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12 Attorneys for Plaintiff SUCCESSFACTORS, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 SUCCESSFACTORS, INC, a Delaware
corporation,

18 Plaintiff,

19 vs.

20 SOFTSCAPE, INC., a Delaware corporation,
21 and DOES 1-10, inclusive,

22 Defendants.

Case No. CV 08-1376 CW (BZ)

CONSENT JUDGMENT

23
24 Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), 41 (c), and 54, Plaintiff and Counterclaim
25 Defendant SuccessFactors, Inc. (“SuccessFactors”) and Defendant and Counterclaim Plaintiff
26 Softscape, Inc. (“Softscape”), by their undersigned counsel, hereby stipulate and consent to the
27 following judgment (the “Consent Judgment”):

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1 **A. Jurisdiction**

2 This Court has jurisdiction over the parties to this Consent Judgment and the subject matter
3 of this action.

4 **B. Permanent Injunction**

5 The Court hereby permanently enjoins Defendant Softscape and its officers, agents, servants,
6 employees, successors and assigns from:

7 (1) Disseminating, publishing, causing to be made available to the public, or affirming
8 the purported truth or accuracy of, the presentation titled “The Naked Truth;”

9 (2) Disseminating, publishing, causing to be made available to the public, or affirming
10 the following allegedly false or misleading statements set forth within that presentation:

- 11 (a) The presentation is “a compilation of facts from Successfactors [sic]
12 customers;”
- 13 (b) The presentation represents “why many of us [SuccessFactors’ customers]
14 have left” SuccessFactors;
- 15 (c) “63% of Their [SuccessFactors’] Customers Left Them by 2008” and “1 out
16 of 2 customers leaves Successfactors [sic] within 2 – 3 years;”
- 17 (d) “After six months Sears Pulled the Plug on the entire project,” or any other
18 statement that Sears is not a current customer;
- 19 (e) Merrill Lynch and Apple Computers are former customers that were
20 “dissatisfied” and “have left” SuccessFactors;
- 21 (f) MasterCard is not a referenceable customer;
- 22 (g) Bank of America, Reebok, Symbol Technologies, Peregrine Systems, and
23 Portal Software are former customers who left SuccessFactors because they
24 were dissatisfied; and
- 25 (h) SuccessFactors employs 440 consultants and spends “1,650 hours of effort
26 for each of its customers;”

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1 (3) Representing or implying that a person or entity other than Softscape authored any
2 of the statements in the presentation regarding SuccessFactors when such person or entity did not
3 author it;

4 (4) Disseminating or making public use of SuccessFactors' trade name, trademark, or
5 logo beyond that amount reasonably necessary to identify SuccessFactors or its products and
6 services;

7 (5) Accessing or obtaining data from any other computer system or computer owned,
8 operated, or licensed by SuccessFactors and subject to restrictions on access without
9 SuccessFactors' express written authorization;

10 (6) Disclosing, publishing, reproducing, or communicating any information or data
11 received from such a restricted computer or computer system; and

12 (7) Obtaining from any partner or other person, or using, any non-public list of
13 SuccessFactors' prospects or leads (hereinafter the "Injunction").

14 **C. Dismissal of Remaining Claims and Counterclaims**

15 All remaining claims for relief in this action, including all counterclaims by Softscape, are
16 hereby dismissed with prejudice, and with each party to bear its own fees and costs.

17 **D. Continuing Jurisdiction**

18 SuccessFactors and Softscape respectfully request that the Court direct the parties to
19 perform each of the obligations set forth in the parties' Settlement Agreement executed on
20 December 17, 2008 ("the Settlement Agreement"), and incorporate the terms of the Settlement
21 Agreement into the Consent Judgment by reference. SuccessFactors and Softscape further request
22 that the Court expressly retain jurisdiction over them for the purposes of enforcing this Injunction
23 and the parties' Settlement Agreement executed on December 17, 2008.

24 **E. Return of Security**

25 Pursuant to Federal Rule of Civil Procedure 65(c) and the Court's temporary restraining
26 order dated March 13, 2008, SuccessFactors posted cash in lieu of a bond in the amount of \$10,000
27 with the Court on March 14, 2008 [Docket No. 27, receipt #44611001920]. Within five (5) days of

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1 entry of the Consent Judgment, the Court clerk shall arrange for the Court to remit \$10,000 to
2 SuccessFactors to extinguish this bond deposit.

3 **IT IS SO STIPULATED.**

4 Dated: December 22, 2008

Mintz, Levin Cohn Ferris Glovsky & Popeo, PC

6 By: /s/ *Bryan Sinclair*

7 Bryan Sinclair

8 Attorneys for Defendant SOFTSCAPE, INC.

9 Dated: December 22, 2008

FENWICK & WEST LLP

11 By: /s/ *Patrick E. Premo*

12 Patrick E. Premo

13 Attorneys for Plaintiff SUCCESSFACTORS, INC.

14 **ATTESTATION PURSUANT TO GENERAL ORDER 45**

15 Concurrence in the filing of this document has been obtained from the other signatory.

16 Dated: December 22, 2008

FENWICK & WEST LLP

18 By: /s/ *Patrick E. Premo*

19 Patrick E. Premo

20 Attorneys for Plaintiff SUCCESSFACTORS, INC.

21 **JUDGMENT**

22 **NOW, THEREFORE, PURSUANT TO STIPULATION, IT IS SO ORDERED,**
23 **ADJUDGED AND DECREED THAT** a permanent injunction be entered in the form identified
24 above against Defendant Softscape in favor of Plaintiff SuccessFactors, Inc. All remaining
25 claims for relief in the above-captioned action, including all counterclaims by Softscape, are
26 hereby dismissed with prejudice, with each party to bear its own fees and costs.
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SuccessFactors and Softscape are hereby directed to perform each of the obligations set forth in the parties' Settlement Agreement executed on December 17, 2008, the terms of which are incorporated herein by reference. This Court shall retain personal and exclusive jurisdiction over SuccessFactors and Softscape for the purpose of enforcing or interpreting any portion of the Injunction or Settlement Agreement. Said jurisdiction may be invoked by or against any party hereto by filing a limited request to re-open Case No. CV 08-1376 CW (BZ), which request shall specifically identify the provision of the Injunction or Settlement Agreement in question and the nature of the dispute or disagreement. Within five (5) days of entry of the Consent Judgment, the Court clerk shall arrange for the Court to remit \$10,000 to SuccessFactors to extinguish the bond deposit that SuccessFactors posted with the Court on or about March 14, 2008.



Dated: December 29, 2008

The Honorable Claudia Wilken
United States District Court Judge