

EXHIBIT Y

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18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

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

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

**DEFENDANTS' SECOND AMENDED
AND SUPPLEMENTAL RESPONSE
TO PLAINTIFFS' THIRD SET OF
REQUESTS FOR ADMISSION TO
DEFENDANTS TOMORROWNOW,
INC., SAP AG, AND SAP AMERICA,
INC.**

**CONFIDENTIAL PURSUANT TO
PROTECTIVE ORDER**

1 **PROPOUNDING PARTIES:** Plaintiffs Oracle USA, Inc., Oracle International
2 Corporation, and Oracle EMEA, Ltd.

3 **RESPONDING PARTY:** Defendants TomorrowNow, Inc., SAP America, Inc., and
4 SAP AG

5 **SET NUMBER:** Three

6 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendants
7 TomorrowNow, Inc., SAP America, Inc., and SAP AG amend and supplement their responses
8 and object as follows to the third set of requests for admission from plaintiffs Oracle USA, Inc.,
9 Oracle International Corporation, and Oracle EMEA, Ltd. (“Plaintiffs”).

10 **GENERAL OBJECTIONS AND RESPONSES**

11 The following General Objections apply to and are incorporated by reference into each
12 response set forth below. These objections are made without waiver of, or prejudice to, these or
13 other objections Defendants may make; all such objections are expressly preserved.

14 1. Defendants object to each Request for Admission to the extent that it enlarges
15 upon or is otherwise inconsistent with the duties imposed by the Federal Rules of Civil Procedure,
16 the Local Rules for the Northern District of California, any applicable order of this Court, or any
17 agreement of the parties.

18 2. Defendants object to each Request for Admission to the extent that it seeks
19 information that is not within TomorrowNow’s possession, custody, or control.

20 3. Defendants object to each Request for Admission to the extent that it seeks
21 information that is not relevant to any claim or defense in this action, or is not reasonably
22 calculated to lead to the discovery of admissible evidence that is relevant to any claim or defense,
23 under Rule 26(b)(1) of the Federal Rules of Civil Procedure. Defendants specifically object to
24 each request for admission as unduly burdensome, oppressive, and calling for information that is
25 neither relevant to any claim or defense of any party nor reasonably calculated to lead to the
26 discovery of admissible evidence, to the extent the request seeks documents or information
27 unrelated to PeopleSoft, J.D. Edwards (“JDE”), or Siebel products as to which TomorrowNow
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1 provided support to customers, except to the very limited extent the parties have agreed and the
2 Court has ordered otherwise.

3 4. Defendants object to each Request for Admission as unreasonable and unduly
4 burdensome to the extent that it requests information that is already within Plaintiffs' possession,
5 already known or disclosed to Plaintiffs, or readily accessible and/or equally available to
6 Plaintiffs or is available from public sources.

7 5. Defendants object to each Request for Admission to the extent that it seeks
8 information protected by the attorney-client privilege, the work-product immunity, or is protected
9 from production by any other applicable privilege or immunity. Inadvertent disclosure of any
10 privileged communications or work product shall not constitute a waiver of privilege or of any
11 other basis for objecting to discovery with respect to such information.

12 6. Defendants object to each Request for Admission to the extent that it improperly
13 seeks a legal conclusion.

14 7. Defendants object to each Request for Admission to the extent that its seeks
15 information containing trade secrets, proprietary information, or other confidential or
16 competitively sensitive business information. Such information will be provided only subject to
17 the protective order in this case.

18 8. Defendants object to the extent the relevant time period is undefined, defined
19 vaguely, or includes time periods that are not relevant to any claim or issue in this case.

20 9. Defendants object to the definition of "Copy" as being overly broad, unduly
21 burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence
22 to the extent it purports to encompass anything beyond the term as defined under U.S. copyright
23 law. Defendants further object to Plaintiffs' use of the term "copy" in these requests as
24 improperly shifting the burden of proof to Defendants.

25 10. Defendants object to the definition of "Customer" to the extent the requests
26 containing the term require Defendants to produce data for all of "Defendants' current and former
27 customers." The definition is overly broad, unduly burdensome, designed to harass, and not
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1 reasonably calculated to lead to the discovery of admissible evidence. Defendants will only
2 respond to the extent the Customer had a contract with TomorrowNow.

3 11. Defendants object to the definition of “Database” as overly broad, vague, and
4 ambiguous to the extent the term is defined as a component of a PeopleSoft environment
5 “generally referred to by the ‘DATABASE_RESTORE’ field in BakTrak” and to the extent the
6 definition is said to include “application engine files.” The general reference to a BakTrak field
7 designed to track whether a database restore occurred does not provide a specific definition of this
8 term and is confusing. Further, Defendants object to the term “application engine files” to the
9 extent the use of the word “file” excludes “definitions.”

10 12. Defendants object to the definition of “Download” to the extent the requests
11 containing the term require Defendants to produce data regarding material not downloaded from
12 the “Customer Connection” website. As Plaintiffs state in their fourth objection to
13 TomorrowNow’s First Set of Interrogatories, “[o]ther Oracle support websites or FTP sites are
14 not at issue in this litigation, and . . . [the] definition calls for irrelevant materials and would
15 impose an excessive burden” The definition of “Download” calls for irrelevant materials
16 and imposes an excessive burden.

17 13. Defendants object to the definition of “Employees” as being overly broad, unduly
18 burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence
19 to the extent that it encompasses persons “purporting to act on behalf of the entity to which the
20 term refers.”

21 14. Defendants object to the definition of “Environment” as being overly broad,
22 unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible
23 evidence to the extent it includes individual environment components and is not intended to only
24 refer to all environment components working as one unit.

25 15. Defendants object to the definition of “Fix” as being overly broad, unduly
26 burdensome, vague, and not reasonably calculated to lead to the discovery of admissible evidence
27 to the extent it includes Master Fix records as included in the SAS database.

1 16. Defendants object to the definition of “Fix Object” as overly broad, vague,
2 confusing, and inaccurate to the extent it includes the phrases “discrete unit of code” and “units of
3 code,” as not all objects contain code. Defendants object to the use of the term “any” as overly
4 broad and unduly burdensome. Defendants further object that the definition is overly broad,
5 unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible
6 evidence to the extent it includes the undefined terms “functions” and “other data structures.”
7 Moreover, Defendants object that the list of what is included in the definition (“PeopleCode
8 objects, fields, records, pages, menus, components, messages, panels, stored statements, panel
9 groups, rule packages, COBOL source code files, COBOL executables, SQR files, SQC files,
10 writer files, Crystal Reports files, SQL scripts, database creation scripts, DAT files, DMS files,
11 project files, batch files, configuration files, or other similar units of code contained in the
12 PeopleSoft or JD Edwards products serviced or supported by any Defendant”) is overly broad,
13 vague, ambiguous, duplicative, and misleading because this list includes: (1) terms which were
14 not normally part of an object as that term was used at TomorrowNow, e.g., “database creation
15 scripts,” “COBOL executables,” and “configuration files”; (2) terms which can have the same
16 meaning, e.g. “panels” and “pages”; and (3) terms which are very broad and undefined, e.g.,
17 “writer files,” “project files,” and “batch files.” Defendants will respond as if the undefined term
18 “object” was used in “fix object’s” place.

