

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MANUFACTURING AUTOMATION
& SOFTWARE SYSTEMS, INC.,

Plaintiff,

v.

KRISTOPHER HUGHES, JAMES
HUYSENTRUYT, INFORMATRAC, INC.,
PCVUE, INC., EDWARD NUGENT, and
DOES 1-10,

Defendants.

Case No. 2:16-cv-8962-CAS (KSx)

STIPULATED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulated Protective Order ("Stipulation") filed on August 2, 2017, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been modified by the Court's amendment of paragraphs 1, 6.2, 6.3, and 7.4(c) of the Stipulation.

1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND MODIFIED BY**
2 **THE COURT**¹

3
4 1. **PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from public disclosure
7 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
8 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
9 Order. The parties acknowledge that this Order does not confer blanket protections on all
10 disclosures or responses to discovery and that the protection it affords from public disclosure and
11 use extends only to the limited information or items that are entitled to confidential treatment under
12 the applicable legal principles. The parties further acknowledge, as set forth in Section 13.4, below,
13 that this Stipulated Protective Order does not entitle them to file confidential information under
14 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
15 will be applied when a party seeks permission from the court to file material under seal.

16 **This action is likely to involve trade secrets, patents, source code, and other valuable**
17 **research, development, commercial, financial, technical and/or proprietary customer**
18 **information for which special protection from public disclosure and from use for any**
19 **purpose other than litigation of this action is warranted.**

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 Federal Rule of
25 Civil Procedure 26(c).

26 _____
27 ¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in bold
28 typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
2 as their support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or items that it
4 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
6 CODE.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the
8 medium or manner in which it is generated, stored, or maintained (including, among other things,
9 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
10 responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
12 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
13 a consultant in this action, (2) is not a past or current employee of a Party or a current employee of
14 a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a
15 Party or of a Party’s competitor.

16 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
17 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
18 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
19 restrictive means.

20 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
21 sensitive “Confidential Information or Items” representing computer code and associated
22 comments and revision histories, formulas, engineering specifications, or schematics that define or
23 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
24 of which to another Party or Non-Party would create a substantial risk of serious harm that could
25 not be avoided by less restrictive means.

26 2.9 House Counsel: attorneys who are employees of a party to this action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

28 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal

1 entity not named as a Party to this action.

2 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
3 action but are retained to represent or advise a party to this action and have appeared in this action
4 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

5 2.12 Party: any party to this action, including all of its officers, directors, employees,
6 consultants, and Outside Counsel of Record (and their support staffs).

7 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
8 Material in this action.

9 2.14 Professional Vendors: persons or entities that provide litigation support services
10 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
11 storing, or retrieving data in any form or medium) and their employees and subcontractors.

12 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
14 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

15 2.16 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
19 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
20 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
22 However, the protections conferred by this Stipulation and Order do not cover the following
23 information: (a) any information that is in the public domain at the time of disclosure to a
24 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
25 result of publication not involving a violation of this Order, including becoming part of the public
26 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
28 information lawfully and under no obligation of confidentiality to the Designating Party. Any use

1 of Protected Material at trial shall be governed by a 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
7 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
8 including the time limits for filing any motions or applications for extension of time pursuant to
9 applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

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

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

22 If it comes to a Designating Party's attention that information or items that it designated for
23 protection do not qualify for protection at all or do not qualify for the level of protection initially
24 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
25 mistaken designation.

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

1 designated before the material is disclosed or produced. Designation in conformity with this Order
2 requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but
4 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
5 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected
7 material. If only a portion or portions of the material on a page qualifies for protection, the
8 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
9 markings in the margins) and must specify, for each portion, the level of protection being asserted.

