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19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   OAKLAND DIVISION

22 ORACLE USA, INC., et al.,   Case No. 07-CV-1658 PJH (EDL)

23   Plaintiffs,   **DEFENDANTS' OBJECTIONS TO
                                          PLAINTIFFS' DEPOSITION
24   v.   DESIGNATIONS**

25 SAP AG, et al.,

26   Defendants.

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1   Pursuant to the Court's Pretrial Order (Dkt. 914), attached as Exhibit "A" is a chart of

2   Defendants' 16 objections to Plaintiffs' current deposition designations, including the disputed

3   testimony and a brief statement of the basis for each of Defendants' objections. The specific

4   portions of the testimony that are the primary focus of each of Defendants' objections are noted in

5   bold. Plaintiffs' current deposition designations include approximately 16 hours of testimony.

6   These 16 objections are what remains after Defendants' other objections were resolved through

7   agreements the parties made during extensive meet and confer communications.

8   To the extent Plaintiffs amend or supplement their current deposition designations,

9   Defendants reserve the right to amend or supplement their objections in response.

10   Defendants are still awaiting receipt of the final version of Plaintiffs' objections to

11   Defendants' current deposition designations. Defendants intend to file a response to Plaintiffs'

12   objections as soon as reasonably practicable after receipt of the final version of Plaintiffs'

13   objections. Defendants expect that response will generally follow the format of the attached.

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15   Dated: October 25, 2010   JONES DAY

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17   By: /s/ Scott W. Cowan
                                                     Scott W. Cowan
18
                                               Counsel for Defendants
19   SAP AG, SAP AMERICA, INC., and
                                               TOMORROWNOW, INC.
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DEFS.' OBJECTIONS TO PLS.' DEPOSITION DESIGNATIONS
Case No. 07-CV-1658 PJH (EDL)

EXHIBIT A

Testimony	Defendants' Objection	Court's Ruling
Apotheker, Leo 10/02/08		
147:16 - 148:1 Q. Okay. Let's go to the next one. "The big issue as we know it continues to be contractual limitations." And you said, "My guess is that we will chart a course into very dangerous waters. But again, it is worth while to investigate the contractual language in Siebel and **Oracle contracts**?" Do you remember what you meant by "chart a course into very dangerous waters"? A. No, I don't.	Defendants' MIL #9. This testimony violates the Court's ruling on Defendants' MIL #9 regarding Oracle's EBS software which is not at issue. The document quoted from discusses EBS and the testimony regarding "Oracle contracts" is a reference to EBS.	
Baugh, John 08/13/09		
128:5 - 128:16 **Q. So, no later than August 28, 2007, everybody on your e-mail, Exhibit 1550, knew that these client environments were working from a shared install?** MR. WILKES: Objection, form. **A. Yes.** **Q. (By Mr. Howard) And that included Shelley Nelson?** **A. Yes.** **Q. Included Kathy Williams?** **A. Yes.** **Q. Included the Greg Lanier?** MR. WILKES: Objection, form. **A. Yes.**	Speculation; No foundation. Mr. Baugh could not know what "everybody" knew on his email or even if "everybody" read his email.	
128:17 - 128:21 **Q. (By Mr. Howard) And can you explain why these environments were not prioritized at least as of your**	Speculation; No foundation. Mr. Baugh was not in a management position and was not a decision maker. There is no foundation laid to show	

Testimony	Defendants' Objection	Court's Ruling
August 28, 2007, e-mail? MR. WILKES: Objection, form. **A. No.**	that he would know "why."	
**Geib, Bob 4/21/09**	
330:14 - 331:5 Q. And to my prior question, the sentence before it says: **"Effectively, on the last read of the license and then the EEL amendment that they have, they have some problem language on the ability to provide us with access to the software. I did bring in Scott Trainor, he did a great job, on handling that last issue."** Do you see that? A. Yes. **Q. So it appears Scott was able to handle the issue with respect to access to the software?** MS. FROYD: Objection. The document speaks for itself. **THE WITNESS: Yes. I don't specifically remember this, but that's what the document says.**	Hearsay; Fed. R. Evid. 1002. The question seeks the deponent to confirm the truth of the matters asserted in a hearsay document. To the extent the document could be otherwise admitted, the content of the document is not being offered to demonstrate the existence of the document or the deponent's understanding of the documents, and therefore is inadmissible because the document is the best evidence of what it states.	
**Kreutz, Mark 02/19/08**	
204:12 - 205:3 Q. You believed at the time that it was **appropriate** to copy downloads taken for other customers, in order to clean up and complete the Praxair folder? MR. COWAN: Objection, form. THE WITNESS: No. I don't believe that it was part of the policy that we were supposed to be following. MR. HOWARD: Q. My	Vague and ambiguous; Legal conclusion; Compound; Fed. R. Evid 403. The use of the term "appropriate" in the question is vague and ambiguous and/or renders the question compound without discerning whether "appropriate" means the conduct at issue was compliant with: (a) TN's policies; (b) the customer's license agreement with Oracle; or (c) the law. The	

