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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

<p>RASHAD BROWN, AN INDIVIDUAL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>WINCOR NIXDORF, INC., A DELAWARE CORPORATION;</p> <p style="text-align: center;">Defendant.</p>	<p>CASE NO. 2:14-cv-06962-JAK(PJWx)</p> <p><i>Original Complaint Filed Sept. 5, 2014</i></p> <p>STANDING PROTECTIVE ORDER FOR CASES ASSIGNED TO JUDGE JOHN A. KRONSTADT</p> <p>Judge: Hon. John A. Kronstadt</p>
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(This Form Represents the Standing Protective Order For Cases Assigned to Judge John A. Kronstadt and Has Not Been Modified.)

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order

1 does not automatically authorize the filing under seal of material designated
2 under this Order. Instead, the parties must comply with Local Rule 79-5.1
3 and this Court's Order Re Pilot Program for Under Seal Documents (See
4 Exhibit F) if they seek to file anything under seal. This Order does not
5 govern the use at trial of material designated under this Order.

6 **2. DESIGNATING PROTECTED MATERIAL**

7 **2.1 Over-Designation Prohibited.** Any party or non-party who
8 designates information or items for protection under this Order as
9 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,"
10 or "HIGHLY CONFIDENTIAL – SOURCE CODE" (a "designator") must only
11 designate specific material that qualifies under the appropriate standards.
12 To the extent practicable, only those parts of documents, items, or oral or
13 written communications that require protection shall be designated.
14 Designations with a higher confidentiality level when a lower level would
15 suffice are prohibited. Mass, indiscriminate, or routinized designations are
16 prohibited. Unjustified designations expose the designator to sanctions,
17 including the Court's striking all confidentiality designations made by that
18 designator.

19 Designation under this Order is allowed only if the designation is
20 necessary to protect material that, if disclosed to persons not authorized to
21 view it, would cause competitive or other recognized harm. Material may
22 not be designated if it has been made public, or if designation is otherwise
23 unnecessary to protect a secrecy interest. If a designator learns that
24 information or items that it designated for protection do not qualify for
25 protection at all or do not qualify for the level of protection initially asserted,
26 that designator must promptly notify all parties that it is withdrawing the
27 mistaken designation.
28

1 **2.2 Manner and Timing of Designations.** Designation under this
2 Order requires the designator to affix the applicable legend
3 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES
4 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page
5 that contains protected material. For testimony given in deposition or other
6 proceeding, the designator shall specify all protected testimony and the
7 level of protection being asserted. It may make that designation during the
8 deposition or proceeding, or may invoke, on the record or by written notice
9 to all parties on or before the next business day, a right to have up to 21
10 days from the deposition or proceeding to make its designation.

11 **2.2.1** A party or non-party that makes original documents or materials
12 available for inspection need not designate them for protection until after
13 the inspecting party has identified which material it would like copied and
14 produced. During the inspection and before the designation, all material
15 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.
16 After the inspecting party has identified the documents it wants copied and
17 produced, the producing party must designate the documents, or portions
18 thereof, that qualify for protection under this Order.

19 **2.2.2** Parties shall give advance notice if they expect a deposition or
20 other proceeding to include designated material so that the other parties
21 can ensure that only authorized individuals are present at those
22 proceedings when such material is disclosed or used. The use of a
23 document as an exhibit at a deposition shall not in any way affect its
24 designation. Transcripts containing designated material shall have a legend
25 on the title page noting the presence of designated material, and the title
26 page shall be followed by a list of all pages (including line numbers as
27 appropriate) that have been designated, and the level of protection being
28 asserted. The designator shall inform the court reporter of these

1 requirements. Any transcript that is prepared before the expiration of the
2 21-day period for designation shall be treated during that period as if it had
3 been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
4 unless otherwise agreed. After the expiration of the 21-day period, the
5 transcript shall be treated only as actually designated.

6 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
7 designate does not, standing alone, waive protection under this Order.
8 Upon timely assertion or correction of a designation, all recipients must
9 make reasonable efforts to ensure that the material is treated according to
10 this Order.

11 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 All challenges to confidentiality designations shall proceed under
13 Local Rule 37-1 through Local Rule 37-4.

14 **4. ACCESS TO DESIGNATED MATERIAL**

15 **4.1 Basic Principles.** A receiving party may use designated material
16 only for this litigation. Designated material may be disclosed only to the
17 categories of persons and under the conditions described in this Order.

18 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
19 **Approval.** Unless otherwise ordered by the Court or permitted in writing by
20 the designator, a receiving party may disclose any material designated
21 CONFIDENTIAL only to:

22 **4.2.1** The receiving party's outside counsel of record in this action
23 and employees of outside counsel of record to whom disclosure is
24 reasonably necessary;

25 **4.2.2** The officers, directors, and employees of the receiving party to
26 whom disclosure is reasonably necessary, and who have signed the
27 Agreement to Be Bound (Exhibit E-1);
28

1 **4.2.3** Experts retained by the receiving party's outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed
3 the Agreement to Be Bound (Exhibit E-1);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit E-1);

8 **4.2.6** During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to
10 Be Bound (Exhibit E-1); and

11 **4.2.7** The author or recipient of a document containing the material,
12 or a custodian or other person who otherwise possessed or knew the
13 information.

