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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION
 20

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

Case No. 07-CV-1658 PJH (EDL)

**PLAINTIFFS' SUPPLEMENTAL
 RESPONSES AND OBJECTIONS TO
 DEFENDANTS' "SECOND" AND
 "THIRD" TARGETED SEARCH
 REQUESTS**

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1 Defendants have any remaining targeted searches available and, if so, how many, Oracle will
 2 also make its own investigation of whether and how it can produce some or all of the requested
 3 information at the contract level from a centralized source and the burdens of doing so.

4 **TARGETED SEARCH REQUEST NO. 3:**

5 For each Plaintiff entity, for the period January 1, 2002 through October 31, 2008,
 6 documents sufficient to show by month, quarter and year the revenues (including but not limited
 7 to license royalty payments), expenses (including but not limited to research and development
 8 costs) and net income to the Plaintiff entity resulting from sales by any Oracle entity of
 9 PeopleSoft and/or JD Edwards software and/or services to customers on Defendant
 10 TomorrowNow, Inc.'s Supplemental Exhibit 1 to Its First Sets Of Requests For Production and
 11 Interrogatories to Plaintiffs.

12 Responsive documents may be contained in, or available through, the Oracle
 13 Financial Analyzer and GIFTS databases or located on a shared drive within Oracle's tax
 14 department. *See, e.g.*, Deposition of Uyen Ngoc Ann Kishore, April 14, 2009 ("Kishore Dep.")
 15 at p. 116 ("I am able to pull a report that has expenses incurred in various lines of business");
 16 Kishore Dep. at p. 122 ("we have system called Oracle Financial Analyzer..."); *id.* at p. 132 ("it's
 17 on a shared drive...[with] tax files from the tax department."); *id.* at p. 183 - 184 ("Our charts of
 18 accounts...we do have accounts relating to sublicense fee payments..." that can be generated from
 19 Oracle Financial Analyzer); *id.* at p. 185 ("There's another system called GIFTS..."); the P&L;
 20 "chart of accounts;" "line of business;" balance sheets; research and development costs; royalty
 21 payment reports generated from Oracle Financial Analyzer (*see, e.g.*, Kishore Dep. at p. 116) and
 22 GIFTS databases (*id.* at p. 185) or located on a shared drive within Oracle's tax department (*id.* at
 23 p. 132); and the general ledgers of the Plaintiff entities.

24 **SUPPLEMENTAL RESPONSE TO TARGETED SEARCH REQUEST NO. 3:**

25 Oracle incorporates by reference as if fully set forth herein in response to this
 26 Request, each of the fifteen General Objections above, as well as each of Oracle's objections and
 27 responses to each of Defendants' Interrogatories and Document Requests that relate to this
 28

1 Request. Oracle is not, by responding to this Request, waiving any of its objections to any of
2 Defendants' Interrogatories and Document Requests.

3 Oracle further objects to the Request on the grounds that numerous terms and
4 phrases throughout this Request are vague and ambiguous. For example, the phrases "license
5 royalty payments," "research and development costs," and "net income" lack sufficient
6 specificity and are therefore overly broad and unduly burdensome.

7 Oracle objects to this Request because it is compound and not a "narrow search
8 by topic." Defendants' Request is improper because it is a combination of multiple targeted
9 search Requests, requiring a search through multiple sources of information and therefore cannot
10 be considered as one Request or as a "targeted" search Request.

11 Oracle objects to the use of the phrase "any Oracle entity" on the grounds that it
12 makes the Request vague, overbroad, and unduly burdensome and to the extent that the
13 construction of the phrase is intended to require information that is neither relevant nor likely to
14 lead to the discovery of admissible evidence.

15 Oracle objects to Defendants' attempt to conduct duplicative discovery to the
16 extent that this Request seeks documents, data, or other information that Oracle has already
17 produced in this case. This objection includes, but is not limited to, an objection to any attempt
18 by Defendants to require Oracle to segregate or otherwise separately identify any documents,
19 data, or other information contained within any document production that Oracle has made or
20 will make in this case. Oracle objects to the extent that information responsive to this targeted
21 search Request has been or will be produced in the ordinary course of the custodian-based
22 production in this case by Oracle. Any attempt by Defendants to seek such duplicative discovery
23 is overbroad and harassing.

24 Oracle objects to the Request to the extent it imposes a burden or obligation to
25 which the parties have not yet agreed by Requesting Oracle to produce documents for the
26 January 1, 2002 through October 31, 2008 time period. The Parties have agreed to expand the
27 discovery timeline for limited issues, and to the extent Defendants' Request for documents
28 responsive to this targeted search Request does not fit within the subject matters agreed upon by

1 parties for expanded discovery, Oracle does not intend to produce those documents beyond the
2 agreed-upon discovery timeline.

3 Oracle objects to the Request to the extent it seeks to require Oracle to search for,
4 review, or produce data that is not reasonable accessible, such as legacy data, under Rule 26 of
5 the Federal Rules of Civil Procedure.

