

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 GREGORY  
 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

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

1 I, GREGORY NELSON, declare:


2 I am an individual over 18 years old. At the times relevant to the documents discussed in  
3 this declaration, I was the Global Chief Information Officer (February 2007) and Vice President  
4 Global Service Automation & Information Technology (July and August 2006) for  
5 TomorrowNow, Inc., one of the Defendants in this action. I make this declaration based on  
6 personal knowledge and, if called upon to do so, could testify competently thereto.

7 1. The document that has been produced by TomorrowNow in this case and Bates  
8 labeled TN-OR01157057 through TN-OR01157059 is an email chain to which I was a party that  
9 began on February 12, 2007. Andrew Nelson of TomorrowNow sent the last email in the chain to  
10 me on February 23, 2007, a one-line email accepting my request to discuss the integration of  
11 TomorrowNow's sales and marketing teams with SAP's sales and marketing teams under the  
12 terms of the Rules of Engagement. My understanding is that except for the first printed line  
13 below the subject line of the email on page one, all other portions of the email have been redacted  
14 and withheld by TomorrowNow's outside counsel in this case based on the assertion of the  
15 Attorney-Client privilege. That assertion is appropriate because the rest of the email chain are  
16 communications dating from February 12 through 22, 2007 between TomorrowNow's executives  
17 (including myself) and Christopher Faye, an in-house attorney with SAP. In these  
18 communications, Mr. Faye was at the request of TomorrowNow providing legal advice and  
19 related recommendations to TomorrowNow regarding the extent to which TomorrowNow's sales  
20 and marketing teams could be integrated with SAP's sales and marketing teams and still comply  
21 with the terms of the Rules of Engagement. This February 12 through 22, 2007 portion of the  
22 email contains and was intended to contain extremely sensitive, confidential non-public  
23 information relating to legal advice regarding what were at the time TomorrowNow's current and  
24 future business plans and strategies.

25 2. The document that has been withheld by TomorrowNow in this case and Bates  
26 labeled TN-OR01058166 through TN-OR01058170 is an email chain to which I was a party that  
27 began on July 20, 2006 and ended when I sent the last email in the chain on August 1, 2006. My  
28 understanding is that this entire document has been withheld based on the assertion of Attorney-

1 Client privilege. That assertion is appropriate because this entire email chain contains  
2 communications relating to TomorrowNow's inquiry to SAP's in-house attorneys Christopher  
3 Faye and Tim Crean seeking their advice and recommendations regarding proposed revisions to  
4 the Rules of Engagement to include an expansion of Tomorrow Now's maintenance services to  
5 include additional software lines beyond PeopleSoft and JD Edwards software. The email first  
6 reflects the request for this legal advice and recommendations, which originated on July 20, 21,  
7 and 28, 2006 in TomorrowNow's and SAP's Asia offices via their internal employees in those  
8 locations, including one of TN's outsourced employees, Leighton Jenkins. The email chain then  
9 shows that the request was then elevated to TomorrowNow's executive team, including Nigel  
10 Pullan, myself and Andrew Nelson on July 28, 2006. Then, as shown in the email chain, I  
11 forwarded that request for advice and recommendations to SAP's in-house lawyers Crean and  
12 Faye on July 31, 2006 and Andrew Nelson added his own separate request for legal advice and  
13 recommendations on the same issue that same day. The final portion of the email chain reflects a  
14 summary of a conversation I had with Chris Faye reporting on the status of the request for legal  
15 advice and recommendations. This entire July 20 to August 1, 2006 email chain contains and was  
16 intended to contain extremely sensitive, confidential non-public information relating to  
17 TomorrowNow's attempt to seek and obtain legal advice regarding what were at the time  
18 TomorrowNow's current and future business plans and strategies.  
19

20 I declare under penalty of perjury under the laws of the United States and the State of  
21 California that the foregoing is true and correct. Executed this 11th day of August, 2008 in  
22 Bryan, Texas.

23  
24   
25 \_\_\_\_\_  
GREGORY NELSON

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27 ///  
28 ///