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Attorneys for Plaintiffs

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 Systems Corp., Oracle EMEA Ltd., and J.D. Edwards  
 15 Europe Ltd.

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

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

24 Plaintiffs,

v.

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

28 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF CHAD RUSSELL  
 IN SUPPORT OF ORACLE'S  
 OPPOSITION TO DEFENDANTS'  
 FRCP 12(B)(1) AND 12(B)(6) MOTION  
 TO DISMISS**

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

DECLARATION OF CHAD RUSSELL IN SUPPORT OF ORACLE'S OPPOSITION TO MOTION TO DISMISS

1 I, Chad Russell, declare:

2 1. I am member of the State Bar of California and an associate at Bingham  
3 McCutchen LLP, counsel of record for Plaintiffs in this action. I have personal knowledge of the  
4 matters stated in this Declaration by virtue of my representation of Plaintiffs in this action. If  
5 called and sworn as a witness, I could and would competently testify as to such matters.

6 2. Attached as Exhibit A are true and correct copies of documents Bates-labeled  
7 ORCL00043749 thru 3752, entitled "Certificate of Ownership and Merger Merging PeopleSoft,  
8 Inc., a Delaware Corporation, into Oracle Corporation, a Delaware Corporation."

9 3. Attached as Exhibit B are true and correct copies of documents Bates-labeled  
10 ORCL00182510 thru 2513, entitled "Certificate of Ownership and Merger Merging J.D.  
11 Edwards World Source Company, a Colorado Corporation, into Oracle Corporation, a Delaware  
12 Corporation."

13 4. Attached as Exhibit C are true and correct copies of documents Bates-labeled  
14 ORCL00182514 thru 2517, entitled "Certificate of Ownership and Merger Merging J.D.  
15 Edwards YOUCentric Company, a Delaware Corporation, into Oracle Corporation, a Delaware  
16 Corporation."

17 5. Attached as Exhibit D are true and correct copies of excerpts from the transcript  
18 of the deposition of Mark Kreutz, taken on October 30, 2007.

19 6. Attached as Exhibit E are true and correct copies of excerpts from the transcript of  
20 the deposition of Shelley Nelson, taken on December 6, 2007.

21 7. Attached as Exhibit F are true and correct copies of excerpts from the transcript of  
22 the deposition of Bill Thomas, taken on October 29, 2007.

23 8. Attached as Exhibit G are true and correct copies of excerpts from the transcript  
24 of the deposition of John Baugh, taken on February 6-7, 2008.

25 9. Attached as Exhibit H are true and correct copies of excerpts from the transcript  
26 of the deposition of Roderic Russell, taken on June 25, 2008.

27 10. Attached as Exhibit I are true and correct copies of excerpts from the transcript of  
28 the deposition of Catherine Hyde, taken on April 1, 2008.

1           11. Attached as Exhibit J are true and correct copies of excerpts from the transcript of  
2 the deposition of Henning Kagermann, taken on September 25-26, 2008.

3           12. Attached as Exhibit K is a true and correct copy of an email and attachment  
4 entitled "Business Case," Bates-labeled SAP-OR0091829 thru 1838, and previously marked by  
5 Plaintiffs as deposition Exhibit 427. This exhibit includes three pages attached at the end, and  
6 included in the deposition copy, created by Plaintiffs to reflect hard-to-read text in pages SAP-  
7 OR00091836, 837, and 838.

8           13. Attached as Exhibit L is a true and correct copy of an email and attachment  
9 entitled "Business Case TomorrowNow," Bates-labeled SAP-OR00157405-7424, and previously  
10 marked by Plaintiffs as deposition Exhibit 431.

11           14. Attached as Exhibit M are true and correct copies of excerpts from the transcript  
12 of the deposition of Thomas Ziemer, taken on October 1, 2008.

13           15. Attached as Exhibit N is a true and correct copy of a document entitled  
14 "TomorrowNow Global Leadership Meeting," Bates-labeled SAP-OR00007470 thru 7537, and  
15 previously marked by Plaintiffs as deposition Exhibit 473.

16           16. Attached as Exhibit O is a true and correct copy of a document that includes an  
17 attachment entitled "Apollo Competitive Program Update," beginning at the page Bates-labeled  
18 SAP-OR00139919. The entire exhibit is Bates-labeled SAP-OR00139918 thru 9969, and was  
19 previously marked by Plaintiffs as deposition Exhibit 418. It includes one page translated from  
20 German to English, as noted in the translator's certificate at the third page of the exhibit.

21           17. Attached as Exhibit P are true and correct copies of excerpts from the transcript of  
22 the deposition of Leo Apotheker, taken on October 2, 2008.

23           18. Attached as Exhibit Q is a true and correct copy of a document entitled "Oracle  
24 Competitive Update," Bates-labeled SAP-OR00018638 thru 8666, and previously marked by  
25 Plaintiffs as deposition Exhibit 421.

26           19. Attached as Exhibit R are true and correct copies of excerpts from the transcript  
27 of the deposition of Arlen Shenkman, taken on June 4, 2008.

28           20. Attached as Exhibit S is a true and correct copy of a document entitled "RE:

1 Peoplesoft 1-2-3,” Bates-labeled SAP-OR00091723 thru 91728, and previously marked by  
2 Plaintiffs as deposition Exhibit 210.

3 21. Attached as Exhibit T is a true and correct copy of two printouts from the “SAS”  
4 database, produced by Defendants in this matter. The first page shows a view from the  
5 “OneWorld” portion of the database called “Engagements by Region,” and the engagement list  
6 for EMEA has been expanded by clicking on it. The second page shows the same for the  
7 “World” portion of the database.

8 I declare under penalty of perjury under the laws of the United States of America  
9 that the foregoing is true and correct.

10 Executed on October 29, 2008 in San Francisco, California.

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Chad Russell

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## **Exhibit A**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

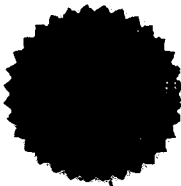
"PEOPLESOFT, INC.", A DELAWARE CORPORATION,

WITH AND INTO "ORACLE CORPORATION" UNDER THE NAME OF "ORACLE CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF MARCH, A.D. 2005, AT 9:32 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2105895 8100M

050171027



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3711040

DATE: 03-01-05

**EXHIBIT**

**B**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:32 AM 03/01/2005  
FILED 09:32 AM 03/01/2005  
SRV 050171027 - 2105895 FILE

**CERTIFICATE OF OWNERSHIP AND MERGER  
MERCING  
PEOPLESOFT, INC., A DELAWARE CORPORATION,  
INTO  
ORACLE CORPORATION, A DELAWARE CORPORATION**

*Pursuant to Section 253  
of the General Corporation Law of the State of Delaware*

March 1, 2005

Oracle Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware with a principal office address of 500 Oracle Parkway, Redwood Shores, California 94065 (the "Parent Corporation").

**DOES HEREBY CERTIFY:**

**FIRST:** That the Parent Corporation was incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

**SECOND:** That the Parent Corporation owns all of the outstanding shares of each class of the capital stock of PeopleSoft, Inc., a Delaware corporation with a principal office address of 4460 Hacienda Drive, Pleasanton, California 94588 (the "Subsidiary Corporation").

**THIRD:** That the Parent Corporation, by the following resolutions of its Board of Directors, duly adopted on February 23, 2005, determined to merge the Subsidiary Corporation into itself, with the Parent Corporation being the surviving corporation:

RESOLVED, that pursuant to Section 253 of the DGCL, the Subsidiary Corporation shall be merged (the "PeopleSoft Merger") with and into the Parent Corporation, whereupon the separate existence of the Subsidiary Corporation shall cease, and the Parent Corporation shall be the surviving corporation (the "Surviving Corporation");

RESOLVED, that the PeopleSoft Merger is hereby approved pursuant to the provisions of Section 253 of the DGCL;

RESOLVED, that the PeopleSoft Merger shall become effective upon filing of the Certificate of Ownership and Merger with the Delaware Secretary of State or at such later time as is otherwise specified in the Certificate of Ownership and Merger (the "Effective Time");

RESOLVED, that from and after the Effective Time, until successors are duly elected or appointed in accordance with applicable law, the directors of the Parent Corporation at the Effective Time shall be the directors of the Surviving Corporation, and the officers of Parent

Corporation at the Effective Time shall be the officers of the Surviving Corporation;

RESOLVED, that from and after the Effective Time, the name of the Surviving Corporation shall be Oracle Corporation;

RESOLVED, that from and after the Effective Time, the bylaws of the Parent Corporation shall be the bylaws of the Surviving Corporation;

RESOLVED, that from and after the Effective Time, the certificate of incorporation of the Parent Corporation shall be the certificate of incorporation of the Surviving Corporation until amended in accordance with applicable law.

