

EXHIBIT 13

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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,
23 Plaintiffs,
24 v.
25 SAP AG, et al.,
26 Defendants.

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

**DEFENDANT TOMORROWNOW,
INC.'S EIGHTH AMENDED AND
SUPPLEMENTAL RESPONSE TO
PLAINTIFF ORACLE
CORPORATION'S FIRST SET OF
INTERROGATORIES (SET ONE)**

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1 forth in a spreadsheet, which will be included in TomorrowNow's document production and on
2 which TomorrowNow relies to respond to this interrogatory pursuant to Rule 33(d).

3 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

4 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
5 INFORMATION.

6 TomorrowNow further responds that its list of employees can be found at
7 TN-OR00000009 – TN-OR00000015. TomorrowNow reserves the right to further supplement
8 this response as necessary during the course of document production.

9 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:**

10 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS
11 CONFIDENTIAL INFORMATION.

12 TomorrowNow further responds that its employee spreadsheet has been updated to reflect
13 the termination of TomorrowNow's employees after the wind down on October 31, 2008. The
14 updated list of TomorrowNow former employees includes dates of hire, dates of termination, and
15 job titles to the extent they are available. *See* TN-OR05942443, Exhibit B to TomorrowNow's
16 Third Amended and Supplemental Response to Plaintiff Oracle Corporation's First Set of
17 Interrogatories (Set One).

18 **INTERROGATORY NO. 3:**

19 Describe in as much detail as possible how You access, store, maintain, retrieve and
20 provide any support materials to Your Customers, including Software and Support Materials,
21 including but not limited to Identifying on what computers, servers or other devices the Software
22 and Support Materials are stored, the names of Person(s) who have access to the Software and
23 Support Materials, how those Software and Support Materials are accessed by Your Employees
24 and Customers, and describing any policies, procedures, protocols or safeguards involved in the
25 provision of Software and Support Materials to Customers, including ensuring they have a valid
26 license for the material.

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

28 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

1 TomorrowNow objects that this interrogatory seeks information not reasonably calculated
2 to lead to the discovery of admissible evidence to the extent that it seeks information about
3 unspecified "support materials" other than the Software and Support Materials at issue in this
4 case. TomorrowNow further objects that this interrogatory is compound, is actually several
5 interrogatories, is wholly or partially duplicative of several other interrogatories served by Oracle
6 (including Nos. 6, 7, 8, 10 and 12 of this set and 1, 2 and 4 of the set served by Oracle USA Inc.),
7 and is unduly burdensome and oppressive to the extent it seeks a narrative answer as to a laundry
8 list of disparate subjects. Subject to and without waiving the foregoing objections and the
9 General Objections and Responses, TomorrowNow responds by incorporating by reference and
10 relies on its responses to Interrogatories Nos. 6, 7, 8, 10 and 12 of this set and Interrogatories 1, 2
11 and 4 of the set served by Oracle USA Inc., including those documents cited in those responses.
12 TomorrowNow further responds as follows: TomorrowNow has accessed, downloaded and/or
13 stored Software and Support Materials on behalf of its new customers. TomorrowNow has done
14 so after receiving from the customer certain representations and warranties that the customer is
15 entitled to permit TomorrowNow such access on its behalf. TomorrowNow's policy was only to
16 conduct downloads for a customer using the specific password and user id. provided by that
17 customer and only before the relevant Maintenance End Date for that customer. Until recently,
18 TomorrowNow conducted the downloads and stored the relevant materials on its computers. The
19 downloads were conducted by TomorrowNow's employees using certain laptop and desktop
20 computers as well as dedicated download servers located at TomorrowNow's data center in
21 Bryan, Texas. TomorrowNow then transferred and stored downloaded materials on certain file
22 servers, the relevant files and file folders from which will be included in TomorrowNow's
23 document production and on which TomorrowNow relies to further respond to this interrogatory
24 pursuant to Rule 33(d). TomorrowNow set forth the policies and procedures governing the
25 downloading and storage of relevant materials in procedure documentation, including emails,
26 which will be included in TomorrowNow's document production and on which TomorrowNow
27 relies to further respond to this interrogatory pursuant to Rule 33(d). Beginning in July 2007,
28 TomorrowNow revised its procedures to have its customers conduct all appropriate downloads

