

# **EXHIBIT 11**



**Subject:**  
RE: Oracle v. SAP -- Electronic Service of Documents

**From:**  
House, Holly  
12/08/2009 05:20 PM

**To:**  
'Elaine Wallace'

**Cc:**  
"Hann, Bree", "Howard, Geoff", "'jfroyd@jonesday.com'", "'jlfuchs@jonesday.com'",  
"'jmcdonell@jonesday.com'", "'pdelahunty@jonesday.com'",  
"'ramittelstaedt@jonesday.com'", "'swcowan@jonesday.com'", "'tglanier@jonesday.com'",  
"Alinder, Zachary J.", "Jindal, Nitin", "Pickett, Donn", "Lee, Lisa"  
Show Details

**History:** This message has been replied to.

Elaine: That supplementation of expert reports is required is wholly the result of Defendants' insistence that Oracle provide its expert reports before fact discovery was completed and before final motions to compel were ruled upon. We made this point when we were negotiating the case schedule and Defendants nonetheless insisted on Oracle's early provision of its experts' reports. All of us must now deal with the inconveniences of that insistence. Given the numerous depositions and the enormity of written discovery and material produced by both sides in the period after Oracle's expert reports were provided and given Defendants' outstanding obligations from Oracle's last successful motion to compel and the parties yet to be filed motions to compel, supplementation clearly will be required. Because we only want to do supplementation once, we suggest a supplementation date three weeks after any final production or additional responses re provided in response to the final motions to compel.

Of course that implicates the timing of the taking of expert depositions as well. Defendants will only have one shot at an expert so I doubt your request of early January for Mr. Meyer makes sense. Moreover, he has a trial in that period. Whenever his deposition is scheduled, we do not agree to provide Mr. Meyer for five days. The federal rule provides for a seven hour deposition of a witness. We believe that rule should be followed except for the damages and technical witnesses (for Oracle -- Paul Meyer and Kevin Mandia) who could be deposed for two seven hour days.

Finally, Oracle rejects your request to provide an explanation for the errata. They are all self-explanatory and, at any rate, Defendants can ask Oracle's experts about them in deposition.

Regards, Holly

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**From:** Elaine Wallace [<mailto:ewallace@JonesDay.com>]  
**Sent:** Monday, December 07, 2009 2:39 PM  
**To:** Jindal, Nitin  
**Cc:** Hann, Bree; Howard, Geoff; House, Holly; 'jfroyd@jonesday.com'; 'jlfuchs@jonesday.com'; 'jmcdonell@jonesday.com'; 'pdelahunty@jonesday.com'; 'ramittelstaedt@jonesday.com'; 'swcowan@jonesday.com'; 'tglanier@jonesday.com'; Alinder, Zachary J.  
**Subject:** RE: Oracle v. SAP -- Electronic Service of Documents

Nitin,

The deadline for serving expert reports was November 16. Depending on the circumstances, Defendants may not object to Oracle serving amended reports to correct legitimate errors that, despite reasonable due diligence, were not identified until after service of a report. Defendants also understand that supplementation may, in some circumstances, be appropriate where relevant information material to any of the opinions in the report was not made available by opposing counsel until after service of the report. Absent these limited circumstances, however, we do not agree that Oracle has any right to serve "updated" or supplemental expert reports. Based on our preliminary review of the expert materials produced on Friday, it does not appear that all of Oracle's changes and additions to its expert reports and back up material are attributable to error or relate to any information made available by Defendants after November 16. We also do not understand the basis for your comment that Oracle's intends to "complete its expert report supplementation" at some unspecified date in the future. Certainly, the customer declarations you reference do not provide a basis for supplementation since there was nothing to prevent Oracle from obtaining them before November 16 and including them in Mr. Meyer's initial report.

Please explain the basis for each of the substantive changes and additions to the expert materials produced on Friday and whether Oracle contends that each change or addition is attributable to either a legitimate error that, despite reasonable due diligence, was not identified until after service of a report or to information made available by Defendants after November 16. Please also explain, in detail, precisely what expert "supplementation" Oracle proposes to provide, when it proposes to provide it, and the basis for its belief that the proposed supplementation is proper.

Regards,

Elaine Wallace  
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 San Francisco, CA 94104  
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From: "Jindal, Nitin" <nitin.jindal@bingham.com>  
 To: "ramittelstaedt@jonesday.com" <ramittelstaedt@jonesday.com>, "jmcdonell@jonesday.com" <jmcdonell@jonesday.com>, "ewallace@jonesday.com" <ewallace@jonesday.com>, "tglanier@jonesday.com" <tglanier@jonesday.com>, "jfroyd@jonesday.com" <jfroyd@jonesday.com>  
 Cc: "swcowan@jonesday.com" <swcowan@jonesday.com>, "pdelahunty@jonesday.com" <pdelahunty@jonesday.com>, "jlfuchs@jonesday.com" <jlfuchs@jonesday.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "House, Holly" <holly.house@bingham.com>, "Alinder, Zachary J." <zachary.alinder@bingham.com>, "Hann, Bree" <bree.hann@bingham.com>  
 Date: 12/04/2009 07:53 PM  
 Subject: RE: Oracle v. SAP -- Electronic Service of Documents

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Counsel,

Along with today's service of updated expert reports, please note that two additional customer declarations were produced along with Navigant's report. These declarations were received after the initial service of the Navigant report, and are not relied upon by the report. They are being provided today as a courtesy so that Defendants do not have to wait until Oracle completes its expert report supplementation to review them. In addition, please note that while there was no errata for the expert report of Douglas Gary Lichtman, a

supplemental back-up document was produced today that was inadvertently missing from Oracle's prior service. Finally, please note that while Oracle hand delivered its updated Navigant report today, Oracle will only be electronically serving errata, notes, and some replacement back-up materials for the Mandiant report tonight. A hand delivery will be made Monday morning.

Best Regards,  
Nitin

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**From:** Kim, Shirlyn

**Sent:** Friday, December 04, 2009 7:24 PM

**To:** 'ramittelstaedt@jonesday.com'; 'jmcdonell@jonesday.com'; 'ewallace@jonesday.com'; 'tglanier@jonesday.com'; 'jfroyd@jonesday.com'

**Cc:** 'swcowan@jonesday.com'; 'pdelahunty@jonesday.com'; 'jlfuchs@jonesday.com'; Howard, Geoff; House, Holly; Alinder, Zachary J.; Hann, Bree

**Subject:** Oracle v. SAP -- Electronic Service of Documents

<< File: REVISED Oracle Report\_120209.pdf >> << File: PKM Errata Letter 12.4.09.PDF >> << File: Proof\_Updated Expert Report.pdf >>

Dear Counsel,

Attached is an electronic service copy of Plaintiffs' Updated Expert Report by Navigant (with errata sheet).

*Print Less → Go Green*

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