EXHIBIT U

Migration of "enormous consequence"

- Supports high value of getting a customer to Switch to SAP.
- Why Safe Passage was launched at time of Oracle / Psft acquisition : enormous Benefits

tangential link with economic (or legal) causation. The criteria were established as a result of an agreement related to Targeted Search Request Number 1 and are not an admission by Defendants as to liability.

The agreed criteria were clarified in a letter from Mr. McDonell to Mr. Geoffrey Howard, Ms. Holly House and Mr. Zachary Alinder (attorneys for Oracle) dated November 3, 2009. The letter makes clear that the List of 86 provided to Oracle was nothing more than "…the agreed upon subset of so-called 'Safe Passage' SAP customers who had 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)."

If a customer satisfied the inclusion criteria, it was added to the list of customers responsive to Targeted Search Request Number 1. The list ultimately had 86 customers on it and became known as the List of 86. Clearly, nothing in the criteria suggests Defendants were admitting that inclusion on the List of 86 established legal or economic causation for the listed customers. It was inappropriate, therefore, for Mr. Meyer to interpret the criteria as an SAP admission of liability for the List of 86 (as he appears to have done).

The List of 86 provided information to Plaintiffs that might be relevant to their discovery in the case.

I understand that for disgorgement in a copyright case the plaintiff's burden is to prove that there was a reasonable probability that the revenues and profits accused were generated as a result of the alleged infringement. Mr. Meyer wrongly assumed that simply being on the List of 86 was sufficient to prove causation and excluded only the few customers that came to his attention as having purchased SAP products or services for reasons other than the Alleged Actions. The fact that a customer is on the List of 86 indicates only that it made SAP purchases during the time it was at TomorrowNow. It says nothing about the reasons why the customer made the SAP purchases. The proper analysis for Mr. Meyer to have made would have been to identify the reasons a customer on the List of 86 bought or licensed SAP products and services during the relevant period and use the information to identify the customers that did so as a result of the Alleged Actions. He failed to do so. Mr. Meyer's fundamental assumption, therefore, is inappropriate and the entire premise underlying his disgorgement analysis is flawed.

10.1.2. Decision to Migrate to SAP Was Not Due to TomorrowNow

The decision to migrate to SAP is one of enormous consequence for the customer,[1024] typically involving millions of dollars worth of license fees, training costs, consulting fees, hardware and middleware costs, and includes all the attendant internal turmoil and disruption related to the transition from one vendor to another, a process that can span several years. Such decisions are entered into only after careful study of the costs and benefits to the company of making the switch and a proper evaluation of the alternatives. Such study usually involves specialist consultants to assist in specifying the system requirements, identifying responsive systems, and helping with the implementation process.

[1024] Sommer Report and also discussed earlier in my report.

TN involvement speculative

- SAP itself believed that TN involvement would result in SAP revenue – was goal of TN acquisition
see Meyer ¶¶55–61, ¶¶439–440

10.1.4
"TN was sole reason an Oracle customer decided to buy products or services from SAP"

- Not Meyer assumption
- But was a factor

Provides no basis for assumption that Safe Passage reporting was inflated

Mr. Sommer, who is an expert in this precise area, confirmed that such decisions are significant events that usually need approval from multiple executives within the company and often from the full board. Therefore, the idea that a customer would go through this arduous, lengthy, and costly process as a result of TomorrowNow's involvement is speculative. The assumption Mr. Meyer made (i.e. that being on the List of 86 is sufficient to prove the economic causation to support a damages claim) is contradicted by the facts as my analysis (described later) show

10.1.3. Decision to Move to SAP Was Made After Product Evaluation

Mr. Sommer's report indicates that the choice of an ERP provider is a decision a compan after evaluating the available alternatives. The ERP evaluation process requires a investment of time and once the purchase decision is made, the company is then face investing even more time and money to implement a new system. Such decisions are no because TomorrowNow could provide support at a price lower than Oracle, whic fundamental assumption of Mr. Meyer's analysis and the evidence shows TomorrowNow drive sales of products and services at SAP, which is another fundamental assumption und Mr. Meyer's analysis. The time and effort spent on due diligence when exploring future ERP systems makes the idea that a customer would evaluate the available ERP vendors' product offerings and select SAP as its application license vendor as a result of TomorrowNow involvement is speculative and neither Oracle nor Mr. Meyer have provided any proof that their assumptions are appropriate.

