

EXHIBIT G

Appendix 5

NON-ACCUSED CONDUCT METHODOLOGY

This document provides the methodology behind the “Non-Accused Conduct” spreadsheet, which is located in Appendix 4 and is bates numbered SAP-GRA-000001. This methodology provides the framework for the analysis and the relevant data sources considered and relied upon as part of that analysis. Importantly, for the purpose of this analysis, the methodology contained in this document assumes (without conceding) that all of the allegations in the Mandiant Report are true. The purpose of the analysis is to determine what customers may, or may not, potentially be implicated by allegations contained in the Mandiant Report. For the reasons explained in the Report, there are numerous issues with the allegations themselves which are not addressed here. All of the work performed below was either done by me or at my direction and under my oversight.

1. CUSTOMER LIST

The 357 customers included in this analysis are the customers identified by Defendant TomorrowNow in its Second Supplemental Exhibit 1 to its First Set of Requests for Production and Interrogatories to Plaintiffs.¹ Additionally, the alternative names listed for these customers are from TomorrowNow’s Responses to Oracle Corporation’s Second Set of Interrogatories, Interrogatory 1.

2. PRODUCTS SERVICED BY TOMORROWNOW

To create a list by customer of each product TomorrowNow serviced, a review of the SAS exports for the PeopleSoft, JDE World and OneWorld, and Siebel product families was

¹ Customer PRG Schultz, while contained in Exhibit 1, is not included in this analysis. PRG Schultz never actually became a TomorrowNow customer, and thus is excluded from my analysis.

completed.² SAS was also consulted during this process. Based on this review, the customers for each product suite were compiled and recorded in the Columns labeled “PeopleSoft Customer,” “JDE World Customer,” “JDE OneWorld Customer,” “All JDE Customers,” and “Siebel Customer” (Columns C, D, E, F and G, respectively) of the “Non-Accused Conduct” spreadsheet.

3. CONCLUSION 1

In conducting the analysis of Conclusion 1 of the Mandiant Report, all of the types of conduct alleged in the Mandiant Report in this Conclusion was considered, including: whether a customer was included in the JDE “master download pool” referenced in the Mandiant Report at ¶¶ 198 and 199; whether a customer was included in the PeopleSoft “master download pool” referenced in the Mandiant Report at ¶ 198; and whether there were downloads of JDE, Siebel or PeopleSoft software and support materials for a customer on TomorrowNow’s servers at the file paths listed in Defendant TomorrowNow’s Response to Plaintiff Oracle Corporation’s First Set of Interrogatories, Interrogatory No. 11. By including all customers identified from these sources, the analysis yields a potentially over-inclusive list of customers for which there was potential conduct related to the allegations in Conclusion 1 of the Mandiant Report.

3.1 JDE “Master Download Pool”

The results of the analysis relating to this allegation are located in the Column labeled “JDE Master Download Pool,” which is Column H of the “Non-Accused Customer” spreadsheet. The deposition testimony of Mark Kreutz and Plaintiffs’ Deposition Exhibits 62 and 63 were considered in order to determine the customers which were included in the “master download

² See TN-OR06515453 (PeopleSoft); TN-OR06515455 (JDE World); TN-OR06515454 (JDE One World); TN-OR07717977 (Siebel).

pool.”³ Additionally, the deposition testimony of Peter Surette and Exhibit 1466 was considered.⁴ If the testimony and/or exhibits indicated a customer was included in the “master download pool,” then this was recorded.

3.2 PeopleSoft “Master Download Pool”

The results of the analysis relating to this allegation are located in the Column labeled “PSFT Master Download Pool,” which is Column I of the “Non-Accused Customer” spreadsheet. As detailed below, a two-step analysis was conducted. First, based on testimony from TomorrowNow witness Shelley Nelson that TomorrowNow discontinued downloading materials into a “master pool” and began using customer-specific download folders in the second quarter of 2005, the earliest customer-specific downloads on TomorrowNow’s servers were identified.⁵ Second, all customers identified as being on-boarded before the date of the earliest customer-specific download were considered as part of the PeopleSoft “master pool.”

