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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. 4:07-CV-1658 PJH (EDL)

**DECLARATION OF ELAINE  
 WALLACE IN SUPPORT OF  
 DEFENDANTS' FED. R. EVID. 1006  
 SUMMARY OF EVIDENCE**

Date: May 5, 2010

Time: 9:00 am

Courtroom: 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

**FILED PURSUANT TO D.I. 810**

1 I, ELAINE WALLACE, declare:

2 I am an associate with the law firm of Jones Day and counsel for Defendants SAP AG,  
3 SAP America, Inc. (together, “SAP”) and TomorrowNow, Inc. (“TN”) (collectively,  
4 “Defendants”) in the above-captioned matter. I am a member in good standing of the state bar of  
5 California and admitted to practice before this Court. I make this declaration based on personal  
6 knowledge and, if called upon to do so, could testify competently thereto. Nothing in this  
7 declaration is intended to waive, or should be construed as a waiver of, the attorney-client  
8 privilege or attorney work product immunity.

9 1. I personally prepared the document entitled Defendants’ Fed. R. Evid. 1006  
10 Summary of Evidence in Support of Motion for Partial Summary Judgment (“Rule 1006  
11 Summary”), attached hereto as **Exhibit 1**.

12 2. The Rule 1006 Summary summarizes information from three sources. The first  
13 source is a database called the OKI3 database, which was produced by Plaintiffs in this case and  
14 which contains thousands of lines of data. The column in the Rule 1006 Summary entitled  
15 “Oracle Sales Region” summarizes for certain customers the information contained in Column  
16 AL (“Org\_toGeography\_Map”) in the OKI3 database. The column in the Rule 1006 Summary  
17 entitled “Oracle Commissionaire/Undisclosed Agent” summarizes for certain customers the  
18 information contained in Column A (“Organization”) in the OKI3 database.

19 3. The second source of information in the Rule 1006 Summary consists of twelve  
20 contracts produced by Plaintiffs. The column in the Rule 1006 Summary entitled  
21 “Commissionaire/Undisclosed Agent’s Territory” summarizes the territories identified in Exhibit  
22 A of ten commissionaire or undisclosed agent agreements produced by Plaintiffs. The Rule 1006  
23 Summary also contains information from two other license related agreements produced by  
24 Plaintiffs.

25 4. The third source of information in the Rule 1006 Summary is a spreadsheet  
26 produced by Plaintiffs listing multiple entities that shared revenue associated with two customers  
27 under certain revenue sharing agreements.

28 5. Collectively, these three sources comprise information relating to thirty-nine

1 customers and multiple Oracle entities that is too voluminous to be conveniently examined by the  
2 Court and that is more conveniently presented in the form of a summary chart. All of the source  
3 documents were produced by Plaintiffs and thus are available to them for examination.  
4 Additionally, Defendants would be happy to provide at the Court's request the documents upon  
5 which Defendants' Rule 1006 Summary is based.

6 6. I personally prepared the Rule 1006 Summary following a thorough review of the  
7 relevant information contained in the sources described above. I believe the Rule 1006 Summary  
8 to be an accurate summary of the information contained in the relevant portions of the documents  
9 on which it is based.

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 3rd day of March, 2010 in San  
12 Francisco, California.

13 /s/ Elaine Wallace  
14 Elaine Wallace

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