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INFORMATION SERVICES, INC.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN FRANCISCO**

16
17 MARS, INCORPORATED, a Delaware
18 corporation, and MARS INFORMATION
SERVICES, INC., a Delaware corporation,

19
20 Plaintiffs,

21 v.

22 ORACLE CORPORATION, a Delaware
corporation, ORACLE AMERICA, INC., a
23 Delaware corporation, and
Does 1-25,

24 Defendants.

Case No. CGC-15-548606

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO SEAL EXHIBITS 13-19 TO
THE DECLARATION OF ELOISE
BACKER IN SUPPORT OF PLAINTIFFS
MARS, INCORPORATED'S AND MARS
INFORMATION SERVICES, INC.'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: December 02, 2015

Time: 9:30 a.m.

Dept.: 302

Reservation No.: 10231202-11

Action Filed: October 23, 2015

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
10/26/2015
Clerk of the Court
BY:ROMY RISK
Deputy Clerk

1 **I. INTRODUCTION**

2 Plaintiffs Mars, Incorporated and Mars Information Services, Inc. (collectively “Mars”
3 and/or “Plaintiffs”) have brought an action for declaratory relief against defendants Oracle
4 Corporation and Oracle America, Inc. (collectively, “Oracle”) and Does 1-25, inclusive
5 (collectively “Defendants”) concerning the rights and obligations of the parties pursuant to a
6 November 23, 1993 License and Services Agreement (“1993 Agreement”) and related ordering
7 documents (collectively the “Operative Agreements”). Concurrently filed with the Complaint for
8 Declaratory Relief and the instant Motion to Seal, Mars moves the court to enjoin Oracle from,
9 among other things, terminating the Operative Agreements.

10 The Operative Agreements contain highly sensitive and confidential proprietary and
11 business information, reflected by the fact that, pursuant to the 1993 Agreement, the parties
12 agreed to maintain the confidentiality of the terms and pricing of the Oracle software programs
13 licensed pursuant to the Operative Agreements. Due to the nondisclosure clause in the 1993
14 Agreement and the otherwise confidential nature of the information contained in those
15 agreements, an overriding interest exists to seal the Operative Agreements attached to the
16 Declaration of Eloise Backer in support of Mars’ Motion for Preliminary Relief (“Backer
17 Declaration”). In order to protect the interests of both Mars and Oracle in preserving the
18 confidentiality of the precise terms and pricing set forth in the Operative Agreements, the instant
19 Motion should be granted, thereby protecting the confidential nature of the Operative Documents.

20 **II. FACTUAL BACKGROUND**

21 On or about November 23, 1993, Mars, Incorporated, acting through its subsidiary
22 Information Services International, a division of Effem Services, Inc., entered into the 1993
23 Agreement with Oracle Corporation which set forth a framework by which Mars could purchase
24 licenses for Oracle “Programs” (as defined in the Agreement) and/or technical support services,
25 pursuant to subsequently executed “Order Forms.” (See Backer Decl., Ex. 13.)

26 Section 7.1 of the 1993 Agreement provides that the parties will maintain the
27 confidentiality of the terms and pricing, among other things:

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By virtue of this Agreement, the parties may have access to information that is confidential to one another (“Confidential Information”). Confidential Information shall be limited to the Programs, the terms and pricing under this Agreement, and all information clearly identified as confidential.

The parties agree to hold each other’s Confidential Information in confidence during the term of this Agreement and for a period of two years after the termination of this Agreement. The parties agree, that unless required by law, not to make each other’s Confidential Information available in any form to any third party or to use each other’s Confidential Information for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

(See Backer Decl., Ex. 13.) Pursuant to the 1993 Agreement, over the course of more than twenty years, Mars executed multiple ordering documents thereby licensing Oracle software products and receiving related technical support from Oracle. (See Backer Decl., Ex. 14-19.) The following Operative Agreements, which are attached as exhibits to the Backer Declaration and have been lodged with the Court in connection with this Motion, reflect highly sensitive confidential information and are protected from disclosure by 7.1 of the 1993 Agreement:

1. Attached as Exhibit 13, the November 23, 1993 Software License and Services Agreement between Oracle Corporation and Mars, Incorporated.
2. Attached as Exhibit 14, December 23, 2010 Ordering Document between Mars IS UK Ltd. and Oracle Corporation UK Limited.
3. Attached as Exhibit 15, December 20, 2012 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.
4. Attached as Exhibit 16, May 31, 2013 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.
5. Attached as Exhibit 17, October 17, 2014 Ordering Document between Mars Information Services, Inc. and Oracle America, Inc.
6. Attached as Exhibit 18, March 28, 2001 Ordering Document between Mars, Incorporated and Oracle Corporation.
7. Attached as Exhibit 19, May 31, 2009 Document between Mars Information Services, Inc. and Oracle USA, Inc.

