

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DINA ELKIN,  
  
                    Plaintiff,  
  
          vs.  
  
NEW YORK LIFE INSURANCE  
COMPANY; and DOES 1 to 50,  
Inclusive,  
  
                    Defendants.

Case No. 2:16-cv-8703-DSF-AFM  
  
**ORDER PROTECTING  
CONFIDENTIALITY OF  
DOCUMENTS AND  
INFORMATION**  
  
Complaint Filed: October 5, 2016



1 **DEFINITIONS:**

2 3. For purposes of this Protective Order, “CONFIDENTIAL  
3 INFORMATION” means any business, financial, personal and proprietary  
4 information that is not generally known to the public and that the “Producing Party”  
5 would normally maintain in confidence and not reveal to the general public,  
6 including any and all information protected by HIPAA, the HITECH Act, and  
7 regulations promulgated thereunder. Any information that is derived from  
8 CONFIDENTIAL INFORMATION also constitutes CONFIDENTIAL  
9 INFORMATION to the extent the derived information embodies, contains, or  
10 discloses any CONFIDENTIAL INFORMATION. The attorneys each agree not to  
11 designate material as “CONFIDENTIAL INFORMATION” unless he or she is  
12 satisfied that they can demonstrate good faith reasons for treating the information in  
13 this fashion. Notwithstanding the foregoing, CONFIDENTIAL INFORMATION  
14 does not include:

- 15 (a) any information which at the time of disclosure is available to the  
16 general public;
- 17 (b) any information which at the time of disclosure had already been  
18 furnished or produced to the Receiving Party outside the course of any  
19 proposed business relationship the Receiving Party may have had with the  
20 Producing Party; or
- 21 (c) any information which (i) was already known to the Receiving Party  
22 from legitimate sources outside of any business relationship the Receiving  
23 Party may have had with the Producing Party, (ii) was independently  
24 developed by the Receiving Party, or (iii) was received after the time of  
25 disclosure hereunder from a third party having the right to make such  
26 disclosure and was not required to be held in confidence.

27 Nothing in this Protective Order is intended either (1) to provide a party with  
28 a basis for a claim against an opposing party for disclosing to any non-party, prior to

1 the date of disclosure in this Action, any CONFIDENTIAL INFORMATION or (2)  
2 to supersede, usurp, or replace any confidentiality obligations owed by one party to  
3 the other party or to non-parties which may have existed prior to entry of this Order.

4 4. For purposes of this Protective Order, “Producing Party” means a party  
5 to this action or any non-party on behalf of which information is furnished or  
6 produced during the course of this action.

7 5. For purposes of this Protective Order, “Receiving Party” means a party  
8 to this action or any non-party to which information is furnished or produced during  
9 the course of this action.

10 6. The term “documents” shall have the same meaning as set forth in Rule  
11 34(a)(1) of the Federal Rules of Civil Procedure.

12 **DESIGNATION OF INFORMATION:**

13 7. CONFIDENTIAL INFORMATION shall be designated as follows:

14 (a) Any Producing Party may stamp documents “CONFIDENTIAL” prior  
15 to production in this action.

16 (b) In the case of depositions, designation of the portion of the transcript,  
17 including exhibits, which contains CONFIDENTIAL INFORMATION, may  
18 be made by a statement to such effect on the record during the course of the  
19 deposition. Portions of deposition transcripts may also be designated as  
20 CONFIDENTIAL within 14 days after receipt of the transcript by counsel for  
21 the person whose CONFIDENTIAL INFORMATION was disclosed at the  
22 depositions by serving on all other parties to the action a letter designating by  
23 page and line number the portion or portions of the deposition transcript  
24 containing CONFIDENTIAL INFORMATION. Until the 14-day period has  
25 expired, the full deposition testimony and transcript shall be treated in its  
26 entirety as CONFIDENTIAL INFORMATION covered by the Protective  
27 Order.

