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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 JOY C.  
 SHERROD IN SUPPORT OF  
 ORACLE'S RESPONSES TO  
 DEFENDANTS' OBJECTIONS TO  
 EVIDENCE FILED IN SUPPORT OF  
 ORACLE'S OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT**

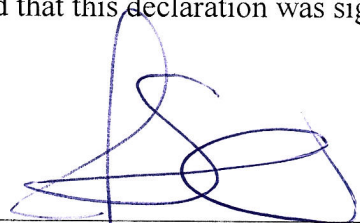
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I, Joy C. Sherrod, declare as follows:

1. I am an attorney licensed to practice law in the State of California and an associate at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc. (predecessor to Oracle America, Inc.), Oracle International Corporation, Oracle EMEA Ltd. and Siebel Systems, Inc. (collectively, "Oracle"). I make this declaration in support of Oracle's April 28, 2010 Responses to Defendants' Objections to Evidence Filed in Support of Oracle's Opposition to Defendants' Motion for Partial Summary Judgment. I have personal knowledge of the facts stated within this Declaration and could testify competently to them if required.

2. Attached hereto as **Exhibit A** is a true and correct copy of pages 2-4 of the transcript of the October 28, 2009 hearing on Defendants' August 26, 2009 Motion for Partial Summary Judgment held before Judge Hamilton.

I declare under penalty of perjury under the laws of the state of California and the United States that the foregoing is true and correct, and that this declaration was signed on April 28, 2010 in San Francisco, California.



Joy C. Sherrod

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL. )  
 )  
 ) PLAINTIFFS, )  
 )  
 ) VS. )  
 )  
 ) SAP AG, ET AL., )  
 )  
 ) DEFENDANTS. )  
 )

**CERTIFIED COPY**

NO. C 07-01658 PJH

PAGES 1 - 45

OAKLAND, CALIFORNIA  
WEDNESDAY, OCTOBER 28, 2009

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BINGHAM MUCCUTCHEN LLP  
THREE EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111-4607  
BY: DONN P. PICKETT,  
ZACHARY J. ALINDER, ATTORNEYS AT LAW

FOR DEFENDANTS:

JONES DAY  
SILICON VALLEY OFFICE  
1755 EMBARCADERO ROAD  
PALO ALTO, CALIFORNIA 94303  
BY: JANE L. FROYD,  
THARAN GREGORY LANIER,  
JACI LEE, ATTORNEYS AT LAW

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258

1 WEDNESDAY, OCTOBER 2008, 2009

10:31 A.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING CIVIL CASE NO. 07-1658, ORACLE  
4 USA, ET AL. VERSUS SAP, ET AL.

5 COUNSEL, PLEASE STEP FORWARD AND STATE YOUR  
6 APPEARANCES.

7 **MR. PICKETT:** GOOD MORNING, YOUR HONOR. DONN PICKETT  
8 ON BEHALF OF PLAINTIFF ORACLE.

9 **THE COURT:** GOOD MORNING.

10 **MR. LANIER:** GOOD MORNING, YOUR HONOR. GREG LANIER,  
11 JANE FROYD, AND JACI LEE OF JONES DAY FOR THE DEFENDANTS.

12 **THE COURT:** ALL RIGHT. GOOD MORNING.

13 ALL RIGHT. THIS MATTER'S ON FOR A HEARING ON SAP'S  
14 MOTION FOR PARTIAL SUMMARY JUDGMENT. ISSUE GOES TO DAMAGES  
15 ESSENTIALLY.

16 I AM PREPARED TO HEAR YOUR ARGUMENTS THIS MORNING. I  
17 REVIEWED YOUR PAPERS. LET ME JUST MAKE A COUPLE OF COMMENTS  
18 ABOUT THE PAPERS SO THAT FOR OUR NEXT ROUND OF MOTIONS,  
19 HOPEFULLY WE WON'T HAVE THE SAME PROBLEM.

20 THE -- REGARDLESS OF WHAT THE RULES REQUIRE, YOU ALL  
21 KNOW WHAT THE LOCAL RULES REQUIRE IN TERMS OF YOUR FILING, THE  
22 REQUIREMENT FOR MAKING A REQUEST OF THE COURT TO FILE DOCUMENT  
23 UNDER SEAL, ET CETERA, ET CETERA. I WANT YOU TO KEEP IN MIND  
24 ONE THING. I NEED A CHAMBER'S COPY. OKAY?

