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 11 LEON TURO, LEILANI HAMMOCK
 AND THE SETTLEMENT CLASS

12 Attorneys for Defendant
 13 ORACLE CORPORATION
 listed on page 2 of caption

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 LEON TURO AND LEILANI
 HAMMOCK, on behalf of themselves
 18 and all others similarly situated,

19 Plaintiffs,

20 vs.

21 ORACLE CORPORATION,

22 Defendant.

CASE NO. C-06-2846 SBA

CLASS ACTION

**ORDER GRANTING JOINT MOTION
 OF THE PARTIES FOR FINAL
 APPROVAL OF CLASS-ACTION AND
 COLLECTIVE-ACTION
 SETTLEMENT, CONFIRMING
 APPOINTMENT OF CLASS COUNSEL
 AND GRANTING CLASS COUNSEL'S
 MOTION FOR REASONABLE
 ATTORNEYS' FEES AND COSTS**

DATE: March 3, 2009
 TIME: 1:00 pm
 COURTROOM: 3

Hon. Sandra Brown Armstrong

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6 Attorneys for Defendant
7 ORACLE CORPORATION

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1 The parties in this action, which alleged past misclassification of various
2 Contract Administrator and License Migration Analyst employees as exempt, unpaid
3 wages and overtime, and other damages, penalties and interest due under various
4 California laws and under the Fair Labor Standards Act, have submitted a Joint Motion of
5 the Parties for Final Approval of Class-Action and Collective-Action Settlement. In
6 addition, the Plaintiffs ask the Court to confirm the appointment of Class Counsel, and
7 Class Counsel has submitted a Motion for Approval of Award of Attorneys' Fees and
8 Costs. The Court, having reviewed the motions, the declarations submitted therewith, the
9 proposed notices to class and collective members and all other documents and the
10 pleadings in the case as a whole, makes the following FINDINGS:

11
12 1. The classes jointly proposed and preliminarily certified by the Court
13 were:

14
15 (1) All individuals who were employed in one of the job codes and
16 job titles below at Defendant or Oracle USA, Inc. in the State of California between April
17 26, 2002 and the date(s) that Defendant or Oracle USA, Inc. made those individuals (or
18 the individuals in their job code(s)) eligible for overtime compensation, for the purposes
19 of Plaintiffs' claims for alleged unpaid overtime and waiting time penalties under the
20 California Labor Code, and interest on those amounts alleged in the Complaint (the
21 "California Overtime Class"):

Covered Job Codes	Covered Job Titles	Eligibility Period
70510	Contract Administrator 1, sometimes referred to as Contract Specialist, Contract Analyst, Contractor, Senior Contract Specialist, VAD Contract Specialist and VAD Service Analyst (all level 1)	4/26/02 – 9/19/04

1 2 3 4 5 6	70520	Contract Administrator 2, sometimes referred to as License Migration Analyst, Contract Analyst, Contract Specialist, Contract Support, Contract Manager, Marketing Specialist, Senior Contract Analyst, Senior Contract Specialist, Senior Field Contract Specialist, Team Lead (all level 2)	4/26/02 – 10/15/05
7 8 9 10 11	70530	Contract Administrator 3, sometimes referred to as Contract Specialist, Senior Contract Specialist, Contract Manager, Licensing Consultant, Senior Contract Administrator, Subcontract Manager and Team Lead Contract Administration (all level 3)	4/26/02 – 12/16/07

12 and

13 (2) All individuals who are currently employed, or formerly have
14 been employed, in one of the job codes and job titles below at Defendant or Oracle USA,
15 Inc. in the State of California between April 26, 2002 and the date of preliminary
16 approval, for the purposes of Plaintiffs’ claims for alleged denied meal and rest periods,
17 record-keeping and other wage-hour penalties and interest on those amounts alleged in the
18 Complaint (the “California Penalties Class”):

