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13 Attorneys for Plaintiffs  
14 Oracle Corporation, Oracle USA, Inc.,  
and Oracle International Corporation

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION  
18

19 ORACLE CORPORATION, a Delaware  
20 corporation, ORACLE USA, INC., a Colorado  
21 corporation, and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

22 Plaintiffs,

23 v.

24 SAP AG, a German corporation, SAP  
25 AMERICA, INC., a Delaware corporation,  
TOMORROWNOW, INC., a Texas corporation,  
and DOES 1-50, inclusive,

26 Defendants.  
27  
28

No. 07-CV-1658 EMC

**DECLARATION OF GEOFFREY M.  
HOWARD IN SUPPORT OF  
ORACLE'S MOTION FOR INTERIM  
PRESERVATION ORDER AND  
MEET AND CONFER SCHEDULE  
FOR FINAL PRESERVATION  
MOTION**

Date: June 6, 2007

Time: 10:30 a.m.

Judge: The Honorable Edward M. Chen  
Courtroom C, 15th Floor

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I, Geoffrey M. Howard, declare:

1. I am a member of the State Bar of California and a partner at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle Corporation, Oracle USA, Inc., and Oracle International Corporation (together "Oracle") in this action. Except for matters stated below on information and belief, I have personal knowledge of the matters stated in this declaration by virtue of my representation of Oracle in this action. If called and sworn as a witness, I could and would competently testify to such matters.

2. On March 22, 2007, the same day Oracle filed its Complaint in this action, I sent letters, by facsimile and overnight express mail, to each of the defendants in this action requesting that they take immediate steps to prevent the destruction or alteration of any relevant materials. I enclosed a proposed stipulated preservation order with each letter. I sent these letters to the General Counsel's offices for both SAP AG and SAP America, Inc., and to the President and CEO of TomorrowNow, Inc. Attached as Exhibit A is a true and correct copy of the letter sent to SAP America, including a true and correct copy of the proposed order. SAP initially assured Oracle that it was aware of and intended to comply with its preservation obligations, and stated that SAP's counsel would contact Oracle shortly to meet and confer regarding the preservation obligations. Attached as Exhibit B is a true and correct copy of the letter from SAP America, Inc.'s In-House Counsel, Brad Brubaker, dated March 26, 2007 in response to the March 22, 2007 letters that I sent on Oracle's behalf.

3. Based on SAP's assurances, we waited to hear further word from SAP's counsel. The next contact did not come until April 4, 2007, when I am informed and believe through discussions with my colleague, Chris Hockett, that SAP's counsel, Robert Mittelstaedt, made contact with Mr. Hockett by telephone to request an extension on SAP's time to respond to the Complaint. I am informed and believe through discussions with my colleague, Chris Hockett, that Mr. Hockett asked for SAP's comments on the draft preservation order, and was told that SAP's counsel, Greg Lanier, would call me later that day to follow-up on the draft preservation order. After not receiving a follow-up call, I called Mr. Lanier the next day. His secretary

1 informed me that Mr. Lanier was on vacation, but would return the call later the same day. That  
2 call did not happen either. Instead, Mr. Lanier did not return my call until April 19th. On that  
3 call, Mr. Lanier again assured me that SAP was preserving their documents, that they did not  
4 object to a preservation order in concept, and that they would provide their comments to that  
5 order shortly.

6 4. We followed up on that phone call the same day with an email requesting SAP  
7 provide comments on the draft preservation order. Attached as Exhibit C is a true and correct of  
8 the email message sent from Mr. Alinder to Mr. Lanier and copied to me and others, dated April  
9 19, 2007. SAP's counsel did not provide any response to that request. We again sought SAP's  
10 thoughts and comments on the draft preservation order in two more emails dated April 23, 2007  
11 and another email on April 26, 2007. Attached as Exhibit D is a true and correct of the email  
12 message sent from Mr. Alinder to Mr. Lanier and copied to me and others, dated April 23, 2007.  
13 Attached as Exhibit E is a true and correct of the second email message sent from Mr. Alinder to  
14 Mr. Lanier and copied to me and others, dated April 23, 2007. Attached as Exhibit F is a true  
15 and correct copy of the email message sent from Mr. Alinder to Mr. Lanier and copied to me and  
16 others, dated April 26, 2007. As of the signing of this declaration, we received no response to  
17 those requests either.

18 5. Instead, in a related email copied to me, SAP's counsel refused to engage in early  
19 informal discovery as proposed by Oracle, and stated that "it is questionable, at least, whether  
20 Oracle will be entitled in formal discovery to all the materials it seeks by its request below."  
21 Attached as Exhibit G is a true and correct of the email message sent from Mr. Lanier to Mr.  
22 Alinder and copied to me and others, dated April 27, 2007. In that informal discovery exchange,  
23 Oracle had requested information related to (a) materials that SAP had downloaded from Oracle,  
24 (b) communications related to those downloads, (c) how SAP accessed and stored these  
25 materials, (d) what use SAP had made of the materials downloaded from Oracle, and (e)  
26 contracts for customers named in the complaint. Those categories are included in the email from  
27 Mr. Alinder to Mr. Lanier, dated April 23, 2007, and attached as Exhibit E.

28 6. Attached as Exhibit H is a true and correct of the April 24, 2007 article from

1 Information Week, in which SAP's CEO admitted that SAP is doing its own internal  
2 investigation of the allegations in Oracle's complaint, an online copy of which is at  
3 <<http://wap.informationweek.com/showArticle.jhtml?articleID=199201225>>.

4 I declare under penalty of perjury under the laws of the United States of America  
5 that the foregoing is true and correct.

6 Executed on April 30, 2007 in San Francisco, California.

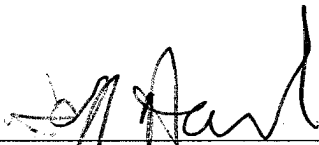
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11 \_\_\_\_\_  
12 Geoffrey M. Howard  
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EXHIBIT A

BINGHAM McCUTCHEN

Geoffrey M. Howard  
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Direct Fax: (415) 393-2286  
geoff.howard@bingham.com

March 22, 2007

**Urgent**

**Via Express Mail and Facsimile**

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SAP America Inc.  
Strategic Planning & Support Office  
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Fax: +610-661-4013

**Re: Oracle v. SAP AG, et al.: Preservation of Discoverable Materials**

Dear Mr. Brubaker:

As you are no doubt aware, Oracle Corporation, Oracle USA, Inc. and Oracle International Corporation (collectively "Oracle") have filed a Complaint today in the United States District Court for the Northern District of California against SAP AG, SAP America, Inc. and TomorrowNow, Inc. (collectively "SAP"). Your authorized agents for service of process have been served with the Complaint.

