

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 5594

HUSQVARNA PROFESSIONAL
PRODUCTS, INC. and
HUSQVARNA BUSINESS
SUPPORT AB,

Plaintiffs,

v.

ROBIN AUTOPILOT HOLDINGS,
LLC; ROBIN TECHNOLOGIES,
INC.; ROBOTIC MOWING
INVESTMENTS, LLC; RLAM
AZALEA, LLC; JEFFREY R.
DUDAN IRREVOCABLE TRUST;
JEFFREY DUDAN; and ANTHONY
HOPP,

Defendants.

**ORDER ON PROTECTIVE ORDER
DISPUTE, SCHEDULING ORDER,
AND NOTICE OF CONFERENCE**

1. **THIS MATTER** is before the Court *sua sponte* to address case management matters in the above-captioned case.

2. On 4 October 2023, Plaintiffs' counsel advised the Court that the parties were unable to resolve some disagreements with respect to certain provisions in their proposed Consent Protective Order, in accordance with the procedures provided in Paragraph 21 of the Case Management Order. (ECF No. 76). The next day, the parties filed a Proposed Protective Order which set forth their disagreements as to Paragraphs 5 and 6. (ECF No. 84). The Court convened a video conference to consider these disputes on 19 October 2023 and subsequently ordered the parties to meet and confer to try and resolve or narrow their disputes. The Court directed the parties to file no later than 30 October 2023 (i) a new Proposed Protective Order reflecting the parties' disagreements, if any, and (ii) written submissions setting forth the parties'

competing proposals as to Paragraphs 5 and 6 of the Proposed Protective Order if the parties were unable to resolve their disputes. (ECF No. 85.)

3. The parties timely filed their written submissions detailing their competing proposals, (ECF Nos. 86, 89), and the Court convened a second video conference (the “Conference”) to consider the proposals on 31 October 2023. All parties were represented by counsel at the Conference. This Order memorializes the Court’s oral rulings at the Conference.

4. As announced at the Conference, the Court agrees with Defendants that the Defendants have a legitimate interest in avoiding the potential competitive harm that could result if their material designated as “Attorneys’ Eyes Only” (“AEO”) or “Confidential–Source Code” is disclosed and used by Plaintiffs or others for competitive purposes. The Court also agrees with Plaintiffs that Plaintiffs will be severely prejudiced if Plaintiffs’ outside counsel cannot share and discuss this highly technical material with at least some of Plaintiffs’ in-house counsel.

5. After careful consideration and review, the Court concludes, in the exercise of its discretion, that the risk of Plaintiffs’ use of this material for competitive purposes can be ameliorated, and the interests of justice can be achieved, by limiting disclosure of this material to a small number of Plaintiffs’ in-house attorneys who are not engaged in competitive decisionmaking in the areas of Plaintiffs’ business that compete with Defendants. Plaintiffs have identified three in-house attorneys to this end: Brian Belanger, Sophie Jonsson, and Earl Bennett. Plaintiffs, however, have failed to offer evidence, through affidavit or otherwise, that these three in-house

lawyers are not engaged in competitive decisionmaking in the areas of Plaintiffs' business that compete with Defendants. Accordingly, as set forth more particularly below, the Court shall permit Plaintiffs an opportunity to make, and Defendants an opportunity to challenge, this evidentiary showing with respect to these lawyers (or with respect to any other in-house lawyers Plaintiffs may elect to designate in their stead).

6. In addition, while the Court is likewise mindful of Defendants' legitimate concern about potential misuse of this confidential information by Plaintiffs' retained experts, including through the expert's inadvertent disclosure, the Court, again after careful consideration and review, concludes, in the exercise of its discretion, that the restrictions proposed by Plaintiffs in their proposed Paragraph 6 and the further restrictions Plaintiffs agreed to at the Conference adequately protect Defendants' legitimate concerns regarding expert misuse of their sensitive information and advance the interests of justice in this action. The Court further concludes, in the exercise of its discretion, that these same restrictions adequately protect any AEO or Confidential–Source Code material of Plaintiffs that Defendants may choose to share with their retained experts.

