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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RSI CORP., dba RESPONSIVE SYSTEMS
COMPANY, a New Jersey corporation,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation;
and DOE DEFENDANTS 1-20,

Defendants.

Case No. C-08-03414 RMW

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO SEAL**

[Re Docket No. 219, 228, 230, 233, 237]

Each party has filed multiple administrative motions to file under seal pursuant to the Local Rules. *See* Dkt. Nos. 219, 228, 230, 233, 237. IBM has designated the documents at issue confidential and therefore it falls to IBM to establish that they should be filed under seal. L.R. 79-5. The court finds, for most of the documents, that IBM has failed to make this showing.

To be sealable a document must be "privileged or protectable as a trade secret or otherwise entitled to protection under the law." L.R. 79-5(a). It is not appropriate to seal documents merely because a party has marked them confidential under the protective order.

1 Here IBM wants to seal documents (including emails and deposition transcripts) relating
2 to the naming of a product and the logistics of an audit. These are not trade secrets.

3 **ORDER**

4 If IBM does not either withdraw its confidentiality designations or file a declaration
5 stating with specificity why each document or portion of a document is privileged or protectable
6 as a trade secret or otherwise entitled to protection under the law by December 7, 2012, the court
7 hereby orders as follows:

- 8 • The Administrative Motion For RSI's Supplemental Brief On Issues Of
9 Willfulness And Estoppel (Dkt. No. 219), is granted with respect to Exhibit B of
10 the Declaration of Ivan Gelb (Dkt. No. 223). The court denies the motion with
11 respect to the all the other documents or portions of documents.
- 12 • The Administrative Motion To File Under Seal IBM's Motion To Strike The
13 Declaration Of Irving S. Rappaport In Its Entirety, And Portions Of The
14 Supplemental Declaration Of Pamela L. Schultz (Dkt. No. 228) is denied.
- 15 • The Administrative Motion To File Under Seal IBM's Response To RSI's
16 Supplemental Brief Re: Willful Infringement And Estoppel (Dkt. No. 230) is
17 denied.
- 18 • The Administrative Motion For RSI's Opposition To Motion To Strike Entirety Of
19 Declaration Of Irving Rappaport And Portions Of Declaration Of Pamela L.
20 Schultz (Dkt. No. 233) is denied.
- 21 • The Administrative Motion To File Under Seal IBM's Reply In Further Support
22 Of Motion To Strike The Declaration Of Irving S. Rappaport In Its Entirety, And
23 Portions Of The Supplemental Declaration Of Pamela L. Schultz (Dkt. No. 237) is
24 denied.

25 IBM will also file a new proposed order reflecting any amendments to its proposed
26 redactions with its declaration.

27 If IBM does not file a new declaration, pursuant to Local Rule 79-5(e), RSI and IBM will
28 have 4 days following the issuance of the order regarding the motions to seal on December 7,

1 2012 to either re-submit the documents for filing in the public record or to withdraw the
2 documents.

3 In light of the above order, IBM is ordered to re-lodge with the court copies of the
4 documents to be sealed under the administration motions at docket entries: 155, 170, and 203.
5 These new copies will indicate what passages IBM believes are privileged or protectable as a
6 trade secret or otherwise entitled to protection under the law. IBM will also file a declaration
7 setting forth with specificity the basis for any proposed redactions. These documents and
8 declarations are due on December 14, 2012.

9 Furthermore, the court orders parties to indicate the docket number of the associated
10 motion to seal and the date the motion to seal was filed on the first page of all future documents
11 lodged with the court to be filed under seal.

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Dated: November 30, 2012


Ronald M. Whyte
United States District Court Judge