This letter concerns the issue of preservation of potentially relevant documents. The issues raised in Oracle's Complaint are of serious concern to Oracle, and we are treating this matter with the utmost urgency and care.

Given the nature of the issues raised in Oracle's Complaint, the evidence in SAP's possession will be critically important to Oracle's case. Because much of that evidence resides on digital media, it is inherently fragile. We are concerned that even SAP's ongoing good faith business operations could cause the loss or alteration of data critical to a full exploration and determination regarding the extent of SAP's access to, taking of, and use of the information copied from Oracle's systems.

Therefore, I write to emphasize your obligations under the law to preserve all relevant documents, data or tangible things in your possession, custody, or control that relate to the subject matter of Oracle's Complaint ("Relevant Material"). Of course, because Relevant Material includes electronic data, you must take immediate action to safeguard these materials and ensure that they are not deleted, manipulated, or otherwise altered from their original state.

TomorrowNow, Inc.  
SAP America Inc.  
SAP AG  
March 22, 2007  
Page 2

Bingham McCutchen LLP  
bingham.com

To assure that all parties will strictly adhere to these obligations, we propose that Oracle and SAP stipulate to an order setting requirements for the preservation of relevant materials in this action. A draft stipulated preservation order is enclosed with this letter. Please let me know whether you will enter into this stipulation, and if not, whether you or your outside counsel are available to meet and confer with us on these issues. Oracle reserves its right to seek a preservation order from the Court if the parties do not reach prompt agreement.

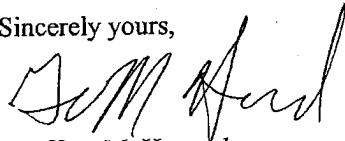
In the interim, please immediately take steps to prohibit the erasing, alteration, deletion, and/or destruction of any relevant materials without making complete and accurate duplicates or copies of such material, suitable for inspection and/or production in this litigation. Any such duplicate or copy should be preserved in a form that will not result in the loss or alteration of any data, and such that it will be accessible for the purposes of this action.

Similarly, no relevant material created subsequent to the date of delivery of this letter should be deleted, manipulated, or otherwise altered from its original state. You should take all appropriate steps to avoid destruction of evidence.

We request also that you provide a copy of this letter, and its attachment, to each of your respective IT departments, as well as the persons whose job responsibilities cover the matters addressed in Oracle's Complaint.

Given the urgency of the issues described in the Complaint, we ask for your response to this letter no later than March 28, 2007.

Sincerely yours,



Geoffrey M. Howard  
Attorney for Oracle Corporation, Oracle USA, Inc.  
and Oracle International Corporation

Enclosure

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13 Attorneys for Plaintiffs  
 14 Oracle Corporation, Oracle USA, Inc.,  
 15 and Oracle International Corporation

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN FRANCISCO DIVISION

19 ORACLE CORPORATION, a Delaware  
 20 corporation, ORACLE USA, INC., a Colorado  
 21 corporation, and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

22 Plaintiffs,

23 v.

24 SAP AG, a German corporation, SAP  
 25 AMERICA, INC., a Delaware corporation,  
 TOMORROWNOW, INC., a Texas corporation,  
 and DOES 1-50, inclusive,

26 Defendants.

No.

**STIPULATED [PROPOSED]  
 PRESERVATION ORDER**

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1 Through their counsel of record, the Parties in the above-captioned action (the  
2 “Litigation”) hereby stipulate and agree as follows:

3 1. “All” includes “any” and “each,” and vice versa.

4 2. “And” and “or,” as used below, shall be construed both conjunctively and  
5 disjunctively and each shall include the other whenever such construction will serve to bring  
6 within the scope of this Order any information that would not otherwise be brought within its  
7 scope.

8 3. “Documents, Data, and Tangible Things” is to be interpreted broadly and includes  
9 all forms of writings, tangible things, and other documents contemplated by Federal Rule of  
10 Civil Procedure 34 and/or Federal Rule of Evidence 1001. This includes without limitation  
11 writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes;  
12 electronic messages; voicemail; e-mail; telephone message records or logs; computer and  
13 network activity logs; hard drives; backup data; removable computer storage media such as  
14 tapes, disks, and cards; printouts; document image files; web pages; databases; spreadsheets;  
15 software; hardware; books; ledgers; journals; orders; invoices; bills; vouchers; checks;  
16 statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic  
17 presentations; drawings; films; charts; digital or chemical process photographs; video,  
18 phonographic, tape, or digital recordings or transcripts thereof; drafts; jottings; and notes.  
19 Information that serves to identify, locate, or link such material, such as file inventories, file  
20 folders, indices, and metadata, is also included in this definition.

21 4. “Oracle” means plaintiffs Oracle Corporation, Oracle USA, Inc., and Oracle  
22 International Corporation.

23 5. “SAP” means defendants SAP AG, SAP America, Inc., TomorrowNow, Inc.,  
24 their predecessors, and their successors.

25 6. “SAP TN” or “TomorrowNow” mean defendant, TomorrowNow, Inc., its  
26 predecessors, and its successors.

27 7. “Software and Support Materials” means, without limitation, all program updates,  
28 software updates, bug fixes, patches, custom solutions, and instructional materials across the

1 entire family of Oracle software products.

2 8. "Communication" means any and all contact or transmission of information  
3 between two or more Persons, whether in a face-to-face meeting, telephone conversation, or  
4 otherwise, or whether by letter, electronic mail, instant messaging system, facsimile  
5 transmission, cable, letters, correspondence, video conference, message, or any other method or  
6 medium of information transfer or exchange.

7 9. "Customer Connection" means the Oracle-maintained support website for  
8 Peoplesoft and JD Edwards customers and all associated Software and Support Materials,  
9 Documents, Data, and Tangible Things, hardware, software, physical server locations, and  
10 internet protocol addresses.

11 10. "Change Assistant" means that Oracle software used to search, select, download,  
12 and deploy software updates from Customer Connection.

13 11. "Download" means any duplication, copying, or replication, in whole or in part.

14 12. "Named Customers" refers to the following current or former customers of SAP  
15 TN: Abbot Laboratories, Abitibi-Consolidated Inc., Allianz of America, Bear, Stearns & Co.,  
16 Berri Limited, Border Foods, Caterpillar Elphinstone, Distrubution & Auto, Fuelserv Limited,  
17 Grupo Costamex S.A. de C.V., Helzberg Diamonds, Herbvert Waldman, Honeywell  
18 International, Interbrew UK, Laird Plastics, Inc., Merck & Co., Metro Machines, Mortice Kern  
19 Systems Inc., National Manufacturing Company, NGC Management Limited, OCE-  
20 Technologies B.V., Perot Systems, Phelps Dodge, Ronis SA, Sandia Labs Federal Credit Union,  
21 Smithfield Foods, SPX Corporation, Stora Enso, Texas Association of School Boards, VSM  
22 Group AB, and Yazaki North America.