3.2.1 Isolating Date of Earliest Customer-Specific Download

To make this determination, the metadata attached to the downloads contained in the customer-specific download folders located on TomorrowNow server DCITBU01⁶ was analyzed. Specifically, the last written dates of download “Red Paper” files were examined and the earliest last written date was determined. The earliest download based on the last written date of “Red Papers” from any customer specific folder was from May 25, 2005.

³ See February 19, 2008 Deposition of Mark Kreutz at 168:2-169:10.

⁴ See June 19, 2009 Deposition of Peter Surette, at 124:2-10 and Pls. Depo Ex. 1466 at page 3.

⁵ See December 6, 2007 Deposition of Shelley Nelson at 97:22-98:11.

⁶ See TN-OR02989991-98 TN (Hard Drives),27-34

3.2.2 Using On-Board Dates to Determine Which Customers to Consider in “Master Pool”

Customer on-boarding dates were then used to determine which customers were on-boarded prior to May 25, 2005. To determine on-boarding dates, a review of the SAS Enterprise Export spreadsheet, Services tab, Column L “Start Date” was completed.⁷ Any customer on-boarded before May 25, 2005 was conservatively considered as being included in the Mandiant Report’s allegations and this information is recorded in the Column labeled “PSFT Master Download Pool.”

3.3 Downloads on file paths from Interrogatory 11 and servers identified in the Mandiant Report

The results of the analysis relating to this allegation are located in the Columns labeled “JDE World and OneWorld Downloads on file paths from Rog 11,” “Siebel Downloads on file paths from Rog 11,” and “PeopleSoft Downloads on file paths from Rog 11,” which are Columns J, K, and L, respectively, of the “Non-Accused Customer” spreadsheet. All customer-specific folders located under the file paths identified as potential locations for PeopleSoft, JDE, or Siebel downloads in Defendant TomorrowNow’s Response to Plaintiff Oracle Corporation’s First Set of Interrogatories, Interrogatory No. 11 were reviewed. In addition, the TomorrowNow servers identified in the Mandiant Report in Table 12 as having downloads were reviewed to the extent any of those file paths were different from the file paths listed in Interrogatory 11. This examination included the following file paths:

- DCITBU01_G\JDE\JDE Delivered Updates & Fixes;⁸
- DCITBU01_G\PeopleSoft;⁹

⁷ See TN-OR06515453.

⁸ See TN-OR02989995-97, TN(Hard Drive).31-.33.

⁹ See TN-OR02989991-94 and TN-OR02989996, TN(Hard Drive).27-.30, .32.

- DCDL1-2, DCLD4-20;¹⁰
- TN-FS01_F\C\DellRestore\F Drive\PS\PS Delivered Updates & Fixes;¹¹
- The AS/400 ENT01 & World Partitions;¹²
- Tempstore_CE\D\PeopleSoft;¹³
- JD-WSVR01_G\JDE\JDE Delivered Updates & Fixes;¹⁴
- TN-FS02_E\Delivered Updates & Fixes;¹⁵
- TN-FS01_F\C\DellRestore\F Drive\Client Download Links;¹⁶
- TN-FS01_F\C\DellRestore\F Drive\PS\JDE Oneworld International Docs and Release Notes;¹⁷
- TN-FS01_F\C\DellRestore\F Drive\PS\JDE World International Docs and Release Notes;¹⁸
- JDDEV03\D\Downloads\Peoplesoft – which I understand was and will be made available to Plaintiffs for inspection as part of the Data Warehouse protocol
- JDDEV03\D\ESUhtm - which I understand was and will be made available to Plaintiffs for inspection as part of the Data Warehouse protocol
- SBLPROD02\SupportWeb-2007.03.11-PSCU_Financial_Services.rar;¹⁹
- TN-FS01_F\C\Siebel\Clients\Actel;²⁰
- TN-FS01_F\C\Siebel\Clients\ATX;²¹
- TN-FS01_F\C\Siebel\Clients\CSBP;²²

¹⁰ See TN-OR05249607, TN (Hard Drive).82.

¹¹ See TN-OR03678707.

¹² See TN-OR03677098-104, TN-OR03678711-14, and TN-OR04446716.

¹³ See TN-OR03727369, TN(Hard Drive).53 and TN-OR05249613, TN(Hard Drive).84.

¹⁴ See TN-OR03712548, TN(Hard Drive).50 and TN-OR06125331, TN(Hard Drive).86.

¹⁵ See TN-OR06423585, TN(Hard Drive).91.

¹⁶ See TN-OR03678707, TN(Hard Drive).39.

¹⁷ See TN-OR03678707, TN(Hard Drive).39.

¹⁸ See TN-OR03678707, TN(Hard Drive).39.

¹⁹ See TN-OR04232668, TN(Hard Drive).72.

²⁰ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²¹ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²² See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

- TN-FS01_F\C\Siebel\Clients\Everdream;²³
- TN-FS01_F\C\Siebel\Clients\FSC;²⁴
- TN-FS01_F\C\Siebel\Clients\MKS;²⁵
- TN-FS01_F\C\Siebel\Clients\NextiraOne;²⁶
- TN-FS01_F\C\Siebel\Clients\Pomeroy;²⁷
- TN-FS01_F\C\Siebel\Clients\PSCU Financial Services;²⁸
- TN-FS01_F\C\Siebel\Clients\Rockwell;²⁹
- TN-FS01_F\C\Siebel\Clients\Smart Center;³⁰
- TN-FS01_F\C\Siebel\Clients\Standard Register;³¹
- DCITBU01_G\Siebel\Actel;³²
- DCITBU01_G\Siebel\PSCU Financial Services;³³
- DCITBU01_G\Siebel\Standard Register; TN-OR02989998, TN(Hard Drive).³⁴

In examining these file paths, a determination was made as to whether there were JDE, Siebel or PeopleSoft downloads for each customer by manually opening each customer-labeled folder and performing a high level inspection of the contents therein. Through this analysis, if a customer had a customer specific folder that appeared to contain downloaded files, this was recorded in the appropriate Column.

²³ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁴ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁵ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁶ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁷ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁸ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

²⁹ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

³⁰ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

³¹ See TN-OR06577706, TN (Hard Drive).95 and TN-OR07099078, TN(Hard Drive).104.

³² See TN-OR02989998, TN(Hard Drive).34.

³³ See TN-OR02989998, TN(Hard Drive).34.

4. CONCLUSION 2

In conducting the analysis of Conclusion 2 of the Mandiant Report, all of the specific conduct alleged in the Mandiant Report in this Conclusion was considered, including: whether the Mandiant Report identified TomorrowNow as having physical application CDs for a given customer; whether any software for a customer appeared in the CD Jukebox located on the TomorrowNow servers TNFS01 and TEMPSTORE; whether the Mandiant Report identified a PeopleSoft environment on TomorrowNow's network related to a given customer; whether a PeopleSoft environment on TomorrowNow's network related to a given customer appeared in Exhibit C to Interrogatory 82, TN-OR08720040; whether a PeopleSoft environment on TomorrowNow's network related to a given customer appeared in the spreadsheet listing environments on TomorrowNow's systems, TN-OR06515456; whether TomorrowNow maintained a JDE environment for a given customer based on testimony of Mark Kreutz; whether TomorrowNow maintained a Siebel environment for a given customer; and whether uninstalled Siebel software existed for a given customer on TomorrowNow's network.

4.1 Oracle Application CDs Identified in ORCLX-MAN000348

The results of the analysis relating to this allegation are located in the Column labeled "CDs [from ORCLX-MAN000348]," which is Column M of the "Non-Accused Customer" spreadsheet. ORCLX-MAN000348 was reviewed and all customers identified were recorded.

