EXHIBIT G

Oracle USA, Inc., et al

v.

SAP AG, et al

Stephen K. Clarke
Expert Report

May 7, 2010

It is a reasonable royalty for this basket of rights that would be at issue for parties to the Negotiation. The resulting license transaction ("License") would be between TomorrowNow and Oracle because SAP would not need a license for the actions it is alleged to have taken as discussed later.

3.2.1. Intellectual Property Valuation

The actual use Defendants made of the Subject IP is far less than the full ownership rights Oracle enjoyed. For example, I understand that TomorrowNow: never had access to Oracle's object code; never sold a license to the Subject IP and could not have sold the Subject IP in a transaction; did not own the Subject IP; did not create upgrades for the Subject IP; could not retire some or all of the Subject IP; and did not share any of the license revenue from the Subject IP.

However, as I will describe later in this report, Mr. Meyer appears to assume that TomorrowNow's access to and use of the Subject IP, was the fundamental equivalent of Oracle's ownership of the entire suite of intellectual property it acquired in the PeopleSoft and Siebel transactions, or which it developed itself as the Oracle product. Accordingly, Mr. Meyer values the Defendants' actual use of the software as a pro rata share of the value of the PeopleSoft and Siebel acquisition prices. One of his errors, therefore, is to employ valuation methodologies that are more properly applied to the valuation of the software suites themselves rather than the actual use Defendants allegedly made of the Subject IP. While I accept that it is appropriate to value intellectual property using the market, income and cost approaches, I do not agree that such an analysis is appropriate when valuing the limited actual use relevant to the Alleged Actions.

3.3. Oracle's Defensive Strategy

Oracle tried to persuade its customers to remain on its support when it became aware that TomorrowNow was trying to win them as a support customer. In doing so, Oracle expressed its opinion as to the inferior nature of the service TomorrowNow could provide to the customer if the customer terminated Oracle support and moved to TomorrowNow's support.

Oracle made statements regarding the difficulties the customer would face because TomorrowNow would not be able to fix certain problems:

> 1. [TomorrowNow does] not have access to PSFT's six Global Support Centers.
> 2. [TomorrowNow does] not have access to PeopleSoft developers and product experts.
> 3. [TomorrowNow does] not have access to PSFT patches and fixes, enhancements, tax updates, upgrade scripts etc.[111]

[111] PeopleSoft email from Tawanna Sanders to Nancy Lyskawa, et al. December 9, 2004. Re: TomorrowNow; ORCL00458582.

accordingly. The Meyer Report does not make clear how Mr. Meyer separates the reasonable royalty from other claims such that it is not duplicative.

3.7. Negotiation

If Mr. Meyer is going to adopt a reasonable royalty as a measure of the Defendants' Value of Use, he must develop his conclusion by "forcing" the parties in the Negotiation to agree on a royalty rate that is reasonable to both. Therefore, the resulting royalty rate will likely be *less than Plaintiffs claim* they would have required to enter into a license agreement and *more than Defendants claim* they would ever have been willing to pay.

Mr. Meyer describes a hypothetical negotiation methodology beginning in paragraph 93 of the Meyer Report and I address his methodology here:

3.7.1. Date of Negotiation

Mr. Meyer uses "January 2005"[136] as the date of the Negotiation for Oracle for PeopleSoft products. Actually the right date for the Negotiation is January 19th 2005, the date of SAP's acquisition of TomorrowNow.

Mr. Meyer uses September 2006[137] as the date of the Negotiation for Siebel. The right date for the Siebel Negotiation is September 29, 2006 when TomorrowNow first supported a Siebel customer.[138]

3.7.2. Subject IP

Mr. Meyer states that he is quantifying "…the amount that SAP – as a willing buyer – would pay Oracle, and that Oracle – as a willing seller – would accept from SAP in the form of a license fee to represent SAP's 'value of use' of Oracle's PeopleSoft-related copyrighted materials in suit."[139] He repeated the same sentence in relation to Siebel. He also includes a calculation of SAP's Value of Use for the "Oracle Database copyrighted materials in suit."

