

# **EXHIBIT H**



RE: Status update on Folger & Levin index and Henley documents 

From: Jason McDonell  
Extension: 35820

12/01/2009 01:08 PM

To: Howard, Geoff  
Cc: "Hann, Bree", "Elaine Wallace", "House, Holly", "Jane L Froyd", "Joshua L Fuchs", "Scott Cowan", "Greg Lanier", "Alinder, Zachary J.", Patrick Delahunty, Jacqueline K. S. Lee

Geoff,

In accordance with Judge Laporte's guidance and in response to your email below, attached is a list of the documents we request. Note that we have narrowed the request from the 1500 pleadings you claim to exist to a much small list of 84. In addition, we request the "small number of deposition transcripts" referred to in you October 26, 2009 letter.

We would like to review these as soon as possible. Please let us know whether you will make them available and, if so, when and where.

Thank you.



- SVI\_75173\_1\_SAP - Folger Levin Docs.DOC

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"Howard, Geoff" Elaine, Attached is the pleadings index maintain... 11/30/2009 07:19:01 AM

From: "Howard, Geoff" <geoff.howard@bingham.com>  
To: "Elaine Wallace" <ewallace@JonesDay.com>  
Cc: "House, Holly" <holly.house@bingham.com>, "Hann, Bree" <bree.hann@bingham.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>, "Greg Lanier" <tglanier@JonesDay.com>, "Jason McDonell" <jmcdonell@JonesDay.com>, "Scott Cowan" <swcowan@JonesDay.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>  
Date: 11/30/2009 07:19 AM  
Subject: RE: Status update on Folger & Levin index and Henley documents

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Elaine,  
Attached is the pleadings index maintained by the Folger firm related to the Alameda litigation between PeopleSoft and Oracle. Please contact Bingham directly, and not Folger, should you wish to request review and production of any items on the index. Oracle reserves all of its rights with respect to any such requests, including on the grounds already stated in the objections, in meet and confer correspondence, and in the parties' discovery conference statements. Indeed, a cursory review of the index reveals that this exercise by Defendants is a waste of the parties time and will not lead to the discovery of admissible evidence.  
Thanks,

Geoff

**From:** Elaine Wallace [mailto:ewallace@JonesDay.com]

**Sent:** Monday, November 23, 2009 5:29 PM

**To:** Howard, Geoff

**Cc:** House, Holly; Hann, Bree; Alinder, Zachary J.; Greg Lanier; Jason McDonell; Scott Cowan; Jane L Froyd; Joshua L Fuchs

**Subject:** Status update on Folger & Levin index and Henley documents

Geoff,

Can you give us an update on the status of the Folger & Levin index and Oracle's production of Jeff Henley documents? I understand from your email to Scott last week that there are no responsive documents to be produced for Harry You.

Regards,

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without copying it and notify sender by reply e-mail, so that our records can be corrected.

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1. 2003-09-04 1st Amended Complaint (Confidential Version).pdf
2. 2003-12-07 Confidential Amended PSFT's Memo of P&A In Opp. to Oracle's Motion for Summary Adjudication on Claim for Interference.pdf
3. 2003-12-12 PeopleSoft Second Amended Complaint (Confidential Sealed Version).pdf
4. 2004-03-30 Oracle Cross-Complaint - Confidential version.pdf
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14. 2004-07-21 PSFT Second Set of Five Queries for ORCL's CRM Database.pdf
15. 2004-07-23 Oracle's Letter Brief re Redactions and Customer Communications.pdf
16. 2004-07-26 PeopleSoft Letter Brief re Redactions and Customer Communications.pdf
17. 2004-07-28 ORCL objections and Responses to PSFT's 2nd set of 5 queries to ORCL CRM.pdf
18. 2004-08-09 PeopleSoft Supp. Response to Rog 65- Exhibit D - Lost Deals After Tender Offer Pages 274-352.pdf
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24. 2004-08-17 Exhibit D - PeopleSoft Amended Supplemental Response to Interrogatory No. 65 Lost Deals After Tender Offer - Pages 366-666.pdf
25. 2004-08-17 Exhibit D - PeopleSoft Amended Supplemental Response to Interrogatory No. 65 Won Deals After Tender Offer - Pages 1-365.pdf
26. 2004-08-18 PeopleSoft Amended Supplemental Response to Interrogatory Nos. 16 17 28 and 65.pdf
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30. 2004-08-24 Oracle's Reply in Support of Motion In Limine re Individualized Proof.pdf
31. 2004-10-06 Oracle's Notice of taking Deposition of Gartner, Inc.pdf