1 they wish to be conducted from the customers' own computers, and to store any such downloaded
2 materials on the customers' computers. Beginning in July 2007, TomorrowNow may on occasion
3 assist or advise its customers in conducting downloads, but it is TomorrowNow's policy that each
4 customer makes the ultimate decision regarding which materials that customer downloads.
5 TomorrowNow has taken other steps to update its business processes, in part to address the
6 uncertainty caused by Oracle's allegations and Oracle's refusal to provide information underlying
7 its claims. Documents describing these process changes will be included in TomorrowNow's
8 document production and on which TomorrowNow relies to further respond to this interrogatory
9 pursuant to Rule 33(d).

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

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. Downloaded material (in native format)
15 includes but is not limited to TN-OR00004203, TN-OR00005106 and TN-OR00005147.
16 TomorrowNow reserves the right to further supplement this response as necessary during the
17 course of document production.

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

19 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS
20 CONFIDENTIAL INFORMATION.

21 This compound interrogatory would require TomorrowNow to chronicle information that
22 involved numerous employees, took place over several years, and is too complex and detailed to
23 describe in an interrogatory response. Pursuant to Rule 33(d), TomorrowNow points Plaintiffs to
24 the SAS database, which is a tool TomorrowNow used to chronicle its business efforts to service
25 clients. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173, TN-OR
26 04446719, TN(Hard drive).75. Further, in addition to the policies and procedures cited above,
27 policies and procedures documents related to the provision of Software and Support Materials to
28 Customers include, but are not limited to, SAP-OR00251437, TN-OR00411402, TN-

1 OR00209243, TN-OR00209244, TN-OR03775488, SAP-OR00631478. For information
2 regarding how TomorrowNow stores and maintains Software and Support Materials, including
3 the identification of the computers, servers or other devices the Software and Support Materials
4 are stored, TomorrowNow relies on all of its current responses to Interrogatory No. 11 of this set,
5 which is incorporated by reference.

6 The most complete record of the TomorrowNow employees who had access to the
7 Software and Support Materials prior to the wind down of TomorrowNow can be derived from
8 the SAS database. *See* TN-OR 03775478, TN(Hard drive).67, TN-OR 04446717, TN(Disc).173,
9 TN-OR 04446719, TN(Hard drive).75. The SAS database also contains the most complete record
10 of how TomorrowNow employees accessed those Software and Support Materials. *Id.* The most
11 complete record regarding the fixes TomorrowNow provided its customers can be derived from
12 TN-OR 00009557, TN(Disc).9, TN-OR04497673, TN(Disc).186 (client fixes from Web 01,
13 DCWEB01); TN-OR04497668, TN(Hard drive).78 (client fixes from Mail 03). In addition,
14 some of the overly broad and unduly burdensome information that this request seeks can be
15 derived from the hours of overlapping 30(b)(6) testimony. *See* October 29, 2007 Deposition of
16 Bill Thomas Pursuant to Rule 30(b)(6); October 29-30, 2007 Deposition of Mark Kreutz
17 Pursuant to Rule 30(b)(6); October 30, 2007 Deposition of Shelley Nelson Pursuant to Rule
18 30(b)(6); December 6, 2007 Deposition of Shelley Nelson Pursuant to Rule 30(b)(6); February 6-
19 7, 2008 Deposition of John Baugh Pursuant to Rule 30(b)(6); February 19, 2008 Deposition of
20 Mark Kreutz Pursuant to Rule 30(b)(6); June 25, 2008 Deposition of Rod Russell Pursuant to
21 Rule 30(b)(6); April 1, 2008 Deposition of Kathy Williams Pursuant to Rule 30(b)(6); April 1,
22 2008 Deposition of Catherine Hyde Pursuant to Rule 30(b)(6).

23 **SIEBEL SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

24 THIS SIEBEL SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
25 INFORMATION.

26 This compound interrogatory would require TomorrowNow to chronicle information that
27 involved numerous employees, took place over several years, and is too complex and detailed to
28 describe in an interrogatory response. Pursuant to Rule 33(d), TomorrowNow points Plaintiffs to

1 the SAS database, which is a tool TomorrowNow used to chronicle its business efforts to service
2 clients, certain files and folders in the Data Warehouse, and the production of certain policy and
3 procedure documents.

