

EXHIBIT 5

TEXT REMOVED - NOT RELEVANT TO MOTION

09:38:20	23	MR. PICKETT: Q. With reference to the
09:38:21	24	second supplemental report, 3201, that references
09:38:32	25	declarations of TomorrowNow customers produced to

09:38:36 1 Oracle for the first time on May 7. Correct?

09:38:42 2 A. I don't know when the declarations were
09:38:43 3 produced to you.

09:38:44 4 Q. After the March 26 report?

09:38:48 5 MR. McDONELL: Lack of foundation.

09:38:50 6 THE WITNESS: I really don't know when
09:38:51 7 they were produced to Oracle.

09:38:53 8 MR. PICKETT: Q. Well, you do recall that
09:38:54 9 some of the customers' declarations came in after
09:38:58 10 your initial report. Correct?

09:39:00 11 A. That's my understanding.

09:39:01 12 Q. And do you know why they came in after you
09:39:04 13 had submitted your report?

09:39:05 14 A. No.

09:39:09 15 Q. What did you do, if anything, to obtain
09:39:14 16 declarations from customers?

09:39:19 17 A. I don't recall doing anything to obtain
09:39:22 18 declarations from customers.

09:39:23 19 Q. So how did you receive customer
09:39:24 20 declarations?

09:39:26 21 A. They came from Jones Day.

09:39:29 22 Q. So whatever declarations you refer to in
09:39:33 23 your report were simply something that came to you
09:39:37 24 from the SAP attorneys?

09:39:39 25 MR. McDONELL: Misstates the testimony and

09:39:40 1 misstates the reality of what you know.

09:39:47 2 THE WITNESS: That's my understanding.

09:39:50 3 MR. McDONELL: Counsel, for the record,
09:39:51 4 you're not intending to ignore the declarations
09:39:54 5 that you produced, are you? Just -- I don't want
09:39:57 6 it to be vague and ambiguous.

09:39:59 7 MR. PICKETT: I'm not. Let's go.

09:40:02 8 Q. If a customer didn't have a declaration,
09:40:05 9 did you make inquiry?

09:40:08 10 MR. McDONELL: Vague and ambiguous.

09:40:09 11 THE WITNESS: Of the customers, no.

09:40:11 12 MR. PICKETT: Q. Of Jones Day?

09:40:16 13 MR. McDONELL: Don't disclose
09:40:17 14 communications with counsel. I instruct you not to
09:40:19 15 answer.

09:40:24 16 MR. PICKETT: Q. How did you distinguish
09:40:26 17 in your mind customers for whom you had a
09:40:28 18 declaration and those for whom you did not?

09:40:30 19 MR. McDONELL: Vague and ambiguous.

09:40:36 20 THE WITNESS: I don't understand that
09:40:36 21 question.

09:40:37 22 MR. PICKETT: Q. Well, you had some
09:40:38 23 statements from some of the customers, and you
09:40:40 24 didn't have statements from some of the other
09:40:41 25 customers. Did it make any difference to you?

09:40:46 1 A. It obviously made a difference in some
09:40:49 2 instances. So I either had a declaration that I
09:40:57 3 used or I didn't have a declaration.

09:41:01 4 Q. And when you didn't have a declaration,
09:41:03 5 did you seek to get a declaration?

09:41:05 6 MR. McDONELL: Again, don't disclose
09:41:06 7 communications with counsel.

09:41:09 8 THE WITNESS: I can't answer that
09:41:10 9 question.

09:41:18 10 MR. PICKETT: Q. The customers who
09:41:20 11 submitted declarations after your March 26 report
09:41:24 12 are not new to the case. Correct?

09:41:31 13 A. I don't know what you mean.

09:41:32 14 Q. Well, they didn't just suddenly pop up
09:41:36 15 after March 26, did they?

09:41:37 16 MR. McDONELL: Vague and ambiguous.
09:41:38 17 Argumentative. Object to the form.

09:41:41 18 THE WITNESS: You mean the customer didn't
09:41:44 19 pop up, or the declaration didn't pop up?

09:41:47 20 MR. PICKETT: Q. Well, the declaration
09:41:47 21 popped up. The customer, I'm talking about.

09:41:50 22 MR. McDONELL: Argumentative, vague and
09:41:51 23 ambiguous.

09:41:53 24 THE WITNESS: Well, I think the customers
09:41:55 25 at issue have been known for quite some time.

09:41:59 1 MR. PICKETT: Q. Was there any reason
09:42:00 2 that SAP or you could not have obtained a
09:42:06 3 declaration prior to the March 26 report being
09:42:09 4 submitted?

09:42:11 5 MR. McDONELL: Lack of foundation,
09:42:12 6 compound. Don't disclose communications with
09:42:14 7 counsel.

09:42:15 8 THE WITNESS: I can't answer that
09:42:16 9 question.

09:42:20 10 MR. PICKETT: Q. Do you know of any
09:42:20 11 attempts to secure additional customer declarations
09:42:23 12 that failed?

09:42:25 13 MR. McDONELL: Same instruction. Don't
09:42:26 14 disclose communications with counsel. If you can
09:42:28 15 answer without disclosing communications with
09:42:30 16 counsel, you may do so.

09:42:33 17 THE WITNESS: I can't answer that
09:42:33 18 question.

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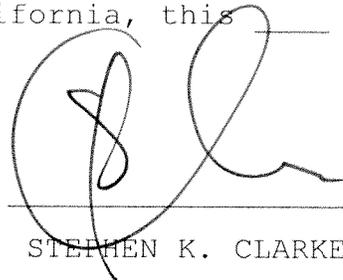
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I declare under penalty of perjury that
the foregoing is true and correct. Subscribed at
_____, California, this _____ day of
_____ 2010.



STEPHEN K. CLARKE

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: June 17, 2010
Holly Thuman
HOLLY THUMAN, CSR