14 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
15 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
16 **Further Approval.** Unless permitted in writing by the designator, a
17 receiving party may disclose material designated HIGHLY CONFIDENTIAL
18 – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE
19 CODE without further approval only to:

20 **4.3.1** The receiving party's outside counsel of record in this action
21 and employees of outside counsel of record to whom it is reasonably
22 necessary to disclose the information;

23 **4.3.2** The Court and its personnel;

24 **4.3.3** Outside court reporters and their staff, professional jury or trial
25 consultants, and professional vendors to whom disclosure is reasonably
26 necessary, and who have signed the Agreement to Be Bound (Exhibit E-1);
27 and **4.3.4** The author or recipient of a document containing the material, or
28

1 a custodian or other person who otherwise possessed or knew the
2 information.

3 **4.4 Procedures for Approving or Objecting to Disclosure of**
4 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
5 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
6 **Experts.** Unless agreed to in writing by the designator:

7 **4.4.1** A party seeking to disclose to in-house counsel any material
8 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
9 make a written request to the designator providing the full name of the in-
10 house counsel, the city and state of such counsel's residence, and such
11 counsel's current and reasonably foreseeable future primary job duties and
12 responsibilities in sufficient detail to determine present or potential
13 involvement in any competitive decision-making. In-house counsel are not
14 authorized to receive material designated HIGHLY CONFIDENTIAL –
15 SOURCE CODE.

16 **4.4.2** A party seeking to disclose to an expert retained by outside
17 counsel of record any information or item that has been designated
18 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
19 CONFIDENTIAL – SOURCE CODE must first make a written request to the
20 designator that (1) identifies the general categories of HIGHLY
21 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL
22 – SOURCE CODE information that the receiving party seeks permission to
23 disclose to the expert, (2) sets forth the full name of the expert and the city
24 and state of his or her primary residence, (3) attaches a copy of the
25 expert's current resume, (4) identifies the expert's current employer(s), (5)
26 identifies each person or entity from whom the expert has received
27 compensation or funding for work in his or her areas of expertise (including
28 in connection with litigation) in the past five years, and (6) identifies (by

1 name and number of the case, filing date, and location of court) any
2 litigation where the expert has offered expert testimony, including by
3 declaration, report, or testimony at deposition or trial, in the past five years.
4 If the expert believes any of this information at (4) - (6) is subject to a
5 confidentiality obligation to a third party, then the expert should provide
6 whatever information the expert believes can be disclosed without violating
7 any confidentiality agreements, and the party seeking to disclose the
8 information to the expert shall be available to meet and confer with the
9 designator regarding any such confidentiality obligations.

10 **4.4.3** A party that makes a request and provides the information
11 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material
12 to the identified in-house counsel or expert unless, within seven days of
13 delivering the request, the party receives a written objection from the
14 designator providing detailed grounds for the objection.

15 **4.4.4** All challenges to objections from the designator shall proceed
16 under Local Rule 37-1 through Local Rule 37-4.

17 **5. SOURCE CODE**

18 **5.1 Designation of Source Code.** If production of source code is
19 necessary, a party may designate it as HIGHLY CONFIDENTIAL –
20 SOURCE CODE if it is, or includes, confidential, proprietary, or trade secret
21 source code.

22 **5.2 Location and Supervision of Inspection.** Any HIGHLY
23 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
24 available for inspection, in a format allowing it to be reasonably reviewed
25 and searched, during normal business hours or at other mutually agreeable
26 times, at an office of the designating party's counsel or another mutually
27 agreeable location. The source code shall be made available for inspection
28 on a secured computer in a secured room, and the inspecting party shall

1 not copy, remove, or otherwise transfer any portion of the source code onto
2 any recordable media or recordable device. The designator may visually
3 monitor the activities of the inspecting party's representatives during any
4 source code review, but only to ensure that there is no unauthorized
5 recording, copying, or transmission of the source code.

6 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party
7 may request paper copies of limited portions of source code that are
8 reasonably necessary for the preparation of court filings, pleadings, expert
9 reports, other papers, or for deposition or trial. The designator shall provide
10 all such source code in paper form, including Bates numbers and the label
11 "HIGHLY CONFIDENTIAL – SOURCE CODE."

12 **5.4 Access Record.** The inspecting party shall maintain a record of
13 any individual who has inspected any portion of the source code in
14 electronic or paper form, and shall maintain all paper copies of any printed
15 portions of the source code in a secured, locked area. The inspecting party
16 shall not convert any of the information contained in the paper copies into
17 any electronic format other than for the preparation of a pleading, exhibit,
18 expert report, discovery document, deposition transcript, or other Court
19 document. Any paper copies used during a deposition shall be retrieved at
20 the end of each day and must not be left with a court reporter or any other
21 unauthorized individual.

