

# EXHIBIT E

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21 Siebel Systems, Inc.

22 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
23 OAKLAND DIVISION

24 ORACLE USA, INC., *et al.*,

25 Plaintiffs,

26 v.

27 SAP AG, *et al.*,

28 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**ORACLE'S PROPOSED JURY  
INSTRUCTIONS (FINAL)**

Oracle's Proposed Instruction No. 35

**FEDERAL COMPUTER FRAUD AND ABUSE ACT - DAMAGES**

**(18 U.S.C. § 1030 et seq.)**

If you find that Defendants violated any of the three sections of the CFAA described above, you may award Oracle damages under the CFAA. These damages may include:

- 1) costs of responding to the violation;
- 2) costs of conducting a damage assessment;
- 3) costs of restoring the system and data to its prior condition;
- 4) lost revenues or costs due to interruption of service;
- 5) costs of investigating the violation;
- 6) costs of identifying the violation;
- 7) the value of any business Oracle lost as a result of Defendants' violation of the CFAA; and,
- 8) the value of any goodwill Oracle lost as a result of Defendants' violation of the CFAA.

It is Oracle's burden to prove its damages by a preponderance of the evidence.

Authority: 18 U.S.C. § 1030(g); *Creative Computing*, 386 F.3d 930, 935 (9th Cir. 2004); *SuccessFactors, Inc. v. Softscape, Inc.*, 544 F. Supp. 2d 975 at 980-81 (N.D. Cal. 2008).

Oracle’s Proposed Instruction No. 36

**FEDERAL COMPUTER FRAUD AND ABUSE ACT –**  
**DAMAGES – GOODWILL**

The goodwill of a company is an intangible business asset that reflects the basic human tendency to do business with a merchant who offers products of the type and quality the customer desires and expects. Service and support to the customer and a willingness to stand behind a warranty and other representations about the quality of the products sold are factors in the goodwill of that business.

The goodwill attached to a product is a part of the overall business value that is the goodwill of the company. It is possible, therefore, that the general goodwill of a corporation may be damaged by the loss of goodwill to a particular product or service. Whether this has occurred is a question of fact for you to determine.

Authority: ABA Model Jury Instructions 2.10.2 (Business Torts) (modified).

Oracle's Proposed Instruction No. 46

**INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Oracle claims that Defendants wrongfully interfered with Oracle's economic relationships with current and prospective purchasers and licensees of Oracle's support services and software. I will now instruct you on the law regarding intentional and negligent interference with prospective economic advantage.

Authority: None. Transitional instruction.

Oracle's Proposed Instruction No. 47

**THEORY OF INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Oracle seeks to recover money damages from Defendants, for alleged interference with Oracle's prospective advantage. Oracle contends that Defendants' conduct prevented Oracle from continuing advantageous relationships with current and prospective purchasers and licensees of Oracle's support services and software, and as a result Oracle suffered monetary loss.

The law recognizes that everyone has a right to establish and conduct a lawful business, free from unjustified interference, and is entitled to the protection of organized society, through its courts, whenever that right is unlawfully invaded. Generally speaking, the question for you to decide is whether Defendants invaded Oracle's right to such an expectancy, and whether, under all of the factors I will instruct you to consider, any such invasion was improper.

In these instructions, I will give you the applicable legal principles upon which you are to determine this question.

Authority: ABA Model Jury Instruction 2.2.1 (Business Torts); *Buxbom v. Smith*, 23 Cal. 2d 535 (Cal. 1944).

Oracle's Proposed Instruction No. 48

**INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Oracle seeks to recover damages based upon a claim of intentional interference with prospective economic advantage. The elements of this claim are:

- 1) economic relationships between Oracle and current and future current and prospective purchasers and licensees of Oracle's support services and software which contained a probability of future economic benefit to Oracle;
- 2) Defendants knew of the existence of the relationships;
- 3) Defendants engaged in wrongful conduct designed to interfere with or disrupt these relationships;
- 4) Defendants did so with the intent to interfere with or disrupt these relationships, or with knowledge that the interference or disruption was certain or substantially certain to occur as a result of their actions;
- 5) these economic relationships were actually interfered with or disrupted; and
- 6) the wrongful conduct of Defendants which was designed to interfere with or disrupt these relationships caused damage to Oracle.

If you find that Oracle has proved each of these elements by a preponderance of the evidence, then you will consider the question of the amount of money damages under instructions I will give you.

Authority: BAJI § 7.82; ABA Model Jury Instruction 2.2.2 (Business Torts); B F. O'Malley, J. Grenig & W. Lee, Federal Jury Practice and Instructions §127.01 (5th ed. 2001) (modified).