3.7.3. Actual Use

In paragraph 104 of the Meyer report, Mr. Meyer references the Alleged Actions and their relationship to the damages he is calculating and states, "I understand [the fair market value license measure of copyright actual damages] must relate to the fair market value of a license that allows for SAP's actions that constitute copyright infringement, and *cannot allow for more or different infringement than actually occurred*." [emphasis added]. This statement is fundamental to the quantification of damages that follows in the Meyer Report. As I point out below, Mr. Meyer loses sight of this statement and its meaning during his analysis and related calculations. However, the concept is so fundamental that it is worth repeating: Defendants are only liable for damages to the extent they infringed the Subject IP. Therefore, the Negotiation must focus only on Defendants' *actual use* of the Subject IP during the infringement period.

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136 Meyer Report, page 69, paragraph 102.
137 Meyer Report, page 176, paragraph 260.
138 Siebel_service.xls export. TN-OR07717977.
139 Meyer Report, page 70, paragraph 103.

The License would be non-exclusive because Oracle provides the same Software and Support Materials to its customers. Non-exclusive licenses command a lower royalty rate than exclusive licenses.

The hypothetical license would cover the actual use TomorrowNow made of the Subject IP. TomorrowNow's operations were exclusively in the US from 2002 through 2004. In 2005, TomorrowNow began supporting customers with international tax and regulatory updates[516] and opened offices in the United Kingdom, the Netherlands, Singapore and Australia.[517] Therefore, the License would be geographically limited to the USA from 2002 through 2004 and would have been limited to the territories in which TomorrowNow's customers were supported from 2005 through 2008.

In addition, because license agreements are frequently re-negotiable upon a change in ownership, I have assumed the License would have been re-negotiated on January 19th, 2005 when SAP acquired TomorrowNow.

However, I do not postulate a separate royalty for the period before January 19, 2005 (the pre-acquisition period) and after that date. Mr. Meyer has not provided a damage claim for the pre-acquisition period so there is no need for me to address such a claim. For the purposes of my report however, I have assumed that the Reasonable Royalty developed in the Negotiation would apply retroactively to the pre-acquisition period. Because the use of the Subject IP was less in the pre-acquisition period than post-acquisition, the Reasonable Royalty is the maximum it could possibly be (and still be reasonable) in the pre-acquisition period.

8.4. Georgia-Pacific Factor No. 4: Licensor's Established Policy

"The licensor's established policy and marketing program to maintain his patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly."

Plaintiffs were in the business of licensing their software and support materials to customers. Therefore, TomorrowNow's customers *had* access to the Subject IP to the same extent TomorrowNow would need access to support that customer, provided the customer kept up its Oracle support contract. As I stated previously, TomorrowNow could stand in the shoes of its customer (customers are licensed to access source code and amend it as needed to fix bugs, etc.), in the same way other third-party consultants and support vendors and in-house staff do. For the

516 TomorrowNow started supporting Foot Locker, Inc. on March 1, 2005 with tax and regulatory updates in US, Canada, Australia, New Zealand, Europe, and Asia Pacific. "PeopleSoft Support Services Agreement for PeopleSoft Releases." December 12, 2004; TN-OR00006885-898.

517 Blau, John. "Safe Passage Support Comes to Europe, Asia." *Computer World*. April 29, 2005. <http://web.archive.org/web/20050430104650/www.computerworld.com.sg/ShowPage.aspx?pagetype=2&articleid=936&pubid=3&issueid=45>. Koe, Benjamin. "It's Time For TomorrowNow." *CMPNet Asia*. July 1, 2005. <http://web.archive.org/web/20051202095327/www.cmpnetasia.com/ViewArt.cfm?Artid=27175&Catid=8&subcat=75>.

