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18 | TOMORROWNOW, INC.

19 | UNITED STATES DISTRICT COURT

20 | NORTHERN DISTRICT OF CALIFORNIA

21 | SAN FRANCISCO DIVISION

22 | ORACLE USA, INC., et al.,   Case No. 07-CV-1658 PJH

23 | Plaintiffs,   **DEFENDANT TOMORROWNOW,**
        v.   **INC.'S FOURTH AMENDED AND**
24 | **SUPPLEMENTAL RESPONSE TO**
     SAP AG, et al.,   **PLAINTIFF ORACLE**
25 | **CORPORATION'S FIRST SET OF**
                  Defendants.   **INTERROGATORIES (SET ONE)**
26 |

27 |

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AMENDED & SUPP. RESP. TO ROGS.
Case No. 07-CV-1658 PJH

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20   **INTERROGATORY NO. 3:**

21   Describe in as much detail as possible how You access, store, maintain, retrieve and

22   provide any support materials to Your Customers, including Software and Support Materials,

23   including but not limited to Identifying on what computers, servers or other devices the Software

24   and Support Materials are stored, the names of Person(s) who have access to the Software and

25   Support Materials, how those Software and Support Materials are accessed by Your Employees

26   and Customers, and describing any policies, procedures, protocols or safeguards involved in the

27   provision of Software and Support Materials to Customers, including ensuring they have a valid

28   license for the material.

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1   **RESPONSE TO INTERROGATORY NO. 3:**

2   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

3   TomorrowNow objects that this interrogatory seeks information not reasonably calculated

4 to lead to the discovery of admissible evidence to the extent that it seeks information about

5 unspecified "support materials" other than the Software and Support Materials at issue in this

6 case. TomorrowNow further objects that this interrogatory is compound, is actually several

7 interrogatories, is wholly or partially duplicative of several other interrogatories served by Oracle

8 (including Nos. 6, 7, 8, 10 and 12 of this set and 1, 2 and 4 of the set served by Oracle USA Inc.),

9 and is unduly burdensome and oppressive to the extent it seeks a narrative answer as to a laundry

10 list of disparate subjects. Subject to and without waiving the foregoing objections and the

11 General Objections and Responses, TomorrowNow responds by incorporating by reference and

12 relies on its responses to Interrogatories Nos. 6, 7, 8, 10 and 12 of this set and Interrogatories 1, 2

13 and 4 of the set served by Oracle USA Inc., including those documents cited in those responses.

14 TomorrowNow further responds as follows: TomorrowNow has accessed, downloaded and/or

15 stored Software and Support Materials on behalf of its new customers. TomorrowNow has done

16 so after receiving from the customer certain representations and warranties that the customer is

17 entitled to permit TomorrowNow such access on its behalf. TomorrowNow's policy was only to

18 conduct downloads for a customer using the specific password and user id. provided by that

19 customer and only before the relevant Maintenance End Date for that customer. Until recently,

20 TomorrowNow conducted the downloads and stored the relevant materials on its computers. The

21 downloads were conducted by TomorrowNow's employees using certain laptop and desktop

22 computers as well as dedicated download servers located at TomorrowNow's data center in

23 Bryan, Texas. TomorrowNow then transferred and stored downloaded materials on certain file

24 servers, the relevant files and file folders from which will be included in TomorrowNow's

25 document production and on which TomorrowNow relies to further respond to this interrogatory

26 pursuant to Rule 33(d). TomorrowNow set forth the policies and procedures governing the

27 downloading and storage of relevant materials in procedure documentation, including emails,

28 which will be included in TomorrowNow's document production and on which TomorrowNow

1   relies to further respond to this interrogatory pursuant to Rule 33(d). Beginning in July 2007,

2   TomorrowNow revised its procedures to have its customers conduct all appropriate downloads

3   they wish to be conducted from the customers' own computers, and to store any such downloaded

4   materials on the customers' computers. Beginning in July 2007, TomorrowNow may on occasion

5   assist or advise its customers in conducting downloads, but it is TomorrowNow's policy that each

6   customer makes the ultimate decision regarding which materials that customer downloads.

7   TomorrowNow has taken other steps to update its business processes, in part to address the

8   uncertainty caused by Oracle's allegations and Oracle's refusal to provide information underlying

9   its claims. Documents describing these process changes will be included in TomorrowNow's

10 document production and on which TomorrowNow relies to further respond to this interrogatory

11 pursuant to Rule 33(d).

12 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

13   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

14 INFORMATION.

15   TomorrowNow further responds that its policies and procedures documents include but

16 are not limited to TN-OR00001278 – TN-OR00004196. Downloaded material (in native format)

17 includes but is not limited to TN-OR00004203, TN-OR00005106 and TN-OR00005147.

18 TomorrowNow reserves the right to further supplement this response as necessary during the

19 course of document production.

20 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

21   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

22 CONFIDENTIAL INFORMATION.

23   This compound interrogatory would require TomorrowNow to chronicle information that

24 involved numerous employees, took place over several years, and is too complex and detailed to

25 describe in an interrogatory response. Pursuant to Rule 33(d), TomorrowNow points Plaintiffs to

26 the SAS database, which is a tool TomorrowNow used to chronicle its business efforts to service

27 clients. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173, TN-OR

28 04446719, TN(Hard drive).75. Further, in addition to the policies and procedures cited above,

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1   policies and procedures documents related to the provision of Software and Support Materials to

2   Customers include, but are not limited to, SAP-OR00251437, TN-OR00411402, TN-

3   OR00209243, TN-OR00209244, TN-OR03775488, SAP-OR00631478. For information

4   regarding how TomorrowNow stores and maintains Software and Support Materials, including

5   the identification of the computers, servers or other devices the Software and Support Materials

6   are stored, TomorrowNow relies on all of its current responses to Interrogatory No. 11 of this set,

7   which is incorporated by reference.

8   The most complete record of the TomorrowNow employees who had access to the

9   Software and Support Materials prior to the wind down of TomorrowNow can be derived from

10 the SAS database. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173,

11 TN-OR 04446719, TN(Hard drive).75. The SAS database also contains the most complete record

12 of how TomorrowNow employees accessed those Software and Support Materials. *Id.* The most

13 complete record regarding the fixes TomorrowNow provided its customers can be derived from

14 TN-OR 00009557, TN(Disc).9, TN-OR04497673, TN(Disc).186 (client fixes from Web 01,

15 DCWEB01); TN-OR04497668, TN(Hard drive).78 (client fixes from Mail 03). In addition,

16 some of the overly broad and unduly burdensome information that this request seeks can be

17 derived from the hours of overlapping 30(b)(6) testimony. *See* October 29, 2007 Deposition of

18 Bill Thomas Pursuant to Rule 30(b)(6); October 29-30, 2007 Deposition of Mark Kreutz

19 Pursuant to Rule 30(b)(6); October 30, 2007 Deposition of Shelley Nelson Pursuant to Rule

20 30(b)(6); December 6, 2007 Deposition of Shelley Nelson Pursuant to Rule 30(b)(6); February 6-

21 7, 2008 Deposition of John Baugh Pursuant to Rule 30(b)(6); February 19, 2008 Deposition of

22 Mark Kreutz Pursuant to Rule 30(b)(6); June 25, 2008 Deposition of Rod Russell Pursuant to

23 Rule 30(b)(6); April 1, 2008 Deposition of Kathy Williams Pursuant to Rule 30(b)(6); April 1,

24 2008 Deposition of Catherine Hyde Pursuant to Rule 30(b)(6).

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9   **INTERROGATORY NO. 7:**

10   Describe in as much detail as possible any policies or procedures related to Downloading

11   Software and Support Materials, as referred to in ¶¶ 9, 72 and 73 of the Answer, including but not

12   limited to identifying whether that policy is oral or written, the dates of creation and any

13   modification of the policy, and identifying the names of all Persons involved in drafting,

14   reviewing, revising, authorizing, approving, implementing, or enforcing that policy.

15   **RESPONSE TO INTERROGATORY NO. 7:**

16
      THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.
17
         Subject to and without waiving the General Responses and Objections, TomorrowNow
18
     responds as follows: TomorrowNow's policies and procedures relating to downloading of
19
     relevant Software and Support Materials were created by certain TomorrowNow employees over
20
     time and were updated on an ongoing basis. The policies and procedures are set forth in
21
     numerous procedural documents, emails and related policy documents, and the personnel
22
     responsible for management of downloading are set forth in TomorrowNow's organization charts,
23
     which documents will be included in TomorrowNow's document production and on which
24
     TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).
25
     SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:
26
         THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
27
     INFORMATION.
28

1   TomorrowNow further responds that its policies and procedures documents include but

2   are not limited to TN-OR00001278 – TN-OR00004196. Personnel who have been or are

3   currently responsible for management of downloading include but are not limited to: Shelley

4   Nelson, Laura Sweetman, Mark Kreutz, Keith Shankle, Peter Surette, Greg Nelson, Mark Meyer,

5   Desmond Harris and Peggy Lanford. TomorrowNow reserves the right to further supplement this

6   response as necessary during the course of document production.

7   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

8   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

9   CONFIDENTIAL INFORMATION.

10   TomorrowNow further responds that before the litigation, TomorrowNow's policies and

11   procedures relating to downloading of relevant Software and Support Materials included the

12   following: (1) TomorrowNow was to download each customer's materials individually, by

13   customer, never sharing materials between customer; (2) TomorrowNow was to use a specific

14   customer's login ID only to download that customer's materials; (3) TomorrowNow was to only

15   use a customer's current and valid login ID, assigned to the customer by the vendor; and (4)

16   TomorrowNow was never to download materials on behalf of a customer past that customer's

17   maintenance end date. *See, e.g.,* TN-OR00411402. Pursuant to Rule 33(d), TomorrowNow

18   responds that its policies and procedures documents related to downloading include but are not

19   limited to TN-OR00001462– TN-OR00001476, TN-OR0000213 –TN-OR00002142, TN-

20   OR00002143–TN-OR00002148, TN-OR00002192–TN-OR00002210, TN-OR00002374–TN-

21   OR00002380, TN-OR00002402–TN-OR00002413, TN-OR00002415–TN-OR00002426, TN-

22   OR00002548–TN-OR00002602, TN-OR00002765–TN-OR00002782, TN-OR00003649–TN-

23   OR00003660, TN-OR00003828–TN-OR00003833, TN-OR00003881–TN-OR00003886, TN-

24   OR00003951–TN-OR00003961, TN-OR00004120–TN-OR00004169. TomorrowNow further

25   incorporates by reference all of its current responses to Interrogatory No. 12.

26   After the litigation, TomorrowNow management issued the directive to change certain

27   business processes related to downloading. These changes were memorialized in the

28   TomorrowNow Compliance Guidelines of Support Services, V1 and V2. *See* SAP-OR00631478

1   –SAP-OR00631496, TN-OR03775488–TN-OR03775511. The TomorrowNow executives and/or

2   employees involved with the changes to the download process were Mark White, Martin Breuer,

3   Harry Schoennagel, Mel Gadd, Mark Kreutz, John Tanner, Shelley Nelson, Rod Russell, John

4   Baugh, Tab Brown, Broderick Ellis, Larry Garcia, Paul Henville, Chris Jackson, Tom Leier,

5   Florence Leong, Gordon Robinson, and Kathy Williams. Both versions of the Compliance

6   Guidelines state that downloading must be performed by the client, and TomorrowNow

7   employees are prohibited from directly engaging in downloading activities. *Id.* Automated

8   downloading tools could no longer be used after the business process changes went into effect.

9   *Id.* TomorrowNow employees were permitted to provide "broad guidance" to customers with

10 respect to the types of information the customers should download, but TomorrowNow

11 employees were prohibited from making specific recommendations regarding the software and

12 support materials that should be downloaded. *Id. See, e.g.,* SAP-OR00251437, TN-

13 OR02813156–TN-OR02813157, TN-OR02813158–TN-OR02813159 (other changes to the

14 download policies and procedures). Pursuant to Rule 33(d), TomorrowNow relies upon each

15 document cited in the Response and all Supplemental Responses to further respond to this

16 interrogatory.

17 **INTERROGATORY NO. 8:**

18   Describe in as much detail as possible any training You have ever provided to Your

19 Employees with regard to Downloading Software and Support Materials or the provision of such

20 materials to Your Customers, including but not limited to Identifying all Persons who have

21 provided or participated in the training, all Documents related to the training, all optional or

22 mandatory parts of the training, and a brief description as to when and how the training is

23 provided to Your Employees.

24 **RESPONSE TO INTERROGATORY NO. 8:**

25   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

26   Subject to and without waiving the General Responses and Objections, TomorrowNow

27 responds as follows: TomorrowNow's employees who conducted downloading on behalf of

28 TomorrowNow's customers typically were trained immediately upon beginning their employment

1   with TomorrowNow, at TomorrowNow's headquarters in Bryan, TX, where all customer

2   downloading operations were focused. TomorrowNow's policies and procedures relating to the

3   downloading of relevant Software and Support Materials were created by certain TomorrowNow

4   employees over time updated on an ongoing basis. The policies and procedures are set forth in

5   numerous procedural documents, e-mails and related policy documents, and the personnel

6   responsible for management of downloading are set forth in TomorrowNow's organization charts,

7   which documents will be included in TomorrowNow's document production and on which

8   TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).

9   TomorrowNow's investigation of this issue is continuing.

10   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

11   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

12   INFORMATION.

13   TomorrowNow further responds that its policies and procedures documents include but

14   are not limited to TN-OR00001278 – TN-OR00004196. Personnel who have been or are

15   currently responsible for management of downloading include but are not limited to: Shelley

16   Nelson, Laura Sweetman, Mark Kreutz, Keith Shankle, Peter Surette, Greg Nelson, Mark Meyer,

17   Desmond Harris and Peggy Lanford. TomorrowNow reserves the right to further supplement this

18   response as necessary during the course of document production.

19   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

20   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

21   CONFIDENTIAL INFORMATION.

22   TomorrowNow further responds as follows: Prior to late 2006, TomorrowNow

23   employees involved in the downloading process received informal training, starting immediately

24   upon beginning their employment. In late 2006, TomorrowNow began conducting formal

25   training classes for all employees involved in the downloading process. There have been three or

26   four such trainings, conducted by Peggy Langford. In addition, some aspects of the downloading

27   process are covered in the new hire orientation program that TomorrowNow provides to all new

28   employees in the Service and Support Group. TomorrowNow employees involved in the

1   downloading process also learned about the process through TomorrowNow's downloading

2   policies and procedures documents. These include, among others, the following documents: TN-

3   OR00001462 – TN-OR00001476, TN-OR00002135 – TN-OR00002142, TN-OR00002143 – TN-

4   OR00002148, TN-OR00002192 – TN-OR00002210, TN-OR00002374 – TN-OR00002380, TN-

5   OR00002402 – TN-OR00002413, TN-OR00002415 – TN-OR00002426, TN-OR00002548 – TN-

6   OR00002602, TN-OR00002765 – TN-OR00002782, TN-OR00003649 – TN-OR00003660, TN-

7   OR00003828 – TN-OR00003833, TN-OR00003881 – TN-OR00003886, TN-OR00003951 – TN-

8   OR00003961, TN-OR00004120 – TN-OR00004169.

9   TomorrowNow reserves the right to further supplement this response as necessary during

10   the course of fact investigation and discovery.