19 17. Defendants object to the definition of “Generic Environment” as being overly
20 broad, unduly burdensome, vague, and not reasonably calculated to lead to the discovery of
21 admissible evidence. Defendants further object that the term “generic environment” is misleading
22 to the extent that includes HR751CSS as an example, as Defendants deny that HR751CSS is a
23 generic environment. Defendants further object to the definition of “Generic Environment” to the
24 extent it incorporates the overly broad, unduly burdensome, and vague term “Environment,” to
25 which Defendants object above.

26 18. Defendants object to the definition of “Local Environment” as being overly broad,
27 unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible
28 evidence to the extent it not limited to all environment components working as one unit and

1 located at TomorrowNow. Defendants further object to the definition of “Local Environment” to
2 the extent it incorporates the overly broad, unduly burdensome, and vague term “Environment,”
3 to which Defendants object above.

4 19. Defendants object to the definition of “Online Objects” as being overly broad,
5 unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible
6 evidence to the extent it incorporates the overly broad, unduly burdensome, and vague term
7 “Environment,” to which Defendants object above.

8 20. Defendants object to the definition of “PS_Home” as overly broad, vague, and
9 ambiguous to the extent the term is defined as a component of a PeopleSoft environment
10 “generally referred to by the ‘NT_RESTORE’ and ‘UNIX_RESTORE’ fields in BakTrak” and to
11 the extent that the definition is stated to include “writer files.” The general reference to a
12 BakTrak field designed to track whether a PS_Home restore occurred does not provide a specific
13 definition of this term and is confusing. Further, Defendants object to the term “writer files” as
14 undefined, vague, and ambiguous.

15 21. Defendants object to the definition of “Registered Work” as being overly broad,
16 unduly burdensome, vague, and not reasonably calculated to lead to the discovery of admissible
17 evidence to the extent it purports to include “any subsequently added copyright registrations in
18 any later amended complaint” or any copyright registrations beyond those identified in the Third
19 Amended Complaint. Defendants further object to the definition of “Registered Work” to the
20 extent it purports to encompass anything beyond the term as defined under U.S. copyright law.
21 Defendants further object to Plaintiffs’ use of the term “registered work” in these requests as
22 improperly shifting the burden of proof to Defendants.

23 22. Defendants object to Plaintiffs’ definitions of “SAP AG,” “SAP America,” “SAP
24 TN,” “You,” or “Your” to the extent that those definitions include persons or entities other than
25 TomorrowNow, SAP America and SAP AG. Defendants further object to the extent Plaintiffs’
26 definitions improperly expand the scope of discovery by seeking data that is not currently in the
27 possession, custody, or control of Defendants.

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1 materials would then be available for customer-specific downloads by TomorrowNow's
2 customers who would use their customer-specific log-in credentials to download their respective
3 materials. On certain occasions, certain of the items listed on TN-OR04497668 may have been
4 either e-mailed, sent on CD by Federal Express or otherwise transmitted to the specific customer
5 for whom those items were intended. And, in certain instances, information regarding such
6 transmittals was recorded in TomorrowNow's SAS databases. Defendants are unaware of any
7 definitive set of records which would, in a readily obtainable way, indicate whether all the items
8 listed on TN-OR04497668 were actually sent to, and/or received by, the intended recipient listed
9 for each item.

10 **REQUEST NO. 12:**

11 For each item 1-33186 on Exhibit D, admit that the listed Fix Object contains more than a
12 de minimis amount of protectable subject matter pursuant to 17 U.S.C. § 102.

13 **RESPONSE TO REQUEST NO. 12:**

14 Defendants object to this request on the grounds stated in the General Objections and
15 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
16 respect to the information sought in this request because Defendants SAP AG and SAP America
17 have no additional knowledge separate and apart from the information provided by Defendant
18 TomorrowNow in this response. Defendants object to this request for admission because it calls
19 for a conclusion of law. Defendants object to this request for admission because it calls for expert
20 opinion. Defendants further object that the phrase "protectable subject matter" is undefined,
21 vague, and ambiguous. Defendants further object to the term "Fix Object" as overly broad, vague,
22 and inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as
23 if the undefined term "object" was used in "Fix Object's" place. Subject to the General
24 Objections and Responses and these specific objections, this request is DENIED.

25 **REQUEST NO. 13:**

26 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
27 Created using a Local Environment.
28

RESPONSE TO REQUEST NO. 13:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America have no additional knowledge separate and apart from the information provided by Defendant TomorrowNow in this response. Defendants object to the request because the terms "copy," "created," and "local environment" make this request overly broad, vague, and ambiguous. Further, Defendants object to this request as compound and unduly burdensome in that this request asks 33,185 separate questions, and the request would require Defendants to review substantial business records to determine an answer, if possible, for each of the 33,185 separate requests. Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix Object's" place.

Subject to the General Objections and Responses and these specific objections, after a reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack sufficient information to respond to these requests as the information sought was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On this basis, therefore, these requests are DENIED.

REQUEST NO. 14:

For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was tested, a Copy of the listed Fix Object was tested using a Local Environment.

RESPONSE TO REQUEST NO. 14:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America have no additional knowledge separate and apart from the information provided by Defendant TomorrowNow in this response. Defendants object to the request because the terms "copy," "tested," and "local environment" make this request overly broad, vague, and ambiguous. Further,

1 Defendants object to this request as compound and unduly burdensome in that this request asks
2 33,185 separate questions, and the request would require Defendants to review substantial
3 business records to determine an answer, if possible, for each of the 33,185 separate requests.
4 Defendants further object to the term “Fix Object” as overly broad, vague, and inaccurate to the
5 extent it includes the phrase “discrete unit of code.” Defendants respond as if the undefined term
6 “object” was used in “Fix Object’s” place.

7 Subject to the General Objections and Responses and these specific objections, after a
8 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
9 sufficient information to respond to these requests as the information sought was not tracked,
10 recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On this basis,
11 therefore, these requests are DENIED.

12 **REQUEST NO. 15:**

13 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
14 Created using a Local Environment that did not solely consist of an installation from, a Copy of,
15 or an installation from a Copy of software received from or on behalf of the recipient stated for
16 the respective item.

17 **RESPONSE TO REQUEST NO. 15:**

18 Defendants object to this request on the grounds stated in the General Objections and
19 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
20 respect to the information sought in this request because Defendants SAP AG and SAP America
21 have no additional knowledge separate and apart from the information provided by Defendant
22 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
23 “created,” and “local environment” make this request overly broad, vague, and ambiguous.
24 Further, Defendants object to this request as compound and unduly burdensome in that this
25 request asks 33,185 separate questions, and the request would require Defendants to review
26 substantial business records to determine an answer, if possible, for each of the 33,185 separate
27 requests. Defendants also object that the phrase “that did not solely consist of an installation from,
28 a Copy of, or an installation from a Copy of software received from or on behalf of the recipient

1 stated for the respective item” is vague and ambiguous. Defendants further object to the term
2 “Fix Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete
3 unit of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s”
4 place.

5 Subject to the General Objections and these specific objections, after a reasonable inquiry
6 and based on Defendants’ understanding of these questions, Defendants lack sufficient
7 information to respond to these requests as the information sought was not tracked, recorded, or
8 maintained by TomorrowNow in a “readily obtainable manner.” On this basis, therefore, these
9 requests are DENIED.

10 **REQUEST NO. 16:**

11 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was tested
12 using a Local Environment that did not solely consist of an installation from, a Copy of, or an
13 installation from a Copy of software received from or on behalf of the recipient stated for the
14 respective item.

