

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  
THOMAS ZIEMEN 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

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

1 I, THOMAS ZIEMEN, declare:

2 I am a Vice President, Service Solution Management – Global Services and Support of  
3 SAP AG, on of the Defendants in this case. I make this declaration based on personal knowledge  
4 and, if called upon to do so, could testify competently thereto.

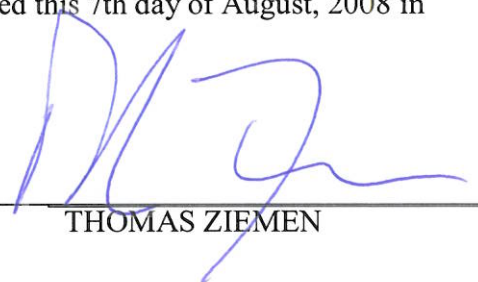
5 1. In 2007, I drafted the document that has been produced by TomorrowNow, Inc. in  
6 this case and Bates labeled TN-OR00164402 through TN-OR00164410. It was designed as a  
7 presentation to SAP’s management providing the business case for Tomorrow Now’s and SAP’s  
8 future business plans relating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

15 2. The bottom portion of page TN-OR00164404 of the presentation contains a  
16 section called “Risk Status”. The information included in the “Summary of Key Risks” portion  
17 of that section is a high-level summary that was created by and provided to me by Markus Geng,  
18 one of SAP’s risk managers, of what he told me had been explained to him by SAP’s in-house  
19 attorneys Chris Faye, Jochen Scholten as the key legal risks of the proposed business strategy  
20 reflected elsewhere in the presentation. I believe that the fact that the referenced risk analysis  
21 involved legal advice from SAP’s attorneys is self-evident in the presentation itself because  
22 Markus Geng noted in the “Overall Risk Status” portion of that section that the more detailed  
23 results of the legal analysis could be made available under “Attorney Client Privilege.” And, I  
24 believe that, as Markus Geng had footnoted on that same page that the in depth technical  
25 examination was outstanding, therefore the technical risk assessment had not yet been performed.

26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 7th day of August, 2008 in Walldorf, Germany.



---

THOMAS ZIEMER