UNIT	ED STATES DISTRICT COURT
NORTHE	RN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE P	PHYLLIS J. HAMILTON, JUDGE
ORACLE CORPORATION, ET	•
PLAINTIFFS,) NO. C 07-01658 PJH)
VS.) JURY TRIAL) VOLUME 2
SAP AG, ET AL.,) PAGES 297 - 479
DEFENDANTS.) OAKLAND, CALIFORNIA) TUESDAY, NOVEMBER 2, 2010
	NSCRIPT OF PROCEEDINGS
APPEARANCES:	
FOR PLAINTIFFS:	BINGHAM MUCCUTCHEN LLP THREE EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111-4607 ZACHARY J. ALINDER, HOLLY A. HOUSE, GEOFFREY M. HOWARD, DONN P. PICKETT, ATTORNEYS AT LAW BOIES, SCHILLER & FLEXNER LLP
BY:	1999 HARRISON STREET, SUITE 900 OAKLAND, CALIFORNIA 94612 STEVEN C. HOLTZMAN, ATTORNEY AT LAW
(APPEAR	ANCES CONTINUED NEXT PAGE)
REPORTED BY:	RAYNEE H. MERCADO, CSR NO. 8258
RAYNEE H. MERCADO, C	SR, RMR, CRR, FCRR, CCRR (510) 451-7530

