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19 Lincoln Benefit Life Company

20 UNITED STATES DISTRICT COURT
21 EASTERN DISTRICT OF CALIFORNIA

22 KAMIES ELHOUTY

23 Plaintiff,

24 v.

25 LINCOLN BENEFIT LIFE COMPANY,
26 a Nebraska corporation, and DOES 1
27 through 10, inclusive.

28 Defendants.

Case No. 1:14-CV-00676-LJO-JLT

ORDER GRANTING PROTECTIVE
ORDER AS MODIFIED BY THE COURT

(Doc. 20)

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PROTECTIVE ORDER

WHEREAS, the parties are engaged in discovery pursuant to the Federal Civil Rules of Procedure; and

WHEREAS, items or information produced or generated in disclosures or responses to discovery in this matter may call for disclosure of non-public and confidential information, including medical, financial, personal, and trade secret information; and

WHEREAS, the parties seek to produce Confidential Materials (as defined below) with suitable assurances of confidentiality and without being improperly used, disclosed, shared, or distributed.

IT IS HEREBY ORDERED that:

1. This Protective Order shall govern all documents and other materials, as well as all information contained in such documents and materials, and all copies, excerpts, or summaries thereof, produced by the parties in regard to this action, whether voluntarily or in response to any discovery request, deposition notice or subpoena, or admissions, and any other documents and materials produced or otherwise provided to a party to this litigation (“Litigation”), whether by discovery, at a hearing or trial or otherwise in connection with the litigation.

2. Any party to this action may designate documents, deposition testimony or other material produced pursuant to any discovery request, including subpoena, as “Confidential” (collectively, the “Confidential Materials”) under the terms of this Order if it believes such material contains non-public, confidential, trade secret, personal, medical or financial data, or other sensitive information that requires the protections provided by this Order. Such designated documents, testimony and other materials shall be “Confidential Materials” and shall be maintained as confidential and used and disclosed only as permitted by this Order unless otherwise ordered by the Court pursuant to paragraph 6 hereof. Each party

1 that designates information or items for protection under this Order must take care
2 to limit any such designation to specific material that qualifies under the
3 appropriate standards. The designating party must designate for protection only
4 those parts of material, documents, items, or oral or written communications that
5 qualify – so that other portions of the material, documents, items, or
6 communications for which protection is not warranted are not swept unjustifiably
7 within the ambit of this Order.

8 3. Mass, indiscriminate, or routinized designations are prohibited.
9 Designations that are shown to be clearly unjustified or that have been made for an
10 improper purpose (e.g., to unnecessarily encumber or retard the case development
11 process or to impose unnecessary expenses and burdens on other parties) may
12 expose the designating party to sanctions, pending the parties' efforts to resolve
13 and/or limit such designations.

14 4. If it comes to a designating party's attention that information or items
15 that it designated for protection do not qualify for protection, that designating party
16 must promptly notify all other parties that it is withdrawing the mistaken
17 designation.

18 5. Except as otherwise provided in this Order, or as otherwise stipulated
19 or ordered, Confidential Materials that qualify for protection under this Order must
20 be clearly so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires the following:

22 (a) The designation shall be made by stamping or otherwise
23 marking "Confidential" on the first page of a document or writing (or on the first
24 page of a section of a document or writing, if only a portion is to be so designated).

25 (b) When the designation is intended to apply to only a portion of
26 the document or writing, that portion shall be clearly indicated.
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1 (c) In regard to responses to interrogatories, document requests,
2 requests for admission and/or pleadings, each page containing Confidential
3 Materials shall be marked as “Confidential.”

4 (d) With respect to any deposition, such designation may be
5 invoked by designating specific pages and/or lines thereof as “Confidential” on the
6 record at the deposition, or by serving such designations within 10 days after
7 receipt of the transcript of the deposition in which the designations are to be made
8 by the party or third party seeking to make such designation.

9 (e) Before the disclosure of Confidential Materials in a deposition,
10 all persons present at the deposition shall have signed an undertaking in the form
11 attached hereto as Exhibit A, agreeing in writing to be bound by the terms and
12 conditions of this Order, consenting to the jurisdiction of the Court for purposes of
13 enforcement of the terms of this Order, and agreeing not to disclose or use any
14 Confidential Materials for purposes other than those permitted herein. Persons to
15 whom the disclosure of such information is prohibited under this Order shall be
16 excluded from the deposition during the disclosure of such information.

17 (f) Any testimony describing a document containing Confidential
18 Materials shall be deemed to be designated as “Confidential,” whether or not the
19 testimony is specifically designated as Confidential Materials.

20 (g) In addition, documents or materials originally authored or
21 prepared by a party in the Litigation, but produced by a different party or third
22 party, may also be designated as Confidential Materials by the authoring or
23 preparing party after the documents or materials are produced by providing the
24 designating party with written notice of the designation. In such instance, such
25 party will be treated as a designating party under this Order. Any copies or
26 reproductions, excerpts, summaries or other documents or media that paraphrase,
27 excerpt or contain documents or materials designated as “Confidential” shall also
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1 be treated as Confidential Materials pursuant to this Order. Any receiving party
2 may request at any time that the designating party remove a “Confidential”
3 designation pursuant to Section 6 of this Order. Such request shall be made in
4 writing and shall state the reasons for the request.

