

# **Exhibit 15**



"Alinder, Zachary J."  
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05/04/2009 05:16 PM

To "Elaine Wallace" <ewallace@JonesDay.com>  
cc "Howard, Geoff" <geoff.howard@bingham.com>, "House, Holly" <holly.house@bingham.com>, "Hann, Bree" <bree.hann@bingham.com>, "Jason McDonell"

bcc

Subject RE: Request for production of portions of Oracle's general ledger

History: This message has been forwarded.

Elaine,

We will need to meet and confer about your request for the production of 73 pages of line items from Oracle's general ledger, in addition to general ledger accounts included within Intangible Assets, Goodwill and Deferred Revenues (both current and non-current), before producing any further financial information. First, the request is facially overbroad and unduly burdensome, seeks irrelevant information, and is vague and ambiguous as to what information you seek or why. We have confirmed with Oracle internally that, as framed, it would take months of multiple people working around the clock to respond, which we will not do. Second, prior to responding to this request, and as discussed in Oracle's responses and objections to the recently served "first" set of targeted searches, we need to meet and confer and come to agreement as to how requests like these that are from non-custodial sources work within the parties' current discovery limits and procedures and, in particular, how they relate to the targeted search process, including the seven targeted searches that you served on 7/16/2008. Please let us know when you are available to discuss these issues further.

Best regards,  
Zac

**From:** Elaine Wallace [mailto:ewallace@JonesDay.com]  
**Sent:** Wednesday, April 29, 2009 10:03 AM  
**To:** Alinder, Zachary J.; Hann, Bree; Howard, Geoff; House, Holly  
**Cc:** Greg Lanier; Jason McDonell; Scott Cowan; Jane L Froyd; Joshua L Fuchs  
**Subject:** Request for production of portions of Oracle's general ledger

Counsel,

Further to our meet and confer discussions regarding Oracle's general ledger, attached is a list of the portions of the general ledger we need Oracle to produce. In addition to the attached list, and because the consolidated charts of accounts provided by Oracle only covered income statement accounts, we also request production of all the detailed general ledger accounts included in the following categories in the balance sheets of Oracle's audited financial statements from 2005 through the present date:

- Intangible assets
- Goodwill
- Deferred revenues (both current and non-current)

We will follow up shortly regarding the PeopleSoft and JD Edwards general ledgers.

Elaine Wallace

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=====  
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# **Exhibit 16**

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 16 Oracle EMEA Limited

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO DIVISION  
 20

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

Case No. 07-CV-1658 PJH (EDL)  
**PLAINTIFFS' SUPPLEMENTAL  
 RESPONSES AND OBJECTIONS TO  
 DEFENDANTS' "SECOND" AND  
 "THIRD" TARGETED SEARCH  
 REQUESTS**



1 2008. Along with any collection and production Oracle makes in response to Defendants'  
2 purported "first" targeted search Request, served on April 20, 2009, all of these efforts can and  
3 should count towards the 10 targeted searches allocated to each party. Though, as set forth  
4 below, Oracle is undertaking to locate and produce reasonably responsive information, Oracle  
5 will provide no responsive information to these "Second" and "Third" Targeted Search Requests  
6 until the Parties have agreed on whether and how many targeted searches (if any) Defendants  
7 have remaining.

8           2. Even if Defendants were allowed these additional targeted searches,  
9 Oracle reiterates its objection to these Requests because they are not "narrow searches by topic"  
10 as the parties agreed they would be and as the Court ordered on August 29, 2008. The August  
11 29, 2008 Order states "[t]he Parties may Request from the other side up to 10 targeted searches,  
12 *i.e.*, narrow searches by topic where document production would come from centralized sources  
13 and/or from those persons most likely to have responsive documents." Oracle has been and  
14 remains willing to meet and confer with Defendants in an effort to reach an agreement whereby  
15 Defendants will amend the form and scope of Defendants' "Second" and "Third" Targeted  
16 Search Requests in order to comply with the parties' previous agreements and the Court's August  
17 29, 2008 Order.

18           3. Oracle reiterates its further objection to the Requests to the extent they are  
19 vague, overbroad, oppressive, harassing and unduly burdensome.

20           4. Oracle reiterates its objection to the Requests because they are compound,  
21 contain numerous subparts and, if properly propounded and individually counted, the Requests  
22 would constitute more than two targeted search Requests.

23           5. Again, as with all of Defendants' other discovery Requests, Oracle's  
24 reasonable inquiry and related response to these discovery Requests, if any, shall be limited in a  
25 manner consistent with the Court's orders and the Parties' agreements that provide limits on the  
26 Parties' discovery obligations in this case. Oracle reiterates its objections to the Requests to the  
27 extent they can be interpreted to require Oracle to make any further search or production beyond  
28 what the parties have agreed and the Court has ordered or with the Court's guidance against seeking

1 unreasonably demanding, expensive, duplicative or marginally relevant discovery, because such an  
2 interpretation of the Requests would make them overbroad and unduly burdensome.

