

EXHIBIT P

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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.,
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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INTERROGATORY NO. 13:

Describe in as much detail as possible all Software and Support Materials that “have been downloaded beyond those that, according to TN’s records, related to applications licensed to the particular customer on whose behalf the downloads were made,” as alleged in ¶ 15 of Your Answer, including but not limited to Identifying the “records” You referenced in making Your determination.

RESPONSE TO INTERROGATORY NO. 13:

THIS RESPONSE IS DESIGNATED AS CONFIDENTIAL INFORMATION.

Subject to and without waiving the General Responses and Objections, TomorrowNow responds as follows: TomorrowNow’s downloads on behalf of customers using JDE’s OneWorld products were made based on instructions set forth on a Download Request Form. The Download Request Forms for Merck, OCE, SPX, Metro Machine and Yakazi instructed the download team to download all ESUs for all system codes on a particular release level. TomorrowNow’s records did not show that those customers had represented that they were licensed to all system codes on a particular release level. Additionally, TomorrowNow has learned that the password and user id. for Honeywell were used to access the Customer Connection site to download materials apparently related to JDE products. Additional information responsive to this interrogatory can be derived or ascertained from the relevant customer contracts, onboarding documentation, Download Request Forms and the relevant customer files, which will be included in

1 TomorrowNow's document production and on which TomorrowNow relies to further respond to
2 this interrogatory pursuant to Rule 33(d).

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

4 THIS SUPPLEMENTAL RESPONSE IS DESIGNATED AS CONFIDENTIAL
5 INFORMATION.

6 TomorrowNow further responds that its customer contracts include but are not limited to:
7 TN-OR00000027 – TN-OR00001007 and TN-OR 00004204 – TN-OR00004276; and that its
8 onboarding documentation includes but is not limited to TN-OR00001008 – TN-OR00001277.
9 Download material (in native format) includes but is not limited to: TN-OR00004202,
10 TN-OR00005146 and TN-OR00005147. TomorrowNow reserves the right to further supplement
11 this response as necessary during the course of document production.

12 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

13 THIS SECOND SUPPLEMENTAL RESPONSE IS DESIGNATED AS
14 CONFIDENTIAL INFORMATION.

15 TomorrowNow further responds that because TomorrowNow did not have access to its
16 customers' respective license agreements with the software vendor, TomorrowNow relied on the
17 representations of its customers in each customer's Support Services Agreement and the
18 "Covered Products" portion of the Agreement's accompanying exhibits, as well as the product
19 information provided by the customer in the Product Verification Forms. As stated in the
20 response above, TomorrowNow believes that there were some downloads made for products
21 beyond those to which the customer informed TomorrowNow that the customer was licensed.

22 However, despite numerous discovery requests for information from Plaintiffs that will map
23 downloads to specific products, no such information has been produced which in turn means that
24 TomorrowNow does not have the ability to map each of the specific downloads to each of the
25 specific products. Plaintiffs have represented to the Court that they also do not have the ability
26 post-download to determine which downloads relate to which products. Thus, without such
27 mapping information (provided in a manner that permits an electronic "download to product"
28 comparison), it is not possible for TomorrowNow to evaluate the appropriateness of each

1 in on December 18, 2006 using the log-in credentials of Yazaki and downloaded
2 a Customer Relationship Management ESU, PH11676, for EnterpriseOne
3 software version 8.11.... SAP TN also used the log-in ID of OCE to download a
4 payroll update for World Software version A7.3, A738217431, on December 21,
5 2006. ... None of these customers was licensed to copy these works. ...

6 TomorrowNow was then able to use this information in ¶ 85 of the FAC to find the
7 customer-specific download folder locations on DCITBU01_G in which these specific files were
8 located. TomorrowNow then concluded that TomorrowNow had downloaded the ESUs with the
9 file names JJ13072 (SPX), JK10093 (Merck) and PH11676 (Yazaki) and the SAR with the name
10 of A738217431 (OCE), which correspond to the respective customers listed in ¶ 85 of the FAC
11 (and as noted in parenthesis herein). See DCITBU01_G (TN-OR02989997, TN-OR02989995).

12 By the time TomorrowNow filed its answer to the FAC on July 2, 2007 TomorrowNow had
13 reached the preliminary conclusions that: (a) TomorrowNow apparently downloaded each of the
14 files noted in ¶ 85 of the FAC using that specific customer's username and password credentials;
15 and (b) by referring to each specific customer's Support Services Agreement with
16 TomorrowNow, product verification forms and download request forms, it appeared that each of
17 the four files noted in ¶ 85 of the FAC related to products other than those for which each
18 respective customer had informed TomorrowNow they were licensed.² The documents and other
19 information on which TomorrowNow's preliminary conclusions at that time were based are as

20 follows:

21 **SPX**

22 **File name:** JJ13072

23 **File location:** BU01_GJDEUPDATES&FIXES75-84\Single Files\SPX Weil-
24 McLain\OneWorld\Electronic Software Updates\811SP1\JJ13072_exe\JJ13072.htm

25 **System code(s) noted in file:** 07 Payroll

26 **TomorrowNow Support Services Agreement:** TN-OR00601393-TN-OR00601404

27 **Product Verification Form:** TN-OR00056188-TN-OR00056190

28 **Download Request Form:** TN-OR00235417

Username apparently used: wmcnc1

² In preparing this supplemental response and gathering the records associated with the preliminary factual conclusions TomorrowNow made before it filed its Answer to the FAC on July 2, 2007, TomorrowNow re-examined the ESU file labeled PH11676 (Yazaki), which notes system code 90 (CRM), and Appendix A to Yazaki's Support Services Agreement with TomorrowNow (TN-OR01711151- TN-OR01711152), which indicates that Yazaki informed TomorrowNow that it was in fact licensed to the JDE OneWorld CRM application, release 8.11. Thus, it appears that TomorrowNow's preliminary conclusion as of July 2, 2007 was incorrect with respect to the ESU file labeled PH11676 that is referred to in ¶ 85 of the FAC.

1 to ¶ 15 of the FAC indicating that there were downloads “beyond those that, according to
2 TomorrowNow’s records, related to applications licensed to the particular customer on whose
3 behalf the downloads were made” and Defendants’ representatives’ subsequently made
4 statements in press releases/news conferences on July 2-3, 2007 that “inappropriate downloads”
5 took place, TomorrowNow made the following additional preliminary conclusions:

6 a. Paragraph 76 of the FAC – This paragraph contains Plaintiffs’ allegation regarding
7 Honeywell. TomorrowNow only serviced Honeywell’s PeopleSoft applications. However,
8 TomorrowNow concluded that it had stored in Honeywell’s download folders at TomorrowNow
9 certain downloads related to JDE, for which Honeywell had not indicated to TomorrowNow it
10 was licensed. Specifically, TomorrowNow concluded that Honeywell’s download folder on
11 TomorrowNow’s servers contained product roadmaps for certain JDE EnterpriseOne Products.
12 See six separate “EnterpriseOne” folders in Honeywell\Product Roadmaps\2005\2005-Q1 on the
13 DCITBU01_G server, which has been produced as part of TomorrowNow’s Data Warehouse
14 native file production. See DCITBU01_G (TN-OR02989993). TomorrowNow also concluded
15 that Honeywell’s download folder on TomorrowNow’s servers contained red papers for certain
16 JDE EnterpriseOne Products. See three separate “EnterpriseOne” folders in Honeywell\Red
17 Papers on DCITBU01_G server (*id.*).

18 The statement in TomorrowNow’s July 2, 2007 answer to ¶ 15 of the FAC that there were
19 downloads “beyond those that, according to TomorrowNow’s records, related to applications
20 licensed to the particular customer on whose behalf the downloads were made” and Defendants’
21 representatives’ subsequent statements in press releases/news conferences on July 2-3, 2007 that
22 “inappropriate downloads” took place simply acknowledge the fact that TomorrowNow’s
23 downloads of JDE materials for Honeywell, a PS customer, were considered by TomorrowNow
24 to be “inappropriate” because it was TomorrowNow’s policy to only download materials for
25 customers related to those products for which the customer had informed TomorrowNow they
26 were licensed. However, as noted above, that does not mean that TomorrowNow concedes either
27 that Honeywell was not in fact licensed to receive the subject files or that the licenses Honeywell
28 had or has with Plaintiffs do not permit Honeywell, or TomorrowNow acting on its behalf, to

1 download all of the files specifically referenced in ¶ 76 of the FAC.

