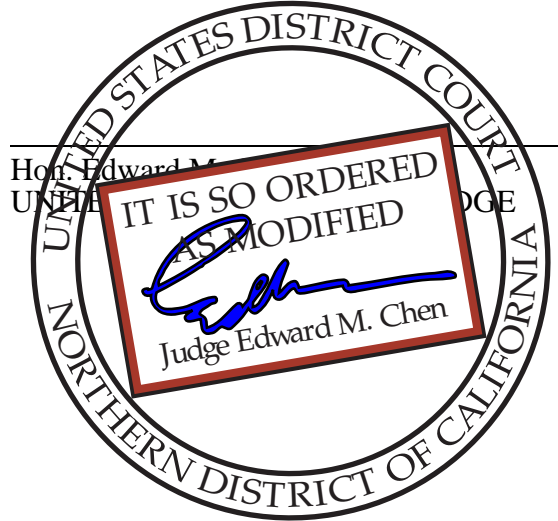
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~[PROPOSED]~~ ORDER

Pursuant to Stipulation, **IT IS SO ORDERED.** Further CMC is reset for

3/29/18 at 10:30 a.m. An updated joint CMC Statement shall be filed
by 3/22/18.

Date: 9/19/17



1 **DECLARATION OF MICHAEL J. STORTZ**

2 I, Michael J. Stortz, declare as follows:

3 1. I am an active member in good standing of the Bar of the State of California,
4 admitted to practice before this Court, and a partner with the firm of Drinker Biddle & Reath
5 LLP, attorneys of record for Defendant The Northwestern Mutual Life Insurance Company
6 (“Northwestern Mutual”) in the above-entitled action. I make this Declaration in support of the
7 parties’ Stipulation to Continue Stay and Case Management Conference. If called, I could and
8 would testify to the matters set forth herein.

9 2. This action has been stayed since June 30, 2016. Since that time, Northwestern
10 Mutual has pursued an appeal in the Ninth Circuit as to this Court’s interlocutory Order
11 denying Northwestern Mutual’s motion to dismiss.

12 3. In Northwestern Mutual’s appeal, the parties have filed their respective briefs,
13 and appellate briefing has been complete since January 27, 2017. Oral argument is scheduled
14 for October 16, 2017.

15 4. In addition to Northwestern Mutual’s appeal, there are two other appeals
16 presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No.
17 16-15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir.
18 Aug. 9, 2016).

19 5. The appellate briefing in *Martin* and *Lujan* is also complete, and the parties in
20 those appeals are also scheduled to appear for oral argument on October 16, 2017.

21 6. On March 2, 2017, the parties in the present action met and conferred through
22 counsel and agreed to a continuance of the existing stay for six more months.

23 7. On March 10, 2017, this Court granted the parties’ Stipulation and continued
24 the stay through September 28, 2017 “or pending further Order of the Court.” This Court also
25 continued the next Case Management Conference from March 28, 2017 to September 28, 2017
26 at 10:30 a.m.

27 8. There is good cause to continue the stay for an additional six months, and to
28 continue the September 28, 2017 Case Management Conference to March 29, 2018, as

1 Northwestern Mutual's appeal, Martin, and Lujan each present the same threshold questions of
2 law, the resolution of which may obviate the need for any further proceedings in this Court.

3 9. The requested continuance will not impact any deadlines already set by the
4 Court.

5 10. To date, the other time modifications in this case are as follows: on August 31,
6 2015, the Court approved the Parties' Stipulation As to Filing of the Amended Complaint; on
7 November 5, 2015, the Court reset the hearing on Northwestern Mutual's Motion to Dismiss
8 Plaintiff's First Amended Complaint and reset the Case Management Conference to November
9 20, 2015; on November 20, 2015, the Court again reset the Case Management Conference to
10 January 21, 2016; on January 12, 2016, the Court again reset the Case Management
11 Conference to March 3, 2016; on February 23, 2016, the Court granted Northwestern Mutual's
12 Motion to Continue the Case Management Conference to March 24, 2016; on May 31, 2016,
13 the Court approved the Parties' stipulated request to continue the Case Management
14 Conference to June 30, 2016; on March 2, 2017, the Court rescheduled the March 30, 2017
15 Case Management Conference for March 28, 2017; and on March 10, 2017, the Court
16 continued the Case Management Conference to September 28, 2017.

17 I declare under penalty of perjury under the laws of the United States of America that
18 the foregoing is true and correct. Executed this 14th day of September, 2017 at Charleston,
19 South Carolina.

20
21 /s/ Michael J. Stortz
Michael J. Stortz