

# **EXHIBIT B**

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-01658-PJH (EDL)

SAP AG, a German Corporation,  
SAP AMERICA, INC., a Delaware  
Corporation, TOMORROWNOW, INC.,  
a Texas Corporation, and DOES  
1-50, Inclusive,

Defendants.

\_\_\_\_\_ /

\*\*\* HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY \*\*\*

DEPOSITION OF DAVID GARMUS

June 4, 2010

Reported by:  
Natalie Y. Botelho  
CSR No. 9897

05:26:04 3 MR. ALINDER: Q. And you don't know how  
05:26:07 4 TomorrowNow used the documentation that was on its  
05:26:08 5 systems, correct?  
05:26:09 6 MR. BUTLER: Objection to the form,  
05:26:12 7 mischaracterizes the testimony.  
05:26:13 8 THE WITNESS: No, I do not know how  
05:26:18 9 TomorrowNow used any of the documentation it had.  
05:26:41 10 That's correct.  
05:26:42 11 MR. ALINDER: Q. And you weren't aware  
05:26:44 12 when you wrote this report that TomorrowNow had  
05:26:48 13 these large documentation libraries on its systems?  
05:26:48 14 A. No --  
05:26:49 15 MR. BUTLER: Object --  
05:26:50 16 THE WITNESS: -- I was not.

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09:44:09 12 Q. For both of these function point counts,  
09:44:12 13 you say, "As an exercise, to demonstrate how to  
09:44:15 14 properly perform an FPA." Do you see that?  
09:44:20 15 A. Yes.  
09:44:26 16 Q. So these are exercises for you, sort of  
09:44:28 17 academic exercises?  
09:44:30 18 A. They were.

10 (Pages 34 to 37)

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Page 41

09 46:44 8 Q. You weren't intending to find a size for  
09 46:47 9 the same applications as Mr. Pinto, correct?  
09 47:06 10 A. No, I was not.

11 (Pages 38 to 41)

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10:30:43 13 Q. My question was, at the end of that  
10:30:47 14 analysis, you still wouldn't get a cost of creating  
10:30:49 15 the software, correct?  
10:30:53 16 A. If I used my numbers, I could come up with  
10:30:56 17 a cost.  
10:30:58 18 Q. And that would be an additional analysis  
10:31:00 19 after the function point count, though, correct?  
10:31:03 20 A. That's correct. Function point counts are  
10:31:08 21 to determine size only, as opposed to the ten-step  
10:31:19 22 method of counting function points.

15 (Pages 54 to 57)

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10:36:40 4 Q. Do you hold yourself out as being a  
10:36:40 5 copyright expert?  
10:36:50 6 A. No, I do not.  
10:36:52 7 Q. Do you hold yourself out as being an  
10:36:56 8 expert in enterprise software licensing?  
10:36:58 9 A. No, I do not.  
10:37:03 10 Q. Do you hold yourself out as being expert  
10:37:05 11 in damages?  
10:37:11 12 A. No.

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16 (Pages 58 to 61)

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10:43:26      7            MR. ALINDER: Q. Did you talk with any  
10:43:31      8            employees of SAP or TomorrowNow before issuing your  
10:43:32      9            report?  
10:43:36      10          A.    None.  
10:43:37      11          Q.    You didn't ask them to confirm your  
10:43:40      12          understanding of facts as you've stated in your  
10:43:42      13          report?  
10:43:44      14          A.    No, the only people that I've dealt with  
10:44:33      15          have been people that work for Jones Day.

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<p style="text-align: right;">Page 74</p> <p>11:01:21 1 Q. What is that document? 11:01:31 2 A. That particular document is one of four, 11:01:42 3 which indicates the contracts that TomorrowNow had 11:01:48 4 with their clients. 11:01:52 5 Q. So are you referring to the four documents 11:01:56 6 with a TN-OR that are listed in your material 11:01:57 7 considered? 11:02:07 8 A. Yes. 11:02:10 9 Q. How did you use those four documents for 11:02:18 10 your report? 11:02:20 11 A. Those documents were provided to me based 11:02:29 12 upon my request to indicate what their contacts 11:02:35 13 were, my request to Jones Day, what their -- what 11:02:43 14 work was being done by TomorrowNow, and what modules 11:02:59 15 they were providing support for. 11:03:01 16 Q. So other than these four documents that 11:03:05 17 were provided by counsel, do you have any 11:03:07 18 independent knowledge of what work TomorrowNow was 11:03:10 19 doing to support customers? 11:03:12 20 A. I validated the information that was 11:03:17 21 contained in those documents against Appendix L to 11:03:25 22 the expert report of Stephen Clarke -- 11:03:25 23 Q. So you -- 11:03:27 24 A. -- which I -- 25 Q. Sorry. You compared those four documents</p>	<p style="text-align: right;">Page 76</p>
<p style="text-align: right;">Page 75</p> <p>11:03:32 1 to Appendix L of Stephen Clarke to see whether they 11:03:33 2 were the same? 11:03:37 3 A. Compared those documents to Appendix L to 11:03:41 4 validate the results for the exclusion I made in my 11:03:47 5 report. 11:03:49 6 Q. And then so outside of anything in those 11:03:53 7 four documents that were provided by counsel and 11:03:56 8 Appendix L, do you have any independent knowledge of 11:04:02 9 what TomorrowNow did to support its customers? 11:04:14 10 A. No. I believe I said before that I don't 11:04:19 11 have any knowledge of what TomorrowNow had or did 11:04:31 12 not have.</p>	<p style="text-align: right;">Page 77</p>

