

1 Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
2 Elaine Wallace (SBN 197882)
JONES DAY
3 555 California Street, 26th Floor
San Francisco, CA 94104
4 Telephone: (415) 626-3939
Facsimile: (415) 875-5700
5 ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
6 ewallace@jonesday.com

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

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

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

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,
23 Plaintiffs,
24 v.
25 SAP AG, et al.,
26 Defendants.

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

**DEFENDANTS' REVISED SPECIAL
VERDICT FORM**

1 Pursuant to the Court's Pretrial Instructions, Defendants submitted a proposed special
2 verdict form to the Court on August 5, 2010. *See* ECF No. 731. In light of the Court's recent
3 order on the Parties' motions for partial summary judgment (ECF No. 762) and the Parties' Trial
4 Stipulation and Order (ECF No. 866), the Parties met and conferred in an effort to narrow the
5 disputes relating to the Parties' separately submitted proposed special verdict forms. As a result,
6 Defendants have substantially shortened and revised their proposed special verdict form to reflect
7 the remaining parties and claims at issue in this case and submit the attached revised special
8 verdict form. Defendants' special verdict form may be subsequently updated in light of the
9 parties' ongoing case narrowing efforts and any additional guidance provided by the Court at the
10 September 30, 2010 pretrial conference.

11 Dated: September 23, 2010

Respectfully submitted,

12 Jones Day

13
14 By: /s/ Tharan Gregory Lanier
15 Tharan Gregory Lanier

16 Attorneys for Defendants
17 SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORACLE USA, INC., ORACLE
INTERNATIONAL CORP., and SIEBEL
SYSTEMS, INC.

Plaintiffs,

v.

TOMORROWNOW, INC., SAP AMERICA,
INC., AND SAP AG

Defendants.

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

SPECIAL VERDICT FORM

This Special Verdict Form has a list of questions that you, the jury in the above-entitled action, must answer. You must follow the instructions of the Court in answering these questions and must use the form carefully. The form will tell you what to do after each question.

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

Copyright

Plaintiff Oracle International Corp. asserts a claim for direct copyright infringement against TomorrowNow, Inc., as well as claims for indirect (*i.e.*, vicarious and contributory) copyright infringement against SAP America, Inc. and SAP AG.

TomorrowNow, Inc. has elected not to contest liability under the claim of direct infringement for purposes of this case. Thus, with respect to the claim for direct infringement against TomorrowNow, Inc., you only need address whether damages should be awarded against TomorrowNow for direct copyright infringement and, if so, how much.

SAP America, Inc. and SAP AG have elected not to contest liability under the claim for vicarious copyright infringement, but deny any liability under the claim for contributory copyright infringement. Thus, with respect to the claim against SAP America, Inc. and SAP AG for vicarious copyright infringement, you need only address: (1) whether damages should be awarded against SAP America, Inc. and SAP AG for vicarious copyright infringement, and (2) if so, how much.

Additionally, you must determine whether SAP America, Inc. and SAP AG are liable for contributory copyright infringement. If you find SAP America, Inc. or SAP AG liable for contributory copyright infringement, then you must determine: (1) whether damages should be awarded against that party for contributory copyright infringement, and (2) if so, how much.

1. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that any employees, agents, directors or officers of SAP America, Inc. learned of TomorrowNow, Inc.'s conduct with regard to each of the following copyright registrations after it occurred?

[Table of registrations actually asserted at trial.]

If your answer is "yes" for any of registrations listed above, then proceed to the following question.

If your answer is "no" for all of registrations listed above, then proceed to question 3.

2. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that one or more of SAP America, Inc.'s employees, agents, directors or officers, acting within the scope of his/her/their authority, as "scope of authority" is defined in the Court's instructions, on behalf of SAP America, Inc., approved TomorrowNow Inc.'s conduct with regard to the following registrations?

[Table of registrations actually asserted at trial.]

Proceed to the following question.

3. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that any employees, agents, directors or officers of SAP AG learned of TomorrowNow, Inc.'s conduct with regard to each of the following copyright registrations after it occurred?

[Table of registrations actually asserted at trial.]

If your answer is "yes" for any of registrations listed above, then proceed to the following question.

If your answer is "no" for all of the registrations listed above, then proceed to question 5.

If your answer to this question is "no" for all of registrations listed above, and your answer to either question 1 or question 2 was "no" for every listed registration, then proceed to question 11.

4. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that one or more of SAP AG's employees, agents, directors or officers, acting

within the scope of his/her/their authority, as “scope of authority” is defined in the Court’s instructions, on behalf of SAP America, Inc., approved TomorrowNow Inc.’s conduct with regard to the following registrations?

[Table of registrations actually asserted at trial.]

If your answer is “no” for all of registrations listed above, and your answer to question 1 or question 2 was “no” no for every listed registration, then proceed to question 11.

5. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP America, Inc. knew or had reason to know of TomorrowNow, Inc.’s infringement of the works copyrighted by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

If your answer is “yes” for any of the registrations listed above, then proceed to the following question.

If your answer is “no” for all of the registrations listed above, then proceed to question 8.

6. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP America, Inc. materially contributed to TomorrowNow, Inc.’s infringement of the works copyrighted by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

If your answer is “yes” for any of registrations listed above, then proceed to question 8.

If your answer is “no” for all of registrations listed above, then proceed to the following question.

7. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP America, Inc. intentionally induced TomorrowNow, Inc.’s infringement of the works copyrighted by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

Proceed to the following question.

8. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP AG knew or had reason to know of TomorrowNow, Inc.'s infringement of the works copyrighted by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

If your answer is "yes" for any of the registrations listed above, then proceed to the following question.

If your answer is "no" for all of the registrations listed above, then proceed to question 11.

9. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP AG materially contributed to TomorrowNow, Inc.'s infringement of the works copyrighted by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

If your answer is "yes" for all of registrations listed above, then proceed to question 11.

If your answer is "no" for any of registrations listed above, then proceed to the following question.

10. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that SAP AG intentionally induced TomorrowNow, Inc.'s infringement of the works covered by each of the following copyright registrations?

[Table of registrations actually asserted at trial.]

Proceed to the following question.

11. Has Oracle International Corp. proved, by a preponderance of the evidence, that it suffered harm it would not have suffered but for TomorrowNow, Inc.'s infringing conduct, as "but for" is defined in the Court's instructions?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 31.

12. Has Oracle International Corp. proved, by a preponderance of the evidence, that there is a causal relationship between the infringement and TomorrowNow, Inc.'s gross revenue?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 17.

13. What did Oracle International Corp. prove, by a preponderance of the evidence, was TomorrowNow, Inc.'s gross revenue from the use or sale of works that were infringed?

Fill in the dollar amount:

\$ _____

Proceed to following question.

14. What did Oracle International Corp. prove, by a preponderance of the evidence, were TomorrowNow, Inc.'s profits attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

15. What portion of TomorrowNow, Inc.'s profits did TomorrowNow, Inc. prove, by a preponderance of the evidence, was not attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

16. What is the dollar amount, if any, of TomorrowNow, Inc.'s profits that Oracle International Corp. is entitled to?

Fill in the dollar amount:

\$ _____

Proceed to following question.

17. Has Oracle International Corp. proved, by a preponderance of the evidence, that there is a causal relationship between the infringement and SAP America, Inc.'s gross revenue?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 22.

18. What did Oracle International Corp. prove, by a preponderance of the evidence, was SAP America, Inc.'s gross revenue from the use or sale of works that were infringed?

Fill in the dollar amount:

\$ _____

Proceed to following question.

19. What did Oracle International Corp. prove, by a preponderance of the evidence, were SAP America, Inc.'s profits attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

20. What portion of SAP America, Inc.'s profits did SAP America, Inc. prove, by a preponderance of the evidence, was not attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

21. What is the dollar amount, if any, of SAP America, Inc.'s profits that Oracle International Corp. is entitled to?

Fill in the dollar amount:

\$ _____

Proceed to following question.

22. Has Oracle International Corp. proved, by a preponderance of the evidence, that there is a causal relationship between the infringement and SAP AG's gross revenue?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 27.

23. What did Oracle International Corp. prove, by a preponderance of the evidence, was SAP AG's gross revenue from the use or sale of works that were infringed?

Fill in the dollar amount:

\$ _____

Proceed to following question.

24. What did Oracle International Corp. prove, by a preponderance of the evidence, were SAP AG's profits attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

25. What portion of SAP AG's profits did SAP AG prove, by a preponderance of the evidence, was not attributable to the infringement?

Fill in the dollar amount:

\$ _____

Proceed to following question.

26. What is the dollar amount, if any, of SAP AG's profits that Oracle International Corp. is entitled to?

Fill in the dollar amount:

\$ _____

Proceed to following question.