4 The most complete record of the TomorrowNow employees who had access to any
5 software and support materials for the Seibel service line prior to the wind down of
6 TomorrowNow can be derived from the SAS database. *See* TN-OR03727374, TN (Disc). 157
7 (Siebel.nsf) and TN-OR04446719, TN(Hard Drive).75 (same Siebel.nsf file). The SAS database
8 also contains the most complete record of how TomorrowNow employees accessed those
9 software and support materials. *Id.* Further, SAS is the most complete record regarding the
10 services and materials, if any, provided to a TomorrowNow customer with respect to a specific
11 customer case. *Id.* Additionally, information related to the services and information provided to
12 certain customers in response to specific cases is also located on one of the Data Warehouse
13 servers. *See* TN-OR 04232660, TN(Hard Drive).68 (NCSERV1\Development\Fixes by TN).

14 For information regarding how TomorrowNow stored and maintained software and
15 support materials, including the identification of the computers, servers or other devices the
16 software and support materials are stored on, TomorrowNow relies on all of its current responses
17 to Interrogatory No. 11 of this set, including the Siebel supplemental response, which is
18 incorporated by reference.

19 TomorrowNow further responds that its policies and procedures documents related to
20 providing third party support for Siebel product lines include, but are not limited to, TN-
21 OR07097693 to TN-OR07099072 on TN-OR06756453, TN (Disc).249. Moreover, as referenced
22 above, applicable policies and procedures documents related to the provision of software and
23 support materials to customers also include, but are not limited to, TN-OR07099596, TN-
24 OR00411402, TN-OR03775488, SAP-OR00631478.

25 In addition, some of the overly broad and unduly burdensome information that this
26 interrogatory seeks is the subject of requested Rule 30(b)(6) deposition testimony provided by
27 TomorrowNow on September 17, 2009 and has already been the subject of prior individual
28 testimony. *See* October 23, 2007 Amended Notice of Deposition of TomorrowNow, Inc.

1 Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 13 (“The manner in which Software and Support
2 Materials, or any support product developed by You, derived by You, or otherwise obtained by
3 You, is maintained, archived, indexed and transmitted to any Customer, including descriptions of
4 hardware and software Used and where this hardware or software is physically located”) and
5 Topic 14 (“The use, distribution, transmission or other communication of Software and Support
6 Materials including without limitation (a) the use, distribution, transmission or other
7 communication of Software and Support Materials within SAP TN or between SAP TN, SAP
8 America, and/or SAP AG; (b) the use, distribution, transmission or other communication of
9 Software and Support Materials into, within, or out of any database or storage device, method, or
10 application; (c) the use, distribution, transmission or other communication of Software and
11 Support Materials between You and Your Customers; (d) the hardware and software Used for any
12 such use, distribution, transmission or other communication identified in this paragraph; and (e)
13 any ‘separate systems,’ ‘firewalls,’ or other methods or devices that prevent the distribution,
14 transmission or other communication of Oracle’s Software and Support Materials from You to
15 SAP AG and SAP America.”) (*See* Plaintiffs’ June 23, 2009 E-mail Correspondence requesting
16 Rule 30(b)(6) deposition testimony regarding TomorrowNow’s support of Siebel products on
17 these topics); March 13, 2009 Deposition of John Tanner.

18 Finally, TomorrowNow incorporates by reference and relies on its current responses,
19 including to the extent applicable the Siebel supplemental response, to Interrogatories Nos. 6, 7, 8
20 and 12 of this set and Interrogatory No. 1 of the first set served by Oracle USA Inc, including all
21 of the documents cited in those responses.