3           6. Any response by Oracle herein or in the future indicating that it will search  
4 for and, if reasonably available, produce documents is not a confirmation that such documents exist  
5 or are in Oracle's possession, custody, or control. Such response indicates only that Oracle, subject  
6 to its objections, will search for such documents to the extent that they do exist and are in Oracle's  
7 possession, custody or control and then evaluate the difficulty, expense, duplicativeness and  
8 relevance of production. Based on that evaluation, Oracle may need to further meet and confer with  
9 Defendants about limiting the scope of production and/or cost shifting.

10           7. Oracle reiterates its objections to Defendants' instructions to the extent that  
11 those instructions seek to require Oracle to produce documents in a form other than that in which  
12 those documents are maintained in the ordinary course of business. Subject to and without waiving  
13 its objections, if Oracle produces, it will produce relevant, responsive non-privileged documents as  
14 they are typically maintained, subject to the Parties' further meet and confer and the Parties'  
15 agreement regarding mechanics of production.

16           8. Oracle again objects to the Requests to the extent they seek to require Oracle  
17 to search for, review, or produce inaccessible information, data, or other materials. Oracle will not  
18 search for, review, or produce inaccessible information, data, or other materials.

19           9. Oracle reiterates its objections to each Request, definition, and instruction to  
20 the extent they seek to impose upon Oracle duties and/or responsibilities greater than those imposed  
21 by the Federal Rules of Civil Procedure, the Local Rules of this Court, any applicable orders of this  
22 Court, or any stipulation or agreement of the parties.

23           10. Oracle again further objects to the Requests to the extent they seek the  
24 production of documents and/or things that are not relevant to any claim or defense in this action, or  
25 reasonably calculated to lead to the discovery of admissible evidence that is relevant to any claim or  
26 defense. under Rule 26(b)(1) of the Federal Rules of Civil Procedure.

27           11. Oracle also again objects to the Requests to the extent they seek documents  
28 that are protected from disclosure by any applicable privilege, protection, or immunity, including but



1 not limited to the attorney-client privilege, the attorney work product doctrine, the privilege afforded  
2 non-testifying experts by Rule 26(b) of the Federal Rules of Civil Procedure, or that is otherwise  
3 protected from disclosure under the Federal Rules of Civil Procedure, the Federal Rules of Evidence,  
4 or relevant statutory or case law. Should any production of any such privileged documents by Oracle  
5 occur, it is inadvertent and shall not constitute a waiver of: (a) any privilege; (b) any other ground for  
6 objecting to discovery with respect to such documents or any other documents; (c) Oracle's right to  
7 claw any such document back; or (d) Oracle's right to object during this litigation or otherwise to the  
8 use of any such document. Oracle will log such privileged information in accordance with the  
9 Parties' agreements.

10           12.     Insofar as Oracle and Defendants work out their differences about how many  
11 Targeted Requests are covered by these Requests and how many (if any) additional targeted requests  
12 are available to Defendants and Oracle then agrees to produce in response to this Request, Oracle  
13 will produce its confidential and proprietary information only under the Agreed Protective Order  
14 entered in this case, which permits designating such documents, depending on their content, as  
15 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION -  
16 ATTORNEYS' EYES ONLY.

17           13.     Again, Oracle's response to Defendants' Requests does not constitute, and  
18 shall not be construed as, an admission or acknowledgement that the information sought is within the  
19 proper scope of discovery or admissible at trial, or that any non-privileged documents responsive to a  
20 particular Request may exist.

21           14.     Oracle's response to Defendants' Requests is made without in any way  
22 waiving: (a) the right to object on the grounds of authenticity, competency, relevancy, materiality,  
23 privilege or admissibility, to the extent that any documents produced in response hereto are ever  
24 attempted to be introduced as evidence for any purpose in any subsequent proceeding in, or the  
25 hearing of, this action or any other action, and (b) the right to object on any grounds to any other  
26 discovery Requests involving or relating to the same or similar subject matter of Defendants'  
27 Requests.

28



1 responses to each of Defendants' Interrogatories and Document Requests that relate to this  
2 Request. Oracle is not, by responding to this Request, waiving any of its objections to any of  
3 Defendants' Interrogatories and Document Requests.

4 Oracle further objects to the Request on the grounds that numerous terms and  
5 phrases throughout this Request are vague and ambiguous, and that, as a whole, the Request is  
6 unintelligible. For example, the phrases "support contract," "available to renew," and "non-  
7 renewals" lack sufficient specificity and are therefore overly broad and unduly burdensome.

