

EXHIBIT 96

Robert A. Mittelstaedt (SBN 060359)
 Jason McDonell (SBN 115084)
 Elaine Wallace (SBN 197882)
 JONES DAY
 San Francisco Office
 555 California Street, 26th Floor
 San Francisco, CA 94104
 Telephone: (415) 626-3939
 Facsimile: (415) 875-5700
 ramittelstaedt@jonesday.com
 jmcdonell@jonesday.com
 ewallace@jonesday.com

Tharan Gregory Lanier (SBN 138784)
 Jane L. Froyd (SBN 220776)
 JONES DAY
 Silicon Valley Office
 1755 Embarcadero Road
 Palo Alto, CA 94303
 Telephone: (650) 739-3939
 Facsimile: (650) 739-3900
 tglanier@jonesday.com
 jfroyd@jonesday.com

Scott W. Cowan (Admitted *Pro Hac Vice*)
 Joshua L. Fuchs (Admitted *Pro Hac Vice*)
 JONES DAY
 717 Texas, Suite 3300
 Houston, TX 77002
 Telephone: (832) 239-3939
 Facsimile: (832) 239-3600
 swcowan@jonesday.com
 jlfuchs@jonesday.com

Attorneys for Defendants
 SAP AG, SAP AMERICA, INC., and
 TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.

Defendants.

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

**DEFENDANT SAP AG AND SAP
 AMERICA, INC.'S SUPPLEMENTAL
 WRITTEN RESPONSE TO ORACLE
 DATABASE RULE 30(B)(6)
 TESTIMONY**

**CONFIDENTIAL PURSUANT TO
 PROTECTIVE ORDER**

1 On December 23, 2009, pursuant to the agreement of the parties, Defendants SAP AG and
2 SAP America, Inc., subject to their objections, provided the following Supplemental Written
3 Response ("Written Response") to the September 30, 2009 Notices and November 23, 2009
4 Amended Notices of Deposition of SAP AG, Inc. and SAP America, Inc. pursuant to Fed. R. Civ.
5 P. 30(b)(6) Regarding Oracle Database ("Notices"). That Written Response supplemented the
6 prior Rule 30(b)(6) testimony on the topics in the Notices by Mr. Georg Schraeder given on
7 November 30, 2009. At Plaintiffs' specific request, Defendants are now submitting a reformatted
8 Written Response which does not modify or alter the substance of the prior Written Response in
9 any form. The Written Response was, and this reformatted Written Response is, intended to be
10 used as an interrogatory response pursuant to Rules 26 and 33 of the Federal Rules of Civil
11 Procedure.

12 SAP AG and SAP America, Inc. (together "SAP") incorporate by reference, as if fully set
13 forth herein, their objections and responses served on November 2, 2009 to the Notices. SAP
14 reserves the right to supplement or amend this Written Response should additional or different
15 information be discovered. This response is made subject to, and without waiving, the attorney-
16 client privilege, work product immunity, or any other applicable privilege. Thus, nothing in this
17 Written Response reveals any attorney-client communications or any information protected by the
18 attorney work product immunity or any other applicable privilege, and SAP will not reveal any
19 such privileged information. Moreover, this response does not, and is not intended to, contain
20 any legal advice or opinions. Subject to and without waiving these objections and qualifications,
21 SAP responds as follows:

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6 F. **What actions, if any, did SAP take to investigate whether TN already had copies of**
7 **Oracle database software on its systems after receiving TN's 2005 requests for a**
8 **standard edition license? Who performed those actions? When did they occur? What**
9 **did SAP learn from those actions?**

10 During the post-acquisition 2005 time period, SAP only had the same general
11 understanding that installations of database server software would likely be used by
12 TomorrowNow as a component of the PeopleSoft enterprise software. Based on communications
13 between TomorrowNow and SAP employees, SAP reasonably understood that TomorrowNow
14 was seeking a license for Oracle database server software, but had no specific understanding that
15 TomorrowNow had, or had been using, such Oracle database server software.

16 In March 2005, the Vice President of Global Automation and IT for TomorrowNow, Greg
17 Nelson, sent a budget review document to John Schaeffer, an SAP employee in the financials
18 department. *See* SAP-OR00844406. This document provided a list of hardware and software
19 TomorrowNow wanted to purchase. This document was created to provide SAP a two-year
20 projection of expenses and permit SAP to analyze the expenses from a financial perspective. In
21 the budget review, TomorrowNow included references to a "Developer License" for Oracle
22 (meaning "Development License," but often referred to as "developer" or "developer's" license).
23 *Id.* This was forwarded to Paul Bigos in SAP's procurement department to determine if the
24 projected IT expenditures were accurate. *Id.* SAP reasonably believes that it was not specifically
25 aware that TomorrowNow already possessed, and was using, Oracle database server software on
26 TomorrowNow's systems or that TomorrowNow was currently relying on a developer's license
27 to use that software at this time.

