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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD J. LEUNG, MD,  
Plaintiff,  
v.  
UNUM LIFE INSURANCE COMPANY  
OF AMERICA,  
Defendant.

Case No.: 22-cv-00767-W-JLB

**ORDER GRANTING JOINT  
MOTION TO CONTINUE CASE  
MANAGEMENT DATES**

**[ECF No. 28]**

Before the Court is a Joint Motion to Continue Case Management Dates. (ECF No. 28.) The parties jointly request to continue all case management dates by approximately 45 days. (*Id.* at 1–2.) Good cause appearing, the Joint Motion is **GRANTED**, and the Scheduling Order (ECF No. 9) is modified as follows:

1. All fact discovery shall be completed by all parties by **June 5, 2023**. “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a).** The Court

1 expects counsel to make every effort to resolve all disputes without court intervention  
2 through the meet and confer process. If the parties reach an impasse on any discovery  
3 issue, counsel shall file an appropriate motion within the time limit and procedures outlined  
4 in the undersigned magistrate judge's chambers rules. **A failure to comply in this regard**  
5 **will result in a waiver of a party's discovery issue. Absent an order of the court, no**  
6 **stipulation continuing or altering this requirement will be recognized by the court.**

7 Discovery disputes must be brought to the Court's attention in the time and manner  
8 required by § V of Judge Burkhardt's Civil Chambers Rules. **All discovery disputes must**  
9 **be raised within 30 calendar days of the service of an objection, answer, or response**  
10 that becomes the subject of dispute, or the passage of a discovery due date without response  
11 or production, and only after counsel (and any unrepresented parties) have met and  
12 conferred to resolve the dispute. *See* J. Burkhardt Civ. Chambers R. § V.

13 2. The parties shall designate their respective experts in writing by  
14 **April 10, 2023**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any  
15 person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of  
16 the Fed. R. Evid. This requirement is not limited to retained experts. The date for exchange  
17 of rebuttal experts shall be by **May 8, 2023**. The written designations shall include the  
18 name, address and telephone number of the expert and a reasonable summary of the  
19 testimony the expert is expected to provide. The list shall also include the normal rates the  
20 expert charges for deposition and trial testimony.

21 3. By **April 10, 2023**, each party shall comply with the disclosure provisions in  
22 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure  
23 requirement applies to all persons retained or specially employed to provide expert  
24 testimony, or whose duties as an employee of the party regularly involve the giving of  
25 expert testimony. **Except as provided in the paragraph below, any party that fails to**  
26 **make these disclosures shall not, absent substantial justification, be permitted to use**  
27 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**  
28 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

1 4. Any party shall supplement its disclosure regarding contradictory or rebuttal  
2 evidence under Federal Rules of Civil Procedure 26(a)(2)(D) and 26(e) by **May 8, 2023**.

3 5. All expert discovery shall be completed by all parties by **June 5, 2023**. The  
4 parties shall comply with the same procedures set forth in the paragraph governing fact  
5 discovery.

6 6. Failure to comply with the above paragraphs or any other discovery order of  
7 the court may result in the sanctions provided for in Fed. R. Civ. P. 37, including a  
8 prohibition on the introduction of experts or other designated matters in evidence.

9 7. All other pretrial motions must be filed by **July 3, 2023**. Counsel for the  
10 moving party must obtain a motion hearing date from the law clerk of the judge who will  
11 hear the motion. The period of time between the date you request a motion date and the  
12 hearing date may vary from one district judge to another. Please plan accordingly. Failure  
13 to make a timely request for a motion date may result in the motion not being heard.  
14 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the  
15 district judge.

16 8. Pursuant to Civil Local Rule 7.1(f)(3)(c), if an opposing party fails to file  
17 opposition papers in the time and manner required by Civil Local Rule 7.1(e)(2), that  
18 failure may constitute a consent to the granting of a motion or other request for ruling by  
19 the court. Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1(e)(2)  
20 or otherwise face the prospect of any pretrial motion being granted as an unopposed motion  
21 pursuant to Civil Local Rule 7.1(f)(3)(c). Should either party choose to file or oppose a  
22 motion for summary judgment or partial summary judgment, no Separate Statement of  
23 Disputed or Undisputed Facts is required.

24 9. A Mandatory Settlement Conference (“MSC”) will be held by video  
25 conference<sup>1</sup> on **July 17, 2023** at **1:45 PM** before **Magistrate Judge Jill L. Burkhardt**.

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28 <sup>1</sup> If any party believes the MSC is more likely to be successful if conducted in-person,  
that party shall meet and confer on the issue with the other parties. After meeting and

1 **Mandatory directions for participating in the MSC by video conference are attached**  
 2 **hereto.** The purpose of the MSC is to permit an informal, candid discussion between the  
 3 attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to  
 4 achieve a mediated resolution of the case. All MSC discussions will be off the record,  
 5 privileged, and confidential. See CivLR 16.3(h). No later than **July 7, 2023**, counsel (and  
 6 any unrepresented parties) shall **lodge** confidential MSC statements with Judge  
 7 Burkhardt’s chambers via e-mail at efile\_Burkhardt@casd.uscourts.gov. The parties’  
 8 MSC statements shall comply with § III.C. of Judge Burkhardt’s Civil Chambers Rules.

9 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for  
 10 insured defendants with full and unlimited authority<sup>2</sup> to negotiate and enter into a binding  
 11 settlement, as well as the principal attorney(s) responsible for the litigation, must be present  
 12 and legally and factually prepared to discuss and resolve the case at the MSC. In the case  
 13 of an entity, an authorized representative of the entity who is not retained outside counsel  
 14 must be present and must have discretionary authority to commit the entity to pay an  
 15 amount up to the amount of the Plaintiff’s prayer (excluding punitive damages prayers).  
 16 The purpose of this requirement is to have representatives present who can settle the case  
 17 during the course of the conference without consulting a superior.

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 20 conferring, and no later than **60 days before the MSC**, the parties shall leave a joint  
 21 voicemail with chambers at (619) 557-6624 indicating which of the parties requests an in-  
 22 person MSC. In the voicemail, the parties shall leave three mutually available dates for a  
 23 telephonic status conference to discuss whether the MSC should be held in-person. The  
 24 final decision will be made by the Court.

25 <sup>2</sup> “Full authority to settle” means that the individuals at the settlement conference must  
 26 be authorized to fully explore settlement options and to agree at that time to any settlement  
 27 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d  
 28 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to  
 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,  
 485–86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement  
 authority to attend the conference includes that the person’s view of the case may be altered  
 during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is  
 not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595–97 (8th Cir. 2001).

1           **Counsel for a United States government entity** may be excused from this  
2 requirement so long as the government attorney who attends the MSC conference (1) has  
3 primary responsibility for handling the case, and (2) may negotiate settlement offers which  
4 the attorney is willing to recommend to the government official having ultimate settlement  
5 authority.

6           **Failure to attend the MSC or obtain proper excuse will be considered grounds**  
7 **for sanctions.**

8           10. No later than **21 days before the MSC**, the parties shall exchange formal  
9 settlement proposals, as required by § III.A. of Judge Burkhardt’s Civil Chambers Rules.  
10 No later than **14 days before the MSC**, the parties shall meet and confer in person or  
11 telephonically, as required by § III.B. of Judge Burkhardt’s Civil Chambers Rules.

12           11. Despite the requirements of Civil Local Rule 16.1(f)(2), neither party is  
13 required to file a Memorandum of Contentions of Fact and Law at any time. The parties  
14 shall instead focus their efforts on drafting and submitting a proposed pretrial order by the  
15 time and date specified by Civil Local Rule 16.1(f)(6)(b). The proposed pretrial order shall  
16 comply with Civil Local Rule 16.1(f)(6) and the Standing Order in Civil Cases issued by  
17 the assigned district judge.

18           12. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.  
19 Civ. P. 26(a)(3) by **November 6, 2023**. Failure to comply with these disclosure  
20 requirements could result in evidence preclusion or other sanctions under Fed. R. Civ. P.  
21 37.

22           13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by  
23 **November 13, 2023**. At this meeting, counsel shall discuss and attempt to enter into  
24 stipulations and agreements resulting in simplification of the triable issues. Counsel shall  
25 exchange copies and/or display all exhibits other than those to be used for impeachment.  
26 The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall  
27 note any objections they have to any other parties’ Pretrial Disclosures under Fed. R. Civ.  
28 P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference

1 order.

2 14. Counsel for plaintiff will be responsible for preparing the pretrial order and  
3 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By  
4 **November 20, 2023**, plaintiff's counsel must provide opposing counsel with the proposed  
5 pretrial order for review and approval. Opposing counsel must communicate promptly  
6 with plaintiff's attorney concerning any objections to form or content of the pretrial order,  
7 and both parties shall attempt promptly to resolve their differences, if any, concerning the  
8 order.

9 15. The Proposed Final Pretrial Conference Order, including objections to any  
10 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and  
11 lodged with the assigned district judge by **November 27, 2023**, and shall be in the form  
12 prescribed in and comply with Local Rule 16.1(f)(6).

13 16. In addition to submitting the proposed final pretrial conference order, the  
14 parties are further ordered to separately submit informal letter briefs, not exceeding two  
15 single spaced pages, served on opposing counsel and received in the chambers of Judge  
16 Thomas J. Whelan, United States District Judge (and not filed with the Clerk's Office) by  
17 **2:30 PM** on **December 6, 2023**.

18 The letter brief should be a relatively informal and straightforward document. The  
19 letter brief should outline a short, concise and objective factual summary of the party's case  
20 in chief, the number of hours/days each party intends to expend at trial, the approximate  
21 number of witnesses, whether certain witnesses will be coming in from out of town, the  
22 number of testifying expert witnesses, whether any unique demonstrative exhibits may be  
23 presented, the number of proposed motions in limine that may be filed, precisely when the  
24 parties would be prepared to submit their in limine papers (and whether the parties have  
25 met and conferred with respect to in limine issues), the issue of proposed jury instructions  
26 and when the parties intend to submit them before trial, and voir dire issues, either party's  
27 preference as to what date(s) the trial should begin and any other pertinent information that  
28 either party may deem useful to assist the Court in the execution of the pretrial conference

1 and in setting the matter for trial.

