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

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 JOYCE WALKER, KIM BRUCE
22 HOWLETT, and MURIEL SPOONER,
23 on behalf of themselves and all others
24 similarly situated,

25 Plaintiffs,

26 v.

27 LIFE INSURANCE COMPANY OF
28 THE SOUTHWEST, a Texas
corporation,

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 JEANETTE T.
BARZELAY IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR LEAVE TO
FILE A SURREPLY TO LSW'S
REPLY MEMORANDUM IN
SUPPORT OF MOTION TO
APPOINT A SPECIAL MASTER**

District Judge James V. Selna
Courtroom: 10C

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

6 2. On April 11, 2013, my colleague, Brian Brosnahan, and I attempted to
7 contact LSW’s counsel, Jonathan Shapiro and Joel Fleming, by telephone to
8 discuss Plaintiffs’ filing of a surreply in response to LSW’s reply on its motion to
9 appoint a special master. Unable to reach them, I left voicemail messages for Mr.
10 Shapiro and for Mr. Fleming informing them that Plaintiffs intended to file a brief
11 surreply to respond to new arguments and misstatements of Plaintiffs’ positions
12 that were made in LSW’s reply, and requesting that LSW stipulate to the filing of
13 the surreply. Shortly thereafter, Mr. Fleming called me and informed me that LSW
14 disagrees that it made new arguments or mischaracterized Plaintiffs’ positions in
15 its reply brief and, thus, LSW does not agree to Plaintiffs’ filing of a surreply. I
16 informed Mr. Fleming that Plaintiffs would file an *ex parte* application that same
17 day, April 11, 2013, seeking leave to file their proposed surreply.

18 3. Plaintiffs will be irreparably harmed if their motion for leave to file a
19 surreply is heard according to regular noticed motion procedures because that
20 motion likely would not be heard until after the Court issues its ruling on the class
21 notice and special master matters. Under those circumstances, Plaintiffs would not
22 have a fair opportunity to respond to the new arguments and clarify the
23 mischaracterizations asserted by LSW in its Reply. Since these arguments and

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28 ///

1 misstatements were first raised in LSW's Reply, Plaintiffs could not have
2 addressed these issues in their opposition papers.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this 11th day of April, 2013 at San Francisco, California.

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6 By: /s/ Jeanette T. Barzelay
7 Jeanette T. Barzelay
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