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17 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF THARAN GREGORY
LANIER ISO DEFENDANTS' FRCP 12(B)(1)
AND 12(B)(6) MOTION TO DISMISS TO**

Date: November 19, 2008; Time: 9:00 a.m.
Courtroom: 3, 17th Floor
Judge: Hon. Phyllis J. Hamilton

26 I, THARAN GREGORY LANIER, declare:

27 I am a partner in the law firm of Jones Day, 1755 Embarcadero Road, Palo Alto,
28

1 California 94303, and counsel of record for Defendants SAP AG, SAP America, Inc. and
2 TomorrowNow, Inc. (collectively, “Defendants”) in the above-captioned action. I am a member
3 in good standing of the state bar of California and admitted to practice before this Court. I make
4 this declaration based on personal knowledge and, if called upon to do so, could testify
5 competently thereto.

6 **History of Plaintiffs’ Amendments to the Complaint**

7 1. Plaintiffs Oracle Corporation (“Oracle Corp.”), Oracle USA, Inc. (“Oracle USA”) and Oracle International Corporation (“OIC”) (collectively, “the Original Plaintiffs”) filed their
8 initial complaint against Defendants on March 22, 2007. *See* D.I. 1.

10 2. On June 1, 2007, the Original Plaintiffs filed their First Amended Complaint
11 (“FAC”). *See* D.I. 31.

12 3. In January 2008, the Original Plaintiffs informed Defendants that they planned to
13 amend the complaint a second time, but could not do so until they had obtained additional
14 copyright registrations.

15 4. At the Case Management Conference in April 2008, the Original Plaintiffs
16 attributed their delay in filing the Second Amended Complaint (“SAC”) to their efforts to obtain
17 additional copyright registrations.

18 5. On July 28, 2008, pursuant to a stipulation, the Original Plaintiffs filed the SAC.
19 *See* D.I. 132. Of the 40 additional copyright registrations identified in the SAC, all of them pre-
20 date the FAC, and all but three pre-date the original complaint.

21 6. On August 28, 2008, after being informed Defendants might respond to the SAC by
22 motion, the Original Plaintiffs informed Defendants that they planned to seek leave to amend
23 again to make “some adjustment to the plaintiff entities currently described in the Second
24 Amended Complaint.” This proposed amendment purportedly followed Plaintiffs’ recent
25 “discovery” of documents relating to ownership of the copyrights-in-suit (“inter-company
26 agreements”) that Defendants have been seeking for more than a year.

27 **History of Plaintiffs’ Production of Their Inter-Company Agreements**

28 7. Defendants first asked the Original Plaintiffs to produce inter-company agreements

1 on July 26, 2007, the day fact discovery opened. The Original Plaintiffs agreed, but as of the fall
2 of 2007, had not done so.

3 8. Defendants raised the Original Plaintiffs' failure to produce the inter-company
4 agreements, as well as other relevant documents, in meet and confer communications in October,
5 November and December 2007, and specifically put the Original Plaintiffs on notice that
6 Defendants may raise legal challenges based on the inter-company agreements. ("We believe that
7 it is not unlikely that the alleged licensing was not handled in the way you have alleged.").

8 9. On January 4, 2008, the Original Plaintiffs again said that they would produce the
9 requested documents but by the end of January, still had not done so.

10 10. On January 28, 2008, Defendants raised the issue in a motion to compel submitted
11 to the Special Discovery Master.

12 11. On February 25, 2008, some seven months after Defendants first requested them,
13 Plaintiffs finally produced a few inter-company agreements. Believing the Original Plaintiffs'
14 production to be incomplete, Defendants continued to meet and confer on the issue.

15 12. On July 22, 2008, a full year after Defendants requested them, the Original
16 Plaintiffs produced several additional inter-company agreements.

17 13. Defendants then asked the Original Plaintiffs to confirm that they had produced all
18 responsive inter-company agreements. The Original Plaintiffs initially refused to give a
19 straightforward answer to that question.

