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 15

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

19 ORACLE USA, INC., *et al.*,
 20 Plaintiffs,
 21 v.
 22 SAP AG, *et al.*,
 23 Defendants.

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

**DECLARATION OF COLLEEN A.
 KELLY IN SUPPORT OF ORACLE'S
 OPPOSITION TO DEFENDANTS'
 MOTION TO COMPEL DISCOVERY
 CONCERNING THIRD PARTY
 SUPPORT PROVIDED BY
 ORACLE'S PARTNERS**

Date: February 10, 2009
 Time: 2 p.m.
 Place: Courtroom E, 15th Floor
 Judge: Hon. Elizabeth D. Laporte

1 I, Colleen Kelly, declare as follows:

2 1. I am the Senior Director of Global Practices for Oracle Corporation and
3 Oracle USA, Inc. In that role, I am the business practices lead for the global Oracle
4 PartnerNetwork, and have been since 2005. In addition, I have been employed by Oracle for
5 approximately sixteen years. I have personal knowledge of the facts set forth in this declaration
6 and would competently testify to them if called upon to do so.

7 2. The global Oracle PartnerNetwork (also known as Alliances and
8 Channels) involves over 20,000 Oracle Partners, concerning dozens of Oracle applications,
9 middleware and database products, and involving at least 19 different industries. These Partner
10 arrangements cover a wide variety of activities, including distributing Oracle's software
11 programs, providing limited (i.e., "first" and/or "second" level) support to those customers to
12 whom a Partner distributes the programs, providing consulting, integration, and implementation
13 services, and providing training or cross-marketing for Oracle database and applications
14 products. For example, SAP provides first level support for Oracle's database program to certain
15 of SAP's customers who operate SAP's applications on a version of the Oracle database licensed
16 by SAP.

17 3. Oracle's Partners are spread across the globe, and programs and practices
18 overseas vary from those in the U.S. Oracle contracts with only a small percentage of its
19 Partners to provide support services on PeopleSoft, J.D. Edwards or Siebel applications – and
20 those are all limited to overseas arrangements where, for example, Oracle acquired a company
21 where such arrangements were already in place, or where Oracle has difficulty providing service
22 in the local language of the region. These support Partners are only licensed to handle first level
23 support and, in some cases, second level support. First level support typically involves
24 responding to telephone, email or web-based requests for support, incident tracking and
25 resolving customer issues. Second level support may include the same services provided in first
26 level of support, but could involve more complex issues, and might also involve the partner
27 helping the customer create and manage an incident request that is sent to Oracle's support team
28 seeking Oracle's assistance. In that instance, Oracle is providing much of the support, with the

1 Partner acting as the conduit for communication purposes. For purposes of supporting these
2 customers, these Partners are not licensed by Oracle to use its intellectual property to create
3 patches, fixes, or updates.

4 4. Indeed, I am not aware of any license with any Partner that would allow
5 that partner to copy Oracle's application software and support materials in order to create their
6 own fixes, patches or updates for customers.

7 5. Oracle has no licensed support Partners for PeopleSoft, J.D. Edwards or
8 Siebel applications in the United States -- including Cedar Crestone. Nor has Oracle licensed
9 any Partner to provide support for any de-supported release of PeopleSoft, J.D. Edwards or
10 Siebel applications -- including Cedar Crestone.

11 I declare under penalty of perjury that the foregoing is true and correct and that
12 this declaration was executed on January 23, 2009 at Redwood City, California

13 
14 _____
15 Colleen A. Kelly