

1 BINGHAM McCUTCHEM LLP
CHRISTOPHER B. HOCKETT (SBN 121539)
2 GEOFFREY M. HOWARD (SBN 157468)
HOLLY A. HOUSE (SBN 136045)
3 ZACHARY J. ALINDER (SBN 209009)
BREE HANN (SBN 215695)
4 Three Embarcadero Center
San Francisco, CA 94111-4067
5 Telephone: (415) 393-2000
Facsimile: (415) 393-2286
6 chris.hockett@bingham.com
geoff.howard@bingham.com
7 holly.house@bingham.com
zachary.alinder@bingham.com
8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)
JEFFREY S. ROSS (SBN 138172)
10 500 Oracle Parkway
M/S 5op7
11 Redwood City, CA 94070
Telephone: (650) 506-4846
12 Facsimile: (650) 506-7114
dorian.daley@oracle.com
13 jeff.ross@oracle.com

14 Attorneys for Plaintiffs
15 Oracle Corporation, Oracle USA, Inc.,
and Oracle International Corporation

16

17

UNITED STATES DISTRICT COURT

18

NORTHERN DISTRICT OF CALIFORNIA

19

SAN FRANCISCO DIVISION

20

21 ORACLE CORPORATION, a Delaware
corporation, ORACLE USA, INC., a Colorado
22 corporation, and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

23

Plaintiffs,

24

v.

25

SAP AG, a German corporation, SAP
AMERICA, INC., a Delaware corporation,
26 TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,

27

Defendants.

28

CASE NO. 07-CV-01658 (MJJ)

FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:

(1) COPYRIGHT INFRINGEMENT;
(2) VIOLATIONS OF THE COMPUTER
FRAUD AND ABUSE ACT;
(3) VIOLATIONS OF THE COMPUTER
DATA ACCESS AND FRAUD ACT;
(4) BREACH OF CONTRACT;
(5) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE;

Case No. 07-CV-01658 (MJJ)

FIRST AMENDED COMPLAINT

(6) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
(7) UNFAIR COMPETITION;
(8) TRESPASS TO CHATTELS;
(9) UNJUST ENRICHMENT / RESTITUTION; and,
(10) AN ACCOUNTING.

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9 Plaintiffs Oracle Corporation, Oracle USA, Inc. (“Oracle USA”), and Oracle
10 International Corporation (“OIC”) (together “Oracle” or “Plaintiffs”) for their Complaint against
11 Defendants SAP AG (“SAP AG”), SAP America, Inc. (“SAP America”), TomorrowNow, Inc.
12 (“SAP TN”), and Does 1 through 50 (collectively referred to as “SAP” or “Defendants”), allege
13 as follows based on their personal knowledge as for themselves, and on information and belief as
14 to the acts of others:

15 **I. INTRODUCTION**

16 1. This case is about corporate theft on a grand scale, committed by the
17 largest German software company – a conglomerate known as SAP. Oracle is a leading
18 developer of database and applications software, and SAP is Oracle’s largest enterprise
19 applications software competitor.

20 2. Oracle brings this lawsuit after discovering that SAP is engaged in
21 systematic, illegal access to – and taking from – Oracle’s computerized customer support
22 systems. Through this scheme, SAP has stolen thousands of proprietary, copyrighted software
23 products and other confidential materials that Oracle developed to service its own support
24 customers. SAP gained repeated and unauthorized access, in many cases by use of pretextual
25 customer log-in credentials, to Oracle’s proprietary, password-protected customer support
26 website. From that website, SAP has copied and swept thousands of copyrighted Oracle
27 software products and other proprietary and confidential materials onto its own servers. As a
28

1 result, SAP has compiled an illegal library of Oracle’s copyrighted software code and other
2 materials. This storehouse of stolen Oracle intellectual property enables SAP to offer cut rate
3 support services to customers who use Oracle software, and to attempt to lure them to SAP’s
4 applications software platform and away from Oracle’s. Through this Complaint, Oracle seeks
5 to stop SAP’s illegal intrusions and theft, to prevent SAP from using the materials it has illegally
6 acquired to compete with Oracle, and to recover damages and attorneys’ fees.

7 3. In late November 2006, there occurred unusually heavy download
8 activity on Oracle’s password-protected customer support website for its PeopleSoft and J.D.
9 Edwards (“JDE”) product lines. That website, called Customer Connection, permits licensed
10 Oracle customers with active support agreements to download a wide array of copyrighted,
11 proprietary software programs and other support materials. Oracle has invested billions of
12 dollars in research, development, and engineering to create these materials, which include
13 program updates, software updates, bug fixes, patches, custom solutions, and instructional
14 documents – all copyrighted by Oracle – across the entire PeopleSoft and JDE family of software
15 products (the “Software and Support Materials”). Customers who have contracted for support
16 with Oracle have log-in credentials to access Customer Connection and download Software and
17 Support Materials. However, Oracle’s support contracts limit customers’ access and download
18 rights to Software and Support Materials pertaining to the customers’ licensed products.
19 Customers have no contractual right to download Software and Support Materials relating to
20 software programs they have not licensed from Oracle, or for which the customers did not
21 purchase support rights.

22 4. The Software and Support Materials are a subset of the technical support
23 services that Oracle makes available to its customers that have licensed Oracle software
24 programs and purchased the right to receive technical support services related to them. The full
25 suite of technical support services (also known as “support” or “maintenance”) generally
26 includes three types of offerings that Oracle, like most other enterprise software vendors, makes
27 available to its licensed customers: (i) telephone or email access to Oracle’s support technicians
28 regarding the operation of Oracle’s software; (ii) software program code for the customers’

1 licensed software programs which adds new functionality or features to the software (generally
2 referred to as “software updates”), or that addresses errors or “bugs” in the software program
3 (generally referred to as “software patches”); and (iii) “knowledge management” articles that
4 help with problem solving and provide suggestions relating to the customer’s use of licensed
5 software programs. Because of the complexity of enterprise software applications and the
6 business environments in which they run, regular software updates and patches and knowledge
7 management articles are critical components of a software maker’s support offering. For
8 purposes of this case, Oracle’s claims against SAP only concern Oracle’s Software and Support
9 Materials, and not Oracle’s provision of telephone or email assistance from Oracle support
10 technicians in response to a customer’s individual support queries.

11 5. The access and download activity Oracle observed on its systems in late
12 November and December 2006 did not resemble the authorized, limited access to which its
13 customers were entitled. Instead, SAP employees using the log-in credentials of Oracle
14 customers with expired or soon-to-expire support rights had, in a matter of a few days or less,
15 accessed and copied thousands of individual Software and Support Materials. For a significant
16 number of these mass downloads, the users lacked any contractual right even to access, let alone
17 copy, the Software and Support Materials. The downloads spanned every library in the
18 Customer Connection support website. For example, using one customer’s credentials, SAP
19 suddenly downloaded an average of over 1,800 items per day for four days straight (compared to
20 that customer’s normal downloads averaging 20 per month). Other purported customers hit the
21 Oracle site and harvested Software and Support Materials after they had cancelled all support
22 with Oracle in favor of SAP TN. Moreover, these mass downloads captured Software and
23 Support Materials that were clearly of no legitimate use to the “customers” in whose names they
24 were taken. Indeed, the materials copied not only related to unlicensed products, but to entire
25 Oracle product families that the customers had not licensed.

26 6. For example, in January 2007, a user on an SAP TN computer signed in
27 as Oracle customer Honeywell International, Inc., a Fortune 100 technology and manufacturing
28 company, to access Oracle’s support system and copy literally thousands of Oracle’s Software

1 and Support Materials in virtually every product library in every line of business. This copying
2 went well beyond the products that Honeywell had licensed and to which it had authorized
3 access. In other examples, users from SAP TN logged in using the credentials of recently
4 departed customers, like Metro Machine Corp., and downloaded Software and Support Materials
5 even after the customers had dropped their support rights with Oracle.

6 7. Oracle has found many examples of similar activity. Across its entire
7 library of Software and Support Materials in Customer Connection, Oracle to date has identified
8 more than 10,000 unauthorized downloads of Software and Support Materials relating to
9 hundreds of different software programs.

10 8. This systematic theft of Oracle's Software and Support Materials did not
11 originate from any actual customer location. Rather, the access originated from an internet
12 protocol (IP) address in Bryan, Texas, an SAP America branch office location and home of its
13 wholly-owned subsidiary SAP TN. SAP TN is a company that purports to provide technical
14 support services on certain versions of Oracle's PeopleSoft and JDE software programs. The
15 Bryan, Texas IP address used to access and download Oracle's Software and Support Materials
16 is connected directly to SAP's computer network. Indeed, Oracle's server logs have recorded
17 access through this same IP address by computers labeled with SAP identifiers using SAP IP
18 addresses.

19 9. In many instances, including the ones described above, SAP employees
20 used the log-in IDs of multiple customers, combined with phony user log-in information, to gain
21 access to Oracle's system under false pretexts. Employing these techniques, SAP users
22 effectively swept much of the contents of Oracle's system onto SAP's servers. These "customer
23 users" supplied user information (such as user name, email address, and phone number) that did
24 not match the customer at all. In some cases, this user information did not match anything: it
25 was fake. For example, some users logged in with the user names of "xx" "ss" "User" and
26 "NULL." Others used phony email addresses like "test@testyomama.com" and fake phone
27 numbers such as "7777777777" and "123 456 7897." In other cases, SAP blended log-in
28 information from multiple customers with fake information. For example, one user name

1 connected to an SAP IP address appears to have logged in using the credentials of *seven* different
2 customers in a span of just 15 days – all from SAP computers in Bryan, Texas. **All of these**
3 **customers whose IDs SAP appropriated had one critical fact in common: they were, or**
4 **were just about to become, new customers of SAP TN – SAP AG’s and SAP America’s**
5 **software support subsidiary whose sole purpose is to compete with Oracle.**

6 10. As a result of this illegal activity, SAP apparently has now copied and
7 warehoused an extensive library of Oracle’s proprietary, copyrighted Software and Support
8 Materials. As explained below, this theft appears to be an essential – and illegal – part of SAP’s
9 competitive strategy against Oracle.

10 * * *

11 11. In the world of enterprise software applications, revenue comes from
12 three basic activities: (a) licenses of the underlying software, (b) consulting relating to the
13 implementation and operation of the software, and (c) support contracts to keep the software
14 updated and upgraded. In January 2005, through SAP America, SAP AG acquired SAP TN, an
15 independent software support company founded by former PeopleSoft software engineers,
16 developers, and support technicians. Not by coincidence, Oracle had previously announced that
17 in January 2005 it would complete its acquisition of PeopleSoft, increasing Oracle’s potency as a
18 competitor to SAP AG for enterprise applications software, consulting, and support.

19 12. Industry observers noted this fundamental shift in the competitive
20 landscape. One industry analyst stated that, “Oracle Corp. is developing a ‘super set’ of
21 applications, combining features from the PeopleSoft and JDE¹ software and its CEO Larry
22 Ellison has been vocal about his intentions to take market share away from SAP. Oracle said it
23 has thousands of developers building the new application suite, called Project Fusion, aimed at
24 taking market share from No. 1 ranked SAP.” Another mused, “After the acquisition of
25 PeopleSoft earlier this year, Oracle officially became a player on SAP’s turf.”

26
27 ¹ “JDE” refers to J.D. Edwards World Solutions, a software company acquired by
28 PeopleSoft, Inc. in 2003.

1 13. SAP AG’s hasty acquisition of SAP TN was widely perceived as a
2 response to the new competitive threat from Oracle. SAP’s own statements confirmed it. SAP
3 AG spokesman Bill Wohl vowed that SAP AG would use SAP TN to “keep the pressure on
4 Oracle” by exploiting legacy PeopleSoft customers’ perceived unease about Oracle’s
5 commitment to support legacy PeopleSoft software. Publicly, SAP advertised this strategy as its
6 “Safe Passage” program, explicitly designed to transition customers away from Oracle products
7 and onto the SAP software platform. As reported in industry publications, SAP TN’s services
8 “form[ed] the basis of [SAP AG’s] Safe Passage initiative, a program aimed at siphoning off
9 valuable software maintenance revenue from Oracle and persuading Oracle customers to switch
10 software products [to SAP].” Although SAP America President and CEO, Bill McDermott,
11 committed to throw “a lot of additional resources” behind SAP TN (which consisted of only 37
12 employees in total), SAP appeared to focus more on growing the SAP TN sales force rather than
13 investing in or expanding SAP TN’s tiny development team. Indeed, SAP TN did not appear to
14 have the development capability to meet the support commitments advertised in the “Safe
15 Passage” brochures at any price, much less the 50% discount promoted by SAP. It certainly did
16 not match Oracle’s investment in development resources, or even come close to it. These facts
17 raised questions about how SAP could offer the type of comprehensive technical support
18 services on Oracle programs that customers of enterprise applications typically require.

19 14. Nevertheless, industry observers deemed the “Safe Passage” program
20 “measurably more aggressive,” and a sign that “SAP has taken the gloves off.” In connection
21 with the SAP TN acquisition, SAP America’s CEO, Bill McDermott, crowed “There’s nothing
22 that I love more than to win.” But win at what cost? SAP appears to have taken a short cut to
23 equip itself to support Oracle’s software programs at half Oracle’s price. SAP stole much of the
24 Software and Support Materials directly from Oracle.

25 15. SAP’s unlawful copying and theft includes, by way of example, the
26 following:

27
28

- 1 • More than 10,000 illicit downloads from Customer Connection between
2 September 2006 and January 2007, with indications that this number may
3 go significantly higher if traced further back in time.
- 4 • A systematic pattern of “sweeping” Oracle’s Customer Connection
5 support website from SAP TN servers just days before, or the day of, the
6 expiration of a new SAP TN customer’s support contract with Oracle, or
7 in some cases on behalf of former Oracle customers with no access rights
8 to Oracle’s Software and Support Materials whatsoever.
- 9 • On multiple occasions, the indiscriminate, wholesale copying of vast
10 libraries of available Software and Support Materials from Oracle’s
11 Customer Connection support website through downloads too rapid to
12 permit any real-time use of the downloaded Software and Support
13 Materials.
- 14 • The improper access to, and theft of, clearly-marked internal proprietary
15 Oracle support documents not available even to licensed, authorized
16 customers or through normal access to Oracle’s Customer Connection
17 system.
- 18 • Accessing and downloading Software and Support Materials across
19 multiple product lines in multiple lines of business available on the
20 Customer Connection support website, in the purported name of
21 customers that had never licensed those products and had no legal access
22 to them.

23 16. In short, to try to “keep the pressure on Oracle,” SAP has been engaged in
24 a systematic program of unfair, unlawful, and deceptive business practices that continues to this
25 day. Through its illegitimate and illegal business practices and copyright infringement, SAP has
26 copied Oracle’s Software and Support Materials and apparently used them to insinuate itself into
27 Oracle’s customer base, and to attempt to convert these customers to SAP software applications.
28 Oracle also has concerns that SAP may have enhanced or improved its own software applications

1 offerings using information gleaned from Oracle’s unlawfully copied Software and Support
2 Materials. SAP’s infringement and other illegal, wrongful, and unfair business practices threaten
3 to cause irreparable harm to Oracle, its many employees, and its customers. Oracle has no
4 adequate remedy at law for the harm threatened and caused by these acts.

5 **II. THE PARTIES**

6 17. Oracle Corporation is a Delaware corporation with its principal place of
7 business in Redwood City, County of San Mateo, State of California. Directly and through its
8 subsidiaries, Oracle Corporation develops and licenses database and applications software
9 programs and provides related services around the world.

10 18. Oracle USA is a Colorado corporation duly authorized to do business in
11 the State of California, with its principal place of business in Redwood City, County of San
12 Mateo, State of California. Oracle USA develops and licenses database and applications
13 software programs and provides related services. Oracle USA is the successor to PeopleSoft
14 USA, Inc. (“PeopleSoft”) and JDE.

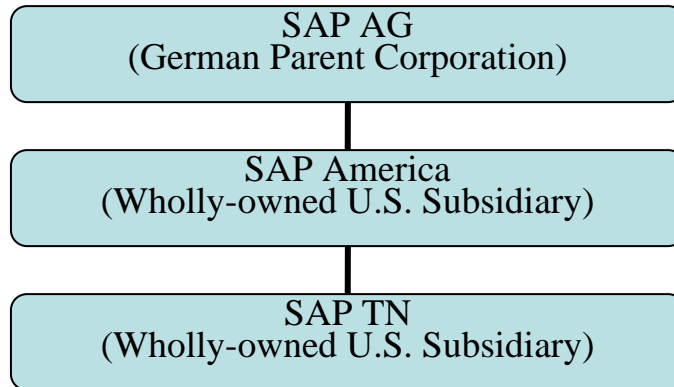
15 19. OIC is a California corporation duly authorized to do business in the State
16 of California, with its only place of business in Redwood City, County of San Mateo, State of
17 California.

18 20. OIC is the owner of the copyrights at issue in this action. Oracle
19 Corporation and Oracle USA are licensees of the copyrights at issue in this action. Oracle
20 Corporation and Oracle USA are authorized to license to end users the copyrighted computer
21 software programs and other works at issue in this action.

22 21. SAP AG is a German corporation with its principal place of business in
23 Walldorf, Germany.

24 22. SAP America is a Delaware corporation with its principal place of
25 business in Newtown Square, Pennsylvania. SAP America is a wholly-owned subsidiary of SAP
26 AG.

1 23. SAP TN is a Texas corporation with its principal place of business in
2 Bryan, Texas. SAP TN is a wholly-owned subsidiary of SAP America. The corporate
3 relationship of the three named defendants is set forth in the chart below.



12
13 24. Oracle is currently unaware of the true names and capacities of Does 1
14 through 50, inclusive, whether individual, partnership, corporation, unincorporated association,
15 or otherwise, and therefore sues these defendants by such fictitious names. Due to the
16 surreptitious nature of Defendants' actions, and the complicated nature of their scheme, the
17 identities of the Doe Defendants have been concealed from Oracle, preventing Oracle from
18 identifying these Defendants by name. After discovery, which is necessary to ascertain the true
19 names and capacities of these Defendants, Oracle will amend its complaint to allege the
20 necessary identifying details.

21 25. Defendants all are doing business in and/or have directed their activities
22 at California, and specifically this judicial district. By way of example only, SAP America and
23 SAP TN advertise, promote, sell, license, service, and support customers in California and in this
24 judicial district. SAP AG negotiates and enters into software license and support agreements
25 directly within the United States and, specifically in this judicial district, negotiates certain
26 software-related contracts directly with Oracle that contain provisions by which SAP AG
27 consents to the jurisdiction of California courts and the application of California law. SAP AG
28 also holds an annual meeting of its Board of Directors in Palo Alto, California, and finances the

1 sales and promotional activities of both SAP America and SAP TN throughout the United States
2 and in California.

3 26. At all material times, through its 100% ownership of both SAP America
4 and SAP TN, SAP AG had both the right and the authority to control the actions of both
5 corporations. Similarly, at all material times, through its 100% ownership of SAP TN, SAP
6 America had both the right and authority to control the actions of SAP TN.

7 27. At all material times, each of the Defendants, including Does 1 through
8 50, was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent,
9 affiliate, alter ego, or co-conspirator of the others, had full knowledge of and gave substantial
10 assistance to the alleged activities, and in doing the things alleged, each was acting within the
11 scope of such agency, service, employment, partnership, joint venture, representation, affiliation,
12 or conspiracy, and each is legally responsible for the acts and omissions of the others.

13 **III. JURISDICTION**

14 28. Oracle's first cause of action arises under the Federal Copyright Act, 17
15 U.S.C. §§ 101 *et seq.*, and its second cause of action arises under the Computer Fraud and Abuse
16 Act, 18 U.S.C. §§ 1030 *et seq.* Accordingly, this Court has subject-matter jurisdiction over this
17 action pursuant to 18 U.S.C. § 1030(g), 28 U.S.C. § 1331, and 28 U.S.C. § 1338.

18 29. This Court has supplemental subject matter jurisdiction over the pendent
19 state law claims under 28 U.S.C. § 1367, because these claims are so related to Oracle's claims
20 under federal law that they form part of the same case or controversy and derive from a common
21 nucleus of operative facts.

22 **IV. VENUE**

23 30. Venue in this district is appropriate, pursuant to 28 U.S.C. § 1391,
24 because a substantial part of the events giving rise to the dispute occurred in this district, a
25 substantial part of the property that is the subject of the action is situated in this district, and the
26 Court has personal jurisdiction over each of the parties as alleged throughout this Complaint.

1 **V. INTRADISTRICT ASSIGNMENT**

2 31. Assignment is proper in this division under Civil L.R. 3-2 (c) and (d),
3 because a substantial part of the events giving rise to the claims occurred in San Mateo County
4 and a substantial part of the property that is the subject of the action is situated in San Mateo
5 County.

6 **VI. FACTUAL ALLEGATIONS**

7 **A. Oracle's Software And Support Materials**

8 32. Oracle is the world's largest enterprise software company, and the first to
9 receive J.D. Power & Associates' global certification for outstanding service and support based
10 on measuring customer satisfaction worldwide. Oracle develops, manufactures, markets,
11 distributes, and services software designed to help its customers manage and grow their business
12 operations. Oracle's software offerings include database, middleware, and applications software
13 programs.

14 33. As is typical in the enterprise software industry, Oracle does not sell
15 ownership rights to its software or related support products to its customers. Instead, Oracle's
16 customers purchase licenses that grant them limited rights to use specific Oracle software
17 programs with Oracle retaining all copyright and other intellectual property rights in these works.
18 In addition, licensed customers can, and typically do, purchase some set of technical support
19 services that include the right to obtain upgraded products such as updates, bug fixes, or patches
20 to those software programs the customers have expressly licensed from Oracle and have the right
21 to use for purposes authorized by Oracle.

22 34. Oracle's license agreements with its customers may vary according to the
23 products licensed, including because the customers originally contracted with PeopleSoft and/or
24 JDE, but all of the relevant license agreements for what is now Oracle software set comparable
25 rules for access to, and use of, that software. Among other things, those rules prohibit access to,
26 or use of, any portion of the software not expressly licensed and paid for by the licensee, and any
27 sublicense, disclosure, use, rent, or lease of the software to third parties.

28

1 35. Oracle’s license agreements define Oracle’s confidential information to
2 include, without limitation, Oracle’s software, its object and source code, and any associated
3 documentation or service offerings. Licensees may designate third parties to help maintain
4 Oracle’s software, but only subject to the terms of the relevant license agreement between the
5 licensee and Oracle. Those agreements generally preclude the third party from installing the
6 software on a server, or accessing the source code of the software. As defined in one illustrative
7 license agreement, “software” specifically includes the update products made available to
8 customers as part of the support contracts that customers purchased from Oracle.

9 36. Through its terms of use, Oracle also restricts access to the Customer
10 Connection technical support website used by Oracle customers and/or their authorized agents to
11 access and download JDE and PeopleSoft Software and Support Materials licensed to Oracle
12 customers:

13 You agree that access to Customer Connection...will be granted
14 only to your designated Oracle technical support contacts and that
15 the Materials [on the support website] may be used solely in
16 support of your authorized use of the Oracle Programs for which
17 you hold a supported license from Oracle. Unless specifically
provided in your licensing or distribution agreement with Oracle,
the Materials may not be used to provide services for or to third
parties and may not be shared with or accessed by third parties.

18 37. The Terms of Use explicitly describe the confidential nature of the
19 material on Customer Connection: “the information contained in the Materials [available through
20 Customer Connection] is the confidential proprietary information of Oracle. ***You may not use,***
21 ***disclose, reproduce, transmit, or otherwise copy in any form or by any means the information***
22 ***contained in the Materials for any purpose***, other than to support your authorized use of the
23 Oracle Programs for which you hold a supported license from Oracle, without the prior written
24 permission of Oracle.” (emphasis supplied).

25 38. Access to the secured areas of Customer Connection is also governed by
26 Special Terms of Use. By using the secured website, the user agrees to accept and comply with
27 these Special Terms of Use. The Special Terms of Use provide that access is only permitted via
28 the user’s “personal username and password” and that all materials on the secured website are

1 confidential and proprietary. The Special Terms of Use clearly provide that: “Use of such
2 CONFIDENTIAL and PROPRIETARY information and materials for any other purpose is
3 strictly prohibited.”

4 39. Prior to downloading Software and Support Materials from Oracle’s
5 support websites, a user must also specifically agree to additional terms of use and restrictions
6 specified in Oracle’s Legal Download Agreement:

7 Your username and password are provided to you for your sole use
8 in accessing this Server and are confidential information subject to
9 your existing confidentiality agreement with Oracle / PeopleSoft /
10 JDEdwards. If you do not have a confidentiality agreement in
11 effect with Oracle / PeopleSoft / JDEdwards, you are hereby
12 notified that your username and password are confidential
information and may only be distributed to persons within your
organization who have a legitimate business purpose for accessing
the materials contained on this server in furtherance of your
relationship with Oracle / PeopleSoft / JDEdwards.

13 40. The Legal Download Agreement also puts the user on notice as to the
14 confidential, proprietary and copyrighted nature of the Software and Support Materials available
15 for download:

16 Any software that is made available to download from this server
17 (“Software”) is the copyrighted work of Oracle / PeopleSoft /
18 JDEdwards and/or its affiliates or suppliers. All Software is
19 confidential information of Oracle / PeopleSoft / JDEdwards and
20 its use and distribution is governed by the terms of the software
21 license agreement that is in effect between you and Oracle /
22 PeopleSoft / JDEdwards (“License Agreement”). The Software is
23 part of the Licensed Products under the License Agreement and
24 may only be downloaded if a valid License Agreement is in place
25 between you and Oracle / PeopleSoft / JDEdwards. The Software
is made available for downloading solely for use by licensed end
users according to the License Agreement and any reproduction or
redistribution of the Software not in accordance with the License
Agreement is expressly prohibited. WITHOUT LIMITING THE
FOREGOING, COPYING OR REPRODUCTION OF THE
SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR
FURTHER REPRODUCTION OR REDISTRIBUTION IS
EXPRESSLY PROHIBITED.

26 41. The Legal Download Agreement further restricts use of documents
27 downloaded from the website:

1 Permission to use Documents (such as white papers, press releases,
2 product or upgrade announcements, software action requests,
3 datasheets and FAQs) from this server (“Server”) is granted,
4 provided that (1) the below copyright notice appears in all copies
5 and that both the copyright notice and this permission notice
6 appear, (2) use of such Documents from this Server is for
7 informational and non-commercial or personal use only and will
8 not be copied or posted on any network computer or broadcast in
9 any media, and (3) no modifications of any Documents are made.
10 Use for any other purpose is expressly prohibited.

11 42. In addition, users accessing specific materials, such as a Software
12 Application Request (“SAR”) through the SAR Search Web Application, agree to additional
13 legal restrictions. These terms notify the user that the software available to download from
14 Oracle is Oracle’s copyrighted material. The terms further provide that the “software is part of
15 the Licensed Products under the License Agreement” and “is made available for downloading
16 solely for use by licensed end users according to the License Agreement. Any reproduction or
17 redistribution of the Software not in accordance with the License Agreement is expressly
18 prohibited.” To download a SAR, the user must click on a button indicating that it accepts these
19 terms.

20 **B. Oracle Threatens To Unseat SAP**

21 43. On January 7, 2005, Oracle completed its acquisition of PeopleSoft to
22 emerge as the second-largest provider of business software applications in the world and the first
23 to rival SAP AG in market share, size, and geographic and product scope. As SAP America’s
24 Vice President of Operations, Richard Knowles, testified on June 23, 2004 at the trial on the
25 Department of Justice’s unsuccessful effort to block Oracle’s acquisition of PeopleSoft, the
26 combination revitalized Oracle overnight as a competitor in the business software applications
27 business. SAP AG suddenly found itself in a far different competitive environment than the one
28 in which it had grown comfortable. As SAP AG reeled, events unfolded at a rapid pace: eleven
29 days after its announcement, Oracle launched the newly-united company and unveiled, at its
30 headquarters with more than 48,000 people joining by Webcast and phone, how the nearly
31 50,000-strong combined workforce of Oracle and PeopleSoft would provide unparalleled
32 innovation and support to 23,000 business applications software customers throughout the world.

1 44. SAP AG’s top executives publicly downplayed the threat that a combined
2 Oracle and PeopleSoft entity would pose to its competitive position for business software
3 applications. SAP AG CEO Henning Kagermann claimed that even with PeopleSoft, Oracle
4 would “not [be] a competitor which could really hurt us.” After the merger, he even claimed to
5 wish Oracle “good luck” in competing with SAP AG.

6 45. But SAP AG had no answer for the business proposition the new Oracle
7 offered. Not only do many SAP AG customers use Oracle’s superior database software
8 programs, but now Oracle offered a deeper, broader product line of enterprise applications
9 software programs to compete against SAP AG.

10 46. Rather than improve its own products and offerings, SAP AG instead
11 considered how to undermine Oracle. One way was to hit at Oracle’s customer base – and
12 potentially increase its own – by acquiring and bankrolling a company that claimed the ability to
13 compete with Oracle support and maintenance services on Oracle’s own software products,
14 despite not owning any of the software code for, or intellectual property rights to, these same
15 products.

16 **C. SAP TN**

17 47. In December 2004, SAP TN was a small software services company,
18 headquartered in Bryan, Texas and founded by former PeopleSoft employees. It claimed to
19 compete with PeopleSoft, JDE, and later, Oracle, by providing low-cost maintenance and support
20 services to PeopleSoft and JDE customers running assorted versions of these software programs.
21 SAP TN claimed that it could cut customer maintenance and support bills in half and give
22 customers a reprieve from software upgrade cycles by allowing customers to remain on older,
23 often outdated, versions of PeopleSoft or JDE software rather than moving to later versions by
24 implementing upgrades that the customers would receive by paying for support services from the
25 software vendors themselves. As one industry journalist explained, SAP TN promised to offer
26 such cheap support “because it is not investing millions of dollars in research and development
27 for future versions of the software; it instead focuses on simply keeping the software up and
28 running for an annual fee.”

D. SAP Responds To Oracle Competition With Its “Safe Passage” Scheme

48. As described in a glossy spread in a leading industry publication, in December 2004, just weeks before Oracle would close the PeopleSoft acquisition, SAP TN president Andrew Nelson got “the magic phone call” from Jim Mackey, SAP AG’s “front man for SAP AG’s mergers and acquisitions strategy.” Mackey made Nelson an offer “he couldn’t refuse.”

49. To retain full control over every detail of its scheme to lure away customers from Oracle, and to use SAP TN to do it, SAP AG proposed to buy SAP TN outright and make it a wholly-owned – and wholly-beholden – subsidiary. Acquiring SAP TN was not a mere investment by SAP AG, but a calculated competitive move. As one industry observer put it, SAP AG bought “another arrow in its quiver to hunt after Oracle’s customers.” Aligning with SAP AG made little sense for SAP TN, however, because to the extent SAP AG successfully undermined Oracle by having its customers move from Oracle’s software to SAP AG’s software, SAP TN would eventually lose its customer base. So SAP AG had to make the price right. SAP AG has refused to disclose the terms of its SAP TN purchase, but – with the Oracle/PeopleSoft deal about to close – the “magic phone call” conveyed terms rich enough that, in barely a month, SAP TN agreed to the deal and cast its lot with SAP AG.

50. On January 19, 2005, SAP AG’s top executives unveiled SAP AG’s acquisition of SAP TN as the centerpiece of its new “Safe Passage” scheme. SAP AG’s CEO, Henning Kagermann, identified SAP TN as instrumental to the parent company’s “Safe Passage” program, publicly indicating that SAP TN was authorized and intended to implement SAP AG’s goals. SAP America’s CEO, Bill McDermott, publicly vowed to bankroll this effort to undermine Oracle by putting “a lot of additional resources into TomorrowNow.” The Senior Vice President and Chief Operating Officer of SAP Asia Pacific, Colin Sampson, admitted that the SAP TN acquisition was “an integral part” of SAP’s Safe Passage program, which in turn was part of SAP’s “ongoing strategy to compete with Oracle.” And SAP TN certainly knew its role was to achieve SAP AG’s ends: as SAP TN’s CEO, Andrew Nelson, stated, “We’re owned by SAP. We want them to be successful.”

1 51. After the acquisition, SAP TN’s new parent companies directed it to
2 begin to implement a two-phase plan to increase SAP’s enterprise application market share.
3 First, to lure the support business over from Oracle, SAP would offer cut-rate pricing combined
4 with the promise of essentially unlimited future support to former PeopleSoft and JDE support
5 customers. Second, in connection with converting Oracle customers to SAP support (via SAP
6 TN), SAP would aggressively campaign to migrate those customers to an SAP enterprise
7 software platform. As SAP AG Managing Director Alan Sedghi admitted, SAP AG would try to
8 use SAP TN as a means of “speeding-up” the migration of PeopleSoft and JDE users to SAP
9 platforms.

10 52. The CEOs stated the proposition more bluntly. In April 2005, SAP
11 America CEO Bill McDermott claimed “The SAP Safe Passage offering gives companies an
12 affordable way to protect their current investments, ease integration with SAP NetWeaver(TM)
13 and begin the process of innovating their businesses today.” A month later, at the SAP AG
14 annual meeting, SAP AG CEO Henning Kagermann confirmed: “We worked with [SAP TN] to
15 very quickly set up a comprehensive program for SAP customers running PeopleSoft and JD
16 Edwards solutions.”

