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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GEOFFREY MOYLE, an individual;  
PAULINE ARWOOD, an individual;  
THOMAS ROLLASON, an  
individual; and JEANNIE SANDERS,  
an individual, on behalf of themselves,

Plaintiff,

vs.

LIBERTY MUTUAL RETIREMENT  
BENEFIT PLAN; LIBERTY  
MUTUAL RETIREMENT PLAN  
RETIREMENT BOARD; LIBERTY  
MUTUAL INSURANCE GROUP,  
INC., a Massachusetts company;  
LIBERTY MUTUAL INSURANCE  
COMPANY, a Massachusetts  
company,

Defendants.

CASE NO.10cv2179-GPC(MDD)

**ORDER DIRECTING PARTIES TO  
FILE ADDITIONAL BRIEFING**

On December 16, 2016, the Court held a hearing on Defendants’ supplemental motion for summary judgment. In their supplemental motion for summary judgment, Defendants sought to address the statute of limitations/statute of repose issue as well as the “substantive merits of the fiduciary duty claim.” (Dkt. No 294-1.) While the motion for summary judgment Defendants filed on January 3, 2013 presented six arguments why summary judgment should be granted as to § 1132(a)(3), (Dkt. No. 212-1), the supplemental motion for summary judgment only addressed the issue of

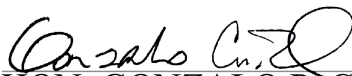
1 statute of repose/statute of limitations, and the equitable relief based on reformation  
2 and surcharge. (Dkt. No. 296.) Plaintiffs filed an opposition on the issues presented  
3 in the supplemental motion. (Dkt. No. 298.) The Court relied on the parties'  
4 supplemental briefing as the remaining issues left for the Court to rule on the breach  
5 of fiduciary duty cause of action; however, that appears not to be the case. For  
6 example, at the hearing, Plaintiffs argued that Defendants had waived the affirmative  
7 defense of statute of limitations which was not raised in their supplemental opposition.<sup>1</sup>  
8 Therefore, the Court directs the parties to address issues that were not sufficiently  
9 addressed in their supplemental briefs and include the following:

- 10 1. whether equitable tolling applies to 29 U.S.C. § 1113 as to Moyle
- 11 2. whether “date of discovery of such breach or violation” under the “fraud or  
12 concealment” exception differs from the “actual knowledge of the breach or violation”<sup>2</sup>
- 13 3. whether Defendants have waived the affirmative defense of statute of  
14 limitations.

15 Accordingly, IT IS HEREBY ORDERED that Defendants shall file a brief no  
16 longer than 10 pages, to address these issues on or before **January 6, 2017**. Plaintiffs  
17 shall file an opposition, no longer than 10 pages, on or before **January 13 2017**.  
18 Defendants shall file a reply, no longer then 5 pages, on or before **January 20, 2017**.  
19 The parties shall not use footnotes to cite to cases and printed text shall be no smaller  
20 than 14-point standard font as required by Local Rule 5.1(a).

21 IT IS SO ORDERED.

22 DATED: December 19, 2016

23   
24 HON. GONZALO P. CURIEL  
25 United States District Judge

26 <sup>1</sup>The Court notes the waiver issue was raised in Plaintiffs' opposition to  
27 Defendants' summary judgment motion. (Dkt. No. 233 at 40.) The Court notes that  
28 numerous other issues were also raised in their opposition.

<sup>2</sup>At the hearing, Defendants raised for the first time that the “date of discovery”  
is applied differently than “actual knowledge.”