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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 CRISTIN MORNEAU, individually;
13 KELLY STRANGE, individually; AND
14 Cristin Morneau and Kelly Strange,
15 jointly as successors-in-interest to
16 Carolyn A. Morneau and on behalf of the
17 ESTATE OF CAROLYN A. MORNEAU,
18 Plaintiffs,

19 v.

20 PROTECTIVE LIFE INSURANCE
21 COMPANY,

22 Defendant.

Case No.: 3:22-cv-01861-W-AHG

ORDER:

**(1) GRANTING JOINT MOTION TO
EXTEND SCHEDULING ORDER
DEADLINES, and**

**(2) ISSUING SECOND AMENDED
SCHEDULING ORDER**

[ECF No. 29]

23 Before the Court is the parties' joint motion to amend the scheduling order. ECF
24 No. 29. The parties seek an order from the Court extending deadlines set forth in the
25 Court's First Amended Scheduling Order by approximately 90 days. *Id.*

26 Parties seeking to continue deadlines in the scheduling order must demonstrate good
27 cause. FED. R. CIV. P. 16(b)(4) ("A schedule may be modified only for good cause and with
28 the judge's consent"); ECF No. 27 at 9 (Amended Scheduling Order, stating that "[t]he
dates set forth herein will not be modified except for good cause shown"); *see also*

1 Chmb.R. at 2 (stating that any request for continuance requires “[a] showing of good cause
2 for the request”).

3 “Good cause” is a non-rigorous standard that has been construed broadly across
4 procedural and statutory contexts. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259
5 (9th Cir. 2010). The good cause standard focuses on the diligence of the party seeking to
6 amend the scheduling order and the reasons for seeking modification. *Johnson v. Mammoth
7 Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (“[T]he focus of the inquiry is upon
8 the moving party’s reasons for seeking modification. . . . If that party was not diligent, the
9 inquiry should end.”) (internal citation omitted). Therefore, “a party demonstrates good
10 cause by acting diligently to meet the original deadlines set forth by the court.” *Merck v.
11 Swift Transp. Co.*, No. CV-16-01103-PHX-ROS, 2018 WL 4492362, at *2 (D. Ariz. Sept.
12 19, 2018).

13 Here, the parties have represented to the Court that they have been working
14 diligently to abide by the Court’s Scheduling Order (ECF No. 27). ECF No. 29. The parties
15 represent that both sides have propounded interrogatories, requests for production (“RFP”),
16 and requests for admission (“RFA”). *Id.* at 3–4. Discovery responses have been served,
17 including several thousand pages of documents. *Id.* The parties’ “attention has been
18 directed at settlement of this matter, and negotiations are still ongoing.” *Id.* at 5. Thus, the
19 parties seek an order from the Court extending the fact discovery deadline, discovery
20 dispute notification deadline, and other scheduling order deadlines by 90 days so that they
21 can accommodate ongoing settlement negotiations without having to simultaneously
22 litigate the case and take depositions. *Id.*

23 The Court appreciates the parties’ thorough motion, and that the parties have been
24 working together and have diligently pursued discovery. Thus, the Court finds good cause
25 to **GRANT** the motion. ECF No. 29. The Court issues the following Second Amended
26 Scheduling Order:

27 1. By **November 14, 2023**, if the parties reach an impasse after substantial meet
28 and confer efforts, the parties may bring any discovery dispute to the Court’s attention via

1 email (at efile_goddard@casd.uscourts.gov) regarding: (1) Plaintiff Morneau's responses
2 to written discovery served on March 31, 2023; (2) Defendant's responses to RFPs served
3 on April 13, 2023; (3) Defendant's responses to interrogatories and RFAs served on
4 April 21, 2023; and (4) Plaintiff Strange's responses to written discovery served on
5 May 1, 2023.

