

1 Robert A. Mittelstaedt (SBN 060359)  
Jason McDonell (SBN 115084)  
2 Elaine Wallace (SBN 197882)  
JONES DAY  
3 555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104  
4 Telephone: (415) 626-3939  
Facsimile: (415) 875-5700  
5 ramittelstaedt@jonesday.com  
jmcdonell@jonesday.com  
6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)  
Jane L. Froyd (SBN 220776)  
8 JONES DAY  
1755 Embarcadero Road  
9 Palo Alto, CA 94303  
Telephone: (650) 739-3939  
10 Facsimile: (650) 739-3900  
tglanier@jonesday.com  
11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)  
Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
13 JONES DAY  
717 Texas, Suite 3300  
14 Houston, TX 77002  
Telephone: (832) 239-3939  
15 Facsimile: (832) 239-3600  
swcowan@jonesday.com  
16 jlfuchs@jonesday.com

17 Attorneys for Defendants  
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.  
27

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

**DECLARATION OF KEITH SHANKLE IN SUPPORT  
OF DEFENDANTS' REPLY TO ORACLE'S  
OPPOSITION TO DEFENDANTS MOTION TO  
COMPEL**

1 I, KEITH SHANKLE, declare:

2 1. I am a former Senior Software Engineer for TomorrowNow, Inc., a Defendant in  
3 this case. I make this declaration based on personal knowledge and, if called upon to do so, could  
4 testify competently thereto.

5 2. I have reviewed the document titled "DownloadMetrics.xls" with Bates number  
6 TN-OR01502369, which I understand was produced from my files at TomorrowNow, Inc.

7 3. I created this document using Customer Connection. In order to create the  
8 document, I ran searches for different types of available JD Edwards files on Customer  
9 Connection and manually typed the results returned by those searches into the spreadsheet. I did  
10 not open or download the files listed in the search results. And I also did not electronically cut or  
11 paste the information from Customer Connection or generate the information in any automated  
12 way. The creation of the spreadsheet was a tedious manual process. To assist in the work of  
13 creating the spreadsheet I assigned sections of the spreadsheet to other TomorrowNow  
14 employees, who performed the same manual process.

15 4. I never completed the spreadsheet and it currently represents an incomplete listing  
16 of certain available files and system codes.

17 5. I spent several months working to create this document using the manual process  
18 of searching for available files and recording the results in the spreadsheet. At the time I created  
19 this spreadsheet I did not know of a way to create a listing of available downloads and system  
20 codes in an automated fashion. I would not have spent months creating the "DownloadMetrics"  
21 document if I knew of an automated method to compile this information. I presently know of no  
22 way to use Customer Connection or any other means to map in an automated fashion the  
23 downloads conducted by TomorrowNow, Inc. to the products or system codes.

24 I declare under penalty of perjury under the laws of the United States and the State of  
25 California that the foregoing is true and correct. Executed this 12<sup>th</sup> day of January 2010 in  
26 \_\_\_\_\_, Texas.

27  
28

\_\_\_\_\_

Keith Shankle

1 I, KEITH SHANKLE, declare:

2 1. I am a former Senior Software Engineer for TomorrowNow, Inc., a Defendant in  
3 this case. I make this declaration based on personal knowledge and, if called upon to do so, could  
4 testify competently thereto.

5 2. I have reviewed the document titled "DownloadMetrics.xls" with Bates number  
6 TN-OR01502369, which I understand was produced from my files at TomorrowNow, Inc.

7 3. I created this document using Customer Connection. In order to create the  
8 document, I ran searches for different types of available JD Edwards files on Customer  
9 Connection and manually typed the results returned by those searches into the spreadsheet. I did  
10 not open or download the files listed in the search results. And I also did not electronically cut or  
11 paste the information from Customer Connection or generate the information in any automated  
12 way. The creation of the spreadsheet was a tedious manual process. To assist in the work of  
13 creating the spreadsheet I assigned sections of the spreadsheet to other TomorrowNow  
14 employees, who performed the same manual process.

15 4. I never completed the spreadsheet and it currently represents an incomplete listing  
16 of certain available files and system codes.

17 5. I spent several months working to create this document using the manual process  
18 of searching for available files and recording the results in the spreadsheet. At the time I created  
19 this spreadsheet I did not know of a way to create a listing of available downloads and system  
20 codes in an automated fashion. I would not have spent months creating the "DownloadMetrics"  
21 document if I knew of an automated method to compile this information. I presently know of no  
22 way to use Customer Connection or any other means to map in an automated fashion the  
23 downloads conducted by TomorrowNow, Inc. to the products or system codes.

24 I declare under penalty of perjury under the laws of the United States and the State of  
25 California that the foregoing is true and correct. Executed this 12<sup>th</sup> day of January 2010 in  
26 Duncanville, Texas.

27  
28



Keith Shankle