Testimony	Defendants' Objection	Court's Ruling
question is, did you believe at the time that that was **appropriate**, to do what you did, when you split the master folder into the specific client folders, to populate them with downloads taken from other clients? Did you believe that was **appropriate** or not? Yes or no. MR. COWAN: Objection to form. THE WITNESS: No.	jury could construe "appropriate" as a synonym for "legal" and thus the question calls for a legal conclusion and would otherwise confuse and mislead the jury.	
Lester, Beth 4/22/09		
181:15 - 181:23 Q. Do you think it's **appropriate** to take one client's software and copy to create a different environment for a different customer? MR. COWAN: Objection to form – MR. BYE: Objection to form. THE DEPONENT: I think it would depend upon the process. My gut feeling is no, but I think it would depend upon the process and all of the steps involved to do so.	Vague and ambiguous; Legal conclusion; Compound; Fed. R. Evid 403; Speculation; No foundation. The use of the term "appropriate" in the question is vague and ambiguous and/or renders the question compound without discerning whether "appropriate" means the conduct at issue was compliant with: (a) TN's policies; (b) the customer's license agreement with Oracle; or (c) the law. The jury could construe "appropriate" as a synonym for "legal" and thus the question calls for a legal conclusion and would otherwise confuse and mislead the jury. There is no evidence that she has personal knowledge sufficient to testify regarding "appropriateness" of the conduct if the question relates to compliance with the customer's license agreement or the law. Thus any answer by this deponent lacks	

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Testimony	Defendants' Objection	Court's Ruling
	foundation and would be pure speculation.	
Nelson, Andrew 2/26/09		
100:9 - 100:12 MR. HOWARD: **Q. Mr. Nelson, after consulting with your counsel are you able to answer the question?** A. Can you please repeat it?	Defendants' MIL #6; Relevance; Fed. R. Evid. 403. The question clearly references the attorney's privilege instruction during the deposition and has no probative value. Thus, the question violates the Court's Order granting Defendants' MIL #6. Moreover, it is confusing and unfairly prejudicial.	
108:9 - 109:2 THE WITNESS: **Can you restate that question?** MR. HOWARD: Q. **It's the same question I have asked three times.** What rules did you put into place, other than maintenance end date and other than not sending fixes to customers that you weren't supporting on that release, designed to ensure that PeopleSoft's intellectual property rights were not violated? MR. FUCHS: Objection to form. THE WITNESS: **Sorry for my confusion. There is just a lot there, the beforehand that you are talking about.** I recall maintenance end date being an issue, something that we considered. I remember making sure that we weren't taking something that was clearly tied to a product outside of what we believed the customer was licensed for. I recall those two examples.	Argumentative; Relevance; Fed. R. Evid. 403. The bolded portions have no probative value, highlight the argumentative nature of the question and should be removed.	

