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 17 Oracle EMEA Limited, and Siebel Systems, Inc.

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 OAKLAND DIVISION

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

CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF ZACHARY J.
 ALINDER IN SUPPORT OF
 ORACLE'S MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

[REDACTED EXS. 17, 18, AND 115-17]

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I. INDEX OF ATTACHED EXHIBITS

Index of Deposition Transcripts

Exhibit	Deponent	Deposition Date
1	Shai Agassi	January 5, 2009
2	Richard Allison	November 12, 2009
3	Leo Apotheker	October 2, 2008
4	Thomas Bamberger	January 29, 2009
5	John Baugh	February 6-7, 2008
6	John Baugh	August 13, 2009
7	John Baugh	December 3, 2009
8	Werner Brandt	November 12-13, 2008
9	Mark DeLing	August 27, 2009
10	Christopher Faye	October 22, 2008
11	Christopher Faye	March 18, 2009
12	Catherine Hyde	April 1-2, 2008
13	Catherine Hyde	February 12, 2009
14	Catherine Hyde	May 12, 2009
15	Henning Kagermann	September 25-26, 2008
16	Ann Kishore	April 14, 2009
17	Uwe Koehler	December 4, 2008
18	Uwe Koehler	December 5, 2008
19	Mark Kreutz	October 29-30, 2007
20	George Lester	April 23, 2009
21	Andrew Nelson	February 26, 2009 & April 29, 2009
22	Greg Nelson	February 19, 2009 & December 3, 2009
23	Shelley Nelson	October 30, 2007 & December 6, 2007
24	Shelley Nelson	April 18, 2008 & September 3, 2009
25	Owen O'Neil	March 10, 2009
26	Gerhard Oswald	December 10-11, 2008
27	John Ritchie	December 2, 2009
28	Keith Shankle	June 16, 2009
29	Arlen Shenkman	June 4-5, 2008
30	Jochen Scholten	November 30, 2009
31	Pete Surette	June 19, 2009
32	Josh Testone	June 3, 2009
33	William Thomas	December 4, 2009
34	Mark White	March 5, 2009
35	John Zepecki	September 9, 2008
36	Thomas Ziemer	September 30 – October 1, 2008

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(Index Continued)***Index of Documents***

Exhibit	Document
37	Stipulation re Admissibility of TN Databases, October 30, 2009
38	Plaintiffs' Deposition Exhibit 9
39	Plaintiffs' Deposition Exhibit 19
40	Plaintiffs' Deposition Exhibit 20
41	Plaintiffs' Deposition Exhibit 31
42	Plaintiffs' Deposition Exhibit 41
43	Plaintiffs' Deposition Exhibit 42
44	Plaintiffs' Deposition Exhibit 75
45	Plaintiffs' Deposition Exhibit 149
46	Plaintiffs' Deposition Exhibit 210
47	Plaintiffs' Deposition Exhibit 244
48	Plaintiffs' Deposition Exhibit 245
49	Plaintiffs' Deposition Exhibit 252
50	Plaintiffs' Deposition Exhibit 316
51	Plaintiffs' Deposition Exhibit 388
52	Plaintiffs' Deposition Exhibit 436
53	Plaintiffs' Deposition Exhibit 449
54	Plaintiffs' Deposition Exhibit 450
55	Plaintiffs' Deposition Exhibit 451
56	Plaintiffs' Deposition Exhibit 452
57	Plaintiffs' Deposition Exhibit 484
58	Plaintiffs' Deposition Exhibit 513
59	Plaintiffs' Deposition Exhibit 601
60	Plaintiffs' Deposition Exhibit 608
61	Plaintiffs' Deposition Exhibit 909
62	Plaintiffs' Deposition Exhibit 1045
63	Plaintiffs' Deposition Exhibit 1255
64	Plaintiffs' Deposition Exhibit 1255 (Sorted by Date)
65	Plaintiffs' Deposition Exhibit 1259
66	Plaintiffs' Deposition Exhibit 1259 (Sorted by Date)
67	BakTrak Restore Records for "HR810" Environments
68	Plaintiffs' Deposition Exhibit 1413
69	Plaintiffs' Deposition Exhibit 1454
70	Plaintiffs' Deposition Exhibit 1459
71	Plaintiffs' Deposition Exhibit 1461
72	Plaintiffs' Deposition Exhibit 1544
73	Plaintiffs' Deposition Exhibit 1549
74	Plaintiffs' Deposition Exhibit 1550

1 (Index Continued)