17 53. SAP implemented Phase One immediately. As reflected on SAP AG’s
18 website: “SAP offers Safe Passage for PeopleSoft, JD Edwards, and Siebel customers – If
19 Oracle’s options have you worried, consider another option: SAP. SAP provides solutions,
20 technology *and maintenance services*.” (emphasis supplied) SAP America’s website promises
21 that “SAP and TomorrowNow can cut your maintenance costs by as much as 50% through
22 2015,” and elsewhere says that “Safe Passage maintenance and support are delivered worldwide
23 through TomorrowNow.” SAP TN’s website confirms its acceptance and undertaking of the
24 SAP-controlled Safe Passage program: “TomorrowNow can also provide our support services as
25 part of the SAP Safe Passage Program.”

26 54. Beginning in January 2005, SAP sales representatives unleashed a torrent
27 of marketing materials designed to exacerbate and leverage perceived, albeit unfounded,
28 PeopleSoft and JDE customer uncertainty about the prospects for long-term, quality support

1 from Oracle. An April 2005 SAP AG press release apparently aimed to increase perceived doubt
2 among Oracle customers by announcing a “second wave” of “Safe Passage.” To exploit the fear
3 it intended to create, SAP AG’s “second wave” included “an intensive customer recruitment
4 campaign, offering significantly lower cost maintenance alternatives to Oracle customers
5 running PSFT/JDE solutions” through 70,000 direct mail solicitations to Oracle customers.
6 These lower cost alternatives advertised by SAP AG were to come directly through SAP TN.

7 55. To implement Phase Two of its plan (luring Oracle customers to the SAP
8 enterprise software platform), SAP AG did not simply sit back and leave the recruiting of
9 potential Safe Passage customers to SAP TN’s sales force. Instead, it took a hands-on approach.
10 It deployed its salespeople to contact potential customers and push them to switch to SAP TN’s
11 services. If customers declined to convert to SAP TN, the SAP AG sales personnel would
12 pressure the customers to drop Oracle products outright in favor of SAP AG’s suite. To give
13 teeth to these commingled sales efforts, SAP AG offered maintenance support through SAP TN,
14 officially “bundled” with SAP AG enterprise software as a centerpiece of the Safe Passage
15 program.

16 56. SAP executives touted the Safe Passage program’s limited success in its
17 first year. SAP AG’s CEO, Henning Kagermann, promised SAP AG would use SAP TN and the
18 Safe Passage program to “fight for” more customers. By March 2006, SAP AG boasted in a
19 press release that more than 200 customers had signed up for Safe Passage, the program it
20 implemented partly through SAP TN, and which it claimed “offers companies SAP solutions,
21 technology, maintenance services, investment protection and a clear road map to the next
22 generation of business software.”

23 57. However, as Oracle continued to take market share and expand its
24 product offerings, including through its September 12, 2005 announcement that it would acquire
25 Siebel Systems, SAP grew more desperate, and more aggressive. In October 2005, SAP
26 announced it would extend its Safe Passage program to Siebel customers, including apparently
27 instantaneous round the clock support from SAP TN – whose engineers at that time presumably
28 had spent virtually no time to develop Siebel support software products. As reported on

1 Forbes.com after Oracle’s announcement of its impending Siebel acquisition, “SAP AG plans to
2 announce . . . that it will offer technical support for more of rival software maker Oracle Corp.’s
3 own products [the Siebel products] for a far cheaper price.” SAP’s “cheaper price” (referred to
4 elsewhere as “cut rate” support) continued at “50 cents on the dollar for maintenance fees,” but
5 its services were expanded to support more Oracle product lines and a wider range of customers.
6 SAP America President and CEO, Bill McDermott, confirmed that SAP intended to use the
7 Siebel acquisition as another opportunity to lure Oracle customers to SAP stating that SAP is
8 “not distracted by the challenges of integrating multiple code bases, companies and corporate
9 cultures.” How SAP could offer instantaneous, round the clock Siebel code support within a few
10 weeks of Oracle’s acquisition announcement remained a mystery.

11 58. By July 2006, SAP AG CEO Henning Kagermann conceded that SAP
12 had lost as much as 2% market share to Oracle. At the same time, curiously, SAP AG continued
13 to tout the success of Safe Passage. In a July 2006 earnings call, SAP AG’s President of
14 Customer Solutions and Operations, Léo Apotheker, boasted that Safe Passage “continues to do
15 really well,” including because SAP AG “extended the program in order to offer it as well to
16 Siebel customers.” By extending the Safe Passage program to Siebel customers, and in
17 conjunction with opening new SAP TN offices around the world, Apotheker claimed that SAP
18 now had “a global network of [SAP TN] capabilities” – enough to “gain[] significant traction.”

19 59. SAP’s April 2007 Annual Report further confirms that SAP has used SAP
20 TN as a tool to try to convert Oracle customers to SAP’s software platform. As reflected on
21 pages 187-190 of the Annual Report, SAP TN loses money in every region in which it operates.
22 SAP has no business incentive to tolerate substantial operating losses in its subsidiary without
23 SAP TN providing a significant off-setting benefit. Here, that takes the form of enhanced
24 opportunities for SAP to sell its enterprise software applications to support customers attracted to
25 SAP TN’s discount pricing – which is made possible through the theft and use of Oracle’s
26 intellectual property.

27
28

E. A Deal Too Good To Be True

60. Although SAP put a brave face on its ability to compete with the increasingly potent Oracle applications offerings, some industry analysts wondered whether a small company like SAP TN, even after having expanded its ranks to 150 employees, could actually develop and offer the hundreds of regulatory updates, bug fixes, patches, and other labor-intensive support items that a customer would need to maintain useful, optimally functioning Oracle software, without infringing on Oracle’s intellectual property. Oracle, by comparison, maintains a development force of more than 15,000 software and support engineers to create and help implement the code fixes, patches, and updates that comprise the advanced support services required by Oracle’s licensed customers.

61. It was not clear how SAP TN could offer, as it did on its website and its other materials, “customized ongoing tax and regulatory updates,” “fixes for serious issues,” “full upgrade script support,” and, most remarkably, “30-minute response time, 24x7x365” on software programs for which it had no intellectual property rights. To compound the puzzle, SAP continued to offer this comprehensive support to hundreds of customers at the “cut rate” of 50 cents on the dollar, and purported to add full support for an entirely different product line – Siebel – with a wave of its hand. The economics, and the logic, simply did not add up.

62. Oracle has now solved this puzzle. To stave off the mounting competitive threat from Oracle and to do so without making the requisite investment, SAP unlawfully accessed, copied, and wrongfully used Oracle’s Software and Support Materials.

F. The SAP Solution: Stolen Passage

1. Oracle Finds A Suspicious Pattern

63. To analyze and improve on its industry leading support services, Oracle asks each customer searching for a solution on Oracle’s Customer Connection website to click on a button after each search to indicate whether or not a particular search result helped solve the customer’s problem. If the customer selects the “No, continue search” option, the support system responds by offering the customer further options. Oracle regularly compiles this data to

1 assess whether its system helped customers resolve their support issues, with the aim of
2 continually improving the support system for customers.

3 64. In late 2006, Oracle noticed huge, unexplained spikes in the number of
4 customers on the online support website who had clicked the “No, continue search” option.
5 These clicks numbered in the thousands for several customers, and Oracle discovered that each
6 response – each answer by users pretending to be the customer – occurred in a matter of seconds
7 or less. Given the extreme speed at which the activity occurred, these clicks could not reflect
8 real responses from any human customers actually reading the solutions they had accessed.
9 Instead, these click patterns showed that the users had employed an automated process to move
10 with lightning speed through the entire library of Software and Support Materials on the
11 Customer Connection website. And, apparently, to make a copy of them all.

12 65. Indeed, Oracle soon discovered that many of these “customers” had taken
13 massive quantities of Software and Support Materials beyond their license rights, over and over
14 again. Oracle also discovered that the downloaded Software and Support Materials included
15 *internal* documents not available even to licensed customers and not available through normal,
16 authorized use of Customer Connection.

17 2. **Oracle Discovers The SAP Link**

18 66. Oracle embarked on a time-consuming and costly investigation to assess
19 the damage done to its customer response database and fully understand the sources of the
20 unauthorized downloads. In the course of this investigation, Oracle discovered a pattern.
21 Frequently, in the month before a customer’s Oracle support expired, a user purporting to be that
22 customer, employing the customer’s log-in credentials, would access Oracle’s system and
23 download large quantities of Software and Support Materials, including dozens, hundreds, or
24 thousands of products beyond the scope of the specific customer’s licensed products and
25 permitted access. Some of these apparent customer users even downloaded materials after their
26 contractual support rights had expired.

27 67. Several of these apparent customer users supplied misleading
28 identification information as part of the log-in process to Oracle’s systems. The users

1 presumably intended this misinformation, which included false names and phone numbers, to
2 mask from Oracle their true identity and the fact of their improper access to the Software and
3 Support Materials. Despite this subterfuge, Oracle has traced the illegal download activity to
4 computers using an SAP IP address. When Oracle first noticed that the unlawful access and
5 downloads originated almost exclusively from one IP address in Bryan, Texas, Oracle shut down
6 access to that IP address. If the access and downloads had been legitimate, the customer or
7 vendor would have called in right away to get its access reinstated. Instead, a new IP address,
8 also linked to SAP, sprouted up almost immediately and the unlawful access and downloading
9 resumed.

10 68. Although it is now clear that the customers initially identified by Oracle
11 as engaged in the illegal downloads are SAP TN customers, those customers do not appear to
12 have themselves directly engaged in the download activity; rather, the unlawful download
13 activity observed by Oracle and described here originates directly from SAP's computer
14 networks. Oracle's support servers have even received hits from URL addresses in the course of
15 these unlawful downloads with SAP TN directly in the name (e.g.
16 *http://hqitpc01.tomorrownow.com*). Indeed, for many of these downloads, Oracle noticed that
17 SAP TN did not even bother to change the false user information from customer to customer
18 when it logged in.

19 69. The wholesale nature of this unlawful access and downloading was
20 extreme. SAP TN appears to have downloaded virtually *every* file, in *every* library that it could
21 find.

22 **3. SAP TN's Access Was Unauthorized**

23 70. SAP TN's unauthorized access to, copying of, and use of Software and
24 Support Materials from Oracle's system violated the terms of the Oracle customers' License
25 Agreements, the Customer Connection Terms of Use, the Customer Connection Special Terms
26 of Use, the Legal Download Agreement, and the SAR legal restrictions. These terms included
27 agreements:

28

- 1 • Not to access or use any portion of the Software, including updates,
2 not expressly licensed and paid for by the Licensee;
- 3 • Not to directly or indirectly, sublicense, relicense, distribute, disclose,
4 use, rent, or lease the Software or Documentation, or any portion
5 thereof, for third party use, or third party training;
- 6 • Not to access the customer support system if not the customer's
7 authorized and designated Oracle technical support contact;
- 8 • Not to use the Materials on the support website except in support of
9 the customer's authorized use of the Oracle Programs for which the
10 customer holds a supported license from Oracle;
- 11 • That the customer username and password are for the customer's sole
12 use in accessing this support server;
- 13 • That the customer username and password may only be distributed to
14 or used by persons in the customer's organization who have a
15 legitimate business purpose for accessing the materials contained on
16 the support server in furtherance of the customer's relationship with
17 Oracle;
- 18 • That the Materials on the support website are confidential information
19 subject to existing confidentiality agreements.