4.2 Software in CD Jukebox

The results of the analysis relating to this allegation are located in the Column labeled "Software in CD Jukebox TNFS01 and TEMPSTORE," which is Column N of the "Non-Accused Customer" spreadsheet. The TomorrowNow servers that comprised the CD Jukebox,

TNFS01³⁴ and TEMPSTORE,³⁵ were reviewed to determine the customers identified in the jukebox. If software attributed to a customer was located in the jukebox, then that information was recorded.

4.3 PeopleSoft Environment on TomorrowNow's System

The results of the analysis relating to this allegation are located in the Column labeled "PSFT Environment on TN System [from ORCLX-MAN00160]," which is Column O of the "Non-Accused Customer" spreadsheet. The spreadsheet entitled "PSFT Environment on TN System," which is located at ORCLX-MAN-0000160, was reviewed. The customer three-letter codes were used to identify the customers for which the environments listed in the spreadsheet tied. The identified customers were recorded.

4.4 PeopleSoft Environment on TomorrowNow's System

The results of the analysis relating to this allegation are located in the Column labeled "PSFT Environment on TN System [from TN-OR08720040, Exhibit C to Rog 82]," which is Column P of the "Non-Accused Customer" spreadsheet. Exhibit C to Interrogatory 82, which is an export from BakTrak listing environments and environment backups (that I understand was originally provided by Plaintiffs to Defendants with the request that Defendants provide the information relating to the source of the install media), was reviewed and all customers identified were recorded.

4.5 PeopleSoft Environment on TomorrowNow's System

The results of the analysis relating to this allegation are located in the Column labeled "PSFT Environment on TN System [from TN-OR06515456]," which is Column Q of the "Non-

³⁴ See TN-OR06577706, TN (Hard Drive).95; TN-OR 06657301, TN (Hard Drive).98.

³⁵ See TN-OR03727369, TN(Hard Drive).53 and TN-OR05249613, TN(Hard Drive).84.

Accused Customer” spreadsheet. TN-OR06515456, which I understand is a list of TomorrowNow customer environments and information related to the environments created by John Baugh for the purposes of responding to written discovery in this case, was reviewed.³⁶ If the spreadsheet indicated that a customer had a local environment on TomorrowNow’s network, this information was recorded.

4.6 JDE Environment on TomorrowNow’s System

The results of the analysis relating to this allegation are located in the Column labeled “JDE Environment on TN System,” which is Column R of the “Non-Accused Customer” spreadsheet. The February 19, 2008 deposition testimony of Mark Kreutz at 8:19-9:18, 62:15-63:17, and 106:11-24, and Deposition Exhibits 45, 52, and 55, were reviewed to determine the customers for which TomorrowNow maintained local JDE environments. The three customers referenced in the testimony and exhibits were recorded.

4.7 Siebel Environment on TomorrowNow’s System

The results of the analysis relating to this allegation are located in the Column labeled “Siebel Environment on TN System,” which is Column S of the “Non-Accused Customer” spreadsheet. The deposition testimony from the September 17, 2009 Deposition of Michael Garafola at 15:23-19:2 and Deposition Exhibit 1623 were reviewed to determine the customers for which TomorrowNow maintained local Siebel environments. The six customers referenced in the testimony and exhibit were recorded.

4.8 Siebel Software on TomorrowNow’s System

The results of the analysis relating to this allegation are located in the Column labeled “Siebel Software on TN System Not Installed,” which is Column T of the “Non-Accused

³⁶ See August 13, 2009 Deposition of John Baugh, at 47:11-49:7.

Customer” spreadsheet. The testimony from the September 17, 2009 Deposition of Michael Garafola at 15:23-19:2 and Deposition Exhibit 1623 were reviewed to determine the customers for which TomorrowNow had Siebel software stored on its servers, but that was not an installed environment on a virtual machine. The customers found to meet this description were recorded.

