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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 THARAN
 GREGORY LANIER IN SUPPORT OF
 REPLY IN SUPPORT OF
 DEFENDANTS' 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 1. As part of discovery in this matter, Defendants produced 11,257,064 Bates
9 numbered pages and over 17 terabytes of electronic data.

10 2. Attached as **Exhibit 1** is a true and correct copy of an untitled document, produced
11 by Defendants in this case at TN-OR00000001–08, and marked in this case as Plaintiffs’
12 Deposition Exhibit 4. TN-OR00000007 lists Nick Rawls as a TN Senior Account Executive for
13 the EMEA region, located in Maidenhead, UK, and Hendrik Zwart as a TN Senior Account
14 Executive for the EMEA region, located in Germany. TN’s counsel, Tom Nolan, is, and has been
15 at all relevant times, located in Stamford, Connecticut. TN-OR00000007 further lists Todd
16 Dunfee as a TN Account Executive located in Ohio. Plaintiffs rely on Exhibit 69 to the House
17 Declaration for their argument that Mr. Dunfee was located in California. Exhibit 69 is a list of
18 TN employees created for purposes of production in this litigation. Exhibit 69 lists Mr. Dunfee’s
19 location as Pleasanton, California because he reported to Bob Geib, who was located in
20 Pleasanton, California. Mr. Dunfee’s actual location was Ohio, as listed in the TN organization
21 chart produced at TN-OR00000007.

22 3. Attached as **Exhibit 2** is a true and correct copy of the following relevant portions
23 of TN’s contract with Harley-Davidson, Inc., which became effective on December 7, 2006 and
24 which was produced by Defendants in this case at TN-OR00000350–67: portions of TN-
25 OR00000350. Also attached as **Exhibit 3** is a true and correct copy of the following relevant
26 portions of SAP’s contract with Harley-Davidson, Inc., which was produced by Defendants in
27 this case at SAP-OR00172658–663, indicating that Harley-Davidson was a customer of SAP at
28 least as early as December 9, 2005: portions of SAP-OR00172658.

1 4. Attached as **Exhibit 4** is a true and correct copy of the following relevant portions
2 of TN's contract with Allianz Life Insurance Company of North America, which became
3 effective on December 22, 2006 and which was produced by Defendants in this case at TN-
4 OR00005178-92: portions of TN-OR00005178 and TN-OR00005186-87.

5 5. Attached as **Exhibit 5** is a true and correct copy of the following excerpts from
6 Plaintiffs' Expert Report of Paul K. Meyer: ¶¶ 20, 71-73, and 433.

7 6. Attached as **Exhibit 6** is a true and correct copy of the following excerpts from the
8 January 9, 2009 Bob Geib Deposition: 1, 40:13-42:9, 239:8-240:25.

9 7. Attached as **Exhibit 7** is a true and correct copy of the following excerpts from the
10 May 21, 2009 Seth Adam Ravin Deposition: 1, 19:2-6, 82:10-16, 273:14-19, 274:1-25.

11 8. Attached as **Exhibit 8** is a true and correct copy of *Arabian v. Sony Elec. Inc.*, No.
12 05-CV-1741 WGH (NLS), 2007 U.S. Dist. LEXIS 12715 (S.D. Cal. Feb. 22, 2007).

13 9. Attached as **Exhibit 9** is a true and correct copy of *Brae Asset Funding, L.P. v.*
14 *Applied Fin., LLC*, No. C 05-02490 WHA, 2006 WL 2355474 (N.D. Cal. Aug. 14, 2006).

15 10. Attached as **Exhibit 10** is a true and correct copy of *Comm. for Immigrant Rights*
16 *of Sonoma County v. County of Sonoma*, No. C 08-4220 PJH, 2009 WL 1833988 (N.D. Cal. June
17 23, 2009).

18 11. Attached as **Exhibit 11** is a true and correct copy of *Craigslist, Inc. v.*
19 *Naturemarket, Inc.*, No. C 08-05065 PJH (MEJ), 2010 U.S. Dist. LEXIS 19992 (N.D. Cal. Jan.
20 28, 2010).

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

23 13. Attached as **Exhibit 13** is a true and correct copy of *JM Comp. Servs., Inc. v.*
24 *Schlumberger Techs., Inc.*, No. C 95-20349 JW, 1996 WL 241607 (N.D. Cal. May 3, 1996).

25 14. Attached as **Exhibit 14** is a true and correct copy of *Key Equip. Fin., Inc. v.*
26 *Ressor*, No. 2:08-cv-2003-DV, 2008 WL 819966 (W.D. Tenn. Mar. 25, 2008).

27 15. Attached as **Exhibit 15** is a true and correct copy of *Lucarino v. Con-Dive, LLC*,
28 No. H-09-2548, 2010 U.S. Dist. LEXIS 20075 (S.D. Tex. Mar. 5, 2010).

1 16. Attached as **Exhibit 16** is a true and correct copy of *Niva v. United States*, No. C
2 03-00908 RS, 2009 WL 3617767 (N.D. Cal. Oct. 29, 2009).

3 17. Attached as **Exhibit 17** is a true and correct copy of *Page v. Children's Council*,
4 No. C 06-3268 SBA, 2006 WL 2595946 (N.D. Cal. Sept. 11, 2006).

5 18. Attached as **Exhibit 18** is a true and correct copy of *Pet Food Express, Ltd. v.*
6 *Royal Canin USA Inc.*, No. C 09-1483 MHP, 2010 WL 583973, (N.D. Cal. Feb. 16, 2010).

7 19. Attached as **Exhibit 19** is a true and correct copy of *Romero v. Hennessey*, No. C
8 08-4675 RMW (PR), 2010 WL 135185 (N.D. Cal. Jan. 5, 2010).

9 20. Attached as **Exhibit 20** is a true and correct copy of *Silong v. U.S.*, No. CV F 06-
10 0474 LJO DLB, 2007 U.S. Dist. LEXIS 68724 (E.D. Cal. Sept. 5, 2007).

11 21. Attached as **Exhibit 21** is a true and correct copy of *Thomas Kinkade Co. v.*
12 *Hazlewood*, No. C 06 7034 MHP, 2007 WL 2462149 (N.D. Cal. Aug. 29, 2007).

13 22. Attached as **Exhibit 22** is a true and correct copy of *Tidenberg v. Bidz.com*, No.
14 CV 08-5553 PSG (FMOx), 2009 U.S. Dist. LEXIS 21916 (C.D. Cal. Mar. 4, 2009).

15 23. Attached as **Exhibit 23** is a true and correct copy of *Veritas Operating Corp. v.*
16 *Microsoft Corp.*, No. 2:06-cv-00703-JCC, 2008 U.S. Dist. LEXIS 35627 (W.D. Wash. Jan. 17,
17 2008).

18 24. Attached as **Exhibit 24** is a true and correct copy of *Wyatt Tech. Corp. v. Smithson*,
19 No. CV 05-1309, 2006 WL 5668246 (C.D. Cal. Aug. 14, 2006).

20 25. Attached as **Exhibit 25** is a true and correct copy of *Zottola v. City of Oakland*, 32
21 Fed. App'x 307 (9th Cir. 2002).

22 26. Attached as **Exhibit 26** is a true and correct copy of Answer and Counterclaim of
23 Royal Canin USA Inc. in *Pet Food Express, Ltd. v. Royal Canin USA Inc.*, No. C09-01483 MHP
24 (N.D. Cal.).

25 27. Attached as **Exhibit 27** is a true and correct copy of Declaration of Mark S.
26 Davidson, attaching Complaint in *Prime Start Ltd. v. Maher Forest Prods., Ltd.*, No. C05-1195
27 JCC (W.D. Wa.), originally filed in King County Superior Court, No. 05-2-19742-1 SEA.

28 28. Attached as **Exhibit 28** is a true and correct copy of Answer and Counterclaim of

1 Defendant Maher Forest Products, Ltd., and Jury Demand in *Prime Start Ltd. v. Maher Forest*
2 *Prods., Ltd.*, No. C05-1195 JCC (W.D. Wa.).

3 29. Attached as **Exhibit 29** is a true and correct copy of Answer of Defendant Pacific
4 Lumber Inspection Bureau and Jury Demand in *Prime Start Ltd. v. Maher Forest Prods., Ltd.*, No.
5 C05-1195 JCC (W.D. Wa.).

6 30. Attached as **Exhibit 30** is a true and correct copy of Ass. Bill No. 2727, Reg. Sess.
7 (Cal. 1999-2000), S. Comm. on Judiciary, Background Information Request from the bill file of
8 the committee on AB 2727.

9 31. Attached as **Exhibit 31** is a true and correct copy of *Milgrim on Trade Secrets* §
10 15.02[3][c].

11 32. Attached as **Exhibit 32** is a true and correct copy of 4 *Nimmer on Copyright*
12 (Matthew Bender, rev. ed.) § 14.02.

13 33. Attached as **Exhibit 33** is a true and correct copy of 6 *Patry on Copyright*
14 §§ 22:129, 22:130.

15 34. Attached as **Exhibit 34** is a true and correct copy of pages 747 and 750-51 of
16 Gordon V. Smith and Russell L. Parr, *Intellectual Property Valuation, Exploitation, and*
17 *Infringement Damages* (2005).

18 I declare under penalty of perjury under the laws of the United States and the State of
19 California that the foregoing is true and correct. Executed this 14th day of April, 2010 in Palo
20 Alto, California.

21 /s/ Tharan Gregory Lanier
22 Tharan Gregory Lanier