28 In October 2005, TomorrowNow employees made inquiries to SAP employees regarding
purchasing a license for Oracle database server software and whether or not SAP had a license

1 that would apply to TomorrowNow. Specifically, TomorrowNow contacted SAP employees to
 2 determine the proper channel and process for purchasing a license for "Oracle Standard Edition
 3 for a 4 CPU machine running AIX and a 4 CPU machine running Windows." TN-OR00866631.
 4 In addition, TomorrowNow asked "if TomorrowNow would fall under some enterprise license
 5 agreement established by Oracle with SAP." *Id*; SAP-OR00846609. An SAP employee
 6 responded to the second inquiry and provided a price quote from a third party vendor. These
 7 communications are detailed in Defendants' response to Interrogatory No. 5 of Defendant
 8 TomorrowNow Inc.'s Sixth Amended and Supplemental Response to Plaintiffs' Third Set of
 9 Interrogatories and Defendants SAP AG and SAP America, Inc.'s Fifth Amended and
 10 Supplemental Response to Plaintiffs' Second Set of Interrogatories ("Interrogatory 5"). SAP has
 11 been unable to locate any additional documents or information separate and apart from the
 12 documents and information relied upon to answer Interrogatory 5 related to these October 2005
 13 communications and Mr. Schraeder's 30(b)(6) testimony regarding this time period.

14 Additionally, SAP reasonably believes that there was no investigation during this
 15 timeframe into whether or not TomorrowNow had or used Oracle database server software, nor
 16 an investigation into the license agreement under which TomorrowNow would have used such
 17 database server software. Likewise, SAP is not reasonably aware of any software inventory being
 18 conducted by SAP in this time period that included Oracle database server software which
 19 TomorrowNow may have had on TomorrowNow's network.

20 a. **What actions, if any, did SAP then take to investigate whether TN had**
 21 **adequate licenses for the copies? What did SAP learn from those**
 22 **actions?**

23 Additionally, SAP reasonably believes that there was no investigation during this
 24 timeframe into whether or not TomorrowNow had or used Oracle database server software, nor
 25 an investigation into the license agreement under which TomorrowNow would have used such
 26 database server software. Likewise, SAP is not reasonably aware of any software inventory being
 27 conducted by SAP in this time period that included Oracle database server software which
 28 TomorrowNow may have had on TomorrowNow's network.

b. **What, if anything, did SAP do in response to any internal investigation (including any communications with Oracle or TN or directives to TN)?**

Additionally, SAP reasonably believes that there was no investigation during this timeframe into whether or not TomorrowNow had or used Oracle database server software, nor an investigation into the license agreement under which TomorrowNow would have used such database server software. Likewise, SAP is not reasonably aware of any software inventory being conducted by SAP in this time period that included Oracle database server software which TomorrowNow may have had on TomorrowNow's network.

G. **What actions, if any, did SAP take to investigate whether TN already had copies of Oracle database software on its systems after receiving TN's 2006 requests for a standard edition license? Who performed those actions? When did they occur? What did SAP learn from those actions?**

During the 2006 time period, SAP only had the same general understanding that installations of database server software would likely be used by TomorrowNow as a component of the PeopleSoft enterprise software. Based on communications between TomorrowNow and SAP employees, SAP reasonably understood that TomorrowNow was seeking a license for Oracle database server software, but had no specific understanding that TomorrowNow had, or had been using, such Oracle database server software.

In January 2006, a TomorrowNow employee contacted SAP employees to follow up on the October requests. Specifically, he asked about (1) the process for requesting an Oracle standard edition license and (2) "if TomorrowNow would fall under some enterprise license agreement established by Oracle with SAP?" SAP-OR00842808-11. The details of this communication are provided in Defendants' current response to Interrogatory 5. After an extensive review, SAP has been unable to locate any additional documents or provide further information separate and apart from the documents and information relied upon to answer Interrogatory 5 related to the January 2006 communications.

