

1 Robert A. Mittelstaedt (SBN 060359)  
 Jason McDonell (SBN 115084)  
 2 Elaine Wallace (SBN 197882)  
 JONES DAY  
 3 555 California Street, 26<sup>th</sup> Floor  
 San Francisco, CA 94104  
 4 Telephone: (415) 626-3939  
 Facsimile: (415) 875-5700  
 5 ramittelstaedt@jonesday.com  
 jmcdonell@jonesday.com  
 6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)  
 Jane L. Froyd (SBN 220776)  
 8 JONES DAY  
 1755 Embarcadero Road  
 9 Palo Alto, CA 94303  
 Telephone: (650) 739-3939  
 10 Facsimile: (650) 739-3900  
 tglanier@jonesday.com  
 11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)  
 Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
 13 JONES DAY  
 717 Texas, Suite 3300  
 14 Houston, TX 77002  
 Telephone: (832) 239-3939  
 15 Facsimile: (832) 239-3600  
 swcowan@jonesday.com  
 16 jlfuchs@jonesday.com

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

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 SAN FRANCISCO DIVISION

22 ORACLE CORPORATION, et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

Case No. 07-CV-1658 PJH

**DECLARATION OF JASON  
 McDONELL IN SUPPORT OF  
 DEFENDANTS' MOTION TO STAY  
 OR EXTEND TIME TO COMPLY  
 WITH JULY 3, 2008 DISCOVERY  
 ORDER**

Date: N/A

Time: N/A

Courtroom: N/A

Judge: Hon. Elizabeth D. Laporte

McDONELL DECL. ISO DEFS.'MOT. TO STAY OR EXTEND  
 TIME TO COMPLY WITH DISCOVERY ORDER

Case No. 07-CV-1658 PJH

1 I, JASON McDONELL, declare:

2 I am a partner in the law firm of Jones Day, 555 California Street, San Francisco,  
3 California 94104, a member in good standing of the bar of this state, and counsel of record for  
4 Defendants SAP AG, SAP Americas, and TomorrowNow, Inc. in the above-captioned action. I  
5 make this declaration based on personal knowledge and, if called upon to do so, could testify  
6 competently thereto.

7 1. On July 3, 2008, the Magistrate Judge issued an order directing, among other  
8 things, defendants to produce to Oracle, no later than July 15, 2008, certain documents produced  
9 to the grand jury. Dkt. 106.

10 2. On July 13, 2006, defendants filed a Stipulation and [Proposed] Order to Extend  
11 Time to Comply with Discovery Order, requesting an extension to July 23, 2008 to comply with  
12 the discovery order on grounds, among others, that defendants' wanted the full period of time  
13 until July 18, 2008 to decide whether to appeal. Dkt. 113. On July 17, 2008, the Magistrate  
14 Judge granted this extension. Dkt. 115.

15 3. In my declaration in support of the stipulated order, I explained that if defendants  
16 decided to appeal, to avoid mootness of the appeal, they would seek a stay of that part of the order  
17 requiring defendants to produce to Oracle documents provided to the grand jury. Dkt. 114.

18 4. Defendants have now decided to appeal the order by filing objections with Judge  
19 Hamilton and thus defendants request an additional extension of time to comply with the order  
20 until a date seven (7) days after the disposition by Judge Hamilton of defendants' objections.

21 5. If defendants were required to comply with the order before their objections are  
22 decided by Judge Hamilton, the resulting production of the documents would moot some or all of  
23 the defendants' objections. Without an extension, substantial harm or prejudice will occur to  
24 defendants as the required production would disclose the materials that defendants maintain are  
25 protected by Fed. R. Crim. P. 6(e) and should not be produced to Oracle. Once that disclosure  
26 has been made it cannot be undone as a practical matter.

27

28

