

HIGHLY CONFIDENTIAL-- ATTORNEYS' EYES ONLY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)

Plaintiff,)

vs.) No. CV 10-03561 WHA

GOOGLE, INC.,)

Defendant.)

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Videotaped Federal Rule 30(b)(6) deposition of DANIEL R. BORNSTEIN, taken at the Law Office of King & Spalding LLP, 333 Twin Dolphin Drive, Suite 400, Redwood Shores, California, commencing at 9:34 a.m., on Friday, July 22, 2011, before Leslie Rockwood, RPR, CSR No. 3462.

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1 MR. KAMBER: Object to the form. Beyond the
 2 scope.
 3 THE WITNESS: Not to my knowledge.
 4 MR. PETERS: All right. Let's go to 285.
 5 (Exhibit PX285 was marked for
 6 identification.)
 7 MR. KAMBER: Yeah, we're going to actually
 8 claw back this document as unintentionally produced
 9 privileged material.
 10 MR. PETERS: I will object to that because as 17:54:49
 11 I understand it, was this -- were you there, Bruce? Was
 12 this read in open court yesterday?
 13 MR. BABER: It was, and that has no bearing
 14 on whether it's privileged or not. The protective order,
 15 I believe, as soon as we give you notice, the basis is 17:55:02
 16 that this was prepared at the request of counsel as part
 17 of activities in anticipation of litigation, and we are
 18 giving you notice under the protective order right now
 19 that we are clawing it back.
 20 Under the protective order, Marc, I believe 17:55:12
 21 you are required to not use it, and you know what the
 22 other consequences are under the protective order.
 23 MR. PETERS: I do, and I will follow the
 24 protective order for the time being, but I will ask, did
 25 you make an objection about privilege yesterday? 17:55:28
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1 MR. BABER: I don't believe -- no, we did not
 2 know what Mr. Holtzman had in the courtroom. He did not
 3 give us notice under the protective order, as he was
 4 required to. That's been the subject of a separate
 5 notice we've already provided to Oracle, which was a 17:55:42
 6 violation of the protective order itself in the first
 7 instance.
 8 So we did not have an opportunity to know
 9 what he was going to use with the Judge, nor to
 10 investigate whether it was something that was 17:55:50
 11 inadvertently produced.
 12 We have determined that since the hearing
 13 yesterday, and we are giving you notice right now under
 14 paragraph 13 of the protective order.
 15 MR. PETERS: Given that notice, I think we 17:56:00
 16 will have to work this out off-line, and since we are
 17 doing that, can we remove the exhibit stamp from that so
 18 it's not in the --
 19 MR. KAMBER: Sure.
 20 MR. BABER: Just so there's no 17:56:12
 21 misunderstanding, I know you don't have the protective
 22 order in front of you right now, but paragraph 13 under
 23 the protective order does provide that after being
 24 notified of the claim of privilege, which we have just
 25 notified you of, a party must promptly return or destroy 17:56:23
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1 the specified information and any copies it has and may
 2 not sequester, use, or disclose the information until the
 3 claim is resolved.
 4 Just so in fairness to you, I wanted to make
 5 sure you understood that's what the order said. 17:56:36
 6 MR. PETERS: So in that case, please hand
 7 that one back.
 8 MR. BABER: And while we're at it, I'll just
 9 make another statement on the record, which is it's my
 10 understanding as a result of our investigation following 17:56:58
 11 Mr. Holtzman's violation of the protective order
 12 yesterday, that there are several other iterations of
 13 this same document, which is a draft of an internal email
 14 that was supposed to have a privilege legend on it, that
 15 had also been produced, and we'll be providing to you 17:57:11
 16 shortly the production numbers of the other iterations,
 17 and the clawback notice applies to those as well.
 18 Sorry, Marc. I wanted to make it as clear as
 19 we could make it.
 20 MR. PETERS: I think it's very clear, as I 17:57:30
 21 said, because I wasn't at the hearing yesterday. It's
 22 clearly something that we'll have to resolve off-line.
 23 (Exhibit PX285 was clawed back.)
 24 MR. PETERS: Sometimes it is exciting, and if
 25 this is what passes for excitement, you know. 17:58:03
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1 MR. KAMBER: I'm not sure this excites him
 2 much.
 3 MR. PETERS: We need to get out more.
 4 Pressing forward. 285.
 5 (Exhibit PX285 was marked for
 6 identification.)
 7 Q. BY MR. PETERS: Mr. Bornstein, do you
 8 remember discussions between Google and a company called
 9 Skelmir, which is referred to in this email?
 10 A. If you don't mind, I'll take a moment to read 17:59:12
 11 the document.
 12 Q. Please.
 13 A. Okay.
 14 Q. Do you remember working -- sorry, do you
 15 remember discussions between Google and a company called 18:00:29
 16 Skelmir?
 17 A. In general, yes.
 18 Q. And what was Google looking to buy from
 19 Skelmir?
 20 MR. KAMBER: Object to the form. 18:00:39
 21 THE WITNESS: So to be clear, I'm a technical
 22 guy, not a business guy. I was involved with discussions
 23 at a technical level with at least one of the guys from
 24 Skelmir. I was not in on the business discussions.
 25 Q. BY MR. PETERS: Did you evaluate Skelmir's 18:01:04
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