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7 UNISYS CORP., DELL, DELL U.S.A.,
DELL COMPUTER CORP. and DELL
8 MARKETING L.P.

9
10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13
14 EAGLE EMBLEMS, INC., J & S
SURPLUS,

15 Plaintiffs,

16 v.

17 DELL, DELL U.S.A., DELL COMPUTER
18 CORP., DELL MARKETING CORP.,
UNISYS CORP. and DOES 1 TO 20,

19 Defendants.
20

CASE NO. C04 03175 RMW ~~ARB~~ HRL

STIPULATED PROTECTIVE ORDER

AS AMENDED BY THE COURT

Complaint Filed: June 25, 2004

Trial Date: None set

1 It is hereby stipulated and agreed by and among the parties hereto, through their respective
2 attorneys of record as follows:

3 1. All documents, materials, items and/or information which contain certain
4 confidential commercial, financial, or business information produced by either a party or a non-
5 party to or for any of the parties in this action shall be governed by this Stipulated Protective Order
6 ("Protective Order"). This Protective Order shall apply to all manner and means of formal and
7 informal discovery, inspection demands, interrogatories, depositions, requests for admissions, and
8 examinations under oath. **However, the parties acknowledge that this Order does not confer
blanket protections on all disclosures or discovery responses and that the protection it
affords extends only to the limited information or items that are entitled under the applicable
legal principals to treatment as confidential.**

9 2. Documents or other information provided by any party or non-party as part of
10 discovery in this action may be designated by such party or non-party as "CONFIDENTIAL."
11 Information designated as "CONFIDENTIAL," shall be information which a party reasonably
12 believes (i) if disclosed to competitors would give those competitors a competitive advantage or
13 deprive a party of its competitive advantage; or (ii) constitutes proprietary trade secret
14 information; or (iii) constitutes confidential financial information such as tax returns, financial
15 projections, or non-public financial reporting or results.

16 3. Any party or non-party wishing to come within the provisions of this Protective
17 Order shall designate in writing the documents, information or portion thereof which it considers
18 "CONFIDENTIAL." In the instance of documents, the items can be designated by a mark of
19 "CONFIDENTIAL" on the document. The producing party shall make such designations of
20 confidentiality at the time of production; any other party has ten (10) business days after
21 production to such party to designate documents not produced by themselves. If counsel to a
22 non-producing party wishes to show any "CONFIDENTIAL" documents so produced to anyone
23 before the ten (10) business days have passed, the written consent of all other counsel must be
24 received, unless the person is enumerated in paragraph 6 herein and has satisfied the conditions
25 therein.

26 4. (a) In the instance of deposition testimony and examinations, the provisions of
27 this Protective Order may be invoked by the examinee, deponent or examinee or counsel for any
28 party or non-party by giving notice to counsel for the other parties. The witness under deposition

1 or examination or counsel shall also have the right within ten (10) days of receiving a transcript of
2 the deposition or examination to designate or change the level of designation of the transcript or
3 portions thereof. During the ten (10) day period, counsel and the deponent or examinee or
4 examinee shall treat the entire transcript as if it had been designated "CONFIDENTIAL." All
5 designations or changes in designation to the deposition transcript shall be telecopied or delivered
6 to all other parties on or before the tenth day of receipt of the transcript identifying the deponent,
7 page and line numbers of the portion sought to be designated "CONFIDENTIAL." The court
8 reporter shall be instructed to redact those portions from the transcript, endorse them as
9 "CONFIDENTIAL," and separately bind them for each deponent or examinee and those portions
10 shall continue to be treated as "CONFIDENTIAL," hereunder.

11 (b) If a deponent or examinee refuses to agree to the non-disclosure provisions of this
12 Protective Order, the deponent or examinee shall sign the original deposition transcript in the
13 presence of the court reporter and no copy of the transcript or exhibits containing
14 "CONFIDENTIAL" information shall be given to the deponent.

