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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
 DEFENDANTS' CROSS MOTION
 FOR PARTIAL SUMMARY
 JUDGMENT AND OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

Date: May 5, 2010, Time: 9:00 a.m.

Courtroom: 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

FILED PURSUANT TO D.I. 810

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 ***Documents Produced by Plaintiffs***

9 1. Attached as **Exhibit 1** is a true and correct copy of the January 31, 2006
10 Oracle/Ozark Contribution, Assignment and Assumption Agreement between Oracle Corporation
11 and Ozark Holding Inc, produced by Plaintiffs in this case at ORCL00182293–301.

12 2. Attached as **Exhibit 2** is a true and correct copy of the March 1, 2005
13 PeopleSoft/JDE LLC OIC Asset Transfer Agreement between Oracle Corporation, Oracle
14 International Corporation, PeopleSoft, Inc. and J.D. Edwards & Company, LLC, produced by
15 Plaintiffs in this case at ORCL00043702–707.

16 3. Attached as **Exhibit 3** is a true and correct copy of the March 1, 2005 OIC Asset
17 Transfer Agreement by and among Oracle Corporation, Oracle International Corporation,
18 PeopleSoft, Inc. and J.D. Edwards & Co., LLC, J.D. Edwards YOUcentric and J.D. Edwards
19 World Source Company, produced by Plaintiffs in this case at ORCL00043708–713.

20 ***Documents Produced by Defendants***

21 4. Attached as **Exhibit 4** is a true and correct copy of a document entitled
22 “TomorrowNow, Inc. Tax & Regulatory Updates: Retrofit Development For PeopleSoft 7.x
23 Releases,” produced by Defendants in this case at TN-OR00646511–513.

24 5. Attached as **Exhibit 5** is a true and correct copy of a document entitled “Critical
25 Support Services Procedures,” produced by Defendants in this case at TN-OR00001623–1644,
26 and marked in this case as Plaintiffs’ Deposition Exhibit 23.

27 6. Attached as **Exhibit 6** is a true and correct copy of a document entitled “Praxair
28 OneWorld,” produced by Defendants in this case at TN-OR00419837, and marked in this case as

1 Plaintiffs' Deposition Exhibit 52.

2 7. Attached as **Exhibit 7** is a true and correct copy of a document entitled "Bonne
3 Bell World," produced by Defendants in this case at TN-OR00419836, and marked in this case as
4 Plaintiffs' Deposition Exhibit 55.

5 8. Attached as **Exhibit 8** is a true and correct copy of an untitled document marked in
6 this case as Plaintiffs' Deposition Exhibit 1623.

7 ***Discovery Responses***

8 9. Attached as **Exhibit 9** is a true and correct copy of Plaintiffs' Fifth Amended and
9 Supplemental Responses and Objections to Defendant TomorrowNow, Inc.'s First Set of
10 Interrogatories, dated December 4, 2009: pp. 64-66, 80.

11 10. Attached as **Exhibit 10** is a true and correct copy of Defendant TomorrowNow,
12 Inc.'s Third Amended and Supplemental Response to Plaintiff Oracle USA, Inc.'s Second Set of
13 Interrogatories, dated December 4, 2009: pp. 10-31, 146.

14 11. Attached as **Exhibit 11** is a true and correct copy of Plaintiffs' Third Supplemental
15 and Amended Initial Disclosures, dated November 2, 2009, and as amended on November 20,
16 2009 and November 23, 2009 at pages 3 and 5: pp. 1-8, 57.

17 12. Attached as **Exhibit 12** is a true and correct copy of Oracle's Supplemental Initial
18 Expert Disclosures, dated October 17, 2009.

19 13. Attached as **Exhibit 13** is a true and correct copy of a letter from Amy Donnelly to
20 Jason McDonnell regarding Plaintiffs' Fourth Supplemental and Amended Initial Disclosures,
21 dated March 30, 2010.

22 ***Deposition Testimony***

23 14. Attached as **Exhibit 14** is a true and correct copy of the November 12, 2009
24 Richard Allison Deposition: pp. 1, 18:22-21:13, 39:23-53:10, 236:1-237:25.

25 15. Attached as **Exhibit 15** is a true and correct copy of the February 6, 2008 John
26 Baugh Deposition: pp. 1, 67:15-68:18, 148-149.

27 16. Attached as **Exhibit 16** is a true and correct copy of the December 3, 2009 John
28 Baugh Deposition: pp. 158, 186, 254-255.

1 17. Attached as **Exhibit 17** is a true and correct copy of the September 17, 2009
2 Michael Garafola and John Tanner Deposition: pp. 1, 15:21-19:2, 213:1-25.

