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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

 Plaintiffs,

 v.

 SAP AG, *et al.*,

 Defendants.

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

**AMENDED JOINT DISCOVERY
 CONFERENCE STATEMENT**

Date: August 25, 2009
 Time: 11:30 a.m.
 Courtroom: E, 15th Floor
 Judge: Hon. Elizabeth D. Laporte

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited
 2 (collectively, “Oracle”) and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
 3 (collectively, “Defendants,” and with Oracle, the “Parties”) submit this Amended Joint Discovery
 4 Conference Statement. The Parties jointly request that the Court schedule sixty minutes on
 5 August 25, 2009 to discuss discovery issues.

6 **I. Extrapolation Proposal and Requests for Admission**

7 ***Oracle’s Position:*** As the Court knows, the Parties have been unable to stipulate to facts
 8 regarding Defendants’ copying and use of Oracle’s intellectual property. After more than a year
 9 of such efforts, Defendants now refuse to answer Requests for Admission that, if accurately
 10 answered, would serve a similar purpose. They would alleviate the burden on both Parties to
 11 collect and analyze the extensive evidence regarding TN’s downloading and use of Oracle’s
 12 software on an individual fix-by-fix basis over time, and still provide Oracle with admissible
 13 evidence.

14 Regarding the stipulation, Defendants continue to block this effort to summarize TN’s
 15 general processes, despite the Court’s recognition that “the incentive for the Defendants to
 16 stipulate” is efficiency and alleviation of discovery and evidence burdens: “that is to say the
 17 alternative is to spend a huge amount, more money and time on unearthing every fact.” *See*
 18 Exhibit A (excerpt from Transcript of November 25, 2008 Discovery Conference) at 34:18-22.
 19 Oracle’s third proposed stipulation on this topic took months of meet and confer efforts to
 20 develop. That proposal was attached as Exhibit A to the February 9, 2009 Joint Discovery
 21 Conference Statement (under seal), and Defendants rejected it.

22 In response to Oracle’s request, Defendants agreed on April 21, 2009 to provide a list of
 23 the facts to which they *are* willing to stipulate. They provided this document on July 14, 2009.
 24 *See* Exhibit B (July 14, 2009 extrapolation proposal including cover email) (filed under seal).
 25 There are three significant problems with Defendants’ proposal, which focuses on stipulated
 26 testimony. First, Defendants continue to insist that they will agree to nothing until they learn how
 27 Oracle will use the stipulated facts in its damages analysis. *Id.* The Court has rejected the logic
 28 of that position. *See* Exhibit C (excerpt from Transcript of February 13, 2009 Discovery

1 Conference) at 9:14-25 (“And I guess I find that puzzling, to tell you the truth, because . . . I have
2 trials where the[re] are stipulated facts and you can use them any way you want, because by the
3 virtue of they’re stipulated they’re true.”). Next, Defendants limit each part of their proposal by
4 stating it “shall not be used to suggest, imply or infer in any way that these service activities were
5 always performed using this practice.” Exhibit B at 4:7-9; 6:12-14. As the Court suggested, a
6 stipulated fact should be available to both Parties for any purpose, including argument. Finally,
7 even though Defendants were supposed to provide a list of the facts to which they *would* agree to
8 stipulate, they stated in their cover email that Oracle was not empowered to accept Defendants’
9 proposal and, more, that “Defendants do not and will not agree to even [their own] attached draft
10 proposed stipulation.” *Id.* In other words, despite having had Oracle’s third proposal for over six
11 months, and despite having provided Oracle with a document stating some facts, Defendants have
12 not actually agreed to anything.

13 The inability to arrive at a stipulation led Oracle to serve a set of RFAs directed to the
14 same facts at issue, TN’s business practices, which the Court has suggested as an alternative. *See*
15 Exhibit A at 34:2-6 (“we could go the RFA route”). Among others, Oracle propounded RFAs
16 asking Defendants to admit to certain specific uses of Customer Connection, as well as to certain
17 detailed statements about TN’s development process. For each step of the process addressed,
18 Oracle asked Defendants to admit the step occurred: (a) each time; (b) the majority of the time; (c)
19 some of the time; and/or (d) at least once. The variety of options for each step would have
20 permitted Defendants to select the most accurate frequency, in keeping with the Court’s
21 suggestions about compromising through variations in language. *See* Exhibit A at 41:21-43:15;
22 Exhibit C at 11:2-12:11, 18:10-20. The descriptions of the steps were taken from Defendants’
23 witnesses’ testimony and documents.

24 Defendants, however, refused to admit to any of these RFAs, even though they cannot
25 credibly refuse given their witnesses’ testimony and the documents they have produced. For
26 example, even though TN’s Rule 30(b)(6) designee for PeopleSoft environments, Catherine Hyde,
27 testified that she created the environment HG75103C “using some customer software” and that it
28 was “used to support HG702 customers,” Defendants denied four Requests asking them to admit,

1 alternatively, that TN created environments from customer software for each fix, the majority of
2 fixes, some fixes, or even once. Exhibit D at 50:16-51:15 (Hyde 30(b)(6) excerpts). At least two
3 of these denials are not credible in light of Ms. Hyde's testimony, and while Oracle can use that
4 testimony at trial, it has employed the RFAs to leverage Ms. Hyde's testimony into broader
5 application in lieu of a stipulation.

6 Oracle sent Defendants a meet and confer letter on August 10 about these RFA
7 deficiencies, and hopes that Defendants will reconsider their responses. However, Defendants
8 cannot continue to block all of Oracle's inquiries into these important facts. Whether by
9 stipulation or RFA, they must admit to those facts about TN's business practices and processes
10 that are not reasonably in dispute. If Defendants do not reconsider, Oracle will seek the Court's
11 assistance with a motion to compel further responses to the RFAs.

12 ***Defendants' Position:*** Defendants remain willing to negotiate a stipulation but have
13 consistently maintained that they must have some objective measure to weigh the cost/benefit of
14 relieving Oracle of its burden of proof. Unless and until Oracle provides Defendants with some
15 information as to how it intends to use the stipulation with respect to its damages calculations,
16 Defendants must continue to hold Oracle to its full burden of proof on each and every element of
17 each and every one of its claims.

18 Oracle's version of the "facts" on which it seeks a stipulation differ somewhat from what
19 Defendants contend are the facts. Oracle's only response to that factual dispute is to point to
20 testimony which Oracle claims proves some of the facts on which it seeks a stipulation. If Oracle
21 already has testimony establishing certain facts, then it does not need a stipulation on those facts.
22 Thus, the major points of the parties' disagreement with respect to the proposed stipulation are: (a)
23 the "facts" themselves; and (b) how any "agreed facts" would be used by Oracle in its damages
24 calculations. Defendants have consistently maintained that their negotiations regarding the
25 stipulation are Rule 408 compromise and settlement negotiations. As with any Rule 408
26 negotiations, all parties involved need to know what they are giving up in exchange for what they
27 are receiving. And, as noted above, Oracle continues to refuse to provide Defendants with critical
28 information necessary to evaluate the downside risks of relieving Oracle of its burden of proof.

1 Oracle has propounded over 700 requests for admission, almost all of which are
2 objectionable on multiple grounds. Oracle is attempting to use these voluminous requests for
3 admission to continue to seek Defendants' acquiescence to Oracle's version of the "facts".
4 Defendants' basic disagreement with Oracle regarding the "facts" themselves (which is one of the
5 two primary obstacles preventing substantial forward progress on the extrapolation/stipulation) is
6 one of the reasons Defendants have denied many of Oracle's requests for admission. That said,
7 as Oracle notes above, Oracle has pointed Defendants to several specific requests for admission
8 and has asked Defendants to reconsider their answers to those requests. Defendants are in the
9 process of reviewing Oracle's correspondence regarding those specific requests and intend to
10 continue the meet and confer process on this issue.

