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 jlfuchs@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

21   OAKLAND DIVISION

22

23 ORACLE CORPORATION, *et al.*,   Case No. 07-CV-1658 PJH (EDL)

24   Plaintiffs,   **REPLY DECLARATION OF
                                             SCOTT W. COWAN**
25 v.   **IN SUPPORT OF DEFENDANTS'
                                             MOTION TO COMPEL**
26 SAP AG, *et al.*,

27   Defendants.

28

                                             REPLY COWAN DECL. ISO
                                             DEFS.' MOT. TO COMPEL
                                             Case No. 07-CV-1658 PJH (EDL)

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.   Attached as **Exhibit A** is a true and correct copy of excerpts from the August

6   4, 2009 Transcript of Proceedings before Judge Laporte, at 28:16-17, 29:4-5, 30:14-31:4.

7   2.   Attached as **Exhibit B** is a true and correct copy of the August 31, 2009 Order

8   Granting in Part and Denying in Part Plaintiffs' Motion to Compel Production of Documents

9   Related to Damages Model and Interrogatory Responses Related to Use of Plaintiffs' Intellectual

10   Property, Dkt. No. 460.

11   3.   In connection with the Expanded Discovery Timeline Agreement (the

12   "Agreement"), the Parties discussed and agreed to produce responsive data from "key custodians"

13   collected after the litigation. I personally participated in those discussions. Based on those

14   discussions and the Agreement, Defendants promptly started the costly recollection and

15   production process for six custodians, *i.e.* Mark White, Martin Breuer, Andrew Nelson, Shelley

16   Nelson, Greg Nelson and John Baugh. Defendants produced the responsive, non-privileged data

17   for these custodians up through the time of TomorrowNow's wind down on October 31, 2008. In

18   addition, on April 10, 2009, Plaintiffs specifically requested that Defendants recollect and

19   produce the documents through the same date for three more custodians, *i.e.* Werner Brandt (SAP

20   Executive Board Member), Gerhard Oswald (SAP Executive Board Member), and Thomas

21   Bamberger (SAP Supervisory Board Member). This request is memorialized in the parties' meet

22   and confer communications and in the Stipulation to Modify May 5, 2008 Case Management

23   Order (Dkt. No. 305, at 4, ¶ 3). In addition, as part of the Agreement, Defendants incurred the

24   expense and burden to recollect, review, and produce through October 31, 2008 numerous

25   TomorrowNow tracking databases, including SAS.

26   //

27   //

28   //

2

1   I declare under penalty of perjury under the laws of the United States and the State of

2   California that the foregoing is true and correct. Executed this 12th day of January, 2010, in

3   Houston, Texas.

4

5

                                                    /s/ Scott W. Cowan
6   Scott W. Cowan

7   HUI-122876v1

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

                                         3   REPLY COWAN DECL. ISO
                                                        DEFS.' MOT. TO COMPEL
                                                        Case No. 07-CV-1658 PJH (EDL)