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 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 ELAINE  
 WALLACE IN SUPPORT OF  
 MOTION TO EXCLUDE EXPERT  
 TESTIMONY OF PAUL K. MEYER**

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

1 I, ELAINE WALLACE, declare as follows:

2 I am an attorney in the law firm of Jones Day, 555 California St., 26th Floor, San  
3 Francisco, California 94104, and counsel of record for Defendants SAP AG, SAP America, Inc.  
4 (together, "SAP"), and TomorrowNow, Inc. ("TN") (collectively, "Defendants") in the above-  
5 captioned matter. I am a member in good standing of the state bar of California and admitted to  
6 practice before this Court. I make this declaration based on personal knowledge and, if called  
7 upon to do so, could testify competently thereto.

8 1. Plaintiffs have issued subpoenas to approximately 125 former TN customers as  
9 part of discovery in this action.

10 2. Attached as **Exhibit 1** are true and correct copies of the following excerpts from  
11 the February 23, 2010 Supplemental Expert Report of Paul K. Meyer, which was produced by  
12 Plaintiffs in this case. Attached are the following relevant paragraphs: 95, 104, 110, 113, 114-15,  
13 116 (Table 6), 117 n.295, 119-120, 121 n.301, 122 n.305, 128, 130-31, 132 n.324, 133-136, 141,  
14 153 (Table 8), 157 n. 357, 161, 163, 165-69, 171 n.373, 189, 196, 198, 229-239, 243, 250, 252,  
15 257, 265, 266-67, 268 (Table 11), 273-274, 340, 341-348, 438, 445 n.832.

16 3. Attached as **Exhibit 2** are true and correct copies of the following excerpts from  
17 the May 12, 2010 Deposition of Paul K. Meyer: 71:12-72:16, 100:6-101:2, 151:12-153:19,  
18 159:25-168:8, 184:16-185:18, 201:19-203:12, 265:2-7.

19 4. Attached as **Exhibit 3** are true and correct copies of the following excerpts from  
20 the May 13, 2010 Deposition of Paul K. Meyer: 365:13-367:10, 372:5-378:1, 423:2-6, 432:7-  
21 435:5, 452:4-24, 481:11-485:8, 488:24-490:3, 590:15-591:5, 603:1-18.

22 5. Attached as **Exhibit 4** are true and correct copies of the following excerpts from  
23 the May 14, 2010 Deposition of Paul K. Meyer: 701:15-702:12, 707:15-708:15, 709:23-711:3,  
24 783:21-790:2, 800:16-801:8, 802:11-20, 805:4-16, 810:12-20, 814:10-14, 817:22-818:15, 818:16-  
25 25, 819:1-820:9, 839:23-847:18.

26 6. Attached as **Exhibit 5** are true and correct copies of the following excerpts from  
27 the May 7, 2010 Expert Report of Stephen K. Clarke, which was produced by Defendants in this  
28 case: pp. 94-115, 206-209.

1           7.       Attached as **Exhibit 6** is a true and correct copy of an excerpt from Oracle  
2 Corporations's Estimation of the Fair Value of Certain Assets and Liabilities of PeopleSoft, Inc. ,  
3 dated December 28, 2004, which was produced by Plaintiffs with Bates number ORCL00313160,  
4 ORCL00313189.

5           8.       Attached as **Exhibit 7** is a true and correct copy of an email chain between Jeff  
6 Henley and Safra Catz, the most recent is dated March 25, 2005, and produced by Plaintiffs with  
7 Bates number ORCL00744446-448.

8           9.       Attached as **Exhibit 8** is a true and correct copy of an email chain involving Juan  
9 Jones, the most recent of which is dated September 19, 2005, and produced by Plaintiffs with  
10 Bates number ORCL00192008-015 and marked as Defendants' Deposition Exhibit 374.

11          10.       Attached as **Exhibit 9** is a true and correct copy of an email chain involving Judith  
12 Sims, the most recent of which is dated October 4, 2005, and produced by Plaintiffs with Bates  
13 number ORCL0055630-337 and marked as Defendants' Deposition Exhibit 632.

14          11.       Attached as **Exhibit 10** is a true and correct copy of an email chain involving  
15 Chris Hummel, the most recent of which is dated December 12, 2005, and produced by Plaintiffs  
16 with Bates number ORCL00306514-518.

17          12.       Attached as **Exhibit 11** is a true and correct copy of an email chain involving  
18 Charles Phillips, the most recent of which is dated May 12, 2006, and produced by Plaintiffs with  
19 Bates number ORCL00550208 and marked as Defendants' Deposition Exhibit 635.

