

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

In re:

SCHOOL SPECIALTY, INC., *et al.*,
Debtors.

)
) Chapter 11
)
)

) Case No. 13-10125 (MFW)
)

) Jointly Administered
)

) **Hearing Date: May 20, 2013 @ 1:30 P.M.**
)

) **Objection Date: May 16, 2013 at 4:00 P.M.**
)

) **Related Docket Nos. 599, 601 and 902**
)
)

**ORACLE’S OPPOSITION TO DEBTORS’ NOTICE OF (I) POSSIBLE ASSUMPTION
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES (II) FIXING OF CURE
AMOUNTS AND (III) DEADLINE TO OBJECT TO CURE AMOUNTS AND
ADEQUATE ASSURANCE OF FUTURE PERFORMANCE (“OPPOSITION”)**

Oracle America, Inc., successor in interest to Oracle USA, Inc. (“Oracle”), a creditor and contract counter-party in the above-captioned jointly administered Chapter 11 cases, submits its Opposition to School Specialty, Inc.’s (“Debtors”) Notice of (I) Possible Assumption of Executory Contracts and Unexpired Leases (II) Fixing of Cure Amounts and (III) Deadline to Object to Cure Amounts and Adequate Assurance of Future Performance (“Assumption Notice”), filed in connection with the Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (“Plan”). In support of the Opposition, Oracle submits:

I. INTRODUCTION

1. In connection with the Plan, the Debtors served the Assumption Notice on Oracle as a contract counter-party whose contracts potentially may be assumed through the Plan. Exhibit “A” to the Assumption Notice Oracle received identifies multiple contracts, all with a stated \$0.00 cure.

2. The Debtors clearly made a serious effort to identify the Oracle agreements they wish to assume, but the contract descriptions omit any reference to the listed contracts’ related



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support agreements. Similarly, no specific dates for any of the listed agreements are provided in the Assumption Notice.

3. At this time, Oracle is aware of at least two outstanding invoices totaling \$107,149.14, copies of which are attached as Exhibit "A".

4. Given their size, and seeming correlation to certain of the listed agreements, their omission from the stated cure is difficult to reconcile with Oracle's records. Until this clarification is provided, Oracle reserves the right to make a further determination as to the appropriate cure amount owed under the Oracle agreements but believes it is not less than \$107,149.14.

5. If the Debtors contemplate assuming these listed Oracle agreements, the Assumption Notice must be amended to properly and specifically identify the targeted agreements and to correct the cure amounts.

6. Therefore, Oracle requests that the Court deny, at this time, the Debtors' request to assume any of the Oracle executory agreements, in the absence of first obtaining Oracle's consent, and paying the correct cure.

II. ARGUMENT

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

7. Until the Debtors have clarified the contracts sought to be assumed, Oracle is unable to determine the exact cure amount owed. Oracle's records reflect that at this time, it is owed not less than \$107,149.14.

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

9. Therefore, in the absence of payment of the appropriate cure, Oracle withholds its consent to assumption of the Oracle agreements. *See* 11 U.S.C. § 365(b)(1)(A). Oracle reserves its right to object further to the cure, and to assert the appropriate amounts owed with specificity, once more certainty on the contracts at issue is provided.

B. The Proposed Assumptions Reflected in the Oracle Assumption Notice Should Be Denied Because They Fail to Provide Adequate Assurance.

10. 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 contracts, and (b) providing adequate assurance of future performance under the contract. Absent the foregoing, the executory contracts may not be assumed.

11. At this time, Oracle is unable to determine whether Debtors have complied, or will comply, with the protections of section 365(b)(1), since there is, among other things, a significant discrepancy in the Debtors' and Oracle's records regarding the appropriate cure.

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III. CONCLUSION

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

Dated: May 16, 2013
Wilmington, Delaware

MARGOLIS EDELSTEIN

/s/ James E. Huggett
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Attorneys for Oracle America, Inc.

EXHIBIT “A”

ORACLE**INVOICE**

Federal Tax ID: 94-2805249

INVOICE NUMBER	41978126
INVOICE DATE	05-Nov-2012
YOUR P.O. NUMBER	POEF-1/Zanden
PAYMENT TERMS	30 NET
DUE DATE	05-Dec-2012

BILL TO :
SCHOOL SPECIALTY INC
 Doug Gabel
 West 6316 Design Drive
 GREENVILLE, WI 54942
 United States

PAYMENT INSTRUCTIONS:

REFERENCE	41978126	ON YOUR REMITTANCE
MAIL CHECKS TO:	Oracle America, Inc. P.O. Box 203448 Dallas 75320-3448	
WIRE TRANSFERS TO:	WELLS FARGO BANK ABA 121000248 ACCT 4522-020841	

