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18 ESPERANZA BOOKE

19 UNITED STATES DISTRICT COURT  
20 FOR THE EASTERN DISTRICT OF CALIFORNIA

21 ESPERANZA BOOKE, individually and as  
22 personal representative of the Estate of  
23 CHARLES SALINAS;

24 Plaintiff,

25 vs.

26 COUNTY OF FRESNO, et al.,

27 Defendants.

28 Case No. 1:13-cv-00586-AWI-SAB

**ORDER ON STIPULATED  
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for

1 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
2 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
3 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
4 discovery and that the protection it affords from public disclosure and use extends only to the limited  
5 information or items that are entitled to confidential treatment under the applicable legal principles. The  
6 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order  
7 does not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the  
8 procedures that must be followed and the standards that will be applied when a party seeks permission  
9 from the court to file material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
12 or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
14 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
15 Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
17 their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
21 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
22 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
23 in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
25 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant  
26 in this action.

27 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
28 does not include Outside Counsel of Record or any other outside counsel.

1           2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
2 entity not named as a Party to this action.

3           2.9    Outside Counsel of Record: attorneys who are not employees of a party to this action  
4 but are retained to represent or advise a party to this action and have appeared in this action on behalf of  
5 that party or are affiliated with a law firm which has appeared on behalf of that party.

6           2.10   Party: any party to this action, including all of its officers, directors, employees,  
7 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

8           2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
9 in this action.

10          2.12   Professional Vendors: persons or entities that provide litigation support services (e.g.,  
11 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
12 or retrieving data in any form or medium) and their employees and subcontractors.

13          2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
14 “CONFIDENTIAL.”

15          2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
16 Producing Party.

17 3.        SCOPE

18           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
19 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
20 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
21 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
22 conferred by this Stipulation and Order do not cover the following information: (a) any information that  
23 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public  
24 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of  
25 this Order, including becoming part of the public record through trial or otherwise; and (b) any  
26 information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party  
27 after the disclosure from a source who obtained the information lawfully and under no obligation of  
28 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a

1 separate agreement or order.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
4 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
6 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
7 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
8 limits for filing any motions or applications for extension of time pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
11 Non-Party that designates information or items for protection under this Order must take care to limit  
12 any such designation to specific material that qualifies under the appropriate standards. The  
13 Designating Party must designate for protection only those parts of material, documents, items, or oral  
14 or written communications that qualify – so that other portions of the material, documents, items, or  
15 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
16 this Order.

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

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

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
25 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
26 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
27 the material is disclosed or produced.

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1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
3 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
4 “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the  
5 material on a page qualifies for protection, the Producing Party also must clearly identify the protected  
6 portion(s) (e.g., by making appropriate markings in the margins).

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

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
18 Designating Party identify on the record, before the close of the deposition, hearing, or other  
19 proceeding, all protected testimony.

20 (c) for information produced in some form other than documentary and for any other tangible  
21 items, that the Producing Party affix in a prominent place on the exterior of the container or containers  
22 in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions  
23 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
24 identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
26 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
27 protection under this Order for such material. Upon timely correction of a designation, the Receiving  
28 Party must make reasonable efforts to assure that the material is treated in accordance with the

1 provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or  
6 a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
7 confidentiality designation by electing not to mount a challenge promptly after the original designation  
8 is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
10 providing written notice of each designation it is challenging and describing the basis for each  
11 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
12 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
13 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the  
14 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
15 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
16 explain the basis for its belief that the confidentiality designation was not proper and must give the  
17 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
18 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
19 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
20 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
21 meet and confer process in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality (and in  
24 compliance with Civil Local Rule 141, if applicable) within 21 days of the initial notice of challenge or  
25 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
26 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that  
27 the movant has complied with the meet and confer requirements imposed in the preceding paragraph.  
28 Failure by the Designating Party to make such a motion including the required declaration within 21

1 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each  
2 challenged designation. In addition, the Challenging Party may file a motion challenging a  
3 confidentiality designation at any time if there is good cause for doing so, including a challenge to the  
4 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this  
5 provision must be accompanied by a competent declaration affirming that the movant has complied  
6 with the meet and confer requirements imposed by the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
8 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
9 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
10 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
11 confidentiality as described above, all parties shall continue to afford the material in question the level  
12 of protection to which it is entitled under the Producing Party's designation until the court rules on the  
13 challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
18 categories of persons and under the conditions described in this Order. When the litigation has been  
19 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
20 DISPOSITION).

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
24 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
25 information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said  
27 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
28 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached



1 hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to  
3 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
4 and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably  
6 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
7 (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary  
13 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
14 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
15 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the  
16 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective  
17 Order.

18 (g) the author or recipient of a document containing the information or a custodian or other  
19 person who otherwise possessed or knew the information.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
21 LITIGATION

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

24 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of  
25 the subpoena or court order;

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

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

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

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

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

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

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

21 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this  
22 litigation, the relevant discovery request(s), and a reasonably specific description of the information  
23 requested; and

24 (3) make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of  
26 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s  
27 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective  
28 order, the Receiving Party shall not produce any information in its possession or control that is subject

1 to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court  
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
3 court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
6 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the  
7 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
10 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be  
11 Bound” that is attached hereto as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
13 MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
15 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
17 modify whatever procedure may be established in an e-discovery order that provides for production  
18 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
19 parties reach an agreement on the effect of disclosure of a communication or information covered by  
20 the attorney-client privilege or work product protection, the parties may incorporate their agreement in  
21 the stipulated protective order submitted to the court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
24 modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
26 Party waives any right it otherwise would have to object to disclosing or producing any information or  
27 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
28 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1           12.3 Filing Protected Material. Without written permission from the Designating Party or a  
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
4 must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a  
5 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
6 Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue  
7 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.

8 13. FINAL DISPOSITION

9           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
10 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
11 used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
12 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
13 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
14 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
15 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned  
16 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
17 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
18 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
19 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
20 exhibits, expert reports, attorney work product, and consultant and expert work product, even if such  
21 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
22 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED: \_\_\_\_\_

4 Attorneys for Plaintiff

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6  
7 DATED: 1/24/13 \_\_\_\_\_ /s/ Kevin P. Allen

8 Attorney for Defendants

9  
10 **ORDER**

11 IT IS SO ORDERED.

12  
13 Dated: February 20, 2014

14   
15 \_\_\_\_\_  
16 UNITED STATES MAGISTRATE JUDGE