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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 HOLLY A.  
 HOUSE IN SUPPORT OF ORACLE'S  
 OPPOSITION TO DEFENDANTS'  
 MOTION TO COMPEL FINANCIAL  
 INFORMATION**

**REDACTED**

Date: August 18, 2009  
 Time: 2:00 p.m.  
 Place: Courtroom E, 15th Floor  
 Judge: Hon. Elizabeth D. Laporte

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 Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF HOLLY A. HOUSE IN SUPPORT OF ORACLE'S OPPOSITION TO DEFENDANTS'  
 MOTION TO COMPEL

1 I, Holly A. House, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am  
3 a partner at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc., Oracle  
4 International Corporation and Oracle EMEA Ltd. (collectively, "Oracle"). I make this  
5 Declaration in Support of Oracle's Opposition to Defendants' Motion to Compel Financial  
6 Information. I have personal knowledge of the facts stated within this Declaration and could  
7 testify competently to them if required.

8 2. Prior to April 25, 2008, when Judge Hamilton opened damages discovery,  
9 Oracle began producing detailed financial information, from both custodial and non-custodial  
10 sources.

11 3. Oracle's financial information production has included discount and  
12 pricing analysis emails and packages, product revenue reporting packages, financial board  
13 packages, fiscal board budget reports, SEC filings, subsidiary performance reports, financial  
14 reference books, support budgets, subsidiary performance reports, and applications revenue  
15 analysis reports – most of which contain cost and/or margin data.

16 ***Rule 30(b)(6) Testimony of Oracle International Corporation and Associated Exhibits***

17 4. Attached as **Exhibit A** is a true and correct copy of Defendants' June 10,  
18 2008 First Notice of Deposition of Plaintiff Oracle International Corporation Pursuant to Federal  
19 Rule of Civil Procedure 30(b)(6) (the "First Notice"). Todd Adler was deposed on October 9,  
20 2008 as the 30(b)(6) designee of Oracle International Corp. ("OIC") as to topics 1-4 of the First  
21 Notice, subject to Oracle's objections. Mr. Adler is Senior Corporate Counsel in Oracle's Legal  
22 Department, responsible principally for Trademarks and Copyrights.

23 5. Paragraphs 8-10 and Exhibit F of the Declaration of Zachary J. Alinder in  
24 Support of Oracle's Opposition to Defendants' Motion to Compel Further Copyright Information  
25 ("Alinder Decl."), Docket No. 300, recount a portion of the history of the Parties' meet and  
26 confer regarding the First Notice: Oracle offered to supplement its response to TomorrowNow,  
27 Inc.'s Interrogatory No. 13 in lieu of providing a witness on topics 5 and 6, Alinder Decl. ¶ 8; *see*  
28 *also* ¶ 36 & Ex. W, below ("Regarding topic 5, [Defendants] agree that an interrogatory response

1 could be an acceptable alternative means of providing the requested information.”). Defendants  
2 deemed “acceptable” Oracle’s proposed format for the supplemental response, but asked through  
3 meet and confer for additional information about certain registrations, *id.* ¶¶ 8-10 & Ex. F at 1;  
4 Oracle revised its proposal to encompass those registrations, *id.* ¶ 9 & Ex. F at 1; and,  
5 Defendants did not further respond prior to Oracle’s serving of its supplemental response, *id.* ¶  
6 10.

7           6. Oracle’s First Supplemental Responses and Objections to Defendant  
8 TomorrowNow, Inc.’s Interrogatory No. 13, which contained information responsive to Topics 5  
9 and 6 of the First Notice, was served on December 5, 2008. This supplemental response has  
10 already been filed with the Court in redacted form as Exhibit F to the Amended Declaration of  
11 Elaine Wallace In Support of Defendants’ Motion to Compel Discovery Relevant to Plaintiffs’  
12 Copyright Claims [Revised ¶ 13, Exhibit F], Docket No. 296. The redacted material is not  
13 relevant to the instant motion. Oracle further supplemented and amended this response with  
14 information responsive to Topics 5 and 6 of the First Notice on May 22, 2009, and again on July  
15 15, 2009.

16           7. Attached as **Exhibit B** is a true and correct copy of Plaintiffs’ April 8,  
17 2009 Responses and Objections to Defendants’ Amended Second Notice of Deposition of  
18 Plaintiff Oracle International Corporation Pursuant to Federal Rule of Civil Procedure 30(b)(6).

