

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

WIN NEUGER, an individual, et al.,
Plaintiff,
v.
ALAN SALKE, an individual, et al.,
Defendant.

Case No. 2:14-cv-08040-AB-JC

STIPULATED PROTECTIVE ORDER

1 **1. A. PURPOSES AND LIMITATIONS**

2 As the Parties have represented that discovery in this action is likely to involve
3 production of confidential, proprietary, or private information for which special protection
4 from public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted, this Court enters the following Protective Order. This Order does not
6 confer blanket protections on all disclosures or responses to discovery. The protection it
7 affords from public disclosure and use extends only to the limited information or items that
8 are entitled to confidential treatment under the applicable legal principles. Further, as set
9 forth in Section 12.3, below, this Protective Order does not entitle the parties to file
10 confidential information under seal. Rather, when the Parties seek permission from the
11 court to file material under seal, the Parties must comply with Civil Local Rule 79-5 and
12 with any pertinent orders of the assigned District Judge and Magistrate Judge.

13 **B. GOOD CAUSE STATEMENT**

14 In light of the nature of the claims and allegations in this case and the Parties and
15 related third-parties' representations that discovery in this case will involve the production
16 of confidential records, and in order to expedite the flow of information, to facilitate the
17 prompt resolution of disputes over confidentiality of discovery materials, to adequately
18 protect information the Parties and third-parties are entitled to keep confidential, to ensure
19 that the Parties and third-parties are permitted reasonable necessary uses of such material
20 in connection with this action, to address their handling of such material at the end of the
21 litigation, and to serve the ends of justice, a protective order for such information is
22 justified in this matter. The Parties shall not designate any information/documents as
23 confidential without a good faith belief that such information/documents have been
24 maintained in a confidential, non-public manner, and that there is good cause or a
25 compelling reason why it should not be part of the public record of this case.

26 **2. DEFINITIONS**

27 2.1 Action: The instant action: *Win Neuger, et al. v. Alan Salke, et al.*, Case No.
28 2:14-cv-08040-AB-JC.

1 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
4 is generated, stored or maintained) or tangible things that qualify for protection under
5 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

6 2.4 Counsel: Plaintiffs’ counsel (as well as their support staff) and counsel for
7 Jennifer Nicholson-Salke, Bert Salke, Steve Berson, and Berson Financial Group, Inc. (and
8 their support staff).

9 2.5 Designating Party: a Party or Non-Party that designates information or items
10 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.6 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among other
13 things, testimony, transcripts, and tangible things), that are produced or generated in
14 disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this Action.

18 2.9 Non-Party: any natural person, partnership, corporation, association, or other
19 legal entity not a Party.

20 2.10 Outside Counsel of Record: attorneys who are not employees of a Party but
21 are retained to represent or advise a Party to this Action and have appeared in this Action
22 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
23 Party, and includes support staff.

24 2.11 Party: Plaintiffs Win Neuger, Marshall Manley, an administrator of the
25 Marshall Manley Roth IRA, and Peter A. Feinstein, MD, Director and Trustee of the Peter
26 A. Feinstein MD PC Profit Sharing Plan, on the one hand, and Jennifer Nicholson-Salke,
27 Bert Salke, Steve Berson, and Berson Financial Group, Inc. on the other hand, including all
28 of their officers, directors, employees, consultants, retained experts, and Outside Counsel

1 of Record (and their support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
3 Material in this Action.

4 2.13 Professional Vendors: persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
6 and organizing, storing, or retrieving data in any form or medium) and their employees and
7 subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is designated
9 as “CONFIDENTIAL.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
11 a Producing Party.

12 **3. SCOPE**

13 The protections conferred by this Order cover not only Protected Material (as defined
14 above) but also (1) any information copied or extracted from Protected Material; (2) all
15 copies, excerpts, summaries, or compilations of Protected Material; and (3) any deposition
16 testimony, conversations, or presentations by Parties or their Counsel that might reveal
17 Protected Material, other than during a court hearing or at trial.

