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17 Attorneys for Defendant Life Insurance
18 Company of the Southwest

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 JOYCE WALKER, KIM BRUCE
22 HOWLETT, and MURIEL SPOONER, on
23 behalf of themselves and all others
24 similarly situated,

25 Plaintiffs,

26 v.

LIFE INSURANCE COMPANY OF THE
SOUTHWEST, a Texas corporation,

Defendant.

CASE NO.: CV 10-9198 JVS (RNBx)

**LIFE INSURANCE COMPANY OF
THE SOUTHWEST'S NOTICE OF
MOTION AND MOTION FOR
LEAVE TO FILE A SUBSTITUTED
SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO CLASS
CERTIFICATION**

Judge: Hon. James V. Selna
Date: Sept. 18, 2012
Time: 1:30p.m.
Courtroom: 10C

1 **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE A**
2 **SUBSTITUTED SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO**
3 **CLASS CERTIFICATION**

4 TO THE COURT, PLAINTIFFS, AND ALL COUNSEL OF RECORD:

5 PLEASE TAKE NOTICE THAT Defendant Life Insurance Company of the
6 Southwest (“LSW”) respectfully requests leave to file a substituted supplemental
7 memorandum, declarations and exhibits thereto, attached hereto as Exhibits 1, 2, 3, and
8 4,¹ in support of its opposition to class certification to replace the memorandum filed as
9 Dkt. 340 on September 25, 2012.

10 On September 18, 2012, this Court held a hearing on Plaintiffs’ Motion For Class
11 Certification. At the conclusion of the hearing, the Court granted Plaintiffs leave to file a
12 supplemental memorandum addressing a particular issue within seven days (by
13 September 25). The Court also granted LSW leave to respond within seven days.² Thus,
14 LSW understood its filing deadline to be October 2.

15 However, at approximately 11:30 am PDT on September 25, the Court issued
16 minutes for the September 18 hearing stating:

17 Counsel shall file the supplemental submission discussed on the record not

18 ¹ Exhibit 1 is the proposed supplemental memorandum; Exhibit 2 is the proposed
19 Declaration of Timothy Perla in support thereof; Exhibit 3 is the proposed Declaration of
20 Joel Fleming in support of the proposed supplemental memorandum; Exhibit 4 is the
21 exhibits to the Fleming Declaration.

22 ² In relevant part, the transcript states:

23 MR. FREIBERG: Okay, will do. Your Honor, further submissions with respect to
24 this motion --

25 THE COURT: How much time do you want for your five percent showing?

26 MR. BROSNAHAN: Ten days.

 THE COURT: How about seven.

 MR. BROSNAHAN: Thank you.

 MR. SHAPIRO: Can we have seven also?

 THE COURT: Yes.

 MR. SHAPIRO: Thank you.

Tr. 66:20-67:7.

1 later than September 25. The above referenced motion shall stand submitted
2 upon the filing of the supplemental briefs.

3 Dkt. 338.

4 Because this Order did not reflect LSW's October 2 response deadline, LSW
5 promptly sought clarification. At approximately 1:30 pm PDT, on September 25, counsel
6 for LSW sent an email to the Courtroom Deputy Clerk requesting clarification of whether
7 LSW's submission was due on September 25 or on October 2.

8 LSW did not receive a response to this email on September 25. Thus, at
9 approximately 11:30 pm PST on September 25, in order to ensure that LSW did not miss
10 a Court deadline for its submission, LSW filed a supplemental memorandum in support
11 of its opposition to class certification. Dkt. 340. Because this filing was nearly
12 simultaneous with Plaintiffs' submission, LSW's submission could not respond
13 specifically to Plaintiffs' submission.

14 On September 26, 2012, the Court issued amended minutes stating, "Plaintiff shall
15 file the supplemental submission discussed on the record not later than September 25,
16 2012 and defendants shall have until October 2, 2012 to respond." Dkt. 341.

17 In order to afford LSW an opportunity to respond to arguments raised in Plaintiffs'
18 submission, in accordance with the Court's instruction during the September 18 hearing
19 (and LSW's understanding of that instruction), LSW respectfully requests that the
20 attached memorandum, declarations and exhibits be substituted for the memorandum that
21 LSW filed on September 25, located at Docket No. 340.

22 Counsel for LSW met and conferred with Plaintiffs' counsel concerning this
23 motion, and Plaintiffs do not assent.
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26

1 DATED: October 2, 2012

Respectfully submitted,

2 WILMER CUTLER PICKERING HALE AND
3 DORR LLP

4 By: /s/ Jonathan A. Shapiro

5 Jonathan A. Shapiro

6 Andrea J. Robinson

7 Timothy J. Perla

8 Attorneys For Defendant

Life Insurance Company of the Southwest

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1 **PROOF OF SERVICE**

2 I am a resident of the Commonwealth of Massachusetts, over the age of eighteen
3 years, and not a party to the within action. My business address is Wilmer Cutler
4 Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109. On October
5 2, 2012, I served the within document(s):

6 **MOTION FOR LEAVE TO FILE SUBSTITUTED SUPPLEMENTAL
7 MEMORANDUM IN OPPOSITION TO CLASS CERTIFICATION**

8 I placed the document(s) listed above in a sealed envelope with postage
9 thereon fully prepaid, in the United States mail addressed as set forth
10 below.

11 I personally caused to be hand delivered the document(s) listed above to
12 the person(s) at the address(es) set forth below.

13 I emailed the document(s) listed above to the person(s) at the address(es)
14 set forth below.

15 I electronically filed the document(s) listed above via the CM/ECF
16 system.

17 Brian P. Brosnahan
18 (bbrosnahan@kasowitz.com)
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/s/ Joel A. Fleming
Joel A. Fleming