5 (h) In order to accelerate the pace of discovery, any person or entity
6 designating material as “Confidential” pursuant to Section 2 (“designating party”)
7 may also designate material “Confidential” by means of cover letter or equivalent
8 actual notice to recipients of such materials (“receiving party”).

9 6. Any party who wishes to challenge the designation of material as
10 Confidential Materials ~~should first confer in good faith with counsel for the~~
11 ~~designating party regarding such designation. If this effort fails to resolve the~~
12 ~~disagreement, the party wishing to challenge such a designation (“objecting party”)~~
13 ~~may file an appropriate motion with the Court, identifying the disputed material by~~
14 ~~category or document number and certifying that the objecting party has sought in~~
15 ~~good faith to confer with counsel for the designating party but has been unable to~~
16 ~~resolve the dispute. Counsel for the designating party will then have ten (10)~~
17 ~~business days in which to file a response to the motion. SHALL comply with the~~
18 ~~scheduling order (Doc. 16 at 4) regarding discovery motions. If this fails to resolve~~
19 ~~the dispute, within 21 days or as otherwise ordered by the Court, the Designating~~
20 ~~Party SHALL file a motion which complies with Local Rule 251 and, in particular,~~
21 ~~subsection (c).~~ The designation of materials as Confidential Materials shall remain
22 in full force and effect until the dispute is ruled upon by the Court.

23 7. A party who does not challenge a designation of material as
24 Confidential Materials at the time that it is designated is not precluded from making
25 a later challenge.

26 8. Confidential Materials shall be maintained in confidence in the United
27 States by any person or entity receiving such materials and shall be used solely for
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1 purposes of the above-captioned proceeding, including use at trial or in any
2 dispositive motion, and any appeal.

3 9. Confidential Materials may be disclosed, summarized, described,
4 characterized or otherwise communicated or made available in whole or in part
5 only in accordance with paragraph 8 above and only to the following persons:

6 (a) Attorneys to the parties of the Litigation and regular and
7 temporary employees and service vendors of such counsel (including outside
8 copying services and outside litigation support services) for use in accordance with
9 this Order;

10 (b) Experts or consultants engaged to assist special litigation
11 counsel for the parties, subject to paragraph 10 below;

12 (c) Witnesses or deponents and their counsel, during the course of,
13 or to the extent necessary to prepare for, depositions or testimony, subject to
14 paragraph 10 below;

15 (d) The Court, persons employed by the Court, and court reporters
16 transcribing the testimony or argument in connection with any hearing, deposition,
17 trial or other proceeding or any appeal therefrom; and

18 (e) Any other person, only upon order of the Court or with the
19 written consent of the designating party.
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21 10. Notwithstanding Paragraph 9(b) and (c) above, the Confidential
22 Materials may be provided to experts or consultants only to the extent necessary for
23 such expert or consultant to prepare a written opinion, to prepare to testify, or to
24 assist counsel in this litigation provided that such expert or consultant is using said
25 materials solely for this litigation and further provided that such expert or
26 consultant signs an undertaking in the form attached hereto as Exhibit A, agreeing
27 in writing to be bound by the terms and conditions of this Order, consenting to the
28 jurisdiction of the Court for purposes of enforcement of the terms of this Order, and

1 agreeing not to disclose or use any Confidential Materials for purposes other than
2 those permitted herein. All persons listed in Paragraph 9(b) and (c) above, who are
3 given access to Confidential Materials or information contained therein, shall be
4 required to confirm their understanding and agreement to abide by the terms of this
5 Order by signing a copy of attached Exhibit A. Alternatively, if the witness is
6 unable or unwilling to sign a copy of Exhibit A, the party desiring to question the
7 witness with Confidential Materials may seek from a court with jurisdiction over
8 the Order an order requiring the witness to abide by the terms of this Order, and
9 upon obtaining such order may give the witness access to Confidential Materials in
10 connection with the testimony.

11 11. ~~If Confidential Materials are to be filed with the Court, any portion~~
12 ~~designated "Confidential" shall be submitted to the Clerk in a sealed envelope.~~
13 ~~Confidential Materials filed with the Court shall be maintained in a secure,~~
14 ~~segregated facility. No one shall have access to such sealed materials other than the~~
15 ~~Court, its agents and employees, and persons authorized by this Order. All such~~
16 ~~materials shall be accorded in camera treatment. No Confidential Materials may be~~
17 ~~filed under seal unless the Court so orders. Requests to file documents under seal~~
18 ~~SHALL comply with Local Rule 141.~~

19 12. If Confidential Materials are to be used at trial, the party seeking to use
20 such Confidential Materials shall not do so until the designating party agrees to the
21 methods for protecting the use of such materials from improper disclosure and/or
22 the Court directs otherwise.

