

# **EXHIBIT N**

**ORACLE USA, INC., ET AL**

**V.**

**SAP AG, ET AL**

**CIVIL ACTION No. 07-CV-01658 PJH (EDL)**

**SECOND SUPPLEMENTAL REPORT OF PAUL K. MEYER**

**TM FINANCIAL FORENSICS, LLC  
APRIL 20, 2012**

  
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PAUL K. MEYER

## I. INTRODUCTION

1. I issued an initial Expert Report in this matter on November 16, 2009, which was replaced and superseded by my Supplement Expert Report issued February 23, 2010. As indicated in those reports, TMF was retained by Plaintiffs to address financial and damage issues resulting from Defendants' alleged acquisition, copying and use of Oracle's intellectual property, including copyrighted software products and other confidential materials. I provided expert testimony as to financial and damage issues at deposition and at the November 2010 trial ("the 2010 trial") in this matter. I understand that as a result of certain post-verdict rulings of the Court, a new trial is scheduled for this matter in June 2012 ("the 2012 trial").
2. The purpose of this Second Supplemental Report is to update my analysis of SAP's profits (infringer's profits) from SAP and TomorrowNow's infringement of Oracle's copyrighted software and support materials. Specifically, I have updated my analysis of SAP's infringer's profits for the passage of time since December 2008. SAP provided revenue data through December 2008 related to the 86 TomorrowNow Customers identified by SAP as having purchased TomorrowNow support services and SAP products or services simultaneously, or that were existing TomorrowNow customers at the time that they purchased new SAP software or service ("List of 86").<sup>1</sup> We understand that SAP identified several additional customers for which no financial information was provided for the period up to December 2008, and SAP has not provided any financial information for any customers for periods after December 2008.

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<sup>1</sup>As explained in my Supplemental Report, I understand that Defendants' list of relevant SAP customers has changed over time. I have based my calculations on the latest version provided to me, which I understand was served by Defendants on July 15, 2009 (a list of 83 customers), and supplemented on October 17, 2009 to add 3 additional customers. See SAP file: List of 83.xls; Email from Jason McDonell (Jones Day) to Geoff Howard, et al. (Bingham McCutchen) Re: Customer list adds, dated October 17, 2009; Letter from Jason McDonell (Jones Day) to Geoff Howard (Bingham McCutchen) Re: List of 86, dated November 3, 2009. On November 3, 2009, Defendants identified seven more TomorrowNow Customers that may currently use SAP applications purchased by their parent companies, though SAP has not produced customer-level SAP revenue information [See November 10, 2009 Joint Discovery Conference Statement, pgs. 19-20]. I understand that in preparation for the 2012 trial, Oracle sought to have SAP provide "updated revenue information from SAP for all TN customers." Letter from Geoff Howard (Bingham McCutchen) to Greg Lanier (Jones Day) Re: *Oracle USA, Inc., et al. v. SAP AG, et al., Case No. 07-CV-1658*, dated March 28, 2012. I reserve the right to revise this section of the report and schedules accordingly if additional information becomes available.

3. My current curriculum vitae is included as **ATTACHMENT 1.SSU** to this report. A listing of cases in which I have testified as an expert witness at trial, arbitration and/or deposition in the last 10 years is included as **ATTACHMENT 2.SSU** to this report. **ATTACHMENT 3.SSU** to this report provides a list of the information I have considered in preparation of this Second Supplemental Report.
4. My hourly billing rate on this matter is \$600. I have no publications during the last ten years. TMF's compensation is not dependent on the outcome of this matter. TMF's work on this matter was performed by me or under my supervision.
5. The opinions and analyses in this Report are based on currently available documents and information. I reserve the right to consider and/or supplement my opinions and this report and schedules if further information is made available or provided to me.
6. The evidentiary cites herein are illustrative and not exhaustive. The case record is vast and not every document or piece of testimony on a point is included. I also will consider and modify opinions herein based on future relevant rulings of the court.

