

# **EXHIBIT B**

**Jeanette T. Barzelay**

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**From:** Jeanette T. Barzelay  
**Sent:** Friday, March 15, 2013 11:07 AM  
**To:** Shapiro, Jonathan; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan; Charles N. Freiberg; Jacob N. Foster  
**Subject:** RE: Deposition notices

Jonathan,

As you know, we gave you advance notice, on Tuesday, March 5 – six days before we filed our motion on Monday, March 11 – that we would be setting the hearing date for April 8. Nevertheless, we did not hear about your purported conflict until two days *after* we filed our motion, on March 13.

We will be opposing your ex parte motion on the basis explained in our previous emails, including the fact that it is an attempt to delay our motion in order to cure the untimeliness of your motion.

Thanks,  
Jeanette

---

**From:** Shapiro, Jonathan [mailto:Jonathan.Shapiro@wilmerhale.com]  
**Sent:** Friday, March 15, 2013 9:20 AM  
**To:** Jeanette T. Barzelay; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan; Charles N. Freiberg; Jacob N. Foster; Shapiro, Jonathan  
**Subject:** RE: Deposition notices

Jeanette,

I just tried you at your office; left vm. We are planning to file later today an ex parte motion to move the hearing date from 4/8 until 4/22 (the date that you previously said would work on your end), or alternatively to 4/15.

As I said on the vm, I'd love to persuade you to reconsider. In any event, all this scheduling/housekeeping really could be avoided if you would simply ask us if a date works before unilaterally assuming as much; I realize that there isn't a rule that requires folks to consult on dates, but it really would make life easier.

Thanks, Jonathan

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---

**From:** Shapiro, Jonathan  
**Sent:** Thursday, March 14, 2013 2:59 PM  
**To:** 'Jeanette T. Barzelay'; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan; Charles N. Freiberg; Jacob N. Foster; Shapiro, Jonathan  
**Subject:** RE: Deposition notices

Jeanette,

March 25 was a typo and I meant March 11. We plainly disagree about whether LSW's filing will be timely, and that's for the Court to decide. What I was trying to say is that LSW is not going to argue that the March 11 deadline has moved as a result of rescheduling the hearing. That is, whatever argument you want to make about timeless, doesn't change one bit (and we are not trying to obtain any advantage in that regard).

I'm not sure why you are connecting my child care challenge on 4/8 to the court filing deadlines. We've told you what we are filing, and when (on Monday) and I have never asked, suggested, etc. that we would like more time for any of that. My scheduling issues on 4/8 have nothing to do with the case. All I asked for was a week delay to the 15<sup>th</sup> or to the 22nd (a date you said worked).

Jonathan

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---

**From:** Jeanette T. Barzelay [<mailto:JBarzelay@kasowitz.com>]  
**Sent:** Thursday, March 14, 2013 1:35 PM  
**To:** Shapiro, Jonathan; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan; Charles N. Freiberg; Jacob N. Foster  
**Subject:** RE: Deposition notices

Jonathan,

The Court explicitly ordered that “any motions concerning the class notice and any disputes among the parties concerning the content of the class notice” must be filed within ten days after the Ninth Circuit’s denial of LSW’s Rule 23(f) petition – this past Monday, March 11. LSW did not file any such motion. You then made a request to move the April 8 hearing date on Plaintiffs’ motion based solely on your personal schedule without ever mentioning that LSW would avail itself of the additional time to file its own motion that would otherwise be untimely. Further, since you were aware of the April 8 hearing date as early as last Tuesday, March 5 (*see* Freiberg email), if you had a scheduling conflict, you should have raised it last week. Your belated request and your email below make plain that your intention in proposing this continuance based on your personal scheduling conflicts was, in the main, to gain additional time to prepare LSW’s untimely motion. This was pure gamesmanship. LSW could have (and should have) ensured that its motion would be timely and heard at the same time as Plaintiffs’ motion by filing its motion this past Monday.

