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 15 Europe Ltd.

16 UNITED STATES DISTRICT COURT
 17
 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.

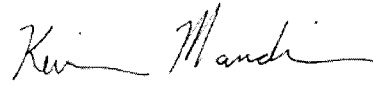
6 6. As part of the discovery process in this case, I have also been given access to
7 copies of a database which I am informed and believe is called BakTrak and was used by SAP
8 TN. Additionally, through the “data warehouse” remote review procedure in this case, I have
9 analyzed the file directory 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.

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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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6 _____
7 Kevin Mandia