

1 Robert A. Mittelstaedt (SBN 060359)  
Jason McDonell (SBN 115084)  
2 Elaine Wallace (SBN 197882)  
JONES DAY  
3 San Francisco Office  
555 California Street, 26<sup>th</sup> Floor  
4 San Francisco, CA 94104  
Telephone: (415) 626-3939  
5 Facsimile: (415) 875-5700  
ramittelstaedt@jonesday.com  
6 jmcdonell@jonesday.com  
ewallace@jonesday.com  
7

8 Tharan Gregory Lanier (SBN 138784)  
Jane L. Froyd (SBN 220776)  
JONES DAY  
9 Silicon Valley Office  
1755 Embarcadero Road  
10 Palo Alto, CA 94303  
Telephone: (650) 739-3939  
11 Facsimile: (650) 739-3900  
tglanier@jonesday.com  
12 jfroyd@jonesday.com

13 Scott W. Cowan (Admitted *Pro Hac Vice*)  
Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
14 JONES DAY  
717 Texas, Suite 3300  
15 Houston, TX 77002  
Telephone: (832) 239-3939  
16 Facsimile: (832) 239-3600  
swcowan@jonesday.com  
17 jlfuchs@jonesday.com

18 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
19 TOMORROWNOW, INC.

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 ORACLE CORPORATION, et al.,

24 Plaintiffs,

25 v.

26 SAP AG, et al.,

27 Defendants.  
28

Case No. 07-CV-1658 PJH

**DECLARATION OF JASON  
McDONELL IN SUPPORT OF  
DEFENDANT TOMORROWNOW'S  
OBJECTIONS TO SPECIAL  
MASTER'S REPORT AND  
RECOMMENDATIONS RE:  
DISCOVERY HEARING NO. 2**

1 I, JASON McDONELL, declare:

2 I am a partner in the law firm of Jones Day, 555 California Street, San Francisco,  
3 California 94104, a member in good standing of the bar of this state, and counsel of record for  
4 Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC in the above-  
5 captioned action. I make this declaration based on personal knowledge and, if called upon to do  
6 so, could testify competently thereto.

7 1. Attached hereto as **Exhibit A** is a true and correct copy of portions of Plaintiffs'  
8 Responses and Objections to Defendant TomorrowNow, Inc.'s First Set of Document Requests,  
9 dated September 14, 2007.

10 2. Attached hereto as **Exhibit B** is a true and correct copy of the Special Master's  
11 Report and Recommendations Re: Discovery Hearing No. 2, dated March 19, 2008 (the "Second  
12 R and R").

13 3. Attached hereto as **Exhibit C** is a true and correct copy of portions of the  
14 transcript of the March 4, 2008 hearing in front of the Special Master on the parties' second set of  
15 motions to compel.

16 4. Attached hereto as **Exhibit D** is a true and correct copy of the portion of the  
17 Special Master's April 4, 2008 Report and Recommendations Re: Discovery Hearing No. 3 that  
18 amends the Second R and R.

19 5. Attached hereto as **Exhibit E** is a true and correct copy of portions of  
20 TomorrowNow's February 19, 2008 letter brief to Judge Legge regarding its second motion to  
21 compel.

22 6. Attached hereto as **Exhibit F** is a true and correct copy of a July 10, 2002 letter  
23 from David Chavez of PeopleSoft to Seth Ravin of TomorrowNow.

24 7. Attached hereto as **Exhibit G** is a true and correct copy of a March 21, 2008 letter  
25 from SAP's counsel, Jason McDonell, to the Special Master.

26 8. As of the March 4, 2008 hearing on the parties' second set of motions to compel,  
27 Oracle's counsel had identified eighteen priority document custodians of the defendants. Ten  
28 were identified in an email, dated October 23, 2007, from Oracle's counsel to three of my

1 colleagues at Jones Day, which I have reviewed. Eight more were identified in a December 11,  
2 2007 email from Oracle's counsel to me. Of these eighteen custodians, sixteen were TN  
3 custodians and two were SAP custodians.

4 9. On or about March 20, 2008, as part of the discovery negotiations in this case,  
5 counsel for defendants proposed that the total universe of custodians from which defendants  
6 would collect documents would include fifty-three TomorrowNow custodians and thirty SAP  
7 custodians. These lists containing eighty-three proposed custodians have not been disclosed to  
8 the Special Master and were not discussed with the Special Master in connection with the motions  
9 to compel.

10 10. Earlier today, I participated in a conference call with counsel for plaintiffs about  
11 discovery issues, during which counsel for plaintiffs took the position that the Second R & R  
12 requires the SAP defendants to produce documents by April 15 from all thirty custodians who  
13 were identified in the March 20, 2008 proposal that was intended to be the entire universe of SAP  
14 custodians that would be searched for documents, not the priority custodians. We advised  
15 counsel for Plaintiffs that we disagreed with their interpretation of the Second R and R and would  
16 file this objection as a protective measure.

17 12. I am informed and believe that, to date, Defendants have produced almost 1.7  
18 million pages of TN documents and over 6 terabytes of electronic data from TN.

19 I declare under penalty of perjury under the laws of the United States and the State of  
20 California that the foregoing is true and correct. Executed this 8<sup>th</sup> day of April 2008 in San  
21 Francisco, California.

22  
23 /S/ Jason McDonell  
24 JASON McDONELL

25  
26  
27 SFI-581461v1