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

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
24 Designating Party identify on the record, before the close of the deposition, hearing, or other
25 proceeding, all protected testimony and specify the level of protection being asserted. When it is
26 impractical to identify separately each portion of testimony that is entitled to protection and it
27 appears that substantial portions of the testimony may qualify for protection, the Designating Party
28 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right

1 to have up to 21 days to identify the specific portions of the testimony as to which protection is
2 sought and to specify the level of protection being asserted. Only those portions of the testimony
3 that are appropriately designated for protection within the 21 days shall be covered by the
4 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
5 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
6 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
9 other proceeding to include Protected Material. In the event that a party is asked to leave a
10 deposition due to the likelihood the questions or testimony will include Protected Material, the
11 party shall do so without disputing the designation. In the event that the party asked to leave, or his
12 or her counsel, believes that the requests are being made vexatiously or without merit, the party’s
13 counsel may contact the magistrate telephonically for assistance in resolving the dispute, and in the
14 event the magistrate is unable to resolve the dispute at that time, the party may suspend the
15 deposition until the magistrate has resolved the issue.

16 The use of a document as an exhibit at a deposition shall not in any way affect its
17 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY.”

19 Transcripts containing Protected Material shall have an obvious legend on the title page that
20 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
21 (including line numbers as appropriate) that have been designated as Protected Material and the
22 level of protection being asserted by the Designating Party. The Designating Party shall inform the
23 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
24 day period for designation shall be treated during that period as if it had been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
26 the expiration of that period, the transcript shall be treated only as actually designated.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
3 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
4 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
5 level of protection being asserted.

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the Designating Party’s
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
10 in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

18 6.2 Meet and Confer. **The Challenging Party shall initiate the dispute resolution**
19 **process under Local Rule 37.1 et seq.** The Challenging Party shall ~~initiate the dispute resolution~~
20 ~~process by providing~~ written notice of each designation it is challenging and describing the basis
21 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
22 must recite that the challenge to confidentiality is being made in accordance with this specific
23 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
24 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
25 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
26 Challenging Party must explain the basis for its belief that the confidentiality designation was not
27 proper and must give the Designating Party an opportunity to review the designated material, to
28 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for

1 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process
2 only if it has engaged in this meet and confer process first or establishes that the Designating Party
3 is unwilling to participate in the meet and confer process in a timely manner **and the parties have**
4 **engaged in a pre-filing telephonic conference with the court pursuant to the court's**
5 **procedures.**

6 6.3 Judicial Intervention. **If, following a pre-filing telephonic conference with the**
7 **court, counsel are unable to settle their differences, they shall formulate a written stipulation,**
8 **in accordance with Local Rule 37-2, unless otherwise ordered by the court. The stipulation**
9 **shall be filed and served with the notice of motion. Exhibits to the stipulation may include**
10 **declarations prepared in conformity with Local Rule 7-7. When a party states its contentions**
11 **with respect to whether to retain confidentiality of the designated material, such party shall**
12 **also state how it proposed to resolve the dispute over that issue at the conference of counsel. If**
13 ~~the Parties cannot resolve a challenge without court intervention, the Designating Party shall file~~
14 ~~and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil~~
15 ~~Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of~~
16 ~~the parties agreeing that the meet and confer process will not resolve their dispute, whichever is~~
17 ~~earlier. Each such motion must be accompanied by a competent declaration affirming that the~~
18 ~~movant has complied with the meet and confer requirements imposed in the preceding paragraph.~~
19 ~~Failure by the Designating Party to make such a motion including the required declaration within~~
20 ~~21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for~~
21 ~~each challenged designation. In addition, the Challenging Party may, but need not, file a motion~~
22 ~~challenging a confidentiality designation at any time if there is good cause for doing so, including a~~
23 ~~challenge to the designation of a deposition transcript or any portions thereof. Any motion brought~~
24 ~~pursuant to this provision must be accompanied by a competent declaration affirming that the~~
25 ~~movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
28 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.

1 Unless the Designating Party has waived the confidentiality designation ~~by failing to file a motion~~
2 ~~to retain confidentiality as described above~~, all parties shall continue to afford the material in
3 question the level of protection to which it is entitled under the Producing Party's designation until
4 the court rules on the challenge.

5 ~~The parties may agree, or the Court may order, that the burden of moving be shifted to the~~
6 ~~Challenging Party in the event the Court finds that one or more challenges was frivolous or was an~~
7 ~~abuse of process. The burden of persuasion would remain on the Designating Party.~~

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
24 Bound" that is attached hereto as Exhibit A;

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

28 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is

1 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
2 to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

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

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

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

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

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

24 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
25 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
26 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
27 followed;

28 (c) the court and its personnel;

1 (d) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4 (e) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information.

