



that insurance agents were employees. SFB Life further states that, based upon the size of their book of business, Plaintiffs and other insurance agents were effectively guaranteed compensation in excess of the amount of salary required by 29 C.F.R. § 541.600 to qualify for the executive, administrative, or professional exemptions. Otherwise denied.

3. Denied.

4. SFB Life admits only that Plaintiffs purports to bring claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) on behalf of themselves and others, but SFB Life denies that it has violated the FLSA. SFB Life further denies that Plaintiffs or any other putative members of this collective action have any viable claims against SFB Life, and denies that this action is appropriate for collective treatment or that notice should issue in this cause. Otherwise denied.

#### **SUBJECT-MATTER JURISDICTION AND VENUE<sup>1</sup>**

5. This paragraph contains jurisdictional allegations and legal conclusions and not factual allegations for which admission or denial is required. To the extent this paragraph suggests that SFB Life engaged in any inappropriate conduct or violated the FLSA, those allegations are denied. Further denied that Plaintiffs are appropriate collective action representatives or that the claims in the Complaint are appropriate for collective action treatment under the FLSA.

6. This paragraph contains jurisdictional allegations and legal conclusions and not factual allegations for which admission or denial is required. To the extent a response is

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<sup>1</sup> The section headings in the Complaint are used in this Answer for organization and convenience only and are not to be construed as an admission by SFB Life as to any factual inference contained in the Complaint. Any allegations or inferences contained in the Complaint’s headings are expressly denied. To the extent that Plaintiffs make allegations throughout the Complaint against all of the Defendants together by using the “Texas Farm Bureau” moniker, SFB Life responds to any such allegations throughout this Answer only on behalf of SFB Life. SFB Life refers to the other defendants collectively as the “TFB Defendants.”

required, SFB Life denies that it is located in Waco, McLennan County, Texas, but does not contest venue in this case.

7. SFB Life admits only that it is a defendant in *Ferguson v. Texas Farm Bureau, et al.*, Case No. 6:17-cv-111-ADA, pending in the Western District of Texas and that the *Ferguson* case involves agency managers. To the extent this paragraph suggests that SFB Life engaged in any wrongful conduct or violated the FLSA, those allegations are denied. Otherwise denied.

#### **PARTIES AND PERSONAL JURISDICTION**

8. Admitted that Plaintiff Heather English previously filed her written consent form to join this lawsuit. Without knowledge as to English's current residence; therefore, denied.

9. Admitted that Plaintiff Joe Hawley previously filed his written consent form to join this lawsuit. Without knowledge as to Hawley's current residence; therefore, denied.

10. Admitted upon information and belief that Plaintiff Robin Broussard resides in Beaumont, Jefferson County, Texas and that her written consent to join this action has been previously filed.

11. Admitted that the "Company Information" page of the Texas Farm Bureau Insurance website states: "The Texas Farm Bureau Insurance Companies Include \*Texas Farm Bureau Mutual Insurance Company \* Texas Farm Bureau Underwriters \* Texas Farm Bureau Casualty Insurance Company \* Farm Bureau County Mutual Insurance Company of Texas," followed by a separate hyperlink to SFB Life's website. Further admitted that the TFB Defendants sometimes use letterhead with "Texas Farm Bureau Insurance" that includes SFB Life as a listed insurance company. The remaining allegations are directed towards the TFB Defendants and require no response from SFB Life. Otherwise denied.

12. The allegations in this paragraph are directed towards the TFB Defendants and require no response from SFB Life. Otherwise denied.

13. The allegations in this paragraph are directed towards Defendant Texas Farm Bureau Casualty Insurance Company and require no response from SFB Life. Otherwise denied.

14. The allegations in this paragraph are directed towards Defendant Texas Farm Bureau Mutual Insurance Company and require no response from SFB Life. Otherwise denied.

15. The allegations in this paragraph are directed towards Defendant Texas Farm Bureau Underwriters and require no response from SFB Life. Otherwise denied.

16. The allegations in this paragraph are directed towards Defendant Farm Bureau Mutual Insurance Company of Texas and require no response from SFB Life. Otherwise denied.

