EXHIBIT 92

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18 TOMORROWNOW, INC.

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' EIGHTH AMENDED
                                     AND SUPPLEMENTAL RESPONSE TO
24   v.   PLAINTIFFS' FOURTH SET OF
                                     INTERROGATORIES TO DEFENDANT
25 SAP AG, et al.,   TOMORROWNOW, INC. AND THIRD
                                     SET OF INTERROGATORIES TO
26   Defendants.   DEFENDANTS SAP AG AND SAP
                                     AMERICA, INC.**
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   HUI-122240v1   DEFENDANTS' 8TH AMENDED AND SUPP.
                                          RESPONSE TO 4TH SET TO TN AND 3RD TO SAP
                                                     Case No. 07-CV-1658 PJH (EDL)

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7   ***ACCESS TO AND USE OF ORACLE INTELLECTUAL PROPERTY***

8   **INTERROGATORY NO. 82:**

9   For each Environment listed in the "ENV_NAME" column of Exhibit C, which is a copy

10 of Oracle's Deposition Exhibit 75, Identify the Customer and/or other Person or source from

11 which SAP TN received the original software media from which that Environment was created,

12 Copied, or installed.

13 **RESPONSE TO INTERROGATORY NO. 82:**

14   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

15   ***TomorrowNow Answer***

16   Defendant TomorrowNow objects to this interrogatory on the grounds stated in the

17 General Objections and Responses. Defendant TomorrowNow further objects to this

18 interrogatory to the extent it requires Defendants to evaluate and chronicle information that

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

20 describe in an interrogatory response. Defendant TomorrowNow further objects to the extent the

21 interrogatory purports to require Defendants to create a compilation, abstract, or summary from

22 materials that Defendants have already produced, will produce, or have made available for review

23 through the parties' agreed Data Warehouse protocol. Defendant TomorrowNow also objects to

24 the extent this interrogatory is cumulative of prior discovery requests. Defendant TomorrowNow

25 further objects that the undefined term "created" as used in this interrogatory is vague and

26 ambiguous. Defendant TomorrowNow objects that the terms "environment," "copied," and

27 "installed" are also vague and ambiguous.

28   Subject to and without waiving its Objections, Defendant TomorrowNow responds as

1   follows: There has been extensive deposition testimony and records produced that provide the

2   information sought by this interrogatory. For example, Plaintiffs requested Rule 30(b)(6)

3   testimony on "the manner and method by which customer local environments were created,

4   stored and used by you," "the identify of all PSFT and JDE customers for whom you created any

5   type of customer local environment," and "the name, release, and version of all PSFT or JDE

6   branded software obtained and/or copied to create each identified customer local environment."

7   January 22, 2008 Amended Notice of Deposition of TomorrowNow, Inc. Pursuant to Fed. R. Civ.

8   P. 30(b)(6), at Topics 1(b), (c), and (e). In responding to this notice, TomorrowNow presented

9   numerous witnesses who testified on issues relating to these topics, including the environments

10 and components of environments listed in this exhibit. *See* February 6-7, 2008 Rule 30(b)(6)

11 Depositions of John Baugh; April 1, 2008 Rule 30(b)(6) Deposition of Kathy Williams; April 1-2,

12 2008 Rule 30(b)(6) Depositions of Catherine Hyde. In fact, the exhibit referenced in this

13 interrogatory is a print out from TomorrowNow's BakTrak database that was introduced during

14 Kathy Williams' Rule 30(b)(6) Deposition on April 1, 2008 and on which she was questioned

15 extensively. *See* April 1, 2008 Rule 30(b)(6) Deposition of Kathy Williams, pp. 42:1-85:16.

16 Catherine Hyde was questioned for countless pages over two days on this exhibit as well,

17 including specific questions on the sources for the environments and components of environments

18 listed. *See* April 1, 2008 Deposition of Catherine Hyde, 48:7-61:14; April 2, 2008 Deposition of

19 Catherine Hyde, 72:1-157:17. Moreover, this exhibit "is the same list of environments from

20 Backtrack as Exhibit 38, except sorted by environment name." April 1, 2008 Rule 30(b)(6)

21 Deposition of Kathy Williams, 42:6-9 (statement by Geoff Howard). Exhibit 38 was introduced

22 during John Baugh's Rule 30(b)(6) Deposition on February 7, 2008, and he testified extensively

23 on the environments and components of environments listed. *See* Rule 30(b)(6) Deposition of

24 John Baugh, 251:16-273:4. Defendants further have produced the BakTrak database itself. *See,*

25 *e.g.,* TN-OR01005523, TN (Disc). 56; TN-OR06125330, TN (Disc).202. Plaintiffs, therefore,

26 have had ample opportunity to obtain information responsive to this interrogatory during these

27 numerous hours of depositions and by reviewing the BakTrak database.

