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15   UNITED STATES DISTRICT COURT

16   NORTHERN DISTRICT OF CALIFORNIA

17   OAKLAND DIVISION

18
   ORACLE USA, INC., *et al.*,   CASE NO. 07-CV-01658 PJH (EDL)
19
              Plaintiffs,   **DECLARATION OF SAFRA CATZ**
20   **IN SUPPORT OF PLAINTIFFS'**
        v.   **OPPOSITION TO DEFENDANTS'**
21   **MOTION FOR PARTIAL**
   SAP AG, *et al.*,   **SUMMARY JUDGMENT**
22   **REGARDING PLAINTIFFS'**
              Defendants.   **HYPOTHETICAL LICENSE**
23   **DAMAGES CLAIM**

24   Date: October 28, 2008
                                            Time: 9:00 a.m.
25   Courtroom: 3, 17th Floor
                                            Judge: Hon. Phyllis J. Hamilton
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                                            Case No. 07-CV-1658 (PJH)

                      DECLARATION OF SAFRA CATZ

1   I, Safra Catz, declare as follows:

2   1.   I am President and Chief Financial Officer of Plaintiff Oracle USA, Inc.

3   ("Oracle"). I have personal knowledge of the facts set forth in this declaration and would

4   competently testify to them if called upon to do so.

5   2.   I understand that for purposes of damages in this case, any retroactive

6   "hypothetical" license award can only cover the exact scope and duration of the infringement by

7   Defendants. I do not have access to all highly confidential information in this case due to the

8   Protective Order limitations, so I do not know the full nature, scope, terms and duration of

9   Defendants' actual use of Oracle's intellectual property. I have not received any analysis

10   regarding a retroactive license by Oracle's damages experts in this case and so have no details

11   concerning the "hypothetical" license damages model and parameters.

12   3.   During my March 27, 2009 deposition, Counsel for Defendants, Mr.

13   Lanier, asked me a series of questions regarding a hypothetical license negotiation between

14   Oracle and SAP/TomorrowNow that would have occurred in January 2005. I did not understand

15   Mr. Lanier's questions to include any limitations on that license. I understood that the

16   hypothetical license that he referred to would have been for SAP – not just TomorrowNow – to

17   "steal" Oracle's intellectual property and use it in an unlimited way, in perpetuity, to take

18   Oracle's customers, including all of the intellectual property and customer base Oracle gained

19   through the PeopleSoft acquisition. Even under those extreme circumstances, as I stated at my

20   deposition, I believe that Oracle would evaluate the proposal from SAP and "how much money

21   Oracle would get" to see whether or not it was a "good business plan for us." If we were to

22   receive such a proposal from SAP, I believe that I would have been asked to provide input and

23   analysis to Mr. Ellison and the Board to inform their decision on whether to go forward with the

24   proposed deal.

25   4.   In order for me to provide input and analysis to Mr. Ellison and the Board

26   concerning whether a proposed license to SAP would make business sense, I would need to

27   understand all of the limitations on the nature, scope, terms and duration of that licensing

28   proposal – including the specific Oracle software to be licensed, to whom, for what uses, and for

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DECLARATION OF SAFRA CATZ

1   how long. At my deposition, I was not provided with any factual limitations on the proposed

2   license to consider in providing my testimony about my views concerning the possibility and

3   price of that license. The factual assumptions I made based on the broad questions asked were in

4   fact different from what I now understand to be the necessary inquiry, in determining a

5   hypothetical license value which is to focus on the actual use by TomorrowNow, for a finite time

6   period, of certain specified Oracle intellectual property, with specific results in the marketplace.

7   For example, Mr. Lanier did not ask me to assume any limit on the time period of the proposed

8   license that would match the time period that TomorrowNow actually operated as part of SAP.

