

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JOHN ZISK,

4 Plaintiff,

5 v.

6 GANNETT COMPANY INCOME PROTECTION,
7 LIFE INSURANCE COMPANY OF NORTH
8 AMERICA,

Defendant(s).

Case No.: 14-CV-391 YGR

ORDER CONTINUING HEARING ON MOTION
TO DISMISS AND DIRECTING PARTIES TO
SUBMIT JOINT STATUS STATEMENT AND
RESPONSE TO SUGGESTION OF STAY

9 Defendant Life Insurance Company of North America (“LINA”) has filed a motion to
10 dismiss the Second Claim in the First Amended Complaint of Plaintiff John Zisk on the grounds
11 that a claim of breach of fiduciary duty against LINA, premised upon the alleged mishandling of a
12 benefit claim, is not actionable under applicable Ninth Circuit law. Plaintiff’s response to the
13 motion is devoted mainly to a discussion of the recent Ninth Circuit decision in *Gabriel v. Alaska*
14 *Electrical Pension Fund*, 755 F.3d 647 (9th Cir. 2014), the dissent therein, and the pending petition
15 for rehearing *en banc*. The Court granted the parties’ prior stipulation regarding consideration of
16 an amicus brief submitted by the Department of Labor in connection with the petition for rehearing
17 *en banc* in *Gabriel*, and permitted LINA to file a response addressing the arguments therein. (Dkt.
18 No. 28.) In the interim, the Ninth Circuit directed defendants-appellees in *Gabriel* to submit a
19 response to the petition for rehearing by August 21, 2014.

20 Based on the foregoing, the Court CONTINUES the hearing in this matter until **September**
21 **30, 2014**, at 2:00 p.m. The parties are directed to file a status report on the petition for rehearing in
22 *Gabriel* no later than **September 23, 2014**.

23 Should the Ninth Circuit grant the petition for rehearing, the Court is considering a stay of
24 this matter. The parties shall include in the status report a joint statement of their positions on the
25 propriety of a stay. The status report shall be no more than four pages.

26 **IT IS SO ORDERED.**

27 Date: August 21, 2014

28 
YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE