

1 Robert A. Mittelstaedt (SBN 060359)
 Jason McDonell (SBN 115084)
 2 Elaine Wallace (SBN 197882)
 JONES DAY
 3 555 California Street, 26th Floor
 San Francisco, CA 94104
 4 Telephone: (415) 626-3939
 Facsimile: (415) 875-5700
 5 ramittelstaedt@jonesday.com
 jmcdonell@jonesday.com
 6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)
 Jane L. Froyd (SBN 220776)
 8 JONES DAY
 1755 Embarcadero Road
 9 Palo Alto, CA 94303
 Telephone: (650) 739-3939
 10 Facsimile: (650) 739-3900
 tglanier@jonesday.com
 11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)
 Joshua L. Fuchs (Admitted *Pro Hac Vice*)
 13 JONES DAY
 717 Texas, Suite 3300
 14 Houston, TX 77002
 Telephone: (832) 239-3939
 15 Facsimile: (832) 239-3600
 swcowan@jonesday.com
 16 jl fuchs@jonesday.com

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' OPPOSITION TO
 PLAINTIFFS' MOTION NO. 3 TO
 EXCLUDE EXPERT TESTIMONY OF
 DAVID GARMUS**

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

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. Attached as **Exhibit 1** is a true and correct copy of Plaintiffs’ Supplemental Initial
9 Expert Disclosures, dated October 16, 2009.

10 2. Attached as **Exhibit 2** is a true and correct copy of the following excerpts from the
11 Expert Report of Paul C. Pinto, dated November 16, 2009, which was produced by Plaintiffs in
12 this case: cover page, 7-11, 14-17.

13 3. Attached as **Exhibit 3** is a true and correct copy of the Expert Rebuttal Report of
14 David P. Garmus, dated March 26, 2010, which was produced by Defendants in this case.

15 4. Attached as **Exhibit 4** is a true and correct copy of the following excerpts from
16 *The Function Point Counting Practices Manual*, Release 4.2, which was produced by Plaintiffs in
17 this case at ORCLX-PIN-000007: cover page, title page, copyright page, Documentation Team
18 page, 2-5.

19 5. Attached as **Exhibit 5** is a true and correct copy of the following excerpts from the
20 May 19, 2010 Paul C. Pinto Deposition: 1, 42:5-43:5, 69:11-24, 103:6-21, 119:8-24, 212:12-17,
21 221:17-222:2.

22 6. Attached as **Exhibit 6** is a true and correct copy of an e-mail chain between Chris
23 Decker and Paul Pinto re: IFPUG Membership, which was produced by Plaintiffs in this case at
24 ORCLX-PIN-000111.

25 7. Attached as **Exhibit 7** is a true and correct copy of the following excerpts from the
26 June 2, 2010 David Garmus Deposition: 1, 31:24-32:5, 43:20-44:2, 51:13-53:10, 116:6-117:8.

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1 8. Attached as **Exhibit 8** is a true and correct copy of Appendix A to the Expert
2 Rebuttal Report of David P. Garmus, dated March 26, 2010, which was produced by Defendants
3 in this case.

4 9. Attached as **Exhibit 9** is a true and correct copy of the following excerpts from
5 Appendix L to the Expert Report of Stephen K. Clarke, dated March 26, 2010, which was
6 produced by Defendants in this case: Columns A-J.

7 10. Attached as **Exhibit 10** is a true and correct copy of an export from
8 TomorrowNow, Inc.'s SAS Database that includes operational data for PeopleSoft customers,
9 which was produced by Defendants in this case at TN-OR06515453.

10 11. Attached as **Exhibit 11** is a true and correct copy of an export from
11 TomorrowNow, Inc.'s SAS Database that includes operational data for J.D. EnterpriseOne
12 customers, which was produced by Defendants in this case at TN-OR06515454.

13 12. Attached as **Exhibit 12** is a true and correct copy of the following excerpts from
14 the December 6, 2007 Shelley Nelson Deposition: 1, 82:22-83:6.

15 13. Attached as **Exhibit 13** is a true and correct copy of the following excerpts from
16 Defendant TomorrowNow, Inc.'s Eighth Amended and Supplemental Response to Plaintiff
17 Oracle Corporation's First Set of Interrogatories (Set One), dated December 4, 2009: cover, 11-20.

18 14. Attached as **Exhibit 14** is a true and correct copy of the following excerpts from
19 spreadsheets purporting to show Paul Pinto's surrebuttal analysis of Defendants' experts David
20 Garmus and Donald Reifer's opinions, marked as Defendants' Deposition Exhibit 2052, and
21 produced by Plaintiffs ORCLX-PIN-000108: 1, 3.

22 15. Attached as **Exhibit 15** is a true and correct copy of Plaintiffs' Fifth Amended
23 And Seventh Supplemental Responses and Objections to Defendant TomorrowNow, Inc.'s
24 Interrogatory No. 13 [Corrected], dated May 17, 2010.

25 16. Attached as **Exhibit 16** is a true and correct copy of the following excerpts from
26 the Expert Report of Stephen K. Clarke, dated May 7, 2010: cover page, 58, 216-17, 224, 248,
27 294.

28 17. Attached as **Exhibit 17** is a true and correct copy of *Burnham v. United States*, No.

1 CV-07-8017-PHX-DGC, 2009 WL 2169191 (D. Ariz. July 20, 2009).

2 18. Attached as **Exhibit 18** is a true and correct copy of *Callaway Golf Co. v. Screen*
3 *Actors Guild, Inc.*, No. 07CV0373-LAB (WMC), 2009 WL 5125603 (S.D. Cal. Dec. 18, 2009).

4 19. Attached as **Exhibit 19** is a true and correct copy of *Garcia v. Union Labor Life*
5 *Ins. Co.*, No. CV 04-0721-WJR (RNBx), 2004 WL 5644436 (C.D. Cal. Nov. 24, 2004).

6 20. Attached as **Exhibit 20** is a true and correct copy of *Humphreys v. Regents of the*
7 *Univ. of Cal.*, No. C 04-03808 SI, 2006 U.S. Dist. LEXIS 47822 (N.D. Cal. July 6, 2006).

8 21. Attached as **Exhibit 21** is a true and correct copy of *IBM Corp. v. Fasco Indus.,*
9 *Inc.*, No. C-93-20326 RPA, 1995 WL 115421 (N.D. Cal. Mar. 15, 1995).

10 22. Attached as **Exhibit 22** is a true and correct copy of *Kilgore v. Carson Pirie*
11 *Holdings, Inc.*, 205 Fed. App'x. 367, 371-72 (6th Cir. 2006).

12 23. Attached as **Exhibit 23** is a true and correct copy of *MMI Realty Servs., Inc. v.*
13 *Westchester Surplus Lines Ins. Co.*, No. 07-00466 BMK, 2009 WL 649894 (D. Haw. Mar. 10,
14 2009).

15 24. Attached as **Exhibit 24** is a true and correct copy of *QR Spex, Inc. v. Motorola,*
16 *Inc.*, No. CV 03-6284-JFW (FMOx), 2004 WL 5642907 (C.D. Cal. Oct. 28, 2004).

17 25. Attached as **Exhibit 25** is a true and correct copy of *Regents of the Univ. of Cal. v.*
18 *Monsanto Co.*, No. C 04-0634 PJH, 2006 WL 5359055 (N.D. Cal. Feb. 7, 2006).

19 26. Attached as **Exhibit 26** is a true and correct copy of *Walton v.*
20 *Bridgestone/Firestone, Inc.*, No. CV-05-3027-PHX-ROS, 2009 U.S. Dist. LEXIS 85014, at *33
21 (D. Ariz. Jan. 16, 2009)

22 I declare under penalty of perjury under the laws of the United States and the State of
23 California that the foregoing is true and correct. Executed this 9th day of September, 2010 in
24 Palo Alto, California.

25 /s/ Tharan Gregory Lanier
26 Tharan Gregory Lanier
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