

EXHIBIT H

SCOTT TRAINOR October 13, 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
SCOTT TRAINOR

TUESDAY, OCTOBER 13, 2009

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REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-423026)

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09:41:38 10 MR. PICKETT: Q. You worked as an attorney
09:41:39 11 for PeopleSoft from February 2002 to November 2004.
09:41:42 12 Correct?
09:41:44 13 A. That is correct.
09:41:44 14 Q. You were Senior Director, Field Legal?
09:41:48 15 A. That's correct.
09:41:48 16 Q. And your client was PeopleSoft at that
09:41:49 17 time. Correct?
09:41:51 18 A. Correct.

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09:49:28 18 MR. PICKETT: Q. You helped negotiate the
09:49:29 19 contracts with the TomorrowNow customers. Correct?
09:49:35 20 A. I helped negotiate some contracts with the
09:49:37 21 customers, yes.

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09:54:58 15 Q. You moved from PeopleSoft to SAP in
09:55:00 16 November of 2004. What were the circumstances of
09:55:03 17 that move?

09:55:04 18 MR. McDONELL: Vague and ambiguous.

09:55:08 19 THE WITNESS: I had received an inquiry
09:55:11 20 from a salesperson that I had worked with at
09:55:16 21 Annuncio Software. She said that there was a
09:55:22 22 position open at SAP.

09:55:24 23 And I was interested, because the Oracle
09:55:28 24 acquisition effort was going on, and I was concerned
09:55:31 25 about my future employment. So I sent a resume, got

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09:55:38 1 a call from a recruiter, decided that the position
09:55:41 2 was too junior, got another call, and went through
09:55:46 3 the interview process for an attorney-level
09:55:49 4 position.

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09:56:46 11 MR. PICKETT: Q. And what was your
09:56:47 12 immediate job when you first came on with SAP?
09:56:55 13 Assistant General Counsel?
09:56:56 14 A. That's the title, correct.
09:56:57 15 Q. What were your duties and responsibilities?
09:56:59 16 A. I supported a region of the United States
09:57:04 17 in negotiating -- the Southeast and Southwest
09:57:08 18 regions of the US in negotiating license agreements.
09:57:12 19 I supported the consulting organization on a
09:57:17 20 national basis.
09:57:20 21 That's what occurs to me now.
09:57:22 22 Q. What license agreements were you involved
09:57:25 23 with?
09:57:29 24 MR. McDONELL: Overly broad, vague and
09:57:30 25 ambiguous.

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09:57:30 1 THE WITNESS: I was negotiating the SAP
09:57:31 2 license agreements with the customers.

09:57:33 3 MR. PICKETT: Q. For what product?

09:57:37 4 A. Any product. So any software product, I
09:57:41 5 guess minus maybe online CRM. But any deal could
09:57:47 6 have been escalated to me if it came out of that
09:57:49 7 region.

09:57:50 8 Q. How were those responsibilities different,
09:57:53 9 if at all, from your responsibilities at PeopleSoft?

09:57:56 10 MR. McDONELL: Vague and ambiguous, overly
09:57:57 11 broad. Don't disclose any privileged information in
09:58:00 12 giving your response, please.

09:58:06 13 THE WITNESS: I did not have the corporate
09:58:11 14 responsibilities on committees, the templates,
09:58:14 15 et cetera. The --

09:58:18 16 MR. PICKETT: Q. At SAP?

09:58:20 17 A. At SAP, correct. The license agreement
09:58:25 18 negotiations were similar. On a larger scale, but
09:58:29 19 similar.

09:58:33 20 Q. To whom did you report initially at SAP?

09:58:37 21 A. I believe that in the HR system I reported
09:58:40 22 directly to Brad Brubaker; and on a day-to-day
09:58:44 23 management, I worked with both Bob Dillon and Mary
09:58:47 24 Beth Hanss.

09:58:48 25 Q. You were Assistant General Counsel from

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09:58:51 1 November 2004 through March 2007?

09:58:53 2 A. That's about right. February or March,
09:58:55 3 yes.

09:58:56 4 Q. And throughout that period, were you an
09:58:58 5 employee of SAP?

09:58:59 6 A. Correct.

09:58:59 7 Q. And you reported up the chain through SAP?