2 b. Paragraphs 77-81 of the FAC – Plaintiffs make several customer specific
3 allegations in ¶¶ 77-81 of the FAC. Although Plaintiffs did not provide (and as of September 23,
4 2009 still have not provided) the specific file names of each file it contends in ¶¶ 77-81 were
5 improperly downloaded, Plaintiffs did provide certain file counts. And, TomorrowNow
6 attempted to determine the accuracy of those counts. However, TomorrowNow was not and is
7 still not able to definitively conclude whether the file counts in ¶¶ 77-81 of the FAC are accurate.
8 But, as part of its investigation before it filed its answer to the FAC on July 2, 2007,
9 TomorrowNow confirmed that its records for Merck (¶ 77), SPX (¶ 78), OCE (¶ 79) and Yazaki
10 (¶ 81) showed that those customers had indicated to TomorrowNow that they were licensed to
11 some, but not all of Plaintiffs’ JDE products. Before TomorrowNow filed its answer to the FAC
12 on July 2, 2007, TomorrowNow confirmed that its download request forms indicated that at the
13 time that TomorrowNow conducted downloads on behalf each of these customers,
14 TomorrowNow downloaded all available ESUs for certain releases instead of only those ESUs for
15 those releases that note the system codes that those customers told TomorrowNow they were
16 licensed to. Likewise, for each of those customers, TomorrowNow’s records indicated that at the
17 time that TomorrowNow conducted downloads on behalf each of these customers,
18 TomorrowNow may have downloaded SARs for certain releases that note system codes other
19 than those the referenced customers told TomorrowNow they were licensed to. The records that
20 TomorrowNow used to make these preliminary conclusions include download request forms (TN-
21 OR00235417, TN-OR00000479-TN-OR00000478, TN-OR00000490- TN-OR00000495, TN-
22 OR00001002-TN-OR00001007, TN-OR00000990-TN-OR00000995, TN-OR05941642-TN-
23 OR05941647, TN-OR00081327), product verification forms (TN-OR00056188-TN-
24 OR00056190, TN-OR01573472-TN-OR01573474, TN-OR00001163-TN-OR00001165),
25 Appendix A forms to TomorrowNow’s Support Services Agreements (TN-OR00601393-TN-
26 OR00601404, TN-OR00000464-TN-OR00000478, TN-OR01711142-TN-OR01711158, TN-
27 OR00602324-TN-OR00602335), and log files (TN-OR02193737, TN(Disc).82).

28 The following table compares Plaintiffs’ allegations in ¶¶ 77-81 of the FAC to the

1 TomorrowNow's Fourth Supplemental Response to Interrogatory No. 13 is further
2 supplemented to correct a clerical error as follows:

3 The sentence in the penultimate paragraph of TomorrowNow's Fourth Supplemental
4 Response to Interrogatory No. 13 that states:

5 "However, as noted above, that does not mean that TomorrowNow concedes that IMCD
6 was not in fact licensed to receive a white paper with the file name "ods-00-0136.txt" titled
7 "Landed Costs in Enterprise One" or that the license IMCD had or have with Plaintiffs do not
8 permit IMCD, or TomorrowNow acting on its behalf, to download all of the files specifically
9 referenced in ¶¶ 77-81 of the FAC."

10 Is hereby amended to state:

11 "However, as noted above, that does not mean that TomorrowNow concedes that IMCD
12 was not in fact licensed to receive a white paper with the file name "ods-00-0136.txt" titled
13 "Landed Costs in Enterprise One" or that the license IMCD had or have with Plaintiffs do not
14 permit IMCD, or TomorrowNow acting on its behalf, to download all of the files that were
15 downloaded by or on behalf of IMCD."

16 For ease of reference, the amended language affected by this Fourth Supplemental
17 Response to Interrogatory No. 13 is underlined above.

18 **INTERROGATORY NO. 14:**

19 Describe in as much detail as possible all Software and Support Materials Downloaded by
20 You which were "inappropriate downloads," as described by Henning Kagermann in Conference
21 Call #1 and Conference Call #2, including but not limited to why the Download was
22 "inappropriate," Identifying any rule, policy or other safeguard that the Download violated, the
23 Person(s) conducting or involved in the Downloading, which Customer's credentials were used
24 for the Download, when and where the Download took place, and a brief description of the means
25 or methods employed to conduct the Download.

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

2 TomorrowNow objects that this interrogatory seeks information not in the possession of
3 TomorrowNow. TomorrowNow further objects that this interrogatory is compound and
4 duplicative of Interrogatory No. 13. Subject to and without waiving the foregoing objections or
5 the General Responses and Objections, TomorrowNow responds by incorporating by reference its
6 response to Interrogatory No. 13.

7 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

8 TomorrowNow further responds by incorporating by reference its supplemental response
9 to Interrogatory No. 13.

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

11 TomorrowNow also incorporates by reference all of its current responses to Interrogatory
12 No. 12, Interrogatory No. 13, and Interrogatory No. 16 and the documents cited therein to further
13 respond to this interrogatory pursuant to Rule 33(d).

14 **INTERROGATORY NO. 15:**

15 Describe in as much detail as possible Your investigation of the “inappropriate”
16 downloads, including but not limited to the name of the Person(s) who initiated the investigation
17 and conducted the investigation, when the investigation began, the reason for the investigation, a
18 description of any results or reports arising from the investigation, the names of all Customers
19 investigated, the names of all Customers on whose behalf any “inappropriate” downloading
20 occurred, and a brief description of the procedures used to investigate the “inappropriate”
21 downloads.

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

23 TomorrowNow objects that this interrogatory seeks information not in the possession of
24 TomorrowNow. TomorrowNow further objects that because the investigation of the issues
25 referenced in this interrogatory was and is conducted in response to the filing of Oracle’s
26 complaint, this interrogatory seeks information that is protected from disclosure by the attorney-
27 client privilege and the work product doctrine. Non-privileged documents and information
28