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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 ELAINE WALLACE  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS'  
MOTION TO COMPEL PRODUCTION  
OF CLAWED BACK DOCUMENTS  
EXHS. 3 & 4 SUBMITTED UNDER SEAL**  
Date: TBD  
Time: TBD  
Courtroom: E, 15<sup>th</sup> Floor  
Judge: Hon. Elizabeth D. Laporte

1 I, Elaine Wallace, declare:

2 I am an associate with the law firm of Jones Day, 555 California Street, 26<sup>th</sup> Floor, San  
3 Francisco, CA 940104 and counsel of record for Defendants in this action. I am a member in  
4 good standing of the state bar of California and admitted to practice before this Court. I make this  
5 declaration based on personal knowledge and, if called upon to do so, could testify competently  
6 thereto.

7 1. Attached hereto as Exhibit 1 is a true and correct copy of a letter I sent to Bree  
8 Hann, counsel for Oracle, on June 30, 2008. The letter contains an accurate description of the  
9 privilege review process Jones Day has implemented in this case. In addition to the information  
10 provided in the June 30 letter, paragraphs 2 and 3 below contain some additional detail regarding  
11 Defendants' privilege review process.

12 2. The contract attorneys refer to the full list of inside and outside counsel provided  
13 by Jones Day during the page by page review. In addition, before beginning the page by page  
14 review of a custodian's documents the contract attorneys generally also run tailored searches  
15 specific to that custodian. These tailored searches are done electronically. The tailored searches  
16 may or may not be the same for any two custodians, depending on who the custodians are. The  
17 tailored searches have been developed to account for the different positions of the various  
18 custodians, the different types of privileged communications they are likely to have had, and the  
19 different inside and outside lawyers with whom they are likely to have communicated. Thus, for  
20 example, the tailored searches for SAP custodians are generally different from those used for  
21 TomorrowNow custodians. The tailored searches have been developed over time by the contract  
22 attorneys as their knowledge of the facts and the data being reviewed has grown. The tailored  
23 searches consist mostly of attorney names, but may occasionally include other terms as well.

24 3. As described in my June 30 letter, quality control occurs at various levels of the  
25 process. The tailored searches are just the first step in the review process. During first level  
26 review, each tailored search is followed by a page by page review of all of a custodian's  
27 documents using the full list of attorney names provided by Jones Day. At the conclusion of the  
28 page by page review, additional quality control searches are run. These searches are done by the

1 attorneys who reviewed the documents because those are the people with the most knowledge of  
2 the contents of the documents and the type of privileged communications they are likely to  
3 contain. The attorneys choose the quality control searches from existing tailored searches or,  
4 where appropriate, develop new ones based on their knowledge of the documents. Additional  
5 quality control searches are run by Jones Day as part of the third level of review. These third  
6 level searches are done electronically and include both key attorney names and terms such as  
7 “legal” and “privileged.” Every one of these searches returns hundreds to thousands of document  
8 hits that have to then be re-reviewed (*i.e.*, the document was reviewed during the page-by-page  
9 review process and is now being reviewed again). The vast majority of the document hits  
10 returned from these searches are not privileged. Every additional search Defendants run greatly  
11 slows the process of production. Defendants’ current process attempts to balance the need to  
12 produce the data in an efficient fashion while attempting to prevent any inadvertent production.

13 4. Attached hereto as Exhibit 2 is a true and correct copy of a June 20, 2008 letter  
14 from Briana Rosenbaum, counsel for Oracle, to Jones Day, counsel for Defendants concerning  
15 Oracle’s inadvertent production of privileged documents to Defendants.

16 5. Attached hereto as Exhibit 3 is a true and correct copy of the March 9, 2005 Rules  
17 of Engagement document produced by TomorrowNow in this case and identified by the Bates  
18 number TN-OR00000016-20.

19 6. Attached hereto as Exhibit 4 is a true and correct copy of the March 15, 2006  
20 Rules of Engagement document produced by TomorrowNow in this case and identified by the  
21 Bates number TN-OR00000025-28.

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 13th day of August, 2008 in San  
24 Francisco, California.

25  
26 /s/ Elaine Wallace

27 Elaine Wallace