

# EXHIBIT 38

JUAN C. JONES April 24, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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ORACLE CORPORATION, a  
Delaware corporation, ORACLE  
USA, INC., a Colorado  
corporation, and ORACLE  
INTERNATIONAL CORPORATION, a  
California corporation,

Plaintiffs,

vs.

No. 07-CV-1658 (PJH)

SAP AG, a German  
corporation, SAP AMERICA,  
INC., a Delaware  
corporation, TOMORROWNOW,  
INC., a Texas corporation,  
and DOES 1-50, inclusive,

Defendants.

\_\_\_\_\_  
Deposition of

JUAN C. JONES

\_\_\_\_\_  
Friday, April 24, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: JOHN WISSENBACH, RMR, CRR, CBC,  
CLR, CSR 6862 01-418986

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Q. Do you have any reason to believe that Oracle's retention rates for customers would have been even higher without having to face TomorrowNow's provision of service using Oracle IP at half the price?

MR. McDONELL: Same objections; lack of foundation.

THE WITNESS: Undoubtedly our cancellation rate would have been lower, our renewal rate would

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16:38:40 1 have been, I believe, significantly higher, and we  
16:38:44 2 would not have had the opportunity cost of having to  
16:38:49 3 work in very -- an overwhelming workload against the  
16:38:57 4 TomorrowNow competition, when they were offering the  
16:39:01 5 same thing for half the price.  
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1 4:49 p.m.)

2 ---o0o---

3 I declare under penalty of perjury that the

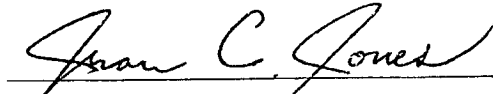
4 foregoing is true and correct. Subscribed at

5 Pleasanton, California, this 15<sup>th</sup> day of

6 May, 2009.

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Signature of the witness

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CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript [X] was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: 4/26/09

  
JOHN WISSENBACH, CSR No. 6862