11   **THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

12   THIS THIRD SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

13   INFORMATION.

14   TomorrowNow further responds that the following people provided and/or participated in

15   training related to the TomorrowNow JDE World and OneWorld downloads: Laura Sweetman,

16   Mark Kreutz, Pete Surette, Keith Shankle, Melissa Garcia, Florence Leong, David Palmer, Mark

17   Deling, Peggy Lanford, Desmond Harris, Robin Alex, Mark Meyer, and Harry Schoennagel. The

18   following people provided and/or participated in training related to the TomorrowNow

19   PeopleSoft downloads: Peggy Lanford, Desmond Harris, George Lester, Wade Walden, Robin

20   Alex, Melissa Garcia, Mark Meyer, Mark Deling, Shelley Nelson, Greg Nelson, Kathy Williams,

21   Aaron Woods, Amanda Krenek, Linda Birdwell, Dimitri Garcia, Zachary Grafe, Cynthia

22   Lampkin, Audrey Wessels, Sarah Rekieta, Briana Perkins, Yolanda Espiriqueta, Brenda Clark,

23   Justin Johnson, and RoseAnna Ramirez. The following people received training from Melissa

24   Garcia related to automated downloads: Thomas Phillips, Morgan Messick, Candace Strother,

25   Clint Auer, and John Ludlow. *See* July 30, 2008 Deposition of Melissa Garcia, at 83:14-16,

26   84:4–85:3, 87:11-18. *See also* TN-OR00904037; TN-OR00904038 – TN-OR00904042, TN-

27   OR00904043 – TN-OR00904048, TN-OR00904049 – TN-OR00904054, TN-OR00904055 – TN-

28   OR00904058 (Melissa Garcia's automated script documentation).

1   For examples of TomorrowNow's other download policies and procedures, *see* TN-

2   OR00411402, SAP-OR00631478 – SAP-OR00631496, TN-OR03775488 – TN-OR03775511,

3   SAP-OR00251437, TN-OR02813156 – TN-OR02813157, TN-OR02813158 – TN-OR02813159.

4   Pursuant to Rule 33(d), TomorrowNow relies upon each document cited in the Response and all

5   Supplemental Responses to further respond to this interrogatory.

6   **INTERROGATORY NO. 9:**

7   Describe in as much detail as possible all automated, electronic or other similar processes,

8   practices, procedures, software or programs used to Download Software and Support Materials in

9   "rapid succession," as alleged in ¶ 73 of Your Answer, including but not limited to the name of

10   any software, middleware or firmware programs used to access or Download anything from

11   Customer Connection and the name of any Person(s) who used or were aware of the automated,

12   electronic or other similar processes, practices, procedures, software or programs.

13   **RESPONSE TO INTERROGATORY NO. 9:**

14   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

15   TomorrowNow objects that this interrogatory is compound and that it seeks information in

16   the possession of Oracle. Subject to and without waiving the foregoing objections and the

17   General Responses and Objections, TomorrowNow responds as follows: TomorrowNow has

18   used Oracle's "Change Assistant" and other tools made available on Oracle's websites to conduct

19   downloads on behalf of its customers. TomorrowNow has also used a proprietary program

20   known as Titan to conduct certain portions of the download process for certain customers;

21   persons knowledgeable about the development of Titan include Josh Testone and John Ritchie,

22   whose job titles are set forth on TomorrowNow's organization charts. People knowledgeable

23   about the use of Titan include Mark Meyer and Peggy Lanford, who have had responsibility for

24   direct or indirect management of the download team over time and whose job titles are set forth

25   on TomorrowNow's organization charts, as well as members of the download team over time.

26   TomorrowNow's organization charts will be included in its document production and

27   TomorrowNow relies on them to further respond to this interrogatory pursuant to Rule 33(d).

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1   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

2   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

3   INFORMATION.

4   TomorrowNow further responds as follows: TomorrowNow has also used AutoIT

5   scripts—including scripts known as Solution Saver, Case Saver, and Update Saver—to conduct

6   certain portions of the download process for certain customers. Persons knowledgeable about

7   development of TomorrowNow's AutoIT scripts include George Lester and Melissa Garcia.

8   Persons knowledgeable about the use of TomorrowNow's AutoIT scripts include George Lester,

9   Melissa Garcia, Candace Strother, Thomas Phillips, Morgan Messick, Clint Auer and John

10   Ludlow, whose job titles are set forth on TomorrowNow's organization charts. *See, e.g.,* TN-

11   OR00005150-TN-OR00005160, TN-OR00013824-TN-OR00013831, TN-OR00020044-TN-

12   OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-OR0013335, TN-

13   OR00099747-TN-OR00099754, TN-OR06026141-TN-OR06026151, TN-OR06415329-TN-

14   OR06415339 (TomorrowNow organizational charts). TomorrowNow has produced the source

15   code for the AutoIT script known as Case Saver at TN-OR00917823– TN-OR00917831 and has

16   produced copies of AutoIT scripts at TN-OR 03665536. *See* TN(Hard Drive).38 (TN-

17   FS01_F\C\Melissa Dominguez\TomorrowNow Automation).

18   In addition, TomorrowNow has used a program known as Information Station to access

19   certain materials that had been downloaded for certain customers. Persons knowledgeable about

20   the development of Information Station include, but are not limited to, Keith Larsen. Persons

21   knowledgeable about the use of Information Station include, but are not limited to, Keith Larsen

22   and Jim Egger, whose job titles are set forth on TomorrowNow's organization charts. *See, e.g.,*

23   TN-OR00005150-TN-OR00005160, TN-OR00013824-TN-OR00013831, TN-OR00020044-TN-

24   OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-OR0013335, TN-

25   OR00099747-TN-OR00099754, TN-OR06026141-TN-OR06026151, TN-OR06415329-TN-

26   OR06415339 (TomorrowNow organizational charts).

27   TomorrowNow has produced a copy of the Titan program at TN-OR00419834, TN

28   (Disc).39. The names of any TomorrowNow employees who used or were aware of the

1   automated, electronic or other similar processes, are listed in TomorrowNow's organization

2   charts. *See, e.g.,* TN-OR00005150-TN-OR00005160, TN-OR00013824-TN-OR00013831, TN-

3   OR00020044-TN-OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-

4   OR0013335, TN-OR00099747-TN-OR00099754, TN-OR06026141-TN-OR06026151, TN-

5   OR06415329-TN-OR06415339 (TomorrowNow organizational charts). Pursuant to Rule 33(d),

6   TomorrowNow relies upon each document cited in the Response and all Supplemental Responses

7   to further respond to this interrogatory.

8   **INTERROGATORY NO. 10:**

9   Describe in as much detail as possible all instances in which a Customer has provided You

10   with a password for use in Downloading Software and Support Materials, including but not

11   limited to Identifying all related Documents, Communications, or "warrant[ies]" provided by the

12   Customer (as used in ¶¶ 71-72 of Your Answer), and indicating in each instance which Software

13   and Support Materials the Customer authorized You to Download with the password.

