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11 and all others similarly situated

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

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

17
18 Plaintiffs,

19 v.

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

23 Defendant.

CLASS ACTION

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

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

**JOINT STIPULATION
REGARDING PROPOSED FOURTH
AMENDED PRETRIAL
SCHEDULING ORDER**

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1 Pursuant to Local Rule 7-1, Plaintiffs Joyce Walker, Kim Bruce Howlett,
2 and Muriel Spooner (“Plaintiffs”) and Defendant Life Insurance Company of the
3 Southwest (“LSW”) (collectively, the “parties”), by and between their undersigned
4 counsel, submit the following stipulation:

5 WHEREAS, on November 26, 2012, LSW filed a petition with the Ninth
6 Circuit pursuant to Federal Rule of Civil Procedure 23(f) for permission to appeal
7 the Court’s decision granting Plaintiffs’ motion for class certification;

8 WHEREAS, it may take several months for the Ninth Circuit to issue a
9 decision granting or denying LSW’s Rule 23(f) petition and several additional
10 months to complete class notice and opt-out procedures if the Rule 23(f) petition is
11 denied;

12 WHEREAS, substantial discovery and other pretrial work is required to take
13 place over the next six weeks under the existing schedule, and the parties believe it
14 would be more efficient to defer much of this work until the Ninth Circuit rules
15 on LSW’s Rule 23(f) petition;

16 WHEREAS, the parties met and conferred regarding the deadlines in the
17 Modified Third Amended Pretrial Scheduling Order, including the impact of
18 LSW’s Rule 23(f) petition presently before the Ninth Circuit;

19 WHEREAS, the parties need to enlarge the schedule set forth in the
20 Modified Third Amended Pretrial Scheduling Order in order to accommodate the
21 time necessary to provide notice to the class, in the event that the Ninth Circuit
22 denies LSW’s Rule 23(f) petition;

23 WHEREAS, the Court’s decision granting Plaintiffs’ motion for class
24 certification set forth a procedure for determining membership in the Illustrations-
25 based subclass, using a Special Master to review policy files;

26 WHEREAS, the parties disagree about the timing of the review of policy
27 files by a Special Master—LSW believes that such a review must take place before
28 a trial commences and Plaintiffs disagree—but the parties agree that resolution of

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1 this issue should be deferred until after the Ninth Circuit rules on LSW's Rule
2 23(f) petition;

3 WHEREAS, good cause exists to modify the dates in the Modified Third
4 Amended Pretrial Scheduling Order in order to provide sufficient time for class
5 notice and otherwise to conserve the resources of the parties and the Court while
6 LSW's Rule 23(f) petition is pending;

7 IT IS HEREBY STIPULATED AND AGREED, by and between the
8 undersigned counsel for the parties:

9 1. All of the dates in the Modified Third Amended Pretrial Scheduling
10 Order shall be modified as set forth below. This amended schedule generally
11 preserves the time periods between the scheduling events as set forth in the
12 Modified Third Amended Pretrial Scheduling Order, but extends the scheduled
13 dates in order to accommodate the time period for providing notice to the class
14 after the Ninth Circuit rules on LSW's pending Rule 23(f) petition. The
15 scheduling of the trial date below is provisional only, and may need to be reset
16 depending on the Court's calendar.

17 2. The parties shall meet and confer regarding the content of the class
18 notice while LSW's Rule 23(f) petition is pending before the Ninth Circuit. In the
19 event that the Ninth Circuit denies LSW's Rule 23(f) petition, the parties shall file,
20 within 10 days after the Ninth Circuit denies LSW's Rule 23(f) petition, any
21 motions concerning the class notice and any disputes among the parties concerning
22 the content of such notice. Alternatively, if the parties have reached agreement on
23 the content of the class notice, the parties shall file, within 10 days after the Ninth
24 Circuit denies LSW's Rule 23(f) petition, a joint stipulation seeking the Court's
25 approval of the proposed class notice. In the event that the Ninth Circuit grants
26 LSW's Rule 23(f) petition, all deadlines in this Order shall be vacated, and the
27 parties shall meet and confer regarding a further amended scheduling order to
28 accommodate the appeal to the Ninth Circuit.

