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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MANUFACTURING AUTOMATION  
& SOFTWARE SYSTEMS, INC.,

Plaintiff,

vs.

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

Defendants.

CASE NO. 2:16-cv-8962

**AMENDED STIPULATED  
ORDER GOVERNING  
ELECTRONIC DISCOVERY**

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**STIPULATED ORDER GOVERNING ELECTRONIC DISCOVERY**

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3 The COURT ORDERS as follows:

4       1.     This Order supplements all other discovery rules and orders. It streamlines  
5 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and  
6 inexpensive determination” of this action, as required by Federal Rule of Civil Procedure  
7

8 1.

9       2.     This order may be modified in the Court’s discretion or by agreement of the  
10 parties.  
11

12       3.     Costs may be shifted for disproportionate ESI production requests pursuant  
13 to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory  
14 discovery tactics will be cost-shifting considerations.  
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16       4.     A party’s meaningful compliance with this Order and efforts to promote  
17 efficiency and reduce costs will be considered in cost-shifting determinations.  
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19       5.     ESI will include at least the following metadata, if such fields exist: for  
20 email, fields showing the date and time that the document was sent and received, as well  
21 as the complete distribution list; and for non-email, date and time created and modified,  
22 and custodian. Additional metadata should be produced if and as required by rule or  
23 order.  
24

25       6.     Absent agreement of the parties or further order of this court, the following  
26 parameters shall apply to ESI production:  
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1 a) **General Document Image Format.** Each electronic document shall be  
2 produced in single-page Tagged Image File Format (“TIFF”) format, but can be  
3 produced in native format if not practicable (*e.g.*, size, foreign language,  
4 spreadsheets, etc.). TIFF files shall be single page and shall be named with a  
5 unique production number followed by the appropriate file extension. Load files  
6 shall be provided to indicate the location and unitization of the TIFF files. If a  
7 document is more than one page, the unitization of the document and any  
8 attachments and/or affixed notes shall be maintained as they existed in the original  
9 document. Load files shall be provided to indicate the location and unitization of  
10 the TIFF files and ease the loading of the files into the receiving party’s  
11 management system. The document load files shall include fields identifying at  
12 least: (1) the beginning and ending Bates numbers for the document; and (2) the  
13 DocID.  
14

15 b) **Text-Searchable Documents.** No party has an obligation to make its  
16 production text-searchable; however, if a party’s documents already exist in text-  
17 searchable format independent of this litigation, or are converted to text-searchable  
18 format for use in this litigation, including for use by the producing party’s counsel,  
19 then such documents shall be produced in the same text-searchable format at no  
20 cost to the receiving party.  
21

22 c) **Footer.** Each document image shall contain a footer with a sequentially  
23 ascending production number. Responsive documents in TIFF format will be  
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1 stamped with the appropriate confidentiality designations in accordance with any  
2 Protective Order in this matter. All material not reduced to documentary, tangible,  
3 or physical form or which cannot be conveniently labeled, shall be designated by  
4 the producing party by informing the receiving party of the designation in writing.  
5

6 d) **Production Media.** Subject to the terms of any Protective Order in this  
7 action, documents shall be produced on external hard drives, readily accessible  
8 computer(s) or electronic media such as CDs, DVDs USB drives (“Production  
9 Media”); production by FTP site rather than on hard media will be acceptable; and  
10 production by e-mail is acceptable provided that the receiving party’s designated e-  
11 mail address for accepting service of the production is used, and the producing  
12 party has not received any error or return message indicating that the service e-  
13 mail was not received or sent successfully. Each piece of production media should  
14 identify: (1) the producing party’s name; (2) the production date; (3) the Bates  
15 Number range of the materials contained on the Production Media; and (4) the  
16 appropriate confidentiality designations in accordance with any Protective Order in  
17 this matter.  
18

19 e) **Native Files.** Production of native format copies of spreadsheets or industry-  
20 specific file types is encouraged. A party that receives a document produced in a  
21 format specified above may make a reasonable request to receive the document in  
22 its native format, and upon receipt of such a request, the producing party shall  
23 produce the document in its native format.  
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1 f) **Voicemail and Mobile Devices.** Absent a showing of good cause, voice-  
2 mails, instant messages, PDAs, and mobile phones are deemed not reasonably  
3 accessible and need not be collected and preserved. The types of ESI listed in this  
4 subparagraph do not include text messages.  
5

6  
7 7. By September 22, 2017, the parties shall exchange a specific identification  
8 of each party's six most significant e-mail custodians in view of the pleaded claims and  
9 defenses.<sup>1</sup>  
10

