

EXHIBIT 27

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE CORPORATION, a Delaware)
corporation, ORACLE USA, INC., a)
Colorado corporation, and ORACLE)
INTERNATIONAL CORPORATION,)
a California corporation,)
Plaintiffs,)
vs.) CASE NO. 07-CV-01658 (MJJ)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
corporation, TOMORROWNOW, INC., a)
Texas corporation, and DOES 1-50,)
inclusive,)
Defendants.)

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ORAL VIDEOTAPED DEPOSITION

JOHN RITCHIE

DECEMBER 2, 2009

ORAL VIDEOTAPED DEPOSITION OF JOHN RITCHIE, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 2nd day of December, 2009, from 9:52 a.m. to 3:30 p.m., before Dana Richardson, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the Hilton Hotel & Conference Center, 801 University Drive East, College Station, Texas 77840, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1603-93483

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Q. All right. What were the -- the approximate dates of
your employment?

A. From July 30 -- July -- actually June 31st, 2006, to
August 1st, 2008.

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Q. In the course of those interviews, did -- let's start with Greg Nelson -- did Greg Nelson give you a description of what your job responsibilities would be at TomorrowNow?

A. They were looking for a -- specialize in automation development for dot-net. And they said they had currently two projects that were very good to go and they needed someone on

10:00:00 1 board fast to get them going. One was Titan. The other
10:00:02 2 was -- oh, God. I didn't work on it; so, I can't remember
10:00:07 3 what the heck it was. It was another application. But they
10:00:11 4 mentioned two specific applications, Titan being one of them.

10:00:14 5 They described Titan as a downloader. It went
10:00:20 6 and retrieved certain documents off the web, and they needed
10:00:24 7 someone to continue working on that program.

10:00:27 8 Q. In that interview, did -- was the interview with all
10:00:32 9 three of them together?

10:00:33 10 A. No, sir.

10:00:33 11 Q. Individually?

10:00:34 12 A. First, it was with Mark DeLing, phone interview,
10:00:39 13 since he lives, I believe, in Michigan. And then I spoke with
10:00:46 14 Greg Nelson and Josh Testone at the same time via phone
10:00:52 15 interview.

10:00:55 16 Then I received the phone call. I believe it
10:00:57 17 was on a Sunday or Saturday morning. It was Greg Nelson
10:01:02 18 offering me the position.

10:01:04 19 Q. And, so, taking Mr. DeLing's phone interview, did he
10:01:09 20 describe Titan to you?

10:01:10 21 A. No.

10:01:10 22 Q. What did he -- just what was the nature of that
10:01:13 23 interview?

10:01:14 24 A. He asked me about my professional skills, how I code,
10:01:17 25 do I reuse code, things like that, things you would ask a

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10:01:22 1 developer that you need to come in.

10:01:23 2 Q. So, Titan was introduced in the -- in the discussion
10:01:26 3 that you had with Greg Nelson and Josh Testone?

10:01:28 4 A. Correct.

10:01:29 5 Q. And did they give you any specifics about Titan other
10:01:32 6 than what you've already described?

10:01:33 7 A. No. They very much minimized what the application
10:01:36 8 was. From my understanding, it was a very lightweight app
10:01:40 9 that went and retrieved some certain things, equivalent to
10:01:43 10 what's called web scraping, where you get a few key details
10:01:48 11 from a website, that's it, very, you know, minimal. So, they
10:01:51 12 downplayed the actual program's ability until I became an
10:01:55 13 employee.

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Q. Did you have any -- after you started working, did you have more discussion with Greg Nelson about your job responsibilities with respect to Titan?

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A. No. We had a discussion that concerned what he called the rules of engagement.

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Q. And what -- when was that discussion in relation to when you started?

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A. That was on my first day of work.

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Q. And what did he say to you?

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A. The rules of engagement, he was stating that because of our parent company, SAP, that information had to be carefully disseminated to make sure that it didn't flow to SAP. He described our position as being somewhat precarious, that we could ask them for information; but they, under no circumstances, could ask us for anything. And since I was sharing an office -- or eventually will be sharing an office

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10:04:03 1 with other SAP employees, he wanted to make sure that was
10:04:06 2 clear that I couldn't go to them and ask them questions and
10:04:09 3 they couldn't come to me and ask -- ask me questions about
10:04:12 4 what I was doing.

10:04:14 5 Then he went on and described the history of
10:04:16 6 Oracle, and he -- very -- became very negative connotations.
10:04:25 7 He was pretty much describing Larry Ellison as almost the
10:04:29 8 Antichrist and Oracle being not just the rival company but the
10:04:33 9 enemy. And the conversation lasted about 45 minutes. What I
10:04:36 10 walked away with really that had disturbed me was his
10:04:40 11 insistency on not putting things in writing. If you have
10:04:44 12 issues or problems or questions, the normal course of action
10:04:49 13 that I would take is I would escalate via e-mails or meetings
10:04:54 14 with the appropriate people in all my past business practices.
10:04:58 15 Here, he was saying that phone calls are okay, personal
10:05:01 16 meetings are okay; but nothing should be written down in
10:05:05 17 e-mails. And the reason he stated is that the content of an
10:05:08 18 e-mail can be taken out of context and could be somewhat
10:05:12 19 damaging to whoever may be looking at it. He kept harping on
10:05:19 20 this fact of the subtext of an e-mail that could be
10:05:22 21 interpreted in a different way by someone else. So, that was
10:05:26 22 basically the brunt of it.

10:05:30 23 Q. This discussion that you had with Mr. Nelson in which
10:05:34 24 he asked you not to put things in writing, was that related
10:05:43 25 specifically to the work that you would be doing for Titan?

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10:05:48 1 A. He said this about anything.

10:05:51 2 Q. Just don't put things in writing?

10:05:52 3 A. Don't put issues in writing.

10:05:54 4 Q. And -- and -- and the reason he gave was that it

10:05:57 5 could be taken out of context?

10:06:00 6 A. Correct.

10:06:02 7 Q. Did he say that that was a company policy?

10:06:05 8 A. Yes.

10:06:12 9 Q. And did -- in the time that you worked at

10:06:15 10 TomorrowNow, did you observe that that was a company policy

10:06:20 11 that was enforced?

10:06:21 12 A. Yes.

10:06:21 13 Q. Was it enforced by Mr. Nelson?

10:06:24 14 A. Yes.

10:06:25 15 Q. In what ways did you observe that Greg Nelson

10:06:28 16 enforced this policy of -- of people not putting things in

10:06:31 17 writing?

10:06:31 18 A. Well, I can't speak for anyone else, but as for me,

10:06:36 19 it became a point that he was actually going through Mark

10:06:39 20 DeLing, my manager, and Mark DeLing was giving me the details

10:06:44 21 of, "Don't say any more about this, just shut up and do your

10:06:49 22 job or else find a new one."

