

EXHIBIT 11

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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

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

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

**PLAINTIFFS' FOURTH SUPPLEMENTAL
AND AMENDED INITIAL DISCLOSURES**

Date: n/a
Time: n/a
Judge: The Honorable Phyllis J. Hamilton
Courtroom: TBD

**CONTAINS INFORMATION
DESIGNATED HIGHLY
CONFIDENTIAL PURSUANT TO
PROTECTIVE ORDER**

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

TEXT REMOVED - NOT RELEVANT

8 **III. COMPUTATION OF DAMAGES¹**

9 Oracle has presented in the November 16, 2009 expert report of Paul Meyer a
10 detailed quantification of the damages it will seek at trial, including the methodologies and
11 extensive evidentiary record and other support for the stated amounts. As noted in that report,
12 discovery is ongoing and Mr. Meyer will consider all outstanding relevant discovery in his final
13 opinions and testimony. In addition, legal rulings (such as on Defendants' pending summary
14 judgment motion on Oracle's fair market value license measure of infringement damages) may
15 affect the final damages methodologies and computations.

16 Though Oracle does not here attempt to include all the material contained in Mr.
17 Meyer's report and in the relevant pleadings and evidentiary record, to recap, in connection with
18 its Fourth Amended Complaint, Oracle seeks damages against Defendants SAP AG, SAP
19 America, Inc., and TomorrowNow, Inc. (collectively referred to as "Defendants") resulting from
20 Defendants' reproduction, distribution, public display, and preparation of derivative works from
21 copyrighted Oracle works, including its software, Software and Support Materials ("SSMs"),
22 software containing SSMs or other copyrighted works, fraudulent access to, theft of, and further
23 misuse of Oracle's underlying software applications as well as SSMs and non-copyrightable
24 support materials, as well as related unfair business practices, interference with Oracle's business
25 relationships, breaches of contract, and unjust enrichment at the expense of Oracle. Based on the

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27 ¹ Oracle also seeks injunctive relief.

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1 evidentiary record to date, Defendants' actions have resulted in the following categories of harm:

- 2 • Lost, diminished, or delayed current and prospective customer revenues and
3 profits, including as they relate to support and maintenance and software
4 applications licensing;
- 5 • Harmed current and prospective customer relationships, even where they did
6 not result in a loss of a customer support contract or software licensing;
- 7 • Devaluation of Oracle's intellectual property and other intangible assets and
8 Oracle's investment in the development and/or purchase of the same,
9 including downward pressure on the value of licenses for, harm to the
10 confidential nature of, minimized competitive advantages regarding,
11 destruction of Oracle's exclusive exploitation of and remuneration of, and the
12 denial of Oracle's licensing rights and revenues regarding the same;
- 13 • Loss of goodwill, including reputational harm and costs associated with
14 addressing Defendants' illegal conduct;
- 15 • Harm to Oracle's overall market cap;
- 16 • Harm and impairment to Oracle's customer support websites and underlying
17 customer support data, including impaired access to the same by Oracle and
18 its legitimate customers, harm to Oracle's control of and the ability to use the
19 same by Oracle and its customers for the purposes for which they were
20 intended, including to improve Oracle's customer support processes, and harm
21 to the functionality of these systems; and,
- 22 • Costs associated with investigating, mitigating (including for example
23 lowered prices, time, and effort to retain customers, or to address reputational
24 harm), and litigating against all these activities.
- 25 • The host of other damages attested to by Oracle witnesses, including, *e.g.*,
26 Juergen Rottler, such as the abandonment of existing PeopleSoft customer
27 contract step-up renewal price escalations, the early adoption and generous
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1 terms of Oracle's Lifetime Support and Applications Unlimited programs, and
2 additional spends on customer support enhancements

3 Some of the above types of damage include elements that are irreparable in
4 nature.

5 Oracle has ten causes of action; some of the damages described overlap and
6 different plaintiffs bring different causes of action. Oracle would not seek or be entitled to
7 duplicate recovery, though it will likely seek damages in the alternative.

8 A. In connection with its Copyright Infringement cause of action, Oracle has
9 alternative measures of its damages available to it under the law. Oracle seeks from Defendants
10 the value of the copyrighted material Defendants infringed both through the fair market value
11 methodologies described in Mr. Meyer's expert report and, in the alternative, through lost
12 profits and/or infringers' profits analyses, also described in Mr. Meyer's report.

