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11 and all others similarly situated

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 JOYCE WALKER, KIM BRUCE
16 HOWLETT, and MURIEL
SPOONER, on behalf of themselves
17 and all others similarly situated,

18 Plaintiffs,

19 v.

20 LIFE INSURANCE COMPANY OF
21 THE SOUTHWEST, a Texas
corporation,

22 Defendant.
23

CLASS ACTION

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

Formerly Case No.: 3:10-cv -04852
JSW from Northern District of CA

**JOINT APPLICATION FOR AN
ORDER ENTERING PROPOSED
FOURTH AMENDED PRETRIAL
SCHEDULING ORDER BECAUSE
OF THE FILING OF A RULE 23(F)
PETITION**

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1 **I. JOINT APPLICATION FOR AN ORDER ENTERING PROPOSED**
2 **FOURTH AMENDED PRETRIAL SCHEDULING ORDER**

3 Plaintiffs Joyce Walker, Kim Bruce Howlett, and Muriel Spooner
4 (“Plaintiffs”) and Defendant Life Insurance Company of the Southwest (“LSW”)
5 jointly submit this Application (“Application”) for an order entering the parties’
6 proposed Fourth Amended Pretrial Scheduling Order, submitted concurrently
7 herewith by joint stipulation of the parties. The parties respectfully request that the
8 Court enter the proposed Fourth Amended Pretrial Scheduling Order, which further
9 modifies the pretrial schedule to accommodate certain scheduling events,
10 including: (1) the time it will take the Ninth Circuit Court of Appeals to rule on
11 LSW’s Rule 23(f) petition for permission to appeal this Court’s order granting
12 class certification, filed on November 26, 2012; and (2) the time necessary to
13 provide notice to the class, in the event that LSW’s petition is denied.

14 On November 28, 2012, the parties began meeting and conferring regarding
15 modifications to the operative Modified Third Amended Pretrial Scheduling Order
16 following LSW’s November 26, 2012 submission to the Ninth Circuit of a Rule
17 23(f) petition for permission to appeal the Court’s class certification ruling. On
18 December 10, 2012, the parties reached agreement concerning proposed
19 modifications to the pretrial schedule and orally agreed to file this joint application
20 for entry of a proposed Fourth Amended Pretrial Scheduling Order.

21 This Application is accompanied by a Joint Stipulation Regarding Proposed
22 Fourth Amended Pretrial Scheduling Order and a Proposed Fourth Amended
23 Pretrial Scheduling Order.

24 A primary purpose of the Fourth Amended Pretrial Scheduling Order is to
25 conserve the resources of the parties and the Court while LSW’s Rule 23(f)
26 petition is pending before the Ninth Circuit by imposing (with some minor
27 exceptions) a temporary stay of discovery during the pendency of LSW’s Rule
28 23(f) petition and by extending certain pretrial and discovery deadlines to account

JOINT APPLICATION FOR AN ORDER ENTERING PROPOSED FOURTH AMENDED PRETRIAL
SCHEDULING ORDER BECAUSE OF THE FILING OF A RULE 23(F) PETITION

1 for the time it will take the Ninth Circuit to rule on the petition and for notice to the
2 class and an opt-out period. If the parties' proposed Fourth Amended Pretrial
3 Scheduling Order (or a version thereof that is acceptable to the Court) can be
4 promptly entered, the parties will not be required to expend resources on certain
5 pretrial and discovery matters in light of the impending deadlines set forth in the
6 presently operative Modified Third Amended Pretrial Scheduling Order, which
7 resources the parties wish to conserve while the status of this case as a class action
8 remains in question. For example, pursuant to the operative Modified Third
9 Amended Pretrial Scheduling Order, all depositions must commence no later than
10 January 14, 2013, and the parties must participate in mediation no later than
11 January 21, 2013. Both of these pretrial matters will require extensive preparation
12 and significant resources that the parties wish to defer until after the Ninth Circuit
13 rules on LSW's petition and may be directly impacted by the Ninth Circuit's
14 eventual ruling.

15 **II. THE APPLICATION SHOULD BE GRANTED BECAUSE THERE IS**
16 **GOOD CAUSE FOR MODIFYING THE PRETRIAL SCHEDULE.**

17 Good cause exists for modifying the pretrial schedule as proposed in the
18 accompanying proposed Fourth Amended Pretrial Scheduling Order. First, there is
19 good cause to impose a temporary stay of discovery while LSW's Rule 23(f)
20 petition is pending before the Ninth Circuit, and to extend certain pretrial and
21 discovery deadlines until after the Ninth Circuit rules on that petition. Although
22 this Court determined that the case could proceed as a class action, the Ninth
23 Circuit may overrule this Court's decision granting class certification in light of
24 LSW's Rule 23(f) petition, which would impact how the case would proceed with
25 respect to discovery, the efficacy of non-judicial dispute resolution before the 23(f)
26 petition is ruled on, and other pretrial matters. In light of this possibility, the
27 parties wish to defer most discovery and pretrial matters until after the Ninth
28 Circuit rules on LSW's Rule 23(f) petition to conserve resources that may not need

1 to be expended.

2 Second, there is good cause to extend the pretrial schedule to allow for
3 sufficient time to provide notice to the class, in the event that the Ninth Circuit
4 denies LSW's Rule 23(f) petition. Even assuming that the parties can agree on a
5 form of class notice, and can do so relatively quickly (Plaintiffs have already
6 provided LSW with a draft for review), the current pretrial schedule does not
7 afford sufficient time to obtain Court approval of any proposed notice, to
8 disseminate the notice to class members, and to provide ample time for class
9 members to decide whether to opt out of the class before dispositive motions may
10 be heard, or before trial. Accordingly, in the parties' proposed order, the pertinent
11 dates are scheduled off of the close of the opt-out period so that sufficient time is
12 allotted to provide class notice and opt-out before any dispositive motions are
13 heard and before the parties proceed to trial.

14 **III. CONCLUSION**

15 In light of the filing of a Rule 23(f) petition and the time required for notice
16 and opt-out procedures, there is good cause to modify the pretrial schedule and the
17 parties respectfully request that the Proposed Fourth Amended Pretrial Scheduling
18 Order be entered.

19
20 DATED: December 12, 2012 KASOWITZ BENSON TORRES & FRIEDMAN
21 LLP

22
23 By: /s/ Brian P. Brosnahan
24 Brian P. Brosnahan

25
26 Attorneys For Plaintiffs
27 JOYCE WALKER, KIM BRUCE HOWLETT,
28 and MURIEL SPOONER, on behalf of
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