20 14. On August 27, 2008, the Original Plaintiffs admitted "that there may be some
21 additional responsive documents related to inter-company agreements." The very next day,
22 August 28, 2008, the Original Plaintiffs informed Defendants that they planned to seek leave to
23 amend again to make "some adjustment to the plaintiff entities currently described in the Second
24 Amended Complaint" as a result of their "discovery" of additional documents relating to
25 copyright ownership.

26 **The Third Amended Complaint**

27 15. On September 11, 2008, the parties entered into a stipulation regarding the Original
28 Plaintiffs' proposed TAC, pursuant to which the Original Plaintiffs would provide to Defendants

1 a draft TAC and would “make reasonable efforts to complete a supplemental production of
2 documents related to the proposed amendments” by September 29, 2008. *See* D.I. 177.

3 16. On September 29, 2008, the Original Plaintiffs provided SAP with the draft TAC
4 and supplemental production described in the stipulation. The supplemental production consisted
5 of additional copyright-related materials and inter-company agreements.

6 17. On October 6, 2008, Defendants stipulated to filing of the TAC, and the Plaintiffs
7 filed the TAC on October 8, 2008. *See* D.I. 182.

8 18. At the October 10, 2008 Discovery Conference, Plaintiffs’ counsel confirmed that
9 Plaintiffs had produced all agreements for the Plaintiffs named in the TAC related to the
10 ownership of and rights to the copyrights in issue. *See* Reporter’s Transcript of October 10, 2008
11 Discovery Conference Before: Hon. Elizabeth D. Laporte, pp. 1, 61-63, attached as Exhibit 9.

12 **Exhibits Attached to This Declaration**

13 19. Attached as Exhibit 1 is a true and correct copy of the June 4, 1998 Research and
14 Development Cost Sharing Agreement by and among J.D. Edwards World Source Company, J.D.
15 Edwards Europe Ltd., and J.D. Edwards (Singapore) Pte. Ltd. *See* ORCL00182315–332.

16 20. Attached as Exhibit 2 is a true and correct copy of the Oracle/Ozark Contribution,
17 Assignment and Assumption Agreement, dated January 31, 2006, between Oracle Corporation
18 and Ozark Holding Inc. *See* ORCL00182293–302.

19 21. Attached as Exhibit 3 is a true and correct copy of the March 1, 2005
20 PeopleSoft/JDE LLC OIC Asset Transfer Agreement between Oracle Corporation, Oracle
21 International Corporation, PeopleSoft, Inc. and J.D. Edwards & Company, LLC. *See*
22 ORCL00043702–707.

23 22. Attached as Exhibit 4 is a true and correct copy of the March 1, 2005 OIC Asset
24 Transfer Agreement by and among Oracle Corporation, Oracle International Corporation,
25 PeopleSoft, Inc. and J.D. Edwards & Co., LLC, J.D. Edwards YOUCentric and J.D. Edwards
26 World Source Company. *See* ORCL00043708–713.

27 23. Attached as Exhibit 5 is a true and correct copy of the “Customer Connection Terms
28 of Use.” *See* ORCL00051977–78.

EXHIBIT 1

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23 Plaintiffs,
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25 SAP AG, *et al.*,
26 Defendants.

CASE NO. 07-CV-1658 PJH (EDL)

**EXHIBIT 1: RESEARCH AND
DEVELOPMENT COST SHARING
AGREEMENT BY AND AMONG J.D.
EDWARDS WORLD SOURCE
COMPANY, J.D. EDWARDS EUROPE
LTD., AND J.D. EDWARDS
(SINGAPORE) PTE. LTD.**

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Regarding: EXHIBIT 1 to the DECLARATION OF THARAN GREGORY LANIER

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EXHIBIT 2

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**EXHIBIT 2: ORACLE/OZARK
CONTRIBUTION, ASSIGNMENT AND
ASSUMPTION AGREEMENT**

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CASE NO. 07-CV-1658 PJH (EDL)

**EXHIBIT 3: PEOPLESOFT/JDE LLC
OIC ASSET TRANSFER AGREEMENT
BETWEEN ORACLE CORPORATION,
ORACLE INTERNATIONAL
CORPORATION, PEOPLESOFT, INC.
AND J.D. EDWARDS & COMPANY,
LLC.**

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**EXHIBIT 4: OIC ASSET TRANSFER
AGREEMENT BY AND AMONG
ORACLE CORPORATION, ORACLE
INTERNATIONAL CORPORATION,
PEOPLESOFT, INC. AND J.D.
EDWARDS & CO., LLC, J.D.
EDWARDS YOUCENTRIC AND J.D.
EDWARDS WORLD SOURCE
COMPANY.**

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EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 8

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EXHIBIT 9

TRANSCRIPTION OF DISCOVERY CONFERENCE 10/10/08

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, et al.,

Plaintiffs,

vs.