20          13.       Attached as **Exhibit 12** is a true and correct copy of an email chain involving Juan  
21 Jones, the most recent of which is dated August 29, 2006, and produced by Plaintiffs with Bates  
22 number ORCL00173509-511 and marked as Defendants' Deposition Exhibit 367.

23          14.       Attached as **Exhibit 13** is a true and correct copy of an email chain involving  
24 Chris Hummel, the most recent of which is dated September 15, 2006, and produced by Plaintiffs  
25 with Bates number ORCL00311546-549.

26          15.       Attached as **Exhibit 14** is a true and correct copy of an email chain involving Juan  
27 Jones, the most recent of which is dated October 4, 2006, and produced by Plaintiffs with Bates  
28 number ORCL00193693-694 and marked as Defendants' Deposition Exhibit 372.

1           16.     Attached as **Exhibit 15** is a true and correct copy of an email chain involving  
2 Thomas Ziemen, the most recent of which is dated December 23, 2004, and produced by  
3 Defendants with Bates number SAP-OR00253278-301 and marked as Plaintiffs' Deposition  
4 Exhibit 447.

5           17.     Attached as **Exhibit 16** are true and correct copies of the following excerpts from  
6 the September 30, 2008 Deposition of Thomas Ziemen: 86:3-18.

7           18.     Attached as **Exhibit 17** are true and correct copies of the following excerpts from  
8 the November 12, 2008 Deposition of Werner Brandt: 19:23-20:15; 113:15-21.

9           19.     Attached as **Exhibit 18** is a true and correct copy of an excerpt from Gordon V.  
10 Smith and Russell L. Parr, *Intellectual Property Valuation, Exploitation, and Infringement*  
11 *Damages* (2005); specifically, the cover page and page 185.

12           20.     Attached as **Exhibit 19** is a true and correct copy of an excerpt of Andrew  
13 Nelson's February 26, 2009 deposition marked as Defendants' Deposition Exhibit 2032.

14           21.     Attached as **Exhibit 20** is a true and correct copy of a chart illustrating Plaintiffs'  
15 alleged damages marked as Defendants' Deposition Exhibit 2044.

16           22.     Attached as **Exhibit 21** is a true and correct copy of Oracle's E-Business Price  
17 List, dated December 1, 2004, and produced by Plaintiffs with Bates number ORCL00704411-  
18 421.

19           23.     Attached as **Exhibit 22** is a true and correct copy of an excerpt from the June 3,  
20 2010 Expert Report of Stephen Gray, including the cover page and pages 62-64.

21           24.     Attached as **Exhibit 23** is a true and correct copy a schedule created by Plaintiffs'  
22 expert Paul K. Meyer marked as Defendants' Deposition Exhibit 2017.

23           25.     Attached as **Exhibit 24** is a true and correct copy of presentation entitled "Safe  
24 Passage II Integrated Marketing Program," produced by Defendants with Bates number TN-  
25 OR00122397-444 Plaintiffs' Deposition Exhibit 181.

26           26.     Attached as **Exhibit 25** is a true and correct copy of an email sent by Bob Geib  
27 dated December 16, 2005, and produced by Defendants with Bates number TN-OR00090923  
28 Defendants' Deposition Exhibit 2038.

1 27. Attached as **Exhibit 26** is a true and correct copy of a declaration signed on May  
2 4, 2010 by Daniel A. Clarke of NewPage Corporation and marked as Defendants' Deposition  
3 Exhibit 2042.

4 28. Attached as **Exhibit 27** is a true and correct copy of the following excerpts from  
5 the September 15, 2009 Deposition of Jeffrey O'Donnell: 6:23-7:10; 37:14-38:16; 41:22-42:2.

6 29. Attached as **Exhibit 28** is a true and correct copy of a schedule created by  
7 Plaintiffs' expert Paul K. Meyer and marked as Defendants' Deposition Exhibit 2020.

8 30. Attached as **Exhibit 29** is a true and correct copy of a document describing BASF  
9 AG's ERP software usage, and produced by the Defendants with Bates number TN-OR00152649.

10 31. Attached as **Exhibit 30** is a true and correct copy of an email chain involving Rick  
11 Cummins and produced by Plaintiffs with the Bates number ORCL00182769 – ORCL00182771.

12 I declare under penalty of perjury under the laws of the United States and the State of  
13 California that the foregoing is true and correct. Executed this 19th day of August, 2010 in San  
14 Francisco, California.

15 /s/ Elaine Wallace  
16 Elaine Wallace

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