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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
27 Plaintiff,

28 vs.

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
AMENDED PROTECTIVE
ORDER**

[DISCOVERY MATTER]

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

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

13 **2. DESIGNATING PROTECTED MATERIAL**

14 **2.1 Confidential Information.** Upon a determination by any party or non-
15 party producing information that any information, document, or thing being
16 disclosed or produced in this action, whether formally or informally, contains
17 information that the designator believes in good faith to constitute or embody
18 confidential, proprietary, or private information, the designator may designate such
19 document or thing “CONFIDENTIAL.” By way of example only,
20 “CONFIDENTIAL” information may include, but is not limited to, materials such
21 as financial information, marketing and sales information, customer lists, business
22 plans, personnel information, technical information about products, trade secrets and
23 other non-public, commercially sensitive information, as well as internal
24 information that is ordinarily treated as private or confidential by the designator.

25 **2.2 Privileged Information.** Defendants contend that certain information
26 and documents were sent or received by Plaintiff in the course and scope of his
27 employment with certain of the Defendants for which one or more of the Defendants
28 hold certain evidentiary privileges, such as the attorney client and/or attorney work

1 product privilege. Defendants contend that given that Plaintiff was an employee at
2 the time of the disclosure, the disclosure of such information and documents to
3 Plaintiff did not constitute a waiver of the Defendants' privilege(s). To the extent
4 any information or documents fall within that category, the disclosing party may
5 designate such information or documents "PRIVILEGED" and by doing so the
6 disclosing party shall not waive its right to claim that the information or documents
7 remain privileged as to any third party. The disclosure of such information or
8 documents in this proceeding to a receiving party who sent or received such
9 information or documents shall not effectuate or be construed in any way as a
10 waiver of any privilege by the disclosing party. At the same time, by entering into
11 this stipulation, Plaintiff is not agreeing that the information or documents are in fact
12 subject to any evidentiary privilege and reserves all rights to contest whether any
13 information or document is privileged. Where appropriate, "PRIVILEGED" and
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY EYES
15 ONLY" designations may be combined.

16 **2.3 Highly Confidential – Attorney Eyes Only Information.**

17 Information for which a higher level of protection is required, such as trade secrets
18 or privileged information, may be designated "HIGHLY CONFIDENTIAL –
19 ATTORNEY EYES ONLY." Where appropriate, "PRIVILEGED" and "HIGHLY
20 CONFIDENTIAL – ATTORNEY EYES ONLY" designations may be combined on
21 one document or thing, in which case the document shall be treated as "HIGHLY
22 CONFIDENTIAL – ATTORNEY EYES ONLY" pursuant to ¶ 4.4.

23 **2.4 Over-Designation Prohibited.** Any party or non-party who designates

24 information or items for protection under this Order as "CONFIDENTIAL,"
25 "PRIVILEGED," or "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY"
26 must only designate specific material that qualifies under the appropriate standards.
27 To the extent practicable, only those parts of documents, items, or oral or written
28 communications that require protection shall be designated. Designations with a

1 higher confidentiality level when a lower level would suffice are prohibited. Mass,
2 indiscriminate, or routinized designations are prohibited. Unjustified designations
3 expose the designator to sanctions, including the Court’s striking all confidentiality
4 and privilege designations made by that designator. Designation under this Order is
5 allowed only if the designation is necessary to protect against the disclosure of
6 confidential or privileged information to third parties and/or to protect material that,
7 if disclosed to persons not authorized to view it, would cause competitive or other
8 recognized harm. Material may not be designated if it has been made public, or if
9 designation is otherwise unnecessary to protect a secrecy interest. If a designator
10 learns that information or items that it designated for protection do not qualify for
11 protection at all or do not qualify for the level of protection initially asserted, that
12 designator must promptly notify all parties that it is withdrawing the mistaken
13 designation.

14 **2.5 Manner and Timing of Designations.** Except for electronically stored
15 information produced in native format and testimony given in deposition or other
16 proceeding, designation under this Order requires the designator to affix the
17 applicable legend (“CONFIDENTIAL,” “PRIVILEGED,” or “HIGHLY
18 CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that contains
19 protected material. For electronically stored information produced in native format,
20 designation under this Order requires the designator to include the applicable legend
21 (“CONFIDENTIAL,” “PRIVILEGED,” or “HIGHLY CONFIDENTIAL –
22 ATTORNEY EYES ONLY”) in the file or directory name, in a metadata field of a
23 database load file, or on the media containing the information (*e.g.*, CD-ROM,
24 DVD). For testimony given in deposition or other proceeding, the designator shall
25 specify all protected testimony and the level of protection being asserted. It may
26 make that designation during the deposition or proceeding, or may invoke, on the
27 record or by written notice to all parties on or before the next business day, a right to
28 have up to 21 days from the deposition or proceeding to make its designation.