28 When the CONFIDENTIAL INFORMATION designation is made with

1 respect to any portion of a deposition, the party making the designation shall direct  
2 the reporter attending such deposition to affix the appropriate confidentiality legend  
3 to the first page and all portions of the original and all copies of the transcript  
4 containing any CONFIDENTIAL INFORMATION.

5 8. If any transcripts of depositions, motions, briefs or other pleadings that  
6 are to be filed with this Court (a "Filing") include CONFIDENTIAL  
7 INFORMATION, such pleadings or other papers shall be filed under seal with this  
8 Court. This Protective Order does not govern use of confidential information at  
9 trial, and use of confidential information at trial shall be governed by orders of the  
10 trial judge. This Protective Order and the designation of material as "confidential"  
11 does not entitle the parties to file material under seal. The parties acknowledge the  
12 requirements of Civil Local Rule 79-5.2 and acknowledge that good cause to file  
13 under seal must be established by submission of competent evidence via declaration  
14 establishing that the material sought to be filed under seal qualifies as confidential,  
15 privileged or otherwise protectable.

16 9. Designation of any documents, things, or information as  
17 CONFIDENTIAL INFORMATION renders confidential any originals, copies,  
18 excerpts, summaries, quotations or paraphrases of such materials by the Receiving  
19 Party.

20 10. All material which is designated by the Producing Party as containing  
21 or comprising CONFIDENTIAL INFORMATION shall be maintained in  
22 confidence according to the terms of this Protective Order by the Receiving Party  
23 and used solely in the preparation, prosecution, defense, or trial of this action.

24 11. Subject to the provisions of this Protective Order, CONFIDENTIAL  
25 INFORMATION shall not, without the consent of the Producing Party or further  
26 Order of the Court, be disclosed *except that* such CONFIDENTIAL  
27 INFORMATION may be disclosed to:

28 (a) attorneys actively working on this case;

- 1 (b) persons regularly employed or associated with the attorneys actively
- 2 working on this case whose assistance is required by said attorneys in
- 3 the preparation for trial, at trial, or at other proceedings in this case;
- 4 (c) the parties, including the parties' respective officers, directors, and
- 5 employees whose assistance is required by the parties' respective
- 6 attorneys for preparation, trial, or other proceedings in this case;
- 7 (d) consultants and expert witnesses retained in connection with this
- 8 proceeding, to the extent such disclosure is necessary for preparation,
- 9 trial, or other proceedings in this case;
- 10 (e) this Court and its employees ("Court Personnel");
- 11 (f) stenographic reports who are engaged in proceedings necessarily
- 12 incident to the conduct of this action;
- 13 (g) deponents, witnesses, or potential witnesses;
- 14 (h) copy or other document service providers hired to assist counsel in this
- 15 litigation;
- 16 (i) mock jurors, focus group members and the like selected by trial
- 17 consultants, jury consultants or by counsel in preparation for trial;
- 18 (j) any mediator specifically retained by the parties to mediate the case;
- 19 and
- 20 (k) other persons by written agreement of the parties.

21 12. Prior to disclosing any CONFIDENTIAL INFORMATION to any  
22 person listed in Subparagraphs 11(d), (g), (h), (i), and (j) above, counsel shall  
23 provide such person with a copy of this Protective Order and obtain from such  
24 person a written acknowledgment in the form attached as Exhibit A to this  
25 Protective Order stating that he or she has read this Protective Order and agrees to  
26 be bound by its provisions. All acknowledgments shall be retained by such counsel  
27 and shall be subject to *in camera* review by the Court if good cause for review is  
28 demonstrated by opposing counsel.

1 **EXCEPTIONS:**

2 13. The receipt of any document, thing, pleading, or response to any  
3 interrogatory designated as CONFIDENTIAL INFORMATION by a party shall not  
4 be construed as an agreement by any party that any such document, thing, pleading,  
5 or response to an interrogatory is in fact confidential, and shall not operate as a  
6 waiver of any party's right to challenge any such designation as provided herein.