> availability, quality, cost, and scope of support for the PeopleSoft products in use today,' said Seth Ravin, president of TomorrowNow. 'Today, TomorrowNow clients enjoy a safe harbor, with predictable and substantial cost savings, 10-year support periods, and highly responsive support services that assure them a strong return on their ERP and CRM investments for years to come. TomorrowNow is an independent support provider, our clients are free to move their businesses forward without any consideration of the current upheaval in the enterprise software market.'[575]

As previously discussed, in the period leading up to the license negotiation, PeopleSoft had begun to recognize TomorrowNow as a competitor. In the third quarter of 2004, PeopleSoft "…developed a new TomorrowNow response sheet for the Support Sales team to use, [which] provides a script they can use with their customers to justify the value of staying [with PeopleSoft support]."[576] Also, in a Business Overview memo dated November 17, 2004, PeopleSoft stated:

> Further threatening our business are emerging grey market support providers with an alternative option to PeopleSoft customers on retired releases. These grey market competitors are offering support services PeopleSoft no longer provides to the customer – bug fixes and tax and regulatory updates. TomorrowNow, a consulting company staffed with former PeopleSoft employees…is aggressively pursuing the Enterprise customer base offering support at a 50 – 70% reduction off of their current maintenance bill. They are also targeting customers on active supported releases with similar savings. Versytec, Conexus (former J.D.Edwards Support Services executives), and InOne are similar types of companies targeting former JDE customers on both World and XE releases. More and more customers are mentioning these competitive alternatives during their renewal negotiations.[577]

As a result of the perceived threat, the Business Overview recommended offering supplemental support for retired releases. PeopleSoft's recognition of the threat posed by a variety of third-party support vendors would have meant that it viewed TomorrowNow as one of a group of new competitors and would presumably have passed on its information to Oracle when the acquisition closed in December 2004.

8.5.3. Renegotiated License in January 2005

Following SAP's acquisition of TomorrowNow, the License would have been re-negotiated. Oracle and SAP are competitors in the same market and because of their commercial relationship, Oracle would have been unwilling to license its software to an SAP subsidiary that offered competitive support products.

575 "TomorrowNow Assures PeopleSoft Licensees of Support into Next Decade." October 28, 2004. TN-OR 00004772-73.

576 "PeopleSoft Q3 2004 Global Operational Performance Package Support Services." October 27, 2004; ORCL00233793-812, at -807.

577 "PeopleSoft Support Services Strategy Supplemental Support Program Releases Retiring in 2005 (v.2)." November 17, 2004. ORCL00135397-403, at -397.

In its Complaint, Oracle calls SAP's acquisition of TomorrowNow in January 2005 a "calculated competitive move." However, Oracle executives may not have viewed TomorrowNow as a real threat even after SAP acquired TomorrowNow. For example, on November 19, 2005, ten months after SAP acquired TomorrowNow, RedHerring.com quoted an Oracle executive dismissing TomorrowNow, "'We rarely ever see them and *they have had no impact on Oracle*,' says Juergen Rottler, executive vice president of Oracle Support Services."[578] [emphasis added].

Mr. Rottler dramatically changed his story in deposition, stating:

> We saw significant impact from SAP/TomorrowNow, but -- you know, but at the same time, we've obviously taken a lot of countermeasures to that threat as well. So we've been able to -- you know, recover from what were at times very poor renewal rates when the threat was the greatest.[579]

Despite Mr. Rottler's contradictory statements as to whether TomorrowNow posed a threat to Oracle's business, the At-Risk Reports indicate Oracle recognized TomorrowNow and other third-party support providers as competing for Oracle's support revenue at least by late 2004.

Given the competitive relationship between Oracle and SAP, Oracle would drive a hard bargain with SAP in the Negotiation. However, during the Negotiation, if it were rational, Oracle would have viewed the receipt of royalties from third-party support vendors as a way to mitigate the profits lost to the new class of competitors; receiving a royalty from TomorrowNow for lost support customers would be better than receiving nothing from customers lost to other third party support vendors. This emerging new market from third-party support vendors suggests a low royalty rate.

In September 2006, TomorrowNow began supporting Siebel applications. SAP acquired TomorrowNow 21 months previously and by the time of the Siebel Negotiation both TomorrowNow and SAP would have known that TomorrowNow's role in the Safe Passage program was a failure, and SAP would have known that they were not generating the TomorrowNow led customers they hoped for. Nevertheless, I assume the royalty rate would not change to reflect the plan's failure. Therefore, I assume the same Reasonable Royalty would apply to all relevant revenues no matter which Oracle software suite was being supported by TomorrowNow; except for Oracle database which I deal with separately.