14   **RESPONSE TO INTERROGATORY NO. 10:**

15   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

16   TomorrowNow objects that this interrogatory is compound and that it is unduly

17   burdensome and overbroad to the extent it seeks a narrative answer with respect to all of

18   TomorrowNow's relevant customers. Subject to and without waiving the foregoing objections

19   and the General Objections and Responses, TomorrowNow responds as follows: Some of

20   TomorrowNow customers have provided TomorrowNow with what the customers represented to

21   be current, valid passwords and user ids. Customers further represented in their contracts with

22   TomorrowNow and/or documentation relating to initiating service with TomorrowNow that they

23   were entitled to provide TomorrowNow with such information and access to software and support

24   materials. The specific information requested by this interrogatory can be derived or ascertained

25   from TomorrowNow's contracts as well as onboarding documentation received from and email

26   communications with TomorrowNow's relevant customers, all of which will be included in

27   TomorrowNow's document production and on which TomorrowNow relies to further respond to

28   this interrogatory pursuant to Rule 33(d).

1   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

2   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

3   INFORMATION.

4   TomorrowNow further responds that its customer contracts include but are not limited to:

5   TN-OR00000027 – TN-OR00001007 and TN-OR 00004204 – TN-OR00004276; and that its

6   onboarding documentation includes but is not limited to TN-OR00001008 – TN-OR00001277.

7   TomorrowNow reserves the right to further supplement this response as necessary during the

8   course of document production.

9   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:**

10   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

11   CONFIDENTIAL INFORMATION.

12   TomorrowNow further responds as follows: As part of the onboarding process,

13   TomorrowNow customers regularly provided TomorrowNow access to the customers' respective

14   Customer Connection user IDs and passwords for use in downloading software and support

15   materials. TomorrowNow customers provided their passwords to TomorrowNow through e-mail

16   communications, in response to Urgent Steps letters, and/or included them in Pre-Install

17   Questionnaires. The user IDs and passwords are stored in a variety of locations, including on

18   Download Request forms, in DotProject, and in multiple locations within the SAS database.

19   TomorrowNow customers represented in their contracts with TomorrowNow, including the

20   accompanying exhibits and/or in the documentation relating to initiating service with

21   TomorrowNow, that they were entitled to provide TomorrowNow with such information and

22   access to software and support materials. The Product Verification forms completed by the

23   TomorrowNow JDE World and OneWorld customers also informed TomorrowNow of the

24   product information the customers were running in production and for which they desired

25   TomorrowNow support.

26   TomorrowNow customers sometimes provided TomorrowNow with their respective user

27   IDs and passwords in response to an e-mail request. *See, e.g.,* TN-OR00069136-TN-

28   OR00069138, TN-OR00077544-TN-OR77546, TN-OR00089430-TN-OR00089431, TN-

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1   OR00177660-TN-OR00177661, TN-OR00184523-TN-OR00184525. Further, e-mail

2   communications containing a user ID and password can be derived or ascertained from

3   TomorrowNow's onboarding documents received from and e-mail communications with

4   TomorrowNow's customers that are located within TomorrowNow's document production, and

5   the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for

6   both parties. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

7   TomorrowNow also received user IDs and passwords from TomorrowNow customers in

8   response to Urgent Steps Letters and on the Pre-Install Questionnaires TomorrowNow provided

9   to its customers.   The standard TomorrowNow PeopleSoft Urgent Steps letter sent to

10   TomorrowNow customers reminded customers to "Complete and return the Pre-Install

11   Questionnaire" and "Please make sure to fill in the section for the Customer Connection

12   Username and Password. . . . We will download all Updates & Fixes for your product release, red

13   papers, and platform information." *See, e.g.,* TN-OR00184963-TN-OR00184964. Some

14   customers would provide their respective user IDs and passwords in response to the Urgent Steps

15   Letter. *See, e.g.,* TN-OR00056147, TN-OR00064944-TN-OR00064946, TN-OR00065864-TN-

16   OR00065868, TN-OR00081437-TN-OR00081438, TN-OR00173285-TN-OR00173287, TN-

17   OR00183955-TN-OR00183957, TN-OR00092059-TN-OR00092060, TN-OR00308821-TN-

18   OR00308822. The Urgent Steps Letters can be located by running a search for "Urgent Steps

19   Letters" in TomorrowNow's document production. Further, user IDs and passwords received by

20   TomorrowNow in response to Urgent Steps Letters can be derived or ascertained from

21   TomorrowNow's onboarding documents received from and e-mail communications with

22   TomorrowNow's customers that are located within TomorrowNow's document production, and

23   the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for

24   both parties. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

25   Other customers included their respective user IDs and passwords on the Pre-Install

26   Questionnaire that the customers sent to TomorrowNow after receiving an Urgent Steps letter.

27   *See, e.g.,* TN-OR00215378-TN-OR00215380, TN-OR00215381-TN-OR00215382, TN-

28   OR00475082-TN-OR00475084, TN-OR00475085-TN-OR00475086, TN-OR00173349, TN-

1   OR00173350-TN-OR00173351, TN-OR00173352-TN-OR00173353. Examples of Pre-Install

2   Questionnaires containing Customer Connection user IDs and passwords can be found at: TN-

3   OR00185602-TN-OR00185603, TN-OR00184985-TN-OR00184986, TN-OR00185006-TN-

4   OR00185007, TN-OR00185014-TN-OR00185015, TN-OR00199550-TN-OR00199551, TN-

5   OR00185022-TN-OR00185023, TN-OR00185041-TN-OR00185042, TN-OR00199935-TN-

6   OR00199936, TN-OR00208806-TN-OR00208807, TN-OR00211801-TN-OR00211802, TN-

7   OR00208864-TN-OR00208865, TN-OR00215665-TN-OR00215666, TN-OR00214943-TN-

8   OR00214944, TN-OR00251397-TN-OR00251398, TN-OR00311267-TN-OR00311268, TN-

9   OR00311405-TN-OR00311406, TN-OR00313360-TN-OR00313361, TN-OR00314141-TN-

10   OR00314142, TN-OR00173525-TN-OR00173526, TN-OR00171689-TN-OR00171691, TN-

11   OR00173946-TN-OR00173947, TN-OR00173339-TN-OR00173340, TN-OR00173352-TN-

12   OR00173353, TN-OR00176222-TN-OR00176224, TN-OR00176621-TN-OR00176623, TN-

13   OR00176662-TN-OR00176664, TN-OR00176100-TN-OR00176101, TN-OR00180152-TN-

14   OR00180153, TN-OR00184007-TN-OR00184008. Additional Pre-Install Questionnaires can be

15   located by running a search over TomorrowNow's production for "Pre-Install Questionnaire" in

16   the full text with document type "Word." Further, Pre-Install Questionnaires containing user ID

17   and password information can be derived or ascertained from TomorrowNow's onboarding

18   documents received from and e-mail communications with TomorrowNow's customers that are

19   located within TomorrowNow's document production, and the burden of deriving or ascertaining

20   the answer to this interrogatory is substantially the same for both parties. Thus, TomorrowNow

21   relies on Rule 33(d) to further respond to this interrogatory.