**FOURTH:** That the merger of the Subsidiary Corporation into the Parent Corporation shall be effective as of the date and time of filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

(This space intentionally left blank.)



**IN WITNESS WHEREOF**, the Parent Corporation has caused this Certificate of Ownership and Merger to be signed as of the date first written above by a duly authorized officer, declaring that the facts stated herein are true.

**ORACLE CORPORATION**

By /s/ Daniel Cooperman  
Name: Daniel Cooperman  
Title: Senior Vice President, General Counsel &  
Secretary

## **Exhibit B**

# Delaware

PAGE 1

*The First State*

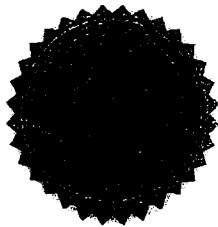
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"J.D. EDWARDS WORLD SOURCE COMPANY", A COLORADO CORPORATION, WITH AND INTO "ORACLE CORPORATION" UNDER THE NAME OF "ORACLE CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF MARCH, A.D. 2005, AT 9:35 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2105895 8100M

050171039



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3711073

DATE: 03-01-05

**CERTIFICATE OF OWNERSHIP AND MERGER**

**MERGING**

**J.D. EDWARDS WORLD SOURCE COMPANY, A COLORADO CORPORATION,  
INTO  
ORACLE CORPORATION, A DELAWARE CORPORATION**

*Pursuant to Section 253  
of the General Corporation Law of the State of Delaware*

March 1, 2005

Oracle Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware with a principal office address of 500 Oracle Parkway, Redwood Shores, California 94065 (the "Parent Corporation"),

**DOES HEREBY CERTIFY:**

**FIRST:** That the Parent Corporation was incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

**SECOND:** That the Parent Corporation owns all of the outstanding shares of each class of the capital stock of J.D. Edwards World Source Company, a Colorado corporation with a principal office address of One Technology Way, Denver, Colorado 80237 (the "Subsidiary Corporation").

**THIRD:** That the Parent Corporation, by the following resolutions of its Board of Directors, duly adopted on February 23, 2005, determined to merge the Subsidiary Corporation into itself, with the Parent Corporation being the surviving corporation:

RESOLVED, that pursuant Section 253 of the DGCL, the Board hereby authorizes and approves the merger of the Subsidiary Corporation with and into the Parent Corporation, whereupon the separate existence of the Subsidiary Corporation shall cease, and the Parent Corporation shall be the surviving corporation (such merger, the "JDE WorldSource Merger");

RESOLVED, that the JDE WorldSource Merger shall become effective upon filing of the Certificate of Ownership and Merger with the Delaware Secretary of State or at such later time as is otherwise specified in the Certificate of Ownership and Merger;

RESOLVED, that, from and after the effective time of the JDE WorldSource Merger until successors are duly elected or appointed in accordance with applicable law, the directors of the Parent Corporation at the effective time shall be the directors of the surviving corporation, and the officers of the Parent Corporation at the effective time shall be the officers of the surviving corporation;

RESOLVED, that, from and after the effective time of the JDE WorldSource Merger, the name of the surviving corporation shall be "Oracle Corporation";

RESOLVED, that, from and after the effective time of the JDE WorldSource Merger, the bylaws of the Parent Corporation shall be the bylaws of the surviving corporation;

RESOLVED, that, from and after the effective time of the JDE WorldSource Merger, the certificate of incorporation of the Parent Corporation shall be the certificate of incorporation of the surviving corporation until amended in accordance with applicable law.

**FOURTH:** That the merger of the Subsidiary Corporation into the Parent Corporation shall be effective as of the date and time of filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

(This space intentionally left blank.)

IN WITNESS WHEREOF, the Parent Corporation has caused this Certificate of Ownership and Merger and Statement of Merger to be signed as of the date first written above by a duly authorized officer, declaring that the facts stated herein are true.