LSW's motion for appointment of a special master is now untimely pursuant to the Fourth Amended Pretrial Scheduling Order. The dispute concerning the timing for appointment of a special master necessarily "concern[s] the class notice" and is raised by the class notices LSW proposed and the dispute between the parties concerning the notice. See, e.g., LSW's Proposed Notice Distributing Questionnaire at 8 (stating, "The Court is currently deciding membership in the sub-Class. In order to do this, **the Court has appointed a so-called "Special Master"** to assist the Court in its review of materials from LSW's policy files in order to determine what materials, if any, potential Class Members received. In addition, the Court has directed that the attached questionnaire be distributed to potential Class Members **to assist the Special Master in determining whether you and other policyholders are members of the sub-Class**); March 8 letter ("LSW believes that the special master process must begin immediately – **in concert with the 'response-required class notice'**"). This is why we raised the issue in our opening motion papers. If LSW wanted to separately move for appointment of a special master, the time to do so was this past Monday, March 11.

We also do not understand your reference to some "March 25" deadline for LSW's now untimely and improper motion. The March 25 deadline to which I referred in my email would be the new deadline for LSW's *opposition* to Plaintiffs' motion if the hearing date on that motion was moved to April 22. Our agreement to stipulate to moving the hearing date was conditioned, however, on LSW's agreement not to take advantage of the additional two weeks and the new April 22 hearing date in order to file a separate motion that would otherwise be untimely.

Nor do we understand what "papers" you believe "we agreed would be filed Monday" or your reference to "Monday's deadline." We did not agree that LSW could file a separate motion concerning class notice issues *after* the deadline set by the Fourth Amended Pretrial Scheduling Order had passed, or at the time it filed its opposition. Further, although you informed us on March 8 of your intention to bring a separate motion, nothing in your letter suggested that you would do so at the time LSW's *opposition* to Plaintiffs' motion would be due (your letter stated, "we will bring a motion at the *same time* that the parties are addressing notice content," not that you would bring it "in connection with opposing" our motion), and we certainly did not "agree" that LSW could file such a motion at the same time as its opposition papers and still be timely.

Moreover, your email suggests that it was always LSW's intention to "notice [its motion] for the same hearing date," but if that is the case, your motion would have had to be filed this past Monday in order to be timely for the April 8 hearing date. We informed you on March 5 that we would notice our motion to be heard on April 8. See Freiberg email. Moreover, as your letter confirms, LSW obviously has been aware of its position concerning the appointment of a special master "in concert with the 'response-required class notice'" for months. See March 8 letter (stating that you "have described LSW's position to [Plaintiffs] previously, so [you] will not reiterate it at length"); February 22 proposed class notices (expressly referencing the appointment of a special master in connection with class notice). Thus, there is no reason why LSW could not have filed its motion on Monday, March 11 and secured the same hearing date for that motion as for Plaintiffs' motion concerning class notice issues.

Accordingly, Plaintiffs do not agree to move the April 8 hearing date on their motion concerning class notice issues.

Regards,  
Jeanette

Jeanette T. Barzelay  
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Fax (650) 745-2866  
[JBarzelay@kasowitz.com](mailto:JBarzelay@kasowitz.com)

#:18055

**From:** Shapiro, Jonathan [<mailto:Jonathan.Shapiro@wilmerhale.com>]  
**Sent:** Thursday, March 14, 2013 8:09 AM  
**To:** Jeanette T. Barzelay; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan; Charles N. Freiberg; Jacob N. Foster; Shapiro, Jonathan  
**Subject:** Re: Deposition notices

Jeanette –

Thanks for your response. The schedule that you proposed is fine with us. We also agree that moving this hearing date will not move the March 25 deadline.

However, just to be clear, as we informed Plaintiffs previously, in connection with opposing Plaintiffs' motion for class notice, LSW will be moving for appointment of a special master, and we will notice that for the same hearing date. These are the papers we agreed would be filed on Monday, and they still will be (we're not trying to bump Monday's deadline).

LSW does not believe such a motion is subject to the March 25 deadline.

I suppose if you disagree, your clients can certainly oppose on timeliness grounds. But, for present purposes, suffice it to say that whatever deadline passes on March 25 is not altered by the stipulation we're now discussing, ok?

