

Watz, Tracy - LAW

From: Pickering, Bettina
Sent: Thursday, October 27, 2005 5:17 PM
To: Trent, Cathy; Bock, Jim
Subject: RE: FW: TomorrowNow JDE Maintenance Support

Cathy and Jim,

It does not appear that we are going to have time or even much opportunity to determine if any of the JDE licenses can be deactivated to lower the cost of maintenance. **As a result, the cost of maint from Oracle is \$635,052 and Tomorrow Now is going to be 1/2 the cost.** If we are going with Tomorrow Now, we need time to complete the contract and do the transission. We need to make this decision by early November at the latest to ensure no loss of coverage.

Bettina

-----Original Message-----

From: Trent, Cathy
Sent: Wednesday, October 05, 2005 6:17 PM
To: Bock, Jim; Pickering, Bettina
Subject: RE: FW: TomorrowNow JDE Maintenance Support

Probably not since we are projecting a 10% increase over the next year or so.

-----Original Message-----

From: Bock, Jim
Sent: Wednesday, October 05, 2005 6:16 PM
To: Trent, Cathy; Pickering, Bettina
Subject: RE: FW: TomorrowNow JDE Maintenance Support

Although the implementation schedule has not been finalized, if Europe goes live first, there would be a slight reduction of the JDE user base (~200) in Europe in 4Q06. The remainder of JDE users would be converted in 3Q07.

Not sure if this creates the leverage we need.

-----Original Message-----

From: Trent, Cathy
Sent: Wednesday, October 05, 2005 3:43 PM
To: Pickering, Bettina; Bock, Jim
Subject: RE: FW: TomorrowNow JDE Maintenance Support

Bettina,

I am not sure as to the deployment of SAP. We will continue to add users to JDE until the SAP equivalent is rolled out.

Jim,

Do you have a timeline for when what pieces are moving off of JDE?

-----Original Message-----

From: Pickering, Bettina
Sent: Wednesday, October 05, 2005 3:07 PM
To: Trent, Cathy; Bock, Jim
Subject: RE: FW: TomorrowNow JDE Maintenance Support

AM0285

5/28/2009

TN-Confidential Information

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA Case No. <u>4:07-cv-01658 PJH/EDL</u> DEFENDANT Exhibit No. <u>A-5002-1</u> Date Admitted: _____ By: _____ Nicole Heuerman, Deputy Clerk
--

Cathy and Jim,

I spoke with Oracle about lowering their price for JDE support to be more competitive with TomorrowNow. They are looking into it but we need to gather some data to help them sell that to their management. One way to sell a price decrease was to look at how many users would decrease next year and beyond. With this information Oracle was thinking it was their best chance of selling a maintenance price decrease. Can either of you help with estimating this information?

Bettina

-----Original Message-----

From: Trent, Cathy

Sent: Tuesday, September 06, 2005 9:33 PM

To: Bock, Jim; Pickering, Bettina

Subject: RE: FW: TomorrowNow JDE Maintenance Support

I spoke with TomorrowNow and they actually seem to provide more service than Oracle. I think it is the right choice. I also spoke with Pieter, and since they have a European presence also, he was fine with it.

-----Original Message-----

From: Bock, Jim

Sent: Tuesday, September 06, 2005 6:02 PM

To: Pickering, Bettina; Trent, Cathy

Subject: RE: FW: TomorrowNow JDE Maintenance Support

Cathy - this now appears to be the right choice, without any downside. Were you able to confirm equivalent service levels with Bob?

Bettina - are you close enough to this market to know if it is worth the energy to do any further diligence on TomorrowNow competitors before we commit?

Thanks,
Jim

-----Original Message-----

From: Pickering, Bettina

Sent: Thursday, September 01, 2005 11:30 AM

To: Bock, Jim; Trent, Cathy

Subject: FW: FW: TomorrowNow JDE Maintenance Support

FYI, Jim it looks like we could still sign up early but would not be billed until 1/1/06.

-----Original Message-----

From: Bob Stephens [mailto:Bob_Stephens@tomorrownow.com]

Sent: Thursday, September 01, 2005 11:28 AM

To: Pickering, Bettina

Subject: Re: FW: TomorrowNow JDE Maintenance Support

Hi Bettina,

Just so you know, I was also contacted this morning by Cathy Trent and described to her the nature of our services and processes.

In response to your questions though not in the order in which you asked:

5/28/2009

AM0286

1. Since your maintenance with Oracle expires 12/31/05, there is a slight potential for "degradation" in service levels if we don't have approximately 30-days to prepare for the transition. We would use that time period to assist Amgen in downloading any existing fixes to its current software versions that might not have applied for various reasons. Without doing this, **though any subsequent problem would be fixed**, it could be delayed if we had to custom develop a fix that was previously available.
2. Regardless of when in 2005 you signed up with our services, you would be billed effective 1/1/06 and have 30 days to pay.
3. There is no requirement or problem with waiting to execute the contract up through 11/30/05 based on 1. above. The benefits to signing up sooner are:
 1. Support would begin immediately and we would have time to interact and feel comfortable with each other prior to the expiration date with Oracle. Amgen could give Oracle the required 30-day in advance written notice that they are not renewing with the knowledge and comfort that they are already being supported.
 2. Any actual support used during that period is at no cost to Amgen. Your annual support period to which your payment would apply would not be effective until 1/1/06.
 3. All potential contract issues would have been resolved and you would not be impacted in any way by the anticipated year-end rush by new clients for TomorrowNow.

Hopefully this helps? Feel free to contact me with any other questions you might have?