ORACLE CORPORATION

By /s/ Daniel Cooperman  
Name: Daniel Cooperman  
Title: Senior Vice President, General Counsel  
& Secretary

## **Exhibit C**

# Delaware

PAGE 1

*The First State*

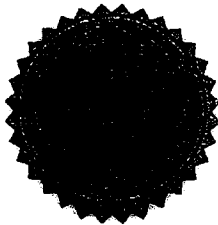
I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"J. D. EDWARDS YOUCENTRIC COMPANY", A DELAWARE CORPORATION, WITH AND INTO "ORACLE CORPORATION" UNDER THE NAME OF "ORACLE CORPORATION", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF MARCH, A.D. 2005, AT 9:34 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2105895 8100M

050171035



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3711062

DATE: 03-01-05



**CERTIFICATE OF OWNERSHIP AND MERGER  
MERCING**

**J.D. EDWARDS YOUCENTRIC COMPANY, A DELAWARE CORPORATION,  
INTO  
ORACLE CORPORATION, A DELAWARE CORPORATION**

*Pursuant to Section 253  
of the General Corporation Law of the State of Delaware*

March 1, 2005

Oracle Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware with a principal office address of 500 Oracle Parkway, Redwood Shores, California 94065 (the "Parent Corporation"),

**DOES HEREBY CERTIFY:**

**FIRST:** That the Parent Corporation was incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

**SECOND:** That the Parent Corporation owns all of the outstanding shares of each class of the capital stock of J.D. Edwards YOUCentric Company, a Delaware corporation with a principal office address of One Technology Way, Denver, Colorado 80237 (the "Subsidiary Corporation").

**THIRD:** That the Parent Corporation, by the following resolutions of its Board of Directors, duly adopted on February 23, 2005, determined to merge the Subsidiary Corporation into itself, with the Parent Corporation being the surviving corporation:

RESOLVED, that pursuant Section 253 of the DGCL, the Board hereby authorizes and approves the merger of the Subsidiary Corporation with and into the Parent Corporation, whereupon the separate existence of the Subsidiary Corporation shall cease, and the Parent Corporation shall be the surviving corporation (such merger, the "JDE YOUCentric Merger");

RESOLVED, that the JDE YOUCentric Merger shall become effective upon filing of the Certificate of Ownership and Merger with the Delaware Secretary of State or at such later time as is otherwise specified in the Certificate of Ownership and Merger;

RESOLVED, that, from and after the effective time of the JDE YOUCentric Merger until successors are duly elected or appointed in accordance with applicable law, the directors of the Parent Corporation at the effective time shall be the directors of the surviving corporation, and the officers of the Parent Corporation at the effective time shall be the officers of the surviving corporation;

RESOLVED, that, from and after the effective time of the JDE YOUCentric Merger, the name of the surviving corporation shall be "Oracle Corporation";

RESOLVED, that, from and after the effective time of the JDE YOUCentric Merger, the bylaws of the Parent Corporation shall be the bylaws of the surviving corporation;

RESOLVED, that, from and after the effective time of the JDE YOUCentric Merger, the certificate of incorporation of the Parent Corporation shall be the certificate of incorporation of the surviving corporation until amended in accordance with applicable law.

**FOURTH:** That the merger of the Subsidiary Corporation into the Parent Corporation shall be effective as of the date and time of filing of this Certificate of Ownership and Merger with the Delaware Secretary of State.

(This space intentionally left blank.)

IN WITNESS WHEREOF, the Parent Corporation has caused this Certificate of Ownership and Merger to be signed as of the date first written above by a duly authorized officer, declaring that the facts stated herein are true.

ORACLE CORPORATION

By /s/ Daniel Cooperman  
Name: Daniel Cooperman  
Title: Senior Vice President, General Counsel  
& Secretary

## **Exhibit D**

## **Exhibit D**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit E**

## **Exhibit E**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit F**



## **Exhibit F**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit G**

## **Exhibit G**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit H**

## **Exhibit H**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

# **Exhibit I**

## **Exhibit I**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit J**



## **Exhibit J**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit K**

## **Exhibit K**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit L**

## **Exhibit L**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit M**

## **Exhibit M**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit N**



## **Exhibit N**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit O**

## **Exhibit O**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit P**

## **Exhibit P**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit Q**

## **Exhibit Q**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit R**



## **Exhibit R**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

## **Exhibit S**

## **Exhibit S**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**

# **Exhibit T**

## **Exhibit T**

**Lodged with the Court under seal  
pursuant to the Stipulated Protective  
Order filed June 6, 2007, and the  
[Proposed] Order to File Documents  
Under Seal filed October 29, 2008.**