Thanks, Jonathan

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**From:** Jeanette T. Barzelay [<mailto:JBarzelay@kasowitz.com>]  
**Sent:** Wednesday, March 13, 2013 07:58 PM Eastern Standard Time  
**To:** Shapiro, Jonathan; Perla, Timothy; Lux, James; Robinson, Andrea  
**Cc:** Brian P. Brosnahan <[BBrosnahan@kasowitz.com](mailto:BBrosnahan@kasowitz.com)>; Charles N. Freiberg <[CFreiberg@kasowitz.com](mailto:CFreiberg@kasowitz.com)>; Jacob N. Foster <[JFoster@kasowitz.com](mailto:JFoster@kasowitz.com)>  
**Subject:** RE: Deposition notices

Jonathan,

We are amenable to moving the hearing date to April 22, provided that LSW agrees to split the difference with respect to the two additional weeks so that both parties will have an additional week to prepare their respective papers. That is, contrary to the presumptive deadlines set forth in Local Rule 7-11, LSW's opposition papers would be due on Monday, March 25 (not Monday, April 1), and Plaintiffs' reply papers would be due on the presumptive deadline, April 8, which would give both LSW and Plaintiffs two weeks (as opposed to the usual one week) to prepare responsive papers.

We want to be clear, however, that we do not want LSW to use this continuance and our agreement to stipulate thereto to secure additional time to make its own motion concerning the class notice (since such a motion, if filed now, would

be untimely for an April 8 hearing date), which, in your March 8 letter, you suggested LSW might do. Even if properly and timely noticed under the Local Rules, such a motion would be untimely pursuant to the Fourth Amended Pretrial Scheduling Order.

Assuming you agree to our proposal concerning the deadlines for LSW's opposition papers and Plaintiffs' reply papers, and agree that LSW will not file its own motion concerning the class notice, please prepare a joint stipulation and proposed order for our review.

Thanks,  
Jeanette

Jeanette T. Barzelay  
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Fax (650) 745-2866  
[JBarzelay@kasowitz.com](mailto:JBarzelay@kasowitz.com)

-----Original Message-----

From: Shapiro, Jonathan [<mailto:Jonathan.Shapiro@wilmerhale.com>]  
Sent: Wednesday, March 13, 2013 10:13 AM  
To: Perla, Timothy; Brian P. Brosnahan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg; Shapiro, Jonathan  
Subject: RE: Deposition notices

Folks,

While we are on the scheduling headnote, 4/8 is rough for me to get to Santa Ana (family/kid conflict).

Can we do 4/22 (two weeks)? If bumping it the extra week is really a problem, I could do 4/15 (which is school vacation but still better than 4/8).

Thanks, Jonathan

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-----Original Message-----

From: Perla, Timothy  
Sent: Wednesday, March 13, 2013 10:08 AM  
To: Brian P. Brosnahan; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

Brian -

Can we do Nancy in DC? She's from Baltimore so that seems like the closest place that's also simple for us all to get to. I'd be glad to host at our DC office (1875 Pennsylvania Ave), which is not far from National airport.

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-----Original Message-----

From: Brian P. Brosnahan [<mailto:BBrosnahan@kasowitz.com>]  
Sent: Tuesday, March 12, 2013 5:07 PM  
To: Perla, Timothy; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

March 28 is fine. Let's do both depositions at 9:30 a.m.

Thanks,

Brian

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Tel. (415) 655-4337  
Fax (415) 358-4278  
[BBrosnahan@kasowitz.com](mailto:BBrosnahan@kasowitz.com)

-----Original Message-----

From: Perla, Timothy [<mailto:Timothy.Perla@wilmerhale.com>]  
Sent: Tuesday, March 12, 2013 1:33 PM

To: Brian P. Brosnahan; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

Brian -

What about March 22 or 28 for Winings? I haven't confirmed with her yet, but as far as I can tell from our back and forth those would be possibilities.

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-----Original Message-----

From: Brian P. Brosnahan [<mailto:BBrosnahan@kasowitz.com>]  
Sent: Tuesday, March 12, 2013 2:09 PM  
To: Perla, Timothy; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

Tim, I have a hearing on March 21, but we can do Weinbaum on March 19. Please confirm date and place for Weinbaum and please provide an alternative date for Winings.

