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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
21 SAN FRANCISCO DIVISION

22 ORACLE USA, INC., et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

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

**REPLY DECLARATION OF ELAINE
WALLACE IN SUPPORT OF
DEFENDANTS' MOTION TO
COMPEL DISCOVERY RELEVANT
TO PLAINTIFFS' COPYRIGHT
CLAIMS**

Date: May 19, 2009

Time: 2:00 pm

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

1 I, ELAINE WALLACE, declare:

2 I am an associate with the law firm of Jones Day and counsel for Defendants in the above-
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do
4 so, could testify competently thereto.

5 1. Attached hereto as Exhibit A is a true and correct copy of Copyright Office
6 Circular 14, entitled "Copyright Registration for Derivative Works." This document was
7 erroneously cited as Copyright Office Circular 41 at page 9 of Defendants' opening brief.

8 2. Counsel for the parties have met and conferred by telephone and email a number
9 of times since the March 31, 2009 discovery conference regarding access to the Customer
10 Connection databases. Defendants' counsel described some of the access problems Defendants'
11 experts had experienced. Oracle's counsel provided information in response, and Defendants'
12 experts have since been able to restore some of the databases. Not all have been restored yet
13 (because of the sheer number of databases produced) so it is unclear whether any access remain to
14 be resolved. If so, Defendants believe they will be able to resolve them with Oracle. The primary
15 problem now is that there appear to be over 700 databases in total and Defendants can only guess
16 based on column and table names as to what is contained in each database and what the data
17 represents. Defendants do not believe that it is possible to understand or use the information
18 without the requested "mapping" information.

19 3. On November 18, 2008, I received an email from Zachary Alinder, counsel for
20 Oracle, in response to my October 21, 2008 email. I did not have an opportunity to respond to
21 Mr. Alinder's email before I left on vacation three days later or before receiving Oracle's
22 supplemental response to Interrogatory No. 13 on December 5, 2008. On December 11, after
23 reviewing the supplemental interrogatory response, I sent an email to Mr. Alinder noting that the
24 response "does not appear to address the information requested by Topic 6 of our Rule 30(b)(6)
25 deposition notice" A true and correct copy of my December 11 email is attached hereto as
26 Exhibit B.

27 4. Oracle was still making supplemental productions of copyright related documents
28 (including registration certificates, copyright applications, deposit materials, and communications

1 with the Copyright Office) as of April 6 and April 17, 2009. The Certificates of Recordation
2 cited by Oracle in its opposition were not produced until April 28, the day it filed the opposition.
3 The agreements purportedly supporting the allegation in the complaint that Oracle Europe Middle
4 East and Africa (“OEMEA”) is a successor in interest to certain PeopleSoft and JD Edwards
5 entities were not produced until April 24, after Defendants served an interrogatory requesting the
6 basis for the allegation. Multiple agreements between Oracle International Corporation (“OIC”)
7 and other Oracle entities to which it licenses the Registered Works were not produced until a few
8 days before (and for some agreements, the day before) Defendants Rule 30(b)(6) deposition of
9 OIC on April 14, 2009.

10 5. Upon information and belief, based on publicly available information, PeopleSoft
11 completed its acquisition of Red Pepper Software, Inc., Distinction Software, Inc., and Vantive
12 Corporation in 1996, 1998, and 1999, respectively.

13 6. Defendants are still determining whether the software Oracle has produced is what
14 Oracle claims it to be. For example, some of the software CDs appear to be “demo” versions.
15 Defendants are confirming with Oracle whether these are complete working versions of the
16 Registered Works. Defendants received an email from Oracle’s counsel on this subject the day
17 before filing their reply brief. Defendants are analyzing the information in that email and plan to
18 follow up with a telephone meet and confer shortly.

19 7. Defendants received Oracle’s first production of software for the Registered
20 Works on December 5, 2008. The next production was not received until April 10, 2009, after
21 Defendants requested and obtained from the Court a hearing date on this motion to compel.

22 8. Defendants’ counsel met and conferred by telephone on April 3, 2009 regarding
23 Oracle’s production of the Registered Works software. Oracle’s counsel asked Defendants’
24 counsel on that call to provide a list of software Defendants believed had not been produced.
25 Defendants’ counsel explained that they had tried to create such a list but had been unable to
26 because of issues such as lack of activation codes to access the software and the fact that, in many
27 cases, the titles on the production CDs do not match the titles in the copyright registrations.
28 Defendants’ counsel thus requested that Oracle provide a list of what it believed had been

1 produced, with the corresponding Bates numbers. Oracle's counsel provided that list later the
2 same day. Only then were Defendants able to compile the list submitted to the Court as Exhibit A
3 to my declaration in support of Defendants' motion. Defendants updated the list as Oracle
4 produced additional software between April 3 and April 14, when the motion was filed. As
5 explained below and in Defendants' reply brief, Defendants have still not been able to access
6 much of the software produced by Oracle. Consequently, the list is largely based on Oracle's
7 representations regarding what software has been produced. A true and correct copy of the April
8 3 email from Oracle's counsel is attached as Exhibit C.

9 9. In a meet and confer on April 8, Defendants informed Oracle that it appeared that
10 Defendants could not obtain activation codes for the JD Edwards products from Oracle's website
11 without providing product serial numbers that Defendants do not have. Defendants also asked
12 that Oracle provide Defendants written authorization to obtain activation codes from the website
13 for purposes of this litigation. Oracle agreed to look into the JD Edwards issue and to provide the
14 requested written authorization. As of the date of Oracle's opposition, Defendants had not
15 received any response from Oracle. Defendants brought that to Oracle's attention by email on
16 April 29 and received a response on May 4, the day before filing their reply brief. Defendants are
17 analyzing the information in that response and will continue to work with Oracle to resolve the
18 issue.

19 10. Defendants raised the issue of PeopleSoft's acquisition of Vantive Corporation by
20 email to Oracle's counsel on March 13, 2009. Oracle's counsel responded on March 17 that they
21 were "looking into the Vantive issue." On April 9, having received no response, Defendants sent
22 another email inquiring about the status of the Vantive issue and noting that other PeopleSoft
23 acquisitions, including that of Red Pepper Software, appeared to be relevant as well. Oracle's
24 counsel responded the same day, stating as follows: "The presumption in Oracle's copyright
25 registrations satisfies the proper scope of the ownership and authorship information for the
26 Registered Works. Having Oracle chase down PeopleSoft acquisition documents years after the
27 fact is precisely the type of pointless discovery that the copyright presumption was intended to
28 prevent." Oracle also requested that Defendants provide authority supporting their position.

1 Based on Oracle's response, Defendants did not believe that any additional meet and confer
2 would be fruitful and included the issue in their motion, filed on April 14. A true and correct
3 copy of the email chain is attached as Exhibit D.

4 11. Defendants' have stated in the last several Joint Discovery Statements submitted to
5 the Court that they anticipated filing a copyright related motion to compel. At the March 31,
6 2009 discovery conference, Defendants' counsel requested leave to file the motion. Defendants
7 described generally the content of the motion, including that it would address the derivative
8 works issue, access to Customer Connection, and Oracle's failure to produce copies of each
9 Registered Work. Defendants informed the court that meet and confer discussions on these topics
10 were ongoing and had been for some time. The Court granted leave to file the motion and set a
11 May 19 hearing date.

12 I declare under penalty of perjury under the laws of the United States and the State of
13 California that the foregoing is true and correct.

14 Executed this 5th day of May, 2009 in San Francisco, California.

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/s/ Elaine Wallace
Elaine Wallace