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 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  
 MARKUS GENG IN SUPPORT OF  
 DEFENDANTS' RESPONSE TO  
 PLAINTIFFS' MOTION TO COMPEL  
 PRODUCTION OF CLAWED BACK  
 DOCUMENTS**

Date: N/A  
 Time: N/A  
 Courtroom: E, 15<sup>th</sup> Floor  
 Judge: Hon. Elizabeth D. Laporte

GENG DECL. ISO DEFS. RESP. TO PLS. MOT. TO COMPEL  
 PROD. OF CLAWED BACK DOCUMENTS  
 Case No. 07-CV-1658 PJH(EDL)

1 I, MARKUS GENG, declare:

2 I am the Head of Operations, Global Governance, Risk & Compliance of SAP AG, one of  
3 the Defendants in this case. I make this declaration based on personal knowledge and, if called  
4 upon to do so, could testify competently thereto.

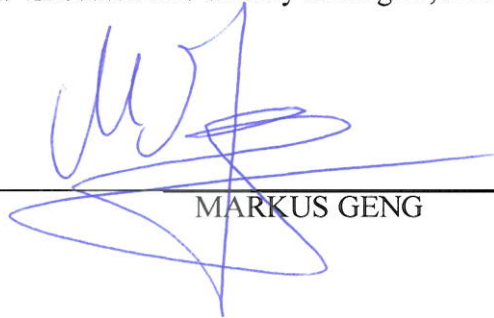
5 1. In or around February 2007, I assisted Thomas Ziemen with drafting the document  
6 that has been produced by TomorrowNow, Inc. in this case and Bates labeled TN-OR00164402  
7 through TN-OR00164410. It was designed as a presentation to SAP's management providing the  
8 business case for Tomorrow Now's and SAP's future business plans relating to Oracle's  
9 eBusiness Suite products and seeking management's business advice and direction on those plans.  
10 This presentation was intended to be a highly confidential, non-public internal SAP document  
11 relating to certain of TomorrowNow's and SAP's future business plans and competitive  
12 strategies. Because of the management-level strategic considerations contained in the document,  
13 the disclosure of this presentation to Oracle without the "Highly Confidential" protections  
14 provided by the Agreed Protective Order in this case could likely cause competitive and business  
15 injury to TomorrowNow and SAP.

16 2. The bottom portion of page TN-OR00164404 of the presentation contains a  
17 section called "Risk Status". The information included in the "Summary of key risks" portion of  
18 that section is a high-level summary containing conclusions I drafted based on legal advice I  
19 sought and obtained from SAP's in-house attorneys Chris Faye and Jochen Scholten relating to  
20 the key legal risks of the proposed business strategy reflected elsewhere in the presentation. I  
21 believe that the fact that the "Summary of key risks" and referenced risk analysis involved legal  
22 advice from SAP's attorneys is self-evident in the presentation itself because I noted in the  
23 "Overall Risk Status" portion of that section that the more detailed results of the legal analysis  
24 could be made available under "Attorney Client Privilege." And, the fact that the "Summary of  
25 key risks" portion of the "Risk Status" section contains only legal considerations is highlighted by  
26 the fact that I footnoted on that same page that the in depth technical examination was  
27 outstanding, therefore the technical risk assessment had not yet been performed.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 8th day of August, 2008 in Walldorf, Germany.



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MARKUS GENG