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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

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

Plaintiffs,

vs.

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

Defendant.

Case No.: CV 10-9198-JVS(RNBx)

RESPONSE TO PLAINTIFFS' "EVIDENTIARY  
OBJECTIONS" TO SHOW CAUSE  
SUBMISSION

Judge: Hon. James V. Selna  
Date: May 20, 2013  
Time: 1:30 P.M.  
Courtroom: 10C

1 Defendant Life Insurance Company of the Southwest (“LSW”) hereby  
2 responds to Plaintiffs’ Evidentiary Objections to the Declaration of Timothy Perla  
3 and the Declaration of Caitlin Monahan, Docket Nos. 436-437 (the “New Filings”).

4 **I. ARGUMENT**

5 The Court should disregard Plaintiffs’ New Filings for three reasons. *First*,  
6 Plaintiffs’ latest papers are, in substance, just more advocacy, which is improper  
7 because the Court made clear that there would be “no replies.” Dkt. 417 at 3. Each  
8 of the New Filings begins with a lengthy substantive argument before one even  
9 reaches the charts that purport to contain “objections.” The charts themselves also  
10 go well beyond offering objections (*i.e.*, a few words or a rule citation), but instead  
11 include lengthy substantive argument about interpreting disputed evidence. The  
12 papers are, in effect, improper reply briefs.

13 *Second*, the rules do not permit evidentiary objections at this stage. *Compare*  
14 L.R. 16-6.3 (rule provides for objections “in the Final Pretrial Conference Order,”  
15 but not before). Indeed, this Court has already held that evidence presented on  
16 “class certification need not be admissible at trial.” Dkt. 353 at 13.

17 *Third*, Plaintiffs have violated the local rules in making their objections. They  
18 did not meet and confer with LSW. L.R. 7-3; *cf.* L.R. 16-2.6 (in connection with  
19 trial, parties must “attempt to resolve any objections to the admission of testimony,  
20 documents, or other evidence”). They did not properly notice their objections. L.R.  
21 7-4. They did not give LSW an opportunity to respond. L.R. 7-9. And they did not  
22 give the Court time to consider the objections. L.R. 6-1.

23 Alternately, if the Court does consider Plaintiffs’ objections on their merits,  
24 the objections should be overruled. Plaintiffs’ “relevance” and “completeness”  
25 objections to each exhibit to the Monahan Declaration are misplaced. Dkt. 436 at  
26 1-14. Plaintiffs argue that each exhibit is irrelevant or incomplete because other

1 documents in the policyholder files (*e.g.*, Agent’s Reports) might be sufficient to  
2 determine illustration receipt. *Id.* But not all policyholder files with confusing  
3 documents like the Monahan exhibits—or other conflicting or ambiguous  
4 evidence—will contain Agent’s Reports. And, even where a particular file does  
5 have one or two documents that Plaintiffs contend would be sufficient to adjudicate  
6 illustration receipt, one needs to review the file as a whole in order to find and  
7 interpret them. The Monahan exhibits are relevant precisely because they are  
8 examples of instances in which a reviewer could be confused or slowed down, which  
9 further highlights why the exercise requires an unmanageable individualized inquiry  
10 that is inconsistent with predominance and superiority requirements.

11 Plaintiffs’ objections to the Perla Declaration are similarly unavailing.  
12 Plaintiffs assert that neither (i) a checked box on the policy application nor (ii) an  
13 agent’s failure to list an illustration in the Agent’s Report proves a lack of illustration  
14 receipt. Dkt. 437 at 2-3. Therefore, Plaintiffs conclude, evidence that the box was  
15 checked or that an illustration was not listed in the Agent’s Report is both irrelevant  
16 and misleading. *Id.* at 3-4. But evidence can be *relevant* and *probative*, even if  
17 standing alone it doesn’t *prove* a disputed fact.<sup>1</sup> The checked-box and  
18 Agent’s-Report evidence cited in the Perla Declaration tend to suggest a lack of  
19 illustration receipt. For instance, the Agent’s Report instructs the agent to list  
20 materials used, including illustrations—so, the failure to list an illustration in  
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24 <sup>1</sup> See *Highland Capital Mgmt., L.P. v. Schneider*, 551 F. Supp. 2d 173, 193 (S.D.N.Y.  
25 2008) (“Evidence to be relevant does not by itself have to prove the ultimate proposition  
26 for which it is offered ... It is enough that the evidence has a tendency to make a  
consequential fact even the least bit more probable or less probable[.]”) (quoting Fed. R.  
Evid. 401 cmt.).

1 response is plainly probative and relevant. LSW would be entitled to have that  
2 evidence admitted and to argue those inferences to the special master and a jury.

3 If anything, the very fact that there are detailed evidentiary disputes about the  
4 contents of policy files shows that their review cannot appropriately be outsourced  
5 to a vendor.

6 **II. CONCLUSION**

7 Plaintiffs' objections should be disregarded or, in the alternative, overruled.

8 Dated: May 9, 2013 /s/ Jonathan A. Shapiro  
9 Jonathan A. Shapiro

**CERTIFICATE 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, Massachusetts 02114. On May 9, 2013 I served the within document(s):

**RESPONSE TO EVIDENTIARY OBJECTIONS**

I electronically filed the document(s) listed above via the CM/ECF system.

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