3 18. Attached as **Exhibit 18** is a true and correct copy of the October 15, 2009 Jason
4 Kees Deposition: pp. 1, 15:2-18:6, 171:14-184:14, 192:16-193:18, 202:9-208:3, 251:25-253:25.

5 19. Attached as **Exhibit 19** is a true and correct copy of the December 4, 2008 Uwe
6 Koehler Deposition: pp. 1, 8:24-9:5, 11:5-12:11, 17:9-22, 22:7-23:2, 193:17-194:21, 235:17-
7 236:25.

8 20. Attached as **Exhibit 20** is a true and correct copy of the December 5, 2008 Uwe
9 Koehler Deposition: pp. 1, 6:4-21, 36:7-41:16, 42:7-44:5, 46:13-47:22; 49:1-51:1, 56:2-23,
10 59:21-61:9, 98:25-100:25.

11 21. Attached as **Exhibit 21** is a true and correct copy of the October 30, 2007 Mark
12 Kreutz Deposition: pp. 80:8-81:25, 242:1-243:25.

13 22. Attached as **Exhibit 22** is a true and correct copy of the February 19, 2008 Mark
14 Kreutz Deposition: pp. 1, 62:15-63:17, 106:11-24, 251:1-252:25.

15 23. Attached as **Exhibit 23** is a true and correct copy of the February 26, 2009
16 Andrew Nelson Deposition: pp. 1, 63:3-72:24, 84:19-86:25, 91:4-92:6, 264:17-265:25.

17 24. Attached as **Exhibit 24** is a true and correct copy of the December 6, 2007 Shelley
18 Nelson Deposition: pp. 1, 221:10-222:16, 241:1-242:25.

19 25. Attached as **Exhibit 25** is a true and correct copy of the April 18, 2008 Shelley
20 Nelson Deposition: pp. 243, 279:20-283:20, 533:1-536:25.

21 26. Attached as **Exhibit 26** is a true and correct copy of the May 21, 2009 Seth Ravin
22 Deposition: pp. 1, 18:23-20:6, 273:14-274:25.

23 27. Attached as **Exhibit 27** is a true and correct copy of the December 2, 2009 John
24 Ritchie Deposition: pp. 1, 166:19-167:11, 168:17-170:25, 205:16-25, 215:9-216:25.

25 ***Transcripts and Unpublished Cases***

26 28. Attached as **Exhibit 28** is a true and correct copy of the November 26, 2008
27 Transcript of Proceedings in *Oracle USA, Inc., et al. v. SAP AG, et al.*, No. 07-CV-01658 PJH.

28 29. Attached as **Exhibit 29** is a true and correct copy of Violent Crime Control and

1 Law Enforcement Act of 1994, Pub. L. No. 103-322.

2 30. Attached as **Exhibit 30** is a true and correct copy of *Binary Semantics Ltd. v.*
3 *Minitab, Inc.*, No. 4:07-CV-1750, 2008 U.S. Dist. LEXIS 28602 (M.D. Pa. Mar. 20, 2008).

4 31. Attached as **Exhibit 31** is a true and correct copy of *Calence, LLC v. Dimension*
5 *Data Holdings*, No. C06-0262RSM, 2007 U.S. Dist. LEXIS 38043 (W.D. Wash. May 24, 2007).

6 32. Attached as **Exhibit 32** is a true and correct copy of *Cassetica Software, Inc. v.*
7 *Computer Sci. Corp.*, No. 09 C 0003, 2009 U.S. Dist. LEXIS 51589 (N.D. Ill. June 18, 2009).

8 33. Attached as **Exhibit 33** is a true and correct copy of *Charles Schwab & Co. v.*
9 *Carter*, No. 04 C 7071, 2005 U.S. Dist. LEXIS 21348 (N.D. Ill. Sept. 27, 2005).

10 34. Attached as **Exhibit 34** is a true and correct copy of *Condux Int'l, Inc. v. Haugum*,
11 No. 08-4824 ADM/JSM, 2008 U.S. Dist. LEXIS 100949 (D. Minn. Dec. 15, 2008).

12 35. Attached as **Exhibit 35** is a true and correct copy of *In re Cygnus Telecomms.*
13 *Tech., LLC, Patent Litig.*, No. C-04-04247 RMW, 2007 WL 2261543 (N.D. Cal. Aug. 6, 2007).

14 36. Attached as **Exhibit 36** is a true and correct copy of *Czech v. Wall St. on Demand,*
15 *Inc.*, No. 09-180 (DWF/RLE), 2009 U.S. Dist. LEXIS 114125 (D. Minn. Dec. 8, 2009).