Exhibit	Document
75	Plaintiffs' Deposition Exhibit 1786
76	Plaintiffs' Deposition Exhibit 1821
77	Plaintiffs' Deposition Exhibit 1829
78	Plaintiffs' Deposition Exhibit 1839
79	Defendants' Deposition Exhibit 167
80	Defendants' Deposition Exhibit 246
81	Defendants' Deposition Exhibit 822
82	Defendants' Deposition Exhibit 824
83	Defendants' Deposition Exhibit 827
84	Defendants' Deposition Exhibit 828
85	PeopleSoft Customer Connection Terms of Use
86	HRMS 7.0 Copyright Registration
87	HRMS 7.5 Copyright Registration
88	HRMS 8.1 Copyright Registration
89	Database 8.1.6 Copyright Registration
90	Database 9.2 Copyright Registration
91	Database 10.2 Copyright Registration
92	Defendants' Eighth Amended and Supplemental Response to Plaintiff Oracle Corp.'s Fourth Set of Interrogatories to Defendant TomorrowNow, Inc. and Third Set of Interrogatories to Defendants SAP AG and SAP America, Inc., No. 82
93	TN-OR08720040 (Relied on in Exhibit 92)
94	Defendant TomorrowNow, Inc.'s Second Amended and Supplemental Response to Plaintiff Oracle Corp.'s First Set of Requests for Admission, No. 13
95	Defendants' Responses to Oracle's Fifth Set of Requests for Admissions, No. 1
96	Defendants' Supplemental Written Responses to Oracle Database Rule 30(b)(6) Testimony
97	Defendant TomorrowNow, Inc.'s Eighth Amended and Supplemental Response to Plaintiff Oracle Corp.'s First Set of Interrogatories, Responses to No. 3
98	Defendants' Responses to Oracle's Second Set of Requests for Admissions, Responses to No. 501
99	Defendant TomorrowNow, Inc.'s Sixth Amended and Supplemental Response to Plaintiff Oracle Corp.'s Third Set of Interrogatories and SAP America, Inc.'s and SAP AG's Fifth Amended and Supplemental Responses to Plaintiff Oracle Corp.'s Second Set of Interrogatories, Responses to No. 4

1 (Index Continued)

Exhibit	Document
100	Defendant TomorrowNow Inc.'s Seventh Amended and Supplemental Response to Plaintiff Oracle USA, Inc.'s First Set of Interrogatories, Responses to No. 6
101	Defendants' First Supplemental Responses and Objections to Plaintiff Oracle Corp.'s Fifth Set of Interrogatories to Defendant TomorrowNow, Inc. and Fourth Set of Interrogatories to Defendants SAP AG and SAP America, Inc., Responses to Nos. 122, 124
102	Charts Created from Exhibit 101
103	Oracle's First Amended Complaint, Dkt. 31, June 1, 2007 (relevant paragraphs)
104	Defendants' Answer to Oracle' First Amended Complaint, Dkt. 36, July 2, 2007 (relevant paragraphs)
105	Oracle's Fourth Amended Complaint, Dkt. 418, August 18, 2008 (relevant paragraphs)
106	Defendants' Answer to Oracle' Fourth Amended Complaint, Dkt. 437, August 26, 2009 (relevant paragraphs)
107	PeopleSoft/JDE LLC / OIC Asset Transfer Agreement
108	PeopleSoft Inc. / Oracle Corporation Certificate of Ownership and Merger
109	Wind Down Operational Program, TN-OR08720699
110	Declaration of Buffy Ransom in Support of Oracle's Opposition to Defendants' Motion to Compel, Dkt. 591, January 5, 2010 (relevant paragraphs)
111	Senate Report NO. 99-432 for P.L. 99-474, Computer Fraud and Abuse Act of 1986
112	18 U.S.C. § 1030, 2006 Edition of the United States Code
113	SAP TN Inventory Report
114	Declaration of Brady Mickelsen
115	Supplemental Expert Report of Paul K. Meyer, February 24, 2009 (relevant paragraphs)
116	Oracle's Lost Support Revenue From Lost Customers, Schedule 34.SU to Meyer Report
117	Chart created from Exhibit 116

1 I, Zachary J. Alinder, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California and
3 before this Court, and am a partner with at Bingham McCutchen LLP, counsel of record for
4 Plaintiffs Oracle International Corp. (“OIC”) and Oracle USA, Inc. (“OUSA,” predecessor to
5 Oracle America, Inc., and together with OIC, “Oracle”) in this action. I have personal
6 knowledge of the facts stated below by virtue of my representation of Oracle in this action and if
7 called as a witness could competently testify as to them.

8 2. For ease of use and reference and to the extent possible without losing
9 context, for all exhibits attached to this Declaration, including deposition transcripts, only the
10 relevant pages and information have been provided. Unless otherwise noted below for a
11 particular document, we have provided all highlighting and/or circling in these Exhibits to
12 further assist in identifying the information relevant to Oracle’s Motion for Partial Summary
13 Judgment (the “Motion”) against Defendants SAP AG, SAP America, Inc. (together, “SAP”),
14 and TomorrowNow, Inc. (“SAP TN,” and together with SAP, “Defendants”).

15 **II. DEPOSITION TRANSCRIPTS**

16 3. Attached as Exhibits 1 through 36 are true and correct copies of excerpts from
17 transcripts of depositions in this case cited by Oracle in support of the Motion. The index at the
18 beginning of this declaration identifies the cited Exhibit, the deponent, and the date(s) of each
19 deposition.