1 (Beeman Decl., ¶¶2-4.)

2 **III. LEGAL ARGUMENT**

3 **A. This Court Has The Authority To Seal Its Record.**

4 Although court records are presumed to be open to the public (Cal. Rules of Court, rule
5 2.550(c)), the Court may order that a record be placed or filed under seal if it expressly finds that:

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7 (1) There exists an overriding interest that overcomes the right to public access to
8 the record;

9 (2) The overriding interest supports sealing the record;

10 (3) A substantial probability exists that the overriding interest will be prejudiced if
11 the record is not sealed;

12 (4) The proposed sealing is narrowly tailored; and

13 (5) No less restrictive means exist to achieve the overriding interest."

14 Cal. Rules of Court, rule 2.550(d); *see also NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*
15 (1999) 20 Cal.4th 1178. Any order sealing records is reviewed for abuse of discretion. *In re*
16 *Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 299-300.

17 **B. Mars Has An Overriding Interest In Preserving The Confidentiality Of The**
18 **Precise Contract Terms.**

19 The California Supreme Court has recognized that various interests override the public's
20 right to access records. *NBC Subsidiary (KNBC-TV), Inc., supra*, 20 Cal.4th 1178, 2223. Such
21 interests include trade secrets and proprietary information as well as the enforcement of a binding
22 contractual obligation to maintain confidentiality. *Ibid.* at n. 46 (citing *Publicker Ind., Inc. v.*
23 *Cohen* (1984) 733 F.2D 1059, 1073); *see also Nixon v. Warner Commc'ns, Inc.* (1978) 435 U.S
24 589, 598; *In re Elec. Arts, Inc.*, (2008) 298 Fed. App'x 568, 569-570. When the parties have
25 entered into a binding confidentiality agreement, public disclosure of that information would
26 deprive the litigant of his right to enforce a legal obligation. *Publicker Ind., Inc. v. Cohen, supra*
27 733 F.2d at 1073. The prevention of such a deprivation of a legal right can constitute an

1 overriding interest within the meaning of rule 2.550(d). *Universal City Studios, Inc. v. Superior*
2 *Court of Los Angeles County* (2003) 110 Cal.App.4th 1273, 1283.

3 Here, in order to support its motion for preliminary injunction, Mars must attach the
4 Operative Agreements to the Backer Declaration because Mars seeks a preliminary injunction
5 enjoining Oracle from, among other things, terminating those Operative Agreements. (Beeman
6 Decl., ¶ 5.) Mars' interest in complying with its obligations pursuant to the 1993 Agreements,
7 and otherwise protecting the parties' highly sensitive confidential business information, override
8 the public's interest in access to the records Mars seeks to seal. (*Id.* at ¶ 4.) Public disclosure of
9 the confidential business information concerning the precise terms and pricing of Mars' licensing
10 Oracle software and contracting technical support services could disadvantage both Mars and
11 Oracle in future negotiations with other parties concerning similar products and services. (*Id.*)
12 Hence, a substantial probability exists that the overriding interest will be prejudiced if the
13 Operative Agreements are not filed/placed under seal. (*Id.*) Accordingly, the sealing of these
14 records will be wholly consistent with the intent and purpose of Cal. Rules of Court, rule 2.550
15 and Cal. Rules of Court, rule 2.551. (*Id.*)

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17 **C. The Proposed Sealing Is Narrowly Tailored And No Less Restrictive Means Exist.**

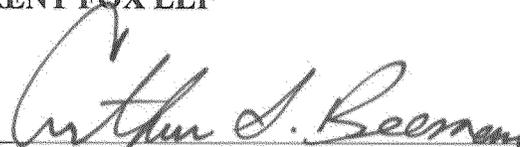
18 The proposed sealing is narrowly tailored to only sealing the Operative Agreements
19 attached to the Backer Declaration. (Beeman Decl., ¶ 5.) Due to the disclosure of confidential
20 information throughout these papers, there is no other tailoring that would adequately protect
21 Mars' rights and interests. Further, absent sealing these papers, Mars cannot control access to and
22 disclosure of the confidential information disclosed therein. (*Id.*) The information which is
23 protected by the nondisclosure clause of the 1993 Agreement cannot be adequately guarded short
24 of sealing the above mentioned papers, and thus there are no less restrictive means to achieve the
25 overriding interest. (*Id.*) Thus, this Court should grant Mars' Motion.

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Dated: October 26, 2015

ARENT FOX LLP

By:



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MARS, INCORPORATED and MARS
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