KEVIN V. RYAN (CSBN 118321)
United States Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PHILLIP E. WHITE, Defendant.	No. VIOLATIONS: 18 U.S.C. §§ 1341, 1343 and 2; 15 U.S.C. §§ 77x, 78j(b), 78m(b)(2), 78ff(a);17 C.F.R. §§ 240.13b2-1, 240.13b2-2 – Mail and Wire Fraud; Securities Fraud, Falsification of Accounting Records; False Statements In Registration Statement And To Accountants; Aiding and Abetting SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

I. BACKGROUND

At all times relevant to this Indictment:

A. The Company

1. Informix Corp. ("Informix") was a Delaware corporation with its headquarters in Menlo Park, California. Informix was a developer and multinational supplier of parallel processing database technology, primarily computer database management software, support, training, and consulting.

2. Informix was a publicly held corporation whose shares were registered with and traded under the symbol "IFMX" on the National Association of Securities Dealers Automated Quotation system ("NASDAQ"), a national securities exchange that uses the means and

instrumentalities of interstate commerce and the mails.

3. Informix sold its products directly to end-user customers and through resellers, including original equipment manufacturers ("OEMs"), distributors, and value added resellers. Informix marketed and sold its products worldwide, and had operating subsidiaries in 37 foreign countries, including Germany and Japan. Informix derived revenues primarily by licensing its software to customers.

4. As a public company, Informix was required to comply with regulations of the United States Securities and Exchange Commission (the "SEC"). Those regulations are designed to protect members of the investing public by, among other things, ensuring that a company's financial information is accurately recorded and disclosed to the public.

5. Under SEC regulations, Informix and its officers also had a duty to: (a) make and keep books, records and accounts that fairly and accurately reflected the company's business transactions; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit preparation of reliable financial statements; and (c) file quarterly reports (on Form 10-Q) and annual reports (on Form 10-K) with SEC. Informix's Form 10-K included audited financial statements, which reflected revenue from software licensing and net income.

6. Ernst & Young ("E&Y"), a public accounting firm, acted as the outside auditors of Informix's financial statements.

B. The Defendant

7. Beginning in 1989, defendant PHILLIP E. WHITE was Informix's Chief Executive Officer ("CEO") and a director of the company. He was also Informix's President beginning in 1990, and Chairman of the Board of Directors beginning in 1992. As President and Chief Executive Officer, WHITE was responsible for the entirety of Informix's world-wide operations. WHITE resigned as Informix's President and Chief Executive Officer on July 22, 1997. Informix's Board of Directors dismissed WHITE from the Board on July 30, 1997.

8. During 1996, WHITE received approximately $465,000 in salary from Informix and exercised Informix stock options resulting in a profit of $3,219,368. In May 1997, WHITE

owned or had the right to purchase approximately 1,307,012 shares of Informix stock.

C. Relevant Customers

9. Hewlett Packard Corp., located in Cupertino, California, through its subsidiary Hewlett Packard GmbH, located in Boeblingen, Germany (collectively, "HP"), was an OEM and customer of Informix's German subsidiary.

10. Fujitsu Limited ("Fujitsu"), located in Tokyo, Japan, was an OEM and a customer of Informix's Japanese subsidiary.

D. Informix's Revenue Recognition Policy

11. Throughout 1996, Informix had a company policy setting certain requirements for revenue recognition in accordance with SEC regulations and Generally Accepted Accounting Principles ("GAAP"). Informix's policy relied upon Software Revenue Recognition, Statement of Position 91-1 (Amer. Inst. of Certified Public Accountants 1997) ("SOP 91-1"). Under its policy and SOP 91-1, Informix recognized revenue immediately upon signing a software license sales contract, even if the payments were not actually received by Informix until a later reporting period, so long as (a) Informix had delivered the software to the customer; (b) Informix had no continuing obligations under the contract; (c) the customer's obligation to pay Informix for the licenses was fixed and irrevocable, and collectibility by Informix was probable; and (d) the customer was obligated to make all payments within twelve months.

E. E&Y's 1996 Summary of Audit Differences ("SAD")

12. For 1996, Informix reported worldwide revenues of $939.3 million and net income (profit) of $97.8 million. As Informix's CEO, WHITE signed the 1996 Form 10-K reporting these financial results in March 1997. Although E&Y issued an unqualified audit report stating that Informix's financial statements complied with GAAP, E&Y informed WHITE that it did not agree with Informix's decision to recognize revenue from certain transactions. E&Y maintained these disagreements on a "Summary of Audit Differences" report ("SAD"). At the time WHITE signed the Form 10-K, E&Y did not consider the amounts reflected on the SAD to be sufficiently large as to materially undermine the reported results.

