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18 Company of the Southwest

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 SOUTHERN DIVISION

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

26 Plaintiffs,

27 v.

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

Defendant.

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

**ANSWER AND AFFIRMATIVE
DEFENSES TO SECOND AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

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

Defendant, LIFE INSURANCE COMPANY OF THE SOUTHWEST

("LSW"), by its attorneys, answers the Second Amended Class Action Complaint

("Complaint") as follows. LSW denies each and every allegation not specifically

1 admitted, and in every respect denies liability, denies that it engaged in any
2 improper conduct and denies that Plaintiffs are entitled to relief. In addition, no
3 response is required to the many allegations of the Complaint that form the basis of
4 conduct that this Court has ruled inactionable by its Orders dated May 5, 2011 and
5 October 20, 2011, or by the Court's earlier orders in the related putative class
6 action against LSW, *Krall v. Life Insurance Co. of the Southwest*, 09-1043
7 JVS(RNBx).

10 All allegations contained in headings, or otherwise outside of numbered
11 paragraphs, are also denied to the extent response to them is required. LSW
12 responds to the specifically numbered allegations of the Complaint as follows:

14 1. Paragraph 1 contains a summary of the action and legal conclusions to
15 which no response is required. To the extent a response is required, LSW admits
16 that it issues indexed universal life insurance policies, including the SecurePlus
17 Provider policy and the SecurePlus Paragon policy, to individuals in California,
18 and otherwise denies each and every allegation contained in Paragraph 1.

21 2. LSW admits that SecurePlus Provider and SecurePlus Paragon are
22 equity-indexed universal life insurance policies, the terms of which are set forth in
23 contracts that speak for themselves. LSW denies that Paragraph 2 completely and
24 accurately construes and characterizes the policy terms. LSW lacks knowledge or
25 information sufficient to form a belief as to the truth of the remaining allegations
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1 contained in Paragraph 2, which refer to unspecified, generalized insurance
2 products. To the extent a further response is required, LSW denies the allegations
3 contained in Paragraph 2.
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5 3. LSW lacks knowledge or information sufficient to form a belief as to
6 what particular “illustrations” Paragraph 3 refers to, and on that basis denies the
7 allegations that contain or relate to such terms. LSW otherwise denies each and
8 every allegation contained in Paragraph 3.
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10 4. LSW lacks knowledge or information sufficient to form a belief as to
11 what particular “illustration” Paragraph 4 refers to, and on that basis denies the
12 allegations that contain or relate to such terms. No response is required to the
13 allegations contained in Paragraph 4 that purport to quote from and summarize an
14 illustration, the terms of which speak for themselves. To the extent a response to
15 these allegations is required, LSW denies that Paragraph 4 completely and
16 accurately construes and characterizes the illustration. LSW otherwise denies each
17 and every allegation contained in Paragraph 4.
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21 5. LSW lacks knowledge or information sufficient to form a belief as to
22 what particular “illustration” and “illustrations” Paragraph 5 refers to, and on that
23 basis denies the allegations that contain or relate to such terms. LSW lacks
24 knowledge or information sufficient to form a belief as to what any particular
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1 plaintiff may have subjectively believed. LSW otherwise denies each and every
2 one of the allegations contained in Paragraph 5, including footnote 1.

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4 6. LSW lacks knowledge or information sufficient to form a belief as to
5 what particular “illustration” and “illustrations” Paragraph 6 refers to, and on that
6 basis denies the allegations that contain or relate to such terms. LSW lacks
7 knowledge or information sufficient to form a belief as to what any particular
8 plaintiff is subjectively “informed” about or “believes.” LSW otherwise denies
9 each and every allegation contained in Paragraph 6.
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12 7. LSW lacks knowledge or information sufficient to form a belief as to
13 what particular “illustrations” Paragraph 7 refers to, and on that basis denies the
14 allegations that contain or relate to such terms. LSW admits the existence of
15 SecurePlus policies, the terms of which speak for themselves. To the extent a
16 response to these allegations is required, LSW denies that Paragraph 7 completely
17 and accurately construes and characterizes the policy terms. Further answering,
18 LSW denies the allegations contained in Paragraph 7 for the additional reason that
19 they disregard the individualized nature of policy values and performance, which
20 depend on such varied factors as the amount and timing of premium payments, the
21 performance of relevant indices, and the particular terms of the policies purchased.
22 LSW otherwise denies each and every allegation contained in Paragraph 7.
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1 8. LSW lacks knowledge or information sufficient to form a belief as to
2 what particular “illustration” Paragraph 8 refers to, and on that basis denies the
3 allegations that contain or relate to such terms. LSW lacks knowledge or
4 information sufficient to form a belief as to what any particular plaintiff is
5 subjectively “informed” about or “believes” or may have subjectively expected.
6 LSW otherwise denies each and every allegation contained in Paragraph 8.
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9 9. LSW denies each and every allegation contained in Paragraph 9.

