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Attorneys for Life Partners, Inc. and Life Partners Holdings, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE,

Plaintiff,

vs.

LIFE PARTNERS, INC., a Texas Corporation
LIFE PARTNERS HOLDINGS, INC., a
Texas Corporation,

Defendants.

MOTION TO DISMISS

Civil No.: 2:06CV00968

Judge: Paul G. Cassell

Defendant Life Partners Holdings Inc. ("LPHI"), pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6), moves to dismiss Plaintiff's Order to Show Cause, dated October 20, 2006, on the grounds and for the reasons more particularly set forth in the supporting memorandum simultaneously filed with this motion.

Dated this 28th day of November, 2006.

RAY, QUINNEY & NEBEKER

/s/ Ryan B. Bell

Mark W. Pugsley

Ryan B. Bell

*Attorneys for Life Partners, Inc.
and Life Partners Holdings, Inc.*

Of counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November, 2006, I electronically filed the foregoing MOTION TO DISMISS with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Jeffery Buckner, Esq.
Assistant Attorney General
160 E. 300 South, Fifth Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872

And mailed, postage prepaid, to the following:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
P.O. Box 146760
Salt Lake City, UT 84114-6760

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/s/ Jeanette Evans

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UTAH DEPARTMENT OF COMMERCE,

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LIFE PARTNERS, INC., a Texas Corporation
LIFE PARTNERS HOLDINGS, INC., a
Texas Corporation, and
MARK BRUCE SUTHERLAND, a Nevada
resident,

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

Civil No.: 2:06CV00968

Judge: Paul G. Cassell

Defendant Life Partners Holdings, Inc. ("LPHI") submits this Memorandum in Support of its Motion to Dismiss Plaintiff's Order to Show Cause, dated October 20, 2006, because the allegations asserted therein fail to allege any conduct by LPHI either in Utah or in connection with the alleged violations of the Utah Securities Act. Therefore, LPHI does not have sufficient contacts with Utah to justify the exercise of personal jurisdiction over it, and Plaintiff has not stated any claim against LPHI upon which relief

can be granted. Accordingly, Plaintiff's Order to Show Cause must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6).

Standard of Review

A court must have personal jurisdiction over a defendant in order to hale that defendant into court and subject the defendant to the court's judgments. *E.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-473 (1985). Where a defendant objects to a court's exercise of jurisdiction over his person, the plaintiff bears the burden of proving the existence of the court's jurisdiction over the defendant. *Pro Axxess, Inc. v. Orlux Distrib.*, 428 F.3d 1270, 1276 (10th Cir. 2005). Where the plaintiff fails to satisfy that burden, the complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2). *OMI Holdings v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1098 (10th Cir. 1998).

A complaint must be dismissed under Federal Rule 12(b)(6) where, assuming for purposes of the motion that all factual allegations are true, the necessary elements for a claim are not present. *See MacArthur v. San Juan County*, 416 F. Supp. 2d 1098, 1137 (D. Utah 2005); *Baumgardner v. ROA Gen.*, 864 F. Supp. 1107, 1110 (D. Utah 1994) (both dismissing claims where all elements were not pleaded). Mere conclusory allegations without supporting factual averments are insufficient to overcome a motion to dismiss. *Ridge at Red Hawk, LLC v. Schneider*, 2005 U.S. Dist. LEXIS 34891, 5-6 (D. Utah 2005).

Plaintiff's Factual Allegations About LPHI

Plaintiff's Order to Show Cause dated October 20, 2006, alleges violations of the Utah Securities Act based upon the alleged referral of five potential purchasers of interests in life insurance policies by a Utah company (Edward Raine, LLC) to a third

party, Mark Sutherland (“Sutherland”), in Nevada and then to Life Partners, Inc. (“LPI”) in Texas. *See* Order to Show Cause ¶ 16. Plaintiff claims that two of the five alleged potential purchasers were assisted by LPI in their purchase of interests in life insurance policies. *See* Order to Show Cause ¶¶ 15 & 16. Three of the five alleged potential purchasers never purchased any interests in life insurance policies. *See* Order to Show Cause ¶ 16.

Throughout the Order to Show Cause’s Statement of Facts, Plaintiff makes no specific allegations about any conduct of LPHI in soliciting, marketing or facilitating the sale of interests in life insurance policies. *See* Order to Show Cause at ¶¶ 6 – 17. All conduct alleged was conducted by LPI, Sutherland, Edward Raine LLC, JC Financial Group LLC, and “M.B.C.” *Id.* No specific conduct by LPHI appears in the Order to Show Cause. In short, the conduct giving rise to the alleged liability in this case consists of conduct by parties other than LPHI.

The only alleged factual basis for LPHI’s inclusion in this case appear in paragraphs 2 and 3:

2. ... Life Partners is a wholly-owned subsidiary of Life Partners Holdings, Inc.
3. Life Partners Holdings, Inc. (Life Partners Holdings) is a Texas corporation, registered on August 16, 2002. Its corporate status in Texas is currently “active,” but Life Partners Holdings is not registered as a foreign corporation in Utah. Life Partners Holdings’ business address is 204 Woodhew Drive, Waco, Texas 76712.

Order to Show Cause at ¶¶ 2 & 3. All of the other allegations concerning LPHI consist of unsubstantiated and conclusory groupings of LPHI with the parties alleged to have actually taken some affirmative action. *See* Order to Show Cause at ¶¶ 5, 19--23, 26, 30, 31, 33, 35, & 36.

