

1 MELINDA S. RIECHERT, State Bar No. 65504
 MORGAN, LEWIS & BOCKIUS LLP
 2 2 Palo Alto Square
 3000 El Camino Real, Suite 700
 3 Palo Alto, CA 94306-2122
 Tel: 650.843.4000
 4 Fax: 650.843.4001
 Email: mriechert@morganlewis.com

5 MEGAN BARRY BOROVIKKA, State Bar No. 241205
 MORGAN, LEWIS & BOCKIUS LLP
 One Market, Spear Street Tower
 6 San Francisco, CA 94105-1126
 Tel: 415.442.1000
 8 Fax: 415.442.1001
 Email: mborovicka@morganlewis.com

9 Attorneys for Defendants,
 10 Northwestern Investment Management Company, LLC
 and Northwestern Mutual Life Insurance Company

11 JOHN A. MCGUINN, State Bar No. 036047
 12 CAROLYN A. LEARY, State Bar No. 226845
 McGuinn, Hillsman & Palefsky
 13 535 Pacific Avenue
 San Francisco, CA 94133
 14 Tel. 415-421-9292
 Fax. 415-403-0202
 15 Email: jamcguinn@mhpsf.com
 Email: cleary@mhpsf.com

16 Attorneys for Plaintiff,
 17 Laurie Gibbs Harris

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 LAURIE GIBBS HARRIS,
 Plaintiff,
 21 vs.
 22 NORTHWESTERN INVESTMENT
 23 MANAGEMENT COMPANY, LLC,
 NORTHWESTERN MUTUAL LIFE
 24 INSURANCE COMPANY, and DOES 1
 through 20 , inclusive,
 25 Defendants.

Case No. 10-01763 CW

**STIPULATION AND ORDER
 CONTINUING HEARING ON
 DEFENDANTS' SUMMARY JUDGMENT
 MOTION AND TRIAL DATE**

[Current Trial Date: October 3, 2011]

1 Plaintiff Laurie Gibbs Harris (“Plaintiff”) and Defendants Northwestern Investment
2 Management Company, LLC and Northwestern Mutual Life Insurance Company (“Defendants”),
3 the parties to the above-entitled action (collectively, the “Parties), submit this stipulation to the
4 Court:

5 **STIPULATION**

6 WHEREAS, on April 26, 2011, the Court granted the Parties’ *Stipulation* and scheduled
7 June 30, 2011 as the last day by which the Court must hear all case-dispositive motions and the
8 date of the next Case Management Conference in this matter;

9 WHEREAS, the parties have not otherwise sought and the Court has not ordered time
10 modifications;

11 WHEREAS, on May 26, 2011, Defendants filed and served their *Motion for Summary*
12 *Judgment, or in the Alternative, Partial Summary Judgment* and supporting documents, and
13 noticed hearing on said Motion for June 30, 2011;

14 WHEREAS, pursuant to Civil Local Rule 7-3, Plaintiff’s deadline for filing her opposition
15 to Defendants’ Motion was June 9, 2011;¹

16 WHEREAS, on June 9, 2011 Plaintiff filed and served her *Opposition* to Defendants’
17 Motion, as well as declarations of Laurie Gibbs Harris, John A. McGuinn, and Craig Pratt in
18 support of her *Opposition*;

19 WHEREAS, Plaintiff’s *Declaration of John A. McGuinn* and *Declaration of Craig Pratt*,
20 filed and served on June 9, 2011, did not include complete sets of the exhibits attached to the
21 declarations as evidence in support of Plaintiff’s *Opposition*;

22 WHEREAS, on Monday, June 13, 2011, Plaintiff sent by email at 4:20 p.m. to
23 Defendants’ counsel a courtesy copy of an *Amended Opposition* and a *Supplemental Declaration*
24 *of John A. McGuinn*;

25 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to file with the Court her
26 *Amended Opposition and Supplemental McGuinn Declaration*;

27 _____
28 ¹ The deadline for Plaintiff to file her opposition brief was June 9, 2011 pursuant to both the pre-June 2, 2011 Civil
Local Rules and to the amended Civil Local Rules.

1 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to withdraw the declaration
2 of Craig Pratt;

3 WHEREAS, of the documents Plaintiff filed on June 9, 2011, she filed the *Declaration of*
4 *John A. McGuinn* under seal and submitted a corresponding administrative motion requesting that
5 the declaration and its exhibits be filed under seal;

6 WHEREAS, the additional documents Plaintiff filed on June 9, 2011 (her *Opposition* brief
7 and the *Declaration of Laurie Gibbs Harris*) also contained confidential information pursuant to
8 the Parties' *Stipulated Protective Order* approved by the Court on November 30, 2010, but were
9 filed without the protections of filing under seal;

10 WHEREAS, today, Tuesday, June 14, 2011, Plaintiff intends to request that all
11 confidential materials be filed under seal (including the *Opposition, Amended Opposition,*
12 *McGuinn Declaration, Supplemental McGuinn Declaration, Harris Declaration*) and that
13 documents previously filed on June 9, 2011 be "locked" from public access;