20 4. Several of the depositions Oracle cites were conducted pursuant to Rule
21 30(b)(6). Two were initially individual depositions, but by the agreement of the parties, are also
22 corporate testimony. First, after his deposition, Defendants designated John Baugh’s December
23 3, 2009 testimony as Rule 30(b)(6) testimony for certain topics related to Oracle Database
24 software. *See* ¶ 3 above, and Ex. 7 at 79:10-80:3. Second, while Catherine Hyde’s April 1-2,
25 2008 testimony was pursuant to a Rule 30(b)(6) notice (*see* ¶ 3 above, and Ex. 12), Defendants
26 also rely on the entirety of her individual testimony of February 12, 2009 and May 12, 2009
27 pursuant to Rule 33(d) in response to questions about the source of software used to create
28 environments at SAP TN. *See* ¶ 58 below, and Ex. 92 (In response to Oracle’s Interrogatory No.

1 82, regarding the “source from which SAP TN received the original software media from which
2 [environments were] created, Copied, or installed,” Defendants stated in part, “TomorrowNow
3 relies on all of the individual testimony of Catherine Hyde in response to this interrogatory. *See*
4 February 12, 2009 Deposition of Catherine Hyde and May 12, 2009 Deposition of Catherine
5 Hyde.”).

6 **III. AUTHENTICITY AND ADMISSIBILITY OF ELECTRONIC RECORDS**

7 5. As explained in Oracle’s Motion, Defendants have stated that SAP TN
8 maintained a database called “Baktrak” to track information about its copies of PeopleSoft
9 environments over time. *See generally*, Motion at pp. 2-3 and 5-7. Defendants have produced
10 native data from BakTrak in multiple volumes. Defendants have produced at least three volumes
11 for BakTrak (at TN-OR01005523, TN-OR01818628, and TN-OR06125330) between March 12,
12 2008 and April 20, 2009.¹ The Parties have stipulated that this data is authentic and admissible,
13 with certain exceptions not relevant here. This stipulation is attached as Exhibit 37. Defendants
14 have not yet executed this stipulation, but Defendants last wrote, “[i]f these changes are
15 acceptable, please send us the finalized version you intend to file for our approval before filing,”
16 after which Oracle confirmed that it accepted Defendants’ changes entirely. Oracle emailed
17 Defendants confirming this agreement again on March 2, 2009, requesting Defendants’
18 immediate response if they disagreed, but received no further response prior to this filing.

19 **IV. PLAINTIFFS’ DEPOSITION EXHIBITS**

20 6. Attached as Exhibit 38 is a true and correct copy of a portion of Plaintiffs’
21 Deposition Exhibit 9, a document entitled “New Client OnBoarding Checklist.”

22 7. Attached as Exhibit 39 is a true and correct copy of Plaintiffs’ Deposition
23 Exhibit 19, an email produced by Defendants entitled “SAP and TomorrowNow.”

24 8. Attached as Exhibit 40 is a true and correct copy of Plaintiffs’ Deposition
25 Exhibit 20, an email produced by Defendants entitled “SAP and TomorrowNow Integration.”

26 9. Attached as Exhibit 41 are true and correct copies of two pages from a native
27 Excel file produced by Defendants entitled “PeopleSoft Environment Spreadsheet.XLS.” Oracle

28 ¹ We refer to each of these productions below as “BakTrak.”

1 marked a printout of this file as Plaintiffs' Deposition Exhibit 31. Attached Exhibit 41 includes
2 the first page of the copy marked as Deposition Exhibit 31, and another page re-printed from the
3 original native file for legibility.

4 10. Attached as Exhibit 42 are true and correct copies of two pages from a native
5 Excel file produced by Defendants on or about February 5, 2008 as "BakTrak_Backup.xls."
6 Oracle previously marked a printout of portions of this file as Plaintiffs' Deposition Exhibit 41.
7 Attached Exhibit 42 includes the first page of the copy marked as Deposition Exhibit 41, and a
8 second page showing the first four rows of data re-printed from the original native file for
9 legibility.

10 11. Attached as Exhibit 43 are true and correct copies of two pages from a native
11 Excel file produced by Defendants on or about February 5, 2008 as "BakTrak_Restore.xls."
12 Oracle marked a printout of portions of this file as Plaintiffs' Deposition Exhibit 42. Attached
13 Exhibit 43 includes the copy marked as Deposition Exhibit 42, and a second page showing the
14 same data re-printed from the original native file for legibility.

15 12. Attached as Exhibit 44 is a true and correct copy of portions of Plaintiffs'
16 Deposition Exhibit 75, which was created by printing information from BakTrak.

17 13. Attached as Exhibit 45 is a true and correct copy of a document produced by
18 Defendants entitled "Business Case TomorrowNow." Oracle marked this document as
19 Plaintiffs' Deposition Exhibit 149, in its originally-produced scanned "TIFF" form. Defendants
20 later produced the native PowerPoint version. Therefore, attached Exhibit 45 includes the first
21 page of the copy marked as Deposition Exhibit 149, and the more legible version printed from
22 the native file of the same document comprises the rest of the exhibit. We have provided the
23 highlighting and circling at p. 10, only.