7 14. If the Receiving Party objects to the designation of certain information  
8 as CONFIDENTIAL INFORMATION, he or she shall inform the Producing Party's  
9 counsel, in writing, of the specific grounds of the objections to the designations. All  
10 counsel shall then in good faith and on an informal basis attempt to resolve such  
11 disputes. If the parties cannot resolve the dispute, the party disputing the  
12 confidentiality designation may file an appropriate motion with the Court at any  
13 time to deem the disputed material not confidential. The Producing Party shall have  
14 the burden of establishing the propriety of the designation.

15 15. No party shall be obligated to challenge the propriety or correctness of  
16 the designation of information as CONFIDENTIAL INFORMATION and a failure  
17 to do so shall not preclude a subsequent challenge of a designation.

18 16. Neither the taking of nor the failure to take any action to challenge any  
19 designation of CONFIDENTIAL INFORMATION pursuant to this Protective Order  
20 or to enforce the provisions of this Protective Order shall constitute a waiver of any  
21 right, claim, or defense by any party in this action or any other action.

22 **INFORMATION INADVERTENTLY DISCLOSED:**

23 17. If a Producing Party inadvertently discloses to a Receiving Party any  
24 document, thing, or information containing information that the Producing Party  
25 deems CONFIDENTIAL INFORMATION without designating it as  
26 CONFIDENTIAL INFORMATION, the Producing Party shall promptly upon  
27 discovery of such inadvertent disclosure inform the Receiving Party in writing and  
28 the Receiving Party shall thereafter treat the document, thing, or information as

1 CONFIDENTIAL INFORMATION under this Protective Order. To the extent such  
2 document, thing, or information may have been disclosed to persons other than  
3 authorized persons described in this Protective Order, the Receiving Party shall  
4 make every reasonable effort to retrieve the document, thing, or information  
5 promptly from such persons and to prevent any further disclosure to unauthorized  
6 persons.

7 18. If the Producing Party inadvertently discloses to a Receiving Party  
8 information that is protected from disclosure because it is privileged or subject to  
9 the work product doctrine, the Producing Party shall promptly, upon discovery of  
10 such disclosure, so advise the Receiving Party in writing and request that the item or  
11 items of information be returned, and no party to this action shall hereafter assert  
12 that such disclosure waived any privilege or work product protection. It is further  
13 agreed that the Receiving Party will make every reasonable effort to return such  
14 inadvertently produced item or items of information, and all copies thereof, within  
15 ten (10) days of receiving a written request for the return of such item or items of  
16 information.

17 19. It is understood that no person or party shall incur liability with respect  
18 to any disclosure by the Receiving Party of CONFIDENTIAL INFORMATION that  
19 was inadvertently disclosed without proper designation by the Producing Party,  
20 provided the disclosure by the Receiving Party occurred prior to the receipt by the  
21 Receiving Party of a written notice of the inadvertent disclosure without proper  
22 designation.

23 20. If CONFIDENTIAL INFORMATION is disclosed in violation of this  
24 Order, the party who caused, permitted, or was otherwise responsible for the  
25 disclosure shall immediately inform the other party to this action of all pertinent facts  
26 relating to the disclosure, and shall make every effort to prevent any further  
27 disclosure, including any disclosure by any person who received any  
28 CONFIDENTIAL INFORMATION in violation of this Order.



1 other discovery material, or relief from this Protective Order with respect to  
2 particular material designated hereunder.

3 **PRODUCTION OF CONFIDENTIAL INFORMATION BY NON-PARTIES:**

4 23. The production of any CONFIDENTIAL INFORMATION by non-  
5 parties shall be subject to all the terms and conditions of this Protective Order.  
6 Pursuant to this Protective Order, a non-party shall be considered to be a Producing  
7 Party and shall have the same rights as the parties to designate information as  
8 CONFIDENTIAL INFORMATION and the same rights to object to disclosures of  
9 their CONFIDENTIAL INFORMATION to individuals or businesses other than  
10 those set forth herein.