22   TomorrowNow often stored customer user IDs and passwords on Download Request

23   forms, which were used by certain TomorrowNow JDE World and OneWorld individuals. *See,*

24   *e.g.*, TN-OR00056036- TN-OR00056037, TN-OR00001002-TN-OR00001007, TN-

25   OR00000479-TN-OR0000484, TN-OR0000094-TN-OR0000096, TN-OR00000588-TN-

26   OR00000590, TN-OR00000253-TN-OR00000258, TN-OR00000625-TN-OR0000627, TN-

27   OR00000313-TN-OR00000318, TN-OR00000715-TN-OR00000721, TN-OR00000319-TN-

28   OR00000324, TN-OR00000749-TN-OR00000754, TN-OR00000811-TN-OR00000816, TN-

1   OR00000817-TN-OR00000822, TN-OR00000839-TN-OR00000845, TN-OR00000846-TN-

2   OR00000852, TN-OR00000428-TN-OR00000430, TN-OR00000889-TN-OR00000892, TN-

3   OR00005995-TN-OR00006000, TN-OR00008908-TN-OR00008911, TN-OR00006915-TN-

4   OR00006920, TN-OR00008953-TN-OR00008959, TN-OR00005256-TN-OR00005258, TN-

5   OR00008989-TN-OR00008994, TN-OR00007969-TN-OR00007974, TN-OR00005387-TN-

6   OR00005392, TN-OR00007243-TN-OR00007248, TN-OR00007324-TN-OR00007329, TN-

7   OR00006477-TN-OR00006482, TN-OR00005789-TN-OR00005794, TN-OR00005834-TN-

8   OR00005836, TN-OR00007424-TN-OR00007427, TN-OR00000990-TN-OR00000995, TN-

9   OR00000490-TN-OR00000495, TN-OR00000057-TN-OR00000061, TN-OR00000062-TN-

10 OR00000067, TN-OR00000509-TN-OR00000514, TN-OR00000515-TN-OR00000520, TN-

11 OR00000088-TN-OR00000093, TN-OR00000521-TN-OR00000526, TN-OR00000527-TN-

12 OR00000532, TN-OR00000128-TN-OR00000133, TN-OR00000161-TN-OR00000166, TN-

13 OR00000591-TN-OR00000596, TN-OR00000601-TN-OR00000606, TN-OR00000235-TN-

14 OR00000239, TN-OR00000607-TN-OR00000612, TN-OR00000613-TN-OR00000618, TN-

15 OR00000285-TN-OR00000289, TN-OR00000307-TN-OR00000312, TN-OR00000695-TN-

16 OR00000700, TN-OR00000325-TN-OR00000330, TN-OR00000344-TN-OR00000349, TN-

17 OR00000383-TN-OR00000388, TN-OR00000823- TN-OR00000838, TN-OR00000399- TN-

18 OR00000404, TN-OR00000405- TN-OR00000410, TN-OR00000863- TN-OR00000868, TN-

19 OR00000869- TN-OR00000874, TN-OR00000432- TN-OR00000436, TN-OR00000453- TN-

20 OR00000458, TN-OR00000459- TN-OR00000463, TN-OR00006607- TN-OR00006610, TN-

21 OR00008607- TN-OR00008611, TN-OR00008640- TN-OR00008644, TN-OR00006634- TN-

22 OR00006637, TN-OR00006638- TN-OR00006641, TN-OR00007525- TN-OR00007540, TN-

23 OR00006032- TN-OR00006035, TN-OR00006123- TN-OR00006128, TN-OR00007670- TN-

24 OR00007673, TN-OR00006147- TN-OR00006151, TN-OR00006869- TN-OR00006873, TN-

25 OR00008948- TN-OR00008952, TN-OR00006164- TN-OR00006167, TN-OR00005326- TN-

26 OR00005330, TN-OR00007070- TN-OR00007073, TN-OR00006319- TN-OR00006322, TN-

27 OR00007117- TN-OR00007120, TN-OR00008995- TN-OR00008998, TN-OR00007207- TN-

28 OR00007210, TN-OR00005481- TN-OR00005484, TN-OR00007221- TN-OR00007225, TN-

1   OR00006421- TN-OR00006424, TN-OR00009325- TN-OR00009328, TN-OR00005689- TN-

2   OR00005692, TN-OR00006533- TN-OR00006538, TN-OR00006553- TN-OR00006557.

3   Further, Download Request Forms containing user ID and password information can be derived

4   or ascertained from TomorrowNow's onboarding documents received from and e-mail

5   communications with TomorrowNow's customers that are located within TomorrowNow's

6   document production, and the burden of deriving or ascertaining the answer to this interrogatory

7   is substantially the same for both parties. Thus, TomorrowNow relies on Rule 33(d) to further

8   respond to this interrogatory.

9   Many of the JDE World and OneWorld Download Request forms can also be located in a

10   folder titled "JDE Clients – TNOW" on DCITBU01. Also located in the "JDE Clients – TNOW"

11   folder is a spreadsheet called "Download Priorities.xls." *See* DCITBU01_G/JDE_1-3/JDE

12   Clients - TNOW/Download Request/Download_Priorities.xls. This spreadsheet contains many of

13   the Customer Connection user IDs and passwords for TomorrowNow JDE customers. Thus,

14   TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

15   TomorrowNow also stored PeopleSoft customer user IDs and passwords within its

16   onboarding database DotProject. *See* TN-OR 01361344, TN (Disc) 62. In order to locate the

17   user id and password information in DotProject, select any customer in the entry screen of

18   DotProject. From the customer's "Projects" page, select the blue "Files" tab, and open the Pre-

19   Install Questionnaire. Again, this questionnaire contains the customers' respective user IDs and

20   passwords. For example, within El Paso Corporation, select the Files tab, and a link to the FDM

21   Pre-Install Questionnaire is available. The screen shot below shows where to locate the Pre-

22   Install Questionnaire for El Paso Corporation. Thus, TomorrowNow relies on Rule 33(d) to

23   further respond to this interrogatory.

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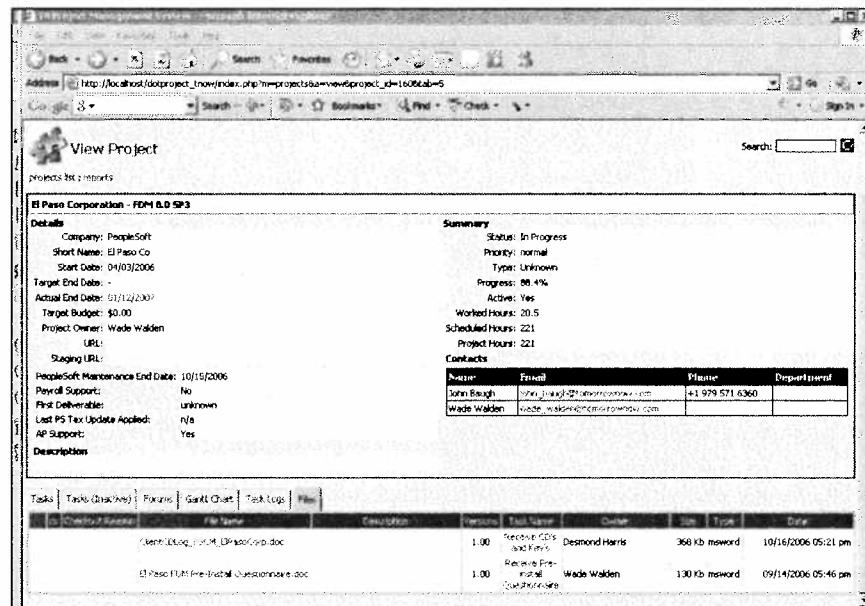
Finally, TomorrowNow stored customer user IDs and passwords within the SAS database. For example, within the SAS Enterprise database, user id and password information can be found in the view 1. Support/ 1. All / By Customer. See TN-OR03775478, TN (Hard drive) 67. For customer Advance Auto Parts, double-click on the Engagement NAmerica tab under FDM. This will bring up a separate window containing the Engagement Master Form. Under Service Information, scroll to the right until Connectivity Info appears. Within Connectivity Info, the "PS Customer Connection – Login and Password Set Up by Client for TN" is available. See TN-OR00184527. Kathy Williams reminded the TomorrowNow PeopleSoft team to "update the SAS 'connection' tab" with the customer user ID and password information. *Id.* The screen shot below shows where the Customer Connection user ID and password can be found for Advance Auto Parts. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

