

1 BINGHAM McCUTCHEM LLP  
 DONN P. PICKETT (SBN 72257)  
 2 GEOFFREY M. HOWARD (SBN 157468)  
 HOLLY A. HOUSE (SBN 136045)  
 3 ZACHARY J. ALINDER (SBN 209009)  
 BREE HANN (SBN 215695)  
 4 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 5 Telephone: (415) 393-2000  
 Facsimile: (415) 393-2286  
 6 donn.pickett@bingham.com  
 geoff.howard@bingham.com  
 7 holly.house@bingham.com  
 zachary.alinder@bingham.com  
 8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 10 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 11 Telephone: (650) 506-4846  
 Facsimile: (650) 506-7114  
 12 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com  
 13

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

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

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

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, the DCITBU01  
27 server is the "primary location," and "final resting place," for files downloaded by SAP TN from  
28 Customer Connection. 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 DCITBU01 server was located in Bryan,  
3 Texas. *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.

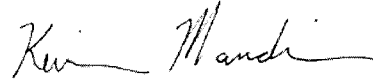
6 6. As part of the discovery process in this case, I have also been given access to  
7 copies of a database which I am informed and believe is called BakTrak and was used by SAP  
8 TN. Additionally, through the "data warehouse" remote review procedure in this case, I have  
9 analyzed the file directory structures of certain servers that reside or resided at SAP TN facilities  
10 in Texas. According to SAP TN corporate testimony, BakTrak lists some of the local software  
11 environments created from software licensed by Oracle to its customers on SAP TN's systems,  
12 and tracks when the environments are backed up, restored, or checked out by SAP TN  
13 employees. 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.

22  
23  
24  
25  
26  
27  
28

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.

4  
5 

6 \_\_\_\_\_  
7 Kevin Mandia