24 14. Attached as Exhibit 46 is a true and correct copy of a portion of Plaintiffs'
25 Deposition Exhibit 210, an email produced by Defendants entitled "PeopleSoft 1-2-3."

26 15. Attached as Exhibit 47 is a true and correct copy of portions of Plaintiffs'
27 Deposition Exhibit 244, a document produced by third-party Andrews Kurth entitled "Stock
28 Purchase Agreement."

1 16. Attached as Exhibit 48 is a true and correct copy of portions of Plaintiffs’
2 Deposition Exhibit 245, a document produced by third-party Andrews Kurth entitled “Disclosure
3 Schedules to the Stock Purchase Agreement.”

4 17. Attached as Exhibit 49 is a true and correct copy of Plaintiffs’ Deposition
5 Exhibit 252, an email produced by Defendants entitled “Board of Directors.”

6 18. Attached as Exhibit 50 is a true and correct copy of Plaintiffs’ Deposition
7 Exhibit 316, an email produced by Defendants entitled “TNow.”

8 19. Attached as Exhibit 51 is a true and correct copy of a portion of Plaintiffs’
9 Deposition Exhibit 388, an email produced by Defendants entitled “PeopleSoft 1-2-3.”

10 20. Attached as Exhibit 52 is a true and correct copy of a document produced by
11 Defendants entitled “Supervisory Board Meeting – TomorrowNow Status Update.” Oracle
12 marked this document as Plaintiffs’ Deposition Exhibit 436, in its originally-produced scanned
13 “TIFF” form. Defendants later produced the native PowerPoint version. Therefore, attached
14 Exhibit 52 includes the first page of the copy marked as Deposition Exhibit 436, and the more
15 legible version of the same document printed from the native file comprises the rest of the
16 exhibit. We have provided the highlighting and circling at pp. 3, 6, and 10, only.

17 21. Attached as Exhibit 53 is a true and correct copy of an email and attachment
18 produced by Defendants entitled “Business Case.” Oracle marked these documents as Plaintiffs’
19 Deposition Exhibit 449 in their originally-produced scanned “TIFF” form. Defendants later
20 produced the native PowerPoint version of the attachment. Therefore, attached Exhibit 53
21 includes the first page of the copy marked as Deposition Exhibit 449, and the more legible
22 version of the same document printed from the native file comprises the rest of the exhibit. We
23 have provided circling at pp. 7-8, only.

24 22. Attached as Exhibit 54 is a true and correct copy of Plaintiffs’ Deposition
25 Exhibit 450, a document produced by Defendants entitled “TomorrowNow Acquisition
26 Monitoring – Status Update.”

27 23. Attached as Exhibit 55 is a true and correct copy of Plaintiffs’ Deposition
28 Exhibit 451, an email produced by Defendants entitled “TNow info/guideline update.”

1 24. Attached as Exhibit 56 is a true and correct copy of a portion of Plaintiffs’
2 Deposition Exhibit 452, an email produced by Defendants entitled “PeopleSoft 1-2-3.”

3 25. Attached as Exhibit 57 is a true and correct copy of Plaintiffs’ Deposition
4 Exhibit 484, an email (and attachment) produced by Defendants entitled “Safe Passage Launched
5 in N.A. – Important Information enclosed.”

6 26. Attached as Exhibit 58 is a true and correct copy of Plaintiffs’ Deposition
7 Exhibit 513, a document produced by Defendants entitled “Business Case.” We have provided
8 the circling at pp. 6-7, only.

9 27. Attached as Exhibit 59 is a true and correct copy of Plaintiffs’ Deposition
10 Exhibit 601, which includes an email produced by Defendants entitled “FC7 accuracy,” as well
11 as the certified English translation of the same document.

12 28. Attached as Exhibit 60 is a true and correct copy of a native PowerPoint
13 document produced by Defendants entitled “Business Case TomorrowNow 2006.” Oracle
14 marked this document as Plaintiffs’ Deposition Exhibit 608 in its originally-produced scanned
15 “TIFF” form. Defendants later produced the native PowerPoint version. Therefore, attached
16 Exhibit 60 includes the first page of the copy marked as Deposition Exhibit 608, and the more
17 legible version of the same document printed from the native file comprises the rest of the
18 exhibit. The document is redacted at p. 4 per Defendants’ request. We have provided the
19 highlighting and circling at pp. 4, 6, and 7, only.

20 29. Attached as Exhibit 61 are true and correct copies of three pages of data from
21 Plaintiffs’ Deposition Exhibit 909 (originally printed from BakTrak). The first two attached
22 pages are printed directly from Deposition Exhibit 909, and the third page contains the data from
23 the rows in the Deposition Exhibit 909 referred to in cited testimony by Catherine Hyde (*see*
24 attached Ex. 13 at 85:24-89:2), re-printed again from the native BakTrak file for legibility.

25 30. Attached as Exhibit 62 is a true and correct copy of Plaintiffs’ Deposition
26 Exhibit 1045, an email produced by Defendants entitled “TomorrowNow Employee
27 Communication.”