10:06:52 23 Q. Was there a -- was there a specific topic related to

10:06:56 24 which Mr. DeLing conveyed to you Mr. Nelson's instructions to

10:07:02 25 not say anything more about something?

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10:07:04 1 A. Yes. It was in regards to Titan's downloading, what
10:07:08 2 we were doing and what they were having me code for the
10:07:11 3 program to do.

10:07:13 4 Q. What was it that you had said about Titan's
10:07:16 5 downloading that led to this discussion with Mr. DeLing?

10:07:19 6 A. I had concerns about the copyright and intellectual
10:07:21 7 property notices that were on the website regarding each of
10:07:26 8 the artifacts.

10:07:30 9 Q. And how did you develop the concerns that you had?

10:07:33 10 A. I read them.

10:07:37 11 Q. What did you read?

10:07:38 12 A. I read things like "Intellectual property of Oracle
10:07:43 13 Corporation. No way, no how should this be copied or handed
10:07:47 14 forth." And it gave a specific example, I remember, that if
10:07:50 15 Employee A of a company downloads a document, he can't even
10:07:55 16 give it to Employee B. Employee B needs to download his own
10:07:59 17 copy. And we were a third-party interest working for the ones
10:08:04 18 that have the original contract in downloading. That seemed
10:08:08 19 to be a conflict with everything I read.

10:08:11 20 Q. So, you came across these materials in the course of
10:08:15 21 doing your work with Titan to develop its downloading
10:08:19 22 capability from Oracle's website?

10:08:21 23 A. Correct. First I have to basically reverse-engineer
10:08:27 24 the website so that I can figure out how to automate the
10:08:30 25 process of getting these artifacts down. During that course,

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10:08:33 1 I'm having to log in manually and look at things; and I'm
10:08:37 2 seeing the same copyright notices as anyone else.

10:08:40 3 Q. And -- and, so, you developed this concern that you
10:08:42 4 had in reading those notices. What did you do when you
10:08:45 5 developed that concern?

10:08:46 6 A. I first alerted my immediate manager, Mark DeLing. I
10:08:52 7 said I had strong concerns about the fact that we were a
10:08:54 8 third-party doing this downloading when they're specifically
10:08:57 9 stating that that is not allowed. And I was given reasons in
10:09:00 10 the beginning as such that, "Oh, of course, you know, SAP's
10:09:04 11 lawyers know everything that's been done and" --

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You were describing a -- that you had conveyed
concerns that you had to Mr. DeLing?

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A. Right.

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10:10:09 16

Q. And Mr. DeLing responded to those concerns?

10:10:14 17

A. By notifying Greg Nelson, yes.

10:10:17 18

10:10:19 19

Q. Okay. And -- and did he tell -- did Mr. DeLing tell
you that he had conveyed your concerns to Greg Nelson?

10:10:22 20

A. Yes.

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Q. All right. Did you ever have a direct discussion
with Greg Nelson about the concerns that you had related to
the copyright notices and the intellectual property notices on
Oracle's website?

10:10:30 23

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A. No.

10:10:35 25

10:10:37 1 Q. Did Mr. DeLing convey back to you a -- a reaction
10:10:44 2 from Greg Nelson to your concerns?

10:10:48 3 A. Yes.

10:10:49 4 Q. What did he say?

10:10:50 5 A. He -- at first, it was okay. They were looking into
10:10:53 6 it. They feel that, you know, they know what they're doing,
10:10:56 7 that everything's okay, that I shouldn't worry about it. And
10:11:00 8 as I kept protesting, you know, this -- bear in mind, this is
10:11:04 9 several instances, you know, through my course of the one year
10:11:07 10 I was working on Titan.

10:11:08 11 So, first my inputs basically were just to Mark
10:11:14 12 DeLing as, you know, "Are we sure we know what we're doing
10:11:18 13 here?" And as we kept going, I would get excuses; and I think
10:11:21 14 this is where he just interjected me. I was basically being
10:11:26 15 told that SAP had looked into this before they bought
10:11:28 16 TomorrowNow. I wasn't going to divulge anything a lawyer
10:11:31 17 said. I was being told by other employees that obviously SAP
10:11:36 18 knows what they're doing and I shouldn't worry about it. I
10:11:38 19 was also given reasons that we couldn't work out a deal with
10:11:41 20 Oracle because they were, quote, "the enemy." Let's see. I
10:11:47 21 was also given the reason that since we were working on behalf
10:11:50 22 of companies that already had a contract with Oracle for this
10:11:56 23 information, they felt it was valid.

10:11:58 24 So, I was given back all these excuses; and I
10:12:01 25 kept escalating my concerns with the more artifacts they had

10:12:05 1 me download and the fact that I knew for -- I knew for a fact
10:12:09 2 that Titan was actually crashing their servers, too.

10:12:15 3 Q. Let me back up and --

10:12:16 4 A. Okay.

10:12:16 5 Q. -- and walk through some of what you just said.

10:12:20 6 A. Probably got a little too far out there. Sorry.

10:12:21 7 Q. No, that's all right. We'll -- we'll -- we'll take
10:12:23 8 it in -- in -- in steps.

10:12:24 9 A. Okay.

10:12:24 10 Q. So, it sounds like you raised concerns that you had
10:12:30 11 several times over the course of your employment?

10:12:33 12 A. Correct. Until the final point where Greg had given
10:12:38 13 Mark DeLing the notice saying that I should shut up and do my
10:12:42 14 job or else look for other employment.

10:12:45 15 Q. And was that a message that you received back from
10:12:47 16 Mr. DeLing?

10:12:50 17 A. Yes.

10:12:50 18 Q. And did he tell you that that message came from Greg
10:12:52 19 Nelson?

10:12:53 20 A. Yes.

10:12:53 21 Q. How many times -- do you remember when that was,
10:12:55 22 approximately?

10:12:58 23 A. Approximately -- it was before Thanksgiving because I
10:13:02 24 remember we were already talking about the company meeting in
10:13:06 25 which case at that time they were going to try to have a

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10:13:09 1 meeting to discuss my concerns. So, I believe it was probably
10:13:14 2 before Thanksgiving, maybe October time frame, when I was
10:13:17 3 actually told to just shut up and do my job.

10:13:20 4 Q. And do you recall what year that was?

10:13:23 5 A. Yes. That was 2006.

10:13:27 6 Q. Approximately how many times would you estimate that
10:13:29 7 you had voiced your concerns to Mr. DeLing prior to that time
10:13:35 8 in November of 2006?

10:13:38 9 A. Constantly. Probably about a good 20, 30 times. And
10:13:45 10 I had other discussions as well with other people about it.

10:13:53 11 Q. And you -- you mentioned a few things that during the
10:13:56 12 course of those discussions, Mr. DeLing conveyed back to you
10:14:01 13 as reasons why your concerns were not valid?

10:14:07 14 A. Correct.

10:14:12 15 Q. And did I hear you right that one of those was that
10:14:16 16 Oracle was the enemy?

10:14:17 17 A. Yes.

