1   Terms of Use, the SAR legal restrictions, Oracle's Technical Support Policies, and the Legal

2   Download Agreement. Further, Oracle refers defendants to Oracle's production of the server

3   logs in this matter as they show defendants' access to and downloading from Customer

4   Connection. Oracle's production of such documents is continuing, but includes materials Bates

5   numbered ORCL00000001 through ORCL00007590, and ORCL00009434. Further, Oracle

6   refers defendants to the First Amended Complaint and defendants' Answer, and incorporates

7   both here.

8   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

9   <u>**Second Supplemental Response to Interrogatory No. 3(a)**</u>:

10   Oracle further objects to the extent that supplementation would require Oracle to

11   summarize the documents and testimony provided on this subject; Oracle cannot and will not and

12   is not required to do so and incorporates all such evidence by reference into this supplemented

13   answer. Subject to and without waiving the specific and general objections stated above, Oracle

14   further responds that Defendants have interfered with, directly breached contract terms and/or

15   induced breach of contractual terms with respect to at least the customers set forth on Defendant

16   TomorrowNow, Inc.'s Supplemental Exhibit 1 to its First Sets of Requests for Production, whose

17   agreements with Oracle have been produced. Oracle's production of such documents is

18   continuing, but includes materials Bates numbered ORCL00000001 through ORCL00007714,

19   ORCL00009434, ORCL00051950 through ORCL00052052, ORCL00139148 through

20   ORCL00159820, ORCL00176128 through ORCL00180465 and ORCL00372975 through

21   ORCL00381654. Oracle also refers Defendants to their own communications with customers

22   urging or requiring them to either download themselves or allow to download and/or use

23   materials outside of the scope of the customers' license. Oracle further responds that the

24   Defendants' breaches of agreements and inducement of breach are set forth in detail in Oracle's

25   responses to Defendants' Fifth Set of Interrogatory Nos. 22-31 and incorporates those responses

26   here as if set forth in full.

27   <u>**Second Supplemental Response to Interrogatory No. 3(b)**</u>:

28   Oracle further objects to the extent that supplementation would require Oracle to

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1   summarize the documents and testimony provided on this subject; Oracle cannot and will not and

2   is not required to do so and incorporates all such evidence by reference into this supplemented

3   answer. Oracle further objects to the extent that supplementation would require Oracle to

4   summarize the documents and testimony provided on this subject; Oracle cannot and will not and

5   is not required to do so and incorporates all such evidence by reference into this supplemented

6   answer. Subject to and without waiving the specific and general objections stated above, Oracle

7   further responds that Defendants have interfered with, directly breached contract terms and/or

8   induced breach of contractual terms with respect to at least the customers set forth on Defendant

9   TomorrowNow, Inc.'s Supplemental Exhibit 1 to its First Sets of Requests for Production, whose

10   agreements with Oracle have been produced. Oracle's production of such documents is

11   continuing, but includes materials Bates numbered ORCL00000001 through ORCL00007714,

12   ORCL00009434, ORCL00051950 through ORCL00052052, ORCL00139148 through

13   ORCL00159820, ORCL00176128 through ORCL00180465 and ORCL00372975 through

14   ORCL00381654. Oracle also refers Defendants to their own communications with customers

15   urging or requiring them to either download themselves or allow to download and/or use

16   materials outside of the scope of the customers' license. Oracle further responds that the

17   Defendants' interference with Oracle's relationships are set forth in detail in Oracle's responses

18   to Defendants' Fifth Set of Interrogatory Nos. 39-76 and incorporates those responses here as if

19   set forth in full.

20   **INTERROGATORY NO. 4:**

21   For each item of Software and Support Materials that Oracle claims was accessed or

22   Downloaded improperly by any Defendant, describe in as much detail as possible the

23   circumstances of the access or Download, including the specific item allegedly accessed or

24   Downloaded, the date and time of the access or Download, and the reasons why the access or

25   Download was improper.

26   **RESPONSE TO INTERROGATORY NO. 4:**

27   In addition to its General Objections, Oracle objects that its investigation into the

28   circumstances related to defendants' intrusion into and theft from Oracle's systems is not yet

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1   complete. Oracle further objects to the extent that this Interrogatory calls for information

2   protected by the attorney-client or work product privileges. Oracle further objects to this

3   Interrogatory on the ground that many of the facts concerning defendants' access and

4   downloading are solely within the knowledge and/or control of defendants or third parties.

5   Oracle further objects to the extent the Interrogatory purports to require Oracle to create a

6   compilation, abstract, or summary from business records that Oracle has already produced or

7   will produce.

