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 10 SAMY TARAZI

11 UNITED STATES DISTRICT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 13 (SAN JOSE)

14 ROBERT DOYLE,  
 15 Plaintiff,

16 v.

17 SANTA CLARA COUNTY; SAMY  
 18 TARAZI; and DOES 1-10,  
 19 Defendants.

No. C11-02260 EJD

**STIPULATED PROTECTIVE ORDER**

**MODIFIED BY THE COURT**

**[Re: Docket No. 18]**

1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public  
 4 disclosure and from use for any purpose other than prosecuting this litigation would be  
 5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
 6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
 7 blanket protections on all disclosures or responses to discovery and that the protection it affords  
 8 extends only to the limited information or items that are entitled under the applicable legal  
 9 principles to treatment as confidential. The parties further acknowledge, as set forth in Section  
 10 10, below, that this Stipulated Protective Order creates no entitlement to file confidential  
 11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed  
 12 and reflects the standards that will be applied when a party seeks permission from the court to

1 file material under seal.

2 2. DEFINITIONS

3 2.1. Party: any party to this action, including all of its officers, directors, employees,  
4 consultants, retained experts, and outside counsel (and their support staff).

5 2.2. Disclosure or Discovery Material: all items or information, regardless of the medium  
6 or manner generated, stored, or maintained (including, among other things, testimony,  
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
8 discovery in this matter.

9 2.3. “Confidential” Information or Items: information (regardless of how generated,  
10 stored or maintained) or tangible things that qualify for protection under standards developed  
11 under F.R.Civ.P. 26(c).

12 2.4. “Highly Confidential - Attorneys’ Eyes Only” Information or Items: extremely  
13 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party  
14 would create a substantial risk of serious injury that could not be avoided by less restrictive  
15 means.

16 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
17 Producing Party.

18 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery Material  
19 in this action.

20 2.7. Designating Party: a Party or non-party that designates information or items that it  
21 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential -  
22 Attorneys’ Eyes Only.”

23 2.8. Protected Material: any Disclosure or Discovery Material that is designated as  
24 “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

25 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to  
26 represent or advise a Party in this action.

27 2.10. House Counsel: attorneys who are employees of a Party.

28 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their

1 support staff).

2 2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to  
3 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as  
4 a consultant in this action and who is not a past or a current employee of a Party or of a  
5 competitor of a Party and who, at the time of retention, is not anticipated to become an  
6 employee of a Party or a competitor of a Party. This definition includes a professional jury or  
7 trial consultant retained in connection with this litigation.

8 2.13. Professional Vendors: persons or entities that provide litigation support services  
9 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
10 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material  
13 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
15 parties or counsel to or in court or in other settings that might reveal Protected Material.

16 4. DURATION

17 Even after the termination of this litigation, the confidentiality obligations imposed by this  
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
19 order otherwise directs. **For a period of six months after the final termination of this action,  
20 this court will retain jurisdiction to enforce the terms of this order.**

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. A  
25 Designating Party must take care to designate for protection only those parts of material,  
26 documents, items, or oral or written communications that qualify so that other portions of the  
27 material, documents, items, or communications for which protection is not warranted are not  
28 swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are

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

4 If it comes to a Party's or a non-party's attention that information or items that designated  
5 for protection do not qualify for protection at all, or do not qualify for the level of protection  
6 initially asserted, that Party or non-party must promptly notify all other parties that it is  
7 withdrawing the mistaken designation.

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

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (apart from transcripts of depositions or  
14 other pretrial or trial proceedings), that the Producing Party affix the legend  
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the top  
16 of each page that contains protected material. If only a portion or portions of the material on a  
17 page qualify for protection, the Producing Party also must clearly identify the protected portions  
18 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the  
19 level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -  
20 ATTORNEYS' EYES ONLY").