Basis of Acquiring TN/ under 1 mo due diligence

10.1.4. Customers Left Oracle for SAP Without Going to TomorrowNow

According to Mr. Meyer, TomorrowNow was the sole reason an Oracle customer decided to buy products or services from SAP. However, his assumption is contradicted by the facts. There were approximately 853 Safe Passage customers by the end of the first quarter of 2008 (the latest date for which I have reported data).[1025] Not all of the Safe Passage customers represented replacements of Oracle ERP systems. In addition, I understand that SAP's account executives inflated the Safe Passage numbers and that it was never completely clear what defined a Safe Passage 'deal'.

However, the report (which is the best available information) states that there were 853 Safe Passage Initiative deals including 625 SAP deals and 228 standalone TomorrowNow customers (i.e., no SAP product involved). Therefore, it was reported[1026] that at least 228 customers terminated Oracle support and went to TomorrowNow without going to SAP for products or services; and at most 78[1027] of the 625 SAP customers went to TomorrowNow for support.

The assumption Mr. Meyer is making in his analysis is that TomorrowNow drove customers to cancel Oracle support and because of TomorrowNow's involvement they became SAP licensed customers.

1025 "Oracle Factsheet – Q1 2008." SAP-OR00098932-933, at -933.

1026 Assuming the quoted data are accurate, which is doubtful.

1027 TomorrowNow only ever had 358 customers. If 228 of those were stand alone Safe Passage deals and TomorrowNow had 52 customers when SAP bought the company, at most 78 customers could be SAP Safe Passage customers (358 – 228 – 52 = 78).

have moved to SAP as a result of the Alleged Actions. Mr. Meyer excluded 17 customers,[1030] "…for which evidence indicates that they may have decided to switch to SAP before engaging TomorrowNow."[1031] I concur with Mr. Meyer's rationale of his exclusion of the 17 customers.

I reviewed the evidence related to the remaining 69 customers[1032] Mr. Meyer did not exclude and applied the parameters he defined. Based on my review, Mr. Meyer should have excluded an additional 17 customers (in addition to the 17 he excluded) because they de SAP before engaging TomorrowNow as shown in Appendix E-2.

358 → 17 truncated LP

in 86 Raw Schedule, identified 17 separately

10.2.2. Parent Company Mandate

The period of potential Disgorgement damages (i.e., 2005 through 200 activity in corporate transactions. Acquisitions were across industries an included acquisitions of Oracle customers by SAP customers and (pre When the parent company mandated that their newly acquired subsidiary run on the same software as the rest of the company, the subsidiary had no choice but to accede to the mandate. [redacted] The facts show that the switch to SAP was not related to the Alleged Actions.

I added a customer to this Exclusion Pool if the products supported by TomorrowNow were the products that were mandated to standardize on SAP. Based on the above criterion, I excluded the customers in Appendix E-2.

10.2.3. Competitor Evaluation

From time to time companies reassess their ERP systems. For example, the company may believe the existing system can no longer support the company's level of activity, or the company has accounting, operations or control needs that the existing system cannot provide. Whatever the reason, when the company decides to upgrade their systems or migrate to a new system, they frequently engage in a competitive evaluation of potential vendors for the required software. A customer was included in this Exclusion Pool if the product line or products supported by TomorrowNow were the products that the customer was evaluating and replacing. If the customer in question (i.e., from the List of 86) engaged in a competitive evaluation, the Alleged Actions were not the cause of the change in ERP vendor. Based on the above criterion, I excluded the customers in Appendix E-2.

10.2.4. Standardization

From time to time, major corporations take steps to rationalize their operations, a process that is particularly important for customers with diverse operations (whether the diversity is the result

1030 Schedule 42.SU to the Meyer Report.

1031 Meyer Report, page 255, paragraph 446.

1032 Those customers which have a parent/subsidiary relationship are counted as one customer; 86 – 17 = 69.

10.2.6. Product Extensions

- 13 customers in pool
- Adjusted if customer was not a Safe Passage deal

See Meyer Schedule 42.2.DU

10.2.6

exclude — Sched 42.2.DU

Capital Group
Conagra
General Santa Fe
Interpublic
Petco
Ross
Simon Property
Suburban Propane
TA

9 exclude / 4 Safe passage

10.2.4 Standardization *

- Assumes TN played no role in decision to standardize on SAP
- 39 Customers

22 are safe passage
see Meyer Schedule 42.2.DU

- Ajinimoto	- Allianz
- Apria	- BASF
- Central Garden + Pet	- Coty
	- Durr
- Fireman's Fund	- Harley Davidson
- High Industries	- Honeywell
- Hydro One	- Merck
- Nextiva One	- Petsmart
- Rockwell Automation	- Seattle Public Schools
- SPX	- Triquint
- Veka	- Yazaki Europe
- Zimmer	

- No adjustment

10.2.5. Specific Functionality

- No specific knowledge about whether Oracle could provide
- 4 customers in pool
- Does not know the level of importance of functionality to customer decision
- No adjustment

of geographical differences, operational and/or functional differences, or the result of acquisitions that have never been fully integrated). One solution (among others) is to replace all diverse systems and standardize on one ERP system which occurs when the company selects an ERP vendor and implements the selected ERP solution across the entire company. As Mr. Sommer indicated, companies pursue this path only after extensive analysis of the available options.

Customers are added to this pool if they had multiple product lines (either Oracle only or Oracle and Non-Oracle) and they were standardizing on an SAP solution. The standardization decision would not have been made as a result of the Alleged Actions. Based on the above criterion, I excluded the customers in Appendix E-2.

10.2.5. Specific Functionality

As the record shows, both Oracle and SAP release upgrades to existing software and sometimes create entirely new software in order to keep up with customer demand for particular functionalities. Customers also need their software to perform very specific functions based on the needs of their industry and the needs may change over time. If the required functionality is not found at their current vendor or within their current software, the customer will likely look elsewhere until they find a vendor to supply the needed functionality.

Often a customer could only achieve the desired functionality within their current product line by upgrading, and the upgrade process alone, because it can be such an extensive process, particularly for highly customized environments, causes customers to re-evaluate their software options. For example, Mr. Hurst testified:

> A customer that would be more likely to make the move to SAP would be a customer that is at a point in time where they're – they're forced to do some sort of an upgrade of their current applications. So it's not enough that their current applications are supported; they need more than what they can do. So if they're forced to upgrade, they would be at a point where they would [sic] looking to be making a decision.[1033]

I excluded customers if they had stated their need for specific functionality and researched ERP vendors to find it. Because the customer needed the specific functionality in order to conduct business, it is inappropriate for Mr. Meyer to assume that subsequent purchases were caused by the Alleged Actions.

Based on the above criterion, I excluded the customers in Appendix E-2.