20 71. SAP TN has intimate familiarity with these important restrictions and
21 conditions relating to Oracle's Software and Support Materials. SAP TN's management, and a
22 significant number of its employees, formerly worked at PeopleSoft and JDE. Of SAP TN's ten-
23 member management team, six list prior employment experience with PeopleSoft, JDE, or
24 Oracle, including: (1) Andrew Nelson, President and CEO; (2) Bob Geib, V.P. North American
25 Sales; (3) Laura Sweetman, V.P. Global J.D. Edwards Support; (4) Mel Gadd, V.P. Quality; (5)
26 Nigel Pullan, V.P. International Sales; and (6) Shelley Nelson, V.P. Global PeopleSoft Support.
27 In addition, former PeopleSoft employees who work for SAP, such as Wade Walden, who is
28 reflected as the person performing many of the downloads at issue, appear to have applied their

1 familiarity with the Customer Connection website to directly participate in and perfect the illegal
2 downloading scheme. Consistent with this evidence, SAP TN’s Vice President, Nigel Pullan,
3 recently suggested that SAP intentionally targets Oracle’s employees to extract their knowledge
4 of Oracle’s new products: “As new releases start to come out, the people that we hire, we make
5 sure that they have skillsets in those new releases.” In short, SAP TN cannot credibly claim
6 ignorance of Oracle’s access rules.

7 72. Notwithstanding SAP TN’s knowledge of Oracle’s license agreements
8 with its customers, the support website terms of use, and the confidential, proprietary, and
9 copyrighted nature of Oracle’s Software and Support Materials, Oracle has learned that SAP TN
10 accessed and downloaded the Software and Support Materials when it either had no legitimate
11 basis to access Oracle’s restricted website, or in a way that grossly violated the limited access
12 rights it did have. Further, during the period of time between when the customer’s support
13 license lapsed and when Oracle decommissioned the customer’s password credentials, SAP TN
14 *still* accessed and downloaded Software and Support Materials using the old customer
15 passwords. SAP TN did so despite its knowledge that it had no legal right or legitimate purpose
16 to access Oracle’s system *at all* after the customer’s support license lapsed.

17 73. SAP TN did not innocently download the Software and Support
18 Materials – the obvious purpose was to copy them from Oracle’s Customer Connection support
19 website and store them on SAP TN’s servers for later use in marketing and providing support
20 services to Oracle customers. The rate that SAP TN accessed many of these materials – at
21 intervals of just seconds or less – shows that no one reviewed them in real time. Further, the
22 scope of the downloaded Software and Support Materials – across *multiple* libraries in *multiple*
23 lines of business – for customers that had no license to take, or need for, those products, suggests
24 that SAP TN took the Software and Support Materials to stockpile a library to support its present
25 and prospective customers.

26 74. SAP TN conducted these high-tech raids as SAP AG’s agent and
27 instrumentality and as the cornerstone strategy of SAP AG’s highly-publicized Safe Passage
28 program. Further, to the extent SAP TN had any legitimate basis to access Oracle’s site as a

1 contract consultant for a customer with current licensed support rights, SAP TN committed to
2 abide by the same license obligations and usage terms and conditions described above applicable
3 to licensed customers. Indeed, *anyone* accessing such Software and Support Materials on the
4 Oracle support website must agree to Oracle’s terms and conditions, which restrict access to
5 support only for products that a company has licensed, and impose strict confidentiality
6 requirements. SAP TN reviewed and agreed to the terms and conditions on Oracle’s support
7 website before proceeding, and therefore committed its theft knowingly and intentionally, and in
8 conscious disregard of Oracle’s copyrights and other protected intellectual property, contractual
9 restrictions on the use of its intellectual property, and the integrity of its computer systems.

10 **4. Specific Examples Of SAP TN’s Unlawful Customer Downloads**

11 75. SAP TN’s improper access to, and taking from, Oracle’s Customer
12 Connection website is too pervasive, and covers too many individual violations, to
13 comprehensively detail here. Oracle has uncovered unlicensed downloads linked to SAP TN on
14 behalf of numerous customers, including without limitation, Abbott Laboratories, Abitibi-
15 Consolidated, Inc., Bear, Stearns & Co., Berri Limited, Border Foods, Caterpillar Elphinstone,
16 Distribution & Auto Service, Fuelserv Limited, Grupo Costamex, Helzberg Diamonds, Herbert
17 Waldman, Honeywell International, Interbrew UK, Laird Plastics, Merck & Co., Metro Machine
18 Corp., Mortice Kern Systems, Inc., National Manufacturing, NGC Management Limited, OCE
19 Technologies, B.V., Ronis, S.A., Smithfield Foods, SPX Corporation, Stora Enso, Texas
20 Association of School Boards, VSM Group AB, and Yazaki North America. By way of example
21 of the nature and extent of SAP’s theft, Oracle sets forth below illustrative instances of SAP
22 TN’s illegal conduct regarding several of its customers.

23 76. **Honeywell.** Honeywell International (“Honeywell”) is listed on SAP
24 TN’s website as a client. In the approximately three and a half year period before Honeywell
25 switched to SAP TN, it averaged just over 20 downloads of Software and Support Materials per
26 month. Then, after switching to SAP TN, a user employing Honeywell’s log-in ID downloaded
27 at least 7,000 Software and Support Materials in less than two weeks in January 2007. Most of
28 these excessive downloads came during the course of *four days*, during which “Honeywell” was

1 downloading almost *1800 solutions per day*. At least 2,000 of the Software and Support
2 Materials taken in this period were solutions that Honeywell was not licensed to take at all. In
3 one specific library containing solutions for Enterprise One software, “Honeywell” downloaded
4 at least 450 distinct unlicensed solutions on January 16, 2007 and nearly 400 more the next day.
5 These downloads spanned virtually every library in every line of business – far beyond the
6 products to which Honeywell had authorized access as an Oracle customer. This unlawful
7 downloading even stretched across product families. Honeywell used and licensed PeopleSoft
8 software applications, but Oracle discovered users downloading JDE products with Honeywell’s
9 credentials. Oracle subsequently connected many of the illegal downloads to an SAP TN IP
10 address and to SAP TN’s employee, Wade Walden – a former PeopleSoft employee now
11 employed by SAP.

12 77. **Merck.** Merck & Company, Inc. (“Merck”), one of the largest
13 pharmaceutical companies in the world, licenses and receives support for many Oracle software
14 products. Merck’s support rights for its JDE software products expired on January 1, 2007. In
15 the three months prior to that date, users purporting to be “Merck” logged into the Oracle support
16 system and downloaded at least 6,500 distinct Software and Support Materials for JDE software.
17 At least 3,800 of these downloads related to JDE software products for which Merck had no
18 license. But, the unauthorized downloads did not stop there. Users logging into Oracle’s support
19 system with Merck’s credentials continued to download Software and Support Materials into
20 March 2007. Many of these “Merck” downloads came directly from an IP address in Bryan,
21 Texas that belongs to SAP TN, and some were traced to a computer with SAP TN’s initials in
22 the title, “TN-DL03.” In many cases, SAP TN users employed fake identification information to
23 download the Software and Support Materials, using names such as “xx” “ss” and “NULL,” and
24 phone numbers such as “4444444444” and “999 999 9999.” Neither Merck nor SAP TN had
25 any license, authorization or other right to access and download the 3,800-plus unlicensed
26 Software and Support Materials from Oracle.

27 78. **OCE.** OCE-Technologies B.V. (“OCE”) is located in the Netherlands
28 and appears as a customer on SAP TN’s website. In the months leading up to the expiration of

1 OCE's support rights for its Oracle products, users employing OCE's credentials downloaded a
2 large number of Oracle products relating to US Payroll, Canadian Payroll, Homebuilder
3 Management, and Real Estate Management – none of which make sense for a European
4 customer supporting its European business. From December of 2006 to January of 2007, SAP
5 TN users logged into Oracle's support system using OCE's credentials (and, in some cases, false
6 user names) and downloaded at least 5,600 distinct Software and Support Materials. These
7 downloads included at least 1,800 distinct items for which OCE had no license. There is little
8 chance that SAP TN intended OCE as the beneficiary of these massive sweeps, since OCE does
9 not run many of the software programs to which these downloads relate, and neither OCE nor
10 SAP TN have any license, authorization, or other right to access and download these Software
11 and Support Materials. Like the other companies, these illegal downloads are associated with the
12 same IP address belonging to SAP TN in Bryan, Texas, including specifically to a computer with
13 SAP TN's initials in the title, "TNL-02." Similar to the other customer examples, many of these
14 "OCE" users entered phony identification information, such as the name "user" and phone
15 numbers such as "123 456 7897," "9999999999," and even "xxx xxx xxxx." This systematic
16 sweep of products across numerous licensed and unlicensed Oracle product lines and libraries
17 dramatically exceeded the access for which OCE (and SAP TN acting on its behalf) had any
18 right or authority, and could serve no legitimate or lawful business purpose.

19 79. **SPX.** SPX Corporation ("SPX") dropped all Oracle support on
20 December 10, 2006 and became an SAP TN customer, listed on SAP TN's website. For the nine
21 month period prior to October 2006, SPX averaged approximately eleven downloads per month
22 from Oracle's support system. Then, between October and December 2006, users purporting to
23 represent SPX accessed and downloaded at least 9,000 distinct Oracle Software and Support
24 Materials (far more than SPX could legitimately access or use). These SPX downloads included
25 at least 1,500 distinct Software and Support Materials for which SPX had no license. At least
26 200 distinct downloads just on November 30, 2006 were Software and Support Materials related
27 to unlicensed Payroll software. In some cases, these users logged in using SPX credentials, but
28 used fake identification information like the name "NULL" and phone numbers like

1 “7777777777” and “999 999 9999.” Many of these SPX downloads, like the others, originated
2 from the same IP address belonging to SAP TN, and some were traced to a computer with SAP
3 TN’s initials in the title, “tn-wts01.”

4 80. **Metro Machine.** Metro Machine Corp. (“Metro Machine”) dropped all
5 Oracle support effective on January 1, 2007 and switched to SAP TN, as reflected on SAP TN’s
6 website. In the month before Metro Machine dropped its support rights with Oracle, users
7 purporting to represent Metro Machine logged onto Oracle’s support servers and downloaded at
8 least 600 distinct Software and Support Materials. At least 50 of those downloads related to
9 software programs that Metro Machine had not licensed from Oracle. In addition, users logging
10 into Oracle’s support system with Metro Machine’s credentials continued to download Software
11 and Support Materials into March 2007. Oracle has traced these illegal and unauthorized
12 downloads to the same SAP TN IP address employed for the other downloads described above.