6 2. All fact discovery shall be completed by all parties by **November 29, 2023**.
7 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil
8 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
9 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
10 into account the times for service, notice and response as set forth in the Federal Rules of
11 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard**
12 **to all discovery disputes in compliance with Local Rule 26.1(a). A failure to comply**
13 **in this regard will result in a waiver of a party's discovery issue. Absent an order of**
14 **the court, no stipulation continuing or altering this requirement will be recognized by**
15 **the court.** The Court expects counsel to make every effort to resolve all disputes without
16 court intervention through the meet and confer process. If the parties reach an
17 impasse on any discovery issue, the movant must e-mail chambers at
18 efile_goddard@casd.uscourts.gov no later than 45 days after the date of service of the
19 written discovery response that is in dispute, seeking a telephonic conference with the
20 Court to discuss the discovery dispute. The email must include: (1) at least three proposed
21 times mutually agreed upon by the parties for the telephonic conference; (2) a neutral
22 statement of the dispute; and (3) one sentence describing (not arguing) each parties'
23 position. The movant must copy opposing counsel on the email. No discovery motion may
24 be filed until the Court has conducted its pre-motion telephonic conference, unless the
25 movant has obtained leave of Court. **All parties are ordered to read and to fully comply**
26 **with the Chambers Rules of Magistrate Judge Allison H. Goddard.**

27 3. The parties shall designate their respective experts in writing by
28 **December 19, 2023**. Pursuant to Fed. R. Civ. P. 26(a)(2)(A), the parties must identify any

1 person who may be used at trial to present evidence pursuant to Rules 702, 703 or 705 of
2 the Fed. R. Evid. This requirement is not limited to retained experts. The date for exchange
3 of rebuttal experts shall be by **January 17, 2024**. The written designations shall include
4 the name, address and telephone number of the expert and a reasonable summary of the
5 testimony the expert is expected to provide. The list shall also include the normal rates the
6 expert charges for deposition and trial testimony.

7 4. By **December 19, 2023**, each party shall comply with the disclosure
8 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This
9 disclosure requirement applies to all persons retained or specially employed to provide
10 expert testimony, or whose duties as an employee of the party regularly involve the giving
11 of expert testimony. **Except as provided in the paragraph below, any party that fails
12 to make these disclosures shall not, absent substantial justification, be permitted to
13 use evidence or testimony not disclosed at any hearing or at the time of trial. In
14 addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

15 5. Any party shall supplement its disclosure regarding contradictory or rebuttal
16 evidence under Federal Rules of Civil Procedure 26(a)(2)(D) and 26(e) by
17 **January 17, 2024**.

18 6. All expert discovery shall be completed by all parties by **February 7, 2024**.
19 The parties shall comply with the same procedures set forth in the paragraph governing
20 fact discovery.

21 7. Failure to comply with this section or any other discovery order of the court
22 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
23 the introduction of experts or other designated matters in evidence.

24 8. All other pretrial motions must be filed by **February 29, 2024**. Counsel for
25 the moving party must obtain a motion hearing date from the law clerk of the judge who
26 will hear the motion. The period of time between the date you request a motion date and
27 the hearing date may vary from one district judge to another. Please plan accordingly.
28 Failure to make a timely request for a motion date may result in the motion not being heard.

1 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the
2 district judge.