In March 2006, there was a follow-up communication from a TomorrowNow employee to a SAP employee regarding the January 2006 communication referenced above. SAP-OR00847764-67. TomorrowNow employees also separately contacted SAP employees

1 requesting information relating to the procurement of Oracle database software server licenses.
2 TN-OR01040841-46. In response, SAP provided quotes for the requested products. TN-
3 OR01029489-93 (Neither Paul Bigos nor Frederick Voss recall whether or not a conversation
4 occurred with George Lester as indicated in this March 31, 2006 email, and therefore neither
5 recall the substance of that communication). The details of these communications are provided in
6 Defendants' current response to Interrogatory 5. After an extensive review, SAP has been unable
7 to locate any additional documents or information separate and apart from the documents and
8 information relied upon to answer Interrogatory 5 related to the March 2006 communications.

9 In September 2006, SAP employee Mark Hulett informed Reiner Schmitt, also an SAP
10 employee, that Greg Nelson had made an inquiry regarding software licensing and management.
11 *See, e.g.*, SAP-OR00788614-16. In response to Mr. Schmitt's questions regarding what was
12 needed, Mr. Nelson stated "what is the complete 'library' of software I can request through SAP
13 and what is the cost?" *Id.* Mr. Nelson included in his list "Database (Oracle/DB2/SQL Server,
14 etc)." *Id.* The details of this communication are provided in Defendants' current response to
15 Interrogatory 5. Mr. Nelson's request was subsequently forwarded directly to employees in
16 SAP's procurement department. SAP-OR00788673. After an extensive effort, SAP has been
17 unable to locate any additional documents or information separate and apart from the documents
18 and information cited above and those relied upon to answer Interrogatory 5 related to the
19 September 2006 communications. SAP also is not reasonably aware of further non-privileged
20 discussions related specifically to TomorrowNow's obtaining a license for Oracle database
21 products prior to March 22, 2007 other than as discussed above and in Interrogatory 5. Moreover,
22 Chris Faye has no recollection of any communications with Greg Nelson regarding the topic of
23 Oracle database software licensing.

24 Additionally, SAP reasonably believes there was no investigation during this timeframe
25 into whether or not TomorrowNow had or used Oracle database server software, nor an
26 investigation into the license agreement under which TomorrowNow would have used such
27 database server software. Likewise, SAP is not reasonably aware of any software inventory being
28 conducted in this time period that included Oracle database server software which TomorrowNow

1 may have had on TomorrowNow's network.

- 2 a. **What actions, if any, did SAP then take to investigate whether TN had**
 3 **adequate licenses for the copies? What did SAP learn from those**
 4 **actions?**

5 **Additionally, SAP reasonably believes there was no investigation during this timeframe**
 6 **into whether or not TomorrowNow had or used Oracle database server software, nor an**
 7 **investigation into the license agreement under which TomorrowNow would have used such**
 8 **database server software.** Likewise, SAP is not reasonably aware of any software inventory being
 9 conducted in this time period that included Oracle database server software which TomorrowNow
 10 may have had on TomorrowNow's network.

- 11 b. **What, if anything, did SAP do in response to any internal investigation**
 12 **(including any communications with Oracle or TN or directives to**
 13 **TN)?**

14 **Additionally, SAP reasonably believes there was no investigation during this timeframe**
 15 **into whether or not TomorrowNow had or used Oracle database server software, nor an**
 16 **investigation into the license agreement under which TomorrowNow would have used such**
 17 **database server software.** Likewise, SAP is not reasonably aware of any software inventory being
 18 conducted in this time period that included Oracle database server software which TomorrowNow
 19 may have had on TomorrowNow's network.

20 Under Rule 33(d), this Written Response incorporates by reference, as if fully set forth
 21 herein, all documents, discovery responses and testimony cited herein.

22 Dated: February 1, 2010.

JONES DAY

23 By: /s/ Scott W. Cowan
 24 Scott W. Cowan

25 Counsel for Defendants
 26 SAP AG, SAP AMERICA, INC., and
 27 TOMORROWNOW, INC.

PROOF OF SERVICE

I, Grace A. Wayte, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On February 1, 2010, I served a copy of the attached document(s):

DEFENDANT SAP AG AND SAP AMERICA, INC.'S SUPPLEMENTAL WRITTEN RESPONSE TO ORACLE DATABASE RULE 30(B)(6) TESTIMONY

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope and causing such envelope to be hand delivered to the office of the addressee on the date specified above.
- ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Geoffrey M. Howard, Esq.
Holly House, Esq.
Zachary J. Alinder, Esq.
Bree Hann, Esq.
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
geoff.howard@bingham.com
holly.house@bingham.com
zachary.alinder@bingham.com
bree.hann@bingham.com

Executed on February 1, 2010, at San Francisco, California.

By: Grace A. Wayte
Grace A. Wayte