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5 Attorneys for Defendants, NEIL SMITH and TDG, LLC

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

11 FIBERTREK, INC., a Nevada corporation; )  
LAWRENCE P. WAGNER, an individual; and )  
12 JOHN G. PEERY, an individual; )  
13 Plaintiffs, )

14 -v- )

15 PREFERRED CORPORATE SERVICES, INC., a )  
Colorado corporation; DOUGLAS GREGG, an )  
16 individual; TDG, LLC, a Colorado limited liability )  
company; NEIL SMITH, an individual; and DOES )  
17 1-100, inclusive, )  
18 Defendants. )

19 AND RELATED CROSS-COMPLAINT )  
20 \_\_\_\_\_ )

Case No. C08 03415 JW (xRS)

JOINT STIPULATION AND  
[PROPOSED] ORDER TO EXTEND  
MEDIATION COMPLETION DATE

[All parties have joined in the  
Stipulation except PREFERRED  
CORPORATE SERVICES, INC.  
whose default has been entered and  
except newly named cross-defendants  
who have not yet been served]

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23 The parties, FIBERTREK, INC., LAWRENCE P. WAGNER, JOHN G. PEERY,  
24 DOUGLAS GREGG, NEIL SMITH, and TDG LLC (collectively, the "Parties") hereby stipulate  
25 to extend the Mediation Completion Date in this case from June 25, 2009, to September 25,  
26 2009, for the following reasons:

27 1. Defendant, Neil Smith, who lives in Denver, Colorado, and is 78 years old, suffered a  
28 stroke of his brain stem on January 21, 2009. An earlier mediation scheduled for March 3,

1 2009, with Robert Ebe in San Francisco, CA, had to be canceled based on Mr. Smith's  
2 prognosis and medical treatment schedule. (A true and correct copy of a letter written by Mr.  
3 Smith's doctor dated February 12, 2009, describing the stroke is attached hereto as Exh. 1).

4 2. The original mediation completion date of March 25, 2009, was extended to June 25,  
5 2009, by stipulation approved by the Court because of Mr. Smith's medical condition.

6 3. A new mediation was scheduled for June 23, 2009, with Robert Ebe in San  
7 Francisco, CA.

8 4. On April 23, 2009, Mr. Smith's doctor wrote another letter indicating that Mr. Smith  
9 was experiencing "cardiac complications with potential sequelae from his stroke." ["Sequelae"  
10 is a pathological condition resulting from a prior injury, disease or attack]. The letter goes on  
11 to say that it is in Mr. Smith's "absolute best interest to stay" in Northern Colorado. "Any  
12 travel outside of Colorado would considerably jeopardize his health until further notice from all  
13 of his medical providers." (A true and correct copy of the letter is attached hereto as Exh. 2).

14 5. Mr. Smith continues to undergo therapy and rehabilitation treatments related to  
15 cardiac related effects of the stroke.

16 6. Mr. Smith suffered an incident on Sunday, May 24, 2009, requiring hospitalization  
17 due to pain on his right side and in his right lung and shortness of breath. As a result of this  
18 incident and on the advice of Mr. Smith's neurologist, Mr. Smith is starting another  
19 rehabilitation therapy on June 9, 2009, for a period of 90 days. (Attached hereto is the  
20 declaration of Neil Smith as Exh. C).

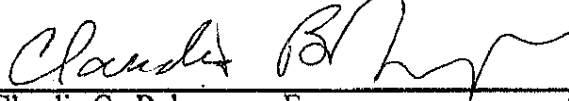
21 7. In addition, Mr. Smith's Answer and Cross-complaint was recently filed on May 18,  
22 2009, after plaintiffs' First Amended Complaint was filed. Mr. Smith's cross-complaint added  
23 six new cross-defendants to this case who should participate in any mediation of this case.  
24 Since the cross-complaint was only recently filed, the new parties are still in the process of being  
25 formally served.

26 8. The parties, therefore, stipulate to, and request the Court to approve, an extension of  
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1 the mediation completion date from June 25, 2009, to September 25, 2009, in view of Mr.  
2 Smith's continuing medical problems and the newly added cross-defendants.


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4 Dated: June 3, 2009

LAW OFFICES OF CLAUDIA C. BOHORQUEZ


5  
6 By:   
Claudia C. Bohorquez, Esq.  
Attys. for Defendants, NEIL SMITH and TDG, LLC

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8  
9 Dated: 6/4/09

ROPERS, MAJESKI, KOHN & BENTLEY

10  
11 By:   
Brian M. Afrunti, Esq.  
Attys. for Plaintiffs, FIBERTREK, INC.,  
WAGNER, PEERY

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15  
16 Dated: 06/04/09

  
Douglas Gregg, Defendant in Pro Per

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18  
19 **IT IS SO ORDERED:**

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22 Dated: June 19, 2009

  
HONORABLE JAMES WARE

HEALING ARTS FAMILY MEDICINE  
3320 W EISENHOWER BLVD  
LOVELAND, CO 80537  
970-669-2849

Carl Elmo Frickman M.D.

Fax 970-669-5436  
Jeremy Dubin D.O.

