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17 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
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
STIPULATION AND [PROPOSED]
ORDER TO EXTEND TIME TO
COMPLY WITH DISCOVERY
ORDER**

Date: N/A

Time: N/A

Courtroom: N/A

Judge: Hon. Elizabeth D. Laporte

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. On July 3, 2008, the Court issued an Order directing Defendants to produce to
8 Oracle, no later than July 15, 2008, all documents produced to the grand jury that have not
9 otherwise been produced during discovery. Dkt. No. 106.

10 2. Defendants seek a short extension of time (8 days, *i.e.*, until July 23, 2008) to
11 comply with the Court’s Order.

12 3. Defendants seek this short extension for two reasons. First, Defendants are still
13 evaluating whether to appeal some or all of the Court’s Order. Under Fed. R. Civ. P. 72(a) and
14 6(a), Defendants’ time to appeal the Order does not expire until July 18, 2008. If Defendants are
15 required to comply with the Order before that date, they will be deprived of the full time allowed
16 under the rules and a full opportunity to evaluate the need for appeal. Moreover, production of
17 the documents would moot some or all of the Defendants’ appeal, should they decide to file one.
18 Without an extension, the production will disclose the materials that Defendants maintain are
19 protected by Fed. R. Crim. P. 6(e). Once that disclosure has been made it cannot be undone and
20 may potentially waive or moot any appeal. If Defendants decide to appeal, then to avoid waiver
21 and mooting of the appeal, Defendants will timely seek a stay of that part of the Court’s Order
22 requiring Defendants to produce to Oracle documents provided to the grand jury.

23 4. The second reason for seeking the extension is to allow Defendants, assuming they
24 decide not to appeal the Order, sufficient time to complete the work necessary to comply with the
25 following provisions of the Court’s Order:

26 “. . . Defendants shall produce all documents that were produced to the grand jury
27 that have not otherwise been produced during the course of discovery in this
28 matter. Further, Defendants may withhold wholly irrelevant documents such as

1 personal employee e-mails, if any, and redact private information such as social
2 security numbers of employees, and must list any withheld or redacted documents
3 on a log with sufficient specificity to show that the withholding or redaction was
4 proper.”

5 Defendants are working to do this and have already segregated the many of documents, but need a
6 short amount of additional time to complete the process, particularly as it relates to employee
7 privacy.

8 5. On July 11, 2008, I contacted Geoff Howard, counsel for Oracle, to ask whether
9 Oracle would stipulate to this request. Mr. Howard informed me that Oracle would stipulate to
10 the requested extension.

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

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15 /S/ Jason McDonell
16 JASON McDONELL

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