

# Exhibit S

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 MAGISTRATE JUDGE ELIZABETH D. LAPORTE

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5 ORACLE CORPORATION, a Delaware ) Case No. C07-1658  
Corporation; ORACLE, USA, INC.,) PJH (EDL)  
6 a Colorado corporation; and )  
ORACLE INTERNATIONAL )  
7 CORPORATION, a California )  
corporation, )

8 )  
Plaintiffs, )  
9 )  
vs. ) FURTHER DISCOVERY  
10 ) CONFERENCE  
)

11 SAP AG, a German corporation; )  
SAP AMERICA, INC., a Delaware )  
12 corporation; TOMORROWNOW, INC.,)  
a Texas corporation; and DOES )  
13 1-50, Inclusive, )  
)  
14 Defendants. )

\_\_\_\_\_)

15  
16 February 13, 2009  
17 TRANSCRIPT OF AUDIO RECORDING

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25 TRANSCRIBED BY: FREDDIE REPPOND

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1 insisting that we say every single object or every  
2 single fix be done, but what we are asking is for a  
3 stipulation that reflects reality and is independent of  
4 damages. And we think that that is fair. And if we  
5 think that we can get it, then we're not as far apart  
6 as we may otherwise be on the needs of the calendar.

7 THE COURT: All right. And --

8 MR. COWAN: Couple things. One, on the  
9 obviously his characterization of my clients' conduct,  
10 pre- or post-litigation, I don't agree with. But I  
11 think for purposes of this discussion, we can deal with  
12 the other points he made.

13 I agree that the SAS database provides some  
14 enriched source of information. We have under the  
15 extended discovery timeline agreement now completed our  
16 privilege review of that. I believe it's being  
17 produced today. I believe our office has already sent  
18 Mr. Howard an e-mail indicating whether he wants  
19 delivery tomorrow or not. It required an incredible  
20 amount of review to get that ready, but it is ready.  
21 So as of tomorrow or Tuesday, whenever they elect  
22 delivery, they should have the SAS database through  
23 October 31, 2008. And that database has all the data  
24 points in it -- or most of the data points in it --  
25 that Mr. Howard is referring to.

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1 You notice on the stipulation that was filed  
2 as Exhibit A to the discovery conference statement  
3 there are a number of appendices. Those appendices  
4 were created using that SAS database. So that database  
5 has a rich source of information for them. Regardless  
6 of whether we have a stipulation, that database is  
7 available to them to meet their burden of proof to come  
8 forward and establish whatever they think they can  
9 establish with that information.

10 With respect to the need for testimony to  
11 come out of the witnesses' mouths rather than the  
12 lawyers' characterization of that, I would hope that  
13 Mr. Howard can appreciate and certainly hope the Court  
14 could appreciate what the lawyers say happened is not  
15 something particularly that has liability implications  
16 and potentially significant damages implications. It's  
17 not something that the business folks want to rely a  
18 hundred percent on. They want to know what the  
19 witnesses have to say about this, particularly since  
20 we're dealing with a subsidiary company. The  
21 decision-making on these kinds of things are certainly  
22 being made at the highest level of the parent company;  
23 and we have to have that evidence.

24 THE COURT: Well, you -- I mean, of course,  
25 unlike the Plaintiffs, you can interview the witnesses