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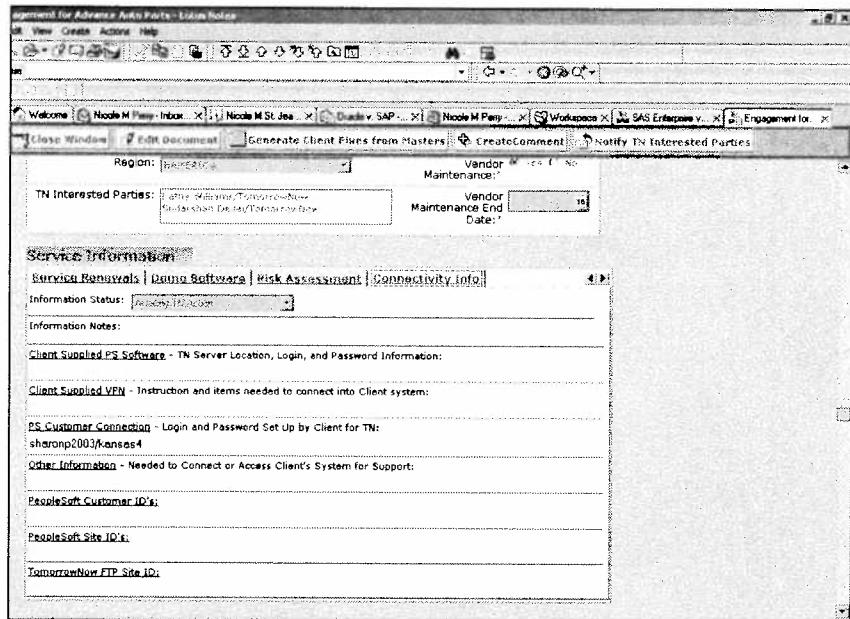
TomorrowNow stored customer user ids and passwords within the SAS Clients Database as well. See TN-OR03727374, TN (Disc) 157. For example, in the view 1. Support / 1. All By Customer / Koontz-Wagner / Customer, e-mail correspondence is posted under Comments / Email / Time. The Koontz-Wagner Customer Connection user ID and password can be found in Incoming Email – Shelley Nelson 01/21/2005 9:50:40 AM Onboarding update. Thus, TomorrowNow relies on Rule 33(d) to further respond to this interrogatory.

Each TomorrowNow customer's Support Services Agreement and the exhibits accompanying the Agreement authorized TomorrowNow to download software and support materials on the customer's behalf. The "Covered Products" portion of the Exhibit to the Agreement identifies product-specific information that TomorrowNow was to service for the customer. *See* Exhibit A to Second Supplemental Interrogatory Responses for a spreadsheet listing the Bates numbers for Support Services Agreements and relevant exhibits for each TomorrowNow customer. The TomorrowNow JDE World and OneWorld teams also requested that its customers complete a Product Verification Form, which included a listing of products for which the customers were licensed and for which they desired TomorowNow support. *See, e.g.,* TN-OR00051406-TN-OR00051408, TN-OR00051858-TN-OR00051860, TN-OR00052001-TN-OR00052004, TN-OR00052707-TN-OR00052710, TN-OR00052711-TN-OR00052714, TN-

1   OR00053241-TN-OR00053244, TN-OR00053245-TN-OR00053248, TN-OR00052805-TN-

2   OR0052808, TN-OR00053154-TN-OR00053156, TN-OR00053438-TN-OR00053441, TN-

3   OR00053684-TN-OR00053586, TN-OR0053473-TN-OR00053475, TN-OR00053615-TN-

4   OR00053617, TN-OR00053430-TN-OR00053433, TN-OR00053434-TN-OR00053437, TN-

5   OR00054127-TN-OR00054129, TN-OR00053746-TN-OR00053749, TN-OR00054507-TN-

6   OR00054509, TN-OR00054347-TN-OR00054349, TN-OR000555724-TN-OR00055726.

7   Additional examples of Product Verification Forms can be located by running the search "Product

8   Verification Form" in the full text with "Word" as the document type. Further, Product

9   Verification Forms containing user ID and password information can be derived or ascertained

10 from TomorrowNow's Support Services Agreements as well as onboarding documents received

11 from and e-mail communications with TomorrowNow's customers that are located within

12 TomorrowNow's document production, and the burden of deriving or ascertaining the answer to

13 this interrogatory is substantially the same for both parties. Thus, TomorrowNow relies on Rule

14 33(d) to further respond to this interrogatory.

15 **INTERROGATORY NO. 11:**

16   Identify all Software and Support Materials You have Downloaded.

17 **RESPONSE TO INTERROGATORY NO. 11:**

18   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

19   Subject to and without waiving the General Objections and Responses, TomorrowNow

20 responds as follows: the most complete known set of relevant materials downloaded by

21 TomorrowNow on behalf of its customers is located on TomorrowNow file servers. The

22 information sought by this interrogatory can be derived or ascertained by review of the relevant

23 files and folders from those servers, which will be included in TomorrowNow's document

24 production and on which TomorrowNow relies to respond to this interrogatory pursuant to Rule

25 33(d).

26 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

27   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

28 INFORMATION.

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1   TomorrowNow further responds as follows: Defendants incurred the extreme expense and

2   burden of presenting data from TomorrowNow's servers that Defendants' reasonably believe

3   were used in the servicing of TomorrowNow's PeopleSoft, JDE, and Siebel customers through an

4   electronic "Data Warehouse." In total, Plaintiffs were presented 93 server partitions that consist

5   of approximately 10.2 terabytes of data for review and were allowed to select the files they would

6   like for production. From that review, Defendants have already produced over 8.1 million files

7   and approximately 4.9 terabytes of data and are in the process of producing an additional

8   approximately 4.5 million files totaling about 2.7 terabytes of data.

9   In addition, Defendants produced complete logical images of backup tape copies of

10   DCITBU01_G (a TomorrowNow server that is in excess of five terabytes) and completed backup

11   tapes of TomorrowNow's AS/400. Through this process, Oracle has been able to examine and

12   request production of possible software and support materials that were downloaded by

13   TomorrowNow on behalf of its customers and kept in a centralized location. Additionally,

14   software and support materials could be contained within the SAS databases, on TomorrowNow

15   employee hard drives, and/or within TomorrowNow employee e-mail boxes; however, to the

16   extent that software and support materials were saved in these locations, they were not saved in a

17   systemic fashion and were not centralized sources for these materials. *See* TN-OR03775478, TN

18   (Hard drive) 67 for the latest version of the SAS databases.

