

1 BINGHAM McCUTCHEN LLP  
 DONN P. PICKETT (SBN 72257)  
 2 GEOFFREY M. HOWARD (SBN 157468)  
 HOLLY A. HOUSE (SBN 136045)  
 3 ZACHARY J. ALINDER (SBN 209009)  
 BREE HANN (SBN 215695)  
 4 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 5 Telephone: 415.393.2000  
 Facsimile: 415.393.2286  
 6 donn.pickett@bingham.com  
 geoff.howard@bingham.com  
 7 holly.house@bingham.com  
 zachary.alinder@bingham.com  
 8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 10 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 11 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 12 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com

13 Attorneys for Plaintiffs  
 14 Oracle USA, Inc., Oracle International Corporation, and  
 Oracle EMEA Limited  
 15

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN FRANCISCO DIVISION  
 19

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

No. 07-CV-01658 PJH (EDL)

**DECLARATION OF PAUL K.  
 MEYER IN SUPPORT OF  
 ORACLE'S OPPOSITION TO  
 DEFENDANTS' MOTION TO  
 COMPEL**

**REDACTED**

1 I, Paul K. Meyer, declare as follows:

2 1. I am over the age of 18 and competent to testify to the facts stated in this  
3 declaration. All statements made in this declaration are based upon my personal knowledge and  
4 belief. If called and sworn as a witness, I could and would competently testify as to such  
5 matters.

6 2. I am a Managing Director at Navigant Consulting, Inc. ("NCI") and co-  
7 leader of NCI's national intellectual property practice. NCI is a national business, economic,  
8 financial and damages consulting company that provides services to government agencies,  
9 corporations and counsel. NCI has approximately 1,900 professionals in over thirty five offices  
10 throughout the United States, Canada, Europe and China.

11 **I. BACKGROUND AND EXPERIENCE**

12 3. I am a Certified Public Accountant (CPA), Certified Fraud Examiner  
13 (CFE), Certified in Financial Forensics (CFF) and accredited in business valuation (CPA-ABV).  
14 I am a Consulting Professor at Stanford University in the Graduate School of Engineering, where  
15 I have been teaching a course covering accounting, economics and financial issues for over  
16 fifteen years. I am also a member of the Advisory Board for the McIntire School of Commerce  
17 at the University of Virginia. I graduated from the University of Virginia in 1979. I frequently  
18 lecture on intellectual property valuation, including at the Sedona Patent Conference, the USC  
19 Intellectual Property Institute, the Licensing Executive Society and Law Seminars International.

20 4. I have over 25 years of experience consulting on financial, accounting,  
21 economic and damages matters. I am experienced in financial, economic, damage, and  
22 accounting matters related to the scope of our work, analysis and study on this matter. I have  
23 consulted on numerous intellectual property infringement, misappropriation, valuation and  
24 licensing-related matters. I have analyzed hundreds of claims for lost profits and other financial  
25 and economic impacts, and have analyzed and determined reasonable royalty rates. I have  
26 testified in over 200 depositions and approximately 70 trials and major arbitrations, including  
27 over 30 jury trials.

28 5. My curriculum vitae is included as ATTACHMENT A to this Declaration.

1 A listing of cases in which I have testified as an expert witness at trial, arbitration and/or  
 2 deposition during the last four years is included as ATTACHMENT B to this Declaration. My  
 3 hourly billing rate on this matter is \$600. I have no publications during the last ten years. NCI's  
 4 work on this matter was performed by me or under my supervision.

5 **II. RETENTION AND ASSIGNMENT**

6 6. Oracle retained NCI to address economic and damage issues related to its  
 7 litigation with Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively  
 8 referred to herein as "SAP" or "Defendants").<sup>1</sup> My analyses of Oracle's damages in this matter  
 9 are on-going; I have not yet reached conclusions, nor have I reviewed all of the documentation  
 10 and information that has been produced by the parties in this matter. I understand that fact  
 11 discovery is ongoing.