23 13. "Person(s)" means, without limitation, any individual, corporation, partnership,  
24 limited partnership, or legal entity and includes the present and former officers, executives,  
25 directors, employees, attorneys, agents, representatives, and all other Persons acting or  
26 purporting to act on behalf of any of them, and any of their present or former parent  
27 corporations, subsidiaries, affiliates, divisions, predecessors, and successors in interest.

28 14. To "Use" means to access, transmit, maintain, manage, store, or otherwise interact

1 with.

2 15. "Customer Contracts" means contracts and agreements with customers for the  
3 license of software programs and related technical support services, including, but not limited to  
4 Terms and Conditions, ordering documents, incorporated policies, and service agreements and  
5 any exhibits and addenda relating to such contracts and agreements.

6 16. "Party" means each party to the Litigation.

7 17. "Preservation" and "Preserve" are to be interpreted broadly to accomplish the  
8 goal of maintaining the integrity of all Documents, Data, and Tangible Things reasonably  
9 anticipated to be subject to discovery under the Federal Rules of Civil Procedure in this action.  
10 Preservation includes without limitation taking reasonable steps to prevent the partial or full  
11 destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration,  
12 theft, or mutation of such material, as well as negligent or intentional handling that would make  
13 material incomplete or inaccessible.

14 18. During the pendency of the Litigation, each Party shall Preserve Any and All  
15 Documents, Data, and Tangible Things within its possession, custody or control, relevant to any  
16 of the issues raised in Oracle's Complaint, including without limitation:

- 17 a. Any Software and Support Materials SAP has Used, Downloaded, or  
18 otherwise taken on behalf of any SAP Customer, including without  
19 limitation the Named Customers, and the individuals involved in all such  
20 Uses and Downloads.
- 21 b. SAP's Use of Customer Connection and Change Assistant in the name of,  
22 or Use of the log-in credentials of, any SAP Customer, including without  
23 limitation the Named Customers.
- 24 c. Any of SAP TN's computers used to access or connect through Customer  
25 Connection or Change Assistant and/or to Use or Download Oracle's  
26 Software and Support Materials, including without limitation the  
27 computers known as: CNU51405KW, CO-AGhosh-L01,  
28 COi808745L01, dcdevtestpc, dcdl01, dcdl02, dcdl03, dcdl05, dcdl06,

1 dcdl07, dcdl09, dcdl10, dcdl11, dcdl12, dcdl13, dcdl15, dcdl16, dcdl17,  
2 dcdl18, DCDL19. dcdl20, dcjddev02, dcjdent02, DCTEMPDWLD01,  
3 hqawoodspc01, HQi809240L02, jd-dev03, L34217Z, LeasedDesktop27,  
4 tn-dl02, TN-DL03, TN-DL08, TNL-02, and tn-wts01.

- 5 d. SAP's network environment and architecture, including any internet  
6 protocol addresses, hardware (including server names and architecture),  
7 software, or other means used to (i) Use or Download from, or connect  
8 through, Customer Connection or Change Assistant; (ii) Use any  
9 materials Downloaded in the course of such access; or (iii) communicate  
10 through electronic mail or instant messaging within SAP TN or between  
11 SAP TN and SAP America, Inc. or SAP AG.
- 12 e. Any database or other storage device, method, or application by which  
13 SAP Uses Oracle's Software and Support Materials.
- 14 f. All patches, updates, fixes, or other software or code provided by SAP  
15 TN to any of SAP TN's customers since January 1, 2003.
- 16 g. What SAP has done with the Software and Support Materials that SAP  
17 has Used or Downloaded, including, without limitation:
- 18 i. all copies made,
  - 19 ii. all customers or other third parties to whom SAP has provided  
20 Software and Support Materials that SAP has Used or  
21 Downloaded,
  - 22 iii. how SAP has been storing the Software and Support Materials  
23 that SAP Used or Downloaded, and how SAP is storing them now,
  - 24 iv. how SAP has been regulating access to the Software and Support  
25 Materials that SAP has Used or Downloaded, and how access is  
26 regulated now,
  - 27 v. who has had access to the Software and Support Materials that  
28 SAP has Used or Downloaded, and who has access now, and

- 1 vi. all SAP's plans for further Use of any Software and Support
- 2 Materials.
- 3 h. Information reflecting SAP's unauthorized access to, and taking of
- 4 information from, Oracle's systems.
- 5 i. SAP's Customer Contracts related to all of SAP TN's current or former
- 6 customers.
- 7 j. SAP's "Safe Passage" program.
- 8 k. Oracle's losses related to SAP's unauthorized access to, and taking of
- 9 information from, Oracle's systems.
- 10 l. Customer Contracts related to former PeopleSoft, JD Edwards, and/or
- 11 Siebel customers.
- 12 m. Terms and conditions and/or other legal restrictions related to Customer
- 13 Connection.

14 19. During the pendency of the Litigation, if the business processes of any Party  
15 involve the routine destruction, recycling, relocation, alteration or mutation of Documents, Data,  
16 and Tangible Things within its possession, custody or control and relevant to any of the issues  
17 raised in Oracle's Complaint the Party must, to the extent practicable for the pendency of this  
18 order, either:

- 19 a. halt such business processes; or
- 20 b. sequester or remove such material from the business processes; or
- 21 c. confirm the separate existence of a complete and accurate duplicates or
- 22 copies of such material that are suitable for inspection and/or production
- 23 in later discovery if requested; or
- 24 d. arrange for the Preservation of complete and accurate duplicates or copies
- 25 of such material, suitable for inspection and/or production in later
- 26 discovery if requested.

27 Notwithstanding the above, neither Party shall be required to alter any business process that  
28 affects only disaster recovery/backup tapes provided that information contained in the disaster

1 recovery/backup tapes is used, and intended for use, solely for disaster recovery purposes.

2 20. During the pendency of the Litigation, no Party shall knowingly erase, alter,  
3 delete, or otherwise destroy any Document, Data or Tangible Thing within its possession,  
4 custody, or control that is relevant to the issues raised in plaintiff's Complaint without making  
5 complete and accurate duplicates or copies of such material, suitable for inspection and/or  
6 production in later discovery if requested, or confirming the separate existence of a complete and  
7 accurate duplicates or copies of such material that are suitable for inspection and/or production in  
8 later discovery if requested. Each Party will retain its duplicates or copies of any Document,  
9 Data or Tangible Thing in the form in which the Document, Data or Tangible Thing is normally  
10 kept.

11 21. No Party shall knowingly transfer, sell, or otherwise dispose of any computer  
12 and/or computer equipment, including personal computers, servers, hard drives or other storage  
13 devices, that contains any Document, Data or Tangible Thing relevant to any of the issues raised  
14 in Oracle's Complaint, in any form, whether active, deleted, or fragmented, unless the Party has:

15 a. first made or confirmed the separate existence of a complete and accurate  
16 duplicate or copy of such material that is suitable for inspection and/or  
17 production in later discovery if requested; or

18 b. first given all other Parties a reasonable opportunity to inspect and copy  
19 the Document, Data or Tangible Thing before the computer and/or  
20 computer equipment is transferred, sold or otherwise disposed of by the  
21 Party.

22 22. This Preservation Order is without prejudice to the right of any Party to seek other  
23 or further relief from the Court.

24 23. This Preservation Order shall not be construed as waiving any right to assert a  
25 claim of privilege, relevance, overbreadth, burdensomeness or other grounds for not producing  
26 material called for, and access to such material shall be only as otherwise provided by the  
27 discovery rules and other applicable laws.

28 24. In the event that any Person or Party violates or threatens to violate the terms of

1 this Preservation Order, the aggrieved disclosing party may immediately apply to obtain relief  
2 against any such Person or Party violating or threatening to violate any of the terms of this  
3 Preservation Order. The Parties and any other Person subject to the terms of this Preservation  
4 Order agree that this Court shall retain jurisdiction over it and them for the purpose of enforcing  
5 this Preservation Order.

6 25. The Parties may agree in writing to reasonable modifications of this Preservation  
7 Order.

8 26. This Order is made without prejudice to either Party seeking a further Order  
9 concerning any Document, Data or Tangible Thing, or other information felt to be entitled to  
10 Preservation.

11 Respectfully Submitted:

12 By:  
13 Dated:  
14 Geoffrey M. Howard  
15 BINGHAM McCUTCHEN LLP  
16 Three Embarcadero Center  
17 San Francisco, CA 94111-4067  
18 Telephone: (415) 393-2000  
19 Facsimile: (415) 393-2286

20 Attorneys for Plaintiffs  
21 Oracle Corporation, Oracle  
22 International Corporation and Oracle  
23 USA, Inc.

24 By:  
25 Dated:

26 Brad Brubaker, General Counsel  
27 SAP America Inc.  
28 3999 West Chester Pike  
Newtown Square, PA 19073  
Telephone: (610) 661-1000  
Facsimile: (610) 661-4013

By:  
Dated:  
Sven Düsterhaus, General Counsel  
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Dietmar-Hopp-Allee 16  
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Telephone: (49) 6227-74-74-74  
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By:  
Dated:  
Andrew Nelson, President & Chief Executive Officer  
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1716 Briarcrest Drive  
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Bryan, Texas 77802  
Telephone: (979) 691-4100  
Facsimile: (979) 691-4110

26 IT IS SO ORDERED:

27 DATED: \_\_\_\_\_, 2007

By: \_\_\_\_\_  
United States District Court Judge

28

**BINGHAM McCUTCHEN**

# Facsimile

DATE: March 22, 2007

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- Tokyo
- Walnut Creek
- Washington

	NAME	FAX	PHONE
TO:	Brad Brubaker SAP America, Inc.	(610) 661-4013	(610) 661-1000

FROM: Geoffrey M. Howard (415) 393-2286 (415) 393-2485  
 geoff.howard@bingham.com

PAGES: (INCLUDING THIS COVER PAGE): 11

RE: Oracle v SAP AG

**MESSAGE:**

**For transmission problems, please call (415) 393-2174**

The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. If you are neither the intended recipient(s) nor a person responsible for the delivery of this transmittal to the intended recipient(s), you are hereby notified that any unauthorized reading, distribution, copying or disclosure of this transmittal is prohibited. If you have received this transmittal in error, please notify us immediately at (same telephone number as in first paragraph - will duplicate) and return the transmittal to the sender. Thank you.

Timekeeper No:	21117	Client/Matter No:	2021039	DATE/TIME STAMP
Client/Matter Name:	0000324170			
Return To:	Silvana R. Kruger	Floor No:		

SF/21707314.1



EXHIBIT B



Brad C. Brubaker  
Sr. Vice President, General Counsel  
and Corporate Secretary

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March 26, 2007

Via Facsimile and U.S. Mail  
415-393-2286

Geoff Howard, Esquire  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA 94111

**Re: Oracle Corp. et al. v. SAP AG et al.: Preservation of Records**

Dear Mr. Howard:

This letter responds to your letters of March 22, 2007, with respect to preservation of documents.

TomorrowNow, Inc. and SAP are aware of their obligations under applicable rules to preserve records with respect to this litigation and intends fully to comply with all such obligations.

We assume that the Plaintiffs themselves have been preserving records in accordance with their obligations, including, by way merely of example and without limitation, records of access to the Customer Connection or Change Assistant by any customers, their agents, or other persons; records relating to entry of, execution, policing, interpretation and implementation of the confidentiality and other agreements in the Complaint; records of dealings with customers who allegedly have been subject to issues described in the Complaint; investigation of TomorrowNow's activities as referred to in the Complaint; and records relating to its competition with SAP that Oracle alludes to in its Complaint. Though we have only recently been advised of Oracle's claims, we assume that there are many other subjects as to which Oracle also has been preserving its records; this list is not meant to be exclusive of Oracle's other obligations.

Geoff Howard, Esquire  
March 26, 2007  
Page II



We have no objection to the parties meeting and conferring with respect to mutual obligations to preserve documents. Like Oracle, however, we believe this should be handled by outside litigation counsel. We will have counsel contact you in this regard shortly.

Please let me know if you have any questions.

Sincerely,  
SAP America, Inc.

*Brad C. Brubaker* (doh)  
Brad C. Brubaker

BCB:doh

EXHIBIT C

From: Alinder, Zachary J.  
Sent: Thursday, April 19, 2007 2:56 PM  
To: 'tglanier@jonesday.com'; 'jfroyd@jonesday.com'  
Cc: Howard, Geoff; Hockett, Chris; Hann, Bree  
Subject: FW: Draft Protective Order

Attachments: Proposed Protective Order.DOC

Dear Greg and Jane,  
Nice meeting you on the phone this afternoon. As discussed, attached to this email is the draft protective order that we sent to Bob last week. We look forward to your comments on this and the draft preservation order as well.  
Best regards,  
Zac Alinder

---

From: Hockett, Chris  
Sent: Tuesday, April 10, 2007 1:30 PM  
To: Robert A Mittelstaedt  
Cc: Howard, Geoff; Alinder, Zachary J.  
Subject: Draft Protective Order

Bob,

As we discussed yesterday, here is a draft protective order for your consideration. Please let us know any comments you have on it.

Chris

EXHIBIT D

From: Alinder, Zachary J.  
Sent: Monday, April 23, 2007 10:48 AM  
To: 'Greg Lanier'  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Hi Greg,

Thanks for your message and hope you all had a nice weekend as well. We look forward to hearing your comments on the draft protective and preservation orders.

