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18 Company of the Southwest

19 **UNITED STATES DISTRICT COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA**

21 **SOUTHERN DIVISION**

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

26 Plaintiffs,

27 vs.

28 LIFE INSURANCE COMPANY OF  
THE SOUTHWEST, a Texas  
corporation, and DOES 1-50,

Defendant.

Case No.: 10-09198 JVS(RNBx)

**NOTICE OF MOTION AND MOTION  
TO APPOINT SPECIAL MASTER**

Judge: Hon. James V. Selna  
Date: April 22, 2013  
Time: 1:30 P.M.  
Courtroom: 10C

1                   **NOTICE OF MOTION AND MOTION TO STRIKE ERRATA SHEETS,**  
2                   **DEPOSITION EXHIBIT, AND DEPOSITION TESTIMONY**

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

4                   PLEASE TAKE NOTICE that on April 22, 2013 at 1:30 P.M. PST, or as soon  
5 thereafter as the matter may be heard, in Courtroom 10C, located at 411 West Fourth  
6 Street, Santa Ana, California, 92701, Defendant Life Insurance Company of the  
7 Southwest (“LSW”) will, and hereby does, move the Court for an order to appoint a  
8 special master. Specifically, LSW asks that the Court enter the Proposed Order attached  
9 hereto. The Proposed Order asks the Court to order as follows:  
10  
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- 12                   1. The parties are to meet and confer for the purpose of selecting a special  
13                   master, following the procedure set forth in the attached Proposed Order.
- 14                   2. Once a special master has been selected and retained, LSW shall provide  
15                   him or her with copies of all policy files LSW extracted and produced in  
16                   response to Plaintiffs’ Request for Production No. 173. In addition, LSW  
17                   shall provide the special master with one copy of an application, an  
18                   illustration, and an agent’s report from the files of one of the named  
19                   Plaintiffs. LSW shall also provide the special master with one copy of a  
20                   sales illustration certification form.
- 21                   3. The special master shall then promptly begin reviewing the policy files to  
22                   determine whether the owner of each policy is a member of the Illustrations  
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1 subclass, defined in the Court's order granting in part and denying in part  
2 Plaintiffs' motion for class certification (Dkt. 353).

- 3
- 4 4. In reviewing the files to determine subclass membership, the Special  
5 Master shall follow the procedure and apply the burden of proof set forth in  
6 the Proposed Order.
- 7
- 8 5. The special master shall issue three interim reports, in the format and  
9 containing the information set forth in the Proposed Order, to be filed  
10 electronically with the Court. The first report shall be prepared and filed  
11 after review of the first 14,000 policy files, the second report after review  
12 of the next 14,000 policy files and the final report after all policy files have  
13 been reviewed.
- 14
- 15
- 16 6. The parties shall file any objections to each special master report within  
17 twenty-one days of the report being filed. The objections shall conform to  
18 the format set forth in the Proposed Order. The non-objecting party shall  
19 file any response to any objections within seven days. The responses shall  
20 conform to the format set forth in the Proposed Order.
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- 22
- 23 7. The Court shall review all objections *de novo*.
- 24
- 25 8. The special master shall not engage in any *ex parte* communications with  
26 the Court or with either party.
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- 28

1 9. Plaintiffs shall pay the special master. The special master shall be paid an  
2 hourly rate as well as reimbursement of reasonable expenses, as set forth in  
3 the Proposed Order.  
4

5 10. The special master shall bill no more than fifteen (15) minutes per policy  
6 file reviewed. This does not include any other time, such as time for  
7 gathering documentation or preparing a report.  
8

9 11. The special master shall keep all records that he or she reviews  
10 confidential, in accordance with the Court's protective orders (Dkt. 103 and  
11 381). Pursuant to Federal Rule of Evidence 502(d), the production of  
12 documents to the special master shall not waive the attorney-client  
13 privilege, the attorney work product doctrine, or any other applicable  
14 privilege or protection in this or any other proceeding.  
15  
16

17 This Motion is made following several discussions between counsel pursuant to  
18 Local Rule 7-3 and 37-1.  
19

20 This Motion is supported by the accompanying Joint Stipulation of Points and  
21 Authorities, a Proposed Order, the Declaration of Timothy Perla and supporting  
22 exhibits, and such other evidence or argument as may be presented at or before the  
23 hearing.  
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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

**CERTIFICATE 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, Massachusetts 02109. On March 18, 2013 I served the within document(s):

**LIFE INSURANCE COMPANY OF THE SOUTHWEST'S NOTICE OF MOTION AND MOTION TO APPOINT A SPECIAL MASTER**

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

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

I 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.

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/s/ Joel Fleming  
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