11 **II. Pre-2005 Damages Related Discovery**

12 ***Defendants' Position:*** Oracle continues to refuse to provide certain financial and
13 customer-specific data for the pre-2005 period (*i.e.*, the period prior to Oracle's acquisition of
14 PeopleSoft). This data includes customer-specific financial reports and cancellation reports that
15 Oracle has produced for the post-acquisition time period. Oracle contends that the data is
16 available only on "legacy" PeopleSoft systems and that it would be unduly burdensome to
17 retrieve it. Oracle has also refused to provide Rule 30(b)(6) testimony on numerous damages-
18 related topics for the pre-2005 period on the ground that it does not have the historical
19 knowledge to do so and has no obligation to obtain it. These topics include PeopleSoft financial
20 records, pricing policies, and support policies, about which Oracle has disclaimed knowledge.
21 Oracle contends that its customer contract files provide sufficient information to calculate
22 damages for the pre-2005 period. Defendants disagree because the contract files are incomplete
23 as well. These gaps in Oracle's production of pre-2005 data, along with its claimed lack of
24 knowledge of PeopleSoft financial and other records make it impossible to calculate damages for
25 the pre-2005 period. Defendants will continue to meet and confer with Oracle, but will seek the
26 Court's guidance at the discovery conference on the burden issue and Oracle's position that it is
27 not obligated to provide Rule 30(b)(6) testimony regarding the records of the predecessors-in-
28 interest to the plaintiff entities.

1 ***Oracle's Position:***

2 *Legacy Customer Reports:* The facts regarding Oracle's production of pre-2005 customer
3 contracts – and the importance for purposes of proving damages of such production – are
4 different from what Defendants state. First, Oracle has produced customer-specific financial
5 reports containing pre-2005 data. For example, it has produced Analytics License Reports, which
6 contain all historical software licenses for lost customers, including legacy PeopleSoft and JDE
7 customers who left before Oracle acquired PeopleSoft. Oracle has also produced OKI3 summary
8 reports by customer which include any support contracts that were active as of October 1, 2004.
9 Finally, Oracle has produced Analytics Contracts reports which are essentially a subset of the
10 information on the OKI3 reports. Oracle has not produced summary OKI3 reports with pre-2005
11 data only in cases where the customer was not active at the time of the PeopleSoft acquisition
12 (*i.e.*, it had already left for TN), because in that situation there is no legacy PeopleSoft system up
13 and running from which such reports can be produced. As Oracle has explained to Defendants in
14 meet and confer, and as Oracle witnesses have attested, PeopleSoft and JDE legacy contract data
15 was not migrated to Oracle's current systems and thus there is no comparable automatic searching
16 or querying ability such as was used to create the summary reports for active customers. Thus,
17 locating historic pre-2005 customer-specific information on the system would require individual,
18 manual searching and sorting, made all the more difficult by the inexact naming and numbering
19 of associated customers. Indeed, it is the matching of customer names and identification numbers
20 to contracts and report fields that has proven the most time consuming part of the specific
21 customer damages efforts. To obtain the legacy data for any given customer, Oracle would have
22 to upload and then access the legacy system, spend unknown hours researching that customer
23 (and its associated alternative names, numbers, and locations), assess which material found (if
24 any) is material and relevant to the actual customer at issue, and then take any found data and
25 either manually transcribe it to a piece of paper or enter it into a different computer system for
26 production.

27 Second, and critically, even without summary reports it is possible to calculate damages
28 for the pre-2005 period (or for any period). That is because the customer's historic contracts

1 contain the necessary information to calculate those damages. Indeed, summary reports are no
2 more than convenient compilations of the underlying contract data; however, they are not
3 necessary to doing the calculations. Indeed, Oracle's damages experts are cross-checking the
4 Oracle summary reports where they have been automatically available and produced against the
5 underlying contracts Oracle produced even for more current customers (as well as against the TN
6 contracts Defendants produced and the customer's records produced pursuant to subpoenas) to
7 validate damages calculations. This is exactly what Defendants' experts are doing, per recent
8 declarations. So there is no established need for customer reports run from legacy data that would
9 justify the significant burden on Oracle in trying to reactive retired systems to create them.

10 *Legacy Cancellation Reports.* Oracle has produced numerous pre-existing legacy
11 PeopleSoft and JDE service renewal and cancellation reports when found in custodial productions,
12 which Defendants have used extensively as deposition exhibits. These historic reports do not
13 exist in any centralized repository. The underlying legacy database from which those legacy
14 PeopleSoft reports were run does not now have reporting functionality. Thus, there is not an
15 active system from which legacy PeopleSoft or JDE cancellation reports can currently be run, as
16 Oracle witnesses have also attested.

17 ***

18 Defendants have never disputed the associated burden with their request for duplicative
19 legacy data. Because this data is neither necessary nor reasonably accessible, Oracle believes
20 both Parties should rely on Oracle's and Defendants' customer contracts, financial reports, and
21 cancellation reports, as Oracle has done. Defendants have yet to explain why this is an
22 inadequate solution or what exactly they are missing. However, Oracle will continue to meet and
23 confer with Defendants on this issue.

24 *Oracle's Objections to Providing 30(b)(6) Testimony on Legacy PS or JDE Records.*
25 Defendants first complained about Oracle's objections to Defendants' Rule 30(b)(6) notice to
26 Oracle USA, Inc on August 13, and no meet and confer has yet occurred. Oracle objected to
27 providing Rule 30(b)(6) testimony on pre-2005 PeopleSoft and JDE financial records, pricing
28 policies, and support policies because documents, not memories of individual witnesses, explain

these years of pricing and policies far better. Moreover, Defendants have taken extensive individual testimony on these topics, from current Oracle employees who were legacy PeopleSoft and/or JDE employees. These include Rick Cummins, Robbin Henslee, Buffy Ransom, and Beth Shippy. In its objections to Defendants' Third 30(b)(6) notice to Oracle USA, Inc., Oracle expressly pointed Defendants to that testimony, as well as to the extensive documents Oracle has produced from those custodians on those topics. In their August 13 letter, Defendants indicate they will accept designations of testimony from these witnesses as to Siebel, if applicable, and also agree to accept Bates-numbers in lieu of testimony for certain topics such as pricing terms and increases. Oracle will meet and confer with Defendants as requested in their August 13 letter to see what, if anything, the individual witnesses did not attest to as to PeopleSoft and JDE pricing and policies that is not otherwise contained in documents and whether anyone else in Oracle's current employ would know more.

III. Deposition Dates and Witnesses

Oracle's Position: Oracle is concerned about the pace at which Defendants provide deposition dates, as well as the timing of the dates themselves. Below is a chart summarizing when Oracle requested a date for certain outstanding witnesses, when Defendants responded, and with what date.