8   Subject to and without waiver of these objections, Oracle responds as follows:

9   Pursuant to Fed. R. Civ. Proc. Rule 33(d), Oracle refers defendants to Oracle's

10 production of the server logs in this matter as they show defendants' access to and downloading

11 of the Software and Support Materials available through Customer Connection. Each access by

12 defendants was improper to the extent that the customer, whose log-in credentials were used by

13 defendants, was not licensed to access, download, and/or receive the downloaded Software and

14 Support Materials, including because the customer's support rights had expired. Defendants had

15 no license of their own, and no other independent right to access, download, or use Oracle's

16 Software and Support Materials.

17 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

18   Subject to and without waiving the above objections, and pursuant to the extensive meet

19 and confer discussions and agreements as described in more detail above, Oracle further

20 responds that pursuant to Fed. R. Civ. Proc. Rule 33(d), Oracle refers defendants to Oracle's

21 production of the server logs in this matter, including ORCL00009434, as they show defendants'

22 access to and downloading of the Software and Support Materials available through Customer

23 Connection. Each access by defendants was improper to the extent that the customer, whose log-

24 in credentials were used by defendants, was not licensed to access, download, and/or receive the

25 downloaded Software and Support Materials, including because the customer's support rights

26 had expired. Defendants had no license of their own, and no other independent right to access,

27 download, or use Oracle's Software and Support Materials.

28

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SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

1

2   Oracle further objects to the extent that supplementation would require Oracle to

3 summarize the documents and testimony provided on this subject; Oracle cannot and will not and

4 is not required to do so and incorporates all such evidence by reference into this supplemented

5 answer. Subject to and without waiving the specific and general objections stated above, Oracle

6 further responds that the business records and depositions of Defendants' employees confirm that

7 (a) Defendants policy was to indiscriminately download all support materials regardless of

8 whether the customer was licensed to it, (b) Defendants regularly downloaded support materials

9 for customers after their maintenance end date with Oracle, (c) Defendants downloaded support

10 materials for customers that never signed an agreement with them, and often kept those illegal

11 downloads for later use, even though the customer never signed on with Defendants, (d) for

12 years Defendants held downloads for all customers in one central repository making it

13 impossible to know which support material was downloaded for which customer, or to know

14 which customer was entitled to access such support materials, (e) Defendants created computer

15 scripts to accomplish their scheme of mass, indiscriminate downloading, which later were more

16 formally developed into computer scrapers, including a computer program, called Titan, so that

17 all support materials available on Oracle's customer support websites could be mass downloaded

18 as quickly as possible, and (f) Defendants created numerous libraries to house their mass, illegal

19 downloads, that are evident all across Defendants' servers and computer systems, including the

20 millions of downloads that exist on TomorrowNow's servers.

INTERROGATORY NO. 5:

21

22   Describe in as much detail as possible how Oracle believes any activity alleged in the

23 Complaint has damaged it, including how Oracle was damaged by each allegedly improper

24 Download identified in the response to Interrogatory No. 4 and, if Oracle claims to have lost any

25 customer as a result of any activity alleged in the Complaint, all facts and inferences upon which

26 Oracle bases that claim for each customer allegedly lost.

RESPONSE TO INTERROGATORY NO. 5:

27

28   In addition to its General Objections, Oracle objects that this Interrogatory is compound,

1 as it includes two distinct inquiries. Oracle will therefore treat this Interrogatory as though it

2 were two separate Interrogatories, as follows:

3 **Interrogatory No. 5(a)**:

4 Describe in as much detail as possible how Oracle believes any activity alleged in the

5 Complaint has damaged it, including how Oracle was damaged by each allegedly improper

6 Download identified in the response to Interrogatory No. 4.

7 **Response to Interrogatory No. 5(a)**:

8 In addition to its General Objections, Oracle objects that the internal reference to

9 Interrogatory No. 4 renders this Interrogatory vague and ambiguous. Oracle further objects that

10 this interrogatory seeks information that is not relevant to the litigation, nor likely to lead to the

11 discovery of admissible evidence. Oracle further objects that its investigation into the

12 circumstances related to defendants' intrusion into and theft from Oracle's systems, and the

13 resulting damage, is not yet complete, including but not limited to its investigation into

14 customers implicated by SAP's unlawful conduct. Oracle further objects to the extent that this

15 Interrogatory calls for information protected by the attorney-client or work product privileges.

16 Oracle further objects to the extent that the Interrogatory calls for expert opinion or testimony in

17 advance of the time for production of this information. Oracle further objects to this

18 Interrogatory on the ground that many of the facts concerning defendants' interference are solely

19 within the knowledge and/or control of defendants or other third parties.

