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20 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 ORACLE USA, INC., *et al.*,
23 Plaintiffs,
24 v.
25 SAP AG, *et al.*,
Defendants.

No. 07-CV-01658 PJH (EDL)

**DECLARATION OF NARGUES
MOTAMED IN SUPPORT OF JOINT
STATEMENT REGARDING
EVIDENTIARY ISSUES**

1 I, Nargues Motamed, declare that I am an attorney licensed to practice law in the
2 State of California and am an associate at Bingham McCutchen LLP, counsel of record for
3 plaintiff Oracle International Corporation (“Oracle” or “Plaintiff”). I have personal knowledge
4 of the facts stated below and could testify competently to them if required.

5 1. I submit this declaration in support of the parties’ Joint Statement
6 Regarding Evidentiary Issues. The boxes and highlighting in the attached exhibits have been
7 added to further assist the Court in identifying the information cited in Oracle’s Motion.

8 2. Oracle had intended that the Parties jointly submit a single set of the
9 exemplar documents identified by each party so that the Court and the Parties could work off of
10 one highlighted copy of the documents at the hearing. Defendants refused this proposal. Thus,
11 in order to highlight for the Court the language in Defendants’ exemplars to which Oracle refers
12 in its responsive sections of the accompanying brief, Oracle attaches to this declaration, in the
13 binder concurrently lodged with the Court, highlighted versions of each of the documents at
14 issue. The Parties’ exemplars (i.e. the documents at issue) are labeled in the binder by Trial
15 Exhibit number (e.g. A-0059)). All of Oracle’s supporting documents are labeled in the binder
16 by exhibit letters as defined below.

17 **DEFENDANTS’ “CATEGORY” ONE - ALLEGED HEARSAY**
18 **EXCEPTIONS/EXEMPTIONS**

19 **Defendants’ Exemplars**

20 3. Attached is a true and correct copy of relevant excerpts of SAP’s Trial
21 **Exhibit A-0059**, (the At Risk Report) an exemplar to Defendants’ first category.

22 4. Attached is a true and correct copy of **SAP’s Trial Exhibit A-6329-1**, an
23 exemplar to Defendants’ first category.

24 5. Attached is a true and correct copy of **SAP’s Trial Exhibit A-0367**, an
25 exemplar to Defendants’ first category.

26 6. Attached is a true and correct copy of **SAP’s Trial Exhibit A-5042**, an
27 exemplar to Defendants’ first category.

1 7. Attached is a true and correct copy of **SAP's Trial Exhibit A-5997**, an
2 exemplar to Defendants' first category.

3 8. Attached is a true and correct copy of **SAP's Trial Exhibit A-6042-1**, an
4 exemplar to Defendants' first category.

5 9. Attached is a true and correct copy of **SAP's Trial Exhibit A-6205-1**, an
6 exemplar to Defendants' first category.

7 10. Attached is a true and correct copy of **SAP's Trial Exhibit A-5193**, an
8 exemplar to Defendants' first category.

9 11. Attached is a true and correct copy of **SAP's Trial Exhibit A-5995**, an
10 exemplar to Defendants' first category.

11 12. Attached is a true and correct copy of **SAP's Trial Exhibit A-5058**, an
12 exemplar to Defendants' first category.

13 13. Attached is a true and correct copy of **SAP's Trial Exhibit A-5002-1**, an
14 exemplar to Defendants' first category.

15 **Plaintiff's Counter Examples**

16 14. Attached as **Exhibit A** is a true and correct copy SAP's Trial Exhibit A-
17 5663.

18 15. Attached as **Exhibit B** is a true and correct copy SAP's Trial Exhibit A-
19 0225.

20 16. Attached as **Exhibit C** is a true and correct copy SAP's Trial Exhibit A-
21 4089.

22 17. Attached as **Exhibit D** is a true and correct copy SAP's Trial Exhibit A-
23 6086.

24 **Plaintiff's Supporting Documents**

25 18. Attached as **Exhibit E** is a true and correct copy of a document produced
26 by Oracle in this matter, Bates numbered ORCL000132443-45.

27 19. Attached as **Exhibit F** is a true and correct copy of the relevant excerpts of
28 the transcript of the September 23, 2008 deposition of Rick Cummins.

1 20. Attached as **Exhibit G** is a true and correct copy of the relevant excerpts
2 of the transcript of the March 5, 2009 deposition of Elizabeth Shippy.

3 21. Attached as **Exhibit H** is a true and correct copy of a document produced
4 by Oracle in this matter, Bates numbered ORCL00127354.

5 22. Attached as **Exhibit I** is a true and correct copy of a document produced
6 by Oracle in this matter, Bates numbered ORCL00033223-26.

7 23. Attached as **Exhibit J** is a true and correct copy of the relevant excerpts of
8 the trial transcript. The following portions of the trial transcript comprise **Exhibit J**:

Date(s)	Trial Transcript Pages	Description of Event
11/2/10	385:10-12	Discussion Regarding Admissibility of Evidence
11/12/10	1209:9-12	Discussion Regarding Admissibility of Evidence
11/15/10	1473:13-1479:21; 1510:3-10	Discussion Regarding Admissibility of Evidence
11/16/10	1528:18-1529:1; 1528:19-22	Discussion Regarding Admissibility of Evidence

14 24. Attached as **Exhibit K** is a true and correct copy of the relevant excerpts
15 of the transcript of the May 24, 2012 pretrial conference in this matter.

16 25. Attached as **Exhibit L** is a true and correct copy of the relevant excerpts
17 of the transcript of the February 13, 2008 discovery hearing in this matter.