As for the document exchange discussed last week, what we have in mind is an exchange of formal document requests with an expedited response, and then a meet and confer process to accomplish the goal of the informal exchange. In spite of the expedited nature of the process, the production of documents like customer license agreements needs to be pursuant to formal discovery requests and subject to a protective order. If you confirm that this is something that you would like to proceed on, we will move forward with putting together our requests for exchange.

Best regards,  
Zac Alinder

Bingham McCutchen LLP  
3 Embarcadero Center  
San Francisco, CA 94111  
415-393-2226 (ph)  
415-393-2286 (fax)

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Monday, April 23, 2007 9:36 AM  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com; Alinder, Zachary J.  
Subject: Re: FW: Draft Protective Order

Zach, I hop eyou had a good weekend. We lost some folks for the weekend but expect to get back to you today or by early tomorrow morning on the draft protective order and proposed retention order. Are you in a position to send Oracle's request for informal discovery discussed on our call and mentioned in Geoff's voicemail of last week?

Thanks,

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

Greg  
Lanier/JonesDay  
Extension 33941

04/19/2007 03:00  
PM

"Alinder, Zachary J."  
<zachary.alinder@bingham.com>

To

cc

"Hann, Bree"  
<bree.hann@bingham.com>, "Hockett,  
Chris" <chris.hockett@bingham.com>,  
"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jffroyd@jonesday.com  
Subject  
Re: FW: Draft Protective Order  
(Document link: Greg Lanier)

Thanks. You now have my contacts (below). We'll get back to you soon, as discussed, and look forward to hearing from you re the request for licenses/confidentiality agreements for the customers mentioned in the complaint.

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tgranier@jonesday.com

"Alinder, Zachary  
J."  
<zachary.alinder@  
bingham.com>

04/19/2007 02:56  
PM

tgranier@jonesday.com,  
jffroyd@jonesday.com

To

CC

"Howard, Geoff"  
<geoff.howard@bingham.com>,  
"Hockett, Chris"  
<chris.hockett@bingham.com>, "Hann,  
Bree" <bree.hann@bingham.com>

Subject

FW: Draft Protective Order

Dear Greg and Jane,  
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Best regards,  
Zac Alinder

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From: Hockett, Chris  
Sent: Tuesday, April 10, 2007 1:30 PM  
To: Robert A Mittelstaedt  
Cc: Howard, Geoff; Alinder, Zachary J.  
Subject: Draft Protective Order

Bob,

As we discussed yesterday, here is a draft protective order for your consideration. Please let us know any comments you have on it.

Chris

<<Proposed Protective Order.DOC>>

=====

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=====

(See attached file: Proposed Protective Order.DOC)

=====

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=====

EXHIBIT E

From: Alinder, Zachary J.  
Sent: Monday, April 23, 2007 5:40 PM  
To: 'Greg Lanier'  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Hi Greg,

As requested, here are the general categories of information that we would request Defendants provide on an expedited basis:

- (1) materials Defendants downloaded from Customer Connection since Sept. 1, 2006 on behalf of customers named in the complaint.
- (2) communications since Sept. 1, 2006 relating to those downloads, including between customers and Defendants.
- (3) Defendants' means of accessing Customer Connection, including the hardware, software, and network systems used, associated logs, forensic images, network diagrams, and IP addresses.
- (4) Defendants' means of storing materials downloaded from Customer Connection.
- (5) support materials provided by TomorrowNow to its customers since Sept. 1, 2006.
- (6) Defendants' use of materials downloaded from Customer Connection.
- (7) contracts with customers in the complaint.

We could turn these categories relatively quickly into a small set of formal document requests for each side to exchange and respond to on an expedited basis. As described earlier, we would then anticipate a fairly brief meet and confer process followed (assuming a protective order had been entered) by production.

We look forward to hearing your thoughts and/or comments on this proposed informal discovery, as well as the proposed preservation and protective orders.

Best regards,  
Zac

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Monday, April 23, 2007 11:00 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Thanks, Zac, for clarifying your desired approach. The mechanics of documenting the scope of our informal discovery requests (or any formalization that may be required for customer consent), can be quickly resolved (probably in the manner you've suggested, though I'll re-read and let you know if we have any problems with that), if we agree that the scope of what each side is seeking in early, informal discovery is something manageable on an that basis. You understand our present request (the licenses and related confidentiality agreements as to those customers mentioned in the complaint), and we hope to learn as quickly as possible what you would seek in exchange.

So, would it be possible for you to let us know today the categories of information you'd be seeking on an expedited basis? The substance will drive agreement here, as the process issues are not that challenging.

Thanks,

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]

Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary  
J."  
<zachary.alinder@  
bingham.com>

"Greg Lanier"  
<tglanier@JonesDay.com>

TO

CC

04/23/2007 10:47  
AM

"Hann, Bree"  
<bree.hann@bingham.com>, "Hockett,  
Chris" <chris.hockett@bingham.com>,  
"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jfroyd@jonesday.com

Subject

RE: FW: Draft Protective Order

Hi Greg,

Thanks for your message and hope you all had a nice weekend as well. We look forward to hearing your comments on the draft protective and preservation orders.

As for the document exchange discussed last week, what we have in mind is an exchange of formal document requests with an expedited response, and then a meet and confer process to accomplish the goal of the informal exchange. In spite of the expedited nature of the process, the production of documents like customer license agreements needs to be pursuant to formal discovery requests and subject to a protective order.

If you confirm that this is something that you would like to proceed on, we will move forward with putting together our requests for exchange.

Best regards,  
Zac Alinder

Bingham McCutchen LLP  
3 Embarcadero Center  
San Francisco, CA 94111  
415-393-2226 (ph)  
415-393-2286 (fax)

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]

Sent: Monday, April 23, 2007 9:36 AM

Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com; Alinder, Zachary J.

Subject: Re: FW: Draft Protective Order

Zach, I hop eyou had a good weekend. We lost some folks for the weekend but expect to get back to you today or by early tomorrow morning on the draft protective order and proposed retention order. Are you in a position to send Oracle's request for informal discovery discussed on our call and mentioned in Geoff's voicemail of last week?

Thanks,

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

Greg

Lanier/JonesDay

Extension 33941

To

"Alinder, Zachary J."

04/19/2007 03:00

<zachary.alinder@bingham.com>

PM

CC

"Hann, Bree"

<bree.hann@bingham.com>, "Hockett,  
Chris"

<chris.hockett@bingham.com>,

"Howard, Geoff"

<geoff.howard@bingham.com>,

jfroyd@jonesday.com

Subject

Re: FW: Draft Protective Order

(Document link: Greg Lanier)

Thanks. You now have my contacts (below). We'll get back to you soon, as discussed, and look forward to hearing from you re the request for licenses/confidentiality agreements for the customers mentioned in the complaint.