1 1.1. CONTRACT ADMINISTRATE NUMBER OF THE RELIGION OF LAST 1 TOMARKY YOU, YARY MUCH YOR YOR ATTENTION. 2 CONTRACTS, WITTEN CONTRACTS, WAS LEDGEN TO THE CONTRACTS AND SUPCED LIAY WAS LEDGEN TO THE CONTRACTS. 2 CONTRACTS, WITTEN CONTRACTS, WAS LEDGEN TO THE CONTRACTS, WAS LEDGEN T		Page 383		Page 385	
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22 SAPE SOFTWARE TO CUSTOMERS THAT CAME TO SAP ONLY BECAUSE OF 23 FIRST, LET ME SAY THAT, JUST TO SET THE BACKGROUND, 23 TOMORROWNOW. AND I'LL EXPLAIN THOSE TWO CATEGORIES AS WE GO CN 24 WHEN ORACLE SLLS SOFTWARE TO A CUSTOMER, THAT CUSTOMER HAS 24 THIS MORNING. 25 RIGHT TO DOWNLOAD CERTAIN MATERIALS FROM ORACLES WEBSTER WLATZ5 WHAT YOU WILL HEAR, THOUGH, IS ORACLE WANTS MUCH MORE Page 384 7 THE CUSTOMER CAN DO WITH THOSE MATERIALS DEPENDS ON THE TERMS OF 1 THAN THAT. IN ADDITION TO A LONG PUELIC TRIAL WHERE THEY IROT 2 THE CONTRACT, THE LICENSE BETWEEN ORACLE AND THE CUSTOMER. 3 WINDFALL. THEY WANT A BONARZA THAT IS OUT OF ALL PROPORTION TO 4 DOWNLOAD THE MATERIALS DOWN COMPUTER, AND IT CAN USE THOSE 1 THAN THAT. IN ADDITION TO A LONG PUELIC TRIAL WHERE THEY IROT 6 TOMORROWNOW HEAP IT WORK ON THASE AND IT CAN USE THOSE 1 THAN THAT. IN ADDITION TO A LONG PUELIC TRIAL WHERE THEY IROT 6 TOMORROWNOW HEAP IT WORK ON THASE ANAPE ATHING PARTY LIKE 5 THIS CASE IS ABOUT. 6 THE ONNLOADED MATERIALS HEAP IT WOLD HAVE 5 THIS CASE IS ABOUT. 7 MATERIALS THAT THA THAD HAP PHENE HERE, IT WOLLD HAVE 6 THE ONE STUBBORY FACT BECAUSE NOBODY CAN DISN'TE T. AND IT <td>20</td> <td>SHOULD THE DEFENDANT PAY THE PLAINTIFF. THIS CASE IS DIFFERENT.</td> <td>20</td> <td>PROFITS THAT SAP GAINED BY SELLING SOFTWARE SAP'S OWN</td> <td></td>	20	SHOULD THE DEFENDANT PAY THE PLAINTIFF. THIS CASE IS DIFFERENT.	20	PROFITS THAT SAP GAINED BY SELLING SOFTWARE SAP'S OWN	
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24 WHEN ORACLE SELLS SOFTWARE TO A CUSTOMER, THAT CUSTOMER HAS 24 THIS MORNING. 25 RIGHT TO DOWNLOAD CERTAIN MATERIALS FROM ORACLES WEBSITE: WHAT YOU WILL HEAR, THOUGH, IS ORACLE WANTS MUCH MORE 26 RIGHT TO DOWNLOAD CERTAIN MATERIALS DEPENDS ON THE TERMS OF 1 THAN THAT. IN ADDITION TO A LONG PUBLIC TRIAL WHERE THEY TROT 2 THE CONTRACT, THE LICENSE BETWEEN ORACLE AND THE CUSTOMER. 2 0UT EVIDENCE OF THINGS WEVE ALREADY ADMITTED TO, THEY WANT A 3 UNDER MOST OF THOSE LICENSES, THE CUSTOMER CAN 3 WINNPALL THEY WANT A BONNARZA THAT IS OUT OF ALL PROPORTION TO 4 DOWNLOAD THE MATERIALS TO ITS OWN COMPUTER, AND IT CAN USE THOSE 5 THE CASE IS ABOUT. 5 TOMORROWNOW HELP IT WORK ON THOSE MATERIALS, HELP IT USE THOSE 6 THE ONE STUBBORN FACT THAT IS GOING TO BE IMPORTANT 7 MATERIALS 10 WANT SALL THAT HAD HAPPENED HERE, IT WOULD HAVE 9 E0E ONTORROWNOW WOND MORE, ONE OF THE THINGS IT DID 9 0 UTSTOMERS WHORE VER WENT TO TO MORROWNOW SO WIL SAND 10.00000000000000000000000000000000000	22	SOMETHING WRONG, AND I WANT TO TELL YOU WHAT IT IS.	22	SAP'S SOFTWARE TO CUSTOMERS THAT CAME TO SAP ONLY BECAUSE OF	
25 RIGHT TO DOWNLOAD CERTAIN MATERIALS FROM ORACLES WEBSITE. WEAT 25 WHAT YOU WILL HEAR, THOUGH, IS ORACLE WANTS MUCH MORE 26 Page 384 Page 386 1 THE CUSTOMER CAN DO WITH THOSE MATERIALS DEPENDS ON THE TEEMS OF 1 2 THE CUSTOMER CAN DO WITH THOSE MATERIALS DEPENDS ON THE TEEMS OF 1 3 UNDER MOST OF THOSE LICENSES, THE CUSTOMER CAN 3 4 DOWNLOAD THE MATERIALS TO SOM COMPUTER, AND IT CAN USE THOSE 4 5 MATERIALS TO NOR RONNOW HEID TS OWN COMPUTER, AND IT CAN USE THOSE 4 6 TOMORRON OWN HEID TT WORK ON THOSE MATERIALS, HEID PT USE THOSE 6 THE INS CASE IS ABOUT. 7 MATERIALS TO NOR RONNOW HEID TT WORK ON THOSE MATERIALS, HEID PT USE THOSE 6 THE ONE STUBBOOR FACT THAT IS COING TO BE IMPORTANT 7 MATERIALS. 1 THAR OUGHOUT THIS CASE IS THAT OF THE 9- OR 10,000 CUSTOMERS THAT 8 IF THATS ALL THAT HAD HAPPENED HERE, IT WOULD HAVE 9 CUSTOMERS WHOEVER WENT TO TOMORRONOW SO INLY 35S. AND ISAN 10 WAST DOWNLOADED MATERIALS THAT THE LUSTOMER VAS ENTITLED TO, 10 11 MEANS THAT DESPITE THE PLANS AND THE HOPES AND THE EXPECTATION 11 BUT DOWNLOADED MATERIALS THAT HAD A RIGHT TO 11 MEANS THAT THOSES OFT, ONLY	23	FIRST, LET ME SAY THAT, JUST TO SET THE BACKGROUND,	23	TOMORROWNOW. AND I'LL EXPLAIN THOSE TWO CATEGORIES AS WE GO C	N
Page 384 Page 386 1 THE CUSTOMER CAN DO WITH THOSE MATERIALS DEPENDS ON THE TEMS OF 1 THAN THAT. IN ADDITION TO A LONG PUBLIC TRIAL WHERE THEY TROT 2 THE CONTRACT, THE LICENSES, THE CUSTOMER. 2 0UT EVIDENCE OF THIOSE WE'VE ALREADY ADMITTED TO, THEY WANT A 3 UNDER MOST OF THOSE LICENSES, THE CUSTOMER CAN 3 WINDFALL. THEY WANT A BONAXZA THAT IS 10 OF OL LI PROPORTION TO 4 DOWNLOAD THE MATERIALS TO ITS OWN COMPUTER, AND IT CAN USE THOSE 4 THE HARM THAT THEY SUFFERED. AND IN A MUTSHELL, THATS WHAT 5 MATERIALS. TOMORROW NELP IT WORK ON THADE AN HERE ALS, HELP IT USE THOSE 6 THE OUGHOUT THIS CASE IS THAT OF THE 9- OR 10,000 CUSTOMERS THAT 6 TOMORROWNOW HELP IT WORK ON THOSE MATERIALS, HELP IT USE THOSE 6 THE OUGHOUT THIS CASE IS THAT OF THE 9- OR 10,000 CUSTOMERS THAT 7 THATS ALL THAT HAD HAPPENED HERE, IT WOULD HAVE 9 CUSTOMERS WHOEVER WENT TO TOMORROWNOW IS ONLY 35S. AND IS AND THE 9 BEEN OKAY. BUT TOMORROWNOW DID MORE. ONE OF THE THINGS IT DID 9 CUSTOMERS WHOEVER WENT TO TOMORROWNOW IS ONLY 35S. AND IT 12 TOMORROWNOW ALSO USED THARE. AND UNDER THE LICENSES, IT WASN'T 12 OR THE HYPE THAT ANY DESTRET HE PLANS AND THE HEVES TANT 14 TOMORROWN	24	WHEN ORACLE SELLS SOFTWARE TO A CUSTOMER, THAT CUSTOMER HAS A	A 24	THIS MORNING.	
