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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  
 ANDREW NELSON 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

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

1 I, ANDREW NELSON, declare:

2 I am the former President and Chief Executive Officer, of TomorrowNow, Inc., one of the  
3 Defendants in this case. I make this declaration based on personal knowledge and, if called upon  
4 to do so, could testify competently thereto.

5 1. The document that has been produced by TomorrowNow in this case and Bates  
6 labeled TN-OR00854803 through TN-OR00854804 is an email that I sent to Shelley Nelson of  
7 TomorrowNow on March 16, 2005. While this email reflects a combination of notes, to-do lists  
8 and communications, it contains two primary types of information. The first nine printed lines  
9 below the subject line of the email is a request by me to Shelley Nelson that she provide me with  
10 certain business information for me to use as part of my communications with Chris Faye, an in-  
11 house attorney with SAP. The remainder of the email (*i.e.*, the majority of the email beginning  
12 with "Back to . . ." on the first page through the end of the document) is directly related to  
13 TomorrowNow's seeking and receiving legal advice on a number of issues from Chris Faye. This  
14 portion of the email contains: (1) summaries of information collected and to be collected at the  
15 request of, and/or for the purposes of continued communications with Chris Faye regarding  
16 seeking and receiving his legal advice on the issues described in the email; (2) proposed agenda  
17 for a call with Chris Faye for purposes of seeking and obtaining legal advice; and (3) notes from  
18 portions of the legal advice that was provided to TomorrowNow by Chris Faye.

19 2. This email contains and was intended to contain extremely sensitive, highly  
20 confidential non-public information relating to legal advice regarding what were at the time  
21 TomorrowNow's current and future business plans and strategies. My understanding is that  
22 except for the first nine printed lines below the subject line of the email on page one and the  
23 signature block on page two, all other portions of the email have been redacted withheld by  
24 TomorrowNow's outside counsel in this case based on the assertion of the Attorney-Client  
25 privilege. Even the un-redacted portions of this email contain sensitive, confidential non-public  
26 information relating to what were at the time TomorrowNow's current and future business  
27 practices and what was considered by TomorrowNow to be internal, commercially sensitive  
28 information.

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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 Bryan, Texas.



ANDREW NELSON