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 Wells Fargo Bank, National Association

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11 Attorneys for Defendants CHRISTINE A.
 DUMAIS, as co-executor of the Estate of Don
 Avery Patton and individually, DOUGLAS M.
 PATTON, as co-executor of the Estate of Don
 Avery Patton and individually

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16	PROTECTIVE LIFE INSURANCE COMPANY,)	
)	Case No. 10-CV-02459-EMC
17	PLAINTIFF;)	
)	STIPULATION AND ORDER OF
18	VS.)	DISMISSAL WITH PREJUDICE,
)	FOR DISCHARGE, AWARD OF
19	CHRISTINE A. DUMAIS, as co-executor of the)	COSTS AND FEES, AND PAYMENT
20	Estate of Don Avery Patton and individually,)	OF INTERPLEADED FUNDS
	DOUGLAS M. PATTON, as co-executor of the)	
21	Estate of Don Avery Patton and individually, and)	
	WELLS FARGO BANK, NATIONAL)	
22	ASSOCIATION,)	
)	
23	DEFENDANTS.)	
)	

24
 25 This Stipulation and Order of Dismissal with Prejudice, for Discharge in Interpleader,
 26 Award of Costs and Fees, and Payment of Interpleaded Funds("Stipulation") is made and entered

Stipulation and Order for Discharge, Award of Costs and Fees, and Payment of Interpleaded Funds
Protective Life Insurance Company v. Christine A. Dumais et al. Case No.: 10-CV-02459
 NY 72871312v6

1 into by plaintiff PROTECTIVE LIFE INSURANCE COMPANY ("PROTECTIVE LIFE"), and
2 defendants CHRISTINE A. DUMAIS, as co-executor of the Estate of Don Avery Patton and
3 individually ("DUMAIS"), DOUGLAS M. PATTON, as co-executor of the Estate of Don Avery
4 Patton and individually ("PATTON"), and WELLS FARGO BANK, NATIONAL ASSOCIATION
5 ("WELLS FARGO") (collectively "Defendants"). By and through their respective attorneys of
6 record, PROTECTIVE LIFE and Defendants hereby stipulate that:

7 1. The Claim for Interpleader was brought by PROTECTIVE LIFE in good faith, and
8 this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. Sections 1332 and 1335.

9 2. On June 3, 2010 PROTECTIVE LIFE deposited with the Court the full amount of
10 benefits, plus interest, \$1,278,531.29, which were due and owing from Don Avery Patton's death
11 and coverage under the policy of life insurance originally issued by the Standard Life Insurance
12 Company and numbered SD0531761 ("the Policy").

13 3. Prior to the date of filing of this action, defendants DUMAIS, PATTON, and
14 WELLS FARGO claimed entitlement to the benefits and interest under the Policy. PROTECTIVE
15 LIFE, and its predecessor in interest, the Standard Life Insurance Company (referred to collectively
16 hereinafter as "PROTECTIVE LIFE"), have claimed and claim no interest in the proceeds due and
17 owing pursuant to Don Avery Patton's death and coverage under the Policy, other than as set forth
18 below.

19 4. WELLS FARGO answered the Complaint and cross-claimed in interpleader
20 claiming sole entitlement to the proceeds of the Policy.

21 5. Defendants DUMAIS, PATTON, and WELLS FARGO hereby release, discharge
22 and acquit PROTECTIVE LIFE, and their representatives, attorneys, agents and employees, of and
23 from any and all liability of any kind or nature whatsoever arising from Don Avery Patton's
24 coverage under the Policy and/or any amounts due and owing or claimed to be due and owing
25

1 thereunder or related to this Complaint, as more fully described in the Complaint on file herein. In
2 this regard, DUMAIS, PATTON and WELLS FARGO hereby expressly waive any and all rights
3 against PROTECTIVE LIFE under Section 1542 of the California Civil Code arising from Don
4 Avery Patton's coverage under the Policy , and/or any amounts due and owing or claimed to be due
5 and owing thereunder, or related to this Complaint as more fully described in the Complaint on file
6 herein. Section 1542 of the California Civil Code reads as follows:

7 "A general release does not extend to claims which the creditor does
8 not know or suspect to exist in his favor at the time of executing the
9 release, which if known by him must have materially affected his
10 settlement with the debtor."

11 6. DUMAIS, PATTON and WELLS FARGO are represented by counsel and have
12 made careful and diligent inquiries and investigations to ascertain the facts relating to the
13 Complaint herein, and this Stipulation. Defendants fully understand that if the stipulated judgment
14 herein proposed is entered by the Court, they will be forever barred and prevented from seeking
15 any further recovery, relief or compensation against or from PROTECTIVE LIFE or by DUMAIS
16 and PATTON against or from WELLS FARGO, either individually or on behalf of any other
17 individual, trust or other entity, relating in any way to the proceeds due and owing related to Don
18 Avery Patton's coverage under the Policy and/or any amounts due and owing or claimed to be due
19 and owing thereunder.