10 10. LSW lacks knowledge or information sufficient to form a belief as to
11 what particular “illustrations” Paragraph 10 refers to, and on that basis denies the
12 allegations that contain or relate to such terms. Further answering, LSW denies the
13 allegations contained in Paragraph 10 to the extent they purport to summarize the
14 terms of an insurance policy, the terms of which are set forth in contracts that
15 speak for themselves. LSW otherwise denies each and every allegation contained
16 in Paragraph 10.
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18 11. LSW lacks knowledge or information sufficient to form a belief as to
19 what is “meaningful” to a prospective policyholder, and on that basis denies the
20 allegations contained in Paragraph 11 that contain or relate to such terms. LSW
21 otherwise denies each and every allegation contained in Paragraph 11.
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23 12. LSW denies each and every allegation contained in Paragraph 12.
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1 13. LSW lacks knowledge or information sufficient to form a belief as to
2 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
3 admits that it no longer sells Paragon policies. LSW otherwise denies each and
4 every allegation contained in Paragraph 13.
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6 14. LSW admits that Joyce Walker’s October 3, 2007 illustration depicts
7 Current Basis B values that, based on the underwriting and other disclosed
8 assumptions, show a cash surrender value of \$1,311,622 if such a policy were to
9 remain in force until policy year 51. LSW otherwise denies each and every
10 allegation contained in Paragraph 14.
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12 15. LSW admits that Kim Howlett’s July 27, 2007 illustration depicts
13 Current Basis B values that, based on the underwriting and other disclosed
14 assumptions, show a cash surrender value of \$159,495 if such a policy were to
15 remain in force until policy year 36. LSW otherwise denies each and every
16 allegation contained in Paragraph 15.
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18 16. LSW admits that Muriel Spooner’s July 27, 2007 illustration depicts
19 Current Basis B values that, based on the underwriting and other disclosed
20 assumptions, show a cash surrender value of \$114,165 if such a policy were to
21 remain in force until policy year 36. LSW otherwise denies each and every
22 allegation contained in Paragraph 16.
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1 17. Paragraph 17 purports to quote a portion of a document, which speaks
2 for itself. LSW otherwise denies each and every allegation contained in Paragraph
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4 17.

5 18. LSW lacks knowledge or information sufficient to form a belief as to
6 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
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8 also lacks knowledge or information sufficient to form a belief as to what
9 particular “illustrations” Paragraph 18 refers to, and on that basis denies the
10 allegations that contain or relate to such terms. Paragraph 18 also purports to quote
11 and/or characterize documents, which speak for themselves. LSW otherwise
12 denies each and every allegation contained in Paragraph 18.
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14 19. LSW lacks knowledge or information sufficient to form a belief as to
15 what particular “illustration” and “illustrations” Paragraph 19 refers to, and on that
16 basis denies the allegations that contain or relate to such terms. LSW otherwise
17 denies each and every allegation contained in Paragraph 19.
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19 20. LSW lacks knowledge or information sufficient to form a belief as to
20 what particular “illustrations” Paragraph 20 refers to, and on that basis denies the
21 allegations that contain or relate to such terms. LSW admits that Ms. Walker has
22 made total premium payments of \$224,000, that Mr. Howlett has made total
23 premium payments of \$105,750, and that Ms. Spooner has made total premium
24 payments of \$59,500. LSW lacks knowledge or information sufficient to form a
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1 belief as to what any particular plaintiff may have subjectively relied upon. LSW
2 otherwise denies each and every allegation contained in Paragraph 20.

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4 21. LSW lacks knowledge or information sufficient to form a belief as to
5 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
6 otherwise denies each and every allegation contained in Paragraph 21.

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8 22. LSW denies each and every allegation contained in Paragraph 22.

9 23. Paragraph 23 contains legal conclusions, to which no response is
10 required. LSW otherwise denies allegations contained in Paragraph 23, including
11 that this action is maintainable as a class action as set forth in Paragraph 23 or
12 otherwise.

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14 24. Paragraph 24 contains legal conclusions to which no response is
15 required. To the extent that a response is required, LSW admits that LSW
16 transacts business in this district, and otherwise denies each and every allegation
17 contained in Paragraph 24.

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19 25. LSW lacks information or knowledge sufficient to form a belief about
20 the truth of the allegations contained in Paragraph 25. To the extent a further
21 response is required, LSW denies each and every allegation contained in Paragraph
22 25.

