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21 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 22 OAKLAND DIVISION

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

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

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

**DECLARATION OF GEOFFREY M.
 HOWARD IN SUPPORT OF
 STIPULATED REQUEST FOR
 ORDER CHANGING TIME FOR
 HEARING OF § 410(c) MOTION
 [Civ. L.R. 6-2]**

Judge: Hon. Phyllis J. Hamilton

1 I, Geoffrey M. Howard, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and a
3 partner at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc., Oracle
4 International Corporation, Oracle EMEA Ltd. and Siebel Systems, Inc. (collectively, “Oracle” or
5 “Plaintiffs”). I make this declaration in support of the Stipulated Request For Order Changing
6 Time for Hearing of § 410(c) Motion, jointly brought by Oracle and Defendants SAP AG, SAP
7 America, and TomorrowNow, Inc. (“Defendants”; together with Oracle, the “Parties”). I have
8 personal knowledge of the facts stated within this Declaration and could testify competently to
9 them if required.

10 2. The Court has set the Pretrial Conference for September 30, 2010. *See*
11 Stipulated Revised Case Management and Pretrial Order, D.I. 325, at 2. The Court has granted
12 the Parties leave to notice motions pursuant to *Daubert v. Merrill Dow Pharmaceuticals, Inc.*,
13 509 U.S. 579 1993), for hearing on the date of the Pretrial Conference. *See* Case Management
14 and Pretrial Order, D.I. 84, at 2. The Court has ordered that motions *in limine* be noticed for
15 hearing on the date of the Pretrial Conference, as well. *See id.* at 4.

16 3. Oracle will file a motion pursuant to 17 U.S.C. § 410(c) (the “§ 410(c)
17 Motion”) regarding the evidentiary weight to be accorded six of Oracle’s copyright registrations
18 that were not obtained within five years of publication of the underlying work.

19 4. The Parties have agreed, subject to the Court’s preference, that this motion
20 should proceed on the same calendar as the scheduled *Daubert* motions, for the efficiency and
21 convenience of the Court and the Parties. However, September 30, 2010, the date of the Pretrial
22 Conference and the date set for the *Daubert* motions, is not a date on the Court’s motion
23 calendar. *See* Civ. L.R. 7-2 (requiring that motions be “noticed in writing on the motion calendar
24 of the assigned Judge”). After Oracle files the § 410(c) Motion on August 19, 2010, the next
25 available date on the Court’s motion calendar under the Local Rules would be September 29,
26 2010. *See* Civ. L.R. 7-2 (requiring 35-day notice).

27 5. Therefore, the effect of the Stipulated Request and [Proposed] Order
28 would be, at most, to grant Defendants one additional calendar day for their Opposition to

1 § 410(c) Motion, and to grant Plaintiffs one additional calendar day for their Reply in Support of
2 § 410(c) Motion. *See* Civ. L.R. 7-3(a) (requiring that any opposition “be served and filed not
3 less than 21 days before the hearing date”) ; *id.* at (c) (requiring that any reply to an opposition
4 “be served and filed not less than 14 days before the hearing date”). These one-day extensions
5 would not affect the overall case schedule.

6 6. The Parties have previously sought and received unrelated extensions to
7 the case schedule. No extensions related to the § 410(c) Motion have been previously sought.

8
9 I declare under the laws of the United States and the State of California that the
10 foregoing is true and correct and that this Declaration was executed on August 18, 2010, in San
11 Francisco, California.

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13 /s/ Geoffrey M. Howard

14 Geoffrey M. Howard
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