

1 **THE KNEAFSEY FIRM, INC.**
 2 Sean M. Kneafsey (SBN 180863)
 3 skneafsey@kneafseyfirm.com
 4 800 Wilshire Blvd., Suite 710
 5 Los Angeles, California 90017
 6 Phone: (213) 892-1200
 7 Fax: (213) 892-1208

8 *Attorneys for Plaintiff*
 9 **BRADLEY TWYNHAM**

10 **BAKER BOTTS L.L.P.**
 11 Bryant C. Boren (SBN 260602)
 12 bryant.c.boren@bakerbotts.com
 13 Ariel D. House (SBN 280477)
 14 ariel.house@bakerbotts.com
 15 1001 Page Mill Road
 16 Building One, Suite 200
 17 Palo Alto, California 94304
 18 Phone: (650) 739-7500
 19 Fax: (650) 739-7699

20 *Attorneys for Defendants COMPUTER SCIENCES*
 21 *CORPORATION, DXC TECHNOLOGY COMPANY,*
 22 *and SERVICEMESH, INC.*

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

25 **BRADLEY TWYNHAM, an individual,**

26 **Plaintiff,**

27 **vs.**

28 **COMPUTER SCIENCES**
CORPORATION, a Nevada corporation,
DXC TECHNOLOGY COMPANY, a
Nevada corporation; SERVICEMESH,
INC., a Delaware corporation,

Defendants.

Case No.: 2:17-cv-08107 SVW JEM

[Hon. Stephen V. Wilson]

[Hon. John E. McDermott,
Magistrate Judge]

~~[PROPOSED]~~ **AGREED
PROTECTIVE ORDER**

[DISCOVERY MATTER]

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or
3 private information requiring special protection from public disclosure and from use
4 for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order applies to production of information by parties and non-parties.
6 This Order does not confer blanket protections on all disclosures or responses to
7 discovery, and the protection it gives from public disclosure and use extends only to
8 the specific material entitled to confidential treatment under the applicable legal
9 principles. This Order does not automatically authorize the filing under seal of
10 material designated under this Order. Instead, the parties must comply with L.R. 79-
11 5.1 if they seek to file anything under seal. This Order does not govern the use at
12 trial of material designated under this Order.

13 **2. DESIGNATING PROTECTED MATERIAL**

14 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
15 information or items for protection under this Order as “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” must only designate
17 specific material that qualifies under the appropriate standards. To the extent
18 practicable, only those parts of documents, items, or oral or written communications
19 that require protection shall be designated. Designations with a higher
20 confidentiality level when a lower level would suffice are prohibited. Mass,
21 indiscriminate, or routinized designations are prohibited. Unjustified designations
22 expose the designator to sanctions, including the Court’s striking all confidentiality
23 designations made by that designator. Designation under this Order is allowed only
24 if the designation is necessary to protect material that, if disclosed to persons not
25 authorized to view it, would cause competitive or other recognized harm. Material
26 may not be designated if it has been made public, or if designation is otherwise
27 unnecessary to protect a secrecy interest. If a designator learns that information or
28 items that it designated for protection do not qualify for protection at all or do not

1 qualify for the level of protection initially asserted, that designator must promptly
2 notify all parties that it is withdrawing the mistaken designation.

3 **2.2 Manner and Timing of Designations.** Except for electronically stored
4 information produced in native format and testimony given in deposition or other
5 proceeding, designation under this Order requires the designator to affix the
6 applicable legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEY EYES ONLY”) to each page that contains protected material. For
8 electronically stored information produced in native format, designation under this
9 Order requires the designator to include the applicable legend (“CONFIDENTIAL”
10 or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) in the file or
11 directory name, in a metadata field of a database load file, or on the media
12 containing the information (*e.g.*, CD-ROM, DVD). For testimony given in
13 deposition or other proceeding, the designator shall specify all protected testimony
14 and the level of protection being asserted. It may make that designation during the
15 deposition or proceeding, or may invoke, on the record or by written notice to all
16 parties on or before the next business day, a right to have up to 21 days from the
17 deposition or proceeding to make its designation.

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

26 **2.2.2** Parties shall give advance notice if they expect a deposition or
27 other proceeding to include designated material so that the other parties can
28 ensure that only authorized individuals are present at those proceedings when

1 such material is disclosed or used. The use of a document as an exhibit at a
2 deposition shall not in any way affect its designation. Transcripts containing
3 designated material shall have a legend on the title page noting the presence
4 of designated material, and the title page shall be followed by a list of all
5 pages (including line numbers as appropriate) that have been designated, and
6 the level of protection being asserted. The designator shall inform the court
7 reporter of these requirements. Any transcript that is prepared before the
8 expiration of the 21-day period for designation shall be treated during that
9 period as if it had been designated HIGHLY CONFIDENTIAL –

10 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
11 the 21-day period, the transcript shall be treated only as actually designated.

12 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
13 designate does not, standing alone, waive protection under this Order. Upon timely
14 assertion or correction of a designation, all recipients must make reasonable efforts
15 to ensure that the material is treated according to this Order.

16 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 All challenges to confidentiality designations shall proceed under L.R. 37-1
18 through L.R. 37-4.

19 **4. ACCESS TO DESIGNATED MATERIAL**

20 **4.1 Basic Principles.** A receiving party may use designated material only
21 for this litigation and not for any other purpose, including any business or
22 commercial purpose, or any other litigation or proceeding. Designated material may
23 be disclosed only to the categories of persons and under the conditions described in
24 this Order. This Order has no effect upon, and shall not apply to, a designator's use
25 or disclosure of its own designated material for any purpose. Nothing herein shall
26 prevent a designator from disclosing its own designated material.