8 Oracle also objects to this Request because it is compound and not a "narrow  
9 search by topic." Defendants' Request is improper because it is a combination of multiple  
10 targeted search Requests, requiring a search through multiple sources of information and  
11 therefore cannot be considered as one Request or as a "targeted" search Request.

12 Oracle also objects to Defendants' attempt to conduct duplicative discovery to the  
13 extent that this Request seeks documents, data, or other information that Oracle has already  
14 produced in this case. This objection includes, but is not limited to, an objection to any attempt  
15 by Defendants to require Oracle to segregate or otherwise separately identify any documents,  
16 data, or other information contained within any document production that Oracle has made or  
17 will make in this case. Oracle objects to the extent that information responsive to this targeted  
18 search Request has been or will be produced in the ordinary course of the custodian-based  
19 production in this case by Oracle. Any attempt by Defendants to seek such duplicative discovery  
20 is overbroad and harassing.

21 Oracle also objects to the Request to the extent it imposes a burden or obligation  
22 to which the parties have not yet agreed by requesting Oracle to produce documents for the  
23 January 1, 2002 through October 31, 2008 time period. The Parties have agreed to expand the  
24 discovery timeline for limited issues, and to the extent Defendants' Request for documents  
25 responsive to this targeted search Request does not fit within the subject matters agreed upon by  
26 parties for expanded discovery, Oracle does not intend to produce those documents beyond the  
27 agreed-upon discovery timeline.

28

1 Oracle also objects to the Request to the extent it seeks to require Oracle to search  
2 for, review, or produce data that is not reasonably accessible, such as legacy customer data,  
3 under Rule 26 of the Federal Rules of Civil Procedure.

4 Oracle also objects to the Request to the extent it seeks to unduly burden Oracle with  
5 a search for, review of, or production of data for thousands of customers and contracts in a manner  
6 and/or form that would impose upon Oracle duties and/or responsibilities greater than those imposed  
7 by the Federal Rules of Civil Procedure, the Local Rules of this Court, any applicable orders or  
8 guidance of this Court or any stipulation or agreement of the parties.

9 Subject to and without waiving its specific and general objections, Oracle's *initial*  
10 response to this Request is as follows:

11 Oracle seeks immediate confirmation from Defendants as to whether it concedes  
12 this is not their "Second" Targeted Search Request.

13 While not verifying the veracity of Defendants' allegations, Defendants allege  
14 documents sought in its Request - "documents sufficient to show support contracts available to  
15 renew and cancellations and/or non-renewals" for *every* Oracle customer who has "received  
16 support services from Oracle for the PeopleSoft and JD Edwards products at issue in this case"  
17 over an almost seven year period - may be contained in, or available through, two different  
18 possible sources of data (the "management portal" and C1 database) and should include, but is  
19 not limited to, at least 15 fields of data ("Contract number," "Organization name," "Sales rep,"  
20 "SSR," "Director," "Manager," "Customer," "Contract Status Code," "QTR," "Contract Start  
21 date," "Contract End date," "Constant Dollar Product Value," "FY-06 Value," "Date cancelled,"  
22 and "State").

23 Cancellation reports containing all the fields Defendants referenced in this  
24 Request do not exist for all customers who received support services from Oracle for the  
25 PeopleSoft and JD Edwards products at issue in this case; and/or do not exist for the entire  
26 period of January 1, 2002 through October 31, 2008; and/or do not exist for all relevant product  
27 lines; and some are duplicative of what's been produced or are over-inclusive. In fact, the report  
28 Defendants point to as an example of the reports they would like to see is a customized report

1 from a system not referenced by Defendants and may not be reproducible. Moreover, the means  
2 and measures for tracking cancellation data have changed over time. As Defendants are aware,  
3 JD Edwards was acquired by PeopleSoft and then PeopleSoft was acquired by Oracle and each  
4 company had their own historic means of tracking cancellations. Some historic customer data  
5 was not migrated over by Oracle after its acquisition of PeopleSoft.

6 Because no single database contains all the requested information, to the extent it  
7 was tracked and exists, Defendants' request is not appropriate to a targeted search. There is no  
8 single repository or custodian that would have all such analyses over this lengthy period.  
9 Moreover, cancellation reports have already been produced through a variety of documents and  
10 will continue to be produced in the ordinary course of the custodian-based production. Search  
11 for these reports specifically is not only duplicative but unnecessarily burdensome on Oracle.  
12 Given that these reports have already been produced and will continue to be produced, Oracle  
13 directs Defendants to look for them in Oracle's production (*e.g.*, ORCL00236146,  
14 ORCL00240845, ORCL00131099).

