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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 USA, INC., 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'
OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL**

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1 I, THOMAS ZIEMEN, declare:

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

5 1. Prior to this litigation, TomorrowNow, Inc. (“TN”), a subsidiary of SAP America,
6 Inc., which is a subsidiary of SAP AG (collectively “SAP”) and one of the defendants in this
7 case, considered providing third party support for each of the Hyperion, Retek, and eBusiness
8 Suite software product lines (collectively “HRE Products”). SAP’s consideration of TN’s
9 potential servicing the HRE Products involved, among other things, an analysis of the projected
10 revenues, expenses and other logistics associated with those potential new service offerings.

11 2. I participated in the drafting and delivery of business case presentations regarding
12 SAP’s consideration of TN providing third party support for the HRE Products. Ultimately, the
13 decision was made that TN would not provide third party support for any of the HRE Products.
14 And, to my knowledge, neither SAP nor TN ever provided such support for any of the HRE
15 Products. To my knowledge, SAP and TN never received any revenue related to providing
16 support services for any HRE Products.

17 3. To my knowledge, other than materials that were available to the general public
18 (i.e., through the internet or other publicly available means), no one at SAP downloaded or
19 otherwise accessed any of the HRE Products’ proprietary software or confidential support
20 materials for any purpose relating to SAP’s consideration of TN providing third party support for
21 those products.

22 4. SAP had a marketing campaign named Safe Passage that was focused on trying to
23 get potential customers to switch from using competing software to using SAP’s software.
24 Potential customers who were using HRE Products were part of the target market for Safe
25 Passage. However, the Safe Passage offering for potential SAP customers using HRE Products
26 did not include a third party maintenance support offering for those products. Potential SAP
27 customers who were using HRE Products were simply offered certain financial incentives if they
28 replaced their HRE software by switching to SAP’s software.

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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 22nd day of January, 2009 in Walldorf, Germany.



THOMAS ZIEMER