15 **RESPONSE TO REQUEST NO. 16:**

16 Defendants object to this request on the grounds stated in the General Objections and
17 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
18 respect to the information sought in this request because Defendants SAP AG and SAP America
19 have no additional knowledge separate and apart from the information provided by Defendant
20 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
21 “tested,” and “local environment” make this request overly broad, vague, and ambiguous. Further,
22 Defendants object to this request as compound and unduly burdensome in that this request asks
23 33,185 separate questions, and the request would require Defendants to review substantial
24 business records to determine an answer, if possible, for each of the 33,185 separate requests.
25 Defendants also object that the phrase “that did not solely consist of an installation from, a Copy
26 of, or an installation from a Copy of software received from or on behalf of the recipient stated
27 for the respective item” is vague and ambiguous. Defendants further object to the term “Fix
28 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit

1 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

2 Subject to the General Objections and Responses and these specific objections, after a
3 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
4 sufficient information to respond to these requests as the information sought was not tracked,
5 recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On this basis,
6 therefore, these requests are DENIED.

7 **REQUEST NO. 17:**

8 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
9 Created using a Generic Environment.

10 **RESPONSE TO REQUEST NO. 17:**

11 Defendants object to this request on the grounds stated in the General Objections and
12 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
13 respect to the information sought in this request because Defendants SAP AG and SAP America
14 have no additional knowledge separate and apart from the information provided by Defendant
15 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
16 “created,” and “generic environment” make this request overly broad, vague, and ambiguous.
17 Further, Defendants object to this request as compound and unduly burdensome in that this
18 request asks 33,185 separate questions, and the request would require Defendants to review
19 substantial business records to determine an answer, if possible, for each of the 33,185 separate
20 requests. Defendants also object to the term “Fix Object” as overly broad, vague, and inaccurate
21 to the extent it includes the phrase “discrete unit of code.” Defendants respond as if the
22 undefined term “object” was used in “Fix Object’s” place.

23 Subject to the General Objections and Responses and these specific objections, after a
24 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
25 sufficient information to respond to these requests as the information sought was not tracked,
26 recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On this basis,
27 therefore, these requests are DENIED.

1 **REQUEST NO. 18:**

2 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
3 tested, a Copy of the listed Fix Object was tested using a Generic Environment.

4 **RESPONSE TO REQUEST NO. 18:**

5 Defendants object to this request on the grounds stated in the General Objections and
6 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
7 respect to the information sought in this request because Defendants SAP AG and SAP America
8 have no additional knowledge separate and apart from the information provided by Defendant
9 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
10 "tested," and "generic environment" make this request overly broad, vague, and ambiguous.
11 Further, Defendants object to this request as compound and unduly burdensome in that this
12 request asks 33,185 separate questions, and the request would require Defendants to review
13 substantial business records to determine an answer, if possible, for each of the 33,185 separate
14 requests. Defendants also object that this is an incomplete and confusing hypothetical.
15 Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the
16 extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term
17 "object" was used in "Fix Object's" place.

18 Subject to the General Objections and Responses and these specific objections, after a
19 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
20 sufficient information to respond to these requests as the information sought by these confusing
21 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
22 "readily obtainable manner." On this basis, therefore, these requests are DENIED.

23 **REQUEST NO. 19:**

24 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
25 Created using a Local Environment to which at least one fix, patch, upgrade or update retrofitted
26 from an Oracle-created or Oracle-delivered fix, patch, upgrade or update had been applied.

27 **RESPONSE TO REQUEST NO. 19:**

28 Defendants object to this request on the grounds stated in the General Objections and

1 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
2 respect to the information sought in this request because Defendants SAP AG and SAP America
3 have no additional knowledge separate and apart from the information provided by Defendant
4 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
5 "created," "local environment," and "retrofitted" make this request overly broad, vague, and
6 ambiguous. Further, Defendants object to this request as compound and unduly burdensome in
7 that this request asks 33,185 separate questions, and the request would require Defendants to
8 review substantial business records to determine an answer, if possible, for each of the 33,185
9 separate requests. Defendants also object to the term "Fix Object" as overly broad, vague, and
10 inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if
11 the undefined term "object" was used in "Fix Object's" place.

12 Subject to the General Objections and Responses and these specific objections, after a
13 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
14 sufficient information to respond to these requests as the information sought by these requests
15 was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On
16 this basis, therefore, these requests are DENIED.

17 **REQUEST NO. 20:**

18 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
19 tested, a Copy of the listed Fix Object was tested using a Local Environment to which at least one
20 fix, patch, upgrade or update retrofitted from an Oracle-created or Oracle-delivered fix, patch,
21 upgrade or update had been applied.

22 **RESPONSE TO REQUEST NO. 20:**

23 Defendants object to this request on the grounds stated in the General Objections and
24 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
25 respect to the information sought in this request because Defendants SAP AG and SAP America
26 have no additional knowledge separate and apart from the information provided by Defendant
27 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
28 "tested," "local environment," and "retrofitted" make this request overly broad, vague, and

1 ambiguous. Further, Defendants object to this request as compound and unduly burdensome in
2 that this request asks 33,185 separate questions, and the request would require Defendants to
3 review substantial business records to determine an answer, if possible, for each of the 33,185
4 separate requests. Defendants also object that this is an incomplete and confusing hypothetical.
5 Defendants further object to the term “Fix Object” as overly broad, vague, and inaccurate to the
6 extent it includes the phrase “discrete unit of code.” Defendants respond as if the undefined term
7 “object” was used in “Fix Object’s” place.

8 Subject to the General Objections and Response and these specific objections, after a
9 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
10 sufficient information to respond to these requests as the information sought by these confusing
11 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
12 “readily obtainable manner.” On this basis, therefore these requests are DENIED.

13 **REQUEST NO. 21:**

14 For each item 1-33186 on Exhibit D, admit that, for the listed Fix Object, at least one fix,
15 patch, upgrade or update that had been applied to a Local Environment used to Create a Copy of
16 the listed Fix Object had not been developed solely for or on behalf of the recipient stated for that
17 item.

18 **RESPONSE TO REQUEST NO. 21:**

19 Defendants object to this request on the grounds stated in the General Objections and
20 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
21 respect to the information sought in this request because Defendants SAP AG and SAP America
22 have no additional knowledge separate and apart from the information provided by Defendant
23 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
24 “created,” and “local environment,” make this request overly broad, vague, and ambiguous.
25 Further, Defendants object that the phrase “at least one fix, patch, upgrade or update that had been
26 applied to a Local Environment used to Create a Copy of the listed Fix Object” and the overall
27 sentence structure is vague, confusing, and ambiguous. Defendants also object to this request as
28 compound and unduly burdensome in that this request asks 33,185 separate questions, and the

1 request would require Defendants to review substantial business records to determine an answer,
 2 if possible, for each of the 33,185 separate requests. Defendants further object to the term “Fix
 3 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
 4 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

5 Subject to the General Objections and Responses and these specific objections, due to the
 6 vague, confusing, and ambiguous language and sentence structure, Defendants are unable to
 7 determine the meaning of these requests, and so they are DENIED.

8 **REQUEST NO. 22:**

9 For each item 1-33186 on Exhibit D, admit that, for the listed Fix Object, if any testing
 10 occurred, at least one fix, patch, upgrade or update that had been applied to a Local Environment
 11 used to test a Copy of the listed Fix Object had not been developed solely for or on behalf of the
 12 recipient stated for that item.

