

# **EXHIBIT 101**

1 Robert A. Mittelstaedt (SBN 060359)  
Jason McDonell (SBN 115084)  
2 Elaine Wallace (SBN 197882)  
JONES DAY  
3 San Francisco Office  
555 California Street, 26<sup>th</sup> Floor  
4 San Francisco, CA 94104  
Telephone: (415) 626-3939  
5 Facsimile: (415) 875-5700  
ramittelstaedt@jonesday.com  
6 jmcdonell@jonesday.com  
ewallace@jonesday.com  
7

8 Tharan Gregory Lanier (SBN 138784)  
Jane L. Froyd (SBN 220776)  
JONES DAY  
9 Silicon Valley Office  
1755 Embarcadero Road  
10 Palo Alto, CA 94303  
Telephone: (650) 739-3939  
11 Facsimile: (650) 739-3900  
tglanier@jonesday.com  
12 jfroyd@jonesday.com

13 Scott W. Cowan (Admitted *Pro Hac Vice*)  
Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
14 JONES DAY  
717 Texas, Suite 3300  
15 Houston, TX 77002  
Telephone: (832) 239-3939  
16 Facsimile: (832) 239-3600  
swcowan@jonesday.com  
17 jlfuchs@jonesday.com

18 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
19 TOMORROWNOW, INC.

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 OAKLAND 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)

**DEFENDANTS' FIRST SUPPLEMENTAL  
RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' FIFTH SET OF  
INTERROGATORIES TO DEFENDANT  
TOMORROWNOW, INC. AND FOURTH SET  
OF INTERROGATORIES TO DEFENDANTS  
SAP AG AND SAP AMERICA, INC.**

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**INTERROGATORIES**

**INTERROGATORY NO. 122:**

For each whole or partial Copy of each of the following versions or releases of Oracle Database products located at any time on SAP TN's Systems, Identify all origins or sources (i.e., from whom or where SAP TN obtained any original copy of the Oracle Database product): 8.1, 8.1.7 ,8.1.7.0, 8.1.7.0.0, 8.1.7.1.0, 8.1.7.4.0, 8i, 9.0.2.0.0, 9.0.2.692.1, 9.2, 9.2.0, 9.2.0.0, 9.2.0.1.0., 9.2.0.4, 9.2.0.4.0,9.2.0.5.0 - 64 bit, 9.2.0.6, 9.2.0.6.0, 9.2.0.7, 9.2.05, 9.2i, 9i, 10.1.0.2.0, 10.1.0.3.0, 10.1.0.4.0, 10.1.2.0.0, 10.2.0.0.0, 10.2.0.1.0., 10.2.0.2.0, 10.2.0.3.0, 10g.

**RESPONSE TO INTERROGATORY NO. 122:**

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION

*TomorrowNow Answer*

Defendant TomorrowNow objects to this interrogatory on the grounds stated in the General Objections and Responses. Defendant TomorrowNow further objects to this request on burden grounds to the extent the interrogatory purports to request Defendants to create a compilation, abstract, or summary from materials that Defendants have already produced, will produce, or have made available for review through the parties' agreed Data Warehouse protocol.

1 Defendant TomorrowNow also objects to the extent this interrogatory is cumulative of other  
2 discovery requests. Defendant TomorrowNow objects that this request is misleading, vague, and  
3 ambiguous in that the request: (1) fails to define the terms “versions or releases,” (2) fails to  
4 define and/or use a uniform naming convention for the alleged versions or releases of Oracle  
5 database components listed, and (3) lists releases (e.g. 8i, 9i, 10g, 8.1, 9.2i, etc) that would cover  
6 multiple versions and/or releases without Plaintiffs providing further identifying information.  
7 Defendant TomorrowNow further objects that the phrases “each whole or partial copy,” “all  
8 origins or sources,” “Oracle Database product(s),” “TN’s systems,” and “any original copy” are  
9 overly broad, unduly burdensome, vague and ambiguous. Defendant TomorrowNow further  
10 objects that the term “copy” is vague and ambiguous and that the phrase “original copy” is vague,  
11 ambiguous, and confusing. TomorrowNow objects that the phrase “at any time” makes this  
12 request unbounded as to time, and thus, this request is overly broad and unduly burdensome.  
13 TomorrowNow further objects that the request improperly assumes that TomorrowNow  
14 maintained each of the “versions” listed in the request and, to the extent TomorrowNow did not  
15 maintain the “versions” listed, the request is compound and should be treated as multiple  
16 interrogatories.

17 Subject to and without waiving its Objections, Defendant TomorrowNow responds as  
18 follows: Defendants incurred the extreme expense and burden of presenting data from  
19 TomorrowNow’s servers that Defendants’ reasonably believe were used in the servicing of  
20 TomorrowNow’s PeopleSoft, JDE, and Siebel customers, including any Oracle database related  
21 components on these servers, through an electronic “Data Warehouse.” TomorrowNow relies on  
22 all of its current responses to Plaintiff Oracle Corporation’s First Set of Interrogatories to  
23 Defendant TomorrowNow, Inc. (Set One) No. 11, including the supplemental database response,  
24 in responding to this request. Through this process, Oracle has been able to examine and request  
25 production of possible Oracle database related components that were kept in a centralized  
26 location. Pursuant to Rule 33(d), TomorrowNow incorporates by reference and relies on the data  
27 made available to Oracle through this process to further respond.

1 As detailed below, TomorrowNow underwent the burden of attempting to locate the exact  
2 release information for the database related components on TomorrowNow's network by  
3 searching for sqlnet.log files within the network folder of each installation of the Oracle database  
4 related product versions to determine the specific release and version information for the  
5 instances that were likely installed and accessed by TomorrowNow. TomorrowNow was able to  
6 locate the following information:

- 7 • PSDEV01\_LV00\app\oracle\product\8.1.7\network\log\sqlnet.log, identifying  
8 the specific version as 8.1.7.4.0, which was made available to Plaintiffs for  
9 inspection as part of the Data Warehouse protocol
- 10 • PSDEV01\_LV00\app\oracle\product\9.2.0\network\log\sqlnet.log, identifying  
11 the specific version as 9.2.0.6.0, which was made available to Plaintiffs for  
12 inspection as part of the Data Warehouse protocol
- 13 • DCPSTEMP01\E\oracle\ora92\network\log\sqlnet.log, identifying the specific  
14 versions as 9.2.0.1.0 and 9.2.0.4.0, which were made available to Plaintiffs for  
15 inspection as part of the Data Warehouse protocol
- 16 • DCPSTEMP02\D\oracle\ora102\NETWORK\log\sqlnet.log, identifying the  
17 specific version as 10.2.0.1.0, which was made available to Plaintiffs for  
18 inspection as part of the Data Warehouse protocol
- 19 • DCPSTEMP02\D\oracle\ora92\network\log\sqlnet.log, identifying the specific  
20 version as 9.2.0.4.0, which was made available to Plaintiffs for inspection as  
21 part of the Data Warehouse protocol
- 22 • PSDEV02[also known as PSIBMAIX1]  
23 \d01\app\oracle\product\9.2.0\network\log\sqlnet.log, identifying the specific  
24 version as 9.2.0.6.0, which was made available to Plaintiffs for inspection as  
25 part of the Data Warehouse protocol
- 26 • PSDEV02[also known as PSIBMAIX1]  
27 \d01\app\oracle\product\8.1.7\network\log\sqlnet.log, identifying the specific  
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1 version as 8.1.7.4.0, which was made available to Plaintiffs for inspection as  
2 part of the Data Warehouse protocol

- 3 • DCSBLPROD03\C\oracle\9.2\network\log\sqlnet.log, identifying the specific  
4 version as 9.2.0.4.0; *see* TN-OR04446713, TN(Hard Drive).73
- 5 • FSC2.1\DISK2-s001\C\oracle\network\log\sqlnet.log, identifying the specific  
6 version as 9.2.0.4.0 as located on the virtual machine from TN-  
7 FS01\_F\Siebel\Backups\FSC.2 (original and recollected image)(this and all  
8 VMs were or will be made available to Plaintiffs for inspection as part of the  
9 Data Warehouse protocol)
- 10 • FSC2\DISK2-s001\C\oracle\network\log\sqlnet.log, identifying the specific  
11 version as 9.2.0.4.0 as located on the virtual machine from TN-  
12 FS01\_F\Siebel\Backups\FSC2 (original and recollected image)(this and all  
13 VMs were or will be made available to Plaintiffs for inspection as part of the  
14 Data Warehouse protocol)
- 15 • FSC.1\DISK2-s001\C\oracle\9.2\network\log\sqlnet.log, identifying the  
16 specific version as 9.2.0.4.0 as located on the virtual machine from TN-  
17 FS01\_F\Siebel\Backups\FSC.1 (original and recollected image)(this and all  
18 VMs were or will be made available to Plaintiffs for inspection as part of the  
19 Data Warehouse protocol)
- 20 • FSC.2\DISK2-s001\C\oracle\9.2\network\log\sqlnet.log, identifying the  
21 specific version as 9.2.0.4.0 as located on the virtual machine from TN-  
22 FS01\_F\Siebel\Backups\FSC.2 (original and recollected image)(this and all  
23 VMs were or will be made available to Plaintiffs for inspection as part of the  
24 Data Warehouse protocol)

25 For the following instances, TomorrowNow located a folder structure appearing to  
26 correspond with an installed product, but because there is no corresponding sqlnet.log file  
27 maintained in the network folder, TomorrowNow reasonably believe these specific installed  
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1 versions were not accessed by TomorrowNow employees as part of TomorrowNow's servicing of  
2 its customers:

- 3 • PSDEV01\_LV00\app\oracle\product\10.2.0\network\log which was made  
4 available to Plaintiffs for inspection as part of the Data Warehouse protocol
- 5 • DCSBLPROD04\oracle\10g\NETWORK\log; *see* TN-OR04446714, TN(Hard  
6 Drive).74
- 7 • FSCSALES\Windows Server 2003 Enterprise Edition-  
8 s001\C\oracle\9.2\network\log as located on the virtual machine from TN-  
9 FS01\_F\Siebel\Backups\FSCSALES (original and recollected image)(this and  
10 all VMs were or will be made available to Plaintiffs for inspection as part of  
11 the Data Warehouse protocol)
- 12 • FSCSALES.1\Windows Server 2003 Enterprise Edition-  
13 s001\C\oracle\9.2\network\log as located on the virtual machine from TN-  
14 FS01\_F\Siebel\Backups\FSCSALES.1 (original and recollected image)(this  
15 and all VMs were or will be made available to Plaintiffs for inspection as part  
16 of the Data Warehouse protocol)
- 17 • FSCSALES.2\C\oracle\9.2\network\log as located on the virtual machine from  
18 TN-FS01\_F\Siebel\Backups\FSCSALES.2 (recollected image)(this and all  
19 VMs were or will be made available to Plaintiffs for inspection as part of the  
20 Data Warehouse protocol)
- 21 • StandardRegister\C\oracle\8.1\network as located on the virtual machine from  
22 TN-FS01\_F\Siebel\Backups\Standard Register (original and recollected  
23 image)(this and all VMs were or will be made available to Plaintiffs for  
24 inspection as part of the Data Warehouse protocol)
- 25 • StandardRegister\C\oracle\9.2\network\log as located on the virtual machine  
26 from TN-FS01\_F\Siebel\Backups\Standard Register (original and recollected  
27 image)(this and all VMs were or will be made available to Plaintiffs for  
28 inspection as part of the Data Warehouse protocol)

- 1                   • StandardRegister.1\C\oracle\8.1\network as located on the virtual machine
- 2                   from TN-FS01\_F\Siebel\Backups\Standard Register.1 (original and recollected
- 3                   image)(this and all VMs were or will be made available to Plaintiffs for
- 4                   inspection as part of the Data Warehouse protocol)
- 5                   • StandardRegister.1\C\oracle\9.2\network\log as located on the virtual machine
- 6                   from TN-FS01\_F\Siebel\Backups\Standard Register.1 (original and recollected
- 7                   image)(this and all VMs were or will be made available to Plaintiffs for
- 8                   inspection as part of the Data Warehouse protocol)
- 9                   • StandardRegister.2\C\oracle\8.1\network\log as located on the virtual machine
- 10                  from TN-FS01\_F\Siebel\Backups\Standard Register.2 (original and recollected
- 11                  image)(this and all VMs were or will be made available to Plaintiffs for
- 12                  inspection as part of the Data Warehouse protocol)

13                  Additionally, TomorrowNow located folder structures and sqlnet.log files maintained in  
 14                  the network folders on TN-FS01\_F, but TomorrowNow does not believe these versions were ever  
 15                  installed and running on TN-FS01\_F. Tomorrow reasonably believes that these specific versions  
 16                  were likely installed on a previous server named TN-Dell 2650-01 and the files were later moved  
 17                  to TN-FS01\_F as follows:

- 18                  • TN-FS01\_F\C\DellRestore\D Drive\oracle\ora81\network\LOG\sqlnet.log,
- 19                  identifying the specific version 8.1.7.4.0; *see* TN-OR06577705, TN(Hard
- 20                  Drive).94
- 21                  • TN-FS01\_F\C\DellRestore\D Drive\oracle\ora92\network\log\sqlnet.log,
- 22                  identifying the specific version 9.2.0.4.0; *see* TN-OR06577705, TN(Hard
- 23                  Drive).94

24                  TomorrowNow reasonably believes that the following folder paths contain materials that  
 25                  were not running instances of an Oracle database platform or release, but that these materials  
 26                  could be used to install a running instance of a specific version as follows:



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- TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 10g release 2; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 8i release 3 (8.1.7) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 8i release 3 (8.1.7) Enterprise Edition (64-bit); *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 9i release 2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\HP-UX\Oracle 8i release 3\Oracle 8i release 3 (8.1.7) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\HP-UX\Oracle 9i release 2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)
- TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 8i release 3\Oracle 8i release 3 (8.1.7) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as part of the original image in the Data Warehouse)

- 1                   • TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 8i release  
2                   3\Oracle 8i release 3 (8.1.7) Enterprise Edition (64-bit); *see* TN-OR07099078,  
3                   TN(Hard Drive).104 (also made available for inspection as part of the original  
4                   image in the Data Warehouse)
- 5                   • TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 9i release  
6                   2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition (64-bit); *see* TN-  
7                   OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
8                   of the original image in the Data Warehouse)
- 9                   • TN-FS01\_F Slice5\TN Software Library\Oracle\Tru64 Unix\Oracle8i  
10                  Enterprise Edition Release (8.1.7) for Compaq Tru64 UNIX; *see* TN-  
11                  OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
12                  of the original image in the Data Warehouse)
- 13                 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
14                  10g release 2; *see* TN-OR07099078, TN(Hard Drive).104(also made available  
15                  for inspection as part of the original image in the Data Warehouse)
- 16                 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
17                  8i release 3; *see* TN-OR07099078, TN(Hard Drive).104 (also made available  
18                  for inspection as part of the original image in the Data Warehouse)
- 19                 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
20                  9i release 2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-  
21                  OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
22                  of the original image in the Data Warehouse)

23                 TomorrowNow reasonably believes that no systematic or centralized records were  
24                 maintained regarding from whom or where these Oracle database components were obtained.  
25                 TomorrowNow has not yet analyzed whether the database components referenced above contain  
26                 any software and support materials, including updates/patches and related support materials. To  
27                 the extent these are the actual database applications, it is likely that the initial instance of the  
28                 database release was obtained from the public Oracle Technology Network website.