## **II. OPINIONS AND ANALYSES**

### **A. Update to Infringer's Profits**

#### **1. Background Information**

7. As explained in my Supplemental Report, SAP's TomorrowNow support offering served as an enabler for SAP to capture Oracle's PeopleSoft, J.D. Edwards and Siebel customers and convert them to SAP applications.<sup>2</sup> SAP provided customer-specific revenue data for the List of 86 customers, including revenue from the sales of licenses, support, training and other services for the period of 2002 to 2008.<sup>3</sup> **SCHEDULE 42.1** to my Supplemental Report provides a summary of revenue received by SAP from sales to the List of 86 customers after the customer started receiving support services from TomorrowNow, by

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<sup>2</sup> See Supplemental Expert Report of Paul K. Meyer, February 23, 2010, Section X.C.

<sup>3</sup>SAP-OR00603615 (SAP Customer Report.xls); SAP-OR00789887 (SAP Customer Report July 2009 Update.xls); SAP-OR00841587 (SAP Customer Report Updated 10-30-09.xls).

revenue type, by year. In the 2010 trial in this matter, I provided an opinion that SAP's infringer's profits were \$236 million through December 2008.<sup>4</sup>

## **2. SAP Additional Revenue Related to TomorrowNow Customers**

8. I understand that SAP may have gained revenue from TomorrowNow customers prior to December 2008 for which financial information was not provided prior to my testimony in the 2010 trial. For example, in November 2009, SAP's counsel indicated that "the List of 86 is not a list of the TomorrowNow customers that replaced Oracle products with SAP products through the Safe Passage program, but rather, the agreed upon subset of so-called "Safe Passage" SAP customers who has simultaneous TomorrowNow purchases or were existing TomorrowNow customers at the time they made a new SAP purchase during the relevant time period (January 1, 2005 through October 31, 2008)."<sup>5</sup> In addition, I understand that there were additional customers identified by SAP or TomorrowNow as Safe Passage customers for which no financial information was provided.<sup>6</sup> I understand that SAP has not produced any financial information on the 86 customers' post-2008 sales data.

## **3. SAP Additional Support Revenue – 2009 Through June 2012**

9. For additional SAP software licenses sold to a TomorrowNow customer, SAP receives annual fees for the support of those licensed products. SAP earns those additional annual support fees for years into the future, as nearly all of SAP's support customers renew their annual support contracts each year.<sup>7</sup> Therefore, for any given software sale to the List of 86 customers prior to December 2008, SAP would expect to receive related annual support revenue beyond 2008.

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<sup>4</sup> **Schedule 42.2.DU.** *Oracle USA, Inc., et al. v. SAP AG, et al.*, Jury Trial, November 9, 2010 p. 1022 (Paul Meyer).

<sup>5</sup> PTX 7035.

<sup>6</sup> *Oracle USA, Inc., et al. v. SAP AG, et al.*, Jury Trial, November 18, 2010 pp. 1851-1853 (Stephen Clarke); PTX 416.

<sup>7</sup> As explained below in Section II.A.3, SAP's annual support renewal rate is approximately 97%. TomorrowNow and SAP documents acknowledge a 10-year duration for a customer support relationship. For example, see "SAP AG Fair Value of Certain Assets, Liabilities and Legal Entities of Business Objects S.A. as of January 21, 2008," SAP-OR 00832546-721, at 638; "TomorrowNow M&A Exploration with SAP AG," SAP-OR00005027-052 (Shenkman Exhibit 215) at 044; Email from Andrew Nelson to Lon Fiala Re: Working financial impact notes, TN-OR 00591548 (Nelson Exhibit 1019).