13 81. **Yazaki.** Yazaki North America, Inc. (“Yazaki”) is a large supplier of
14 automotive products headquartered in Michigan. It dropped all Oracle support effective on
15 January 3, 2007. In the month leading up to the expiration of Yazaki’s support rights for its
16 Oracle products, users employing Yazaki’s credentials downloaded an enormous number of
17 Oracle Software and Support Materials relating to Canadian Payroll, Homebuilder Management,
18 and Real Estate Management, and many other software products, which make no sense for a U.S.
19 automotive supply company supporting its U.S. business. In two weeks, from December 15,
20 2006 to December 28, 2006, SAP TN users logged into Oracle’s support system using Yazaki’s
21 credentials and downloaded at least 11,000 distinct Software and Support Materials. These
22 downloads included at least 1,500 distinct items for which Yazaki had no license. There is little
23 chance that SAP TN intended Yazaki as the beneficiary of these massive sweeps, since Yazaki
24 does not run many of the software programs to which these downloads relate, and neither Yazaki
25 nor SAP TN has any license, authorization, or other right to access and download these Software
26 and Support Materials. Like the other companies, these illegal downloads are associated with the
27 same IP address belonging to SAP TN in Bryan, Texas. Similar to the other cases, “Yazaki”
28 users entered phony identification information, such as mixing the user ID “Joel_Joyce” with a

1 different user name “Jeff Livermore” and an email address related to a different customer, SPX,
2 “rosbie@spxmks.com,” and a phony phone number “4444444444.” This systematic sweep of
3 products across numerous licensed and unlicensed Oracle product lines and libraries
4 substantially exceeded the access for which Yazaki (and SAP TN acting on its behalf) had any
5 right or authority, and could serve no legitimate or lawful business purpose.

6 **G. Oracle’s Software And Support Materials Are Registered With The**
7 **Copyright Office.**

8 82. The Software and Support Materials that SAP TN downloaded from
9 Oracle’s systems included numerous works that are protected under the Federal Copyright Act,
10 17 U.S.C. §§ 101 *et seq.* These protected works are original works of authorship, owned by
11 Oracle. Defendants’ acts violated Oracle’s exclusive rights to reproduce, create derivative
12 works, publish, publicly display, offer for sale, and distribute these works. Defendants’ acts
13 were willful and intentional and constitute both direct and indirect copyright infringement under
14 the Federal Copyright Act, 17 U.S.C. §§ 101 *et seq.*

15 83. **The Copyright Registrations.** With literally thousands of software
16 programs available for licensing, Oracle does not typically obtain copyright registrations on all
17 programs or related Software and Support Materials as it generally does not find itself in the
18 position of having to enforce its copyrights to stop infringement. However, upon discovering
19 Defendants’ mass downloading, Oracle registered copyrights on the Software and Support
20 Materials taken and infringed by SAP TN.

21 84. The massive nature of the illicit downloads by SAP TN make it
22 impossible to detail comprehensively each copyright violation in this Complaint. However,
23 Oracle has now obtained from the Register of Copyrights over 40 certificates of registration that
24 cover a wide range of Software and Support Materials taken by SAP TN. These include
25 registrations of a number of Oracle knowledge management solutions, numerous versions of
26 Oracle’s JDE software applications, service packs of JDE updates, and specific unlicensed
27 Software and Support Materials taken by SAP TN. Collectively, these registrations cover
28 thousands of unlicensed Software and Support materials unlawfully copied by SAP TN.

1 85. Examples of SAP’s infringement of registered copyrights include the
2 following. On December 5, 2006, SAP TN used SPX’s log-in ID to download a Payroll ESU,
3 JJ13072, for EnterpriseOne software version 8.11 SP1. Oracle registered this ESU with the
4 United States Copyright Office, *See* Registration No. TX 6-541-027. SAP TN used the log-in
5 ID of another customer, Merck, to download an EnterpriseOne 8.12 Blend Management ESU,
6 JK10093, on December 13, 2006. Oracle also registered this ESU with the Copyright Office.
7 *See* Registration No. TX 6-541-045. Further, SAP TN logged in on December 18, 2006 using
8 the log-in credentials of Yazaki and downloaded a Customer Relationship Management ESU,
9 PH11676, for EnterpriseOne software version 8.11, which is now registered with the Copyright
10 Office. *See* Registration No. TX 6-541-035. SAP TN also used the log-in ID of OCE to
11 download a payroll update for World Software version A7.3, A738217431, on December 21,
12 2006. Oracle registered this update with the Copyright Office as well. *See* Registration No. TX
13 6-541-043. None of these customers was licensed to copy these works. Nor was SAP licensed
14 to copy them in the names of those customers.

15 86. **The DST Solution.** In at least one instance, SAP TN has also, publicly
16 displayed, distributed, and thereby profited from Oracle’s copyrighted Software and Support
17 Materials. In December 2006, Oracle developed a knowledge solution related to the recent early
18 change to Daylight Savings Time (the “DST Solution”). The DST Solution is a narrative
19 document with specific instructions for how to conform certain Oracle software to the new
20 Daylight Savings Time change. Oracle fielded more than a thousand service requests from its
21 customers related to the Daylight Savings Time change, and its DST Solution helped resolve
22 more than 750 of them.

23 87. Oracle traced downloads of the DST Solution to SAP TN’s IP address on
24 January 8, 2007 and January 15, 2007. Oracle also noticed that SAP TN posted a “PeopleSoft
25 Daylight Savings Time solution” on its website. SAP TN’s “solution” is substantially similar in
26 total—and in large part appears to be copied identically from—Oracle’s DST Solution. SAP TN’s
27 copied version even includes minor errors in the original DST Solution that Oracle later
28

1 corrected. SAP TN's version also substitutes an SAP TN logo in place of the original Oracle
2 logo and copyright notice.

3 88. Oracle has registered the downloaded version of its DST Solution that
4 SAP TN copied and created derivative works from, and later distributed and publicly displayed,
5 as well as a later version that SAP TN also downloaded shortly before Oracle filed its original
6 Complaint, Registration Nos. TX 6-541-019 and TX 6-541-018. No customer is licensed to
7 create derivative works from, distribute or publicly display Oracle's Software and Support
8 Materials, and neither is SAP.

9 **H. SAP Adds The Ill-Gotten Gains To Its Coffers**

10 89. SAP TN now claims to have delivered thousands of fixes and more than
11 1000 tax and regulatory updates to Oracle's former customers. Not coincidentally, SAP TN has
12 illegally downloaded thousands of fixes and updates from Oracle's restricted customer support
13 website. SAP AG and SAP America directed this download scheme, ratified it, never disavowed
14 it, and financially benefited from it. SAP subsequently has used Oracle's stolen intellectual
15 property to provide maintenance services and unfairly compete against Oracle, has illegally won
16 business and a number of customers from Oracle, and has artificially inflated its market share.

17 **I. The SAP Defendants Conspired With And Aided And Abetted Each Other**

18 90. Defendants willfully, intentionally, and knowingly agreed and conspired
19 with each other to engage in the alleged wrongful conduct, including Defendants' interference
20 with Oracle's business relationships and other unfair business practices, as well as Defendants'
21 trespass on, and computer fraud concerning the Software and Support Materials.

22 91. Defendants did the acts alleged pursuant to, and in furtherance of, that
23 agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting
24 the acts of the others.

25 92. As a direct and proximate result of the acts in furtherance of the
26 conspiracy, Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss
27 of profits from sales to current and potential customers of Oracle support services and licenses
28

1 for Oracle’s software programs. The wrongful conduct committed pursuant to the conspiracy
2 was a substantial factor in causing this harm.

3 93. Defendants also had full knowledge of or should have reasonably known
4 of the true nature of the wrongful conduct of each other Defendant, and aided and abetted such
5 wrongful conduct, including interference with Oracle’s business relationships and other unfair
6 business practices, as well as Defendants’ trespass on, and computer fraud concerning the
7 copyrighted Software and Support Materials, by providing substantial assistance and/or
8 encouraging the others to act.

9 94. Defendants also aided and abetted the described wrongful conduct of the
10 other Defendants by giving substantial assistance and/or encouragement that, separately
11 considered, was wrongful in and of itself.

12 95. As a direct and proximate result of the aiding and abetting of these acts,
13 Oracle has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits
14 from sales to current and potential customers of Oracle support services and licenses to Oracle
15 software programs. The wrongful conduct aided and abetted by the Defendants was a substantial
16 factor in causing this harm.

17 96. Defendants’ intentional agreement to commit, and commission of, these
18 wrongful acts, and aiding and abetting of these wrongful acts, was willful, malicious, oppressive,
19 and in conscious disregard of Oracle’s rights, and Oracle is therefore entitled to an award of
20 punitive damages to punish their wrongful conduct and deter future wrongful conduct.

21 **First Claim for Relief**

22 **Copyright Infringement**

23 (By Oracle Against All Defendants)

24 97. Oracle incorporates by reference each of the allegations in the preceding
25 paragraphs of this Complaint as though fully set forth here.

26 98. Oracle owns a valid and enforceable copyright in all of its Software and
27 Support Materials, which are creative works of original authorship by Oracle.

28

1 99. Oracle has complied in all respects with the copyright laws and is the
2 exclusive owner of the copyrights to its Software and Support Materials, including the rights
3 infringed by Defendants. Oracle has obtained from the Register of Copyrights Certificates of
4 Registration that cover many of the Software and Support Materials taken by SAP TN. These
5 certificates are identified, dated and numbered as follows:

Title of Work	Date of Registration	Registration Number
Initial release of JD Edwards EnterpriseOne XE	April 26, 2007	TX 6-541-033
Current development environment for JD Edwards EnterpriseOne Xe	April 26, 2007	TXu1-345-109
ESU for JD Edwards EnterpriseOne Xe	May 3, 2007	TX 6-541-051
Cumulative Update 8 for JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-048
Initial release of JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-050
Current development environment for JD Edwards EnterpriseOne 8.0	April 26, 2007	TXu1-345-111
ESU for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-046
Cumulative Update 1 for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-034
Initial release of JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-049
Current development environment for JD Edwards EnterpriseOne 8.9	April 26, 2007	TXu1-345-112
ESU for JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-036
Initial release of JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-038
Current development environment for JD Edwards EnterpriseOne 8.10	April 26, 2007	TXu1-345-113
ESU for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-037
Cumulative Update 2 for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-032
Initial release of JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-028
Current development environment for JD Edwards EnterpriseOne 8.11	April 26, 2007	TXu1-345-114
ESU for JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-035
Initial release of JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-040
Current development environment for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TXu1-345-115
ESU for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-027
Cumulative Update 1 for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-039
Initial release of JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-041
Current development environment for JD Edwards EnterpriseOne 8.12	April 26, 2007	TXu1-346-350
ESU for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-045

1	Cumulative Update 1 for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-042
2	Initial release of JD Edwards World A7.3	April 26, 2007	TX 6-541-029
3	Current development environment for JD Edwards World A7.3	April 26, 2007	TXu1-345-110
4	Code Change for JD Edwards World A7.3	April 26, 2007	TX 6-541-043
5	Cumulative Update 16 for JD Edwards World A7.3	April 26, 2007	TX 6-541-031
6	Initial release of JD Edwards World A8.1	April 26, 2007	TX 6-541-047
7	Current development environment for JD Edwards World A8.1	May 1, 2007	TX 6-545-422
8	Code Change for JD Edwards World A8.1	April 26, 2007	TX 6-541-044
9	Cumulative Update 6 for JD Edwards World A8.1	May 1, 2007	TX 6-545-421
10	Initial release of JD Edwards World A9.1	April 26, 2007	TX 6-541-030
11	ECRM89: Common Errors on Mobile Sales	April 26, 2007	TX 6-541-020
12	EAP WTHD06: 1099 IRS changes for the year 2006	April 26, 2007	TX 6-541-023
13	JD Edwards World -- 1099 Changes for Tax Year 2006	April 26, 2007	TX 6-541-026
14	E1: 1099: Year 2006 1099 ESUs	April 26, 2007	TX 6-541-024
15	Changes to Daylight Savings Time for 2007 (DST)	April 26, 2007	TX 6-541-025
16	E1: 07/77: Quantum for Payroll Tax v.280	April 26, 2007	TX 6-541-022
17	GM--Grants issues resolved by FMS ESA 8.9 Bundle #10-653723 (Oct 06)	April 26, 2007	TX 6-541-021
18	PeopleTools Third Party Daylight Saving Time Required Modifications	April 26, 2007	TX 6-541-019
19	PeopleTools Third Party Daylight Saving Time Required Modifications (Revised)	April 26, 2007	TX 6-541-018

17
18
19
20
21
22
23
24
25
26
27
28

100. These registrations generally cover, but are not limited to, numerous versions of Oracle software, including the updates, patches and fixes incorporated in each relevant version, service packs of Oracle updates, patches and fixes, and individual exemplar Software and Support Materials, including certain Oracle knowledge management solutions and certain Oracle updates, patches and fixes, all of which SAP TN copied without a license.