28 31. Attached as Exhibit 63 are true and correct copies of five pages of data from

1 Plaintiffs' Deposition Exhibit 1255 (originally printed from BakTrak). The first attached page is
2 printed directly from Deposition Exhibit 1255, and the other four pages are re-printed from the
3 native BakTrak file for legibility.

4 32. The first screenshot at p. 7 of Oracle's Motion is a true and correct copy of
5 data from Plaintiffs' Deposition Exhibit 1255 (*see* ¶ 31, above).

6 33. The second screenshot at p. 7 of Oracle's Motion is a true and correct copy of
7 data from Plaintiffs' Deposition Exhibit 1255 (*see* ¶ 31, above).

8 34. Attached as Exhibit 64 is a true and correct copy of a printout of data from
9 BakTrak. We created attached Exhibit 64 using the same entries from BakTrak as Plaintiffs'
10 Deposition Exhibit 1255 (*see* ¶ 31, above), but removed several columns for legibility and re-
11 sorted the data by the "RESTORE_DATETIME" column. Dates before January 19, 2005 are
12 highlighted in green and dates after January 19, 2005 are highlighted in yellow. For a general
13 description of these columns, *see* ¶ 3 above, and Ex. 5 at 278:18-279:9 (Baugh), above.

14 35. Attached as Exhibit 65 are true and correct copies of three pages of data from
15 Plaintiffs' Deposition Exhibit 1259 (originally printed from BakTrak). The first attached page is
16 printed directly from Deposition Exhibit 1259, and the other two pages are re-printed from the
17 native BakTrak file for legibility.

18 36. Attached as Exhibit 66 is a true and correct copy of a printout of data from
19 BakTrak. We created attached Exhibit 66 using the same entries from BakTrak as Plaintiffs'
20 Deposition Exhibit 1259 (*see* ¶ 35, above), but removed several columns for legibility and re-
21 sorted the data by the "RESTORE_DATETIME" column. Dates before January 19, 2005 are
22 highlighted in green and dates after January 19, 2005 are highlighted in yellow. For a general
23 description of these columns, *see* ¶ 3 above, and Ex. 5 at 278:18-279:9 (Baugh).

24 37. Attached as Exhibit 67 is a true and correct copy of a printout of data from
25 BakTrak, reflecting certain columns from BakTrak's "Restore" table for "HR810" environments
26 indicated. The data is sorted by the "RESTORE_DATETIME" column, and dates before
27 January 19, 2005 are highlighted with green, and dates after January 19, 2005 are highlighted in
28 yellow.

1 38. The screenshot at p. 8 of Oracle’s Motion at is a true and correct copy of data
2 from attached Exhibit 67 (*see* ¶ 37, above).

3 39. Attached as Exhibit 68 is a true and correct copy of Plaintiffs’ Deposition
4 Exhibit 1413, an email produced by Defendants entitled “TomorrowNow WINS! Waste
5 Management Inc,” as redacted at p. 2 per Defendants’ request.

6 40. Attached as Exhibit 69 is a true and correct copy of Plaintiffs’ Deposition
7 Exhibit 1454, an email produced by Defendants entitled “Customer #2 - Koontz-Wagner!!”

8 41. Attached as Exhibit 70 is a true and correct copy of portions of Plaintiffs’
9 Deposition Exhibit 1459, an email (and attachment) produced by Defendants entitled “OneWorld
10 Download Change Assistant Client.doc.”

11 42. Attached as Exhibit 71 is a true and correct copy of Plaintiffs’ Deposition
12 Exhibit 1461, an email produced by Defendants entitled “Keep our download docs as is... .”

13 43. Attached as Exhibit 72 are true and correct copies of five pages of data printed
14 from a native Excel file produced by Defendants as TN-OR06515456 and entitled
15 “TomorrowNow Internal PS Support Environments.” Oracle marked TN-OR06515456 as
16 Plaintiffs’ Deposition Exhibit 1544, and the first attached page is a copy of the first page of the
17 deposition exhibit. The next four pages have been re-printed from the original native file and
18 depict the same data as Deposition Exhibit 1544, but filtered to show only entries where
19 “Oracle” is in the “Database Server Platform” column, and sorted on the “Database Server
20 Release Column” (*see* ¶ 3 above, and Ex. 7 at 250:17-253:1).

21 44. Attached as Exhibit 73 is a true and correct copy of pages from Plaintiffs’
22 Deposition Exhibit 1549, an email produced by Defendants entitled “Privileged and
23 Confidential: Level Set – ‘Cross-Use’ Environments.” The first two pages are re-printed from
24 the original production copy of this email for legibility purposes, and the third page is printed
25 directly from Deposition Exhibit 1549 for reference.

26 45. Attached as Exhibit 74 is a true and correct copy of Plaintiffs’ Deposition
27 Exhibit 1550, an email produced by Defendants entitled “Privileged: Clients with environments
28 needs a full or partial rebuild.”

1 46. Attached as Exhibit 75 is a true and correct copy of Plaintiffs' Deposition
2 Exhibit 1786, an email produced by Defendants entitled "Oracle Database Licenses."

3 47. Attached as Exhibit 76 is a true and correct copy of Plaintiffs' Deposition
4 Exhibit 1821, an email produced by Defendants entitled "PeopleSoft login info."

5 48. Attached as Exhibit 77 is a true and correct copy of Plaintiffs' Deposition
6 Exhibit 1829, an email produced by Defendants entitled "ORACLE DEVELOPMENT
7 LICENSE AGREEMENT."

8 49. Attached as Exhibit 78 is a true and correct copy of Plaintiffs' Deposition
9 Exhibit 1839, an email (and attachment) produced by Defendants entitled "Environment Build
10 List."

11 **V. DEFENDANTS' DEPOSITION EXHIBITS**

12 50. Attached as Exhibit 79 is a true and correct copy of Defendants' Deposition
13 Exhibit 167, a document entitled "Nature of Harm/Damage," which is referred to in the
14 Declaration of Uwe Koehler in Support of Oracle's Motion for Partial Summary Judgment, filed
15 concurrently with this Declaration.

16 51. Attached as Exhibit 80 is a true and correct copy of Defendants' Deposition
17 Exhibit 246, a document produced by Oracle entitled "OC/OIC Asset Transfer Agreement."

18 52. Attached as Exhibit 81 is a true and correct copy of Defendants' Deposition
19 Exhibit 822, a document produced by Oracle entitled "Customer Connection Terms of Use."

20 53. Attached as Exhibit 82 is a true and correct copy of Defendants' Deposition
21 Exhibit 824, a document produced by Oracle entitled "Customer Connection Terms of Use."

22 54. Attached as Exhibit 83 is a true and correct copy of Defendants' Deposition
23 Exhibit 827, a document produced by Oracle entitled "Legal Disclaimer."

24 55. Attached as Exhibit 84 is a true and correct copy of Defendants' Deposition
25 Exhibit 828, a document produced by Oracle entitled "Terms of Use."

26 56. Attached as Exhibit 85 is a true and correct copy of a document produced by
27 Oracle and Bates-labeled ORCL00051969 through 970, which was not marked as a separate
28 deposition exhibit, but was referenced at the Deposition of Richard Allison as a version of the

1 PeopleSoft Customer Connection Terms of Use (*see* ¶ 3 above, and Ex. 2 at 169:3-23).

2 **VI. COPYRIGHT REGISTRATIONS**

3 57. Attached as Exhibits 86 through 91 are true and correct copies of Oracle's
4 copyright registrations for the software indicated in the table below, each bearing the United
5 States Copyright Office seal, the signature of the Register of Copyrights and the indicated
6 registration number:

7 Exhibit	Software	Registration Number
8 86	PeopleSoft HRMS 7.0	TX 4-792-577
9 87	PeopleSoft HRMS 7.5	TX 4-792-575
10 88	PeopleSoft 8 HRMS SP1	TX 5-501-312
11 89	Oracle 8i Enterprise Edition, Release 2 (8.1.6)	TX 5-222-106
12 90	Oracle9i Database Enterprise Edition, Release 2 (9.2.0.1)	TX 5-673-282
13 91	Oracle Database 10g Release 2	TX 6-942-003

14 **VII. DISCOVERY RESPONSES**

15 58. Attached as Exhibit 92 is a true and correct copy of Defendants' Eighth
16 Amended and Supplemental Response to Plaintiffs' Fourth Set of Interrogatories to Defendant
17 TomorrowNow, Inc. and Third Set of Interrogatories to Defendants SAP AG and SAP America,
18 Inc., No. 82.

19 59. Attached as Exhibit 93 is a true and correct copy of a printout of data from a
20 native Excel file produced by Defendants as TN-OR08720040, which Defendants relied upon in
21 their response to Interrogatory No. 82. *See* ¶ 58 above, and Ex. 92 at 64:2-6 ("TomorrowNow
22 incorporates and relies on the modified Exhibit 75 ('Exhibit C') which has been produced as
23 Bates number TN-OR08720040. Exhibit C has a column added named 'Source of Original
24 Media' which provides TomorrowNow's current reasonable belief as to the source of the original
25 media used to create the environment or environment components identified.").

26 60. Attached as Exhibit 94 is a true and correct copy of Defendant
27 TomorrowNow, Inc.'s Second Amended and Supplemental Response to Plaintiff Oracle
28 Corporation's First Set of Requests for Admission, No. 13.

61. Attached as Exhibit 95 is a true and correct copy of Defendants' Response to

1 Plaintiffs' Fifth Set of Requests for Admission to Defendants TomorrowNow, Inc., SAP AG, and
2 SAP America, No. 1.

3 62. Attached as Exhibit 96 is a true and correct copy of portions of Defendant
4 SAP AG and SAP America, Inc.'s Supplemental Written Response to Oracle Database Rule
5 30(b)(6) Testimony.

6 63. Attached as Exhibit 97 is a true and correct copy of Defendant
7 TomorrowNow, Inc.'s Eighth Amended and Supplemental Response to Plaintiff Oracle
8 Corporation's First Set of Interrogatories, No. 3.

9 64. Attached as Exhibit 98 is a true and correct copy of Defendants' Fourth
10 Amended Responses to Requests 496 Through 680 of Plaintiffs' Second Set of Requests for
11 Admission to Defendants TomorrowNow, Inc., SAP AG, and SAP America, Inc, No. 501. Also
12 included in attached Exhibit 98 is "Exhibit A," referred to in the Requests for Admission, as
13 originally served by Oracle.

14 65. Attached as Exhibit 99 is a true and correct copy of portions of Defendant
15 TomorrowNow, Inc.'s Sixth Amended and Supplemental Responses to Plaintiff Oracle Corp.'s
16 Third Set of Interrogatories and SAP America Inc.'s and SAP AG's Fifth Amended and
17 Supplemental Responses to Plaintiff Oracle Corp.'s Second Set of Interrogatories, No. 4. The
18 document is redacted at pp. 30-31, 33-34, and 38 per Defendants' Request.

19 66. Attached as Exhibit 100 is a true and correct copy of portions of Defendant
20 TomorrowNow, Inc.'s Seventh Amended and Supplemental Response to Plaintiff Oracle USA,
21 Inc.'s First Set of Interrogatories, No. 6.

22 67. Attached as Exhibit 101 is a true and correct copy of Defendants' First
23 Supplemental Responses and Objections to Plaintiffs Fifth Set of Interrogatories to Defendant
24 TomorrowNow, Inc. and Fourth Set of Interrogatories to Defendants SAP AG and SAP America,
25 Inc., Nos. 122 and 124.

26 68. For the Court's convenience, we have attached three charts summarizing the
27 data in Defendants' Responses to Interrogatories Nos. 122 and 124 ("Interrogatories 122 and
28 124," *see* ¶ 67, above) on the topic of Oracle Database versions that existed at various places at

1 SAP TN. These charts are attached as Exhibit 102. The first chart (“SAP TN’s Oracle Database
2 Installs and Install Media”) summarizes the following information contained in Interrogatories
3 122 and 124:

4 Column	Description
5 Path	Filepath identified for each instance of Database software
6 Install Media / Functional	Whether the Database software is identified as “likely installed” / “installed versions” or “could be used to install”
7 Release	Database release identified in Rogs 122 and 124
8 Oracle Copyright	Copyright in Oracle’s Complaint corresponding to “Release” ²
9 Server / Virtual Machine (“VM”)	Whether the identified Database software was stored on a “virtual machine”
10 Machine Name	Identified name of the storage device on which the Database software was stored (e.g., “DCPSTEMP02”) ³
11 Machine / Download Platform	Operating system identified for either a) the version of install media if “could be used to install” or b) the Machine Name if “likely installed” or “installed versions” ⁴

12 The second chart (“Summary Count of SAP TN’s Oracle Database Installs and
13 Install Media”) counts the number of copies of Database software in the first chart by Oracle
14 Copyright, Install Media / Functional, and Server / Virtual Machine (“VM”). These results are
15 cited in Oracle’s Motion at p. 9, and summarized in the first chart on the same page.

16 The third chart (“SAP TN Oracle Database Platforms Where # Machines > #
17 Copies of Install Media”) counts the number of copies of Database software in the first chart, but
18 instead by Install Media / Functional and Machine / Download Platform. The chart also
19 identifies with highlighting the instances where the number of installs for an Oracle Copyright
20 exceeds the number of copies of install media for the same platform. These results are cited in
21 Oracle’s Motion at p. 9, and summarized in the second chart on the same page.

22
23
24 ² See Declaration of Mark Fallon in Support of Oracle’s Motion for Partial Summary Judgment,
¶¶ 5-6.

25 ³ Two installations (referenced by Defendants as TN-FS01_F\C\DellRestore\D
26 Drive\oracle\ora81 and TN-FS01_F\C\DellRestore\D Drive\oracle\ora92) are each recorded
27 twice in this first chart because Interrogatories 122 and 124 state: “Tomorrow [sic] reasonably
believes that these specific versions were likely installed on a previous server named TN-Dell
2650-01 and the files were later moved to TN-FS01_F.” See ¶ 67, Ex. 101 at p. 12, above.

28 ⁴ See ¶ 3, Ex. 3 at 29:5-12 (Thomas) (identifying operating systems for relevant SAP TN
servers), and ¶ 80, Ex. 113 (same, redacted to show relevant servers only) in this Declaration.

VIII. PLEADINGS

69. Attached as Exhibit 103 are true and correct copies of pages from Oracle’s First Amended Complaint, Dkt. 31, filed on June 1, 2007, containing relevant paragraphs cited in Oracle’s Motion.

70. Attached as Exhibit 104 are true and correct copies of pages from Defendants’ Answer to Oracle’s First Amended Complaint, Dkt. 36, filed on July 2, 2007, containing relevant paragraphs cited in Oracle’s Motion.

71. Attached as Exhibit 105 are true and correct copies of pages from Oracle’s Fourth Amended Complaint, Dkt. 418, filed on filed on August 18, 2008, containing relevant paragraphs cited in Oracle’s Motion.