32. 2004-10-14 Subpoena Duces Tecum to Custodian of Records of Gartner, Inc.pdf
33. 2004-10-25 Gartner Letter and Objections.pdf
34. 2004-10-25 Non-Party Gartner, Inc's Objections to Subpoena.pdf
35. 2004-11-15 Cross-Defendants PeopleSoft's MPA in Supp. of MSJ.pdf
36. 2004-11-15 Cross-Defendants PeopleSoft's Separate Stmt of Facts in Supp. of MSJ.pdf
37. 2004-11-15 ORACLE STATEMENT OF UNDISPUTED FACTS - VIOLATES BUSINESS & PROFESSIONS CODE SEC 17200.PDF
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46. 2004-11-15 ORACLE MSJ NOTICE OF MOTION - PROSPECTIVE ECONOMIC ADVANTAGE .PDF
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54. 2004-11-19 ORACLE MIL NO. 11 RE WHITE PAPER - MOTION IN LIMINE.PDF
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64. 2004-11-19 Oracle MIL UCL.pdf
65. 2004-11-19 Oracle MIL white Paper Decl.pdf
66. 2004-11-19 Oracle MIL white Paper.pdf

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71. 2004-12-03 OMIL01 PeopleSoft's Opposition to Oracle's Motion In Limine to Preclude Evidence of Communication with Customers as to which PeopleSoft Asserts No Claims.pdf
72. 2004-12-03 OMIL03 PeopleSoft opposition to Oracle motion in limine no 3 re internal Oracle customer strategies.pdf
73. 2004-12-03 OMIL11 PeopleSoft's Memo of P and A In Opposition to Oracle's MIL to Exclude Evidence of PeopleSoft's white Paper.pdf
74. 2004-12-03 OMIL12 PeopleSoft's Opposition to Oracle's MIL to Exclude Evidence of Inadmissible Customer Hearsay Statements by PeopleSoft witnesses.pdf
75. 2004-12-03 OMIL15 Confidential- PeopleSoft's Opp. to Oracle's MIL to Exclude Evidence and-of Argument re Character, Reputation or Practices of Oracle Corp. and Larry Ellison.pdf
76. 2004-12-03 PMIL04 Decl of Daniel Feldstein in Support of Oracle's Opposition to Motion No. 4.pdf
77. 2004-12-03 PMIL04 OC's Opposition to Motion No. 4 - denial of knowledge of customer relationships.pdf
78. 2004-12-03 Redacted- PeopleSoft's Memo of P and A In Opp. to Oracle's Motion for Summary Adjudication on Claim for Interference.pdf
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82. 2004-12-09 MSJ\_OINT ORACLE - STATEMENT OF UNDISPUTED FACTS - INTERFERENCE.pdf
83. 2004-12-09 OMIL Declaration of Chi Soo Kim in Support of Oracle's MIL to Exclude Evidence of non-listed Customers.pdf
84. 2004-12-09 OMIL Oracle's Notice and MIL to Exclude Evidence of Non-Listed Customers.pdf

# **EXHIBIT I**



**Folger subpoena**

From: Jason McDonell  
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12/10/2009 02:36 PM  
To: Howard, Geoff, House, Holly, Alinder, Zachary, Hann, Bree, Jindal, Nitin  
Cc: Scott Cowan, Greg Lanier, Elaine Wallace  
Bcc: Jane L Froyd, Joshua L Fuchs, Patrick Delahunty, Jacqueline K. S. Lee

Geoff,

In a continuing effort to resolve this issue, attached is a revised request for pleadings from the Folger index (down to 64 from 84). In addition, we continue to request the "small number" of deposition transcripts you have identified.