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4DOWNLOAD THE MATERIALS TO ITS OWN COMPUTER, AND IT CAN USE THOSE4THE HARM THAT THEY SUFFERED. AND IN A NUTSHELL, THATS WHAT5MATERIALS TO WORK ON IT AND CAN HAVE A THIRD PARTY LIKE5THIS CASE IS ABOUT.6TOMORROWNOW HELP IT WORK ON THOSE MATERIALS, HELP IT USE THOSE6THE ONE STUBBORN FACT THAT IS GOING TO BE IMPORTANT7MATERIALS.7THROUGHOUT THIS CASE IS THAT OF THE 9- OR 10,000 CUSTOMERS THAT8IF THATS ALL THAT HAD HAPPENED HERE, IT WOULD HAVE8PEOPLESOFT HAVE - HAD THAT YOU HEARD ABOUT, THE NUMBER OF THORE9BEEN OKAY. BUT TOMORROWNOW DID MORE. ONE OF THE THINGS IT DID9CUSTOMERS WHOEVER WENT TO TOMORROWNOW IS ONLY 358. AND ISAS10WAS IT DOWNLOADED MATERIALS THAT THE CUSTOMER WAS ENTITLED TO,10THATS A STUBBORN FACT BECAUSE NOBODY CAN DISPUTE IT, AND IT11BUT DOWNLOADED THEM NOT TO THE CUSTOMER WAS ENTITLED TO,10THATS A STUBBORN FACT BECAUSE NOBODY CAN DISPUTE IT, AND IT12TOMORROWNOW SOWN COMPUTER. AND UNDER THE LICENSES, IT WASNT12OR THE HYPE THAT ANYBODY HAD OF ALL THOSE 9, 10,000 CUSTOMERS13SUPPOSED TO DO THAT.13FROM PEOPLESOFT, ONLY 358 EVER WENT TO TOMORROWNOW, AND SO WERE14TOMORROWNOW ALSO USED THOSE MATERIALS - USED THE14WE START LOOKING AT THE HARM THAT WAS CAUSED TO ORACLE, WE START15MATERIALS TO SERVICE OTHER CLIENTS, CLIENTS THAT HAD A RIGHT TO15WITH THAT 358.16DOWNLOAD THE MATERIALS, BUT TOMORROWNOW JUST DOWNLOADED THEM14THAT, IN A NUTSHELL, IS WHAT THIS CASE IS ABOUT. AND17FOR ONE CUSTOMER AND THEM USED THEM FOR	2	THE CONTRACT, THE LICENSE BETWEEN ORACLE AND THE CUSTOMER.	2	OUT EVIDENCE OF THINGS WE'VE ALREADY ADMITTED TO, THEY WANT A	
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10WAS IT DOWNLOADED MATERIALS THAT THE CUSTOMER WAS ENTITLED TO, BUT DOWNLOADED THEM NOT TO THE CUSTOMER'S COMPUTER BUT TO10THAT'S A STUBBORN FACT BECAUSE NOBODY CAN DISPUTE IT, AND IT11BUT DOWNLOADED THEM NOT TO THE CUSTOMER'S COMPUTER BUT TO11MEANS THAT DESPITE THE PLANS AND THE HOPES AND THE EXPECTATIONS12TOMORROWNOW'S OWN COMPUTER. AND UNDER THE LICENSES, IT WASN'T12OR THE HYPE THAT ANYBODY HAD OF ALL THOSE 9, 10,000 CUSTOMERS13SUPPOSED TO DO THAT.13FROM PEOPLESOFT, ONLY 358 EVER WENT TO TOMORROWNOW. AND SO WHET14TOMORROWNOW ALSO USED THOSE MATERIALS USED THE14WE START LOOKING AT THE HARM THAT WAS CAUSED TO ORACLE, WE START15MATERIALS TO SERVICE OTHER CLIENTS, CLIENTS THAT HAD A RIGHT TO15WITH THAT 358.16DOWNLOAD THE MATERIALS, BUT TOMORROWNOW JUST DOWNLOADED THEM ALL 16THAT, IN A NUTSHELL, IS WHAT THIS CASE IS ABOUT. AND17FOR ONE CUSTOMER AND THEN USED THEM FOR OTHERS. AND TOMORROWNOW17THE EVIDENCE WILL SHOW THE COMPENSATION THAT ORACLE IS ENTITLED18ALSO DOWNLOADED MORE MATERIALS THAN A CUSTOMER WAS ENTITLED TO18TO IS IN THE MILLIONS, THE TENS OF MILLIONS. IT'S NOT IN THE19DOWNLOAD.19BILLIONS.20TOMORROWNOW ADMITS ALL OF THAT. THAT WAS WRONG. IT2021FOR SAPS PART, SAPS CONDUCT ALSO FELL SHORT OF WHAT2122FOR SAPS PART, SAPS CONDUCT ALSO FELL SHORT OF WHAT2231TI SHOULD HAVE BEEN. FIRST OF ALL, SAP SHOULD NOT HAVE BOUGHT2332FIRST LET ME START WITH BILL MCDERMOTT.24TOMORROWNOW WIT	8	IF THAT'S ALL THAT HAD HAPPENED HERE, IT WOULD HAVE	8	PEOPLESOFT HAVE HAD THAT YOU HEARD ABOUT, THE NUMBER OF THOS	Е
11BUT DOWNLOADED THEM NOT TO THE CUSTOMER'S COMPUTER BUT TO11MEANS THAT DESPITE THE PLANS AND THE HOPES AND THE EXPECTATIONS12TOMORROWNOW'S OWN COMPUTER. AND UNDER THE LICENSES, IT WASN'T12OR THE HYPE THAT ANYBODY HAD OF ALL THOSE 9-, 10,000 CUSTOMERS13SUPPOSED TO DO THAT.12OR THE HYPE THAT ANYBODY HAD OF ALL THOSE 9-, 10,000 CUSTOMERS14TOMORROWNOW ALSO USED THOSE MATERIALS USED THE14WE START LOOKING AT THE HARM THAT WAS CAUSED TO ORACLE, WE START15MATERIALS TO SERVICE OTHER CLIENTS, CLIENTS THAT HAD A RIGHT TO15WITH THAT 358.16DOWNLOAD THE MATERIALS, BUT TOMORROWNOW JUST DOWNLOADED THEMALL 16THAT, IN A NUTSHELL, IS WHAT THIS CASE IS ABOUT. AND17FOR ONE CUSTOMER AND THEN USED THEM FOR OTHERS. AND TOMORROWNOW17THE EVIDENCE WILL SHOW THE COMPENSATION THAT ORACLE IS ENTITLED18ALSO DOWNLOADED MORE MATERIALS THAN A CUSTOMER WAS ENTITLED TO18TO IS IN THE MILLIONS, THE TENS OF MILLIONS. IT'S NOT IN THE19DOWNLOAD.19BILLIONS.20TOMORROWNOW ADMITS ALL OF THAT. THAT WAS WRONG. IT20OKAY. BEFORE I GO FURTHER AND TELL YOU HOW THE21WAS COPYRIGHT INFRINGEMENT.21EVIDENCE IS GOING TO SHOW ALL OF THAT, LET ME MAKE SOME22FOR SAPS PART, SAPS CONDUCT ALSO FELL SHORT OF WHAT23FIRST LET ME START WITH BILL MCDERMOTT.23TI SHOULD HAVE BEEN. FIRST OF ALL, SAP SHOULD NOT HAVE BOUGHT23FIRST LET ME START WITH BILL MCDERMOTT.24TOMORROWNOW WITHOUT MAKING SURE THAT TOMORROWNOW WAS COMPLYING24MR. MCDERMOTT IS ONE OF TWO CHIEF EXECUTIVE	9	BEEN OKAY. BUT TOMORROWNOW DID MORE. ONE OF THE THINGS IT DID	9	CUSTOMERS WHOEVER WENT TO TOMORROWNOW IS ONLY 358. AND I SAY	
12TOMORROWNOWS OWN COMPUTER. AND UNDER THE LICENSES, IT WASNT12OR THE HYPE THAT ANYBODY HAD OF ALL THOSE 9, 10,000 CUSTOMERS13SUPPOSED TO DO THAT.13FROM PEOPLESOFT, ONLY 358 EVER WENT TO TOMORROWNOW. AND SO WHEN14TOMORROWNOW ALSO USED THOSE MATERIALS - USED THE14WE START LOOKING AT THE HARM THAT WAS CAUSED TO ORACLE, WE START15MATERIALS TO SERVICE OTHER CLIENTS, CLIENTS THAT HAD A RIGHT TO15WITH THAT 35S.16DOWNLOAD THE MATERIALS, BUT TOMORROWNOW JUST DOWNLOADED THEMLL 16THAT, IN A NUTSHELL, IS WHAT THIS CASE IS ABOUT. AND17FOR ONE CUSTOMER AND THEN USED THEM FOR OTHERS. AND TOMORROWNOW17THE EVIDENCE WILL SHOW THE COMPENSATION THAT ORACLE IS ENTITLED18ALSO DOWNLOADED MORE MATERIALS THAN A CUSTOMER WAS ENTITLED TO18TO IS IN THE MILLIONS, THE TENS OF MILLIONS. IT'S NOT IN THE19DOWNLOAD.19BILLIONS.20TOMORROWNOW ADMITS ALL OF THAT. THAT WAS WRONG. IT20OKAY. BEFORE I GO FURTHER AND TELL YOU HOW THE21WAS COPYRIGHT INFRINGEMENT.21EVIDENCE IS GOING TO SHOW ALL OF THAT, LET ME MAKE SOME22FOR SAPS PART, SAPS CONDUCT ALSO FELL SHORT OF WHAT23FIRST LET ME START WITH BILL MCDERMOTT.23TSHOULD HAVE BEEN. FIRST OF ALL, SAP SHOULD NOT HAVE BOUGHT23FIRST LET ME START WITH BILL MCDERMOTT.24TOMORROWNOW WITHOUT MAKING SURE THAT TOMORROWNOW ASCOMPLYING 24MR. MCDERMOTT IS ONE OF TWO CHIEF EXECUTIVE OFFICERS OF	10	WAS IT DOWNLOADED MATERIALS THAT THE CUSTOMER WAS ENTITLED TO,	10	THAT'S A STUBBORN FACT BECAUSE NOBODY CAN DISPUTE IT, AND IT	
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	23	IT SHOULD HAVE BEEN. FIRST OF ALL, SAP SHOULD NOT HAVE BOUGHT	23	FIRST LET ME START WITH BILL MCDERMOTT.	
25 WITH ORACLE'S COPYRIGHTS. AND HAVING MADE THE MISTAKE OF BUYING 25 C.E.O.'S OF SAP AG. HE WAS GIVEN THAT POSITION IN FEBRUARY OF	24	TOMORROWNOW WITHOUT MAKING SURE THAT TOMORROWNOW WAS COMPLY	ING 24	MR. MCDERMOTT IS ONE OF TWO CHIEF EXECUTIVE OFFICERS OF	
	25	WITH ORACLE'S COPYRIGHTS. AND HAVING MADE THE MISTAKE OF BUYING	25	C.E.O.'S OF SAP AG. HE WAS GIVEN THAT POSITION IN FEBRUARY OF	