5. CONCLUSION 3

In conducting the analysis of Conclusion 3 of the Mandiant Report, all of the specific conduct alleged in the Mandiant Report in this Conclusion was considered, including: whether a customer subscribed to receive support from TomorrowNow for PeopleSoft HRMS Legislative (Legs)/Regulatory (Regs) or Extended Support (Retrofit Support) services; whether a customer subscribed to receive support from TomorrowNow for JDE World Financials A7.3 Legs/Regs service; and whether a customer received a PeopleSoft HRMS or JDE World Financials A7.3 fix based on an analysis of what the Mandiant Report refers to as “Delivered Updates & Fixes” (DUF), which are files on TomorrowNow’s Mail03 and Web01 servers; and the customers listed in the Mandiant Report’s Table 34 as being associated with the Master Fix ID number 1012062843.

5.1 PeopleSoft Legs/Regs and Extended Support

The results of the analysis relating to this allegation are located in the Column labeled “PSFT Legs & Regs & Ext Support,” which is Column U of the “Non-Accused Customer” spreadsheet. The SAS Enterprise Database was reviewed to determine each customer that subscribed to TomorrowNow’s Extended Support and Legs/Regs services for all PeopleSoft

HRMS product lines.³⁷ Where the SAS records indicated that a customer subscribed to either service, this information was recorded.

5.2 JDE World Financials A7.3 Legs/Regs Support

The results of the analysis relating to this allegation are located in the Column labeled “JDE World Support,” which is Column V of the “Non-Accused Customer” spreadsheet. The SAS World Database was reviewed to determine each customer that subscribed to TomorrowNow’s Legs/Regs services for JDE World Financials A7.3.³⁸ Where the SAS records indicated that a customer subscribed to this service, this information was recorded.

5.3 Received a PeopleSoft Fix

The results of the analysis relating to this allegation are located in the Column labeled “PSFT Fix Posted,” which is Column W of the “Non-Accused Customer” spreadsheet. The files contained within the Mandiant Report’s DUF folders, which are located on TomorrowNow’s Mail03 and Web01 servers,³⁹ were evaluated to determine whether the file appeared to relate to a PeopleSoft HRMS fix, and, if so, whether any information in the file, file path or file name corresponding to that file, could be used to identify a specific customer. The customers identified through this process were recorded.

5.4 Received a JDE World Fix from Mail03/Web01

The results of the analysis relating to this allegation are located in the Column labeled “JDE World Fix,” which is Column X of the “Non-Accused Customer” spreadsheet. The files contained within the Mandiant Report’s DUF folders, which are located on TomorrowNow’s

³⁷ See TN-OR04446719, TN (Hard Drive).75 at Enterprise View: 1. Support\1. All\Services by Engagement.

³⁸ See TN-OR04446719, TN (Hard Drive).75 at World View: 1. Support\1. All\Services by Engagement.

³⁹ See TN-OR 00009557, TN (Disc).9; TN-OR 04497668 , TN (Hard Drive).78; TN-OR 04497673, TN (Disc).187.

Mail03 and Web01 servers,⁴⁰ were evaluated to determine whether the file appeared to relate to a JDE World Financials A7.3 fix, and, if so, whether any information in the file, file path or file name corresponding to that file, could be used to identify a specific customer. The customers identified through this process were recorded.

5.5 Received a JDE World Fix from Table 34

The results of the analysis relating to this allegation are located in the Column labeled “Listed for Fix # 1012062843,” which is Column Y of the “Non-Accused Customer” spreadsheet. Table 34 from the Mandiant Report, which is a list of customers which SAS identifies as potentially receiving JDE World Master Fix 1012062843 was reviewed. If the Mandiant Report listed a customer for that in Table 34, then this information was recorded.

⁴⁰ See TN-OR 00009557, TN (Disc).9; TN-OR 04497668 , TN (Hard Drive).78; TN-OR 04497673, TN (Disc).187.