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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 JASON
 MCDONELL IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION NO. 2 TO
 EXCLUDE EXPERT TESTIMONY OF
 BRIAN S. SOMMER**

Date: September 30, 2010

Time: 2:30 p.m.

Courtroom: 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

DECL. OF JASON MCDONELL ISO DEFS.' OPP. TO PLS.' MOT.
 NO. 2 TO EXCLUDE EXPERT TEST. OF BRIAN SOMMER

Case No. 07-CV-1658 PJH (EDL)

1 I, JASON MCDONELL, declare as follows:

2 I am a partner in the law firm of Jones Day, 555 California St., 26th Floor, San Francisco,
3 California 94104, 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 the cover page and the
9 following excerpts from the Supplemental Expert Report of Paul K. Meyer dated February 23,
10 2010 (“Meyer Report”). The relevant paragraphs are: 65, 232, 233, 361, 368, 369, 370, 440.

11 2. Attached as **Exhibit 2** is a true and correct copy of the Expert Report of Brian S.
12 Sommer dated March 26, 2010.

13 3. Attached as **Exhibit 3** is a true and correct copy of the cover page and the
14 following excerpts from the Expert Report of Stephen K. Clarke dated May 7, 2010. The relevant
15 pages are: 209-210, 217-218.

16 4. Attached as **Exhibit 4** is a true and correct copy of an email exchange between
17 Holly House and myself dated January 25, 2010.

18 5. Attached as **Exhibit 5** is a true and correct copy of the cover page, signature page,
19 and the following excerpts from the Deposition of Paul K. Meyer dated May 12, 2010. The
20 relevant pages are: 37:19-41:18 and 56:23-57:15.

21 6. Attached as **Exhibit 6** is a true and correct copy of the cover page, signature page,
22 and the following excerpts from the Deposition of Paul K. Meyer dated May 14, 2010 relevant
23 pages are: 828:11-22, 829:12- 831:8, 856:25-857:18, 934:13-19.

24 7. Attached as **Exhibit 7** is a true and correct copy of the cover page, signature page,
25 and the following excerpts from the Deposition of Brian S. Sommer dated June 25, 2010. The
26 relevant pages are: 89:9-17, 121:13-18, 130:14-159:24; 183:6-189:25.

27 8. Attached as **Exhibit 8** is a true and correct copy of ORCLX-NAV-000020
28 produced by Paul K. Meyer. The article is titled “The Man Behind ‘Half Off’ Third-Party

1 Maintenance” authored by Thomas Wailgum from CIO and dated April 11, 2008. The document
2 is cited at paragraph 368 and footnote 695 of the Meyer Report.

3 9. Attached as **Exhibit 9** is a true and correct copy of ORCLX-NAV-000054
4 produced by Paul K. Meyer and marked as Plaintiffs’ deposition exhibit 3219 and reflecting
5 highlights previously added by Plaintiffs. The article is titled “TomorrowNow Expanding Third-
6 Party Maintenance Business” authored by Alex Woodie from ITJungle and dated November 7,
7 2006. The document is cited at paragraph 369 and footnote 700 of the Meyer Report.

8 10. Attached as **Exhibit 10** is a true and correct copy of SAP-BSS-000883 - 84
9 produced by Brian Sommer. The article is titled “Five Simple Steps to Reduce Software
10 Maintenance Costs” authored by Ray Wang and dated March 25, 2009.

11 11. Attached as **Exhibit 11** is a true and correct copy of SAP-BSS-000078 - 87
12 produced by Brian Sommer. The article is titled “Should You Rehabilitate Your Current ERP
13 System Rather Than Buy A New One?” It is authored by Jim Shepherd from AMR Research and
14 dated September 2009.

15 12. Attached as **Exhibit 12** is a true and correct copy of *JMJ Enters. v. Via Veneto*
16 *Italian Ice*, 1998 WL 175888 (E.D. Pa. Apr. 15, 1998).

17 13. Attached as **Exhibit 13** is a true and correct copy of *MMI Realty Servs., Inc. v.*
18 *Westchester Surplus Lines Ins. Co.*, No. 07-00466 BMK, 2009 WL 649894 (D. Haw. Mar. 10,
19 2009).

20 14. Attached as **Exhibit 14** is a true and correct copy of *United States v. Walker*, 217
21 Fed. Appx. 714 (9th Cir. 2007).

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 San
24 Francisco, California.

25 /s/ Jason McDonell
26 Jason McDonell