1 TomorrowNow reasonably believes this website could be www.oracle.com/technology. To the  
2 extent the location and address of the website can be known during the relevant time period, this  
3 is information which would be within Plaintiffs' custody, control, and possession. To the extent  
4 updates/patches were applied or stored in the locations identified above, TomorrowNow  
5 reasonably believes that they were likely obtained by TomorrowNow employees from the  
6 metalink.oracle.com website.

7 In addition, some of the overly broad and unduly burdensome information that this  
8 interrogatory seeks is the subject of requested Rule 30(b)(6) deposition testimony and has already  
9 been the subject of prior individual testimony. See September 30, 2009 Notice of Deposition of  
10 TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 1 ("The identification by release,  
11 version, and/or filename of any Oracle Database Software in []TN's possession at any time or  
12 which []TN obtained, Copied, or used for any purpose"), Topic 2 ("The identification of []TN's  
13 computers, servers, or other hardware on which any Oracle Database Software ever resided"),  
14 Topic 6 ("The original source of any Oracle Database Software which ever existed on []TN's  
15 Systems and the manner or method by which []TN acquired or accessed each such original  
16 source"); see also April 23, 2009 Deposition of George Lester; September 3, 2009 Deposition of  
17 Shelley Nelson. Pursuant to Rule 33(d), Defendants rely on all documents and files cited to  
18 further respond to this interrogatory.

19 ***SAP AG and SAP America Response***

20 Defendant SAP objects to this interrogatory on the grounds stated in the General  
21 Objections and Responses. Consistent with the parties' practices with respect to discovery in this  
22 case, SAP interprets this request as limited to information relating to TomorrowNow and/or  
23 TomorrowNow's services of PeopleSoft, J.D. Edwards and/or Siebel applications. Defendant  
24 SAP further objects to this request on burden grounds to the extent the interrogatory purports to  
25 request Defendants to create a compilation, abstract, or summary from materials that Defendants  
26 have already produced, will produce, or have made available for review through the parties'  
27 agreed Data Warehouse protocol. Defendant SAP also objects to the extent this interrogatory is  
28 cumulative of other discovery requests. Defendant TomorrowNow objects that this request is

1 misleading, vague, and ambiguous in that the request: (1) fails to define the terms “versions or  
 2 releases,” (2) fails to define and/or use a uniform naming convention for the alleged versions or  
 3 releases of Oracle database components listed, and (3) lists releases (e.g. 8i, 9i, 10g, 8.1, 9.2i, etc)  
 4 that would cover multiple versions and/or releases without Plaintiffs providing further identifying  
 5 information. Defendant SAP further objects that the phrases “each whole or partial copy,” “all  
 6 origins or sources,” “Oracle Database product(s),” “TN’s systems,” and “any original copy” are  
 7 overly broad, unduly burdensome, vague and ambiguous. Defendant SAP further objects that the  
 8 term “copy” is vague and ambiguous and that the phrase “original copy” is vague, ambiguous,  
 9 and confusing. SAP objects that the phrase “at any time” makes this request unbounded as to  
 10 time, and thus, this request is overly broad and unduly burdensome. Defendant SAP further  
 11 objects that the request improperly assumes that TomorrowNow maintained each of the  
 12 “versions” listed in the request and, to the extent TomorrowNow did not maintain the “versions”  
 13 listed, the request is compound and should be treated as multiple interrogatories.

14 Subject to and without waiving its Objections, SAP responds as follows: SAP has no  
 15 additional knowledge other than what is reflected in TomorrowNow’s answer to this  
 16 Interrogatory.

17 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 122:**

18 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
 19 INFORMATION

20 ***TomorrowNow Answer***

21 TomorrowNow further responds that TomorrowNow has provided further deposition  
 22 testimony that is responsive to the overly broad and unduly burdensome information that this  
 23 request seeks. *See, e.g.*, December 4, 2009 of Bill Thomas to Rule 30(b)(6); December 3, 2009 of  
 24 John Baugh.

25 **INTERROGATORY NO. 123:**

26 For each whole or partial Copy of each of the following versions or releases of Oracle  
 27 Database products located at any time on SAP TN's Systems, Identify any Customers for which  
 28 the whole or partial Copy was used as part of SAP TN's provision of software support services to

1 **INTERROGATORY NO. 124:**

2 Identify all Oracle Database Software and Support Materials Downloaded by any  
3 Defendant from Metalink, E-Delivery, or any other Oracle-owned or -managed website  
4 (including the credentials used to Download those Oracle Database Software and Support  
5 Materials).

