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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)

**DECLARATION OF JOSHUA L.  
FUCHS IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION TO AMEND  
COMPLAINT**

27 Date: August 19, 2009  
Time: 9:00 a.m.  
Courtroom: 5, 17th Floor  
28 Judge: Hon. Phyllis J. Hamilton

1 I, JOSHUA L. FUCHS, declare as follows:

2 1. I am an associate in the law firm of Jones Day, 717 Texas, Suite 3300, Houston,  
 3 Texas 77002, and counsel of record for Defendants SAP AG, SAP America, Inc. (together,  
 4 "SAP") and TomorrowNow, Inc. ("TN") (collectively, "Defendants") in the above-captioned  
 5 action. I am a member in good standing of the state bar of Texas and admitted *pro hac vice* in  
 6 this matter. I make this declaration based on personal knowledge and, if called upon to do so,  
 7 could testify competently thereto.

8 **Discovery To Date**

9 2. The Court has imposed discovery limits in this case. The parties may serve a  
 10 maximum of 125 interrogatories and 150 requests for production per side. *See* D.I. 50, 76.  
 11 Further, each side may request production of responsive data from up to 140 custodians. *See* D.I.  
 12 325. Each side is also allowed 450 hours of fact deposition testimony. *See* D.I. 325.

13 3. On July 26, 2007, the parties began serving written discovery requests in this  
 14 matter. The chart below displays the discovery that has occurred since that time:

DISCOVERY ITEM	DEFENDANT	PLAINTIFF
<b>Requests for Production</b>	Received 150 Numbered Requests for Production.	Received 127 Numbered Requests for Production.
<b>Interrogatories</b>	Received 121 Numbered Interrogatories.	Received 125 Numbered Interrogatories.
<b>Requests for Admission</b>	Received 749 Numbered Requests.	Received 149 Numbered Requests.
<b>Bates Numbered Pages</b>	Produced 7,896,044 Bates Numbered Pages (including responsive data from 100 custodians).	Produced 537,133 Bates Numbered Pages.
<b>Fact Depositions Hours</b>	Taken approximately 146 of the 450 fact deposition hours allotted.	Taken approximately 332 of the 450 fact deposition hours allotted. <sup>1</sup>
<b>Other Productions</b>	Produced in excess of 17 terabytes of data including: <ul style="list-style-type: none"> <li>• The TomorrowNow ("TN") services databases such as SAS, BakTrak, and dotProject; provided in a format that gives Plaintiffs the unique ability to see</li> </ul>	Produced Customer Connection database, which includes: <ul style="list-style-type: none"> <li>• Several terabytes of native files that Plaintiffs claim to be logs tracking access to Customer Connection and the back-end databases of</li> </ul>

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28 <sup>1</sup> Plaintiffs have noticed and taken over 60 depositions to date.

DISCOVERY ITEM	DEFENDANT	PLAINTIFF
	the data as TN employees saw the data. Plaintiffs have used printouts from the databases as hundreds of deposition exhibits; and <ul style="list-style-type: none"> <li>• The TN support services servers and/or partitions for Plaintiffs to inspect and select for production through the “Data Warehouse,” including all common locations at which downloads, environment components, and databases have been located. <i>See, infra</i>, Paragraphs 10-16.</li> </ul>	Customer Connection.

**Time Frame of Discovery and Production of TN Databases**

4. At the beginning of the case, the parties agreed to produce responsive non-privileged documents that fell within a January 1, 2004 to March 22, 2007 time frame (or shortly thereafter). In addition, there were specific categories of information, such as databases or specific custodians, for which the parties agreed to produce through the collection date of the data.

5. Late in 2008, the parties began discussing expanding the production time frame for limited categories of information, and the parties agreed to the Expanded Discovery Timeline Agreement in November 2008. *See* Exhibit (“Ex.”) A. The parties limited the Agreement to specific subsets of data for the pre-2004 time frame and for the time frame between the original collection date and the TN wind-down on October 31, 2008. *See id.*

6. Most of the production dates Plaintiffs reference in their Motion to Amend Complaint (“Motion”) regarding TN’s databases are not the original production dates for these materials. Rather, many of the dates Plaintiffs cite are the supplemental production dates of the respective items completed pursuant to the Expanded Discovery Timeline Agreement.

