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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

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

18 Plaintiffs,

19 vs.

20 LIFE INSURANCE COMPANY OF
21 THE SOUTHWEST, a Texas
22 corporation, and DOES 1-50,

22 Defendant.

Case No.: 10-09198 JVS(RNBx)

EX PARTE APPLICATION TO
RESCHEDULE HEARING ON
PLAINTIFFS' MOTION FOR
APPROVAL OF CLASS NOTICE

Judge James Selna
Courtroom: 10C

EX PARTE APPLICATION

Pursuant to Fed. R. Civ. Proc. 6(c)(1)(A) and Local Rule 7-19, Life Insurance Company of the Southwest (“LSW”) respectfully files this *ex parte* application to reschedule the hearing on Plaintiffs’ Motion for Approval of Class Notice. See Docket No. 403. Plaintiffs oppose this motion.

On March 13, 2013, Jonathan Shapiro, counsel for LSW, contacted counsel for Plaintiffs by email asking to reschedule the hearing, currently scheduled for April 8, and advised them of the reason for the request. Declaration of Jonathan Shapiro (“Shapiro Dec.”) ¶ 2, Ex. A at 5. On March 15, 2013 (following back-and-forth emails where Plaintiffs first indicated they were “amenable” to rescheduling and then refused the request), Mr. Shapiro contacted Jeanette Barzelay, counsel for plaintiffs, by telephone and advised her that LSW would be filing an *ex parte* application that day to extend the hearing and advised her, again, of the basis of the application. See Shapiro Dec. ¶ 3.

This motion is based on the attached memorandum of points and authorities, the declaration of Jonathan Shapiro and exhibits thereto, the pleadings, records and files in this case, and such other matters as may be considered by the Court.

DATED: March 15, 2013

Respectfully submitted,
WILMER CUTLER PICKERING HALE AND
DORR LLP

By: /s/ Jonathan A. Shapiro
Jonathan A. Shapiro (257199)
Andrea J. Robinson (*pro hac vice*)
Timothy J. Perla (*pro hac vice*)

Attorneys for Defendant Life Insurance Company of
the Southwest

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 LSW asks this Court to extend the hearing on Plaintiffs’ Motion for Approval of
3 Class Notice, currently scheduled for April 8, to April 22 (or, in the alternative, April 15),
4 because April 8 presents scheduling problems for LSW’s lead counsel (who would argue
5 the motion) due to family/child responsibilities.¹

6 LSW raised this issue with Plaintiffs’ counsel on March 13, 2013. Shapiro Dec. Ex.
7 A at 5. LSW indicated that its counsel could be available on April 22 or, if necessary, April
8 15 (which is during a school vacation, but which LSW nevertheless proposed in order to
9 provide as much flexibility on hearing dates as possible). *Id.* Plaintiffs initially indicated
10 that they were “amenable to moving the hearing date to April 22.” *Id.* However, they
11 conditioned their assent on LSW agreeing to refrain from filing a motion to appoint a
12 special master (which LSW will file on Monday). *Id.* LSW, unwilling to compromise
13 substantive rights in order to receive the courtesy of assent to a hearing rescheduling,
14 declined the condition. Thereafter, Plaintiffs stated that they would “not agree to move the
15 April 8 hearing date.” *Id.* at 3.

16 Plaintiffs apparently believe that LSW’s motion for a special master will be untimely
17 (they think it was due by March 11, the deadline for filing class notice motions), and that
18 rescheduling the hearing would somehow also extend the March 11 deadline. *Id.*
19 However, as LSW has already informed Plaintiffs, LSW is seeking solely to reschedule a
20 hearing by 1-2 weeks to accommodate a familial conflict — not to alter the March 11
21 deadline. *Id.* at 2. Whatever timeliness argument Plaintiffs plan to press would remain
22 unchanged. For the foregoing reasons, the hearing on Plaintiffs’ Motion for Approval of
23 Class Notice (Dkt. No. 403) should be rescheduled to April 22 (or April 15, if necessary).
24

25 ¹ Per L.R. 7-19: lead opposing counsel is Brian Brosnahan of Kasowitz Benson Torres &
26 Friedman LLP. 101 California St., Suite 2300, San Francisco, CA 94111. His phone
27 number is (415) 655-4337. His email address is bbrosnahan@kasowitz.com.

1 Respectfully submitted,

2 WILMER CUTLER PICKERING HALE AND
3 DORR LLP

4
5 By: /s/ Jonathan A. Shapiro
6 Jonathan A. Shapiro (257199)
7 Andrea J. Robinson (*pro hac vice*)
8 Timothy J. Perla (*pro hac vice*)

9 Attorneys for Defendant Life Insurance Company of
10 the Southwest
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PROOF OF SERVICE

I am a resident of the Commonwealth of Massachusetts, over the age of eighteen years, and not a party to the within action. My business address is Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, MA 02109. On March 15, 2013 I served the within document(s):

LSW’S EX PARTE APPLICATION TO RESCHEDULE HEARING

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

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



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



I personally caused to be delivered by Facsimile the document(s) listed above to the person(s) at the facsimile number(s) set forth below.

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/s/ Joel Fleming

Joel Fleming