20 7. DUMAIS, PATTON and WELLS FARGO agree to waive all rights to the attorneys'
21 fees and costs they incurred in connection with this action and stipulate that the Court shall award
22 PROTECTIVE LIFE fees and costs in the amount of \$10,000.00 to be paid from the interpleaded
23 funds in full satisfaction of PROTECTIVE LIFE's claims for costs and fees arising out of this
24 action.

1 8. Defendants DUMAIS and PATTON have determined upon review of the file and
2 the Policy and upon advice of legal counsel to disclaim all benefits under the Policy in favor of
3 WELLS FARGO as the named beneficiary under the Policy and defendants DUMAIS, PATTON
4 and WELLS FARGO hereby stipulate that an order and judgment shall issue awarding the entire
5 amount on deposit with the Court to be paid to "WELLS FARGO BANK N.A.", with the exception
6 of \$10,000.00 (ten thousand dollars) to be paid by the Clerk of the Court to PROTECTIVE LIFE
7 care of its counsel of record, representing partial reimbursement to PROTECTIVE LIFE of its
8 attorneys fees and costs incurred in this interpleader action.

9 9. Defendants DUMAIS and PATTON, individually and as Co-Executors of the Estate
10 of Don Avery Patton, and PROTECTIVE LIFE, hereby release, discharge and acquit WELLS
11 FARGO, and each person or entity who may claim an interest in the policy through WELLS
12 FARGO, and each of their respective parents, subsidiaries, affiliates, predecessors, successors,
13 assigns, and beneficiaries, and their respective representatives, attorneys, agents and employees
14 (the "WELLS FARGO RELEASEES"), of and from any and all liability of any kind or nature
15 whatsoever arising from Don Avery Patton's coverage under the Policy and/or any amounts due
16 and owing or claimed to be due and owing thereunder or related to this Complaint, as more fully
17 described in the Complaint on file herein. In this regard, DUMAIS, PATTON and PROTECTIVE
18 LIFE, hereby expressly waive any and all rights against the WELLS FARGO RELEASEES under
19 Section 1542 of the California Civil Code arising from Don Avery Patton's coverage under the
20 Policy, and/or any amounts due and owing or claimed to be due and owing thereunder or related to
21 this Complaint, as more fully described in the Complaint on file herein. Section 1542 of the
22 California Civil Code reads as follows:
23

24 "A general release does not extend to claims which the creditor does
25 not know or suspect to exist in his favor at the time of executing the

1 release, which if known by him must have materially affected his
2 settlement with the debtor.”

3 10. Defendant WELLS FARGO and Plaintiff PROTECTIVE LIFE, hereby release,
4 discharge and acquit DUMAIS AND PATTON, individually and as Co-Executors of the Estate of
5 Don Avery Patton, and their representatives, attorneys, agents and employees, of and from any and
6 all liability of any kind or nature whatsoever arising from Don Avery Patton’s coverage under the
7 Policy and/or any amounts due and owing or claimed to be due and owing thereunder or related to
8 this Complaint, as more fully described in the Complaint on file herein. In this regard, WELLS
9 FARGO and PROTECTIVE LIFE, hereby expressly waive any and all rights against DUMAIS
10 AND PATTON, individually and as Co-Executors of the Estate of Don Avery Patton under Section
11 1542 of the California Civil Code arising from Don Avery Patton’s coverage under the Policy,
12 and/or any amounts due and owing or claimed to be due and owing thereunder or related to this
13 Complaint, as more fully described in the Complaint on file herein. Section 1542 of the California
14 Civil Code reads as follows:

15 “A general release does not extend to claims which the creditor does
16 not know or suspect to exist in his favor at the time of executing the
17 release, which if known by him must have materially affected his
18 settlement with the debtor.”
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11. The Complaint and Cross-Claim in Interpleader are dismissed with prejudice subject to the provisions of this Stipulation and Order.

IT IS SO STIPULATED.

DATED: July __, 2010

GREEN & HUMBERT

By: /s/ C. Mark Humbert
C. Mark Humbert

Attorneys for Plaintiff
Protective Life Insurance Company

STROOCK & STROOCK & LAYAN, LLP

By: Bruce H. Schneider
Bruce H. Schneider (pro hac vice)

Attorneys for Defendant and Cross-Claimant
Wells Fargo Bank, National Association

HOPKINS & CARLEY

Ernest M. Malaspina

By: Ernest M. Malaspina

AUGUST 5, 2010

Attorneys for Defendants CHRISTINE A. DUMAIS, as co-executor of the Estate of Don Avery Patton and individually, DOUGLAS M. PATTON, as co-executor of the Estate of Don Avery Patton and individually

ORDER

IT IS SO ORDERED. Judgment is to be entered in conformance herewith.

DATED: 8/10/10