15 Thus, Oracle does not agree or concede that obtaining the reports Defendants  
16 reference is the appropriate, best or most cost-effective means to secure cancellation data or that  
17 such reports are relevant or likely to lead to the discovery of admissible evidence. Indeed, the  
18 irrelevant details sought by Defendants' Request evidence the harassing nature of the Request.  
19 For example, there is no need for Defendants to know the "Sales Rep," "Director," "Manager,"  
20 or "State" for *every* renewal contract of *every* support customer for such a lengthy period,  
21 especially for those customers that never left Oracle support. Thus, Oracle will not produce  
22 additional cancellation reports with such detail because such reports have already been produced  
23 to the extent they contain information relevant to this case. What Oracle will agree to produce is  
24 a supplement of summary cancellation rate data to the extent such data has not already been  
25 produced, and only for those periods where the data is reasonably accessible. Oracle expects it  
26 could produce any such reports three weeks after the Parties reach agreement on the number of  
27 targeted searches already used by Defendants, the number of search requests in this Request, and  
28 the number of Defendants' remaining targeted searches (if any). Subject to resolution of whether

1 Defendants have any remaining targeted searches available and, if so, how many, Oracle will  
 2 also make its own investigation of whether and how it can produce some or all of the requested  
 3 information at the contract level from a centralized source and the burdens of doing so.

4 **TARGETED SEARCH REQUEST NO. 3:**

5 For each Plaintiff entity, for the period January 1, 2002 through October 31, 2008,  
 6 documents sufficient to show by month, quarter and year the revenues (including but not limited  
 7 to license royalty payments), expenses (including but not limited to research and development  
 8 costs) and net income to the Plaintiff entity resulting from sales by any Oracle entity of  
 9 PeopleSoft and/or JD Edwards software and/or services to customers on Defendant  
 10 TomorrowNow, Inc.'s Supplemental Exhibit 1 to Its First Sets Of Requests For Production and  
 11 Interrogatories to Plaintiffs.

12 Responsive documents may be contained in, or available through, the Oracle  
 13 Financial Analyzer and GIFTS databases or located on a shared drive within Oracle's tax  
 14 department. *See, e.g.*, Deposition of Uyen Ngoc Ann Kishore, April 14, 2009 (“Kishore Dep.”)  
 15 at p. 116 (“I am able to pull a report that has expenses incurred in various lines of business”);  
 16 Kishore Dep. at p. 122 (“we have system called Oracle Financial Analyzer...”); *id.* at p. 132 (“it's  
 17 on a shared drive...[with] tax files from the tax department.”); *id.* at p. 183 - 184 (“Our charts of  
 18 accounts...we do have accounts relating to sublicense fee payments...” that can be generated from  
 19 Oracle Financial Analyzer); *id.* at p. 185 (“There's another system called GIFTS...”); the P&L;  
 20 “chart of accounts;” “line of business;” balance sheets; research and development costs; royalty  
 21 payment reports generated from Oracle Financial Analyzer (*see, e.g.*, Kishore Dep. at p. 116) and  
 22 GIFTS databases (*id.* at p. 185) or located on a shared drive within Oracle's tax department (*id.* at  
 23 p. 132); and the general ledgers of the Plaintiff entities.

24 **SUPPLEMENTAL RESPONSE TO TARGETED SEARCH REQUEST NO. 3:**

25 Oracle incorporates by reference as if fully set forth herein in response to this  
 26 Request, each of the fifteen General Objections above, as well as each of Oracle's objections and  
 27 responses to each of Defendants' Interrogatories and Document Requests that relate to this  
 28



1 Request. Oracle is not, by responding to this Request, waiving any of its objections to any of  
2 Defendants' Interrogatories and Document Requests.

3 Oracle further objects to the Request on the grounds that numerous terms and  
4 phrases throughout this Request are vague and ambiguous. For example, the phrases "license  
5 royalty payments," "research and development costs," and "net income" lack sufficient  
6 specificity and are therefore overly broad and unduly burdensome.

7 Oracle objects to this Request because it is compound and not a "narrow search  
8 by topic." Defendants' Request is improper because it is a combination of multiple targeted  
9 search Requests, requiring a search through multiple sources of information and therefore cannot  
10 be considered as one Request or as a "targeted" search Request.

11 Oracle objects to the use of the phrase "any Oracle entity" on the grounds that it  
12 makes the Request vague, overbroad, and unduly burdensome and to the extent that the  
13 construction of the phrase is intended to require information that is neither relevant nor likely to  
14 lead to the discovery of admissible evidence.