20 (Pages 383 to 386)

CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, TUESDAY, NOVEMBER 2, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

piper H. Meredo

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 3, 2010

UNITED STAT	TES DISTRICT COURT
NORTHERN DIST	TRICT OF CALIFORNIA
BEFORE THE HONORABLE PHYLLIS	J. HAMILTON, JUDGE
ORACLE CORPORATION, ET AL.) JURY TRIAL
PLAINTIFFS,) NO. C 07-01658 PJH
VS.) VOLUME 7
SAP AG, ET AL.,) PAGES 1188 - 1420
DEFENDANTS.) OAKLAND, CALIFORNIA) FRIDAY, NOVEMBER 12, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP

ВХ:	THREE EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111-4607 ZACHARY J. ALINDER, HOLLY A. HOUSE, GEOFFREY M. HOWARD, DONN P. PICKETT, ATTORNEYS AT LAW
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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

	Page 1209		Page 1211
1	RESPONSIBILITIES. CERTAINLY NOT THE SCOPE OF HIS	1	EMPLOYMENT. SCOPE OF HIS AUTHORITY.
2	RESPONSIBILITIES IN FEBRUARY 2007 WITH RESPECT TO THE TOPICS OF	2	MR. PICKETT: I'M SORRY. SCOPE OF HIS AGENCY,
3	THIS EMAIL. IT JUST ISN'T THAT SIMPLE TO GET IN.	3	AUTHORITY.
4	THE COURT: WELL, THERE'S A CERTAINLY THERE'S A	4	THE COURT: BUT ALL WELL, LET'S LOOK AT THE
5	LIMITED SHOWING THAT HAS TO BE MADE. IT CAN BE SIMPLE IF IT HAS	5	STATEMENTS THAT MR. MITTELSTAEDT SPECIFICALLY REFERRED TO.
6	BEEN ESTABLISHED	6	WOULD THOSE BE? IS THERE SOME SUGGESTION THAT THEY
7	(SIMULTANEOUS COLLOQUY.)	7	WOULD NOT BE WITHIN THE SCOPE OF HIS AUTHORITY AS THE CHIEF OF
8	MR. PICKETT: IT'S FOUNDATION, RIGHT.	8	SUPPORT?
9	THE COURT: EXACTLY. AND IF, INDEED, THERE HAS BEEN	9	(PAUSE IN THE PROCEEDINGS.)
10	IN THE RECORD I'M NOT AWARE THAT THERE'S BEEN SUCH A	10	THE COURT: OKAY. I'M GOING TO ALLOW THIS ONE IN.
11	FOUNDATION. AND, IN FACT, YOU DO NEED TO HAVE SUCH A FOUNDAT	ON 11	MR. PICKETT: ALL RIGHT.
12	BEFORE I CAN ADMIT IT AS AN ADMISSION.	12	THE COURT: I'M GOING TO ALLOW THIS ONE IN.
13	I DON'T SEE IT AS A BUSINESS RECORD, THOUGH. I MEAN,	13	MR. PICKETT: OVER OBJECTION, OBVIOUSLY.
14	IS THIS EMAIL IS IT DOES IT EXCERPT SOME SORT OF A REPORT	14	I HAVE ONE OTHER ISSUE RELATED TO THIS.
15	THAT IS ITSELF A BUSINESS RECORD?	15	THE COURT: OKAY.
16	MR. MITTELSTAEDT: I THINK THAT GOES BACK TO WHAT HIS	16	MR. PICKETT: BECAUSE THE DOOR HAS BEEN OPENED, WE
17	POSITION IS AND WHETHER THIS IS WITHIN THE SCOPE OF WHAT HE'S	17	THINK INAPPROPRIATELY, TO THIS TYPE OF HEARSAY EVIDENCE ON
18	DOING. BUT IF HE'S WRITING SOMETHING THAT'S WITHIN THE SCOPE OF	18	TUESDAY, WE DO HAVE ONE DOCUMENT WE WOULD LIKE TO USE WITH
19	WHAT HE'S DOING AND HE'S HE'S EXPRESSING FACTS BASED ON WHAT		MR. MEYER, WHICH IS AN ORACLE DOCUMENT WHICH REFUTES THE STATE
20	HE KNOWS, SEEMS TO ME THAT IS A BUSINESS RECORD.	20	OF MIND THAT THEY ATTEMPT TO SHOW WITH THESE DOCUMENTS.
21	MR. LANIER: AND, YOUR HONOR, I'D REFER THE COURT	21	IN OTHER WORDS, IT'S A DOCUMENT THAT SHOWS THAT THEY
22	AND WE CAN PROVIDE A COPY OF IT FOR YOUR HONOR, TO PAGES	22	ARE VERY CONCERNED ABOUT TOMORROWNOW AND DESPITE THE FACT TH
23	PAGE 780 779 AND 780 OF THE TRANSCRIPT. IT'S THE TESTIMONY	23	DON'T KNOW ABOUT THE IP
24	OF MR. ELLISON. AND I ASKED MR. ELLISON,	24	THE COURT: WHAT KIND OF DOCUMENT IS IT?
25	"AND THE ATTENDEES TO THIS MEETING ARE LISTED,	25	MR. PICKETT: I CAN SHOW IT TO YOU. IT'S
	Page 1210	_	Page 1212
1	BUT YOU SEE ONE OF THEM IS MR. ROTTLER, DON'T YOU?"	1	EXHIBIT 432. IT'S ANOTHER EMAIL.
2	MR. ELLISON SAID, "I DO."	2	THE COURT: IT'S ONE OF YOUR EXHIBITS, 432?
3	"Q. AND AT THE TIME, WHAT WAS HIS JOB, DO	3	MR. PICKETT: YES.
4	YOU REMEMBER, JANUARY 2005?"	4	THE COURT: OKAY. LET ME TAKE A LOOK AT IT.
5	"HE WAS IN CHARGE OF ALL SUPPORT."	5	(PAUSE IN THE PROCEEDINGS.)
6	SO THAT'S IN JANUARY 2005. I DON'T KNOW THAT WE'VE	6	THE COURT: I DON'T HAVE IT IN THE MEYER'S BINDER.
7	ESTABLISHED THAT AS OF FEBRUARY 2007, BUT THAT WAS THE TESTIMO		
8	,		IS THERE ANOTHER PLACE I FIND IT?
0	FROM MR. ELLISON AS OF SOME OF THE DOCUMENTS WE GOT IN THROUG	6H 8	IS THERE ANOTHER PLACE I FIND IT? (PAUSE IN THE PROCEEDINGS.)
9	FROM MR. ELLISON AS OF SOME OF THE DOCUMENTS WE GOT IN THROUG	iH 8 9	IS THERE ANOTHER PLACE I FIND IT? (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: HERE'S A COPY. IT'S
10	FROM MR. ELLISON AS OF SOME OF THE DOCUMENTS WE GOT IN THROUG MR. ELLISON. THE COURT: THAT'S CLOSER. THAT'S CLOSER. WE JUST	йН 8 9 10	IS THERE ANOTHER PLACE I FIND IT? (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: HERE'S A COPY. IT'S (PAUSE IN THE PROCEEDINGS.)
10 11	FROM MR. ELLISON AS OF SOME OF THE DOCUMENTS WE GOT IN THROUG MR. ELLISON. THE COURT: THAT'S CLOSER. THAT'S CLOSER. WE JUST DON'T HAVE IT AS OF 2007, ALTHOUGH THERE'S A FAIR INFERENCE THAT	H 8 9 10 11	IS THERE ANOTHER PLACE I FIND IT? (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: HERE'S A COPY. IT'S (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: NOW, UNLIKE THE PRIOR DOCUMENT, THIS IS
10 11 12	FROM MR. ELLISON AS OF SOME OF THE DOCUMENTS WE GOT IN THROUG MR. ELLISON. THE COURT: THAT'S CLOSER. THAT'S CLOSER. WE JUST DON'T HAVE IT AS OF 2007, ALTHOUGH THERE'S A FAIR INFERENCE THAT CAN BE RAISED THAT HE'S GOT THE SAME POSITION.	H 8 9 10 11 12	IS THERE ANOTHER PLACE I FIND IT? (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: HERE'S A COPY. IT'S (PAUSE IN THE PROCEEDINGS.) MR. PICKETT: NOW, UNLIKE THE PRIOR DOCUMENT, THIS IS A DOCUMENT MR. MEYER RELIED ON. AND MR. ALLBRITTEN IS THE
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7 (Pages 1209 to 1212)