10:14:18 18 Q. Did Mr. DeLing use those words?

10:14:22 19 A. No. I think, actually, those words came from Josh.

10:14:26 20 Q. Josh Testone.

10:14:27 21 A. Yeah. And also from Greg Nelson, basically, in the
10:14:30 22 rules-of-engagement speech he gave me.

10:14:32 23 Q. What -- what did Mr. Testone say to you, as best you
10:14:35 24 can recall?

10:14:35 25 A. My alternative solution to just doing what we were

10:14:40 1 doing was to work out a deal with Oracle. And I asked, you
10:14:44 2 know, has anyone bothered to consider contacting them to see
10:14:48 3 if we could work out and negotiate a deal to do -- continue
10:14:51 4 doing what we're doing. And I was basically laughed at and
10:14:55 5 said that Oracle would not go for it, Oracle was the enemy and
10:15:00 6 this, that and the other.

10:15:05 7 Q. And then another reason that you were given was that
10:15:10 8 TomorrowNow was working for other companies?

10:15:14 9 A. Yes. We were representing their interests with their
10:15:18 10 contract still supposedly valid.

10:15:27 11 Q. And were there any other reasons you were given
10:15:30 12 that -- as to why your concerns were not valid?

10:15:34 13 A. I think that's basically the crux of it. They
10:15:38 14 basically just -- you know, at one point, it just became,
10:15:41 15 "Don't talk about it."

10:15:44 16 Q. And -- and, so, then, these discussions, it sounds
10:15:51 17 like, culminated with this November, 2006, discussion that you
10:15:53 18 had with Mr. DeLing?

10:15:56 19 A. Correct.

10:15:57 20 Q. And -- and what do you recall, as best you can, about
10:15:59 21 what he said to you, conveying the message from Greg Nelson?

10:16:06 22 A. Mark was trying to tell me to not to worry about it.
10:16:10 23 It was very stressful because I had very bad feelings that
10:16:14 24 this was going to lead to something not good. So, he was
10:16:17 25 trying to calm me down and just say, "Just go ahead and do the

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10:16:21 1 work and don't worry about it, you know. If anything happens,
10:16:23 2 they're going to have to go through me as well." He was
10:16:26 3 basically standing up for me, you know, saying that, you know,
10:16:28 4 this was his decision as well so -- to follow Greg's orders.

10:16:36 5 And during the conversation, he kind of
10:16:38 6 hem-hawed and hem-hawed. And the reason I remember it so well
10:16:42 7 is because I actually had to pull the words out of him. I
10:16:45 8 said, "Mark, are you trying to tell me to shut up and just do
10:16:49 9 my job or else look for other employment?"

10:16:51 10 And he went, "Yes."

10:16:56 11 And I said, you know, "Is that Greg's last
10:16:56 12 comment on the subject?"

10:16:57 13 And he said, "Yes."

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Q. You had two subsequent conversations with Greg Nelson after this discussion with Mark DeLing in November, 2006.

A. Correct. The first was, I was in a meeting with Peggy Lanford and Keith Shankle. Keith Shankle represented the JDE One World software line. Peggy Lanford represented she had some sort of control over the overall downloading.

I only wrote the application. I didn't physically do any -- the actual downloading. I passed application to them and they had a team and I believe Peggy was in charge of that team. I'm not sure. But she was in the meeting with us; and while we were discussing creating a Titan for JDE One World, somehow the topic came up about, "Is this legal?" And I said, "I'm not going there. I've already been told to shut up about the deal."

And that's pretty much, as far as I know, all we said about it, and we took a short break and when we came back from the break, Greg Nelson had charged into the meeting

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10:19:12 1 room, slammed the door behind him, and he was saying, "Who's
10:19:16 2 talking about this being illegal, what we're doing? I don't
10:19:19 3 want to hear anything more about this." I mean, he -- he was
10:19:21 4 actually a little bit outraged. You know, he just didn't come
10:19:25 5 in nice and calm. He came in rather aggressive, kind of took
10:19:30 6 us all aback; and he had mentioned that they also had concerns
10:19:33 7 from the Asia office about what we were doing with Titan and
10:19:37 8 the downloading in particular, whether or not it was legal.
10:19:40 9 And Greg just mentioned that; and then he said, you know,
10:19:44 10 "Look, I don't want any more said about this. We're going to
10:19:47 11 deal with it at the company meeting, just keep going" -- "just
10:19:52 12 keep doing your work."

Q. Did he instruct the people in that meeting not to
raise further concerns about the legality of Titan?

A. Yes. He said it to all three of us.

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Q. You referred to other discussions that you had with folks, I think, other than Mr. DeLing and Mr. Nelson regarding these concerns that you had about the legality of Titan?

A. Correct.

Q. Who did you have these other discussions with?

A. The other person I had the conversation with was another chain of command. His name was Julio Guzman. He was the project manager for Titan. And since we were in the same office, I worked closely with him, showing him the copyright notices and my concerns; and he became concerned himself. He even downloaded the copyright notices and went through the material himself and told me, "This doesn't look good." And for the -- a while there, he was on my side. Well, I don't

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10:23:38 1 want to make this sound like there were sides. He understood
10:23:42 2 my concerns and wanted a better answer than what we were
10:23:45 3 getting. And then at some point, he just shut up about it.
10:23:49 4 He just said, "Oh, this is fine. Keep going, John." He
10:23:53 5 didn't give me any reason why or what had changed his mind. I
10:23:59 6 assume that was some other private conversation that he had
10:24:01 7 had.

10:24:04 8 Q. So, about how many times would you estimate that you
10:24:06 9 talked with Mr. Guzman about your concerns related to the
10:24:11 10 legality of Titan?

10:24:13 11 A. Oh, easily 20 to 30 times as well.

10:24:15 12 Q. And were these separate discussions from the ones you
10:24:20 13 were having with Mr. DeLing?

10:24:22 14 A. Correct.

10:24:22 15 Q. And over what approximate period of time would you
10:24:26 16 say that those conversations took place?

10:24:30 17 A. Same period that I was contacting Mark DeLing.
10:24:31 18 Since, you know, those are both my chain of escalation, I used
10:24:37 19 both.

10:24:37 20 Q. About how soon after you started work at TomorrowNow
10:24:41 21 would you say that you first raised these concerns?

10:24:46 22 A. About six weeks. I was only there six weeks, and I
10:24:51 23 got a pretty good handle on what Titan was doing and what they
10:24:54 24 wanted me to keep doing.

10:24:57 25 Q. So, this -- these -- these discussions that you were

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10:25:00 1 having with Mr. DeLing and Mr. Guzman and Mr. Nelson, it
10:25:05 2 sounds like those occurred in -- approximately in the -- maybe
10:25:12 3 the early August to end of November, 2006, time period. Is
10:25:17 4 that about right?

10:25:18 5 A. That is correct.

10:25:19 6 Q. All right. And then after that November, 2006, time
10:25:26 7 frame, these discussions were closed down?