22 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 23 **IN OTHER LITIGATION**

24 **6.1 Subpoenas and Court Orders.** This Order in no way excuses
25 noncompliance with a lawful subpoena or court order. The purpose of the
26 duties described in this section is to alert the interested parties to the
27 existence of this Order and to give the designator an opportunity to protect
28 its confidentiality interests in the court where the subpoena or order

1 issued.

2 **6.2 Notification Requirement.** If a party is served with a subpoena or
3 a court order issued in other litigation that compels disclosure of any
4 information or items received by that party in this action and designated in
5 this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY
6 EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that party
7 must do the following.

8 **6.2.1** Promptly notify the designator in writing. Such notification shall
9 include a copy of the subpoena or court order.

10 **6.2.2** Promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered
12 by the subpoena or order is subject to this Order. Such notification shall
13 include a copy of this Order.

14 **6.2.3** Cooperate with all reasonable procedures sought by the
15 designator whose material may be affected.

16 **6.3 Wait For Resolution of Protective Order.** If the designator
17 promptly seeks a protective order, the party served with the subpoena or
18 court order shall not produce any information designated in this action as
19 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or
20 HIGHLY CONFIDENTIAL – SOURCE CODE before a determination by the
21 court where the subpoena or order issued, unless the party has obtained
22 the designator's permission. The designator shall bear the burden and
23 expense of seeking protection of its confidential material in that court.

24 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

25 If a receiving party learns that, by inadvertence or otherwise, it has
26 disclosed designated material to any person or in any circumstance not
27 authorized under this Order, it must immediately (1) notify in writing the
28 designator of the unauthorized disclosures, (2) use its best efforts to

1 retrieve all unauthorized copies of the designated material, (3) inform the
2 person or persons to whom unauthorized disclosures were made of all the
3 terms of this Order, and (4) use reasonable efforts to have such person or
4 persons execute the Agreement to Be Bound (Exhibit E-1).

5 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 When a producing party gives notice that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the
9 obligations of the receiving parties are those set forth in Fed. R. Civ. P.
10 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production
12 without prior privilege review pursuant to Fed. R. Evid. 502(d) and (e).

13 **9. FILING UNDER SEAL**

14 Without written permission from the designator or a Court order, a
15 party may not file in the public record in this action any designated material.
16 A party seeking to file under seal any designated material must comply with
17 Local Rule 79-1. Filings may be made under seal only pursuant to a court
18 order authorizing the sealing of the specific material at issue. The fact that
19 a document has been designated under this Order is insufficient to justify
20 filing under seal. Instead, parties must explain the basis for confidentiality
21 of each document sought to be filed under seal. Because a party other than
22 the designator will often be seeking to file designated material, cooperation
23 between the parties in preparing, and in reducing the number and extent
24 of, requests for under seal filing is essential. If a **receiving party's** request
25 to file designated material under seal pursuant to Local Rule 79-5.1 is
26 denied by the Court, then the receiving party **may file the material in the**
27 **public record** unless (1) **the designator** seeks reconsideration within four
28 days of the denial, or (2) as otherwise instructed by the Court.

10. FINAL DISPOSITION

Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60-day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

IT IS SO ORDERED.

Dated: 12/12/14



HON. PATRICK J. WALSH

UNITED STATES MAGISTRATE JUDGE

1 AGREEMENT TO BE BOUND (EXHIBIT E-1)

2 I, _____ [print or type full name], of
3 _____ [print or type full address], declare under penalty of
4 perjury that I have read in its entirety and understand the Protective Order
5 that was issued by the United States District Court for the Central District of
6 California on _____ [date] in the case of Rashad Brown v. Wincor
7 Nixdorf, Inc., 2:14-cv-06962-JAK(PJWx).

8 I agree to comply with and to be bound by all the terms of this
9 Protective Order, and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment for contempt. I
11 solemnly promise that I will not disclose in any manner any information or
12 item that is subject to this Protective Order to any person or entity except in
13 strict compliance with this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing this
16 Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print or type full
19 name] of
20 _____ [print or type full address
21 and telephone number] as my California agent for service of process in
22 connection with this action or oh any proceedings related to enforcement of
23 this Order.

24 Date: _____

25 City and State where sworn and signed:
26 _____

27 Printed name: _____

28 Signature: _____

CERTIFICATE OF E-FILE SERVICE

I hereby certify that on December 11, 2014, a copy of the foregoing document and all attachments were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail as indicated below. Parties may access this filing through the Court's electronic filing system.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and executed on December 11, 2014, in the City of San Diego, California.

Julie L. DeVercelly
Julie L. DeVercelly