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

20 ORACLE USA, INC., *et al.*,

21 Plaintiffs,

22 v.

23 SAP AG, *et al.*,

24 Defendants.

No. 07-CV-1568 PJH (EDL)

**DECLARATION OF CHAD
 RUSSELL IN SUPPORT OF
 ORACLE'S MOTION TO AMEND
 COMPLAINT**

Date: August 19, 2009
 Time: 9:00 a.m.
 Courtroom: 5, 17th Floor
 Judge: Hon. Phyllis J. Hamilton

1 I, Chad Russell, declare as follows:

2 1. I am an associate at the firm of Bingham McCutchen LLP, counsel of
3 record for Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited
4 (collectively, “Oracle”) in this action. I make this declaration based on my personal knowledge
5 from my representation of Oracle and could and would testify competently to the facts stated
6 herein if called upon to do so.

7 2. Attached as Exhibit A are true and correct copies of excerpts from the
8 transcript of the deposition of Mark Kreutz as TomorrowNow’s Rule 30(b)(6) witness, taken on
9 or about October 30, 2007 in this action. Oracle has supplied the highlighting.

10 3. Oracle served a Second Set of Interrogatories to Defendants on or about
11 November 27, 2007 in this action. Defendants served their responses to those interrogatories on
12 or about December 27, 2007. Defendants then served Amended and Supplemental Responses to
13 the same interrogatories on or about May 22, 2009. For the Court’s convenience, attached as
14 Exhibit B are true and correct copies of excerpts from only the Amended and Supplemental
15 Responses, which additionally reflect the text of both Oracle’s original Interrogatories and
16 Defendants’ December 2007 Response.

17 4. Attached as Exhibit C is a combined list derived from two sources:
18 • Defendants’ SAS Database, and representing products and releases
19 supported by Defendants for the PeopleSoft, JDE, and Siebel Product
20 lines; and
21 • the “screenshots” produced by Defendants by email on or about May
22 1, 2009 (see ¶ 23 below), and representing versions of Oracle database
23 products which may have existed on Defendants’ systems.

24 5. Attached as Exhibit D is a true and correct copy of a printout of a
25 spreadsheet produced by Defendants in this action and Bates-labeled (according to the
26 production cover letter) as TN-OR00169315. It has been formatted for printing, including by
27 adding the “No.” column to number the environments for the Court’s convenience.

28 6. Attached as Exhibit E are true and correct copies of excerpts from the

1 transcript of the deposition of John Baugh as TomorrowNow's Rule 30(b)(6) witness, taken on
2 or about February 6, 2008 in this action. Oracle has supplied the highlighting.

3 7. Attached as Exhibit F is a true and correct copy of a printout of a
4 spreadsheet produced by Defendants in this action and Bates-labeled (according to the
5 production cover letter) as TN-OR06515456. It has been formatted for printing, including by
6 adding the "No." column to number the environments for the Court's convenience.

7 8. Oracle received the following productions from Defendants on or about
8 the dates indicated, and designated by the accompanying cover letters as follows:

- 9 • "BakTrak files" - April 20, 2009;
- 10 • "SAS database" - March 6, 2009;
- 11 • "DotProject files" - May 8, 2009.

12 9. Attached as Exhibit G is a true and correct copy of a printout of a view
13 from Defendants' SAS Database, as produced by Defendants on or about March 6, 2009. Oracle
14 has supplied the highlighting.

15 10. Attached as Exhibit H is a true and correct copy of a printout of a view
16 from Defendants' SAS Database, as produced by Defendants on or about December 4, 2007 (and
17 corresponding to the view referenced in ¶ 9 above).

18 11. Attached as Exhibit I are true and correct copies of excerpts from the
19 transcript of the discovery hearing held by Magistrate Judge Laporte on November 25, 2008.
20 Oracle has supplied the highlighting.

21 12. As of the execution of this declaration, Oracle has received productions
22 from Defendants Bates-labeled up through approximately the following numbers - SAP-
23 OR00787867 and TN-OR06997289. These combined productions indicate a production of
24 approximately 7,785,156 pages. This is only a rough approximation, as there are a number of
25 exceptions to the "one Bates-number equals one-page" rule, including that many large
26 spreadsheets and databases are assigned only one Bates number. Defendants' production cover
27 letters and assigned Bates numbers as of January 1, 2009 (approximately SAP-OR00581938 and
28 TN-OR03712543) indicate that Defendants have produced approximately 3.5 million pages thus

1 far in 2009.

2 13. One of the hard drives produced by Defendants on or about March 6, 2009
3 (see ¶ 8 above) as the SAS database, was assigned the Bates-number TN-OR04446719. The
4 combined size of the files on this drive is approximately 21.6 gigabytes.