Witness	Date Requested	Date of Response Offering Dates	Date Offered/Set
Scott Trainor	June 15	June 23, then cancelled by Defendants on July 21.	Set for July 23; cancelled by Defendants on July 21 without explanation; no new date offered yet.
Werner Brandt	June 15	NONE	NONE
Desmond Harris	July 6	NONE	NONE
Laura Sweetman	July 6	NONE	NONE

As the chart shows, although Oracle requested these witnesses in June or early July (and Defendants agreed in April to provide additional deposition time with Mr. Brandt), Defendants have failed to offer dates. While it is true that both Parties have many discovery obligations – since April, Oracle has responded or supplemented its responses to 122 interrogatories, produced 51 custodians' documents (comprising 5.5 GB of data) and 533 CDs of software, defended 17

1 depositions of Oracle witnesses, and scheduled 11 more – Defendants’ delay in providing dates is
2 impacting Oracle’s ability to complete these depositions by the close of fact discovery and in time
3 for their inclusion in expert reports. In particular, Oracle was surprised when Defendants
4 unilaterally, and without explanation, cancelled Scott Trainor’s deposition two days before it was
5 to take place. Mr. Trainor, a former PeopleSoft attorney now working for SAP’s legal
6 department, is a crucial witness, and the last-minute cancellation (and subsequent failure to offer
7 new dates) is troubling. So too is Defendants’ position – told to Oracle for the first time last week
8 – that key Board member and CFO Werner Brandt will not testify until November, perhaps less
9 than a week before Oracle’s damages report is due. Oracle asks for the Court to order Defendants
10 to offer September dates for these witnesses; if Defendants are unable to provide September dates
11 for Ms. Sweetman, Oracle asks that they agree that her deposition take place shortly before or
12 after Gerd Oswald’s October 27 deposition in London, to alleviate both Parties’ travel burdens.

13 Defendants’ recitation, below, about witnesses they requested on May 13 is inaccurate in
14 two respects. First, one of the two dates offered on July 7 was an alternate date for one witness,
15 for whom Oracle had already offered a far earlier date that Defendants had rejected. Second, as
16 Defendants know, the lone witness for whom Oracle has not offered a date is a former Oracle
17 employee who resides in Germany. Oracle suggested to Defendants that the Parties consolidate
18 their travels by scheduling all German depositions together; therefore, Oracle will encourage its
19 former employee to agree to appear for his deposition once Defendants provide a date and
20 location for Mr. Brandt’s deposition. Since Defendants forced Oracle to reschedule certain
21 customer depositions last May because of Defendants’ counsel’s schedule, Defendants must
22 understand the need for cooperation.

23 As for customer depositions, which Defendants refer to below, Oracle has promptly
24 cooperated when Defendants have provided potential dates for such depositions in the past and
25 will continue to do so. Despite Oracle’s requests, Defendants have not yet told Oracle which
26 customers, in which locations, they intend to notice for deposition, which impacts Oracle’s ability
27 to confirm its counsel’s availability.
28

Defendants' Position: As noted in Oracle's chart above, Defendants have offered dates for all but four requested witnesses: Laura Sweetman, Desmond Harris, Scott Trainor and Werner Brandt. Ms. Sweetman, a former TN executive, is a resident of England and has engaged her own counsel. Defendants have been in communication with Ms. Sweetman's counsel on several occasions and before the discovery conference hope to provide additional information to Oracle regarding Ms. Sweetman's response to Oracle request to depose her. Mr. Harris is a former TN employee that is not currently represented by outside counsel. Defendants have been unable to contact him by phone or otherwise. Defendants are continuing their efforts to contact him (including having sent him a certified letter indicating that if he does not return Defendants' counsel's calls, then Oracle will subpoena him directly) and hope to be able to provide additional information to Oracle regarding Mr. Harris before the discovery conference. Scott Trainor is an in-house lawyer at SAP and former in-house lawyer at PeopleSoft. His deposition was originally scheduled and then cancelled for reasons that implicate the attorney-client privilege. Defendants advised Oracle of that fact. Mr. Trainor now has separate counsel and Defendants are working with Mr. Trainor and his counsel to select a mutually convenient date on which to reschedule his deposition and hope to provide proposed dates to Oracle before the discovery conference. Mr. Brandt is the CFO and an executive board member of SAP, AG and has already been deposed once in this case. Defendants agreed to collect additional custodian documents from Mr. Brandt in Germany and allow Oracle to depose Mr. Brandt again on the Siebel claims. Defendants informed Plaintiffs that due to the additional document collection, which is necessarily complicated by German privacy laws, the volume of the data, the "21-day agreement" (there must be at least 21 days between a custodian's document production and that custodian's deposition), and Mr. Brandt's quarter-end obligations as CFO, Mr. Brandt is not available for deposition until early November. Defendants hope to provide a definitive date and location for Mr. Brandt's deposition prior to the discovery conference.

Defendants have been cooperative in scheduling depositions. For example, when Oracle has requested earlier dates that were workable for the witness and all counsel, Defendants have complied with Oracle's requests. Moreover, what Oracle's chart does not show is that Oracle has

1 taken a similar length of time to offer deposition dates in response to Defendants' requests and
 2 has required similar lead times. For example, on May 13 Defendants requested dates for eight
 3 witnesses. On June 18 and 19, Oracle responded with dates in July, August, and September for
 4 four witnesses; on July 7, Oracle responded with dates in August and September for two other
 5 witnesses; on August 17, Oracle responded with a date in mid-October for one witness; and
 6 Oracle has yet to provide dates for the remaining witness.

7 Also, Defendants have a significant number of deposition hours remaining and intend to
 8 use many of those hours deposing certain TN customers. Defendants have proposed dates in
 9 September for two customer depositions and are waiting for Oracle's response. Defendants have
 10 advised Oracle that Defendants intend to take numerous customer depositions between now and
 11 the close of fact discovery and thus need Oracle's ongoing cooperation in getting those dates
 12 scheduled. If the Court offers any guidance at the discovery conference regarding deposition
 13 scheduling, then the TN customer depositions should be taken into account.

14 **IV. Updating Interrogatory Responses with Siebel Information**

15 ***Oracle's Position:*** As part of the Parties' joint stipulation to amend the case schedule,
 16 which Judge Hamilton signed on June 11, the Parties agreed that "each side may identify 20
 17 interrogatory responses that it would like updated in scope consistent with the additional Siebel
 18 discovery permitted or required elsewhere in this Order." Docket Item 325 at 6:21-24. This
 19 provision was necessary to ensure the Parties had sufficient written discovery regarding Siebel,
 20 given the fact that both Parties had already used most of their available interrogatories. (The
 21 stipulation did not impose any limitation on how the Parties could use those remaining
 22 interrogatories.) For example, the stipulation and order's explicit reference to *updated* responses
 23 indicates that the Parties were referring to extant interrogatories, to which Oracle or Defendants
 24 had already responded, though without Siebel-related information. Based on this understanding,
 25 when selecting its 20 interrogatory responses for Defendants to update, Oracle did not include
 26 interrogatories from its Fourth Set,¹ as it was not served until May 20, after the Parties had

27 ¹ Prior to and independent of the Parties' stipulation to amend the case schedule, each side
 28 was entitled to serve 125 interrogatories. Oracle's Fourth Set drew from this number.
 Defendants have served all 125 interrogatories.

1 already submitted their stipulation to Judge Hamilton. The Parties could not have believed during
2 negotiations that the 20 updated interrogatories would be drawn from a set not yet served, and the
3 stipulation did not purport to set out all the Siebel discovery available to the Parties. Nor is
4 Defendants' position, below, that Siebel was not part of the case until August 14 supported by the
5 facts. Defendants stipulated to Siebel's inclusion on May 12, and Judge Hamilton made clear on
6 May 28 that she would confirm that stipulation, as reflected in her June 11 order. Moreover,
7 Defendants asked Oracle witnesses about Siebel as early as their second deposition, in August
8 2008 (because Oracle had referred to Siebel as early as the Second Amended Complaint).

9 Oracle was therefore surprised when Defendants' eventual responses to the Fourth Set
10 refused to provide Siebel-related information where appropriate, contending that Oracle is limited
11 to 20 total interrogatories relating to Siebel in total – despite not having been served, much less
12 answered, when the Parties agreed to *update* 20 existing interrogatory *answers*.