13 Oracle expects to seek to recover damages based on the fair market value of the
14 PeopleSoft, J.D. Edwards, Siebel, and Database applications and support material infringement
15 by Defendants. The legal and industry approved intellectual property valuation tests and the
16 authorities in support are set out in detail in Mr. Meyer's expert report and also in Oracle's
17 September 23, 2009 Opposition to Defendants' pending Motion for Partial Summary Judgment
18 Re Oracle's [Fair Market Value] Hypothetical License Damages Claims ("Opposition"). In
19 summary, the value of Defendants' use of the PeopleSoft, J.D. Edwards, Siebel, and Database
20 infringed materials are determined by the IP valuation approaches described in Mr. Meyer's
21 report and also in his Declaration in support of Oracle's Opposition, all of which use various
22 factors to establish the objective fair market value of the infringed rights, as evidenced by the
23 circumstances at the time (*e.g.*, for Oracle – the fact that Oracle had just paid significant amounts
24 for the companies, the anticipated value to Oracle of the PeopleSoft, J.D. Edwards, and Siebel
25 acquisitions, the anticipated impact of having SAP able to support Oracle's acquired customer
26 base); for Defendants – the fact that the acquisitions significantly increased Oracle's threat to
27 SAP, the anticipated value to SAP of the TN acquisition, the amount that would not have to be
28 expended by Defendants to legitimately create what they would instead license (which was also

1 the subject of expert analysis and relied upon by Oracle's damages experts). As Oracle's
2 damages expert report states, the fair market value of the infringed materials total in the billions
3 of dollars.

4 Oracle's alternative lost profits and infringers' profits analyses for its copyright
5 infringement claims against Defendants were also provided in Mr. Meyer's damages expert
6 report. The lost profits and infringers' profits measurements overlap in part with the lost profits
7 measurements stemming from Oracle's alternative claims (described below). The combined lost
8 profits and infringers' profits analyses currently encompass all the lost profits for support
9 associated with the parties' long agreed upon list of support customers who left Oracle,
10 PeopleSoft, J.D. Edwards, or Siebel for SAP and TN. In his infringers' profits analysis, Mr.
11 Meyer also includes profits for lost license sales for the approximately 90 customers who bought
12 not only support from TN but additional products and services from SAP..

13 In his expert report, Mr. Meyer has also done a preliminary quantification of the
14 fair market value of/lost profits/unjust enrichment related to Defendants' unlicensed use of
15 Oracle's database products. He describes the number and prices of the database licenses (and the
16 sources of those metrics) that the limited evidence to date provided by Defendants indicates
17 Defendants should have secured from Oracle but did not. Evidence relevant to Oracle's lost
18 profits/infringers' profits analyses is contained, for example, in Defendants' multiple internal and
19 external reports of the revenues taken away from Oracle by TN and by the Safe Passage program
20 and in requested productions from Defendants concerning gross revenues, expenses, and margins
21 associated with those programs and with the list of relevant customers, in the voluminous
22 customer contracts and related files produced by the parties, in the customer financial reports that
23 the parties have created and produced, in Oracle's At Risk reports and TN win-back
24 spreadsheets, in the customer depositions and declarations, and in the extensive documents on
25 support renewal cancellations and license wins and losses against SAP and TN. As stated in its
26 damages expert's report, the lost revenues associated with support losses as to the agreed upon
27 list of TomorrowNow customers exceed \$300 million dollars. Oracle's infringers' profits
28 analysis includes the profits on the revenues SAP and TN made from their copyright

1 infringement, including some or all of the approximately \$40 million TN reported as revenues,
2 and a portion of the approximately \$500 million in license revenue associated with SAP's
3 leverage of TN and Safe Passage in the sale of license applications. Further evidence in support
4 of this aspect of Oracle's damages is described in section E below.