15 Oracle objects to Defendants' attempt to conduct duplicative discovery to the  
16 extent that this Request seeks documents, data, or other information that Oracle has already  
17 produced in this case. This objection includes, but is not limited to, an objection to any attempt  
18 by Defendants to require Oracle to segregate or otherwise separately identify any documents,  
19 data, or other information contained within any document production that Oracle has made or  
20 will make in this case. Oracle objects to the extent that information responsive to this targeted  
21 search Request has been or will be produced in the ordinary course of the custodian-based  
22 production in this case by Oracle. Any attempt by Defendants to seek such duplicative discovery  
23 is overbroad and harassing.

24 Oracle objects to the Request to the extent it imposes a burden or obligation to  
25 which the parties have not yet agreed by Requesting Oracle to produce documents for the  
26 January 1, 2002 through October 31, 2008 time period. The Parties have agreed to expand the  
27 discovery timeline for limited issues, and to the extent Defendants' Request for documents  
28 responsive to this targeted search Request does not fit within the subject matters agreed upon by

1 parties for expanded discovery, Oracle does not intend to produce those documents beyond the  
2 agreed-upon discovery timeline.

3 Oracle objects to the Request to the extent it seeks to require Oracle to search for,  
4 review, or produce data that is not reasonable accessible, such as legacy data, under Rule 26 of  
5 the Federal Rules of Civil Procedure.

6 Oracle objects to the Request to the extent it seeks to unduly burden Oracle with a  
7 search for, review of, or production of potentially hundreds of reports in a manner and/or form that  
8 would impose upon Oracle duties and/or responsibilities greater than those imposed by the Federal  
9 Rules of Civil Procedure, the Local Rules of this Court, any applicable orders of this court or any  
10 stipulation or agreement of the parties.

11 Subject to and without waiving its specific and general objections, Oracle's *initial*  
12 response to this Request is as follows:

13 Oracle seeks immediate confirmation from Defendants as to whether it concedes  
14 this is not their "Third" Targeted Search Request.

15 While not verifying the veracity of Defendants allegations, Defendants allege in  
16 their Request that the information they are seeking may be contained in, or available through, at  
17 least four different possible sources of data (OFA, GIFTs, the general ledger, and a shared drive  
18 within Oracle's tax department) and can include, but is not limited to, at least four different types  
19 of reports *from each source* (line of business expense reports, royalty payment reports, balance  
20 sheets, and P&L statements).

21 Because no single database contains all the requested information, to the extent it  
22 was tracked and exists, Defendants' request is not appropriate to a targeted search. There is no  
23 single repository or custodian that would have all such information over this lengthy period.  
24 Oracle thus objects to such discovery to the extent Oracle cannot locate such information in  
25 central repositories following a reasonably diligent search. Moreover, this financial information  
26 has already been produced through a variety of documents and will continue to be produced in  
27 the ordinary course of the custodian-based production. Search for these reports specifically is  
28 not only duplicative but unnecessarily burdensome on Oracle. Given that these reports have



1 already been produced and will continue to be produced, Oracle directs Defendants to look for  
2 them in Oracle's production (*e.g.*, ORCL00079380, ORCL00079343).

3           Additionally, as Defendants are well aware, the information Defendants seek with  
4 this Request largely does not exist as requested. Defendants have been repeatedly told through  
5 previous deposition testimony that Oracle does not track expenses and net income by product line.  
6 *See, e.g.*, Depo. of Ivgen Guner as Oracle Corp.'s Rule 30(b)(6) designee at p. 73:24 -74:1 ("There is  
7 no product profitability at Oracle. We do not measure product profitability at Oracle."). One  
8 deponent's testimony about various existing pieces of reporting functions from various sources does  
9 not mean that those pieces can somehow be combined into one report with the format and  
10 presentation of Defendants' choice. Defendants' Request in essence requires Oracle to attempt to  
11 redesign its reporting and tracking systems in order to try to capture information that might not even  
12 be available. Oracle is not obligated to and will not engage in such an effort. Moreover, the  
13 financial information Defendants seek, to the extent it does exist, does not exist for the entire time  
14 period of January 1, 2002 through October 31, 2008; and/or do not exist for all the relevant  
15 product lines.

16           Thus, Oracle does not agree or concede that obtaining the reports Defendants  
17 reference is the appropriate, best or most cost-effective means to secure financial information or  
18 that such reports are relevant or likely to lead to the discovery of admissible evidence. Oracle  
19 has begun investigating the reporting functions available from Oracle Financial Analyzer and the  
20 GIFTs database, and has thus far only confirmed the previous testimony that informed  
21 Defendants that the information Defendants seek is not available with the requested detail.

22 However, Oracle will continue to investigate whether and how it can produce some or all of the  
23 many requested financial reports and the burdens of doing so while respecting that those most

24 knowledgeable about Oracle's financial reporting functions are heavily impacted by Oracle's  
25 May 31, 2008 fiscal year-end activities. Upon completion of that investigation, Oracle will  
26 produce responsive information only to the extent not previously produced, subject to the  
27 objections outlined herein, and subject to resolution of whether Defendants have any remaining  
28 targeted searches available and, if so, how many.