15 (c) If at a deposition or examination, material or confidential information, or any work
16 product including such material or information previously designated "CONFIDENTIAL" or
17 which is designated "CONFIDENTIAL" at the deposition is to be presented to the deponent or
18 examinee for review, identification, testimony or otherwise or is otherwise to be discussed,
19 testified to, presented, distributed or reviewed in the deposition room, any person who is not
20 permitted access to "CONFIDENTIAL" pursuant to paragraph 6 of this Protective Order, other
21 than the deponent or examinee where he refuses to sign this agreement as provided in paragraph 6
22 of this Protective Order, shall be required to leave the deposition room while such
23 "CONFIDENTIAL" information is presented, disclosed, discussed, testified to, reviewed or
24 otherwise visible or accessible, and each party hereto and all counsel shall cooperate in excluding
25 such persons from the deposition room, including requesting any person present at their request or
26 on their behalf or with their permissions, or that of the party whom they represent, to leave, and
27 the deposition shall not proceed until all such persons have left.

28 (d) Under no circumstances, however, shall deposition testimony that was given prior

1 to the date of this Protective Order be marked "CONFIDENTIAL."

2 5. Information designated as "CONFIDENTIAL" shall be used only in connection
3 with this litigation and not for any business, competitive, or other purpose. Further, such
4 information may not be disclosed to anyone except as provided in this Protective Order. Copies
5 of designated documents shall be made only to the extent necessary to enable counsel to prepare
6 this action for trial, including, but not limited to use in depositions or for filing motions, or for
7 post-trial proceedings or appeals, subject to the terms of this Protective Order.

8 6. **Unless otherwise ordered by the court,** documents, deposition testimony, or other
9 information designated as
10 "CONFIDENTIAL" as well as any copies or excerpts therefrom, may be made available only to:

11 (a) Attorneys of record for the parties, their associates, of counsel, co-counsel, legal
12 assistants, clerks, and clerical personnel;

13 (b) Judges, law clerks, jurors during trial of this action and subject to the court's ruling
14 such evidence admissible, and other clerical personnel of the Court before which this action is
15 pending;

16 (c) The author(s) of the designated material or anyone shown to have been a recipient
17 of the material prior to its disclosure in this action;

18 (d) The officers and designated agents of each party on a need to know basis in
19 connection with the handling of this action;

20 (e) Court reporters and their clerical personnel performing transcription of depositions
21 taken in this action;

22 (f) Trial witnesses while preparing for giving testimony;

23 (g) Trial witnesses while giving testimony;

24 (h) Deposition witnesses while preparing for giving testimony;

25 (i) Deposition witnesses while giving testimony; and

26 (j) Independent experts or consultants.

27 PROVIDED, however, that all such persons enumerated in paragraph 6(d)-(f) and
28 paragraph 6(h)-(j) have first read a copy of this Protective Order and signed a statement in the
form attached hereto as Exhibit A.

1 7. (a) If any party desires to file with the Court material designated
2 "CONFIDENTIAL," such party shall first meet and confer with the party that designated the
3 "CONFIDENTIAL" document to determine if the filing can be avoided. If there is no agreement
4 after ten (10) business days of the first attempt by a party to meet and confer, the ~~document~~ ^{party} may
seek leave from the Court to file under seal designated material pursuant to Local Rule 79-5
5 ~~be filed~~ with the designation as herein provided. With respect to claimed work product, the meet
6 and confer obligation requires counsel to reveal the same information, including the general
7 nature or subject matter of the claimed privileged material, without revealing its specific content,
8 When seeking leave to file under seal ^{submitted} as is required in a privilege log. ~~If~~ any designated material ~~is filed~~ with the Court, it shall be ~~filed~~
9 in a sealed envelope or other sealed container marked on the outside with the title of this action
10 and a statement substantially in the following form:

11 "CONFIDENTIAL"

12 This document is subject to a PROTECTIVE ORDER and may not be examined

13 or copied except in compliance with that order.

