

1 BINGHAM MCCUTCHEN LLP
 DONN P. PICKETT (SBN 72257)
 2 GEOFFREY M. HOWARD (SBN 157468)
 HOLLY A. HOUSE (SBN 136045)
 3 ZACHARY J. ALINDER (SBN 215695)
 BREE HANN (SBN 215695)
 4 Three Embarcadero Center
 San Francisco, CA 94111-4067
 5 Telephone: 415.393.2000
 Facsimile: 415.393.2286
 6 donn.pickett@bingham.com
 geoff.howard@bingham.com
 7 holly.house@bingham.com
 zachary.alinder@bingham.com
 8 bree.hann@bingham.com

9 BOIES, SCHILLER & FLEXNER LLP
 DAVID BOIES (Admitted *Pro Hac Vice*)
 333 Main Street
 10 Armonk, NY 10504
 Telephone: 914.749.8200
 11 dboies@bsflp.com
 STEVEN C. HOLTZMAN (SBN 144177)
 12 1999 Harrison St., Suite 900
 Oakland, CA 94612
 13 Telephone: 510.874.1000
 sholtzman@bsflp.com

14 DORIAN DALEY (SBN 129049)
 15 JENNIFER GLOSS (SBN 154227)
 500 Oracle Parkway, M/S 5op7
 16 Redwood City, CA 94070
 Telephone: 650.506.4846
 17 Facsimile: 650.506.7114
 dorian.daley@oracle.com
 18 jennifer.gloss@oracle.com

19 Attorneys for Plaintiffs
 Oracle USA, Inc., *et al.*

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

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

23 Plaintiffs,

24 v.

25 SAP AG, *et al.*,

26 Defendants.

No. 07-CV-01658 PJH (EDL)

**DECLARATION OF ZACHARY J.
 ALINDER IN SUPPORT OF
 PLAINTIFFS' MOTION NO. 3: TO
 EXCLUDE TESTIMONY OF
 DEFENDANTS' EXPERT DAVID
 GARMUS**

Date: September 30, 2010
 Time: 9 a.m.
 Place: Courtroom 3
 Judge: Hon. Phyllis J. Hamilton

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

DECLARATION OF ZACHARY J. ALINDER IN SUPPORT OF PLAINTIFFS' MOT. NO. 3: TO EXCLUDE
 TESTIMONY OF DEFENDANTS' EXPERT DAVID GARMUS

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

2 1. I am an attorney licensed to practice law in the State of California and am
3 a 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").
5 Except where stated below on information and belief, I have personal knowledge of the facts
6 stated within this Declaration and could testify competently to them if required.

7 2. Attached as Exhibit A is a true and correct copy of relevant excerpts from
8 the Expert Rebuttal Report of David P. Garmus, served by Defendants on March 26, 2010. Non-
9 relevant portions of the Report have been either excluded or redacted. Defendants produced
10 Donald Reifer's 91-page rebuttal report to Mr. Pinto on the same day.

11 3. Attached as Exhibit B is a true and correct copy of relevant excerpts from
12 the transcript of the June 4, 2010 Deposition of David P. Garmus. Non-relevant portions of the
13 deposition transcript have been either excluded or redacted.

14 4. Attached as Exhibit C is a true and correct copy of relevant excerpts from
15 the Expert Report of Paul C. Pinto, served by Oracle on November 16, 2009. Non-relevant
16 portions of the Report have been either excluded or redacted.

17 5. Attached as Exhibit D is a true and correct copy of relevant excerpts from
18 the transcript of the May 19, 2010 Deposition of Paul C. Pinto. Non-relevant portions of the
19 deposition transcript have been either excluded or redacted.

20 6. Attached as Exhibit E is a true and correct copy of Paul Pinto's May 19,
21 2010 Notes re Response to Rebuttal Report of David P. Garmus, which was produced prior to
22 Mr. Pinto's May 19, 2010 Deposition and which was included as part of Exhibit 3044 to the
23 Deposition of David Garmus. For ease of use and clarity, Oracle has included the cover page
24 with the Exhibit stamp, but has replaced the remaining pages with a clean copy of those Notes.
25 Non-relevant portions of the deposition transcript have been either excluded or redacted.

26 7. Attached as Exhibit F is a true and correct copy of relevant excerpts from
27 the Expert Report of Kevin Mandia, as supplemented on February 12, 2010, and marked as
28 Exhibit 3017 to the June 1, 2010 Deposition of Michael Gary Funck. For ease of use and clarity,

1 Oracle has included the cover page with the Exhibit stamp, but has replaced the remaining pages
2 with a clean copy of the Report. Non-relevant portions of the Report have been either excluded
3 or redacted.

4 8. In the months leading up to Garmus' deposition, Defendants turned over
5 thousands of instant messages ("IMs") that relate to TN's use of Oracle software, including
6 EnterpriseOne 8.12 software. Due to the late production of these IMs by Defendants, Oracle was
7 unable to finish reviewing them until after Mr. Garmus' deposition, and was also unable to
8 question TomorrowNow and its employees about these additional Oracle software copies on
9 their computers, since they were produced after the close of fact discovery. Oracle has since
10 reviewed many of these messages. Attached as Exhibit G is a true and correct copy of relevant
11 excerpts from an October 24, 2006 IM message between TN employees, Pete Surette and Ashis
12 Ghosh.

13 9. Attached as Exhibit H is a true and correct copy of relevant excerpts from
14 the Expert Report of Stephen Clarke, as supplemented on May 7, 2010. Non-relevant portions of
15 the Report have been either excluded or redacted.

16 10. Attached as Exhibit I is a true and correct copy of relevant excerpts from
17 the transcript of the June 8, 2010 Deposition of Stephen Clarke. Non-relevant portions of the
18 deposition transcript have been either excluded or redacted.

19 I declare under penalty of perjury under the laws of the United States that the
20 foregoing facts are true and correct, and that this Declaration was executed on August 19, 2010,
21 in San Francisco, CA.

22 /s/ Zachary J. Alinder
23 Zachary J. Alinder
24
25
26
27
28