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Testimony	Defendants' Objection	Court's Ruling
Phillips, Spencer 7/22/09		
45:24 - 46:1 & 46:25 - 47:4 Q. Who – who is Scott Trainor? A. Scott Trainor is an SAP attorney who supported TomorrowNow in the first year I was with them. . . . Q. **What was his primary responsibility with respect to TomorrowNow when he was supporting TomorrowNow?** MR. COWAN: Objection, form. A. To review – to help with contract negotiations, anything that required a change for a legal term.	No foundation. The deponent was a TomorrowNow sales person who has no personal knowledge regarding Scott Trainor's "primary responsibility with respect to TomorrowNow."	
Ravin, Seth 7/21/10		
282:17 - 283:11 MR. HOWARD: Q. Good morning, Mr. Ravin. A. Good morning. Q. Do you understand that we are here today as a continuation of your deposition on May 21st, 2009 when I deposed you at the offices of your former counsel, Wilson Sonsini? A. Yes. Q. And do you understand why you are here today? A. Yes. Q. What is that understanding? A. We are continuing the deposition that we had on May 21st of 2009. Q. **Do you understand that's pursuant to a court order that requires you to answer questions related to some questions that you were**	Relevance. This entire line of questioning is not probative because it simply confirms the witness' understanding that he is appearing for this deposition as a result of a U.S.D.C. – Nevada Court ruling related to a discovery dispute that arose in his prior deposition in this case, which was taken under a subpoena issued from that Nevada Court.	

Testimony	Defendants' Objection	Court's Ruling
instructed not to answer at that last deposition? **A. I understand that this requires me to** **answer questions that were posed and approved by the judge.**		
369:7 - 370:10 MR. HOWARD: Q. Mr. Ravin, let me direct your attention to **Exhibit 947**, which is the Rimini Street press release. Do you have that in front of you? A. Just a second. I now have it in front of me. Q. Looking down at the -- towards the bottom there is a paragraph there that begins "In February 2009." Do you see that? A. Yes. Q. That paragraph is referring to a phone call that you testified about in response to Mr. Cowan's questions between counsel for Rimini Street and counsel for Oracle? A. Yes. Q. You misremembered the date of that call, did you not -- A. Yes. Q. -- in your testimony? A. Yes. Q. You testified that in that call your lawyer communicated that Rimini Street had local copies of Oracle software on Rimini Street systems. Is that your testimony here today? A. That's my understanding. **Q. And yet you refused, at your same lawyer's**	Oracle's MIL #7; Defendants' MIL #6; Relevance; Argumentative. Exhibit 947 mentions Oracle's lawsuit against Rimini Street and Rimini's counter-claims in that same suit and thus violates the Court's Order granting Oracle's MIL #7. The deponent's refusal, at his counsel's direction, to answer the bolded question during his previous deposition in this case, is both irrelevant and violations the Court's Order granting Defendants' MIL # 6. Moreover, counsel's chiding of the deponent regarding that fact is argumentative.	

Testimony	Defendants' Objection	Court's Ruling
direction, to answer those questions at your May 21, 2009 deposition; is that right? A. Yes.		
370:18 - 371:25 MR. HOWARD: Q. Now, you testified to Mr. Cowan that you reviewed and approved **Exhibit 947** before it was released to the public. Is that right? A. That is correct. Q. And you believe each statement in this press release to be an accurate statement of fact; is that right? A. Yes. Q. Looking at that same paragraph that begins "In February 2009," the second sentence of that paragraph, would you please read that sentence? A. "On the call, Rimini Street offered to share Rimini Street internal information and/or work out an agreement that would utilize an independent third party auditor reporting back to both parties to confirm Rimini Street's compliance with its standard processes and procedures." Q. It says that Rimini Street offered to share, does it not? A. Yes. Q. It doesn't say shared. True? A. Yes. But this is an additional information on top of what was already presented in the call. Q. Does it say that Rimini Street shared	Oracle's MIL #7; Relevance; Argumentative; Fed. R. Evid. 403. Exhibit 947 mentions Oracle's lawsuit against Rimini Street and Rimini Street's counter-claims in that same suit and thus violates the Court's Order granting Oracle's MIL #7. Moreover, counsel's insinuation that the witness stated that Rimini Street actually shared information regarding the existence of local environments on Rimini Street systems is false and thus the bolded question is argumentative, unfairly prejudicial, and misleading.	