5 B. Portions of Oracle's damages from Defendants' violations of the Federal
6 Computer Fraud and Abuse Act, of the Computer Data Access and Fraud Act, and in connection
7 with Defendants' Trespass to Chattels were testified to by Dr. Koehler in his Fed. R. Civ. Proc.
8 30(b)(6) deposition. He also provided a written outline of harm and damages to Oracle's
9 computer systems, databases, data, and network, Ex. 167, from which he testified. Oracle refers
10 Defendants to that testimony and the accompanying exhibits. Further, Defendants took a Rule
11 30(b)(6) deposition related to the harm to the Siebel computer systems and data on October 15,
12 2009, and Oracle refers Defendants to that testimony. Further, Defendants own extensive
13 records of their computer access and fraud, and their own deposition testimony related to these
14 issues confirms the damage to Oracle's computers, data, and systems. In addition, Defendants'
15 actions adversely impacted Oracle's goodwill and caused it to lose business. These damages
16 overlap in large measure with those described below related to Defendants' breach of contract
17 and interference with Oracle's prospective economic advantage; they are not bounded by
18 Defendants' infringement of copyrighted materials. Oracle's damages expert included a formal
19 computation in his report. In addition, as allowed by statute or law, Oracle will seek its tens of
20 millions of dollars of associated attorneys' fees and other litigation costs, as well as punitive
21 damages, in an amount to be proved at trial.

22 C. Oracle's damages from Defendants' breaches of contract overlap with its
23 lost profits analysis, described below. Moreover, the breach of contract damages are distinct
24 from Defendants' infringement of copyrighted materials, as described in Oracle's responses to
25 Defendants' Fifth Set of Interrogatories.

26 D. The harm from Oracle's interference claims overlaps in part with its
27 alternative infringement lost profits analysis, described above, albeit with different plaintiffs.
28 However, as described in detail in Oracle's responses to Defendants' Fifth Set of Interrogatories

1 (and as highlighted in a number of the bullet points above), Defendants have interfered with
2 Oracle's current or prospective customer relationships, in ways that do not solely involve
3 copying, distribution, public display, or creation of a derivative work, causing further and
4 additional lost profit damages and other types of harm like harm to goodwill and other
5 reputational harm. Because of the willfulness of Defendants' interference, including TN and
6 SAP's knowledge of the illegality of TN's method of service delivery and their lengthy failure to
7 correct and make legal that business delivery despite knowing of its existence from due diligence
8 and continuing that illegal business model for over a year and a half after being sued by Oracle,
9 Oracle will also be seeking significant punitive damages, in an amount to be proved at trial.

10 E. Defendants were also unjustly enriched and received ill-gotten gains at the
11 expense of Oracle, other than as described in its copyright infringement action, by all the illegal
12 conduct and other unfair business practices listed in Oracle's Fourth Amended Complaint and as
13 described in Oracle's responses to Defendants' Fifth Set of Interrogatories. Mr. Meyer describes
14 and quantifies the two components of Defendants' unjust enrichment Oracle is seeking at trial:
15 the \$1.1 to \$3.5 billion in expenses Defendants avoided in taking from Oracle the above-
16 described material rather than legitimately creating it (which is also be the subject of Oracle
17 expert Paul Pinto's report and analysis and relied upon by Oracle's damages experts) and the
18 \$24.7 to \$88.4 million in avoided database license fees. Relevant evidence includes Oracle's at-
19 risk reports and other customer financial reports and evidence as to the amount that Defendants
20 saved in taking from Oracle the above-described material rather than legitimately creating it.
21 The evidence in support of the database license fees Defendants avoided is described above and
22 in that section of Mr. Meyer's report.

TEXT REMOVED - NOT RELEVANT

1 DATED: March 30, 2010

2 Bingham McCutchen LLP

3
4 By:  _____

5 Geoff Howard

6 Attorneys for Plaintiffs

7 Oracle USA, Inc., Oracle International Corporation,
8 Oracle EMEA Limited, and Siebel Systems, Inc.

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PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence by U.S. Mail and Electronic Mail, and they are deposited and/or sent that same day in the ordinary course of business.

Today I served the following document:

PLAINTIFFS' FOURTH SUPPLEMENTAL AND AMENDED INITIAL DISCLOSURES

(BY ELECTRONIC MAIL) by transmitting via electronic mail document(s) in portable document format (PDF) listed below to the email address set forth below on this date.

(BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

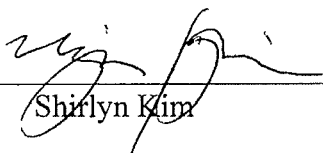
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on March 30, 2010, at San Francisco, California.



Shirlyn Kim