Please let me know if Oracle will agree to this production.

Thanks.



PeopleSoft Documents.doc

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63.	2004-12-09	MSJ_OINT ORACLE - MPA INTERFENCE ECONOMIC ADVANTAGE - UNDER SEAL
64.	2004-12-09	MSJ_OINT ORACLE - STATEMENT OF UNDISPUTED FACTS - INTERFERENCE

# **EXHIBIT J**

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SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

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

**JOINT DISCOVERY CONFERENCE  
STATEMENT**

Date: November 25, 2008

Time: 2:00 p.m.

Courtroom: E, 15th Floor

Judge: Hon. Elizabeth D. Laporte

1 within ninety days, on a rolling basis. Defendants provided their Second Supplemental  
2 Objections and Responses to Plaintiffs' First Set of Targeted Search Requests on November 10.  
3 The Parties continue to meet and confer on Defendants' supplemental responses and objections,  
4 and hope to resolve their outstanding disputes without the Court's assistance. In addition, the  
5 Parties continue to meet and confer on a variety of issues relating to targeted searches, including  
6 mutual exchange of customer-specific financial reports, copyright materials, and policies and  
7 procedures.

8 **3. Discovery Time Ranges**

9 When discovery began in this case, the Parties mutually limited their responses to the time  
10 period between January 1, 2004 and March 22, 2007, the date on which Oracle filed its original  
11 complaint. Since then, the Parties have agreed that some expansion of this relevant time period,  
12 both forwards and backwards, is necessary to capture additional relevant information.  
13 Recognizing the need to limit the burden of this expansion, the Parties agreed to a reasonable  
14 search for responsive information. Like the targeted search process, the Parties agreed to narrow  
15 searches by topic where production would come from centralized sources or from those persons  
16 most likely to have responsive documents. A copy of the agreement is attached to this statement  
17 as Exhibit A.

18 **4. De-Designation of Highly Confidential and Confidential Documents**

19 Defendants have completed their re-review of the approximately 27,000 SAP AG and  
20 SAP America documents that Defendants initially stamped "Highly Confidential." Of these  
21 documents, approximately 7% remain Highly Confidential, 85% are now Confidential, and 7%  
22 are now undesignated. Oracle reserves its right to further challenge these designations.

23 The Parties continue to meet and confer on whether, and how, the confidentiality  
24 designations for TomorrowNow's document production, deposition testimony, and other  
25 discovery responses should be re-designated or de-designated since TomorrowNow ceased  
26 operations on October 31, 2008. Oracle proposed a method for accomplishing this de-designation  
27 on August 15, Defendants provided a response on October 21, and Oracle provided a further  
28 proposal on November 18. The Parties will continue to meet and confer, but in the event they

1 DATED: November 18, 2008

JONES DAY

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By: \_\_\_\_\_ /s/

4

Jason McDonell  
Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.

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EXHIBIT A

### **Expanded Discovery Timeline Agreement**

The Parties agree to expand the discovery timelines in this case as set forth below. This agreement is subject to, and not intended as a waiver of, any and all objections served by any party in response to any discovery request in this case. In other words, this agreement only relates to the expansion of the discovery time frames, and is not, by itself an agreement to produce any document. Just because a document fits the time frames and subject matters noted below, that does not mean that it will be produced, especially if it is privileged or the subject of any objections served by any party in response to any discovery request in this case. Moreover, any restrictions placed on any subject matter described below (e.g., "independent" third party support) shall not be construed as a concession or waiver of any parties' right to seek to broaden or narrow discovery on any subject matter, subject only to the terms of any non-appealable ruling by the court or special master that definitively precludes discovery regarding a particular subject matter in this case.