CERTIFICATE OF REPORTER WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, FRIDAY, NOVEMBER 12, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING. THE VALIDITY OF THE REPORTERS' CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE. pyper J. Meredo RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR DIANE E. SKILLMAN, CSR, RPR, FCRR SATURDAY, NOVEMBER 13, 2010

UNITED STAT	ES DISTRICT COURT
NORTHERN DIST	RICT OF CALIFORNIA
BEFORE THE HONORABLE PHYLLIS	J. HAMILTON, JUDGE
ORACLE CORPORATION, ET AL.)	JURY TRIAL
) PLAINTIFFS,)	NO. C 07-01658 PJH
VS.	VOLUME 8
SAP AG, ET AL.,	PAGES 1421 - 1511
) DEFENDANTS.)	OAKLAND, CALIFORNIA MONDAY, NOVEMBER 15, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MUCCUTCHEN LLP

	THREE EMBARCADERO CENTER
	SAN FRANCISCO, CALIFORNIA 94111-4607
BY:	ZACHARY J. ALINDER,
	HOLLY A. HOUSE,
	GEOFFREY M. HOWARD,
	DONN P. PICKETT, ATTORNEYS AT LAW
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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258 DIANE E. SKILLMAN, CSR NO. 4909

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

	Page 1466		Page 1468
1	A. OF COURSE.	1	O. DIFFERENTLY TOPIC. AS C.E.O. OF SAP, ARE YOU GENERALLY
2	Q. YOU MENTIONED A WINDOW OF OPPORTUNITY THAT WAS THERE FOR	2	FAMILIAR WITH THE THE FACT THAT SAP HAS LICENSES, AND
3	SAFE HARBOR. WAS THAT THE SAME WINDOW OF OPPORTUNITY FOR SAF		DIFFERENT SORTS OF INTELLECTUAL PROPERTY AGREEMENTS WITH OTHER
4	PASSAGE?	4	COMPANIES?
5	A. YES, I THINK SO, BECAUSE, AGAIN, AT THAT TIME, YOU HAVE TO	5	A. YES.
6	THINK LIKE THE CUSTOMER THINKS DURING THE SITUATION WHERE THEI		Q. DO SOME OF THOSE COMPANIES INCLUDE THROUGH COMPETITORS OF
7	WORLD HAS BEEN TURNED UPSIDE-DOWN. AND WHEN THEIR WORLD'S	7	SAP?
8	TURNED UPSIDE-DOWN, THEY'RE THEN IN THE INVESTIGATION MODE ON	8	A. YES.
9	WHAT THEIR OPTIONS ARE. AND TO THE EXTENT THAT WE COULD CREAT		Q. AS YOU UNDERSTAND IT, DOES SAP TYPICALLY ENTER INTO THOSE
10	CONFIDENCE IN SAP AND DOUBT ABOUT THE COMPETITION, THAT WAS GO		AGREEMENTS BASED ON AN UPFRONT, LUMP-SUM PAYMENT?
11	FOR SOFTWARE SALES.	11	A. NEVER.
12	Q. YOU MENTIONED THE WORLD BEING TURNED UPSIDE-DOWN, I'M	12	Q. TYPICALLY HOW ARE PAYMENT ARRANGEMENTS MADE IN GENERAL? I'M
13	GUESSING I KNOW WHAT YOU MEAN, BUT WOULD YOU JUST CLARIFY FOR		NOT ASKING YOU ABOUT ANY PARTICULAR ONE.
14	THE JURY WHAT THAT IS?	14	A. WELL, TYPICALLY, IT'S A RUNNING ROYALTY. SO AS WE HAVE
15	A. SURE. IF A CUSTOMER INVESTED IN PEOPLESOFT AND JDE AND HAD	.15	SUCCESS WITH CUSTOMERS IN THE MARKETPLACE, THERE IS A
16	THOSE SYSTEMS, LIKED THOSE SYSTEMS, LIKED THE PEOPLE THEY WERE	16	REVENUE-SHARING MODEL BETWEEN ONE COMPANY AND ANOTHER COMPA
17	DEALING WITH, WHEN THEY REALIZED THAT THEY WERE UNCERTAIN WH		AND AS CUSTOMERS ARE CONVINCED THAT THE VALUE IS THERE, BOTH
18	ORACLE'S INTENTIONS MIGHT BE, THEY THEN WERE IN A SITUATION OF	18	SIDES WIN.
19	EXPLORING THEIR OPTIONS, YOU KNOW, WHAT MIGHT ORACLE DO. WILL		Q. DIFFERENT TOPIC.
20	THEY CONTINUE THE MAINTENANCE? WILL THEY FORCE ME OFF OF	20	YOU KNOW, YOU COULD INFER FROM WHAT YOU WERE SAYING
21	MAINTENANCE AND FORCE ME TO UPGRADE TO A NEW SYSTEM?	21	THAT IT MIGHT HAVE BEEN A MISTAKE TO BUY TOMORROWNOW. DO YOU
22	AND THEN SAP, SINCE SAP WAS A WELL-RESPECTED BRAND IN	22	THINK IT WAS?
23	THE INDUSTRY, WAS RIGHT OUT THERE IN THE MEDIA SAYING, "WE HAVE	23	A. YES, I DO.
24	A GREAT SYSTEM, WE THINK WE HAVE A BETTER SYSTEM THAN THEY DO	24	Q. WHY?
25	WHILE YOU'RE CONSIDERING YOUR OPTIONS, PLEASE CONSIDER THIS."	25	A. WELL, THE FACT THAT WE'RE ALL HERE IN THE FIRST PLACE MAKES
	Page 1467		Page 1469
1	AND THE SAFE HARBOR PROGRAM WAS, IN ADDITION TO	1	IT VERY CLEAR TO ME THAT IT WAS A MISTAKE. AND IT'S OBVIOUS
2	PROVING THAT WE'RE BETTER, WE'LL ALSO GIVE YOU A VERY COMPELLING	j 2	THAT THEY WERE DOING THINGS THAT NEEDED MUCH CLOSER SCRUTI
3	FINANCIAL OFFER TO TRADE IN YOUR OLD LICENSES FOR NEW ONES.	3	AND ANYTHING THAT HARMS THE BRAND AND THE REPUTATION OF OU
4	Q. I'M GOING TO TAKE A RISK, AND I'M GOING TO CHALLENGE YOU ON	4	COMPANY, I TAKE VERY SERIOUSLY, AND I'M SORRY FOR THAT. SO I
5	SOMETHING HERE. YOU KNOW, WE SWITCHED FROM WINDOWS COMPUTER	TO 5	THINK IT WAS A MISTAKE. YES.
6	APPLE COMPUTERS NOT TOO LONG AGO AT OUR HOUSE.		THINK IT WAS A MISTARE. TES.
		6	MR. LANIER: THANK YOU, SIR.
7	A. SURE.	6 7	
7 8	A. SURE. Q. AND WE SURVIVED THROUGH THAT. IS IT REALLY THAT BIG A DEAL	6 7 8	MR. LANIER: THANK YOU, SIR.
		7	MR. LANIER: THANK YOU, SIR. THE WITNESS: THANK YOU.
8	Q. AND WE SURVIVED THROUGH THAT. IS IT REALLY THAT BIG A DEAL	7 8	MR. LANIER: THANK YOU, SIR. THE WITNESS: THANK YOU. MR. LANIER: PASS THE WITNESS, YOUR HONOR.
8 9	Q. AND WE SURVIVED THROUGH THAT. IS IT REALLY THAT BIG A DEAL TO SWITCH THE ERP SYSTEM AT A COMPANY?	7 8 9	MR. LANIER: THANK YOU, SIR. THE WITNESS: THANK YOU. MR. LANIER: PASS THE WITNESS, YOUR HONOR. THE COURT: ALL RIGHT.
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8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. AND WE SURVIVED THROUGH THAT. IS IT REALLY THAT BIG A DEAL TO SWITCH THE ERP SYSTEM AT A COMPANY? A. IT REALLY IS A BIG DEAL. Q. WHY? A. WELL, YOU IF YOU THINK OF IT AS A PLUMBING IN A HOUSE, YOU'RE ESSENTIALLY REWIRING ALL THE PLUMBING IN THE HOUSE, AND THAT'S A BIG DEAL. SHEETROCK HAS TO COME OFF. PEOPLE HAVE TO PUT NEW PIPES INTO TWO-BY-FOURS, AND THEY HAVE TO DO THAT THROUGHOUT THE WHOLE ENTERPRISE. IT'S A BIG COMMITMENT. AND CUSTOMERS WILL ONLY MAKE THAT COMMITMENT IF THEY SEE THE BUSINESS RATIONALE IS ROCK SOLID AND THE GAIN FAR OUTWEIGHS THE DIFFICULTY OF CHANGE, SO IT'S A BIG CONVERSATION. Q. IS MAINTENANCE AND SAVING MONEY ON MAINTENANCE A SUFFICIENTLY COMPELLING BUSINESS RATIONALE IN YOUR EXPERIENCE WITH CUSTOMERS? 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. LANIER: THANK YOU, SIR. THE WITNESS: THANK YOU. MR. LANIER: PASS THE WITNESS, YOUR HONOR. THE COURT: ALL RIGHT. CROSS-EXAMINATION? CROSS-EXAMINATION BY MR. BOIES: Q. GOOD MORNING, MR. MCDERMOTT. A. GOOD MORNING, MR. BOIES. Q. WE HAVENT MET, BUT WE KNOW WHO EACH OTHER ARE? A. YES, SIR. I NOTICED YOU WENT TO NORTHWESTERN AT ONE POINT IN YOUR CAREER AS WELL. Q. YES. I WAS BORN IN LOUISVILLE, ILLINOIS. A. I WENT TO NORTHWESTERN BUSINESS SCHOOL. Q. WELL, GOOD. IT'S A FINE SCHOOL. LITTLE COLD IN THE WINTERTIME. A. YES, INDEED.
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8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 Q. AND WE SURVIVED THROUGH THAT. IS IT REALLY THAT BIG A DEAL TO SWITCH THE ERP SYSTEM AT A COMPANY? A. IT REALLY IS A BIG DEAL. Q. WHY? A. WELL, YOU IF YOU THINK OF IT AS A PLUMBING IN A HOUSE, YOU'RE ESSENTIALLY REWIRING ALL THE PLUMBING IN THE HOUSE, AND THAT'S A BIG DEAL. SHEETROCK HAS TO COME OFF. PEOPLE HAVE TO PUT NEW PIPES INTO TWO-BY-FOURS, AND THEY HAVE TO DO THAT THROUGHOUT THE WHOLE ENTERPRISE. IT'S A BIG COMMITMENT. AND CUSTOMERS WILL ONLY MAKE THAT COMMITMENT IF THEY SEE THE BUSINESS RATIONALE IS ROCK SOLID AND THE GAIN FAR OUTWEIGHS THE DIFFICULTY OF CHANGE, SO IT'S A BIG CONVERSATION. Q. IS MAINTENANCE AND SAVING MONEY ON MAINTENANCE A SUFFICIENTLY COMPELLING BUSINESS RATIONALE IN YOUR EXPERIENCE WITH CUSTOMERS? 	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. LANIER: THANK YOU, SIR. THE WITNESS: THANK YOU. MR. LANIER: PASS THE WITNESS, YOUR HONOR. THE COURT: ALL RIGHT. CROSS-EXAMINATION? CROSS-EXAMINATION BY MR. BOIES: Q. GOOD MORNING, MR. MCDERMOTT. A. GOOD MORNING, MR. BOIES. Q. WE HAVENT MET, BUT WE KNOW WHO EACH OTHER ARE? A. YES, SIR. I NOTICED YOU WENT TO NORTHWESTERN AT ONE POINT IN YOUR CAREER AS WELL. Q. YES. I WAS BORN IN LOUISVILLE, ILLINOIS. A. I WENT TO NORTHWESTERN BUSINESS SCHOOL. Q. WELL, GOOD. IT'S A FINE SCHOOL. LITTLE COLD IN THE WINTERTIME. A. YES, INDEED.

13 (Pages 1466 to 1469)