1 DATED: June 3, 2009

BINGHAM McCUTCHEN LLP

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By:



Zachary J. Alinder  
Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corporation, and Oracle EMEA, Ltd.

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**PROOF OF SERVICE**

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

Today I served the following documents:

**PLAINTIFFS' SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANTS' "SECOND" AND "THIRD" TARGETED SEARCH REQUESTS**

(VIA EMAIL) by transmitting via electronic mail document(s) in portable document format (PDF) listed above on this date to the person(s) at the email address(es) set forth below.

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

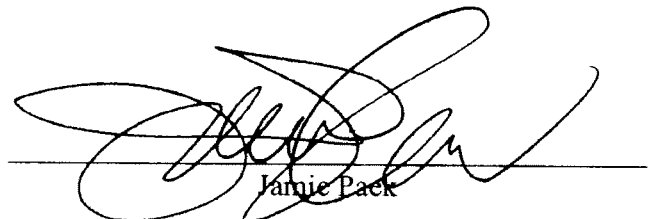
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I declare under penalty of perjury that this declaration was executed on June 3, 2009 at San Francisco, California.

  
\_\_\_\_\_  
Jamie Paek

# **Exhibit 17**

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2 Elaine Wallace (SBN 197882)  
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17 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
18 TOMORROWNOW, INC.

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

22 ORACLE USA, INC., et al.,

23 Plaintiffs,

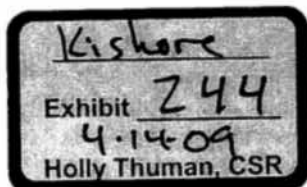
24 v.

25 SAP AG, et al.,

26 Defendants.

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

**DEFENDANTS' AMENDED SECOND  
NOTICE OF DEPOSITION OF  
PLAINTIFF ORACLE  
INTERNATIONAL CORPORATION  
PURSUANT TO FEDERAL RULE OF  
CIVIL PROCEDURE 30(b)(6)**



DEFENDANTS' AM. SECOND NOT. OF DEPOSITION  
OF PLAINTIFF OIC PURSUANT TO FRCP 30(b)(6)  
Case No. 07-CV-1658 PJH (EDL)

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil  
3 Procedure, Defendants SAP AG, SAP America (together, "SAP"), and TomorrowNow, Inc.  
4 ("TN") will take the deposition of Plaintiff Oracle International Corporation ("OIC"), on April 14,  
5 2009, commencing at 9 a.m. at the law offices of Jones Day, 555 California Street, 26th Floor,  
6 San Francisco, CA 94104.

7 The deposition will be recorded stenographically, using real time transcription, by a  
8 certified court reporter, and by video and audio by a certified videographer.

9 OIC is hereby requested and required, pursuant to Federal Rule of Civil Procedure  
10 30(b)(6), to designate and produce a witness or witnesses to testify on its behalf on the topics  
11 described below.

12 **DEFINITIONS AND INSTRUCTIONS**

13 For purposes of this Notice of Deposition, the following definitions shall apply, unless  
14 otherwise indicated:

- 15 1. "Complaint" means the Third Amended Complaint.
- 16 2. "Cost Sharing Agreements" means the series of cost sharing and license  
17 agreements, and amendments thereto, produced by Plaintiffs, an example of which can be found  
18 at ORCL00182333-64.
- 19 3. "Documents" shall be interpreted broadly and includes all forms of writings,  
20 tangible things, and other documents contemplated by Federal Rule of Civil Procedure 34 and/or  
21 Federal Rule of Evidence 1001. This includes without limitation: writings; records; files;  
22 correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; voicemail;  
23 e-mail; telephone message records or logs; computer and network activity logs; data on hard  
24 drives; backup data; data on removable computer storage media such as tapes, disks, and cards;  
25 printouts; document image files; web pages; databases; spreadsheets; software; hardware; books;  
26 ledgers; journals; orders; invoices; bills; vouchers; checks; statements; worksheets; summaries;  
27 compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts;  
28 digital or chemical process photographs; video, phonographic, tape, or digital recordings or

1 transcripts thereof; drafts; jottings; and notes. Information that serves to identify, locate, or link  
2 such material, such as file inventories, file folders, indices, and metadata, is also included in this  
3 definition.

4 4. "Plaintiffs" means OIC, Oracle USA, Inc. ("OUSA"), and Oracle EMEA Limited,  
5 ("OEMEA"), their predecessors, and their successors.

6 5. "Registered Work" means a work underlying a federal copyright registration  
7 identified in the Complaint and any subsequent amendments to the Complaint.