14 ^{submitting} when seeking leave to file under seal
14 Counsel ~~filing~~ any "CONFIDENTIAL" documents shall be responsible for advising the
15 clerk of the court that the documents are subject to this Protective Order and must be kept under
16 seal, if the court so orders.

17 (b) Only those documents, pages, or, if reasonably practicable, those portions of
18 documents or pages, which contain the information requiring confidentiality shall be ^{filed} submitted for leave to file
19 seal. For each document or page, or portion thereof, filed under seal there shall be included in the
20 public file a document bearing a legend in substantially the following form: "By order dated
21 _____ (fill in), the complete (identify document), pages or portions thereof, has been filed under
22 seal, and may not be examined without further order of the court."

23 8. Individuals and entities permitted access to "CONFIDENTIAL" documents or
24 parts thereof pursuant to this Protective Order are hereby ordered not to show, convey or
25 reproduce such documents, or any parts thereof, or any copies thereof, or any matters contained
26 therein, or any extracts thereof, to any individual or to any entity who would not otherwise have
27 access to "CONFIDENTIAL" documents under the provisions of this Protective Order.

28 9. If any party gives written notice that previously produced privileged or protected

1 material was inadvertently produced or produced without an intended confidentiality designation,
2 in good faith, voice-to-voice dialogue
3 the parties with access to it shall meet and confer[↑] in response to the producing party's request for
4 remedial action. If they are unable to agree, the burden is on the party who inadvertently
5 produced the material to seek appropriate relief from the Court, as appropriate, within ten (10)
6 days after it is apparent that there is no agreement. During the meet and confer period and for the
7 ten (10) days following, the material shall be protected as if it had not been disclosed or given the
8 correct designation.

9 10. The restrictions of this Protective Order do not apply to counsel's own information
10 or information properly, lawfully, and in good faith obtained by said counsel independently of the
11 marked material and independently of the discovery proceedings.

12 11. Entering into, agreeing to, and/or complying with the terms of this Protective
13 Order shall not operate as an admission by any party that a particular document or material sought
14 to be designated as "CONFIDENTIAL" by another party contains or reflects trade secrets,
15 proprietary or other commercial information, or other confidential matter.

16 12. If counsel for any party believes that counsel for any other party or non-party is
17 unreasonably or improperly designating certain material as "CONFIDENTIAL" or believes that it
18 is necessary to disclose designated information to persons other than those permitted by this
19 Protective Order, the objecting counsel shall first meet and confer[↑] with counsel for the
20 designating party to try informally to resolve the dispute.

21 (a) In the event that any party seeks to strike the "CONFIDENTIAL" designation of a
22 document and the objecting party and designating party cannot reach agreement within ten (10)
23 business days of the first attempt by either party to meet and confer, counsel for the objecting
24 party may bring a motion before the Judge for an order striking the "CONFIDENTIAL"
25 designation, or otherwise relieving that counsel of the restrictions imposed by this Protective
26 The burden of persuasion in any such challenge shall be on the designating party.
27 Order.[↑] In that event, the information in question shall remain subject to the protection of this
28 Protective Order unless and until the Judge rules otherwise and any applicable time for the taking
of an appeal or writ on said ruling has expired.

13. This Protective Order will be without prejudice to the right of any party or non-

1 party to oppose production of any information on the ground of attorney-client privilege, work
2 product immunity or any other protection afforded by law.

3 14. Originals and copies of all "CONFIDENTIAL" materials shall either be returned
4 to counsel for the producing party at the termination of this action, destroyed (with certification of
5 such destruction) or retained solely by litigation counsel or the Court for record keeping purposes in a manner
6 designed to preserve the security and confidentiality of such information. All counsel to this
7 Protective Order shall certify in writing to counsel for the party or non-party who produced the
8 "CONFIDENTIAL" materials that all such materials, including but not limited to, all copies
9 thereof within his or her or its possession or control and all attorney work product referencing any
10 "CONFIDENTIAL" information, have been returned or destroyed or is being retained for record
11 keeping purposes solely by litigation counsel in a manner designed to preserve the security and
12 confidentiality of such information.