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
8 or Items to Experts.

9 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
10 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
11 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
12 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a
13 written request to the Designating Party that (1) identifies the general categories of “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
15 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
16 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches
17 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
18 each person or entity from whom the Expert has received compensation or funding for work in his
19 or her areas of expertise or to whom the expert has provided professional services, including in
20 connection with a litigation, at any time during the preceding five years,¹ and (6) identifies (by
21 name and number of the case, filing date, and location of court) any litigation in connection with
22 which the Expert has offered expert testimony, including through a declaration, report, or
23 testimony at a deposition or trial, during the preceding five years.²

24 _____
25 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
26 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
27 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

28 ² It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY” information.

1 (b) A Party that makes a request and provides the information specified in the
2 preceding respective paragraphs may disclose the subject Protected Material to the identified
3 Expert unless, within 14 days of delivering the request, the Party receives a written objection from
4 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
7 within seven days of the written objection. If no agreement is reached, the Party seeking to make
8 the disclosure to the Expert may **initiate the dispute resolution process under Local Rule 37.1 et**
9 **seq.** (and in compliance with the Court’s pre-filing requirements). If the court grants permission to
10 file a motion , ~~and in compliance with Civil Local Rule 79-5,) seeking permission from the court~~
11 ~~to do so.~~ A any such motion must describe the circumstances with specificity, set forth in detail the
12 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
13 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In
14 addition, any such motion must be accompanied by a competent declaration describing the parties’
15 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
16 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
17 approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
19 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
20 outweighs the Receiving Party’s need to disclose the Protected Material to its Expert.

21 8. SOURCE CODE

22 (a) To the extent production of source code becomes necessary in this case, a
23 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if
24 it comprises or includes confidential, proprietary or trade secret source code.

25 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
26 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the individuals to whom
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as

1 set forth in Paragraphs 7.3 and 7.4

2 (c) Any source code produced in discovery shall be made available for
3 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business
4 hours or at other mutually agreeable times, at an office of the Producing Party's counsel or another
5 mutually agreed upon location. The source code shall be made available for inspection on a secured
6 computer in a secured room without Internet access or network access to other computers, and the
7 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
8 any recordable media or recordable device. The Producing Party may visually monitor the
9 activities of the Receiving Party's representatives during any source code review, but only to
10 ensure that there is no unauthorized recording, copying, or transmission of the source code.

11 (d) The Receiving Party may request paper copies of limited portions of source
12 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
13 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
14 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
15 The Producing Party shall provide all such source code in paper form including bates numbers and
16 the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge
17 the amount of source code requested in hard copy form pursuant to the dispute resolution
18 procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
19 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute
20 resolution.

21 (e) The Receiving Party shall maintain a record of any individual who has
22 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
23 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
24 Receiving Party shall not create any electronic or other images of the paper copies and shall not
25 convert any of the information contained in the paper copies into any electronic format. The
26 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
27 to prepare court filings, pleadings, or other papers (including a testifying expert's expert report),
28 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper

1 copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
2 must not be given to or left with a court reporter or any other unauthorized individual. The
3 Receiving Party must provide notice to the Producing Party before including “HIGHLY
4 CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

5 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –
10 SOURCE CODE” that Party must:

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

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

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

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
21 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which
22 the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The
23 Designating Party shall bear the burden and expense of seeking protection in that court of its
24 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 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
27 LITIGATION

28 (a) The terms of this Order are applicable to information produced by a Non-
Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such
2 information produced by Non-Parties in connection with this litigation is protected by the remedies
3 and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a
4 Non-Party from seeking additional protections.

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

8 1. promptly notify in writing the Requesting Party and the Non-Party that some
9 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

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

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

21 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person or entity to seek its modification by the court in the future.

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

13.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law.

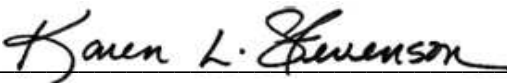
14. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4,

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

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 DATED: August 3, 2017



18 Karen L. Stevenson
19 United States Magistrate Judge
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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
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on _____ [date] in the case of
7 *Manufacturing Automation & Software Sys. v. Hughes, et al.*, 2:16-cv-8962-CAS (KSx). I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]