10.2.6. Product Extensions

Many of the customers on the List of 86 had made the decision to purchase products or services from SAP prior to receiving support services from TomorrowNow which, therefore, could not have been the causal link between the customer and its SAP purchases. These customers may have extended their existing SAP software's functionality (e.g., by adding payroll to an existing

1033 Thomas Gene Hurst, II deposition dated April 30, 2008, page 136.

11.2.8 Parent Mandate

- 1 customer in this pool
- Meyer truncates damages
  - Customer would have paid Oracle at least during period it was a TN customer

See Schedule 48.DU

11.2.9 Service Gap

- relies on Sommer only
- Absent TN, customer would have returned to Oracle /paid back support
- 20 customers in pool
- Inaccurate calculation of gaps, ie. different days

See Schedule 48.DU

70% under 3 mo
15% 3 to 6 mo
15% >6 mo

5% >12 mo

11.2.10 No Accused Conduct

- Based on Gray review of Mandia, alleges no copies
- relies on Gray only
- 36 customers in pool
- exclusion allegedly for copyright issues
  - ignores state claims

TP 162 + TP 12 - TP 19 complaint

11.2.8. Parent Mandate

Parent companies may mandate that their subsidiaries change their ERP systems to a new system. Such a change leads to the subsidiary canceling support on their current system at some point. Accordingly, if the parent company mandated that the subsidiary stop paying support, Oracle's loss was not the result of the Alleged Actions. Based on the above criterion, I excluded the customers in Appendix E-3.

11.2.9. Service Gap

Mr. Meyer determined that a four year period between the cessation of Oracle support and the start of support at TomorrowNow was enough of a gap to exclude the customer from his Lost Profits damage analysis.[1057] I agree with his principle but the timeline is too long. Logically, after a customer has self supported or run without support for six months or more, their termination of Oracle support could not be the result of the Alleged Actions. Mr. Sommer indicated that a customer running without support for six months must have terminated Oracle support for reasons unrelated to the Alleged Actions. Therefore, I excluded the customers in Appendix ~~D~~. E-3.9

11.2.10. No Accused Conduct – Lost Profits

I understand that Oracle engaged Kevin Mandia to evaluate the "means and methods by which [TomorrowNow] accessed and downloaded from Oracle's customer support websites, as well the nature and extent of [TomorrowNow's] customers" and that he generally reached the following conclusions:

1. TomorrowNow engaged in mass downloading from and improper access to Oracle systems

2. TomorrowNow made thousands of full or partial copies of Oracle enterprise application software and database software

3. TomorrowNow's fix development and delivery process resulted in significant cross-use and contamination

4. TomorrowNow continued to access, download, copy, modify and distribute Oracle enterprise application software and support materials after Oracle filed this action.

I understand that Defendants engaged Mr. Gray to analyze Mr. Mandia's report and analysis regarding the conclusions above and Mr. Gray determined that, even assuming Mr. Mandia was correct, the accused conduct does not apply to all of TomorrowNow customers. Accordingly, I have excluded the customers for which there was no accused conduct from the Lost Profits damage analysis. I listed these customers in Appendix E-3. E-3.10

1057 According to Mr. Meyer's Schedule 33.3.SU, Everdream and Powerway had a four year gap between the cessation of Oracle support and TomorrowNow support beginning. He excluded these customers solely on this basis.

11.3.1 Budget Constraint

- not used
- similicr to:
  #2 cost
  #9 financial distress
  #18 price increases

11.3.2 cost

- not used
- similar to:
  #1 budget constraint
  #9 financial distress
  #18 price increases

Oracle even outlined the type of customer that would find third-party support appealing in the "at-risk" customer profile: low call volume, highly customized, old release, limited sales opportunity/activity in account and an overall lack of relationship with Oracle.[1058] As Oracle admits, there are customers that would consider third-party support a possible and appealing alternative to Oracle support. In order to provide a well-rounded illustration of the customer's experience at Oracle, I have included some sources that reference product lines that customers did not have supported by TomorrowNow.

11.3.1. Budget Constraint

I included customers in the "Budget constraint" pool if they had recent budget restrictions or parent/management mandated decreases in IT spending. Because support fees are often a large part of the customer's IT budget, they tend to be scrutinized closely when a company has financial difficulties.

This pool is different from the "Cost" pool to the extent budget constraints may play a role in a support termination even though the customer would like to retain the services. When the termination is the result of a parent mandate to cut costs or financial difficulties at the company itself, the customer has no choice but to comply. If support costs are one avenue for achieving the required reductions, then from time to time the company will take that avenue and terminate support. Sometimes, budget constraints alone are enough to cause a customer to terminate support with a vendor. I listed the customers that met this criterion in Appendix E-4.

11.3.2. Cost

I included customers in the "Cost" pool if they cited cost as a factor that caused them to terminate Oracle support or they were displeased with the costs associated with Oracle support. A customer that had cost as a primary concern would find the reduced support prices of third-party vendors appealing.

Support for a customer's Oracle system is expensive. A customer that may have spent millions of dollars to license a new Oracle system and millions more to train its people on the system, are then faced with annual support fees that are about 22% of the license cost to support the system. As such, the customer effectively pays for the system twice over the course of just a few years. Inevitably, the customer's management questions the value of what they are getting for the annual support fees. The desire to cut costs (especially in difficult economic times) may be overwhelming and a prime focus of such cost cutting, as Mr. Sommer indicated, is the support budget. The desire to cut costs may become even greater when the customer is: on an old or stable release; has competent in-house staff who can deal with most problems without outside assistance; is experiencing financial difficulties, and so on.

1058 "PeopleSoft/JDE 'At Risk' Update." August 16, 2006; ORCL00087649-660, at -654. "Maintenance At Risk Analysis: PeopleSoft/J.D. Edwards Customer Base." June 10, 2005; ORCL00130679-690, at -688-690. "NAS Customer Escalation Report." May 27th, 2005; ORCL00138470-475, at -470. Oracle email from Rick Cummins to Michael J. Lochead. March 23, 2005. Re: Pepay Option; ORCL00172564-566, at -565.

11.3.3 Customized

- Used to exclude (35 customers)
- "Oracle struggled to provide" – unsubstantiated
- TN contracts indicate that they don't support customizations

See Schedule 48. DU

11.3.4 Did Not Return to Oracle

- not used

11.3.5 Dislikes Fusion

- not used

Based on the evidence produced in this case, Oracle's answer to most customer requests for support price cuts has been to deny the cut. They try to instill fear of a systemic failure into the customer by telling them of all the catastrophes that may befall them if they terminate support and also point out that coming back to Oracle support will be even more expensive (more about reinstatement fees below). Accordingly, the customer is in a bind – it cannot terminate support without incurring risk but does not want to (or simply cannot afford to) write the check each year to pay for support. Sometimes, the customer will resort to alternative providers of support including third-party support or self support or a combination of those two. While price alone will not usually be enough to cause the customer to terminate support, taken in combination with other factors, it may result in a support termination. I listed the customers that met this criterion in Appendix E-4.

11.3.3. Customized

I included customers in this pool if any of their applications had been significantly customized. Mr. Sommer confirmed that customers with highly customized software sometimes develop problems that are less amenable to the standard solutions the ERP vendor provides. Based on the Oracle email traffic, highly customized customers were difficult to support and were at high risk for terminating support.[1059] The availability of a dedicated support individual which was one of the services TomorrowNow provided would appeal to these customers because it would allow them to receive the personalized support that Oracle struggled to provide. I am aware that TomorrowNow did not guarantee support for customized software, only that they would do their best to support it. I listed the customers that met this criterion in Appendix E-4.

E-4.3

11.3.4. Did Not Return to Oracle

Once TomorrowNow closed its doors on October 31, 2008,[1060] its customers may still have needed support for their Oracle software (usually the need was dependent on the product line that was being supported).

The fact that most customers did not go back to Oracle when they had the chance to do so suggests they would have left Oracle regardless of TomorrowNow. As Mr. Meyer stated that 74 customers reinstated, relicensed or never left Oracle,[1061] I concluded that the remaining 284 customers did not return to Oracle. I listed the customers that met this criterion in Appendix D.