22 **FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

23 THIS FOURTH SUPPLEMENTAL RESPONSE IS DESIGNATED AS
24 CONFIDENTIAL INFORMATION.

25 TomorrowNow has provided further deposition testimony that is responsive to the overly
26 broad and unduly burdensome information that this request seeks. *See, e.g.*, December 5, 2008
27 Deposition of Matthew Bowden; February 12, 2008 and May 12, 2009 Depositions of Catherine
28 Hyde; March 12, 2008 Deposition of John Tanner; April 10, 2009 Deposition of Patti VonFeldt;

1 June 16, 2009 Deposition of Keith Shankle; June 16, 2009 Deposition of Pete Surette; August 13,
2 2009 Deposition of John Baugh; September 3, 2009 Deposition of S. Nelson; September 17, 2009
3 Deposition of Michael Garafola and John Tanner Pursuant to Rule 30(b)(6); September 22, 2009
4 Deposition of Peggy Lanford; October 9, 2009 Deposition of Desmond Harris.

5 **ORACLE DATABASE AMENDED INTERROGATORY NO. 3:**

6 Describe in as much detail as possible how You access, store, maintain, retrieve and
7 provide any support materials to Your Customers, including Software and Support Materials,
8 including but not limited to by Identifying on what computers, servers or other devices the
9 Software and Support Materials are stored, the names of Person(s) who have access to the
10 Software and Support Materials, how those Software and Support Materials are accessed by Your
11 Employees and Customers, and describing any policies, procedures, protocols or safeguards
12 involved in the provision of Software and Support Materials to Customers, including ensuring
13 they have a valid license for the material.

14 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:**

15 THIS ORACLE DATABASE SUPPLEMENTAL RESPONSE IS DESIGNATED AS
16 CONFIDENTIAL INFORMATION.

17 TomorrowNow objects to Plaintiffs' modification of this request by inserting the word
18 "by" in the phrase "but not limited to [by] . . ." as an improper attempt to alter this admittedly
19 overly broad, unduly burdensome, compound, vague and ambiguous request outside of the
20 parties' discovery agreements. TomorrowNow reserves the right to assert that Oracle Database
21 Amended Interrogatory No. 3 should be counted as an additional interrogatory against Plaintiffs'
22 total allotted interrogatories. Subject to and without waving all of the foregoing objections,
23 TomorrowNow provides the following supplemental response:

24 TomorrowNow did not provide Oracle database applications, including any updates or
25 patches to those applications, to TomorrowNow customers as part of its services. Likewise,
26 TomorrowNow did not provide support services or corresponding support materials for Oracle's
27 database components and/or applications, including any updates or patches to those applications,
28 to TomorrowNow customers as part of its services.

1 At least some of the environments maintained on behalf of TomorrowNow's customers on
2 TomorrowNow's network used an Oracle database platform as a component. With regard to how
3 these database related components were accessed, and by whom, as part of TomorrowNow's
4 servicing of its customers, TomorrowNow incorporates by reference its current responses to this
5 request above and its current responses to Plaintiff's Fifth Set of Interrogatories to Defendant
6 TomorrowNow, Inc. and Fourth Set of Interrogatories to Defendants SAP AG and SAP America,
7 Inc. Interrogatory Nos. 123 and 124. TomorrowNow incorporates by reference each document
8 cited in those responses as part of its supplemental response to this interrogatory. As noted in
9 response to Interrogatory No. 124, TomorrowNow reasonably believes that no systematic or
10 centralized records were maintained regarding from whom or where these Oracle database
11 components were obtained. To the extent any of these database components contain
12 updates/patches or other support materials, these support materials likely would have been
13 obtained from the website metalink.oracle.com and would be stored in the TN Software Library
14 locations identified in response to Interrogatory No. 124. TomorrowNow is not currently aware of
15 specific instances in which it applied patches or updates to the initial instance of any database
16 components referenced in response to Interrogatory No. 124.

17 Moreover, for information regarding how TomorrowNow stored and maintained any
18 Oracle database related components, including the identification of specific servers,
19 TomorrowNow incorporates by reference into this response all of its current responses to
20 Interrogatory No. 11 of this set, including the Oracle Database supplemental response, and its
21 current response to Plaintiff's Fifth Set of Interrogatories to Defendant TomorrowNow and
22 Fourth Set of Interrogatories to Defendants SAP AG and SAP America, Inc. Interrogatory Nos.
23 123 and 124. Further, TomorrowNow is not aware of any policies specific to Oracle database
24 related components other than those identified above.