28 Specifically, John Baugh and Catherine Hyde testified on how to interpret the naming

1   conventions used by TomorrowNow for environments and environment components. For

2   customers receiving Critical Support Services ("CSS") from TomorrowNow, John Baugh testified

3   that the naming convention for a particular customer's environment (or component of an

4   environment) was to use an eight character name where the first character designates the product

5   installed, the next three characters designate the product version and service pack, characters five

6   through seven are the three digit client code for the particular customer as noted in the SAS

7   database, and the final character designates the database platform. *See* February 6, 2008 Rule

8   30(b)(6) Deposition of John Baugh, 133:18-134:5. For example, he noted that the environment

9   name F890AOSO would refer to an environment with Financials (F), on version 8.90 (890), for

10   customer AO Smith (AOS) and an Oracle database (O). *Id.* at 134:6-12. Shortly after the start of

11   the critical support model, TomorrowNow's policy was to build environments for a customer

12   using that customer's software media. Therefore, pursuant to this policy, the naming convention

13   itself should generally indicate the specific customer in BakTrak (and on Exhibit 75) whose

14   original software media was used to create the environment or environment component.

15   John Baugh testified that environments in the extended support model had a different

16   naming convention. Typically, environments in the extended support model followed an eight

17   letter naming convention where the first two characters designated the product installed, the next

18   three characters relate to the product version and service pack, and the final three characters relate

19   to the PeopleSoft release update. *See* February 7, 2008 Rule 30(b)(6) Deposition of John Baugh,

20   179:13-22. For example, HG70205C would refer to the Education and Government product line,

21   the 7.02 version, and the 05C tax update from PeopleSoft. *Id.*
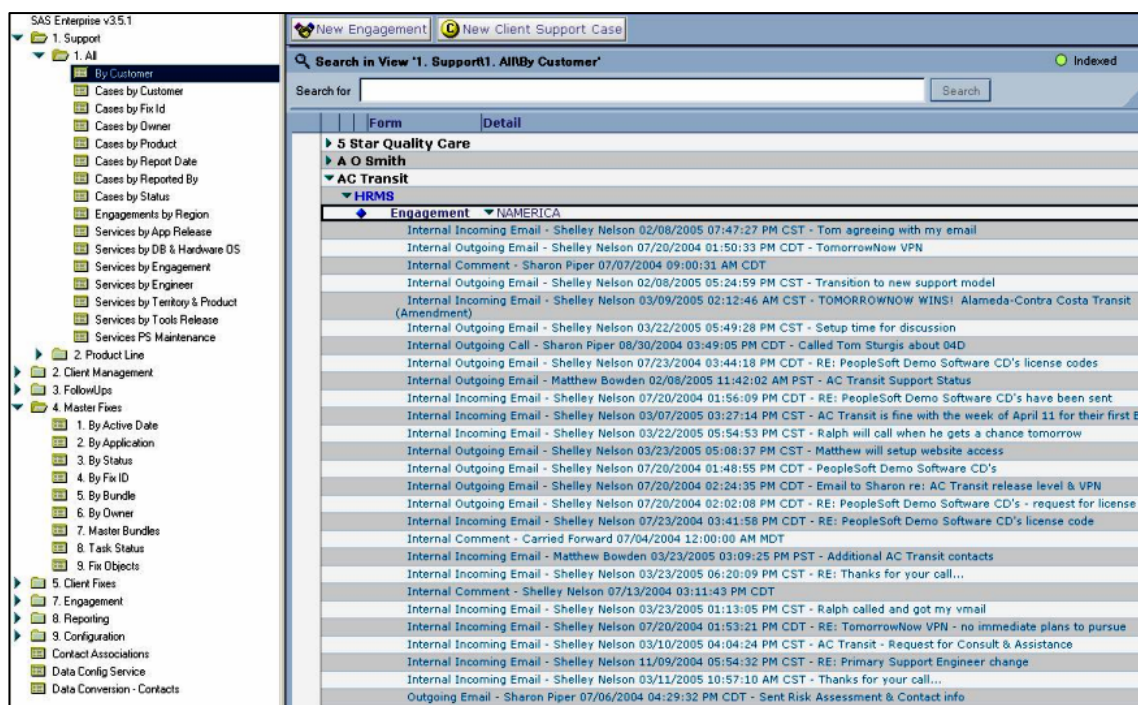
22   There were also other variation of names that were used during the extended support