11.3.5. Dislikes Fusion

I included customers in this pool if they did not see a future for Oracle's Fusion in their company. Many customers and industry analysts expressed their view that Fusion would not be released when anticipated or that it would ineffectively combine all of the product lines that Oracle had acquired.[1062] Such worries appear to have been justified because Fusion was behind

1059 "NAS Customer Escalation Report." May 27th, 2005; ORCL00138470-475, at -470. Oracle email from Rick Cummins to Michael J. Lochead. March 23, 2005. Re: Pepay Option; ORCL00172564-566, at -565.

1060 "TomorrowNow Operations Wind Down: Final Report." October 31, 2008; TN-OR03523871-924.

1061 Meyer Schedule 33.SU.

1062 "Marketplace Communications: Influence Uptake;" SAP-OR00060092-428, Various locations within the document. "FROM THE ANALYSTS: Saluting the Siebel supernova; Summing up the postmortems on Oracle's latest acquisition." SAP-OR00044052-081, at -072. Maynard, Billy and Yvonne Genovese.

14.4.2 SAP Safe Passage

- No basis for conclusion that TN "was not a factor"
- No customer testimony

"No rational customer would migrate" due to TN

- Contrary to SAP stated goals of TN acquisition/ Safe Passage. Examples:
  - PeopleSoft 1-2-3
    ¶55, SD 136-2
    ¶57, SD 143-2
  - Agassi testimony
    ¶57, SD 145-3
  - PeopleSoft Attack Plan
    ¶58, SD 147-2

14.4.3. Third Party Alternatives

- No other comparable alternatives
  - Customer testimony
    ¶366, SD 692-2, 4, 5, 7, 8, 10, 13, 17, 20, 22
    + TN
  - SAP acknowledged no alternatives
    ¶367, SD 693-1 – <1% (Gartner)
    693-4 – Klee not viable
    694-4, 17, – Oracle loss = 2x TN
    ¶369, SD 699-1 – Only 2 options: Oracle + TN

14.4.2. SAP Safe Passage

Mr. Meyer addresses SAP's Safe passage program by quoting an SAP document that states, "SAP builds credibility and loyalty with the customer by providing immediate savings,"[1139] via TomorrowNow. Mr. Meyer fails to highlight the fact that for most of the Safe Passage customers, TomorrowNow was not a factor in the customer's decision to migrate some or all of its software to SAP. Mr. Meyer appears not to have done sufficient analysis to determine the customer's rationale for buying products or services from SAP while they were supported at TomorrowNow. However, as previously stated, and as indicated by Mr. Sommer, no rational customer would migrate their ERP systems to SAP as a result of modest savings during a brief period of support by TomorrowNow.

14.4.3. Third-Party Alternatives

Mr. Meyer addresses third-party support alternatives by stating that SAP's acquisition made TomorrowNow a viable option for Oracle customers.[1140] He quotes Juergen Rottler's reference to TomorrowNow as "...the one perceived, you know, credible alternative to our own [Oracle] support offering."[1141] However, there is nothing wrong with buying a business to legitimize it. There were other third-party support offerings in the market as I discuss elsewhere in this report. Mr. Meyer's reliance on Mr. Rottler's statement is inappropriate.

Though Mr. Meyer argues that TomorrowNow was the only credible third-party option available to PeopleSoft, J.D.Edwards, and Siebel customers, he acknowledges that there were other third-party vendors available (e.g., Conexus Partners, CH2M HILL, Versytec, and Klee Associates).[1142] Mr. Meyer claims that the other third-party providers could not provide the same level of support as TomorrowNow, because they did not have the access to Oracle's intellectual property that was allegedly necessary to provide the support services. The evidence is clear that there are alternative ways Oracle customers can support their application software. They can self-support, go with a consulting firm on an as-needed basis, or use any one of a group of other third-party vendors, including netCustomer and CedarCrestone.[1143] These companies can deliver support for Oracle's products and have done so for years, and their existence provides choice for Oracle's customers.

