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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 JOSHUA L.
 FUCHS IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION NO. 5 TO
 EXCLUDE EXPERT TESTIMONY
 OF STEPHEN GRAY**

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

1 I, JOSHUA L. FUCHS, declare as follows:

2 I am an associate in the law firm of Jones Day, 717 Texas, Suite 3300, Houston, Texas
3 77002, and counsel of record for Defendants SAP AG, SAP America, Inc. (together, "SAP"), and
4 TomorrowNow, Inc. ("TN") (collectively, "Defendants") in the above-captioned matter. I am a
5 member in good standing of the state bar of Texas and admitted *pro hac vice* to practice before
6 this Court. I make this declaration based on personal knowledge and, if called upon to do so,
7 could testify competently thereto.

8 1. Attached as **Exhibit A** is a true and correct copy of the following excerpts from
9 the June 8, 2010 Stephen Gray Deposition: 36:3-37:2, 44:5-21, 47:4-18, 83:18-85:17, 88:18-89:8,
10 96:24-97:20, 109:19-113:6, 114:5-115:8, 121:22-123:12, 123:24-127:3, 127:20-129:25, 198:7-21,
11 209:10-25, 213:16-215:11, 224:23-226:20, 229:15-230:3, 238:1-23, 239:19-25, 250:14-24.

12 2. Attached as **Exhibit B** is a true and correct copy of the Appendix 1 to Stephen
13 Gray's June 3, 2010 Report, produced by Defendants in this case.

14 3. Attached as **Exhibit C** is a true and correct copy of the May 12, 2010 Expert
15 Report of Kevin Mandia, produced by Plaintiffs in this case.

16 4. Attached as **Exhibit D** is a true and correct copy of the following excerpts from
17 the June 9, 2010 Stephen Gray Deposition: 324:13-326:22, 327:19-23, 330:1-332:21, 344:25-
18 348:23, 382:2-383:11, 440:1-441:20, 442:22-445:10, 472:11-474:6, 477:13-479:4, 492:16-24,
19 495:5-16, 496:11-497:12, 507:20-509:1, 534:17-535:24, 550:20-552:3, 552:7-23, 555:21-556:10,
20 558:6-24, 582:24-583:13, 588:1-8.

21 5. Attached as **Exhibit E** is a true and correct copy of the May 12, 2010 Expert
22 Report of Kevin Mandia Appendices, produced by Plaintiffs in this case.

23 6. Attached as **Exhibit F** is a true and correct copy of March 12, 2010 Letter from J.
24 Polito.

25 7. Attached as **Exhibit G** is a true and correct copy of the following excerpts from
26 the May 20, 2010 Kevin Mandia Deposition: 168:2-11, 169:1-13, 170:7-172:10, 196:2-18,
27 198:18-199:25.

28 8. Attached as **Exhibit H** is a true and correct copy of the following excerpts from

1 the May 21, 2010 Kevin Mandia Deposition: 304:22-306:5.

2 9. Attached as **Exhibit I** a true and correct copy of the June 15, 2010 e-mail from
3 Josh Fuchs.

4 10. Attached as **Exhibit J** is a true and correct copy of ORCLX-MAN-000208 –
5 Mandiant: Materials Considered, produced by Plaintiffs in this case.

6 11. Attached as **Exhibit K** is a true and correct copy of the following excerpts from
7 April 30, 2010 Daniel Levy Deposition: 78:3-79:1.

8 12. Attached as **Exhibit L** is a true and correct copy of the February 12, 2010
9 Appendix 4 to Daniel Levy's Expert Report, produced by Plaintiffs in this case.

10 13. Attached as **Exhibit M** are true and correct copies of the following excerpts from
11 the April 20, 2010 Douglas Lichtman Deposition: 88:24-89:22, 189:21-190:8, 210:22-211:22,
12 304:17-305:14.

13 14. Attached as **Exhibit N** is a true and correct copy of *Scientific Components Corp. v.*
14 *Sirenza Microdevices, Inc.*, No. 03 CV 1851 (NGG) (RML), 2008 WL 4911440 (E.D.N.Y. Nov.
15 13, 2008).

16 15. Attached as **Exhibit O** is a true and correct copy of *Minebea Co. v. Papst*, No.
17 Civ.A. 97-0590(PLF), 2005 WL 1459704 (D.D.C. June 21, 2005).

18 16. Attached as **Exhibit P** is a true and correct copy of *Long Term Capital Holdings v.*
19 *United States*, No. 3:01 CV 1290 (JBA), 2003 WL 21518555 (D. Conn. May 15, 2003).

20 17. Attached as **Exhibit Q** is a true and correct copy of *Perry v. Schwarzenegger*, No.
21 C 09-2292 VRW, 2010 WL 3025614 (N.D. Cal. Aug. 4, 2010).

22 18. Attached as **Exhibit R** is a true and correct copy of *Lanard Toys Ltd. v. Novelty,*
23 *Inc.*, No. 08-55795, 2010 WL 1452527 (9th Cir. Apr. 13, 2010).

24 19. Attached as **Exhibit S** is a true and correct copy of *United Nat'l Maint., Inc. v. San*
25 *Diego Convention*, No. 07-cv-2172, 2010 U.S. Dist. LEXIS 79541 (S.D. Cal. Aug. 3, 2010).

26 20. Attached as **Exhibit T** is a true and correct copy of *Trekeight, LLC v. Symantec*
27 *Corp.*, No. 04-CV-1479, 2006 WL 5201349 (S.D. Cal. May 23, 2006).

28 I declare under penalty of perjury under the laws of the United States and the State of

1 California that the foregoing is true and correct. Executed this 9th day of September, 2010 in
2 Houston, Texas.

3 /s/ Joshua L. Fuchs
4 Joshua L. Fuchs

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