14 WHEREAS, the Parties have met and conferred regarding the above confidentiality issues
15 and amended and supplemental documents, and agree that to avoid prejudice to Defendants,
16 Defendants' should have additional time to respond to Plaintiff's *Opposition* and supporting
17 papers;

18 WHEREAS, pursuant to Civil Local Rule 7-3, Defendants' current deadline for filing
19 their reply brief is June 16, 2011;²

20 WHEREAS, the next available hearing on the Court's calendar after the current hearing
21 date is July 14, 2011;

22 WHEREAS, under the pre-June 2, 2011 Civil Local Rules, applicable with respect to
23 Defendants' Motion, if the hearing on the Motion is scheduled for July 14, 2011, Defendants'
24 reply brief would be due no later than June 30, 2011;

25 WHEREAS, a continuance of the hearing on the Motion alone would not require
26 modification to the current October 3, 2011 trial date;

27 _____
28 ² The current deadline for Defendants to file their reply brief is June 16, 2011 pursuant to both the pre-June 2, 2011
Civil Local Rules and to the amended Civil Local Rules.

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

WHEREAS, the Parties engaged in an Early Neutral Evaluation on December 16, 2010;

WHEREAS, as part of the meet and confer process in which the Parties have engaged throughout the litigation of this matter following the Early Neutral Evaluation, the Parties have discussed whether it would be fruitful to continue to attempt to resolve this matter through mediation;

WHEREAS, the Parties agree that it is in the best interests of their respective clients to pursue mediation at this time, and have confirmed that they may mediate this matter with a neutral third party, Mark S. Rudy of Rudy, Exelrod, Zieff & Lowe LLP;

WHEREAS, the Parties have yet been unable to confirm a mediation date with Mr. Rudy, but the Parties anticipate that due to Mr. Rudy's schedule, a mediation date will not be available prior to September 2011;

WHEREAS, in light of the above factors, the Parties have agreed to seek a continue of the Motion hearing date, as well as the trial date and other case deadlines connected to the trial date, so that the Parties may attempt to resolve this matter through mediation.

THEREFORE, the Parties, through their respective counsel of record, hereby STIPULATE to continue the hearing on Defendants' *Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment* to a date subject to the Court's convenience and availability that is approximately one month following the completion of mediation with Mr. Rudy, and that the last day for Defendants to file their reply brief shall be two weeks prior to the hearing. They further stipulate that the Case Management Conference be continued to the same day as the hearing on Defendants' Motion. The Parties further stipulate that the trial date be continued to a date of the Court's convenience and availability that is between three and four months following the hearing on Defendant's Motion, and that additional pre-trial case deadlines be reset in accordance with the rescheduled trial date. The Parties agree to inform the court when they are able to confirm that exact date of their scheduled mediation.

IN THE ALTERNATIVE, if the Court does not grant approval to continue the trial date to allow the Parties to pursue mediation, the Parties, through their respective counsel of record,

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

hereby STIPULATE to continue the hearing on Defendants’ *Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment* to July 14, 2011, or thereafter, subject to the Court’s convenience and availability, and that the last day for Defendants to file their reply brief shall be June 30, 2011. They further stipulate that the Case Management Conference be continued to July 14, 2011, and that the deadlines for disclosures of identities and reports of expert witnesses and for completion of expert discovery be moved by two weeks to July 19, 2011 and August 17, 2011, respectively.

IN THE ALTERNATIVE, should the Court instead desire, despite the Parties stipulation, to maintain the current hearing date of June 30, 2011, the Parties hereby STIPULATE that the last day for Defendants to file their reply brief shall be June 22, 2011.

IT IS SO STIPULATED.

DATE: June 14, 2011

/s/ Carolyn A. Leary

John A. McGuinn
Carolyn A. Leary
McGuinn, Hillsman & Palefsky
Attorneys for Plaintiff, Laurie Gibbs Harris

DATE: June 14, 2011

/s/ Megan Barry Borovicka

Melinda S. Riechert
Megan Barry Borovicka
Morgan, Lewis & Bockius

Attorneys for Defendants,
Northwestern Investment Management Company,
LLC and Northwestern Mutual Life Insurance
Company

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

PURSUANT TO STIPULATION, IT IS SO ORDERED.

The hearing on Defendants' *Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment* shall be continued to July 14, 2011, and the last day for Defendants to file their reply brief shall be June 30, 2011. The Case Management Conference is continued to July 14, 2011. The deadlines for disclosures of identities and reports of expert witnesses and for completion of expert discovery are scheduled for July 19, 2011 and August 17, 2011, respectively.

DATE: 6/20/2011



The Honorable Claudia Wilken
United States District Judge

ATTESTATION

Pursuant to General Order 45(X), I attest that concurrence in the filing of this document has been obtained from the other signatory.

Dated: June 14, 2011

By: /s/ Megan Barry Borovicka
Megan Barry Borovicka