

1 SQUIRE, SANDERS & DEMPSEY L.L.P.
 David S. Elkins (State Bar # 148077)
 2 Nicole L. Leonard (State Bar # 219090)
 600 Hansen Way
 3 Palo Alto, CA 94304-1043
 Telephone: +1.650.856.6500
 4 Facsimile: +1.650.843.8777

5 SQUIRE, SANDERS & DEMPSEY L.L.P.
 Richard Gurbst (*pro hac vice*)
 6 4900 Key Towner, 127 Public Square
 Cleveland, OH 44114-1304
 7 Telephone: +1.216.479.8500
 Facsimile: +1.216.479.8780

8
 9 Attorneys for Defendants
 NURENBERG, PLEVIN, HELLER &
 10 MCCARTHY CO., L.P.A. and JAMIE R.
 LEBOVITZ
 11

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16
 17 Thomas O. Wichelmann,

18 Plaintiff,

19 vs.

20 Nurenberg, Plevin, Heller & McCarthy
 Co., L.P.A. and Jamie R. Lebovitz,

21 Defendants.
 22

Case No. C 03 04450 HRL

**DECLARATION OF DAVID S. ELKINS
 IN SUPPORT OF DEFENDANTS'
 MISCELLANEOUS ADMINISTRATIVE
 REQUEST FOR CASE MANAGEMENT
 CONFERENCE [CIV. L. R. 7-10]**

Magistrate Judge Howard R. Lloyd

23 I, DAVID S. ELKINS, declare:

24 1. I am an attorney-at-law, licensed to practice before this Court and the Courts of the
 25 State of California, and am a partner at the law firm Squire, Sanders & Dempsey L.L.P., counsel
 26 of record for Defendants Nurenberg, Plevin, Heller & McCarthy Co., L.P.A. and Jamie R.
 27 Lebovitz. Unless indicated otherwise, I make this declaration based on my own personal
 28

DECLARATION OF D. ELKINS IN SUPPORT
 OF DEFS.' MISC. ADMIN. REQ.
 CASE NO. C 03 04450 HRL

1 knowledge, and, if required to do so, would and could testify competently as to the matters
2 contained below.

3 2. By letter dated April 16, 2004, from plaintiff's counsel, Rebecca Connolly,
4 plaintiff requested, among other things, that defendants stipulate to a revised pretrial schedule that
5 would extend the fact discovery cut-off date to as late as October 1, 2004. Plaintiff also
6 contended that defendants' jury demand was untimely. Attached as *Exhibit A* is a true and
7 correct copy of Ms. Connolly's April 16, 2004 letter.

8 3. On April 19, 2004, I responded in writing to Ms. Connolly's April 16 letter.
9 Among other things, my letter declined plaintiff's request to extend the discovery cut-off on the
10 ground that this case involves a one-count breach of contract claim, the agreements are clear on
11 their face, and the parties' respective legal positions are straight-forward. The letter also stated
12 that defendants had never waived their jury rights and filed their jury demand in light of
13 plaintiff's apparent belief that defendants had waived their right to demand a jury, to ensure that
14 their position is understood. Attached as *Exhibit B* is a true and correct copy of my April 19,
15 2004 letter.

16 4. On April 20, 2004, I received a letter from Ms. Connolly, again requesting that
17 defendants agree to extend the discovery cut-off of October 1, 2004, and restating plaintiff's
18 objection to defendants' jury demand. Ms. Connolly's letter stated that plaintiff wants additional
19 time for discovery because he anticipates that he will need to move to compel further responses to
20 discovery (for which responses were not yet due) and additional discovery following the
21 deposition of defendant Lebovitz. Attached as *Exhibit C* is a true and correct copy of Ms.
22 Connolly's April 20, 2004 letter.

23 5. Defendant Mr. Lebovitz represents multiple individual clients in a trial in Chicago
24 beginning May 3. The trial involves tort claims arising out of a rail accident. Plaintiff was
25 informed of Mr. Lebovitz's upcoming trial in early March, when the parties discussed mediation
26 dates. The trial has a common component and then individual components, including not only
27 Mr. Lebovitz's clients but others. Unless the trials are continued, settle, or otherwise disappear,
28 Mr. Lebovitz is not available for deposition in May. Defendants have offered Mr. Lebovitz for

1 deposition in California (he lives in Cleveland, Ohio) the week of June 7—before the June 10
2 mediation and June 29 summary judgment hearing. Defendants have proposed plaintiff's
3 deposition for the same week. If Mr. Lebovitz's May trials disappear, he will make himself
4 available for deposition in Cleveland as soon as possible.

5 6. On April 22, 2004, I telephoned and emailed Ms. Connolly in attempt to resolve
6 the parties' disagreement as to the discovery cut-off and jury demand.

7 7. On the morning of April 23, 2004, I spoke with Ms. Connolly by telephone and
8 reiterated that defendants do not believe additional time is necessary for discovery because this
9 case is straight-forward and extending the discovery cut-off to October 1 would run up too close
10 to trial currently set for November 2, 2004. I advised Ms. Connolly that defendants were
11 nevertheless willing to agree to a reasonable extension of discovery from June 4 to August 4, in
12 consideration for (a) a 15-20 day extension of time for defendants to respond to plaintiff's written
13 discovery (because of defendant Lebovitz's current trial preparation), and (b) plaintiff's
14 withdrawal of his contention that defendants waived their right to jury trial. Ms. Connolly
15 responded that the defendants had previously agreed to an October 1, 2004 discovery cut-off date
16 in the pretrial schedule proposed in the parties' Joint Pretrial Case Management Statement. While
17 true, the parties' agreement to an October 1 fact discovery cut-off was made in the context of a
18 trial date scheduled no earlier than March 2005. I explained that defendants would consider an
19 extension longer than two months, but an extension to October 1 would be unreasonable unless
20 the trial date of November 2 were also changed, which I said defendants would entertain. Ms.
21 Connolly stated that she needed to consult with Mr. Ebey about defendants' proposal.

22 8. Later on April 23 I received a letter from Ms. Connolly refusing to agree to
23 defendants' proposal. Instead, Ms. Connolly indicated that plaintiff would file a motion to
24 reschedule fact and expert discovery cut-off dates and move for an order shortening time to hear
25 plaintiff's motion. Attached as *Exhibit D* is a true and correct copy of Ms. Connolly's April 23,
26 2004 letter.

27 9. Defendants believe that these issues are best resolved through a case management
28 conference that can address overarching issues, rather than through piecemeal, time-consuming

1 motion practice. Resolution is dependent on numerous variables, including the Court's schedule
2 and availability, as well as counsel and clients' availability. These matters can be more
3 efficiently addressed in one status conference, which will allow for an open dialogue with the
4 Court and counsel.

5 I declare under penalty of perjury that the foregoing is true and correct.

6
7 Dated: April 23, 2004

/s/ David S. Elkins

8 David S. Elkins

9
10 PaloAlto/68033.1

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28