13 **RESPONSE TO REQUEST NO. 22:**

14 Defendants object to this request on the grounds stated in the General Objections and
 15 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
 16 respect to the information sought in this request because Defendants SAP AG and SAP America
 17 have no additional knowledge separate and apart from the information provided by Defendant
 18 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
 19 “test,” and “local environment,” make this request overly broad, vague, and ambiguous. Further,
 20 Defendants object that the phrase “at least one fix, patch, upgrade or update that had been applied
 21 to a Local Environment used to test a Copy of the listed Fix Object” and the overall sentence
 22 structure is vague, confusing, and ambiguous. Defendants also object to this request as
 23 compound and unduly burdensome in that this request asks 33,185 separate questions, and the
 24 request would require Defendants to review substantial business records to determine an answer,
 25 if possible, for each of the 33,185 separate requests. Defendants further object to the term “Fix
 26 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
 27 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

28 Subject to the General Objections and Responses and these specific objections, due to the

1 vague, confusing, and ambiguous language and sentence structure, Defendants are unable to
2 determine the meaning of these requests, and so they are DENIED.

3 **REQUEST NO. 23:**

4 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
5 Created using a Copy of PeopleTools.

6 **RESPONSE TO REQUEST NO. 23:**

7 Defendants object to this request on the grounds stated in the General Objections and
8 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
9 respect to the information sought in this request because Defendants SAP AG and SAP America
10 have no additional knowledge separate and apart from the information provided by Defendant
11 TomorrowNow in this response. Defendants object to the request because the terms "copy," and
12 "created" make this request overly broad, vague, and ambiguous. Further, Defendants object to
13 this request as compound and unduly burdensome in that this request asks 33,185 separate
14 questions, and the request would require Defendants to review substantial business records to
15 determine an answer, if possible, for each of the 33,185 separate requests. Defendants also object
16 to the term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase
17 "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix
18 Object's" place.

19 Subject to the General Objections and Responses and these specific objections, after a
20 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
21 sufficient information to respond to these requests as the information sought by these requests
22 was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On
23 this basis, therefore, these requests are DENIED.

24 **REQUEST NO. 24:**

25 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
26 tested, a Copy of the listed Fix Object was tested using a Copy of PeopleTools.

27 **RESPONSE TO REQUEST NO. 24:**

28 Defendants object to this request on the grounds stated in the General Objections and

1 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
2 respect to the information sought in this request because Defendants SAP AG and SAP America
3 have no additional knowledge separate and apart from the information provided by Defendant
4 TomorrowNow in this response. Defendants object to the request because the terms "copy," and
5 "tested" make this request overly broad, vague, and ambiguous. Further, Defendants object to
6 this request as compound and unduly burdensome in that this request asks 33,185 separate
7 questions, and the request would require Defendants to review substantial business records to
8 determine an answer, if possible, for each of the 33,185 separate requests. Defendants also
9 object that this is an incomplete and confusing hypothetical. Defendants further object to the
10 term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase
11 "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix
12 Object's" place.

13 Subject to the General Objections and Responses and these specific objections, after a
14 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
15 sufficient information to respond to these requests as the information sought by these confusing
16 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
17 "readily obtainable manner." On this basis, therefore, these requests are DENIED.

18 **REQUEST NO. 25:**

19 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
20 Created using a Copy of PeopleTools, the source of which was neither an installation from, nor a
21 Copy of, nor an installation from a Copy of software received from or on behalf of the recipient
22 stated for the respective item.

23 **RESPONSE TO REQUEST NO. 25:**

24 Defendants object to this request on the grounds stated in the General Objections and
25 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
26 respect to the information sought in this request because Defendants SAP AG and SAP America
27 have no additional knowledge separate and apart from the information provided by Defendant
28 TomorrowNow in this response. Defendants object to the request because the terms "copy" and

1 “created” make this request overly broad, vague, and ambiguous. Further, Defendants object to
2 this request as compound and unduly burdensome in that this request asks 33,185 separate
3 questions, and the request would require Defendants to review substantial business records to
4 determine an answer, if possible, for each of the 33,185 separate requests. Defendants also object
5 to the term “Fix Object” as overly broad, vague, and inaccurate to the extent it includes the phrase
6 “discrete unit of code.” Defendants respond as if the undefined term “object” was used in “Fix
7 Object’s” place.

8 Subject to the General Objections and Responses and these specific objections, after a
9 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
10 sufficient information to respond to these requests as the information sought by these requests
11 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
12 this basis, therefore, these requests are DENIED.

13 **REQUEST NO. 26:**

14 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
15 tested, a Copy of the listed Fix Object was tested using a Copy of PeopleTools, the source of
16 which was neither an installation from, nor a Copy of, nor an installation from a Copy of software
17 received from or on behalf of the recipient stated for the respective item.

18 **RESPONSE TO REQUEST NO. 26:**

19 Defendants object to this request on the grounds stated in the General Objections and
20 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
21 respect to the information sought in this request because Defendants SAP AG and SAP America
22 have no additional knowledge separate and apart from the information provided by Defendant
23 TomorrowNow in this response. Defendants object to the request because the terms “copy” and
24 “tested” make this request overly broad, vague, and ambiguous. Further, Defendants object to
25 this request as compound and unduly burdensome in that this request asks 33,185 separate
26 questions, and the request would require Defendants to review substantial business records to
27 determine an answer, if possible, for each of the 33,185 separate requests. Defendants also object
28 that this is an incomplete and confusing hypothetical. Defendants further object to the term “Fix

1 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
2 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

3 Subject to the General Objections and Responses and these specific objections, after a
4 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
5 sufficient information to respond to these requests as the information sought by these confusing
6 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
7 “readily obtainable manner.” On this basis, therefore, these requests are DENIED.

8 **REQUEST NO. 27:**

9 For each item 1-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
10 Created using a Copy of PeopleTools from a Generic Environment.

11 **RESPONSE TO REQUEST NO. 27:**

12 Defendants object to this request on the grounds stated in the General Objections and
13 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
14 respect to the information sought in this request because Defendants SAP AG and SAP America
15 have no additional knowledge separate and apart from the information provided by Defendant
16 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
17 “created,” and “generic environment” make this request overly broad, vague, and ambiguous.
18 Further, Defendants object to this request as compound and unduly burdensome in that this
19 request asks 33,185 separate questions, and the request would require Defendants to review
20 substantial business records to determine an answer, if possible, for each of the 33,185 separate
21 requests. Defendants also object to the term “Fix Object” as overly broad, vague, and inaccurate
22 to the extent it includes the phrase “discrete unit of code.” Defendants respond as if the
23 undefined term “object” was used in “Fix Object’s” place.

24 Subject to the General Objections and Responses and these specific objections, after a
25 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
26 sufficient information to respond to these requests as the information sought by these requests
27 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
28 this basis, therefore, these requests are DENIED.

1 **REQUEST NO. 28:**

2 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
3 tested, a Copy of the listed Fix Object was tested using a Copy of PeopleTools from a Generic
4 Environment.

5 **RESPONSE TO REQUEST NO. 28:**

6 Defendants object to this request on the grounds stated in the General Objections and
7 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
8 respect to the information sought in this request because Defendants SAP AG and SAP America
9 have no additional knowledge separate and apart from the information provided by Defendant
10 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
11 "tested," and "generic environment" make this request overly broad, vague, and ambiguous.
12 Further, Defendants object to this request as compound and unduly burdensome in that this
13 request asks 33,185 separate questions, and the request would require Defendants to review
14 substantial business records to determine an answer, if possible, for each of the 33,185 separate
15 requests. Defendants also object that this is an incomplete and confusing hypothetical.
16 Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the
17 extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term
18 "object" was used in "Fix Object's" place.