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25 26. LSW lacks information or knowledge sufficient to form a belief about
26 the truth of the allegations contained in Paragraph 26. To the extent a further
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1 response is required, LSW denies each and every allegation contained in Paragraph
2 26.

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4 27. LSW lacks information or knowledge sufficient to form a belief about
5 the truth of the allegations contained in Paragraph 27. To the extent a further
6 response is required, LSW denies each and every allegation contained in Paragraph
7 27.

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9 28. LSW admits the allegations contained in Paragraph 28.

10 29. LSW lacks knowledge or information sufficient to form a belief as to
11 the truth of the allegation contained in Paragraph 29 that Plaintiffs are “currently
12 unaware of the identities of Does 1 through 50, who were the agents of LSW.”
13 LSW further states that Plaintiffs have disregarded the Court’s rules by purporting
14 to sue unidentified persons who have not been served with notice of any such
15 claims against them, nor been provided an opportunity to defend such claims.
16 LSW otherwise denies each and every allegation contained in Paragraph 29.

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19 30. LSW lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations contained in Paragraph 30 as to what any particular
21 plaintiff is subjectively “informed” about or “believes.” LSW admits that it has
22 been an issuer of life insurance policies, including indexed or equity-indexed
23 universal life insurance policies since the times that Plaintiffs purchased the
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1 policies issued by LSW at issue in this litigation. LSW otherwise denies each and
2 every allegation contained in Paragraph 30.

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4 31. LSW lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 31, which are based on vague
6 and unsupported generalizations about “life insurance generally.” To the extent a
7 further response is required, LSW denies each and every allegation contained in
8 Paragraph 31.

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10 32. LSW lacks knowledge or information sufficient to form a belief as to
11 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
12 admits that it has issued certain equity-indexed universal life insurance policies,
13 including SecurePlus Provider and SecurePlus Paragon, the terms of which are set
14 forth in contracts which speak for themselves. To the extent a response to these
15 allegations is required, LSW denies that Paragraph 32 completely and accurately
16 construes and characterizes the policy terms and the individualized circumstances
17 of policyholders. LSW otherwise denies each and every allegation contained in
18 Paragraph 32.

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20 33. LSW lacks knowledge or information sufficient to form a belief as to
21 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
22 admits that it has issued certain equity-indexed universal life insurance policies,
23 including SecurePlus Provider and SecurePlus Paragon, to policyholders in the
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1 State of California. LSW otherwise denies each and every allegation contained in
2 Paragraph 33.

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4 34. LSW lacks knowledge or information sufficient to form a belief as to
5 what particular “illustration” Paragraph 34 refers to, and on that basis denies the
6 allegations that contain or relate to such terms. LSW denies each and every
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8 allegation contained in Paragraph 34.

9 35. LSW lacks knowledge or information sufficient to form a belief as to
10 what particular “illustration” and “illustrations” Paragraph 35 refers to, and on that
11 basis denies the allegations that contain or relate to such terms. LSW admits that
12 certain charges, expenses and/or fees have been collected in accordance with the
13 terms of the policies, which speak for themselves. LSW otherwise denies each and
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15 every allegation contained in Paragraph 35, including all subparts.

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17 36. LSW lacks knowledge or information sufficient to form a belief as to
18 what particular “illustration” and “illustrations” Paragraph 36 refers to, and on that
19 basis denies the allegations that contain or relate to such terms. LSW lacks
20 knowledge or information sufficient to form a belief as to what any particular
21 plaintiff may have subjectively assumed or expected. LSW otherwise denies each
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23 and every allegation contained in Paragraph 36.

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25 37. LSW denies each and every allegation contained in Paragraph 37.
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1 38. LSW lacks knowledge or information sufficient to form a belief as to
2 what particular “illustration” and “illustrations” Paragraph 38 refers to, and on that
3 basis denies the allegations that contain or relate to such terms. LSW lacks
4 knowledge or information sufficient to form a belief as to what any particular
5 plaintiff may have subjectively expected. LSW admits the existence of SecurePlus
6 policies, and admits that certain charges, expenses and/or fees have been collected
7 in accordance with the terms of those policies, which speak for themselves. LSW
8 denies that Paragraph 38 completely and accurately construes and characterizes the
9 policy terms. LSW otherwise denies each and every allegation contained in
10 Paragraph 38, including all subparts.
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14 39. LSW lacks knowledge or information sufficient to form a belief as to
15 what particular “illustration” Paragraph 39 refers to, and on that basis denies the
16 allegations that contain or relate to such terms. LSW lacks knowledge or
17 information sufficient to form a belief as to what any particular plaintiff may have
18 subjectively expected. LSW otherwise denies each and every allegation contained
19 in Paragraph 39.
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23 40. LSW lacks knowledge or information sufficient to form a belief as to
24 what particular “illustration” and “illustrations” Paragraph 33 refers to, and on that
25 basis denies the allegations that contain or relate to such terms. LSW denies each
26 and every allegation contained in Paragraph 40.
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1 41. LSW lacks knowledge or information sufficient to form a belief as to
2 what particular “illustration” Paragraph 41 refers to, and on that basis denies the
3 allegations that contain or relate to such terms. LSW admits that policy costs,
4 including cost of insurance charges, are deducted from accumulated policy values
5 in accordance with the terms of the policies, which speak for themselves. LSW
6 otherwise denies each and every allegation contained in Paragraph 41.
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9 42. LSW denies each and every allegation contained in Paragraph 42.