Best wishes,
Bob

Bob Stephens
Senior Account Executive
EnterpriseOne and World Solutions
TomorrowNow Inc.
Tel: (239) 390-7670
Cel: (979) 571-8702
bob_stephens@tomorrownow.com

"Pickering, Bettina" <bettinap@amgen.com>

To "Bob_Stephens@tomor

09/01/2005 01:54 PM

cc

Subject FW: TomorrowNow JDE

Bob,

I left you a vm on this as well, but please help us understand the value proposition in signing up early, other than it helps them smooth out demand.

5/28/2009

AM0287

We would like to explore the early renewal offer but don't understand the particulars. In addition, we need to book the 2006 maintenance as a 2006 expense, which we can't do if we pay in 2005. Do you require payment in 2005 if we sign up in 2005?

If we wait until 2006, could you please clarify if we would experience any degrade in our service levels if we don't take advantage of this early renewal offer?

Bettina

-----Original Message-----

From: Bob Stephens [mailto:Bob_Stephens@tomorrownow.com]

Sent: Tuesday, August 30, 2005 1:33 PM

To: bettinap@amgen.com

Subject: TomorrowNow JDE Maitenance Support

Hi Bettina

You said to get back in touch in late August/early September. Is it still too early to begin evaluating our support services in detail? Amgen's annual savings with our support will exceed \$300,000 /year for each year until your full migration to SAP is complete.

Let me know?

Best wishes,
Bob

Bob Stephens
Senior Account Executive
EnterpriseOne and World Solutions
TomorrowNow Inc.
Tel: (239) 390-7670
Cel: (979) 571-8702
bob_stephens@tomorrownow.com

5/28/2009

AM0288

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15 Attorneys for Plaintiffs Oracle USA, Inc., Oracle International Corp.,
Oracle Systems Corp., Oracle EMEA Ltd., and J.D. Edwards Europe, Ltd.

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO

20 ORACLE USA, INC., a Colorado corporation;
ORACLE INTERNATIONAL CORP., a
21 California corporation; ORACLE SYSTEMS
CORP., a Delaware corporation; ORACLE
22 EMEA LTD., an Irish private limited
company; and J.D. EDWARDS EUROPE
23 LTD., an Irish private limited company,

24 Plaintiffs,

25 v.

26 SAP AG, a German corporation; SAP
AMERICA, INC., a Delaware corporation;
27 TOMORROWNOW, INC., a Texas
corporation; and DOES 1-50, inclusive,

28 Defendants.

Case No. 07-CV-01658 PJH (EDL)

Before: Hon. Phyllis J. Hamilton
Complaint Filed: March 22, 2007

**DECLARATION OF CUSTODIAN OF
RECORDS OF AMGEN, INC.**



1 DECLARATION OF CUSTODIAN OF RECORDS

2 I, Sheila Martin, declare as follows:

3 1. I am over the age of 18 and competent to testify to the facts stated in this
4 declaration. All statements made in this declaration are based upon my personal knowledge and
5 belief.

6 2. I am currently employed as Executive Director Enterprise Records Management at
7 Amgen, Inc. ("Amgen") and my business address is One Amgen Center Drive, Thousand Oaks,
8 California 91320-1799.

9 3. I am the duly authorized custodian of the following described business records,
10 and am authorized to certify such records: Documents produced in response to Civil Subpoena
11 for Production of Documents and Things served on Amgen pursuant to Federal Rule of Civil
12 Procedure 45, issued by plaintiffs on June 1, 2009 in the matter of *Oracle USA, Inc. et al. v. SAP*
13 *AG et al.*, Case No. 07-CV-01658 PJH (EDL), pending in the United States District Court for the
14 Northern District of California.

15 4. The documents produced in response to plaintiffs' subpoena are true, correct, and
16 complete copies and prepared by Amgen's personnel in the ordinary course of their duties at or
17 near the time of the events recorded. The documents are Bates labeled as AM0001-AM0879.

18
19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct and that this declaration is executed at Thousand Oaks, California on August 24,
21 2009.

22
23 By: Sheila Martin
24 SHEILA MARTIN
25
26
27
28



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15 Attorneys for Plaintiffs Oracle USA, Inc., Oracle International Corp.,
Oracle Systems Corp., Oracle EMEA Ltd., and J.D. Edwards Europe, Ltd.
16

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO

20 ORACLE USA, INC., a Colorado corporation;
ORACLE INTERNATIONAL CORP., a
21 California corporation; ORACLE SYSTEMS
CORP., a Delaware corporation; ORACLE
22 EMEA LTD., an Irish private limited
company; and J.D. EDWARDS EUROPE
23 LTD., an Irish private limited company,

24 Plaintiffs,

25 v.

26 SAP AG, a German corporation; SAP
AMERICA, INC., a Delaware corporation;
27 TOMORROWNOW, INC., a Texas
corporation; and DOES 1-50, inclusive,

28 Defendants.

Case No. 07-CV-01658 PJH (EDL)

Before: Hon. Phyllis J. Hamilton
Complaint Filed: March 22, 2007

**REVISED NOTICE OF SUBPOENA OF
AMGEN, INC. FOR THE PRODUCTION
OF DOCUMENTS**



1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 1, 2009, pursuant to Rule 45 of the Federal Rules
3 of Civil Procedure, Amgen, Inc. shall produce, at the offices of Barg Coffin Lewis & Trapp, LLP,
4 350 California Street, 22nd Floor, San Francisco, CA 94104, telephone number (415) 228-5400,
5 the documents described in Exhibit A to the subpoena served with this notice.