19   At this time and pursuant to Rule 33(d), TomorrowNow is aware of the following specific

20   locations where materials downloaded by TomorrowNow on behalf of its customers can be

21   located:

22   • DCITBU01_G\JDE\JDE Delivered Updates & Fixes; *see* TN-OR02989995-97

23   • DCITBU01_G\PeopleSoft; *see* TN-OR02989991-94 and TN-OR02989996

24   • DCDL1-2, DCLD4-20; see TN-OR05249607

25   • Tempstore_CE\D\PeopleSoft; TomorrowNow has produced the files initially

26   requested by Oracle as TN-OR03727369 and will be producing the files from

27   Tempstore_CE\D\PeopleSoft marked "Record" by Plaintiffs which

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1   TomorrowNow believes may contain materials downloaded by TomorrowNow on

2   behalf of its customers.

3   • TN-FS01_F\C\DellRestore\F Drive\PS\PS Delivered Updates & Fixes; *see* TN-

4   OR03678707

5   • JD-WSVR01_G\JDE\JDE Delivered Updates & Fixes: TomorrowNow has

6   produced the files initially requested by Oracle as TN-OR03712548 and will be

7   producing the files from JD-WSVR01_G\JDE\JDE Delivered Updates & Fixes

8   marked "Record" by Plaintiffs which TomorrowNow believes may contain

9   materials downloaded by TomorrowNow on behalf of its customers

10 • The AS/400 ENT01 Partition and World Partition may also contain some materials

11 downloaded by TomorrowNow on behalf of its customers; *see* TN-OR03677098-

12 104, TN-OR03678711-14, and TN-OR04446716

13   Any additional files and folders sought by this interrogatory can be derived or ascertained

14 by a review of the servers already made available as part of the Data Warehouse and from files

15 and folders that have been or are being produced as part of TomorrowNow's ongoing document

16 production.

17 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

18   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

19 CONFIDENTIAL INFORMATION.

20   TomorrowNow further responds that, at this time and pursuant to Rule 33(d),

21 TomorrowNow is aware of the following additional centralized locations where materials

22 downloaded by TomorrowNow on behalf of its customers can be located:

23 • Tempstore_CE\D\PeopleSoft; *see* TN-OR03727369, TN(Hard Drive).53 and TN-

24 OR05249613, TN(Hard Drive).84

25 • JD-WSVR01_G\JDE\JDE Delivered Updates & Fixes; *see* TN-OR03712548,

26 TN(Hard Drive).50 and TN-OR06125331, TN(Hard Drive).86

27 • TN-FS02_E\Delivered Updates & Fixes; *see* TN-OR06423585, TN(Hard Drive).91

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1   • TN-FS01_F\C\DellRestore\F Drive\Client Download Links; *see* TN-OR03678707,

2   TN(Hard Drive).39

3   • TN-FS01_F\C\DellRestore\F Drive\PS\JDE Oneworld International Docs and Release

4   Notes; *see* TN-OR03678707, TN(Hard Drive).39

5   • TN-FS01_F\C\DellRestore\F Drive\PS\JDE World International Docs and Release

6   Notes; *see* TN-OR03678707, TN(Hard Drive).39

7   • JDDEV03\D\Downloads\Peoplesoft - has been made available to Plaintiffs for

8   inspection as part of the Data Warehouse protocol

9   • JDDEV03\D\ESUhtm - has been made available to Plaintiffs for inspection as part of

10   the Data Warehouse protocol

11 **INTERROGATORY NO. 12:**

12   Describe in as much detail as possible any policies, practices or procedures, including

13 clean room procedures, that You have to ensure that Software and Support Materials are not

14 mixed between and among Customers or sent to SAP AG or SAP America.

15 **RESPONSE TO INTERROGATORY NO. 12:**

16   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

17   Subject to and without waiving the General Responses and Objections, TomorrowNow

18 responds by incorporating by reference its response to Interrogatory No. 6. TomorrowNow

19 further responds that its policy was to store a customer's downloaded material in a separate folder

20 structure for that particular customer and only to use such materials for that customer.

21 TomorrowNow's policies and procedures were promulgated in a variety of documents, which will

22 be included in TomorrowNow's document production and on which TomorrowNow relies to

23 further respond to this interrogatory pursuant to Rule 33(d).

24 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

25   THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL

26 INFORMATION.

27   TomorrowNow further responds by incorporating by reference its supplemental response

28 to Interrogatory No. 6. TomorrowNow's policies and procedures documents include but are not

1   limited to TN-OR00001278 – TN-OR00004196. TomorrowNow reserves the right to further

2   supplement this response as necessary during the course of document production.

3   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

4   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

5   CONFIDENTIAL INFORMATION.

6   TomorrowNow further responds that before the litigation, TomorrowNow's relevant

7   policies and procedures included the following: (1) TomorrowNow was to download each

8   customer's materials individually, by customer, never sharing materials between customer; (2)

9   TomorrowNow was to use a specific customer's login ID only to download that customer's

10   materials; (3) TomorrowNow was to only use a customer's current and valid login ID, assigned

11   to the customer by the vendor; and (4) TomorrowNow was never to download materials on

12   behalf of a customer past that customer's maintenance end date. *See, e.g.,* TN-OR00411402.

13   For other relevant TomorrowNow policies and procedures, *see* SAP-OR00631478 – SAP-

14   OR00631496, TN-OR03775488 – TN-OR03775511, SAP-OR00251437, TN-OR02813156 – TN-

15   OR02813157, TN-OR02813158 – TN-OR02813159, SAP-OR00129611-SAP-OR00129614, TN-

16   OR00489529-TN-OR00489532. TomorrowNow further responds by incorporating by reference

17   all of its current responses to Interrogatory No. 7. Pursuant to Rule 33(d), TomorrowNow relies

18   upon each document cited in the Response and all Supplemental Responses to further respond to

19   this interrogatory.

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24 **INTERROGATORY NO. 16:**

25   Identify all Persons who were aware of, engaged in, conducted, supervised, authorized,

26 investigated, or stopped any "inappropriate" downloads, including but not limited to stating their

27 name, date of hire and termination, job title, job responsibilities, and a brief description of how

28 they related to the "inappropriate" Downloads.

1   **RESPONSE TO INTERROGATORY NO. 16:**

2   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

3   TomorrowNow objects that this interrogatory seeks information not in the possession of

4   TomorrowNow. TomorrowNow further objects that because the investigation of the issues

5   referenced in this interrogatory was and is conducted in response to the filing of Oracle's

6   complaint, this interrogatory seeks information that is protected from disclosure by the attorney-

7   client privilege and the work product doctrine. Subject to and without waiving the foregoing

8   objections and the General Responses and Objections, TomorrowNow responds as follows: Peter

9   Surette was the TomorrowNow employee generally responsible for completing the Download

10   Request Forms for JDE One World, as discussed in response to Interrogatory No. 13. Keith

11   Shankle was the TomorrowNow employee generally responsible for completing the Download

12   Request Forms for JDE World. Various TomorrowNow employees working on the PeopleSoft

13   side of TomorrowNow's business provided information to TomorrowNow employees Peggy

14   Lanford and Mark Meyer, who generally supervised other TomorrowNow employees who

15   actually conducted the downloads at relevant times. The job titles and dates of hire and

16   termination, if relevant, for the employees named in this response are contained on the

17   spreadsheet referenced in the response to Interrogatory No. 2, above. TomorrowNow executive

18   management gave direction to change certain business processes relating to downloading.

19   Documents relating to those process changes will be included in TomorrowNow's document

20   production, and TomorrowNow relies on such documents to further respond to this interrogatory

21   pursuant to Rule 33(d).

