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15 Oracle EMEA Limited

16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

                 SAN FRANCISCO DIVISION

18 ORACLE USA, INC., *et al.*,   CASE NO. 07-CV-01658 PJH (EDL)

19   Plaintiffs,   **DECLARATION OF JOHN A.**
                                            POLITO IN SUPPORT OF
20   v.   **PLAINTIFFS' REPLY IN SUPPORT**
                                            OF PLAINTIFFS' MOTION TO
21 SAP AG, *et al.*,   **COMPEL PRODUCTION OF**
                                            DOCUMENTS RELATED TO
22   Defendants.   **DAMAGES MODEL AND**
                                            INTERROGATORY RESPONSES
23   **RELATED TO USE OF PLAINTIFFS'**
                                            INTELLECTUAL PROPERTY
24

25   Date: August 4, 2009
                                            Time: 2:00 p.m.
26   Place: Courtroom E, 15th Floor
                                            Judge: Hon. Elizabeth D. Laporte
27

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                                            Case No. 07-CV-01658 PJH (EDL)
   DECLARATION OF JOHN A. POLITO IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF
                        PLAINTIFFS' MOTION TO COMPEL

1   I, John A. Polito, declare as follows:

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3   1.   I am an attorney licensed to practice law in the State of California and am

4   an associate at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc.,

5   Oracle International Corporation and Oracle EMEA Ltd. (collectively, "Oracle"). I have

6   personal knowledge of the facts stated within this Declaration and could testify competently to

7   them if required.

8   2.   As part of the discovery process in this case, Defendants have produced

9   copies of several Lotus Notes application databases. These Lotus Notes application databases

10   have been collectively described by Defendants as TomorrowNow's ("SAP TN's") "SAS

11   Database." The SAS Database contains certain records of SAP TN's support activities for the

12   PeopleSoft, J.D. Edwards, and Siebel products lines, including certain records relating to the

13   development, testing, and delivery of SAP TN-delivered fixes, updates, patches, documentation,

14   and other material delivered (collectively, a "fix" or "fixes").

15   3.   Defendants' most recent production of the SAS Database, including but

16   not limited to materials Bates-numbered TN-OR03775478, TN-OR03727374, TN-OR03775478,

17   TN-OR04446717, TN-OR04446719, and TN-OR04446728 to TN-OR04447185 (collectively,

18   the "March 2009 SAS Database"), was produced on or before March 6, 2009.

19   4.   For the PeopleSoft product line, certain records related to certain SAP TN-

20   delivered fixes are stored as "Master Fix" and related records. The March 2009 SAS Database

21   contains 1887 Master Fix records for the PeopleSoft product line, according to a form-based

22   search for "Master Fix" forms across the entire March 2009 SAS Database for that product line.
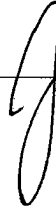
23   5.   Based upon my review, and the review of attorneys working under my

24   supervision, there is no environment information contained within at least 920 Master Fix

25   records in the March 2009 SAS Database. Fewer than 100 Master Fix records appear to contain

26   information about the environments used at more than one point in the fix-delivery process.

27   6.   Only 51 of the 1887 Master Fix records in the March 2009 SAS Database,

28   or less than 3% of such records, appear to contain four or more attachments documenting the use

1   Case No. 07-CV-01658 PJH (EDL)
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DECLARATION OF JOHN A. POLITO IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL

1   of environments at any point in the fix-delivery process.

2

3   I declare under penalty of perjury under the laws of the United States that the

4   foregoing facts are true and correct, and that this Declaration was executed on July 21, 2009, in

5   San Francisco, California.

6   John A. Polito

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DECLARATION OF JOHN A. POLITO IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL