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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
 21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF THARAN
 GREGORY LANIER IN SUPPORT OF
 MOTION TO EXCLUDE EXPERT
 TESTIMONY OF PROFESSOR
 DOUGLAS G. LICHTMAN**

Date: September 30, 2010
 Time: 2:30 p.m.
 Courtroom: 3, 3rd Floor
 Judge: Hon. Phyllis J. Hamilton

1 I, THARAN GREGORY LANIER, declare as follows:

2 I am a partner in the law firm of Jones Day, 1755 Embarcadero Road, Palo Alto,
3 California 94303, and counsel of record for Defendants SAP AG, SAP America, Inc. (together,
4 “SAP”), and TomorrowNow, Inc. (“TN”) (collectively, “Defendants”) in the above-captioned
5 matter. I am a member in good standing of the state bar of California and admitted to practice
6 before this Court. I make this declaration based on personal knowledge and, if called upon to do
7 so, could testify competently thereto.

8 1. Attached as **Exhibit 1** is a true and correct copy of the Expert Report of Douglas
9 Gary Lichtman, which was produced by Plaintiffs in this case.

10 2. Attached as **Exhibit 2** is a true and correct copy of a curriculum vitae for Douglas
11 Gary Lichtman, which was produced by Plaintiffs in this case as Exhibit 1 to the Expert Report of
12 Douglas Gary Lichtman.

13 3. Attached as **Exhibit 3** is a true and correct copy of the following excerpts from the
14 April 20, 2010 Douglas Lichtman Deposition: 1, 6:12-15, 24:19-25:8, 25:20-28:7, 31:4-32:1,
15 47:9-18, 57:23-60:19, 65:3-15, 67:22-69:16, 70:17-75:7, 75:17-24, 77:18-79:22, 80:9-83:3,
16 109:22-110:3, 113:20-114:10, 115:19-117:7, 118:11-119:4, 156:22-157:6, 162:25-165:16,
17 178:19-179:9, 192:23-195:4, 204:6-22, 211:23-212:10, 216:5-217:8, 218:16-21, 219:19-222:20,
18 226:10-227:8, 233:10-235:17, 235:14-17, 236:25-237:24, 245:11-17, 254:3-256:9, 256:14-258:17,
19 260:5-261:1, 263:2-6, 283:1-25, 298:22-299:15, 300:21-301:14, 304:17-305:24, 310:13-311:2,
20 311:21-312:13, 313:15-314:3, 325:8-17, 326:18-330:2, 338:5-16, 343:17-346:16, 348:9-13,
21 352:18-353:5, 353:10-354:12, 354:17-25, 355:18-358:17, 362:15-363:15, 370:2-8, 370:17-371:14,
22 379:8-25.

23 4. Attached as **Exhibit 4** is a true and correct copy of *A&M Records, Inc. v. Napster,*
24 *Inc.*, No. C 99-05183 MHP, 2000 WL 1170106 (N.D. Cal. Aug. 10, 2000).

25 5. Attached as **Exhibit 5** is a true and correct copy of Defendant Napster Inc.’s
26 Consolidated Response to Plaintiffs’ Evidentiary Objections and Request to Exclude Expert
27 Reports of Tygar, Hall, Fader, and Lessig, *A&M Records, Inc. v. Napster, Inc.*, No. C 99-05183
28 MHP, 2000 WL 34634859 (N.D. Cal. July 20, 2000).

1 6. Attached as **Exhibit 6** is a true and correct copy of the June 20, 2000 Deposition of
2 David J. Teece, Ph.D., *A&M Records, Inc. v. Napster, Inc.*, No. C 99-05183 MHP, 2000 WL
3 34744095 (N.D. Cal. June 20, 2000).

4 7. Attached as **Exhibit 7** is a true and correct copy of *Charter Nat'l Bank. v. Charter*
5 *One Fin., Inc.*, No. 01 C 0905, 2001 U.S. Dist. LEXIS 13919 (N.D. Ill. Aug. 31, 2001).

6 8. Attached as **Exhibit 8** is a true and correct copy of *F.B.T. Prods., LLC v.*
7 *Aftermath Records*, No. CV 07-3314 PSG (MANx), 2009 U.S. Dist. LEXIS 5981 (C.D. Cal. Jan.
8 20, 2009).

9 9. Attached as **Exhibit 9** is a true and correct copy of Defendants' Notice of Motion
10 and Motion in Limine No. 1 to Exclude Putative Expert Testimony of Law Professor Peter S.
11 Menell, *F.B.T. Prods., LLC v. Aftermath Records*, No. CV 07-3314 PSG (MANx), 2008 U.S. Dist.
12 Ct. Motions 78441 (C.D. Cal. Dec. 19, 2008).

13 10. Attached as **Exhibit 10** is a true and correct copy of *Gable v. National*
14 *Broadcasting Co.*, No. CV 08-4013 SVW (FFMx), 2010 U.S. Dist. LEXIS 77772 (C.D. Cal. Feb.
15 22, 2010).

16 11. Attached as **Exhibit 11** is a true and correct copy of *Jonathan Browning, Inc. v.*
17 *Venetian Casino Resort LLC*, No. C 07-03983 JSW, 2009 U.S. Dist. LEXIS 57665 (N.D. Cal.
18 June 18, 2009).

19 12. Attached as **Exhibit 12** is a true and correct copy of *Mannick v. Kaiser Found.*
20 *Health Plan, Inc.*, No. C 03-5905 PJH, 2006 U.S. Dist. LEXIS 38430 (N.D. Cal. June 9, 2006).

21 13. Attached as **Exhibit 13** is a true and correct copy of *Pierson v. Ford Motor Co.*,
22 No. C 06-6503 PJH, 2009 U.S. Dist. LEXIS 65297 (N.D. Cal. Apr. 16, 2009).

23 14. Attached as **Exhibit 14** is a true and correct copy of *Redfoot v. B.F. Ascher & Co*,
24 No. C 05-2045 PJH, 2007 U.S. Dist. LEXIS 40002 (N.D. Cal. June 1, 2007).

25 15. Attached as **Exhibit 15** is a true and correct copy of *Religious Tech. Center v.*
26 *Netcom On-Line Commc'n Servs., Inc.*, No. C-95-20091 RMW, 1997 WL 34605244 (N.D. Cal.
27 Jan. 6, 1997).

28 16. Attached as **Exhibit 16** is a true and correct copy of *SEC v. Leslie*, No. C 07-3444,

1 2010 U.S. Dist. LEXIS 76826 (N.D. Cal. July 29, 2010).

2 17. Attached as **Exhibit 17** is a true and correct copy of *Ticketmaster Corp. v.*
3 *Tickets.com, Inc.*, No. CV 99-07654 HLH (VBKx), 2003 WL 25781901 (C.D. Cal. Feb. 10,
4 2003).

5 18. Attached as **Exhibit 18** is a true and correct copy of Ninth Circuit Model Jury
6 Instructions, Instruction 1.1A.

7 I declare under penalty of perjury under the laws of the United States and the State of
8 California that the foregoing is true and correct. Executed this 19th day of August, 2010 in Palo
9 Alto, California.

10 /s/ Tharan Gregory Lanier
11 Tharan Gregory Lanier
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