27. Has Oracle International Corp. proved, by a preponderance of the evidence, that it is entitled to copyright damages from TomorrowNow, Inc. in the form of a fair market value license, as "fair market value license" is defined in the Court's instructions?

_____ Yes _____ No

Proceed to the following question.

28. Has Oracle International Corp. proved, by a preponderance of the evidence, that it is entitled to copyright damages from SAP America, Inc. in the form of a fair market value license, as "fair market value license" is defined in the Court's instructions?

_____ Yes _____ No

Proceed to the following question.

29. Has Oracle International Corp. proved, by a preponderance of the evidence, that it is entitled to copyright damages from SAP AG in the form of a fair market value license, as "fair market value license" is defined in the Court's instructions?

_____ Yes _____ No

If your answer is "yes" to any of questions 27-29 above, then proceed to the following question.

If your answer is "no" to all of the questions 27-29 above, then proceed to question 31.

30. What is the amount, if any, that Oracle International Corp. has proved, by a preponderance of the evidence, to be the amount of a fair market value license, as “fair market value license” is defined in the Court’s instructions, from TomorrowNow, or SAP America, Inc., or SAP AG for the infringed works?

Fill in the amount:

\$ _____

Proceed to following question.

Computer Fraud and Abuse Act

Oracle USA, Inc. and Oracle International Corporation claim that TomorrowNow violated five provisions of the Federal Computer Fraud and Abuse Act (“CFAA”). TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for violation of the CFAA, and (2) if so, how much.

31. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow’s violation of section 1030(a)(2)(C) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is “no,” then proceed to question 33.

32. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow’s section 1030(a)(2)(C) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

33. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(2)(C) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 35.

34. What is the dollar amount of damage, if any, that Oracle International Corp. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(2)(C) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

35. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(4) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 37.

36. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(4) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

37. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(4) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 39.

38. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(4) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

39. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(i) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 41.

40. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(i) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

41. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(i) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 43.

42. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(i) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

43. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(ii) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 45.

44. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(ii) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

45. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(ii) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 47.

46. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(ii) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

47. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(iii) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 49.

48. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(iii) violation?

Fill in the dollar amount:

\$ _____

49. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section 1030(a)(5)(A)(iii) of the Computer Fraud and Abuse Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 51.

50. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section 1030(a)(5)(A)(iii) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

Computer Data Access and Fraud Act

Oracle USA, Inc. and Oracle International Corporation claim that TomorrowNow violated four sections of California Penal Code Section 502, known as the California Computer Data Access and Fraud Act ("CDAFA"). TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for violation of the CDAFA, and (2) if so, how much.

51. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(2) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 53.

52. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(2) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

53. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(2) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 55.

54. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(2) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

55. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(3) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 57.

56. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(3) violations?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

57. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(3) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 59.

58. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(3) violations?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

59. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(6) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 61.

60. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(6) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

61. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(6) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 63.

62. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(6) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

63. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(7) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 65.

64. What is the dollar amount of damage, if any, that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(7) violation?

Fill in the dollar amount:

\$ _____

65. Do you find that Oracle International Corporation has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's violation of section (c)(7) of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 67.

66. What is the dollar amount of damage, if any, that Oracle International Corporation has proved, by a preponderance of the evidence, to have suffered as a result of TomorrowNow's section (c)(7) violation?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

Breach of Contract

Oracle USA claims that TomorrowNow is liable for breach of contract. TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for breach of contract, and (2) if so, how much.

67. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's breach of contract?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 69.

68. What is the dollar amount of damage that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of the breach of contract by TomorrowNow, Inc. of the following contracts?

[Table of each contract asserted at trial.]

Proceed to the following question.

Intentional Interference with Prospective Economic Advantage

Oracle International Corp. and Oracle USA, Inc. assert a claim for intentional interference with prospective economic advantage against defendant TomorrowNow. TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for intentional interference with prospective economic advantage, and (2) if so, how much.

69. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow’s intentional interference with prospective economic advantage?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is “no,” then proceed to question 71.

70. What is the dollar amount of damage, if any, from TomorrowNow, Inc. that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of the intentional interference by TomorrowNow, Inc.?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

71. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow’s intentional interference with prospective economic advantage?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is no, then proceed to question 73.

72. What is the dollar amount of damage, if any, from TomorrowNow, Inc. that Oracle International Corp. has proved, by a preponderance of the evidence, to have suffered as a result of the intentional interference by TomorrowNow, Inc.?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

Negligent Interference with Prospective Economic Advantage

Oracle International Corp. and Oracle USA, Inc. assert a claim for negligent interference with prospective economic advantage against defendant TomorrowNow. TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for negligent interference with prospective economic advantage, and (2) if so, how much.

73. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's negligent interference with prospective economic advantage?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 75.

74. What is the dollar amount, if any, of damage from TomorrowNow, Inc. that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of the negligent interference by TomorrowNow, Inc.?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

75. Do you find that Oracle International Corp. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's negligent interference with prospective economic advantage?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 77.

76. What is the dollar amount of damage, if any, from TomorrowNow, Inc. that Oracle International Corp. has proved, by a preponderance of the evidence, to have suffered as a result of the negligent interference by TomorrowNow, Inc.?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

Trespass to Chattels

Oracle USA, Inc. asserts a claim for trespass to chattels against defendant TomorrowNow. Specifically, Oracle USA, Inc. claims that TomorrowNow, Inc. wrongfully trespassed on its personal property. TomorrowNow has elected not to contest liability under that claim for purposes of this case. Thus, you only need address: (1) whether damages should be awarded against TomorrowNow for trespass to chattels, and (2) if so, how much.

77. Do you find that Oracle USA, Inc. has proved, by a preponderance of the evidence, that it is entitled to damages from TomorrowNow for TomorrowNow's trespass to chattels?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 79.

78. What is the dollar amount of damage, if any, from TomorrowNow that Oracle USA, Inc. has proved, by a preponderance of the evidence, to have suffered as a result of the trespass by TomorrowNow, Inc.?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

Punitive Damages

Plaintiffs Oracle International Corporation and Oracle USA, Inc. seek punitive damages against TomorrowNow based on their claims for violation of the Computer Data Access and Fraud Act (Cal. Penal Code § 502(c)(2), (3), (6), (7)) and intentional interference with prospective economic advantage. If you have awarded damages against TomorrowNow on one or more of those claims, you should then consider: (1) whether to award punitive damages against TomorrowNow based on that claim, and (2) if so, how much.

79. Did you award damages against TomorrowNow under Oracle USA, Inc.'s claim for violation of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 82.

80. Did Oracle USA, Inc. prove, by clear and convincing evidence, that conduct committed by TomorrowNow, Inc. that constitutes a violation of the Computer Data Access and Fraud Act constitutes malice, oppression or fraud?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 82.

81. What amount of punitive damages, if any, did Oracle USA, Inc. prove, by clear and convincing evidence, Oracle USA, Inc. is entitled to as a result of this conduct?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

82. Did you award damages against TomorrowNow under Oracle International Corporation's claim for violation of the Computer Data Access and Fraud Act?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 85.

83. Did Oracle International Corporation prove, by clear and convincing evidence, that conduct committed by TomorrowNow, Inc. that constitutes a violation of the Computer Data Access and Fraud Act constitutes malice, oppression or fraud?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 85.

84. What amount of punitive damages, if any, did Oracle International Corporation prove, by clear and convincing evidence, Oracle International Corporation is entitled to as a result of this conduct?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

85. Did you award damages against TomorrowNow under Oracle USA, Inc.'s claim for intentional interference with prospective economic advantage?

_____ Yes _____ No

If your answer is "yes," then proceed to the following question.

If your answer is "no," then proceed to question 88.

86. Did Oracle USA, Inc. prove, by clear and convincing evidence, that conduct committed by TomorrowNow, Inc. that constitutes intentional interference with prospective economic advantage constitutes malice, oppression or fraud?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is “no,” then proceed to question 88.

87. What amount of punitive damages, if any, did Oracle USA, Inc. prove, by clear and convincing evidence, Oracle USA, Inc. is entitled to as a result of this conduct?

Fill in the dollar amount:

\$ _____

Proceed to the following question.

88. Did you award damages against TomorrowNow under Oracle International Corporation’s claim for intentional interference with prospective economic advantage?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is “no,” then proceed to the end of this form.

89. Did Oracle International Corporation prove, by clear and convincing evidence, that conduct committed by TomorrowNow, Inc. that constitutes intentional interference with prospective economic advantage constitutes malice, oppression or fraud?

_____ Yes _____ No

If your answer is “yes,” then proceed to the following question.

If your answer is “no,” then proceed to the end of this form.

90. What amount of punitive damages, if any, did Oracle International Corporation prove, by clear and convincing evidence, Oracle International Corporation is entitled to as a result of this conduct?

Fill in the dollar amount:

\$ _____

Have the presiding juror sign and date this form.

Signed: _____
Presiding Juror

Dated: _____