#### **01-01-02 through 01-01-04 Documents:**

- (1) Relevant financial data including revenues, costs and profits to be agreed upon by the parties or per court order.
- (2) Customer related documents (contracts and licensing for TN customers and related emails/negotiations to the extent kept in centralized files; on-boarding documents; the independent third party support market; TN, PeopleSoft, and JD Edwards key custodian documents re early TN customers).
- (3) Damages Causation and Mitigation Documents (win/loss reports, at-risk reports, and other customer-specific reports kept in centralized locations (or with key custodians) or that can be generated from electronic sources).
- (4) TomorrowNow Business Model Related Documents (documents re TomorrowNow's business model from centralized sources or key custodians from both sides, including the planning and formation of TN's business, communications between PeopleSoft and TN, documents re download servers/environments and fix/update development documents, and documents regarding PeopleSoft's or JD Edwards' knowledge of TN's support activities).
- (5) Relevant TN, PeopleSoft, and JD Edwards employee emails from key custodians.
- (6) The Parties' copyright-related documents to be agreed upon by the parties or per court order.

**03-22-07 through 10-31-08 Documents:**

- (7) Updated relevant financial data including revenues, costs and profits.
- (8) “TN/SAP customer”<sup>1</sup> related documents (documents from centralized sources and key custodians from both sides concerning those customers and created after the complaint, including the SAS database post-shutdown, the pathfinder database, customer off-boarding or transfer documents, TN, SAP and Oracle customer contracts, customers returning to Oracle from TN, customers lost by Oracle and efforts by Oracle to mitigate its damages, customers gained by TN or SAP).
- (9) Damages Causation and Mitigation Documents (updated win/loss reports, at-risk reports, and other customer-specific reports kept in centralized locations (or with key custodians) or that can be generated from electronic sources).
- (10) TomorrowNow Business Model Related Documents (documents from centralized sources or key custodians from both sides concerning: TN-related policies created or modified in any way since filing of complaint, including related to Project Blue; continued use of Oracle intellectual property, including transfer to third parties; Mark White's placement as head of TN; SAP's efforts to sell TN; documents related to independent third party support).
- (11) The Parties' copyright-related documents to be agreed upon by the parties or per court order.

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<sup>1</sup> “TN/SAP customers” shall be mean those customers involving at least one of the following: (a) all TN customers; (b) Safe Passage deals with TN as a component; or (c) SAP sales to TN customers after acquisition of TN.

# **EXHIBIT K**

Expanded Time Line discovery

From:

Jason McDonell

05/20/2009 06:21 PM

Extension:

35820

To:

Alinder, Zachary J., Howard, Geoff, Hann, Bree, House, Holly

Cc:

Scott Cowan, "Wallace, Elaine", Greg Lanier, Joshua Fuchs, Jane Froyd

Show Details

History: This message has been forwarded.

Counsel,

Please confirm that you have produced, or will produce, responsive documents consistent with the Expanded Discovery Timeline Agreement.

Among other things (without limitation), please confirm that you have produced for the expanded timeline from the following custodians:

Robert Lachs

Michael Van Boening

Rick Cummins

Chris Madsen

Juan Jones

Juergen Rottler

Charles Phillips

Safra Catz

Lawrence Ellison

Beth Shippy

Buffy Ransom

Additionally, please confirm that you have produced, or will produce, responsive documents consistent with the Expanded Discovery Timeline Agreement from centralized sources such as OKS or C1 databases.

We note that Oracle witnesses have described documents generated after March 22, 2007 that are responsive to Defendants' RFPs that do not appear to have been produced. For example, Rick Cummins described a win-back spreadsheet that tracks Oracle efforts to sell support services to former TomorrowNow customers. *See, e.g.*, Deposition of Richard Cummins, September 16, 2008, pp. 36-37. He indicated that he has a copy of the report on his computer and that Michael Van Boening has "custody of it." Similarly, At Risk Reports, similar to the one introduced as Defendants' Exhibit 55, were created until February 2008 and stored on the OKS database. *See, e.g.*, Deposition of Beth Shippy, September 25, 2008, pp. 80-81. Please confirm that you have or will produce these documents as well.