27 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
28 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the

1 designator, a receiving party may disclose any material designated

2 CONFIDENTIAL only to:

3 **4.2.1** The receiving party's outside counsel of record in this action
4 and employees of outside counsel of record to whom disclosure is reasonably
5 necessary;

6 **4.2.2** Plaintiff, when he is the receiving party, and the officers,
7 directors, and employees of Defendants to whom disclosure is reasonably
8 necessary, when they are the receiving party;

9 **4.2.3** Experts retained by the receiving party's outside counsel of
10 record to whom disclosure is reasonably necessary, and who have signed the
11 Agreement to Be Bound (Exhibit A);

12 **4.2.4** The Court and its personnel;

13 **4.2.5** Outside court reporters and their staff;

14 **4.2.6** Professional jury or trial consultants, mock jurors, and
15 professional vendors to whom disclosure is reasonably necessary, and who
16 have signed the Agreement to Be Bound (Exhibit A);

17 **4.2.7** In preparation for or during their depositions, witnesses in the
18 action to whom disclosure is reasonably necessary and who have signed the
19 Agreement to Be Bound (Exhibit A); and

20 **4.2.8** The author or recipient of a document containing the material, or
21 a custodian or other person who otherwise possessed or knew the information.

22 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**

23 **ONLY Without Further Approval.** Unless permitted in writing by the designator,
24 a receiving party may disclose material designated HIGHLY CONFIDENTIAL –
25 ATTORNEY EYES ONLY without further approval only to:

26 **4.2.1** The receiving party's outside counsel of record in this action and
27 employees of outside counsel of record to whom disclosure is reasonably
28 necessary;

1 **4.2.2** Experts retained by the receiving party's outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 **4.2.3** The Court and its personnel;

5 **4.2.4** Outside court reporters and their staff;

6 **4.2.5** Professional jury or trial consultants, mock jurors, and
7 professional vendors to whom disclosure is reasonably necessary, and who
8 have signed the Agreement to Be Bound (Exhibit A);

9 **4.2.6** In preparation for or during their depositions, witnesses in the
10 action to whom disclosure is reasonably necessary); and

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

13 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
14 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel**
15 **or Experts.** Unless agreed to in writing by the designator:

16 **4.4.1** A receiving party seeking to disclose to in-house counsel any
17 material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
18 ONLY must first make a written request to the designator providing the full
19 name of the in-house counsel, the city and state of such counsel's residence,
20 and such counsel's current and reasonably foreseeable future primary job
21 duties and responsibilities in sufficient detail to determine present or potential
22 involvement in any competitive decision-making.

23 **4.4.3** A receiving party that makes a request and provides the
24 information specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated
25 material to the identified in-house counsel or expert unless, within seven days
26 of delivering the request, the party receives a written objection from the
27 designator providing detailed grounds for the objection.

28

1 **4.4.4** All challenges to objections from the designator shall proceed
2 under L.R. 37-1 through L.R. 37-4.

3 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-
6 compliance with a lawful subpoena or court order. The purpose of the duties
7 described in this section is to alert the interested parties to the existence of this
8 Order and to give the designator an opportunity to protect its confidentiality interests
9 in the court where the subpoena or order issued.

10 **5.2 Notification Requirement.** If a party is served with a subpoena or a
11 court order issued in other litigation that compels disclosure of any information or
12 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL
13 – ATTORNEY EYES ONLY that party must:

14 **5.2.1** Promptly notify the designator in writing. Such notification shall
15 include a copy of the subpoena or court order;

16 **5.2.2** Promptly notify in writing the party who caused the subpoena or order
17 to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this Order. Such notification shall include a
19 copy of this Order; and

20 **5.2.3** Cooperate with all reasonable procedures sought by the designator
21 whose material may be affected.

22 **5.3 Wait For Resolution of Protective Order.** If the designator timely
23 seeks a protective order, the party served with the subpoena or court order shall not
24 produce any information designated in this action as CONFIDENTIAL or HIGHLY
25 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court
26 where the subpoena or order issued, unless the party has obtained the designator's
27 permission. The designator shall bear the burden and expense of seeking protection
28 of its confidential material in that court.

1 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 designated material to any person or in any circumstance not authorized under this
4 Order, it must immediately (1) notify in writing the designator of the unauthorized
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
6 designated material, (3) inform the person or persons to whom unauthorized
7 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
8 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

9 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a producing party gives notice that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
14 This provision is not intended to modify whatever procedure may be established in
15 an e-discovery order that provides for production without prior privilege review
16 pursuant to Federal Rule of Evidence 502(d) and (e).

17 **8. FILING UNDER SEAL**

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

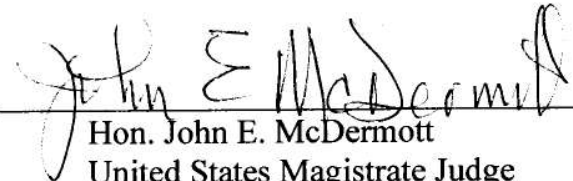
1 the receiving party may file the material in the public record unless (1) the
2 designator seeks reconsideration within four days of the denial, or (2) as otherwise
3 instructed by the Court.

4 **9. FINAL DISPOSITION**

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

19 IT IS SO ORDERED.

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22 DATED: October 17, 2018



Hon. John E. McDermott
United States Magistrate Judge

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EXHIBIT A
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 Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Bradley Twynham v. Computer Sciences Corporation, et al.*, Case No.: 2:17-cv-08107 SVW JEM. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment for contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]