20 Subject to and without waiver of these objections, Oracle responds as follows:

21 As a result of the conduct described in its First Amended Complaint, Oracle has suffered

22 damages, including without limitation loss of profits from sales or licenses to current and

23 potential customers of Oracle support services and software programs; diminution of Oracle's

24 competitive advantage; harm to Oracle's data, programs, and computer systems, including

25 without limitation damage to their functionality; loss of the revenues, earnings, profits,

26 compensation, and benefits that SAP obtained from the unlawful and unfair use of Oracle's

27 stolen property; damage to Oracle's rights to dominion and control over its property; damage to

28 the confidential nature of the information on Oracle's website; diminution in value of Oracle's

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1   stolen property; deprivation of the intended use of Oracle's computer systems; and irreparable

2   harm as a result of SAP's illegal, wrongful, and unfair business practices, for which Oracle has

3   no adequate remedy at law. Oracle may discover additional categories of damage as it continues

4   its investigation of the matter. A calculation of damages has not been made. After computation

5   of damages is complete, Oracle will make available to SAP the documents or other evidentiary

6   material, not privileged or protected from disclosure, on which such computation is based,

7   including materials bearing on the nature and extent of injuries suffered.

8   **Interrogatory No. 5(b)**:

9   If Oracle claims to have lost any customer as a result of any activity alleged in the

10 Complaint, all facts and inferences upon which Oracle bases that claim for each customer

11 allegedly lost.

12 **Response to Interrogatory No. 5(b)**:

13 In addition to its General Objections, Oracle objects on the grounds that the undefined

14 phrase "all facts and inferences" renders the Interrogatory vague and ambiguous. Oracle further

15 objects that this Interrogatory seeks information that is not relevant to the litigation, and is not

16 likely to lead to the discovery of admissible evidence. Oracle further objects that its

17 investigation into the circumstances related to defendants' intrusion into and theft from Oracle's

18 systems, and the resulting damage, is not yet complete, including but not limited to its

19 investigation into customers implicated by SAP's unlawful conduct. Such a request is

20 objectionable as a premature contention interrogatory before discovery has begun in earnest. *See*

21 *In re Convergent Technologies,* 108 F.R.D. 328 (N.D. Cal. 1985). Oracle further objects to the

22 extent that this Interrogatory calls for information protected by the attorney-client or work

23 product privileges. Oracle further objects to this Interrogatory on the ground that many of the

24 facts concerning lost customers are solely within the knowledge and/or control of defendants or

25 other third parties.

26 Subject to and without waiver of these objections, Oracle responds as follows:

27 As a result of the conduct described in its First Amended Complaint, Oracle has lost a

28 number of current and potential customers of Oracle support services and software programs.

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1   The full extent of customers lost due to SAP's unlawful conduct will be revealed as Oracle

2   continues its investigation of the matter and conducts discovery. However, at a minimum and

3   without limitation, Oracle has lost the Named Customers as a result of the activity alleged in the

4   First Amended Complaint. Pursuant to Fed. R. Civ. Proc. Rule 33(d), Oracle refers defendants

5   to Oracle's document production, including Oracle's production of the customer license

6   agreements related to each of the Named Customers and the customer's license agreement file,

7   and including correspondence related to the customer's support renewal. Further, Oracle refers

8   defendants to the First Amended Complaint and defendants' Answer.

9   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

10   **Supplemental Response to Interrogatory No. 5(b):**

11   Subject to and without waiving the above objections, and pursuant to the extensive meet

12 and confer discussions and agreements as described in more detail above, Oracle further

13 responds that pursuant to Fed. R. Civ. Proc. Rule 33(d), Oracle refers defendants to Oracle's

14 document production, including Oracle's production of the customer license agreements related

15 to each of the Named Customers and the customer's license agreement file, and including

16 correspondence related to the customer's support renewal. Oracle's production of such

17 documents is continuing, but includes materials Bates numbered ORCL00000001 through

18 ORCL00007590. Further, Oracle refers defendants to the First Amended Complaint and

19 defendants' Answer.

20 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

21   **Second Supplemental Response to Interrogatory No. 5(a):**

22   Oracle further objects to the extent that supplementation would require Oracle to

23 summarize the documents and testimony provided on this subject, including, e.g., the deposition

24 testimony of Redacted

25 Redacted   ; Oracle cannot and will not and is not required to do so

26 and incorporates all such evidence by reference into this supplemented answer. Subject to and

27 without waiving the specific and general objections stated above, Oracle further incorporates by

28 reference the damages-related responses and information contained in Oracle's responses to