19 Subject to the General Objections and Responses and these specific objections, after a
20 reasonable inquiry, based on Defendants' understanding of these questions, Defendants lack
21 sufficient information to respond to these requests as the information sought by these confusing
22 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
23 "readily obtainable manner." On this basis, therefore, these requests are DENIED.

24 **REQUEST NO. 29:**

25 For each item 1-33186 on Exhibit D, admit that, in Creating a Copy of the listed Fix
26 Object, SAP TN made a backup copy of at least one Local Environment.

27 **RESPONSE TO REQUEST NO. 29:**

28 Defendants object to this request on the grounds stated in the General Objections and

1 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
 2 respect to the information sought in this request because Defendants SAP AG and SAP America
 3 have no additional knowledge separate and apart from the information provided by Defendant
 4 TomorrowNow in this response. Defendants object to the request because the terms "creating,"
 5 "copy," "backup copy," and "local environment" make this request overly broad, vague, and
 6 ambiguous. Further, Defendants object to this request as compound and unduly burdensome in
 7 that this request asks 33,185 separate questions, and the request would require Defendants to
 8 review substantial business records to determine an answer, if possible, for each of the 33,185
 9 separate requests. Defendants also object to the term "Fix Object" as overly broad, vague, and
 10 inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if
 11 the undefined term "object" was used in "Fix Object's" place.

12 Subject to the General Objections and Responses and these specific objections, after a
 13 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
 14 sufficient information to respond to these requests as the information sought by these requests
 15 was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On
 16 this basis, therefore, these requests are DENIED.

17 **REQUEST NO. 30:**

18 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
 19 tested, in testing a Copy of the listed Fix Object, SAP TN made a backup copy of at least one
 20 Local Environment.

21 **RESPONSE TO REQUEST NO. 30:**

22 Defendants object to this request on the grounds stated in the General Objections and
 23 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
 24 respect to the information sought in this request because Defendants SAP AG and SAP America
 25 have no additional knowledge separate and apart from the information provided by Defendant
 26 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
 27 "tested/testing," "backup copy," and "local environment" make this request overly broad, vague,
 28 and ambiguous. Further, Defendants object to this request as compound and unduly burdensome

1 in that this request asks 33,185 separate questions, and the request would require Defendants to
2 review substantial business records to determine an answer, if possible, for each of the 33,185
3 separate requests. Defendants also object that this is an incomplete and confusing hypothetical.
4 Defendants further object to the term “Fix Object” as overly broad, vague, and inaccurate to the
5 extent it includes the phrase “discrete unit of code.” Defendants respond as if the undefined term
6 “object” was used in “Fix Object’s” place.

7 Subject to the General Objections and Responses and these specific objections, after a
8 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
9 sufficient information to respond to these requests as the information sought by these confusing
10 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
11 “readily obtainable manner.” On this basis, therefore, these requests are DENIED.

12 **REQUEST NO. 31:**

13 For each item 1-33186 on Exhibit D, admit that, in Creating a Copy of the listed Fix
14 Object, SAP TN restored at least one Local Environment from a backup copy.

15 **RESPONSE TO REQUEST NO. 31:**

16 Defendants object to this request on the grounds stated in the General Objections and
17 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
18 respect to the information sought in this request because Defendants SAP AG and SAP America
19 have no additional knowledge separate and apart from the information provided by Defendant
20 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
21 “creating,” “backup copy,” “restored,” and “local environment” make this request overly broad,
22 vague, and ambiguous. Further, Defendants object to this request as compound and unduly
23 burdensome in that this request asks 33,185 separate questions, and the request would require
24 Defendants to review substantial business records to determine an answer, if possible, for each of
25 the 33,185 separate requests. Defendants also object to the term “Fix Object” as overly broad,
26 vague, and inaccurate to the extent it includes the phrase “discrete unit of code.” Defendants
27 respond as if the undefined term “object” was used in “Fix Object’s” place.

28 Subject to the General Objections and Responses and these specific objections, after a

1 reasonable inquiry, based on Defendants' understanding of these questions, Defendants lack
2 sufficient information to respond to these requests as the information sought by these requests
3 was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On
4 this basis, therefore, these requests are DENIED.

5 **REQUEST NO. 32:**

6 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
7 tested, in testing a Copy of the listed Fix Object, SAP TN restored at least one Local Environment
8 from a backup copy.

9 **RESPONSE TO REQUEST NO. 32:**

10 Defendants object to this request on the grounds stated in the General Objections and
11 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
12 respect to the information sought in this request because Defendants SAP AG and SAP America
13 have no additional knowledge separate and apart from the information provided by Defendant
14 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
15 "tested/testing," "backup copy," "restored," and "local environment" make this request overly
16 broad, vague, and ambiguous. Further, Defendants object to this request as compound and
17 unduly burdensome in that this request asks 33,185 separate questions, and the request would
18 require Defendants to review substantial business records to determine an answer, if possible, for
19 each of the 33,185 separate requests. Defendants also object that this is an incomplete and
20 confusing hypothetical. Defendants further object to the term "Fix Object" as overly broad,
21 vague, and inaccurate to the extent it includes the phrase "discrete unit of code." Defendants
22 respond as if the undefined term "object" was used in "Fix Object's" place.

23 Subject to the General Objections and Responses and these specific objections, after a
24 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
25 sufficient information to respond to these requests as the information sought by these confusing
26 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
27 "readily obtainable manner." On this basis, therefore, these requests are DENIED.

1 **REQUEST NO. 33:**

2 For each item 1-33186 on Exhibit D, admit that, in Creating a Copy of the listed Fix
3 Object, SAP TN made a Copy of at least one Local Environment.

4 **RESPONSE TO REQUEST NO. 33:**

5 Defendants object to this request on the grounds stated in the General Objections and
6 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
7 respect to the information sought in this request because Defendants SAP AG and SAP America
8 have no additional knowledge separate and apart from the information provided by Defendant
9 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
10 "creating," and "local environment" make this request overly broad, vague, and ambiguous.
11 Further, Defendants object to this request as compound and unduly burdensome in that this
12 request asks 33,185 separate questions, and the request would require Defendants to review
13 substantial business records to determine an answer, if possible, for each of the 33,185 separate
14 requests. Defendants further object to the term "Fix Object" as overly broad, vague, and
15 inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if
16 the undefined term "object" was used in "Fix Object's" place.

17 Subject to the General Objections and Responses and these specific objections, after a
18 reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack
19 sufficient information to respond to these requests as the information sought by these requests
20 was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On
21 this basis, therefore, these requests are DENIED.

22 **REQUEST NO. 34:**

23 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
24 tested, in testing a Copy of the listed Fix Object, SAP TN made a copy of at least one Local
25 Environment.

26 **RESPONSE TO REQUEST NO. 34:**

27 Defendants object to this request on the grounds stated in the General Objections and
28 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with

1 respect to the information sought in this request because Defendants SAP AG and SAP America
2 have no additional knowledge separate and apart from the information provided by Defendant
3 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
4 “tested/testing,” and “local environment” make this request overly broad, vague, and ambiguous.
5 Further, Defendants object to this request as compound and unduly burdensome in that this
6 request asks 33,185 separate questions, and the request would require Defendants to review
7 substantial business records to determine an answer, if possible, for each of the 33,185 separate
8 requests. Defendants also object that this is an incomplete and confusing hypothetical.
9 Defendants further object to the term “Fix Object” as overly broad, vague, and inaccurate to the
10 extent it includes the phrase “discrete unit of code.” Defendants respond as if the undefined term
11 “object” was used in “Fix Object’s” place.