6 DATED: May 20, 2009

7 JOHN F. BARG
8 MARCO QUAZZO
9 CHRISTOPHER D. JENSEN
10 BARG COFFIN LEWIS & TRAPP, LLP

11 By: /s/ Christopher D. Jensen
12 Attorneys for Plaintiffs Oracle USA, Inc., Oracle
13 International Corp., Oracle Systems Corp., Oracle
14 EMEA Ltd., and J.D. Edwards Europe, Ltd.



Issued by the
UNITED STATES DISTRICT COURT
Central District of California

ORACLE USA, INC., et al.,

SUBPOENA IN A CIVIL CASE

V.

SAP AG, a German corp., SAP AMERICA, INC., a Delaware corp., TOMORROWNOW, INC., a Texas corp.

Case Number: 1 (MISC)
07-CV-1658 PJH (EDL) Pending in:
United States District Court,
Northern District of California,
San Francisco Division

TO: AMGEN, INC.
c/o Eric Levinrad, Esq.
McDermott Will & Emery, 2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3208

[] YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY COURTROOM
DATE AND TIME

[] YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION DATE AND TIME

[x] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
SEE EXHIBIT A, attached.

PLACE Barg Coffin Lewis & Trapp, LLP, 350 California Street, 22nd Floor
San Francisco, CA 94104-1435 DATE AND TIME 6/1/2009 9:30 am

[] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE
Attorney for Plaintiffs 5/20/2009

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Christopher D. Jensen, Barg Coffin Lewis & Trapp, LLP, 350 California Street, 22nd Floor, San Francisco, CA 94104-1435; Tel: 415-228-5411; E-mail: cdj@bcltlaw.com

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

1 If action is pending in district other than district of issuance, state district under case number.

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15 Attorneys for Plaintiffs Oracle USA, Inc., Oracle International Corp.,
Oracle Systems Corp., Oracle EMEA Ltd., and J.D. Edwards Europe, Ltd.
16

17 **Issued by the**
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ORACLE USA, INC., a Colorado corporation, et
21 al.,

22 Plaintiffs,
23 v.

24 SAP AG, a German corporation, SAP
AMERICA, INC., a Delaware corporation,
25 TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,

26 Defendants.
27

CASE NO. 07-CV-1658 PJH (EDL)

Pending in:
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA
SAN FRANCISCO DIVISION

**EXHIBIT A TO THE SUPOENA FOR
THE PRODUCTION OF
DOCUMENTS TO AMGEN, INC.**

Production Date: May 18, 2009



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EXHIBIT A TO SUBPOENA TO PRODUCE DOCUMENTS

TO: AMGEN, INC.

PLEASE TAKE NOTICE THAT pursuant to Rule 45 of the Federal Rules of Civil Procedure, plaintiffs Oracle USA, Inc., et al., (collectively, "Oracle") request that Amgen, Inc. produce within its district by depositing documents in the U.S. mail or by other recognized method of courier service, and direct such delivery to Christopher D. Jensen, Barg Coffin Lewis & Trapp LLP, 350 California Street, 22nd Floor San Francisco, CA 94104-1435 (Tel: 415-228-5411) on June 1, 2009 at 9:30 a.m., or at such time and place as may be mutually agreed upon by the parties, the documents, electronic data, and things described herein that are in Your possession, custody, and/or control, and thereby permit Oracle and/or its representatives to inspect copies, or create copies of originals for such inspection.

DEFINITIONS

Unless otherwise indicated, the following definitions shall apply to each of the Requests below:

- 1. The terms "Amgen," "You," and "Your," mean and include non-party Amgen, Inc. and all of its current and former subsidiaries and affiliates; all divisions, predecessors, successors and assigns of each of the foregoing; and all current officers, directors, employees, agents, consultants, attorneys, accountants, administrators and all other persons, organizations, or others acting or purporting to act on behalf, or under the control, of each of the foregoing, including all temporary employees and independent contractors.
- 2. The term "Oracle" means and includes plaintiffs Oracle USA, Inc., et al.; all current and former subsidiaries and affiliates thereof; all divisions, predecessors, successors and assigns of each of the foregoing.
- 3. The term "TomorrowNow" means third-party software support services provider TomorrowNow, Inc., a Texas corporation, and all current and former all divisions, predecessors, successors and assigns thereof.
- 4. The term "Document(s)" means and includes, without limitation, written, printed, typed, recorded, computerized, electronic, taped, graphic or other matter, in whatever form,



1 whether in final or draft, including, but not limited to, all materials and things that constitute
2 “writings” or “recordings” within the meaning of Rule 1001 of the Federal Rules of Evidence or
3 Documents within the meaning of Rule 34 of the Federal Rules of Civil Procedure.

4 The term “Documents(s)” further includes, but is not limited to, the original and each
5 copy of any writings, including any copy that differs in any respect from the original or other
6 versions of the Document(s), such as, but not limited to, copies containing notations, insertions,
7 corrections, marginal notes, or any other variations; records or files; correspondence; reports;
8 memoranda; calendars; diaries; minutes; electronic messages; voicemail; email; telephone
9 message records or logs; computer and network activity logs; data on hard drives; backup data;
10 data on removable computer storage media such as tapes, disks, and cards; printouts; document
11 image files; web pages; databases; spreadsheets; software; hardware; books; ledgers; journals;
12 orders; invoices; bills; vouchers; checks; statements; worksheets; summaries; compilations;
13 computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or
14 chemical process photographs; video, phonographic, tape, or digital records or transcripts; drafts;
15 jottings; and notes.