8 6. "You," "Your," or "OIC" means Plaintiff Oracle International Corporation, its  
9 predecessors, and its successors.

10 7. The applicable time period for each of the topics below is January 1, 2002 through  
11 the present.

12 **SCOPE OF TESTIMONY**

13 1. Payments, including but not limited to royalty payments, received by or due to  
14 OIC in connection with the Registered Works. Specifically:

15 (a) Identification of each source of such payments, including but not limited to  
16 other Oracle entities, affiliates, and/or partners;

17 (b) With respect to royalty payments, royalty rates for license and/or support of  
18 the Registered Works and how royalty payments are calculated;

19 (c) How OIC determines what royalty rates to set for the Registered Works.

20 (d) With respect to non-royalty payments, the types of non-royalty payments  
21 received by OIC in connection with the Registered Works and how they are calculated;

22 (e) The policies and procedures for implementing the terms of the Cost Sharing  
23 Agreements that relate to payments to OIC in connection with the Registered Works;

24 (f) Any other agreements relating to payments to OIC in connection with the  
25 Registered Works, including the terms of such agreements and the policies and procedures for  
26 implementing them;

27  
28

1 (g) The types and locations of records reflecting payments made to, due to, or  
2 received by OIC in connection with the Registered Works, including records required to be  
3 maintained under the Cost Sharing Agreements.

4 2. Cost sharing arrangements among the participants to the Cost Sharing Agreements.  
5 Specifically:

6 (a) The types of costs that are allocated among the participants to the Cost Sharing  
7 Agreements, including costs relating to the Registered Works;

8 (b) How costs are allocated among the participants, including costs relating to the  
9 Registered Works.

10 (c) The policies and procedures for implementing the terms of the Cost Sharing  
11 Agreements relating to allocation of costs;

12 (d) Any other agreements concerning allocation of costs relating to the Registered  
13 Works, including the terms of such agreements and the policies and procedures for implementing  
14 them;

15 (e) The types and locations of records reflecting allocation of costs relating to the  
16 Registered Works, including records required to be maintained under the Cost Sharing  
17 Agreements.

18 3. Oracle's transfer pricing policies and procedures, including as they relate to the  
19 Registered Works, and the types and locations of records reflecting such policies and procedures.

20  
21 Dated: February 24, 2009

JONES DAY

22  
23 By: 

Patrick Delahunty

24  
25 Counsel for Defendants  
26 SAP AG, SAP AMERICA, INC., and  
27 TOMORROWNOW, INC.  
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**PROOF OF SERVICE**

I, Denise Harmon, 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 94101. On February 24, 2009, I served a copy of the within document(s):

**DEFENDANTS' AMENDED SECOND NOTICE OF DEPOSITION  
OF PLAINTIFF ORACLE INTERNATIONAL CORPORATION  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE  
30(b)(6)**

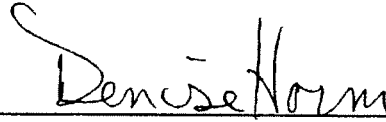
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

BINGHAM McCUTCHEM LLP  
DONN P. PICKETT  
GEOFFREY M. HOWARD  
HOLLY A. HOUSE  
ZACHARY J. ALINDER  
BREE HANN  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
Telephone: (415) 393-2000  
Facsimile: (415) 393-2286  
*donn.pickett@bingham.com*  
*geoff.howard@bingham.com*  
*holly.house@bingham.com*  
*zachary.alinder@bingham.com*  
*bree.hann@bingham.com*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

1 I declare that I am employed in the office of a member of the bar of this court at whose  
2 direction the service was made.

3 Executed on February 24, 2009, at San Francisco, California.

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6 Denise Harmon

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# **Exhibit 18**

## JONES DAY

555 CALIFORNIA STREET • 26TH FLOOR • SAN FRANCISCO, CALIFORNIA 94104-1500  
TELEPHONE: 415-626-3939 • FACSIMILE: 415-875-5700

June 12, 2009

VIA E-MAIL

Zachary Alinder, Esq.  
Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4067

Re: Case No. 07-CV-1658; *Oracle USA, Inc., et al. v. SAP AG, et al.*;  
U. S. District Court, Northern District of California, San Francisco Division

Dear Zac:

I am writing to meet and confer about several discovery issues that have impeded Defendants' ability to evaluate Oracle's alleged lost profits relating to the customers for whom TomorrowNow provided support on PeopleSoft, J. D. Edwards and Siebel product lines.<sup>1</sup>

Oracle has alleged damages including "loss of profits."<sup>2</sup> Defendants have diligently sought discovery of Oracle's profit margins for the relevant products lines in order to evaluate any claim of lost profits that Oracle may ultimately offer. Indeed, from the *first* day discovery was permitted, Defendants have sought discovery of Oracle's profit margins for the products and services at issue in the case. For example, our Request for Production of Documents No. 70 sought "[a]ll Documents relating to any alleged loss of revenues or profits by Oracle as a result of the conduct alleged in the Complaint." In response, Plaintiffs agreed to produce "[d]ocuments sufficient to show Oracle's revenues, costs, and profit margins for support or maintenance services relating to legacy PeopleSoft and J.D. Edwards enterprise software applications for which Oracle has alleged that defendants Downloaded Software and Support Materials from Oracle's systems ...."