12 Subject to the General Objections and Responses and these specific objections, after a
13 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
14 sufficient information to respond to these requests as the information sought by these confusing
15 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
16 “readily obtainable manner.” On this basis, therefore, these requests are DENIED.

17 **REQUEST NO. 35:**

18 For each item 1-33186 on Exhibit D, admit that, in Creating a Copy of the listed Fix
19 Object, SAP TN modified at least one Local Environment.

20 **RESPONSE TO REQUEST NO. 35:**

21 Defendants object to this request on the grounds stated in the General Objections and
22 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
23 respect to the information sought in this request because Defendants SAP AG and SAP America
24 have no additional knowledge separate and apart from the information provided by Defendant
25 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
26 “creating,” “modified,” and “local environment” make this request overly broad, vague, and
27 ambiguous. Further, Defendants object to this request as compound and unduly burdensome in
28 that this request asks 33,185 separate questions, and the request would require Defendants to

1 review substantial business records to determine an answer, if possible, for each of the 33,185
2 separate requests. Defendants also object to the term “Fix Object” as overly broad, vague, and
3 inaccurate to the extent it includes the phrase “discrete unit of code.” Defendants respond as if
4 the undefined term “object” was used in “Fix Object’s” place.

5 Subject to the General Objections and Responses and these specific objections, after a
6 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
7 sufficient information to respond to these requests as the information sought by these requests
8 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
9 this basis, therefore, these requests are DENIED.

10 **REQUEST NO. 36:**

11 For each item 1-33186 on Exhibit D, admit that, in Creating a Copy of the listed Fix
12 Object, SAP TN modified at least one Local Environment so as to create a derivative work,
13 within the meaning of 17 U.S.C. § 101, that was based on copyrighted Oracle software.

14 **RESPONSE TO REQUEST NO. 36:**

15 Defendants object to this request on the grounds stated in the General Objections and
16 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
17 respect to the information sought in this request because Defendants SAP AG and SAP America
18 have no additional knowledge separate and apart from the information provided by Defendant
19 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
20 “creating,” “modified,” “derivative work,” “copyrighted Oracle software,” and “local
21 environment” make this request overly broad, vague, and ambiguous. Further, Defendants object
22 to this request as compound and unduly burdensome in that this request asks 33,185 separate
23 questions, and the request would require Defendants to review substantial business records to
24 determine an answer, if possible, for each of the 33,185 separate requests. Defendants object to
25 this request for admission because it calls for a conclusion of law. Defendants further object to
26 the term “Fix Object” as overly broad, vague, and inaccurate to the extent it includes the phrase
27 “discrete unit of code.” Defendants respond as if the undefined term “object” was used in “Fix
28 Object’s” place.

1 Subject to the General Objections and Responses and these specific objections, these
2 requests only seek conclusions of law, and on that basis are DENIED.

3 **REQUEST NO. 37:**

4 For each item 1-33186 on Exhibit D, admit that SAP TN's modification of at least one
5 Local Environment in the course of Creating a Copy of the listed Fix Object was unlicensed.

6 **RESPONSE TO REQUEST NO. 37:**

7 Defendants object to this request on the grounds stated in the General Objections and
8 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
9 respect to the information sought in this request because Defendants SAP AG and SAP America
10 have no additional knowledge separate and apart from the information provided by Defendant
11 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
12 "creating," "modification," "unlicensed," and "local environment" make this request overly broad,
13 vague, and ambiguous. Further, Defendants object to this request as compound and unduly
14 burdensome in that this request asks 33,185 separate questions, and the request would require
15 Defendants to review substantial business records to determine an answer, if possible, for each of
16 the 33,185 separate requests. Defendants object to this request for admission because it calls for a
17 conclusion of law. Defendants further object to the term "Fix Object" as overly broad, vague, and
18 inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if
19 the undefined term "object" was used in "Fix Object's" place.

20 Subject to the General Objections and Responses and these specific objections, these
21 requests are DENIED.

22 **REQUEST NO. 38:**

23 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
24 tested, in testing a Copy of the listed Fix Object, SAP TN modified at least one Local
25 Environment.

26 **RESPONSE TO REQUEST NO. 38:**

27 Defendants object to this request on the grounds stated in the General Objections and
28 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with

1 respect to the information sought in this request because Defendants SAP AG and SAP America
2 have no additional knowledge separate and apart from the information provided by Defendant
3 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
4 “tested,” “modified,” and “local environment” make this request overly broad, vague, and
5 ambiguous. Further, Defendants object to this request as compound and unduly burdensome in
6 that this request asks 33,185 separate questions, and the request would require Defendants to
7 review substantial business records to determine an answer, if possible, for each of the 33,185
8 separate requests. Defendants also object that this is an incomplete and confusing hypothetical.
9 Defendants further object to the term “Fix Object” as overly broad, vague, and inaccurate to the
10 extent it includes the phrase “discrete unit of code.” Defendants respond as if the undefined term
11 “object” was used in “Fix Object’s” place.

12 Subject to the General Objections and Responses and these specific objections, after a
13 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
14 sufficient information to respond to these requests as the information sought by these confusing
15 and incomplete hypotheticals was not tracked, recorded, or maintained by TomorrowNow in a
16 “readily obtainable manner.” On this basis, therefore, these requests are DENIED.

17 **REQUEST NO. 39:**

18 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
19 tested, in testing a Copy of the listed Fix Object, SAP TN modified at least one Local
20 Environment so as to create a derivative work, within the meaning of 17 U.S.C. § 101, that was
21 based on copyrighted Oracle software.

22 **RESPONSE TO REQUEST NO. 39:**

23 Defendants object to this request on the grounds stated in the General Objections and
24 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
25 respect to the information sought in this request because Defendants SAP AG and SAP America
26 have no additional knowledge separate and apart from the information provided by Defendant
27 TomorrowNow in this response. Defendants object to the request because the terms “copy,”
28 “tested/testing,” “modified,” “derivative work,” “copyrighted Oracle software,” and “local

1 environment” make this request overly broad, vague, and ambiguous. Further, Defendants object
2 to this request as compound and unduly burdensome in that this request asks 33,185 separate
3 questions, and the request would require Defendants to review substantial business records to
4 determine an answer, if possible, for each of the 33,185 separate requests. Defendants object to
5 this request for admission because it calls for a conclusion of law. Defendants also object that
6 this is an incomplete and confusing hypothetical. Defendants further object to the term “Fix
7 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
8 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

9 Subject to the General Objections and Responses and these specific objections, these
10 requests are DENIED.

11 **AMENDED RESPONSE TO REQUEST NO. 39:**

12 Subject to and without waiving their General and Specific Objections, Defendants amend
13 their response as follows: Defendants object to this request on the grounds stated in the General
14 Objections and Responses. Defendants’ response is based solely on Defendant TomorrowNow’s
15 knowledge with respect to the information sought in this request because Defendants SAP AG
16 and SAP America have no additional knowledge separate and apart from the information
17 provided by Defendant TomorrowNow in this response. Defendants object to the request because
18 the terms “copy,” “tested/testing,” “modified,” “derivative work,” “copyrighted Oracle software,”
19 and “local environment” make this request overly broad, vague, and ambiguous. Further,
20 Defendants object to this request as compound and unduly burdensome in that this request asks
21 33,185 separate questions, and the request would require Defendants to review substantial
22 business records to determine an answer, if possible, for each of the 33,185 separate requests.
23 Defendants object to this request for admission because it calls for a conclusion of law.
24 Defendants also object that this is an incomplete and confusing hypothetical. Defendants further
25 object to the term “Fix Object” as overly broad, vague, and inaccurate to the extent it includes the
26 phrase “discrete unit of code.” Defendants respond as if the undefined term “object” was used in
27 place of “Fix Object.”