23   model to identify "replication," "development" and "test" environments, which would follow the

24   same naming convention but would have REP, DEV, or TST as the last three characters (e.g.

25   HR702REP, HR702DEV, HR702TST). *See* April 2, 2008 Rule 30(b)(6) Deposition of Catherine

26   Hyde, 114:13-127:25. Additionally, some of the environments used a naming convention that

27   contained "CSS" as the last three characters (e.g., HR751CSS). When TomorrowNow stopped

28   performing retrofit updates in the extended support model and moved to the critical support

1   model, Catherine Hyde testified that this environment was renamed from an extended support

2   environment. *See* April 1, 2008 Rule 30(b)(6) Deposition of Catherine Hyde, 45:8-20. She also

3   testified that, most likely, one set of customer CDs was used to build the environments in the

4   extended support model. This customer was likely either Washington Gas Light Company or

5   Safeway Stores Inc.. *See, e.g., id.* at 45:21-47:20; *see also* April 2, 2008 Rule 30(b)(6)

6   Deposition of Catherine Hyde.

7   Under the ENV_NAME column of Exhibit 75, there are also references to components of

8   environments which have "DAT" in the name. *See, e.g.,* D702DATM. Catherine Hyde testified

9   that the naming convention for such databases revealed whether the database was used in the

10 critical support model or the extended support model. The "D" prefix indicates that it would be

11 used as part of the critical support model. *See* April 2, 2008 Rule 30(b)(6) Deposition of

12 Catherine Hyde, 74:4-16. Instances in which the prefix referenced the application, however, like

13 HR702DAT4, indicate that the database was used as part of the extended support model. *See id.*

14 Catherine further testified regarding what she believed to be the sources of these databases. For

15 example, she testified that D702DATM was probably created from Washington Gas Light

16 Company or Safeway Stores Inc.. *See id.* at 75:4-9. The aforementioned are non-exclusive

17 examples of Catherine Hyde's testimony on this subject, and Defendants rely on Rule 33(d) and

18 refer Plaintiffs to her deposition testimony regarding sources for other "DAT" components of

19 environments and the sources discussed for other environments and components of environments

20 listed in Exhibit 75. *See* April 1, 2008 Deposition of Catherine Hyde, 48:7-61:14; April 2, 2008

21 Deposition of Catherine Hyde, 72:1-157:17; s*ee also generally* May 12, 2009 Deposition of

22 Catherine Hyde.

23   Further, the BakTrak database itself has fields that point out the source of a restored

24 environment by listing the name of the environment from which a restoration was done under

25 "SOURCE_ENV." For example, in Exhibit 1253, the very first row shows the source

26 environment as HG75103G and that the target environment was HG751REP. The stated

27 description in BakTrak is to "create 03G rep." This entry combined with the testimony above

28 provides information on how the HG751REP environment was created and its source.

1   Information responsive to this interrogatory may also be contained in the dotProject

2 database and the SAS databases. *See* TN-OR 01361344, TN(Disc).62 (dotProject); TN-

3 OR06220764, TN(Disc).214 (dotProject); TN-OR03775478, TN(Hard Drive).67 (SAS); TN-OR

4 0446717, TN(Disc).173 (SAS); TN-OR 04446719, TN(Hard Drive).75 (SAS). Further,

5 TomorrowNow has made available for Plaintiffs' inspection numerous CDs potentially

6 containing PeopleSoft and JDE software materials which were housed at TomorrowNow. The

7 proper way to find this information in SAS, to the extent it was recorded, is to use the following

8 view in either the Enterprise, World, or OneWorld databases: 1. Support\1. All\By

9 Customer\[Click on a Customer Name]\ [Click on an Application]\[Click on Engagement]\[Look

10 under Service Information]\[Look under Demo Software].