Jason McDonell, Esq.  
Jones Day  
555 California Street, 26th Floor  
San Francisco, CA 94104-1500  
SF Office Main Tel.: (415) 626-3939  
Direct Dial: (415) 875-5820  
Fax: (415) 875-5700  
Email: jmcdonell@jonesday.com

=====

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# **EXHIBIT L**

BINGHAM

Zachary J. Alinder  
Direct Phone: (415) 393-2226  
Direct Fax: (415) 393-2286  
zachary.alinder@bingham.com

November 30, 2008

**Via Electronic Mail**

Elaine Wallace, Esq.  
Jones Day  
555 California Street, 26th Floor  
San Francisco, CA 94104-1500

**Re: Oracle, et al. v. SAP AG, et al.**

Dear Elaine:

This letter responds only to your November 17, 2009 letter regarding various discovery issues. I address each below, but note that your letter, attempting to expand new discovery and revive issues that have been long since abandoned by Defendants is inconsistent with Defendants' and Judge Laporte's statements with regard to narrowing discovery at this late date. *See, e.g.*, November 17, 2009 Discovery Conference Hearing Trans. 6:8-7:5. The Parties have engaged in active meet and confer dialogues on numerous topics and have included all disagreements in our discovery conference statements before Judge Laporte. To the extent that Defendants had any complaint on the topics discussed in your letter, they would have needed to have been raised weeks, if not months, ago, rather than raising such concerns two weeks before the discovery cut-off. Despite this fact, Oracle provides detailed responses to the issues you have raised, and offers to supplement certain responses below.

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

**I. REQUESTS FOR PRODUCTION**

**A. Defendants' First Set of RFPs**

**1. RFP No. 42**

First, you appear to seek further documents concerning user ids, passwords and other log-in credentials for all TN customers. To the extent that such information was contained in custodial documents or in non-custodial files that were searched in accordance with targeted search requests, Oracle has produced them. *See, e.g.*, ORCL00086985. To the extent that these are contained in numerous non-custodial documents that have been identified, Oracle has produced those as well.

Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA  
94111-4067

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bingham.com

Elaine Wallace, Esq.  
November 30, 2008  
Page 2

*See* ORCL00009434, ORCL00009435, ORCL00595548 (productions of logs). Further, Defendants claim to have this information themselves in forms that are even more accessible. *See, e.g.*, SAP TN's Responses to Oracle Corp.'s First Set of Interrogatories, No. 10 (describing and identifying by Bates number multiple sources which Defendants claim contain customer log-in credentials, including emails, Urgent Steps letters, Pre-install Questionnaires, Download Request Forms, Data Warehouse, dotProject, and SAS). Moreover, Oracle has now produced its expert report from Mandiant that lists numerous customer credentials used by TN to download from Oracle's customer support websites. *See* Mandiant Report at p. 37 and eAppendix ORCLX-MAN-000140. You have not asked for further efforts to collect all log on credentials before now, and if you had done so that would have constituted a targeted search and would have been subject to the procedures agreed by the parties and approved by the Court for such non-custodial searches. Nevertheless, Oracle will continue to produce any responsive information from any further custodians that are reviewed and produced going forward.

2. RFP Nos. 44, 45, 37

Next, you state that "you do not agree that Oracle has produced sufficient information to make" the determination of which Software and Support Materials each TN customer was entitled to download. However, you do not identify any actual deficiency in Oracle's production. My letter of October 13 set forth the detailed information that Oracle has produced both in terms of documents, data, testimony, and for inspection for you to make those determinations about "which software and support materials each TN customer was entitled to download." Defendants have now had access to Customer Connection for many days since I wrote that October 13 letter, the inspection of which combined with the customer license agreements allows Defendants to make such determinations. Finally, Defendants have voluntarily abandoned their 9-item 30(b)(6) deposition on this topic, despite having ample hours available to pursue it. That also evidences Defendants agreement that they have sufficient information already to determine which software and support materials each of their customers were entitled to download. Nevertheless, Oracle will continue to produce any responsive information from any further custodians that are reviewed and produced going forward.