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

11 10. A Mandatory Settlement Conference shall be conducted on **April 24, 2024** at
12 **9:30 a.m.** in the chambers of **Magistrate Judge Allison H. Goddard**. Plaintiff must serve
13 on Defendant a **written** settlement proposal, which must include a specific demand
14 amount, no later than **April 3, 2024**. The defendant must respond to the plaintiff **in writing**
15 with a specific offer amount prior to the Meet and Confer discussion. The parties should
16 not file or otherwise copy the Court on these exchanges. Rather, the parties must include
17 their written settlement proposals in their respective Settlement Conference Statements to
18 the Court. Counsel for the parties must meet and confer in person or by phone no later
19 than **April 10, 2024**. Each party must prepare a Settlement Conference Statement, which
20 will be served on opposing counsel and lodged with the Court no later than **April 17, 2024**.
21 The Statement must be lodged in .pdf format via email to
22 efile_goddard@casd.uscourts.gov (not filed). The substance of the Settlement Conference
23 Statement must comply fully with Judge Goddard's Mandatory Settlement Conference
24 Rules (located at
25 <https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Mandatory%20Settlement%20Conference%20Rules.pdf>). Each party may also prepare an **optional** Confidential
26 Settlement Letter for the Court's review only, to be lodged with the Court no later than
27 **April 17, 2024**. The Letter must be lodged in .pdf format via email to
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1 efile_goddard@casd.uscourts.gov (not filed). Should a party choose to prepare a Letter,
2 the substance of the Settlement Conference Letter must comply fully with Judge Goddard's
3 Mandatory Settlement Conference Rules. **All parties are ordered to read and to fully**
4 **comply with the Chambers Rules and Mandatory Settlement Conference Rules of**
5 **Magistrate Judge Allison H. Goddard.**

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

12 12. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
13 Civ. P. 26(a)(3) by **June 3, 2024**. Failure to comply with these disclosure requirements
14 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

15 13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
16 **June 10, 2024**. At this meeting, counsel shall discuss and attempt to enter into stipulations
17 and agreements resulting in simplification of the triable issues. Counsel shall exchange
18 copies and/or display all exhibits other than those to be used for impeachment. The exhibits
19 shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any
20 objections they have to any other parties' Pretrial Disclosures under Fed. R. Civ. P.
21 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference
22 order.

23 14. Counsel for plaintiff will be responsible for preparing the pretrial order and
24 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **June 17, 2024**,
25 plaintiff's counsel must provide opposing counsel with the proposed pretrial order for
26 review and approval. Opposing counsel must communicate promptly with plaintiff's
27 attorney concerning any objections to form or content of the pretrial order, and both parties
28 shall attempt promptly to resolve their differences, if any, concerning the order.

1 15. The Proposed Final Pretrial Conference Order, including objections to any
2 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
3 lodged with the assigned district judge by **June 24, 2024**, and shall be in the form
4 prescribed in and comply with Local Rule 16.1(f)(6).

5 16. In addition to submitting the proposed final pretrial conference order, the
6 parties are further ordered to separately submit informal letter briefs, not exceeding two
7 single spaced pages, served on opposing counsel and received in the chambers of Judge
8 Thomas J. Whelan, United States District Judge (and not filed with the Clerk's Office) by
9 2:30 p.m. on **June 24, 2024**. The letter brief should be a relatively informal and
10 straightforward document. The letter brief should outline a short, concise and objective
11 factual summary of the party's case in chief, the number of hours/days each party intends
12 to expend at trial, the approximate number of witnesses, whether certain witnesses will be
13 coming in from out of town, the number of testifying expert witnesses, whether any unique
14 demonstrative exhibits may be presented, the number of proposed motions in limine that
15 may be filed, precisely when the parties would be prepared to submit their in limine papers
16 (and whether the parties have met and conferred with respect to in limine issues), the issue
17 of proposed jury instructions and when the parties intend to submit them before trial, and
18 voir dire issues, either party's preference as to what date(s) the trial should begin and any
19 other pertinent information that either party may deem useful to assist the Court in the
20 execution of the pretrial conference and in setting the matter for trial.

21 17. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
22 **Thomas J. Whelan** on **July 1, 2024** at **10:30 a.m.**

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

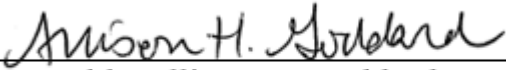
25 19. A post trial settlement conference before a magistrate judge may be held
26 within 30 days of verdict in the case.

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

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

6 **IT IS SO ORDERED.**

7 Dated: August 3, 2023

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Honorable Allison H. Goddard
United States Magistrate Judge

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