10 43. LSW lacks knowledge or information sufficient to form a belief as to
11 what particular “illustrations” Paragraph 43 refers to, and on that basis denies the
12 allegations that contain or relate to such terms. LSW lacks knowledge or
13 information sufficient to form a belief as to what any particular plaintiff may have
14 subjectively expected. LSW admits that annual rates of return will vary between
15 zero and the market cap and will depend on market performance. LSW further
16 admits that, as a general principle, cost of insurance deductions are higher if the
17 accumulated value is lower. LSW admits that Plaintiffs claim to have received
18 illustrations, and that each individualized illustration contains a statement of the
19 number of years that a policy will remain in force on a guaranteed basis, subject to
20 the assumptions and other disclosures set forth therein. No response is required to
21 the allegations contained in Paragraph 43 that purport to quote from and
22 summarize illustrations, the terms of which speak for themselves. To the extent a
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1 response to these allegations is required, LSW denies that Paragraph 36 completely
2 and accurately construes and characterizes the illustrations. LSW otherwise denies
3 each and every allegation contained in Paragraph 43.
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5 44. LSW lacks knowledge or information sufficient to form a belief as to
6 what any particular plaintiff may have subjectively believed. LSW admits that it is
7 possible that certain simulations could reflect a variety of patterns of hypothetical
8 S&P 500 returns. LSW otherwise denies each and every allegation contained in
9 Paragraph 44.
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11 45. LSW lacks knowledge or information sufficient to form a belief as to
12 what particular “illustration” and “illustrations” Paragraph 45 refers to, and on that
13 basis denies the allegations that contain or relate to such terms. No response is
14 required to the allegations contained in Paragraph 45 that contain legal
15 conclusions. LSW otherwise denies each and every allegation contained in
16 Paragraph 45.
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18 46. LSW lacks knowledge or information sufficient to form a belief as to
19 what particular “illustrations” Paragraph 46 refers to, and on that basis denies the
20 allegations that contain or relate to such terms. No response is required to the
21 allegations contained in Paragraph 46 that purport to summarize certain
22 illustrations, the terms of which speak for themselves, or to summarize the policies,
23 which function according to their terms and speak for themselves. To the extent a
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1 response to these allegations is required, LSW denies that Paragraph 46 completely
2 and accurately construes and characterizes the polices or the illustrations, and
3 denies that the allegations contained in Paragraph 46 for the additional reason that
4 they disregard the individualized nature of policyholders' circumstances. LSW
5 otherwise denies each and every allegation contained in Paragraph 46.
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8 47. LSW lacks knowledge or information sufficient to form a belief as to
9 what any particular plaintiff is subjectively "informed" about or "believes." To the
10 extent the allegations contained in Paragraph 47 concern hypothetical
11 circumstances that rely on a number of unknown factors, such as the performance
12 of the S&P, the date of Mr. Howlett's retirement, the payment of premiums, and
13 the amount of any loans, LSW denies each and every allegation contained in
14 Paragraph 47. LSW otherwise denies each and every allegation contained in
15 Paragraph 47, including the allegations contained in footnote 2.
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18 48. LSW lacks knowledge or information sufficient to form a belief as to
19 what particular "illustration" Paragraph 48 refers to, and on that basis denies the
20 allegations that contain or relate to such terms. LSW lacks knowledge or
21 information sufficient to form a belief as to what any particular plaintiff may have
22 subjectively expected or understood. LSW otherwise denies each and every
23 allegation contained in Paragraph 48.
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1 49. LSW denies each and every allegation contained in Paragraph 49 and
2 incorporates its answers to Paragraph 9-18, above.

