

1 Robert A. Mittelstaedt (SBN 060359)
 Jason McDonell (SBN 115084)
 2 Elaine Wallace (SBN 197882)
 JONES DAY
 3 555 California Street, 26th 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 ELAINE WALLACE
 IN SUPPORT OF DEFENDANTS'
 OPPOSITION TO PLAINTIFFS'
 MOTION TO COMPEL PRODUCTION
 OF CLAWED BACK DOCUMENTS
 EXHS. 3 & 4 SUBMITTED UNDER SEAL**

Date: TBD

Time: TBD

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

WALLACE DECL. ISO DEFS.' OPP.
 TO MOT. TO COMPEL
 Case No. 07-CV-1658 PJH(EDL)

1 I, Elaine Wallace, declare:

2 I am an associate with the law firm of Jones Day, 555 California Street, 26th Floor, San
3 Francisco, CA 940104 and counsel of record for Defendants in this action. I am a member in
4 good standing of the state bar of California and admitted to practice before this Court. I make this
5 declaration based on personal knowledge and, if called upon to do so, could testify competently
6 thereto.

7 1. Attached hereto as Exhibit 1 is a true and correct copy of a letter I sent to Bree
8 Hann, counsel for Oracle, on June 30, 2008. The letter contains an accurate description of the
9 privilege review process Jones Day has implemented in this case. In addition to the information
10 provided in the June 30 letter, paragraphs 2 and 3 below contain some additional detail regarding
11 Defendants' privilege review process.

12 2. The contract attorneys refer to the full list of inside and outside counsel provided
13 by Jones Day during the page by page review. In addition, before beginning the page by page
14 review of a custodian's documents the contract attorneys generally also run tailored searches
15 specific to that custodian. These tailored searches are done electronically. The tailored searches
16 may or may not be the same for any two custodians, depending on who the custodians are. The
17 tailored searches have been developed to account for the different positions of the various
18 custodians, the different types of privileged communications they are likely to have had, and the
19 different inside and outside lawyers with whom they are likely to have communicated. Thus, for
20 example, the tailored searches for SAP custodians are generally different from those used for
21 TomorrowNow custodians. The tailored searches have been developed over time by the contract
22 attorneys as their knowledge of the facts and the data being reviewed has grown. The tailored
23 searches consist mostly of attorney names, but may occasionally include other terms as well.

24 3. As described in my June 30 letter, quality control occurs at various levels of the
25 process. The tailored searches are just the first step in the review process. During first level
26 review, each tailored search is followed by a page by page review of all of a custodian's
27 documents using the full list of attorney names provided by Jones Day. At the conclusion of the
28 page by page review, additional quality control searches are run. These searches are done by the

1 attorneys who reviewed the documents because those are the people with the most knowledge of
2 the contents of the documents and the type of privileged communications they are likely to
3 contain. The attorneys choose the quality control searches from existing tailored searches or,
4 where appropriate, develop new ones based on their knowledge of the documents. Additional
5 quality control searches are run by Jones Day as part of the third level of review. These third
6 level searches are done electronically and include both key attorney names and terms such as
7 “legal” and “privileged.” Every one of these searches returns hundreds to thousands of document
8 hits that have to then be re-reviewed (*i.e.*, the document was reviewed during the page-by-page
9 review process and is now being reviewed again). The vast majority of the document hits
10 returned from these searches are not privileged. Every additional search Defendants run greatly
11 slows the process of production. Defendants’ current process attempts to balance the need to
12 produce the data in an efficient fashion while attempting to prevent any inadvertent production.

13 4. Attached hereto as Exhibit 2 is a true and correct copy of a June 20, 2008 letter
14 from Briana Rosenbaum, counsel for Oracle, to Jones Day, counsel for Defendants concerning
15 Oracle’s inadvertent production of privileged documents to Defendants.

16 5. Attached hereto as Exhibit 3 is a true and correct copy of the March 9, 2005 Rules
17 of Engagement document produced by TomorrowNow in this case and identified by the Bates
18 number TN-OR00000016-20.

19 6. Attached hereto as Exhibit 4 is a true and correct copy of the March 15, 2006
20 Rules of Engagement document produced by TomorrowNow in this case and identified by the
21 Bates number TN-OR00000025-28.

22 I declare under penalty of perjury under the laws of the United States and the State of
23 California that the foregoing is true and correct. Executed this 13th day of August, 2008 in San
24 Francisco, California.

25
26 /s/ Elaine Wallace

27 Elaine Wallace