

EXHIBIT 36

REDACTED

November 3, 2009

BY EMAIL

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Re: List of 86

Dear Counsel:

This letter concerns Defendants' list of TomorrowNow and SAP customers, currently known as the "List of 86."

First, we write to address a misstatement made in Plaintiffs' October 20, 2009 Motion to Compel Production of Damages-Related Documents and Information ("Motion to Compel"). Specifically, Plaintiffs state that they intend to "seek not only the profits TomorrowNow made from supporting Oracle's applications, but also the profits SAP earned from the now 86 TomorrowNow customers that took SAP's 'Safe Passage' program to move to SAP applications." *See* Motion to Compel at 5:11-13. This is not an accurate description of the List of 86.

As you know, early in the discovery process, Plaintiffs asked Defendants for discovery of all SAP "Safe Passage" customers. Defendants objected that such a request was overly broad given the nature of the Safe Passage program. We noted that many customers who were internally identified by SAP as Safe Passage customers had nothing to do with TomorrowNow. In fact, the definition of "Safe Passage" changed over time, and at times included SAP customers who replaced their PeopleSoft, J.D. Edwards and/or Siebel software with SAP software, regardless of whether the customer had a maintenance agreement with TomorrowNow. After meeting and conferring on the issue, the parties agreed that Defendants would produce financial information for a subset of these so-called "Safe Passage" customers, specifically, only the subset that "purchased TomorrowNow service and SAP products/support simultaneously or were existing TomorrowNow customers at the time they purchased new SAP software or service." *See* June 25, 2009 email between J. McDonnell and A. Donnelly. Thus, the List of 86 is not a list of the TomorrowNow customers that replaced Oracle products with SAP products through the Safe Passage program, but rather, the agreed upon subset of so-called "Safe Passage" SAP customers who had simultaneous

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TomorrowNow purchases or were existing TomorrowNow customers at the time they made a new SAP purchase during the relevant time period (January 1, 2005 through October 31, 2008).

Second, Defendants have spent a great deal of time and effort determining this List of 86. It has been a difficult process, especially in light of the size and complexity of many of the customers and their numerous affiliates and multiple names. Defendants initially generated reports from SAP's internal financial system (the "ISP system") that identified by customer number the customers that had simultaneous SAP and TomorrowNow order entries or had an active support contract with TomorrowNow and subsequently had a new order entry during the relevant time period. Defendants eliminated from this report customers who obviously did not fall within the larger universe of so-called "Safe Passage" SAP customers, such as customers for whom TomorrowNow only supported Baan products and customers who only had order entries for Business Objects products. Defendants then, customer by customer, verified the results of this search through manual searches of the ISP system. Defendants added to the report any customers who fell within the agreed upon parameters that were not accounted for on the report. For example, despite SAP's standard practice of having one customer number per customer, occasionally the TomorrowNow order entry was entered under a different customer number than the SAP order entry. Because the initial report was run by customer number, it did not identify such customers. Defendants did an extremely thorough job in reviewing the relevant records and compiling the List of 86 and Defendants continue to review any additional relevant data that has been located by any party in this case.

Further, as additional customer information came to Defendants' attention during the course of discovery, such as alternative corporate names and information regarding corporate structure, Defendants conducted additional investigations and analysis and updated the List of 86 accordingly. This included conducting further review of the ISP system and speaking with individuals in SAP's sales organization to verify the accuracy of the List of 86. The three most recent additions, (Arvato Services/Bertelsmann AG, NBC Universal/General Electric Corporation and Fujitsu Technology Solutions GmbH (formerly Fujitsu Technology Services)) evidence Defendants' ongoing and extensive efforts to ensure the accuracy of the List of 86.

As part of these ongoing efforts, Defendants recently identified seven customers who may fall within the agreed upon parameters, but cannot be verified by any information or knowledge we have been able to identify within Defendants' custody or control. Specifically, SAP has identified seven former TomorrowNow customers that are subsidiaries of parent companies who are SAP customers. These seven customers may have migrated to SAP via their parent companies' SAP volume contracts. SAP, however, typically does not require its customers to provide information regarding location of software installations (such as at a subsidiary location), rather the customers simply pay for the number of seats they intend to license. Thus, only the customers themselves are able to verify whether or not they fall within the agreed upon parameters. These seven customers include:

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- Brenco, Inc./Amsted Industries, Inc.
- Coors Brewers Limited
- Crayola LLC (a.k.a. Binney & Smith)/Hallmark
- National Manufacturing Company/Stanley Works
- Organon International/Schering-Plough Corporation
- Rolls-Royce of North America, Inc./Rolls-Royce Group plc
- World Kitchen (Asia Pacific) Pte Ltd./WKI Holding Co., Inc.

Defendants provide this information to Plaintiffs as a courtesy and to be transparent in the discovery process. Defendants do not intend to add these customers to the List of 86.

Please let us know if you have any questions.

Very truly yours,

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cc:

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