SHIP TO :
SCHOOL SPECIALTY INC
 W6316 Design Dr
 GREENVILLE, WI 54942-8404
 United States

FOR BILLING QUESTIONS, CALL COLLECTIONS CENTER (888) 803-7414

ORACLE SALESPERSON	ORACLE ORDER NUMBER	CUSTOMER CONTACT	END USER
	5352802	Doug Gabel	

ITEM NO.	DESCRIPTION	QTY/ NO. OF USERS	TAX	EXTENDED AMOUNT
1	Oracle CRM On Demand - Single-Tenant - Standard Edition - Hosted Named User: 01-NOV-2012 : 31-JAN-2013	100	N	13,884.00

SPECIAL INSTRUCTIONS:		SUBTOTAL	TAX	TOTAL(USD)
		13,884.00	0.00	13,884.00
Less payments				0.00
Credits/Adjustments				0.00
Outstanding Balance as of 13-Feb-2013				13,884.00

ORACLE**INVOICE**

Federal Tax ID: 94-2805249

INVOICE NUMBER	41977600
INVOICE DATE	05-Nov-2012
YOUR P.O. NUMBER	POEF-1/VandenZanden
PAYMENT TERMS	30 NET
DUE DATE	05-Dec-2012

BILL TO :
SCHOOL SPECIALTY INC
DOUG GABEL
W6316 Design Drive
GREENVILLE, WI 54942
United States

PAYMENT INSTRUCTIONS:

REFERENCE	41977600	ON YOUR REMITTANCE
MAIL CHECKS TO:	Oracle America, Inc. P.O. Box 203448 Dallas 75320-3448	
WIRE TRANSFERS TO:	WELLS FARGO BANK ABA 121000248 ACCT 4522-020841	

SHIP TO :
SCHOOL SPECIALTY INC
W6316 Design Drive
GREENVILLE, WI 54942
United States

FOR BILLING QUESTIONS, CALL COLLECTIONS CENTER (888) 803-7414

ORACLE SALESPERSON	ORACLE ORDER NUMBER	CUSTOMER CONTACT	END USER
	4338253	DOUG GABEL	

ITEM NO.	DESCRIPTION	QTY/ NO. OF USERS	TAX	EXTENDED AMOUNT
1	Oracle CRM On Demand - Mobile Sales Data Access - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	25	N	1,207.50
2	Oracle CRM On Demand - Mobile Sales Data Access - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	30	N	1,449.00
3	Oracle CRM On Demand - Single-Tenant - Enterprise Edition - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	105	N	14,578.20
4	Oracle CRM On Demand - Mobile Sales Data Access - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	65	N	3,139.50
5	Oracle CRM On Demand - Single-Tenant - Enterprise Edition - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	371	N	51,509.64

SPECIAL INSTRUCTIONS:	SUBTOTAL	TAX	TOTAL(USD)
	93,265.14	0.00	93,265.14
	Less payments		0.00
	Credits/Adjustments		0.00
	Outstanding Balance as of 13-Feb-2013		93,265.14

ORACLE

INVOICE

Federal Tax ID: 94-2805249

INVOICE NUMBER	41977600
INVOICE DATE	05-Nov-2012
YOUR P.O. NUMBER	POEF-1/VandenZanden
PAYMENT TERMS	30 NET
DUE DATE	05-Dec-2012

6	Oracle CRM On Demand - Single-Tenant - Enterprise Edition - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	45	N	6,247.74
7	Oracle CRM On Demand - Single-Tenant - Enterprise Edition - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	50	N	6,942.00
8	Oracle CRM On Demand - Single-Tenant - Enterprise Edition - Hosted Named User: 01-DEC-2012 : 28-FEB-2013	59	N	8,191.56

SPECIAL INSTRUCTIONS:

SUBTOTAL	TAX	TOTAL(USD)
93,265.14	0.00	93,265.14
Less payments		0.00
Credits/Adjustments		0.00
Outstanding Balance as of 13-Feb-2013		93,265.14

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

_____)	
In re:)	Chapter 11
)	
SCHOOL SPECIALTY, INC., <i>et al.</i> ,)	Case No. 13-10125 (MFW)
)	
Debtors.)	Jointly Administered

CERTIFICATE OF SERVICE

I, James E. Huggett, hereby certify that on May 16, 2013, I served a copy of *Oracle's Opposition to Debtors' Notice of (I) Possible Assumption of Executory Contracts and Unexpired Leases (II) Fixing of Cure Amounts and (III) Deadline to Object to Cure Amounts and Adequate Assurance of Future Performance* on the parties listed on the attached service list via electronic mail.

/s/ James E. Huggett
James E. Huggett (#3956)

SERVICE LIST

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Greenville, WI 54942
Attn: Michael P. Lavelle, CEO
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The ABL Lenders

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United States Trustee

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