Unfortunately, we still have not received sufficient information to allow us to determine Oracle's profit margins on the relevant product lines. In the early stages of the case, Oracle took the position that Oracle's contracts with the former TomorrowNow customers were sufficient to show the profits Oracle contends it would have made from those customers but for the activities of TomorrowNow. That assertion proved to be incorrect for a variety of reasons, including the fact that many customer contract files are incomplete.

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<sup>1</sup> Pursuant to the Stipulated Revised Case Management and Pretrial Order, Plaintiffs' discovery obligations have been extended to the Siebel product line, including "Siebel financial information." *Id.*, p. 6.

<sup>2</sup> See, e.g., Oracle's Third Amended Complaint for Injunctive Relief, etc., ¶ 141.

Zachary Alinder, Esq.  
June 12, 2009  
Page 2

JONES DAY

Oracle also pointed to its publicly filed Annual Report and various internal quarterly reports as evidence of its profit margins. While the Annual Report shows a profit margin for Oracle's support services (*e.g.*, Def. Dep. Ex. 31, p. 103), it is accompanied by a disclaimer that states that the reported margins "do not represent the actual margins." *Id.*

REDACTED

In further attempts to determine Oracle's purported lost profits on these product lines, we have sought production of Oracle's general ledger and have identified portions of its charts of accounts that may lead us to the appropriate general ledger information. While Oracle has produced some chart of accounts information, it has refused to produce the general ledger information we requested on grounds of burden and citing the targeted search request procedure. *See, e.g.*, Email, Alinder to Wallace, *et al.*, 5/4/09.

To make matters more difficult, Oracle has not provided discovery that would allow Defendants to determine the revenues or profits of the actual plaintiff entities in this case. Thus, for example, we know that Oracle International Corporation ("OIC") is the only plaintiff entity with standing to sue for copyright infringement damages. We also know from discovery that OIC does not license the alleged copyrighted works to customers, but rather licenses them to Oracle affiliates who pay a royalty to OIC. Thus, any profits that OIC makes (or allegedly lost) on such transactions depends on the royalty revenues it receives from its affiliates based on the affiliates' sales to customers.

REDACTED

As yet another attempt to get at Plaintiffs' revenues and profitability information, Defendants served their Targeted Search Request No. 3. The request calls for the following:

"For each Plaintiff entity, for the period January 1, 2002 through October 31, 2008, documents sufficient to show by month, quarter and year the revenues

Zachary Alinder, Esq.  
June 12, 2009  
Page 3

JONES DAY

(including but not limited to license royalty payments), expenses (including but not limited to research and development costs) and net income to the Plaintiff entity resulting from sales by any Oracle entity of PeopleSoft and/or JD Edwards software and/or services to customers on Defendant TomorrowNow, Inc.'s Supplemental Exhibit 1 to Its First Sets Of Requests For Production and Interrogatories to Plaintiffs.”

Here again, we are simply trying to determine Oracle’s revenues and profitability, if any, in connection with the product lines at issue in Oracle’s Complaint. In response, in addition to many objections, Oracle stated that “Oracle will continue to investigate whether and how it can produce some or all of the many requested financial reports and the burdens of doing so ...” Plaintiffs’ Supplemental Responses and Objections to Defendants “Second” and “Third” Targeted Search Requests, p. 13. To date, we have received no further response.

Finally, our pending Rule 30(b)(6) deposition notice to Oracle USA, Inc. contains a number of topics that bear on Oracle’s lost profit claims. Oracle has objected to all of these topics.

Following up on the suggestion in our recent telephone discussions, I suggest that we schedule a call with, at a minimum, you, Nitin Jindal and me to discuss these issues and see if there is a way we can break through these various roadblocks. Please let me know if either Tuesday or Wednesday of next week will work for you.

Thank you.

Very truly yours,

/s/ Jason McDonell

Jason McDonell

cc: Holly House  
Bree Hann  
Donn Pickett  
Geoff Howard  
Robert A. Mittelstaedt  
Greg Lanier  
Scott Cowan  
Elaine Wallace  
Jane Froyd  
Joshua Fuchs

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# **Exhibit 19**

**EXHIBIT FILED  
UNDER SEAL**