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 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 SCOTT W.
 COWAN IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION NO. 6: TO
 EXCLUDE EXPERT TESTIMONY OF
 BRUCE SPENCER**

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

1 I, Scott W. Cowan, declare as follows:

2 (1) I am a partner in the law firm of Jones Day, 717 Texas, Suite 3300, Houston,
3 Texas 77002, 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 action. I am a member in good standing of the State Bar of Texas, all federal district courts in
6 Texas, and the United States Courts of Appeal for the Third, Fourth, Fifth, Ninth, and Eleventh
7 Circuits. I am also admitted *pro hac vice* in this matter. I make this declaration based on
8 personal knowledge and, if called upon to do so, could testify competently thereto.

9 (2) Attached as Exhibit A are true and correct copies of the following excerpts from
10 the June 4, 2010 Dr. Bruce Spencer Deposition: 92:15-20, 95:6-24, 97:8-22, 99:11-17, 116:2-20,
11 121:1-21, 123:16-20, 152:18-153:9, 199:2-202:5, 211:11-214:3, 214:19-215:16, 223:9-224:11.

12 (3) Attached as Exhibit B is a true and correct copy of the Expert Report of Bruce
13 Spencer, which was served by Defendants in this case on March 26, 2010.

14 (4) Attached as Exhibit C are true and correct copies of the following excerpts from
15 the April 30, 2010 Daniel Levy Deposition: 40:25-41:16, 184: 22-185:1.

16 (5) Attached as Exhibit D is a true and correct copy of the February 12, 2010 Expert
17 Report of Daniel Levy and corresponding cover letter, which was served by Plaintiffs in this case.

18 (6) Attached as Exhibit E is a true and correct copy of the following excerpt from *The*
19 *Oxford Dictionary of Statistical Terms Dictionary* (Yadolah Dodge ed., Oxford University Press
20 2003): 376.

21 (7) Attached as Exhibit F are true and correct copies of the following excerpts from
22 William G. Cochran, *Sampling Techniques* (Wiley 3rd ed. 1977): 12, 30, 99.

23 (8) Attached as Exhibit G is a true and correct copy of the following excerpt from
24 Carl-Erick Sarndal et al., *Model Assisted Survey Sampling* (Springer 1992): 73.

25 (9) Attached as Exhibit H is a true and correct copy of a letter sent from Plaintiffs’
26 counsel, Joy Sherrod, on April 28, 2010.

27 (10) Attached as Exhibit I is a true and correct copy of B.D. McCullogh, *Microsoft*
28 *Excel’s ‘Not The Wichmann–Hill’ random number generators*, 52 *Computational Statistics and*

1 Data Analysis 4587 (2008).

2 (11) Attached as Exhibit J is a true and correct copy of B.D. McCullogh and David
3 Heiser, *On the accuracy of statistical procedures in Microsoft Excel 2007*, 52 Computational
4 Statistics and Data Analysis 4570 (2008).

5 (12) Attached as Exhibit K is a true and correct copy of B.D. McCullogh and Barry
6 Wilson, *On the accuracy of statistical procedures in Microsoft Excel 2003*, 49 Computational
7 Statistics and Data Analysis 1244 (2005).

8 (13) Attached as Exhibit L is a true and correct copy of Stephen Fienberg,
9 *Randomization and Social Affairs: The 1970 Draft Lottery*, 171 Science 255 (January 1971).

10 (14) Attached as Exhibit M is a true and correct copy of Joan Rosenblatt and James
11 Filliben, *Randomization and the Draft Lottery*, 171 Science 306 (January 1971).

12 (15) Attached as Exhibit N is a true and correct copy of the following excerpt from Paul
13 S. Levy and Stanley Lemeshow, *Sampling of Populations*, Fourth Edition (Wiley & Sons, 2008):
14 35.

15 (16) Attached as Exhibit O is a true and correct copy of the following excerpt from
16 George Snedecor and William Cochran, *Statistical Methods* (The Iowa State University Press
17 1967): 60.

18 (17) Attached as Exhibit P are true and correct copies of the cover and signature pages
19 of the May 27, 2010 Walter Vandaele Deposition.

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

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 Houston, Texas.

25 /s/ Scott W. Cowan
26 Scott W. Cowan