21 A Party or non-party that makes original documents or materials available for  
22 inspection need not designate them for protection until after the inspecting Party has indicated  
23 which material it would like copied and produced. During the inspection and before the  
24 designation, all of the material made available for inspection shall be deemed "HIGHLY  
25 CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting Party has identified  
26 the documents it wants copied and produced, the Producing Party must determine which  
27 documents, or portions thereof, qualify for protection under this Order, then, before producing  
28 the specified documents, the Producing Party must affix the appropriate legend

1 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the  
2 top of each page that contains Protected Material. If only a portion or portions of the material  
3 on a page qualify for protection, the Producing Party also must clearly identify the protected  
4 portions (e.g., by making appropriate markings in the margins) and must specify, for each  
5 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
6 CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
8 Party or non-party offering or sponsoring the testimony identify on the record, before the close  
9 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
10 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES  
11 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled  
12 to protection, and when it appears that substantial portions of the testimony may qualify for  
13 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on  
14 the record (before the deposition or proceeding is concluded) a right to have up to 20 days to  
15 identify the specific portions of the testimony as to which protection is sought and to specify the  
16 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -  
17 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately  
18 designated for protection within the 20 days shall be covered by the provisions of this Stipulated  
19 Protective Order.

20 Transcript pages containing Protected Material must be separately bound by  
21 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”  
22 or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
23 non-party offering or sponsoring the witness or presenting the testimony.

24 (c) for information produced in some form other than documentary and for any other  
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
26 container or containers in which the information or item is stored the legend  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only  
28 portions of the information or item warrant protection, the Producing Party, to the extent

1 practicable, shall identify the protected portions, specifying whether they qualify as  
2 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items as “CONFIDENTIAL” OR “HIGHLY  
5 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” does not, standing alone, waive the  
6 Designating Party’s right to secure protection under this Order for such material. If material is  
7 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -  
8 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on  
9 timely notification of the designation, must make reasonable efforts to assure that the material is  
10 treated in accordance with the provisions of this Order.

## 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
13 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
14 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
15 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
16 promptly after the original designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s  
18 confidentiality designation must do so in good faith and must begin the process by conferring  
19 directly (in voice to voice dialogue; other forms of communication are not sufficient) with  
20 counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
21 for its belief that the confidentiality designation was not proper and must give the Designating  
22 Party an opportunity to review the designated material, to reconsider the circumstances, and, if  
23 no change in designation is offered, to explain the basis for the chosen designation. A  
24 challenging Party may proceed to the next stage of the challenge process only if it has engaged  
25 in this meet and confer process first.

26 **If the parties cannot resolve a challenge without court**  
27 **intervention, they shall comply with the undersigned’s Standing Order re Civil Discovery**  
28 **designation after considering the justification offered by the Designating Party may file and**  
**Disputes. Any Discovery Dispute Joint Report (DDJR) shall (1) attest that the**  
~~serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if~~

1 **meet-and-confer requirements imposed in the preceding paragraph have been satisfied;**  
2 ~~applicable) that identifies the challenged material and sets forth in detail the basis for the~~  
3 **(2) identify the challenged material and the basis for the challenge; and (3) set forth**  
4 ~~challenge. Each such motion must be accompanied by a competent declaration that affirms that~~  
5 ~~the movant has complied with the meet and confer requirements imposed in the preceding~~  
6 ~~paragraph and that sets forth~~ with specificity the justification for the confidentiality designation  
7 that was given by the Designating Party in the meet and confer dialogue.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating  
9 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
10 question the level of protection to which it is entitled under the Producing Party's designation.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
13 produced by another Party or by a non-party in connection with this case only for prosecuting,  
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
15 to the categories of persons and under the conditions described in this Order. When the  
16 litigation has been terminated, a Receiving Party must comply with the provisions of section 11,  
17 below (FINAL DISPOSITION).

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

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
22 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
23 information or item designated CONFIDENTIAL only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
25 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
26 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
27 attached hereto as Exhibit A;

28 (b) the officers, directors, and employees (including House Counsel) of the  
Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

1 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
2 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
3 Protective Order” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staff, and professional vendors to whom disclosure is  
6 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
7 Protective Order” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
9 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).  
10 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
11 Material must be separately bound by the court reporter and may not be disclosed to anyone  
12 except as permitted under this Stipulated Protective Order.