7. Defendants completed production of TN’s services databases earlier than stated in the Motion. For example, the BakTrak database is a TN-developed database that TN used to

1 track the backup, restore, check-in and check-out of TN customers' environments and  
2 environment components. On February 4, 2008, Defendants produced all content from the  
3 BakTrak database through exported Excel spreadsheets prior to John Baugh's Rule 30(b)(6)  
4 deposition on February 6-7, 2008. The exported native spreadsheets contained all TN backup and  
5 restore activity tracked in BakTrak through approximately the end of January 2008. Defendants  
6 then produced the entire native version of the BakTrak database to Plaintiffs on March 12, 2008  
7 and included data through February 2008. On April 20, 2009, Defendants updated the BakTrak  
8 production pursuant to the Expanded Discovery Timeline Agreement to include data through  
9 October 31, 2008. This is the copy of BakTrak referenced in the Motion.

10 8. Further, recognizing the special importance that the SAS database has to this case,  
11 Defendants started producing SAS in native form in 2007. The SAS database was designed to  
12 document TN support services activities, including managing of cases, scoping (researching)  
13 problems, development of fixes or updates and testing of fixes or updates. Defendants produced a  
14 complete subset of the SAS database containing the six customers identified in paragraphs 76-80  
15 of Plaintiffs' First Amended Complaint on September 21, 2007. Defendants produced a complete  
16 subset of the SAS database with respect to the 69 additional customers identified by Plaintiffs on  
17 October 5 and November 9, 2007. Finally, Defendants produced the entirety of the SAS database  
18 containing all of TN's PeopleSoft and J.D. Edwards customers on December 4, 2007. This  
19 production included TN's activities though the end of April 2007. As part of the Expanded  
20 Discovery Timeline Agreement, on March 6, 2009, Defendants further updated the SAS database  
21 production to include TN activity through October 31, 2008. This is the copy of SAS referenced  
22 in Plaintiffs' Motion.

23 9. Defendants first produced the entirety of the dotProject database to Plaintiffs on  
24 March 26, 2008. This production included TN's activities though the end of June 2007. The  
25 dotProject database contains information regarding the downloads for a particular customer,  
26 including the date the downloads were completed and the credentials and product questionnaires  
27 provided by the customer. Pursuant to the Expanded Discovery Timeline Agreement,  
28 Defendants' production of dotProject was then updated on May 8, 2009 to include TN activity

1 through October 31, 2008. This is the copy of dotProject referenced in Plaintiffs' Motion.

2 **Plaintiffs' Access to TN's Servers**

3 10. In a collaborative and open process, Defendants have made TN's services and  
4 support servers available to Plaintiffs for review through a "Data Warehouse" procedure. This  
5 procedure permits Plaintiffs remote access review of images on these servers and server partitions.  
6 This process allows Plaintiffs to review and see the files in native form. After a number of  
7 discussions between the parties starting in April 2008, the parties agreed that Plaintiffs could: (1)  
8 take screen shots of the folder structures of the server; (2) create metadata reports containing the  
9 associated metadata for files; (3) request production of certain files ("produce" files) and (4) mark  
10 certain files for metadata production only that would remain recorded ("record" files).

11 11. Beginning in July 2008, Defendants made available to Plaintiffs fifty-two  
12 partitions from TN's J.D. Edwards and PeopleSoft servers. Plaintiffs completed most of their  
13 initial selections by August 2008. Defendants produced the requested metadata and screen shots  
14 on a rolling basis and completed this by the end of August 2008 for the partitions reviewed.  
15 Defendants subsequently began processing and producing the non-privileged "produce" files  
16 requested by Plaintiffs with the first production occurring in October 2008.

17 12. By December 1, 2008, Defendants had made available, and Plaintiffs had reviewed,  
18 all sixty-eight partitions from TN's J.D. Edwards and PeopleSoft servers. Plaintiffs estimated  
19 that by December 23, 2008, Defendants had produced "approximately two-thirds (61% of files by  
20 file count; 68% of files by size) of the requested files . . . ." Ex. I at 2. Defendants completed the  
21 production of the requested "produce" files by February 9, 2009, which totaled approximately 8  
22 million files and 4.5 terabytes of data.