Interestingly, an odd tension existed between TomorrowNow and SAP in that at a fundamental level, they were essentially competing for the same customers. Evidence confirms the notion that it was not in TomorrowNow's self interest to encourage its customers to move to SAP as it would have preferred to keep the steady support revenue stream for itself.[580] A TomorrowNow executive planning document stated, "SAP desires to move TN customers off TN services and on

578 Bhuta, Falguni. "TomorrowNow Faces Oracle." *Red Herring*. November 19, 2005. <http://www.redherring.com/Home/14403>.

579 Jeurgen Rottler deposition dated May 13, 2009, pages 235-236.

580 Montgomery, Nigel. "TomorrowNow Now." *AMR Research*. November 3, 2005; TN-OR00317779-780, at -780.

> A. Well, it was before I joined, so the dates are a bit vague to me. I believe it was in the summer or, the summer of 2002.[594]

Therefore, the License first covers a period beginning in 2002 with TomorrowNow's Extended Support model and ends January 19th when TomorrowNow was acquired by SAP. The License then would be renegotiated because of TomorrowNow's change of ownership and that license term ends on October 31, 2008 when TomorrowNow ceased operations.[595]

8.8. Georgia-Pacific Factor No. 8: Product Success

"The established profitability of the product made under the patent; its commercial success; and its current popularity."

In mid-2007, Computer Business Review estimated the enterprise application support market at between $8 billion and $20 billion annually[596] and Mr. Wang of Forrester Research stated that the market for support is growing by about 9 percent each year.[597]

Oracle reports a gross margin of about 90% on its Product License Updates and Product Support.

> Software license updates provide customers with rights to unspecified software product upgrades and maintenance releases and patches released during the term of the support period. Product support includes internet and telephone access to technical support personnel located in our global support centers, as well as internet access to technical content… Substantially all of our customers purchase software license updates and product support when they acquire new software licenses. In addition, substantially all of our customers renew their software license updates and product support contracts annually.[598]

Oracle's software license updates and product support represented $8.3 billion, or 46 percent of total revenues in 2007; $6.6 billion, or 46 percent of total revenues in 2006; and $5.3 billion, or 45 percent of total revenues in 2005.[599] Oracle's reported financial information indicates that the Software and Support Materials are profitable, commercially successful, and used extensively by its customers. The high profit margins on support provide ample room to cut the fees charged to customers and potentially earn a profit. Third-party support vendors generally advertise a range of cost savings (around 50 percent) over the support provided by the major ERP vendors.[600] The

[594] Shelley Nelson deposition dated April 18, 2008, pages 253-254.

[595] "By October 31, 2008, SAP had completed the orderly wind down of operations at TN and TN had ceased providing third-party maintenance and support services or any other business activities." "TomorrowNow Operations Wind Down: Final Report" October 31, 2008; TN-OR0352387-924, at -876.

[596] Eager, Angela. "Maintenance: better the devil you know?" *Computer Business Review*. July 31, 2007. < http://www.cbronline.com/article_cbr.asp?guid=4BB12A32-4703-44B7-AB56-FF926373A6D1>.

[597] Gohring, Nancy and Elizabeth Montalbano. "Maintenance contracts at the heart of Oracle, SAP dispute," *Info World*, March 22, 2007. http://www.infoworld.com.

[598] Oracle Corporation Form 10-K for the fiscal year ended May 31, 2007, page 6.

[599] Oracle Corporation Form 10-K for the fiscal year ended May 31, 2007, pages 7 and 41.

[600] I discuss later in my report that Versytec, Rimini Street, Conexus Partners, LegacyMode, ContinuServe and CIBER advertised approximately 50% cost savings. Citagus claimed it could offer a 30%-60% reduction

world if the price policy were to increase to more than 75% of the Oracle price, the sales made by TomorrowNow would have been reduced to zero. My assumption that the demand curve for TomorrowNow pricing is flat between 50% and 75% of the Oracle price favors Oracle.