1 **2.5.1** A party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until after the
3 inspecting party has identified which material it would like copied and
4 produced. During the inspection and before the designation, all material shall
5 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.
6 After the inspecting party has identified the documents it wants copied and
7 produced, the producing party must designate the documents, or portions
8 thereof, that qualify for protection under this Order.

9 **2.5.2** Parties shall give advance notice if they expect a deposition or
10 other proceeding to include designated material so that the other parties can
11 ensure that only authorized individuals are present at those proceedings when
12 such material is disclosed or used. The use of a document as an exhibit at a
13 deposition shall not in any way affect its designation. Transcripts containing
14 designated material shall have a legend on the title page noting the presence
15 of designated material, and the title page shall be followed by a list of all
16 pages (including line numbers as appropriate) that have been designated, and
17 the level of protection being asserted. The designator shall inform the court
18 reporter of these requirements. Any transcript that is prepared before the
19 expiration of the 21-day period for designation shall be treated during that
20 period as if it had been designated HIGHLY CONFIDENTIAL –
21 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
22 the 21-day period, the transcript shall be treated only as actually designated.

23 **2.6 Inadvertent Failures to Designate.** An inadvertent failure to designate
24 does not, standing alone, waive protection under this Order. Upon timely assertion
25 or correction of a designation, all recipients must make reasonable efforts to ensure
26 that the material is treated according to this Order.

1 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

4 **4. ACCESS TO DESIGNATED MATERIAL**

5 **4.1 Basic Principles.** A receiving party may use designated material only
6 for this litigation and not for any other purpose, including any business or
7 commercial purpose, or any other litigation or proceeding. Designated material may
8 be disclosed only to the categories of persons and under the conditions described in
9 this Order. This Order has no effect upon, and shall not apply to, a designator's use
10 or disclosure of its own designated material for any purpose. Nothing herein shall
11 prevent a designator from disclosing its own designated material.

12 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
13 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
14 designator, a receiving party may disclose any material designated
15 CONFIDENTIAL only to:

16 **4.2.1** The receiving party's outside counsel of record in this action and
17 employees of outside counsel of record to whom disclosure is reasonably
18 necessary;

19 **4.2.2** Plaintiff, when he is the receiving party, and the officers,
20 directors, and employees of Defendants to whom disclosure is reasonably
21 necessary, when they are the receiving party;

22 **4.2.3** Experts retained by the receiving party's outside counsel of
23 record to whom disclosure is reasonably necessary, and who have signed the
24 Agreement to Be Bound (Exhibit A);

25 **4.2.4** The Court and its personnel;

26 **4.2.5** Outside court reporters and their staff;

27
28

1 **4.2.6** Professional jury or trial consultants, mock jurors, and
2 professional vendors to whom disclosure is reasonably necessary, and who
3 have signed the Agreement to Be Bound (Exhibit A);

4 **4.2.7** In preparation for or during their depositions, witnesses in the
5 action to whom disclosure is reasonably necessary and who have signed the
6 Agreement to Be Bound (Exhibit A); and

7 **4.2.8** The author or recipient of a document containing the material.

8 **4.3 Disclosure of PRIVILEGED Material Without Further Approval.**

9 Unless otherwise ordered by the Court or permitted in writing by the designator, a
10 receiving party may disclose any material designated PRIVILEGED only to:

11 **4.3.1** The receiving party's outside counsel of record in this action and
12 employees of outside counsel of record to whom disclosure is reasonably
13 necessary;

14 **4.3.2** Plaintiff, when he is the receiving party, and the officers,
15 directors, and employees of Defendants to whom disclosure is reasonably
16 necessary, when they are the receiving party;

17 **4.3.3** The Court and its personnel;

18 **4.3.4** Outside court reporters and their staff; and

19 **4.3.5** The author or recipient of a document containing the material.

20 **4.4 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
21 **ONLY Without Further Approval.** Unless permitted in writing by the designator,
22 a receiving party may disclose material designated HIGHLY CONFIDENTIAL –
23 ATTORNEY EYES ONLY without further approval only to:

24 **4.4.1** The receiving party's outside counsel of record in this action and
25 employees of outside counsel of record to whom disclosure is reasonably
26 necessary;

1 **4.4.2** 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 **4.4.3** The Court and its personnel;

5 **4.4.4** Outside court reporters and their staff;

6 **4.4.5** 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 **4.4.6** In preparation for or during their depositions, witnesses in the
10 action to whom disclosure is reasonably necessary; and

11 **4.4.7** The author or recipient of a document containing the material.

12 **4.5 Procedures for Approving or Objecting to Disclosure of HIGHLY**
13 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel.**

14 Unless agreed to in writing by the designator:

15 **4.5.1** A receiving party seeking to disclose to in-house counsel any
16 material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES
17 ONLY must first make a written request to the designator providing the full
18 name of the in-house counsel, the city and state of such counsel's residence,
19 and such counsel's current and reasonably foreseeable future primary job
20 duties and responsibilities in sufficient detail to determine present or potential
21 involvement in any competitive decision-making.

