

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
CONEXANT SYSTEMS, INC., <i>et al.</i> ,	)	
	)	Case No. 13-10367 (MFW)
Debtors.	)	
	)	Jointly Administered
	)	
	)	<b>Hearing Date: June 4, 2013 @ 10:30 A.M.</b>
	)	<b>Objection Date: May 30, 2013 at 4:00 P.M.</b>
	)	
	)	<b>Related Docket Nos. 206, 207, 209, 210 &amp; 262</b>

**ORACLE’S OPPOSITION TO DEBTORS’ NOTICE OF (A) EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED BY THE DEBTORS PURSUANT TO THE PLAN; (B) CURE AMOUNTS, IF ANY; AND (C) RELATED PROCEDURES IN CONNECTION THEREWITH (“OPPOSITION”)**

Oracle America, Inc., successor in interest to Hyperion Solutions Corporation, PeopleSoft, RightNow Technologies, Skywire Software, Sun Microsystems, and Oracle USA, Inc. (“Oracle”), a creditor and contract counter-party in the above-captioned jointly administered Chapter 11 cases, submits its Opposition to Conexant Systems, Inc., et al.,’s (“Debtors”) Notice of (A) Executory Contracts and Unexpired Leases to be Assumed by the Debtors Pursuant to the Plan; (B) Cure Amounts, if Any; and (C) Related Procedures in Connection Therewith (“Assumption Notice”), filed in connection with the Debtors’ Second Modified Joint Plan of Reorganization of Conexant Systems, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (“Plan”). In support of the Opposition, Oracle submits as follows:

**I. INTRODUCTION**

1. In connection with the Plan, on May 24, 2013, the Debtors served Oracle with the Assumption Notice advising Oracle that certain of its contracts with Debtors will be assumed

through the Plan<sup>1</sup>. The Assumption Notice Oracle received identifies one contract, described only as “PO—IT,” with a stated \$0.00 cure.

2. This “contract” description is wholly inadequate, as it fails to provide a specific contract name, date, or even the nature of the subject agreement to which the PO might correlate. It fails to identify any related support renewal, or any underlying license agreement.

3. To further complicate matters, the Debtors also identified several Oracle contracts for rejection in their First Supplement to the Plan Supplement to the Plan (“First Supplement”).

4. The contract descriptions in the First Supplement similarly are unclear and given the vagueness of the descriptions in both of the Debtors’ notices, Oracle cannot tell whether the contract identified for assumption relates to the listed Oracle agreements identified for rejection.

5. Therefore, based on the incomplete information provided, and given the short time frame in which Oracle is obligated to respond to the Assumption Notice (essentially two business days), Oracle remains unable to identify either the specific contract at issue or to determine the stated cure’s accuracy.

6. Oracle is aware of at least one invoice owing from Debtors, in the amount of \$15,866.04, which will come due on May 31, 2013. Whether this sum correlates to a rejected or assumed contract is impossible to discern, based on the Debtors’ record to date.

7. If the Debtors contemplate assuming an Oracle agreement, the Assumption Notice must be amended to properly and specifically identify the targeted contract and correct cure amount.

8. Based on the very general description in the Assumption Notice, Oracle cannot, at this time, determine the appropriate cure amount owed under the listed Oracle agreement.

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<sup>1</sup> The Assumption Notice was received on May 28, 2013 by Oracle’s counsel.

9. Therefore, Oracle requests that the Court deny the Debtors' motion to assume the Oracle "PO-IT," whatever that may be, in the absence of first obtaining Oracle's consent, and paying the correct cure which correlates to the targeted agreement.

## **II. ARGUMENT**

### **A. Any Proposed Assumption Should Be Denied With Respect to the Oracle Agreement Until All Arrearages are Paid.**

10. Until the Debtors have clarified the contract sought to be assumed, Oracle is unable to determine the exact cure amount owed.

11. Oracle's records reflect that at this time, a sum of not less than \$15,866.04 will come due from Debtors on May 31, 2013.

12. The Debtors cannot assume the Oracle agreement until all arrearages due thereunder are tendered in cure, payment of which is a precondition to Oracle's consent to the proposed assignments.

13. Therefore, in the absence of payment of the appropriate cure, Oracle withholds its consent to the proposed contract assumption. *See* 11 U.S.C. § 365(b)(1)(A).

14. Oracle reserves its right to object further to the cure, and to assert the appropriate amounts owed with specificity, once more certainty on the contract at issue is provided.

### **B. The Proposed Assumption Reflected in the Oracle Assumption Notice Should Be Denied Because Debtors Fail to Provide Adequate Assurance.**

15. Section 365(b) of the Bankruptcy Code sets forth specific prerequisites that must be met before a trustee/debtor can assume an executory contract, including (a) curing (or providing adequate assurance of a prompt cure of) any defaults under the subject contract, and (b) providing adequate assurance of future performance under the contract.

16. Absent the foregoing, the executory contract may not be assumed. Given the confusion created by the belatedly received and potentially inconsistent Assumption and

Rejection decisions found in Debtors' Assumption Notice and First Supplement, Oracle cannot determine whether Debtors have complied, or will comply, with the protections of section 365(b)(1).

**III. CONCLUSION**

17. Oracle requests that prior to allowing the proposed contract assumption: (a) the Debtors be required to identify with specificity the contract intended to be assumed; (b) all sums owed under the targeted Oracle agreement be paid; and (c) Debtors provide adequate assurance of future performance as required under the Bankruptcy Code.

Dated: May 30, 2013  
Wilmington, Delaware

Respectfully submitted,  
**MARGOLIS EDELSTEIN**

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