23 13. On February 2, 2009, Plaintiffs sent an email stating: "Pursuant to the Expanded  
24 Timeline Agreement, Plaintiffs request that Defendants produce documents that post-date the  
25 collection of server images reviewed through the Data Warehouse and are related to TN/SAP  
26 customers and/or TomorrowNow's business model." Ex. J. While Defendants did not agree that  
27 the "Expanded Discovery Timeline Agreement" covered the "Data Warehouse" servers,  
28 Defendants agreed in March 2009 to re-produce 12 server partitions with updated, post-lawsuit

1 information. These are the server partitions still being reviewed by Plaintiffs and for which  
2 Defendants are still reviewing, processing and producing requested, non-privileged files.

3 14. On March 16, 2009, Plaintiffs expanded their original request for production from  
4 the "Data Warehouse" to include all files from the "Data Warehouse" review previously marked  
5 for metadata production only. Defendants produced the requested files from these 26 server  
6 partitions, totaling over 2.5 terabytes of data, by May 29, 2009. On March 16, 2009, Plaintiffs  
7 also requested that Defendants make three additional servers available for review.

8 15. Additionally, Defendants have produced two servers (DCITBU01\_G and the  
9 AS/400) outside of the "Data Warehouse" protocol. DCITBU01\_G generally contains materials  
10 downloaded by TN on behalf of its customers. Defendants produced a metadata report and screen  
11 shot of the folder structure for this server partition on January 30, 2008. All logical files and  
12 folders for this server partition made from a November 2007 back-up tape, except for personal  
13 family photos and one document redacted for privilege, were produced to Plaintiffs by October 29,  
14 2008. The AS/400 generally contains materials used by TN in servicing its J.D. Edwards World  
15 customers. In November 2008, Plaintiffs inspected the actual AS/400 machine. Subsequently,  
16 Defendants produced in November and December backup tapes for two partitions from the  
17 AS/400 requested by Plaintiffs, one from a November 2008 full system backup and the other  
18 from a May 2007 partial back-up.

19 16. To date, including the re-collected partitions, Defendants have made available 105  
20 support services servers and/or partitions for Plaintiffs to inspect and select for production  
21 through the "Data Warehouse" process. Taking into account all of the materials discussed above,  
22 this production now exceeds 17 terabytes of data specifically requested by Plaintiffs. As noted,  
23 the only remaining review and productions after February 2009 relate to Plaintiffs' specific  
24 request to review data under the Expanded Discovery Timeline Agreement and to Plaintiffs'  
25 March 16 requests to produce the "record" files and review three other servers in the "Data  
26 Warehouse."

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1           **Discovery Evidencing Knowledge of Environments**

2           17.     Former TN employee Josh Testone testified that “[a]n environment, as defined  
3 locally inside [TN], would be a database and other software programs required to run an instance  
4 of that environment.” Ex. B-7, at 27:14-17.

5           18.     

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9           19.     As another example, Edward Abbo, also an Oracle employee, testified regarding  
10 an email that he sent in December 2006 about an article stating: “TomorrowNow set up a test  
11 environment at its own site that mirrored Pomeroy’s. That way, when the solution was ready, it  
12 was straightforward to implement on Pomeroy’s systems.” Ex. C-2, at 193:9-194:23; *see also*  
13 Exs. K-1 and K-2.

14           20.     Plaintiffs’ knowledge regarding TN’s use of environments is also evidenced by  
15 early discovery in the case. On August 2, 2007, Plaintiffs served Oracle USA, Inc.’s First Set of  
16 Interrogatories to Defendant TomorrowNow, Inc. *See* Ex. E. Interrogatory No. 9 states:

17                   Describe in as much detail as possible all JD Edwards or PeopleSoft  
18 software applications which have ever resided or been installed on  
19 any computer, internal or external hard drive, disk, tape, CD-ROM,  
20 DVD-ROM, flash drive, portable drive, network, server, or any  
21 other type of electronic storage device or medium within Your  
22 possession, custody, or control, including but not limited to  
23 Identifying the devices on which the applications reside or resided  
24 and Describing in as much detail as possible how You obtained the  
25 applications and for what purposes You have used them.

26           *Id.* at 8.