6 **RESPONSE TO INTERROGATORY NO. 124:**

7 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION

8 *TomorrowNow Answer*

9 Defendant TomorrowNow objects to this interrogatory on the grounds stated in the  
10 General Objections and Responses. Defendant TomorrowNow objects to this interrogatory to the  
11 extent it requires Defendants to evaluate and chronicle information that involved numerous  
12 employees, took place over several years, and is too complex and detailed to describe in an  
13 interrogatory response. Defendant TomorrowNow further objects to this request on burden  
14 grounds to the extent the interrogatory purports to request Defendants to create a compilation,  
15 abstract, or summary from materials that Defendants have already produced, will produce, or  
16 have made available for review through the parties' agreed Data Warehouse protocol. Defendant  
17 TomorrowNow further objects that the use of the terms "all" and "any" make this request overly  
18 broad, unduly burdensome, vague and ambiguous. Defendant TomorrowNow objects that the  
19 terms and phrases "download(ed)," "Oracle-owned or – managed website," and "credentials used  
20 to download" are vague and ambiguous. TomorrowNow also objects that the term "software" in  
21 the context of the request is vague and ambiguous.

22 Subject to and without waiving its Objections, Defendant TomorrowNow responds as  
23 follows: Defendants incurred the extreme expense and burden of presenting data from  
24 TomorrowNow's servers that Defendants' reasonably believe were used in the servicing of  
25 TomorrowNow's PeopleSoft, JDE, and Siebel customers, including any Oracle database related  
26 components on these servers, through an electronic "Data Warehouse." TomorrowNow relies on  
27 all of its current responses to Plaintiff Oracle Corporation's First Set of Interrogatories to  
28 Defendant TomorrowNow, Inc. (Set One) No. 11, including the supplemental database response,

1 in responding to this request. Through this process, Oracle has been able to examine and request  
2 production of possible software and support materials that were kept in a centralized location,  
3 including any potential Oracle database software and support materials. Additionally, software  
4 and support materials could be contained on TomorrowNow employee hard drives, and/or within  
5 TomorrowNow employee e-mail boxes; however, to the extent that software and support  
6 materials were saved in these locations, they were not saved in a systemic fashion and were not  
7 centralized sources for these materials. Pursuant to Rule 33(d), TomorrowNow incorporates by  
8 reference and relies on the data made available to Oracle through this process to further respond.

9 As detailed below, TomorrowNow underwent the burden of attempting to locate the exact  
10 release information for the database related components on TomorrowNow's network by  
11 searching for sqlnet.log files within the network folder of each installation of the Oracle database  
12 related product versions to determine the specific release and version information for the  
13 instances that were likely installed and accessed by TomorrowNow. TomorrowNow was able to  
14 locate the following information:

- 15 • PSDEV01\_LV00\app\oracle\product\8.1.7\network\log\sqlnet.log, identifying  
16 the specific version as 8.1.7.4.0, which was made available to Plaintiffs for  
17 inspection as part of the Data Warehouse protocol
- 18 • PSDEV01\_LV00\app\oracle\product\9.2.0\network\log\sqlnet.log, identifying  
19 the specific version as 9.2.0.6.0, which was made available to Plaintiffs for  
20 inspection as part of the Data Warehouse protocol
- 21 • DCPSTEMP01\E\oracle\ora92\network\log\sqlnet.log, identifying the specific  
22 versions as 9.2.0.1.0 and 9.2.0.4.0, which was made available to Plaintiffs for  
23 inspection as part of the Data Warehouse protocol
- 24 • DCPSTEMP02\D\oracle\ora102\NETWORK\log\sqlnet.log, identifying the  
25 specific version as 10.2.0.1.0, which was made available to Plaintiffs for  
26 inspection as part of the Data Warehouse protocol

- 1
- 2 • DCPSTEMP02\D\oracle\ora92\network\log\sqlnet.log, identifying the specific  
3 version as 9.2.0.4.0, which was made available to Plaintiffs for inspection as  
4 part of the Data Warehouse protocol
  - 5 • PSDEV02[also known as PSIBMAIX1]  
6 \d01\app\oracle\product\9.2.0\network\log\sqlnet.log, identifying the specific  
7 version as 9.2.0.6.0, which was made available to Plaintiffs for inspection as  
8 part of the Data Warehouse protocol
  - 9 • PSDEV02[also known as PSIBMAIX1]  
10 \d01\app\oracle\product\8.1.7\network\log\sqlnet.log, identifying the specific  
11 version as 8.1.7.4.0, which was made available to Plaintiffs for inspection as  
12 part of the Data Warehouse protocol
  - 13 • DCSBLPROD03\C\oracle\9.2\network\log\sqlnet.log, identifying the specific  
14 version as 9.2.0.4.0; *see* TN-OR04446713, TN(Hard Drive).73
  - 15 • FSC2.1\DISK2-s001\C\oracle\network\log\sqlnet.log, identifying the specific  
16 version as 9.2.0.4.0 as located on the virtual machine from TN-  
17 FS01\_F\Siebel\Backups\FSC.2 (original and recollected image)(this and all  
18 VMs were or will be made available to Plaintiffs for inspection as part of the  
19 Data Warehouse protocol)
  - 20 • FSC2\DISK2-s001\C\oracle\network\log\sqlnet.log, identifying the specific  
21 version as 9.2.0.4.0 as located on the virtual machine from TN-  
22 FS01\_F\Siebel\Backups\FSC2 (original and recollected image)(this and all  
23 VMs were or will be made available to Plaintiffs for inspection as part of the  
24 Data Warehouse protocol)
  - 25 • FSC.1\DISK2-s001\C\oracle\9.2\network\log\sqlnet.log, identifying the  
26 specific version as 9.2.0.4.0 as located on the virtual machine from TN-  
27 FS01\_F\Siebel\Backups\FSC.1 (original and recollected image)(this and all  
28 VMs were or will be made available to Plaintiffs for inspection as part of the  
Data Warehouse protocol)