20	Covered Job Codes	Covered Job Titles	Eligibility Period
21 22 23 24 25	70510	Contract Administrator 1, sometimes referred to as Contract Specialist, Contract Analyst, Contractor, Senior Contract Specialist, VAD Contract Specialist and VAD Service Analyst (all level 1)	4/26/02 – Date of Preliminary Approval
26 27 28	70520	Contract Administrator 2, sometimes referred to as License Migration Analyst, Contract Analyst, Contract Specialist, Contract Support, Contract	4/26/02 – Date of Preliminary Approval

	Manager, Marketing Specialist, Senior Contract Analyst, Senior Contract Specialist, Senior Field Contract Specialist, Team Lead (all level 2)	
70530	Contract Administrator 3, sometimes referred to as Contract Specialist, Senior Contract Specialist, Contract Manager, Licensing Consultant, Senior Contract Administrator, Subcontract Manager and Team Lead Contract Administration (all level 3)	4/26/02 – Date of Preliminary Approval

2. As a threshold matter, the classes are well defined as their members are identifiable; second, the proposed classes satisfy the four requirements of Fed.R.Civ.P. 23(a) at 108 and 138 members respectfully. They are numerous. Also, each member of each class suffered the same alleged injuries by the Defendant’s alleged violations of California law, and they share the same remedies. Thus, the proposed classes exhibit commonality. Likewise, comparing the named Plaintiffs’ claims with those of the unnamed class members, they are substantially if not actually identical in nature. Thus, the proposed classes have typicality. And, lastly, the representative parties appear to have fairly and adequately protected the interests of the classes, and, in particular, there were no apparent conflicts between the named Plaintiffs or their counsel and any class members. Also their counsel prosecuted this action vigorously, completely and competently, as they are extensively experienced in employment and labor class actions. Thus, the proposed classes were adequate.

3. The proposed classes satisfy Fed.R.Civ.P. 23(b). Here, the parties seek certification under Fed.R.Civ.P. 23(b)(3). This is appropriate for three reasons. First, common questions predominate here, where all proposed members in each class suffered the same injuries and had the same remedies. Second, class action is superior as

1 there are over a hundred identical claims in each class which would have to be prosecuted
2 in different venues. Seeking the same relief would unduly burden the parties and the court
3 system. Third, considering the four factors of Fed.R.Civ.P. 23(b)(3), the proposed
4 members would benefit more from a class action than by controlling their own individual
5 actions. Also, there are no other matters pending in any jurisdiction arising from the facts
6 giving rise to this matter and the parties' settlement agreement provides for an offset if a
7 member of a proposed class receives a recovery in the suit and in a suit filed outside
8 California but arising from the incidents giving rise to this suit. Moreover, given the fact
9 that the classes involve persons employed in California, California is the favored forum.
10 And, finally, the parties have no difficulty managing the class nature of this action.

11
12 4. The Court is inclined to appoint Schneider Wallace Cottrell Brayton
13 Konecky LLP and the Law Office of Christina Djernaes as class counsel. Under
14 Fed.R.Civ.P. 23(c)(1)(b), the Court is required to appoint class counsel under
15 Fed.R.Civ.P. 23(g) when it certifies a class. Under Fed.R.Civ.P. 23(g)(1)(A), in
16 appointing class counsel, the Court must consider: one, the work counsel has done in
17 identifying or investigating potential claims in the action; two, counsel's experience in
18 handling class actions, other complex litigation, and the types of claims asserted in the
19 case; three, counsel's knowledge of the applicable law; and, four, the resources counsel
20 will commit to representing the class. Further, the appointed counsel must fairly and
21 adequately represent the interests of the class.

22
23 5. The Court is inclined to appoint Schneider Wallace Cottrell Brayton
24 Konecky LLP and the Law Office of Christina Djernaes as class counsel. These firms
25 have provided fair, adequate, and vigorous representation in the matter, in part because of
26 their efforts as well as their skill and experience in these types of matters, as supported by
27 the declarations that have been filed with this Court by both. Thus, the Court is
28 appointing these firms as counsel for the classes.

