

# **EXHIBIT N**

JUDITH SIM September 2, 2009  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation, ORACLE	)	
USA, INC., a Colorado	)	
corporation, and ORACLE	)	
INTERNATIONAL CORPORATION, a	)	
California corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German corporation,	)	
SAP AMERICA, INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation, and	)	
DOES 1-50, inclusive,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF  
JUDITH SIM

WEDNESDAY, SEPTEMBER 2, 2009

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REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-422383)

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Q. Okay. Now, going back to the terms  
"upsell" and "cross-sell," does the analytics group  
have any responsibility with respect to analysis of,

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10:33:11 1 say, upsell activities?

10:33:14 2 A. The analytics group primarily does what I  
10:33:17 3 described earlier for us in marketing, which is,  
10:33:19 4 taking a look at the types of activities that we  
10:33:23 5 create, and we try to sequence and figure out which  
10:33:27 6 ones are the most effective, statistically.

10:33:32 7 Q. But going back again to upsell activities,  
10:33:34 8 does the analytics group have any responsibility  
10:33:37 9 with respect to upset activities?

10:33:41 10 MS. HOUSE: Objection. Calls for  
10:33:41 11 speculation.

10:33:43 12 THE WITNESS: Yeah. I only know what I end  
10:33:44 13 up seeing at the end of the day out of that group,  
10:33:47 14 and that's where I see it, is related to the  
10:33:49 15 marketing activities.

10:33:50 16 MS. WALLACE: Q. And in your mind,  
10:33:51 17 marketing activities does not include upsell  
10:33:53 18 activities?

10:33:53 19 A. It does not necessarily include that, no.

10:33:57 20 Q. Is that a sales function rather than a  
10:33:59 21 marketing function?

10:34:00 22 MS. HOUSE: Objection. Vague.

10:34:01 23 THE WITNESS: I wouldn't know.

10:34:03 24 MS. WALLACE: Q. Okay. Well, let's backup  
10:34:04 25 a little bit.

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10:34:06 1 To your knowledge, does Oracle do anything  
10:34:08 2 to try and determine what the potential upsell  
10:34:11 3 opportunities are for a particular customer or group  
10:34:14 4 of customers?

10:34:18 5 A. I'm sure that there are groups who take a  
10:34:20 6 look at that.

10:34:21 7 Q. Do you know which groups those would be?

10:34:24 8 A. I'd be speculating.

10:34:26 9 MS. HOUSE: So calls for speculation.

10:34:28 10 MS. WALLACE: Q. Go ahead and speculate.

10:34:30 11 A. Sales?

10:34:31 12 Q. Sales, okay. Do you know more specifically  
10:34:35 13 than that whether --

10:34:36 14 A. No.

10:34:37 15 Q. Well, let's back up.

10:34:38 16 Do you know that Oracle does that kind of  
10:34:39 17 analysis, or do you not even know if it does that  
10:34:42 18 kind of analysis?

10:34:43 19 A. I am not sure which group would do that,  
10:34:44 20 no. I -- I don't know.

10:34:47 21 Q. But do you know if Oracle does that  
10:34:49 22 analysis in the first place?

10:34:51 23 A. I do not know.

10:34:52 24 MS. HOUSE: Objection. Vague.

10:34:53 25 MS. WALLACE: Q. You do not know if it

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10:34:54 1 does that analysis.

10:34:55 2 And I assume -- is the answer the same with  
10:34:56 3 respect to cross-sell?

10:34:58 4 A. Correct.

10:35:01 5 Q. Who would know at Oracle whether Oracle  
10:35:05 6 analyzes upsell opportunities?

10:35:07 7 A. I don't know.

10:35:09 8 MS. HOUSE: And objection. Calls for  
10:35:10 9 speculation, and vague.

10:35:18 10 MS. WALLACE: Q. Have you ever heard the  
10:35:20 11 acronym, in the course of your work at Oracle,  
10:35:23 12 "NLP"?

10:35:26 13 A. Yes.

10:35:27 14 Q. What does that stand for?

10:35:30 15 A. Next likely purchase.

10:35:32 16 Q. And how have you heard that acronym in the  
10:35:37 17 course of your work; in what context has that come  
10:35:39 18 up?

10:35:40 19 A. The same example that I gave you earlier,  
10:35:42 20 with the marketing activities and sequencing,  
10:35:46 21 whether or not you would put an online marketing  
10:35:49 22 activity and then a physical event and then a  
10:35:51 23 download, that to us in marketing is NLP. What's  
10:35:55 24 the next likely activity that will lead to purchase.

10:35:59 25 Q. And by activity, do you mean like, for

10:36:04 1 example, if we put on an event, a specific event,  
10:36:08 2 that's likely to lead to purchases? Is that what  
10:36:11 3 you're referring to?

10:36:12 4 A. It wouldn't be one single event. It would  
10:36:14 5 be a sequence of activities, but that is an example  
10:36:17 6 of an activity, yes.