16 5. The terms “Relate,” “Relating,” “Related,” “Concern,” or “Concerning” mean
17 about, constituting, describing, discussing, evidencing, pertaining to, consisting of, referencing,
18 reflecting or having any logical or factual connection with the matter discussed.

19 6. The term “Person” means any natural person, company, corporation, partnership,
20 firm, association, entity, government agency or other organization cognizable at law, and its
21 agents, representatives and employees.

22 7. The term “Communication” means any transmission of information from one
23 Person to another, including without limitation any of the following: (a) any Document,
24 including any e-mail; (b) any telephone call between two or more Persons, whether or not such
25 call was by chance or prearranged, formal or informal; and (c) any conversation or meeting
26 between two or more Persons, whether or not such contact was by chance or prearranged, formal
27 or informal.

28 8. The term “Customer Connection” means any Oracle-maintained support website,



1 including E-Delivery, for PeopleSoft, JD Edwards and Siebel Systems customers and all
2 associated Software And Support Materials, Documents, data, hardware, software, physical
3 server locations, internet protocol addresses, and any other tangible or identifiable things
4 associated with the website, including those available via Change Assistant.

5 9. The term “Download” means any duplication, copying, transfer, or replication, in
6 whole or in part, of any file, Document, data, or other information from an outside source
7 connected through the internet to a computer, server, or network that is part of another Person’s
8 computer infrastructure or subject to that Person’s control.

9 10. The term “Software And Support Materials” means, without limitation, all
10 programs, and all code (fixes, patches, and updates) Related to any Oracle materials across the
11 entire family of PeopleSoft, JD Edwards, and/or Siebel Systems branded products; and all
12 Documents and documentation concerning such programs and code (fixes, patches, and updates).

13 11. The term “Use,” with reference to Software And Support Materials, means to
14 study, alter, manipulate, reverse-engineer, distribute, copy or replicate—in whole or in part—or
15 otherwise interact with.

16 INSTRUCTIONS

17 1. With respect to a Document that You contend is privileged, immune or otherwise
18 excludable from discovery, provide: (i) the Document’s preparation date and the date appearing
19 on the Document; (ii) the name, present and last known addresses, telephone numbers, titles and
20 positions, and occupations of those individuals who prepared, produced, reproduced, and
21 received said Document, including all authors, senders, recipients, “cc” recipients, and “bcc”
22 recipients; (iii) the number of pages withheld in the Document or the size, volume or quantity of
23 the Document withheld; and (iv) a description sufficient to identify the Document without
24 revealing the information for which the privilege is claimed, including the general subject matter
25 and character of the Document (*e.g.*, letter, memorandum, notes).

26 2. With respect to a Document that You contend is privileged only in part, produce
27 the responsive non-privileged portion of the Document in redacted form, provided that the
28 redacted material is identified and the basis for the claim of privilege is stated in accordance with



1 Instruction number 1 above.

2 3. If a Document once existed, but has been lost or destroyed, or otherwise is no
3 longer in Your possession, custody, or control, You shall identify the Document and state the
4 details concerning the loss of such Document, including the name, title, and address of the
5 present custodian of any such Document, if known to You.

6 4. The terms “and” as well as “or” shall be construed disjunctively and conjunctively
7 as necessary in order to bring within the scope of the following Requests all information which
8 might otherwise be construed to be outside their scope.

9 5. The use of the singular form of any word includes the plural and vice versa.

10 6. The term “including” is comprehensive and shall be construed as “including but
11 not limited to,” the term “any” shall be construed as “any and all,” and the term “each” shall be
12 construed as “each and every.”

13 7. Any pronoun shall be construed to refer to the masculine, feminine, or neuter
14 gender as in each case is most inclusive.

15 8. Unless otherwise specified, the relevant time period for Your response to these
16 requested Documents shall be from January 1, 2005 to June 30, 2008.

17 **REQUESTS FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 All Communications between You and TomorrowNow constituting and Concerning:

- 20 (i) Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards Software And Support
21 Materials;
- 22 (ii) system logs, web proxy logs, application-level logs, network logs, scripts,
23 manifests, database records, spreadsheets, and reports Relating to such Software
24 And Support Materials;
- 25 (iii) TomorrowNow’s development of Software and Support Materials for Oracle,
26 PeopleSoft, Siebel Systems, and/or JD Edwards software; and
- 27 (iv) Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards Software And Support
28 Materials received by, provided to, Downloaded by You from TomorrowNow



1 servers, or otherwise made available to You from TomorrowNow.

2 **REQUEST FOR PRODUCTION NO. 2:**

3 All Documents, including any Communications between You and TomorrowNow and
4 Your internal Communications, Concerning: (i) the installation of Software And Support
5 Materials for Your Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards software environment
6 by TommorowNow and (ii) local or remote software environments made available to You by
7 TomorrowNow.

8 **REQUEST FOR PRODUCTION NO. 3:**

9 All Documents, and Communications between You and TomorrowNow and Your internal
10 Communications, Concerning Your consideration or negotiation of any proposed or actual use of
11 TomorrowNow as Your software support provider for Oracle’s PeopleSoft, Siebel Systems,
12 and/or JD Edwards branded enterprise software applications products, including: (i) any
13 marketing materials provided to You by TomorrowNow Relating to support services for Oracle,
14 PeopleSoft, Siebel Systems, and/or JD Edwards software; and (ii) any Communications from
15 TomorrowNow Concerning Your existing software contracts.