10:25:30 8 A. With those people. I had further conversation with
10:25:34 9 another employee.

10:25:37 10

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Q. Prior -- while you were having those discussions with Mr. Guzman, did he express similar concerns to the ones you were expressing?

10:27:16 13

10:27:20 14

10:27:21 15

A. Yes.

10:27:22 16

10:27:25 17

Q. And did he give a reason why he was concerned about the legality of Titan?

10:27:28 18

10:27:30 19

A. Yes. For the same reasons I had, by reading the documents. It seemed to be very clear that what we were doing was not appropriate.

10:27:34 20

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Q. All right. The documents that you're referring to that gave rise to these concerns that were being discussed between you and Mr. Guzman, were any of them what you would refer to as the terms of use that are -- the terms of use that are posted on the Oracle website?

10:28:47 16

A. Yes.

10:28:48 17

Q. Did you -- did you read the terms of use?

10:28:49 18

A. Yes.

10:28:54 19

10:28:57 20

Q. And were the terms of use one of the documents that gave rise to the concerns that you had about what you were doing with Titan?

10:29:00 21

10:29:02 22

A. Yes.

10:29:05 23

Q. Did you discuss the terms of use with Mr. Guzman?

10:29:10 24

A. Yes.

10:29:10 25

Q. And did you discuss them with Mr. DeLing?

10:29:13 1 A. Yes.

10:29:14 2 Q. Did you discuss them with Mr. Testone?

10:29:17 3 A. No.

10:29:17 4 Q. And with respect to the terms of use, did Mr. Guzman
10:29:20 5 indicate to you that he shared your concerns?

10:29:22 6 A. Yes.

10:29:24 7 Q. Did Mr. DeLing ever indicate to you that he shared
10:29:29 8 your concern regarding the terms of use?

10:29:30 9 A. Yes.

10:29:32 10 Q. What did he say to you?

10:29:33 11 A. He felt the same way I did. He felt that this is
10:29:36 12 probably going to cause problems, and he was looking forward
10:29:40 13 to the company meeting in February when they were lined up to
10:29:44 14 talk to an SAP intellectual property lawyer.

10:29:50 15 Q. You mentioned -- in addition to the terms of use,
10:29:56 16 there were other documents, it sounds like, that you had read
10:29:59 17 and were concerned about?

10:29:59 18 A. Yes.

10:30:00 19 Q. Those were the copyright notices that are part of the
10:30:03 20 downloads themselves?

10:30:04 21 A. There's copyright notices on their web pages and
10:30:08 22 embedded in certain documents as well.

10:30:11 23 Q. In addition -- other than the terms of use and the --
10:30:14 24 and the various copyright notices that you saw, was -- were
10:30:18 25 there any -- was there anything else that you encountered in

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10:30:19 1 the course of developing Titan or downloading from the Oracle
10:30:25 2 website that was a basis for the concerns you've described?
10:30:28 3 A. Yes. The other concern that I mentioned was that
10:30:32 4 since Titan was hammering their server so hard, downloading
10:30:38 5 thousands and thousands of documents, I could see how many
10:30:40 6 times the servers would crash by how many times my program had
10:30:44 7 to break the connection and then reestablish it, renavigate
10:30:47 8 back to where it was and pick up where it left off. And, so,
10:30:52 9 you know, if you want to really look at it that way, this, in
10:30:56 10 my mind, was equivalent to a -- what we call a
10:30:59 11 denial-of-service attack, you know, where you basically pound
10:31:03 12 on a server so hard that nobody can get through to it.
10:31:08 13
10:31:08 14
10:31:12 15
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10:31:26 17
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Was -- were you given instructions as to how

10:50:32 4

many downloads Titan should be designed to accomplish?

10:50:37 5

A. As many as possible.

10:50:39 6

Q. And --

10:50:40 7

10:50:45 8

different. It depends on certain things in the Oracle

10:50:47 9

website. But basically I was told that -- that Titan needs to

10:50:51 10

run as fast as possible and no matter what.

10:50:55 11

10:50:59 12

Q. Did you come to have an understanding as to how many

downloads there were on the website that Titan should be

10:51:03 13

capable of downloading?

10:51:05 14

10:51:08 15

A. Oh, yeah. I -- during my development testing, I

would easily download several thousand documents within just

10:51:12 16

12 hours. It depends on the artifact and, you know, what's

10:51:17 17

involved in it; but they also look at the fact that since they

10:51:23 18

wanted Titan to run as fast as possible, it's multi-threaded,

10:51:26 19

once it picks up a document that it's supposed to download,

10:51:30 20

that thread goes off and does the download while Titan goes on

10:51:35 21

to the next thing. And once it finds the next file, it

10:51:38 22

initiates another thread to download that file. There was a

10:51:41 23

maximum, though. I had to keep it at 15. Any more than 15,

10:51:44 24

and I just crashed the server at Oracle's website.

10:51:49 25

Q. 15 threads?

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10:51:51 1 A. Yes.

10:51:51 2 Q. So --

10:51:53 3 A. The program just couldn't keep going. The website
10:51:55 4 would just keep crashing.

10:51:58 5 Q. How did you determine that 15 threads was the maximum
10:52:01 6 number of simultaneous downloads that could be occurring
10:52:06 7 through Titan at the same time?

10:52:08 8 A. By the fact that every time I tried to increase it,
10:52:11 9 the website would crash more and more.

10:52:13 10 Q. And how did you determine that when you tried to have
10:52:15 11 more than 15 threads, the website was crashing?

10:52:18 12 A. Titan has a very extensive logging capability. It
10:52:21 13 logs everything it does. I looked at the log.

10:52:24 14 Q. And what -- what in the log told you that more than
10:52:27 15 15 threads was resulting in the server crashing?

10:52:31 16 A. Well, it records the number of threads that are being
10:52:34 17 spawn and I'd see it go up to, like, 18 or 19 and then I would
10:52:40 18 get errors out of the Oracle website and Titan was documenting
10:52:43 19 those errors.

10:52:44 20 Q. And -- and those -- how did you know to interpret
10:52:53 21 those errors as the website crashing?

10:52:58 22 A. Because I get an Error 404, which is basically not
10:53:01 23 able to retrieve results. You've lost the HTTP connection.

10:53:13 24 Q. And, so, you used the term "denial of service"
10:53:16 25 earlier.

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10:53:16 1 A. Yes. That is -- was in regards to giving you an
10:53:22 2 example of what I considered Titan to be. The fact that it
10:53:26 3 was going so fast and so hard, you're looking at the fact
10:53:30 4 that, yeah, it's basically almost a denial-of-service attack,
10:53:34 5 especially if you run more than one instance of Titan at a
10:53:39 6 time.
10:53:42 7
10:53:44 8
10:53:46 9
10:53:52 10
10:53:56 11
10:53:58 12
10:54:02 13
10:54:05 14
10:54:09 15
10:54:12 16
10:54:17 17
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10:55:44 16

Q. Were you concerned that -- that Titan -- Titan's downloading from the Oracle website in these instances you've described where it lost the connection, were you concerned that during that time there was a decreased functionality from the Oracle website?