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4 50. LSW lacks knowledge or information sufficient to form a belief as to
5 what particular “illustration” and “illustrations” Paragraph 50 refers to, and on that
6 basis denies the allegations that contain or relate to such terms. LSW lacks
7 knowledge or information sufficient to form a belief as to what any particular
8 plaintiff may have subjectively believed. Insofar as the allegations contained in
9 footnote 3 purport to characterize the Complaint, no response is required. To the
10 extent a response is required, LSW denies the allegations contained in footnote 3
11 and otherwise denies each and every allegation contained in Paragraph 50.
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14 51. LSW lacks knowledge or information sufficient to form a belief as to
15 what particular “illustration” Paragraph 51 refers to, and on that basis denies the
16 allegations that contain or relate to such terms. LSW lacks knowledge or
17 information sufficient to form a belief as to what any particular plaintiff may have
18 subjectively believed or expected, or why Mr. Howlett did not surrender his policy.
19 LSW otherwise denies each and every allegation contained in Paragraph 51.
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22 52. LSW lacks knowledge or information sufficient to form a belief as to
23 what particular “illustrations” Paragraph 52 refers to, and on that basis denies the
24 allegations that contain or relate to such terms. LSW lacks knowledge or
25 information sufficient to form a belief as to what any particular plaintiff is
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1 subjectively “informed” about or “believes.” LSW otherwise denies each and
2 every allegation contained in Paragraph 52.

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4 53. LSW lacks knowledge or information sufficient to form a belief as to
5 what particular “illustration” Paragraph 53 refers to, and on that basis denies the
6 allegations that contain or relate to such terms. LSW admits the allegations
7 contained in the second sentence of Paragraph 53. Further answering, LSW lacks
8 knowledge and information sufficient to form a belief as to the idiosyncratic
9 decisions that putative class members make to acquire policies on the basis of their
10 individualized circumstances. LSW otherwise denies each and every allegation
11 contained in Paragraph 53.
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14 54. LSW denies each and every allegation contained in Paragraph 54.

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16 55. LSW lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegations concerning what was presented to Ms. Walker or what
18 her intentions were upon or prior to the purchase of her contract. No response is
19 required to the allegations contained in Paragraph 55 that purport to summarize the
20 terms of a life insurance policy, a copy of which the Complaint purports to attach
21 as Exhibit B, and the terms of which speak for themselves. To the extent a
22 response to these allegations is required, LSW denies that Paragraph 55 completely
23 and accurately construes and characterizes the contract’s terms. The Complaint
24 also purports to attach as Exhibit A a copy of an illustration purportedly shown to
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1 Ms. Walker. LSW admits the allegations contained in footnote 4, that Ms. Walker
2 purchased a life insurance policy with a policy number of LS0156670 and an
3 effective date of December 27, 2007, with an initial premium of \$112,637, and that
4 the terms of the policy are set forth in the contract, which speaks for itself. LSW
5 otherwise denies each and every allegation contained in Paragraph 55.
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8 56. LSW denies each and every allegation contained in Paragraph 56 and
9 incorporates its answers to Paragraph 30-54, above.

10 57. LSW lacks knowledge or information sufficient to form a belief as to
11 what any particular plaintiff is subjectively “informed” about or “believes,” or as to
12 the truth of the allegations contained in Paragraph 57 regarding the nature and
13 extent of Ms. Walker’s expertise, trust, expectations, understanding, knowledge of,
14 or familiarity with insurance and other matters. LSW admits that the policy is
15 governed by and subject to the contract, the terms of which speak for themselves.
16 LSW denies that Paragraph 57 completely and accurately construes and
17 characterizes the contract’s terms. LSW otherwise denies each and every
18 allegation contained in Paragraph 57.
19

20 58. LSW admits that Ms. Walker made two periodic payments of
21 \$112,000 each; that LSW denied her request for a refund of premiums; that Ms.
22 Walker surrendered her policy at a time when its accumulated cash value was
23 \$197,647.21, resulting in a payment to her of \$142,633.79 upon surrender,
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1 pursuant to the contract's terms, which speak for themselves. LSW otherwise
2 denies each and every allegation contained in Paragraph 58.

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4 59. LSW lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations contained in Paragraph 59 regarding Ms. Walker's
6 subjective state of mind. LSW otherwise denies each and every allegation
7 contained in Paragraph 59, and incorporates its answers to Paragraph 30-54, above.

