

1 BINGHAM MCCUTCHEN LLP
 DONN P. PICKETT (SBN 72257)
 2 GEOFFREY M. HOWARD (SBN 157468)
 HOLLY A. HOUSE (SBN 136045)
 3 ZACHARY J. ALINDER (SBN 209009)
 BREE HANN (SBN 215695)
 4 Three Embarcadero Center
 San Francisco, CA 94111-4067
 5 Telephone: 415.393.2000
 Facsimile: 415.393.2286
 6 donn.pickett@bingham.com
 geoff.howard@bingham.com
 7 holly.house@bingham.com
 zachry.alinder@bingham.com
 8 bree.hann@bingham.com

9
 DORIAN DALEY (SBN 129049)
 10 JENNIFER GLOSS (SBN 154227)
 500 Oracle Parkway, M/S 5op7
 11 Redwood City, CA 94070
 Telephone: 650.506.4846
 12 Facsimile: 650.506.7114
 dorian.daley@oracle.com
 13 jennifer.gloss@oracle.com

14 Attorneys for Plaintiffs
 Oracle USA, Inc., Oracle International Corporation, and
 15 Oracle EMEA Limited

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 ORACLE USA, INC. *et al*,
 20 Plaintiffs,
 21 v.
 22 SAP AG, *et al.*,
 23 Defendants.

No. 07-CV-01658 PJH (EDL)

**DECLARATION OF GEOFFREY M.
 HOWARD IN SUPPORT OF
 PLAINTIFFS' MOTION TO
 COMPEL**

Date: August 4, 2009
 Time: 9:00 a.m.
 Place: E, 15th Floor
 Judge: Hon. Elizabeth D. Laporte

1 I, Geoffrey M. Howard, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California and
3 before this Court, and am a partner at Bingham McCutchen LLP, counsel of record for plaintiffs
4 Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited (together,
5 “Oracle”) in this action. I have personal knowledge of the facts stated below and, if called as a
6 witness, could competently testify as to them.

7 2. Attached as **Exhibit A** is a true and correct copy of an excerpt from
8 Plaintiffs’ Oracle Corp.’s First Set of Interrogatories to Defendant TomorrowNow, served
9 August 2, 2007, containing Interrogatory 13.

10 3. Attached as **Exhibit B** is a true and correct copy of an excerpt from Oracle
11 USA’s Second Set of Interrogatories to Defendant TomorrowNow, Inc. served November 27,
12 2007, containing Interrogatory 14.

13 4. Attached as **Exhibit C** is a true and correct copy of an excerpt from
14 Defendant TomorrowNow’s Fourth Amended and Supplemental Response to Plaintiff to Oracle
15 Corporation’s First Set of Interrogatories, served May 22, 2009, containing Defendants’
16 responses and objections to Interrogatory 13.

17 5. Attached as **Exhibit D** is a true and correct copy of an excerpt from
18 Defendant TomorrowNow’s First Amended and Supplemental Response to Plaintiff Oracle
19 USA’s Second Set of Interrogatories, containing Defendants’ responses and objections to
20 Interrogatory 14.

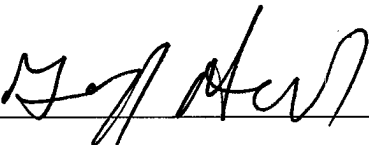
21 6. After Defendants first served responses relying heavily on Rule 33(d) in
22 late 2007, Oracle sought judicial assistance regarding Interrogatory 14 from then-discovery
23 referee Judge Legge. Attached as **Exhibit E** is a true and correct copy of relevant portions of
24 Judge Legge’s February 25, 2008 Report and Recommendations re Discovery Hearing No. 1.
25 Oracle reminded Defendants of Judge Legge’s ruling requiring them to supplement this response
26 to Interrogatory 14 in a meet and confer letter dated April 30, 2009. One week later, on May 7,
27 2009, Oracle sent a letter asking Defendants to update their response to Interrogatory 13, too,
28 pointing out that Defendants must provide the same type of supplemental response for

1 Interrogatory 13, including by providing information for all situations involving downloading in
2 excess of a customer's license, rather than just discussing specifics for customers named in the
3 complaint.

4 7. On May 21, 2009, Defendants responded to Oracle's April 30 and May 7,
5 2009 meet and confer letters, and agreed to update their responses to both Interrogatory 13 and
6 Interrogatory 14 in response to Oracle's requests. Upon receipt, Oracle disagreed that
7 Defendants had supplemented their responses in a meaningful way. In a June 5, 2009 letter to
8 Defendants, Oracle again asked Defendants to further update their response to Interrogatories 13
9 and 14. In a letter dated June 16, 2009 and again in a subsequent meet and confer call,
10 Defendants refused to provide additional supplementation.

11 8. On May 12, 2009, I deposed Ms. Catherine Hyde, formerly
12 TomorrowNow's key PeopleSoft support developer and now a paid litigation consultant. During
13 the course of the deposition, Ms. Hyde provided details about the source of several specific local
14 environments at TomorrowNow.

15 I declare under penalty of perjury under the laws of the State of California and the
16 United States that the foregoing is true and correct, and that this Declaration was signed on June
17 30, 2009 in San Francisco, California.

18 
19 _____
20 Geoffrey M. Howard