13 To preserve its rights, on August 12, Oracle provided a revised list of 20 interrogatories to
14 Defendants. However, it believes Defendants are obligated to answer all interrogatories from the
15 Fourth Set, as well as any subsequently-served interrogatories, with Siebel-related information
16 where appropriate. Oracle believes this is a matter the Court can resolve without motion practice.
17 If Defendants must answer the newly-served interrogatories with Siebel-related information, on
18 which Oracle believes no limitation was imposed by the stipulation, then the Court can give that
19 guidance. Alternatively, if the Court agrees with Defendants' interpretation, then Oracle requests
20 leave to withdraw and reserve the interrogatories in question.

21 Regarding the Siebel Rule 30(b)(6) testimony referred to below by Defendants, Oracle has
22 not refused to produce a witness on any reasonable line of inquiry. Defendants noticed Oracle
23 witnesses for 131 sub-topics. Oracle objected to 61, generally on the same grounds it had
24 objected to their PeopleSoft and JDE predecessors and, as to 49 of those 61, because the sub-
25 topics were not relevant to Siebel. It then agreed to provide a witness as to 30, designated
26 existing applicable testimony as to another 27, and offered other responsive information as to 13
27 after meet and confer. It is in these 13 where Oracle suggested another form of production would
28 be appropriate given the number of Siebel customers involved.

Defendants' Position: Defendants disagree with Oracle's construction of the parties' agreement and Judge Hamilton's resulting June 11th Order relating to interrogatory discovery for Siebel. One primary purpose of the parties' agreement to permit Oracle to add Siebel into the case was to define the extent of discovery and resulting burdens regarding that new issue. Moreover, Oracle's position regarding this interrogatory issue is at odds with Oracle's refusal to provide Siebel Rule 30(b)(6) testimony on a number of topics on the ground that there are only 16 customers at issue therefore extensive discovery is not warranted. In other words, Oracle is simultaneously asserting that the discovery it seeks regarding Siebel should be unlimited and the discovery it has to provide to Defendants regarding Siebel should be restricted.

The interrogatories Oracle served on May 20th were no different than those previously served in that Defendants responded to them referencing the product lines that were at issue in the case **at the time the response was due**. The Siebel products were not formally at issue in this case until Friday August 14, 2009, when Judge Hamilton granted Oracle's motion to amend its complaint. Thus, the interrogatories served on May 20th are no different than those Oracle previously served. Defendants agree that if the parties are unable to reach an appropriate compromise before the discovery conference, then this is an issue that can be resolved during the conference without the need for motion practice.

V. Admissibility of TN-Authored SAS Records

Oracle's Position: As discussed at the August 4 hearing on Oracle's motion to compel, and as the Court is generally aware, Defendants have repeatedly, and heavily, relied on the SAS database for their responses to interrogatories and requests for production. Unlike substantive discovery responses, this reliance on SAS may not provide Oracle with presumptively admissible evidence. Given the breadth and frequency of Defendants' reliance on SAS, Oracle believes it is therefore appropriate for the Parties to stipulate that all TN-authored documents and statements, and all TN-authored data regarding environments, downloads, and TN's service process in general, contained in SAS, are admissible at trial. Without such a stipulation, Oracle will be unfairly prejudiced by Defendants' choice to rely on SAS in their discovery responses. Further, such a stipulation is to Defendants' advantage as well, since they presumably agree that the TN-

1 authored documents in SAS are authentic and admissible, given their frequent reliance on them in
 2 lieu of narrative interrogatory responses, and intend to make use of the same documents
 3 themselves at trial.

4 At the August 4 hearing, the Court stated, “I do think to the extent this was about
 5 admissibility, I think you ought to address that directly by stipulation.” Exhibit F (Transcript of
 6 August 4 Hearing) at 59:3-5. Oracle will provide Defendants with a proposed stipulation during
 7 the week of August 17 and will be prepared to discuss it with the Court at the August 25
 8 Discovery Conference.

9 ***Defendants’ Position:*** As Defendants’ counsel has previously indicated to the Court,
 10 Defendants are willing to consider any reasonable proposal by Oracle in this regard and will
 11 respond accordingly when and if it is received. Regardless, it is important to note that Oracle’s
 12 statement above discusses a unilateral stipulation regarding the authenticity and/or admissibility
 13 of certain of Defendants’ documents. To the extent that any agreement is reached regarding
 14 authenticity and/or admissibility in this case, that agreement should be bilateral and consider
 15 certain of Oracle’s documents as well.

16 **VI. Oracle’s Compliance with Order on Defendants’ Copyright Motion to**
 17 **Compel**

18 ***Defendants’ Position:*** It has been two months since the Court’s June 26 order on
 19 Defendants’ copyright motion to compel and Oracle still has not provided the supplemental
 20 interrogatory response the Court ordered regarding derivative Registered Works. Defendants
 21 request that the Court specify a date certain that, given the limited time left for discovery, allows
 22 Defendants sufficient time for analysis and follow-up discovery. It is important to note that
 23 Oracle has produced additional inter-entity agreements after its June 29 certification (pursuant to
 24 this Court’s order) that it had produced “all inter-Oracle entity agreements relating to the
 25 acquisition, assignment, or transfer of the Registered Works located after a diligent search of all
 26 locations at which such materials might plausibly exist.” Oracle has characterized the additional
 27 agreements it produced after its certification as not being subject to the June 26th order.
 28 Defendants disagree that the additional agreements, which include assignment and distribution

1 agreements among Oracle entities similar to those produced previously, are not subject to the
2 order. One of the purposes of the motion and resulting order was to provide certainty as to the
3 universe of applicable agreements. Oracle's continuing production of agreements defeats that
4 purpose. Moreover, now that Judge Hamilton has permitted Oracle to include additional
5 copyright registrations in this case, Oracle should be given a date certain to produce all
6 responsive documents related to those new registrations.

7 As another example of Oracle's delayed production of documents and information ordered
8 produced by this Court, Oracle has during the past week also produced additional customer-
9 specific financial reports for more than 50 customers after representing in May that its "April 21,
10 2009 supplemental production of financial reports [pursuant to this Court's April 2 order]
11 included any and all financial reports that could be located in reasonably available databases after
12 an extensive customer-by-customer search." Oracle has indicated that it is continuing to
13 investigate whether there are additional reports that should have been produced as well.
14 Defendants contend that this investigation should have been completed and the supplemental
15 productions made a long time ago. Defendants thus request that the Court set a date certain for
16 Oracle to produce any such reports.

17 With regard to Oracle's statements on Defendants' production of customer-specific
18 reports: (a) Defendants have already produced customer-specific financial reports for all TN
19 customers for which such reports exist, including the Siebel customers recently added to the list;
20 (b) Defendants have responded to Oracle's August 18 inquiry regarding contracts for six TN
21 customers indicating that contracts for three of them were produced several months ago and that
22 no contracts exist for the remaining three; and (c) Defendants' customer-specific reports are
23 largely pre-existing documents -- to the extent any of them are "unreliable," it is a reflection of
24 the available data and not due to any failure by Defendants to supplement.

25 ***Oracle's Position:*** Defendants here combine two unrelated issues. First, as to the
26 interrogatory response, the Parties and the Court agreed and understood that supplementing
27 Interrogatory No. 13 per the Court's June 26 order would take a significant amount of time (the
28 newly-added part of that response will be approximately 70 pages). That is why, before even

1 issuing that order, the Court ordered the Parties to meet and confer with respect to Oracle's
2 burden, and is also why the order currently contains no date certain. Oracle has been working
3 diligently to collect, organize, and verify this information to be able to supplement its response
4 appropriately, and for PeopleSoft and JDE, expects to do so prior to the August 25 Discovery
5 Conference. For Siebel and Oracle's database products (the latter of which Judge Hamilton
6 allowed to be added to Oracle's complaint on August 14, 2009), Oracle is working similarly
7 diligently and will further supplement its response as soon as possible, and in particular, the
8 Parties have agreed that supplementation of prior interrogatories related to Siebel should occur by
9 September 18 and Oracle will meet that deadline. Regardless, Defendants will have these
10 responses with more than ample time for sufficient analysis and follow-up discovery, the need for
11 which they do not attempt to quantify. Oracle has proposed a limited amount of additional
12 discovery for both sides in connection with the database claims, but have not received a response
13 yet regarding that proposal. If necessary, Oracle will seek appropriate relief from Judge Hamilton
14 or this Court.