13 (g) the author of the document or the original source of the information.

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY”  
15 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
16 Designating Party, a Receiving Party may disclose any information or item designated  
17 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” only to:

18 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
19 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
20 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is  
21 attached hereto as Exhibit A;

22 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary  
23 for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”  
24 (Exhibit A);

25 (c) the Court and its personnel;

26 (d) court reporters, their staff, and professional vendors to whom disclosure is  
27 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by  
28 Protective Order” (Exhibit A); and

1 (e) the author of the document or the original source of the information.

2 7.4 Procedures for Approving; Disclosure of “HIGHLY CONFIDENTIAL -  
3 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

4 (a) Unless otherwise ordered by the court or agreed in writing by the Designating  
5 Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or  
6 item that has been designated “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”  
7 first must make a written request to the Designating Party that (1) identifies the specific  
8 HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose  
9 to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
10 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s  
11 current employer(s), (5) identifies each person or entity from whom the Expert has received  
12 compensation for work in his or her areas of expertise or to whom the expert has provided  
13 professional services at any time during the preceding five years, and (6) identifies (by name  
14 and number of the case, filing date, and location of court) any litigation in connection with  
15 which the Expert has provided any professional services during the preceding five years.

16 (b) A Party that makes a request and provides the information specified in the  
17 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
18 within seven court days of delivering the request, the Party receives a written objection from the  
19 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

20 (c) A Party that receives a timely written objection must meet and confer with the  
21 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
22 **the parties shall comply with the undersigned's**  
23 **Standing Order re Civil Discovery Disputes.**  
24 ~~may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule~~  
25 ~~79-5, if applicable) seeking permission from the court to do so. Any such motion~~ **DDJR**  
26 must describe  
27 the circumstances with specificity, set forth in detail the reasons for which the disclosure to the  
28 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and  
29 suggest any additional means that might be used to reduce that risk. In addition, any such  
30 **DDJR shall contain an attestation describing the**  
31 ~~motion must be accompanied by a competent declaration in which the movant describes the~~

1 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet  
2 and confer discussions) and sets forth the reasons advanced by the Designating Party for its  
3 refusal to approve the disclosure.

4 In any such proceeding the Party opposing disclosure to the Expert shall bear the  
5 burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
6 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
8 LITIGATION

9 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
10 would compel disclosure of any information or items designated in this action as  
11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the  
12 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)  
13 immediately and in no event more than three court days after receiving the subpoena or order.  
14 Such notification must include a copy of the subpoena or court order.

15 The Receiving Party also must immediately inform in writing the Party who caused the  
16 subpoena or order to issue in the other litigation that some or all the material covered by the  
17 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
18 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
19 caused the subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of  
21 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
22 protect its confidentiality interests in the court from which the subpoena or order issued. The  
23 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
24 its confidential material - and nothing in these provisions should be construed as authorizing or  
25 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

26 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective

1 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms  
4 of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 10. FILING PROTECTED MATERIAL

7 Without written permission from the Designating Party or a court order secured after  
8 appropriate notice to all interested persons, a Party may not file in the public record in this  
9 action any Protected Material. A Party that seeks to file under seal any Protected Material must  
10 comply with Civil Local Rule 79-5.

11 11. FINAL DISPOSITION

12 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
13 after the final termination of this action, each Receiving Party must return all Protected Material  
14 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,  
15 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
16 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
17 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
18 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
19 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
20 deadline that identifies (by category, where appropriate) all the Protected Material that was  
21 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
22 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
23 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
24 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
25 work product, even if such materials contain Protected Material. Any such archival copies that  
26 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
27 Section 4 (DURATION), above.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Robert Doyle v. Santa Clara County et al.* Case No. C11-02260 EJD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]