22 **4.5.2** A receiving party that makes a request and provides the
23 information specified in paragraphs 4.4.1 may disclose the designated
24 material to the identified in-house counsel unless, within seven (7) days of
25 delivering the request, the party receives a written objection from the
26 designator providing detailed grounds for the objection.

27 **4.5.3** All challenges to objections from the designator shall proceed
28 under L.R. 37-1 through L.R. 37-4.

1 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-
4 compliance with a lawful subpoena or court order. The purpose of the duties
5 described in this section is to alert the interested parties to the existence of this
6 Order and to give the designator an opportunity to protect its confidentiality
7 interests in the court where the subpoena or order issued.

8 **5.2 Notification Requirement.** If a party is served with a subpoena or a
9 court order issued in other litigation that compels disclosure of any information or
10 items designated in this action as CONFIDENTIAL, PRIVILEGED, or HIGHLY
11 CONFIDENTIAL – ATTORNEY EYES ONLY that party must:

12 **5.2.1** Promptly notify the designator in writing. Such notification shall
13 include a copy of the subpoena or court order;

14 **5.2.2** Promptly notify in writing the party who caused the subpoena or
15 order to issue in the other litigation that some or all of the material covered by
16 the subpoena or order is subject to this Order. Such notification shall include
17 a copy of this Order; and

18 **5.2.3** Cooperate with all reasonable procedures sought by the
19 designator whose material may be affected.

20 **5.3 Wait For Resolution of Protective Order.** If the designator timely
21 seeks a protective order, the party served with the subpoena or court order shall not
22 produce any information designated in this action as CONFIDENTIAL,
23 PRIVILEGED, or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
24 before a determination by the court where the subpoena or order issued, unless the
25 party has obtained the designator’s permission. The designator shall bear the
26 burden and expense of seeking protection 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 **7.1** Nothing in this Order shall be construed to require production by any
12 party of information, documents, or things that the party in good faith believes to be
13 subject to an evidentiary privilege unless the document at issue was previously
14 disclosed to a party to this action.

15 **7.2** When a producing party gives notice that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the
17 obligations of the receiving parties are those set forth in Federal Rule of Civil
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
19 procedure may be established in an e-discovery order that provides for production
20 without prior privilege review pursuant to Federal Rule of Evidence 502(d) and (e).

21 **8. CONTINUING JURISDICTION**

22 After the conclusion of the lawsuit between the parties, the provisions of this
23 Order shall continue to be binding until further court order. This Court shall have
24 exclusive jurisdiction to hear any complaint brought by any party alleging that any
25 person has breached the terms of this Order. Such complaint shall be brought by
26 motion for appropriate relief after the parties have conferred in good faith, through
27 counsel, regarding the alleged breach. The Court shall also retain jurisdiction over
28 the parties and any other person who has had access to CONFIDENTIAL,

1 PRIVILEGED, or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
2 information pursuant to this Order, so that the Court can continue to enforce this
3 Order.

4 **9. FILINGS AND PRESENTATIONS UNDER SEAL**

5 Without written permission from the designator or a court order, a party may
6 not file in the public record in this action any designated material. A party seeking
7 to file under seal any designated material must comply with L.R. 79-5.1. Filings
8 may be made under seal only pursuant to a court order authorizing the sealing of
9 the specific material at issue. The fact that a document has been designated under
10 this Order is insufficient to justify filing under seal. Instead, parties must explain
11 the basis for confidentiality of each document sought to be filed under seal.

12 Because a party other than the designator will often be seeking to file designated
13 material, cooperation between the parties in preparing, and in reducing the number
14 and extent of, requests for under seal filing is essential. If a receiving party's
15 request to file designated material under seal pursuant to L.R. 79-5.1 is denied by
16 the Court, then the receiving party may file the material in the public record unless
17 (1) the designator seeks reconsideration within four days of the denial, or (2) as
18 otherwise instructed by the Court.

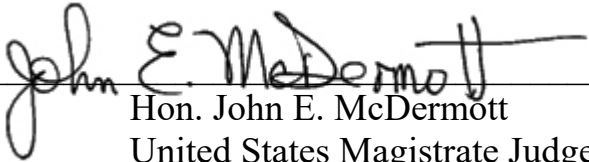
19 **10. FINAL DISPOSITION**

20 Within 60 days after the final disposition of this action, each party shall return
21 all designated material to the designator or destroy such material, including all
22 copies, abstracts, compilations, summaries, and any other format reproducing or
23 capturing any designated material. The receiving party must submit a written
24 certification to the designator by the 60-day deadline that (1) identifies (by category,
25 where appropriate) all the designated material that was returned or destroyed, and
26 (2) affirms that the receiving party has not retained any copies, abstracts,
27 compilations, summaries, or any other format reproducing or capturing any of the
28 designated material. This provision shall not prevent counsel from retaining an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain designated material. Any such archival copies remain subject to
5 this Order.

6 IT IS SO ORDERED.

7 DATED: 2/28/2019

8 
9 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]