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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

OANDA Corporation,
 	
   Plaintiff,
 	
v.
 	
GAIN Capital Holdings, Inc.;
GAIN Capital Group, LLC.
 	
   Defendants.
	Civil Action No. 3:20-cv-5784
	
	Judge: Hon. Douglas E. Arpert
	
	Motion Day: June 5, 2023
	
	ORAL ARGUMENT REQUESTED
	
	FILED UNDER SEAL

<u>**OANDA'S BRIEF IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF DATA FROM GAIN'S JIRA SYSTEM**</u>

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I.   INTRODUCTION

Plaintiff OANDA files this motion to compel Defendant GAIN to produce data from JIRA, which is an issue tracking and project management software program employed by GAIN during the period relevant to this lawsuit. According to deposition testimony from GAIN's software engineer, David Leach, and other documents produced by GAIN, GAIN employees have used JIRA ██ ██████████████████ during the relevant period. In addition, JIRA is the software tool GAIN has used to track when particular versions of the accused products were deployed or retired (i.e., in use or not in use). JIRA thus contains material technical information, including information relevant to understanding the design and function of GAIN's accused products, as well as when particular versions of the software were deployed.

Notwithstanding the direct relevance of this information, GAIN has refused to produce any data from JIRA, principally on the alleged ground that JIRA is "not reasonably accessible" within the meaning of the Federal Rule of Civil Procedure 26(b)(2)(B) and the ESI Order in this case. GAIN's position is that it would need to employ a vendor to extract and produce relevant data from JIRA in readable format using a third-party software platform, at a cost of approximately $14,500, and that this renders JIRA inaccessible under the ESI Order. Based on this reasoning, GAIN has stated that it is willing to produce JIRA data but will do so only if OANDA foots the bill for production.

OANDA, however, is entitled to this data without having to pay for it. Unlike sources that are traditionally considered inaccessible, such as backups for disaster recovery or fragmented data, JIRA is an active database, from which documents can be searched, retrieved, and produced, as numerous cases involving JIRA discovery disputes confirm. And while GAIN may consider running searches in JIRA too burdensome, there are other methods to produce the relevant data

that have been proposed by OANDA, including providing OANDA with a complete copy of the database (such as through providing read-only access or a complete copy via XML export), an approach that has been endorsed by federal courts. GAIN, however, has rejected these alternatives, claiming that providing OANDA access in this way would compromise private customer information, and taking the position that even the highest levels of protection provided by the Stipulated Confidentiality Order do not for some reason address that concern. While GAIN's preferred method of production of JIRA data might require paying a vendor, that is not a sufficient basis for finding JIRA inaccessible, particularly when GAIN has refused to produce via other available, less costly production methods.

Finally, even if a searchable software platform that is in current, daily use by GAIN employees could be deemed "not reasonably accessible," there is still no basis for requiring OANDA to reimburse GAIN for the costs of production. The factors that are considered in a cost-shifting analysis all weigh in favor of maintaining the traditional approach to discovery costs: that the producing party pays.

OANDA's Motion should be granted.

II.   BACKGROUND

A.   The Parties Engage In Initial Discovery, With OANDA Seeking Access to GAIN's Source Code And Technical Documents To Understand The Design, Function, and Operation of the Accused Products.

In this lawsuit, OANDA alleges that its competitor GAIN's foreign exchange trading technologies infringe two of OANDA's patents, U.S. Patents No. 7,146,336 (the '336 Patent) and No. 8,392,311 (the '311 Patent). These patents claim systems and methods for online currency trading that improve upon prior art online currency trading.

OANDA propounded its First Set of Requests for Production of Documents ("RFP(s)") on June 2, 2021, the first day it could do so under Federal Rule of Civil Procedure 26(f). (Paisley

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