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

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

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16 JOYCE WALKER, KIM BRUCE  
HOWLETT, and MURIEL SPOONER,  
17 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

**PLAINTIFFS' EVIDENTIARY  
OBJECTIONS TO THE  
DECLARATION OF CRAIG SMITH  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
THIRD AMENDED COMPLAINT**

Judge James V. Selna

Date: March 4, 2013

Time: 1:30 p.m.

Courtroom: 10C

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

1 Plaintiffs Joyce Walker, Kim Bruce Howlett, and Muriel Spooner  
 2 (“Plaintiffs”) hereby object to the Declaration of Craig Smith, submitted by  
 3 Defendant Life Insurance Company of the Southwest (“LSW”) in opposition to  
 4 Plaintiffs’ motion for leave to file Third Amended Complaint:

Evidence	Grounds for Objection(s)
5 6 Pg. 1, ¶3: 7 8 “I disagree with Plaintiffs’ 9 characterization of my testimony 10 as stating that LSW lacked the 11 intent to provide those non- 12 guaranteed enhancements.”	1. Argumentative and misleading. The proffered material is not testimony but argument, and it misstates Plaintiffs’ motion papers and proposed Third Amended Complaint. Plaintiffs do not characterize Mr. Smith as “ <i>stating</i> that LSW lacked the intent to provide” non-guaranteed benefits. Plaintiffs rely on Mr. Smith’s testimony as to facts from which Plaintiffs argue that inferences can be drawn about LSW’s intent. FRE 403.
14 Pg. 1, ¶4: 15 16 “LSW’s GAAP accounting 17 anticipates a 1.25% increase in 18 the interest credited under the 19 Provider policy beginning in 20 policy year ten.”	1. Lacks foundation. Mr. Smith provides no foundation for or explanation of “GAAP accounting” or the purpose of that accounting as used by LSW in this instance. FRE 602.  2. Vague, ambiguous. Fails to explain what aspect of “GAAP accounting” he refers to or the purpose of such accounting. Fails to specify what it means for the GAAP accounting to “anticipate” a 1.25% increase. FRE 403 and 611(a).  3. Irrelevant. Irrelevant to LSW’s actual intent to provide the Account Value Enhancement to the extent that the purpose of GAAP accounting is, like illustration actuary testing, simply to quantify what LSW’s costs and revenues would be <i>if</i> all illustrated non-guaranteed benefits were provided. FRE 403.

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DATED: February 15, 2013 KASOWITZ BENSON TORRES & FRIEDMAN  
LLP

By: s/Brian P. Brosnahan  
Brian P. Brosnahan

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