22   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

23   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

24   TomorrowNow further responds as follows: TomorrowNow typically downloaded

25   software and support materials to which its customers represented that they were entitled while

26   the customers were in the on-boarding process with TomorrowNow. As part of that process,

27   TomorrowNow determined what materials to download by reviewing the information located in a

28   customer's Support Services Agreement and the information in the "Covered Products" portion of

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1   the Agreement's accompanying exhibits. *See* Exhibit A to Second Supplemental Interrogatory

2   Responses for a spreadsheet listing the Bates numbers for Support Services Agreements and

3   relevant exhibits for each TomorrowNow customer. The TomorrowNow JDE World and

4   OneWorld teams also received product information from the customer through the Product

5   Verification Forms. *See* Second Supplemental Response to Interrogatory No. 10 for a listing of

6   the Support Services Agreements and Product Verification Forms.

7   Generally, the following people assisted with or supervised the TomorrowNow JDE

8   World and OneWorld downloads: Laura Sweetman, Mark Kreutz, Pete Surette, Keith Shankle,

9   Melissa Garcia, Florence Leong, David Palmer, Mark Deling, and Harry Schoennagel. Other

10 members of the TomorrowNow JDE team may have gone on to Customer Connection on certain

11 occasions. *See, e.g.*, TN-OR00005150-TN-OR00005160, TN-OR00013829-TN-OR00013831,

12 TN-OR00020044-TN-OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-

13 OR0013335, TN-OR00099747-TN-OR00099754 (TomorrowNow organizational charts).   In

14 addition to the TomorrowNow JDE team members listed above, the TomorrowNow information

15 services team was also enlisted to help with the downloading process. *See, e.g.*, TN-

16 OR00005150-TN-OR00005160, TN-OR00013829-TN-OR00013831, TN-OR00020044-TN-

17 OR00020051, TN-OR00061681-TN-OR00061686, TN-OR00133328-TN-OR0013335, TN-

18 OR00099747-TN-OR00099754 (TomorrowNow organizational charts).

19   Generally, the following people assisted with or supervised the TomorrowNow PeopleSoft

20 downloads: Peggy Lanford, Desmond Harris, George Lester, Wade Walden, Robin Alex, Melissa

21 Garcia, Mark Meyer, Shelley Nelson, Greg Nelson, Kathy Williams, Aaron Woods, Amanda

22 Krenek, Linda Birdwell, Dimitri Garcia, Zachary Grafe, Cynthia Lampkin, Audrey Wessels,

23 Sarah Rekieta, Briana Perkins, Yolanda Espiriqueta, Brenda Clark, Justin Johnson, and RoseAnna

24 Ramirez. Other members of the TomorrowNow PeopleSoft team may have gone on to Customer

25 Connection on certain occasions. *See, e.g.*, TN-OR00005150-TN-OR00005160, TN-

26 OR00013829-TN-OR00013831, TN-OR00020044-TN-OR00020051, TN-OR00061681-TN-

27 OR00061686, TN-OR00133328-TN-OR0013335, TN-OR00099747-TN-OR00099754

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1 (TomorrowNow organizational charts). There were also temporary employees used along the

2 way to facilitate the downloads conducted on behalf of the TomorrowNow PeopleSoft customers.

3 Initially, all downloading was done manually with the assistance of temporary employees.

4 At a later date, George Lester created downloading scripts, and Melissa Garcia was later placed in

5 charge of the use and maintenance of the downloading scripts that assisted with the downloading

6 process. TomorrowNow subsequently created Titan to assist with the downloading process.

7 Titan is an automated program created initially by Josh Testone and then further developed by

8 John Ritchie. However, during the time periods that TomorrowNow used Titan, some manual

9 downloading occurred.

10 Because TomorrowNow did not have access to its customers' respective license

11 agreements with the software vendor, TomorrowNow relied on the representations of its

12 customers in the customer's Support Services Agreement and the "Covered Products" portion of

13 the Agreement's accompanying exhibits, as well as the product information provided by the

14 customer in the Product Verification Forms. TomorrowNow now believes that there were some

15 downloads made for products beyond those to which the customer informed TomorrowNow that

16 the customer was licensed. However, despite numerous discovery requests for this mapping

17 information from Plaintiffs, TomorrowNow still does not have the ability to map each of the

18 specific downloads to each of the specific products. Plaintiffs have represented to the Court that

19 they also do not have the ability post-download to determine which downloads relate to which

20 products. Thus, without such mapping information (provided in a manner that permits an

21 electronic "download to product" comparison), it is not possible for TomorrowNow to evaluate

22 the appropriateness of each of the downloads it made on behalf of its customers.

23 In order to determine if any specific download was appropriate, a review of millions of

24 downloaded files and the objects contained in those files would be required, along with Support

25 Services Agreements, Product Verification Forms, Download Request Forms, the customers'

26 license agreements with the vendor, and a mapping from the vendor of what software and support

27 materials correspond with what products. *See* Second Supplemental Response to Interrogatory

28 No. 11 for a listing of where the downloaded materials can be found; *see* Second Supplemental

1   Response to Interrogatory No. 10 for a listing of Download Request Forms. This complex

2   mapping process would be equally burdensome for all parties.

3   After the litigation, TomorrowNow management gave the directive to change certain

4   business processes related to downloading. These changes were memorialized in the

5   TomorrowNow Compliance Guidelines of Support Services, V1 and V2. *See* SAP-OR00631478-

6   SAP-OR00631496, TN-OR03775488-TN-OR03775511. The TomorrowNow executives and/or

7   employees involved with the changes to the download process were Mark White, Martin Breuer,

8   Harry Schoennagel, Mel Gadd, Mark Kreutz, John Tanner, Shelley Nelson, Rod Russell, John

9   Baugh, Tab Brown, Broderick Ellis, Larry Garcia, Paul Henville, Chris Jackson, Tom Leier,

10   Florence Leong, Gordon Robinson, and Kathy Williams. Both versions of the Compliance

11   Guidelines state that downloading must be performed by the client, and TomorrowNow

12   employees are prohibited from directly engaging in downloading activities. *Id.* Automated

13   downloading tools could no longer be used after the business process changes went into effect.

14   *Id.* TomorrowNow employees were permitted to provide "broad guidance" to customers with

15   respect to the types of information the customers should download, but TomorrowNow

16   employees were prohibited from making specific recommendations regarding the software and

17   support materials that should be downloaded. *Id.* For a list of the other changes to the download

18   process, *see* SAP-OR00631478-SAP-OR00631496 and TN-OR03775488-TN-OR03775511.

19   The following employees were disciplined for download-related reasons: Ed Harris and

20   Greg Nelson. *See* TN-OR02812000, TN-OR00009540-TN-OR00009541.

21   For a list of the dates of hire, dates of termination, and job titles of the employees listed

22   above, *see* TomorrowNow Employees spreadsheet. *See* TN-OR 00009568, TN (Disc) 12.

23   **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:**

24   THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS

25   CONFIDENTIAL INFORMATION.

26   TomorrowNow further responds that after the litigation, the TomorrowNow executives

27   and/or employees involved with the changes to the download process also include Peggy Lanford,

28   Desmond Harris, Mark Meyer, and Robin Alex. For a list of the dates of hire, dates of

1   termination, and job titles of the employees listed above, see TomorrowNow's updated employee

2   spreadsheet. *See* TN-OR05942443, Exhibit B to TomorrowNow's Third Amended and

3   Supplemental Response to Plaintiff Oracle Corporation's First Set of Interrogatories (Set One).

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