3. RFP 51

You next state that RFP 51 seeks "all system codes for each SAR and ESU." Please refer to my October 13 letter, which identifies the locations in the production, including the Customer Connection back-end database servers and the

Elaine Wallace, Esq.  
November 30, 2008  
Page 3

production of system code and mapping documents produced both in Oracle's production and detailed in Oracle's response to Defendants' Interrogatory No. 7 and its incorporated exhibit. In addition, Oracle refers Defendants to the system code analysis in the produced expert report from Mandiant. *See* Mandiant Report at Appendix M and supporting materials. Finally, Defendants have inspected Customer Connection directly and currently are still accessing those systems. Defendants therefore can access any systems codes, SARs or ESUs, as to which they still believe they have insufficient information.

4. RFP No. 52

You next state that Defendants seek not only the "displayed content of each page of Customer Connection" but also "documents sufficient to show when the content was posted and removed." While maintaining its objections based on burden and duplication, Oracle agreed in its initial responses, over two years ago, to provide Defendants with access to Customer Connection for this purpose. Defendants did avail themselves of the access offered by Oracle in January 2008, and raised no complaint then, or at any time since then, that they could not get the information they claimed to need through that method. This is the same procedure Defendants have relied upon for the production of voluminous information from their own servers, and which the Court has essentially approved. In addition, Defendants have now had several days of additional access to Customer Connection to cure any concern they failed to raise early last year after their initial access period. Finally, Defendants have access to all of the content on their own servers which they downloaded from Customer Connection. These sources are more than adequate given the failure to raise this issue for 18 months.

5. RFP No. 101

Other than attorney time and related costs expended during the investigation, all documents that Oracle relies on for its damages analysis with respect to the costs of investigation have been produced either prior to or in conjunction with Oracle's damages expert report, served on November 16, 2009, or will be produced by the December 4 discovery cut off.

B. Defendants' Second Set of Requests for Production

1. RFP No. 120

Following Oracle's search, Oracle was unable to locate any responsive, non-privileged documents related to this issue. Oracle further did not find any

Elaine Wallace, Esq.  
November 30, 2008  
Page 4

responsive, privileged documents, and accordingly is not aware that any such documents show up on its privilege logs. This includes following the review of the legacy PeopleSoft email archive for the PeopleSoft in-house counsel listed on the communications identified in this RFP.

## **II. ADDITIONAL, LATE EXPANDED DISCOVERY TIMELINE DISCOVERY REQUESTS**

### **A. “Automated At-Risk Reports”**

Defendants’ first request for additional expanded timeline discovery is for automated at-risk type reports identified in the Shippy deposition, which occurred over a year ago. Ms. Shippy identified these documents as being a list of active and cancelled contracts. Accordingly, these documents would be duplicative and cumulative of the contract-by-contract cancellation reports Oracle already has produced, *See* Shippy Depo. at 79:6-22. Defendants can determine which customers cancelled their contracts from the produced reports. Under these circumstances and given the late hour of the request, this request is unduly burdensome and not reasonably calculated to lead to additional relevant information.

### **B. Post-Litigation Productions for 11 Custodians, Including Oracle’s Top Executives**

You next request that Oracle collect, review and produce post-litigation documents for 11 custodians, including Oracle’s top three executives. Defendants first sought these documents by email on May 20, 2009. Oracle promptly objected to this request on May 26, 2009. Defendants then asked to meet and confer on May 29, 2009. Oracle agreed, and the Parties met and conferred on June 6, 2009. During that meet and confer, Oracle again objected and stated that it did not see how Defendants’ request fit within the defined document categories that were the subject of the expanded timeline agreement. Because they could not articulate a basis for seeking these particular custodians, Defendants stated during that June 6, 2009 meet and confer that they would provide by email a further explanation of why they believed these were proper requests. Oracle has no record or recollection of Defendants ever following through on that promise by sending the email, or of ever raising the issue again in the numerous meet and confers, discovery conference statements, or discovery conferences that have occurred since June 6, 2009. In short, this request was improper when first made in May, for the reasons stated at the time, and the passage of time and Defendants’ abandonment of it, has only made it more so.

