

1 STEPHANIE DORIA WILEY (SBN 196825)

sdoria@rukinhyland.com

2 REBECCA STEPHENS (SBN 299234)

rstephens@rukinhyland.com

3 RUKIN HYLAND LLP

4 100 Pine Street, Suite 2150

San Francisco, CA 94111

5 Telephone: (415) 421-1800

6 Facsimile: (415) 421-1700

7 Attorneys for PLAINTIFF A.M.

8 SEE NEXT PAGE FOR ADDITIONAL COUNSEL

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 A.M., a minor by and through his guardian
13 ad litem CHRISTOPHER MROZINSKI,
14 Plaintiff,

15 v.

16 SAN JUAN UNIFIED SCHOOL DISTRICT,
17 1ST STEP APPLIED BEHAVIOR
18 ANALYSTS, INC., NICHOLAS TICHE, and
TRACY MCDONALD,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. 2:16-cv-02380-KJM-KJN

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER**

1 DOMENIC SPINELLI (SBN 131192)

2 domenics@sdnlaw.com

3 SPINELLI, DONALD & NOTT

815 "S" Street, Second Floor

Sacramento, CA 95811

Telephone: (916) 448-7888

Facsimile: (916) 448-6888

5
6 Attorneys for DEFENDANTS San Juan Unified School District
and Tracy McDonald

7 MICHAEL LEVANGIE (SBN160163)

8 michael.levangie@llg-law.com

9 LEVANGIE LAW GROUP

2021 N Street

Sacramento, CA 95811

10 Telephone: (916) 443-4849

11 Facsimile: (916) 443-4855

12 Attorneys for DEFENDANTS 1st Step Applied Behavior
13 Analysts and Nicholas Tiche
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 Plaintiff A.M., by and through his Guardian ad Litem, Chris Mrozinski (“Plaintiff”), and
3 Defendants San Juan Unified School District (“SJUSD”), 1st Step Applied Behavior Analysts, Inc.
4 (“1st Step”), Nicholas Tiche, and Tracy McDonald (collectively, “Defendants”) (collectively, “the
5 Parties”), hereby stipulate as follows:

6 1. PURPOSES AND LIMITATIONS

7 Disclosure and discovery activity in this action are likely to involve production of
8 confidential, proprietary, or private information for which special protection from public disclosure
9 and from use for any purpose other than prosecuting or defending this litigation may be warranted.
10 Examples of such information in this case include, but are not limited to, the educational, medical
11 and psychological records of the minor Plaintiff A.M. Accordingly, the Parties hereby stipulate to
12 and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge
13 that this Order does not confer blanket protections on all disclosures or responses to discovery and
14 that the protection it affords from public disclosure and use extends only to the limited information
15 or items that are entitled to confidential treatment under applicable legal principles. The Parties
16 further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
17 not entitle them to file confidential information under seal; Civil Local Rule 141 sets forth the
18 procedures that must be followed and the standards that will be applied when a party seeks
19 permission from the court to file material under seal.

20 2. DEFINITIONS

21 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
22 information or items under this Order.

23 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
24 generated, stored or maintained) or tangible things that qualify for protection under the provisions of
25 Paragraph 1, above.

26 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
27 as their support staff).

28 2.4 Designating Party: a Party or Non-Party that designates information or items that it

1 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
3 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
4 transcripts, and tangible things), that are produced or generated in disclosures or responses to
5 discovery in this matter.

6 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
7 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
8 consultant in this action.

9 2.7 House Counsel: attorneys who are employees of a party to this action. House
10 Counsel does not include Outside Counsel of Record or any other outside counsel.

11 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
12 entity not named as a Party to this action.

13 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
14 but are retained to represent or advise a party to this action and have appeared in this action on
15 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

16 2.10 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
22 storing, or retrieving data in any form or medium) and their employees and subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL.”

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
26 Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Stipulation and Order do not cover the following
7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
8 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
9 publication not involving a violation of this Order, including becoming part of the public record
10 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
11 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
12 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
13 Protected Material at trial shall be governed by a separate agreement or order.