09:59:03 8 MR. McDONELL: Vague and ambiguous.

09:59:04 9 THE WITNESS: Correct.

09:59:05 10 MR. PICKETT: Q. Ultimately, someone
09:59:06 11 reported to the Board of Directors, I take it?

09:59:09 12 MR. McDONELL: Lack of foundation, vague
09:59:10 13 and ambiguous.

09:59:13 14 THE WITNESS: Yes. Eventually somebody
09:59:14 15 reported to the CEO and us.

09:59:17 16 MR. PICKETT: Q. You understood that your
09:59:18 17 client was SAP while you worked at SAP?

09:59:21 18 MR. McDONELL: Vague and ambiguous, vague
09:59:22 19 as to time.

09:59:25 20 MS. PHILLIPS: Overbroad.

09:59:26 21 THE WITNESS: I did.

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10:30:59 19 MR. PICKETT: Q. Well, you knew that
10:31:00 20 TomorrowNow was going after PeopleSoft's customers
10:31:04 21 by trying to get them to switch over to service
10:31:07 22 contracts with TomorrowNow. Right?
10:31:08 23 MR. McDONELL: Argumentative, assumes facts
10:31:10 24 not in evidence, vague and ambiguous.
10:31:17 25 THE WITNESS: I did know the general

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10:31:18 1 TomorrowNow model.

10:31:19 2 MR. PICKETT: Q. And the general

10:31:20 3 TomorrowNow model was to take away service business

10:31:22 4 from PeopleSoft.

10:31:23 5 MR. McDONELL: Argumentative.

10:31:24 6 THE WITNESS: It was to sign up customers

10:31:26 7 for after-market support services, yes. Generally

10:31:32 8 PeopleSoft, but not exclusively, yes.

10:31:34 9 MR. PICKETT: Q. And that was now Oracle's

10:31:35 10 business. True?

10:31:37 11 MR. McDONELL: Misstates testimony, lack of

10:31:38 12 foundation.

10:31:40 13 THE WITNESS: Based on Oracle's acquisition

10:31:41 14 of PeopleSoft, that is accurate.

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10:48:50 8 Q. And you assisted in the negotiation of
10:48:52 9 TomorrowNow customer contracts.
10:48:54 10 A. I did.

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11:07:30 16 MR. PICKETT: Q. Do you recall an effort
11:07:33 17 by TomorrowNow to revise its model support services
11:07:37 18 contract?
11:07:39 19 MR. McDONELL: Vague and ambiguous.
11:07:41 20 THE WITNESS: Yes.
11:07:42 21 MR. PICKETT: Q. You were involved with
11:07:43 22 that, were you not?
11:07:45 23 MR. McDONELL: You may answer yes or no.
11:07:46 24 THE WITNESS: Yes.
11:07:48 25 MR. PICKETT: Q. Did TomorrowNow in fact

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11:07:50 1 develop a new model contract?

11:07:54 2 MR. McDONELL: You may answer "yes" or

11:07:54 3 "no."

11:07:55 4 THE WITNESS: Yes.

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11:15:00 23 Q. Did anyone other than you at SAP approve
11:15:02 24 the final model contract?
11:15:03 25 MR. McDONELL: Lack of foundation, vague

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11:15:04 1 and ambiguous. Don't disclose privileged
11:15:08 2 information.

11:15:11 3 MS. PHILLIPS: Assumes facts not in
11:15:11 4 evidence.

11:15:12 5 THE WITNESS: I don't recall the -- who did
11:15:14 6 the final review.

11:15:16 7 MR. PICKETT: Q. Were you satisfied with
11:15:17 8 the new model agreement at the end?

11:15:22 9 MR. McDONELL: Vague.

11:15:23 10 MS. PHILLIPS: Objection. Work product.

11:15:24 11 MR. McDONELL: Instruct you not not to
11:15:25 12 answer.

11:15:26 13 MR. PICKETT: Q. Who approved the final
11:15:27 14 work product?

11:15:28 15 MR. McDONELL: Asked and answered.

11:15:29 16 MR. PICKETT: Q. Who?

11:15:29 17 A. I don't recall. I don't recall if I was
11:15:31 18 the final or if it went to somebody else.

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12:52:43 4 THE WITNESS: I don't know. As I read it,
12:52:45 5 it doesn't -- I don't remember doing it, I don't
12:52:47 6 remember any thinking about it.