17. Admitted only that SFB Life is a Mississippi insurance company that is licensed to offer various life, health and disability insurance related products and services in the state of Texas and may be served with process and has been served with process in this case. Otherwise denied.

**DEFENDANTS FORM A SINGLE ENTERPRISE**

18. Denied.

19. Admitted that SFB Life is engaged in the selling and servicing of life insurance and related products in Texas and that SFB Life's insurance products are sold through a multi-line agency force utilized by the other defendants. Otherwise denied.

20. Admitted that the TFB Defendants sometimes use letterhead with "Texas Farm Bureau Insurance" that includes SFB Life as a listed insurance company. Further admitted that SFB Life is licensed to sell and service various life insurance products in the State of Texas. Otherwise denied.

21. Denied.

22. Admitted only that Russell W. Boening also serves on the Board of Directors of SFB Life. Otherwise denied.

23. Denied.

24. Admitted only that SFB Life is engaged in the selling and servicing of life insurance and related products in Texas and that SFB Life's insurance products are sold through a multi-line agency force utilized by the other Defendants. Specifically denied that SFB Life issued business cards or provided email addresses to insurance agents. Otherwise denied.

25. Denied.

**DEFENDANTS ARE JOINT EMPLOYERS OF PLAINTIFFS**

26. Denied.

27. Denied.

28. Denied. Plaintiffs' Agent Contracts with SFB Life speak for themselves.

29. Denied.

30. Admitted that the TFB Defendants sometimes use letterhead with "Texas Farm Bureau Insurance" that includes SFB Life as a listed insurance company. Otherwise denied.

31. Admitted only that Russell W. Boening also serves on the Board of Directors of SFB Life. Otherwise denied.

32. Denied.

33. SFB Life admits that it pays insurance agents commissions for insurance products sold by insurance agents on behalf of SFB Life. Otherwise denied.

**SPECIFIC EMPLOYMENT ALLEGATIONS**

34. Denied.

35. Admitted only that SFB Life is engaged in the selling and servicing of life insurance and related products in Texas and that SFB Life's insurance products are sold through a multi-line agency force utilized by the other Defendants. Otherwise denied.

36. Denied.

37. Denied.

38. Denied.

39. SFB Life admits that as contracted insurance agents, Plaintiffs and other putative collective action members solicited, sold and serviced life insurance products on behalf of SFB Life pursuant to Agent Contracts. Otherwise denied.

40. The Agent Contracts between SFB Life and Plaintiffs speak for themselves and any allegation to the contrary is expressly denied. Otherwise denied.

41. SFB Life admits that, pursuant to an insurance agent's Agent Contract with SFB Life, both SFB Life and the insurance agent had the right to terminate the Agent Contract, which speaks for itself. Otherwise denied.

42. The Agent Contracts between SFB Life and Plaintiffs speak for themselves and any allegation to the contrary is expressly denied. Otherwise denied.

43. Denied.

#### **FLSA COVERAGE**

44. Admitted only that SFB Life is an "employer" within the meaning of the FLSA, but denied that SFB Life employed the Plaintiffs or any members of the putative class; and further denied that Plaintiffs or any members of the putative class were employees of SFB Life.

45. Denied.

46. Admitted only that SFB Life is responsible for determining its compliance with the FLSA, but denied that SFB Life employed the Plaintiffs, or that Plaintiffs were employees of SFB Life. Otherwise denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

### FACTS

52. Denied.

53. SFB Life admits that it is only licensed to sell and service various life insurance products. Otherwise denied.

54. SFB Life admits that as contracted insurance agents, Plaintiffs and other putative collective action members solicited, sold and serviced life insurance products on behalf of SFB Life. Otherwise denied.

55. Denied.

56. Admitted that Plaintiff Heather English contracted with SFB Life between February 1, 2015 and November 30, 2017. Further admitted that Plaintiff Joe Hawley contracted with SFB Life between November 1, 2011 and July 1, 2016. Further admitted that Plaintiff Robin Broussard has been under contract with SFB Life since November 1, 2004. Specifically denied that SFB Life employed the Plaintiffs. Otherwise denied.