I do not assume for the purposes of my analysis that TomorrowNow must be given a royalty rate that *guaranteed* it making a profit; TomorrowNow was unable to make a profit applying the 50% price policy so it is most unlikely it could have made a profit with prices 50% higher. There is nothing in the law (that I am aware of) other than the wording of Georgia-Pacific Factor 15 that guarantees profits[987] for the defendant. However, it would be inappropriate to assume a royalty so high that it would drive the company out of business. Accordingly, the resulting royalty rate must have a balance between compensating Oracle and not putting TomorrowNow out of business. I am not aware of any enhancement TomorrowNow could have used to boost their ability to generate support sales at a price 50% higher than they actually charged.

8.15.6. TomorrowNow Royalty

An alternative way to look at the pricing issue is to assume that TomorrowNow could not have stayed in business with a price lower than its 50% pricing policy, while the upper boundary of the TomorrowNow market price would be at most a 50% mark-up on the old TomorrowNow price policy. Based on my entire report and analysis therefore, I assume a Reasonable Royalty equal to 50% of TomorrowNow's gross revenues.

The 50% royalty rate on TomorrowNow's revenues would have been fair to Oracle. One Oracle executive referred to the companies that terminate Oracle support as "unprofitable laggards."[988] Similarly, an Oracle sales representative[989] "advised Laura [Sweetman of TomorrowNow] that Oracle execs aren't too terribly threatened by us re: JDE, because they feel our clients are those that they would have lost anyway."[990] While the 50% royalty rate would be fair to Oracle, I recognize that Oracle will claim they would never have settled for such a rate. That is a common plaintiff complaint and is not determinative of whether a license fee is appropriate in the circumstances.

I calculated 50% of TomorrowNow's revenues[991] to be approximately $32 million as shown in Appendix G-1.

If SAP had been forced to accept a 50% price increase on TomorrowNow service such that prices were set at a rate approximately equal to 75% of the Oracle support rate,[992] there is a slim

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987 In this case, because TomorrowNow could not make a profit using the 50% of Oracle price metric, it is probably impossible to set a royalty rate that would result in profits. Any royalty would have to be either added to the support price or absorbed in the existing price. In the first case, sales would likely decline and in the second case the losses would increase.

988 Oracle email from Juan Jones to Chris Madsen and Rick Cummins. August 29, 2006. Re: Fw: FW: Home Depot Executive Summary; ORCL00173509-511, at -509.

989 Likely Kort Crosby, an Oracle sales representative. "Organization Chart, Oracle Aria People Search;" ORCL0034208.

990 TomorrowNow email from Mandy Wheeler to Andrew Nelson, et al. June 23, 2005. Re: Quest Software Migration Evaluation: Management Call – Wednesday, June 22; TN-OR01133541, at -541.

991 As discussed later in my report.

992 This assumption is a continuation of the fiction that TomorrowNow priced its service at 50% of the Oracle rate. Such an assumption is not exactly correct but is close enough for the purpose of the Negotiation.

chance TomorrowNow could have stayed in business through October 2008, before SAP took action to shut down its operations.

8.15.7. SAP "Royalty"

Given the background of the financial condition of TomorrowNow and the introduction of SAP as its new owner, the parties in the Negotiation would have faced a difficult time agreeing on any royalty that made sense from their points of view. Oracle would not want to grant a license except at a high price to SAP and SAP would not want to overpay for a license. Even though it would have been unlikely that the parties would have agreed to a license in the real world, particularly a paid-up license, I understand that the Court has indicated that a forced agreement should be assumed if it can be done without undue speculation. In my opinion, it is impossible to create a scenario in which the parties at the Negotiation would have reached an agreement for the License. It requires an act of pure speculation to assume they could have done so based on the testimony and other evidence in this case. Furthermore, even if the parties had been willing to discuss a license for TomorrowNow's use of the Subject IP, it is inconceivable they would have agreed on a rate. As Mr. Ellison stated, SAP would (or should) have been willing to pay a billion dollars for a license which would have made no rational business sense to a prudent licensee like SAP. Therefore, it is only by undue speculation that a Reasonable Royalty can be formulated and even then the fiction of the royalty rate stretches the imagination to breaking point.