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary  
J."  
<zachary.alinder@  
bingham.com> tglanier@jonesday.com,  
jfroyd@jonesday.com

CC 04/19/2007 02:56 PM "Howard, Geoff"  
<geoff.howard@bingham.com>,  
"Hockett, Chris"  
<chris.hockett@bingham.com>, "Hann,  
Bree" <bree.hann@bingham.com>

subject FW: Draft Protective Order

Dear Greg and Jane,  
Nice meeting you on the phone this afternoon. As discussed, attached to this email is the draft protective order that we sent to Bob last week.  
We look forward to your comments on this and the draft preservation order as well.

Best regards,  
Zac Alinder

---

From: Hockett, Chris  
Sent: Tuesday, April 10, 2007 1:30 PM  
To: Robert A Mittelstaedt  
Cc: Howard, Geoff; Alinder, Zachary J.  
Subject: Draft Protective Order

Bob,

As we discussed yesterday, here is a draft protective order for your consideration. Please let us know any comments you have on it.

Chris

<<Proposed Protective Order.DOC>>

=====  
=====

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If you have received this email in error, please notify me immediately by reply email, delete this email, and do not disclose its contents to anyone. Thank you.

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=====

(See attached file: Proposed Protective Order.DOC)

=====  
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**EXHIBIT F**



From: Alinder, Zachary J.  
Sent: Thursday, April 26, 2007 10:26 AM  
To: 'Greg Lanier'  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Greg,  
Thank you for the response to the proposed early exchange of information. We will discuss your response and get back to you on that. As to the protective order, many of your comments/suggestions will work for us, but we are still discussing a couple of the points that you raised. We expect to be able to respond to that shortly as well. In the meantime, if you have any comments on the proposed preservation order, please let us know those as well.  
Best regards,  
Zac

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Thursday, April 26, 2007 9:43 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Zac, we've considered Oracle's proposed categories of information for informal, early exchange. Oracle's requests are hardly "balanced" against the fairly simple request (customer licenses/confidentiality agreements) we made. Either Oracle does not intend for an early exchange of information or it intends to leverage the (asserted) confidentiality of customer contracts to obtain early and substantial discovery without providing meaningful discovery itself.

In any event, we will agree to an early exchange of similar information as the price imposed by Oracle to honor our request for specific, limited, easily accessible information. Specifically, we propose that Oracle provide the licenses/confidentiality agreements for the customers named in the complaint in exchange for which TomorrowNow will provide its contracts with the same customers. Such production would be subject to the protective order we're negotiating; alternatively, such production could be subject to a temporary "outside counsel only" agreement.

Please let us know Oracle's response.

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary J."  
<zachary.alinder@bingham.com>

04/23/2007 05:39 PM

"Greg Lanier"  
<tglanier@JonesDay.com>

"Hann, Bree"  
<bree.hann@bingham.com>, "Hockett,"  
Page 1

To  
  
cc

Chris" <chris.hockett@bingham.com>,  
"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jfroyd@jonesday.com

Subject  
RE: FW: Draft Protective Order

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We could turn these categories relatively quickly into a small set of formal document requests for each side to exchange and respond to on an expedited basis. As described earlier, we would then anticipate a fairly brief meet and confer process followed (assuming a protective order had been entered) by production.

We look forward to hearing your thoughts and/or comments on this proposed informal discovery, as well as the proposed preservation and protective orders.

Best regards,  
Zac

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]

Sent: Monday, April 23, 2007 11:00 AM

To: Alinder, Zachary J.

Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com

Subject: RE: FW: Draft Protective Order

Thanks, Zac, for clarifying your desired approach. The mechanics of documenting the scope of our informal discovery requests (or any formalization that may be required for customer consent), can be quickly resolved (probably in the manner you've suggested, though I'll re-read and let you know if we have any problems with that), if we agree that the scope of what each side is seeking in early, informal discovery is something manageable on an that basis. You understand our present request (the licenses and related confidentiality agreements as to those customers mentioned in the complaint), and we hope to learn as quickly as possible what you would seek in exchange.

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Thanks,

Greg

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1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary

J."

<zachary.alinder@

To

bingham.com>

"Greg Lanier"

<tglanier@JonesDay.com>

cc

04/23/2007 10:47

"Hann, Bree"

AM

<bree.hann@bingham.com>,

"Hockett,

Chris"

<chris.hockett@bingham.com>,

"Howard, Geoff"

<geoff.howard@bingham.com>,

jfroyd@jonesday.com

Subject

RE: FW: Draft Protective Order

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Best regards,  
Zac Alinder

Bingham McCutchen LLP  
3 Embarcadero Center  
San Francisco, CA 94111  
415-393-2226 (ph)  
415-393-2286 (fax)

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Monday, April 23, 2007 9:36 AM  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com; Alinder, Zachary J.  
Subject: Re: FW: Draft Protective Order

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Thanks,

Greg

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1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

Greg

Lanier/JonesDay

Extension 33941

To

"Alinder, Zachary J."

04/19/2007 03:00

<zachary.alinder@bingham.com>

PM

CC

"Hann, Bree"

<bree.hann@bingham.com>, "Hockett,  
Chris"

<chris.hockett@bingham.com>,

"Howard, Geoff"

<geoff.howard@bingham.com>,

jfroyd@jonesday.com

Subject

Re: FW: Draft Protective Order

(Document link: Greg Lanier)

Thanks. You now have my contacts (below). We'll get back to you soon, as discussed, and look forward to hearing from you re the request for licenses/confidentiality agreements for the customers mentioned in the complaint.

Greg

Tharan Gregory Lanier  
[PLEASE NOTE NEW ADDRESS]  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary

J."

<zachary.alinder@

To

bingham.com>

tglanier@jonesday.com,

Page 5

jfroyd@jonesday.com

cc

04/19/2007 02:56

"Howard, Geoff"

PM

<geoff.howard@bingham.com> ,

"Hockett, Chris"

<chris.hockett@bingham.com> , "Hann,  
Bree" <bree.hann@bingham.com>

Subject

FW: Draft Protective Order

Dear Greg and Jane,  
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We look forward to your comments on this and the draft preservation order as well.

Best regards,  
Zac Alinder

---

From: Hockett, Chris  
Sent: Tuesday, April 10, 2007 1:30 PM  
To: Robert A Mittelstaedt  
Cc: Howard, Geoff; Alinder, Zachary J.  
Subject: Draft Protective Order

Bob,

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Chris

<<Proposed Protective Order.DOC>>

=====  
=====  
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If you have received this email in error, please notify me immediately by reply email, delete this email, and do not disclose its contents to anyone. Thank you.  
=====

=====  
(See attached file: Proposed Protective Order.DOC)

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If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
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=====

EXHIBIT G



From: Greg Lanier [tglanier@JonesDay.com]  
Sent: Friday, April 27, 2007 9:59 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Zac, we decline to proceed with the informal exchange on the terms Oracle seeks to impose, and repeat our request that the Oracle and TomorrowNow promptly exchange the relevant licenses/agreements, for several reasons.

First, we obviously have a different understanding of what a "balanced" exchange would entail. We think that means an exchange of information as to which the burdens of production are balanced. Plainly, trading a group of contracts is such a balanced exchange, and what Oracle has proposed is not.

Second, what Oracle proposes to do cannot reasonably be accomplished on an informal basis over the next few days, as we had hoped when we started this discussion. The problem would be exacerbated were we to "balance" the situation by requesting Oracle produce materials of equal burden, as Oracle proposes. For just some examples, to balance the exchange, we would be required to seek documents reflecting Oracle's policies, procedures, communications and actual conduct with respect to: access to Customer Connection by customers and their agents; the contracts, licenses and confidentiality agreements with all Oracle customers for applications, products and services related to the allegations of the complain; investigation of TomorrowNow's and other third party service providers; competition with SAP; and customers at issue in the complaint.

Third, it is questionable, at least, whether Oracle will be entitled in formal discovery to all the materials it seeks by its request below. Oracle is entitled to discovery based on the claims in its complaint, and the requests below go well beyond them, as we understand the complaint.

We had requested a very limited, accessible, easily produced class of documents, which your email characterizes as "critical" to defendants' understanding and assessment of this case. While Oracle's complaint purports to describe the license obligations of its customers, you surely know that not all the relevant customer licenses are identical. Oracle plainly is not interested in permitting defendants' (or even their counsel) access to those documents, whether to avoid scrutiny and consideration of the accuracy of Oracle's representations or to handicap defendants in their defense of the case, or both, we cannot say.

In any event, we decline the "balanced exchange" you've proposed, and repeat our request that Oracle and TomorrowNow exchange the licenses/confidentiality agreements/contracts with the customers named in the complaint.

Greg

Tharan Gregory Lanier  
Jones Day  
1755 Embarcadero Road  
Palo Alto, CA 94303  
650-739-3941 (Direct)  
650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary  
J."  
<zachary.alinder@  
bingham.com>

"Greg Lanier"  
<tglanier@JonesDay.com>  
Page 1

To

04/26/2007 05:52  
PM

"Hann, Bree"  
<bree.hann@bingham.com>, "Hockett,  
Chris" <chris.hockett@bingham.com>,  
"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jfroyd@jonesday.com

cc

Subject

RE: FW: Draft Protective Order

Greg,

We have considered your counter-proposal that "Oracle provide the licenses/confidentiality agreements for the customers named in the complaint in exchange for which TomorrowNow will provide its contracts with the same customers." We do not consider that a fair exchange. Oracle's license agreements are far more critical for SAP to understand/evaluate the core of its case, than TomorrowNow's contracts are for Oracle. What we proposed is what we believe is a fair exchange of information in terms of the relative importance of the information to both sides.

To move forward, we suggest that SAP propose whatever additional categories of information it would need to receive from Oracle in order to balance the exchange. We look forward to hearing from you.

Best regards,  
Zac

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Thursday, April 26, 2007 9:43 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Zac, we've considered Oracle's proposed categories of information for informal, early exchange. Oracle's requests are hardly "balanced" against the fairly simple request (customer licenses/confidentiality agreements) we made. Either Oracle does not intend for an early exchange of information or it intends to leverage the (asserted) confidentiality of customer contracts to obtain early and substantial discovery without providing meaningful discovery itself.

In any event, we will agree to an early exchange of similar information as the price imposed by Oracle to honor our request for specific, limited, easily accessible information. Specifically, we propose that Oracle provide the licenses/confidentiality agreements for the customers named in the complaint in exchange for which TomorrowNow will provide its contracts with the same customers. Such production would be subject to the protective order we're negotiating; alternatively, such production could be subject to a temporary "outside counsel only" agreement.

Please let us know Oracle's response.

Greg

Tharan Gregory Lanier  
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650-739-3900 (Fax)  
tglanier@jonesday.com

"Alinder, Zachary  
J."  
To <zachary.alinder@  
bingham.com> "Greg Lanier"  
<tglanier@JonesDay.com>  
CC 04/23/2007 05:39 "Hann, Bree"  
PM <bree.hann@bingham.com>,  
"Hockett, Chris"  
<chris.hockett@bingham.com>,"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jfroyd@jonesday.com  
Subject RE: FW: Draft Protective Order

Hi Greg,

As requested, here are the general categories of information that we would request

Defendants provide on an expedited basis:

- (1) materials Defendants downloaded from Customer Connection since Sept. 1, 2006 on behalf of customers named in the complaint.
- (2) communications since Sept. 1, 2006 relating to those downloads, including between customers and Defendants.
- (3) Defendants' means of accessing Customer Connection, including the hardware, software, and network systems used, associated logs, forensic images, network diagrams, and IP addresses.
- (4) Defendants' means of storing materials downloaded from Customer Connection.
- (5) support materials provided by TomorrowNow to its customers since Sept. 1, 2006.
- (6) Defendants' use of materials downloaded from Customer Connection.
- (7) contracts with customers in the complaint.

We could turn these categories relatively quickly into a small set of formal document requests for each side to exchange and respond to on an expedited basis. As described earlier, we would then anticipate a fairly brief meet and confer process followed (assuming a protective order had been entered) by production.

We look forward to hearing your thoughts and/or comments on this proposed informal discovery, as well as the proposed preservation and protective orders.

Best regards,  
Zac

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Monday, April 23, 2007 11:00 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com  
Subject: RE: FW: Draft Protective Order

Thanks, Zac, for clarifying your desired approach. The mechanics of documenting the scope of our informal discovery requests (or any formalization that may be required for customer consent), can be quickly resolved (probably in the manner you've suggested, though I'll re-read and let you know if we have any problems with that), if we agree that the scope of what each side is seeking in early, informal discovery is something manageable on an that basis. You understand our present request (the licenses and related confidentiality agreements as to those customers mentioned in the complaint), and we hope to learn as quickly as possible what you would seek in exchange.

So, would it be possible for you to let us know today the categories of information you'd be seeking on an expedited basis? The substance will drive agreement here, as the process issues are not that challenging.

Thanks,

Greg

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"Alinder, Zachary  
J."  
<zachary.alinder@  
To bingham.com> "Greg Lanier"  
<tglanier@JonesDay.com>

CC 04/23/2007 10:47 AM "Hann, Bree"  
<bree.hann@bingham.com>,  
"Hockett, Chris"  
<chris.hockett@bingham.com>,"Howard, Geoff"  
<geoff.howard@bingham.com>,  
jfroyd@jonesday.com

Subject RE: FW: Draft Protective Order

Hi Greg,

Thanks for your message and hope you all had a nice weekend as well. We look forward to hearing your comments on the draft protective and preservation orders.

As for the document exchange discussed last week, what we have in mind is an exchange of formal document requests with an expedited response, and then a meet and confer process to accomplish the goal of the informal exchange. In spite of the expedited nature of the process, the production of documents like customer license agreements needs to be pursuant to formal discovery requests and subject to a protective order.

If you confirm that this is something that you would like to proceed on, we will move forward with putting together our requests for exchange.

Best regards,  
Zac Alinder

Bingham McCutchen LLP  
3 Embarcadero Center  
San Francisco, CA 94111  
415-393-2226 (ph)  
415-393-2286 (fax)

-----Original Message-----

From: Greg Lanier [mailto:tglanier@JonesDay.com]  
Sent: Monday, April 23, 2007 9:36 AM  
Cc: Hann, Bree; Hockett, Chris; Howard, Geoff; jfroyd@jonesday.com; Alinder, Zachary J.  
Subject: Re: FW: Draft Protective Order

Zach, I hop eyou had a good weekend. we lost some folks for the weekend but expect to get back to you today or by early tomorrow morning on the draft protective order and proposed retention order. Are you in a position to send Oracle's request for informal discovery discussed on our call and mentioned in Geoff's voicemail of last week?

Thanks,

Greg

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650-739-3900 (Fax)  
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Greg

Lanier/JonesDay

Extension 33941

To

"Alinder, Zachary J."

04/19/2007 03:00

<zachary.alinder@bingham.com>

PM

CC

"Hann, Bree"

<bree.hann@bingham.com>, "Hockett, Chris"

<chris.hockett@bingham.com>,

"Howard, Geoff"

<geoff.howard@bingham.com>,

jfroyd@jonesday.com

Subject

Re: FW: Draft Protective Order

Page 6

(Document link: Greg Lanier)

Thanks. You now have my contacts (below). We'll get back to you soon, as discussed, and look forward to hearing from you re the request for licenses/confidentiality agreements for the customers mentioned in the complaint.

Greg

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"Alinder, Zachary

J."

To <zachary.alinder@  
bingham.com>

tglanier@jonesday.com,  
jfroyd@jonesday.com

CC 04/19/2007 02:56  
PM

"Howard, Geoff"  
<geoff.howard@bingham.com>,  
"Hockett, Chris"  
<chris.hockett@bingham.com>, "Hann,  
Bree" <bree.hann@bingham.com>

Subject

FW: Draft Protective Order

Dear Greg and Jane,  
Nice meeting you on the phone this afternoon. As discussed, attached to this email is the draft protective order that we sent to Bob last week.  
We look forward to your comments on this and the draft preservation order as well.

Best regards,  
Zac Alinder

---

From: Hockett, Chris  
Sent: Tuesday, April 10, 2007 1:30 PM  
To: Robert A Mittelstaedt  
Cc: Howard, Geoff; Alinder, Zachary J.  
Subject: Draft Protective Order

Bob,

As we discussed yesterday, here is a draft protective order for your consideration. Please let us know any comments you have on it.

Chris

<<Proposed Protective Order.DOC>>

=====  
=====  
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EXHIBIT H

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# InformationWeek

BUSINESS INNOVATION POWERED BY TECHNOLOGY

## SAP Is Investigating Oracle's Charges Of Theft, CEO Kagermann Says

The company plans to file a legal response in a few weeks; Kagermann wouldn't comment as to whether it's a countersuit.

By Mary Hayes Weier, [InformationWeek](#)  
April 24, 2007

URL: <http://www.informationweek.com/story/showArticle.jhtml?articleID=199201225>

SAP plans to respond to Oracle's lawsuit alleging corporate data theft in a few weeks, said SAP CEO Henning Kagermann in a sit-down interview with *InformationWeek* Tuesday. He also indicated SAP is doing its own investigation into the charges.

"We have policies in place to ensure obligations as management," Kagermann said. "Nevertheless, having policies is one thing, having them enforced is another thing. We have to have a complete picture." The company plans to file a legal response next week; Kagermann wouldn't comment as to whether it's a countersuit.

In its March lawsuit, Oracle alleges that SAP employees pretended to be Oracle customers to log on to one of the company's Web sites and copy proprietary technical and customer-support data. Describing SAP's actions as "corporate theft on a grand scale," Oracle claims that SAP gathered the support documentation to provide cut-rate support for Oracle products, then shift those companies to SAP products.

Some might argue that Kagermann's admission of even the possibility that policies weren't followed could indicate a weakness in its defense against Oracle's claims. However, it seems to underscore the personality of a CEO who says he insists on playing above board. Kagermann, soft-spoken and with no discernable ego, says fair play includes not paying attention to any of its archcompetitor's abrasive publicity tactics, such as having employees stand outside the convention center handing out Oracle bags to attendees of SAP's Sapphire conference in Atlanta this week.

"I don't like their style; why should I adopt it?" Kagermann asked. "I don't think it's helpful. They should focus on their customers."

Kagermann said this includes making primarily small acquisitions that make sense, in stark contrast to Oracle's spending billions on acquisitions. SAP won't "play games" with customers by trying to sell them applications based on different designs and technologies, he said.

SAP is the first enterprise software company to deliver a service-oriented architecture designed to make business processes more flexible and integration easier, Kagermann said. Its My SAP ERP 2005 suite, released last year, is based on SOA, as is its NetWeaver middleware. Oracle offers its Fusion middleware based on SOA but doesn't plan to start delivering SOA-based applications until sometime next year.

But just how badly does the market want SOA? Kagermann insisted demand is hot; nearly 2,500 customers have gone live with My SAP ERP 2005 since its release, and he expects the number to go live this year will outpace the first-year adoption. By comparison, adoption of MySAP ERP 2004 adoption was just 500 customers in some years, he says.

Kagermann also thinks SAP has the right leadership in place to execute on its goals to drive SOA adoption and substantially grow its customer base among midsize companies. The spot vacated by Shai Agassi, who resigned from his job as president of products and technology in March, has been filled by several executives, each focused on specific areas. SAP doesn't necessarily need a president of products and technology, he said. "It's good to have several people with product experience," he said.

Leo Apotheker became Kagermann's deputy CIO and is first in line to succeed him. President of Americas Bill McDermott was promoted to the executive board and had his oversight expanded to include Asia Pacific, and former Asia Pacific president Hans-Peter Klaey was moved over to head up a new small and medium enterprise division that has the job of driving the aggressive growth Kagermann expects in that market.

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