

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 jlfuncs@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, 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

**DECLARATION OF SCOTT W. COWAN IN
 SUPPORT OF DEFENDANTS' RESPONSE
 TO PLAINTIFFS' ADMINISTRATIVE
 MOTION**

Date: N/A

Time: N/A

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

1 I, SCOTT W. COWAN, declare:

2 I am a partner 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. Exhibit "A" to the February 9, 2009 Joint Discovery Conference Statement is a
6 "snapshot" from the Parties' inchoate compromise discussions regarding Plaintiffs' claims
7 regarding PeopleSoft HRMS environments and updates/fixes. Exhibit "A" is Plaintiffs' current
8 proposed stipulation that Defendants have not accepted. Defendants' counsel has made clear
9 throughout the negotiation process regarding the proposed stipulation that Defendants' continued
10 negotiation with Plaintiffs is an attempt to reach a compromise regarding how certain facts in this
11 case can be established and presented in a more streamlined fashion regarding the claims and
12 defenses in this case. Defendants' counsel has also informed Plaintiffs' counsel that Defendants
13 are engaging in such compromise discussions under Fed. R. Evid. 408.

14 2. Defendants' counsel has further made clear that: (a) no statement (or conversely,
15 lack of comment) made during the negotiations is intended to be, or should otherwise be
16 construed as, an agreement, stipulation, concession or admission regarding any fact whatsoever;
17 and (b) unless and until the Parties negotiate, finalize and fully execute a formal stipulation, there
18 will be no such agreement, stipulation, concession or admission.

19 3. In addition, Defendants have protected certain information contained in Exhibit
20 "A" from improper public disclosure through the Stipulated Protective Order (D.I. 32) that is
21 designed to prevent the Parties' private commercial information from being improperly disclosed.
22 Under the terms of that Order, Defendants designate certain documents, deposition transcripts,
23 and discovery responses containing private commercial information as either "Confidential" or
24 "Highly Confidential" prior to producing such documents in the course of discovery. Exhibit "A"
25 contains certain information taken from documents and testimony that was so designated.

26 4. Given that Exhibit "A" is a "snapshot" from the Parties' inchoate compromise
27 discussions relating to Plaintiffs' claims regarding PeopleSoft HRMS environments and
28 updates/fixes, it reveals, at least in part, the substance of those compromise discussions. The

1 policy of Fed. R. Evid. 408 is to promote the out-of-court settlement of claims. Thus, if the
2 information contained in Exhibit "A" were publicly disclosed, such disclosure could prejudice,
3 chill or otherwise harm the Parties' bilateral negotiations relating to Plaintiffs' claims regarding
4 PeopleSoft HRMS environments and updates/fixes.

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

7 Executed this 17th day of February 2009 in Houston, Texas.

8

9

/s/ Scott W. Cowan
Scott W. Cowan

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28