15 As to the June 26 Order, it specifically is limited to the inter-entity agreements "relating to
16 the acquisition, assignment, or transfer of the Registered Works...." Docket Item 328, ¶ 3.
17 Defendants now imply, but stop short of claiming, that the further inter-entity productions have
18 related to "the acquisition, assignment, or transfer of the Registered Works." The further inter-
19 entity agreements did not relate to "the acquisition, assignment, or transfer of the Registered
20 Works," and Oracle's certification stands, subject to the inter-entity agreements related to the new
21 amendments. They also say now for the first time that the intent of their copyright motion (as to
22 which the June 26 Order related) was to receive "the universe of applicable agreements." That
23 claim contradicts the language of the June 26 Order itself. Further, not only is that new request
24 vague and overbroad as to what Oracle would be forced to produce in response, but it also fails to
25 take into account the ongoing discovery about the applicable agreements, including ongoing
26 production of Siebel and Database-related agreements.

27 Second, as to Oracle's production of customer-specific financial reports, although that
28 production is essentially complete, under Rule 26(e) Oracle is obligated to and does supplement

its discovery responses if it learns new relevant information. Last week's production was such a supplement. Corporate affiliations are not always readily apparent when running such reports. The Parties have been supplementing when such affiliations are identified, often through a manual review and comparison of documents produced by both Parties. For example, in searching for the corporate history of relevant customer Foot Locker during the pertinent time period, Oracle learned that the entity Venator Group became Foot Locker, and accordingly went back to review, collect, and produce Venator Group's OKI3 report. Both Parties are obligated to make such supplements of their discovery responses, and Defendants have done so as well as Oracle. For example, Oracle believes Defendants should supplement their own customer-specific financial reports, as Defendants have described those reports as "not reliable" and have not produced updated versions since last amending their list of customers. As another example, on August 18, Oracle pointed out six TN customers for whom Defendants have not produced customer contracts, which Defendants should provide in a supplemental production.

Given its obligations under Rule 26(e) and its need for Defendants' changing customer information to evaluate its own production, Oracle cannot predict when, if at all, it will learn new information that will require supplementation of its discovery responses. It will continue to timely meet its obligations and expects Defendants to do the same.

VII. Supervisory Board Documents

Oracle's Position: At his June 2, 2009 deposition, Hasso Plattner, Chairman of the SAP AG Supervisory Board, referenced two documents that are responsive to Oracle's document requests but have not been produced by Defendants. First, Mr. Plattner described a Supervisory Board meeting, at which the SAP AG Executive Board presented the TN acquisition opportunity to the Supervisory Board and at which Mr. Plattner asked the Executive Board if TN was "supported by a legal framework" and "whether [TN] has the right to access source code." Exhibit E at 17:25-18:11 (Plattner Depo.). This meeting therefore involved topics plainly relevant to the case, but Defendants did not produce any corresponding Supervisory Board meeting minutes from it. Second, Mr. Plattner testified that a one-page TN report was presented

1 at the same Supervisory Board meeting. This document also does not appear in Defendants'
2 production. *Id.* at 13:1-7; 73:2-74:3; 75:23-76:9.

3 Oracle inquired about these documents soon after Mr. Plattner's deposition, but
4 Defendants stated that they were unable to locate any such documents. However, after reviewing
5 the transcript for accuracy, Mr. Plattner did not change his testimony. This creates a discrepancy
6 between the Chairman's sworn testimony and the documents collected by Defendants, which
7 Defendants have been unable to explain in meet and confer. Oracle requests that Defendants be
8 required either to conduct a more exhaustive search, or provide a detailed description of why they
9 are unable to produce documents their Chairman has said existed and that he reviewed and
10 believed were still available. Since Defendants, below, do not claim that any such documents are
11 archived or otherwise inaccessible, such a description should state that the documents referenced
12 by Mr. Plattner have been lost or destroyed, if that is the case. Whether through further
13 investigation or description, Oracle needs confirmation that Defendants' counsel have discussed
14 the matter directly with Mr. Plattner as part of the effort to locate these critical documents; a
15 statement from a custodian of the minutes, as offered by Defendants below, is insufficient without
16 certification that Mr. Plattner has been directly consulted.

17 ***Defendants' Position:*** Defendants have already informed Oracle that Defendants have
18 attempted to determine whether the document(s) noted above ever existed, and have been unable
19 to make that determination and/or locate such document(s). If necessary, Defendants are willing
20 to produce a declaration from one of the custodians of the Supervisory Board meeting minutes
21 indicating that a reasonable search has been made and that the above-cited document(s)
22 referenced in Mr. Plattner's testimony, to the extent they ever existed, have not been located.
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28

1 DATED: August 19, 2009

BINGHAM McCUTCHEN LLP

2
3
4 By: /s/ Bree Hann
5 Bree Hann
6 Attorneys for Plaintiffs
7 Oracle USA, Inc., Oracle International
8 Corporation, and Oracle EMEA Limited

9 In accordance with General Order No. 45, Rule X, the above signatory attests that
10 concurrence in the filing of this document has been obtained from the signatory below.

11 DATED: August 19, 2009

JONES DAY

12 By: /s/
13 Jason McDonell
14 Attorneys for Defendants
15 SAP AG, SAP AMERICA, INC., and
16 TOMORROWNOW, INC.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
MAGISTRATE JUDGE ELIZABETH D. LAPORTE

ORACLE CORPORATION, a Delaware)	Case No. C07-1658
Corporation; ORACLE, USA, INC.,)	PJH(EDL)
a Colorado Corporation; and)	
ORACLE INTERNATIONAL)	
CORPORATION, a California)	
Corporation,)	
)	
Plaintiffs,)	
)	
vs.)	FURTHER DISCOVERY
)	CONFERENCE
)	
SAP AG, a German Corporation;)	
SAP AMERICA, INC., a Delaware)	
CORPORATION; TOMORROWNOW, INC.,)	
a Texas Corporation; and DOES)	
1-50, Inclusive,)	
)	
Defendants.)	
)	

November 25, 2008

TRANSCRIPT OF AUDIO RECORDING OF DISCOVERY CONFERENCE

TRANSCRIBED BY: FREDDIE REPPOND

1 one side --

2 THE COURT: Or it's sort of like -- I guess --
3 you know we could go the RFA route. I mean that's
4 another thing, but I don't want to get into, you know,
5 all of that. I think that would be less cooperative.
6 I'd prefer to --

7 MR. PICKETT: This has been going on since
8 June, so we're now facing almost its six-month
9 anniversary; and I don't want it to have a seventh- or
10 eighth-month anniversary. I think this is something
11 we've got to resolve one way or the other. If we can't,
12 it has big impact on discovery, because we've been
13 hoping to get beyond this. Then we need to go back and
14 say there are far many more custodians that we're going
15 to need production from. We may need to go to Judge
16 Hamilton to get -- and you don't want to go down that
17 road.

18 THE COURT: Right. Well -- and to some extent
19 that's always been, I think, the incentive for the
20 Defendants to stipulate; that is to say the alternative
21 is to spend a huge amount more money and time on
22 unearthing every fact.

23 MR. COWAN: That is in part, Your Honor, the
24 quid pro quo. One issue that -- I don't think that
25 Mr. Pickett's suggestion is a bad one in terms of

1 suffer.

