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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 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,  
23 Plaintiffs,  
24 v.  
25 SAP AG, et al.,  
26 Defendants.

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

**DECLARATION OF SCOTT W.  
COWAN IN SUPPORT OF  
DEFENDANTS' OPPOSITIONS TO  
PLAINTIFFS' MOTIONS IN LIMINE**

Date: September 30, 2010  
Time: 2:30 p.m.  
Courtroom: 3, 3rd Floor  
Judge: Hon. Phyllis J. Hamilton

1 I, Scott W. Cowan, declare as follows:

2 1. I am a partner in the law firm of Jones Day, 717 Texas, Suite 3300, Houston,  
3 Texas 77002, and counsel of record for Defendants SAP AG, SAP America, Inc. (together,  
4 “SAP”), and TomorrowNow, Inc. (“TN”) (collectively, “Defendants”) in the above-captioned  
5 action. I am a member in good standing of the State Bar of Texas, all federal district courts in  
6 Texas, and the United States Courts of Appeal for the Third, Fourth, Fifth, Ninth and Eleventh  
7 Circuits. I am also admitted *pro hac vice* in this matter. I make this declaration based on  
8 personal knowledge and, if called upon to do so, could testify competently thereto.

9 2. In a April 29, 2010 2:09 p.m.<sup>1</sup> email, Plaintiffs’ counsel, Geoff Howard, proposed  
10 to Defendants’ counsel, Greg Lanier, that “there are some pre-trial logistical matters we think the  
11 parties should discuss, such as . . . the process for exchanging depo designations and counter-  
12 designations (we suggest exchanging designations by July 15 and counter-designations by July  
13 29).” Then, in a May 11, 2010 1:25 p.m. e-mail, Defendants’ counsel Greg Lanier, responded to  
14 that proposal by providing the following counter-proposal: “With regard to deposition  
15 designations, we propose exchanging designations on July 16 and counter-designations on August  
16 2.” Then, in a June 7, 2010 10:58 a.m. e-mail, Plaintiffs’ counsel Geoff Howard accepted  
17 Defendants’ counter-proposal by stating: “we accept your . . . depo designation and counter-  
18 designation dates of July 16, and August 2, respectively.”

19 3. On July 16, 2010 at 7:25 p.m., Defendants provided initial deposition designations  
20 to Plaintiffs. On July 16, 2010 at 9:10 p.m., Plaintiffs provided initial deposition designations to  
21 Defendants. Neither Plaintiffs nor Defendants designated any testimony from the deposition of  
22 Pat Phelan on that date.

23 4. Plaintiffs provided a series of additional sets of initial designations. On July 22,  
24 2010 at 6:34 p.m., Plaintiffs provided additional initial designations. Then, on July 23, 2010 at  
25 2:16 p.m., Plaintiffs provided further additional initial designations along with an errata for  
26 certain of their previous designations and indicated that they had “noticed typos and cites that  
27 ha[d] been inadvertently deleted during the formatting process.” Next, on July 29, 2010 at 2:46

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<sup>1</sup> All times noted in this declaration are Pacific time.

1 p.m., Plaintiffs again provided “a revised spreadsheet of designations” containing further initial  
2 designations. Then, on August 2, 2010 at 12:36 p.m., Plaintiffs provided Defendants further  
3 additional initial designations stating “Attached is a revised spreadsheet of designations. For your  
4 convenience, we have identified the errata on the first tab titled Plaintiffs’ 8.2 Errata and the last  
5 two tabs list the revised designations from 7/16/10 and 7/22/10 in their entirety.” The August 2,  
6 2010 designations included over 66 new, initial designations. Plaintiff did not designate any  
7 testimony from Pat Phelan with these additional designations.

8 5. On August 2, 2010 at 7:36 p.m., Plaintiffs provided Defendants counter deposition  
9 designations, including testimony from Pat Phelan. Defendants had not previously made any  
10 initial designations from the testimony of Pat Phelan.

11 6. On August 4, 2010 at 1:00 p.m., Defendants informed Plaintiffs that Defendants  
12 inadvertently designated testimony from a third party witness, Robert Wasson, and informed  
13 Plaintiffs that Defendants were withdrawing those designations and asked Plaintiffs to “confirm  
14 that in light of Defendants’ withdrawal, Plaintiffs withdraw their counters.” On August 4, 2010 at  
15 2:11 p.m., Plaintiffs responded by stating “Plaintiffs have decided not to withdraw their  
16 designations for Robert Wasson’s deposition (McLennan County). Given that Defendants have  
17 withdrawn their initial designations, we will now include these designations as Plaintiffs’  
18 affirmative designations.”

19 7. On August 5, 2010 at 4:38 a.m., Defendants provided Plaintiffs additional  
20 deposition designations “relating to both Plaintiffs’ 8/2/2010 errata and Plaintiffs’ 8/2/2010  
21 counter/completeness designations,” as well as Plaintiffs’ August 4, 2010 initial designations of  
22 Robert Wasson.

23 8. On August 5, 2010 at 4:00 p.m., Plaintiffs e-mailed Defendants’ counsel to  
24 provide 137 initial deposition transcript designations for two witnesses and noted “Plaintiffs  
25 intend to include these designations in the version it will be filing today with the court.” Then, on  
26 August 5, 2010 at 7:38 p.m., Defendants responded to Plaintiffs’ additional 137 initial  
27 designations by emailing Defendants’ responsive counter designations for those witnesses.

28 I declare under penalty of perjury under the laws of the United States and the State of

1 California that the foregoing is true and correct. Executed this 19th day of August, 2010 in  
2 Houston, Texas.

3 /s/ Scott W. Cowan  
4 Scott W. Cowan  
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