No. C07-1658 PJH (EDL)

SAP AG, et al.,

Defendants.

REPORTER'S TRANSCRIPTION OF DISCOVERY CONFERENCE

BEFORE: HON. ELIZABETH D. LAPORTE

Friday, October 10, 2008

Reported by:
CLAUDIA A. BETTUCCHI
CSR No. 12214

JOB No. 98424

1 is right for us to negotiate a briefing schedule.

2 THE COURT: Okay.

3 MR. McDONELL: There is one issue that we
4 think could be addressed now. Very narrow. There is a
5 third amended complaint that is brand new. It changes
6 the parties to the case so Oracle corporation is out,
7 other Oracle authorities are in. And it rejiggers who
8 owns copyrights in a way that we can't quite understand.
9 And all of that is contingent on how the various Oracle
10 affiliates have intercompany agreements by which they
11 license copyrights.

12 All we are asking for is a statement by the
13 plaintiffs that they have now produced all of the
14 relevant intercompany licensing agreements so that we
15 know we are no longer shooting at a moving target. And
16 thus far they have declined to confirm or deny, as far
17 as I know.

18 MR. HOWARD: Well, I don't agree with the
19 characterization of the complaint. I think the
20 ownership allegations are the same as they were in the
21 prior versions of the complaint. But we have produced
22 all of the documents that we believe support the
23 allegations of the complaint and demonstrate the
24 ownership or otherwise the copyright standing of each of
25 those plaintiffs that are in the current third amended

1 complaint.

2 THE COURT: Okay. But you are asking for a --
3 and I think a declaration of a person most knowledgeable
4 as to what?

5 MR. McDONELL: No, I'm willing to take
6 counsel's representation here on the record that they
7 have now produced all of the intercompany license
8 agreements that substantiate which of the entities have
9 copyrights rights. And I think counsel, as I heard him,
10 said they have now been produced.

11 MR. HOWARD: Yes. The -- I'm not sure what
12 copyrights rights are. We've alleged that one of the
13 plaintiffs owns the copyrights and other plaintiff have
14 claims of the copyrights. And we have indeed produced
15 all of the documents that substantiate those allegations
16 in the complaint.

17 THE COURT: Okay. Have you produced all of
18 the intercompany agreements that relate to any of the
19 copyrighted material that is the subject of the
20 complaint?

21 MR. HOWARD: The reason I'm hesitating, Your
22 Honor, is because there are a lot of entities and a lot
23 of intercompany agreements. But what I am confident of
24 is that we have produced all of the intercompany
25 agreements that are relevant to determining the

1 ownership or other copyright standing of the named
2 plaintiffs with respect to each of the copyright
3 registrations that are identified in the complaint as
4 the registered works at issue in the case.

5 MR. McDONELL: Then we'll rely on that --

6 THE COURT: Okay.

7 MR. McDONELL: -- for present purposes.

8 THE COURT: All right.

9 MR. McDONELL: I think what he's saying is
10 that they have produced all of --

11 THE COURT: It sounds like it's sufficient to
12 show as opposed to everything possible, but that is
13 normally a good approach.

14 MR. McDONELL: Sufficient to show who owned
15 what and when they owned it.

16 THE COURT: And that's --

17 MR. McDONELL: We'll rely on that.

18 THE COURT: Yes, but let's just -- so on the
19 mo- -- you were anticipating a motion to compel with
20 documents related to potential new plaintiffs? Is that
21 what this boils down to?

22 MR. McDONELL: It's a little -- it's a little
23 different issue, and I think we've got that worked out
24 by agreement. We didn't want to have to start --

25 THE COURT: Right.