

BOIES, SCHILLER & FLEXNER LLP  
OAKLAND, CALIFORNIA

MORRISON & FOERSTER LLP  
MICHAEL A. JACOBS (Bar No. 111664)  
mjacobs@mofo.com  
MARC DAVID PETERS (Bar No. 211725)  
mdpeters@mofo.com  
DANIEL P. MUINO (Bar No. 209624)  
dmuino@mofo.com  
755 Page Mill Road, Palo Alto, CA 94304-1018  
Telephone: (650) 813-5600 / Facsimile: (650) 494-0792

BOIES, SCHILLER & FLEXNER LLP  
DAVID BOIES (Admitted *Pro Hac Vice*)  
dboies@bsflp.com  
333 Main Street, Armonk, NY 10504  
Telephone: (914) 749-8200 / Facsimile: (914) 749-8300  
STEVEN C. HOLTZMAN (Bar No. 144177)  
sholtzman@bsflp.com  
1999 Harrison St., Suite 900, Oakland, CA 94612  
Telephone: (510) 874-1000 / Facsimile: (510) 874-1460  
ALANNA RUTHERFORD  
575 Lexington Avenue, 7th Floor, New York, NY 10022  
Telephone: (212) 446-2300 / Facsimile: (212) 446-2350 (fax)

ORACLE CORPORATION  
DORIAN DALEY (Bar No. 129049)  
dorian.daley@oracle.com  
DEBORAH K. MILLER (Bar No. 95527)  
deborah.miller@oracle.com  
MATTHEW M. SARBORARIA (Bar No. 211600)  
matthew.sarboraria@oracle.com  
500 Oracle Parkway, Redwood City, CA 94065  
Telephone: (650) 506-5200 / Facsimile: (650) 506-7114

*Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE, INC.

Defendant.

Case No. CV 10-03561 WHA

**DECLARATION OF ALANNA C.  
RUTHERFORD IN SUPPORT OF  
ORACLE AMERICA, INC.'S  
OPPOSITION TO GOOGLE INC.'S  
MOTION TO RETAIN  
CONFIDENTIALITY DESIGNATIONS**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William H. Alsup

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I, Alanna C. Rutherford, declare as follows:

1. I am a partner with the law firm of Boies, Schiller & Flexner LLP, attorneys for plaintiff Oracle America, Inc. in the above captioned matter, and admitted to practice law before this Court.

2. I make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently as to the matters set forth herein.

3. Attached hereto as Exhibit A is a true and correct copy of email correspondence between Oracle's and Google's counsel with the most recent email correspondence dated October 24, 2011. I received this email.

Dated: October 25, 2011

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Alanna C. Rutherford  
Alanna C. Rutherford

*Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

# **EXHIBIT A**

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**From:** Daniel Purcell [DPurcell@KVN.com]  
**Sent:** Monday, October 24, 2011 4:17 PM  
**To:** Alanna Rutherford; DALVIK-KVN; Google-Oracle-OutsideCounsel@KSLAW.com;  
GT Google@gtlaw.com  
**Cc:** Oracle-Google; OracleMoFoServiceList@mofo.com  
**Subject:** RE: Oracle v. Google: Motion to Retain Confidentiality of the Lindholm Documents

Alanna,

Thanks for your email. Google is not withdrawing its motion to retain the confidentiality designations for the Lindholm email and drafts thereof. The Court's October 20, 2011 Order addressed the privilege status of the Lindholm email, not the confidentiality issue. It did not moot Google's motion. In fact, it expressly states at page 14 that "This order makes no comment on the merits of [Google's] pending motion [to retain confidentiality designations]." As we've pointed out several times, including in the motion itself, the question whether these documents are confidential under the protective order does not depend on whether they are privileged.

In any event, despite the October 20 Order, Google believes these documents are privileged and intends to challenge the Court's ruling to the contrary. Given that, Google must continue to avoid doing anything that could be construed as waiver of any privilege. Accordingly, barring a Court order, Google is not in a position to reproduce the emails without a privilege designation until the privilege issue is finally adjudicated.

Thanks.

-----Original Message-----

From: Alanna Rutherford [mailto:ARutherford@BSFLLP.com]  
Sent: Saturday, October 22, 2011 6:39 PM  
To: DALVIK-KVN; Google-Oracle-OutsideCounsel@KSLAW.com; GT\_Google@gtlaw.com  
Cc: Oracle-Google; OracleMoFoServiceList@mofo.com  
Subject: Oracle v. Google: Motion to Retain Confidentiality of the Lindholm Documents

Counsel,

Following the Court's Order dated October 20, 2011 which published the full the text of the Lindholm Document for public consumption, Oracle is inquiring as to whether Google is willing to withdraw its October 11, 2011 Motion to Retain Confidentiality Designations of the Lindholm Documents. Although the Court stated that it will continue to entertain the request, it appears to be a moot issue following the issuance of the Court's Order and the text of the Protective Order, which states in pertinent part that "the protections conferred by this Stipulation and Order do not cover the following information: . any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party." ¶ 3.

Further, in light of the Court's finding that the Lindholm Documents are not privileged and confidential, we would ask that Google reproduce the documents without the added "Privileged & Confidential" footer.

Please let me know as soon as practicable but no later than the close of business Monday whether you are amenable to this.

Regards,

Alanna

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IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, unless we expressly state

otherwise, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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