16 37. Attached as **Exhibit 37** is a true and correct copy of *Doe v. Dartmouth-Hitchcock*
17 *Med. Ctr.*, Civil No. 00-100-M, 2001 U.S. Dist. LEXIS 10704 (D.N.H. July 19, 2001).

18 38. Attached as **Exhibit 38** is a true and correct copy of *Dong Ah Tire & Rubber Co.*
19 *v. Glasforms, Inc.*, No. 06-3359, 2009 U.S. Dist. LEXIS 30610 (N.D. Cal. Apr. 9, 2009).

20 39. Attached as **Exhibit 39** is a true and correct copy of *Flotsam of Cal., Inc. v.*
21 *Huntington Beach Conf. & Visitors Bureau*, No. C 06-7028 MMC, 2008 WL 144693 (N.D. Cal.
22 Jan. 10, 2008).

23 40. Attached as **Exhibit 40** is a true and correct copy of *Garland-Sash v. Lewis*, No.
24 05 Civ. 6827 (WHP), 2007 U.S. Dist. LEXIS 20909 (S.D.N.Y. Mar. 26, 2007).

25 41. Attached as **Exhibit 41** is a true and correct copy of *Gastelum v. Abbott Labs.*, No.
26 CV 05-645 PHX NVW, 2006 WL 2456199 (D. Ariz. Aug. 22, 2006).

27 42. Attached as **Exhibit 42** is a true and correct copy of *Hanger Prosthetics &*
28 *Orthotics, Inc. v. Capstone Orthopedic, Inc.*, No. 2:06-cv-2879-GEB-KJM, 2008 U.S. Dist.

1 LEXIS 91373 (E.D. Cal. June 13, 2008).

2 43. Attached as **Exhibit 43** is a true and correct copy of *Kalow & Springnut, LLP v.*
3 *Commence Corp.*, C.A. No. 07-3442 (FLW), 2008 U.S. Dist. LEXIS 48036 (D.N.J. June 23,
4 2008).

5 44. Attached as **Exhibit 44** is a true and correct copy of *L-3 Comms. Westwood Corp.*
6 *v. Robicharux*, No. 06-0279, 2007 WL 756528 (E.D. La. Mar. 8, 2007).

7 45. Attached as **Exhibit 45** is a true and correct copy of *Laser Design Int'l, Inc. v. BJ*
8 *Crystal, Inc.*, No. C 03-1179 JSW, 2007 U.S. Dist. LEXIS 21329 (N.D. Cal. Mar. 7, 2007).

9 46. Attached as **Exhibit 46** is a true and correct copy of *Mintel Int'l Group, Ltd. v.*
10 *Neergheen*, No. 08-cv-3939, 2010 U.S. Dist. LEXIS 2323 (N.D. Ill. Jan. 12, 2010).

11 47. Attached as **Exhibit 47** is a true and correct copy of *NLFC, Inc. v. Devcom Mid-*
12 *America, Inc.*, No. 93 C 0609, 1993 U.S. Dist. LEXIS 16459 (N.D. Ill. Nov. 16, 1993).

13 48. Attached as **Exhibit 48** is a true and correct copy of *Nexans Wires S.A. v. Sark-*
14 *USA, Inc.*, 319 F. Supp. 2d 468 (S.D.N.Y. 2004).

15 49. Attached as **Exhibit 49** is a true and correct copy of *Ortega v. City of Oakland*, No.
16 C07-02659 JCS, 2008 WL 4532550 (N.D. Cal. Oct. 8, 2008).

17 50. Attached as **Exhibit 50** is a true and correct copy of *Raymonde v. Mirant Cal.,*
18 *LLC*, No. C 08-03733 WHA, 2010 U.S. Dist. LEXIS 5362 (N.D. Cal. Jan. 25, 2010).

19 51. Attached as **Exhibit 51** is a true and correct copy of *Resdev, LLC v. Lot Builders*
20 *Ass'n*, No. 6:04-cv-1374-Orl-31DAB, 2005 U.S. Dist. LEXIS 19099 (M.D. Fla. Aug. 10, 2005).

21 52. Attached as **Exhibit 52** is a true and correct copy of *Romero v. Hennessey*, No. C
22 08-4675 RMW (PR), 2010 WL 135185 (N.D. Cal. Jan. 5, 2010).

23 53. Attached as **Exhibit 53** is a true and correct copy of *U.S. v. Nosal*, No. C 08-0237
24 MHP, 2010 U.S. Dist. LEXIS 24359 (N.D. Cal. Jan. 5, 2010).

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 31st day of March, 2010 in Palo Alto, California.

/s/ Tharan Gregory Lanier
Tharan Gregory Lanier