Elaine Wallace, Esq.  
November 30, 2008  
Page 5

### III. INTERROGATORIES

#### A. Defendants' Second Set of Interrogatories

##### 1. Interrogatory No. 16

Oracle will evaluate this response and determine whether it requires supplementation prior to the December 4, 2009 discovery cut-off.

#### B. Defendants' Seventh Set of Interrogatories

##### 1. Interrogatory No. 123

Defendants request that Oracle supplement this response with information from 2002-2003; however, Defendants have not identified any basis within the expanded timeline agreement for supplementing this response. Please provide the specific language from that agreement that Defendants believe applies to this interrogatory, and Oracle will consider the request.

##### 2. Interrogatory No. 124

While Oracle does not agree that the purported examples cited in Defendants' letter evidence awareness or knowledge by Oracle of "unlawful conduct by TN described in the Complaint," Oracle intends to amend/supplement this response prior to the December 4, 2000 discovery cut-off.

\* \* \* \* \*

Sincerely yours,

/s/ Zachary Alinder

Zachary J. Alinder

cc: Via E-mail

Elaine Wallace, Esq.  
November 30, 2008  
Page 6

Joshua Fuchs - Jones Day San Francisco - jlfuchs@jonesday.com  
Greg Lanier - Jones Day Silicon Valley - tglanier@jonesday.com  
Jason McDonell - Jones Day San Francisco - jmcdonell@jonesday.com  
Scott Cowan - Jones Day Houston - swcowan@jonesday.com  
Jane Froyd - Jones Day Silicon Valley - jfroyd@jonesday.com

Via E-mail

Geoffrey Howard - Bingham McCutchen, LLP - geoff.howard@bingham.com  
Holly House - Bingham McCutchen, LLP - holly.house@bingham.com  
Zachary Alinder - Bingham McCutchen, LLP - zachary.alinder@bingham.com  
Bree Hann - Bingham McCutchen, LLP - bree.hann@bingham.com

# **EXHIBIT M**

**Re: Oracle v SAP - Location of Custodians**

From: Elaine Wallace  
Extension: 35831

12/04/2009 04:25 PM

To: Sherrod, Joy

Cc: "Donnelly, Amy", "Hann, Bree", "Howard, Geoff", "House, Holly", "Jason McDonell", "MacDonald, Lucia", "Jeong, Martha", "Jindal, Nitin", "Patrick Delahunty", "Scott Cowan", "Alinder, Zachary J."

Joy,

Thank you for providing the custodian locations below. We note that three of the six key custodians for whom we have requested updated productions under the Expanded Discovery Timeline Agreement are located in California and two of them are in Denver. We do not believe these locations make our request unduly burdensome, particularly since it was first made in May. We further note that Mr. Lachs is no longer with Oracle. If Mr. Lachs left Oracle before March 2007, then we assume there would be no additional data to produce for him and would be willing to withdraw our request for his data on that basis.

As discussed on the call yesterday, in addition to reducing our list of key custodians from the original eleven to the six listed above, we are also willing to agree to a much more limited set of search terms for purposes of this request. Our proposed list of search terms is attached. Please let us know whether Oracle will agree to this request or whether this issue is now joined.

Regards,



JD\_625029\_1.XLS

Elaine Wallace  
JONES DAY  
555 California Street, 26th Floor  
San Francisco, CA 94104  
(415) 875-5831 (Direct Dial)  
(415) 875-5700 (Fax)  
ewallace@jonesday.com

"Sherrod, Joy"

Dear Scott: Per your request at today's meet and...