57. Denied.

58. SFB Life denies that it issued business cards to Plaintiffs or other insurance agents. Otherwise denied.

59. Denied.

60. SFB Life denies that it provided Plaintiffs or other putative collective action member SFB Life e-mail addresses or accounts. Otherwise denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. SFB Life admits only that Plaintiffs and other putative collective action members were contracted with SFB Life for varying durations. Otherwise denied.

68. Denied.

69. Denied.

70. Denied.

71. SFB Life states that insurance agents were generally paid commissions and admitted that some new insurance agent participated in limited-time financing plans. SFB Life denies that insurance agents were employees, but SFB Life states that, based upon the size of their book of business, Plaintiffs and other insurance agents were effectively guaranteed compensation in excess of the amount of salary required by 29 C.F.R. § 541.600 to qualify for the executive, administrative, or professional exemptions. Otherwise denied.

72. SFB Life admits that it did not make payroll tax or other withholdings from commissions paid to Plaintiffs or other putative collective action members, but expressly denies that it was required to do so. Otherwise denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied that any of the alleged facts stated in subparts (a) through (r) of paragraph 79 “demonstrate the insurance agents’ status as employees.”

(a) SFB Life admits that, pursuant to an insurance agent’s Agent Contract with SFB Life, both SFB Life and the insurance agent had the right to terminate the Agent Contract, which speaks for itself. Otherwise denied.

(b) Denied.

(c) SFB Life admits only that Plaintiffs and other putative collective action members were contracted with SFB Life for varying durations. Otherwise denied.

(d) Denied.

(e) Denied.

(f) Denied.

(g) Denied.

(h) Denied.

(i) Admitted that SFB Life policyholders made premium payments directly to SFB Life. Otherwise denied.

(j) Denied.

(k) Denied.

(l) Denied.

(m) Denied.

(n) Denied.

(o) Denied.

(p) SFB Life denies that it provided Plaintiffs or other putative collective action members with e-mail addresses or business cards

(q) Denied.

(r) Denied.

80. Denied.

81. Denied.

82. Denied.

**VIOLATION OF 29 U.S.C. § 207**

83. SFB Life incorporates by reference its responses to all of the preceding paragraphs as if fully set forth herein.

84. SFB Life specifically denies that it was required to pay Plaintiffs or any insurance agent overtime compensation under the FLSA. Otherwise denied.

85. Denied.

**VIOLATION OF 29 U.S.C. § 211(c)**

86. SFB Life incorporates by reference its responses to all of the preceding paragraphs as if fully set forth herein.

87. Denied.

88. This paragraph contains legal conclusions and not factual allegations for which admission or denial is required. To the extent this paragraph suggests that SFB Life engaged in wrongful or inappropriate conduct or violated the FLSA, those allegations are denied.

89. Denied.

**WILLFULLNESS**

90. Denied.

91. SFB Life admits only that it was and is aware of its obligations under the FLSA. SFB Life specifically denies, however, that Plaintiffs or other putative collective action members were entitled to overtime compensation, or that SFB Life was required to pay overtime compensation, under the FLSA. Otherwise denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

### **COLLECTIVE-ACTION ALLEGATIONS**

96. SFB Life incorporates by reference its responses to all of the preceding paragraphs as if fully set forth herein.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. SFB Life specifically denies that Plaintiffs are appropriate collective action representatives or that the claims in the Complaint are appropriate for collective action treatment. Otherwise denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. SFB Life states that it is without knowledge as to the allegations of paragraph 106 relating to Plaintiffs' counsel; therefore, denied.

### **DAMAGES AND ATTORNEY'S FEES SOUGHT**

107. Denied.

108. Denied.

109. Denied.

**JURY DEMAND**

110. Paragraph 110 contains a jury demand and not a factual allegation to which admission or denial is required.

**PRAYER**

111. SFB Life denies the allegations of paragraph 111, including all subparts. SFB Life denies that Plaintiffs or any other person is entitled to any relief in this action, including overtime pay, interest, liquidated damages, attorney's fees and costs, or any other damage or relief requested. SFB Life further denies that the claims in the Complaint are appropriate for representative or collective action treatment.