10:55:51 17

10:55:54 18

10:56:03 19

10:56:06 20

10:56:08 21

A. Yes. And I --

10:56:08 22

10:56:12 23

10:56:14 24

MR. LANIER: Object to form. Sorry. Again, sometimes I'll spit those objections in. You don't have to worry about it.

10:56:15 25

THE WITNESS: It's okay.

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10:56:15 1 A. Just want to make sure I don't say something -- yes,
10:56:18 2 there is one clear indication. While Titan was running, I
10:56:22 3 would try to manually log on to Oracle's website; and I
10:56:26 4 couldn't. So, that leaves, in my mind, that Titan was pretty
10:56:32 5 much using up all the connections.

10:56:34 6 Q. (BY MR. HOWARD) Was there anything, from your
10:56:36 7 understanding, different about your attempt to manually log on
10:56:40 8 as opposed to any other customer that Oracle might have?

10:56:44 9 MR. LANIER: Object to form.

10:56:45 10 A. No difference.

10:56:45 11 Q. (BY MR. HOWARD) Were --were you doing it just by
10:56:48 12 going to the website and putting in a credential?

10:56:49 13 A. Correct.

10:56:51 14 Q. And -- and how many times did it happen that you
10:56:55 15 tried to log on to the Oracle website while Titan was running
10:56:59 16 and you couldn't log on?

10:57:01 17 A. Probably about three or four. You know, I didn't
10:57:04 18 want to keep doing it because I realized what was going on.
10:57:06 19 So, I stopped.

10:57:08 20

10:57:13 21

10:57:18 22

10:57:19 23

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10:59:48 14

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10:59:55 16

10:59:58 17

11:00:01 18

11:00:08 19

11:00:12 20

11:00:16 21

11:00:19 22

11:00:22 23

11:00:25 24

11:00:29 25

Q. Okay. Really what I'm getting at is: What is it in your background and experience that allowed you to be able to evaluate the Titan logs and -- and the performance issues in the way that you did to be concerned about denial of service?

A. I think I can answer that better by saying I have 15-plus years' experience in the computer industry from software testing and development, running test teams, developing enterprise applications. That's my credentials. That's what gave me the knowledge to determine that I was concerned about denial-of-service attacks.

11:00:35 1 Q. And based on that experience and based on what you
11:00:38 2 observed with Titan, did you conclude that Titan had crashed
11:00:42 3 the Oracle website?

11:00:45 4 MR. LANIER: Object to form.

11:00:47 5 A. Yes.

11:00:48 6 MR. LANIER: Sorry. Sometimes I mutter those.
11:00:49 7 You can still answer.

11:00:51 8 Q. (BY MR. HOWARD) And how many times -- can you
11:00:51 9 estimate how many times you believe Titan did crash the Oracle
11:00:55 10 website?

11:00:57 11 MR. LANIER: Object to form.

11:00:58 12 A. No, I can't estimate that. It was lots of times, and
11:01:01 13 it's -- I can only speak for the times I actually ran it.

11:01:05 14 Q. (BY MR. HOWARD) And -- and based on the -- based on
11:01:07 15 your attempts to manually log on unsuccessfully --

11:01:12 16 A. Uh-huh.

11:01:12 17 Q. -- while Titan was running, did you conclude that the
11:01:17 18 Oracle website was unavailable to any third-party during those
11:01:23 19 times?

11:01:24 20 MR. LANIER: Object to form.

11:01:24 21 A. That's -- that's my main concern for denial of
11:01:27 22 service, is that while Titan is hitting their servers, their
11:01:31 23 other customers cannot log on and get the information they
11:01:34 24 need.

11:01:35 25 Q. (BY MR. HOWARD) And -- and -- and did you conclude

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11:01:36 1 that that was the case, that during those times where you
11:01:39 2 couldn't log on, that other customers also could not log on?

11:01:43 3 MR. LANIER: Object to form.

11:01:44 4 A. To the best of my ability, yes.

11:01:46 5 Q. (BY MR. HOWARD) Did you voice those concerns
11:01:48 6 regarding Titan's impact on the availability of the Oracle
11:01:52 7 website to others at TomorrowNow?

11:01:55 8 A. Yes.

11:01:56 9 Q. Who did you express those concerns to?

11:01:59 10 A. Mark DeLing, Julio Guzman, Owen O'Neil, Keith Larsen.

11:02:11 11 That's pretty much it, think so. Yeah, there is one other
11:02:15 12 person that I mentioned things to; but he had no -- no
11:02:22 13 dealings with this whatsoever. He's a whole different group.
11:02:24 14 He was a Lotus Notes developer. We were just friends, and we
11:02:27 15 live near each other; so, I did discuss some of this with him.
11:02:30 16 But, you know, he's not -- as far as this whole case, he
11:02:34 17 didn't really see much from his side of the company. So,
11:02:37 18 those are the main people that I've talked to that can
11:02:39 19 actually give back the same feedback that I have.

11:02:43 20 Q. Do you recall the name of the Lotus developer?

11:02:44 21 A. Yes, I know him. It's Guy Gowan.

11:02:49 22 Q. And were the -- the discussions that you had with
11:02:53 23 Mr. DeLing regarding Titan's impact on the performance of the
11:02:59 24 Oracle website, were those part of the same discussions you
11:03:03 25 were having regarding your concerns about the legality of

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11:03:05 1 Titan overall?

11:03:08 2 A. Yes and no. Sometimes I brought it up. I know I hit
11:03:14 3 the denial-of-service stuff really heavy, and I brought it up
11:03:19 4 to Mark DeLing a couple of times and Julio separately of the
11:03:26 5 copyright notices. I said, "This is another problem that we
11:03:28 6 are causing."

11:03:30 7 Q. And in the -- and when you brought it up separately
11:03:33 8 and when you had these separate discussions with Mr. DeLing,
11:03:37 9 what was his response?

11:03:38 10 A. His response was pretty much the same as always, you
11:03:41 11 know, "Well, we need to do it, and if anything happens, I'll
11:03:44 12 cover your back," or actually, I think his actual words were,
11:03:48 13 "Yes, I'll be in jail next to you."

11:03:51 14 Q. That's what he said to you?

11:03:52 15 A. Yeah.

11:03:55 16 Q. Did he indicate to you that he shared your concerns
11:04:00 17 about Titan's impact on the Oracle website?

11:04:02 18 A. Yes.

11:04:03 19 Q. And do you recall any of the specifics about what he
11:04:06 20 said in that regard?

11:04:07 21 A. Just that he shared my concerns and knew that our --
11:04:10 22 our hands were basically tied.

11:04:13 23 Q. Did he -- did you go over the -- the -- the logs that
11:04:17 24 Titan was creating in -- in voicing these concerns to him?

