

1 JONATHAN A. SHAPIRO (257199)
JOEL FLEMING (281264)
2 WILMER CUTLER PICKERING HALE
AND DORR LLP
3 950 Page Mill Road
Palo Alto, CA 94304
4 Tel: (650) 858-6101
Fax: (650) 858-6100
5 jonathan.shapiro@wilmerhale.com

6 ANDREA J. ROBINSON (PRO HAC VICE)
TIMOTHY J. PERLA (PRO HAC VICE)
7 WILMER CUTLER PICKERING HALE
AND DORR LLP
8 60 State Street
Boston, MA 02109
9 Tel: (617) 526-6000
Fax: (617) 526-5000
10 andrea.robinson@wilmerhale.com
timothy.perla@wilmerhale.com
11 Attorneys for Defendant Life Insurance
Company of the Southwest
12

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

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

19 Plaintiffs,

20 vs.

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

23 Defendant.
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CLASS ACTION

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

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

**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 18, 2012
Time: 1:30 p.m.

1 PLEASE TAKE NOTICE THAT pursuant to the Court's emailed request of
2 September 11, 2012, Civil Local Rule 79-5.1 and the Court's Second Amended
3 Protective Order in this action, Dkt. 103 at ¶ 10 (Sept. 27, 2011), Defendant Life
4 Insurance Company of the Southwest ("LSW") submits this application to the
5 Court for an Order sealing (1) Plaintiffs' Motion for Class Certification; (2)
6 exhibits C, E, F, I, S, and U to the Declaration of Brian P. Brosnahan; (3) the
7 Declaration of Dr. Patrick L. Brockett and exhibits G, H, L, N, Q, and S thereto;
8 and (4) the Declaration of Lesa Dinglasan and exhibits C, D, E, F, and H thereto.

9 Under Civil Local Rule 79-5.1, a party can request that documents be filed
10 under seal by submitting a written application along with the documents sought to
11 be filed under seal. The Court's Second Amended Protective Order (the
12 "Protective Order") requires that an application to seal be filed whenever any
13 papers are filed containing information and/or documents designated as
14 "CONFIDENTIAL" or "CONFIDENTIAL INFORMATION – PROTECTIVE
15 ORDER." Dkt. 103 at ¶10.

16 **I. LSW's Application**

17 LSW applies to seal the above-listed materials on the grounds that they
18 contain confidential information protected by the Protective Order. The Court
19 previously granted LSW's application to seal certain of these materials when
20 submitted with the parties' Joint Stipulation on Plaintiffs' Motion to Compel and
21 Plaintiffs' motion for review of Magistrate Judge Block's order pertaining thereto
22 and supporting papers. *See* Civil Minutes, Dkt. 136; Dkt. 197; Dkt. 209. The
23 specific grounds that apply to each document are set forth below:

24 **Plaintiffs' Motion for Class Certification**

25 (i) Plaintiffs' Motion for Class Certification refers to and/or directly quotes
26 confidential information from the sealed exhibits listed below. To the extent it
27 does so, those references should be sealed as well.

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

1 (i) Brosnahan Dec., Ex. C is a letter from LSW to Plaintiffs, which contains
2 information about LSW's internal processes with respect to life insurance policies,
3 which are proprietary. This letter was drafted by LSW for Plaintiffs pursuant to a
4 negotiated agreement which contemplated confidential treatment of the
5 information provided. If released, this information would likely be sufficient to
6 allow a competitor understand how LSW designs, constructs, and implements its
7 life policies. Thus, this document further reflects confidential financial
8 information about the value of Plaintiffs' LSW policies. The information contained
9 in the letter is confidential, non-public commercial information that, if disclosed to
10 the general public or competitors of LSW could reasonably and in good faith be
11 expected to result in prejudice or harm. For this reason, it was designated as
12 CONFIDENTIAL.

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

23 (iii) Brosnahan Dec., Ex. F is a non-party's LSW Illustration, which contains
24 confidential information about an individual, including age, underwriting class and
25 policy value. This is confidential, non-public personal identifying information
26 that, if disclosed could reasonably and in good faith be expected to result in
27 prejudice or harm. For that reason, it was designated CONFIDENTIAL.

28 (iv) Brosnahan Dec., Ex. I is an internal LSW email chain discussing marketing
strategies and compliance policies, as well as strategies regarding positioning vis-
à-vis LSW's competitors. Specifically, it discusses marketing strategies for a

1 particular category of consumers (doctors). This is confidential, non-public
2 commercial information about LSW products that, if disclosed to the general
3 public or competitors of LSW, could reasonably and in good faith be expected to
4 result in prejudice or harm. For that reason, it was designated CONFIDENTIAL.

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

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

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

23 (i) The Declaration of Dr. Patrick Lee Brockett refers to and/or directly quotes
24 confidential information from the exhibits listed below.

25 (ii) Brockett Dec., Ex. G is an internal LSW document that discusses LSW's
26 business strategies, including pricing goals and constraints for certain LSW
27 products. This includes sensitive information about LSW's margins, overhead, and
28 commissions. It includes discussions about LSW's pricing targets for its return-
on-investment, planned rate structures and the algorithm used to determine
minimum premiums. It also includes assumed lapse rates. This is confidential, non-

1 public commercial information about LSW products that, if disclosed to the
2 general public or competitors of LSW, could reasonably and in good faith be
3 expected to result in prejudice or harm. For that reason, it was designated
4 CONFIDENTIAL.

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

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

26 (v) Brockett Dec., Ex. Q contains excerpts from the deposition of Elizabeth
27 MacGowan. In the testimony excerpted therein, Ms. MacGowan testified to,
28 among other things, LSW's strategy regarding confidential actuarial calculations.
Ms. MacGowan also testified about a document discussing LSW's strategies
regarding the pricing of various aspects of its products. This is confidential, non-

1 public commercial information that, if disclosed to the general public or
2 competitors of LSW, could reasonably and in good faith be expected to result in
3 prejudice or harm. For that reason, this testimony was designated Confidential.

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

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

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

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

23 19. Dinglasan Dec., Ex. D is a non-party's policy application. It contains
24 confidential personal, contact, financial, and medical information (including family
25 medical history) about a non-party and that person's LSW policy. This is
26 confidential, non-public personal identifying information 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 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 **II. Conclusion**

25 For all the foregoing reasons, LSW requests that the Court issue an
26 Order sealing (1) Plaintiffs' Motion for Class Certification; (2) exhibits C, E, F, I,
27 S, and U to the Declaration of Brian P. Brosnahan; (3) the Declaration of Dr.
28 Patrick L. Brockett and exhibits G, H, L, N, Q, and S thereto; and (4) the
Declaration of Lesa Dinglasan and exhibits C, D, E, F, and H thereto.

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Dated: September 11, 2012

Respectfully submitted,

WILMER CUTLER PICKERING HALE
AND DORR LLP

By: /s/ Joel Fleming
Joel Fleming

Attorneys for Defendant
LIFE INSURANCE COMPANY OF THE
SOUTHWEST

PROOF 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, MA 02109. On September 11, 2012 I served the within document(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 Boston, MA addressed as set forth below.

I personally caused to be 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.

I personally caused to be delivered by Facsimile the document(s) listed above to the person(s) at the facsimile number(s) set forth below.

Brian P. Brosnahan
Charles N. Freiberg
Jacob Foster
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
101 California Street, Suite 2300
San Francisco, CA 94111
(415) 358-4278

Harvey R. Levine
LEVINE & MILLER
550 West C. Street, Suite 1810
San Diego, CA 92101-8596
(619) 231-8638

/s/ Joel Fleming
Joel Fleming