16 **REQUEST FOR PRODUCTION NO. 4:**

17 All Documents and Communications showing or constituting any considered, proposed,
18 or actual licensing of software from TomorrowNow, including: (i) negotiations, or
19 representations Relating to considered, proposed, or agreed-upon services or contractual terms;
20 and (ii) all past or present contracts, licenses, agreements, terms and conditions, ordering
21 Documents, and incorporated policies Related to any licensing of software from TomorrowNow.

22 **REQUEST FOR PRODUCTION NO. 5:**

23 All Documents and Communications constituting and Concerning Your permission or
24 authorization—in any way or manner—for or on behalf of TomorrowNow, to Use or Download
25 Software And Support Materials from Customer Connection, including, but not limited to, any
26 request(s) by TomorrowNow for the provision of login identifications, credentials, or passwords.

27 **REQUEST FOR PRODUCTION NO. 6:**

28 All Documents and Communications constituting and Concerning TomorrowNow’s



1 request that You provide TomorrowNow, or any of its agents or assigns, with source code or
2 installation media (via CDs, electronic devices, or Oracle E-Delivery material) for any Oracle, JD
3 Edwards, Siebel Systems, and/or PeopleSoft branded software applications.

4 **REQUEST FOR PRODUCTION NO. 7:**

5 All Documents, including any Communications between You and TomorrowNow,
6 Concerning TomorrowNow's efforts, plans, and/or actions to Use Software and Support
7 Materials, or JD Edwards, Siebel Systems, and/or PeopleSoft branded software application
8 source code, in connection with providing services or selling products to You or others.

9 * * * * *

10 **RULE 45 OF THE FEDERAL RULES OF CIVIL PROCEDURE**

11 PLEASE TAKE NOTICE that Rule 45 of the Federal Rules of Civil Procedure provides,
12 in part, as follows:

13 **(c) Protection of Persons Subject to Subpoenas.**

14 (1) A party or an attorney responsible for the issuance and service of a subpoena shall
15 take reasonable steps to avoid imposing undue burden or expense on a person subject to that
16 subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and
17 impose upon the party or attorney in breach of this duty an appropriate sanction, which may
18 include, but is not limited to, lost earnings and a reasonable attorneys' fee.

19 (2)(A) A person commanded to produce and permit inspection, copying, testing, or
20 sampling of designated electronically stored information, books, papers, Documents or tangible
21 things, or inspection of premises need not appear in person at the place of production or
22 inspection unless commanded to appear for deposition, hearing or trial.

23 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and
24 permit inspection, copying, testing, or sampling may, within 14 days after service of the
25 subpoena or before the time specified for compliance if such time is less than 14 days after
26 service, serve upon the party or attorney designated in the subpoena written objection to
27 producing any or all of the designated materials or inspection of the premises -- or to producing
28 electronically stored information in the form or forms requested. If objection is made, the party



1 serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect
2 the premises except pursuant to an order of the court by which the subpoena was issued. If
3 objection has been made, the party serving the subpoena may, upon notice to the person
4 commanded to produce, move at any time for an order to compel the production, inspection,
5 copying, testing, or sampling. Such an order to compel shall protect any person who is not a party
6 or an officer of a party from significant expense resulting from the inspection, copying, testing, or
7 sampling commanded.

8 (3)(A) On timely motion, the court by which a subpoena was issued shall quash or
9 modify the subpoena if it

10 (i) fails to allow reasonable time for compliance;

11 (ii) requires a person who is not a party or an officer of a party to travel to a place
12 more than 100 miles from the place where that person resides, is employed or regularly transacts
13 business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such
14 a person may in order to attend trial be commanded to travel from any such place within the state
15 in which the trial is held;

16 (iii) requires disclosure of privileged or other protected matter and no exception or
17 waiver applies; or

18 (iv) subjects a person to undue burden.

19 (B) If a subpoena

20 (i) requires disclosure of a trade secret or other confidential research,
21 development, or commercial information; or

22 (ii) requires disclosure of an unretained expert's opinion or information not
23 describing specific events or occurrences in dispute and resulting from the expert's study made
24 not at the request of any party; or

25 (iii) requires a person who is not a party or an officer of a party to incur substantial
26 expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to
27 or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the
28 subpoena is issued shows a substantial need for the testimony or material that cannot be



1 otherwise met without undue hardship and assures that the person to whom the subpoena is
2 addressed will be reasonably compensated, the court may order appearance or production only
3 upon specified conditions.

4 **(d) Duties in Responding to Subpoena.**

5 (1)(A) A person responding to a subpoena to produce documents shall produce them as
6 they are kept in the usual course of business or shall organize and label them to correspond with
7 the categories in the demand.

8 (B) If a subpoena does not specify the form or forms for producing electronically
9 stored information, a person responding to a subpoena must produce the information in a form or
10 forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

11 (C) A person responding to a subpoena need not produce the same electronically
12 stored information in more than one form.

13 (D) A person responding to a subpoena need not provide discovery of electronically
14 stored information from sources that the person identifies as not reasonably accessible because of
15 undue burden or cost. On motion to compel discovery or to quash, the person from whom
16 discovery is sought must show that the information sought is not reasonably accessible because
17 of undue burden or cost. If that showing is made, the court may nonetheless order discovery
18 from such sources if the requesting party shows good cause, considering the limitations of Rule
19 26(b)(2)(C). The court may specify conditions for the discovery.

20 (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged
21 or subject to protection as trial-preparation materials, the claim shall be made expressly and shall
22 be supported by a description of the nature of the documents, communications, or things not
23 produced that is sufficient to enable the demanding party to contest the claim.