27           21.     Defendants first responded on September 21, 2007, stating in part:

28                   . . . TomorrowNow has for many customers made and maintained  
emergency backup copies of their JDE or PeopleSoft applications;  
the records of such emergency backup copies will be included in  
TomorrowNow’s document production, and TomorrowNow relies  
on those records to respond to this interrogatory pursuant to Rule  
33(d). TomorrowNow has also for many customers maintained  
development environments on TomorrowNow’s systems, to avoid  
interference with customer production environments in the  
development and testing of individual fixes and updates;

1 TomorrowNow's databases, which will be included in  
2 TomorrowNow's production of documents (as to relevant  
3 customers), contain records of such environments, and  
TomorrowNow relies on those records to further respond to this  
interrogatory pursuant to Rule 33(d).

4 Ex. F, at 9-10.

5 22. On October 30, 2007, former TN employee Mark Kreutz testified that TN had a  
6 copy of some customers' demo environments on its systems. *See* Declaration of Chad Russell in  
7 Support of Plaintiffs' Motion to Amend Complaint ("Russell Decl."), Ex. A.

8 23. On November 27, 2007, Oracle served Oracle USA, Inc.'s Second Set of  
9 Interrogatories to Defendant TomorrowNow, Inc. *See* Ex. G. Interrogatory No. 12 states:

10 For each Customer for whom SAP TN has created one or more  
11 local PeopleSoft environments on SAP TNs' systems from copies  
12 of that Customer's PeopleSoft software, as testified by Shelley  
13 Nelson (Shelley Nelson Dep. at 13:24-17:11 (Oct. 30, 2007)),  
Identify the Customer, Identify each product name and release  
copied to create the local environment, and state the total number of  
local environments created for that customer.

14 *Id.* at 5.

15 24. Defendants responded on December 27, 2007 stating in part:

16 . . . TomorrowNow has maintained approximately 183 PeopleSoft  
17 environments on behalf of approximately 122 different customers,  
18 which have variously included one or more of the CRM, EPM,  
FDM, SA, Portal, and HRMS products, with varying releases of  
19 each (including CRM - releases 8.4, 8.8 SP1, and 8.9; EPM -  
release 8.9; FDM - releases 7.52, 7.53, 8 SP3, 8.4, 8.4 SP1, 8.4 SP2,  
20 8.8 SP1, and 8.9; SA - releases 7.6 and 8 SP1; Portal - releases 8.4  
and 9.9; and HRMS - releases 7.02, 7.50, 7.51, 8, 8 SP1, 8.3, 8.3  
21 SP1, 8.8 SP1, and 8.9). Additional information responsive to this  
interrogatory as to specific customers may be derived or ascertained  
22 from TomorrowNow's business records, including specifically  
TomorrowNow's E Portal .nsf file, produced at TN-OR 00169313,  
23 information contained at TN-OR 00169315, TomorrowNow's  
emails among development and support engineers and its databases  
of customer service information, including its SAS databases  
24 (which have been previously produced, in native format, at TN-OR  
00009569), which have been or will be included in  
25 TomorrowNow's production of documents and on which  
TomorrowNow relies to further respond to this interrogatory  
26 pursuant to Rule 33(d).

27 Ex. H, at 5-6.

28 25. Subsequently, former TN employee John Baugh was designated and presented as a



1 Rule 30(b)(6) witness for TN on various topics relating to these customer environments. *See Ex.*  
2 *M*, Topic 1(b) (designating John Baugh to testify to “The manner and method by which Customer  
3 Local Environments were created, stored, and Used by You”); Topic No. 1(c) (designating John  
4 Baugh to testify to “The identity of all PSFT and JDE Customers for whom You created any type  
5 of Customer Local Environment”); Topic No. 1(d) (designating John Baugh to testify to “The  
6 total number of Customer Local Environments created for each identified Customer”); Topic No.  
7 1(l) (designating John Baugh to testify to “The process by which Customer Local Environments  
8 were Used as part of the ordinary course of business for SAP TN, including without limitation to  
9 on-boarding of new Customers; support of Customer cases, issues, and problems; reactive and  
10 proactive development of bug fixes, updates, patches, explanations, or regulatory changes for  
11 Customers; research into and design of those changes; troubleshooting for Customers; and testing  
12 of other operating system levels”). He was deposed for 9 hours and 53 minutes.