	1473	1475
1	Q. SO IT'S YOUR TESTIMONY THAT YOUR RESPONSIBILITY ON THE	1 Q. WELL, LET ME JUST SEE IF I UNDERSTAND WHAT YOU'RE SAYING.
2	EXECUTIVE BOARD WAS SIMPLY LIMITED TO SALES AND YOU DIDN'T HAVE	2 YOU UNDERSTAND THAT SAP WAS WRONG?
3	ANY RESPONSIBILITY FOR ANYTHING ELSE; IS THAT TRUE?	3 A. YES.
4	A. YES.	4 Q. ALL RIGHT.
5	Q. SO IT WOULD BE YOUR TESTIMONY THAT YOU DIDN'T HAVE ANY	5 NOW, AND SAP OBVIOUSLY IS PEOPLE, AND SO SOMEBODY HAD
6	RESPONSIBILITY AT ALL FOR TOMORROWNOW UNTIL YOU BECAME C.E.O.?	6 TO DO THE THINGS THAT WERE WRONG, CORRECT?
7	A. YES.	7 A. YES.
8	Q. AND BY THAT TIME, TOMORROWNOW HAD BEEN SHUT DOWN?	8 Q. AND YOU NOW KNOW WHO THOSE PEOPLE WERE THAT DID THE THINGS
9	A. YES.	9 THAT WERE WRONG, CORRECT?
10	Q. NOW, YOU RECOGNIZE THAT SAP WAS WRONG TO HAVE INFRINGED ON	10 A. THAT'S CORRECT.
11	ORACLE'S COPYRIGHTS, CORRECT?	11 Q. AND WHAT I'M ASKING YOU IS, YOU HAVE NOT DONE ANYTHING TO
12	A. YES, I DO.	12 DISCIPLINE ANY OF THOSE PEOPLE YET, BUT YOU PLAN TO DO SOMETHING
13	Q. NOW, WHEN YOU BECAME C.E.O., DID YOU DISCIPLINE ANYBODY FOR	13 TO DISCIPLINE THOSE PEOPLE?
14	THAT?	14 A. WHAT I AM AWARE OF AT THIS TIME IS THAT THE TOMORROWNOW
15	A. I DID NOT.	15 SUBSIDIARY ACTED INAPPROPRIATELY, AND I AM ALSO AWARE THAT SAP
16	Q. OKAY. THE PEOPLE WHO HAD BEEN INVOLVED WERE STILL AT SAP,	16 TOOK DISCIPLINARY ACTIONS THERE. I AM NOT AWARE OF PEOPLE
17	CORRECT?	17 WITHIN SAP AT THIS TIME THAT HAVE DONE SOMETHING THAT IS
18	A. THE PEOPLE THAT INVOLVED INVOLVED, YES.	18 PARTICULARLY WRONG.
19	Q. AND WERE ANY OF THE SAP OFFICERS OR DIRECTORS EVER	19 WE HAVE FOCUSED ON THE RESOLUTION OF THE MATTER WITH
20	DISCIPLINED IN ANY WAY FOR WHAT HAPPENED?	20 ORACLE, SHOULD IT COME TO OUR ATTENTION THAT PEOPLE IN SAP DID
21	A. NOT THAT I AM AWARE OF, SIR.	21 THE WRONG THING, WE'LL STAND UP TO IT, JUST LIKE WE STOOD UP TO
22	Q. DID YOU THINK THEY SHOULD HAVE BEEN?	22 THE RESOLUTION WITH ORACLE.
23	A. AT THIS STAGE OF THE SITUATION, WE WERE FOCUSED ON	23 Q. SIR, ARE YOU SAYING THAT YOU THINK THE ONLY PEOPLE WHO DID
24	CORRECTING THE SITUATION AND COMING UP WITH A RESOLUTION WITH	24 ANYTHING WRONG WERE AT TOMORROWNOW?
25	ORACLE.	25 A. NO, I'M SAYING THAT
	1474	1476
1	Q. BUT IN ADDITION TO COMING UP WITH A RESOLUTION AT ORACLE,	1 Q. OKAY. OKAY. THATS
1 2	Q. BUT IN ADDITION TO COMING UP WITH A RESOLUTION AT ORACLE, DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU	
		1 Q. OKAY. OKAY. THAT'S
2	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU	1 Q. OKAY. OKAY. THAT'S 2 A. OKAY.
2 3	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP,
2 3 4	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN?	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT?
2 3 4 5	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES.	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING
2 3 4 5 6	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT.
2 3 4 5 6 7	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT THIS WAS UNACCEPTABLE CONDUCT?	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT. Q. AND, INDEED, YOU WERE ON THE EXECUTIVE BOARD IN FACT, YOU
2 3 4 5 6 7 8	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT THIS WAS UNACCEPTABLE CONDUCT? A. I BELIEVE THAT WE ENTERED INTO THE TOMORROWNOW ACQUISITION	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT. Q. AND, INDEED, YOU WERE ON THE EXECUTIVE BOARD IN FACT, YOU WERE THE CO-C.E.O. WHEN SAP ADMITTED THE CONTRIBUTORY
2 3 4 5 7 8 9	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT THIS WAS UNACCEPTABLE CONDUCT? A. I BELIEVE THAT WE ENTERED INTO THE TOMORROWNOW ACQUISITION TOO QUICKLY WITHOUT THE RIGHT DUE DILIGENCE. AND I BELIEVE WHEN	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT. Q. AND, INDEED, YOU WERE ON THE EXECUTIVE BOARD IN FACT, YOU WERE THE CO-C.E.O. WHEN SAP ADMITTED THE CONTRIBUTORY INFRINGEMENT, CORRECT, SIR?
2 3 4 5 6 7 8 9 10	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT THIS WAS UNACCEPTABLE CONDUCT? A. I BELIEVE THAT WE ENTERED INTO THE TOMORROWNOW ACQUISITION TOO QUICKLY WITHOUT THE RIGHT DUE DILIGENCE. AND I BELIEVE WHEN YOU MAKE MOVES ON PERSONNEL, IT SHOULD BE QUITE THOUGHTFUL AND	 Q. OKAY. OKAY. THATS A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT. Q. AND, INDEED, YOU WERE ON THE EXECUTIVE BOARD IN FACT, YOU WERE THE CO-C.E.O. WHEN SAP ADMITTED THE CONTRIBUTORY INFRINGEMENT, CORRECT, SIR? A. CORRECT.
2 3 4 5 6 7 8 9 10 11	DIDN'T YOU WANT, AS A MATTER OF RUNNING THE COMPANY THAT YOU WERE NOW THE CO-C.E.O. FOR, TO BE SURE THIS NEVER HAPPENED AGAIN? A. YES. Q. AND TO DO THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT, DIDN'T YOU THINK YOU HAD TO SEND A MESSAGE TO EMPLOYEES THAT THIS WAS UNACCEPTABLE CONDUCT? A. I BELIEVE THAT WE ENTERED INTO THE TOMORROWNOW ACQUISITION TOO QUICKLY WITHOUT THE RIGHT DUE DILIGENCE. AND I BELIEVE WHEN YOU MAKE MOVES ON PERSONNEL, IT SHOULD BE QUITE THOUGHTFUL AND WELL WELL PLANNED OUT.	 Q. OKAY. OKAY. THAT'S A. OKAY. Q. SOME OF THE PEOPLE WHO DID THINGS WRONG WERE AT SAP, CORRECT? A. MANAGEMENT SHOULD HAVE DONE A MUCH BETTER JOB OF MANAGING TOMORROWNOW, CORRECT. Q. AND, INDEED, YOU WERE ON THE EXECUTIVE BOARD IN FACT, YOU WERE THE CO-C.E.O. WHEN SAP ADMITTED THE CONTRIBUTORY INFRINGEMENT, CORRECT, SIR? A. CORRECT. Q. AND SO YOU KNOW FROM PERSONAL EXPERIENCE THAT SAP ITSELF