101. Through the acts alleged above, Defendants have violated Oracle's exclusive right to reproduce and make copies of its copyrighted support materials by downloading Oracle's copyrighted Software and Support Materials onto its computers in violation of 17 U.S.C. § 106.

102. Defendants have also violated Oracle's right to control the distribution, creation of derivative works and public display of its copyrighted works by downloading,

1 copying, creating derivative works from and/or and distributing Oracle's Software and Support
2 Materials and/or derivative works to Defendants' customers, via posting to its website or
3 otherwise, including at least Oracle's DST Solution, in violation of 17 U.S.C. § 106.

4 103. Defendants were not authorized to copy, download, reproduce, create
5 derivative works from, distribute, or publicly display Oracle's copyrighted Software and Support
6 Materials except as authorized by and in support of a specific licensed customer, using only that
7 licensed customer's log in credentials, and with respect only to Software and Support Materials
8 for which that customer had a current right to have and use.

9 104. In addition to directly infringing Oracle's copyrights, Defendants have
10 contributorily and/or vicariously infringed Oracle's copyrights in its Software and Support
11 Materials by controlling, directing, inducing or materially contributing to the copying,
12 distribution, publicly display or creation of derivative works from Oracle's copyrighted Software
13 and Support Materials. Defendants also obtained a direct financial benefit from the above
14 alleged infringing activities.

15 105. Defendants knew or should have known that copying, distributing, public
16 display of, and creating derivative works from Oracle's Software and Support Materials, which
17 Defendants copied in the name of customers who had no license to copy, distribute, publicly
18 display or create derivative works from those materials infringed Oracle's copyrights in those
19 materials.

20 106. Oracle is entitled to damages in an amount to be proven at trial, including
21 profits attributable to the infringement not taken into account in computing actual damages under
22 17 U.S.C. § 504.

23 107. Defendants' infringement of Oracle's copyrights has also caused Oracle
24 irreparable injury. Unless restrained and enjoined, Defendants will continue to commit such
25 acts. Oracle's remedy at law is not adequate to compensate it for these inflicted and threatened
26 injuries, entitling Oracle to remedies including injunctive relief as provided by 17 U.S.C. § 502,
27 and an order impounding or destroying any and all infringing materials pursuant to
28 17 U.S.C. § 503.

Second Claim for Relief

Violation of Federal Computer Fraud and Abuse Act

(18 U.S.C. §§ 1030(a)(2)(C), (a)(4) & (a)(5))

(By Oracle Against All Defendants)

108. Oracle incorporates by reference each of the allegations in the preceding paragraphs of this Complaint as though fully set forth here.

109. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing a computer used for interstate commerce or communication, without authorization or by exceeding authorized access to such a computer, and by obtaining information from such a protected computer.

110. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4), by knowingly, and with intent to defraud Oracle, accessing a protected computer, without authorization or by exceeding authorized access to such a computer, and by means of such conduct furthered the intended fraud and obtained one or more things of value, including but not limited to Oracle’s Software and Support Materials.

111. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)(A)(i), by knowingly causing the transmission of a program, information, code, or command and as a result intentionally causing damage without authorization to a protected computer owned by Oracle.

112. Defendants have violated the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030(a)(5)(A)(ii) and (iii) by intentionally accessing a protected computer without authorization, causing damage to Oracle, recklessly or without due regard for their actions.

113. The computer system or systems that Defendants accessed as described above constitute a “protected computer” within the meaning of 18 U.S.C. § 1030(e)(2).

114. Oracle has suffered damage and loss by reason of these violations, including, without limitation, harm to Oracle’s data, programs, and computer systems and other losses and damage in an amount to be proved at trial, but, in any event, in an amount well over \$5000 aggregated over a one-year period.

1 amount to be proven at trial. Oracle is also entitled to recover its reasonable attorneys' fees
2 pursuant to California Penal Code § 502(e).

3 123. Oracle is informed and believes that the aforementioned acts of the
4 Defendants were willful and malicious in that Defendants' acts described above were done with
5 the deliberate intent to injure Oracle's business and improve its own. Oracle is therefore entitled
6 to punitive damages.

7 124. Oracle has also suffered irreparable injury from these acts, and due to the
8 continuing threat of such injury, has no adequate remedy at law, entitling Oracle to injunctive
9 relief.

10 **Fourth Claim for Relief**

11 **Breach of Contract**

12 (By Oracle Against All Defendants)

13 125. Oracle incorporates by reference the allegations of paragraphs 1 through
14 81, 89 through 96, and 108 through 124 of this Complaint as though fully set forth here.

15 126. Defendants agreed to be bound by the Customer Connection Terms of
16 Use, the Special Terms of Use, the SAR legal restrictions, and/or the Legal Download
17 Agreement when Defendants accessed or downloaded Software and Support Materials from
18 Customer Connection.

19 127. Oracle has performed all conditions, covenants, and promises required on
20 its part to be performed in accordance with the terms and conditions of the Customer Connection
21 Terms of Use, the Special Terms of Use, the SAR legal restrictions, and the Legal Download
22 Agreement.

23 128. Defendants have breached the Customer Connection Terms of Use, the
24 Special Terms of Use, the SAR legal restrictions, and/or the Legal Download Agreement by,
25 among other things:

- 26 • Accessing or using portions of the Software and Support Materials,
27 not expressly licensed to and/or paid for by Defendants or the
28

1 customers in whose name Defendants accessed Customer Connection
2 and took the Software and Support Materials;

- 3 • Accessing the content available through Customer Connection, in the
4 form of the Software and Support Materials, without being an
5 authorized and designated Oracle technical support contact;
- 6 • Using the Software and Support Materials other than in support of a
7 customer's authorized use of Oracle software for which a customer
8 holds a supported license from Oracle;
- 9 • Using the Software and Support Materials without a legitimate
10 business purpose; and,
- 11 • Using the Software and Support Materials in ways other than the
12 furtherance of a relationship with Oracle.

13 129. As a result of Defendants' breach of the Customer Connection Terms of
14 Use, the Special Terms of Use, the SAR legal restrictions, and the Legal Download Agreement,
15 Defendants have caused damage to Oracle in an amount to be proven at trial.

16 **Fifth Claim for Relief**

17 **Intentional Interference With Prospective Economic Advantage**

18 (By Oracle Against All Defendants)

19 130. Oracle incorporates by reference the allegations of paragraphs 1 through
20 81, 89 through 96, and 108 through 129 of this Complaint as though fully set forth here.

21 131. Oracle has and had an expectancy in continuing and advantageous
22 economic relationships with current and prospective purchasers and licensees of Oracle's support
23 services and software.

24 132. These relationships contained the probability of future economic benefit
25 in the form of profitable support service contracts and software licenses. Had Defendants
26 refrained from engaging in the unlawful and wrongful conduct described in this complaint, there
27 is a substantial probability that Oracle support customers would have initiated, renewed, or
28 expanded support contracts and software licenses with Oracle rather than Defendants.

1 133. Defendants were aware of these economic relationships and intended to
2 interfere with and disrupt them by wrongfully:

- 3 • gaining unauthorized access to Oracle’s computer systems through
4 Oracle’s password-protected Customer Connection support website in
5 violation of the agreements governing such access;
- 6 • gaining unauthorized access to the Software and Support Materials
7 available on Oracle’s computer systems through Customer
8 Connection, in violation of the agreements governing such access,
9 including by using log in credentials of customers with no right or
10 license to the Software and Support Materials taken by Defendants;
- 11 • breaching the agreements governing access to, and use of, the website
12 and the Software and Support Materials available through it,
- 13 • luring Oracle’s current and prospective customers by making
14 promotional and marketing statements regarding Defendants’ ability to
15 provide support services for Oracle software that were only possible
16 because of Defendants’ improper access to, and taking from, Oracle’s
17 computer systems through Customer Connection; and,
- 18 • using information learned through the improper access to, and taking
19 from, Oracle’s computer systems through Customer Connection to
20 provide support services to SAP TN customers.

21 134. Defendants’ conduct was wrongful by a measure beyond the fact of the
22 interference itself. Defendants gained unauthorized access to Oracle’s computer systems through
23 Oracle’s password-protected Customer Connection support website, breached the agreements
24 governing access to, and use of, Customer Connection and the Software and Support Materials
25 available through it, and wrongfully used the property that they found there to advertise their
26 services, and otherwise obtain and retain Oracle’s current and prospective clients.

27 135. This conduct, as alleged above, constitutes violations of numerous state
28 and federal statutes and codes, including, but not limited to, violation of the Federal Computer

1 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §
2 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,
3 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access
4 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-
5 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust
6 enrichment.

7 136. As a result of Defendants' acts, the above-described relationships have
8 been actually disrupted, causing certain current and prospective support clients to contract with
9 Defendants instead of Oracle for their software support and maintenance and, in some cases, for
10 their enterprise software.

11 137. As a direct and proximate result of Defendants' actions, Oracle has
12 suffered economic harm, including, but not limited to, loss of profits from sales or licenses to
13 current and potential customers of Oracle support services and enterprise software programs.
14 Defendants' wrongful conduct was a substantial factor in causing this harm.

15 138. Unless Defendants are restrained by appropriate injunctive relief, their
16 actions are likely to recur and will cause Oracle irreparable injury for which there is no adequate
17 remedy at law.

18 139. Defendants' interference with Oracle's prospective economic advantage
19 with its current and future customers, as described above, was willful, malicious, oppressive, and
20 in conscious disregard of Oracle's rights, and Oracle is therefore entitled to an award of punitive
21 damages to punish their wrongful conduct and deter future wrongful conduct.

22 **Sixth Claim for Relief**

23 **Negligent Interference With Prospective Economic Advantage**

24 (By Oracle Against All Defendants)

25 140. Oracle incorporates by reference the allegations of paragraphs 1 through
26 81, 89 through 96, and 108 through 139 of this Complaint as though fully set forth here.

1 141. Oracle has and had an expectancy in continuing and advantageous
2 economic relationships with current and prospective purchasers and licensees of Oracle's support
3 services and software.