28 Subject to the General Objections and Responses and these specific objections, these

1 requests only seek conclusions of law based on an incomplete hypothetical, and on that basis are
2 DENIED.

3 **REQUEST NO. 40:**

4 For each item 1-33186 on Exhibit D, admit that, if a Copy of the listed Fix Object was
5 tested, SAP TN's modification of at least one Local Environment in the course of testing a Copy
6 of the listed Fix Object was unlicensed.

7 **RESPONSE TO REQUEST NO. 40:**

8 Defendants object to this request on the grounds stated in the General Objections and
9 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
10 respect to the information sought in this request because Defendants SAP AG and SAP America
11 have no additional knowledge separate and apart from the information provided by Defendant
12 TomorrowNow in this response. Defendants object to the request because the terms "copy,"
13 "tested/testing," "modification," "unlicensed," and "local environment" make this request overly
14 broad, vague, and ambiguous. Further, Defendants object to this request as compound and
15 unduly burdensome in that this request asks 33,185 separate questions, and the request would
16 require Defendants to review substantial business records to determine an answer, if possible, for
17 each of the 33,185 separate requests. Defendants also object that this is an incomplete and
18 confusing hypothetical. Defendants object to this request for admission because it calls for a
19 conclusion of law. Defendants further object to the term "Fix Object" as overly broad, vague, and
20 inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if
21 the undefined term "object" was used in "Fix Object's" place.

22 Subject to the General Objections and Responses and these specific objections, these
23 requests are DENIED.

24 **REQUEST NO. 41:**

25 For each item 1-33186 on Exhibit D, admit that a Copy of the contents of the listed Fix
26 Object (with or without the same file name) was sent to at least one entity other than the recipient
27 stated for that item.

RESPONSE TO REQUEST NO. 41:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America have no additional knowledge separate and apart from the information provided by Defendant TomorrowNow in this response. Defendants object to the request because the terms "copy" and "contents" make this request overly broad, vague, and ambiguous. Further, Defendants object to this request as compound and unduly burdensome in that this request asks 33,185 separate questions, and the request would require Defendants to review substantial business records to determine an answer, if possible, for each of the 33,185 separate requests. Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix Object's" place.

Subject to the General Objections and Responses and these specific objections, after a reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack sufficient information to respond to these requests as the information sought by these requests was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On this basis, therefore, these requests are DENIED.

REQUEST NO. 42:

For each item 1-33186 on Exhibit D, admit that a Copy of the contents of the listed Fix Object (with or without the same file name) was used to update or modify at least one Local Environment.

RESPONSE TO REQUEST NO. 42:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America have no additional knowledge separate and apart from the information provided by Defendant TomorrowNow in this response. Defendants object to the request because the terms and phrases

1 “copy,” “contents,” “was used to update or modify,” and “local environment” make this request
2 overly broad, vague, and ambiguous. Further, Defendants object to this request as compound and
3 unduly burdensome in that this request asks 33,185 separate questions, and the request would
4 require Defendants to review substantial business records to determine an answer, if possible, for
5 each of the 33,185 separate requests. Defendants also object to the term “Fix Object” as overly
6 broad, vague, and inaccurate to the extent it includes the phrase “discrete unit of code.”
7 Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

8 Subject to the General Objections and Responses and these specific objections, after a
9 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
10 sufficient information to respond to these request as the information sought by these requests was
11 not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On this
12 basis, therefore, these requests are DENIED.

13 **REQUEST NO. 43:**

14 For each item 1-33186 on Exhibit D, admit that a Copy of the contents of the listed Fix
15 Object (with or without the same file name) was used to update or modify at least one Local
16 Environment that was not a customer-specific environment for the recipient stated for that item.

17 **RESPONSE TO REQUEST NO. 43:**

18 Defendants object to this request on the grounds stated in the General Objections and
19 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
20 respect to the information sought in this request because Defendants SAP AG and SAP America
21 have no additional knowledge separate and apart from the information provided by Defendant
22 TomorrowNow in this response. Defendants object to the request because the terms and phrases
23 “copy,” “contents,” “was used to update or modify,” and “local environment” make this request
24 overly broad, vague, and ambiguous. Further, Defendants object to this request as compound and
25 unduly burdensome in that this request asks 33,185 separate questions, and the request would
26 require Defendants to review substantial business records to determine an answer, if possible, for
27 each of the 33,185 separate requests. Defendants also object to the term “Fix Object” as overly
28 broad, vague, and inaccurate to the extent it includes the phrase “discrete unit of code.”

1 Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

2 Subject to the General Objections and Responses and these specific objections, after a
3 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
4 sufficient information to respond to these requests as the information sought by these requests
5 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
6 this basis, therefore, these requests are DENIED.

7 **REQUEST NO. 44:**

8 For each item 1-33186 on Exhibit D, admit that a Copy of the contents of the listed Fix
9 Object (with or without the same file name) was used to update or modify at least one Generic
10 Environment.

11 **RESPONSE TO REQUEST NO. 44:**

12 Defendants object to this request on the grounds stated in the General Objections and
13 Responses. Defendants’ response is based solely on Defendant TomorrowNow’s knowledge with
14 respect to the information sought in this request because Defendants SAP AG and SAP America
15 have no additional knowledge separate and apart from the information provided by Defendant
16 TomorrowNow in this response. Defendants object to the request because the terms and phrases
17 “copy,” “contents,” “was used to update or modify,” and “generic environment” make this
18 request overly broad, vague, and ambiguous. Further, Defendants object to this request as
19 compound and unduly burdensome in that this request asks 33,185 separate questions, and the
20 request would require Defendants to review substantial business records to determine an answer,
21 if possible, for each of the 33,185 separate requests. Defendants also object to the term “Fix
22 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
23 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

24 Subject to the General Objections and Responses and these specific objections, after a
25 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
26 sufficient information to respond to these requests as the information sought by these requests
27 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
28 this basis, therefore, these request are DENIED.

1 **REQUEST NO. 45:**

2 For each item 18462-33186 on Exhibit D, admit there is substantial similarity between the
3 protectable elements of the listed Fix Object and a file in SAP TN's possession, custody or
4 control that had been created by Oracle or had been delivered by Oracle as part of a PeopleSoft
5 application release, fix, update, upgrade or patch.

6 **RESPONSE TO REQUEST NO. 45:**

7 Defendants object to this request on the grounds stated in the General Objections and
8 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
9 respect to the information sought in this request because Defendants SAP AG and SAP America
10 have no additional knowledge separate and apart from the information provided by Defendant
11 TomorrowNow in this response. Defendants object to the request because the terms and phrases
12 "substantial similarity," "protectable elements," "created," and "PeopleSoft application release,
13 fix, update, upgrade or patch" make this request overly broad, vague, and ambiguous. Further,
14 Defendants object to this request as compound and unduly burdensome in that this request asks
15 14,724 separate questions, and the request would require Defendants to review substantial
16 business records to determine an answer, if possible, for each of the 14,724 separate requests.
17 Defendants object to this request for admission because it calls for a conclusion of law.
18 Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the
19 extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term
20 "object" was used in "Fix Object's" place.