In the real world the parties would never have agreed on a license. However, if the parties are forced to come to an agreement, the result of their deliberations would be as follows:

Once TomorrowNow had paid a license fee to Oracle of 50% of its revenues, it would be inappropriate for SAP to pay any royalty on application software sales because it (i.e., SAP) would assume it would have made no *additional* application license sales as a result of the License. The rationale for this argument is simple. Any customer terminating its license agreements with Oracle and migrating its ERP systems to SAP would have made that choice only after a thorough evaluation process showing that SAP was the preferred ERP vendor.[993] Therefore, the customer would only have migrated its ERP systems to SAP because of what SAP offered, not as a result of TomorrowNow's involvement.

I considered the analytical approach to computing the Reasonable Royalty. The analytical approach was referenced in the *TWM Mfg. Co., Inc. v. Dura* case,[994] affirmed on appeal.

The approach sets the reasonable royalty at a rate that disgorges the *excess* profits made by an infringer. For example, if the normal margin for the infringer is 10% and use of the intellectual property allows the margin to increase to 40%, then the royalty rate is set at 30% (i.e., 40% - 10% = 30%).

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993 An ERP system migration is an expensive, disruptive and time consuming task. Accordingly, based on the evidence I have seen in this case, since confirmed by Mr. Sommer, the decision to change ERP systems is only made after thorough analysis and comparative assessments of competing systems.

994 *TWM Manufacturing Co., Inc. v. Dura Corp. and Kidde, Inc.* 789 F.2d 895; United States Court of Appeals, Federal Circuit. April 25, 1986.

The approach in this case yields a royalty of zero because SAP made no *additional* margin on any sales made as a result of the Alleged Actions. Therefore, the royalty rate would be zero using the analytical approach.

The Reasonable Royalty for SAP would be half of the profits on any sales it made that it would not have made absent the Alleged Actions.

The parties would have agreed that SAP would pay a royalty of 50% of the profits that it would have earned on sales to the three customers that it would not have otherwise made.[995] 50% of total profits after interest of $4,344,212[996] equals $2,172,106.

9. TomorrowNow's Use of Oracle's Database Software

Shelley Nelson explained the use TomorrowNow made of Oracle's database software:

> Q. How did TomorrowNow use the Oracle database software that it did use as part of supporting customers?
>
> A. It was kind of the database server, so to speak, for those customers who had Oracle to run their PeopleSoft application. So, the – the Oracle database would act as the server to house PeopleSoft demo environments for customers who ran PeopleSoft with Oracle.
>
> Q. Why was it necessary to have Oracle database software acting as the – as the server for those customers who had Oracle database underneath their environments?
>
> A. It – in certain instances, the PeopleSoft software might behave differently, depending on what database back-end is being used to house it. And, so, it's preferred that – that an install is done on that database version. So, you're – you're working in the same – or a similar environment with the client's demo environment.[997]

SAP and Oracle entered into a license agreement for SAP to act as a reseller of Oracle database software. Mr. Plattner stated that the fee SAP negotiated for the database from Oracle "…was decided by market price, and not by IP, or value or whatever. It was decided by market price."[998] Similarly, a Negotiation for TomorrowNow's use of Oracle's database would be based on market price.

Mr. Meyer provides an extensive assessment of the Value of Use TomorrowNow made of Oracle's database software.[999] However, it is unclear why Mr. Meyer's analysis is so lengthy because the calculation is simple. The Oracle database is readily available at a known price to

995 Appendix N-1.
996 Per Appendix N-1, SAP made profits of $3,862,031. Adding interest through the estimated trial end date of December 10, 2010 equals $4,344,212.
997 Shelley Nelson deposition dated September 3, 2009, pages 627-628.
998 Hasso Plattner deposition dated June 2, 2009, page 49.
999 Meyer Report, Section VII, pages 150-173.

any customer that wishes to use it. Because the price is known and well established in the marketplace, all Mr. Meyer needs to do to quantify the amount TomorrowNow should have paid for the allegedly inappropriate use of the Oracle database is multiply the quantity used by the applicable price. However, Mr. Meyer did not make this calculation correctly.