25 In addition, some of the overly broad and unduly burdensome information that this
26 interrogatory seeks has already been the subject of requested Rule 30(b)(6) deposition testimony
27 on which former TomorrowNow employee John Baugh testified in February 2008. *See*
28 Defendant TomorrowNow, Inc.'s January 22, 2008 Response to Plaintiff Oracle's Second

1 30(b)(6) Notice of Deposition of TomorrowNow, Topic 1(b) (designating John Baugh to testify to
2 “The manner and method by which Customer Local Environments were created, stored, and Used
3 by You”); Topic No. 1 (c) (designating John Baugh to testify to “The identity of all PSFT and
4 JDE Customers for whom You created any type of Customer Local Environment”); Topic No. 1
5 (d) (designating John Baugh to testify to “The total number of Customer Local Environments
6 created for each identified Customer”); Topic No. 1 (l) (designating John Baugh to testify to “The
7 process by which Customer Local Environments were Used as part of the ordinary course of
8 business for [] TN, including without limitation to on-boarding of new Customers; support of
9 Customer cases, issues, and problems; reactive and proactive development of bug fixes, updates,
10 patches, explanations, or regulatory changes for Customers; research into and design of those
11 changes; troubleshooting for Customers; and testing of other operating system levels”).

12 Moreover, the overly broad and unduly burdensome information that this interrogatory seeks is
13 also the subject of additional requested Rule 30(b)(6) deposition testimony and has already been
14 the subject of prior individual testimony. *See* September 30, 2009 Notice of Deposition of
15 TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6), Topic 1 (“The identification by release,
16 version, and/or filename of any Oracle Database Software in []TN’s possession at any time or
17 which []TN obtained, Copied, or used for any purpose”), Topic 2 (“The identification of []TN’s
18 computers, servers, or other hardware on which any Oracle Database Software ever resided”),
19 Topic 3 (“The manner, method, and purposes for which [] TN used any Oracle Database Software
20 which ever existed on its Systems”), Topic 4 (“The identification of any Customers for which
21 []TN used any Oracle Database Software on its Systems to provide support services”), Topic 5
22 (“The manner and method by which []TN used any Oracle Database Software on its Systems to
23 provide support services to Customers”), Topic 6 (“The original source of any Oracle Database
24 Software which ever existed on []TN’s Systems and the manner or method by which []TN
25 acquired or accessed each such original source”), Topic 7 (“Any [] TN policies or procedures
26 related to [] TN’s Copying or Use of Oracle Database Software”); April 23, 2009 Deposition of
27 George Lester; September 3, 2009 Deposition of Shelley Nelson. Pursuant to Rule 33(d),
28

1 Defendants rely on all documents and files cited and/or incorporated above to further respond to
2 this interrogatory.

3 **SUPPLEMENTAL RESPONSE TO ORACLE DATABASE SUPPLEMENTAL**
4 **RESPONSE TO INTERROGATORY NO. 3:**

5 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
6 INFORMATION.

7 TomorrowNow has provided further deposition testimony that is responsive to the overly
8 broad and unduly burdensome information that this request seeks. *See, e.g.*, December 4, 2009 of
9 Bill Thomas to Rule 30(b)(6); December 3, 2009 of John Baugh.

10 **INTERROGATORY NO. 4:**

11 Identify all third-party vendors, contractors, or consultants who have ever been to any of
12 Your Facilities, including but not limited to third parties used for security, janitorial services,
13 maintenance, or information technology services.

14 **RESPONSE TO INTERROGATORY NO. 4:**

15 THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

16 TomorrowNow objects that this interrogatory seeks information not reasonably calculated
17 to lead to the discovery of admissible evidence to the extent it seeks information concerning
18 “third party” visits to TomorrowNow’s facilities having nothing to do with the Software and
19 Support Materials at issue in this case. TomorrowNow further objects that this interrogatory
20 seeks information protected from disclosure by the attorney-client privilege and the work product
21 doctrine. Subject to and without waiving the foregoing objections and the General Responses and
22 Objections, TomorrowNow responds as follows: TomorrowNow is not aware of any relevant,
23 non-privileged visits.

24 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

25 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
26 INFORMATION.

27 TomorrowNow further responds that the following entities have had access to
28 TomorrowNow’s network and/or facilities: Summit Technology, Inc., Newmerix Corp., Quest