19           8. Attached as **Exhibit C** is a true and correct copy of relevant excerpts from  
20 the deposition transcript of OIC’s 30(b)(6) designee in response to the Amended Second Notice,  
21 Uyen Ngoc Ann Kishore, dated April 14, 2009, including pages 121:18-122:1, 128:19-25,  
22 150:18-152:2, 162:6-163:6, and 207:13-208:14.

23           9. Attached as **Exhibit D** is a true and correct copy of Jason McDonell’s  
24 May 6, 2009 letter to my colleagues Geoff Howard and John Polito, copying me, discussing the  
25 alleged inadequacies in Ms. Kishore’s preparation and testimony as OIC’s 30(b)(6) designee in  
26 response to the Amended Second Notice.

27           10. Attached as **Exhibit E** is a true and correct copy of a letter dated May 22,  
28 2009, from my colleague, Zachary Alinder, to Mr. McDonell responding to Mr. McDonell’s May

1 6, 2009 letter. I was copied on the email sending the letter to Mr. McDonell.

2 11. On June 4, 2009, I and other Oracle attorneys met and conferred  
3 telephonically with attorneys for Defendants, including at least Mr. McDonell. During this meet  
4 and confer, we reminded Defendants of our May 22, 2009 letter, and stated that we awaited their  
5 reply. No further discussion of Ms. Kishore's preparation or testimony occurred. On  
6 information and belief, this was the June 4, 2009 telephonic meet and confer referred to in Mr.  
7 McDonell's Declaration In Support of Defendants' Motion to Compel ("McDonell Decl."), ¶ 20.  
8 My belief is reasonable based on my participation in that telephonic meet and confer and review  
9 of Mr. McDonell's Declaration.

10 12. On July 9, 2009, I and other Oracle attorneys met and conferred  
11 telephonically with attorneys for Defendants, including at least Mr. McDonell. Defendants  
12 refused to discuss Ms. Kishore's preparation or testimony beyond saying that they "disagreed"  
13 with our May 22, 2009 letter. On information and belief, based on my participation in the July 9  
14 call, I believe that this is the telephonic meet and confer (incorrectly) identified in McDonell  
15 Decl., ¶ 20, as a July 10, 2009 telephonic meet and confer. My belief is reasonable based on my  
16 participation in that telephonic meet and confer, review of Mr. McDonell's Declaration, and my  
17 understanding that no meet and confer as to the topics of Defendants' Motion occurred on July  
18 10, 2009.

19 *Defendants' Request for Oracle's General Ledger and Associated Exhibits*

20 13. Oracle began a rolling production of its historical and current charts of  
21 accounts on February 13, 2009, and completed production on March 30, 2009. Because of the  
22 burden associated with producing Oracle's entire General Ledger, Defendants were to use  
23 Oracle's charts of accounts to identify and isolate relevant portions of the General Ledger data.  
24 During this time, Defendants never informed Oracle that its charts of accounts were so "cryptic"  
25 that they or their experts were unable to meaningfully identify the accounts for which they would  
26 want General Ledger detail.

27 14. On April 29, 2009, Defendants requested general ledger data for a 73-page  
28 list of accounts. Attached as **Exhibit F** is a true and correct copy of an email and attachment,

1 dated April 29, 2009, from Elaine Wallace to me requesting general ledger data.

2 15. On May 11, 2009, I and other Oracle attorneys met and conferred  
3 telephonically with attorneys for Defendants, including at least Mr. McDonell. One of the topics  
4 we discussed was Defendants' April 29, 2009 request for general ledger information.



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15 16. Attached as **Exhibit G** is a true and correct copy of an email dated May  
16 14, 2009, from my colleague, Mr. Alinder, to Mr. McDonell, blind copying me and asking  
17 Defendants for a revised request for general ledger information prior to further meet and confer  
18 on their request for general ledger information.

19 17. Attached as **Exhibit H** is a true and correct copy of an email dated May  
20 14, 2009, from my colleague, Mr. Alinder, to Ms. Wallace, copying me and informing  
21 Defendants that Oracle's counsel would discuss any further requests for general ledger  
22 information with Oracle employee Alex San Juan and would inform Defendants of any  
23 associated burdens of those requests.

24 18. Attached as **Exhibit I** is a true and correct copy of a letter dated May 22,  
25 2009, from Mr. Alinder, to Ms. Wallace, blind copy to me, again asking Defendants for a revised  
26 request for general ledger information.