25 AND KEEP IN MIND WHAT A CHAMBER'S COPY IS FOR. IT'S

1 SO THAT I CAN HAVE A SET OF THE ORIGINAL DOCUMENTS IN A VERY  
2 ORDERLY -- I NEED A ROAD MAP TO YOUR PAPERS. I DON'T WANT TO  
3 HAVE TO PULL SEALED DOCUMENTS OUT OF ENVELOPES AND PUT THEM  
4 BEHIND TABS MYSELF. I DON'T WANT MY LAW CLERK HAVING TO DO IT.  
5 I WANT YOU TO GIVE ME A CHAMBER'S COPY THAT IS AS CLEAR AS YOU  
6 COULD POSSIBLY MAKE IT AND THAT'S COMPLETE IN ONE SET SO I DON'T  
7 HAVE TO HUNT AND FIND THINGS.

8 YOU ALL HAVE A LOT MORE RESOURCES THAN I HAVE, AND IT  
9 WOULD CERTAINLY HELP ME IN TERMS OF BEING ABLE TO DEVOTE MY TIME  
10 TO READING YOUR PAPERS AND THINKING ABOUT YOUR ARGUMENT AND NOT  
11 TRYING TO PUT EVERYTHING TOGETHER.

12 SO JUST KEEP THAT IN MIND. I KNOW THERE WERE CALLS  
13 BACK AND FORTH TO BOTH SIDES ABOUT PROBLEMS WITH YOUR FILINGS.  
14 I KNOW YOUR FILINGS ARE MASSIVE EVERY GO-ROUND. I ANTICIPATE  
15 ONE MORE ROUND OF MOTIONS BEFORE THE CASE IS TRIED, SO FOR THE  
16 NEXT GO-ROUND, HOPEFULLY IT WILL GO A LITTLE MORE SMOOTHLY.

17 BUT JUST KEEP IN MIND WHAT THE PURPOSE OF THE  
18 CHAMBER'S COPY IS. IF I CAN PICK UP ONE THING AND EVERYTHING'S  
19 THERE AND IT TELLS ME, YOU KNOW, THESE ARE THE PORTIONS THAT THE  
20 PUBLICLY FILED DOCUMENTS REDACT -- I MEAN, THEY'RE MISSING, YOU  
21 KNOW. THESE SECTIONS ARE MISSING IN SOME WAY. I DON'T CARE IF  
22 YOU WRITE ON IT BY HAND. JUST MAKE SURE THAT IT'S CLEAR TO ME  
23 WHAT IT IS I'M LOOKING AT.

24 **MR. PICKETT:** SO JUST TO BE CLEAR, LET ME JUST ASK,  
25 WOULD YOU PREFER IT ALL IN BINDER OR SET OF BINDERS WITH A TABLE

1 OF CONTENTS?

2 **THE COURT:** I DON'T PARTICULARLY LIKE --

3 (SIMULTANEOUS COLLOQUY.)

4 **MR. PICKETT:** THEN NO BINDER.

5 **THE COURT:** -- BECAUSE, YOU KNOW, WE CAN PULL THINGS  
6 OUT, BUT -- I DON'T PARTICULARLY LIKE BINDERS. DOESN'T MATTER  
7 TO ME IF YOU WOULD PREFER TO USE THEM. I JUST WANT THEM ALL IN  
8 ONE PLACE.

9 SEE, WHENEVER I GET SEALING REQUESTS, I GET THE  
10 ORIGINAL IN AN ENVELOPE. I GET THE OTHER -- THE COPY IN ANOTHER  
11 ENVELOPE, AND THEN USUALLY THEY'RE ATTACHED OR REFERRED TO BY A  
12 DECLARATION SOMEWHERE OR ANOTHER, AND THE DECLARATION'S  
13 SOMEWHERE ELSE. AND IT'S JUST TOO MUCH WORK FOR US, GIVEN THE  
14 AMOUNT OF PAPERS THAT WE LOOK AT.

15 I LOOK AT PROBABLY 20 MOTIONS A WEEK. YOU NEED TO  
16 MAKE IT EASIER RATHER THAN MORE DIFFICULT.

17 **MR. LANIER:** SHOULD WE GET TOGETHER AND GIVE YOU ONE  
18 COMBINED CHAMBER'S --

19 **THE COURT:** THAT DOESN'T MATTER AS LONG AS BOTH SIDES  
20 GIVE ME A COMPLETE SET WITH A ROAD MAP. TELL ME SPECIFICALLY  
21 WHAT IT IS THAT'S IN THERE.

22 **MR. PICKETT:** MAKES SENSE.

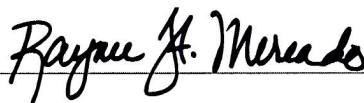
23 **THE COURT:** OKAY. I'M MORE CONCERNED WITH THE  
24 CHAMBER'S COPIES THAN I AM WITH WHAT'S FILED. THE CLERK'S  
25 OFFICE WILL TELL YOU -- THE CLERK'S OFFICE WILL TELL YOU WHETHER

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CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658 PJH, ORACLE CORPORATION, ET AL. V. 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.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

WEDNESDAY, NOVEMBER 11, 2009