7. The Court, therefore, concludes, in the exercise of its discretion, that the parties shall have the right to disclose AEO and Confidential–Source Code information to their retained experts, provided, however, that

a. the expert shall:

- (i) execute a non-disclosure agreement in the form attached as **Exhibit A** to Plaintiffs' Proposed Protective Order,
- (ii) confirm to the retaining party by affidavit or declaration under the penalty of perjury: (a) the person is not competing against the party who produced the AEO or Confidential–Source Code material; (b) the person is not presently employed by, or under contract with, a competitor of the party who produced the AEO or Confidential–Source Code material; (c) the person shall use the AEO or Confidential–Source Code material only for the purposes of the prosecution or defense of the above-captioned action, shall not use it for any business, commercial, competitive, personal, or other purpose, and shall not disclose it to anyone other than those persons described in Paragraphs 5–7 of Plaintiffs' Proposed Protective Order, as may be applicable depending on the designation, unless and until the restrictions in the Protective Order are removed either by written agreement of counsel for the parties or by order of the Court; and (d) the person shall notify the retaining party in writing in the event the expert is hired during the pendency of this action by a competitor of the party who produced the AEO or Confidential–Source Code material;
- (iii) provide to the retaining party by affidavit or declaration under the penalty of perjury answers to the following questions:

1. Who is your present employer(s)?
2. Are you presently employed, either in-house or as a consultant, by a competitor of the party who produced the AEO or Confidential–Source Code material ?
3. Are you presently applying for employment, either in-house or as a consultant, with a competitor of the party who produced the AEO or Confidential–Source Code material within the next three years?
4. Do you understand that the confidential information from the party who produced the AEO or Confidential–Source Code material can never be revealed, used, or discussed by you outside this litigation and that if you do so anytime in the future, even after this case has been terminated, the Court can hold you in contempt, the penalties for which can include fines and imprisonment?
5. Do you understand that if you provide false answers in this questionnaire, you could face criminal penalties in the Court for perjury?; and

(iv) provide to the retaining party the expert's current curriculum vitae;
and

b. promptly upon retention of an expert, the parties shall submit by email to the Court for *in camera* review the document(s) required in the preceding subparagraphs.

8. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

a. The parties shall meet and confer and thereafter report to the Court no later than 6 November 2023 their agreement or competing positions regarding whether the experts' affidavits or declarations submitted for *in camera* review hereunder shall be disclosed to the opposing party after the conclusion of this litigation;

b. Plaintiffs shall have through and including 14 November 2023 to submit a brief of no more than 1500 words that (i) identifies the in-house counsel Plaintiffs seek to designate in Paragraph 5 of the Proposed Protective Order and (ii) addresses why those individuals should have access to Defendants' AEO and Confidential–Source Code information under applicable law. The brief shall be accompanied by affidavits from the designated in-house counsel confirming the scope of their job duties and addressing, in particular, whether they are engaged in competitive decisionmaking for Plaintiffs in the areas of Plaintiffs' business that compete with Defendants;

c. Defendants shall have through and including 27 November 2023 to submit a brief of no more than 1500 words in opposition to Plaintiffs' brief;

d. The parties shall meet and confer and Plaintiffs' counsel shall submit to the Court's law clerks by email no later than 10:00 AM on 28 November 2023 a revised Proposed Protective Order incorporating the Court's recommended changes, the changes discussed at the Conference, and the changes referenced in this Order. The parties' changes to Paragraphs 5 and 6 shall be highlighted; and

e. The parties are to **TAKE NOTICE** that a conference on any remaining disputes as to Paragraphs 5 and 6 will be held on 28 November 2023 at 1:30 PM via Webex videoconference. Client attendance is not required.

SO ORDERED, this the 1st day of November, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge