

# **EXHIBIT 12**

ORACLE USA, INC., ET AL

V.

SAP AG, ET AL

CASE NO. 07-CV-01658

SUPPLEMENTAL EXPERT REPORT OF PAUL K. MEYER

TM FINANCIAL FORENSICS, LLC.

FEBRUARY 23, 2010



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PAUL K. MEYER

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**F. Oracle Tracking and Efforts to Limit Losses to TomorrowNow and SAP**

88. As mentioned above, PeopleSoft became aware of TomorrowNow in 2002 and sent a letter July 10, 2002 informing TomorrowNow that it may be misappropriating PeopleSoft proprietary materials.<sup>247</sup> TomorrowNow

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<sup>247</sup> Email from Edward Cavazos, Andrews Kurth LLP, to Russell Hartz, Blank Rome, attaching letters: PeopleSoft letter from David Chavez to Seth Ravin dated July 10, 2002 and TomorrowNow letter from James Spencer to David Chavez dated July 27, 2002, AK000555-62, at 557.

responded on July 27, 2002 denying any unlawful activity.<sup>248</sup> PeopleSoft was generally aware of TomorrowNow continuing to offer some level of support for PeopleSoft products in 2003 and 2004 but felt that TomorrowNow did not have a scalable business model that could provide the same level of support as PeopleSoft assuming TomorrowNow was not using PeopleSoft's proprietary Software and Software and Support Materials.<sup>249</sup> In the second half of 2004, PeopleSoft had an informal process for keeping track of third party support providers.<sup>250</sup> In January 2005, as a result of its acquisition of PeopleSoft and SAP's acquisition of TomorrowNow, Oracle started tracking the impact of competition from TomorrowNow and cancellations of PeopleSoft and J.D. Edwards support contracts where the customer switched to TomorrowNow.<sup>251</sup> Oracle established numerous policies and procedures in an effort to combat the competition from SAP's TomorrowNow service offering, including:

- Oracle established a formal "At Risk" reporting process for sales personnel to report support renewal customers that they felt were "at risk" of not renewing with Oracle;<sup>252</sup>

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<sup>248</sup> Email from Edward Cavazos, Andrews Kurth LLP, to Russell Hartz, Blank Rome, attaching letters: PeopleSoft letter from David Chavez to Seth Ravin dated July 10, 2002 and TomorrowNow letter from James Spencer to David Chavez dated July 27, 2002, AK000555-62, at 558.

<sup>249</sup> Deposition of Robbin Henslee (Oracle Senior Director of Support Policies and Programs), July 15, 2009, pgs. 19-21; Deposition of Nancy Lyskawa (Vice President of Support Marketing), May 6, 2009, pgs.17 and 147.

<sup>250</sup> PeopleSoft email chain, ORCL00461310-14 (Lyskawa Exhibit 423), at 310-312; Deposition of Nancy Lyskawa (Vice President of Support Marketing), May 6, 2009, pg. 124; Deposition of Meeia Crossman (Oracle Senior Manager, Support Renewals), December 2, 2009, pgs. 31-32, 47-48; Email from Tawanna Sanders to Meeia Crossman Re: Competitive Meeting Objective and Action items, ORCL00454843-45 (Crossman Exhibit 862); Email from Nancy Lyskawa to Andy Allbritten Re: Competitive information on 3<sup>rd</sup> party grey market providers, ORCL00454965-75 (Crossman Exhibit 863).

<sup>251</sup> Deposition of Robbin Henslee (Oracle Senior Director of Support Policies and Programs), July 15, 2009, pg. 38.

<sup>252</sup> Deposition of Richard Cummins (Oracle Senior Director, Support Renewals for North America), September 16, 2008, pgs. 88-90; For example, see "At Risk" reports at 3<sup>rd</sup>\_party\_Risk\_Analysis\_05-03-06.xls, ORCL 00032751 (Cummins Exhibit 55) and PSFT-JDE 3<sup>rd</sup> party risk analysis 1-25-08REDACTED.xls, ORCL 00079745 (Cummins Exhibit 59).

- A “Third Party SWAT Team” was created to determine how to deal with customers identified as “At Risk” for going to TomorrowNow;<sup>253</sup>
- Oracle developed marketing collateral to sell against TomorrowNow;<sup>254</sup>
- Oracle tracked cancellation rate statistics and trends, including those cancellations identified as lost to TomorrowNow;<sup>255</sup> and
- Oracle analyzed the impact of high cancellation rates of PeopleSoft, J.D. Edwards and Siebel support contracts on Oracle’s application strategies and funding of research and development.<sup>256</sup>

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<sup>253</sup> Deposition of Richard Cummins (Oracle Senior Director, Support Renewals for North America), September 16, 2008, pgs. 118-120.

<sup>254</sup> Deposition of Nancy Lyskawa (Vice President of Support Marketing), May 6, 2009, pgs. 71-72 and 144-147; Oracle email from Tawanna Sanders to Nancy Lyskawa Re: Customer FAQv2 with attached document “Customer Retention Program Customer FAQs v2\_022405.doc,” ORCL00302457-67 (Lyskawa Exhibit 428), at 463-467.

<sup>255</sup> Deposition of Richard Cummins (Oracle Senior Director, Support Renewals for North America), September 23, 2008, pgs. 291-298; Oracle email from Rick Cummins to Juan Jones and Christopher Madsen Re: At Risk PeopleSoft JDE, ORCL 00209742-745(Cummins Exhibit 302), at 742; Oracle email from Juan Jones to Dave Hare Re: Focus on JB Hunt / New TomorrowNow Program, ORCL 00087645-46 (Cummins Exhibit 53), with attached document “PSFT ‘At Risk’ Update August 16, 2006,” ORCL 00297958-969, at 00297959, 961 and 966; Oracle email from Buffy Ransom to Tod Keiffer Re: Third Party Risk, ORCL 00087892-893 (Cummins Exhibit 61); Oracle email from Juan Jones to Dave Hare Re: Applications support initiatives with attached document “JDE Maintenance Revenue Discussion,” ORCL 00087618-44 (Cummins Exhibit 65), at 632-636.

<sup>256</sup> “Implications of Maintenance Cancellations on Applications Product Strategy,” ORCL 00289369-86, at 374 and 381. “Applications Revenue Analysis & Plan,” ORCL 00498305-314, at 306 and 309-310; “Business Review Q1 FY08,” ORCL 00498318-346, at 320 and 325; Discussions with Mohit Mahendra (Applications Product Strategy) and Ognjen Pavlovic (Oracle Senior Vice President of Customer Services, North America Support).

TEXT REMOVED - NOT RELEVANT TO MOTION

381. Where applicable, the results of my analysis were compared, by customer, to Oracle or PeopleSoft contemporaneous reports of support renewals lost or at risk of being lost (“At Risk” reports).

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