1 6. The Court is inclined to find that notice in this case was adequate.
2 Fed.R.Civ.P. 23 requires the Court direct to the members of the classes and collective the
3 best notice practicable under the circumstances, including individual notice to all
4 members who can be identified through reasonable effort. A copy of the notice of
5 proposed settlement of class and collective action is included in the record. This form
6 includes the terms of the settlement and informs the members of the classes of their right
7 to object to it. The notice further informs the members of the classes and collective action
8 of the date of the fairness hearing, March 3rd, 2009, and the fact that if they wish to
9 object, they must file written objections with RG/2 Claims Administration, LLC, by
10 January 15th, 2009.

11
12 7. One objection has been filed. Class and collective members were
13 sent as part of their notice package a form entitled “notice of objection to settlement.”
14 This form has a space to write entries below preprinted text which states that “I hereby
15 object to the settlement of the above-entitled case for each of the following reasons.” The
16 objector, Patricia Herring, writes that “I was hired as a salaried employee. I never
17 received overtime pay.” Based upon the discussion at the Final Fairness hearing in
18 connection with her objection, the record before the Court, including that there is no
19 objector—including Ms. Herring—present in court, the Court has overruled the objection.

20
21 8. The parties retained RG/2 Claims to provide notice. Between
22 October 22nd and October 29th, 2008, Defendant’s counsel forwarded to RG/2 Claims the
23 names and addresses of 354 persons: 105 potential California Overtime Class members,
24 145 potential California Penalties Class members, and 214 potential FLSA Collective
25 members.¹ RG/2 verified the data were current via the U.S. Postal Service National
26 Change of Address database and, where necessary, via other information sources. On

27 ¹ The total of the number of members of each class and collective (464 members) exceeds the number of
28 Settlement Members (354 members), because many Settlement Members are members of more than one of
the classes and collective.

1 November 10th, 2008, RG/2 mailed packets to all 354 persons consisting of a Notice of
2 Proposed Settlement of Class and Collective Action, the Claim, Waiver, Release and
3 Consent to Join form, the individualized notice to class members of eligible employment,
4 and the Notice of Objection to settlement. Eighteen packets were returned as
5 undeliverable, RG/2 checked again, and 15 packets were resent to an address from which
6 they were not returned. The other three packets were not deliverable. In addition, 200 of
7 the 354 persons were employed at Oracle as of November 12, 2008, and for those 200
8 persons Oracle personnel sent notice packets on that date to them via interoffice mail and
9 as attachments to emails, none of which were returned as undeliverable. As of February
10 13, 2009, RG/2 Claims had received 252 claim forms, or 71 percent of 354 packets sent
11 out, broken down as follows: 78 for the California Overtime Class, 98 for the California
12 Penalties Class, and an additional 159 claim forms for the FLSA Collective. Of the total
13 252 total claim forms, 241 were timely, having been served by January 26, 2009. RG/2
14 received no opt-out requests for any class or the collective. RG/2 received one purported
15 objection already addressed.

16
17 9. The Court finds the timely notice given in the matter meets these
18 criteria set out in *Officers for Justice v. Civil Service Com'n of City and County of San*
19 *Francisco*, 688 F.2d 615, 624-625 (9th Cir. 1982). In light of the foregoing, the Court is
20 inclined to find that notice of the proposed final settlement was adequately disseminated
21 and clearly apprised any persons inclined to object to file timely objections in accordance
22 with Fed.R.Civ.P. 23.

23
24 10. In assessing the fairness, reasonableness, and adequacy of the
25 settlement, the Court has evaluated, considered and balanced the following nine exclusive
26 factors: the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration
27 of further litigation; the amount offered in settlement; the extent of discovery completed
28 and the stage of proceedings; the experience and views of counsel; and the reaction of the

1 class members to the proposed settlement. Based upon the submissions and
2 representations of the parties, the Court is inclined to find the settlement fair, adequate,
3 and reasonable.