6 Oracle objects to the Request to the extent it seeks to unduly burden Oracle with a
7 search for, review of, or production of potentially hundreds of reports in a manner and/or form that
8 would impose upon Oracle duties and/or responsibilities greater than those imposed by the Federal
9 Rules of Civil Procedure, the Local Rules of this Court, any applicable orders of this court or any
10 stipulation or agreement of the parties.

11 Subject to and without waiving its specific and general objections, Oracle's *initial*
12 response to this Request is as follows:

13 Oracle seeks immediate confirmation from Defendants as to whether it concedes
14 this is not their "Third" Targeted Search Request.

15 While not verifying the veracity of Defendants allegations, Defendants allege in
16 their Request that the information they are seeking may be contained in, or available through, at
17 least four different possible sources of data (OFA, GIFTs, the general ledger, and a shared drive
18 within Oracle's tax department) and can include, but is not limited to, at least four different types
19 of reports *from each source* (line of business expense reports, royalty payment reports, balance
20 sheets, and P&L statements).

21 Because no single database contains all the requested information, to the extent it
22 was tracked and exists, Defendants' request is not appropriate to a targeted search. There is no
23 single repository or custodian that would have all such information over this lengthy period.
24 Oracle thus objects to such discovery to the extent Oracle cannot locate such information in
25 central repositories following a reasonably diligent search. Moreover, this financial information
26 has already been produced through a variety of documents and will continue to be produced in
27 the ordinary course of the custodian-based production. Search for these reports specifically is
28 not only duplicative but unnecessarily burdensome on Oracle. Given that these reports have

1 already been produced and will continue to be produced, Oracle directs Defendants to look for
2 them in Oracle's production (*e.g.*, ORCL00079380, ORCL00079343).

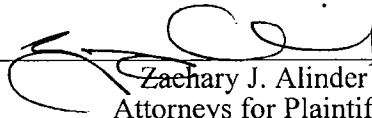
3 Additionally, as Defendants are well aware, the information Defendants seek with
4 this Request largely does not exist as requested. Defendants have been repeatedly told through
5 previous deposition testimony that Oracle does not track expenses and net income by product line.
6 *See, e.g.*, Depo. of Ivgen Guner as Oracle Corp.'s Rule 30(b)(6) designee at p. 73:24 -74:1 ("There is
7 no product profitability at Oracle. We do not measure product profitability at Oracle."). One
8 deponent's testimony about various existing pieces of reporting functions from various sources does
9 not mean that those pieces can somehow be combined into one report with the format and
10 presentation of Defendants' choice. Defendants' Request in essence requires Oracle to attempt to
11 redesign its reporting and tracking systems in order to try to capture information that might not even
12 be available. Oracle is not obligated to and will not engage in such an effort. Moreover, the
13 financial information Defendants seek, to the extent it does exist, does not exist for the entire time
14 period of January 1, 2002 through October 31, 2008; and/or do not exist for all the relevant
15 product lines.

16 Thus, Oracle does not agree or concede that obtaining the reports Defendants
17 reference is the appropriate, best or most cost-effective means to secure financial information or
18 that such reports are relevant or likely to lead to the discovery of admissible evidence. Oracle
19 has begun investigating the reporting functions available from Oracle Financial Analyzer and the
20 GIFTs database, and has thus far only confirmed the previous testimony that informed
21 Defendants that the information Defendants seek is not available with the requested detail.
22 However, Oracle will continue to investigate whether and how it can produce some or all of the
23 many requested financial reports and the burdens of doing so while respecting that those most
24 knowledgeable about Oracle's financial reporting functions are heavily impacted by Oracle's
25 May 31, 2008 fiscal year-end activities. Upon completion of that investigation, Oracle will
26 produce responsive information only to the extent not previously produced, subject to the
27 objections outlined herein, and subject to resolution of whether Defendants have any remaining
28 targeted searches available and, if so, how many.

1 DATED: June 3, 2009

BINGHAM McCUTCHEN LLP

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By: 
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PROOF OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in San Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mail and by email, and they are deposited and/or sent that same day in the ordinary course of business.

Today I served the following documents:

PLAINTIFFS' SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANTS' "SECOND" AND "THIRD" TARGETED SEARCH REQUESTS

(VIA EMAIL) by transmitting via electronic mail document(s) in portable document format (PDF) listed above on this date to the person(s) at the email address(es) set forth below.

(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

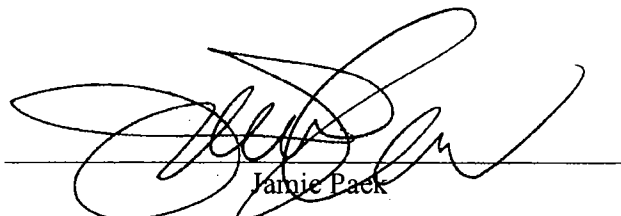
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I declare under penalty of perjury that this declaration was executed on June 3, 2009 at San Francisco, California.



Jamie Paek