24 (B) If information is produced in response to a subpoena that is subject to a claim of
25 privilege or of protection as trial-preparation material, the person making the claim may notify
26 any party that received the information of the claim and the basis for it. After being notified, a
27 party must promptly return, sequester, or destroy the specified information and any copies it has
28 and may not use or disclose the information until the claim is resolved. A receiving party may



1 promptly present the information to the court under seal for a determination of the claim. If the
2 receiving party disclosed the information before being notified, it must take reasonable steps to
3 retrieve it. The person who produced the information must preserve the information until the
4 claim is resolved.

5
6 DATED: May 20, 2009

JOHN F. BARG
MARCO QUAZZO
CHRISTOPHER D. JENSEN
BARG COFFIN LEWIS & TRAPP, LLP

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8
9 By: /s/Christopher D. Jensen
10 Attorneys for Plaintiffs Oracle USA, Inc., Oracle
11 International Corp., Oracle Systems Corp., Oracle
12 EMEA Ltd., and J.D. Edwards Europe, Ltd.
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McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Eric Levinrad
elevinrad@mwe.com
+1 310 551 9370

June 26, 2009

VIA U.S. MAIL

Christopher D. Jensen
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94010-1435

Re: Amgen Inc.'s Response to Subpoena (Oracle USA, Inc. et al. v. SAP AG et al.)

Dear Chris:

Enclosed please find Amgen Inc.'s production documents Bates labeled AM0001 – AM0879, Amgen Inc.'s Response to Subpoena and Amgen Inc.'s privilege log.

If you have any questions, please feel free to contact me.

Sincerely,



Eric Levinrad

Enclosures

cc: Donn P. Pickett (response and privilege log only)
Dorian Daley (response and privilege log only)

LAS99 1735456-1.041925.0129

AMGEN INC.
PRIVILEGE LOG

Privilege Number	Bates Number	From	Recipient	CC	Date Sent	Description	Basis for Privilege
1	NA	DiPrizio, Vito	Rawles, Lee	Pickering, Betina	12/13/2005 16:39	Confidential communication with outside counsel.	Attorney-Client Privilege
2	NA	Zeverly, Jane	Pickering, Betina	Miciano, Miguel; DiPrizio, Vito; Davis, Kimberly	12/1/05, 11:06 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
3	NA	Zeverly, Jane	Pickering, Betina	Miciano, Miguel; DiPrizio, Vito; Davis, Kimberly	12/1/05, 11:22 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
4	NA	DiPrizio, Vito	Pickering, Betina		12/1/05, 9:42 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
5	NA	DiPrizio, Vito	Rawles, Lee	Pickering, Betina	12/13/05, 11:11 AM	Confidential communication with outside counsel.	Attorney-Client Privilege
6	NA	Rawles, Lee	DiPrizio, Vito	Pickering, Betina; Zeverly, Jane	12/13/05, 4:40 PM	Confidential communication with outside counsel.	Attorney-Client Privilege
7	AM0879	DiPrizio, Vito	Rawles, Lee	Pickering, Betina	12/15/05, 9:33 AM	Confidential communication with outside counsel.	Attorney-Client Privilege
8	NA	DiPrizio, Vito	Zeverly, Jane	Pickering, Betina	12/2/2005, 10:06 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
9	NA	DiPrizio, Vito	Zeverly, Jane	Pickering, Betina	12/2/2005, 10:50 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
10	NA	DiPrizio, Vito	Rawles, Lee		12/5/2005, 4:46 PM	Confidential communication with outside counsel.	Attorney-Client Privilege
11	NA	DiPrizio, Vito	Rawles, Lee	Pickering, Betina	12/5/2005, 5:20 PM	Confidential communication with outside counsel.	Attorney-Client Privilege
12	AM0136	Lee, Wilfred	Williams, Mike	Le, Hieu; Pickering, Bettina	5/2/2006, 10:20 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
13	AM0136	Williams, Mike	Lee, Wilfred	Le, Hieu; Pickering, Bettina	5/2/2006, 10:41 AM	Confidential communication with in-house counsel.	Attorney-Client Privilege
14	AM0133	NA	NA	NA	NA	Attachment to email Bates numbered AM0131-AM0132	Amgen Confidential Financial Information

SAN FRANCISCO	
Calendar and Court Services	
Received: June 29, 2009	
c/m#	2021039-0000324170
Dates to be Entered	
φ	
<small>The attorney, whose initials appear below, has reviewed the applicable court rules, and has verified that the above dates are correct.</small>	
Atty:	
Date Processed:	6/29
Received via:	Mail/InBox/Fax/ECF
or Other	
Routed to:	1 Donn Pickett
Processed by:	KS

1 ERIC LEVINRAD (State Bar No. 169025)
 elevinrad@mwe.com
 2 McDERMOTT WILL & EMERY LLP
 2049 Century Park East, Suite 3800
 3 Los Angeles, CA 90067-3218
 Telephone: +1 310 277 4110
 4 Facsimile: +1 310 277 4730
 5 Attorney for Third Party Witness
 AMGEN INC.
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Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 ORACLE USA, INC., a Colorado
 13 corporation, et al.,

Plaintiffs,

v.

