

Exhibit B

1 Robert A. Mittelstaedt (SBN 060359)
JONES DAY
2 San Francisco Office
555 California Street, 26th Floor
3 San Francisco, CA 94104
Telephone: (415) 626-3939
4 Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com

5 Tharan Gregory Lanier (SBN 138784)
6 Jane L. Froyd (SBN 220776)
JONES DAY
7 Silicon Valley Office
1755 Embarcadero Road
8 Palo Alto, CA 94303
Telephone: (650) 739-3939
9 Facsimile: (650) 739-3900
tglanier@jonesday.com
10 jfroyd@jonesday.com

11 Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
12 JONES DAY
717 Texas, Suite 3300
13 Houston, TX 77002
Telephone: (832) 239-3939
14 Facsimile: (832) 239-3600
swcowan@jonesday.com
15 jlfuchs@jonesday.com

16 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
17 TOMORROWNOW, INC.

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

21 ORACLE CORPORATION, et al.,
22 Plaintiffs,
23 v.
24 SAP AG, et al.,
25 Defendants.

Case No. 07-CV-1658 PJH

**DEFENDANT TOMORROWNOW,
INC.'S FIRST AMENDED AND
SUPPLEMENTAL RESPONSE TO
PLAINTIFF ORACLE USA, INC.'S
SECOND SET OF
INTERROGATORIES**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY NO. 12:

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

RESPONSE TO INTERROGATORY NO. 12:

THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

TomorrowNow objects that this interrogatory is compound, unduly burdensome and oppressive to the extent that it seeks a narrative answer with respect to Peoplesoft environments and each product name and release copied to each such environment. Subject to and without waiving the foregoing objections and the General Responses and Objections, TomorrowNow responds as follows: TomorrowNow has maintained approximately 183 Peoplesoft environments on behalf of approximately 122 different customers, which have variously included one or more of the CRM, EPM, FDM, SA, Portal, and HRMS products, with varying releases of each (including CRM - releases 8.4, 8.8 SP1, and 8.9; EPM- release 8.9; FDM - releases 7.52, 7.53, 8 SP3, 8.4, 8.4 SP1, 8.4 SP2, 8.8 SP1, and 8.9; SA – releases 7.6 and 8 SP1; Portal – releases 8.4 and 9.9; and HRMS - releases 7.02, 7.50, 7.51, 8, 8 SP1, 8.3, 8.3 SP1, 8.8 SP1, and 8.9). Additional information responsive to this interrogatory as to specific customers may be derived or ascertained from TomorrowNow’s business records, including specifically TomorrowNow’s E Portal .nsf file, produced at TN-OR 00169313, information contained at TN-OR 00169315;

1 TomorrowNow's emails among development and support engineers and its databases of customer
 2 service information, including its SAS databases (which have been previously produced, in native
 3 format, at TN-OR 00009569), which have been or will be included in TomorrowNow's
 4 production of documents and on which TomorrowNow relies to further respond to this
 5 interrogatory pursuant to Rule 33(d).

6 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

7 TomorrowNow amends the confidentiality designation of its prior response to be
 8 designated as Confidential Information.

9 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

10 TomorrowNow further responds that an Excel workbook that has been produced at
 11 TN-OR06515456 that contains the most detailed information TomorrowNow has been able to
 12 gather regarding the PeopleSoft environment components that might have existed on
 13 TomorrowNow's network. Additional information responsive to this interrogatory may be
 14 derived or ascertained from TomorrowNow's business records of local PeopleSoft environments
 15 and their locations, including specifically TomorrowNow's BakTrack database, produced at TN-
 16 OR 06125330, TomorrowNow's SAS database, produced at TN-OR 03775478, TN(Hard
 17 drive).67, TN-OR 04446717, TN(Disc).173, TN-OR 04446719, TN(Hard drive).75,
 18 TomorrowNow's SAS environment portals, produced at TN-OR 00169313, TN-OR 00871902,
 19 TN-OR 03775478, and TN-OR04446719, TomorrowNow's Path Finder database, produced at
 20 TN-OR 04498712, and TomorrowNow's DotProject database, produced at TN-OR06220764,
 21 TN(Disc).214, as well as through the servers that have been made available in the "Data
 22 Warehouse," all which have been included in TomorrowNow's production of documents or
 23 otherwise made available to Plaintiffs and on which TomorrowNow relies to further respond to
 24 this interrogatory pursuant to Rule 33(d).

25 Further, in response to these noticed topics and during the course of individual depositions
 26 of TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the
 27 local PeopleSoft environments. *See, e.g.*, February 6-7, 2008 Deposition of John Baugh Pursuant
 28 to Rule 30(b)(6); June 25, 2008 Deposition of Rod Russell Pursuant to Rule 30(b)(6); April 1,

1 2008 Deposition of Kathy Williams Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of
2 Catherine Hyde Pursuant to Rule 30(b)(6); December 5, 2008 Deposition of Matthew Bowden;
3 February 12, 2009 Deposition of Catherine Hyde; May 12, 2009 Deposition of Catherine Hyde;
4 February 5, 2009 Deposition of Rod Russell; April 18, 2008 Deposition of Shelley Nelson.
5 Pursuant to Rule 33(d), TomorrowNow relies on this testimony to further respond to this
6 interrogatory.

