

EXHIBIT C

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20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA
 22 SAN FRANCISCO DIVISION

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

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

**PLAINTIFFS' SECOND AMENDED
 AND SUPPLEMENTAL RESPONSES
 AND OBJECTIONS TO
 DEFENDANT TOMORROWNOW,
 INC.'S FIRST SET OF
 INTERROGATORIES**

**CONTAINS CONFIDENTIAL
 INFORMATION DESIGNATED
 PURSUANT TO PROTECTIVE
 ORDER**

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PROPOUNDING PARTY: Defendant TomorrowNow, Inc.

RESPONDING PARTY: Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited

SET NUMBER: One

Pursuant to Federal Rule of Civil Procedure 26(e) and 33, plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited (collectively, "Oracle") hereby further supplement and amend their responses and objections to defendant TomorrowNow, Inc.'s ("SAP TN") First Set of Interrogatories.

GENERAL OBJECTIONS

1. The following General Objections are incorporated into each specific Response below as if fully repeated in each Response. Any failure to repeat all or any part of these General Objections in a specific Response shall not constitute a waiver or relinquishment of such objections.

2. Oracle's answers to any Interrogatory shall be without prejudice to, and shall preserve, any objections that it may have to the competence, relevance, materiality, or admissibility of any of the Interrogatories, the Responses, and their subject matter at any hearing or trial in this action.

3. Oracle objects to the Interrogatories to the extent they purport to obligate Oracle to respond in any manner that exceeds or is inconsistent with the requirements of the Federal Rules of Civil Procedure or any other applicable laws. Oracle shall respond to the Interrogatories to the extent and in the manner required by the Rules.

4. Oracle objects to each Interrogatory to the extent that SAP AG, SAP America, Inc., or SAP TN (collectively, "defendants") seek information that is not within Oracle's possession, custody, or control, including without limitation information that is in the possession of Oracle's or defendants' customers. Oracle will respond to the Interrogatories based only on information in its own possession, custody, or control, as required by the Federal

1 Rules of Civil Procedure.

2 5. Oracle objects to these Interrogatories to the extent they are compound.
3 When compound Interrogatories are separated into their distinct subparts, SAP TN has served 21
4 Interrogatories, not 15.

5 6. Oracle objects to each Interrogatory to the extent it seeks disclosure of
6 information protected from discovery by the attorney-client, common interest, work product,
7 witness statement, and/or party communications privileges, the privileges and exemptions from
8 discovery afforded to materials prepared in anticipation of litigation or in preparation for trial,
9 and all other applicable privileges. Oracle does not intend to disclose such protected
10 information.

11 7. Oracle objects to the Interrogatories to the extent they purport to obligate
12 Oracle to respond in any manner that exceeds or is inconsistent with the requirements of the
13 Federal Rules of Civil Procedure or any other applicable laws. Oracle shall respond to the
14 Interrogatories to the extent and in the manner required by the Rules.

15 8. Oracle's investigation into the facts of the case is ongoing. These
16 Responses are made based on Oracle's knowledge to date. Oracle reserves the right to
17 supplement these Responses and will amend these Responses as required at an appropriate time
18 pursuant to Federal Rule of Civil Procedure 26(e). Oracle further objects to the need for further
19 supplementation of these responses to the extent the additional or corrective information has
20 otherwise been made known to the other parties during the discovery process or in writing,
21 pursuant to Federal Rule of Civil Procedure 26(e). Oracle is not required to summarize and/or
22 synthesize every fact disclosed in discovery in these responses. These responses are without
23 waiver to Oracle's ability to rely on additional and different facts at trial.

24 **OBJECTIONS TO DEFINITIONS**

25 1. Oracle objects to the definition of "Customer Connection" as divergent
26 from the parties' agreed-upon definition in the draft Preservation Order. Oracle will interpret
27 "Customer Connection" as the Oracle-maintained support website for PeopleSoft and J.D.
28 Edwards customers and all associated Software and Support Materials, Documents, Data, and

1 Tangible Things, hardware, software, physical server locations, and internet protocol addresses,
2 including those available via Change Assistant.

3 2. Oracle objects to the definition of “Customer Contracts” as overbroad,
4 unduly burdensome, and not reasonably likely to lead to the discovery of admissible evidence.
5 The definition includes contracts that are irrelevant to this litigation.

6 3. Oracle objects to the definitions of “Named Customers” and “TN
7 Customer” as inconsistent with the current list of applicable TomorrowNow customers, as set
8 forth in Defendant TomorrowNow, Inc.’s Supplemental Exhibit 1 to its First Sets of Requests for
9 Production. Oracle will interpret “Named Customers” and “TN Customer” when used together
10 to mean the full list of TomorrowNow customers set forth in Defendant TomorrowNow, Inc.’s
11 Supplemental Exhibit 1 to its First Sets of Requests for Production.