13. Before issuing its unqualified audit report, E&Y demanded a specific

representation from Informix's management, including WHITE, that none of the revenue from 1996 was subject to forfeiture, refund or other concession. As Informix's CEO, WHITE signed and provided such a representation to E&Y in March 1997.

14. In or about March 1997, E&Y discovered concessions in so-called "side agreements" with two Informix customers in 1996 software license sales contracts in the United Kingdom, precluding recognition of approximately $2 million in revenue. In or about May 1997, E&Y concluded that even including this amount in the SAD, the total amount of improperly recognized revenue for 1996 was not enough to trigger a restatement of Informix's reported financial results.

15. In or about late June 1997, E&Y discovered another previously undisclosed "side agreement" issued to Fujitsu in December 1996, that precluded recognition of approximately $4.7 million in revenue from Informix's August 1996 software license sales contract with Fujitsu in Japan. The "side agreement" extended Fujitsu's payment period to two years, in violation of GAAP. E&Y advised WHITE that the amount of the SAD was now material and, unless Fujitsu rescinded the "side agreement," E&Y would require a restatement of Informix's 1996 financial results. WHITE knew that Informix could not grant any concessions to Fujitsu in order to obtain the rescission.

II. THE SCHEME TO DEFRAUD

16. Beginning no later than on or about July 2, 1997, and continuing to on or about July 30, 1997, within the Northern District of California, and elsewhere, the defendant PHILLIP E. WHITE knowingly and intentionally devised, and intended to devise, a scheme and artifice to defraud Informix, its shareholders, and the SEC, to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and to deprive Informix of its intangible right to his honest services.

17. It was part of the scheme and artifice to defraud that defendant WHITE directly and indirectly:

a. concealed facts from Informix's auditors and finance staff which, had such facts been disclosed, would have caused an immediate restatement of Informix's 1996 financial

results and a consequent plunge in the value of Informix's stock price;

b. caused false and illusory sales to be maintained as revenue in the books and records of Informix, in violation of GAAP and Informix's own internal revenue recognition policy;

c. made and caused to be made material false statements to Informix's finance staff, its auditors, the SEC and the investing public regarding Informix's 1996 revenue and profits.

18. The purpose of the scheme and artifice to defraud was to forestall or prevent a restatement of Informix's 1996 financial results, to falsely inflate Informix's revenue and profits, to induce investors to continue to purchase and hold Informix stock, to artificially sustain Informix's stock price, and to maintain the defendant WHITE's position in the company and reputation with the investing public.

A. False Transactions and Accounting Entries

19. As part of the scheme and artifice to defraud, defendant WHITE engaged in and concealed the following fraudulent transactions:

(1) The Second "Side Agreement" With Fujitsu

20. At E&Y's urging, WHITE flew to Japan, and on July 4, 1997, met with a senior executive of Fujitsu. WHITE obtained a written recision of the "side agreement" with Fujitsu referred to in ¶15 above. In exchange for the recision, however, WHITE also simultaneously entered into an entirely new and separate "side agreement" with Fujitsu under which Informix promised to pay Fujitsu $3 million for unspecified products and services. The $3 million corresponded to the remaining amount due to Informix under the August 1996 software license sales contract with Fujitsu.

21. When WHITE returned to the United States, he provided E&Y with Fujitsu's written recision of the original "side agreement" and E&Y agreed not to proceed with a restatement. WHITE never provided the second "side agreement" he negotiated in Japan (entitled a "Memorandum or Understanding," or "MOU"), nor did he ever disclose its existence, to E&Y or to Informix's finance staff in the United States. WHITE knew that disclosure of the

MOU would trigger a restatement of Informix's 1996 financial statements.

(2) White Conceals A "Side Agreement" With HP

22. On or about July 2, 1997, Informix's Vice President for Worldwide Operations informed WHITE that a $6.4 million software license sales agreement with HP's German subsidiary from December 1996 was subject to an undisclosed "side agreement" granting HP the right to cancel the transaction and seek a refund of any payments made to Informix. As a result of the "side agreement," HP refused to make a $3.2 million payment due on the contract and demanded a refund from Informix of its previous $3.2 million payment.

23. On or about July 7, 1997, WHITE met with a senior executive of HP in the United States in an effort to persuade HP not to enforce the "side agreement." White offered to ensure the sale of any remaining software licenses from the contract for HP, a concession which in and of itself would have precluded revenue recognition. The HP senior executive declined to rescind the "side agreement." WHITE never disclosed the existence of this "side agreement," HP's cancellation of the original transaction, or its demand for a refund, to E&Y or to Informix's finance staff in the United States. WHITE knew that disclosure of this information would trigger a restatement of Informix's 1996 financial statements.

B. False Statements To The SEC and Investing Public

24. It was a further part of the scheme and artifice to defraud that the defendant WHITE made materially false and misleading statements to the SEC and the investing public. Specifically, on or about July 16, 1997, Informix filed with the SEC two Form S-8 registration statements for the sale of 12 million shares of common stock to Informix employees. As Informix's CEO, WHITE signed the Forms S-8, certifying that Informix believed that they complied with the Securities Act of 1933, and incorporating Informix's existing 1996 financial statements by reference. These representations by WHITE were false. At the time he signed the Forms S-8 and caused them to be filed with the SEC and disseminated to the investing public, WHITE knew about and was concealing the existence of the Fujitsu MOU and the HP "side agreement." WHITE therefore knew that Informix's existing 1996 financial statements were, in fact, false and misleading, were required to be restated, and that the Form S-8 registration

statements therefore did not comply with the Securities Act of 1933.

C. White's False Statement to Informix's Auditors

25. It was a further part of the scheme and artifice to defraud that defendant WHITE made materially false and misleading statements to Informix's auditor E&Y in connection with the filing of Informix's Form S-8 with the SEC. As part of the Form S-8 filing process, E&Y required WHITE to provide a "representation letter." WHITE signed the letter on July 11, 1997. In it, WHITE re-affirmed the accuracy of the 1996 financial statements. WHITE represented:

a. "We have responded fully to all inquiries made to us by your review."

b. "We recognize that, as members of management of the Company, we are responsible for the fair presentation of its unaudited consolidated financial statements . . . for 1996 (incorporated by reference in the Form S-8). Such financial statements were prepared from the books and records of Informix Corporation in conformity with generally accepted accounting principles applied on the same basis as that used for the audited consolidated financial statements of Informix Corporation as of and for the three years in the period ending December 31, 1996, and reflect all adjustments necessary for a fair presentation of the consolidated financial statements."

c. "All material transactions have been properly recorded in the accounting records underlying these financial statements."

d. "Subsequent Events. No events or transactions have occurred since the date of our previous letter or are pending, other than those reflected or disclosed in the filing, that would have a material effect on the audited financial statements and the unaudited interim financial information incorporated by reference in the Form S-8 or that are of such significance in relation to the Company's affairs to require mention in a note to the audited financial statements . . . so as to make them not misleading regarding the financial position . . . of the Company."

26. These representations by WHITE were false. When he made them, WHITE knew that: (a) he had not responded fully to all inquiries by E&Y; (b) because of the Fujitsu MOU and the HP "side agreement," Informix's existing 1996 financial statements were, in fact, false and misleading, and were required to be restated; (c) the Fujitsu and HP transactions had not been properly recorded by Informix; and (d) subsequent to the 1996 Form 10-K, WHITE had entered into the MOU with Fujitsu and learned of the HP "side agreement," both of which had a material effect on the financial statements and, while concealed from the auditors and the investing public, rendered those statements false and misleading with respect to Informix's financial position.

III. THE RESTATEMENT

27. In or about the last week of July 1997, E&Y and Informix's finance staff discovered WHITE's MOU with Fujitsu and the HP "side agreement." Informix's Board of Director's dismissed WHITE from his position as Chairman. Because each was a concession to the original contract and precluded revenue recognition under GAAP, E&Y reversed the revenue from the transactions and commenced procedures to determine the full extent of its restatement of Informix's 1996 financial results.

28. In or about August and September of 1997, Informix announced publicly that because of the improperly recognized revenue, it would restate its 1994, 1995 and 1996 financial results. The company reduced total 1996 revenues by $212 million, eliminated net income (profits) of nearly $100 million, and reported a loss of $73 million. As Informix announced that it had improperly recognized revenue and that its financial results would have to be restated, its stock price dropped from a high of $12.20 per share, to as low as $6.28 per share, losing approximately 50% of its value. Informix's market capitalization, or the value of the public's investment in the company, dropped from approximately $1.8 billion to as low as $942 million.

