

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2FA TECHNOLOGY LLC,

Plaintiff,

10 Civ. 9648 (BSJ)

– against –

ORACLE CORPORATION, a Delaware Corporation, and PASSLOGIX, INC., a wholly owned subsidiary of ORACLE CORPORATION,

Defendants.

DECLARATION OF DANIEL P. GOLDBERGER

I, Daniel P. Goldberger, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney associated with the firm Proskauer Rose LLP, counsel for defendants Oracle Corporation and Passlogix, Inc.

2. I submit this declaration to put before the Court the following true and correct documents, which are referred to in Defendants' accompanying memorandum of law:

Exhibit 1: Amended Complaint, filed by Passlogix, Inc. against 2FA Technology LLC et al, dated December 23, 2008.

Exhibit 2: 2FA Technology LLC's Answer and Counterclaim, dated January 30, 2009.

Exhibit 3: Stipulated and Court-ordered protective order in the First-Filed Action, so ordered by Judge Leisure on April 21, 2009.

Exhibit 4: Order, dated November 24, 2009 (Dolinger, J.).

Exhibit 5: Order denying 2FA's Petition for Rule 202 Deposition in Texas state court, dated December 23, 2010.

Exhibit 6: Order #2, dated December 21, 2009 (Dolinger, J.).

3. Defendants have not included plaintiff's complaint as an exhibit to this motion.

Plaintiff's complaint was filed in violation of the stipulated and Court-ordered protective order

(Exhibit 3) in the First-Filed Action, which prohibits use of confidential documents and information learned as part of the First-Filed Action for any other purpose. Plaintiff used confidential information and documents produced in the First-Filed Action under the protective order to frame its complaint in This Action. Because the Court already has a copy of plaintiff's complaint in This Action, Defendants have not included a copy, as doing so would further undercut the protective order. Defendants reserve all their rights in connection with this violation. We would be happy to provide the Court with a courtesy copy of the complaint in This Action if the Court would like us to do so.

* * *

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 31, 2011, in New York, New York.



Daniel P. Goldberger