12 7. The purpose of this Declaration is to address issues related to Defendants'  
 13 request to seek an order compelling Oracle USA, Inc., Oracle International Corporation and  
 14 Oracle EMEA, Ltd. (collectively referred to herein as "Oracle" or "Plaintiffs") to produce the  
 15 entire general ledgers for each Plaintiff corporation.<sup>2</sup> Defendants make this request in their  
 16 Motion to Compel Production of Financial Information from Plaintiffs, dated July 14, 2009.<sup>3</sup>

17 8. I submit this Declaration in support of Oracle's Opposition to Defendants'  
 18 Motion to Compel Production of Financial Information. I make the following statements based  
 19 on my personal knowledge and expertise and, if called as a witness, would be prepared to testify  
 20 competently about them. The basis for my opinions, and materials relied upon are referenced  
 21 herein.

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24 <sup>1</sup> *Oracle USA, Inc. et al. v. SAP AG et al.*, Complaint In Case No. 07-01658 dated March 22,  
 25 2007; *Oracle USA, Inc. et al v. SAP AG et al*, Third Amended Complaint In Case No. 07-01658  
 dated October 8, 2008.

26 <sup>2</sup> Defendants' Motion to Compel Production of Financial Information from Plaintiffs  
 ("Defendants' Motion"), dated July 14, 2009, at 1.

27 <sup>3</sup> Defendants' Motion at 11-12.

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1 **III. SUMMARY OF CONCLUSIONS**

2 9. General ledger detail does not, by mere virtue of being more detailed than  
3 more summary level financial information and/or reports, more closely identify costs related to  
4 sales by product.

5 10. The level of detail provided in a general ledger is generally excessive,  
6 likely to require extraordinary amounts of costs and hours to analyze, and unlikely to result in a  
7 different determination of identifying which costs vary with additional relevant sales than other,  
8 more summary level financial information, which is either available or will be made available.

9 11. Defendants request general ledger information for accounts that are  
10 irrelevant to a lost profits analysis in this case.

11 **IV. GENERAL LEDGER INFORMATION**

12 12. A general ledger is accounting terminology for a set of records that  
13 contains the transactional level detail from all of a company's financial operations. Instead of  
14 being simply organized by the date of each transaction, the general ledger is arranged by account  
15 code which seeks to group like financial transactions together. General ledgers can become quite  
16 complex in large entities and so another document, termed a chart of accounts, is used to provide  
17 a roadmap to the account codes used in the general ledger.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 14. [REDACTED]  
24 [REDACTED]

25 \_\_\_\_\_  
26 <sup>4</sup> Declaration of Alex San Juan in support of Oracle's Opposition to Defendants' Motion to  
Compel ("San Juan Decl."), dated July 27, 2009, ¶ 3.

27 <sup>5</sup> San Juan Decl. ¶ 6.  
28

1 [REDACTED].<sup>6</sup> If there are no account codes established to track costs by  
 2 product, then it is not possible to identify expenses for the PeopleSoft, J.D. Edwards or Siebel  
 3 products by simply reviewing and summarizing selected accounts from the general ledger.

4 **V. DEFENDANTS' APRIL 2009 REQUEST FOR GENERAL LEDGER**  
 5 **DATA**

6 15. I understand that no agreement has been reached regarding the scope of  
 7 what general ledger information might be produced.

8 16. I have been informed by counsel that Defendants were provided (a)  
 9 Oracle's consolidated chart of accounts for fiscal years 2005 through 2009, and (b) Oracle's  
 10 current chart of accounts at the general ledger level for the Plaintiffs in this case. I further  
 11 understand that on April 29, 2009, Defendants identified a subset of accounts for which they  
 12 would like to see detailed transaction level general ledger data ("Defendants' April 2009  
 13 Request"). The subset of accounts chosen by Defendants is a 73 page list of account and line of  
 14 business codes and titles, with approximately 14 pages of account and line of business codes and  
 15 titles per fiscal year.<sup>7,8</sup> I have reviewed the 73 page list of account and line of business codes  
 16 identified by the Defendants, attached as Exhibit F to the Declaration of Holly A. House.

17 17. I understand that the amount of information involved in responding to  
 18 Defendants' April 2009 Request would be in the hundreds of millions of lines of data, and that

19 \_\_\_\_\_  
 20 <sup>6</sup> Declaration of Ivgen Guner in Support of Oracle's Opposition to Defendants' Motion to  
 21 Compel, dated July 24, 2009, ¶ 4.

22 <sup>7</sup> April 29, 2009 Email from Elaine Wallace to Zach Alinder, et al. Re: "Request for production  
 23 of portions of Oracle's general ledger" and attachment "Requested Portions of Oracle's General  
 24 Ledger." Defendants have also requested data on detailed general ledger balance sheet accounts  
 25 for intangible assets, goodwill and deferred revenues (both current and non-current) for 2005  
 26 through the present date.