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1	1477	1479
1	Q. IT'S NOW ALMOST THE END OF 2010, RIGHT?	1 AT THE SAME TIME?
2	HOW LONG DOES IT TAKE TO EVALUATE WHETHER IT'S	2 A. I WILL GRANT YOU THAT, YES.
3	APPROPRIATE TO DISCIPLINE PEOPLE FOR COMMITTING THIS COPYRIGHT	3 Q. OKAY.
4	INFRINGEMENT?	4 NOW, I RAISE THIS NEXT LINE BECAUSE OF YOU WEREN'T
5	MR. LANIER: OBJECTION, YOUR HONOR. IT'S BEEN GOING	5 HERE AT DURING THE OPENING STATEMENTS, WERE YOU, SIR?
6	ON A WHILE. IT'S NOT RELEVANT. HE'S ARGUING WITH HIM AT THIS	6 A. YES, I WAS.
7	POINT, AND I'M AFRAID HE'S GETTING INTO THE GROUND COVERED BY	7 Q. YOU WERE?
8	THE ATTORNEY-CLIENT PRIVILEGE AS WELL.	8 A. YES.
9	THE COURT: ALL RIGHT. WE'LL MAKE SURE THAT THAT	9 Q. OKAY. WELL, YOU HEARD YOUR COUNSEL SAY THAT SAP WANTED TO
10	DOESN'T HAPPEN. I'M GOING TO OVERRULE THAT OBJECTION, BUT BE	10 TAKE RESPONSIBILITY FOR WHAT HAD HAPPENED?
11	CAREFUL WITH REGARD TO THAT ISSUE.	11 A. YES.
12	THE WITNESS: COULD YOU PLEASE RESTATE THE QUESTION.	12 Q. NOW, AS PART OF THAT, HAS SAP EVER APOLOGIZED TO ORACLE FOR
13	BY MR. BOIES:	13 TAKING ITS SOFTWARE?
14	Q. CERTAINLY. AND I WANT TO MAKE CLEAR THAT I'M NOT ASKING FOR	14 A. I AM NOT AWARE OF AN APOLOGY.
15	ATTORNEY-CLIENT DISCUSSIONS. I'M ASKING FOR WHAT WAS DONE AS A	15 Q. WOULD YOU LIKE TO DO THAT NOW, SIR?
16	BUSINESS MATTER AT THE BOARD.	16 A. I WOULD. YES, I AM. I AM SORRY TO ORACLE.
17	A. UH-HUH.	17 Q. OKAY. AND I APPRECIATE THAT. BECAUSE I THINK IT'S
18	Q. AND WHAT I'M ASKING IS YOU'VE SAID THAT PEOPLE AT SAP DID	18 IMPORTANT
19	THINGS WRONG AND YOU MAY DISCIPLINE THEM SOMETIME IN THE FUTURE,	19 A. UM-HMM.
20	CORRECT?	20 Q THAT THAT SORT OF THING HAPPEN.
21	A. YES.	21 A. LAGREE WITH YOU.
22	Q. AND WHAT I'M ASKING IS TO PUT IT BLUNTLY AND I DON'T MEAN	22 Q. OKAY. NOW, LET ME TURN TO
23	THIS IN ANY KIND OF A RUDE WAY, BUT WHAT'S TAKING SO LONG?	23 THE COURT: MR. BOIES, EXCUSE ME. I'VE LET THE TIME
24	A. FIRST, YOU HAVE TO UNDERSTAND, AS I KNOW YOU DO, THAT	24 GET BY US. WE'RE OVERDUE FOR OUR FIRST BREAK OF THE MORNING, SO
25	THERE'S AN EXECUTIVE BOARD AND A SUPERVISORY BOARD OF SAP. TO	25 MAYBE THIS WOULD BE A GOOD TIME.
	1478	1480
1	THE EXTENT THAT SOMETHING WAS DONE IN AN INAPPROPRIATE WAY, THE	1 MR. BOIES: THANK YOU.
~		
2	SUPERVISORY BOARD WILL HAVE TO BE A PART OF THE DECISION-MAKING	2 THE COURT: ALL RIGHT.
2 3	SUPERVISORY BOARD WILL HAVE TO BE A PART OF THE DECISION-MAKING PROCESS.	
		2 THE COURT: ALL RIGHT.
3	PROCESS.	 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, YOU'RE EXCUSED FOR
3 4	PROCESS. OUR ATTENTION HAS BEEN FOCUSED ON THE RESOLUTION OF	 2 THE COURT: ALL RIGHT. 3 LADIES AND GENTLEMEN OF THE JURY, YOU'RE EXCUSED FOR 4 15 MINUTES.
3 4 5	PROCESS. OUR ATTENTION HAS BEEN FOCUSED ON THE RESOLUTION OF THE CASE WITH ORACLE. IT IS ENTIRELY POSSIBLE AND I DON'T	 2 THE COURT: ALL RIGHT. 3 LADIES AND GENTLEMEN OF THE JURY, YOU'RE EXCUSED FOR 4 15 MINUTES. 5 (RECESS TAKEN AT 10:24 A.M.)
3 4 5 6	PROCESS. OUR ATTENTION HAS BEEN FOCUSED ON THE RESOLUTION OF THE CASE WITH ORACLE. IT IS ENTIRELY POSSIBLE AND I DON'T THINK IT'S APPROPRIATE FOR ME TO HAVE TO DISCUSS TODAY MY	 2 THE COURT: ALL RIGHT. 3 LADIES AND GENTLEMEN OF THE JURY, YOU'RE EXCUSED FOR 4 15 MINUTES. 5 (RECESS TAKEN AT 10:24 A.M.) 6 (PROCEEDINGS RESUMED AT 10:43 A.M.)
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	Page 1510	
1	THE COURT: ALL RIGHT. I WILL TAKE A LOOK AND	
2	DECIDE IF I WANT TO REVISIT IT OR NOT.	
3	MY UNDERSTANDING WAS YOU WERE RAISING A DIFFERENT	
4	GROUND THAN YOU RAISED BEFORE. I HAVEN'T HAD A CHANCE TO READ	
5	IT, BUT IT APPEARS TO ME THAT YOU ARE NOW ARGUING THAT THE	
6	APPROPRIATE HEARSAY EXCEPTION WOULD BE FOR ADOPTIVE ADMISSIO	NS ?
7	MR. LANIER: THAT'S CORRECT, YOUR HONOR.	
8	THE COURT: WHICH IS NOT SOMETHING YOU ARGUED	
9	BEFORE; IS THAT THE POSITION YOU ARE TAKING?	
10	MR. LANIER: YES, YOUR HONOR.	
11	THE COURT: YOU CERTAINLY COULD HAVE ARGUED IT	
12	BEFORE.	
13	MR. LANIER: YOUR HONOR'S RULING THAT WE HADN'T	
14	ARTICULATED A BASIS ON WHICH IT WAS ADMISSIBLE OR AN EXCEPTION	
15	THAT WAS APPLICABLE, PEOPLE WENT BACK AND THOUGHT ABOUT IT AN	D
16	CAME UP WITH THAT ONE.	
17	NOT TO BE UNFAIR TO THEM, WE HAVE GIVEN YOU OUR	
18	POSITION IN WRITING.	
19	THE COURT: RIGHT. JUST GIVE ME A BRIEF FIRST THING	
20	IN THE MORNING AND I WILL TAKE A LOOK AT IT AND DECIDE.	
21	MR. HOWARD: THAT IS WHAT WE WILL DO.	
22	THE COURT: ALL RIGHT. WE ARE ADJOURNED.	
23	MR. LANIER: THANK YOU.	
24	MR. HOWARD: THANK YOU.	
25	(PROCEEDINGS ADJOURNED AT 1:28 P.M.)	
	Page 2010	
	CERTIFICATE OF REPORTER	
	WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL	
	REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF	
	CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN	
	C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE	
	REPORTED BY US ON, MONDAY, NOVEMBER 15, 2010, CERTIFIED	
	SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER O	UR
	DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL,	
	COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT	
	THE TIME OF FILING.	
	THE VALIDITY OF THE REPORTER'S CERTIFICATION OF	
	SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL	
	FROM THE COURT FILE.	
	RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR	
	DIANE E CUILLMAN COD DDD FODD	
	DIANE E. SKILLMAN, CSR, RPR, FCRR	
	TUESDAY, NOVEMBER 16,	
	TOLODAT, NOVEMBER 10,	
_		