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1 3. Except as described below, all discovery, including depositions and
2 written discovery not previously propounded, will be deferred until the Ninth
3 Circuit rules on LSW's Rule 23(f) petition. Notwithstanding this temporary stay of
4 discovery, while LSW's Rule 23(f) petition is pending, either party may bring a
5 joint stipulation before the Magistrate Judge to resolve any discovery dispute that
6 is currently outstanding or that may arise while LSW's Rule 23(f) petition is
7 pending.

8 4. The last date for hearing motions will be extended to 7 days after the
9 close of the opt-out period as provided in the class notice approved by the Court.
10 Pursuant to the Modified Third Amended Pretrial Scheduling Order, the last date
11 for hearing motions will be seven weeks (49 days) before the trial date. All
12 motions shall be served and filed no later than four weeks (28 days) before the last
13 date for hearing motions.

14 5. With respect to any motion for summary judgment that may be filed,
15 the parties will meet and confer on a briefing schedule, but the time between the
16 filing of any summary judgment motion and the hearing date shall be no less than
17 60 days.

18 6. The trial date shall be extended to seven weeks (49 days) after the last
19 date for hearing motions, as set forth in Paragraph 3 above. The pretrial
20 conference will take place 10 days before the amended trial date, in accordance
21 with the Modified Third Amended Pretrial Scheduling Order.

22 7. Pursuant to the Trial Order and in compliance with Local Rule 6, all
23 motions *in limine* shall be filed and served no later than four weeks (28 days) prior
24 to the amended pretrial conference date.

25 8. Pursuant to and in compliance with Local Rule 16, the parties' Pretrial
26 Conference Order shall be lodged no later than 11 days before the amended pretrial
27 conference date.

28 9. Pursuant to and in compliance with Local Rule 16, all Memoranda of

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1 Contentions of Fact and Law, Exhibit Lists, and Witness Lists shall be submitted
2 no later than three weeks (21 days) prior to the amended pretrial conference date.

3 10. In accordance with the time periods between scheduling events as set
4 forth in the Modified Third Amended Pretrial Scheduling Order, non-expert fact
5 discovery shall remain open until eleven weeks (77 days) before the amended trial
6 date. Pursuant to the Trial Order, all depositions shall commence no later than 5
7 working days before the close of non-expert fact discovery.

8 11. Pursuant to the Modified Third Amended Pretrial Scheduling Order
9 (Dkt. 355), entered by the Court on November 29, 2012, the deadline for written
10 discovery shall be December 4, 2012. Notwithstanding this deadline, either party
11 may propound additional written discovery pursuant to any Order by the Court
12 permitting such additional written discovery upon good cause shown. Nothing in
13 this Order shall be interpreted as a waiver of a propounding party's right to seek
14 supplementation of the responding party's responses to any previously propounded
15 written discovery requests as required by the Federal Rules, by Court Order, or by
16 any other applicable rule.

17 12. Expert discovery will remain open until five weeks before the
18 amended trial date. In accordance with the Modified Third Amended Pretrial
19 Scheduling Order, the parties shall submit their expert disclosures no later than
20 eight weeks (56 days) prior to the amended close of expert discovery, any rebuttal
21 expert disclosures no later than five weeks (35 days) prior to the amended close of
22 expert discovery, and any reply expert disclosures no later than two weeks (14
23 days) prior to the amended close of expert discovery. All expert depositions shall
24 commence no later than the date for the amended close of expert discovery.

25 13. The parties will participate in a non-judicial dispute resolution
26 proceeding, Settlement Procedure Number 3 under Local Rule 16-15.4. The last
27 date for completion of this Settlement Procedure shall be no later than the amended
28 close of non-expert fact discovery.

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