

1 JONATHAN A. SHAPIRO (257199)  
2 WILMER CUTLER PICKERING HALE  
3 AND DORR LLP  
4 950 Page Mill Road  
5 Palo Alto, CA 94304  
6 Tel: (650) 858-6101  
7 Fax: (650) 858-6100  
8 jonathan.shapiro@wilmerhale.com

9 ANDREA J. ROBINSON (PRO HAC VICE)  
10 TIMOTHY J. PERLA (PRO HAC VICE)  
11 WILMER CUTLER PICKERING HALE  
12 AND DORR LLP  
13 60 State Street  
14 Boston, MA 02109  
15 Tel: (617) 526-6000  
16 Fax: (617) 526-5000  
17 andrea.robinson@wilmerhale.com  
18 timothy.perla@wilmerhale.com  
19 Attorneys for Defendant Life Insurance  
20 Company of the Southwest

21  
22  
23  
24  
25  
26  
27  
28  
**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

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

20 Plaintiffs,

21 vs.

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

25 Defendant.

**CLASS ACTION**

CASE NO.: CV 10-9198 JVS (RNBx)

Formerly Case No.: 3:10-cv -04852 JSW  
from Northern District of California

**DECLARATION OF TIMOTHY  
PERLA IN SUPPORT OF LIFE  
INSURANCE COMPANY OF THE  
SOUTHWEST'S APPLICATION TO  
SEAL PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION AND  
CERTAIN DOCUMENTS AND  
EXHIBITS SUBMITTED IN SUPPORT  
THEREOF**

Judge: Hon. James V. Selna  
Courtroom: 10C  
Date: September 10, 2012  
Time: 1:30 p.m.

**DECLARATION OF TIMOTHY PERLA**

I, Timothy Perla, declare as follows:

1. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts and admitted *pro hac vice* before this Court. I am a Counsel at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Defendant in the above-entitled action. I respectfully submit this Declaration in support of Defendant Life Insurance Company of the Southwest’s (“LSW”) application for an Order sealing Plaintiffs’ Motion for Class Certification and certain exhibits thereto.

2. On August 26, 2011, Magistrate Judge Block entered a protective order (Dkt. 97), and entered an amended protective order on September 27, 2011. Dkt. 103.<sup>1</sup>

3. Plaintiffs’ class certification papers attach and refer to documents which were designated as confidential under the protective order, and which should remain sealed from the public record for the following reasons:

**Plaintiffs’ Motion for Class Certification**

4. Plaintiffs’ Motion for Class Certification refers to and/or directly quotes confidential information from the sealed exhibits listed below. To the extent it does so, those references should be sealed as well.

**Certain Exhibits to the Declaration of Brian P. Brosnahan**

5. Brosnahan Dec., Ex. C is a letter from LSW to Plaintiffs, which contains information about LSW’s internal processes with respect to life insurance policies, which are proprietary. This letter was drafted by LSW for Plaintiffs pursuant to a negotiated agreement which contemplated confidential treatment of the information provided. If released, this information would likely be sufficient to allow a competitor understand how LSW designs, constructs, and implements its

<sup>1</sup> Magistrate Judge Block previously granted LSW’s application to seal certain of the above-listed materials when they were submitted with the parties’ Joint Stipulation on Plaintiffs’ Motion to Compel and Plaintiffs’ motion for review of Magistrate Judge Block’s order pertaining thereto and supporting papers. *See* Civil Minutes, Dkt. 136; Dkt. 197; Dkt. 209.

1 life policies. Thus, this document further reflects confidential financial  
2 information about the value of Plaintiffs' LSW policies. The information contained  
3 in the letter is confidential, non-public commercial information that, if disclosed to  
4 the general public or competitors of LSW could reasonably and in good faith be  
5 expected to result in prejudice or harm. For this reason, it was designated as  
6 CONFIDENTIAL.

7 6. Brosnahan Dec., Ex. E is an internal LSW document containing  
8 discussions of LSW's business strategies and internal compliance policies. The  
9 face of the document states "For Agent Use Only—Not For Use With The Public."  
10 And with good reason: this document contains, among other things, confidential  
11 communications between LSW and its agents about marketing policies,  
12 replacement of policies, and procedures for addressing customer complaints. This  
13 is confidential, non-public commercial information about LSW that, if disclosed to  
14 the general public or competitors of LSW, could reasonably and in good faith be  
15 expected to result in prejudice or harm. For that reason, it was designated  
16 CONFIDENTIAL.

17 7. Brosnahan Dec., Ex. F is a non-party's LSW Illustration, which  
18 contains confidential information about an individual, including age, underwriting  
19 class and policy value. This is confidential, non-public personal identifying  
20 information that, if disclosed could reasonably and in good faith be expected to  
21 result in prejudice or harm. For that reason, it was designated CONFIDENTIAL.