23 13. It is the responsibility of counsel for each undersigned party to
24 maintain the security of all Confidential Materials pursuant to the terms of this
25 Order.

26 14. In the discretion of the Court, a breach of the provisions of this Order
27 shall be subject to sanctions.
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1 15. Confidential Materials shall not lose their status as Confidential
2 Materials through use in any court proceeding referred to in paragraph 8 above.

3 16. This Order has no effect on, and shall not apply to, any designating
4 party's use or disclosure of its own Confidential Materials for any purpose
5 whatsoever.

6 17. The parties reserve the right to move the Court to modify this Order
7 and/or for an order seeking additional safeguards for Confidential Materials beyond
8 the protections afforded by this Order.

9 18. Inadvertent disclosure of or failure to designate any documents or
10 testimony as Confidential Materials shall not be deemed a waiver of the safeguards
11 provided by this Order. In the event such disclosure occurs, the parties agree that
12 any documents protected by attorney client privilege or under the attorney work
13 product doctrine, or prohibited from disclosure under applicable state or federal law
14 shall be returned immediately upon request. Such inadvertent disclosure shall not
15 act as a waiver of or estoppel as to any claim of privilege, work product, or other
16 basis for withholding production to which any party would otherwise be entitled.

17 19. By agreeing to or performing as required by this Order, no person or
18 entity has waived any objection to discovery of non-public, confidential,
19 proprietary, or commercially sensitive information.

20 20. (a) In the event that a person or entity receives material designated
21 "Confidential" that was already legitimately in such person's or entity's possession,
22 the restrictions of this Order apply only to the copy of the material actually
23 designated as "Confidential" and produced under this Order, and do not apply to the
24 copy of such material previously held by such person or entity unless its disclosure
25 is otherwise prohibited by law.
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1 (b) The provisions of this Order do not apply to material produced
2 in discovery or otherwise acquired by the parties in any proceeding other than those
3 referred to in paragraph 8 above.

4 21. In the event that any person or party bound by this Order is served
5 with a valid and enforceable subpoena or is otherwise requested by any other court,
6 law enforcement and/or administrative agency of competent jurisdiction to produce
7 documents or other materials produced by any designating party under the terms of
8 this Order, such persons or party shall promptly notify counsel for the designating
9 party by electronic mail of the pendency of such subpoena or other request. In the
10 event the designating party objects to the production of documents or other
11 materials designated as "Confidential" under the terms of this Order, the
12 designating party will be responsible for seeking to protect the Confidential
13 Materials. In the absence of a protective order or limiting instruction by the
14 requesting party, the responding party or person shall cooperate fully with the
15 subpoena or request. Such disclosure shall not be deemed a waiver of the
16 safeguards provided by this Order. Such disclosure shall not be deemed a breach of
17 the terms of this Order.

18 22. Within 30 days of final termination (upon the parties' execution of a
19 release and settlement of their claims and/or the issuance of a final non-appealable
20 Order) of the Litigation, unless the parties and all designating parties otherwise
21 agree, each party shall assemble all documents or other materials designated as
22 "Confidential" hereunder that were produced to it, including all copies thereof, and
23 make available all such documents or materials to the party or designating party
24 producing such documents or have them destroyed, at the option of the party in
25 possession of such materials, and shall provide an affidavit from counsel of record
26 certifying that a good-faith search for any and all such documents or other materials
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1 has been made and that the provisions of this paragraph have been satisfied by such
2 receiving party.

3 23. This Order shall survive the final termination or resolution of the
4 Litigation, and this Court shall retain jurisdiction to resolve any dispute concerning
5 the use of Confidential Materials disclosed hereunder.

6 24. The provisions of this Order shall govern discovery of Confidential
7 Materials in connection with the Litigation. The undersigned parties agree to be
8 bound by the terms of this Order pending entry by the Court of this Order, or an
9 alternative thereto that is satisfactory to all parties, and any violation of the terms of
10 this proposed Order shall subject the offender to the same sanctions and penalties as
11 if this Order had been entered by the Court.

12 PROPOSED BY:

13 Kamies Elhouty

14
15 By: /s/ Amanda Lucas (as approved on 11/14/14)

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7 **ORDER**

8 The stipulated protective order is **GRANTED as modified** (in paragraphs 6
9 and 11) by the Court.

10
11 IT IS SO ORDERED.

12 Dated: November 17, 2014

/s/ Jennifer L. Thurston
13 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A TO PROTECTIVE ORDER

1. I have received and read the Protective Order (“Order”) entered in the matter of *Kamies Elhouty v. Lincoln Benefit Life Company*, Case No. 1:14-CV-00676-LJO-JLT pending in the United States District Court Eastern District of California, and understand all of the terms and provisions of that Order.

2. I agree only to use or disclose any Confidential Materials, as that term is defined by that Order, in strict compliance with the provisions of that Order and in particular, the requirements of paragraph 9 of that Order.

3. I agree that I am subject to the jurisdiction of the United States District Court Eastern District of California for all matters relating to this Order.

Dated: _____

Signature

Print Name