Testimony	Defendants' Objection	Court's Ruling
internal information, including the existence of local environments on Rimini Street systems? A. It does not say that. **Q. So, which is incorrect, your testimony** **here today, or this press release?** MR. WEBB: Objection, argumentative. THE WITNESS: Neither.		
Ritchie, John 12/02/09		
56:1 - 56:5 **Q. And based on that experience and based on what you observed with Titan, did you conclude that Titan had crashed the Oracle website?** MR. LANIER: Object to form. **A. Yes.**	No foundation; Speculation. The answer is purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared to all of the other customers (167:25-168:5). *See, e.g.,:* Q. How many -- do you know anything about the actual operation and structure of the website that Titan would access? A. Yes. Q. How many computers was it based on? A. How many computers? Q. How many servers? A. Don't know. Q. How many servers were JDE? A. How many servers for	

Testimony	Defendants' Objection	Court's Ruling
	JDE? Q. Yeah, had JDE stuff on them. A. I don't know. Q. How many had PeopleSoft? A. Don't know. (166:19-167:7) Q. What percentage of the downloads done from Oracle's website in any interval -- month is fine -- are done by TomorrowNow or were done by TomorrowNow as compared to all the other customers? A. As opposed to all other customers? I don't know all the other customers. (167:25-168:5).	
56:17 - 57:8 Q. – while Titan was running, **did you conclude that the Oracle website was unavailable to any third party during those times?** MR. LANIER: Object to form. A. That's -- that's my main concern for denial of service, is that while Titan is hitting their servers, their other customers cannot log on and get the information they need. Q. (BY MR. HOWARD) And -- and -- **and did you conclude that that was the case, that during those times where you couldn't log on, that other customers also could not log on**? MR. LANIER: Object to form. A. To the best of my ability, yes.	No foundation; Speculation. The answer is purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared to all of the other customers (167:25-168:5). See above.	

Testimony	Defendants' Objection	Court's Ruling
Q. (BY MR. HOWARD) Did you voice those concerns regarding **Titan's impact on the availability of the Oracle website** to others at TomorrowNow? A. Yes.		
62:1 - 63:13 Q. Did anybody -- Mr. DeLing, Mr. Guzman, anybody instruct you to take any measures to modify Titan in order to minimize the impact on the Oracle website? A. No. I did it myself. Q. What did you do? A. I toned it down to 15 multiple threads at a time, maximum. Q. After you did that, did you -- A. It still was hitting the server hard, **but it was crashing less**. Q. Okay. So, after you modified Titan so that it only was downloading 15 threads at a time, did you still observe instances where you believe that it was crashing the Oracle server? A. No. It seemed to be able to handle it. But like I said, logging in was still difficult. It would be very sluggish; and you could see that by just the fact that when you logged on normally under a normal circumstance, it would take, say, 3.5 seconds. Under these circumstances, we're looking at maybe 10 to 15 seconds versus, you know, trying to get logged on. And that's not even searching anything.	No foundation; Speculation. The answers (including the statement that the Oracle website was "crashing less" and that there was a "decrease in performance of the Oracle website") are purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared to all of the other customers (167:25-168:5). See above.	

Testimony	*Defendants' Objection*	*Court's Ruling*
That's just logging on. Q. So, did you compare manually logging on while Titan was running to manually logging on when Titan was not running? A. Yes. Q. And when Titan was running 15 threads -- A. Big difference. Q. What was the difference? A. You're looking at -- like I said, it was very sluggish -- 15 seconds -- 10 to 15 seconds to log on only. Q. Compared to what, when Titan wasn't running 15 threads? A. Three seconds. Q. **So, is it fair to say that you observed a decrease in the performance of the Oracle website in responding to a manual log-on while Titan was running at the 15 thread rate?** MR. LANIER: Object to form. A. Yes.		
120:16 - 121:12 Q. And we've talked earlier about Titan maxing out at threads per session? A. What happens when you have multiple instances of it running? Q. Right. A. Worse. Q. But am I right that -- that -- that you would have up to 15 threads running on each individual machine that was conducting a -- a -- a download search? A. That is correct. And they had problems that they	Hearsay; Speculation. The deponent's answer confirms that the "problems" at issue occurred before he "came on board" at TomorrowNow and thus he has no personal knowledge and is simply repeating out of court assertions from one or more unidentified individuals.	

Testimony	Defendants' Objection	Court's Ruling
realized from this. Q. What were the problems? A. Well one of the problems **before I came on board**, when they were tracked doing the downloads, their IP had been blacklisted. That means basically Oracle's website did not allow any IP from TomorrowNow to access their servers. We had to manually change our IP in-house to a new one to get around that blacklisting. MR. LANIER: Object. Move to strike. A. So, these are the -- some of the problems that they ran into with running multiple instances. They were causing the server to crash more often.		