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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 USA, Inc., 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 "B" to the August 18, 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 "B" is Defendants' current  
8 proposed stipulation that Plaintiffs 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 "B" 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 "B"  
25 contains certain information taken from documents and testimony that was designated as  
26 "Confidential."

27 4. Given that Exhibit "B" is a "snapshot" from the Parties' inchoate compromise  
28 discussions relating to Plaintiffs' claims regarding PeopleSoft HRMS environments and

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

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

8 Executed this 25th day of August 2009 in San Francisco, California.

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/s/ Scott W. Cowan  
Scott W. Cowan

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