All allegations of the Complaint not specifically admitted are denied.

**FIRST DEFENSE**

Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The claims of Plaintiffs and other current or former insurance agents who opt in to this collective action are barred, in whole or in part, by the applicable statute of limitations.

**THIRD DEFENSE**

Pending further investigation, some or all of Plaintiffs' claims and the claims of other current or former insurance agents who opt in to this collective action are barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands and/or laches due to unreasonable delay in presenting their claims and/or misrepresentations regarding the scope and types of activities performed under Agent Contracts with SFB Life.

**FOURTH DEFENSE**

The claims of Plaintiffs and other current or former insurance agents who purport to assert claims for overtime in this action are barred, in whole or in part, by the express terms of their Agent Contracts with SFB Life.

**FIFTH DEFENSE**

The claims of other current or former insurance agents who did not contract directly with SFB Life are barred because they did not contract personally with SFB Life and a corporate entity or limited liability company does not have standing to seek relief for overtime as an employee under the FLSA.

**SIXTH DEFENSE**

Plaintiffs' claims and the claims of other current or former insurance agents in this action are barred because SFB Life's insurance agents were independent contractors under the FLSA as a matter of law.

**SEVENTH DEFENSE**

Plaintiffs' claims and the claims of other current or former insurance agents in this action are barred by the fact that Plaintiffs and other insurance agents did not work over 40 hours per week for Defendants or SFB Life.

**EIGHTH DEFENSE**

SFB Life denies that Plaintiffs or other current or former insurance agents in this action were or are employees. In the alternative, however, SFB Life asserts that, even if Plaintiffs or any other members of the putative class were employees, their claims would be barred by the exemption for outside sales employees under 29 C.F.R. § 541.500 et seq.

**NINTH DEFENSE**

SFB Life denies that Plaintiffs or other current or former insurance agents in this action were or are employees. In the alternative, however, even if the Plaintiffs or other members of the putative class in this action were employees, their claims would be barred because some or all of the insurance agents qualify for the highly-compensated exemption set forth in 29 C.F.R. § 541.601.

**TENTH DEFENSE**

SFB Life denies that Plaintiffs or other current or former insurance agents in this action were or are employees. In the alternative, however, even if the Plaintiffs or other members of the putative class in this action were employees, their claims would be barred because some or all of the insurance agents qualify for the administrative exemption set forth in 29 C.F.R. § 541.200 et seq.

**ELEVENTH DEFENSE**

SFB Life denies that Plaintiffs or other current or former insurance agents in this action were or are employees. In the alternative, however, even if the Plaintiffs or other members of the putative class in this action were employees, their claims would be barred because some or all of the insurance agents qualify for the executive exemption set forth in 29 C.F.R. § 541.100 et seq.

**TWELFTH DEFENSE**

Plaintiffs are not similarly situated to other putative collective action members, nor are Plaintiffs adequate representatives of the proposed class.

**THIRTEENTH DEFENSE**

Any alleged violation of the FLSA by SFB Life was not willful, and therefore all claims of Plaintiffs and collective action members, if any, are limited to a two-year limitations period

calculated from the date on which each individual files his or her written consent with the Court to join this action.

**FOURTEENTH DEFENSE**

If SFB Life is found to have violated Plaintiffs' rights or the rights of any collective action member, which SFB Life denies, such violation was not done with malice or reckless indifference to the rights of Plaintiffs or the collective action members, but in good faith, for good cause, and based on a reasonable belief that SFB Life was and is in compliance with all applicable wage and compensation requirements, and any claims for liquidated damages are, therefore, without merit.

**FIFTEENTH DEFENSE**

Allowing this action to proceed as a collective action would violate SFB Life's rights to Due Process and SFB Life's rights under the Seventh and Fourteenth Amendments to the United States Constitution.