21 Subject to the General Objections and Responses and these specific objections, these
22 requests are DENIED.

23 **REQUEST NO. 46:**

24 For each item 18462-33186 on Exhibit D, admit that a Copy of the listed Fix Object was
25 Created by modifying a file in SAP TN's possession, custody or control that had been created by
26 Oracle or had been delivered by Oracle as part of a PeopleSoft application release, fix, update,
27 upgrade or patch.

RESPONSE TO REQUEST NO. 46:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America have no additional knowledge separate and apart from the information provided by Defendant TomorrowNow in this response. Defendants object to the request because the terms and phrases "copy," "created," "modifying," and "PeopleSoft application release, fix, update, upgrade or patch" make this request overly broad, vague, and ambiguous. Further, Defendants object to this request as compound and unduly burdensome in that this request asks 14,724 separate questions, and the request would require Defendants to review substantial business records to determine an answer, if possible, for each of the 14,724 separate requests. Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix Object's" place.

Subject to the General Objections and Responses and these specific objections, after a reasonable inquiry and based on Defendants' understanding of these questions, Defendants lack sufficient information to respond to these requests as the information sought by these requests was not tracked, recorded, or maintained by TomorrowNow in a "readily obtainable manner." On this basis, therefore, these requests are DENIED.

REQUEST NO. 47:

For each item 18462-33186 on Exhibit D, admit that a Copy of the listed Fix Object was Created by using as a reference a file in SAP TN's possession, custody or control that had been created by Oracle or had been delivered by Oracle as part of a PeopleSoft application release, fix, update, upgrade or patch.

RESPONSE TO REQUEST NO. 47:

Defendants object to this request on the grounds stated in the General Objections and Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with respect to the information sought in this request because Defendants SAP AG and SAP America

1 have no additional knowledge separate and apart from the information provided by Defendant
2 TomorrowNow in this response. Defendants object to the request because the terms and phrases
3 “copy,” “created,” “reference a file,” and “PeopleSoft application release, fix, update, upgrade or
4 patch” make this request overly broad, vague, and ambiguous. Further, Defendants object to this
5 request as compound and unduly burdensome in that this request asks 14,724 separate questions,
6 and the request would require Defendants to review substantial business records to determine an
7 answer, if possible, for each of the 14,724 separate requests. Defendants also object to the term
8 “Fix Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete
9 unit of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s”
10 place.

11 Subject to the General Objections and Responses and these specific objections, after a
12 reasonable inquiry and based on Defendants’ understanding of these questions, Defendants lack
13 sufficient information to respond to these requests as the information sought by these requests
14 was not tracked, recorded, or maintained by TomorrowNow in a “readily obtainable manner.” On
15 this basis, therefore, these requests are DENIED.

16 **REQUEST NO. 48:**

17 For each item 18462-33186 on Exhibit D, admit that the listed Fix Object is a derivative
18 work within the meaning of 17 U.S.C. § 101.

19 **RESPONSE TO REQUEST NO. 48:**

20 Defendants object to this request on the grounds stated in the General Objections and
21 Responses. Defendants object to the request because the term “derivative work” makes this
22 request overly broad, vague, and ambiguous. Further, Defendants object to this request as
23 compound and unduly burdensome in that this request asks 14,724 separate questions, and the
24 request would require Defendants to review substantial business records to determine an answer,
25 if possible, for each of the 14,724 separate requests. Defendants object to this request for
26 admission because it calls for a conclusion of law. Defendants further object to the term “Fix
27 Object” as overly broad, vague, and inaccurate to the extent it includes the phrase “discrete unit
28 of code.” Defendants respond as if the undefined term “object” was used in “Fix Object’s” place.

1 Subject to the General Objections and Responses and these specific objections, these
2 requests only seek conclusions of law, and on that basis are DENIED.

3 **REQUEST NO. 49:**

4 For each item 18462-33186 on Exhibit D, admit that SAP TN's modification of a file that
5 had been created by Oracle or had been delivered by Oracle as part of a PeopleSoft application
6 release, fix, update, upgrade or patch so as to Create the listed Fix Object was unlicensed.

7 **RESPONSE TO REQUEST NO. 49:**

8 Defendants object to this request on the grounds stated in the General Objections and
9 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
10 respect to the information sought in this request because Defendants SAP AG and SAP America
11 have no additional knowledge separate and apart from the information provided by Defendant
12 TomorrowNow in this response. Defendants object to the request because the terms and phrases
13 "created," "modification," "PeopleSoft application release, fix, update, upgrade or patch," and
14 "unlicensed" make this request overly broad, vague, and ambiguous. Further, Defendants object
15 to this request as compound and unduly burdensome in that this request asks 14,724 separate
16 questions, and the request would require Defendants to review substantial business records to
17 determine an answer, if possible, for each of the 14,724 separate requests. Defendants object to
18 this request for admission because it calls for a conclusion of law. Defendants further object to
19 the term "Fix Object" as overly broad, vague, and inaccurate to the extent it includes the phrase
20 "discrete unit of code." Defendants respond as if the undefined term "object" was used in "Fix
21 Object's" place.

22 Subject to the General Objections and Responses and these specific objections, these
23 requests only seek conclusions of law, and on that basis are DENIED.

24 **REQUEST NO. 50:**

25 For each item 18462-33186 on Exhibit D, admit that SAP TN's use as a reference of a file
26 that had been created by Oracle or had been delivered by Oracle as part of a PeopleSoft
27 application release, fix, update, upgrade or patch so as to Create the listed Fix Object was
28 unlicensed.

1 **RESPONSE TO REQUEST NO. 50**

2 Defendants object to this request on the grounds stated in the General Objections and
3 Responses. Defendants' response is based solely on Defendant TomorrowNow's knowledge with
4 respect to the information sought in this request because Defendants SAP AG and SAP America
5 have no additional knowledge separate and apart from the information provided by Defendant
6 TomorrowNow in this response. Defendants object to the request because the terms and phrases
7 "created," "use as a reference of a file," "PeopleSoft application release, fix, update, upgrade or
8 patch," and "unlicensed" make this request overly broad, vague, and ambiguous. Further,
9 Defendants object to this request as compound and unduly burdensome in that this request asks
10 14,724 separate questions, and the request would require Defendants to review substantial
11 business records to determine an answer, if possible, for each of the 14,724 separate requests.
12 Defendants object to this request for admission because it calls for a conclusion of law.
13 Defendants further object to the term "Fix Object" as overly broad, vague, and inaccurate to the
14 extent it includes the phrase "discrete unit of code." Defendants respond as if the undefined term
15 "object" was used in "Fix Object's" place.

16 Subject to the General Objections and Responses and these specific objections, these
17 requests only seek conclusions of law, and on that basis are DENIED.

18
19 Dated: December 4, 2009

JONES DAY

20
21 By: /s/ Jason McDonell

22 Jason McDonell

23 Counsel for Defendants
24 SAP AG, SAP AMERICA, INC., and
25 TOMORROWNOW, INC.

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PROOF OF SERVICE

I, Laurie Paige Burns, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On December 4, 2009, I served a copy of the attached document(s):

DEFENDANTS' SECOND AMENDED AND SUPPLEMENTAL RESPONSES TO PLAINTIFFS' THIRD SET OF REQUESTS FOR ADMISSION TO DEFENDANTS TOMORROWNOW, INC., SAP AG, AND SAP AMERICA, INC.

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Executed on December 4, 2009, at San Francisco, California.

By: 
Laurie Paige Burns