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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

**JOINT CONFIDENTIALITY
STIPULATION AND PROTECTIVE
ORDER**

Judge: Hon. James V. Selna
Courtroom: 10C

1 Plaintiffs Joyce Walker, Kim Bruce Howlett, and Muriel Spooner

2 (“Plaintiffs”) and Defendant Life Insurance Company of the Southwest
3
4 (“Defendant” or “LSW” and, together with Plaintiffs, the “Parties”) submit the
5 following stipulation to govern certain matters relating to the production by LSW
6 of certain policyholder files pertaining to class members.

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8 WHEREAS, on November 9, 2012, the Court entered an Order certifying a
9 class comprising “all Provider and Paragon Policies who purchased their Policies
10 on or after September 24, 2006.” Dkt. 353 at 27;

11
12 WHEREAS, Plaintiffs’ Request for Production No. 173 demands the
13 production of certain documents contained in the policyholder files for each class
14 member;

15
16 WHEREAS, pursuant to an agreement with Plaintiffs, LSW intends to make
17 an interim production of 1400 policy files on an expedited basis, plus a production
18 of the remaining files as soon as practicable thereafter (collectively, the
19 “Production”);

20
21 WHEREAS, LSW expects that the Production may be very voluminous
22 because each policy file potentially contains hundreds of pages;

23
24 WHEREAS, the files may include sensitive medical information, as well as
25 information protected by the work product, attorney-client or other privileges;

26
27 WHEREAS, on September 27, 2011 the parties agreed to a Second
28 Amended Protective Order which provided, *inter alia*, for protection of

1 inadvertently disclosed documents, which continues in full force and effect, but the
2 parties wish to provide further protection for the Production;

3
4 WHEREAS, the parties wish to enter into a stipulation that will permit LSW
5 to make the Production quickly with little or no human review, but without any
6 possibility of waiver of any protection or privilege that would have permitted LSW
7 to withhold any document.
8

9 Thus, IT IS HEREBY STIPULATED by and among all Parties, through
10 their respective attorneys of record, as follows:

- 11
- 12 1. “Protected Information” shall be defined as any information contained
13 in the Production that could have been withheld, for any reason,
14 including: the attorney-client privilege, work-product protection,
15 privileges pertaining to medical information, spousal privilege, or any
16 other applicable privilege or ground for withholding or redacting
17 (“Ground For Protection”).
18
 - 19 2. Non-Waiver: Plaintiffs understand and agree that LSW shall
20 make the Production after undertaking either no human review, or an
21 extremely limited human review, at the sole option of LSW. Plaintiffs
22 expressly agree that doing so shall not constitute a waiver of any
23 Ground For Protection. Thus, Plaintiffs shall never, under any
24 circumstances, argue: (i) that the Production or any part thereof
25 constitutes a waiver of, or calls into question, the applicability of any
26 Ground For Production; and (ii) that LSW failed to take reasonable
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1 efforts to assert or preserve any Ground For Protection by making the
2 Production. Pursuant to Federal Rule of Evidence 502(d), the
3 privilege or protection is not waived by the Production.
4

5 3. Non-Use: Plaintiffs shall make no use whatsoever of any
6 information that they reasonably believe to be Protected Information.
7 The use of documents containing confidential medical information
8 shall be governed by the terms of the parties' September 27, 2011
9 Second Amended Protective Order. In regards to all other types of
10 Protected Information, with the exception of confidential medical
11 information, Plaintiffs shall promptly notify LSW upon identifying
12 such information. Plaintiffs shall either (i) destroy the documents
13 containing such Protected Information, or (ii) take reasonable efforts
14 to segregate and protect the confidentiality of the information pending
15 any Return Request, or clarification from LSW regarding whether the
16 information is Protected Information (which clarification Plaintiffs
17 shall be entitled to request from LSW).
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22 4. Return Requests: LSW may, at any time, tender to Plaintiffs'
23 counsel a written request specifying the Bates numbers of the pages
24 on which Protected Information appears for the redaction of such
25 information or return of any document(s) containing such information
26 from the Production. If such a request is made:
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#17211

- 1 a. Plaintiffs shall promptly redact the Protected Information and
2 keep no copies of the redacted information or return to LSW or
3 destroy all copies of the non-redacted document(s). Plaintiffs
4 shall not seek or demand any prior showings, explanations,
5 conditions, negotiations, or conferrals. The purpose of the
6 preceding sentence is to provide for prompt, no-questions-
7 asked, redaction or return of any Protected Information upon
8 request;
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- 12 b. At the same time LSW requests that Protected Information be
13 returned, it shall tender a privilege log pertaining to the
14 redacted information or returned document(s);
15
- 16 c. Plaintiffs may thereafter initiate motion practice to challenge
17 whether any information or document was Protected
18 Information, consistent with Paragraph 2 above. Thus, in such
19 a challenge, the only issue for adjudication shall be whether the
20 document could properly have been withheld had it not been
21 part of the Production.
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- 23 d. LSW is under no obligation to request the redaction or return of
24 documents, and the failure to do so shall not prejudice LSW's
25 rights in any way;
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e. Plaintiffs are under no obligation to challenge the designation of Protected Information, and the failing to do so shall not prejudice their rights in any way; and

f. Attorneys fees and costs shall be awarded to the prevailing party in any motion practice challenging the designation of Protected Information.

5. By making the Production, neither party waives any objection regarding admissibility, relevancy, or any other evidentiary ground, all of which are specifically reserved.

6. The provisions of this Stipulation are intended to be in addition to those provided for by the parties' September 27, 2011 Second Amended Protective Order, which remains in full force and effect for the Production and any other document productions.

1 Dated: January 9, 2013 #17213 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

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3

By: /s/ Charles N. Freiberg

4

Charles N. Freiberg (70890)

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Attorneys for Plaintiffs

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Dated: January 9, 2013

WILMER CUTLER PICKERING HALE AND DORR LLP

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By: /s/Jonathan A. Shapiro

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Jonathan A. Shapiro

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Attorneys for Defendant Life Insurance Company of the Southwest

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PURSUANT TO STIPULATION, IT IS SO ORDERED

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Dated: _____

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Honorable Robert N. Block

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United States Magistrate Judge

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PROOF OF SERVICE

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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, Massachusetts 02109. On January 9, 2013, I served the within document(s):

JOINT CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER

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 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.

Brian P. Brosnahan
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