Doc. 657 Att. 62

Case4:07-cv-01658-PJH Document657-63 Filed03/03/10 Page1 of 5

# **EXHIBIT 62**

## Case4:07-cv-01658-PJH Document657-63 Filed03/03/10 Page2 of 5

Message

From: White, Mark [/O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000120031]

**Sent**: 11/26/2007 4:04:58 PM

To: Tuman, Anne [/O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000127440]; Breuer, Martin

[/O=SAP/OU=EUROPE1/CN=RECIPIENTS/CN=000000114001]; Brubaker, Brad [/O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000043664]; Lavan, Patricia

[/O=SAP/OU=AMERICA1/CN=RECIPIENTS/CN=000000058612]

Subject: FW: TomorrowNow Employee Communication

Attachments: image001.gif

FYI.

Mark

From: Mandy Wheeler [mailto:Mandy\_Wheeler@tomorrownow.com]

Sent: Monday, November 26, 2007 4:49 PM

**To:** all@tomorrownow.com; White, Mark; Tom Nolan **Subject:** TomorrowNow Employee Communication

Below please find an overview of last week's communications regarding TomorrowNow. The purpose of this communication is to ensure that our TN team members are fully and timely informed. Please note that you should not forward this message to anyone either internally within TomorrowNow (since all employees are copied) and externally. This should NOT be forwarded to partners, customers, competitors, or SAP employees.

The letter to customers sent by Andrew Nelson, dated November 1, 2007 was improperly sent to at least one member of the press. While it is currently unknown how this occurred, this is an example of sensitive information about our company that should not be disclosed to any unauthorized person or entity.

#### **Alternatives**

As the press release indicated, SAP is considering all options for TomorrowNow including possible sale. I would point out that at this point in time, there should be no other interpretation or speculation of this statement. Below please find the options.

- a sale of the business
- selling or spinning off parts of the business
- transfer of contracts back to Oracle or to some other third party
- continuation of the business

A sale of the business has some unique challenges. TomorrowNow is a defendant (as is SAP AG and SAP America) in a major lawsuit by its number one competitor. TomorrowNow is also the subject of an active investigation by the Department of Justice. Both of these investigations will require TomorrowNow to retain the assets (computers, laptops, servers, etc.), so any potential buyer will have to fund the IT infrastructure which could make a purchase significantly more expensive. SAP would also need to come to an agreement with a buyer regarding the future liabilities of the business. Other important factors to consider in a potential acquirer is whether they truly have the funding to serve the current customers of TomorrowNow going forward, have the funding to invest in the future growth for the business, and ensure there is long-term career potential for the employees of TomorrowNow. There are several companies that do provide similar services as TomorrowNow that might not be able to meet these criteria and so a sale to them would be extremely unlikely. We would also want to ensure that the senior management team of any buyer is a strong one. Finally, we would want any acquirer to have a business model as close as possible to ours in order to limit TomorrowNow's or SAP's future liability.

Selling or spinning off parts of the business is also an option with several challenges. The same funding and liability challenges would need to be resolved. The concerns around customers and employees are also the same as mentioned above. In addition, any acquirer would need to have adequate business experience regarding the financial and legal

Ex 62 - Page 1 Ex. 1045 White, 3/5/09 requirements. Finally, all of these would also be considered against whether this hinders our ability to sell the entire business or continue the business intact in the future.

It is not a simple decision to transfer the business to Oracle or some other third party. There are many customers who do not want to do business with Oracle in a support-only mode as they may not receive the value that they are getting from TomorrowNow. Many customers are on releases that are no longer supported by Oracle and so going back to Oracle might require a purchase of a new license/new implementation or some minor level of implementation around the latest release. This could be expensive for either the customer or TomorrowNow to ensure this transition. We have no indications that Oracle wants these customers back. We have no indications that any other third party wants to have the contracts transferred to them and whether our customers would permit it.

Relative to the on-going litigation, our next Case Management Conference with the federal judge is scheduled for February, 2008. At that time I would anticipate that Oracle will request more depositions and an extension in discovery as well as moving back the date of the trial. The current trial date is February, 2009 with discovery scheduled to end in July, 2008. I mention this because if we find that the three options above are not possible, it may be that TomorrowNow continues as is. Many of our current customers have expiration dates in their contract closer to the end of 2008. The closer that we get to the trial date with a continuation of the business and having so many customers locked into us until the end of 2008 are a couple of reasons why we would consider keeping the business. This is why SAP announced that it was reviewing alternatives.

## **Organization**

I am pleased to announce that Martin Breuer, Senior Vice President for the SAP Custom Development Group, will be joining the TN leadership team. As of today, Shelly Nelson, John Tanner, Gordon Robinson, Greg Nelson and Mark Kreutz will report directly to Martin. Martin is a graduate of the University of Cologne and joined SAP in 1989 and has held various senior management positions in sales operations, business development and marketing. In 1997, Martin was a member of the SAP Asia Pacific management team. In 2001, Martin became Managing Director of SAP Hosting and subsequently ran the Consumer Products/Life Sciences Global Industry Business Unit. From that position, Martin was the Senior Vice President for Global Sales Operations and Global Initiatives reporting to Leo Apotheker until 2005. I look forward to Martin's experience and assistance, and we will introduce him tomorrow in Denver.