14 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to
24 limit any such designation to specific material that qualifies under the appropriate standards. The
25 Designating Party must designate for protection only those parts of material, documents, items, or
26 oral or written communications that qualify – so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept unjustifiably within
28 the ambit of this Order.

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

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
9 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
10 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
11 designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

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

18 A Party or Non-Party that makes original documents or materials available for inspection need not
19 designate them for protection until after the inspecting Party has indicated which material it would
20 like copied and produced. During the inspection and before the designation, all of the material made
21 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
22 identified the documents it wants copied and produced, the Producing Party must determine which
23 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
24 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
25 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
26 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
27 appropriate markings in the margins).

28 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the

Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

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

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

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only

1 if it has engaged in this meet and confer process first or establishes that the Designating Party is
2 unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
4 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
5 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
6 confer process will not resolve their dispute, or the first day of trial in this matter, whichever is
7 earlier. Each such motion must be accompanied by a competent declaration affirming that the
8 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
9 Any motion brought pursuant to this provision must be accompanied by a competent declaration
10 affirming that the movant has complied with the meet and confer requirements imposed by the
11 preceding paragraph.

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by

1 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
4 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
5 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
6 attached hereto as Exhibit A;

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

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

13 (d) the court and its personnel;

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

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

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

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
26 LITIGATION

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

1 must:

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

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

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

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

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

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

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

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

28 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in

1 this litigation, the relevant discovery request(s), and a reasonably specific description of the
2 information requested; and

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

4 (c) If the Non-Party fails to object or seek a protective order from this court within 14
5 days of receiving the notice and accompanying information, the Receiving Party may produce the
6 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
7 seeks a protective order, the Receiving Party shall not produce any information in its possession or
8 control that is subject to the confidentiality agreement with the Non-Party before a determination by
9 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
10 seeking protection in this court of its Protected Material.

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
20 MATERIAL

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
3 its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
5 no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered by
8 this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating Party or a
10 court order secured after appropriate notice to all interested persons, a Party may not file in the
11 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
12 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal
13 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
14 to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected
15 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
16 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
17 Rule 141 is denied by the court, then the Receiving Party may file the information in the public
18 record unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
22 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
24 the Protected Material is returned or destroyed, the Receiving Party must submit a written
25 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
26 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
27 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
28 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected

1 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
2 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
4 and expert work product, even if such materials contain Protected Material. Any such archival copies
5 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
6 Section 4 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED: February 23, 2017

RUKIN HYLAND LLP

10
11 By: /s/ Stephanie Doria Wiley

12 STEPHANIE DORIA WILEY
13 Attorneys for Plaintiff A.M.

14
15 DATED: February 23, 2017

SPINELLI, DONALD & NOTT

16
17 By: /s/ Domenic Spinelli (as authorized on 2/22/17)

18 DOMENIC SPINELLI
19 Attorneys for Defendants
20 San Juan Unified School District and
Tracy McDonald

21 DATED: February 23, 2017

LEVANGIE LAW GROUP

22 By: /s/ Michael Levangie (as authorized on 2/22/17)

23 MICHAEL LEVANGIE
24 Attorneys for Defendants
25 1st Step Applied Behavior Analysts and
26 Nicholas Tiche
27
28

1 The court adopts the parties' stipulation except to the extent that paragraph 12.3 ("Filing Protected
2 Material") is superseded by the court's standing order. *See* Standing Order § 10 ("Sealing and
3 Protective Orders"), ECF No. 3-1. Specifically, "The court will only consider requests to seal or
4 redact filed by the proponent of sealing or redaction. If a party plans to make a filing that includes
5 material an opposing party has identified as confidential and potentially subject to sealing, the filing
6 party shall provide the opposing party with sufficient notice in advance of filing to allow for the
7 seeking of an order of sealing or redaction from the court." *Id.*

8
9
10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11 DATED: May 12, 2017

12
13 
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for the
6 Eastern District of California on [date] in the case of *A.M. v San Juan Unified School District, et al.*,
7 Case No. 2:16-cv-02380-KJM-KJN. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
10 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
11 any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Eastern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____
26
27
28