4
5 11. With respect to the strength of the Plaintiffs' case, Plaintiffs' counsel
6 conducted a significant factual investigation during the prosecution of this action,
7 including reviewing hundreds of pages of documents produced by Oracle relating to pay
8 policy, time records, and its preclassification decisions. Counsel also deposed Oracle's
9 corporate designee regarding these issues. On March 1, 2007, the parties mediated
10 Plaintiffs' claims. Likewise, Oracle deposed the named Plaintiffs. As a result of this
11 discovery and mediation, Plaintiffs' counsel believes that settlement is in the best interest
12 of the proposed classes and collective and in light of all known facts and circumstances,
13 including the significant risk and delays of litigation presented by the defense and
14 potential appellate issues Oracle may assert. In this regard, Oracle denies any wrongdoing
15 or legal liability arising out of the action. Oracle further alleges that the Court would deny
16 certification because, among other things, individual issues predominate, raising
17 manageability concerns, and it alleges that the Court would adjudicate the case in Oracle's
18 favor on the merits were certification granted. Given the contentious nature of the suit
19 and uncertainty of a successful resolution for Plaintiff, settlement appears to be
20 reasonable.

21
22 12. Given the risk, expense, and complexity were the case to go to trial,
23 Plaintiffs estimate fees and costs would well exceed \$2 million per side and may be
24 upward of \$3 million. Further, litigating claims in the action would require substantial
25 additional preparation and discovery, and ultimately would involve the deposition and
26 presentation of numerous witnesses, the consideration, preparation, presentation of
27 documented evidence, and the preparation and analysis of expert reports. In addition,
28 Oracle would likely move to decertify any class or collective and appeal any adverse

1 ruling. In contrast, settlement will yield a prompt, certain, and very substantial recovery
2 for the classes and collective. Such a result will benefit the parties and the court system.

3
4 13. Based upon the receipt of 241 timely claims upon final approval of
5 settlement, the 78 members of California Overtime Class will receive an average award of
6 \$3,453.03; the 98 members of the California Penalties Class will receive an average award
7 of \$616.66; and the 159 members of the FLSA Collective will receive an average award
8 of \$2,241.63. In addition, Oracle will pay \$25,000 to the California Labor and Workforce
9 Development Agency. This is a substantial recovery. Finally, the two named plaintiffs
10 will each receive \$7,500 for their personal time and effort in discovery, including being
11 deposed.

12
13 14. Extent of discovery: as already noted, the parties have conducted
14 extensive formal discovery. As Plaintiffs' counsel indicated, the terms of the settlement
15 were based on a thorough evaluation of the evidence and the underlying case law.

16
17 15. The views of counsel: Plaintiffs' counsel is of the opinion that the
18 settlement is fair, reasonable, adequate, and in the best interests of the classes in light of
19 all known facts and circumstances. Plaintiffs' counsel has fully advised the representative
20 plaintiffs of the terms of settlement and represents that they fully approve of it and
21 consent to it. With respect to the additional factors, there is no evidence of collusion
22 based upon what this Court has available to it. And the parties have engaged in extensive
23 discovery and mediation. This request for settlement has been reached after formal
24 discovery and arm's-length negotiation. Of the 105 potential California Overtime Class
25 members and 145 potential California Penalties Class members, RG/2 Claims received 78
26 and 98 claims respectively, a response rate of about 74 and 68 percent, respectively. In
27 addition, out of the 214 potential FLSA Collective Members, they received 159 claims or
28 response rate of about 74 percent. There were no opt-outs and only one purported

1 objection, which has been overruled. So support for the settlement among the class and
2 collective members has been substantial.

3
4 16. After evaluating all the relevant factors, the Court is inclined to
5 approve the settlement under Fed.R.Civ.P. 23. The Court is also inclined to find the
6 amount of the settlement is of substantial value to the settlement classes and collective and
7 that the overall settlement is therefore fair, reasonable, and adequate under Fed.R.Civ.P.
8 23.