18 Any use of Protected Material during a court hearing or at trial shall be governed by
19 the orders of the presiding judge. This Order does not govern the use of Protected Material
20 during a court hearing or at trial.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
24 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
25 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; (2) final
26 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
27 trials, or reviews of this Action, including the time limits for filing any motions or
28

1 applications for extension of time pursuant to applicable law; and (3) upon the settlement
2 of all claims or final satisfaction of any judgment arising from the Action.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection under this Order
6 must take care to limit any such designation to specific material that qualifies under the
7 appropriate standards. The Designating Party must designate for protection only those parts
8 of material, documents, items, or oral or written communications that qualify so that other
9 portions of the material, documents, items, or communications for which protection is not
10 warranted are not swept unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber the case development process or to impose unnecessary expenses
14 and burdens on other parties) may expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or
20 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
21 must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions), that the Producing Party affix at a minimum, the
25 legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
26 contains protected material. If only a portion or portions of the material on a page qualifies
27 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
28 by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection need
2 not designate them for protection until after the inspecting Party has indicated which
3 documents it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions
7 thereof, qualify for protection under this Order. Then, before producing the specified
8 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
9 that contains Protected Material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins).

12 (b) for testimony given in depositions that the Designating Party identifies on the
13 record, before the close of the deposition as protected testimony.

14 (c) for information produced in some form other than documentary and for any
15 other tangible items, that the Producing Party affix in a prominent place on the exterior of
16 the container or containers in which the information is stored the legend
17 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
18 the Producing Party, to the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
20 to designate qualified information or items does not, standing alone, waive the Designating
21 Party’s right to secure protection under this Order for such material. Upon timely correction
22 of a designation, the Receiving Party must make reasonable efforts to assure that the
23 material is treated in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
26 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
28 process under Local Rule 37-1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding shall be on the
2 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
3 harass or impose unnecessary expenses and burdens on other parties) may expose the
4 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
5 confidentiality designation, all parties shall continue to afford the material in question the
6 level of protection to which it is entitled under the Producing Party’s designation until the
7 Court rules on the challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this Action
11 only for prosecuting, defending, or attempting to settle this Action. Such Protected Material
12 may be disclosed only to the categories of persons and under the conditions described in
13 this Order. When the Action has been terminated, a Receiving Party must comply with the
14 provisions of Section 13 below.

15 Protected Material must be stored and maintained by a Receiving Party at a location
16 and in a secure manner that ensures that access is limited to the persons authorized under
17 this Order.

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
20 may disclose any information or item designated “CONFIDENTIAL” only to:

- 21 (a) the Receiving Party’s counsel of record in this Action, as well as employees of
- 22 said counsel to whom it is reasonably necessary to disclose the information for this Action;
- 23 (b) the officers, directors, and employees (including, if applicable, House Counsel)
- 24 of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 25 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
- 26 reasonably necessary for this Action and who have signed the “Acknowledgment and
- 27 Agreement to Be Bound” (Exhibit A);
- 28 (d) the court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
3 whom disclosure is reasonably necessary for this Action and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or a custodian
6 or other person who otherwise possessed or knew the information;

7 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
8 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
9 witness sign the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit
10 A hereto; and (2) they will not be permitted to keep any confidential information unless
11 they sign the “Acknowledgment and Agreement to Be Bound” attached as Exhibit A, unless
12 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
13 deposition testimony or exhibits to depositions that reveal Protected Material may be
14 separately bound by the court reporter and may not be disclosed to anyone except as
15 permitted under this Protective Order; and

16 (i) any mediator or settlement officer, and their supporting personnel, mutually
17 agreed upon by any of the parties engaged in settlement discussions.

18 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
19 **PRODUCED IN OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation that
21 compels disclosure of any information or items designated in this Action as
22 “CONFIDENTIAL,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification shall include
24 a copy of the subpoena or court order unless prohibited by law;

25 (b) promptly notify in writing the party who caused the subpoena or order to issue
26 in the other litigation that some or all of the material covered by the subpoena or order is
27 subject to this Protective Order. Such notification shall include a copy of this Protective
28 Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
2 Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
6 issued, unless the Party has obtained the Designating Party’s permission, or unless
7 otherwise required by the law or court order. The Designating Party shall bear the burden
8 and expense of seeking protection in that court of its confidential material and nothing in
9 these provisions should be construed as authorizing or encouraging a Receiving Party in
10 this Action to disobey a lawful directive from another court.