2 17. The final Pretrial Conference is scheduled on the calendar of the **Honorable**  
3 **Thomas J. Whelan** on **December 11, 2023** at **10:30 AM**

4 18. The parties must review the chambers' rules for the assigned district judge  
5 and magistrate judge.

6 19. A post trial settlement conference before a magistrate judge may be held  
7 within 30 days of verdict in the case.

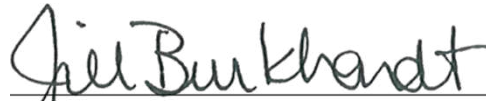
8 20. The dates and times set forth herein will not be modified except for good cause  
9 shown.

10 21. Briefs or memoranda in support of or in opposition to any pending motion  
11 shall not exceed twenty-five (25) pages in length without leave of a district court judge.  
12 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.  
13 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents  
14 and a table of authorities cited.

15 22. Plaintiff's counsel shall serve a copy of this order on all parties that enter this  
16 case hereafter.

17 **IT IS SO ORDERED.**

18 Dated: February 21, 2023

19   
20 Hon. Jill L. Burkhardt  
21 United States Magistrate Judge  
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1                    **Mandatory Directions for Zoom Video Conference Participation**

2            1.        The Court will use its official ZoomGov video conferencing account to hold  
3 the MSC. **IF YOU ARE UNFAMILIAR WITH ZOOM:** Zoom is available on  
4 computers through a download on the Zoom website (<https://zoom.us/meetings>) or on  
5 mobile devices through the installation of a free app.<sup>3</sup> Joining a Zoom conference does not  
6 require creating a Zoom account, but it does require downloading the .exe file (if using a  
7 computer) or the app (if using a mobile device). Participants are encouraged to create an  
8 account, install Zoom and familiarize themselves with Zoom in advance of the MSC.<sup>4</sup>  
9 There is a cost-free option for creating a Zoom account.

10           2.        Prior to the start of the MSC, the Court will e-mail each MSC participant an  
11 invitation to join a Zoom video conference. Again, if possible, participants are encouraged  
12 to use laptops or desktop computers for the video conference, as mobile devices often offer  
13 inferior performance. Because Zoom may quickly deplete the battery of a participant’s  
14 device, each participant should ensure that her or his device is plugged in or that a charging  
15 cable is readily available during the video conference. Participants shall join the video  
16 conference by following the ZoomGov Meeting hyperlink in the invitation. **Participants**  
17 **who do not have Zoom already installed on their device when they click on the**  
18 **ZoomGov Meeting hyperlink will be prompted to download and install Zoom before**  
19 **proceeding.** Zoom may then prompt participants to enter the password included in the  
20 invitation. All participants will be placed in a waiting room until the MSC begins.

21           3.        Each participant should plan to join the Zoom video conference **at least**  
22 **5 minutes** before the start of the MSC to ensure that the MSC begins on time.

23           4.        Zoom’s functionalities will allow the Court to conduct the MSC as it  
24 ordinarily would conduct an in-person MSC. That is, the Court will begin the MSC with  
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26 <sup>3</sup>        If possible, participants are encouraged to use laptops or desktop computers for the  
27 video conference, as mobile devices often offer inferior performance.

28 <sup>4</sup>        For help getting started with Zoom, visit: <https://support.zoom.us/hc/en-us/categories/200101697-Getting-Started>



1 all participants joined together in a main session. After an initial discussion in the main  
2 session, the Court will divide participants into separate, confidential sessions, which Zoom  
3 calls Breakout Rooms.<sup>5</sup> In a Breakout Room, the Court will be able to communicate with  
4 participants from a single party in confidence. Breakout Rooms will also allow parties and  
5 counsel to communicate confidentially without the Court.

6 5. As previously stated, MSCs are confidential court proceedings. All attendees  
7 must participate from a private and stable location where no individual who is not a party,  
8 a party representative, or an attorney for a party can overhear the proceedings. All  
9 attendees must be prepared to devote their full attention to the MSC as if they were  
10 attending in person. This means that attendees must clear their schedules of all conflicts  
11 for the entire period of the MSC.<sup>6</sup> Attendees may not participate from a moving car or a  
12 public space.

13 6. All participants are expected to display the same level of professionalism and  
14 civility as they would at an in-person court proceeding. *See* CivLR 2.1; J. Burkhardt’s Civ.  
15 Chambers R. § I.

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27 <sup>5</sup> For more information on what to expect when participating in a Zoom Breakout  
28 Room, visit: <https://support.zoom.us/hc/en-us/articles/115005769646>

<sup>6</sup> MSCs are ordinarily scheduled for three hours but may last considerably longer.