7 **INTERROGATORY NO. 13:**

8 For each Customer for whom SAP TN has created one or more local J.D. Edwards
9 environments on SAP TN's systems from copies of that Customer's J.D. Edwards software, as
10 testified by Mark Kreutz (Mark Kreutz Dep. at 90:14-94:12-18 (Oct. 30, 2007)), Identify the
11 Customer, Identify each product name and release copied to create the local environment, and
12 state the total number of local environments created for that customer.

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

14 THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

15 TomorrowNow objects that this interrogatory is compound, unduly burdensome and
16 oppressive to the extent that it seeks a narrative answer with respect to JDE environments and
17 each product name and release copied to each such environment. Subject to and without waiving
18 the foregoing objections and the General Responses and Objections, TomorrowNow responds as
19 follows: TomorrowNow has maintained JDE environments on behalf of three different customers:
20 Koontz-Wagner Electric, Inc., The Bonne Bell Company, Inc., and Praxair, Inc. For Koontz-
21 Wagner, there are nine environments, which include products Distribution, Financials, HRMS,
22 and Manufacturing, release A7.3, Cumulative Update 7. For Bonne Bell, there are three
23 environments, which include products Distribution, Financials, HRMS, and Manufacturing,
24 release A8.1, Cumulative Update 6. For Praxair, there are twelve environments, which include
25 products Distribution, Financials, HRMS, and Manufacturing, release Xe SP23G1. Additional
26 Information responsive to this interrogatory as to specific customers may be derived or
27 ascertained from TomorrowNow's business records, including TomorrowNow's emails among
28 development and support engineers and its databases of customer service information, including

1 its SAS databases (which have been previously produced, in native format, at TN-OR 00009569),
 2 which have been or will be included in TomorrowNow's production of documents and on which
 3 TomorrowNow relies to further respond to this interrogatory pursuant to Rule 33(d).

4 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

5 TomorrowNow amends the confidentiality designation of its prior response to be
 6 designated as Confidential.

7 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

8 TomorrowNow further responds that Plaintiffs have questioned TomorrowNow's
 9 witnesses extensively in deposition on topics related to this interrogatory. For example, Plaintiffs
 10 requested deposition testimony on TomorrowNow's "creation and use of Customer Local
 11 Environments, including without limitation: b. The manner and method by which Customer Local
 12 Environments were created, stored and Used by You; . . . d. The total number of Customer Local
 13 Environments created for each identified customer; e. The name, release, and version of all PSFT
 14 or JDE branded Software obtained and/or copied to create each identified Customer Local
 15 Environment; f. The identity and description of all Customer Local Environments maintained in
 16 any way by You relating to Customers for whom You had ceased to provide support services; g.
 17 The identity and description of all Customer Local Environments Used by You in any way to
 18 support any Customer other than the one that provided the Software used to create the Customer
 19 Local Environment; . . . [and] l. The process by which Customer Local Environments were Used
 20 as part of the ordinary course of business for SAP TN, including without limitation to on-
 21 boarding of new Customers; support of Customer cases, issues, and problems; reactive and
 22 proactive development of bug fixes, updates, patches, explanations, or regulatory changes for
 23 Customers; and testing of other operating systems levels. . . ." See January 22, 2008 Amended
 24 Notice of Deposition of TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6).

25 In response to these noticed topics and during the course of individual depositions of
 26 TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the
 27 creation and use of TomorrowNow's local JDE environments. See, e.g., February 19, 2008
 28 Deposition of Mark Kreutz Pursuant to Rule 30(b)(6); April 10, 2009 Deposition of Patti

1 VonFeldt. *See also* Future Deposition of Keith Shankle. In addition, TomorrowNow has made
2 the relevant server partitions available through "Data Warehouse." Pursuant to Rule 33(d),
3 TomorrowNow relies upon all testimony and each document cited in this Supplemental Response
4 to further respond to this interrogatory.

5 **INTERROGATORY NO. 14:**

6 For each local environment Identified in Your responses to Interrogatories 12 and 13,
7 Identify all Customers who received support based on the Use of that environment, and a detailed
8 description of that support (such as, for example, the retrofit tax updates testified to by Shelley
9 Nelson (Shelley Nelson Dep. at 32:19-34:13 (Oct. 30, 2007)) including, where applicable,
10 Identification of the name, number, version or other Identifying information of the product
11 provided as part of the support.