15 SAP AG, a German corporation, SAP
 16 AMERICA, INC., a Delaware corporation,
 17 TOMORROWNOW, INC., a Texas
 corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO.: Misc.
 ACTION Pending in: United States District
 Court Northern District of California
 San Francisco Division, Case No. 07-CV-
 1658 PJH (EDL)

**AMGEN INC.'S RESPONSE TO
 SUBPOENA**

McDERMOTT WILL & EMERY LLP
 ATTORNEYS AT LAW
 LOS ANGELES

28

1 PROPOUNDING PARTY: PLAINTIFF ORACLE USA, INC.
2 RESPONDING PARTY: THIRD PARTY WITNESS AMGEN INC.
3 SET NUMBER: ONE (Nos. 1-7)

4 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, AMGEN INC.
5 (“Amgen”) hereby objects and responds to Plaintiff ORACLE USA, INC.’s (“Oracle” or
6 “Plaintiff”) Subpoena requesting the production of documents by Amgen and to the
7 specific Requests for Production set forth in Exhibit A to the Subpoena (“Requests”) as
8 follows:

9 **GENERAL OBJECTIONS**

10 The following general objections and statements apply to each of the particular
11 Requests propounded by Oracle and are hereby incorporated within each response set
12 forth below. No specific objection is intended to constitute, and should not be construed
13 as constituting, a waiver of any general objection.

14 1. Amgen objects to the Requests to the extent they purport to require Amgen
15 to produce documents or electronically stored information that are maintained in Amgen’s
16 archival databases, which sources are not reasonably accessible because of undue burden
17 and cost. This objection is made pursuant to Federal Rule of Civil Procedure 45(d)(1)(D),
18 which provides:

19 “The person responding [to a subpoena] need not provide discovery of
20 electronically stored information from sources that the person identifies as
21 not reasonably accessible because of undue burden or cost.”

22 2. Amgen objects to the Requests to the extent that any Request seeks
23 information and/or documents that contain or constitute Amgen’s proprietary,
24 confidential, trade secret, and/or private information.

25 3. Amgen objects to the Requests to the extent that they seek to impose
26 obligations different from, or in excess of, those created by the Federal Rules of Civil
27 Procedure and the Local Rules. Amgen’s responses are made pursuant to, and as limited
28 by, the Federal Rules of Civil Procedure and the Local Rules.

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a. Amgen objects to the definitions of “Amgen,” “You” and “Your” in paragraph 1 of the Definitions to the extent they purport to include “all of [Amgen’s] current and former subsidiaries and affiliates; all divisions, predecessors, successors and assigns of each of the foregoing; and all current officers, directors, employees, agents, consultants, attorneys, accountants, administrators and all other persons, organizations, or others acting or purporting to act on behalf, or under the control, of each of the foregoing, including all temporary employees and independent contractors” on the grounds that: (1) the definition is vague and ambiguous; and (2) the definition is compound, overly broad, unduly burdensome, and beyond the scope of permissible discovery under the Federal Rules of Civil Procedure.

b. Amgen objects to the definition of “Relate,” “Relating,” “Related,” “Concern,” or “Concerning” in paragraph 5 of the Definitions on the grounds that the definition is compound, overly broad, unduly burdensome, and beyond the scope of permissible discovery under the Federal Rules of Civil Procedure.

7. Amgen’s responses herein are based upon facts presently known to Amgen, and represent a diligent and good faith effort to comply with these Requests. Amgen reserves the right to supplement, alter, or change its responses and objections to these Requests, and to produce additional responsive information and/or documents, if any, that Amgen has in its possession, custody or control at the time these Requests were propounded. Amgen further reserves the right, during any subsequent proceedings in which it may be involved, to rely on documents, evidence, or other matters in addition to the information and/or documents produced in response to these Requests, whether or not such documents, evidence, or other matters are newly discovered or are now in existence, but have not been located despite diligent and good faith efforts.

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RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Communications between You and TomorrowNow constituting and concerning:

- (i) Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards Software And Support Materials;
- (ii) system logs, web proxy logs, application-level logs, network logs, scripts, manifests, database records, spreadsheets, and reports Relating to such Software And Support Materials;
- (iii) TomorrowNow's development of Software and Support Materials for Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards software; and
- (iv) Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards Software And Support Materials received by, provided to, Downloaded by You from TomorrowNow servers, or otherwise made available to You from TomorrowNow.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Amgen incorporates by reference each of its General Objections above. Amgen objects to this request on the ground that it is improperly compound. Amgen further objects to this request to the extent that it seeks the production of documents protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine. Amgen additionally objects to this request to the extent that it seeks Amgen's confidential and/or proprietary business information.

Subject to and without waiving the foregoing general and specific objections, Amgen responds as follows: Amgen will comply with this request by producing responsive, non-privileged documents in its possession, custody or control that do not require extraction or recovery from archival sources, as such archived documents are not reasonably accessible because of undue burden and cost.

1 **REQUEST FOR PRODUCTION NO. 2:**

2 All Documents, including any Communications between You and TomorrowNow
3 and Your internal Communications, Concerning: (i) the installation of Software And
4 Support Materials for Your Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards
5 software environment by TommorowNow and (ii) local or remote software environments
6 made available to You by TomorrowNow.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

8 Amgen incorporates by reference each of its General Objections above. Amgen
9 objects to this request on the ground that it is improperly compound. Amgen further
10 objects to this request to the extent that it seeks the production of documents protected
11 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.
12 Amgen additionally objects to this request to the extent that it seeks Amgen's confidential
13 and/or proprietary business information.

14 Subject to and without waiving the foregoing general and specific objections,
15 Amgen responds as follows: Amgen will comply with this request by producing
16 responsive, non-privileged documents in its possession, custody or control that do not
17 require extraction or recovery from archival sources, as such archived documents are not
18 reasonably accessible because of undue burden and cost.