11:04:21 25 A. I didn't go over the log with him. I told him how I

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11:04:25 1 knew the information. I showed Julio the logs.

11:04:29 2 Q. And did -- did Mr. Guzman indicate to you that he
11:04:33 3 agreed with your concerns?

11:04:35 4 A. Yes.

11:04:37 5 Q. Did either Mr. DeLing or Mr. Guzman say to you that
11:04:42 6 they disagreed with your conclusion that Titan was shutting
11:04:45 7 down the Oracle website?

11:04:47 8 A. No. Neither one disagreed.

11:04:49 9 Q. Did they indicate that they agreed that that's what
11:04:51 10 was happening?

11:04:52 11 A. Yes.

11:04:53 12 Q. Each of them did?

11:04:54 13 A. Yes. Mark DeLing and Julio both agreed that Titan
11:04:57 14 was possibly causing denial-of-service attacks.

11:05:01 15 Q. And what was your discussion with Mr. O'Neil
11:05:04 16 regarding the -- the concern about denial of service?

11:05:11 17 A. Pretty much with Owen, I mean, he already knew
11:05:13 18 everything; and he was taking his own tangents. He's kind of
11:05:19 19 a strange employee with the company. He was given kind of a
11:05:24 20 big clout status; so, he kind of does what he wants.
11:05:28 21 Basically he took the information and supposedly talked to an
11:05:33 22 SAP lawyer. That's all I'm going to say of that.

11:05:35 23 Q. Okay.

11:05:38 24 A. That was from Owen. He told me that.

11:05:40 25 Q. He told you that he had taken the information you

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11:05:42 1 provided and talked to an SAP lawyer?

11:05:45 2 A. He took the information he already -- that he figured
11:05:49 3 out and confirmed with me to an SAP lawyer..

11:05:51 4 Q. Okay. This is part of the same exchange that you had
11:05:56 5 with him where you gave him the link to SourceSafe and he went
11:05:59 6 in and looked at Titan?

11:06:01 7 A. Many, many exchanges we had. From the time he took
11:06:05 8 over it, 24 hours later, I heard from him. And then, you
11:06:08 9 know, for the next two, three weeks, I kept hearing, you know,
11:06:12 10 he was going through this stuff; and we were just waiting for
11:06:14 11 the company meeting to hopefully get an answer to it all.

11:06:18 12 Q. That would be the company meeting in February, 2007?

11:06:20 13 A. Correct.

11:06:21 14 Q. And that's the same meeting where Mr. Nelson
11:06:23 15 indicated that you would just keep doing what you were doing?

11:06:26 16 A. Correct.

11:06:27 17 Q. Mr. O'Neil indicate to you that he agreed with your
11:06:29 18 assessment regarding the Titan's impact on the Oracle website?

11:06:36 19 A. Yes.

11:06:37 20

11:06:40 21

11:06:41 22

11:06:43 23

11:06:47 24

11:06:49 25

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11:07:01 6

Q. Did -- did anybody give you an indication that they had discussed the denial-of-service concerns with Greg Nelson?

11:07:07 7

11:07:12 8

A. Yes.

11:07:12 9

Q. Who gave you that indication?

11:07:14 10

A. Mark DeLing and Julio Guzman.

11:07:18 11

Q. What did Mr. DeLing say?

11:07:19 12

11:07:20 13

A. Mr. DeLing said, you know, he brought the concerns up to Greg and, "We'll see how it goes and hopefully in the February meeting, get some more definitive answers."

11:07:23 14

11:07:26 15

Julio, basically the same thing. He said -- actually, at this point, he was already on their side. He said, "Don't worry about it."

11:07:30 16

11:07:32 17

11:07:34 18

Q. And did -- did Mr. DeLing convey back to you a specific response from Greg Nelson relating to the denial-of-service concern?

11:07:41 19

11:07:43 20

A. No quotes, just keep on going. Duly noted.

11:07:44 21

11:07:52 22

Q. Were you asked to take any steps to modify Titan to minimize the impact on the Oracle website after you raised the concerns that you did?

11:07:59 23

11:08:02 24

11:08:04 25

A. Did they tell me? No.

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Q. Okay. So, after you modified Titan so that it only was downloading 15 threads at a time, did you still observe instances where you believe that it was crashing the Oracle server?

11:08:41 12

11:08:46 13

11:08:50 14

11:08:50 15

A. No. It seemed to be able to handle it. But like I said, logging in was still difficult. It would be very sluggish; and you could see that by just the fact that when you logged on normally under a normal circumstance, it would take, say, 3.5 seconds. Under these circumstances, we're looking at maybe 10 to 15 seconds versus, you know, trying to get logged on. And that's not even searching anything. That's just logging on.

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11:34:33 20
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Q. And -- and, so, in -- in developing Titan, did you need to log on to the website with Titan and download from the website in order to perfect the functionality you were trying to achieve?

A. Yes.

Q. And was that something that you did routinely in your work on Titan?

A. Yes. And the tests were very extensive because I

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11:34:52 1 found out early on, you know, before I realized how much of an
11:34:56 2 impact this was having on the Oracle server -- in particular,
11:34:59 3 Solution Savers, it would run for, like, 12, 13, 14 hours and
11:35:04 4 then it would just crap out and they'd say, "Oh, there's a bug
11:35:08 5 in it." Well, what -- what happened?

11:35:09 6 Okay. So, that's when I also developed putting
11:35:12 7 in an extensive log capability; and I also had to do extensive
11:35:16 8 testing, not just for an hour or two. I had to run it for
11:35:19 9 several hours to make sure that it was secure and handled any
11:35:23 10 type of error that was coming out of the Oracle database. And
11:35:26 11 most of the time, I'd have to run it for overnight just to
11:35:30 12 make sure that it was good, it could handle all the errors.

11:35:33 13 Q. And when you say "running it," you're -- are --
11:35:35 14 you're referring specifically to running Titan --

11:35:38 15 A. And downloading --

11:35:38 16 Q. -- and downloading from the Oracle website?

11:35:41 17 A. That is correct. I am actually downloading
11:35:44 18 documents.

11:35:44 19 Q. In doing that, were you doing that on behalf of any
11:35:47 20 particular customer at TomorrowNow?

11:35:48 21 A. No. That is strictly for test purposes only. Once I
11:35:53 22 was done with the test run, I deleted the documents off my
11:35:55 23 local unit.

11:35:56 24 Q. But you would need a credential to log on to the
11:35:59 25 website?

11:36:00 1 A. That is correct. Credentials were given to me from
11:36:03 2 the project management office.

11:36:04 3 Q. And from time to time, would you need to request new
11:36:07 4 credentials?

11:36:07 5 A. Yes. Like, for example, if I was working on the
11:36:11 6 Siebel, it needed different credentials. So, they needed to
11:36:14 7 give me appropriate credentials for whatever I was working on.

