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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, SAN FRANCISCO DIVISION

21 ORACLE CORPORATION, et al.,

22 Plaintiffs,

23 v.

24 SAP AG, et al.,

25 Defendants.

Case No. 07-CV-1658 PJH

**REPLY DECLARATION OF JOSHUA  
 FUCHS IN SUPPORT OF MOTION TO  
 COMPEL DISCOVERY CONCERNING  
 THIRD PARTY SUPPORT PROVIDED BY  
 ORACLE'S PARTNERS**

Date: February 10, 2009

Time: 2:00 PM

Courtroom: E, 15<sup>th</sup> Floor

Judge: Hon. Elizabeth D. Laporte

1 I, JOSHUA FUCHS, declare:

2 I am an attorney with the law firm of Jones Day and counsel for Defendants in the above-  
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do  
4 so, could testify competently thereto.

5 1. Based on Defendants records of production in this case, the discovery burden has  
6 not been equal. Defendants have been required to review and produce far more data and been  
7 required to prepare and present many more witnesses for deposition than Plaintiffs.

8 2. To date, Defendants have reviewed in excess of 6 million documents for potential  
9 production from custodian files. Out of that, Defendants have produced approximately 4,364,049  
10 Bates numbered pages from 72 different custodians. In addition, Defendants have produced in  
11 excess of 10 terabytes of native data including entire portions of TomorrowNow servers and key  
12 services databases which have required thousands of man hours of review and processing time.  
13 In contrast, Plaintiffs to date have only produced approximately 312,743 Bates numbered pages  
14 from 41 custodians. In addition, much of the native data Plaintiffs have produced consists of log  
15 files and software release and updates which do not have the potential to contain privileged data  
16 and, therefore, do not require review for privileged content.

17 3. As for depositions, to date, Defendants have been required to prepare and present  
18 30 witnesses totaling nearly 200 hours of deposition time. Plaintiffs, on the other hand, have been  
19 required to present 11 witnesses totaling nearly 51 hours of deposition time.

20 4. To date, Oracle has served 102 subpoenas *duces tecum* upon 99 former customers  
21 of TomorrowNow. Of those 99 customers, 49 customers have produced approximately 389,900  
22 Bates numbered pages and 77,012 documents. Defendants review each document produced by a  
23 third party to appropriately designate any confidential or highly confidential information that may  
24 be contained therein.

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I declare under penalty of perjury under the laws of the United States and the State of Texas that the foregoing is true and correct.

Executed this 27th day of January 2009 in Houston, Texas.

/s/ Joshua Fuchs  
Joshua Fuchs