

FILED

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RICHARD W. WIEKING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorney for Plaintiff,
NACIO SYSTEMS, INC.

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 NACIO SYSTEMS, INC.) Case No.: C 07 3481 PJH
12 a Nevada corporation,)
13 Plaintiff) TEMPORARY RESTRAINING ORDER
14 v.) (WITHOUT PRIOR NOTICE) TO PRESERVE
15 HERBERT GOTTLIEB, an individual;) EVIDENCE AND ORDER TO SHOW CAUSE RE
16 SWIDENT, LLC, a California Limited) PRELIMINARY INJUNCTION
17 liability corporation,)
18 Defendants)
19)
20)

21 TO DEFENDANTS HERBERT GOTTLIEB AND SWIDENT LLC:

22 (Temporary Restraining Order and
23 Order to Show Cause Re: Preliminary Injunction:)

24 You, your agents servants, employees and attorneys and those in active concert or
25 participation with you or them ARE HEREBY RESTRAINED AND ENJOINED from:

26 Preservation Order

- 27 1. Removing or destroying any data from your computer systems, electronic data
28 storage devices, ^{or copying} your Internet Service Providers' computers which evidence, show or indicate
Portable storage devices, thumb drives, flash memory or

1 any of the following:

2 (a) the presence on defendants' personal or corporate computers, hard drives, cell phones,
3 personal data assistants, backup media or other electronic storage systems of Nacio's GASP audit
4 application, or any of its component parts, including the Software Identification Database, or any
5 code or data taken or developed from the GASP audit program or any of its component parts;

6 (b) any use, possession, modification to or of that software known as GASP, or any of its
7 component parts, or the transfer of GASP or any of its component parts to third parties;

8 (c) any communications after January 1, 2006 between any defendant and any third party about
9 the use, purchase, maintenance, alteration or sale of GASP or any of its component parts; or,

10 ~~2. Preventing, interfering or otherwise impeding in any way the immediate inspection~~
11 ~~and copying of all hard drives of all computers, as well as any flash memory, thumb drives or~~
12 ~~other portable data storage in their possession, custody and control by representatives of Nacio~~
13 ~~when they arrive at your premises pursuant to the limited discovery order set out below, or,~~

14 ~~23.~~ Communicating with any Internet Service Provider ("ISP"), Web hosting company
15 or other firm whose services have been used by DEFENDANTS GOTTLIEB or SWIDENT from
16 April 1, 2007 to date, for the purpose of having removed from the ISP's systems or data storage
17 devices any data which evidence, show or indicate any of the following:

18 (a) the presence on personal or corporate computer systems of Nacio's GASP audit program, or
19 any of their component parts, including the Software Identification Database, or any code or data
20 taken or developed from the GASP audit program or any of its component parts;

21 (b) any use of that software known as GASP, or any of its component parts;

22 (c) any communications after January 1, 2006 between any defendant and any third party about
23 the use, purchase, maintenance, alteration, license or sale of GASP or any of its component parts.

24
25 DEFENDANTS HERBERT GOTTLIEB AND SWIDENT LLC may move the Court to
26 dissolve or modify the Temporary Restraining Order set forth above within ~~two~~ ^{five} days as a matter
27 of right, or less time upon leave of Court pursuant to Federal Rule of Civil Procedure 65(b).

1 DEFENDANT HERBERT GOTTLIEB AND SWIDENT LLC ARE HEREBY
2 FURTHER ORDERED TO SHOW CAUSE at 9 a.m., on Aug. 1, 2007, or as soon
3 thereafter as counsel may be heard in the courtroom of the Honorable ~~Ratya~~ ^{Chyllis} Hamilton, located
4 at the United States District Court, located in Courtroom 3, 17th Floor, 450 Golden Gate Avenue,
5 San Francisco, California, why you, your officers, agents, servants, employees and attorneys and
6 those in active concert or participation with you or them, should not be restrained and enjoined –
7 pending trial of this action – from:

8 Removing or destroying any data from your computer systems, computer data storage
9 devices or your Internet Service Providers' computers which evidence, show or indicate any of
10 the following:

- 11 (a) the presence on personal or corporate computer systems of Nacio's GASP audit application or
- 12 any of its component parts, including the Software Identification Database, or any code or data
- 13 taken or developed from the GASP audit application or any of its component parts;
- 14 (b) any use of that software known as GASP, or any of its component parts;
- 15 (c) any communications after January 1, 2006 between any defendant and any third party about
- 16 the use, purchase, maintenance, alteration, licensing or sale of GASP or any of its component
- 17 parts.

18 The above Temporary Restraining Order is effective on Plaintiff's filing an undertaking
19 in the sum of \$ 10,000⁰⁰. This Order to Show Cause and Supporting papers must be served on
20 Defendants no later than July 19, 2007 ~~70~~ days before the date set for hearing, and proof of service shall be
21 filed no later than July 20, 2007 ~~10~~ court days before the hearing.

22 Any response or opposition to this Order to Show Cause must be filed and personally
23 served upon Plaintiff's counsel no later than 5 court days before the date set for hearing, and
24 proof of service shall be filed no later than 5 court days before the hearing.

25 **(Limited Discovery Order)**

26 FURTHER, IT IS HEREBY ORDERED THAT Plaintiff's inspection expert First
27 Advantage Litigation Consulting ("FALC") may enter into the DEFENDANTS' GOTTLIEB'S

1 and SWIDENT LLC's premises at 10 Indian Trail Court, Novato, CA, during regular business
2 hours, and may inspect and copy all hard drives of all computers and personal data assistants, and
3 all portable storage media such as flash drives, zip drives or other forms of electronic data storage
4 GOTTLIEB or SWIDENT LLC or any SWIDENT LLC or GOTTLIEB employees or consultants
5 have used since March 1, 2006, with the actual copies of the hard drives and data found on personal
6 data assistants and portable storage media to be held without review by FALC until further Order of
7 this Court;

8 **Identification of All Storage Media**

9 and it is also hereby ORDERED THAT DEFENDANTS HERBERT GOTTLIEB and
10 SWIDENT LLC and any SWIDENT LLC employees at its premises at 10 Indian Trial Court,
11 Novato, CA at the time of the inspection ordered above, must identify and make available to
12 representatives of FALC for copying all computers (including both desk top and lap top
13 computers), personal data assistants, and all portable storage media GOTTLIEB and/or SWIDENT
14 LLC and its employees or consultants have used since April 1, 2006, (including flash drives,
15 removable hard drives and all back up media such as CDs); and it is also hereby,

16 ORDERED THAT if any of the computers, personal data assistants or portable storage
17 media identified as ordered above are not present at 10 Indian Trail Court at the time of the
18 inspection, DEFENDANTS GOTTLIEB AND SWIDENT LLC must deliver same FARC at its
19 addresss in Rancho Cucamonga California within 24 hours of having been served with a copy of
20 this order . FALC is hereby ordered to copy the data from these devices within 48 hours thereafter
21 and return such devices to DEFENDANTS GOTTLIEB or SWIDENT LLC by overnight delivery
22 72 hours after FALC receives such media or computers,
23

24 **Federal Marshal Support**

25 and, it is hereby ORDERED THAT the Federal Marshal's office shall provide a Marshal to
26 accompany FALC to DEFENDANTS GOTTLIEB'S and SWIDENT LLC's premises at 10 Indian
27 Trail Court in Novato, California to enforce this order to allow the immediate copying of the subject
28

1 hard drives.

3 Duplicate Review Copy

4 Finally, FALC is hereby ordered to make a duplicate copy of all hard drives or other storage
5 copied pursuant to this order within 48 hours of the original copy being made. The original copy
6 ("Master Set") is to be kept under lock and key at FALC's business premises and no-one shall have
7 access thereto until further order of this Court. The copy set ("Review Copy") shall be made
8 available to defendants' experts within 48 hours after the Review Copy is complete, for
9 examination and review on FALC premises. Plaintiff and its attorneys shall not be given access to
10 the Review Copy without further order of this Court or stipulation between the parties confirmed by
11 the Court

12 It is Further ordered that ORDERED THAT DEFENDANTS GOTTLIEB and SWIDENT
13 LLC must identify to FALC within 48 hours after the service of this Order the names, addresses,
14 email addresses, phone numbers and facsimile numbers of all ISPs who have provided either web
15 hosting or email address support for defendants GOTTLIEB and SWIDENT LLC from April 1,
16 2006 to date, as well as the email addresses assigned to GOTTLIEB, SWIDENT or any of their
17 agents or employees. If no information permitting the identification of all such [INTERNET
18 PROVIDERS] is available at DEFENDANTS GOTTLIEB's and SWIDENT's premises at the time
19 of the inspection ordered above, IT IS FURTHER ORDERED THAT DEFENDANTS GOTTLIEB
20 and SWIDENT LLC must provide such identification in writing to Plaintiffs' attorneys identified
21 above within 24 hours of the commencement of the inspection ordered herein.

23 DATED: 7/16, 2007

25
26 Hon Phyllis J. Hamilton, *Marilyn Hall Saly*
United States District Court Judge

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