Bob Ludlum, Hendrik Zwart, Albert van Wissen, Mel Gadd, Lesley Loftus and Tom Nolan and their respective organizations will report to me along with Martin.

## **Project Level Set/Priorities**

As of last week, we determined that our first priority was to ensure customers had outstanding service through January, 2008. We will be reaching out to those customers who have not yet made the transition to remote support to find a date that is more convenient to them as well as to understand their business constraints regarding remote support. We have to go to remote support, but we also need to honor our contracts and provide outstanding customer support. For those of you who have pushing hard to complete Project Level Set, I thank you and acknowledge your hard work and the difficult discussions with some customers.

#### Compensation/Performance

As I indicated last week, 2007 bonuses (anticipated to be paid out at the end of February, 2008) are not affected by the announcements of last week. They will still be paid based upon the business performance/metrics already communicated to you. As I indicated, I will lobby for additional bonus in recognition of the difficult year it has been.

2007 calibration will continue as planned. I believe it is very important for each employee to receive feedback on their performance.

2008 performance management plans will need to be finalized as planned as we should operate as an ongoing business.

2008 Merit/Promotion compensation will be developed per the original schedule with announcement in March 2008, retroactive to January 1, 2008.

Ex 62 - Page 2

For any employee that does receive an external employment offer, please do not hesitate to let me and your manager know. I am available to discuss your future TN career options with you. I would strongly request that people do not leave in the unprofessional manner that some employees used when they left to join one of our competitors.

## **Employee Meeting**

The employee meeting will occur in Houston the week of January 28, 2008. Please plan your travel accordingly.

#### Competition

I've always believed that once a business model is finalized, that the number one competitor is only one's ability to execute/perform. While some might think our number one competitor is Oracle or perhaps Rimini Street, I would tell you it is still up to us as to how we do in the marketplace. I recognize that Rimini Street and Oracle are contacting our customer base and we need to reassure our customers of our continued support except in certain circumstances (see below). We have already reached out to many of these customers with our plans for supporting them.

### **Communication/External Press**

As I stressed over the phone last week in the employee calls, it is very important that you do not discuss externally what is going on within TomorrowNow. The external press so far has kept their articles and commentary primarily to that which was disclosed in the press release. By keeping quiet, we avoid rumors and speculation, both of which can seriously damage our relationships with our customers and the future of the business. There have only been a handful of such "speculative" articles and that is a good result so I thank everyone for not discussing our business externally, even with friends or neighbors, or outside of the offices in a public setting.

With regards to our customers, you should communicate what is in the press release and that we will continue to support them through year end 2007 and then transition them to remote support.

#### Retention

I hope to have the retention plans finished by early next week with notification occurring later in the week. Note that there will be no "downsizing" in 2007 and any downsizing that might occur in 2008 would still receive the 2007 bonus. At this point in time, my bias is to try to keep the majority of employees in order to ensure that we will meet our customer obligations, although not all will be offered a retention plan.

#### **New Customers/Renewals**

Customers that do not want to go to remote support (Project Level Set) will not be renewed when their contract expires. For other customers who can agree to the terms that we must have, it is possible that we will either take on new customers or renew them. I know that I said last week that we would not be doing this, but I should have given the caveats under which we would do so. I will working with the leadership team to determine whether any new solutions can be rolled out. So, for those of you who might think we are definitely going out of business, that is not the case. We have too many customers to just shut down and if a sale does become possible, I need to balance the creation of a more valued asset against increasing the liability to TomorrowNow and SAP. We are in the process of rolling out the template under which we can take on new customers or renew existing ones.

#### Transfers to SAP

Transfers of TN employees to employment opportunities with SAP are possible under the right timing and circumstances with the obvious criteria of there being a job opening within SAP. Just because there is a business operations "firewall" between SAP and TomorrowNow does not mean that TomorrowNow employees cannot find a home within SAP at some point in the future.

With regard to employees opting out of an acquisition because they do not like the purchaser, TomorrowNow will utilize the SAP Separation Plan and provide severance benefits if the buyer does not offer a "comparable position" which is defined as a position in the new company being within 50 miles or the new position offers at least 90% of your current base salary. The amount offered under the retention plan would still be paid out following the completion of any sale, but not additional severance benefits. As indicated in my opening comments, if a buyer can be found, the SAP very much wants to find a buyer that is a good solution for our customers and our employees.

Ex 62 - Page 3

## Summary

I hope this answers your current questions or concerns. I will be trying to get out to most locations yet this year. The leadership team's next meeting will be the week of January 10, 2008. If you have other questions, do not hesitate to contact me. As you should be able to see from the above, no final decisions on alternatives have been made, we have a business to run and one that still offers the potential of a meaningful career. I look forward to working with you in making TomorrowNow a valued partner to our customers.

Regards,

Mark

Mark White Chairman

610-661-2111 phone

mark.white@sap.com

This e-mail may contain trade secrets or privileged, undisclosed or otherwise confidential information. If you have received this e-mail in error, you are hereby notified that any review, copying or distribution of it is strictly prohibited. Please inform us immediately and destroy the original transmittal. Thank you for your cooperation.