COUNT ONE: (15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5 – Fraud in Connection with the Purchase and Sale of Securities; 18 U.S.C. § 2 – Aiding, Abetting and Willfully Causing)

29. Paragraphs 1 through 28 are incorporated here by reference.

30. Beginning on or about July 2, 1997, and continuing to on or about July 30, 1997, in the Northern District of California, and elsewhere, the defendant

PHILLIP E. WHITE

knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of a national securities exchanges, did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Informix, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making and causing Informix to make untrue statements of material fact and omitting to state facts necessary

in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Informix securities.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

COUNTS TWO AND THREE: (15 U.S.C. §§ 78m(b) and 78ff(a), and 17 C.F.R. 240.13b2-1; 18 U.S.C. § 2 -- Falsification of Accounting Records; Aiding, Abetting and Willfully Causing)

31. Paragraphs 1 through 28 are incorporated here by reference.

32. On or about the following dates, within the Northern District of California and elsewhere, the defendant

PHILLIP E. WHITE

did knowingly and willfully, directly and indirectly, circumvent Informix's system of internal accounting controls, and falsify and cause to be falsified Informix's books, records and accounts, which were subject to Section 13(b)(2)(A) of the Securities and Exchange Act, as follows:.

Count	Approximate Date	False Book, Record And Account
TWO	July 1997	Continued recognition of revenue within Informix's 1996 financial statements from the August 1996 Fujitsu software license contract in the amount of approximately $4.7 million;
THREE	July 1997	Continued recognition of revenue within Informix's 1996 financial statements from the December 1996 HP (Germany) software license contract transaction in the amount of approximately $6.4 million.

All in violation of Title 15, United States Code, Sections 78m(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.13b2-1; and Title 18, United States Code, Section 2.

COUNT FOUR: (15 U.S.C. §§ 78m(b)(2) and 78ff(a), and 17 C.F.R. 240.13b2-2; 18 U.S.C. § 2 -- False Statements to Accountants; Aiding, Abetting, and Willfully Causing)

33. Paragraphs 1 through 28 are incorporated here by reference.

34. On or about July 11, 1997, within the Northern District of California and

elsewhere, the defendant

PHILLIP E. WHITE

did knowingly and willfully make and cause to be made materially false and misleading statements to Informix's auditor and accountant E&Y in connection with the audit and examination of Informix's 1996 financial statements and the preparation of documents and reports required to be filed with the SEC, specifically the Forms S-8 filed with the SEC on July 16, 1997, and did knowingly and willfully omit to state material facts necessary in order to make statements made – in light of the circumstances under which such statements were made – not misleading.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNTS FIVE THROUGH SEVEN: (18 U.S.C. §§ 1341, 1343 and 2 -- Wire and Mail Fraud; Deprivation Of Right To Honest Services; Aiding, Abetting and Willfully Causing)

35. Paragraphs 1 through 28 are incorporated here by reference.

36. On or about the following dates, within the Northern District of California and elsewhere, for the purpose of executing a scheme and artifice to defraud, to obtain money and property, and to deprive his employer Informix of the intangible right to his honest services, defendant

PHILLIP E. WHITE

did knowingly cause the following items to be delivered by a private and commercial interstate carrier according to the direction thereon and transmitted by means of a wire communication in interstate and foreign commerce:

Count	Approximate Date	Form of Communication	Description
FIVE	July 5, 1997	Wire Transmission (facsimile)	Fujitsu's July 4, 1997, Recision of the December 1996 "side agreement," bearing the signatures of WHITE and Fujitsu executive, from Tokyo, Japan to WHITE's home in Atherton, California.

SIX	July 8, 1997	Wire Transmission (facsimile)	Fujitsu MOU, bearing WHITE's signature, from Informix headquarters in Menlo Park, California, to Informix's Japanese subsidiary in Tokyo, Japan.
SEVEN	July 11, 1997	Commercial Carrier (DHL International)	Fujitsu MOU, bearing WHITE'S signature, from Informix headquarters in Menlo Park, California, to Informix's Japanese subsidiary in Tokyo, Japan.

All in violation of Title 18, United States Code, Sections 1341, 1343 and 2.

COUNT EIGHT: (15 U.S.C. § 77x; 18 U.S.C. § 2 -- False Statements In A Registration Statement; Aiding, Abetting and Willfully Causing)

37. Paragraphs 1 through 28 are incorporated here by reference.

38. On or about July 16, 1997, within the Northern District of California and elsewhere, the defendant

PHILLIP E. WHITE

did knowingly and willfully in a registration statement filed under the Securities Act of 1933, cause to be made untrue statements of material fact, and omit and cause Informix to omit to state material facts required to be stated therein and necessary to make the statements therein not misleading.

All in violation of Title 15, United States Code, Section 77x; and Title 18, United States Code, Section 2.

DATED: November 21, 2002

A TRUE BILL.

FOREPERSON

KEVIN V. RYAN
United States Attorney

CHARLES B. BURCH
Chief, Criminal Division

(Approved as to form: AUSA Robbins)