13 26. During his deposition, Mr. Baugh testified that he was involved in responding to  
14 Plaintiffs’ discovery requests and that he “was asked to provide information on the number of  
15 environments.” *See Ex. B-1*, at 140:11-20. He specifically noted that the spreadsheet referenced  
16 in Interrogatory No. 12, TN-OR 00169315 (which is Ex. 31 to his deposition), was created by  
17 looking at dotProject and SAS. *Id.* at 130:17-132:21; Russell Decl. Ex. D. When questioned  
18 about the numbers of environments stated in response to Interrogatory No. 12, he responded that  
19 BakTrak must also be used to derive the number of environments. *Id.* at 141:24-142:25.  
20 Subsequently, he explained that “. . . I had thought that all of our environments were in SAS  
21 Environment Portal and dotProject, but it was only in performing research over the last few days  
22 in preparation for this deposition that we found, looking at BakTrak, that there was some  
23 additional environments that were not in this document.” *See Ex. B-2*, at 182:25-183:6.

24 27. Defendants produced the BakTrak exports on February 4, 2008 prior to the John  
25 Baugh deposition. Additionally, Defendants produced the SAS Environmental Portal, dotProject  
26 and the full native version of BakTrak by early 2008. Defendants, in the same timing and fashion  
27 as Plaintiffs, orderly supplemented the response to Interrogatory No. 12 on May 22, 2009.<sup>2</sup>

28 <sup>2</sup> Defendants have supplemented their discovery responses within the time frame provided  
by the Court and/or agreed to by the parties. Both parties supplemented some of their discovery

1           **Discovery Evidencing Familiarity of “Knowledge Management” Documents**

2           28.     In paragraphs 75-80 of the initial complaint filed on March 22, 2007, Plaintiffs  
3 provided detailed statements of what they believe TN downloaded from the Customer Connection  
4 website. *See* D.I. 1. In response to Interrogatory No. 1 propounded by Defendants, on September  
5 14, 2007, Plaintiffs explained their investigation procedures that led to the filing of the litigation.  
6 *See* Ex. D. Specifically, Plaintiffs explained that they had “log entries, and other reports  
7 generated by Oracle’s software, including Change Assistant, [that] provide the specific identifiers  
8 for the individual Software and Support Materials requested at any given time . . . .” *Id.* at 6:22-  
9 24.

10           29.     Through the “Data Warehouse,” Plaintiffs have been able to examine and request  
11 production of possible software and support materials that were downloaded by TN on behalf of  
12 its customers and kept in a centralized location, including any “Knowledge Management”  
13 documents stored in these servers. As noted above, most of the servers in the “Data Warehouse”  
14 were reviewed, and the metadata produced, by August 2008. Moreover, DCITBU01\_G housed  
15 the majority of materials downloaded by TN on behalf of its customers. As noted in Paragraph  
16 15, Defendants produced the metadata report for DCITBU01\_G in January 2008 and the files by  
17 October 2008.

18           30.     Further, pursuant to Rule 30(b)(6), in 2007, Plaintiffs requested, and TN presented  
19 witnesses who gave testimony on, the type of information and documents downloaded. *See* Ex. N,  
20 Topic 13 (agreeing to produce a witness to testify to “The manner in which Software and Support  
21 Materials, or any support product developed by You, derived by You, or otherwise obtained by  
22 You, is maintained, archived, indexed and transmitted to any Customer, including descriptions of  
23 hardware and software Used and where this hardware or software is physically located.”); Topic  
24 No. 14(b) (agreeing to produce a witness to testify to “the use, distribution, transmission or other  
25 communication of Software and Support Materials into, within, or out of any database or storage  
26

27 \_\_\_\_\_  
(continued...)

28 responses on May 22, 2009.

1 device, method, or application”); Topic No. 14(c) (agreeing to produce a witness to testify to “the  
2 use, distribution, transmission or other communication of Software and Support Materials  
3 between You and Your Customers”). Specifically, former TN employees Shelley Nelson and  
4 Mark Kreutz testified that several categories of documentation were downloaded as part of TN’s  
5 on-boarding process for its customers. *See* Ex. B-5, at 67:10-68:24; Ex. B-6, at 73:12-74:17.