19 **REQUEST FOR PRODUCTION NO. 3:**

20 All Documents, and Communications between You and TomorrowNow and Your
21 internal Communications, Concerning Your consideration or negotiation of any proposed
22 or actual use of TomorrowNow as Your software support provider for Oracle's
23 PeopleSoft, Siebel Systems, and/or JD Edwards branded enterprise software applications
24 products, including: (i) any marketing materials provided to You by TomorrowNow
25 Relating to support services for Oracle, PeopleSoft, Siebel Systems, and/or JD Edwards
26 software; and (ii) any Communications from TomorrowNow Concerning Your existing
27 software contracts.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

2 Amgen incorporates by reference each of its General Objections above. Amgen
3 objects to this request on the ground that it is improperly compound. Amgen further
4 objects to this request to the extent that it seeks the production of documents protected
5 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

6 Subject to and without waiving the foregoing general and specific objections,
7 Amgen responds as follows: Amgen will comply with this request by producing
8 responsive, non-privileged documents in its possession, custody or control that do not
9 require extraction or recovery from archival sources, as such archived documents are not
10 reasonably accessible because of undue burden and cost.

11 **REQUEST FOR PRODUCTION NO. 4:**

12 All Documents and Communications showing or constituting any considered,
13 proposed, or actual licensing of software from TomorrowNow, including:
14 (i) negotiations, or representations Relating to, considered, proposed, or agreed-upon
15 services or contractual terms; and (ii) all past or present contracts, licenses, agreements,
16 terms and conditions, ordering Documents, and incorporated policies Related to any
17 licensing of software from TomorrowNow.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

19 Amgen incorporates by reference each of its General Objections above. Amgen
20 objects to this request on the ground that it is improperly compound. Amgen further
21 objects to this request to the extent that it seeks the production of documents protected
22 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

23 Subject to and without waiving the foregoing general and specific objections,
24 Amgen responds as follows: Amgen will comply with this request by producing
25 responsive, non-privileged documents in its possession, custody or control that do not
26 require extraction or recovery from archival sources, as such archived documents are not
27 reasonably accessible because of undue burden and cost.

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1 **REQUEST FOR PRODUCTION NO. 5:**

2 All Documents and Communications constituting and Concerning Your permission
3 or authorization—in any way or manner—for or on behalf of TomorrowNow, to Use or
4 Download Software And Support Materials from Customer Connection, including, but not
5 limited to, any request(s) by TomorrowNow for the provision of login identifications,
6 credentials, or passwords.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

8 Amgen incorporates by reference each of its General Objections above. Amgen
9 objects to this request on the ground that it is improperly compound. Amgen further
10 objects to this request to the extent that it seeks the production of documents protected
11 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

12 Subject to and without waiving the foregoing general and specific objections,
13 Amgen responds as follows: Amgen will comply with this request by producing
14 responsive, non-privileged documents in its possession, custody or control that do not
15 require extraction or recovery from archival sources, as such archived documents are not
16 reasonably accessible because of undue burden and cost.

17 **REQUEST FOR PRODUCTION NO. 6:**

18 All Documents and Communications constituting and Concerning
19 TomorrowNow's request that You provide TomorrowNow, or any of its agents or assigns,
20 with source code or installation media (via CDs, electronic devices, or Oracle E-Delivery
21 material) for any Oracle, JD Edwards, Siebel Systems, and/or PeopleSoft branded
22 software applications.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

24 Amgen incorporates by reference each of its General Objections above. Amgen
25 objects to this request on the ground that it is improperly compound. Amgen further
26 objects to this request to the extent that it seeks the production of documents protected
27 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

28 Subject to and without waiving the foregoing general and specific objections,

1 Amgen responds as follows: Amgen will comply with this request by producing
2 responsive, non-privileged documents in its possession, custody or control that do not
3 require extraction or recovery from archival sources, as such archived documents are not
4 reasonably accessible because of undue burden and cost.

5 **REQUEST FOR PRODUCTION NO. 7:**

6 All Documents, including any Communications between You and TomorrowNow,
7 Concerning TomorrowNow's efforts, plans, and/or actions to Use Software and Support
8 Materials, or JD Edwards, Siebel Systems, and/or PeopleSoft branded software
9 application source code, in connection with providing services or selling products to You
10 or others.


11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

12 Amgen incorporates by reference each of its General Objections above. Amgen
13 objects to this request on the ground that it is improperly compound. Amgen further
14 objects to this request to the extent that it seeks the production of documents protected
15 from disclosure by the attorney-client privilege and/or the attorney work product doctrine.

16 Subject to and without waiving the foregoing general and specific objections,
17 Amgen responds as follows: Amgen will comply with this request by producing
18 responsive, non-privileged documents in its possession, custody or control that do not
19 require extraction or recovery from archival sources, as such archived documents are not
20 reasonably accessible because of undue burden and cost.

21
22 Dated: June 26, 2009

McDERMOTT WILL & EMERY LLP

23
24 By: 
25 ERIC LEVINRAD
26 Attorney for Third Party Witness
27 AMGEN INC.
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 3800, Los Angeles, California 90067-3218.


On July 26, 2009, I served the following documents: **AMGEN INC.'S RESPONSES TO ORACLE USA, INC.'S EXHIBIT A TO THE SUBPOENA FOR THE PRODUCTION OF DOCUMENTS**

- (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."
- [BY MAIL] as follows: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. Under that practice the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. Under that practice the envelope(s) was (were) sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date in the United States Mail at Los Angeles, California addressed as set forth below.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **July 26, 2009**, at Los Angeles, California.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.


DEANNA RODRIGUEZ

SERVICE LIST

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Marco Quazzo
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MCDERMOTT WILL & EMERY LLP
ATTORNEYS AT LAW
LOS ANGELES