2 MR. COWAN: We're mindful of that, Your Honor.
3 And that's why we went through the things we did to tell
4 them what the problems were in writing so they can look
5 at that and --

6 THE COURT: Now, without having seen them --

7 [CROSS-TALK]

8 MR. PICKETT: I don't think it's ripe to
9 present you this, but it's going to be ripe soon,
10 because I think we need to resolve this before long.

11 THE COURT: I think -- I think you'll have to
12 discuss, too, which judge you think you should deal
13 with.

14 MR. PICKETT: I'm agnostic.

15 THE COURT: Yeah. If it's a process issue,
16 it's one thing. I thought it was going to be more along
17 the lines of sort of sampling and experts and so on, but
18 you're talking now something different. And so it may
19 be less than what I was having in mind. It's still a
20 good idea. I just --

21 MR. PICKETT: It would be great to achieve if
22 we could.

23 I hesitate -- well, let me try -- this may not
24 be useful or not or it may be. One example of a problem
25 is we say that -- we cite this testimony. We say this

1 is the way it was done for each -- we use the word
2 "critical support" -- basically for each copy that was
3 made this is how --

4 THE COURT: Each what?

5 MR. PICKETT: Each copy that was made.

6 And one of their objections is, Well, we can't
7 say "each" because we may want to put in evidence that
8 it wasn't done for this particular copy or application.
9 But that seems to me to kind of --

10 [CROSS-TALK]

11 THE COURT: Could the answer be the vast
12 majority?

13 MR. COWAN: I think the answer --

14 THE COURT: In other words --

15 MR. PICKETT: If we don't have access --

16 THE COURT: Yeah. But I mean if it's -- I
17 don't know what to say, but if -- well -- you can't --
18 if you haven't produced the counter example, obviously I
19 don't see how you could put it in evidence --

20 MR. COWAN: And that's part of why we've been
21 very vociferous in our response is to try to guide them
22 to what our issues are to where we could -- you can
23 either define something by what it is or by what it's
24 not, right? And I think having an umbrella that covers
25 everything when we know going into it no, no, there's

1 some instances where that is not --

2 THE COURT: Okay. So why don't you give them
3 the examples of instances where it's not the case and
4 then you arrive either at something that's truly
5 quantitative, you know, 95 percent of the time or
6 60 percent of the time; or you arrive at some words of
7 qualitative; and I don't know if that would be
8 satisfactory. But I'll bet you for a jury it is, like
9 the "vast majority" or "most," "more than half," you
10 know, "at least 75 percent" -- I mean you know juries
11 don't cut it that finely, if even that finely, you know.

12 MR. PICKETT: Okay. That's actually helpful.

13 MR. COWAN: Correct.

14 MR. PICKETT: All right.

15 MR. COWAN: Thank you, Your Honor.

16 The next -- the next point is just an FYI for
17 you that we included on here is that the Oracle filed a
18 third amended complaint. We filed a motion to dismiss;
19 and Judge Hamilton is hearing that tomorrow. So that's
20 that point.

21 THE COURT: Is that sort of expanding the
22 case? Is that what's at issue?

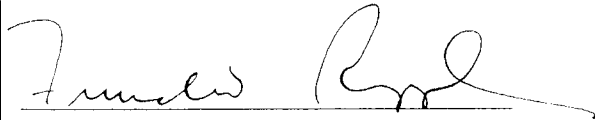
23 MR. COWAN: It's our attempt to address what
24 we believe are the deficiencies in their copyright
25 claim; and so it's --

1 STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

2
3 CERTIFICATE OF REPORTER/TRANSCRIBER

4 I, the undersigned, a Shorthand Reporter and
5 licensed Notary Public, do hereby certify that the above
6 referenced recording was transcribed by me and that this
7 transcript is a true record of that recording.

8 IN WITNESS WHEREOF I have hereunto set my hand
9 on this 9th of December, 2008.

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12 FREDDIE REPPOND
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EXHIBIT B

**DOCUMENT SUBMITTED
UNDER SEAL**

EXHIBIT C

PROCEEDINGS February 13, 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
MAGISTRATE JUDGE ELIZABETH D. LAPORTE

ORACLE CORPORATION, a Delaware)	Case No. C07-1658
Corporation; ORACLE, USA, INC.,)	PJH (EDL)
a Colorado corporation; and)	
ORACLE INTERNATIONAL)	
CORPORATION, a California)	
corporation,)	
)	
Plaintiffs,)	
)	
vs.)	FURTHER DISCOVERY
)	CONFERENCE
)	
SAP AG, a German corporation;)	
SAP AMERICA, INC., a Delaware)	
corporation; TOMORROWNOW, INC.,)	
a Texas corporation; and DOES)	
1-50, Inclusive,)	
)	
Defendants.)	
)	

February 13, 2009

TRANSCRIPT OF AUDIO RECORDING

TRANSCRIBED BY: FREDDIE REPPOND

1 MR. HOWARD: Yes.

2 THE COURT: Okay. And so anything I did was
3 not a quid pro quo for that. And if those are going to
4 change, which would have to be up to her -- and I would
5 be surprised if she would change them, but, you know.
6 So I do, you know, I continue to feel that the Rule 1
7 considerations of just expedient and expensive caution
8 for some kind of stipulation. And I don't -- but, you
9 know, by its nature I can't force a stipulation. That
10 would be an oxymoron. So -- but I certainly think it
11 would make sense, you know -- and it looked like the
12 kinds of things the Plaintiff was proposing in general
13 made some sense.

14 MR. COWAN: And I think, Your Honor, maybe it
15 helps to use your analogy. And we've talked -- every
16 time we talk this issue I raise the point that we have
17 to know more information about how they're going to use
18 the stipulation.

19 THE COURT: And I guess I find that puzzling,
20 to tell you the truth, because I tend to view it -- when
21 the Plaintiffs say stipulation, I have trials where they
22 are stipulated facts and you can use them any way you
23 want, because by the virtue of they're stipulated
24 they're true. So I'm not sure -- I really don't
25 understand what is the concern. Maybe if I

1 understood -- I mean, obviously, you know, nobody wants
2 them to be distorted, but that's why you word them
3 carefully.

4 MR. COWAN: Right. And let me give you an
5 example; and it's bit of an obtuse analogy, but I think
6 it's one that will help prove the point.

7 When I come to this hearing, every time we're
8 here I usually come by taxi. Sometimes on occasion I
9 have walked. Rarely. Sometimes I've driven a rental
10 car. And for some purposes I might be willing to
11 stipulate every time I go to a discovery conference in
12 front of Judge LaPorte, I ride the taxi, every time;
13 because it really doesn't matter; that's not that
14 material. But if someone was going to retrospectively
15 charge me a thousand dollars for that taxi trip, I
16 would want to get that agreement of what I'm
17 stipulating to with much more precision. And the big
18 dilemma my client faces is for some things summarizing
19 the facts in the form of a stipulation may work --

20 THE COURT: Well, I assume that what you're
21 worried about is damages.

22 MR. COWAN: Absolutely. That's our focus.
23 And if we cannot understand how Plaintiffs are going to
24 take these stipulations and fold them into their damage
25 model, I don't think we'll ever get there. And I've

1 told --

2 THE COURT: But to me that just -- I mean
3 these are -- to me then what you would have to do is
4 stipulate, instead of -- that's sort of again coming
5 back to a more statistical or probablistic approach that
6 I would think serve both of you is if you think that
7 it's generally true but maybe five percent of the time
8 it wasn't, then you stipulate that ninety-five percent
9 of the time or to some -- you know, that kind of
10 adjustment -- you know, a plus or minus factor or an
11 uncertainty or something analogous to that, rather than,
12 you know -- what I think Judge Hamilton -- she's not
13 going to give you so many trial hours that you can go
14 through the exceptions to stuff anyway. In the end you
15 won't be able to do that, either one of you.