27 <sup>8</sup> I understand that items included on the 73 page list that have alphanumeric codes, such as  
 28 "YC9 – Marketing – Retail," represent lines of business rather than individual financial  
 statement revenue or expense accounts. In addition, the 73 page list contains mostly "parent"  
 level accounts or lines of business that represent the "roll-up" of more detailed "child" level  
 accounts and lines of business. Transaction-level detail can only be generated at the "child"  
 level, and therefore Defendants' 73 page request, in terms of detailed general ledger data, is  
 much more voluminous than the 73 page list would suggest. See San Juan Decl. ¶ 7.

1 the effort to collect and produce such data would require at least six months of dedicated efforts  
2 from five to ten Oracle personnel.<sup>9</sup>

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4 **VI. DEFENDANTS' MOTION TO COMPEL GENERAL LEDGER**  
5 **DATA**

6 18. I understand that in their motion to compel, Defendants' are now  
7 requesting the entire general ledgers of each Plaintiff in this case, which involves a broader scope  
8 of accounts than what was included in Defendants' April 2009 Request.<sup>10</sup> I understand that the  
9 amount of information involved in responding to such a request would be extremely voluminous,  
10 and that the effort to produce such data would require three months of dedicated effort from five  
11 to ten Oracle personnel.<sup>11</sup>

12 **VII. RELEVANCE AND USEFULNESS OF THE GENERAL LEDGER**  
13 **DATA REQUESTED BY DEFENDANTS**

14 19. I understand Defendants are seeking Oracle's general ledger data for their  
15 evaluation of Oracle's damages on the basis of its lost profits.<sup>12</sup>

16 20. In measuring a company's lost profits, it is accepted damages theory that  
17 the only expenses that should be deducted from lost revenues are those that vary with the  
18 claimed lost sales. Overhead costs that do not vary by lost sales should not be applied to the lost  
19 sales.

20 21. In my experience, some of the general ledger detail that Defendants  
21 request appears to be related to costs that are unlikely to vary with Oracle's lost sales.

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<sup>9</sup> San Juan Decl. ¶¶ 12-13.

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<sup>10</sup> Defendants' Motion at 12; San Juan Decl. ¶ 15.

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<sup>11</sup> San Juan Decl. ¶¶ 19-20.

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<sup>12</sup> Defendants' Motion at 2.

1 [REDACTED] 13

2 22. Moreover, Defendants have requested the detail for accounts where it  
3 appears that the detailed information would serve no incremental benefit relative to summary  
4 information.

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Therefore, obtaining Defendants' requested level of detail appears to provide no benefit to a lost  
10 profits analysis in this case.

11 23. I understand from counsel that production of data is ongoing and that  
12 financial reports containing varying levels of detail related to revenue and expense data have  
13 been produced. I further understand that revenue and expense data, which has been manually  
14 collected or allocated by product and/or generated for each Oracle Plaintiff in this matter, is in  
15 the process of being identified and produced.

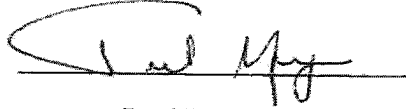
16 24. In my opinion, much of the detailed general ledger information requested  
17 by Defendants may not be relevant to their evaluation of lost profits in this case. Moreover, the  
18 general ledger detail information Defendants request would not provide significant incremental  
19 benefit in identifying costs or expenses by software product, and would be extremely  
20 burdensome both for Oracle to produce, and for SAP to analyze. In my previous experience  
21 analyzing lost profits damages in intellectual property disputes, I have not been required to rely  
22 upon general ledger detailed transactional-level information to determine revenues, costs or  
23 profits.

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25 \_\_\_\_\_

26 <sup>13</sup> For example, see Requested Portions of Oracle's General Ledger, p. 3, 11, 16, 25, 30, 39, 44,  
54, 59 and 70.

27 <sup>14</sup> For example, see Requested Portions of Oracle's General Ledger, p. 2, 16, 29, 44 and 59.  
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1 I declare under penalty of perjury under the laws of the United States that the  
2 foregoing is true and correct and that this declaration is executed at \_\_\_\_\_, California, on  
3 July 2, 2009.

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