11 **OBLIGATIONS OF PARTIES:**

12 24. The parties are prohibited from using or disclosing PHI-  
13 CONFIDENTIAL INFORMATION for any purpose other than this case.

14 25. If another court, administrative agency, or any person or entity  
15 subpoenas or orders production or disclosure of CONFIDENTIAL INFORMATION  
16 which a party has obtained under the terms of this Protective Order, such party shall  
17 within three (3) business days notify in writing the Producing Party (either directly  
18 or through counsel) who produced the CONFIDENTIAL INFORMATION of the  
19 pending subpoena or order. Nothing in this Protective Order shall be construed as  
20 prohibiting production of CONFIDENTIAL INFORMATION covered by this  
21 Protective Order in response to a lawful subpoena or Court Order.

22 26. Each of the parties named above and their counsel of record undertake  
23 to abide by and be bound by its provisions and to use due care to see that its  
24 provisions are known and adhered to by those under their supervision or control.

25 27. Nothing in this Protective Order shall bar counsel from rendering  
26 advice to their client with respect to this litigation and, in the course thereof, relying  
27 upon any CONFIDENTIAL INFORMATION, provided counsel does not disclose  
28 CONFIDENTIAL INFORMATION in a manner not specifically authorized under

1 this Protective Order.

2 28. This Protective Order shall not abrogate or diminish any contractual,  
3 statutory, or other legal privilege or protection of any party or person with respect to  
4 any CONFIDENTIAL INFORMATION. The fact that any materials have been  
5 designated CONFIDENTIAL INFORMATION pursuant to this Protective Order  
6 shall not affect or operate as a means of objection to the admissibility of any such  
7 material; nor shall such designation constitute the authentication of such material or  
8 a waiver of any right to challenge the relevance, confidentiality, or admissibility of  
9 such material. The fact that materials are designated as CONFIDENTIAL  
10 INFORMATION pursuant to the Protective Order shall not affect what a trier of fact  
11 in this litigation or any other proceeding may find to be confidential or proprietary.

12 **EFFECT OF ORDER:**

13 29. This Protective Order shall remain in full force and effect unless  
14 modified by an Order of the Court. Without limiting the generality of the foregoing,  
15 this Protective Order shall survive or remain in full force and effect after the  
16 termination of this litigation. Nothing in this Protective Order shall limit or preclude  
17 any party from applying to the Court for relief from this Protective Order, or for  
18 such further or additional protective orders as the Court may deem appropriate.

19 30. Stipulations may be made, between counsel for the respective parties  
20 and Producing Parties, as to the application of this Protective Order to specific  
21 situations (*e.g.*, documents which are so voluminous that it would be overly  
22 burdensome to mark each page thereof individually) provided that such stipulations  
23 are recorded in writing or contained in the record of any oral proceeding.

24 This Court shall retain jurisdiction over this Protective Order and the parties  
25 for purposes of enforcing the terms of this Order.

26 Dated: 7/10/2017



27 \_\_\_\_\_  
28 ALEXANDER F. MACKINNON  
U.S. MAGISTRATE JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

The undersigned \_\_\_\_\_ (print or type name of person) hereby acknowledges that he or she received a copy of the ORDER PROTECTING CONFIDENTIALITY OF DOCUMENTS AND INFORMATION (“PROTECTIVE ORDER”) entered in the case entitled *Dina Elkin v. New York Life Insurance Company*, Case Number 2:16-cv-8703-DSF-AFM, pending in the United States District Court for Central District of California, has read the PROTECTIVE ORDER, agrees to be bound by all the provisions thereof, and hereby submits to the jurisdiction of the Court for the purpose of enforcement of the terms of the PROTECTIVE ORDER.

Dated: \_\_\_\_\_

\_\_\_\_\_

[Signature]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Address]