16 MR. HOWARD: That's exactly why this is so
17 critical and otherwise. I mean this is a little crazy
18 that for eight months we've been, you know, supposedly
19 we're working in good faith on a stipulation but now we
20 can't agree to facts that we all know are true because
21 of damages.

22 THE COURT: Well --

23 MR. HOWARD: We can't put on our liability
24 case because of damages.

25 THE COURT: All right. Well, I think that

1 what you have to do is -- if, for example, what you're
2 saying is you are aware, to use your analogy, that
3 ninety-five percent of the time you use the taxi. But,
4 you know, if it really came down to whether you had to
5 go in front of Congress and say you paid for that
6 borrowed limousine, et cetera, with the other five
7 percent, you would really need to know, you know -- and
8 then you may need to be willing to compromise and not go
9 for a hundred percent, even though you think it's a
10 hundred percent but there might have been, you know,
11 exceptions and --

12 MR. HOWARD: Your Honor, if I may. The
13 example being used is not one of the three obstacles
14 that have been identified in the statement. We have
15 compromised on that one. We started with each. We've
16 moved to, in many -- in most cases we've moved to
17 generally speaking, taking your guidance from the last
18 hearing. These are the three obstacles starting with
19 the last one first, which is damages.

20 They won't stipulate to liability facts
21 unless there are constraints on our ability to use them
22 on damages. We will not agree to that. And we don't
23 think we should be prevented from putting on our
24 liability case because of their concern over damages.
25 Everyone does what they're going to do on damages. So

1 If you're asking me to increase the number of deposition
2 hours, I can't do that. Would you have a better case in
3 front of Judge Hamilton for increasing the deposition
4 hours if they're not willing to follow a suggestion that
5 I've made for eight months, and I -- it's not a unique
6 suggestion. All of our standing orders, as far as I
7 know, say the parties are supposed to stipulate in the
8 pretrial order to as many undisputed facts as possible.

9 MR. COWAN: That's the point.

10 THE COURT: And, you know, I think it's a
11 valid thing to the extent you are afraid justifiably of
12 stipulating that something was done a hundred percent of
13 the time because you haven't chased everything down and
14 everybody knows that rarely is anything done a hundred
15 percent of the time, even when it's supposed to be,
16 right. So I think that, you know, makes sense if you --
17 and you're saying you're doing that. And to have it
18 most of the time or ninety percent of the time or that
19 sort of thing, that makes sense to me. But I can't, you
20 know, force anyone to stipulate.

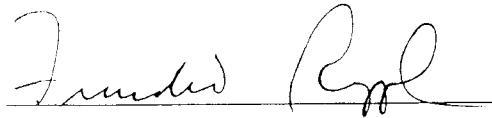
21 Now, it does strike me that if there's a
22 difference somehow between what was done before the
23 lawsuit and what since, you know, maybe it's easier to
24 stipulate to certain time periods than later time
25 periods. And any degree of stipulation helps. I

1 STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

2
3 CERTIFICATE OF REPORTER/TRANSCRIBER

4 I, the undersigned, a Shorthand Reporter and
5 licensed Notary Public, do hereby certify that the above
6 referenced recording was transcribed by me and that this
7 transcript is a true record of that recording.

8 IN WITNESS WHEREOF I have hereunto set my hand
9 on this 19 of February . 2009.

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12 FREDDIE REPPOND
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EXHIBIT D

CATHERINE LEE HYDE April 1, 2008

HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, ET AL, *
Plaintiffs, *
VS. * CASE NO. 07-CV-01658 (MJJ)
SAP AG, ET AL, *
Defendants. *

HIGHLY CONFIDENTIAL
ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF
CATHERINE LEE HYDE
APRIL 1, 2008

REPORTED BY:
CAROL JENKINS, CSR, RPR, CRR
CERTIFICATE NO. 2660

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Q. So you create HG75103C using some customer

17:39:33 17

software. Some college students download from Customer

17:39:42 18

Connection updates for HG751, and -- and you apply those

17:39:46 19

to fix master the environment?

17:39:49 20

A. Payroll fixes, yes.

17:39:54 21

Q. Then how is that -- then how is that

17:39:58 22

environment used over time to create the retrofit

17:40:02 23

updates for the HG751 customers? Let me -- let me ask

17:40:12 24

it a different way.

17:40:13 25

How is the HG75103C environment then used

CATHERINE LEE HYDE April 1, 2008
HIGHLY CONFIDENTIAL

Page 51

17:40:19 1 to create retrofit updates?

17:40:24 2 A. Let's just say I don't remember exactly when
17:40:28 3 PeopleSoft retired that release. So I can tell you how
17:40:32 4 we used it prior to 03C for sure. If you have 03B and
17:40:41 5 you compare it to 03C, we would know what was changed,
17:40:46 6 and we would determine if we could put that into the 702
17:40:50 7 release for HG.

17:40:57 8 Q. So was HG75103C being used to support HG702
17:41:03 9 customers?

17:41:08 10 A. Yes.

17:41:08 11 Q. And each time a new update was created, would
17:41:15 12 new downloads be applied to the environment?

17:41:20 13 A. The tax update?

17:41:23 14 Q. Yes.

17:41:24 15 A. Yes.

17:41:27 16

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17:41:34 18

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17:42:02 21

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HIGHLY CONFIDENTIAL

1 COUNTY OF HARRIS

2 STATE OF TEXAS

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4

REPORTER'S CERTIFICATE

5

6

I, CAROL JENKINS, Certified Shorthand

7

Reporter in and for the State of Texas, hereby certify

8

that this transcript is a true record of the testimony

9

given by the witness named herein, after said witness

10

was duly sworn by me.

11

I further certify that the deposition

12

transcript was submitted on _____,

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_____ to the witness or to the attorney for the

14

witness for examination, signature, and return to me by

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_____, _____.

16

I further certify the amount of time used

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by each party at the deposition is as follows:

18

Mr. Geoffrey M. Howard - (01h44m)

19

Mr. Jason McDonell - (00h00m)

20

I further certify that I am neither

21

attorney nor counsel for, related to, nor employed by

22

any of the parties to the action in which this testimony

23

was taken. Further, I am not a relative or employee of

24

any attorney of record in this cause, nor do I have a

25

financial interest in the action.

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1 SUBSCRIBED AND SWORN TO by the undersigned
2 on this the 7th day of April, 2008.

3
4 Carol Jenkins
CAROL JENKINS, CSR

5 Certificate No. 2660

6 Date of Expiration: 12/31/08

Merrill Legal Solutions, No. 210

315 Capitol Street, Suite 100

7 Houston, Texas 77002

(713) 426-0400

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EXHIBIT E

HASSO PLATTNER June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	No. 07-CV-1658 (PJH)
)	
SAP AG, a German corporation,)	
SAP AMERICA, INC., a Delaware)	
corporation, TOMORROWNOW,)	
INC., a Texas corporation, and)	
DOES 1-50, inclusive,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF
HASSO PLATTNER

TUESDAY, JUNE 2, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-419913)

HASSO PLATTNER June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 17

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Were there any concerns that were

HASSO PLATTNER June 2, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 18

09:09:34 1 identified to the Supervisory Board relating to the
09:09:37 2 way in which TomorrowNow provided service to its
09:09:39 3 customers prior to the acquisition?

09:09:45 4 A. By the executive team?

09:09:48 5 Q. At this presentation by the executive team,
09:09:50 6 yes, sir.

09:09:52 7 A. No. I asked a question.

09:09:55 8 Q. What did you ask?

09:09:56 9 A. I asked the question whether this is
09:10:01 10 supported by a legal framework, and whether
09:10:04 11 TomorrowNow has the right to access source code.

