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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 SCOTT W.  
 COWAN IN SUPPORT OF  
 DEFENDANTS' MOTION TO  
 PARTIALLY EXCLUDE  
 TESTIMONY OF KEVIN MANDIA  
 AND DANIEL LEVY**

Date: September 30, 2010

Time: 2:30 p.m.

Courtroom: 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

1 I, SCOTT W. COWAN, declare as follows:

2 I am a partner in the law firm of Jones Day, 717 Texas, Suite 3300, Houston, Texas  
3 77002, and counsel of record for Defendants SAP AG, SAP America, Inc. (together, "SAP"), and  
4 TomorrowNow, Inc. ("TN") (collectively, "Defendants") in the above-captioned matter. I am a  
5 member in good standing of the state bar of Texas and admitted *pro hac vice* to practice before  
6 this Court. I make this declaration based on personal knowledge and, if called upon to do so,  
7 could testify competently thereto.

8 1. Attached as **Exhibit A** is a true and correct copy of the May 12, 2010 Expert  
9 Report of Kevin Mandia.

10 2. Attached as **Exhibit B** is a true and correct copy of the following excerpts from the  
11 May 20, 2010 Deposition of Kevin Mandia: 1, 12:1-19, 14:25-15:6, 15:25-16:7, 168:2-7, 168:8-  
12 11, 168:12-25, 169:1-13, 170:7-172:10, 173:11-22, 180:20-181:5, 196:2-18, 198:18-199:25,  
13 200:22-201:22, 222:9-25, 226:11-24, 227:12-228:9, 271:24-273:2.

14 3. Attached as **Exhibit C** is a true and correct copy of the following excerpts from  
15 the May 21, 2010 Deposition of Kevin Mandia: 291, 304:22-306:5, 369:4-22, 454:15-456:7,  
16 487:1-5, 533:10-535:7, 542:2-13.

17 4. Attached as **Exhibit D** is a true and correct copy of the February 12, 2010 Expert  
18 Report of Daniel Levy, which was produced by Plaintiffs in this case.

19 5. Attached as **Exhibit E** is a true and correct copy of the following excerpts from the  
20 April 30, 2010 Deposition of Daniel Levy: 1, 24:24-25:17, 47:4-7; 48:10-49:23; 197:14-199:13.

21 6. Attached as **Exhibit F** is a true and correct copy of the list of 55 copyright  
22 registrations asserted by Plaintiffs in this case for which Mandia conducted no analysis as  
23 described in his May 12, 2010 Expert Report.

24 7. Attached as **Exhibit G** are true and correct copies of Attachments A and B to the  
25 May 12, 2010 Expert Report of Kevin Mandia.

26 8. Attached as **Exhibit H** is a true and correct copy of the following excerpts from  
27 the June 3, 2010 Expert Report of Stephen Gray: 37 and Appendix 6.

28 9. Attached as **Exhibit I** is a true and correct copy of the following excerpts from

1 Plaintiffs' Fourth Amended Complaint (D.I. 418), dated August 18, 2009: 51-58.

2 10. Attached as **Exhibit J** are true and correct copies of the following excerpts from  
3 the November 30, 2010 Deposition of Edward Screven: 1, 15:17-20; 16:19-17:16; 20:19-21:9,  
4 33:18-35:16; 67:12-68:3.

5 11. Attached as **Exhibit K** is a true and correct copy of *In re Katz Interactive Call*  
6 *Processing Patent Litigation*, No. 07-ML-01816-B-RGK (FFMx), 2009 WL 3698470 (C.D. Cal  
7 Mar. 11, 2009).

8 12. Attached as **Exhibit L** is a true and correct copy of *Mooring Capital Fund v.*  
9 *Knight*, Nos. 09-6075, 09-6141, 2010 U.S. App. LEXIS 15114 (10th Cir. July 22, 2010).

10 I declare under penalty of perjury under the laws of the United States and the State of  
11 California that the foregoing is true and correct. Executed this 19th day of August, 2010 in  
12 Houston, Texas.

13 /s/ Scott W. Cowan  
14 Scott W. Cowan

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