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18 TOMORROWNOW, INC.

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN FRANCISCO DIVISION

22 ORACLE USA, INC., et al.,   Case No. 07-CV-1658 PJH (EDL)

23   Plaintiffs,   **DECLARATION OF CATHERINE HYDE**

24   v.

25 SAP AG, et al.,

26   Defendants.

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DECLARATION OF CATHERINE HYDE
Case No. 07-CV-1658 PJH (EDL)

1   I, Catherine Hyde, declare as follows:

2   1.   I am a former TomorrowNow, Inc. employee. I have personal knowledge of the

3   facts stated in this declaration and could competently testify to them if required.

4   2.   I was employed by TomorrowNow as a developer for the PeopleSoft product lines

5   from October 2002 through October 31, 2008. During my employment at TomorrowNow, I used

6   a TomorrowNow-created database, referred to as the SAS database, which was created to

7   document the support activity for TomorrowNow's customers. As a general practice, the SAS

8   database was used by TomorrowNow employees to document the scoping (researching of an

9   issue), development and testing of the fixes and regulatory updates created for TomorrowNow

10   customers. This documentation often included information about the environments and/or

11   environment components that were accessed or used during that process. In my experience at

12   TomorrowNow, these researching, development and testing activities documented in SAS were

13   usually performed on a daily basis, and included use of several TomorrowNow customer

14   environments and/or environment components in servicing customers' needs.

15   3.   For a portion of the time I was employed by TomorrowNow, I used a

16   TomorrowNow-created database, referred to as BakTrak, to track the backup, restore, check-in

17   and check-out of TomorrowNow customers' environments and environment components. As a

18   general practice, TomorrowNow used BakTrak to track when and why TomorrowNow customer

19   environments and/or environment components were backed-up and/or restored. As a general

20   practice, TomorrowNow also used BakTrak to track which environments and/or environment

21   components were being used, and by whom, through a check-in and check-out process.

22   4.   Based on my experience, the SAS database is the best record, if any, of how and

23   when TomorrowNow customer environments and/or environment components were used to

24   support customers. The SAS database is relatively easy to use, and, with minimal training,

25   relevant material can be easily extracted. The SAS database has a self-contained index and is

26   fully searchable. The data can be sorted and reviewed in a number of different ways including,

27   but not limited to, by customer, fix, case and product line. All of the different ways to view the

28   data can be determined by the index. The BakTrak database has self-explanatory buttons that

DECLARATION OF CATHERINE HYDE
Case No. 07-CV-1658 PJH (EDL)

- 1 -

1   allow the user to view the restores, backups, and check-in and check-out information. Within

2   these views, the user can pick the product line or environment/environment component they want

3   to see.

4   5.   So far, in this case, I have been deposed as a 30(b)(6) witness and in my individual

5   capacity for approximately 22 hours collectively on April 1, 2008, April 2, 2008, February 12,

6   2009 and March 12, 2009. During those 22 hours, Oracle's attorneys have questioned me

7   regarding numerous printouts and documents from the SAS database and regarding spreadsheets

8   generated from BakTrak. Those printouts and documents appear exactly as they would if I had

9   printed them at TomorrowNow while I was an employee. It is apparent to me that whoever

10   printed these documents from the SAS and BakTrak databases for Oracle's attorneys is a

11   competent user of both the SAS database and BakTrak. It was also apparent to me from Oracle's

12   counsel's questions that they understand how to locate the necessary information from both

13   sources. Much of Oracle's counsel's questioning of me has involved reference to specific

14   TomorrowNow's customer environments and/or environment components. And a substantial

15   portion of those questions involved simply asking me to confirm the information in the SAS

16   database printouts and/or the BakTrak spreadsheets. In fact, the 30(b)(6) deposition that took

17   place on April 1 and 2, 2008 was focused principally on the creation and use of TomorrowNow

18   customer environments and/or environment components.

19   6.   I have read Oracle's Motion to Compel and Geoff Howard's supporting

20   declaration, and I acknowledge that during my individual deposition on March 12, 2009, Mr.

21   Howard asked me questions about the CDs used to build TomorrowNow customer environments

22   and/or environment components. However, Mr. Howard also asked almost the exact same

23   questions during my 30(b)(6) deposition regarding the same TomorrowNow customer

24   environments and/or environment components, in addition to many more that he did not ask me

25   about during my individual deposition. In preparing for my 30(b)(6) testimony, I spent numerous

26   hours reviewing the SAS database and BakTrak to help educate myself for that deposition

27   because I believed these to contain the most complete and accurate record of the creation and use

28   of environments and/or environment components at TomorrowNow. I also relayed some of the

1   results of my research from my 30(b)(6) testimony in my individual deposition. During all of the

2   deposition testimony I have provided, I believe I have exhausted all of my personal knowledge

3   regarding the source of environments; therefore, I do not believe I could provide any additional

4   information regarding the sources of environments. Also, the source of each TomorrowNow

5   customer environment and/or environment component is a different question than how each and

6   every environment and/or environment component was used, about which Oracle's attorneys also

7   exhaustively questioned me.

8   7.   I also read Mr. Howard's statement that I am a paid litigation consultant. It is true

9   that I have a consulting agreement with TomorrowNow to help locate and provide information

10   relating to the litigation. However, the consulting agreement does not prevent me from being

11   employed elsewhere, and I am actively seeking that employment. When I entered into the

12   consulting agreement, I did not envision and do not now believe that it requires me to spend

13   months or even years extracting information out of the SAS and BakTrak databases. I have

14   further read Plaintiff Oracle USA, Inc.'s Second Set of Interrogatories to Defendant

15   TomorrowNow, Inc. Interrogatory No. 14 and believe that it would takes thousands of man-hours

16   to go through the SAS database and provide the most complete answer possible to interrogatory

17   14, and that answer would still be incomplete. I also believe that with Oracle's attorneys'

18   knowledge of the databases that was demonstrated during their questioning of me, they are in

19   substantially the same position as I would be to conduct the review. This is particularly true

20   because I have no independent recollection of the specific information Oracle seeks and the

21   information in the SAS databases is essentially the best information available to answer
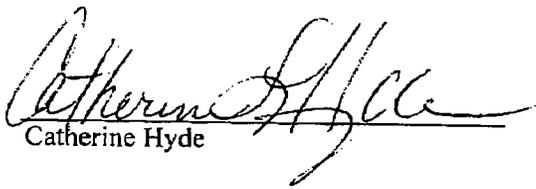
22   Interrogatory No. 14.

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DECLARATION OF CATHERINE HYDE
Case No. 07-CV-1658 PJH (EDL)

- 3 -

8.   I declare under the penalty of perjury that the above facts are based on my personal knowledge and are true and correct. This Declaration was executed on July *14*, 2009, at Melbourne, Florida.

Catherine Hyde