12:52:50 7 MR. PICKETT: Q. Do you deny that you were
12:52:52 8 telling Waste Management that it was to their
12:52:57 9 advantage to provide access to software?

12:53:01 10 MR. McDONELL: Vague and ambiguous, lack of
12:53:02 11 foundation, asked and answered.

12:53:05 12 THE WITNESS: I don't recall if I drafted
12:53:09 13 this, first of all. And second of all, as I read
12:53:13 14 this, I don't believe it coincides with what you
12:53:16 15 just concluded.

12:53:17 16 MR. PICKETT: Q. Why not?

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12:54:45 1 THE WITNESS: That's not how I read the
12:54:46 2 "you don't want us accessing."

12:54:49 3 MR. PICKETT: Q. How did you read it?

12:54:51 4 MR. McDONELL: Same objections and same
12:54:52 5 instruction to you not to disclose privileged
12:54:55 6 information.

12:55:00 7 THE WITNESS: I feel like I'm going into
12:55:01 8 where I'm drawing legal conclusions as I interpret
12:55:04 9 this.

12:55:05 10 MR. McDONELL: Okay. So I instruct you not
12:55:07 11 to disclose your mental legal analysis.

12:55:10 12 MR. PICKETT: Q. Do you recall other
12:55:11 13 instances in which SAP told TomorrowNow prospective
12:55:19 14 customers that it was to their advantage to allow
12:55:25 15 access to software?

12:55:28 16 MR. McDONELL: Lack of foundation, calls
12:55:29 17 for speculation.

12:55:31 18 THE WITNESS: I don't.

12:55:34 19 MR. PICKETT: Q. Let's turn to page 5 of
12:55:35 20 the document.

12:55:55 21 Under -- and this is -- actually, if you go
12:56:03 22 back to page 4, you'll see the title is, paragraph
12:56:06 23 9, "Indemnity."

12:56:07 24 A. Yes.

12:56:08 25 Q. And that goes on for several paragraphs.

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12:56:10 1 Do you see that?

12:56:11 2 A. I do.

12:56:14 3 Q. There's a bracket right after the title

12:56:16 4 which begins page 5 of the agreement: We do not

12:56:20 5 have access to the terms of the PeopleSoft license.

12:56:22 6 We therefore need this protection.

12:56:24 7 Were those your words?

12:56:25 8 A. I don't know.

12:56:26 9 Q. Were they SAP or TomorrowNow words?

12:56:30 10 A. I --

12:56:30 11 MR. McDONELL: Lack of foundation, calls

12:56:31 12 for speculation.

12:56:32 13 Don't disclose privileged information.

12:56:35 14 THE WITNESS: I can't tell from this

12:56:38 15 redline who said it.

12:56:43 16 MR. PICKETT: Q. Well, this was a redline

12:56:45 17 that you sent to their outside counsel for purposes

12:56:49 18 of negotiating the agreement. True?

12:56:52 19 A. Yes.

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12:57:20 6 MR. PICKETT: Q. Now, is it true that you
12:57:23 7 did not have access to the terms of PeopleSoft
12:57:26 8 licenses?

12:57:29 9 A. Yes.

12:57:30 10 Q. You had worked with them for some time when
12:57:34 11 you worked as an attorney for PeopleSoft. True?

12:57:38 12 A. True.

12:57:38 13 Q. And so did you compartmentalize that --
12:57:44 14 your experience?

12:57:46 15 MR. McDONELL: Calls for mental impressions
12:57:48 16 of an attorney. I'll instruct you not to answer on
12:57:52 17 work product grounds.

12:57:53 18 MR. PICKETT: Q. Did you take any steps to
12:57:55 19 avoid relying on your memory of the PeopleSoft
12:57:57 20 licenses in negotiating the terms of these licenses
12:58:01 21 with TomorrowNow customers?

12:58:03 22 MR. McDONELL: Same objection, same
12:58:04 23 instruction not to answer.

12:58:08 24 MR. PICKETT: Q. If you take a look at
12:58:09 25 paragraph 9A of the agreement, "TomorrowNow

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12:58:11 1 Indemnity," there's a bracket that states: This
12:58:14 2 will need to be different from the license. Our
12:58:17 3 rights to use the PeopleSoft software come entirely
12:58:20 4 by way of the Waste Management license with
12:58:23 5 PeopleSoft.