10:36:19 7 Q. Okay. So when you refer to next likely  
10:36:22 8 purchase, you're not talking, then, about looking at  
10:36:25 9 a specific customer and the products that the  
10:36:28 10 customer has and trying to predict what that  
10:36:30 11 customer's purchase would be, are you?

10:36:33 12 A. It is more about predicting the activity  
10:36:36 13 that will ultimately lead to the purchase of a  
10:36:40 14 product, correct.

10:36:41 15 Q. In a broader sense, not focused on a  
10:36:45 16 particular customer?

10:36:46 17 A. I think of it as more of a marketing sense,  
10:36:48 18 but yes.

10:36:49 19 Q. Okay. And so does the analytics group do  
10:36:54 20 any work for you in marketing in connection with  
10:36:57 21 this "next likely purchase" concept?

10:37:01 22 A. That is what they do for me in marketing.

10:37:03 23

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12:02:08 20 (Deposition Exhibit 615 was marked for  
12:02:10 21 identification.)

12:02:26 22 MS. WALLACE: Q. And Ms. Sim, Exhibit 615  
12:02:28 23 is another example of a document where it's an email  
12:02:31 24 plus Power Point, but I'm only going to ask you to  
12:02:38 25 look at I believe two pages on the Power Point.



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12:02:41 1 A. Oh, okay.

12:02:48 2 Q. So you can take a minute to look through  
12:02:49 3 the email -- and in fact, even the email, I  
12:02:52 4 probably -- well, take a look through the entire  
12:02:55 5 email, and then I'll give you the pages of the Power  
12:02:57 6 Point when you're ready.

12:03:20 7 A. (Examining document.) Okay.

12:03:22 8 Q. The first Power Point page is going to be  
12:03:24 9 554054.

12:03:40 10 A. Okay.

12:03:40 11 Q. Before directing your attention to that  
12:03:42 12 page specifically, though, first of all, the email,  
12:03:46 13 you'll see, is from Robert Fleming to you dated  
12:03:49 14 March 25, 2005. And it has the title -- well, it's  
12:03:54 15 a forward: "Urgent - PeopleSoft Marketing -  
12:03:57 16 Approved Plan."

12:03:59 17 First of all, who is Robert Fleming?

12:04:02 18 A. He is one of the people I identified at the  
12:04:07 19 start. He reports to me and does do the campaigns.

12:04:11 20 Q. And was he in that same position in -- as  
12:04:14 21 of the date of this email, March 2005?

12:04:18 22 A. I think he was still running the campaigns,  
12:04:21 23 but reporting to Todd Forsythe, who was reporting to  
12:04:24 24 me.

12:04:25 25 Q. Okay. And if you look at the first page of

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12:04:32 1 the Power Point, which has the number 554036, it  
12:04:38 2 says: "Protect & Grow - The PeopleSoft Installed  
12:04:41 3 Base - Incremental Marketing Plan,  
12:04:44 4 PeopleSoft/JD Edwards."

12:04:46 5 So do you know anything about the purpose  
12:04:49 6 of this Power Point?

12:04:52 7 A. Based on the email note, it looks like it  
12:04:54 8 was a marketing plan for PeopleSoft products.

12:04:58 9 Q. Do you know who developed the marketing  
12:05:01 10 plan?

12:05:01 11 A. No, I do not.

12:05:03 12 Q. Did you have any involvement in developing  
12:05:05 13 the marketing plan?

12:05:06 14 A. No, I did not.

12:05:12 15 Q. Do you know what Protect & Grow -- well,  
12:05:17 16 let me stop there, actually.

12:05:19 17 Is Protect & Grow, was that a campaign name  
12:05:22 18 of some sort?

12:05:23 19 A. It's the first time I've heard of it just  
12:05:25 20 now.

12:05:26 21 Q. Okay. Let's look, then, at 554054.

12:05:36 22 You'll see it starts with the words  
12:05:40 23 "Significant source of revenue." You'll see there's  
12:05:46 24 a circle there, and to the left of the circle,  
12:05:49 25 Cross-Sell, slash -- colon, New Pillar.

12:05:55 1 What does New Pillar refer to there, do you

12:05:58 2 know?

12:05:58 3 A. I wouldn't know, no.

12:06:00 4 Q. Okay. Let's look for a moment at the page

12:06:11 5 before that, 554053.

12:06:14 6 A. Okay.

12:06:15 7 Q. That page has the title "Scope of

12:06:17 8 Analysis." And the second bullet point is, "Upsell

12:06:21 9 potential."

12:06:23 10 Do you know who came up with the

12:06:24 11 information that's reflected in that second bullet

12:06:27 12 point?

12:06:29 13 A. Projected average selling price per unit?

12:06:32 14 Q. Yes --

12:06:33 15 A. Or in the whole bullet?

12:06:35 16 Q. In the whole bullet.

12:06:36 17 A. Oh. No, I do not.

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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;

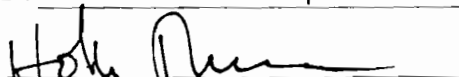
That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [X] 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: \_\_\_\_\_

9-9-09

  
\_\_\_\_\_  
HOLLY THUMAN, CSR