

EXHIBIT 26

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION
19

20 ORACLE USA, INC., *et al.*,
21 Plaintiffs,
22 v.
23 SAP AG, *et al.*,
24 Defendants.

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

**PLAINTIFFS' FIFTH AMENDED
AND SUPPLEMENTAL RESPONSES
AND OBJECTIONS TO
DEFENDANT TOMORROWNOW,
INC.'S FIRST SET OF
INTERROGATORIES**

**CONTAINS HIGHLY
CONFIDENTIAL INFORMATION
DESIGNATED PURSUANT TO
PROTECTIVE ORDER**

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2 TEXT REMOVED - NOT RELEVANT TO MOTION
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4 **INTERROGATORY NO. 10:**

5 Describe in as much detail as possible what methods Oracle believes companies that
6 provide third-party support for any Oracle product referred to in the Complaint or at issue in this
7 litigation may permissibly employ in providing such support, including with respect to access to,
8 and Downloading of, the Software and Support Materials.

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

10 In addition to its General Objections, Oracle objects that the phrase “any Oracle product
11 referred to in the Complaint or at issue in this litigation” is vague, ambiguous, and overbroad.
12 The Complaint refers to many Oracle products, including products that are not at issue in this
13 case, like Fusion, and also products that Defendants blocked discovery on during this litigation,
14 such as database technology, Siebel applications and other software products like E-Business
15 Suite, Retek and Hyperion. Accordingly, unless and until additional products are made part of
16 this litigation by order or otherwise, Oracle will interpret “any Oracle product referred to in the
17 Complaint or at issue in this litigation” as applications and Software and Support Materials for
18 legacy PeopleSoft and J.D. Edwards enterprise software applications available from Oracle,
19 including through Customer Connection. Oracle further objects that the phrase “companies that
20 provide third-party support” is vague, ambiguous, overbroad, and calls for an unduly
21 burdensome Response from Oracle. “Third-party support” is not defined and thus Oracle cannot
22 determine whether the term refers to third-party maintenance providers, like SAP TN, or other
23 entities, which would be overbroad. Oracle will therefore interpret “third-party support” to refer
24 to entities with business models similar to that of SAP TN. Oracle further objects that this
25 Interrogatory is an improper contention Interrogatory and seeks a legal conclusion, as it calls for
26 Oracle to define what it “believes” is legal or permissible conduct.

27 Subject to and without waiving its objections, Oracle responds as follows:

28 The Software and Support Materials that a third-party is entitled to access and download

1 on behalf of a customer is determined by, and entirely dependent upon, the customer's license
2 agreements, including the attached schedules and exhibits, and any support renewal notices sent
3 to the customer or renewals made by customers, and in the various contracts associated with
4 access to Customer Connection. Therefore, pursuant to Fed. R. Civ. Proc. Rule 33(d), Oracle
5 refers defendants to those documents in Oracle's production.

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

7 Subject to and without waiving the above objections, and pursuant to the extensive meet
8 and confer discussions and agreements as described in more detail above, Oracle further
9 responds that the Software and Support Materials that a third-party is entitled to access and
10 download on behalf of a customer is determined by, and entirely dependent upon, the customer's
11 license agreements, including the attached schedules and exhibits, and any support renewal
12 notices sent to the customer or renewals made by customers, and in the various contracts
13 associated with access to Customer Connection. Therefore, pursuant to Fed. R. Civ. Proc. Rule
14 33(d), Oracle refers defendants to those documents in Oracle's production, including
15 ORCL00000001 through ORCL00007590.

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

17 Oracle further objects to the extent that supplementation would require Oracle to
18 summarize the documents and testimony provided on this subject; Oracle cannot and will not and
19 is not required to do so and incorporates all such evidence by reference into this supplemented
20 answer. Subject to and without waiving the specific and general objections stated above, Oracle
21 further responds that, as its witnesses and Defendants' witnesses have repeatedly testified,
22 everything that an independent third party servicer is entitled to use and do for a particular
23 customer is determined by, and entirely dependent upon, (a) the customer's license agreements,
24 including the attached schedules and exhibits, (b) any support renewal notices sent to the
25 customer or renewals made by customers, and (c) in the various contracts and policies associated
26 with access to Customer Connection. Therefore, pursuant to Fed. R. Civ. Proc. Rule 33(d),
27 Oracle refers defendants to those documents in Oracle's production, including at
28 ORCL00000001 through ORCL00007714, ORCL00051950 through ORCL00052052,

1 ORCL00139148 through ORCL00159820, ORCL00176128 through ORCL00180465 and
2 ORCL00372975 through ORCL00381654. Any third party servicer who leverages, steals, or
3 uses Oracle's software, support materials, and other property beyond the allowed terms in those
4 contracts and/or terms of use is not providing permissible support.


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TEXT REMOVED - NOT RELEVANT TO MOTION

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