October 2008 shutdown of TomorrowNow." It is unclear what Mr. Meyer is trying to prove with this footnote; presumably that SAP and TomorrowNow continued to earn revenues after September 2007. If so, this issue is not being disputed.

1139 Meyer Report, page 227, paragraph 361.

1140 Meyer Report, page 228, paragraph 363.

1141 Meyer Report, page 226, paragraph 361. Juergen Rottler deposition dated May 13, 2009, page 43.

1142 Meyer Report, page 229, paragraph 365.

1143 I checked the netCustomer website on March 21, 2010 and found that the firm provides support for a wide range of Oracle products including former PeopleSoft, J.D.Edwards and Siebel systems. In addition, netCustomer offers "75% savings in day-to-day technical operations" with a "24 x 7" global support center to support PeopleSoft customers around the world. "David Hare, former SVP, Support Services, Oracle/PeopleSoft" and current netCustomer Board member is quoted as saying, "...netCustomer offers an innovative service, focusing on high-end support..." netCustomer. "Testimonials." <http://netCustomer.com/testimonials.asp>.

customers would have left
Oracle anyway

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1. Clarke does not show that a vendor was available at the time customer left for TN.

2. Meyer attrition rate accounts for customers that would have left Oracle in the absence of TN.
See Meyer ¶ 388-391

3. Clarke assumes that at all times all support options were available.

4. Clarke ignores customer and Oracle testimony about the difficulty to win a customer back after they have reduced their budget with TN. See Meyer ¶ 370

   a. customers (Lexmark SD 705-2, Electrolux SD 705-4, Baker Botts SD 705-6)

   b. Oracle - Block SD 704-2, Cummins SD 704-4, Phillips SD 704-6 (Oracle management)

5. SAP expert, Sommer, recognizes the value of customer relationship.

Mr. Meyer also discusses the customer's willingness to return to Oracle support once their relationship with TomorrowNow ended.[1144] Mr. Meyer states that according to customers (it is unclear how many Mr. Meyer is referencing), once support expenses have been reduced by going to a third-party support vendor, it is difficult to increase the budget to previous levels in subsequent years.[1145] However, Mr. Meyer fails to identify a causal link between the third-party vendor pricing and a customer's willingness to return to Oracle. A customer may choose not to return to Oracle for several reasons, including the quality of the support they received from Oracle in the past, availability of other third-party vendors, a decision to migrate to another ERP vendor, and internal politics (e.g., the CIO had a previous relationship with another vendor) to name just a few.

In addition, it is clear that economic forces drove certain customers away from Oracle support even after TomorrowNow ceased operations. Evidence suggests some doubt about whether the third-party support vendors are even in the same market as Oracle's support offering. It is quite likely that there is sufficient difference between the price of Oracle's support and the price of support from third-party vendors that they are not the same market. Further evidence that there really are two markets for software support was provided when TomorrowNow ceased operations and most TomorrowNow customers chose to go somewhere other than Oracle for support.

The fact that numerous customers stayed with third-party vendors or self supported rather than return to Oracle lends credibility to the argument that absent TomorrowNow these customers would have left Oracle anyway, which means damages would be zero for these customers.