5 14. According to the production cover letters, since January 1, 2009,
6 Defendants' productions have included documents corresponding to custodians in the table
7 below, which also shows the individual's job title as indicated on Defendants' organizational
8 charts or customer lists:

9 John Baugh	Environments Manager
10 Shelley Blackmarr	Consultant II, Senior Support
11 Patti VonFeldt	World Development
12 Larry Garcia	PSFT Quality Assurance Manager
13 Desmond Harris	IT Analyst
14 Peggy Lanford	Senior Tech Services Analyst
15 Keith Larsen	Senior SA Developer
16 Beth Lester	Specialist IV, Quality Management
17 Kimberley Martinez	HCM QA Lead
18 Adrienne McMillan	Tech / CRM Support Engineer
19 Sharon Piper	HCM Support Engineer Lead
20 Elouise Plain	Financials/Payroll/HR Engineer
21 Roberto Porfirio	Technical Engineer
22 Keith Shankle	Technical Engineer
23 Pete Surette	Distribution Engineer
24 Siew Hee Wong	Technical Engineer

25 15. Attached as Exhibit J are true and correct copies of excerpts from
26 Defendants' Motion to Compel Discovery Relevant to Plaintiffs' Copyright Claims, filed with
27 the Court on or about April 14, 2009 in this action as entry 294 on the Docket. Oracle has
28 supplied the highlighting.

16. Attached as Exhibit K is a true and correct copy of Magistrate Judge
Laporte's Order Granting Defendants' Motion to Compel Discovery Relevant to Plaintiffs'
Copyright Claims, entered by the Court on or about June 26, 2009 in this action as entry 328 on
the Docket. Oracle has supplied the highlighting.

17. Attached as Exhibit L are true and correct copies of excerpts from
Defendants' Reply in Support of Their Motion to Compel Discovery Relevant to Plaintiffs'

1 Copyright Claims, filed with the Court on May 5, 2009 in this action as entry 302 on the Docket.
2 Oracle has supplied the highlighting.

3 18. Attached as Exhibit M is a true and correct copy of a document produced
4 by Defendants in this action and Bates-labeled TN-OR01019046. Oracle has supplied the
5 highlighting.

6 19. Attached as Exhibit N is a true and correct copy of a document produced
7 by Defendants in this action and Bates-labeled TN-OR01029402-08. Oracle has supplied the
8 highlighting.

9 20. Because of the large number of documents produced by Defendants on an
10 ongoing basis, Oracle uses search terms based on the operative issues in the case to reduce the
11 review sets. Reviews are prioritized based on upcoming immediate needs, which typically relate
12 to deposition preparation.

13 21. On or about February 8, 2009, while preparing for the deposition of Greg
14 Nelson on February 19, 2009, I came across TN-OR01019046 and TN-OR01029402 (see ¶¶ 18-
15 19 above). As soon as I found them I circulated them internally and Oracle began to investigate
16 the issues raised by the documents. These documents were included in a production from
17 Defendants in March 2008 consisting of approximately 176,916 pages.

18 22. Attached as Exhibit O is a true and correct copy of a document produced
19 by Defendants in this action and Bates-labeled TN-OR00434268. Oracle has supplied the
20 highlighting.

21 23. Attached as Exhibit P are true and correct copies of printouts of
22 “screenshots” sent to Oracle by Defendants via email on May 1, 2009.

23 24. Attached as Exhibit Q are true and correct copies of excerpts from the
24 transcript of the deposition of George Lester, taken on or about April 23, 2009 in this action.
25 Oracle has supplied the highlighting.

26 25. Attached as Exhibit R is a true and correct copy of a printout of Plaintiffs’
27 and Defendants’ Joint Administrative Motion to Modify May 5, 2008 Case Management Order,
28 filed with the Court on May 12, 2009 in this action as entry 304 on the Docket.

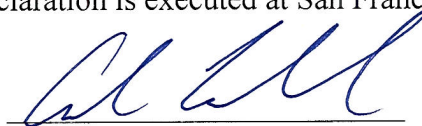
1 26. Attached as Exhibit S are true and correct copies of excerpts from the
2 transcript of the discovery hearing held by Magistrate Judge Laporte on February 13, 2009.
3 Oracle has supplied the highlighting.

4 27. Attached as Exhibit T are true and correct copies of excerpts from the
5 transcript of the discovery hearing held by Magistrate Judge Laporte on March 31, 2009. Oracle
6 has supplied the highlighting.

7 28. Between December 27, 2007, and July 28, 2008, Oracle deposed the
8 following TomorrowNow witnesses on or about the following dates for the corresponding
9 approximate amount of record time:

Shelley Nelson	12/6/2007	5:40
John Baugh - 30(b)(6)	2/6/2008	4:35
John Baugh - 30(b)(6)	2/7/2008	5:15
Mark Kreutz - 30(b)(6)	2/19/2008	8:29
Kathy Williams - 30(b)(6)	4/1/2008	1:44
Catherine Hyde - 30(b)(6)	4/1/2008	5:00
Catherine Hyde - 30(b)(6)	4/2/2008	7:03
Shelley Nelson	4/18/2008	7:14
Roderic Russell - 30(b)(6)	6/25/2008	4:42
Larry Garcia - 30(b)(6)	6/25/2008	0:47
Sharon Piper - 30(b)(6)	6/25/2008	0:22
Total 30(b)(6) Record Time:		37:57
Total Record Time:		50:51

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20 I declare under penalty of perjury under the laws of the United States that the
21 foregoing is true and correct and that this declaration is executed at San Francisco, California, on
22 July 15, 2009.



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24 Chad L. Russell

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