18 26. Attached as **Exhibit M** is a true and correct copy of the relevant excerpts
19 of the transcript of the September 30, 2010 pretrial conference in this matter.

20 27. Attached as **Exhibit N** is a true and correct copy of the relevant excerpts
21 of the transcript of the September 25, 2008 deposition of Elizabeth Shippy.

22 **DEFENDANTS' "CATEGORY" TWO - ALLEGED EVIDENCE OF**
23 **WILLFUL INFRINGEMENT**

24 **Defendants' Exemplars**

25 28. Attached is a true and correct copy of **Oracle's Trial Exhibit PTX 0008**,
26 an exemplar to Defendants' second category.

27 29. Attached is a true and correct copy of **Oracle's Trial Exhibit PTX 0014**,
28 an exemplar to Defendants' second category.

1 30. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 0161**,
2 an exemplar to Defendants’ second category.

3 **Plaintiff’s Supporting Documents**

4 31. Attached as **Exhibit O** is a true and correct copy Oracle’s Trial Exhibit
5 PTX 0196.

6 32. Attached as **Exhibit P** is a true and correct copy Oracle’s Trial Exhibit
7 PTX 0035.

8 33. Attached as **Exhibit Q** is a true and correct copy Oracle’s Trial Exhibit
9 PTX 006.

10 34. Attached as **Exhibit R** is a true and correct copy of the relevant excerpts
11 of the February 23, 2010 Supplemental Expert Report of Paul K. Meyer.

12 **DEFENDANTS’ “CATEGORY” THREE - EVIDENCE ALLEGEDLY**
13 **RELATING TO EXCLUDED DAMAGES THEORIES**

14 **Defendants’ Exemplars**

15 35. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 4809**,
16 an exemplar to Defendants’ third category.

17 36. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 4819**,
18 an exemplar to Defendants’ third category.

19 37. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 0012**,
20 an exemplar to Defendants’ third category.

21 38. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 0024**,
22 an exemplar to Defendants’ third category.

23 39. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 0960**,
24 an exemplar to Defendants’ third category.

25 40. Attached is a true and correct copy of **Oracle’s Trial Exhibit PTX 7028**,
26 an exemplar to Defendants’ third category.

1 **Plaintiff's Supporting Documents**

2 41. Attached as **Exhibit S** is a true and correct copy Oracle's Trial Exhibit
3 PTX 0970.

4 42. Attached as **Exhibit T** is a true and correct copy Oracle's Trial Exhibit
5 PTX 0023.

6 43. Attached as **Exhibit U** is a true and correct copy Oracle's Trial Exhibit
7 PTX 0141.

8 44. Attached as **Exhibit V** is a true and correct copy of the relevant excerpts
9 of the transcript of the June 8, 2010 deposition of Stephen K. Clarke.

10 45. Attached as **Exhibit W** is a true and correct copy of the June 4, 2012
11 Supplement of Stephen K. Clarke.

12 **PLAINTIFF "CATEGORY" ONE - ORACLE INCOME STATEMENTS**
13 **AND CANCELLATION REPORTS**

14 **Plaintiff's Exemplars**

15 46. Attached is a true and correct copy of relevant excerpts of **Oracle's Trial**
16 **Exhibit PTX 8040**, an exemplar to Oracle's first category.

17 47. Attached is a true and correct copy of **Oracle's Trial Exhibit PTX 2582**,
18 an exemplar to Oracle's first category.

19 **Plaintiff's Supporting Documents**

20 48. Attached as **Exhibit X** is a true and correct copy of the relevant excerpts
21 of the transcript of the November 20, 2009 deposition of Claire Sebti.

22 49. Attached as **Exhibit Y** is a true and correct copy of the relevant excerpts
23 of the transcript of the August 12, 2009 deposition of Eileen McMillan.

24 **PLAINTIFF "CATEGORY" TWO - POST-TRIAL STATEMENTS BY SAP**
25 **EXECUTIVES**

26 **Plaintiff's Exemplars**

27 50. Attached is a slip sheet corresponding to **Oracle's Trial Exhibit PTX**
28 **8112**, the May 25, 2011 SAP Shareholders' Meeting Transcript available at

1 [http://www.sap.com/corporateen/investors/governance/meetings/pdf/2011-05-25-](http://www.sap.com/corporateen/investors/governance/meetings/pdf/2011-05-25-ShareholderMeeting-e-mcdermott.Pdf)
2 [ShareholderMeeting-e-mcdermott.Pdf](http://www.sap.com/corporateen/investors/governance/meetings/pdf/2011-05-25-ShareholderMeeting-e-mcdermott.Pdf), an exemplar to Oracle's second category.

3 51. Attached is a slip sheet corresponding to **Oracle's Trial Exhibit PTX**
4 **8111**, the Shareholders' Meeting Webcast available at [http://www.sap.com/company/media/](http://www.sap.com/company/media/110525_ShareholdersMeeting_EN_250.aspx)
5 [110525_ShareholdersMeeting_EN_250.aspx](http://www.sap.com/company/media/110525_ShareholdersMeeting_EN_250.aspx), an exemplar to Oracle's second category.

6 **PLAINTIFF "CATEGORY" THREE - STATEMENTS FROM TN PLEA**
7 **AGREEMENT**

8 **Plaintiff's Exemplars**

9 52. Attached is a true and correct copy of relevant excerpts of **Oracle's Trial**
10 **Exhibit PTX 8108**, an exemplar to Oracle's third category.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing facts are true and correct, and that this Declaration was executed on June 5, 2012 in
13 San Francisco, California.

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15 Nargues Motamed
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