27 19. Attached as **Exhibit J** is a true and correct copy of Defendants' May 26,  
28 2009 Notice of Deposition of Alex San Juan.

1           20. Attached as **Exhibit K** is a true and correct copy of an excerpt of  
2 Plaintiffs' May 26, 2009 Responses and Objections to Defendants' Third Notice of Deposition of  
3 Plaintiff Oracle USA, Inc. Pursuant to Federal Rule of Civil Procedure 30(b)(6).

4           21. During the June 4, 2009, meet and confer discussed above in ¶ 11, Oracle  
5 again asked Defendants for a revised request for general ledger data.

6           22. Attached as **Exhibit L** is a true and correct copy of an email dated June  
7 16, 2009 from Mr. McDonell to me cancelling the June 19, 2009 deposition of Oracle employee  
8 Mr. San Juan. Prior to cancelling, Defendants never confirmed that Oracle would make Mr. San  
9 Juan available informally during a meet and confer in lieu of his deposition. Defendants never in  
10 their contemporaneous written correspondence or oral meet and confers asserted why they had  
11 cancelled Mr. San Juan's deposition or that they understood Oracle had offered him informally  
12 for questioning or consultation.

13 *Defendants' "Third" Targeted Search Request and Associated Exhibits*

14           23. Attached as **Exhibit M** is a true and correct excerpt of Oracle's May 27,  
15 2009 Responses and Objections to Defendants' "Second" and "Third" Targeted Search Request.

16           24. Attached as **Exhibit N** is a true and correct excerpt of Oracle's June 3,  
17 2009 Supplemental Responses and Objections to Defendants' "Second" and "Third" Targeted  
18 Search Request. In part, this response states that "Oracle will continue to investigate whether  
19 and how it can produce some or all of the many requested financial reports and the burdens of  
20 doing so while respecting that those most knowledgeable about Oracle's financial reporting  
21 functions are heavily impacted by Oracle's May 31, 2008 fiscal year-end activities." Oracle did  
22 not expect this to be a problem because a week earlier, Judge Hamilton had allowed for a six-  
23 month extension of the fact discovery deadline. Moreover, Defendants never indicated that the  
24 delay was problematic.

25           25. After informing Defendants that Oracle would provide them with a  
26 supplemental response to Defendants' "Third" Targeted Search Request on July 17, 2009,  
27 Defendants never asked Oracle for an earlier response.

28           26. During the July 9, 2009 meet and confer discussed in ¶ 12, above,

1 Defendants for the first time asked Oracle to search for, collect, and produce certain analyses  
2 referenced during the depositions of certain Oracle executives. Many of these analyses had been  
3 produced during custodial productions. I explained to Defendants that Oracle had already been  
4 searching for these analyses and that Oracle had learned that they were created on an *ad hoc*  
5 basis at the request of certain Oracle personnel. In addition, I explained that they were created  
6 using various assumptions and allocations not reflected in Oracle's accounting and reporting  
7 systems.

8           27. On July 17, 2009, Oracle served its Second Supplemental Responses and  
9 Objections to Defendants' "Second" and "Third" Targeted Search Request on Defendants.

10 ***Other Exhibits and Exhibits Reflecting Ongoing Meet and Confer***

11           28. Attached as **Exhibit O** is a true and correct copy of my June 30, 2009  
12 letter to Mr. McDonell.

13           29. Attached as **Exhibit P** is a true and correct copy of my July 10, 2009 letter  
14 to Mr. McDonell.

15           30. Attached as **Exhibit Q** is a true and correct copy of a July 13, 2009 email  
16 sent to me at 7:24 p.m. from Christine Lok on behalf of Mr. McDonell, counsel for Defendants.  
17 Attached to this email was a copy of meet and confer correspondence, a true and correct copy of  
18 which has already been filed with the Court in redacted form as Exhibit 2 to the Declaration of  
19 Jason McDonell in support of Defendants' Motion to Compel Production of Financial  
20 Information of Plaintiffs, Docket No. 347.

21           31. Attached as **Exhibit R** is a true and correct copy of my July 14, 2009 letter  
22 to Mr. McDonell.

23           32. Attached as **Exhibit S** is a true and correct copy of Mr. McDonell's July  
24 21, 2009 letter to me.

25           33. Attached as **Exhibit T** is a true and correct copy of my July 22, 2009 letter  
26 to Mr. McDonell.

27           34. Attached as **Exhibit U** is a true and correct copy of Mr. McDonell's July  
28 23, 2009 letter to me.

