

1 Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
2 Elaine Wallace (SBN 197882)
JONES DAY
3 555 California Street, 26th 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 jlfuncs@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 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
DEFENDANTS' MOTION TO STAY
OR EXTEND TIME TO COMPLY
WITH JULY 3, 2008 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. in the above-captioned action. I
5 make this declaration based on personal knowledge and, if called upon to do so, could testify
6 competently thereto.

7 1. On July 3, 2008, the Magistrate Judge issued an order directing, among other
8 things, defendants to produce to Oracle, no later than July 15, 2008, certain documents produced
9 to the grand jury. Dkt. 106.

10 2. On July 13, 2006, defendants filed a Stipulation and [Proposed] Order to Extend
11 Time to Comply with Discovery Order, requesting an extension to July 23, 2008 to comply with
12 the discovery order on grounds, among others, that defendants' wanted the full period of time
13 until July 18, 2008 to decide whether to appeal. Dkt. 113. On July 17, 2008, the Magistrate
14 Judge granted this extension. Dkt. 115.

15 3. In my declaration in support of the stipulated order, I explained that if defendants
16 decided to appeal, to avoid mootness of the appeal, they would seek a stay of that part of the order
17 requiring defendants to produce to Oracle documents provided to the grand jury. Dkt. 114.

18 4. Defendants have now decided to appeal the order by filing objections with Judge
19 Hamilton and thus defendants request an additional extension of time to comply with the order
20 until a date seven (7) days after the disposition by Judge Hamilton of defendants' objections.

21 5. If defendants were required to comply with the order before their objections are
22 decided by Judge Hamilton, the resulting production of the documents would moot some or all of
23 the defendants' objections. Without an extension, substantial harm or prejudice will occur to
24 defendants as the required production would disclose the materials that defendants maintain are
25 protected by Fed. R. Crim. P. 6(e) and should not be produced to Oracle. Once that disclosure
26 has been made it cannot be undone as a practical matter.

27

28

