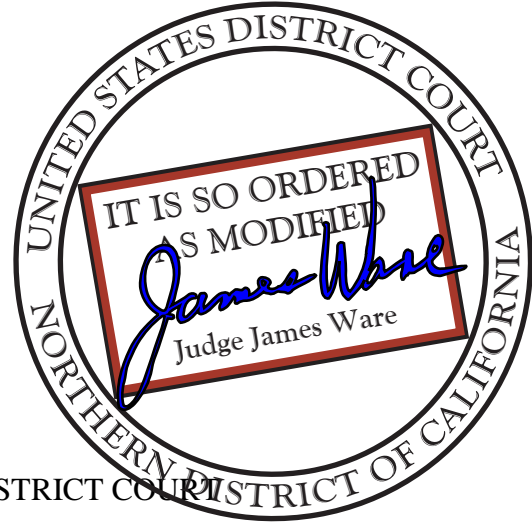


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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

12 RICK M. GREENBERG,  
 13 Plaintiff,

14 v.

15 LIFE INSURANCE COMPANY  
 OF NORTH AMERICA and ARROW  
 16 ELECTRONICS,  
 17 Defendants.

CASE NO. CV08-03240 JW

**JOINT APPLICATION TO VACATE  
 SUMMARY JUDGMENT HEARING DATE  
 and [PROPOSED] ORDER THEREON**

**ORDER REFERRING THE CASE FOR A  
 SETTLEMENT CONFERENCE WITH  
 MAGISTRATE JUDGE SEEBORG**

19  
 20 Plaintiff, Rick M. Greenberg, *pro se*, and Defendants, Life Insurance Company of  
 21 North America (“LINA”) and Arrow Electronics (“Arrow”), through their counsel of record as  
 22 identified above, hereby jointly request that the Court vacate the date currently set for the  
 23 hearing on cross-motions for summary judgment in this matter, of May 4, 2009. As grounds  
 24 therefore, the parties state:

25 1. The current date of May 4, 2009 for cross-motions for summary judgment was  
 26 set by the Court in its Order Vacating Hearing and Vacating Case Management Conference,  
 27 issued November 25, 2008. In setting a hearing date for cross-motions for summary judgment,  
 28 the Court properly understood from the parties’ Joint Report of Rule 26 Conference that this

1 ERISA benefits dispute is to be resolved via cross-motions for summary judgment, or cross-  
2 motions under Rule 52, and thus conducting “a bench trial on the record.” *E.g., Caplan v. CNA*  
3 *Fin. Corp.*, 544 F.Supp.2d 984 (N.D. Cal. 2008), *citing Kearney v. Standard Ins. Co.*, 175 F.3d  
4 1084, 1094-95 (9th Cir. 1999)(en banc).

5         2.         The parties are informed, and thereby submit, that when the Case Management  
6 Conference date was vacated, this matter went off the calendar of the Court’s Alternative  
7 Dispute Resolution Program, despite the fact that the parties had jointly requested a Settlement  
8 Conference before a United States Magistrate Judge and had filed the required Notice of Need  
9 for an ADR Telephone Conference on October 7, 2008. This matter has now been set for an  
10 ADR Telephone Conference on March 25, 2009, and the parties still desire a Settlement  
11 Conference before a Magistrate Judge.

12         3.         In December, 2008, the Court granted the Defendants’ Motion to Strike several  
13 of the prayers for relief contained in Plaintiff’s Complaint. In January, 2009, Defendants filed  
14 their joint Answer to the Complaint, and LINA filed a Counterclaim for reimbursement of  
15 certain sums previously paid to Plaintiff as benefits under the ERISA plan.

16         4.         On March 6, 2009, approximately fifty (50) days later, Plaintiff filed a Motion  
17 to Strike Portions of Defendant Life Insurance Company of North America’s Counterclaim and  
18 Motion to Amend Plaintiff’s Prayers for Relief. That motion is currently set for hearing on  
19 April 27, 2009.

20         5.         Pursuant to the schedule established by the Court and the applicable Local  
21 Rules, the parties’ briefing of their cross-motions for summary judgment must be completed  
22 before the time that the Court hears argument on Plaintiff’s pending motion, and before the  
23 parties can schedule and conduct a Settlement Conference.

24         6.         The parties submit that proper briefing of the ultimate issues for judgment in the  
25 case will necessarily depend upon the Court’s ruling on the Plaintiff’s motion to amend, and  
26 therefore would have to be rewritten by reply or surreply memoranda. Thus, the current  
27 schedule virtually guarantees duplication of efforts and inconvenience for the parties and for  
28 the Court. Moreover, the parties submit that the overall interest in judicial economy would be

1 served by permitting them to participate in a Settlement Conference before undertaking the  
2 expense and effort of preparing summary judgment motions.

3 7. In order to allow for hearing on the Plaintiff's pending motion, full participation  
4 in a Settlement Conference – preferably before a United States Magistrate Judge – and then  
5 careful preparation of cross-motions for judgment, the parties hereby jointly request that the  
6 date currently set for the hearing on the cross-motions be vacated, and that a new date  
7 convenient for the Court be set for a hearing after September 1, 2009.

8 Dated: March 18, 2009

RICK M. GREENBERG

9 By: s/Rick M. Greenberg per authorization of  
March 18, 2009

10 RICK M. GREENBERG,  
11 Plaintiff *pro se*

12 Dated: March 18, 2009

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

13 By: /s/Lawrence J. Rose

14 ADRIENNE C. PUBLICOVER  
15 LAWRENCE J. ROSE  
16 Attorneys for Defendants  
17 LIFE INSURANCE COMPANY OF NORTH  
AMERICA AND ARROW ELECTRONICS


18 **ORDER ON JOINT APPLICATION**

19 Good cause appearing, IT IS HEREBY ORDERED THAT the hearing date previously  
20 set for cross-motions for summary judgment of May 4, 2009 is VACATED .

21 The Court will set a new date in its Order addressing Plaintiff's Motion to Amend.

22 In light of the parties' strong desire to resolve the case short of trial and request for a  
23 settlement conference with a magistrate judge, the Court refers the parties to Magistrate Judge  
24 Seeborg for a settlement conference. On or before **April 13, 2009**, the parties shall contact  
25 Judge Seeborg's Chambers to set up their conference. In light of this Order, the Court exempts  
26 the parties from participating in the Court's ADR program at this time.  
27

28 Dated: April 2, 2009

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge