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ORACLE AMERICA, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.  
  
Plaintiff,  
  
v.  
  
GOOGLE, INC.  
  
Defendant.

Case No. CV 10-03561 WHA  
  
**DECLARATION OF MATTHEW  
SARBORARIA IN SUPPORT OF  
GOOGLE, INC.'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PORTIONS OF GOOGLE'S DAUBERT  
REPLY BRIEF**  
  
Dept.: Courtroom 9, 19th Floor  
Judge: Honorable William H. Alsup

1 I, MATTHEW SARBORARIA, declare as follows:

2 1. I am in-house counsel for Oracle America, Inc. (“Oracle”). My title is Senior Patent  
3 Counsel and I represent Oracle in the above-captioned matter.

4 2. I make this declaration based on my own personal knowledge. If called as a witness, I  
5 could and would testify competently as to the matters set forth herein.

6 3. I have reviewed Google’s Reply Brief regarding its *Daubert* Motion (“Reply”) (Dkt. No.  
7 198), along with Google’s Administrative Motion to File Under Seal (Dkt. No. 196) and its supporting  
8 papers.

9 4. The redacted material on page 8:12 through 8:14 of the Reply refers to a document that  
10 Google attached to its *Daubert* motion as Exhibit H to the Weingaertner Declaration In Support Of  
11 Google, Inc.’s *Daubert* Motion (hereinafter “Weingaertner Decl.”): Oracle’s Form CO to the European  
12 Commission discussing its acquisition of Sun. As I described in my previous Declaration, (*see*  
13 Declaration of Matthew Sarboraria In Response To Google’s Administrative Motion To Seal  
14 (hereinafter “First Sarboraria Decl.”) ¶ 8 (Dkt. No. 184)), the European Commission employs special  
15 confidentiality procedures to protect the information of the companies seeking merger review, and the  
16 version that Google attached to its *Daubert* motion has not been made public. I understand that this  
17 Court has already held that this document should remain under seal. (Dkt. Nos. 186, 203.) However,  
18 the sentences that Google has redacted contain only very general information derived from this  
19 document, and making those sentences public would not jeopardize Oracle’s confidential information.  
20 Therefore, Oracle does not request that redacted material on page 8:12 through 8:14 remain redacted  
21 from its Reply, although Oracle does not waive its claim to the confidentiality of the underlying  
22 document. Oracle would not object to an order requiring Google to unredact these two sentences from  
23 its Reply.

24 5. The redacted material on page 8:14 through 8:17 of the Reply refers to a document that  
25 Google attached to its *Daubert* motion as Exhibit I to the Weingaertner Declaration. As I previously  
26 described, Exhibit I is a proprietary Oracle spreadsheet setting forth the contract terms with  
27 manufacturers licensing Java as well as related financial forecasts and business strategies. (First  
28 Sarboraria Decl. ¶ 6 (Dkt. No. 184).) Oracle does not make these kinds of documents public in the

1 ordinary course of business, as doing so would provide an unfair advantage to Oracle’s counterparties  
2 and competitors, and Oracle generally protects its customers’ confidential information. (*Id.*) I  
3 understand that this Court has already held that this document should remain under seal. (Dkt. No.  
4 186.) Oracle believes that the redacted sentences refer to the specific information contained in these  
5 documents, and therefore requests that the redacted material on page 8:14 through 8:17 of the Reply  
6 remain under seal.

7           6. The redacted material on page 8:18 through 8:20 of the Reply refers to the Report of  
8 Professor Iain Cockburn, and discusses proposed terms of a license that Oracle and Google negotiated  
9 in 2006. While Oracle continues to believe that Professor Cockburn’s report should be sealed, (*see*  
10 First Sarboraria Decl. ¶ 10 (describing reasons to seal report); Dkt. No. 186 (sealing report)), the first of  
11 the two redacted sentences is too general to jeopardize any Oracle confidential information. Moreover,  
12 it is public knowledge that Oracle and Google negotiated for a license for Android. (*See* First  
13 Sarboraria Decl. ¶ 10 (“the fact that Google engaged in licensing negotiations with Oracle [has] almost  
14 always been public information.”).) However, the last sentence in the paragraph refers to the proposed  
15 terms of the license that the parties negotiated, which reflects the parties’ demands and positioning in  
16 the negotiations. Oracle does not disclose this kind of information in the ordinary course of business,  
17 and Oracle believes that disclosure of that information would give an unfair advantage to Oracle’s  
18 negotiating counterparties. Oracle therefore requests that only the last sentence, reflected on page 8:19  
19 through 8:20, remain under seal. Oracle would not object to an order requiring Google to unredact the  
20 sentence found at page 8:18 through 8:19 from its Reply.

21           7. Google’s citations for the redacted material on page 8:26 through 8:28 make no sense.  
22 Although Google claims that the redacted information is derived from Oracle’s July 1, 2010 10-K form,  
23 which is obviously public, the figures it describes do not exist in that document. Instead, Google has  
24 cited to Exhibit J to the Weingaertner Declaration, which contains not Oracle’s 10-K filing but a sealed  
25 third-party accounting document. Paragraph 19 of the Weingaertner Declaration, which Google also  
26 cites, refers to an unrelated public website. To the best of Oracle’s ability to discern, the information  
27 that Google has redacted was contained in Weingaertner Declaration Exhibit J, a third-party accounting  
28 document from Duff & Phelps that Oracle commissioned in connection with its acquisition of Sun

1 Microsystems, Inc. As I previously described, Oracle has promised to keep this material confidential,  
2 and the material contained therein is competitively sensitive. (First Sarboraria Decl. ¶ 9.) I understand  
3 that this Court has already held that this document should remain under seal. (Dkt. No. 186.) Oracle  
4 therefore requests that the redacted material on page 8:26 through 8:28 remain under seal.

5 8. The redacted material contained on page 9:2 through 9:9 refer to two different  
6 documents—an offer to purchase Sun’s software assets (Weingaertner Decl. Exh. W) and another third-  
7 party valuation of Java that Oracle referred to in its *Daubert* opposition. (See Declaration of Matthew  
8 Sarboraria In Support Of Oracle America, Inc.’s Administrative Motion to File Under Seal Portions Of  
9 Opposition To Google’s *Daubert* Motion at ¶ 5, 6.) I have explained why those third-party valuation  
10 documents are competitively sensitive. (*Id.*; see also First Sarboraria Decl. at ¶ 8, 9.) I understand that  
11 this Court has previously held those documents should remain under seal. (Dkt. Nos. 186, 203.) Once  
12 again, although Google characterizes the statements in Oracle’s public 10-K filing, it is mistaken. The  
13 information it refers to cannot be found in that public document. Oracle therefore requests that the  
14 redacted material on page 9:2 through 9:9 remain under seal.

15 9. Finally, Google has redacted a single clause from page 13:3 through 13:4. That  
16 information obliquely refers to the licensing terms on which Oracle has licensed Java in the past, and  
17 thus should remain under seal for the reasons described above in paragraph 5.

18  
19 I declare under penalty of perjury that the foregoing is true and correct and that this declaration  
20 was executed on July 12, 2011 at Redwood Shores, California

21  
22 By: /s/ Matthew Sarboraria  
Matthew Sarboraria

**ATTESTATION OF FILER**

The signatory to this document is Matthew Sarboraria. I, Steven C. Holtzman, have obtained Mr. Sarboraria's concurrence to file this document on his behalf.

Dated: July 12, 2011

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Steven C. Holtzman  
Steven C. Holtzman

*Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

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