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Finally, in addition to the Rule 30(b)(6) testimony cited above, TomorrowNow relies on all of the individual testimony of Catherine Hyde in response to this interrogatory. *See* February 12, 2009 Deposition of Catherine Hyde and May 12, 2009 Deposition of Catherine Hyde.

Given the information obtained through deposition testimony and documents produced to Plaintiffs, the burden of obtaining further information for this interrogatory is substantially the same on Plaintiffs as it is on Defendants. Pursuant to Rule 33(d), therefore, TomorrowNow relies upon all testimony and each document cited in the response to further respond to this interrogatory.

SAP AG and SAP America Answer

Defendants SAP AG and SAP America object to this interrogatory on the grounds stated in the General Objections and Responses. Defendants SAP AG and SAP America object to this interrogatory to the extent it requires Defendants to evaluate and chronicle information that involved numerous employees, took place over several years, and is too complex and detailed to describe in an interrogatory response. Defendants SAP AG and SAP America further object to

1   the extent the interrogatory purports to require Defendants to create a compilation, abstract, or

2   summary from materials that Defendants have already produced, will produce, or have made

3   available for review through the parties' agreed Data Warehouse protocol. Defendants SAP AG

4   and SAP America also object to the extent this interrogatory is cumulative of prior discovery

5   requests. Defendants SAP AG and SAP America further object that the undefined term "created"

6   as used in this interrogatory is vague and ambiguous. Defendants SAP AG and SAP America

7   object that the terms "environment," "copied," and "installed" are also vague and ambiguous.

8   Subject to and without waiving their Objections, Defendants SAP AG and SAP America

9   respond as follows: SAP AG and SAP America have no additional knowledge other than what is

10   reflected in TomorrowNow's answer to this interrogatory.

11   **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 82**

12   THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

13   ***TomorrowNow Answer***

14   Consistent with the parties meet and confer discussions regarding Interrogatory 82 and

15   subject to the TomorrowNow's objections above, TomorrowNow supplements its response as

16   follows:

17   TomorrowNow has undertaken an extensive review of the SAS database,

18   TomorrowNow's BakTrak program, and the deposition testimony taken to date to further respond

19   to this overly broad, unduly burdensome, vague, and confusing request. TomorrowNow

20   incorporates and relies on the modified Exhibit 75 ("Exhibit C") which has been produced as

21   Bates number TN-OR08720040. Exhibit C has a column added named "Source of Original

22   Media" which provides TomorrowNow's current reasonable belief as to the source of the original

23   media used to create the environments or environments components identified.

24   For those TomorrowNow's customers receiving service for PeopleSoft related

25   applications for whom TomorrowNow created local environments or environment components on

26   TomorrowNow's network, it was TomorrowNow's general practice to build the environment

27   component on the respective customer's behalf using that customer's PeopleSoft application files

28   provided to TomorrowNow by that customer on either CD, tape, or some other form of electronic

1 delivery. TomorrowNow's standard naming convention for the customer environment

2 components TomorrowNow maintained on its network on behalf of each such customer included

3 the following: (1) the first character was the type of application being used (H for human

4 resources or F for financials); (2) the next three characters corresponded to the PeopleSoft release

5 (i.e., 801 for 8SP1 or 842 for 8.4SP2); (3) the next three characters identified the customer (i.e.,

6 RHI for Robert Half International); and (4) the final character represented the type of database the

7 environment was built to access (i.e., O for Oracle or M for Microsoft).