09:10:07 12

09:10:09 13

09:10:11 14

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09:10:22 18

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09:10:42 25

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09:02:47 1 Q. And do you recall, was there a document
09:02:49 2 that was used in the presentation?

09:02:54 3 A. More probably, overhead. Power Points.

09:02:57 4 MR. LANIER: I'll just caution you not to
09:02:58 5 guess. Give him your best recollection.

09:03:02 6 THE WITNESS: It has to be Power Point.
09:03:04 7 Otherwise, it cannot be presented.

09:03:12 8

09:03:12 9

09:03:15 10

09:03:17 11

09:03:19 12

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09:03:38 16

09:03:39 17

09:03:42 18

09:03:46 19

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09:04:00 22

09:04:03 23

09:04:06 24

09:04:08 25

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10:41:01 1

10:41:04 2 The first one I'm going to mark as

10:41:06 3 Exhibit 1400, is titled "Business Case,

10:41:09 4 TomorrowNow," with a date of January 7, 2005.

10:41:13 5 You'll get a copy from the court reporter

10:41:14 6 in just a minute.

10:41:16 7 This is a copy of a presentation that's

10:41:19 8 been previously marked in the case as an attachment

10:41:22 9 to an email. That exhibit is 449. But it's hard to

10:41:26 10 read, and this is from the native document and it's

10:41:29 11 easier to read, so I'm using this one.

10:41:31 12 (Deposition Exhibit 1400 was marked for

10:41:32 13 identification.)

10:41:55 14 MR. HOWARD: Q. Mr. Plattner, have you

10:41:56 15 seen this document before?

10:42:25 16 A. (Examining document.) I don't know whether

10:43:42 17 that was used in a -- in the Supervisory Board

10:43:47 18 presentation.

10:43:48 19 Q. That was my question, whether you could

10:43:49 20 tell from looking at this if this was the

10:43:51 21 presentation that you saw in that meeting you

10:43:54 22 testified about earlier.

10:43:55 23 A. I cannot tell. It also could have been

10:44:05 24 additional material, and there was a 1-page, since

10:44:08 25 it was a very small acquisition. I just read, it

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10:44:12 1 was only a 10 million acquisition, so it was a very
10:44:16 2 small acquisition, so that there was probably only a
10:44:19 3 1-page document.
10:44:21 4
10:44:28 5
10:44:31 6
10:44:39 7
10:44:41 8
10:44:43 9
10:44:46 10
10:44:50 11
10:44:52 12
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10:45:04 22
10:45:04 23
10:45:06 24
10:45:08 25

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10:45:11 1

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10:45:30 7

10:45:37 8

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10:45:50 10

10:45:51 11

10:45:56 12

10:45:58 13

10:46:01 14

10:46:07 15

10:46:12 16

10:46:13 17

10:46:15 18

10:46:43 19

10:46:44 20

10:46:48 21

10:46:52 22

10:46:55 23 MR. HOWARD: Q. Okay. And the specific

10:46:56 24 comment -- are you referring to the --

10:46:57 25 A. I do not -- I have not seen that comment

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10:47:01 1 here.

10:47:01 2 Q. Are you referring to the parenthetical that
10:47:03 3 refers to offsite production copies?

10:47:05 4 A. Yeah, offsite production copies. If I
10:47:07 5 interpret this negatively, then that was not
10:47:12 6 presented.

10:47:14 7 So then this is definitely not what I have
10:47:19 8 seen. As I said, I have seen probably only a 1-page
10:47:23 9 document.

10:47:23 10

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10:48:09 17

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10:48:53 25

1 CERTIFICATE OF REPORTER

2 I, HOLLY THUMAN, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell the
5 truth, the whole truth, and nothing but the truth in the
6 within-entitled cause; that said deposition was taken
7 down in shorthand by me, a disinterested person, at the
8 time and place therein stated, and that the testimony of
9 the said witness was thereafter reduced to typewriting,
10 by computer, under my direction and supervision;

11 That before completion of the deposition,
12 review of the transcript ☒ was [] was not requested.
13 If requested, any changes made by the deponent (and
14 provided to the reporter) during the period allowed are
15 appended hereto.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties to the said
18 deposition, nor in any way interested in the event of
19 this cause, and that I am not related to any of the
20 parties thereto.

21

22

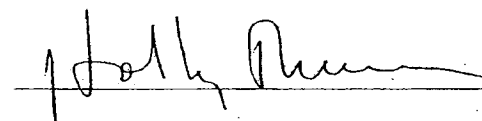
DATED

June 5, 2009.

23

24

25



HOLLY THUMAN, CSR No. 6834

EXHIBIT F

Pages 1 - 59

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE ELIZABETH D. LAPORTE, MAGISTRATE

ORACLE CORPORATION,)

)

Plaintiff,)

)

VS.)NO. C 07-1658

)

SAP AG, et al,)

)San Francisco, California

Defendants.)Tuesday

)August 4, 2009

)2:00 p.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: BINGHAM, MCCUTCHEN LLP

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San Francisco, California 94111-4067

BY: GEOFFREY M. HOWARD, ESQ.

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ZACHARY J. ALINDER, ESQ.

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BY: SCOTT W. COWAN, ESQ.

JONES DAY

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Palo Alto, California 94303

BY: JACQUELINE K.S. LEE, ESQ.

HEATHER FUGITT, ESQ.

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR

Official Reporter - US District Court

Computerized Transcription By Eclipse

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1 major disputes on authenticity, that it is what it says it

2 is

3 THE COURT: It's a business record, so it's not

4 hearsay

5 MR. COWAN: I don't think there is going to be any

6 issue on that. They have used it extensively in depositions,

7 et cetera. I don't foresee that being a problem unless there

8 is some particular piece of it or component that has similar

9 liability issue, et cetera. I don't think that's going to be

10 the big issue. I do agree that's something we take up with

11 the trial judge at trial if --

12 THE COURT: Well, I mean, there is no reason not to

13 take it up now to some extent. I mean, I don't know if you

14 have some particular concern

15 Anyway. I have to stop. It's been an hour and 20

16 minutes.

17 MR. HOWARD: We may make a further proposal in a

18 discovery conference in that regard

19 THE COURT: I'm not opposed to that. I don't think

20 you can leave everything to the last minute.

21 MR. COWAN: I understand. But my only point on

22 that, your Honor, without knowing what his proposed agreement

23 is and trying to agree with something on the fly, I'm

24 hesitant not to commit

25 THE COURT: I'm not asking you to commit to

59

1 anything right this minute.

2 MR. COWAN: Okay

3 THE COURT: I do think to the extent this was about

4 admissibility, I think you ought to address that directly by

5 stipulation

6 MR. COWAN: I don't expect any major barriers

7 there.

8 MR. HOWARD: Thank you, your Honor

9 THE COURT: All right. Thank you. I guess I will

10 ask both of you to prepare an order

11 MR. COWAN: Okay

12 THE COURT: I guess your motion --

13 MR. HOWARD: Why don't we prepare it and send it to

14 them, your Honor?

15 MR. COWAN: That's fine. Thank you, your Honor

16

17 (Whereupon, further proceedings in the

18 above matter were adjourned.)

19

20 --00--

21

22

23

24

25

CERTIFICATE OF REPORTER

I, DEBRA L. PAS, Official Reporter for the United

States Court, Northern District of California, hereby certify

that the foregoing proceedings in C 07-1658 PJH (EDL), ORACLE

CORPORATION versus SAP AG, et al were reported by me, a

certified shorthand reporter, and were thereafter transcribed

under my direction into typewriting, that the foregoing is a

full, complete and true record of said proceedings as bound

by me at the time of filing

The validity of the reporter's certification of said

transcript may be void upon disassembly and/or removal

from the court file.

/s/ Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Wednesday, August 5, 2009