10. Because SAP has not produced data after December 2008, I have estimated the amount of additional support revenue that SAP has received from January 2009 through June 2012 (the anticipated conclusion of trial). From The List of 86 customers included in my infringer's profits calculation, I have calculated SAP's annual additional support revenue based on the amount of revenue received from a particular customer for support of SAP products in 2008, less any 2008 "on-going revenue" adjustment, to identify the support revenue related to software licenses entered into since the customer contracted with TomorrowNow.<sup>8</sup> To account for potential customer cancellations, I have applied an annual renewal rate of 97%. This renewal rate is consistent with annual support renewal rates reported by SAP in public disclosures, as well as in documents produced in this case.<sup>9</sup>
11. Based on my calculations, I have determined that SAP has received additional SAP support revenue of approximately \$143 million from 2009 through June 2012 as a result of its infringement of Oracle's copyrighted software and support materials.<sup>10</sup> This amount is in addition to the \$472 million in revenue I have already quantified through 2008.<sup>11</sup>

#### **4. Estimated SAP Infringer's Profits on Additional Support Revenue – 2009 Through June 2012**

12. As explained in my Supplemental Report, I understand in these circumstances it is the Defendant's burden to identify and address any appropriate apportionment issues and/or cost deductions.<sup>12</sup> For purposes of determining SAP's infringer's profits related to

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<sup>8</sup> **SCHEDULE 50.1.SSU.** The amount of 2008 "ongoing" revenue that I deducted was provided by SAP's expert, Stephen Clarke. For purposes of this adjustment, I have used these amounts.

<sup>9</sup> For example, see William Blair & Company report "SAP AG - Strong Revenue Growth Driven by North America; Guidance Maintained," October 27, 2010, p. 3; Jefferies & Company, Inc. report on SAG, January 7, 2010, p. 4; SAP Financial Analyst Call Script (edited) Fourth Quarter and Full-Year 2011, January 25, 2011, p. 4; "Annual Service Portfolio Planning," SAP-OR00740304-374, at 333, 352 and 354; "Maintenance 2005-2007 Strategic Business Plan," SAP-OR00379101-162, at 103 and 109; "Strategic Performance Management," SAP-OR00715648-695, at 670.

<sup>10</sup> **SCHEDULE 50.1.SSU.**

<sup>11</sup> \$577,272,651 reported on **SCHEDULE 42.2.DU**, less revenue for <sup>redacted</sup> (\$20,402,217), <sup>redacted</sup> (\$68,064,775) and <sup>redacted</sup> (\$16,955,477). The total revenues reported by SAP for all 86 customers was approximately \$900 million. See Supplemental Expert Report of Paul K. Meyer, February 23, 2010, ¶ 435.

additional support revenue received from 2009 through June 2012, I have applied a profit margin of 75% to the SAP support revenues.<sup>13</sup>

13. After applying a profit margin of 75%, I have calculated SAP's infringer's profits on additional support revenue from 2009 through June 2012 to be approximately \$107 million.<sup>14</sup> This amount is in addition to the \$236 million in infringer's profits I have already quantified through 2008.<sup>15</sup>
14. The total of \$343 million in infringer's profits does not include any additional profits that SAP earned on additional software license sales and/or professional services subsequent to December 2008 related to the 86 customers. It also does not include any additional profits that SAP earned on software license sales, support and/or professional services for TomorrowNow customers identified by SAP or TomorrowNow as Safe Passage customers for which SAP has not produced any financial information. Documents indicate that SAP expected to make additional license sales due to TomorrowNow over time, including after 2008.<sup>16</sup>

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<sup>13</sup> SAP's gross margin on support revenue is approximately 85% [See SAP-OR00832955; SAP-OR00833008; "Annual Service Portfolio Planning," SAP-OR00740304-374, at 352]. Consistent with my Supplemental Report, I have deducted an additional 10% to account for estimated sales related costs (commissions) reported by SAP within Sales and Marketing expenses [See Supplemental Expert Report of Paul K. Meyer, February 23, 2010, ¶ 133].

<sup>14</sup> **SCHEDULES 50.SSU AND 50.1.SSU.**

<sup>15</sup> \$288,636,326 reported on **SCHEDULE 42.2.DU**, less <sup>redacted</sup> (\$10,201,109), <sup>redacted</sup> (\$34,032,388) and (\$8,477,739); *Oracle USA, Inc., et al. v. SAP AG, et al.*, Jury Trial, November 8, 2010, p. 1021:1022 (Paul Meyer).

<sup>16</sup> "Safe Passage Sales Brief," SAP-OR00042962-967 (Hurst Exhibit 175); PTX 24.