4 142. These relationships contained the probability of future economic benefit
5 in the form of profitable support service contracts and enterprise software licenses. Had
6 Defendants refrained from engaging in the unlawful and wrongful conduct described in this
7 complaint, there is a substantial probability that Oracle support customers would have initiated,
8 renewed, or expanded support contracts and enterprise software licenses with Oracle rather than
9 Defendants.

10 143. Defendants knew or should have known about the economic relationship,
11 described above, and knew or should have known that these relationships would be interfered
12 with and disrupted if Defendants failed to act with reasonable care in their access of Customer
13 Connection and use of Oracle's Software and Support Materials. Defendants failed to act with
14 reasonable care. Instead, they:

- 15 • gained unauthorized access to Oracle's computer systems through
16 Oracle's password-protected Customer Connection support website in
17 violation of the agreements governing such access;
- 18 • gained unauthorized access to the Software and Support Materials
19 available on Oracle's computer systems through Customer Connection, in
20 violation of the agreements governing such access, including by using log
21 in credentials of customers with no right or license to the Software and
22 Support Materials taken by Defendants;
- 23 • breached the agreements governing access to, and use of, the website and
24 the Software and Support Materials available through it;
- 25 • lured Oracle's current and prospective customers by making promotional
26 and marketing statements regarding Defendants' ability to provide
27 support services for Oracle software that were only possible because of
28

1 Defendants' improper access to, and taking from, Oracle's computer
2 systems through Customer Connection; and,

- 3 • used information learned through the improper access to, and taking
4 from, Oracle's computer systems through Customer Connection to
5 provide support services to SAP TN customers.

6 144. Defendants' conduct was wrongful by a measure beyond the fact of the
7 interference itself. Defendants gained unauthorized access to Oracle's computer systems through
8 Oracle's password-protected Customer Connection support website, breached the agreements
9 governing access to, and use of, Customer Connection and the Software and Support Materials
10 available through it, and wrongfully used the property that they found there to advertise their
11 services, and otherwise obtain and retain Oracle's current and prospective clients.

12 145. This conduct, as alleged above, constitutes violations of numerous state
13 and federal statutes and codes, including, but not limited to, violation of the Federal Computer
14 Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, receipt of stolen property, Cal. Penal Code §
15 496, unauthorized access to computers, Cal. Penal Code § 502, wire fraud, 18 U.S.C. § 1343,
16 violation of RICO, 18 U.S.C. § 1962, fraud and related activity in connection with an access
17 device, 18 U.S.C. § 1029, and violation of the Stored Communications Act, 18 U.S.C. §§ 2701-
18 11. Defendants' conduct also constitutes trespass to chattels, breach of contract, and unjust
19 enrichment.

20 146. As a result of Defendants' acts, the above-described relationships have
21 been actually disrupted, causing certain current and prospective support clients to contract with
22 Defendants instead of Oracle for their software support and maintenance and, in some cases, for
23 their enterprise software.

24 147. As a direct and proximate result of Defendants' actions, Oracle has
25 suffered economic harm, including, but not limited to, loss of profits from sales or licenses to
26 current and potential customers of Oracle support services and enterprise software programs.
27 Defendants' wrongful conduct was a substantial factor in causing this harm.

1 Materials. In light of Defendants' conduct, it would be inequitable to allow Defendants to retain
2 the benefit of the funds obtained through the unauthorized and unlawful use of Oracle's property.

3 155. Defendants' unfair business practices have unjustly minimized Oracle's
4 competitive advantage and have caused and are causing Oracle to suffer damages.

5 156. As a result of such unfair competition, Oracle has also suffered
6 irreparable injury and, unless Defendants are enjoined from such unfair competition, will
7 continue to suffer irreparable injury, whereby Oracle has no adequate remedy at law.

8 157. Defendants should be compelled to disgorge and/or restore any and all
9 revenues, earnings, profits, compensation, and benefits they may have obtained in violation of
10 California Business & Professions Code § 17200 *et seq.*, including, but not limited to, returning
11 the any revenue earned from the unlawful and unfair use of Oracle's stolen property, and should
12 be enjoined from further unlawful, unfair, and deceptive business practices.

13 **Eighth Claim for Relief**

14 **Trespass To Chattels**

15 (By Oracle Against All Defendants)

16 158. Oracle incorporates by reference the allegations of paragraphs 1 through
17 81, 89 through 96, and 108 through 157 of this Complaint as though fully set forth here.

18 159. At all times mentioned in this Complaint, Oracle had legal title to and
19 actual possession of Customer Connection, its access-restricted internet-based support system,
20 and the Software and Support Materials on that support system, as described above.

21 160. Defendants intentionally interfered with Oracle's use or possession of
22 both Customer Connection and Oracle's related internal databases and systems, and the Software
23 and Support Materials housed for licensed access through Customer Connection.

24 161. Defendants' trespass and interference proximately caused damage to
25 Oracle, including, but not limited to, damage to the functionality of Oracle's computer system
26 and data, damage to Oracle's rights to dominion and control over its property, and damage to the
27 confidential nature of the information on Oracle's website. As a result, Defendants caused
28

1 Oracle's property to greatly diminish in value and deprived Oracle of the intended use of its
2 computer systems.

3 162. Oracle is entitled to recover any and all damages it sustained as a result of
4 such trespass, in an amount to be determined at trial.

5 163. Defendants' trespass interfered with, and damaged, the integrity and
6 functionality of Oracle's computer system and data. Defendants will continue to commit such
7 acts and other competitors will be encouraged to sweep Oracle's website, potentially to the point
8 of denying effective access to Oracle's customers and preventing Oracle from using its systems
9 and data for their intended purpose. Defendants' trespass therefore threatens to cause irreparable
10 harm to Oracle, for which Oracle's remedy at law is not adequate to compensate it for the
11 injuries inflicted and threatened.

12 **Ninth Claim for Relief**

13 **Unjust Enrichment/Restitution**

14 (By Oracle Against All Defendants)

15 164. Oracle incorporates by reference the allegations of paragraphs 1 through
16 81, 89 through 96, and 108 through 163 of this Complaint as though fully set forth here.

17 165. Defendants unjustly received benefits at the expense of Oracle through
18 their wrongful conduct, including Defendants' breach of the agreements governing access to and
19 use of Customer Connection, interference with Oracle's business relationships and other unfair
20 business practices, as well as Defendants' trespass on, and computer fraud concerning the
21 Software and Support Materials, which took substantial time and money for Oracle to develop.
22 Defendants continue to unjustly retain these benefits at the expense of Oracle. It would be unjust
23 for Defendants to retain any value they obtained as a result of their wrongful conduct.

24 166. Oracle is accordingly entitled to full restitution of all amounts in which
25 Defendants have been unjustly enriched at Oracle's expense.

1 **Tenth Claim for Relief**

2 **An Accounting**

3 (By Oracle Against All Defendants)

4 167. Oracle incorporates by reference the allegations of paragraphs 1 through
5 81, 89 through 96, and 108 through 166 of this Complaint as though fully set forth here.

6 168. Since at least September 2006, Defendants have obtained business
7 through the use of unlawful conduct including, but not limited to:

8 (a) Breaching the agreements governing access to or use of Customer
9 Connection;

10 (b) Intentionally and/or negligently interfering with Oracle's
11 prospective economic advantage with its existing and potential customers;

12 (c) Improperly, willfully, and unlawfully taking commercial advantage
13 of Oracle's investment in its Software and Support Materials, for the purpose of sabotaging
14 Oracle's ability to do business and compete in the market; and

15 (d) Fraudulently accessing and intentionally trespassing on Oracle's
16 password-protected Customer Connection website, without authorization or consent, in
17 furtherance of their unlawful and deceptive scheme as described above.

18 169. Defendants have received money as a result of their misconduct, at
19 Oracle's expense, and that some or all of such money is rightfully due to Oracle.

20 170. The amount of money due from Defendants to Oracle is unknown to
21 Oracle and cannot be ascertained without an accounting of the income and gross profits
22 Defendants have obtained through their wrongful and unlawful conduct. Oracle is entitled,
23 therefore, to a full accounting.

24 **Prayer For Relief**

25 WHEREFORE, Oracle respectfully prays for the following:

26 A. For a preliminary and permanent injunction restraining
27 Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert
28 or participation with any of them, from the following:

1 (1) Downloading, distributing or using any Oracle Software
2 and Support Materials Defendants except as authorized by and in support of a specific licensed
3 customer, using only that licensed customer's log in credentials, and with respect only to
4 Software and Support Materials for which that customer has a current right to have and use;

5 (2) Distributing any Software and Support Materials to any
6 person or entity without keeping records to show accurately what was transferred, when, and to
7 whom;

8 (3) Downloading Oracle Software and Support Materials from
9 Oracle without keeping records to show accurately what was downloaded, when, using what log
10 in credentials, and for whom;

11 (4) Commingling Oracle Software and Support Materials
12 downloaded for different customers;

13 (5) Using Oracle Software and Support Materials to train
14 employees or generate derived works; and,

15 (6) Otherwise engaging in acts of unfair competition, copyright
16 infringement, trespass, computer fraud, and interference with Oracle's business relationships;

17 B. That the Court order Defendants to file with the Court and serve on
18 Oracle within thirty (30) days after the service on Defendants of such injunction a report in
19 writing, under oath, setting forth in detail the manner and form in which Defendants have
20 complied with the injunction;

21 C. For an Order directing Defendants to return Oracle's property,
22 including, without limitation, Oracle's confidential, proprietary, and copyrighted Software and
23 Support Materials, including data, internal documents, and valuable updates, patches, fixes, and
24 other computer code, that Defendants took from Oracle, as set forth in this Complaint;

25 D. For an order impounding or destroying any and all infringing
26 materials pursuant to 17 U.S.C. § 503;

27 E. For an Order awarding Oracle punitive damages in a sum to be
28 determined at trial, on the basis of Defendants' willful and deliberate unauthorized computer

1 access, intentional interference with Oracle's prospective economic advantage, aiding and
2 abetting and conspiracy;

3 F. For restitution and disgorgement of all ill-gotten gains unjustly
4 obtained and retained by Defendants through the acts complained of here;

5 G. For damages to be proven at trial;

6 H. For prejudgment interest;

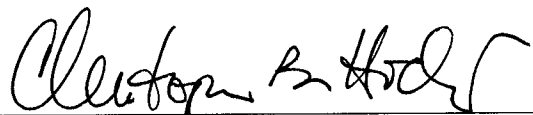
7 I. For an accounting;

8 J. For an Order awarding Oracle its attorneys' fees and costs; and,

9 K. For an Order awarding Oracle such other and further relief as the

10 Court deems just and proper.
11 DATED: June 1, 2007

BINGHAM McCUTCHEN LLP

12
13 By:  _____

14 Christopher B. Hockett
15 Attorneys for Plaintiffs
16 Oracle Corporation, Oracle USA, Inc., and
17 Oracle International Corporation

18
19
20
21
22
23
24
25
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle Corporation, Oracle International Corporation and Oracle USA, Inc. demand a trial by jury on all issues triable by a jury.

DATED: June 1, 2007

BINGHAM McCUTCHEN LLP

By: 

Christopher B. Hockett
Attorneys for Plaintiffs
Oracle Corporation, Oracle USA, Inc., and
Oracle International Corporation