24 (Pages 1510 to 2010)

CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, MONDAY, NOVEMBER 15, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

Paymer H. Mereado

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

Vin Fullmen

DIANE E. SKILLMAN, CSR, RPR, FCRR

TUESDAY, NOVEMBER 16, 2010

	UNITED STA	ATES DIS	TRICT COURT
	NORTHERN DIS	STRICT O	F CALIFORNIA
BEFORE THE	HONORABLE PHYLLIS	S J. HAM	ILTON, JUDGE
ORACLE CORE	PORATION, ET AL.)	JURY TRIAL
	PLAINTIFFS,))	NO. C 07-01658 PJH
VS.)	VOLUME 9
SAP AG, ET	AL.,))	PAGES 1512 - 1695
	DEFENDANTS.) _)	OAKLAND, CALIFORNIA TUESDAY, NOVEMBER 16, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: BINGHAM MCCUTCHEN LLP

BY:	THREE EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111-4607 ZACHARY J. ALINDER,
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(APPEARANCES CONTINUED NEXT PAGE)

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RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

I	Page 1525		Page 1527
1	SOME OF THEM PURPORT TO INSTRUCT THE JURY AS TO WHAT THE LAW	/IS 1	THAT CHANGES HIS DOLLAR AMOUNT. I THINK IT'S APPROPRIATE AT THE
2	IN TERMS OF GEORGIA PACIFIC FACTORS. SOME OF THEM PURPORT	2	LAST MINUTE, IF THEY WANT TO CHANGE THEIR MIND, THEY CAN CHANGE
3	INACCURATELY, IN OUR VIEW, TO TRY TO SUMMARIZE WHAT OUR EXPI	ERT 3	THEIR MIND.
4	SAID.	4	MR. CLARKE HAS CHANGED HIS MIND ON TWO CUSTOMERS, AND
5	OBVIOUSLY, THE JURY HAS HEARD OUR EXPERT. IT'S UP TO	5	UNLIKE MR. MEYER, WE HAVE SUBMITTED A REVISED SCHEDULE TO THE
6	THE JURY TO DETERMINE WHAT OUR EXPERT SAID, NOT FOR HIM TO	6	PLAINTIFFS TO PUT THEM ON NOTICE SO THEY DON'T HEAR ABOUT IT FOR
7	SUMMARIZE IT.	7	THE FIRST TIME ON THE STAND. SO IT INCREASES THE DAMAGES.
8	THE COURT: ALL RIGHT. SO HOW WOULD YOU LIKE TO	8	I'M HAPPY TO GO WITH THE LOWER DAMAGE AMOUNT. BUT IF
9	HANDLE THIS, MR. BOIES? DO YOU WANT TO MAKE AN OBJECTION ON	1 9	MR. BOIES IS GOING TO GET UP AND CROSS-EXAMINE HIM AND SAY, WHY
10	SLIDE-BY-SLIDE BASIS OF WHAT I MEAN, HERE WE ARE. IT'S 8:30	10	DID YOU INCLUDE THESE, MR. CLARKE SHOULD BE ABLE TO SAY, WELL
11	IN THE MORNING. YOU'RE TALKING ABOUT SOMETHING THAT WAS	11	ACTUALLY, I'VE CHANGED MY MIND, AND NOW I'M INSTEAD OF
12	PRODUCED LAST NIGHT. WHAT IS IT THAT YOU WANT ME TO DO ABOU	Г 12	EXCLUDING THEM, I'M INCLUDING THEM.
13	IT?	13	THE COURT: HE CAN SAY WHATEVER IS THE TRUTH. HE CAN
14	MR. BOIES: YOUR HONOR, GIVEN THE FACT OF THE TIME, I	14	SAY WHATEVER HE WANTS. I WOULDN'T RULE THAT HE COULDN'T SAY
15	THINK PROBABLY THE BEST THING TO DO IS TO GIVE THE COURT THE	15	WHATEVER
16	DIFFERENT VERSIONS OF THE SLIDES THAT THEY'VE PRODUCED SO THA	T 16	MR. BOIES: NO, NOBODY'S SAYING THAT HE CAN'T ANSWER
17	YOU HAVE THEM, AND THEN AS THEY GET TO THEM AND I DON'T KNO	W 17	QUESTIONS
18	WHEN THEY'RE GOING TO GET TO THEM THE ONES THAT THEY GET TO) 18	(SIMULTANEOUS COLLOQUY.)
19	AFTER THE FIRST BREAK, OBVIOUSLY, WE CAN DEAL WITH AT THAT	19	THE COURT: HOLD ON. HOLD ON.
20	POINT.	20	THE ONLY WAY TO HANDLE THIS IS ON A SLIDE-BY-SLIDE
21	BUT WITH RESPECT TO THE ONES THAT THEY GET TO NOW,	21	BASIS. I NEED TO SEE THEM, AND YOU CAN MAKE YOUR ARGUMENTS.
22	I'LL HAVE TO SIMPLY RISE, AND THE COURT WILL LOOK AT IT AND	22	STPHAOT: THANK YOU, YOUR HONOR.
23	AND MAKE A DECISION.	23	THE COURT: OKAY. AND IF WE HAVE TO DO IT IN FRONT
24	THE COURT: I DON'T QUITE UNDERSTAND WHY ARE THERE	24	OF THE JURY, WE'LL DO IT IN FRONT OF THE JURY.
25	ARE CHANGES BEING MADE TO THE SLIDES AT THIS LAST DATE.	25	MR. BOIES: AND THE ONLY THING I WOULD ADD, THEY KEEP
	Page 1526		Page 1528
1	MR. McDONELL: THE PRIMARY CHANGE COUNSEL REFERRED TO	1	SAYING "TWO CUSTOMERS." THAT'S THEY'VE DOUBLED THE NUMBER OF
2	WAS THE RESULT OF MR. CLARKE'S INTENSIVE PRETRIAL PREPARATION	2	CUSTOMERS. IN OTHER WORDS, THEY'VE GONE FROM TWO TO FOUR.
3	WHERE HE WENT BACK AND LOOKED AT ALL THE MATERIAL THAT HE'S	3	THE COURT: ALL RIGHT.
4	WORKED WITH AND TOOK INTO CONSIDERATION INFORMATION MR. ME		WITH REGARD TO THE MOTION THAT WAS BRIEFED YESTERDAY
5	TESTIFIED ABOUT HERE IN THIS COURTROOM.	5	BY THE DEFENDANTS, ESSENTIALLY THE REQUEST THAT THE COURT
6	AND THEN THE DOLLAR CHANGE THAT HE'S REFERRING TO IS	6	RECONSIDER THE AT-RISK REPORT CUSTOMER COMMENTS, I'M PREPARED TO
7	MR. CLARKE DECIDED THAT WITH RESPECT TO TWO CUSTOMERS. HE WA		RULE ON THAT.
8	GOING TO INCLUDE THEM IN HIS CALCULATION OF INFRINGER'S PROFITS		MR. MCDONELL YOU PRESENTED THAT, DID YOU NOT?
9	DAMAGES WHERE HE HAD PREVIOUSLY EXCLUDED THEM, AND THAT WA		MR. McDONELL: YES, YOUR HONOR.
10	SIMPLY BASED ON A CONTINUING AND INTENSIVE REVIEW OF THE	10	THE COURT: OKAY. ALL RIGHT. I'VE READ YOUR BRIEF;
11	INFORMATION THAT HE'S BASING HIS OPINION ON IN THE RAMP-UP TO	10	I READ YOUR BRIEF. I DID NOT READ THE VOLUMINOUS DOCUMENTS THAT
12	TRIAL.	12	YOU ALL SUBMITTED BECAUSE I DIDN'T HAVE AN OPPORTUNITY TO DO SO.
13	IT'S HARD TO IMAGINE ANY PREJUDICE WHEN WHAT THIS	12	AND AT THIS TIME, I'M GOING TO DENY YOUR REQUEST.
14	THE EFFECT OF THIS IS IT HAS INCREASED THE DAMAGES THAT	14	I'M NOT GOING TO ALLOW IT IN. I RULED PRIOR TO TRIAL THAT YOU
15	MR. CLARKE IS TESTIFYING TO.	15	HAD NOT CITED AN EXCEPTION TO THE HEARSAY RULE THAT I FOUND
15	MR. CLARKE IS TESTIFYING TO. THE COURT: HMM. WE'LL DO IT WE'LL HAVE TO HANDLE	15	PERSUASIVE. I LOOKED AT THE ADDITIONAL ONE CASE THAT YOU CITED
		10	AND IT DOESN'T CHANGE MY VIEW.
17	IT ON A INDIVIDUAL BASIS. YOU CAN OBJECT TO EVERY SINGLE ONE OF THEM IF YOU WISH.	17	I THINK ORACLE'S POSITION IS IS THE CORRECT ONE.
18			
19	MR. McDONELL: AND, YOUR HONOR, JUST TO PREVIEW,	19	THEY WEREN'T THESE CUSTOMER COMMENTS WEREN'T ADOPTED BY
20	THESE SLIDES ARE DEMONSTRATIVE, OPINION. THEY ARE NOT INTENDED		ORACLE. IN FACT, TO THE EXTENT THAT SOME OF THE COMMENTS WERE
21	TO BE THE EVIDENCE.	21	COMPLAINTS, IT WOULD BE ODD TO FIND THAT ORACLE ADOPTED THEM AS
22	MR. MITTELSTAEDT: YOUR HONOR, COULD I JUST ADD THIS	22	THEIR OWN.
23	SO WE DON'T HAVE TO CONFUSE THIS IN FRONT OF THE JURY?	23	SO, THEREFORE, THE CUSTOMER COMMENTS STILL, IN MY VIEW, ARE HEARSAY, AND THEY'RE NOT SUFFICIENTLY RELIABLE TO
			VIEW ARE BEARSAY AND THEY'RE NOT SHEETCHENTLY RELIABLE TO
24 25	WHEN MR. MEYER TESTIFIED, HE TESTIFIED THAT HE WAS CHANGING HIS MIND ON THREE CUSTOMERS. WE DIDN'T OBJECT TO THA	24 T. 25	WARRANT ADMISSION UNDER THE RESIDUAL HEARSAY EXCEPTION.

5 (Pages 1525 to 1528)

	Page 1529		Page 1531
1	SO YOUR REQUEST IS DENIED.	1	Q. AND HOW LONG DID YOU SERVE IN THE AIR FORCE AFTER COLLEGE?
2	MR. HOWARD: THANK YOU, YOUR HONOR.	2	A. AFTER COLLEGE, IT WAS ABOUT TWO MORE YEARS.
3	THE COURT: OKAY. LET'S BRING THE JURY.	3	Q. AND AFTER THE AIR FORCE, WHAT DID YOU DO?
4	(THE FOLLOWING PROCEEDINGS WERE HEARD IN THE PRESENCE	4	A. I BECAME I WENT FROM THE SUBLIME TO THE RIDICULOUS. I
5	OF THE JURY:)	5	
6	THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND	6	
7	GENTLEMEN.	7	-
8	COUNSEL, EVERYONE, BE SEATED.	8	A. YES. THE A CHARTERED ACCOUNTANT IS A LOT LIKE A C.P.A.
9	MR. MITTELSTAEDT, CALL YOUR NEXT WITNESS.	9	IT'S A SOMEWHAT MORE INTERNATIONAL QUALIFICATION. AND IT'S VERY
10	MR. MITTELSTAEDT: YES, YOUR HONOR.	10	DIFFICULT TO BECOME ONE. AND IT'S A THREE-YEAR TRAINING WHERE
11	GOOD MORNING.	11	YOU'RE WE CALLED IT ARTICLED, SO YOU'RE YOU HAVE A LEADER
12	THE COURT: GOOD MORNING.	12	WHO IS RESPONSIBLE FOR TAKING YOU THROUGH YOUR CAREER AND
13	MR. MITTELSTAEDT: THE DEFENDANTS CALL MR. STEPHEN	13	TEACHING YOU HOW TO BE AN ACCOUNTANT.
14	CLARKE.	14	Q. AND DURING THAT PERIOD, WHAT KIND OF WORK WERE YOU DOING?
15	(PAUSE IN THE PROCEEDINGS.)	15	A. MY MAIN ROLE WAS TO AT FIRST TO DO ACCOUNTING FOR SMALLER
16	THE CLERK: PLEASE STEP UP HERE. RAISE YOUR RIGHT	16	COMPANIES. I WOULD TRAVEL AROUND LONDON AND SHOW UP FOR A DA
17	HAND.	17	OR TWO HOURS AND DO THEIR ACCOUNTING. AND AT THE SAME TIME, I
17	STEPHEN K. CLARKE,	18	WAS LEARNING TO DO AUDIT WORK. SO LATER, ONCE I FIGURED OUT THE
10	CALLED AS A WITNESS FOR THE DEFENDANTS, HAVING BEEN DULY SWO		ACCOUNTING, I STARTED TO DO AUDITING, TRAVELING AROUND FROM ON
20	CALLED AS A WITNESS FOR THE DEFENDANTS, HAVING BEEN DOL'T SWO TESTIFIED AS FOLLOWS:	20	COMPANY TO ANOTHER TO SEE WHETHER THE BOOKS WERE BEING PROPE
20	THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL	20	KEPT.
21	YOUR LAST NAME FOR THE RECORD AND SPEAK CLEARLY INTO THE	22	Q. OKAY. AND WHAT WAS YOUR NEXT JOB?
22	MICROPHONE.	22	A. AFTER AFTER I BECAME A CHARTED ACCOUNTANT AND FULLY
23 24		23	QUALIFIED, I JOINED A SMALL AIRLINE IN JUST NORTH OF LONDON
24	THE WITNESS: MY NAME IS STEPHEN CLARKE, C-L-A-R-K-E.	24	AT STANSTED AIRPORT AND, AND I WAS THEIR CONTROLLER IT'S WHAT
25		25	AT STANSTED AIR OKT AND, AND I WAS THEIR CONTROLLER IT'S WHAT
	Page 1530		Page 1532
1	Page 1530 DIRECT EXAMINATION	1	
1 2		1	WE WOULD CALL THE CONTROLLER IN THE UNITED STATES.
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6 (Pages 1529 to 1532)

CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, TUESDAY, NOVEMBER 16, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

Paymer J. Mereado

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

Viane E. Skillman

DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 17, 2010