11:36:18 8 Q. And do you have -- did you know whose credentials you
11:36:21 9 were being given at any particular time?

11:36:22 10 A. No. I was never told. I was just say -- you know,
11:36:25 11 told to use these credentials for this task.

11:36:29 12 Q. And did you understand that those credentials were
11:36:32 13 credentials from a particular TomorrowNow customer?

11:36:36 14 A. From what I understood, they were supposed to be from
11:36:39 15 a customer, yes, except in the case where -- like I told you,
11:36:42 16 where that one employee supposedly had his own credentials.

11:36:48 17 Q. And from time to time in using the credentials that
11:36:52 18 you were given for the purpose of testing Titan, would you
11:36:57 19 find out that the credential didn't work?

11:37:00 20 A. Only one time was I given credentials that didn't
11:37:02 21 work.

11:37:03 22 Q. And -- and what -- what did you do then?

11:37:05 23 A. I requested new credentials.

11:37:07 24 Q. Did you receive them?

11:37:07 25 A. Yes.

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11:37:07 1 Q. And did you have an understanding as to why the
11:37:11 2 credential didn't work?

11:37:12 3 A. They didn't know why.

11:37:18 4

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11:37:59 16 Q. (BY MR. HOWARD) In thinking about the amount of time
11:38:01 17 that you were testing Titan, is that from late June, 2006, to
11:38:06 18 the time the litigation was filed in March, 2007?

11:38:10 19 A. Actually, a couple of weeks after the litigation was
11:38:13 20 filing when they told me to stop working on Titan.

11:38:20 21 Q. And during that course of -- so, what was that, early
11:38:24 22 April when you started -- when you were told to stop?

11:38:27 23 A. Yeah, but -- I believe so, yeah.

11:38:29 24 Q. Early April, 2007?

11:38:31 25 A. Mid-April, I think.

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11:38:32 1 Q. Okay.

11:38:32 2 A. Because our company meeting was at the end of
11:38:35 3 February, if I remember correctly, and it was a couple of
11:38:37 4 weeks right after that. I remember it was very apropos
11:38:39 5 timing, considering we just had the company meeting, then the
11:38:42 6 billion-dollar lawsuit hits. So, I think it was mid-April.

11:38:47 7 Q. So, from -- from the end of June, 2006, to late
11:38:51 8 April, 2007, you were testing Titan by downloading from the
11:38:54 9 Oracle website?

11:38:57 10 A. Correct.

11:38:57 11 Q. And it sounds like you are often running Titan for
11:39:01 12 several hours at a time?

11:39:02 13 A. That is correct.

11:39:04 14 Q. And at what approximate pace is Titan downloading
11:39:09 15 during the time that it's running when you're testing it?

11:39:12 16 A. Very fast, faster than a human.

11:39:15 17 Q. Incrementing through the different downloads from the
11:39:18 18 Oracle site?

11:39:19 19 A. Correct.

11:39:19 20

11:39:22 21

11:39:24 22

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Q. So, now, thinking about the several-month period that

11:40:42 21

you were developed -- that you were testing Titan --

11:40:44 22

A. A little over a year.

11:40:45 23

Q. -- the number of times that you were testing it by

11:40:49 24

running it several hours at a time, having that in mind, can

11:40:55 25

you give me an informed estimate -- it can be an

11:41:01 1 approximation -- but an informed estimate as to how many
11:41:05 2 downloads you would estimate you downloaded from the Oracle
11:41:09 3 website in the course of testing Titan?

11:41:13 4 MR. LANIER: Object to form.

11:41:16 5 A. An informed estimate. Each artifact --

11:41:26 6 THE REPORTER: I'm sorry, sir, I didn't hear
11:41:26 7 you. "Each artifact" --

11:41:26 8 A. With each artifact, I'm doing "X" number of testing
11:41:30 9 for hours, several hundred thousand per test run. I would
11:41:40 10 probably say easily a million documents total, as an estimate,
11:41:44 11 just off the top of my head.

11:41:47 12 Q. (BY MR. HOWARD) I understand. And if it's easier to
11:41:51 13 give a range, you know, it's fine to give a range.

11:41:53 14 A. That estimate is probably about as accurate as I can
11:41:56 15 get, unless I actually did some more research.

11:41:58 16 Q. Were any of those approximately million downloads
11:42:02 17 taken on behalf of any specific customer at TomorrowNow?

11:42:06 18 A. No. I never represented or downloaded any documents
11:42:12 19 for any particular customer. My testing was specifically
11:42:17 20 functionally based.

11:42:19 21 Q. And I believe you said that you deleted those
11:42:22 22 downloads after you took them?

11:42:23 23 A. That is correct. Until the litigation hit. Then I
11:42:28 24 had to store them; and then two weeks after, we stopped all
11:42:33 25 together. So, I still had some documents left on my system

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11:42:34 1 that I couldn't delete. But for the most part, yeah, every
11:42:38 2 single time I ran it, it -- I would just delete the results.
11:42:51 3
11:42:53 4
11:42:56 5
11:42:59 6
11:43:02 7
11:43:07 8
11:43:10 9
11:43:14 10
11:43:18 11
11:43:21 12
11:43:24 13
11:43:27 14
11:43:28 15
11:43:35 16
11:43:44 17
11:43:48 18
11:43:50 19
11:43:57 20
11:44:01 21
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11:44:16 25

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12:05:07 15

12:05:08 16

12:05:12 17

12:05:16 18

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12:05:27 21

12:05:27 22 Q. And would they tell you that they would use a
12:05:28 23 credential and download everything available in the course of
12:05:32 24 their testing of Titan?

12:05:33 25 A. Yes. They told me they downloaded everything

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12:05:36 1 available. They did not tell me what credentials they were
12:05:38 2 using. So, it may not have been the same as what I was using;
12:05:42 3 or it may have been the same.
12:05:44 4
12:05:46 5
12:05:50 6
12:05:54 7
12:05:55 8
12:06:00 9
12:06:02 10
12:06:05 11
12:06:07 12
12:06:11 13
12:06:14 14
12:06:16 15
12:06:19 16
12:06:23 17
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MR. HOWARD: All right. Let's mark as

13:55:00 4

Exhibit 1821 an e-mail exchange between Desmond Harris and

13:55:06 5

John Ritchie dated December 4, 2006.

6

(Exh.1821 marked)

13:55:21 7

Q. (BY MR. HOWARD) Let me ask you to start with the

13:55:24 8

back, the last page, which is an e-mail from you to

13:55:27 9

Mr. Harris, and then let me know, after you've read through,

13:55:30 10

what this exchange is about.

13:55:45 11

A. (Witness reviewing exhibit.)

13:55:46 12

Yes. This is when I was working with that --

13:55:48 13

at the time, I didn't know; but this, I believe, was Wade

13:55:52 14

Walden's personal ID. And, yeah, it was prompting me to

13:55:59 15

change the password when I logged in; and I didn't know if

13:56:03 16

that would be valid, especially if it was a customer or not.