9
10 17. The collective under the Fair Labor Standards Act jointly proposed
11 and preliminarily certified by the Court was:

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13 All individuals who were employed in one of the job codes
14 and job titles below at Defendant or Oracle USA, Inc. in the United States between April
15 26, 2003 and the date(s) that Defendant or Oracle USA, Inc. made those individuals (or
16 the individuals in their job code(s)) eligible for overtime compensation, for the purposes
17 of Plaintiffs' claims for alleged unpaid overtime, liquidated damages, and interest alleged
18 in the Complaint under the Fair Labor Standards Act (the "FLSA Collective"):

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21

Covered Job Codes	Covered Job Titles	Eligibility Period
70510	Contract Administrator 1, sometimes referred to as Contract Specialist, Contract Analyst, Contractor, Senior Contract Specialist, VAD Contract Specialist and VAD Service Analyst (all level 1)	4/26/03 – 9/19/04
70520	Contract Administrator 2, sometimes referred to as License Migration Analyst, Contract	4/26/03 – 10/15/05

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	Analyst, Contract Specialist, Contract Support, Contract Manager, Marketing Specialist, Senior Contract Analyst, Senior Contract Specialist, Senior Field Contract Specialist, Team Lead (all level 2)	
70530	Contract Administrator 3, sometimes referred to as Contract Specialist, Senior Contract Specialist, Contract Manager, Licensing Consultant, Senior Contract Administrator, Subcontract Manager and Team Lead Contract Administration (all level 3)	4/26/03 – 12/16/07

18. The Court is inclined to certify the collective because it is similar and the notice, opt-in forms, and other related forms were adequate.

19. Similarity: to certify a matter as a collective action, the potential plaintiff (current and former) employees must be similarly situated to the filing plaintiff. The Court is inclined to find that the potential plaintiff (current and former) employees are similarly situated to the filing Plaintiffs given their single employer, similar treatment, similar claims for overtime pay, similar job titles and functions, and the parties' apparent agreement on this issue.

20. Notice: because non-parties to a collective action are not subject to claim preclusion, giving notice to potential plaintiffs of a collective action has less to do with the due process rights of the potential plaintiffs and more to do with the named plaintiffs' interests in vigorously pursuing the litigation and the Court's interest in managing collective actions. Here, the Court has already found that it is inclined to find that the procedures used to provide notice to the proposed members of the Rule 23 classes were adequate to provide them with the opportunity to opt out and protect their rights to

1 pursue an independent action. This is a greater due process burden than that imposed on a
2 notice to a proposed collective member. Because the same procedures were used to
3 deliver notice packets to the proposed class and collective members, the Court is inclined
4 to find that these procedures were adequate under the FLSA.

5
6 21. Turning to the substance of the notice, the form includes the terms of
7 the proposed settlement and informs the collective members of their right to object to it.
8 The notice further informs them of the date of the fairness hearing, and if they wish to
9 object, they must file written objections by January 15th, 2009. And it further advised the
10 collective members (separately from the information provided regarding the class actions)
11 how to opt in if they wished to participate in the settlement, as well as the fact that failing
12 to do so will not impact their rights under the FLSA. Out of the 214 potential collective
13 members, 159 opted in and none objected. The Court is inclined to find that this notice
14 was substantively adequate.

15
16 22. The Court is inclined to certify the proposed collective of plaintiffs
17 under the FLSA.

18
19 23. Turning to the Motion for Approval of Award of Attorneys' Fees and
20 Costs, the Court notes that Plaintiffs' counsel (*i.e.*, class counsel) has requested fees in the
21 amount of \$228,729.60, or 25 percent of the value of the funds allocated for settlement, as
22 follows: Oracle paid \$1,187,500 to RG/2 Claims as total settlement funds. Prior to issuing
23 the notice packets, the parties had allocated \$20,000 for litigation costs, \$7,500 for each of
24 the two named Plaintiffs, and \$27,000 for RG/2 Claims's fees and costs, which left
25 \$1,125,500 for claims payments. Of this amount, class and collective members submitted
26 claims for approximately \$910,000 in settlement funds. Per the parties' settlement
27 agreement, upon final approval, 25 percent of this amount will be paid to Plaintiffs'
28 counsel as attorneys' fees. The amount of settlement funds unclaimed, or \$214,659.37,

1 will revert to Oracle, according to the settlement agreement. So the amount requested for
2 attorneys' fees is in line with the Ninth Circuit benchmark of 25 percent.