The evidence shows that 252 of the 341[1146] (or 73.9%) customers that had support for either PeopleSoft or J.D.Edwards applications started TomorrowNow support on or after August 1, 2005, which is more than six months after Oracle's acquisition of PeopleSoft.[1147] Therefore, the vast majority of the PeopleSoft and J.D.Edwards customers left Oracle after experiencing Oracle's support offering. In fact, the TomorrowNow support start dates for the 252 customers occurred in the following periods:[1148]

- 38 from August 1 to December 31, 2005
- 129 in 2006
- 64 in 2007
- 21 in 2008

The evidence that Mr. Meyer has provided is insufficient to support his assertions. Mr. Meyer and Oracle acknowledge that there were other third-party support providers in addition to TomorrowNow, and the Meyer Report lists several of them. However, Mr. Meyer claims that

1144 Mr. Meyer's statement may be aimed at a more generalized set of third-party support providers.
1145 Meyer Report, pages 232-233, paragraph 370.
1146 Appendix K-3.
1147 Appendix K-3.
1148 Appendix K-3.

1. 6-month gap | No change to Meyer

- Clarke says Oracle was not damaged because TN did not cause these customers to cancel
- however, absent TN, these customers could have returned to Oracle and paid back maintenance
- Assume Clarke relying solely on Sommer. Not citation to actual customer

| No Change

2. cancelled contracts not later supported by TN

- Meyer's methodology includes all contracts cancelled that contain product families that were supported by TN
See Meyer FN 721
- if a customer had multiple contracts with OPCL and went to TN for a particular family, Meyer included all contracts that had that family

1. TN End Dates

- updated, see Schedules 34.3.DU, 34.4.DU

34.5 Summary of Adjustments

2. Contracts Cancelled after TN service date

- Affects 2 customers:
- Both had significant cancelled contracts prior to TN end date
See Schedule 31.4
• Arvato Services

	Last Paid Amt
Prior to TN end	31.4-[illegible] [redacted]
After TN end	31.4-167+169 $5,583

• Richardson Electronics

	Last Paid Amt
Prior to TN end	31.4-1163, 1167 $592,964
After TN end	31.4-1151, 1153, 1155, 1157, 1159, 1161 $163,128

| No Change |

14.5.1.7 Lost OKI3 Customers

Mr. Meyer uses the OKI3 reports and SAP and TomorrowNow data to perform the following analysis by customer for the Lost OKI3 Customers:[1176]

- Identify the support contracts related to PeopleSoft, J.D.Edwards, and Siebel
- Identify the relevant cancelled PeopleSoft, J.D.Edwards, and Siebel contracts based on:
    - Comparison of the product lines serviced by TomorrowNow and corresponding service period start and end dates
    - Review of "Contract Status Type" and "Contract Status Code" fields (identifying "true cancellations") for the product lines serviced by TomorrowNow, noting cancelled items
    - Review of other Oracle/SAP customer-related docs and information, as necessary
- Identify the last annual amount the customer(s) paid to Oracle on the relevant cancelled support contract(s) using the "Annual Constant Dollar Product Value" field

Mr. Meyer makes several unreasonable assumptions in identifying the cancelled support contracts at issue and the amounts of those contracts. Using the same data and methodology, I corrected the schedules by incorporating more reasonable assumptions.

1. 25 customers (27 contracts) had gaps of six months or more between the end of their Oracle support and the beginning of TomorrowNow support. These customers should be excluded from lost profits damages because TomorrowNow did not cause these customers to cancel with Oracle.[1177]
2. Customers that cancelled contracts that were not later supported by TomorrowNow should be excluded from lost profits damages because TomorrowNow did not cause the customer to close out the contracts.[1178]

I also corrected the following two errors because Mr. Meyer:

1. Incorporates an incorrect TomorrowNow support end date for a number of customers. A review of the SAS database and other documentation yields correct information.[1179]
2. Includes customer contracts that were cancelled after the TomorrowNow support end date[1180]

1176 Meyer Report, pages 238-239, paragraph 380. See summary on Schedule 31.SU of the Meyer Report.

1177 Appendix W-19.

1178 Oracle's customers often had more than one contract for Oracle support. When TomorrowNow took over support, the customer would only pay for support on the required elements. The customer could terminate all support on one Oracle contract without affecting continued support on its other contracts. Appendix W-19.

1179 Appendix K-2.