8   Based on that naming convention, TomorrowNow reasonably believes that the majority of

9 the client specific environment components listed on Exhibit C were built from media provided

10 by that client to TomorrowNow. As noted in Exhibit C, TomorrowNow has listed those clients in

11 the column "Source of Original Media." After an extensive review of the SAS database and

12 BakTrak, TomorrowNow has not currently found any indication that these clients did not provide

13 TomorrowNow the media TomorrowNow used to build the specific environment components

14 listed in Exhibit C. *See* TN-OR04446719, TN (Hard Drive).75; TN-OR 06125330, TN (Disc).202

15 BakTrak\Search Restore Log.

16   A number of environment components listed on Exhibit C do not follow that standard

17 naming convention. Although TomorrowNow is not certain of the specific source,

18 TomorrowNow reasonably believes based on testimony from the April 1, 2008, April 2, 2008,

19 February 12, 2009 and May 12, 2009 depositions of Catherine Hyde, that some of the

20 environments listed in Exhibit C that do not follow the standard naming convention were created

21 from CDs provided by either Safeway Stores, Inc., Washington Gas Light Company, and

22 Rentway Corporation (Rent-A-Center, Inc.). *See* April 1, 2008 Deposition of Catherine Hyde;

23 April 2, 2008 Deposition of Catherine Hyde; February 12, 2009 Deposition of Catherine Hyde;

24 and May 12, 2009 Deposition of Catherine Hyde. Therefore, TomorrowNow has indicated, in the

25 column "Source of Original Media" in Exhibit C, these environment components which were

26 likely built from CDs provided by Safeway Stores, Inc., Washington Gas Light Company, or

27 Rentway Corporation (Rent-A-Center, Inc.).

28   Likewise, based on testimony provided by Catherine Hyde in her April 2008 depositions,

1   TomorrowNow reasonably believes that a number of PeopleSoft HRMS 8SP1 environment

2   components originated from media provided by a customer or customers receiving support during

3   2003 for HRMS 7.02 or 7.51. *See* April 2, 2008 Deposition of Catherine Hyde at 54:25-56:12;

4   April 2, 2008 Deposition of Catherine Hyde at 83:9-22 and 140: 14-141:22. However,

5   TomorrowNow is currently unable to determine after extensive effort and review of BakTrak and

6   the SAS database the exact source of those environment components.

7   Further, after an extensive review of the available data, TomorrowNow has not currently

8   been able to determine the specific source of the media used to build some of the environment

9   components and for those environments components, TomorrowNow has indicated the lack of

10 that information in the column "Source of Original Media" in Exhibit C by leaving the space

11 blank.

12   Finally, Plaintiff listed a number of remote environments on Exhibit C. TomorrowNow

13 does not have control, custody, or possession over these environment components as they reside

14 on the customers' networks, and thus cannot respond as to the source for those environment

15 components.

16   Given the information obtained through deposition testimony and documents produced to

17 Plaintiffs, the burden of obtaining further information for this interrogatory is substantially the

18 same on Plaintiffs as it is on Defendants. Pursuant to Rule 33(d), therefore, TomorrowNow relies

19 upon all testimony and each document cited in the response to further respond to this

20 interrogatory.

21   ***SAP AG and SAP America Answer***

22   Consistent with the parties meet and confer discussions regarding Interrogatory 82 and

23 subject to the SAP AG and SAP America's ("SAP") objections above, SAP supplements its

24 response as follows:

25   SAP has no additional knowledge other than what is reflected in TomorrowNow's

26 responses to this interrogatory.

27 **INTERROGATORY NO. 83:**

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18   Dated: December 21, 2009   JONES DAY

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20   By: /s/ Jason McDonell
                                                     Jason McDonell
21
                                                 Counsel for Defendants
22   SAP AG, SAP AMERICA, INC., and
                                                 TOMORROWNOW, INC.
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PROOF OF SERVICE

I, Laurie Paige Burns, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California St, 26th Fl., San Francisco, CA 94104. On December 21, 2009, I served a copy of the attached document(s):

DEFENDANTS' EIGHTH AMENDED AND SUPPLEMENTAL RESPONSE TO PLAINTIFFS' FOURTH SET OF INTERROGATORIES TO DEFENDANT TOMORROWNOW, INC. AND THIRD SET OF INTERROGATORIES TO DEFENDANTS SAP AG AND SAP AMERICA, INC.

☐   by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒   by placing the document(s) listed above in a sealed envelope and causing such envelope to be hand delivered to the office of the addressee on the date specified above.

☒   by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Executed on December 21, 2009, at San Francisco, California.

By: _____
LAURIE PAIGE BURNS

HUI-122240v1

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PROOF OF SERVICE
Case No. 07-CV-1658 PJH (EDL)