12/02/2009 04:36:19 PM

From: "Sherrod, Joy" <joy.sherrod@bingham.com>  
To: "Scott Cowan" <swcowan@JonesDay.com>  
Cc: "Howard, Geoff" <geoff.howard@bingham.com>, "House, Holly" <holly.house@bingham.com>, "Hann, Bree" <bree.hann@bingham.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>, "Jindal, Nitin" <nitin.jindal@bingham.com>, "Donnelly, Amy" <amy.donnelly@bingham.com>, "MacDonald, Lucia" <lucia.macdonald@bingham.com>, "Elaine Wallace" <ewallace@JonesDay.com>, "Patrick Delahunty" <pdelahunty@JonesDay.com>, "Jason McDonell" <jmcdonell@JonesDay.com>, "Jeong, Martha" <martha.jeong@bingham.com>  
Date: 12/02/2009 04:36 PM  
Subject: Oracle v SAP - Location of Custodians

Dear Scott:

Per your request at today's meet and confer, below please find where the 11 custodians you have requested additional productions from are physically located:

- Juergen Rottler, Charles Phillips, Safra Catz, Larry Ellison – Redwood Shores, Ca
- Chris Madsen – Rocklin, Sacramento
- Juan Jones - Pleasanton, Ca
- Rick Cummins, Buffy Ransom and Michael Van Boening – Denver, Co
- Elizabeth Shippy – Phoenix, Az.
- Rob Lachs is no longer with Oracle

Joy C. Sherrod | Associate  
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Three Embarcadero Center  
San Francisco, CA 94111  
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**Search Terms**

TomorrowNow or TommorrowNow or TN or TNow

rimini\*

spinnaker\*

CedarCrestone or cedar near2 crestone or crestone

netCustomer or net near2 customer

thirdpart\* or "third party" or "third parties"

3rdpart\* or "3rd party" or "3rd parties"

at w/3 risk

SAP

"safe (passgae or pasage or passag)"

"Safe\* \*Passage\*"

"Asia Pacific Breweries" or asia near2 breweries

"Atlantic Container Line" or atlantic near2 line

"Autobuses de La Piedad" or autobuses near2 piedad

"Beacon Industrial" or beacon near2 industrial

"By Referral Only"

"Contico Group" or contico

"Dominion Homes" or dominion near2 homes

"Drexel Heritage" or drexel near2 heritage

Ecolab

"Fabrica National de Lija" or fabrica near4 lija

"Foss Maritime Company" or foss near2 maritime

"Greg\* Appliance\*" or greg\* near2 appliance\*

"HydroOne Networks" or "Hydro One Networks" or hydro near2 network\*

Liberata

"Magee Clothing" or magee or magee near2 clothing

"N.V. Organon" or nv near2 organon or n.v. near2 organon

"Organon Mexicana" or organon near2 mexicana

"Richardson Electronic\*" or richardson near2 electronic\*

"SCSG Management Company" or SCSG or SCSG near2 management

"Van Hessen" or van near2 hessen

"Petroleum Geo-Services" or "Petroleum Geoservices" or petroleum near2 geo-service\* or petroleum near2 ge

"Schaffner Holding" or schaffner or schaffner near2 holding\*

"Sygenta Crop Protection" or Sygenta or sygenta near2 crop\* or sygenta near2 protect\*

"ACN Europe" or ACN

"Al Nisr"

"Alberto-Culver" or "Alberto Culver"

"Clear Channel"

"Alcatel-Lucent" or Alcatel or Lucent

Crothall

"DiamondCluster" or "Diamond"

"Fireman's Fund" or Fireman

"Forth Ports" or Forth near2 Port

"FP Bois"

"Fundamental Administrative Services" or fundamental near 2 admin\*

"Genesis Healthcare" or genesis near2 health\*

Hager

JALPAK

"Lion Resources" or lion near2 resource\*

Publicis

Longaberger

Madix

"National Manufacturing" or national near2 manufactur\*

"New Era Cap" or new near2 era

PETCO

Pillsbury

Proliance

RTKL

"Sara Lee"

"Smart Centers" or smart near2 center\*

Spokane

"St Luke's" or luke\* near2 hospital

"Standard Register" or standard near2 register

"II Stanley" or stanley near2 co

"Stanley Electric" or stanley near2 electric

"UPM-Kymmene"

"Watson Laboratories" or watson near2 lab\*

Westcode

ZMC