Mr. Meyer is correct in his statement that the per processor[1000] price for the Oracle Database Enterprise Edition software was $40,000 for the license and $8,800 for support.[1001] Mr. Meyer then claims:

> The server with the majority of TomorrowNow local environments running on Oracle database was purchased in January 2005 and was a 4 processor Unix server with dual-cores, or effectively 8 processors, based upon which Oracle would price a license for 6 processors (Oracle applies a .75 processor factor to Unix processors, so 8 * .75 = 6 processors priced in the license)….Therefore, I have assumed that Oracle would require SAP to purchase no less than a license that covered each customer accessing Oracle database priced at 6 processers per license. A 6 processor Enterprise Edition Oracle database license would be priced at 6 processors times the license fee of $40,000 per customer, or $240,000 per customer, and an annual support fee of $8,800 times 6 processors, or $52,800 per year per customer.[1002]

Mr. Meyer applies the base license and support costs for the number of years each customer used the Oracle database, deducting 5% to account for any additional costs. He then claims that "counting only one environment per customer, at least 71 local environments were running Oracle database software on TomorrowNow's systems (both customer-specific and non-customer specific)."[1003] This calculation results in damages of $23.6 million.[1004]

Mr. Meyer's approach to computing these damages is incorrect. The Oracle database pricing does not work in the way that he suggests. Database licenses are purchased based on the server core processors on which they will be installed. The number of databases the licensed user (or environments) creates after the installation is irrelevant. I understand that TomorrowNow had the Oracle database software that was ultimately used to support its customers installed on servers with 27 processors as follows:[1005]

1000 The actual processor metric used to calculate the quantity is based on the number of cores multiplied by a processor factor to arrive at the licensing quantity. For example, a dual-core, quad-processor Intel server would consist of eight cores (4 * 2), which would be multiplied by a processor factor of 0.5. See Oracle E-Business Global Price List, September 1, 2006; "Oracle E-Business Global Price List." September 1, 2006; ORCL00704381-396, at -392 to arrive at a licensing quantity of four (8 * 0.5).

1001 Meyer Report, page 165, paragraph 252.

1002 Meyer Report, pages 166-167.

1003 Meyer Report, page 167, paragraph 254. Schedule 44.1.SU lists 69 customer-specific and two non-customer specific environments.

1004 Meyer Report, page 169, table 9.

1005 Based on an email from Josh Fuchs at Jones Day to Nitin Jindal at Bingham McCutchen dated February 19, 2010, TomorrowNow had Oracle Database software installed on 7 servers with 20 processors and a total of 46 cores. Taking into account the applicable licensing factors results in a licensing quantity of 27 processors; ORCL00704381-396, at -392.

Damages Summary[1269]	
Disgorgement – SAP[1270]	$4,344,212
Disgorgement – TomorrowNow [1271]	$1,054,474
Oracle Lost Profits	
OUSA	$10,162,957
OEMEA	
PeopleSoft	$241,616
J.D.Edwards EnterpriseOne	$476,574
J.D.Edwards World	$159,632
Siebel	$787,569
OIC	$17,312,276
OTC	$1,660,199
ORC	$248,569
Total	**$36,448,078**

Lost Profits and Disgorgement damages are additive. Therefore, total damages if Defendants are found liable for all of Oracle's claims are $36,448,078.

Stephen K. Clarke

May 7th, 2010

Date

1269 I did not calculate damages for the No Accused Conduct customers in any of my damages analyses. Earlier in my report, I calculated a reasonable royalty in response to Mr. Meyer's presentation. I do not consider reasonable royalty to be an appropriate measure of damages in this matter.

1270 Appendix N-1.

1271 Appendix Q-1.