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9 60. LSW lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations concerning what was presented to Mr. Howlett or what
11 his intentions were upon or prior to the purchase of his contract. No response is
12 required to the allegations contained in Paragraph 60 that purport to summarize the
13 terms of a life insurance policy, a copy of which the Complaint purports to attach
14 as Exhibit D, and the terms of which speak for themselves. To the extent a
15 response to these allegations is required, LSW denies that Paragraph 60 completely
16 and accurately construes and characterizes the contract's terms. The Complaint
17 also purports to attach as Exhibit C a copy of an illustration purportedly shown to
18 Mr. Howlett. LSW admits that Mr. Howlett purchased a life insurance policy with
19 a policy number of LS0149017 and an effective date of September 26, 2007, with
20 an initial premium of \$105,750, and that the terms of the policy are set forth in the
21 contract, which speaks for itself. LSW otherwise denies each and every allegation
22 contained in Paragraph 60.
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1 61. LSW denies each and every allegation contained in Paragraph 61 and
2 incorporates its answers to Paragraph 30-54, above.

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4 62. LSW lacks knowledge or information sufficient to form a belief as to
5 what any particular plaintiff is subjectively “informed” about or “believes,” or as to
6 the truth of the allegations contained in Paragraph 62 regarding the nature and
7 extent of Mr. Howlett’s expertise, trust, expectations, understanding, knowledge
8 of, or familiarity with insurance and other matters. LSW admits that the policy is
9 governed by and subject to the contract, the terms of which speak for themselves.
10 LSW denies that Paragraph 62 completely and accurately construes and
11 characterizes the contract’s terms. LSW otherwise denies each and every
12 allegation contained in Paragraph 62.

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14 63. LSW lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations contained in Paragraph 63 regarding Mr. Howlett’s
16 subjective state of mind. LSW admits that Mr. Howlett made one periodic
17 payment of \$105,750; that LSW denied his request for a refund of premium
18 because one was not due in accordance with the terms of his policy (which speaks
19 for itself); and that Mr. Howlett has not surrendered his policy. LSW otherwise
20 denies each and every allegation contained in Paragraph 63.

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22 64. LSW lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations contained in Paragraph 64 regarding Mr. Howlett’s
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1 subjective state of mind. LSW otherwise denies each and every allegation
2 contained in Paragraph 64, and incorporates its answers to Paragraph 30-54, above.

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4 65. LSW lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations concerning what was presented to Ms. Spooner or what
6 her intentions were upon or prior to the purchase of her contract. No response is
7 required to the allegations contained in Paragraph 65 that purport to summarize the
8 terms of a life insurance policy, a copy of which the Complaint purports to attach
9 as Exhibit F, and the terms of which speak for themselves. To the extent a
10 response to these allegations is required, LSW denies that Paragraph 65 completely
11 and accurately construes and characterizes the contract's terms. The Complaint
12 also purports to attach as Exhibit E a copy of an illustration shown to Ms. Spooner.
13 LSW admits that Ms. Spooner purchased a life insurance policy with a policy
14 number of LS0149018 and an effective date of October 5, 2007, with an initial
15 premium of \$59,500, and that the terms of the policy are set forth in the contract,
16 which speaks for itself. LSW otherwise denies each and every allegation contained
17 in Paragraph 65.
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22 66. LSW denies each and every allegation contained in Paragraph 66 and
23 incorporates its answers to Paragraph 30-54, above.

24 67. LSW lacks knowledge or information sufficient to form a belief as to
25 what any particular plaintiff is subjectively "informed" about or "believes," or as to
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1 the truth of the allegations contained in Paragraph 67 regarding the nature and
2 extent of Ms. Spooner's expertise, trust, expectations, understanding, knowledge
3 of, or familiarity with insurance and other matters. LSW admits that the policy is
4 governed by and subject to the contract, the terms of which speak for themselves.
5 LSW denies that Paragraph 67 completely and accurately construes and
6 characterizes the contract's terms. LSW otherwise denies each and every
7 allegation contained in Paragraph 67.
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10 68. LSW admits that Ms. Spooner made one periodic payment of
11 \$59,500; that LSW denied her request for a refund of premiums; that Ms. Spooner
12 surrendered her policy at a time when its accumulated cash value was \$36,794.45,
13 resulting in a payment to her of \$4,813.17 upon surrender, pursuant to the
14 contract's terms, which speak for themselves. LSW otherwise denies each and
15 every allegation contained in Paragraph 68.
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18 69. LSW lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations contained in Paragraph 69 regarding Ms. Spooner's
20 subjective state of mind. LSW otherwise denies each and every allegation
21 contained in Paragraph 69, and incorporates its answers to Paragraph 30-54, above.
22

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24 70. Paragraph 70 contains legal conclusions to which no response is
25 required. To the extent that a response is required, LSW denies that this action is
26 maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2)
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1 and 23(b)(3), and further denies all allegations that the putative class members are
2 similarly situated.