**SIXTEENTH DEFENSE**

To the extent applicable, SFB Life is entitled to a recoupment, offset, or credit for any termination or post-termination payments made to any former insurance agent; and to the extent any current or former insurance agent repudiates his or her Agent Contract with SFB Life, such insurance agent is not entitled to claim the benefits under such contract, including any termination or post-termination payments under such contract, and SFB Life is entitled at its option to treat such contract as terminated.

**SEVENTEENTH DEFENSE**

Plaintiffs and the collective action members are barred and estopped from asserting claims for overtime pay as they never provided notice or made SFB Life aware that they ever worked overtime or were improperly classified as independent contractors, and SFB Life was not

aware nor did it have constructive knowledge that Plaintiffs or putative collective action members worked overtime.

SFB Life reserves the right to plead any additional defenses or affirmative defenses that may be revealed during the course of the litigation.

WHEREFORE, SFB Life denies that Plaintiffs or any other insurance agents in this action are entitled to any relief in this cause, and SFB Life respectfully requests that the Court enter judgment for SFB Life, as well as award SFB Life its attorney's fees and costs, to the extent permitted by law.

Dated: October 15, 2018

Respectfully submitted,

/s/ Markham R. Leventhal

MARKHAM R. LEVENTHAL

mleventhal@carltonfields.com

CARLTON FIELDS JORDEN BURT, P.A.

1025 Thomas Jefferson St., NW, Suite 400 West  
Washington, D.C. 20007

Telephone: (202) 965-8189

Facsimile: (202) 965-8104

CATHLEEN BELL BREMMER

cbell@carltonfields.com

CARLTON FIELDS JORDEN BURT, P.A.

4221 W. Boy Scout Boulevard, Suite 1000

Tampa, Florida 33607-5780

Telephone: (813) 223-7000

Facsimile: (813) 229-4133

AARON S. WEISS

aweiss@carltonfields.com

IRMA REBOSO SOLARES

isolares@carltonfields.com

STEPHANIE A. FICHERA  
sfichera@carltonfields.com  
CARLTON FIELDS JORDEN BURT, P.A.  
Miami Tower, Suite 4200  
100 S.E. Second Street  
Miami, Florida 33131-2113  
Telephone: (305) 530-0050  
Facsimile: (305) 530-0055

*Attorneys for Defendant Southern Farm Bureau Life  
Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of October, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will provide service on all counsel of record listed on the Notice of Electronic Filing including:

John Eddie Williams, Jr.  
jwilliams@williamskherkher.com  
Brian A. Abramson  
babramson@williamskherkher.com  
Sean M. McCarthy  
smccarthy@williamskherkher.com  
**Williams Kherkher Hart Boundas, LLP**  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
Telephone: (713) 230-2200  
Facsimile: (713) 643-6226

Julie A. Springer  
jspringer@wshllp.com  
Matt C. Wood  
mwood@wshllp.com  
Sara E. Janes  
sjanes@wshllp.com  
**Weisbart Springer Hayes LLP**  
212 Lavaca Street, Suite 200  
Austin, Texas 78701  
Telephone: (512) 652-5780  
Facsimile: (512) 682-2074

Daniel O. Goforth  
dangoforth@goforthlaw.com  
Ryan D. King  
ryanking@goforthlaw.com  
Avi Moshenberg  
avimoshenberg@goforthlaw.com  
**Goforth King Moshenberg LLP**  
1900 Pennzoil South Tower  
711 Louisiana Street  
Houston, Texas 77002  
Telephone: (713) 650-0022  
Facsimile: (713) 650-1669

*Counsel for Defendants Texas Farm Bureau  
Casualty Insurance Company, Texas Farm  
Bureau Mutual Insurance Company, Texas  
Farm Bureau Underwriters, and Farm Bureau  
County Mutual Insurance Company of Texas*

Kelly E. Cook  
kcook@wylycook.com  
Warren A. Berlanga  
wberlanga@wylycook.com  
**Wyly & Cook, PLLC**  
4101 Washington Ave. 2nd Floor  
Houston, Texas 77007  
Telephone: (713) 236-8330  
Facsimile: (713) 863-8502

*Counsel for Plaintiffs*

*/s/ Markham R. Leventhal*

115952927