6 **Discovery Evidencing Knowledge of Databases**

7 31. Beginning on February 6, 2008, Plaintiffs obtained testimony regarding the  
8 structure of the environments and the underlying databases. *See* Ex. B-1, at 36:16-37:12, 84:21-  
9 86:9. John Baugh testified in early February 2008 that TN obtained its database platforms from a  
10 variety of vendors, including Oracle. *See id.* On April 1, 2008, former TN employee Kathy  
11 Williams testified regarding the different component parts of an environment—including the  
12 “relational database platform”—and the naming conventions for the databases at TN. Ex. B-3, at  
13 47:7-13, 107:13-108:9. On April 2, 2008, former TN employee Catherine Hyde also testified to  
14 the naming conventions for the database platforms at TN. *See* Ex. B-4, at 112:12-113:16.

15 32. Moreover, the two documents used by Plaintiffs as exhibits to the April 2009  
16 deposition of George Lester were produced to Plaintiffs on February 8, 2008 and March 13, 2008.  
17 *See* Russell Decl., Exs. M, N. These documents are e-mails between former TN employees  
18 regarding TN’s use of Oracle databases. *See id.* A third database-related document attached as  
19 Exhibit O to Plaintiff’s Motion was also produced on February 8, 2008. *See id.* at Ex. O.

20 33. Further, in 2008, Plaintiffs had the opportunity to review and select for production  
21 files from TN’s servers containing database components as part of the “Data Warehouse”  
22 production described above. However, in the review of these servers, Plaintiffs did not mark the  
23 database files as “produce” files and only marked some files as “record.” The metadata from the  
24 requested “record” files was produced by August 2008. As noted above, Plaintiffs did not request  
25 the production of any “record” files until March 16, 2009.

26 34. Exhibit P to Chad Russell’s declaration consists of screen shots from “Data  
27 Warehouse” servers detailing the location of certain files which may be components of databases.  
28 These were sent in response to a request from Mr. Geoff Howard made in April 2009.

1           **Discovery Related to the Historic PeopleSoft Registrations**

2           35.     TN began producing its service contracts with customers to Plaintiffs on August 6,  
3 2007. These service contracts reflect the PeopleSoft, J.D. Edwards or Siebel products that TN  
4 supported for the customer.

5           36.     For example, TN produced customer contracts on November 9, 2007. That  
6 production contained a TN contract which shows that TN supported PeopleSoft CRM version 8.4  
7 SP1. *See* Ex. L-2. The November 9, 2007 production also contained TN contracts which  
8 evidence that TN supported PeopleSoft 8 FIN/SCM SP1. *See* Exs. L-5, L-4, L-3. Additionally,  
9 the November 9, 2007 production contained a TN contract which shows that TN supported  
10 PeopleSoft 8.3 Enterprise Performance Management (EPM) SP1. *See* Ex. L-1. Both FIN/SCM 8  
11 SP 1 and EPM 8.3 are releases contained in the December 2007 SAS production.

12           37.     TN produced additional customer contracts on July 28, 2008, including a TN  
13 contract that evidenced TN's support of PeopleSoft Financials and Supply Chain Management  
14 (FIN/SCM) 8.0. *See* Ex. L-6. FIN/SCM 8.0 is also contained in the December 2007 SAS  
15 production.

16           38.     On February 5, 2009, pursuant to the parties' Expanded Discovery Timeline  
17 Agreement, TN produced customer contracts that had been entered into after the filing of Oracle's  
18 lawsuit. That production contained an amendment to a contract entered into on September 28,  
19 2007. This amendment showed that TN began supporting modules of PeopleSoft EPM 8.3 SP4  
20 as of October 1, 2007. *See* Ex. L-7. Both CRM 8.4 SP1 and EPM 8.3 SP4 referenced on page 8  
21 lines 7-11 of Plaintiffs' Motion are releases that TN started servicing after Plaintiffs' filing of the  
22 lawsuit and after Defendants' original collection of the SAS database.

23           **Attachments**

24           39.     Attached as **Exhibit A** is a true and correct copy of the Expanded Discovery  
25 Timeline Agreement.

