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17   UNITED STATES DISTRICT COURT

18   NORTHERN DISTRICT OF CALIFORNIA

19   SAN FRANCISCO DIVISION

20 ORACLE USA, INC., a Colorado corporation,   CASE NO. 07-CV-01658 PJH (EDL)
    ORACLE INTERNATIONAL CORPORATION,
21 a California corporation, ORACLE SYSTEMS   **DECLARATION OF KEVIN MANDIA**
    CORPORATION, a Delaware corporation,   **IN SUPPORT OF ORACLE'S**
22 ORACLE EMEA LIMITED, an Irish private   **OPPOSITION TO DEFENDANTS'**
    limited company, and J.D. EDWARDS EUROPE   **FRCP 12(B)(1) AND 12(B)(6) MOTION**
23 LIMITED, an Irish private limited company,   **TO DISMISS**

24   Plaintiffs,
            v.
25

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

28   Defendants.

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

1   I, Kevin Mandia, declare:

2   1.   I am CEO and president of Mandiant Corporation, a computer forensics and

3 information security consultation firm. Except for matters stated below on information and

4 belief, I have personal knowledge of the matters stated in this Declaration by virtue of my

5 retention by Plaintiffs in this action. If called and sworn as a witness, I could and would

6 competently testify as to such matters.

7   2.   Plaintiffs have provided me with copies of certain log files which track

8 information about downloads conducted through its Customer Connection website. By

9 analyzing these logs, I am able to determine for each download: the date and time of the

10 download, the IP address of the user requesting the download, and the Oracle-assigned identifier

11 associated with the download.

12   3.   Based on my analysis of certain log files in this case, I have determined that

13 between the dates of September 1, 2006 and April 8, 2007, over 1,000,000 files were

14 downloaded by users at the following two IP addresses - 209.189.228.98 and 209.189.228.126.

15   4.   Based on a review of publicly available information, I learned that these two

16 addresses were registered to locations in Bryan, Texas during the time period described in ¶ 3.

17 This means that each of these 1,000,000 downloads were stored on computer hardware in Texas

18 for at least some period of time. Publicly available information also indicates that

19 TomorrowNow's ("SAP TN's") worldwide headquarters was in Bryan, Texas during this time,

20 as was an SAP America branch office. Discovery has since confirmed these two IP addresses

21 belonged to SAP TN.

22   5.   As part of the discovery process in this case, I have also been given access to

23 copies of certain files stored on SAP TN servers, including copies of metadata for files stored on

24 what I am informed and believe is the "G" partition of a TomorrowNow server called

25 DCITBU01. According to deposition transcripts of SAP TN witness testimony I have read in

26 this case, which I am informed and believe reflect SAP TN corporate testimony, ██████████

27 ██

28 ████████████████████ . Declaration of Chad Russell in Support of Oracle's Opposition to

1   Defendants' Motion to Dismiss ("Russell Decl.") Ex. D at 103:11-24, Ex. E at 85:18-86:5, and

2   Ex. F at 57:9-21. This testimony also indicates that the ███████████████████

3   ███. *Id.* Ex. F at 24:25-25:3, 59:12-16. Combining my analysis of DCITBU01 and SAP TN's

4   corporate testimony, I conclude that SAP TN stored at least 8,000,000 files downloaded from

5   Oracle systems in Texas.

6   6.   As part of the discovery process in this case, I have also been given access to

7   copies of a database which I am informed and believe is called BakTrak and was used by SAP

8   TN. Additionally, through the "data warehouse" remote review procedure in this case, I have

9   analyzed the file directory structures of certain servers that reside or resided at SAP TN facilities

10   in Texas. According to SAP TN corporate testimony, BakTrak ████████████████

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12 ██

13 ████. Russell Decl. Ex. G at 95:1-12. Corporate testimony also indicates that all local

14   software environments were stored on servers in Texas. *Id.* at 120:22-121:4. Combining my

15   analysis of BakTrak and the copies of servers made available remotely with SAP TN's corporate

16   testimony, I conclude that there were thousands of complete or partial copies of PeopleSoft and

17   J.D. Edwards software applications residing on SAP TN systems in Texas.
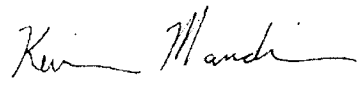
18   7.   At certain times SAP TN would use local environments to create fixes and

19   updates that SAP TN delivered to customers besides the ones for whom the environments used

20   had been built. Russell Decl. Ex. H at 22:4-23:8, 25:15-26:10, 39:13-24, 64:16-65:11, 96:16-

21   97:24, and Ex. I at 20:14-21:10.

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DECLARATION OF KEVIN MANDIA IN SUPPORT OF ORACLE'S OPPOSITION TO MOTION TO DISMISS

1   I declare under penalty of perjury under the laws of the United States of America

2   that the foregoing is true and correct.

3   Executed on October 28, 2008 in Alexandria, VA   .

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5

6   _Kevin Mandia_
                        _____
7   Kevin Mandia

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