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18 Company of the Southwest

19 **UNITED STATES DISTRICT COURT**
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21 **CENTRAL DISTRICT OF CALIFORNIA**
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23 **SOUTHERN DIVISION**

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

28 Plaintiffs,

vs.

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

Defendant.

Case No.: 10-09198 JVS(RNBx)

**STATEMENT REGARDING
COMPLIANCE WITH LOCAL RULE 7.3
ON DEFENDANT'S NOTICE OF
MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS**

Honorable James V. Selna

Date: September 12, 2011

Time: 1:30 p.m.

Courtroom: 10C

1 **STATEMENT REGARDING COMPLIANCE WITH LOCAL RULE 7.3 ON**
2 **DEFENDANT’S NOTICE OF MOTION AND MOTION FOR JUDGMENT ON**
3 **THE PLEADINGS**

4 Defendant’s Contentions:

5 Defendant Life Insurance Company of the Southwest (“LSW”) met and conferred
6 with Plaintiffs prior to the filing of its Notice of Motion and Motion for Judgment on the
7 Pleadings (the “Motion”) pursuant to Local Rule 7.3. Specifically, on July 19, 2011,
8 counsel for LSW informed counsel for Plaintiffs that they expected to file a motion for
9 judgment on the pleadings seeking to dismiss a substantial portion of Plaintiffs’ claims.
10 Subsequently, on July 25, 2011, counsel for LSW informed counsel for Plaintiffs about the
11 substantive bases for LSW’s anticipated motion prior to filing the Motion. LSW also told
12 Plaintiffs of the date on which LSW intended to file the Motion. Because Plaintiffs never
13 stated that they needed additional time to meet-and-confer regarding the Motion, nor did
14 they provide any substantive reason (let alone a compelling one) why the Motion should
15 not be filed, LSW understood that the parties were at an impasse as to the substance of the
16 Motion, and that the Motion would not be resolved by agreement.

17 During the period after LSW informed Plaintiffs of the Motion, the parties
18 exchanged several communications regarding the Motion, primarily regarding the hearing.
19 During these communications, no potential resolution of the Motion was identified.
20 Plaintiffs did not (and do not) indicate any willingness to voluntarily dismiss any of their
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1 claims against LSW (the relief sought by LSW’s Motion), nor have Plaintiffs complained at
2 any point since the Motion was filed that LSW insufficiently met or conferred.
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5 Plaintiffs’ Contentions:

6 LSW made no attempt to comply with Local Rule 7.3, which requires that, at least
7 ten (10) days before the filing of a motion, “counsel contemplating the filing of any motion
8 shall first contact opposing counsel to discuss thoroughly, preferably in person, the
9 substance of the contemplated motion and any potential resolution.” Counsel for LSW did
10 not contact Plaintiffs at least ten (10) days before the July 25 filing of its motion and never
11 discussed the substance of the motion and any potential resolution, let alone discuss it
12 “thoroughly” as required by the rule. The parties’ *only* communications regarding the
13 pending motion *prior to the date the motion was filed* concerned the hearing date for the
14 motion. The first time LSW ever mentioned the motion was on July 19, when the parties
15 discussed various discovery disputes and LSW suggested that the discovery disputes should
16 be heard the week of September 12 because it intended to file a motion for judgment on the
17 pleadings to be heard that same week. On July 21, 22, and 25, the parties continued to
18 discuss the hearing date for the motion for judgment on the pleadings. It was not until after
19 Plaintiffs requested information about the substantive content of the motion on July 25, the
20 same day the motion was filed, that LSW provided Plaintiffs with a brief general
21 description of its contents in the context of a discussion of whether Plaintiffs would be
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1 willing to reduce the previously stipulated time period to oppose the motion in order to
2 accommodate a hearing date of August 29.¹ LSW's failure to meet and confer thoroughly
3 pursuant to Local Rule 7.3 regarding the substance and potential resolution of the motion
4 deprived the parties of an opportunity to narrow the scope of the motion, as Plaintiffs would
5 have pointed out to LSW several allegations and other issues that LSW's motion overlooks,
6 including among other things that, in part, the motion restates arguments from LSW's
7 motion to dismiss that were previously rejected by the Court such that any new motion on
8 those arguments is a motion for reconsideration.
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23 ¹ Ultimately, LSW filed the motion with a hearing date of September 12, 2011 even though
24 Plaintiffs advised LSW that neither of Plaintiffs' lead counsel could appear on that date.
25 Mr. Brosnahan had (and still has) a trial set to begin September 6, 2011 that is expected to
26 last at least two weeks. Mr. Freiberg had (and still has) a mediation scheduled in Chicago
27 that would prevent him from appearing on September 12. Plaintiffs have not yet sought to
28 move the hearing on LSW's motion because there is still a chance of settlement in the case
Mr. Brosnahan is scheduled to try.

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Respectfully submitted,

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

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KASOWITZ, BENSON, TORRES & FRIEDMAN

By: /s/ Charles N. Freiberg
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Jacob P. Foster (250785)

Attorneys for Plaintiffs Joyce Walker, Kim Bruce
Howlett and Muriel Spooner

PROOF OF SERVICE

I am a resident of the State of California, 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, 950 Page Mill Road, Palo Alto, CA 94304. On August 18, 2011, I served the within document(s):

STATEMENT REGARDING COMPLIANCE WITH LOCAL RULE 7.3 ON DEFENDANT’S NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS

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 hand delivered 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/ Jonathan A. Shapiro
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