For example, paragraph 5 alleges that LPI, LPHI, and Sutherland “offered and sold unregistered securities.” The ensuing paragraphs 6-17 make clear, however, that only the other defendants are alleged to have taken any actual actions in connection with the alleged offer and sale of unregistered securities. In short, the only substantive allegation against LPHI is that it is the parent holding company of LPI. This allegation is insufficient to warrant the exercise of jurisdiction over LPHI or to state a claim against it upon which relief can be granted.

LPHI Took No Action

The mere assertion that LPHI is the parent holding company of LPI is inadequate to establish that LPHI violated the Utah Securities Act or is otherwise responsible for the acts of its subsidiary LPI. Parent corporations are so denominated because of their ownership of the subsidiary’s stock. *United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998). As a shareholder, a parent holding company is a distinct legal entity from its subsidiary. *Id.*; *Salt Lake City Corp. v. James Constructors*, 761 P.2d 42, 46-47 (Utah Ct. App. 1988) (recognizing the general rule that a corporation is an entity separate and distinct from its officers, shareholders and directors). Allegations about the conduct of a subsidiary company, without more, do not evidence conduct by the parent corporation. *United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998) (citing extensive authority: “It is a general principle of corporate law deeply ‘ingrained in our economic and legal systems’ that a parent corporation . . . is not liable for the acts of its subsidiaries.”); *Salt Lake City Corp.*, 761 P.2d at 46 (stating that the purpose in separating the corporate entity from its shareholders is to insulate the shareholders from the liabilities of the corporation);

Reedeker v. Salisbury, 952 P.2d 577, 582 (Utah Ct. App. 1998) (approving general rule that shareholders are not liable for their corporation's debts and obligations).

Moreover, Plaintiff's general conclusory allegations about LPHI (*see, e.g.*, Order at ¶¶ 5, 19, 20, 22, 26, 30) do not allege any specific conduct by LPHI and, therefore, are inadequate to withstand a motion to dismiss. *Ridge at Red Hawk, LLC*, 2005 U.S. Dist. LEXIS 34891, 5-6.

LPHI Has No Contacts With Utah

As attested in Brian D. Pardo's Declaration (attached as Exhibit 1), LPHI has never maintained any offices or facilities in Utah. (Exh. 1 at ¶ 5). LPHI has never employed personnel or agents in Utah. (Exh. 1 at ¶ 6). LPHI has never sold, advertised, facilitated, negotiated or executed viatical settlement or life settlement contracts in Utah or anywhere else. (Exh. 1 at ¶ 7). LPHI is a passive holding company. (Exh. 1 at ¶ 8). LPHI wholly owns LPI and has owned other holdings, assets, and subsidiaries over its years of existence. (*Id.*). LPHI is a separate and distinct corporate entity from LPI. (*Id.*).

Accordingly, LPHI manifestly lacks sufficient contacts with Utah to justify the exercise of personal jurisdiction over LPHI in Utah.

Conclusion

Defendant LPHI respectfully requests that the Order to Show Cause be dismissed as to LPHI due to LPHI's lack of contacts with Utah and/or because the Order to Show Cause fails to allege conduct by LPHI that might constitute a cognizable violation of law by LPHI.

Dated this 28th day of November, 2006.

RAY, QUINNEY & NEBEKER

/s/ Ryan B. Bell

Mark W. Pugsley

Ryan B. Bell

*Attorneys for Life Partners, Inc.
and Life Partners Holdings, Inc.*

Of counsel

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/s/ Jeanette Evans

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LIFE PARTNERS HOLDINGS, INC., a
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MARK BRUCE SUTHERLAND, a Nevada
resident,

Defendants.

**DECLARATION
OF BRIAN D. PARDO IN
SUPPORT OF MOTION TO DISMISS
ORDER TO SHOW CAUSE**

Civil No.: 2:06CV00968

Judge: Paul G. Cassell

DECLARATION OF BRIAN D. PARDO
IN SUPPORT OF MOTION TO DISMISS ORDER TO SHOW CAUSE

1. My name is Brian D. Pardo. I am a resident of the State of Texas. I am over 18 years of age. I have personal knowledge of the facts stated in this Declaration.

2. I have served as the Chief Executive Officer and President of Life Partners Holdings, Inc. since its formation in 1999.

3. Life Partners Holdings, Inc. is a Texas corporation with its principal place of business in Waco, Texas.

4. Life Partners Holdings, Inc. is publicly traded on the NASDAQ market under the symbol LPHI.

5. Life Partners Holdings, Inc. has never maintained any offices or facilities in Utah.

6. Life Partners Holdings, Inc. has never employed personnel or agents in Utah.

7. Life Partners Holdings, Inc. has never sold, advertised, facilitated, negotiated or executed viatical settlement or life settlement contracts in Utah or anywhere else.

8. Life Partners Holdings, Inc. is a passive holding company. Life Partners Holdings, Inc. wholly owns Life Partners Inc. and has owned other holdings, assets, and subsidiaries over its years of existence. Life Partners Holdings, Inc. is a separate and distinct corporate entity from Life Partners, Inc.

Signed under the penalties of perjury by:



Brian D. Pardo

Dated: November 28, 2006