22 8. Brosnahan Dec., Ex. I is an internal LSW email chain discussing  
23 marketing strategies and compliance policies, as well as strategies regarding  
24 positioning vis-à-vis LSW's competitors. Specifically, it discusses marketing  
25 strategies for a particular category of consumers (doctors). This is confidential,  
26 non-public commercial information about LSW products that, if disclosed to the  
27 general public or competitors of LSW, could reasonably and in good faith be  
28 expected to result in prejudice or harm. For that reason, it was designated  
CONFIDENTIAL.

1           9.       Brosnahan Dec., Ex. S contains excerpts from the deposition of  
2 Elizabeth MacGowan. In the testimony excerpted therein, Ms. MacGowan  
3 testified to, among other things, LSW's strategy regarding confidential actuarial  
4 calculations. Ms. MacGowan also testified about a document discussing LSW's  
5 strategies regarding the pricing of various aspects of its products and the margin  
6 that it receives on those products. This is confidential, non-public commercial  
7 information that, if disclosed to the general public or competitors of LSW, could  
8 reasonably and in good faith be expected to result in prejudice or harm.

9           10.      Brosnahan Dec., Ex. U contains excerpts from the deposition of  
10 Michael Richardson. In the testimony excerpted herein, Mr. Richardson testified  
11 to, among other things, the internal workings of LSW's proprietary computer  
12 software, including certain strategic choices made by LSW in determining the  
13 content of illustrations generated by the ICS software program. This is  
14 confidential, non-public commercial information that, if disclosed to the general  
15 public or competitors of LSW, could reasonably and in good faith be expected to  
16 result in prejudice or harm. For that reason, this testimony was designated  
17 CONFIDENTIAL.

18 **Declaration of Dr. Patrick Lee Brockett and Certain Exhibits Thereto**

19           11.      The Declaration of Dr. Patrick Lee Brockett refers to and/or directly  
20 quotes confidential information from the exhibits listed below.

21           12.      Brockett Dec., Ex. G is an internal LSW document that discusses  
22 LSW's business strategies, including pricing goals and constraints for certain LSW  
23 products. This includes sensitive information about LSW's margins, overhead, and  
24 commissions. It includes discussions about LSW's pricing targets for its return-  
25 on-investment, planned rate structures and the algorithm used to determine  
26 minimum premiums. It also includes assumed lapse rates. This is confidential, non-  
27 public commercial information about LSW products that, if disclosed to the  
28 general public or competitors of LSW, could reasonably and in good faith be

1 expected to result in prejudice or harm. For that reason, it was designated

2 CONFIDENTIAL.

3 13. Brockett Dec., Ex. H is an internal LSW document that contains  
4 internal testing data and internal pricing assumptions. It also discusses LSW's  
5 historic distribution of business by risk class and issue age as well as its  
6 compensation structure for agents and expenses per policy issued. It includes  
7 information about LSW's average policy size (in dollars). This is confidential, non-  
8 public commercial information about LSW and LSW's products that, if disclosed  
9 to the general public or competitors of LSW, could reasonably and in good faith be  
10 expected to result in prejudice or harm. For that reason, it was designated

11 CONFIDENTIAL.

12 14. Brockett Dec., Ex. L is a letter from LSW to Plaintiffs, which contains  
13 information about LSW's internal processes with respect to life insurance policies,  
14 which are proprietary. This letter was drafted by LSW for Plaintiffs pursuant to a  
15 negotiated agreement which contemplated confidential treatment of the  
16 information provided. If released, this information would likely be sufficient to  
17 allow a competitor understand how LSW designs, constructs, and implements its  
18 life policies. Thus, this document further reflects confidential financial  
19 information about the value of Plaintiffs' LSW policies. The information contained  
20 in the letter is confidential, non-public commercial information that, if disclosed to  
21 the general public or competitors of LSW could reasonably and in good faith be  
22 expected to result in prejudice or harm. For this reason, it was designated as

23 CONFIDENTIAL.

24 15. Brockett Dec., Ex. Q contains excerpts from the deposition of Elizabeth  
25 MacGowan. In the testimony excerpted therein, Ms. MacGowan testified to,  
26 among other things, LSW's strategy regarding confidential actuarial calculations.  
27 Ms. MacGowan also testified about a document discussing LSW's strategies  
28 regarding the pricing of various aspects of its products. This is confidential, non-  
public commercial information that, if disclosed to the general public or

1 competitors of LSW, could reasonably and in good faith be expected to result in  
2 prejudice or harm. For that reason, this testimony was designated Confidential.