- 1                   • FSC.2\DISK2-s001\C\oracle\9.2\network\log\sqlnet.log, identifying the  
2                   specific version as 9.2.0.4.0 as located on the virtual machine from TN-  
3                   FS01\_F\Siebel\Backups\FSC.2 (original and recollected image)(this and all  
4                   VMs were or will be made available to Plaintiffs for inspection as part of the  
5                   Data Warehouse protocol)

6                   For the following instances, TomorrowNow located a folder structure appearing to  
7                   correspond with an installed product, but because there is no corresponding sqlnet.log file  
8                   maintained in the network folder, TomorrowNow reasonably believe these specific installed  
9                   versions were not accessed by TomorrowNow employees as part of TomorrowNow's servicing of  
10                  its customers:

- 11                  • PSDEV01\_LV00\app\oracle\product\10.2.0\network\log which was made  
12                  available to Plaintiffs for inspection as part of the Data Warehouse protocol
- 13                  • DCSBLPROD04\oracle\10g\NETWORK\log; *see* TN-OR04446714, TN(Hard  
14                  Drive).74
- 15                  • FSCSALES\Windows Server 2003 Enterprise Edition-  
16                  s001\C\oracle\9.2\network\log as located on the virtual machine from TN-  
17                  FS01\_F\Siebel\Backups\FSCSALES (original and recollected image)(this and  
18                  all VMs were or will be made available to Plaintiffs for inspection as part of  
19                  the Data Warehouse protocol)
- 20                  • FSCSALES.1\Windows Server 2003 Enterprise Edition-  
21                  s001\C\oracle\9.2\network\log as located on the virtual machine from TN-  
22                  FS01\_F\Siebel\Backups\FSCSALES.1 (original and recollected image)(this  
23                  and all VMs were or will be made available to Plaintiffs for inspection as part  
24                  of the Data Warehouse protocol)
- 25                  • FSCSALES.2\C\oracle\9.2\network\log as located on the virtual machine from  
26                  TN-FS01\_F\Siebel\Backups\FSCSALES.2 (recollected image)(this and all  
27                  VMs were or will be made available to Plaintiffs for inspection as part of the  
28                  Data Warehouse protocol)



- 1           • StandardRegister\C\oracle\8.1\network as located on the virtual machine from  
2           TN-FS01\_F\Siebel\Backups\Standard Register (original and recollected  
3           image)(this and all VMs were or will be made available to Plaintiffs for  
4           inspection as part of the Data Warehouse protocol)
- 5           • StandardRegister\C\oracle\9.2\network\log as located on the virtual machine  
6           from TN-FS01\_F\Siebel\Backups\Standard Register (original and recollected  
7           image)(this and all VMs were or will be made available to Plaintiffs for  
8           inspection as part of the Data Warehouse protocol)
- 9           • StandardRegister.1\C\oracle\8.1\network as located on the virtual machine  
10          from TN-FS01\_F\Siebel\Backups\Standard Register.1 (original and recollected  
11          image)(this and all VMs were or will be made available to Plaintiffs for  
12          inspection as part of the Data Warehouse protocol)
- 13          • StandardRegister.1\C\oracle\9.2\network\log as located on the virtual machine  
14          from TN-FS01\_F\Siebel\Backups\Standard Register.1 (original and recollected  
15          image)(this and all VMs were or will be made available to Plaintiffs for  
16          inspection as part of the Data Warehouse protocol)
- 17          • StandardRegister.2\C\oracle\8.1\network\log as located on the virtual machine  
18          from TN-FS01\_F\Siebel\Backups\Standard Register.2 (original and recollected  
19          image)(this and all VMs were or will be made available to Plaintiffs for  
20          inspection as part of the Data Warehouse protocol)

21           Additionally, TomorrowNow located folder structures and sqlnet.log files maintained in  
22           the network folders on TN-FS01\_F, but TomorrowNow does not believe these versions were ever  
23           installed and running on TN-FS01\_F. Tomorrow reasonably believes that these specific versions  
24           were likely installed on a previous server named TN-Dell 2650-01 and the files were later moved  
25           to TN-FS01\_F as follows:

- 26           • TN-FS01\_F\C\DellRestore\D Drive\oracle\ora81\network\LOG\sqlnet.log,  
27           identifying the specific version 8.1.7.4.0; *see* TN-OR06577705, TN(Hard  
28           Drive).94

- 1                   • TN-FS01\_F\C\DellRestore\D Drive\oracle\ora92\network\log\sqlnet.log,  
2                   identifying the specific version 9.2.0.4.0; *see* TN-OR06577705, TN(Hard  
3                   Drive).94

4                   TomorrowNow reasonably believes that the following folder paths contain materials that  
5                   were not running instances of an Oracle database platform or release, but that these materials  
6                   could be used to install a running instance of a specific version as follows:

- 7                   • TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 10g release 2; *see*  
8                   TN-OR07099078, TN(Hard Drive).104 (also made available for inspection as  
9                   part of the original image in the Data Warehouse)
- 10                  • TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 8i release 3  
11                  (8.1.7) Enterprise Edition; *see* TN-OR07099078, TN(Hard Drive).104 (also  
12                  made available for inspection as part of the original image in the Data  
13                  Warehouse)
- 14                  • TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 8i release 3  
15                  (8.1.7) Enterprise Edition (64-bit); *see* TN-OR07099078, TN(Hard Drive).104  
16                  (also made available for inspection as part of the original image in the Data  
17                  Warehouse)
- 18                  • TN-FS01\_F Slice5\TN Software Library\Oracle\AIX\Oracle 9i release  
19                  2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-OR07099078,  
20                  TN(Hard Drive).104 (also made available for inspection as part of the original  
21                  image in the Data Warehouse)
- 22                  • TN-FS01\_F Slice5\TN Software Library\Oracle\HP-UX\Oracle 8i release  
23                  3\Oracle 8i release 3 (8.1.7) Enterprise Edition; *see* TN-OR07099078,  
24                  TN(Hard Drive).104 (also made available for inspection as part of the original  
25                  image in the Data Warehouse)
- 26                  • TN-FS01\_F Slice5\TN Software Library\Oracle\HP-UX\Oracle 9i release  
27                  2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-OR07099078,  
28

- 1 TN(Hard Drive).104 (also made available for inspection as part of the original  
2 image in the Data Warehouse)
- 3 • TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 8i release  
4 3\Oracle 8i release 3 (8.1.7) Enterprise Edition; *see* TN-OR07099078,  
5 TN(Hard Drive).104 (also made available for inspection as part of the original  
6 image in the Data Warehouse)
  - 7 • TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 8i release  
8 3\Oracle 8i release 3 (8.1.7) Enterprise Edition (64-bit); *see* TN-OR07099078,  
9 TN(Hard Drive).104 (also made available for inspection as part of the original  
10 image in the Data Warehouse)
  - 11 • TN-FS01\_F Slice5\TN Software Library\Oracle\Solaris\Oracle 9i release  
12 2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition (64-bit); *see* TN-  
13 OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
14 of the original image in the Data Warehouse)
  - 15 • TN-FS01\_F Slice5\TN Software Library\Oracle\Tru64 Unix\Oracle8i  
16 Enterprise Edition Release (8.1.7) for Compaq Tru64 UNIX; *see* TN-  
17 OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
18 of the original image in the Data Warehouse)
  - 19 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
20 10g release 2; *see* TN-OR07099078, TN(Hard Drive).104 (also made available  
21 for inspection as part of the original image in the Data Warehouse)
  - 22 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
23 8i release 3; *see* TN-OR07099078, TN(Hard Drive).104 (also made available  
24 for inspection as part of the original image in the Data Warehouse)
  - 25 • TN-FS01\_F Slice5\TN Software Library\Oracle\Windows2000 or NT\Oracle  
26 9i release 2\Oracle 9i release 2 (9.2.0.1) Enterprise Edition; *see* TN-  
27 OR07099078, TN(Hard Drive).104 (also made available for inspection as part  
28 of the original image in the Data Warehouse)

1 TomorrowNow has not yet analyzed whether the database components referenced above  
2 contain any software and support materials, including updates/patches and related support  
3 materials, or are simply the actual database applications. As explained in Response No. 122  
4 above, which is incorporated here, TomorrowNow reasonably believes that no systematic or  
5 centralized records were maintained regarding from whom or where these Oracle database  
6 components were obtained. To the extent these are the actual database applications, it is likely  
7 that the initial instance of the database release was obtained from the public Oracle Technology  
8 Network website. To the extent any of these database components contain updates/patches or  
9 other support materials, these support materials likely would have been obtained from the website  
10 metalink.oracle.com and would be stored in the TN Software Library locations identified above.  
11 To the extent any materials were obtained from Metalink, the credentials used likely were for an  
12 account set up by John Baugh. *See* TN-OR01226238. It is TomorrowNow's understanding that,  
13 at least initially, this account was free and did not require the purchase of support from Oracle.  
14 As of June 6, 2006, the credentials for this account were: Log-in name:  
15 john\_baugh@tomorrownow.com and password xjlr61x8. *See* TN-OR08295762. TomorrowNow  
16 is not currently aware of whether these credentials were ever used to log into the Metalink site.  
17 TomorrowNow reasonably believes, but has not been able to confirm, that different credentials  
18 were used before this date. TomorrowNow reasonably believes that sometime around June 2006,  
19 TomorrowNow ceased accessing the Metalink website. Additionally, TomorrowNow is not  
20 currently aware of specific instances in which it applied patches or updates to the initial instance  
21 of the database components referenced above. Further, TomorrowNow is not currently aware of  
22 any such materials that were obtained from Oracle's E-Delivery website.