12 4. Oracle objects to the definition of “Software and Support Materials” as
13 overbroad, unduly burdensome, and divergent from the parties’ agreed-upon definition in the
14 draft Preservation Order. Defendants’ definition includes materials available not only on
15 Customer Connection but also on “any similar Oracle support website or File Transfer Protocol
16 (“FTP”) site.” Oracle FTP sites and support websites, other than Customer Connection,
17 Metalink and SupportWeb, are not at issue in this litigation, and so defendants’ definition calls
18 for irrelevant materials and would impose an excessive burden on Oracle. Oracle will interpret
19 “Software and Support Materials” to mean, without limitation, all program updates, software
20 updates, bug fixes, patches, custom solutions, and instructional materials, created or owned by
21 Oracle, or derived from, copied from or based on any such materials, including by SAP or TN,
22 across the entire family of PeopleSoft, Siebel and/or J.D. Edwards branded products.

23 OBJECTIONS TO INSTRUCTIONS

24 1. Oracle objects to the time period set by Instruction No. 4, which is
25 “January 1, 2002 through the date of response,” as overbroad and unduly burdensome to the
26 extent that it imposes a burden or obligations different from or additional to the agreement the
27 parties have reached regarding production of information before 2004 and after the filing of the
28 litigation.

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21 **INTERROGATORY NO. 5:**

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.

27 **RESPONSE TO INTERROGATORY NO. 5:**

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

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.

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

1 Defendants' Fifth Set of Interrogatories and Oracle's Supplemental and Amended Initial
 2 Disclosures as if set forth here in full. Oracle further incorporates by reference the extensive
 3 evidence from Defendants' production and testimony concerning the fear, uncertainty and doubt
 4 ("FUD") consistently employed by Defendants to cause Oracle's customers to question the value
 5 of Oracle's service offerings and/or their products' future, Defendants' promises to Oracle's
 6 customers that TN offered "superior service at half the price" (or less) which further undermined
 7 those customers' perception of the value of Oracle's service and which delayed customers'
 8 purchases, spurred them to unreasonable negotiations with Oracle and/or lured Oracle's
 9 customers to TN and/or SAP; TN's misuse of Oracle IP – with SAP's knowledge – also created
 10 the impression that TN's service was comparable to Oracle's, which further undermined those
 11 customers' perception of the value of Oracle's service and which delayed customers' purchases,
 12 spurred them to unreasonable negotiations with Oracle and/or lured Oracle's customers to TN
 13 and/or SAP.

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

15 Oracle further objects to the extent that supplementation would require Oracle to
 16 summarize the documents and testimony provided on this subject, including, *e.g.*, the deposition
 17 testimony of [REDACTED]
 18 [REDACTED] and relevant Oracle 30(B)(6) testimony; Oracle cannot
 19 and will not and is not required to do so and incorporates all such evidence by reference into this
 20 supplemented answer. Subject to and without waiving the specific and general objections stated
 21 above, Oracle further incorporates by reference the damages-related responses and information
 22 contained in Oracle's responses to Defendants' Fifth Set of Interrogatories and Oracle's
 23 Supplemental and Amended Initial Disclosures as if set forth here in full. Oracle's production of
 24 such documents is continuing, but includes materials Bates numbered ORCL00000001 through
 25 ORCL00007714, ORCL00139148 through ORCL00159820, ORCL00176128 through
 26 ORCL00180465 and ORCL00372975 through ORCL00381654. Oracle further incorporates by
 27 reference the extensive evidence concerning (a) the limited alternative and legal service options
 28 available to the customers on Defendant TomorrowNow, Inc.'s Supplemental Exhibit 1 to its

1 First Sets of Requests for Production other than TN at the time such customers chose TN service,
2 (b) the fact that no customer would have chosen to do business with TN had TN informed them it
3 was providing service based on the host of improper and illegal methods detailed in Oracle's
4 third amended complaint and revealed in this litigation; (c) the past histories of all such
5 customers of doing business with Oracle or its predecessors at the prices Oracle and its
6 predecessor companies charged; (d) the fact that, once a service customer is lost, it is difficult to
7 get that customer to return for the host of reasons described in discovery, including reduction of
8 the customers' service budget due to paying at least 50% less to TN and the difficulty of the
9 responsible purchasing party at the customer explaining to his or her manager that he or she had
10 erred in leaving Oracle service in the first place.


11 **INTERROGATORY NO. 6:**

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DATED: May 22, 2009

Bingham McCutchen LLP

By: 
Zachary J. Alinder
Attorneys for Plaintiffs
Oracle USA, Inc., Oracle International Corporation,
and Oracle EMEA Limited

PROOF OF SERVICE

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I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence by U.S. Mail and Electronic Mail, and they are deposited and/or sent that same day in the ordinary course of business.

Today I served the following documents:

**PLAINTIFFS' SECOND AMENDED AND SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO DEFENDANT
TOMORROWNOW, INC.'S FIRST SET OF INTERROGATORIES**

(BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in portable document format (PDF) listed below to the email address set forth below on this date.

(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

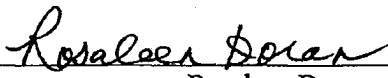
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on May 22, 2009, at San Francisco, California.



Rosaleen Doran