12:58:24 6 Is it true that you were conveying to Waste
12:58:26 7 Management the position that TomorrowNow's rights to
12:58:30 8 use the PeopleSoft software come entirely by way of
12:58:34 9 the Waste Management license with PeopleSoft?

12:58:37 10 MR. McDONELL: The document speaks for
12:58:38 11 itself.

12:58:39 12 THE WITNESS: I don't recall drafting this.
12:58:42 13 However, that -- what you recited is what the
12:58:45 14 document represents, yes.

12:58:47 15 MR. PICKETT: Q. Was that SAP's position?

12:58:51 16 MR. McDONELL: Document speaks for itself.

12:58:54 17 THE WITNESS: Was that --

12:58:57 18 MR. McDONELL: By position, do you mean,
12:58:58 19 was that what SAP conveyed to the customer?

12:59:01 20 MR. PICKETT: Q. Yes. Was that your
12:59:03 21 position to the customer?

12:59:07 22 A. It appears -- yes, it appears that in this
12:59:10 23 document, that's the position we took.

12:59:11 24 Q. Was that a true statement so far as you
12:59:13 25 knew?

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12:59:15 1 MR. McDONELL: I have -- hold on for a
12:59:17 2 second.

12:59:24 3 Calls for a legal conclusion and legal
12:59:26 4 analysis. I'll instruct you not to answer.

12:59:30 5 MR. PICKETT: Q. So you can't tell me
12:59:31 6 whether it's true or not?

12:59:32 7 MR. McDONELL: I've instructed you not to
12:59:34 8 answer on grounds of work product. You're asking
12:59:36 9 him to sit here and do legal analysis.

12:59:39 10 MR. PICKETT: Q. To your knowledge, did
12:59:40 11 SAP or TomorrowNow ever misrepresent facts to
12:59:43 12 customers during negotiation of terms?

12:59:45 13 MR. McDONELL: I instruct you not to
12:59:46 14 answer. It's argumentative, calling for legal
12:59:50 15 conclusions and work product and potential
12:59:53 16 attorney-client. And it's argumentative. I've
13:00:00 17 already said that.

13:00:05 18 MR. PICKETT: You probably think it's
13:00:06 19 argumentative.

13:00:07 20 MR. McDONELL: It's overbroad.

13:00:27 21 MR. PICKETT: Q. Did SAP or TomorrowNow
13:00:29 22 take any steps to determine whether a particular
13:00:33 23 customer's allowance of access to software
13:00:38 24 constituted copyright infringement?

13:00:42 25 MR. McDONELL: Instruct you not to answer

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13:00:43 1 on grounds of legal -- privilege and work product.

13:00:46 2 MR. PICKETT: It's take any steps. It's

13:00:48 3 not what they did.

13:00:51 4 MR. McDONELL: Stand by my instruction.

13:00:56 5 MR. PICKETT: Q. Did TomorrowNow or SAP

13:00:59 6 ever analyze in connection with a negotiation of a

13:01:01 7 contract the general topic of a customer's rights to

13:01:06 8 provide access to software?

13:01:08 9 MR. McDONELL: Instruct you not to answer

13:01:09 10 on the grounds of attorney-client privilege and work

13:01:10 11 product.

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13:17:27 20 MR. PICKETT: Q. Who is Spencer Phillips?

13:17:29 21 A. Spencer was an account executive,

13:17:32 22 salesperson.

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13:20:48 22 MR. PICKETT: Q. Did you have access to a
13:20:51 23 PeopleSoft software license agreement in 2005?
13:20:56 24 A. I --
13:20:57 25 MR. McDONELL: Asked and answered.

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13:20:57 1

THE WITNESS: I did not.

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13:23:37 3 MR. PICKETT: Q. You understand that you
13:23:38 4 have certain ethical obligations as an attorney in
13:23:40 5 the State of California. Correct?

13:23:42 6 MR. McDONELL: Calls for a legal
13:23:42 7 conclusion.

13:23:43 8 THE WITNESS: I do.

13:23:43 9 MR. PICKETT: Q. And you understood that
13:23:45 10 you have the obligation to keep information you
13:23:48 11 learned from a former -- a client strictly
13:23:51 12 confidential. True?