23 Some of the overly broad and unduly burdensome information that this interrogatory  
24 seeks is the subject of requested Rule 30(b)(6) deposition testimony and has already been the  
25 subject of prior individual testimony. *See* September 30, 2009 Notice of Deposition of  
26 TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 1 ("The identification by release,  
27 version, and/or filename of any Oracle Database Software in [ ]TN's possession at any time or  
28 which [ ]TN obtained, Copied, or used for any purpose"), Topic 2 ("The identification of [ ]TN's

1 computers, servers, or other hardware on which any Oracle Database Software ever resided”),  
2 Topic 3 (“The manner, method, and purposes for which []TN used any Oracle Database Software  
3 which ever existed on its Systems”), Topic 4 (“The identification of any Customers for which  
4 []TN used any Oracle Database Software on its Systems to provide support services”), Topic 5  
5 (“The manner and method by which []TN used any Oracle Database Software on its Systems to  
6 provide support services to Customers”), Topic 6 (“The original source of any Oracle Database  
7 Software which ever existed on []TN’s Systems and the manner or method by which []TN  
8 acquired or accessed each such original source”); April 23, 2009 Deposition of George Lester;  
9 September 3, 2009 Deposition of Shelley Nelson. Pursuant to Rule 33(d), Defendants rely on all  
10 documents and files cited to further respond to this interrogatory.

11 ***SAP AG and SAP America Answer***

12 Defendant TomorrowNow objects to this interrogatory on the grounds stated in the  
13 General Objections and Responses. SAP objects that the request is overly broad, unduly  
14 burdensome and unlikely to lead to the discovery of admissible evidence. Since SAP is a reseller  
15 of Oracle databases, the phrase “by any Defendant” could lead to information well outside the  
16 scope of this case. Furthermore, this request seeks information not related to Oracle’s allegations  
17 in this case and thus, SAP will interpret this interrogatory in a manner related to Oracle’s current  
18 allegations in this case and as referring only to Oracle software or support materials obtained in  
19 some manner by SAP through TomorrowNow. SAP also objects that the term “software” in the  
20 context of the request is vague and ambiguous. Defendant SAP objects to this interrogatory to the  
21 extent it requires Defendants to evaluate and chronicle information that involved numerous  
22 employees, took place over several years, and is too complex and detailed to describe in an  
23 interrogatory response. Defendant SAP further objects to this request on burden grounds to the  
24 extent the interrogatory purports to request Defendants to create a compilation, abstract, or  
25 summary from materials that Defendants have already produced, will produce, or have made  
26 available for review through the parties’ agreed Data Warehouse protocol. Defendant SAP  
27 further objects that the use of the terms “all” and “any” as making this request overly broad,  
28 unduly burdensome, vague and ambiguous. Defendant SAP further objects that the terms and

1 phrases “download(ed),” “Oracle-owned or – managed website,” and “credentials used to  
2 download” are vague and ambiguous.

3 Subject to and without waiving its Objections, SAP responds as follows: SAP has no  
4 additional knowledge other than what is reflected in TomorrowNow’s answer to this  
5 Interrogatory.

6 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 124:**

7 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL  
8 INFORMATION

9 ***TomorrowNow Answer***

10 TomorrowNow further responds that TomorrowNow has provided further deposition  
11 testimony that is responsive to the overly broad and unduly burdensome information that this  
12 request seeks. *See, e.g.*, December 4, 2009 of Bill Thomas to Rule 30(b)(6); December 3, 2009 of  
13 John Baugh.

14  
15 Dated: December 4, 2009.

JONES DAY

16  
17 By: /s/ Jason McDonell

18 Jason McDonell

19 Counsel for Defendants  
20 SAP AG, SAP AMERICA, INC., and  
21 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' FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIFTH SET OF INTERROGATORIES TO DEFENDANT TOMORROWNOW, INC. AND FOURTH SET OF INTERROGATORIES TO DEFENDANTS 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 and causing such envelope to be hand delivered to the office of the addressee on the date specified above.
- 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.

Donn Pickett, Esq.  
 Geoffrey M. Howard, Esq.  
 Holly House, Esq.  
 Zachary J. Alinder, Esq.  
 Bree Hann, Esq.  
 BINGHAM McCUTCHEN LLP  
 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
*donn.pickett@bingham.com*  
*geoff.howard@bingham.com*  
*holly.house@bingham.com*  
*zachary.alinder@bingham.com*  
*bree.hann@bingham.com*

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

By:   
 LAURIE PAIGE BURNS