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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, et al., Plaintiffs, v. ORACLE CORPORATION, Defendant.	CASE NO. C 04-0807 VRW Filed June 15, 2004 Hearing Date: TBA **PLAINTIFFS' RESPONSE TO BLOOMBERG NEWS ET AL.'S MOTION TO UNSEAL EXHIBITS SUBMITTED AT TRIAL**

The Associated Press, Bloomberg News, the Contra Costa Times, the Los Angeles Times, and the San Francisco Chronicle (collectively "Newspapers") move to unseal the Special Master's report and the redacted and sealed exhibits thus far moved into evidence.[1] Plaintiffs agree that the Special Master's five-page Second Report and Recommendation filed on June 1, 2004 [Docket #237] should be unsealed because it does not contain confidential information. However, Plaintiffs believe that, with respect to the Newspapers' motion to entirely unseal previously submitted documents, non-parties have demonstrated sufficiently compelling reasons to seal certain information from the public record. Contrary to the Newspapers' allegations, the

[1]Although not specifically stated, Plaintiffs assume the Newspapers refer to the Special Master's Second Report and Recommendation because the initial Report filed on June 1, 2004 is public. *See* Docket #208.

Court, the Special Master, and the non-parties have complied with procedural requirements established by applicable Supreme Court and Ninth Circuit caselaw, and with Local Rule 79-5. The Court's actions and admonitions make clear that the Court strictly construes the relevant caselaw and applies a great weight to the public's side of the scale when balancing it against the legitimate interests of non-parties to avoid harm from public disclosure of selected sensitive business information. There is no reason to believe that the Court has not, and will not, give that public interest adequate weight in the balance.

Plaintiffs rely on our prior filings in this action regarding the confidentiality of third-party sensitive business information. *See* Pls.' Resp. to Third Party Req. for Additional Protection filed on 3/18/04 [Docket #79]; Pls.' Resp. to Third Parties' Mot. Supplementing Existing Protective Order filed on 5/19/04 [Docket #180].

Plaintiffs wish to stress the public policy interests implicated by disclosing third-party materials submitted to federal and state antitrust enforcement bodies. As the substantial number of customer witnesses and other non-parties in this matter demonstrates, Plaintiffs heavily rely on customers and other non-parties for critical information. For the federal and state antitrust agencies to effectively investigate mergers under their respective statutes, third parties must have confidence that their most sensitive business information will receive appropriate protection from harmful disclosure in any subsequent litigation.

In addition to these significant public interests, third parties that have produced information to the United States or Plaintiff States in the course of their investigations have significant business interests in avoiding harmful disclosure of their sensitive business information to a competitor or supplier. Without adequate protections, affected parties would be unwilling to participate in antitrust investigations. Third parties in this action have largely

complied with Civil Investigative Demands issued by the United Sates and with Plaintiffs' discovery requests. They should not be subjected to possible harm for having done so. As the court noted in *United States v. Dentsply International, Inc.*:

> While some nonparties may rejoice in the Justice Department's antitrust investigation, others doubtless consider the risk inherent in sharing extremely sensitive information too high a price to pay for curing the alleged unlawful anticompetitive activity. These nonparties have produced or will produce information because they are law-abiding entities with severely limited options. Their information will be shared not because they are a litigant seeking redress or an accused wrongdoer defending a lawsuit, but because they have valuable information which may or may not shed light on whether [the defendant] has engaged in proscribed anticompetitive activity.

United States v. Dentsply Int'l, Inc., 187 F.R.D. 152, 160 (D. Del. 1999) (granting non-party's motion for protective order).

As such, the Newspapers' motion should be denied to the extent that it seeks to disclose information that, if disseminated, would seriously harm or prejudice non-parties, thereby threatening to impede the United States and the Plaintiff States' ability to enforce the antitrust laws.

Dated: June 15, 2004

Respectfully submitted,

/s/

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Dated: June 15, 2004

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