Oracle's Proposed Instruction No. 49

**NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Oracle also claims that Defendants negligently interfered with a relationship between it and current and prospective purchasers and licensees of Oracle's support services and software that probably would have resulted in an economic benefit to Oracle. To establish this claim, Oracle must prove all of the following:

- 1) Oracle and current and prospective purchasers and licensees of Oracle's support services and software were in an economic relationship that probably would have resulted in a future economic benefit to Oracle;
- 2) Defendants knew or should have known of this relationship;
- 3) Defendants knew or should have known that this relationship would be disrupted if it failed to act with reasonable care;
- 4) Defendants failed to act with reasonable care;
- 5) Defendants engaged in wrongful conduct through breach of contract, computer fraud, trespass, and other illegal acts;
- 6) the relationship was disrupted;
- 7) Oracle was harmed; and
- 8) Defendants' wrongful conduct was a substantial factor in causing Oracle's harm.

Authority: CACI No. 2204 (modified).

Oracle's Proposed Instruction No. 52

**INTERFERENCE – CAUSATION**

You, the jury, must determine whether Defendants were responsible for preventing Oracle from entering into or continuing relationships with current and prospective purchasers and licensees of Oracle's support services and software. In other words, you must decide whether, except for Defendants' interference, there was a substantial probability that support customers would have initiated, renewed or expanded support contracts and software licenses with Oracle.

You may deem Defendants' conduct responsible for Oracle's failure to enter into or continue the relationships above if Defendants' conduct was a substantial factor in causing purchasers and licensees of Oracle's support services and software not to enter into or continue relationships with Oracle.

Authority: ABA Model Jury Instructions 2.5.1-2.5.2 (Business Torts) (modified)

Oracle's Proposed Instruction No. 60

**STATE LAW CLAIMS - COMPENSATORY DAMAGES**

If, after considering the evidence in this case and the instructions of the court, you should find in favor of Oracle on its breach of contract, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, and/or trespass to chattels claims then it is my duty to tell you what damages Oracle is entitled to recover.

You may award Oracle such a sum as you believe, from the evidence, will fairly and reasonably compensate Oracle for any damage it has suffered by reason of the Defendants' acts complained of and for the anticipated profits of which Oracle was deprived, provided they are of such a nature to be beyond the speculative stage.

In determining compensatory damages on these claims, you may consider whether Oracle suffered any measurable loss of profits as a result of Defendants' conduct. In this case, Oracle claims that its support sales and software licensing businesses were affected because of loss of profits Oracle might have earned but for Defendants' conduct.

For lost profits to be recovered there must be a reasonable basis for computing them. Ordinarily, it is sufficient for this purpose to show actual past profits and losses. Although they cannot be taken as an exact measure of future or anticipated profits, you, the jury, should consider those past profits and losses together with the uncertainties and contingencies by which they probably would have been affected. Losses and profits that are mere guesses, speculative, remote, or uncertain should not be considered.

Damages, if any, should be restricted to such losses, if any, as are proved by facts from which their existence is logically and legally inferable. The general rule on the subject of damages is that all damages resulting necessarily, immediately, and directly from the wrong are recoverable, and not those that are contingent and uncertain or mere speculation.

Although a qualified person may make estimates concerning probable profits or losses of a going business, you should, in weighing all such evidence, take into consideration, among other things, the truth or falsity of the basis of such estimates; the knowledge or lack of

1 knowledge of the witnesses of all of the conditions on which the estimate is based; whether the  
2 facts assumed as a basis for an estimate rest upon actual accounts and records kept in the  
3 ordinary course of business rather than in uncertain recollections; and knowledge of the witness  
4 in the particular line of business about which the witness testifies. From all of the evidence in  
5 this case bearing on the subject, you should determine for yourselves the probability or  
6 improbability, and the amount, of profits anticipated by the plaintiff.

7           The difficulty or uncertainty in ascertaining or measuring the precise amount of  
8 any damages does not preclude recovery, and you, the jury, should use your best judgment in  
9 determining the amount of such damages, if any, based upon the evidence.

10           In determining compensatory damages, you may consider whether Oracle  
11 suffered any measurable loss to its goodwill. The goodwill of a company is an intangible  
12 business asset that reflects the basic human tendency to do business with a merchant who offers  
13 products of the type and quality the customer desires and expects. Service and support to the  
14 customer and a willingness to stand behind a warranty and other representations about the quality  
15 of the products sold by a merchant are factors in the goodwill of that business.

16           The goodwill attached to a product is a part of the overall business value that is  
17 the goodwill of the company. It is possible, therefore, that the general goodwill of a corporation  
18 may be damaged by the loss of goodwill to a particular product or service. Whether this has  
19 occurred is a question of fact for you to determine.

20           If you find that Oracle's goodwill has been damaged either by injury to the  
21 goodwill associated with a particular product and/or service or by injury to Oracle's general  
22 business reputation, you may assess such compensatory damages as you may find shown by the  
23 evidence. The measure of the plaintiff's damage is the difference between the value of such  
24 goodwill before and after the acts of the defendant.

25           That Defendants did not actually anticipate or contemplate that these losses would  
26 occur is not a relevant factor for you to consider.

27

28 Authority: ABA Model Jury Instruction 2.10.2 (Business Torts) (modified).