Thanks,

Brian

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Tel. (415) 655-4337  
Fax (415) 358-4278  
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-----Original Message-----

From: Perla, Timothy [<mailto:Timothy.Perla@wilmerhale.com>]



Sent: Tuesday, March 12, 2013 5:42 AM

To: Brian P. Brosnahan; Shapiro, Jonathan; Lux, James; Robinson, Andrea

Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg

Subject: RE: Deposition notices

Brian -

Following up. I have people trying to hold dates open so please let me know....

Tim

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-----Original Message-----

From: Perla, Timothy

Sent: Monday, March 11, 2013 8:18 AM

To: 'Brian P. Brosnahan'; Shapiro, Jonathan; Lux, James; Robinson, Andrea

Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg

Subject: RE: Deposition notices

Brian -

Understood -- trying to accommodate one trip. Winings is unfortunately away in early April. She could do March 21. I know there's a one day gap, but that's the closest I'm coming to back to back. How about that?

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-----Original Message-----

From: Brian P. Brosnahan [<mailto:BBrosnahan@kasowitz.com>]

Sent: Friday, March 08, 2013 9:29 PM

To: Perla, Timothy; Shapiro, Jonathan; Lux, James; Robinson, Andrea

Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg

Subject: RE: Deposition notices

Tim, we could do March 19 and could also do April 4. We would prefer to do Weinbaum and Winings in one trip. Could Winings do April 3 or 5?

Brian

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-----Original Message-----

From: Perla, Timothy [<mailto:Timothy.Perla@wilmerhale.com>]

Sent: Friday, March 08, 2013 12:04 PM

To: Brian P. Brosnahan; Shapiro, Jonathan; Lux, James; Robinson, Andrea

Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg

Subject: RE: Deposition notices

Brian -

Still working on Nancy but I heard back from Peter. He has an extensive travel schedule for March, but could be available in Boston on March 19. Could that work for you? If that doesn't work, the best alternative that I have for Peter is April 4. I presume you prefer sooner. Let me know.

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-----Original Message-----

From: Brian P. Brosnahan [<mailto:BBrosnahan@kasowitz.com>]  
Sent: Friday, March 08, 2013 2:02 PM  
To: Perla, Timothy; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

Tim, the 29th will not work. Could we do Nancy on the 25th or 26th? Maybe Peter on the 27th?

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-----Original Message-----

From: Perla, Timothy [<mailto:Timothy.Perla@wilmerhale.com>]  
Sent: Friday, March 08, 2013 5:15 AM  
To: Brian P. Brosnahan; Shapiro, Jonathan; Lux, James; Robinson, Andrea  
Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg  
Subject: RE: Deposition notices

Brian -

We received the deposition notices. I can confirm that we represent both of the noticed witnesses. We do not need subpoenas, and will be glad to work cooperatively on dates and locations (the witnesses do not reside near Boston, but I may be able to have them voluntarily come to Boston).

I am waiting to hear back from Peter about dates. I understand that Nancy is not available on the proposed date, but could do the 29th. Would you like to lock that in?

Tim

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-----Original Message-----

From: Brian P. Brosnahan [<mailto:BBrosnahan@kasowitz.com>]

Sent: Wednesday, March 06, 2013 8:11 PM

To: Shapiro, Jonathan; Lux, James; Perla, Timothy; Robinson, Andrea

Cc: Eugenia M. DiSabatino; Jacob N. Foster; Jeanette T. Barzelay; Charles N. Freiberg

Subject: Deposition notices

<<Notice of Dep Winings w POS.pdf>> De <<Notice of Dep Weinbaum w POS.pdf>> ar counsel,

Attached please find deposition notices for Nancy Winings and Peter Weinbaum. I believe you previously advised us that you represent Mr. Weinbaum. Please let us know whether March 26 is workable for his deposition and please confirm that he will not require a subpoena.

Please also advise us whether you represent Ms. Winings and whether a subpoena will be required. If not, please advise us whether March 27 will work for her deposition.

Thanks,

Brian

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