

1 JEFFREY M. SHOHEM, Bar No. 067529
 jeffrey.shohet@dlapiper.com
 2 CHRISTOPHER J. BEAL, Bar No. 216579
 cris.beal@dlapiper.com
 3 AMANDA C. FITZSIMMONS, Bar No. 258888
 amanda.fitzsimmons@dlapiper.com
 4 DLA PIPER LLP (US)
 401 B Street, Suite 1700
 5 San Diego, CA 92101-4297
 Tel: 619.699.2700
 6 Fax: 619.699.2701

7 Attorneys for Plaintiff
 Oracle America, Inc.

8 GEOFFREY M. EZGAR, Bar No. 184243
 gezgar@kslaw.com
 9 KING & SPALDING LLP
 10 101 Second Street
 Suite 2300
 11 San Francisco, CA 94105
 Telephone: (415) 318-1200
 12 Facsimile: (415) 318-1300

13 Attorney for Defendant
 Myriad Group AG

14 [Additional Counsel Appear on Signature Pages]
 15

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION
 19

20 ORACLE AMERICA, INC.,
 21 Plaintiff,
 22 v.
 23 MYRIAD GROUP AG,
 24 Defendant.

CASE NO. 10-CV-5604-SBA

**STIPULATION AND REQUEST TO STAY
 LITIGATION**

1 WHEREAS, on January 17, 2012, this Court issued an Order Granting Oracle's Motion
2 for Preliminary Injunction (hereinafter the "Injunction") to address disputes that had arisen
3 between the parties concerning the earlier order, denying Myriad's Motion to Stay and Compel
4 Arbitration, that has been appealed, by which it ordered Oracle and Myriad to meet and confer
5 regarding a stay of this action and the arbitration of Oracle's breach of contract claim;

6 WHEREAS, if the parties did not reach agreement, the Court ordered supplemental
7 briefing on Myriad's Motion for Stay Pending Appeal and Oracle's request to stay the arbitration
8 of the contract claim by Friday, January 27, 2012;

9 WHEREAS, on January 25, 2012, Myriad notified the International Chamber of
10 Commerce Court of Arbitration (ICC), the Permanent Court of Arbitration (PCA) and the
11 International Centre for Dispute Resolution (ICDR) of the Injunction and requested that those
12 institutions abate any activities inconsistent with the Injunction;

13 WHEREAS, on January 25, 2012 Oracle notified the ICC, PCA, and ICDR of its position
14 concerning Myriad's January 25, 2012 submission;

15 WHEREAS, on January 30, 2012, the Court, pursuant to the parties' stipulation, extended
16 the Court's deadline to Friday, February 3, 2012 so as to allow the parties additional time to meet
17 and confer regarding a stay of the instant action and the arbitration;

18 WHEREAS, the parties have continued to meet and confer regarding a stay of the instant
19 action and the arbitration;

20 WHEREAS, the parties agree that the interests of judicial economy and efficiency support
21 a stay of the instant litigation, the litigation pending in the United States District Court, District of
22 Delaware, and the arbitration until such time as the Ninth Circuit Court of Appeals resolves
23 Myriad's appeal, subject only to the completion of the process of appointing an arbitrator;

24 WHEREAS, the parties disagree over whether such a stay should extend to the
25 appointment of an arbitrator and this stipulation shall not be deemed or construed as a waiver of
26 either party's rights and is made without prejudice to either party's substantive positions
27 concerning the issues an arbitrator may appropriately be appointed to arbitrate, the location of the
28 arbitration or the timing by which the parties shall proceed with the trial of the litigable claims

1 and the arbitration of the arbitrable claims;

2 **THE PARTIES HEREBY STIPULATE** as follows:

- 3 1. The instant litigation shall be stayed in its entirety as set forth below;
- 4 2. The parties shall submit a proposed stipulated order to the United States District
5 Court, District of Delaware requesting that the Delaware Action be stayed in its
6 entirety as set forth below;
- 7 3. The parties shall jointly submit a request to the ICC International Court of
8 Arbitration requesting that it complete the process of appointing an arbitrator, and
9 upon doing so, provide the arbitrator with copies of the Court's January 17, 2012
10 Injunction Order, the parties' January 25, 2012 correspondence to the ICC, PCA,
11 and ICDR, and this stipulation and its implementing Order(s), and instruct the
12 arbitrator that his or her appointment is being made subject to the terms and
13 conditions of this stipulation and that the arbitration shall be immediately stayed
14 upon his or her appointment as set forth below;
- 15 4. Neither Myriad nor Oracle will initiate any additional arbitrations nor any
16 additional claims in any court related to the claims presented in this action, the
17 Delaware Action, and/or the pending arbitration during the duration of the stay of
18 the litigations and existing arbitration;
- 19 5. Upon the issuance of the mandate by the Ninth Circuit Court of Appeals, the stay
20 of both litigations and the arbitration shall remain in force for a period of ten days
21 during which the parties shall meet and confer regarding further proceedings in
22 light of the ruling by the Ninth Circuit Court of Appeals and during which period
23 neither party will seek any rulings from this Court, the Delaware Court, and/or the
24 arbitrator;
- 25 6. Upon the conclusion of the ten-day meet-and-confer period, the stay of both
26 litigations and the arbitration shall be deemed lifted, and the parties shall be free to
27 pursue all appropriate courses of action, subject to further orders of the respective
28 courts or arbitrator.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: February 3, 2012

DLA PIPER LLP (US)

By: /s/ Jeffrey M. Shohet
JEFFREY M. SHOHE
CHRISTOPHER J. BEAL
AMANDA C. FITZSIMMONS
Attorneys for Plaintiff
Oracle America, Inc.

Dated: February 3, 2012

KING & SPALDING LLP

By: /s/ Geoffrey M. Ezgar
GEOFFREY M. EZGAR
KEVIN R. SULLIVAN
TIMOTHY J. SULLIVAN
BRIAN A. WHITE
Attorneys for Defendant
Myriad Group AG

PURSUANT TO STIPULATION, IT IS SO ORDERED.

The instant action is administratively closed during the pendency of the stay. At the close of the ten-day meet and confer period set forth above, the parties shall notify the Court of their proposal for further handling of the instant action.

Date: 2-6-12



Hon. Sandra Brown Armstrong
U.S. District Court