13:56:05 17

I didn't know.

13:56:06 18

Q. So, is it correct that up until December 4, 2006,

13:56:09 19

your work with Titan downloading from Oracle's website was all

13:56:15 20

using this credential, the "bbohannon" and "guitar3"

13:56:19 21

credential?

13:56:21 22

A. For this iteration of it, yes.

13:56:24 23

Q. What do you mean by "iteration"?

13:56:25 24

A. Well, I said each time I do a new development phase,

13:56:30 25

they usually gave me a new user name and password. So, the

13:56:34 1 development phases are broken out by version. Each version is
13:56:37 2 a release. So, I'm not sure how long I was using this one.

13:56:46 3 Q. But this -- is this the same one that you --

13:56:49 4 A. But this is also the same one that's hard-coded in
13:56:51 5 the Microsoft Access database, yes.

13:56:52 6 Q. Okay. That was my question. That's the same one
13:56:53 7 that you found when you arrived hard-coded into the Microsoft
13:56:58 8 Access database?

13:56:58 9 A. That is correct.

13:56:59 10 Q. And that never changed, so far as you know?

13:57:01 11 A. No.

13:57:33 12 MR. HOWARD: I think we're up to 1822. Let's
13:57:36 13 mark --

13:57:36 14 A. There's actually several user name and passwords in
13:57:39 15 this e-mail chain. And actually, the very beginning one is
13:57:44 16 actually one I commented to Julio about.

13:57:48 17 Q. (BY MR. HOWARD) You're still referring to
13:57:49 18 Exhibit 1821?

13:57:50 19 A. Yes, that is correct.

13:57:50 20 Q. And which is the one that you commented to Julio
13:57:51 21 about?

13:57:51 22 A. The very first entry when I got the final pass for
13:57:56 23 Rockwell, when I read that they were off maintenance. Well,
13:58:01 24 that's me -- was concern for me whether or not they still had
13:58:04 25 a current contract with Oracle. If they were off maintenance,

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13:58:08 1 that meant technically they didn't have a right to be logging

13:58:11 2 in. And I don't think I ever got an answer for that.

13:58:15 3 Q. Did you request a different credential?

13:58:18 4 A. No. That was the one that was given; so, I was told
13:58:21 5 to use that.

13:58:24 6 Q. Let's mark as Exhibit 1822 an e-mail exchange in
13:58:32 7 which you were involved, at the top, dated 12/20/06.

13:58:44 8 A. And actually, this is -- just going back to 1821 --

13:58:48 9 Q. Uh-huh.

13:58:48 10 A. -- I just wanted to add, the Rockwell is actually an
13:58:54 11 exception. Most of the time, it was given to me -- like in
13:58:55 12 the e-mail at the bottom of the second page, it's "Use this."
13:58:59 13 You know, that's usually the way I got it. I didn't know who
13:59:03 14 it was for or anything. It was just user name, password, use
13:59:06 15 it. Okay.

13:59:10 16

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Q. And is there -- and the way that she wrote her script was -- how did the script authenticate into the website, do you know?

14:23:47 15

14:23:53 16

14:23:56 17

A. She's asking for a user name and password on the main screen, and then she uses that -- if you go to about the midway on the second page, 709, you'll see a comment that says, "Enter User Information." That is where the user information is actually being sent to the Oracle database, Oracle website.

14:23:59 18

14:24:15 19

14:24:18 20

14:24:20 21

14:24:25 22

14:24:28 23

Q. Okay. Thank you.

14:24:33 24

A. This is an AutoIt script.

14:24:35 25

Q. And what does that mean?

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14:24:38 1 A. It is a different language than what I was using in
14:24:40 2 Titan.
14:24:40 3 Q. Okay. So, you took this and you converted it to
14:24:44 4 Visual plus --
14:24:47 5 A. VB.net.
14:24:50 6
14:24:54 7
14:25:00 8
14:25:05 9
14:25:10 10
14:25:16 11
14:25:18 12
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14:25:25 14
14:25:28 15
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Q. What precisely would it say to prove that it was a break caused by overload of the Oracle website?

14:38:16 22

14:38:17 23

A. Oh, it would not break because of overload. It just breaks.

14:38:20 24

14:38:21 25

Q. It just breaks. Break because a mouse chews through

14:38:25 1 a cable, maybe?

14:38:26 2 A. Maybe or maybe because you're accessing too much
14:38:27 3 information at once.

14:38:28 4 Q. Or it breaks because there's a storm or there's a
14:38:31 5 sunspot and sometimes things don't work so well, right?

14:38:34 6 A. Yeah, or because they're running Windows and we all
14:38:37 7 know Windows has problems.

14:38:38 8 Q. There you go. So --

14:38:38 9 A. But if you want to -- I see where you're getting at,
14:38:40 10 if I can cut you off. You want to know how can I determine
14:38:43 11 whether or not we were impacting Oracle servers without
14:38:48 12 knowing how many servers they have. I know that because I
14:38:51 13 cannot access their website reliably while Titan is running.
14:38:57 14 If you run multiple instances, you have even harder times
14:39:00 15 logging on to their website, if at all.

14:39:03 16 Q. And you can't rule out, can you, that the reason for
14:39:04 17 that problem was something other than the number of Oracle's
14:39:07 18 connections or burdens in Oracle's website?

14:39:13 19 A. I can't rule out any other reasons, but I would say
14:39:14 20 highly unlikely there would be sunspots or a mouse chewing
14:39:17 21 through the cable. A very high percentage would be the fact
14:39:21 22 that the servers are being overloaded and --

14:39:24 23 Q. When Oracle -- I'm sorry.

14:39:25 24 A. -- basically bringing out errors that are within the
14:39:27 25 site.

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Q. Okay. So, again, in order to know whether or not what you were doing was okay, you looked at some -- some legal documents, some contract or something like that, right?

A. I looked at Oracle's website.

STATE OF TEXAS
COUNTY OF HARRIS

REPORTER'S CERTIFICATE

I, Dana Richardson, a Certified Shorthand Reporter in and
for the State of Texas, do certify that this deposition
transcript is a true record of the testimony given by the
witness named herein, after said witness was duly sworn by me.
The witness was requested to review the deposition.

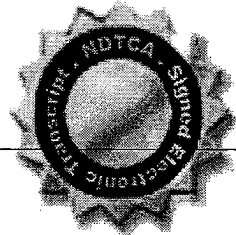
I further certify that I am neither attorney or counsel
for, related to, nor employed by any parties to the action in
which this testimony is taken and, further, that I am not a
relative or employee of any counsel employed by the parties
hereto or financially interested in the action.

I further certify that the amount of time used by each
party at the deposition is as follows:

Mr. Geoff Howard - 03:47
Mr. Greg Lanier - 00:56

SUBSCRIBED AND SWORN TO under my hand and seal of office
on this the 8 day of December,
2009.

Dana Richardson



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