72. Attached as Exhibit 106 are true and correct copies of pages from Defendants’ Answer to Oracle’s Fourth Amended Complaint, Dkt. 437, filed on August 26, 2009, containing relevant paragraphs cited in Oracle’s Motion.

IX. OTHER DOCUMENTS

73. Attached as Exhibit 107 is a true and correct copy of a document recording with the United States Copyright Office Oracle’s “PeopleSoft/JDE LLC OIC Asset Transfer Agreement,” which bears the Volume and Document No. 3569-436 and the United States Copyright Office seal and signature of the Register of Copyrights.

74. Attached as Exhibit 108 is a true and correct copy of a document recording with the State of Delaware Oracle’s “Certificate of Ownership and Merger” for PeopleSoft, Inc. and Oracle Corporation. The document bears the “file” no. 2105895 and the seal of the State of Delaware, as well as the certification and signature of the Secretary of State of the State of Delaware.

75. Attached as Exhibit 109 is a true and correct copy of portions of an email and attachment produced by Defendants entitled “Privileged and Confidential: Wind Down Operational Program - Daily Status - Meeting Minutes,” and “Returning IP,” respectively, and with the bates numbers TN-OR8720699-700 and TN-OR8720722-25, respectively.

76. The screenshot below is from the “Engagement” record for Rockwell

1 Automation from the native version of the “SAS” Database produced by Defendants at TN-
2 OR04446719.⁵ We have circled the maintenance end date for the Court’s convenience.

3

4 **Engagement Master Form** **TOMORROW NOW**

5 **Required Fields* *** NO VENDOR MAINTENANCE ***

Account Name:*	Rockwell Automation	Account Code:*	ROK
Engagement Owner:*	Shelley Nelson/TomorrowNow	Product Line:*	FDM
Region:	NAMERICA	Vendor Maintenance?	<input type="radio"/> Yes <input checked="" type="radio"/> No
TN Interested Parties:	Kathy Williams/TomorrowNow Sudarshan Desai/TomorrowNow	Vendor Maintenance End Date:*	03/31/2006 16

6

7

8

9 77. Attached as Exhibit 110 is a true and correct copy of a portion of the
10 Declaration of Buffy Ransom in Support of Oracle’s Opposition to Defendants’ Motion to
11 Compel, Dkt. 591, January 5, 2010.

12 78. Attached as Exhibit 111 is a true and correct copy of a document printed from
13 Westlaw entitled “SENATE REPORT NO. 99–432” for “P.L. 99–474, COMPUTER FRAUD
14 AND ABUSE ACT OF 1986.”

15 79. Attached as Exhibit 112 is a true and correct copy of 18 U.S.C. § 1030 as
16 published in the 2006 Edition of the United States Code, printed from HeinOnline (at
17 <http://heinonline.org>).

18 80. Attached as Exhibit 113 is a true and correct copy of portions of two pages
19 (TN-OR01361328 and 337) of a document produced by Defendants entitled “Inventory Report.”

20 81. Attached as Exhibit 114 is a true and correct copy of a Declaration by Oracle
21 Associate General Counsel Brady Mickelsen regarding certain aspects of Oracle’s corporate
22 structure after Oracle’s acquisition of Sun Microsystems, Inc. Oracle sent this declaration to
23 Defendants by email on or about February 23, 2010. Defendants have since made a request for
24 more information, which Oracle is evaluating.

25

26

27 ⁵ Defendants have represented that they maintained their “SAS” database to generally track their
28 day-to-day customer support activities. *See, e.g.*, Joint Discovery Conference Statement,
February 9, 2009, Dkt. 265, at 5:11-16.

1 **X. EXPERT REPORT**

2 82. Oracle produced a Supplemental Expert Report of Paul K. Meyer to
3 Defendants on February 24, 2009. Attached as Exhibit 115 are true and correct copies of
4 portions of that report relevant to Oracle's Motion.

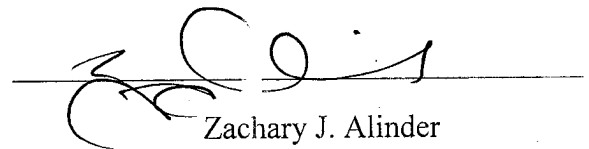
5 83. Attached as Exhibit 116 is a true and correct copy of portions of four pages
6 from Schedule 34.SU ("Oracle's Lost Support Revenue From Lost Customers") to the Meyer
7 Report identified in ¶ 81 above (and described in ¶ 397 of that report). The Schedule has been
8 redacted to show the lost revenue only for those customers identified in Oracle's Motion at p.
9 20:14-22, and referenced again at p. 23:1-6.

10 84. For the Court's convenience, attached as Exhibit 117 is a true and correct
11 copy of a chart totaling the yearly lost support revenues calculated by Mr. Meyer in Schedule
12 34.SU (*see* ¶ 82, above) for each of the four customers listed. These results are cited in Oracle's
13 Motion at p. 23:1-6.

14 **XI. SIGNATURE**

15 85. I declare under penalty of perjury under the laws of the State of California and
16 the United States that the foregoing is true and correct.

17
18 Dated: March 3, 2010

19 
Zachary J. Alinder