Stacy Davisson F.N.P

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February 12, 2009

RE: Neil Smith  
DOB: 07/20/1930

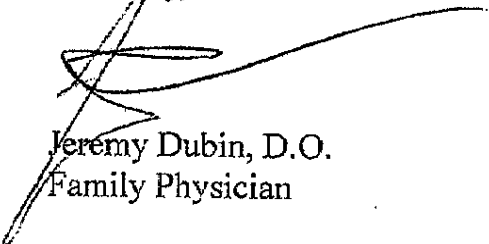
To Whom it May Concern,

This letter is intended to inform parties interested of an unfortunate medical injury of my patient Neil Smith (DOB 07/20/1930). Neil suffered a stroke of his brain stem on January 21, 2009. Currently, he needs to have blood draws twice week for anticoagulation therapy, patient is pending a cardiac examination at Heart Center of the Rockies, and as of March 23, 2009, he will begin rehabilitation at Northern Colorado Rehab Center which could last from 6 weeks to 12 months. Also, serial ultrasounds have been ordered to track potential clots in his legs that may have been the cause of his stroke.

It is in Neil's absolute best medical interest that he stays here in Northern Colorado to optimize his recovery and decrease chances of future cerebrovascular events.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Jeremy Dubin, D.O.  
Family Physician

HEALING ARTS FAMILY MEDICINE  
3320 W EISENHOWER BLVD  
LOVELAND, CO 80537  
970-669-2849

Carl Elmo Frickman M.D.

Fax 970-669-5436  
Jeremy Dubin D.O.

Stacy Davisson F.N.P.

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April 23, 2009

RE: Neil Smith  
DOB: 07/20/1930

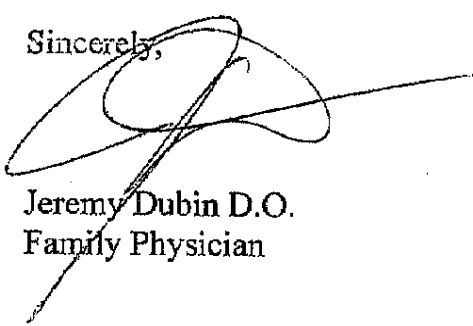
To Whom it May Concern:

This letter is intended to inform parties interested of an unfortunate medical injury of my patient Neil Smith (DOB 07/20/1930). Neil suffered a stroke of his brain stem on January 21, 2009. This patient is now being evaluated for cardiac complications with potential sequelae from his stroke.

It is Neil's absolute best medical interest to stay here in Northern Colorado. Any travel outside of Colorado would considerably jeopardize his health until further notice from all of his medical providers.

If you have any questions or concerns, please do not hesitate to contact me at 970-669-2849.

Sincerely,



Jeremy Dubin D.O.  
Family Physician

DECLARATION OF NEIL SMITH

I, Neil Smith, declare as follows:

1. I am a party to the case of Fibertrek, Inc. et al. v. Preferred Corporate Services, Inc. et al., Case No. C08 03415 JW, filed in United States District Court for the Northern District of California, San Jose Division. I have personal knowledge of the facts contained in this declaration and if called as a witness could and would testify competently thereto.

2. I am 78 years old. I live in <sup>LOVELAND</sup> Parker, Colorado.

3. On January 21, 2009, I suffered a stroke of my brain stem. I spent several days in the hospital and am now undergoing various treatments and therapies as a result to the stroke. I am being evaluated and treated for cardiac complications from the stroke. My doctor, Jeremy Dubin, estimated on February 12, 2009, that my rehabilitation could last from 6 weeks to 12 months.

4. Since my stroke, I have had hospital and doctor appointments every week, sometimes several times a week for various testings and therapies.

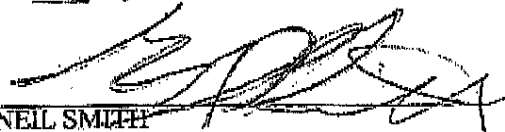
5. On Sunday, May 24, 2009, I was taken to the hospital with a pain in my right lung and side and shortness of breath where I remained overnight

6. I will begin a new rehabilitation program on June 9<sup>th</sup>, 2009, and will be monitored by a neurologist for 90 days. This is in addition to monitoring from my cardiologist.

7. The stroke has left me unable to concentrate for long periods of time and has been extremely debilitating.

8. I am under orders from my doctors not to travel. I am undergoing therapies and treatments that require weekly hospital visits. Mediation in this case would require me to travel to San Francisco on June 23, 2009. I simply cannot do it on advice of my doctors and my lack of physical and mental well-being.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this <sup>LOVELAND</sup> 31<sup>st</sup> day of June, 2009, at Parker, Colorado.

  
NEIL SMITH

Exh. 3

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PROOF OF SERVICE

I am employed in the County of Los Angeles. I am over the age of 18 years and not a party to the within action. My business address is 3500 W. Olive Avenue, Suite 300, Burbank, CA, 91505. On June 4, 2009, I served the documents named below on the parties in this action as follows:

Document served: "STIPULATION AND [PROPOSED] ORDER TO CONTINUE MEDIATION COMPLETION DATE"

Parties served:

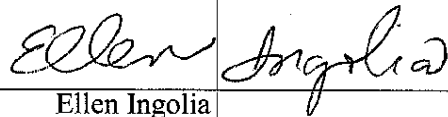
Douglas Gregg  
16025 Sequoia Drive  
Parker, CO 80134  
(Defendant - In pro per)  
(By mail)

(BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Burbank, CA, following the ordinary business practices at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary court of business.

Executed this 4 day of June, 2009, at Burbank, California.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4 day of June, 2009, at Burbank, California.

  
Ellen Ingolia