9   He also did not ask me about simultaneous hypothetical licenses for TomorrowNow's operations

10 relating to Oracle's Siebel or database software. Mr. Lanier did not explain that the license

11 would involve limited use and access by TomorrowNow alone, and would have not allowed SAP

12 or TomorrowNow to openly market their access to and use of Oracle's intellectual property as

13 part of a competitive service offering. My responses during my deposition would have been

14 different if any or all of these limitations would have been explained. (I do not intend to say that

15 the illustrative list of limiting facts above is comprehensive, but they illustrate how differently

16 one would approach differing factual scenarios.) In particular, taking into account the types of

17 factual differences described above, I would not have assumed that Oracle's license to SAP

18 would have resulted in Oracle selling all of the intellectual property and customer base that

19 Oracle acquired through the PeopleSoft acquisition. Consequently, though my estimation of the

20 fair market value of such a more limited license would still be considerable, it would have been

21 significantly lower than my estimation during my deposition of selling all of the intellectual

22 property and customer base that Oracle had acquired through the PeopleSoft acquisition to SAP.

23   5.   When presented with the final parameters of licenses for the actual

24 infringement by Defendants of Oracle's copyrighted materials from Oracle's damages experts, I

25 will analyze those parameters rigorously before opining on what I believe the fair value would

26 be. Among the things I would consider are exactly what intellectual property was being

27 licensed, to whom, how it was used, SAP/TomorrowNow access to the software, the limitations

28 on SAP's ability to communicate to customers about the license, Oracle's expected profit from

DECLARATION OF SAFRA CATZ

1   using the software in the absence of any such licenses, what Oracle expected to lose in business

2   from granting such a license, how much Oracle had spent developing or acquiring the material to

3   be licensed, how much time and cost Defendants could avoid by licensing the material when they

4   did, the value Oracle would forgo by relinquishing exclusive control over the software, Oracle's

5   competitive relationship with SAP, and any potential adverse impact on the competitive

6   positions of the companies by virtue of the license.

7   6.   I understand that Oracle's damages expert, Paul Meyer of Navigant

8   consulting, is relying on various documents created or produced by Oracle in opposing SAP's

9   motion for partial summary judgment. Exhibit 29 to the Meyer Declaration contains a true and

10   correct copy of a worksheet labeled "PeopleSoft Operating Model." It is Bates numbered

11   ORCL00313255. This document reflects backup for Oracle's "Project Spice" financial model

12   prepared at the time of its acquisition of PeopleSoft. I was involved in creating and analyzing

13   this financial model.

14   7.   Exhibit 16 to the Meyer Declaration contains excerpts from the Standard

15   and Poor Report "Oracle Corporation: Estimation of the Fair Value of Certain Assets and

16   Liabilities of PeopleSoft, Inc. as of December 28, 2004." The full report has the Bates numbers

17   ORCL 00313169-253. This document reflects an independent third-party valuation secured by

18   Oracle and relied upon by Oracle of the fair value of certain assets and liabilities Oracle acquired

19   from PeopleSoft, including intangible assets; it was used to assist Oracle in its allocation of the

20   purchase price for financial reporting purposes.

21   8.   Exhibit 30 to the Meyer Declaration contains a true and correct copy of a

22   worksheet labeled "Sierra-Input." It is Bates numbered ORCL00312843. This document

23   reflects backup for Oracle's "Project Sierra" financial model prepared at the time of Oracle's

24   acquisition of Siebel. I also was involved in creating and analyzing this financial model.

25   9.   Exhibit 18 to the Meyer Declaration contains excerpts from the Duff &

26   Phelps report "Estimation of the Fair Value of Certain Assets and Liabilities of Siebel Systems,

27   Inc. as of January 31, 2006." The full report is Bates numbered ORCL 00312747-819. This

28   document reflects an independent third-party valuation secured by Oracle and relied upon by

DECLARATION OF SAFRA CATZ

1   Oracle of the fair value of certain assets and liabilities Oracle acquired from Siebel, including

2   intangible assets; it was used to assist Oracle in its allocation of the purchase price for financial

3   reporting purposes.

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5   I declare under penalty of perjury that the foregoing is true and correct and that

6   this declaration was executed on September 22, 2009 at Redwood Shores, California.

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8   Safra Catz

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Case No. 07-CV-1658 (PJH)

DECLARATION OF SAFRA CATZ