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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 ARLEN
SHENKMAN IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE THEIR MOTION
TO COMPEL AND SUPPORTING
DOCUMENTS UNDER SEAL**

Date: N/A

Time: N/A

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. LaPorte

1 I, ARLEN SHENKMAN, declare:

2 I am an individual over 18 years old. I am a Vice President of Corporate Finance at SAP
3 Global Marketing, a Defendant in the above-entitled action. I make this declaration based on
4 personal knowledge and, if called upon to do so, could testify competently thereto.

5 1. SAP has taken steps to ensure that these documents and the information contained
6 therein remain confidential. For example, in this litigation, SAP insisted upon a Protective Order
7 to protect these and other documents produced in the course of discovery from improper public
8 disclosure. Under the terms of that order, SAP would designate documents containing private
9 information as “Confidential” or “Highly Confidential” prior to producing such documents in the
10 course of discovery. SAP has designated each of the documents discussed herein as either
11 “Confidential” or “Highly Confidential Information – Attorneys’ Eyes Only,” thus bringing them
12 within the ambit of the Protective Order.

13 2. SAP has good reason to protect the confidentiality of these documents, as a
14 revelation of their contents would likely cause SAP to suffer a competitive injury.

15 3. For example, I drafted or was sent each part of the correspondence Bates labeled
16 SAP-OR00091723 through SAP-OR00091728, which was attached as Exhibit E to the
17 Declaration of Geoffrey M. Howard In Support Of Plaintiffs’ Motion to Compel Production of
18 Clawed Back Documents (“Howard Decl.”). This internal email chain discusses SAP’s business
19 and competitive strategy with Oracle regards to the third-party maintenance market for both
20 SAP’s and Oracle’s products. I and the other participants intended this discussion to be a
21 confidential, intra-company discussion relating to SAP’s current and future business plans and
22 competitive strategies. Because of the management-level strategic considerations contained in
23 this document, the failure to permit filing of this document under seal would likely cause
24 competitive business injury to SAP. The document reveals both SAP’s strategy with regards to
25 both a particular transaction (the TN acquisition) and its broader strategies regarding SAP’s
26 competitive position relative to the third-party maintenance market. The document also more
27 generally reveals the standards by which SAP ascertains the value of potential acquisitions. As
28

1 such, public release of this document would benefit existing and future competitors at SAP's
2 expense and compromise SAP's negotiation power in future attempts to acquire companies.

3 4. For similar reasons, the document Bates labeled SAP-OR00004973-74 (Howard
4 Decl., Exh. F) is a confidential business strategy discussion, the public revelation of which would
5 cause competitive business injury to SAP. I and other management-level participants in the
6 meeting summarized in this internally-circulated email intended it to be a non-public discussion,
7 the revelation of which would harm SAP through release of sensitive information concerning its
8 business plans, including the market sectors potentially targeted by SAP, SAP's evaluation of
9 different models for participation in the third party maintenance market, and SAP's evaluation of
10 its competitors' ability to compete in those markets. The document ends with a list of strategic
11 concerns for future business planning and also includes risk assessment analyses. Consequently,
12 public disclosure of the information contained in this document would benefit SAP's competitors
13 at SAP's expense.

14 5. The internally-circulated email and attachment which is Bates labeled SAP-
15 OR00004992 through SAP-OR00005007 (Howard Decl., Exh. G), reflects an internal analysis of
16 Oracle's acquisition of PeopleSoft and considerations regarding SAP's competition with Oracle
17 in a segment of the human resources support market. Although most of the information contained
18 in this document was publicly available, it includes an analysis of such information relative to
19 SAP's competitive position with Oracle and other competitors, including specific ideas for
20 executing the recommendations contained therein. This analysis is not to an evaluation of a
21 single business transaction (*i.e.*, the TN acquisition); rather, it provides insight into SAP's self-
22 analysis of its own market position. Thus, the revelation of the compilation of information and
23 internal strategic analysis contained in this document will give SAP's business rivals a
24 competitive advantage over SAP.

25 6. Exhibit H to the Howard Declaration consists of a Power Point Presentation Bates
26 labeled SAP-OR00004768 through SAP-OR00004771. This documents was prepared for the
27 purpose of summarizing the business case for acquiring TomorrowNow. This was intended to be
28 a non-public document due to the confidential nature of the information contained therein. This

1 information was circulated to SAP's management, and, as such, provides an insight generally into
2 how risk analysis is undertaken at the company. Consequently, public disclosure of this
3 document or the information contained therein would injure SAP by providing our competitors
4 with insight into private decision-making processes and corporate governance, the reciprocal
5 version of which is not available to SAP.

6 7. To my knowledge none of the documents which are the subject of this motion
7 have been included as part of any dispositive motion in this or any other case.

8 I declare under penalty of perjury under the laws of the United States and the State of
9 California that the foregoing is true and correct. Executed this 13th day of August, 2008 in
10 Newbury Square, Pennsylvania.

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13 ARLEN SHENKMAN
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