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10 Attorneys for Plaintiffs  
JOYCE WALKER, KIM BRUCE HOWLETT,  
11 and MURIEL SPOONER, on behalf of themselves  
and all others similarly situated

12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

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

18 Plaintiffs,

19 v.

20 LIFE INSURANCE COMPANY OF  
THE SOUTHWEST, a Texas  
21 corporation,

22 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 BRIAN P.  
BROSNAHAN IN OPPOSITION TO  
EX PARTE APPLICATION**

Judge James V. Selna  
Courtroom: 10C

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP  
101 CALIFORNIA STREET, SUITE 2300  
SAN FRANCISCO, CALIFORNIA 94111

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1 I, Brian P. Brosnahan, declare as follows:

2 1. I am an attorney authorized to practice in the courts of California and  
3 in the United States District Court for the Central District of California. I am a  
4 partner of Kasowitz, Benson, Torres & Friedman, LLP, counsel for Plaintiffs in  
5 these proceedings. I have personal knowledge of the facts stated herein and if  
6 required could and would testify under oath thereto.

7 2. On July 3, 2012, counsel for LSW took the deposition of Dr. Patrick  
8 L. Brockett. During a break in the deposition, Mr. Joel Fleming, counsel for LSW,  
9 asked whether pursuant to L.R. 7-3, Plaintiffs would stipulate to a motion striking  
10 Dr. Brockett's declaration or to the withdrawal of the declaration. Mr. Fleming did  
11 not discuss the substance of LSW's planned motion. My colleague, Jacob Foster,  
12 informed Mr. Fleming that Plaintiffs would not withdraw Dr. Brockett's declaration  
13 and that LSW was free to file a motion. Ten days later, LSW filed its motion to  
14 strike Dr. Brockett's declaration.

15 3. On August 21, 2012, I sent an email to Jonathan Shapiro inquiring  
16 whether LSW would stipulate to an August 31, 2012 due date for the evidentiary  
17 objections by both sides. This request had nothing to do with any concern about  
18 page limits since Plaintiffs' objections are not subject to any page limits. Mr.  
19 Shapiro rejected this proposal and provided LSW's interpretation of the Scheduling  
20 Order. On August 23, 2012, I responded to Mr. Shapiro by thanking him for  
21 providing LSW's interpretation of the Order. Since LSW refused to agree on any  
22 due date for objections, Plaintiffs filed their objections with their reply papers on  
23 August 24, 2012. A true and correct copy of an email chain including all of the  
24 foregoing emails is attached hereto as Exhibit A.

25 4. On August 28, 2012, Mr. Fleming telephoned Mr. Foster and myself,  
26 and indicated that LSW intended to file an *ex parte* motion to strike Plaintiffs'  
27 objections to evidence submitted with LSW's opposition to class certification.  
28 When I inquired as to the basis of LSW's *ex parte* motion, Mr. Fleming stated that

1 the objections to evidence were required to be filed in the form of a motion to  
2 strike, and Plaintiffs had not met and conferred regarding a motion to strike. When  
3 I inquired whether there was any case law or other authority supporting LSW's  
4 argument that objections to evidence were required to be filed in the form of a  
5 motion to strike, Mr. Fleming stated that the authority was contained in LSW's *ex*  
6 *parte* motion, which would be filed shortly. On reviewing LSW's *ex parte*  
7 application (Dkt. 311), I noted that it does not contain any applicable case law (or  
8 other authority) for the proposition that objections to evidence are required to be  
9 filed in the form of a motion to strike.

10 5. On August 28, 2012, at 12:41 p.m., approximately one hour after Mr.  
11 Fleming's phone call, I sent an email to counsel for LSW, which stated that  
12 "[h]aving consulted the pertinent rules and Judge Selna's General Order, we do not  
13 believe that the relief you describe can be obtained via an *ex parte* application. We  
14 would be happy to discuss a stipulation for an order shortening time so that you can  
15 file a motion to strike to be heard on September 10, 2012." Attached hereto as  
16 Exhibit B is a true and correct copy of this email.

17 6. Attached hereto as Exhibit C is an email from James Lux to Brian  
18 Brosnahan, dated August 18, 2012, at 2:04 p.m. Mr. Lux responded to my earlier  
19 email (Exhibit B) by stating, "[w]e don't see the rule you are referring to ... Is there  
20 some rule we're missing?"

21 7. Attached hereto as Exhibit D is a true and correct copy of an email  
22 from Brian Brosnahan to James Lux, dated August 18, 2012, at 2:17 p.m. I  
23 responded to Mr. Lux's earlier email (Exhibit C) by stating:

24 Nothing in the Local Rules, Judge Selna's rules, or his order regarding  
25 page limits precludes the filing of objections to evidence or includes  
26 objections to evidence within any page limits applicable to briefs.

27 Judge Selna's Initial Order Following Filing of Complaint Assigned  
28 to Judge Selna states (in Part D) that "Ex Parte applications are solely

1 for extraordinary relief and should be used with discretion.” There is  
2 nothing extraordinary about your motion to strike, and we see no  
3 reason why it needs to be heard before September 10. Please advise  
4 us why you believe your motion needs to be resolved on an ex parte  
5 basis.

6 8. Attached hereto as Exhibit E is a true and correct copy of an email  
7 from James Lux to Brian Brosnahan, dated August 18, 2012, at 3:08 p.m. Mr. Lux  
8 responded to my earlier email (Exhibit D) by stating, “[i]t certainly seems  
9 extraordinary for Plaintiffs to have unilaterally submitted more than eight times the  
10 allowed number of pages ... an ex parte application is appropriate, and we will file  
11 this evening as we described.”

12 I declare under penalty of perjury that the foregoing is true and correct and  
13 that this declaration was executed this 29th day of August, 2012 at San Francisco,  
14 California.

15 KASOWITZ, BENSON, TORRES & FRIEDMAN  
16 LLP

17  
18 By: /s/ Brian P. Brosnahan  
19 Brian P. Brosnahan  
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