11 8. By October 9, 2017, the parties shall exchange a specific request that a party  
12 produce e-mail in accordance with the following provisions:

13 a) An e-mail production request shall identify the custodians, search terms, and  
14 time frames. The parties shall cooperate to identify the proper custodians, proper  
15 search terms, and proper time frames. Each requesting party shall limit its e-mail  
16 production request to a total of six custodians per producing party for any such  
17 request. The parties may jointly agree to modify this limit without the Court's  
18 leave. The Court shall consider contested requests for additional or fewer  
19 custodians per producing party, upon showing a distinct need based on  
20 proportionality, and the size, complexity, and issues of this specific case.  
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26 <sup>1</sup>A "specific identification" requires a short description of why the custodian is believed  
27 to be significant.

28 To the extent a party has fewer than six e-mail custodians total, that party will identify all  
custodians it does have.

1 b) Each requesting party shall limit its e-mail production requests to a total of  
2 ten search terms per custodian per party. The parties may jointly agree to modify  
3 this limit without the Court’s leave. The Court shall consider contested requests  
4 for additional or fewer search terms per custodian, upon showing a distinct need  
5 based on the size, complexity, and issues of this specific case. The search terms  
6 shall be narrowly tailored to particular issues. Indiscriminate terms, such as the  
7 producing company’s name or its product name, are inappropriate unless combined  
8 with narrowing search criteria that sufficiently reduce the risk of overproduction.  
9 Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to  
10 limit the production and shall be considered when determining whether to shift  
11 costs for disproportionate discovery. The parties agree to meet and confer  
12 regarding potential search terms prior to a party collecting and producing emails.  
13 The parties additionally agree to meet and confer regarding narrowing the scope of  
14 search terms or eliminating searching terms where a search term results in  
15 excessive or unduly burdensome search results.  
16

17 9. The receiving party shall not use ESI that the producing party asserts is  
18 attorney-client privileged or work product protected to challenge the privilege or  
19 protection.  
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21 10. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a  
22 privileged or work product protected ESI is not a waiver in the pending case or in any  
23 other federal or state proceeding.  
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1           11. The mere production of ESI in a litigation as part of a mass production shall  
2 not itself constitute a waiver for any purpose.

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4           12. **Processing of Third-Party Documents.** A party that issues a non-party  
5 subpoena (“Issuing Party”) shall include a copy of this Order regarding electronic  
6 discovery with the subpoena and state that the parties to the litigation have requested that  
7 third-parties produce documents in accordance with the specifications set forth herein.  
8 The Issuing Party shall promptly produce any documents obtained pursuant to a non-  
9 party subpoena to the opposing party. If the non-party production is not Bates-stamped,  
10 the Issuing Party will endorse the non-party production with unique prefixes and Bates  
11 numbers prior to producing them to the opposing party. Nothing in this stipulation is  
12 intended to or should be interpreted as narrowing, expanding, or otherwise affecting the  
13 rights of the parties or third-parties to object to a subpoena.  
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17           13. Notwithstanding the preceding paragraphs, the parties may later make other  
18 agreements for their mutual convenience relating to the form and manner of production.  
19 To the extent a producing party believes discovery requests or particular applications of  
20 this order may be unduly burdensome or otherwise objectionable under the applicable  
21 rules, the parties will meet and confer in good faith as to the necessity for, scope of, and  
22 objections to such production before seeking relief from the Court.  
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25           14. An agreement by any party to bear or receive the costs of any ESI discovery  
26 is an interim agreement subject to modification by a final Taxation Order issued by the  
27 Court and shall not prejudice any party’s right to seek ESI expenses as taxable costs.  
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1 15. Except as expressly stated, nothing in this order affects the parties'  
2 discovery obligations under the Federal or Local Rules.  
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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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6 DATED: September 12, 2017 /s/ Kirk M. Hallam

7 Attorney for Plaintiff Manufacturing  
8 Automation & Software Systems, Inc.  
9

10 DATED: August 2, 2017 /s/ Kevin Abbott

11 Attorney for Defendants InformaTrac, Inc.,  
12 Kristopher Hughes, and James Huysentruyt  
13

14 DATED: August 2, 2017 /s/ Wyley S. Proctor

15 Attorney for Defendants PcVue, Inc. and  
16 Edward Nugent  
17

18 PURSUANT TO STIPULATION AS AMENDED BY THE COURT, IT IS SO  
19 ORDERED.  
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21 Dated: September 19, 2017

By: \_\_\_\_\_



22 Karen L. Stevenson  
23 United States Magistrate Judge  
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