3
4 24. The Court is inclined to find that the request for fees and costs is fair
5 and reasonable. In the Ninth Circuit, a district court has discretion to award fees in
6 common fund cases based on either the so-called lodestar multiplier method or the
7 percentage-of-the-fund method. The Ninth Circuit has expressly approved the use of
8 percentage methods in common fund cases, and 25 percent has been found to be
9 reasonable. The Court considers that the circumstances of this case compare favorably
10 with the *Vizcaino* factors. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).

11
12 25. Results obtained: Class counsel obtained favorable results on behalf
13 of the class and collective members.

14
15 26. The risks for the class counsel: Counsel for the Plaintiffs have
16 actively litigated these claims for almost three years against a large business entity with
17 substantial resources with no guarantee of any recovery. Further, the employees at issue
18 are paid relatively large salaries and perform relatively sophisticated tasks, making
19 recovery uncertain.

20
21 27. Non-monetary benefits achieved: Plaintiffs' counsel asserts that it has
22 vindicated important public policies expressed in California and federal wage and
23 overtime laws.

24
25 28. The reasonable market rate factor: Contingency fee agreements of
26 one-third are very common, and, therefore, an award of less than that market rate, in this
27 case 25 percent, is reasonable and is favorable to the interests of class and collective
28 members.

1 29. And lastly, preclusion of other employment: Representation of the
2 classes and collective required counsel to forgo other work, which is a relevant factor
3 under *Vizcaino*.

4
5 30. Accordingly, the Court is inclined to approve the \$228,729.60
6 requested for attorneys' fees as well as the costs.

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10 Based upon the foregoing FINDINGS, the Court makes the following
11 ORDERS:

12
13 1. Pursuant to and in compliance with Fed.R.Civ.P. 23, due and
14 adequate notice was directed to all persons and entities who are members of the two
15 classes and the collective who could be identified with reasonable effort. This notice
16 adequately advised those persons of the Revised Joint Stipulation of Class and Collective
17 Action Settlement Between Plaintiffs and Defendant, Settlement Agreement and Release,
18 and of their right to object thereto.

19
20 2. A full and fair opportunity was provided to any such persons to be
21 heard with respect to the settlement and no timely objections to the settlement were filed
22 that were sustained.

23
24 3. The settlement is fair, reasonable, and adequate, and the Court hereby
25 grants the Joint Motion of the Parties for Final Approval of Class Action and Collective
26 Action Settlement.

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28 4. The Court appoints Schneider Wallace Cottrell Brayton Konecky

1 LLP and the Law Office of Christina Djernaes as class counsel.

2
3 5. The Court grants the Motion for Approval of Award of Attorneys'
4 Fees and Costs pursuant to Fed.R.Civ.P. 23(h) and Local Rule 54-6 and hereby awards
5 attorneys' fees in the amount of \$228,729.60 and litigation expenses in the amount of
6 \$20,000 to Schneider Wallace Cottrell Brayton Konecky LLP, and the Law Offices of
7 Christina Djernaes.

8
9 6. The Court hereby awards the class representatives, Leon Turo and
10 Leilani Hammock, the amount of \$7,500 each as compensation for services rendered as
11 class representatives.


12
13 7. The Court approves: one, the release of \$686,188.81 from RG/2
14 Claims to Class and Collective members who submitted valid and timely claims form;
15 and, two, the reversion of \$214,659.37 to Oracle from RG/2 Claims.

16
17 8. The Court approves an award of fees and costs in the amount of
18 \$27,000 to RG/2 Claims Administration, LLC, for services rendered as the claims
19 administrator.

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21 9. The parties will be paid any interest that has accrued on the above
22 monetary amounts on a pro-rata basis.

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Dated: _3/17/09


The Hon. Sandra Brown Armstrong

Approved as to form:

DATED: March 17, 2009

TODD M. SCHNEIDER
W.H. "HANK" WILLSON, IV
SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP

CHRISTINA DJERNAES
LAW OFFICE OF CHRISTINA DJERNAES

By: /s/ Hank Willson
Hank Willson

Attorneys for Plaintiffs
LEON TURO, LEILANI HAMMOCK AND THE
PUTATIVE CLASS

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DATED: March 17, 2009

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By: /s/ Nancy Abell

Nancy L. Abell

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ORACLE CORPORATION

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