13:23:52 13 MR. McDONELL: Depends on the
13:23:53 14 circumstances. It calls for a legal conclusion.
13:23:56 15 Object to the form of the question.

13:24:00 16 MS. PHILLIPS: Overbroad.

13:24:01 17 THE WITNESS: I do.

13:24:01 18 MR. PICKETT: Q. And if you revealed this
13:24:02 19 type of information to Mr. Phillips, that violated
13:24:06 20 your ethical obligation. True?

13:24:09 21 MR. McDONELL: Object to the form of the
13:24:09 22 question, and I'm going to instruct you not to
13:24:11 23 answer on the grounds of attorney work product and
13:24:13 24 privilege.

13:24:15 25 MR. PICKETT: Q. Is this information

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13:24:16 1 confidential?

13:24:17 2 MR. McDONELL: Vague and ambiguous,
13:24:18 3 overbroad, calls for a legal conclusion, calls for a
13:24:22 4 legal analysis by an attorney of a legal issue
13:24:24 5 collaterally related to the case.

13:24:27 6 I'm going to instruct you not to answer.

13:24:29 7 MR. PICKETT: Q. Is it private? Is it
13:24:30 8 confidential? That's not a privilege issue.

13:24:33 9 MR. McDONELL: Same objections. Same
13:24:34 10 instruction.

13:24:39 11 MR. PICKETT: On what ground?

13:24:40 12 MR. McDONELL: Privilege, work product.

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13:26:32 7 MR. PICKETT: Q. If you did convey it,
13:26:33 8 would you have felt comfortable conveying it, the
13:26:37 9 portion that I just read?
13:26:38 10 MR. McDONELL: Instruct you not to answer.
13:26:39 11 Grounds of attorney-client, attorney work product.
13:26:41 12 It's unduly argumentative. I object to the form of
13:26:45 13 the question.

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13:59:55 25

MR. McDONELL: Counsel, I've had a chance

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13:59:57 1 to do a preliminary review of Exhibit 1683, which is
14:00:01 2 Bates numbers SAP-OR00677719 through -25.
14:00:09 3 I have reason to believe it was an
14:00:10 4 inadvertently produced privileged document, and
14:00:13 5 hereby exercise our right to claw it back. We'll
14:00:17 6 give you a more detailed request in writing soon
14:00:20 7 with regard to that.

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14:08:16 1 MR. PICKETT: Q. Do you recall that in the
14:08:17 2 latter part of 2005, you along with others conducted
14:08:22 3 training sessions for TomorrowNow?

14:08:26 4 MR. McDONELL: Assumes facts not in
14:08:26 5 evidence.

14:08:28 6 THE WITNESS: Yes.

14:08:30 7 MR. PICKETT: Q. And was a group of
14:08:33 8 slides, Power Point slides, prepared for that
14:08:36 9 purpose?

14:08:39 10 A. They -- yes, they were.

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14:18:31 7 specific recollection of saying why exactly.

14:18:34 8 MR. PICKETT: Q. Well, generally, what did
14:18:36 9 you convey to them?

14:18:38 10 MR. McDONELL: Overly broad, vague and
14:18:39 11 ambiguous.

14:18:40 12 THE WITNESS: That we couldn't see the --
14:18:41 13 that we couldn't see the agreement, because -- yeah,
14:18:45 14 I guess -- I don't remember specifically saying it,
14:18:47 15 but we couldn't see the agreement because it was
14:18:49 16 arguably confidential.

14:18:57 17 MR. PICKETT: Q. Turning to Exhibit 1684,
14:19:00 18 page ending -861, under the indemnification
14:19:04 19 provision, it reads, "Key term -- no removing this."

14:19:10 20 Was that true, that this was a key term for
14:19:14 21 SAP, and it would not negotiate this term away?

14:19:19 22 MR. McDONELL: Instruct not to answer on
14:19:20 23 the grounds of attorney-client and work product.

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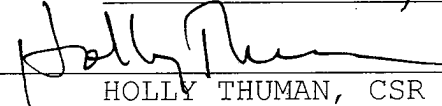
CERTIFICATE OF REPORTER

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: 10.16.09

HOLLY THUMAN, CSR