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4 71. Paragraph 71 contains legal conclusions to which no response is
5 required. To the extent that a response is required, LSW denies that this action is
6 maintainable as a class action as set forth in Paragraph 64 or otherwise.

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8 72. Paragraph 72 contains legal conclusions to which no response is
9 required. To the extent that a response is required, LSW denies that this action is
10 maintainable as a class action as set forth in Paragraph 72 or otherwise.

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12 73. Paragraph 73 contains legal conclusions to which no response is
13 required. To the extent that a response is required, LSW denies the allegations
14 contained in Paragraph 73, including that this action is maintainable as a class
15 action as set forth in Paragraph 73 or otherwise.

16
17 74. LSW lacks knowledge or information sufficient to form a belief as to
18 what any particular plaintiff is subjectively “informed” about or “believes.”
19 Paragraph 74 contains legal conclusions to which no response is required. To the
20 extent that a response is required, LSW denies the allegations in Paragraph 74,
21 including that this action is maintainable as a class action as set forth in Paragraph
22 74 or otherwise.

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25 75. LSW lacks knowledge or information sufficient to form a belief as to
26 what particular “illustrations” Paragraph 75 refers to, and on that basis denies the
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1 allegations that contain or relate to such terms. Paragraph 75 contains legal
2 conclusions to which no response is required. To the extent that a response is
3 required, LSW denies the allegations contained in Paragraph 75, including all
4 subparts, including the allegation that this action is maintainable as a class action
5 as set forth in Paragraph 75 or otherwise.
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8 76. Paragraph 76 contains legal conclusions to which no response is
9 required. To the extent that a response is required, LSW denies the allegations
10 contained in Paragraph 76.
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12 77. LSW lacks knowledge or information sufficient to form a belief as to
13 the allegations contained in the last sentence of Paragraph 77. The balance of
14 Paragraph 77 contains legal conclusions to which no response is required. To the
15 extent that a response is required, LSW denies the allegations contained in
16 Paragraph 77, including that this action is maintainable as a class action as set forth
17 in Paragraph 77 or otherwise.
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20 78. Paragraph 78 contains legal conclusions to which no response is
21 required. To the extent that a response is required, LSW denies the allegations
22 contained in Paragraph 78, including all subparts, including the allegation that this
23 action is maintainable as a class action as set forth in Paragraph 78 or otherwise.
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25 79. LSW incorporates by reference its responses to the Paragraphs 1
26 through 69 as if set forth fully herein. To the extent a further response is required,
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1 LSW denies each and every allegation as set forth in its responses to the
2 Paragraphs 1 through 69 above.
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4 80. LSW lacks knowledge or information sufficient to form a belief as to
5 what particular “illustration” and “illustrations” Paragraph 80 refers to, and on that
6 basis denies the allegations that contain or relate to such terms. LSW lacks
7 knowledge or information sufficient to form a belief as to what any particular
8 plaintiff may have subjectively expected or assumed. Further answering,
9 Paragraph 80, including all subparts, contains legal conclusions, to which no
10 response is required, and purports to summarize various legal provisions in the
11 California Insurance Code, which speaks for itself. LSW denies that Paragraph 80,
12 including all subparts, completely and accurately construes and characterizes the
13 California Insurance Code’s provisions. To the extent any further response is
14 required, LSW denies all allegations contained in Paragraph 80, including all
15 subparts.
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20 81. LSW lacks knowledge or information sufficient to form a belief as to
21 what particular “illustrations” Paragraph 81 refers to, and on that basis denies the
22 allegations that contain or relate to such terms. LSW denies each and every
23 allegation contained in Paragraph 81, including all subparts.
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1 82. LSW lacks knowledge or information sufficient to form a belief as to
2 what any particular plaintiff may have subjectively considered important. LSW
3 otherwise denies each and every allegation contained in Paragraph 82.
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5 83. LSW lacks knowledge or information sufficient to form a belief as to
6 what any particular plaintiff is subjectively “informed” about or “believes” or may
7 have subjectively relied on. LSW otherwise denies each and every allegation
8 contained in Paragraph 83.
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10 84. LSW denies each and every allegation contained in Paragraph 84,
11 including all subparts.
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13 85. LSW denies each and every allegation contained in Paragraph 85.
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15 86. LSW lacks knowledge or information sufficient to form a belief as to
16 what any particular plaintiff is subjectively “informed” about or “believes.” LSW
17 denies each and every allegation contained in Paragraph 86.
18

19 87. LSW incorporates by reference its responses to the Paragraphs 1
20 through 69 as if set forth fully herein. To the extent a further response is required,
21 LSW denies each and every allegation as set forth in its responses to the
22 Paragraphs 1 through 69 above.
23

24 88. Paragraph 88 purports to summarize various legal provisions in the
25 California Business & Professions Code, which speaks for itself. LSW denies that
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1 Paragraph 88 completely and accurately construes and characterizes the California
2 Business & Professions Code’s provisions.

