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17 Attorneys for Defendants  
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 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 SAN FRANCISCO DIVISION

22 ORACLE CORPORATION, et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

Case No. 07-CV-1658 PJH

**DECLARATION OF JASON  
 McDONELL IN SUPPORT OF  
 DEFENDANTS' OBJECTIONS TO  
 SPECIAL MASTER'S REPORT AND  
 RECOMMENDATIONS RE:  
 DISCOVERY HEARINGS 1 AND 2**

Date: July 1, 2008

Time: 9:00 a.m.

Courtroom: E, 15<sup>th</sup> Floor

Judge: Hon. Elizabeth D. Laporte

McDONELL DECL. ISO DEFS.' OBJS. TO SPECIAL MASTER'S  
 REPORT AND RECOMMENDATIONS  
 Case No. 07-CV-1658 PJH

1 I, JASON McDONELL, declare:

2 I am a partner in the law firm of Jones Day, 555 California Street, San Francisco,  
3 California 94104, a member in good standing of the bar of this state, and counsel of record for  
4 Defendants SAP AG, SAP Americas, and TomorrowNow, Inc. (“TN”) in the above-captioned  
5 action. I make this declaration based on personal knowledge and, if called upon to do so, could  
6 testify competently thereto.

7 1. Attached hereto as Exhibit 1 are true and correct copies of SAP AG’s and SAP  
8 Americas’ October 1, 2007 responses to RFP No. 55 in Plaintiffs’ First Set of Requests for  
9 Production of Documents.

10 2. Attached hereto as Exhibit 2 is a true and correct copy of TN’s September 21,  
11 2007 response to RFP No. 84 in Plaintiffs’ First Set of Requests for Production of Documents.

12 3. Attached hereto as Exhibit 3 is a true and correct copy of the Special Master’s  
13 Report and Recommendations Re: Discovery Hearing No. 1, dated February 22, 2008 (“R&R No.  
14 1”).

15 4. Attached hereto as Exhibit 4 are true and correct copies of Oracle’s September 14,  
16 2007 responses to RFP Nos. 25 and 26 in Defendants’ First Set of Requests for Production of  
17 Documents.

18 5. Attached hereto as Exhibit 5 is a true and correct copy of the Special Master’s  
19 Report and Recommendations Re: Discovery Hearing No. 2, dated March 20, 2008 (“R&R No.  
20 2”).

21 6. Attached hereto as Exhibit 6 are true and correct copies of the relevant excerpts  
22 from the transcript of the March 4, 2008 hearing with the Special Master on the parties’ second  
23 set of motions to compel.

24 7. Attached hereto as Exhibit 7 are true and correct copies of the relevant excerpts  
25 from the transcript of the February 13, 2008 hearing with the Special Master on the parties’  
26 second set of motions to compel.

27 8. Attached hereto as Exhibit 8 is a true and correct copy of a July 10, 2002 letter  
28 from David Chavez of PeopleSoft to Seth Ravin of TomorrowNow.

1 9. I have reviewed Oracle's January 28, 2008 Motion to Compel Production of  
2 Documents Related to Government Investigations and Further Responses to Interrogatories (the  
3 "Letter Brief"). In the Letter Brief, at page 3, Oracle states: "Since the government is  
4 investigating Defendant's conduct as it relates to Oracle's claims [Oracle presumes], materials  
5 related to that investigation, and particularly whatever materials Defendants have provided to the  
6 government, are relevant." Oracle further argues, at page 4, that the only way for Oracle to know  
7 whether Defendants have produced the same documents to the government that they have  
8 produced to Oracle is to "compare and contrast Defendants' . . . production[s]."

9 10. Oracle further states in the Letter Brief, at page 2, that "Defendants themselves  
10 publicly disclosed that the government's investigation is addressed to the conduct Oracle alleges  
11 in the Complaint."

12 I declare under penalty of perjury under the laws of the United States and the State of  
13 California that the foregoing is true and correct. Executed this 16th day of May, 2008 in San  
14 Francisco, California.

15  
16 /S/ Jason McDonell  
17 JASON McDONELL  
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