13 15. If any attorney who has had access to "CONFIDENTIAL" information or
14 materials leaves employment or terminates his or her relationship with the firm or company
15 which is the attorney of record for a party or non-party to this Protective Order, the attorney shall
16 be required to return to the firm or company that he/she is leaving all "CONFIDENTIAL"
17 information or materials in his/her possession before leaving such employment and such firm or
18 company shall assure that all such materials have been returned and shall notify all counsel to this
19 Protective Order of the terminating attorney's new employer. If such terminating attorney should
20 enter employment or otherwise commence providing services to a competitor of a designating
21 party of "CONFIDENTIAL" information or materials to which the terminating attorney has had
22 access, the terminating attorney and his/her former firm or company shall agree with the
23 designating party to reasonable protections to assure the terminating attorney does not use or
24 disclose "CONFIDENTIAL" information or materials in performing services for the designating
25 party's competitor, and if they cannot agree, then such protection as shall be ordered by the Court
26 at the request or on the motion of the designating party. The provision of this paragraph shall not
27 apply if the departing attorney continues to represent his/her client in this litigation after his/her
28 departure from his/her present law firm or company.

1 16. In the event anyone shall violate or threaten to violate any terms of this Protective
2 Order, the aggrieved party may seek enforcement of this Protective Order through declaratory and
3 injunctive relief and it shall not be a defense thereto that the aggrieved party possesses an
4 adequate remedy at law. Each person subject to this Protective Order stipulates to an injunction
5 consistent with the terms of this Protective Order.

6 17. In the event of a breach of this Protective Order by any person subject to its terms,
7 the aggrieved party may institute a contempt proceeding, in addition to any other remedy
8 provided by law, for such penalties as the law allows, including upon proper showing, all loss or
9 damage caused by the breach and the prevailing party in any such action shall be entitled to
10 recover its reasonable attorney fees and costs.

11 18. This Court shall retain jurisdiction over all persons subject to this Protective Order
12 for the purpose of enforcing this Protective Order, **for a period of six months after the final**
termination of this action.

13 IT IS SO STIPULATED.

14 Dated: January 29, 2010

DONAHUE GALLAGHER WOODS LLP

15
16 By: John C. Kirke
17 John C. Kirke
18 Attorneys for Defendants
19 UNISYS CORP., DELL, DELL U.S.A., DELL
COMPUTER CORP. and DELL MARKETING
L.P.

20 Dated: January 25, 2010

BECK & MATHIESEN

21
22 By: David R. Beck
23 David R. Beck
24 Attorneys for Plaintiffs
EAGLE EMBLEMS, INC., J & S SURPLUS

25 PURSUANT TO STIPULATION, IT IS SO ORDERED. **AS MODIFIED BY THE COURT.**

26 Dated: February 2, 2010

27 Howard R. Lloyd
United States Magistrate Judge
28 **HOWARD R. LLOYD**

1 **EXHIBIT A**

2 **PROTECTIVE ORDER ACKNOWLEDGMENT**

3 I, have read the Stipulated Protective Order dated _____, 2001 in the
4 action entitled Eagle Emblems, Inc. v. Unisys, Inc., et al., United States District Court, Case No.
5 C04 03175 RMW ~~ARB~~ HRL and hereby consent to be bound by the terms thereof with respect to all
6 documents, materials, and other information disclosed to me which are subject to that Protective
7 Order. I submit to the exclusive jurisdiction of the United States District Court for the Northern
8 District of California, for enforcement of the undertakings I have made herein. I appoint
9 _____ (counsel) as my agent to receive service of process in
10 connection herewith.