26           40.     Attached as **Exhibit B** are true and correct copies of excerpts from the following  
27 deposition transcripts: (1) February 6, 2008 Rule 30(b)(6) Deposition of John Baugh (36:16-37:12,  
28 84:21-86:9, 130:17-132:21, 140:11-20, 141:24-142:25); (2) February 7, 2008 Rule 30(b)(6)

1 Deposition of John Baugh (182:25-183:6); (3) April 1, 2008 Rule 30(b)(6) Deposition of  
2 Katherine Williams (47:7-13, 107:13-108:9); (4) April 2, 2008 Rule 30(b)(6) Deposition of  
3 Catherine Hyde (112:12-113:16); (5) October 29, 2007 Rule 30(b)(6) Deposition of Mark Kreutz  
4 (67:10-68:24); (6) December 6, 2007 Rule 30(b)(6) Deposition of Shelley Nelson (73:12-74:17);  
5 (7) June 3, 2009 Deposition of Josh Testone (27:12-17).

6 41. Attached as **Exhibit C** are true and correct copies of excerpts from the following  
7 deposition transcripts: (1) June 12, 2009 Deposition of [REDACTED] (98:6-103:21); (2) June 26,  
8 2009 Deposition of Edward Abbo, (193:9-194:22).

9 42. Attached as **Exhibit D** is a true and correct copy of an excerpt from Plaintiffs'  
10 Second Amended and Supplemental Responses and Objections to TN, Inc.'s First Set of  
11 Interrogatories, Responses to Interrogatory No. 1.

12 43. Attached as **Exhibit E** is a true and correct copy of an excerpt from Oracle USA,  
13 Inc.'s First Set of Interrogatories to Defendant TomorrowNow, Inc., Interrogatory No. 9.

14 44. Attached as **Exhibit F** is a true and correct copy of an excerpt from TN's  
15 Responses to Oracle USA, Inc.'s First Set of Interrogatories, Response to Interrogatory No. 9.

16 45. Attached as **Exhibit G** is a true and correct copy of an excerpt from Oracle USA,  
17 Inc.'s Second Set of Interrogatories to Defendant TomorrowNow, Inc., Interrogatory No. 12.

18 46. Attached as **Exhibit H** is a true and correct copy of an excerpt from TN's  
19 Response to Oracle USA, Inc.'s Second Set of Interrogatories to Defendant TomorrowNow, Inc.,  
20 No. 12.

21 47. Attached as **Exhibit I** is a true and correct copy of an excerpt from the January 5,  
22 2009 Joint Discovery Conference Statement.

23 48. Attached as **Exhibit J** is a true and correct copy of the February 2, 2009 Email  
24 Correspondence from John Polito.

25 49. Attached as **Exhibit K** are true and correct copies of Defendants' deposition  
26 exhibits: (1) 511A and (2) 512A.

27 50. Attached as **Exhibit L** are true and correct copies of documents produced by  
28 Defendants at: (1) TN-OR00007174, (2) TN-OR00007580-7581, (3) TN-OR00008137, (4) TN-

1 OR00008385, (5) TN-OR00008747-8748, (6) TN-OR02812885-2886, (7) TN-OR03768152-  
2 8154.

3 51. Attached as **Exhibit M** is a true and correct copy of Defendant TomorrowNow,  
4 Inc.'s January 22, 2008 Response to Plaintiff Oracle's Second 30(b)(6) Notice of Deposition of  
5 TomorrowNow, Topic Nos. 1(b), (c), (d), and (l).

6 52. Attached as **Exhibit N** is a true and correct copy of Defendant TomorrowNow,  
7 Inc.'s October 26, 2007 Responses and Objections to Plaintiff Oracle's 30(b)(6) Amended Notice  
8 of Deposition, Topic Nos. 13 and 14.

9 53. Attached as **Exhibit O** is a true and correct copy of an excerpt from Plaintiffs'  
10 First Amended and Supplemental Responses and Objections to TN's First Set of Interrogatories,  
11 Amended Response to Interrogatory No. 13.

12 54. I declare under penalty of perjury under the laws of the United States and the State  
13 of California that the foregoing is true and correct. Executed this 29th day of July, 2009 in  
14 Houston, Texas.

15  
16 /s/ Joshua L. Fuchs  
17 Joshua L. Fuchs  
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