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

13 THIS RESPONSE IS DESIGNATED AS HIGHLY CONFIDENTIAL.

14 TomorrowNow objects that this interrogatory is cumulative, compound, unduly
15 burdensome and oppressive to the extent it seeks to require TomorrowNow to attempt to evaluate
16 millions of pages of documents and data relating to customer support that have been created over
17 several years. Subject to and without waiving the foregoing objections and the General
18 Responses and Objections, TomorrowNow responds as follows: Generally, to the extent a
19 particular entity is or was a TomorrowNow customer, and when TomorrowNow maintains an
20 environment on that customer's behalf, TomorrowNow provided or provides support to that
21 customer utilizing that environment. For updates and/or fixes to Peoplesoft and JDE products,
22 TomorrowNow has generally used the customer's environment(s) (whether maintained by
23 TomorrowNow or the customer) to create or test the updates and/or fixes. TomorrowNow is
24 aware of certain instances where an environment maintained on behalf of one customer may have
25 been used to create or test updates and/or fixes for other customers. *See, e.g.*, Tr. of October 30,
26 2007 Deposition of Mark Kreutz, at 197:8-199:25; Tr. of October 30, 2007 Deposition of Shelley
27 Nelson at 32:19-41:17, 53:13-55:7; Dec. 6, 2007 Deposition of Shelley Nelson at 126:4-139:3,
28 145:1-14, 160:16-161:5, 185:3-16, 195:24-196:20. Additional information responsive to this

1 interrogatory as to specific customers may be derived or ascertained from TomorrowNow's
 2 business records; specifically, the relevant specific customer support efforts, updates, and fixes
 3 are set forth and described in detail in TomorrowNow's emails among development and support
 4 engineers and its databases of customer service information, including its SAS databases (which
 5 have been previously produced, in native format, at TN-OR 00009569), which have been or will
 6 be included in TomorrowNow's production of documents and on which TomorrowNow relies to
 7 further respond to this interrogatory pursuant to Rule 33(d).

8 **AMENDED AND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

9 TomorrowNow amends the confidentiality designation of its prior response to be
 10 designated as Confidential.

11 TomorrowNow supplements its prior response as follows:

12 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL.

13 TomorrowNow further responds that information responsive to this interrogatory can be
 14 found in the SAS database. See TN-OR 03775478, TN(Hard drive).67. TomorrowNow further
 15 responds that Plaintiffs have questioned TomorrowNow's witnesses extensively in deposition on
 16 topics related to this interrogatory. For example, Plaintiffs requested deposition testimony on
 17 TomorrowNow's "creation and use of Customer Local Environments, including without
 18 limitation: b. The manner and method by which Customer Local Environments were created,
 19 stored and Used by You; . . . d. The total number of Customer Local Environments created for
 20 each identified customer; e. The name, release, and version of all PSFT or JDE branded Software
 21 obtained and/or copied to create each identified Customer Local Environment; f. The identity and
 22 description of all Customer Local Environments maintained in any way by You relating to
 23 Customers for whom You had ceased to provide support services; g. The identity and description
 24 of all Customer Local Environments Used by You in any way to support any Customer other than
 25 the one that provided the Software used to create the Customer Local Environment; . . . [and] l.
 26 The process by which Customer Local Environments were Used as part of the ordinary course of
 27 business for SAP TN, including without limitation to on-boarding of new Customers; support of
 28 Customer cases, issues, and problems; reactive and proactive development of bug fixes, updates,

1 patches, explanations, or regulatory changes for Customers; and testing of other operating
2 systems levels. . .” See January 22, 2008 Amended Notice of Deposition of TomorrowNow, Inc.
3 Pursuant to Fed. R. Civ. P. 30(b)(6).

4 **In response to these noticed topics and during the course of individual depositions of**
5 **TomorrowNow witnesses, TomorrowNow has provided more than sufficient testimony on the use**
6 **of TomorrowNow’s local environments.** See, e.g., February 6-7, 2008 Deposition of John Baugh
7 Pursuant to Rule 30(b)(6); February 19, 2008 Deposition of Mark Kreutz Pursuant to Rule
8 30(b)(6); December 6, 2007 Deposition Testimony of Shelley Nelson Pursuant to Rule 30(b)(6);
9 June 25, 2008 Deposition of Rod Russell Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of
10 Kathy Williams Pursuant to Rule 30(b)(6); April 1, 2008 Deposition of Catherine Hyde Pursuant
11 to Rule 30(b)(6); April 18, 2008 Deposition of Shelley Nelson; December 5, 2008 Deposition of
12 Matthew Bowden; February 12, 2009 Deposition of Catherine Hyde; May 12, 2009 Deposition of
13 Catherine Hyde; February 5, 2009 Deposition of Rod Russell; April 10, 2009 Deposition of Patti
14 VonFeldt; February 26, 2009 Deposition for Andrew Nelson; April 29, 2009 Deposition of
15 Andrew Nelson.

16 TomorrowNow further states that it would be impossible and unreasonable to expect
17 TomorrowNow to provide a detailed description of the support provided with each local
18 environment. This interrogatory calls for tracking information for hundreds of environments
19 from 2002 until the local environments were shut down on April 30, 2008. TomorrowNow relies
20 upon all testimony and each document cited in this Supplemental Response to further respond to
21 this interrogatory pursuant to Rule 33(d).

22 Dated: May 22, 2009

JONES DAY

23
24 By: 
25 Jason McDonell

26 Counsel for Defendants
27 SAP AG, SAP AMERICA, INC., and
28 TOMORROWNOW, INC.