11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
12 **PRODUCED IN THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-Party
14 in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
15 Parties in connection with this litigation is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce a
19 Non-Party’s confidential information in its possession, and the Party is subject to an
20 agreement with the Non-Party not to produce the Non-Party’s confidential information, then
21 the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that some
23 or all of the information requested is subject to a confidentiality agreement with a Non-
24 Party;

25 (2) promptly provide the Non-Party with a copy of the Protective Order in this
26 Action, the relevant discovery request(s), and a reasonably specific description of the
27 information requested; and
28

1 (3) make the information requested available for inspection by the Non-Party, if
2 requested.

3 (c) If a Non-Party represented by counsel fails to commence the process called for
4 by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
5 accompanying information or fails contemporaneously to notify the Receiving Party that it
6 has done so, the Receiving Party may produce the Non-Party's confidential information
7 responsive to the discovery request. If an unrepresented Non-Party fails to seek a protective
8 order from this court within 14 days of receiving the notice and accompanying information,
9 the Receiving Party may produce the Non-Party's confidential information responsive to
10 the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
11 shall not produce any information in its possession or control that is subject to the
12 confidentiality agreement with the Non-Party before a determination by the court unless
13 otherwise required by the law or court order. Absent a court order to the contrary, the Non-
14 Party shall bear the burden and expense of seeking protection in this court of its Protected
15 Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Protective Order, the Receiving Party must immediately (a) notify in writing the
20 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
21 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
22 unauthorized disclosures were made of all the terms of this Order, and (d) request such
23 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
24 attached hereto as Exhibit A.

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently
28 produced material is subject to a claim of privilege or other protection, the obligations of

1 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
2 This provision is not intended to modify whatever procedure may be established in an e-
3 discovery order that provides for production without prior privilege review. Pursuant to
4 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
5 effect of disclosure of a communication or information covered by the attorney-client
6 privilege or work product protection, the parties may incorporate their agreement into this
7 Protective Order.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
10 to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. No Party waives any right it otherwise would
12 have to object to disclosing or producing any information or item on any ground not
13 addressed in this Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
16 Material must comply with Civil Local Rule 79-5 and with any pertinent orders of the
17 assigned District Judge and Magistrate Judge. If a Party's request to file Protected Material
18 under seal is denied by the court, then the Receiving Party may file the information in the
19 public record unless otherwise instructed by the court.

20 **13. FINAL DISPOSITION**

21 After the final disposition of this Action, as defined in Section 4, within 60 days of a
22 written request by the Designating Party, each Receiving Party must return all Protected
23 Material to the Producing Party or destroy such material. As used in this subdivision, "all
24 Protected Material" includes all copies, abstracts, compilations, summaries, and any other
25 format reproducing or capturing any of the Protected Material. Whether the Protected
26 Material is returned or destroyed, the Receiving Party must submit a written certification to
27 the Producing Party (and, if not the same person or entity, to the Designating Party) by the
28 60 day deadline that (1) identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
2 retained any copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, counsel are
4 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
5 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
6 reports, attorney work product, and consultant and expert work product, even if such
7 materials contain Protected Material. Any such archival copies that contain or constitute
8 Protected Material remain subject to this Protective Order as set forth in Section 4.

9 **14.** Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary sanctions.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: November 22, 2024

13 /s/Michael D. Dempsey
14 Attorneys for Plaintiff(s)

15 DATED: November 22, 2024

16 /s/Anthony R. Bisconti
17 Attorneys for Jennifer Nicholson-Salke, Bert Salke,
18 Steve Berson, and Berson Financial Group, Inc.

19 *Pursuant to L.R. 5-4.3.4(a)(2)(i), the above-identified filer attests that*
20 *all other signatories listed, and on whose behalf this filing is submitted,*
concur in the filing's content and have authorized the filing.

21 IT IS SO ORDERED.

22 DATED: November 25, 2024

23 
24 Honorable Jacqueline Chooljian
25 United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Protective Order that was issued by the United States District Court for
7 the Central District of California on November 25, 2024 in the case of *Win*
8 *Neuger, et al. v. Alan Salke, et al.*, Case No. 2:14-cv-08040-AB-JC. I agree to comply with
9 and to be bound by all the terms of this Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Protective Order to any person or entity except in strict compliance
13 with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this Protective Order,
16 even if such enforcement proceedings occur after termination of this action. I hereby
17 appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____
26
27
28