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4 89. LSW denies each and every allegation contained in Paragraph 89.

5 90. LSW incorporates by reference its responses to the Paragraphs 1
6 through 69 and 80 through 86 as if set forth fully herein. LSW denies each and
7 every allegation contained in Paragraph 90. Further answering, Paragraph 90
8 purports to summarize various legal provisions in the California Insurance Code,
9 which speaks for itself. LSW denies that Paragraph 90 completely and accurately
10 construes and characterizes the California Insurance Code’s provisions, and
11 otherwise denies the allegations contained in Paragraph 90, including all subparts.
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14 91. LSW incorporates by reference its responses to the Paragraphs 1
15 through 69 and 80 through 86 as if set forth fully herein. LSW lacks knowledge or
16 information sufficient to form a belief as to what particular “illustration” or
17 “illustrations” Paragraph 91 refers to, and on that basis denies the allegations that
18 contain or relate to such terms. LSW lacks knowledge or information sufficient to
19 form a belief as to what any particular plaintiff may have subjectively expected.
20 LSW otherwise denies each and every allegation contained in Paragraph 91,
21 including all subparts.
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25 92. LSW lacks knowledge or information sufficient to form a belief as to
26 what particular “illustration” or “illustrations” Paragraph 92 refers to, and on that
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1 basis denies the allegations that contain or relate to such terms. Paragraph 92 also
2 purports to describe insurance policies and illustrations, the terms of which speak
3 for themselves. LSW denies that Paragraph 92 completely and accurately
4 construes and characterizes the terms of the policies and illustrations. LSW
5 otherwise denies each and every allegation contained in Paragraph 92, including all
6 subparts.
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9 93. LSW denies each and every allegation contained in Paragraph 93,
10 including all subparts.
11

12 94. LSW denies each and every allegation contained in Paragraph 94.
13

14 **AFFIRMATIVE DEFENSES**

15 LSW does not admit that it bears the burden of proving any of the defenses
16 set forth below. LSW does not waive any affirmative defenses and reserves the
17 right to assert any and all affirmative defenses that may be available after
18 reasonable discovery.
19

20 **First Affirmative Defense**

21 This action is barred in whole or in part because Plaintiffs have not suffered
22 any injury or damage, or, in the alternative, that any injury or damage that
23 Plaintiffs claim to have sustained was not caused by LSW.
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Seventh Affirmative Defense

Even assuming that the misrepresentations and omissions alleged in the Complaint were made (which is denied), they were not material and Plaintiffs were not entitled to and did not justifiably rely on them.

Eighth Affirmative Defense

This action is barred in whole or in part by applicable statutes of limitation.

Ninth Affirmative Defense

This action is barred in whole or in part by the doctrines of laches, estoppel, and/or unclean hands.

Tenth Affirmative Defense

This action is barred in whole or in part because of ratification, waiver, release, payment, and/or accord and satisfaction.

Eleventh Affirmative Defense

To the extent that the Complaint asserts claims against LSW on the basis of agency liability for the acts of any employee or purported agent of LSW, those claims are barred because those agents were acting outside of the scope of any agency relationship with LSW.

Twelfth Affirmative Defense

The claims asserted in the Complaint are barred in whole or in part because Defendant did not act with scienter, but instead exercised reasonable due diligence and acted in good faith.

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Thirteenth Affirmative Defense

Plaintiffs failed to mitigate their damages, if any, thus barring or reducing any recovery.

Fourteenth Affirmative Defense

To the extent (and without admitting) that there is any entitlement to recover benefits, such recovery is subject to setoff.

Fifteenth Affirmative Defense

This case is not maintainable as a class action pursuant to Fed. R. Civ. P. 23.

Sixteenth Affirmative Defense

This action is barred in whole or part because of Plaintiffs' assumption of risk.

Seventeenth Affirmative Defense

This action is barred in whole or part because of the contributory negligence, comparative negligence and/or intervening negligence or other conduct by Plaintiffs or those other than LSW.

Eighteenth Affirmative Defense

This action is barred in whole or part because of the statute of frauds.

PROOF OF SERVICE

I am a resident of the State of California, 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, 950 Page Mill Road, Palo Alto, California 94304. On May 7, 2012, I served the within document(s):

ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT AND JURY DEMAND

I placed the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, CA 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.

Executed on May 7, 2012, at Palo Alto, California.

/s/ Jonathan A. Shapiro

Jonathan A. Shapiro