3 16. Brockett Dec., Ex. S contains excerpts from the deposition of Michael  
4 Richardson. In the testimony excerpted herein, Mr. Richardson testified to, among  
5 other things, the internal workings of LSW's proprietary computer software,  
6 including certain strategic choices made by LSW in determining the content of  
7 illustrations generated by the ICS software program. This is confidential, non-  
8 public commercial information that, if disclosed to the general public or  
9 competitors of LSW, could reasonably and in good faith be expected to result in  
10 prejudice or harm. For that reason, this testimony was designated  
11 CONFIDENTIAL.

12 **Declaration of Lesa Dinglasan and Certain Exhibits Thereto**

13 17. The Declaration of Lesa Dinglasan refers to and/or directly quotes  
14 confidential information from the exhibits listed below. It also provides  
15 information gathered from a sample of policyholder files provided by LSW to  
16 Plaintiffs, subject to the Protective Order.

17 18. Dinglasan Dec., Ex. C is an Agent's Report relating to a non-party. It  
18 contains confidential information about a non-party's LSW policy, net worth,  
19 household income, and contact information. This is personal identifying  
20 information that, if disclosed could reasonably and in good faith be expected to  
21 result in prejudice or harm. For that reason, it was designated Confidential.

22 19. Dinglasan Dec., Ex. D is a non-party's policy application. It contains  
23 confidential personal, contact, financial, and medical information (including family  
24 medical history) about a non-party and that person's LSW policy. This is  
25 confidential, non-public personal identifying information that, if disclosed to the  
26 general public or competitors of LSW, could reasonably and in good faith be  
27 expected to result in prejudice or harm. For that reason, it was designated  
28 Confidential.

1           20.     Dinglasan Dec., Ex. E is a non-party's LSW Illustration. It contains  
2 confidential financial information about the age and underwriting class of a non-  
3 party and the value of a non-party's LSW policy. This is confidential, non-public  
4 commercial information and personal identifying information that, if disclosed to  
5 the general public or competitors of LSW, could reasonably and in good faith be  
6 expected to result in prejudice or harm. For that reason, it was designated  
7 Confidential.

8           21.     Dinglasan Dec., Ex. F is a non-party's LSW Illustration. It contains  
9 confidential financial information about the age and underwriting class of a non-  
10 party and the value of a non-party's LSW policy. This is confidential, non-public  
11 commercial information and personal identifying information that, if disclosed to  
12 the general public or competitors of LSW, could reasonably and in good faith be  
13 expected to result in prejudice or harm. For that reason, it was designated  
14 Confidential.

15           22.     Dinglasan Dec., Ex. H contains excerpts from the deposition of  
16 Elizabeth MacGowan. In the testimony excerpted therein, Ms. MacGowan  
17 testified to, among other things, LSW's strategy regarding confidential actuarial  
18 calculations. Ms. MacGowan also testified about a document discussing LSW's  
19 strategies regarding the pricing of various aspects of its products. This is  
20 confidential, non-public commercial information that, if disclosed to the general  
21 public or competitors of LSW, could reasonably and in good faith be expected to  
22 result in prejudice or harm. For that reason, this testimony was designated  
23 Confidential.

24           23.     LSW is withdrawing its application to seal the following documents:  
25 the Declaration of Brian P. Brosnahan; Exhibits D, G, H, L, Q, R, T, V, W, X, and  
26 Y to the Declaration of Brian P. Brosnahan; Exhibits F, M, O, P, R, and T to the  
27 Declaration of Dr. Patrick Lee Brockett; and Exhibit G to the Declaration of Lesa  
28 Dinglasan. Therefore, it asks that the Court seal only the following documents: (1)  
Plaintiffs' Motion for Class Certification; (2) exhibits C, E, F, I, S, and U to the

1 Declaration of Brian P. Brosnahan; (3) the Declaration of Dr. Patrick L. Brockett  
2 and exhibits G, H, L, N, Q, and S thereto; and (4) the Declaration of Lesa  
3 Dinglasan and exhibits C, D, E, F, and H thereto.

4 I declare under the penalty of perjury that the foregoing is true and correct.  
5 Executed this 21st day of May, at Boston, Massachusetts.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By: /s/ Timothy Perla  
Timothy Perla



**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 May 21, 2012, I served the within document(s):

**DECLARATION OF TIMOTHY PERLA IN SUPPORT OF LSW'S APPLICATION TO SEAL PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND CERTAIN DOCUMENTS AND EXHIBITS SUBMITTED IN SUPPORT THEREOF**

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.

Charles N. Freiberg  
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
101 California Street, Suite 2300  
San Francisco, CA 94111

Harvey R. Levine  
LEVINE & MILLER  
550 West C. Street, Suite 1810  
San Diego, CA 92101-8596

/s/ Joel Fleming

Joel Fleming