<p style="text-align: right;">Page 90</p>	<p style="text-align: right;">Page 92</p> <p>11:45:43 1 they were using, do you? 11:45:45 2 A. I have no idea what TomorrowNow was using, 11:45:50 3 or I have no -- I didn't talk to anybody from 11:45:54 4 TomorrowNow. I have no idea what they were using, 11:45:59 5 except I do know the support they were providing to 11:46:01 6 their customers, and those are the documents that 11:46:06 7 they would have been using. There would be no 11:46:08 8 reason, in my view, for them to use any other 11:46:20 9 document. And in the case of using those particular 11:46:24 10 spreadsheets, it's my assumption that the people 11:46:30 11 that they had contracts with had valid licenses. 11:46:33 12 Q. So your assumption is that everything that 11:46:36 13 TomorrowNow was using is contained on those 11:46:40 14 spreadsheets that were provided to you by your 11:46:40 15 counsel? 11:46:47 16 MR. BUTLER: Objection to the form, vague, 11:46:46 17 ambiguous. 11:46:49 18 THE WITNESS: It's my view in this field 11:46:54 19 that there wouldn't be a purpose for using any other 11:46:59 20 documents than -- and I don't even believe they 11:47:02 21 would have needed to use the PeopleBooks to provide 11:47:09 22 the support to their customers. 11:47:09 23 MR. ALINDER: Q. You don't know how 11:47:11 24 TomorrowNow was providing support to their 25 customers, right?</p>
<p style="text-align: right;">Page 91</p> <p>25 Q. And that's -- you don't have any idea what</p>	<p style="text-align: right;">Page 93</p> <p>11:47:15 1 A. The only thing I know is what I read in 11:47:19 2 the spreadsheets, right. 11:47:21 3 Q. Right. So your knowledge is limited to 11:47:24 4 the spreadsheets that Mr. Butler and his colleagues 11:47:26 5 provided to you? 11:47:39 6 A. That's correct.</p>

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11:53:07      10      MR. ALINDER: Q. You're not aware of the  
11:53:10      11      fact that TomorrowNow had thousands of copies of  
11:53:14      12      Oracle software in its systems?  
11:53:14      13      A.    No, I am not.

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25 (Pages 94 to 97)

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25 Q. Your understanding isn't that these copies

26 (Pages 98 to 101)

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11:02:01 1 of software were on TomorrowNow's systems?  
11:02:04 2 A. I have no idea of that, whether they were  
11:02:05 3 or they weren't.  
11:02:08 4 Q. So your opinion doesn't take into account  
11:02:11 5 copies that TomorrowNow made of Oracle software  
11:02:12 6 sitting on their systems?  
11:02:14 7 A. That wasn't -- the purpose of my report  
11:02:19 8 was to determine Mr. Pinto's use of the ten-step  
11:02:24 9 method that he claimed used function point analysis.

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27 (Pages 102 to 105)

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12:15:16

24

MR. ALINDER: Q. So you didn't take into

25

account any of those downloads in the opinions that

28 (Pages 106 to 109)

<p style="text-align: right;">Page 110</p> <p>2:15:24 1 you've put into your report, correct? 2:15:27 2 MR. BUTLER: Objection: hypothetical, 2:15:31 3 incomplete hypothetical, vague, ambiguous. 2:15:33 4 THE WITNESS: Can you testify that they 2:15:38 5 downloaded? I mean, I certainly can't. I have no 2:16:06 6 evidence that they did -- in fact, did.</p>	<p style="text-align: right;">Page 112</p> <p>12:18:27 1 Software and Support Materials, and further admit 12:18:34 2 that TN used those materials for customer support." 12:18:35 3 MR. ALINDER: Q. You've never seen this 12:18:37 4 document before, though, correct? 12:18:40 5 A. Not to the best of my knowledge, right.</p>
<p style="text-align: right;">Page 111</p> <p>12:17:35 11 Q. Right. Under the answer -- this whole 12:17:37 12 document is the answer and affirmative defenses, so 12:17:41 13 we number the paragraphs consecutively. On Page 2, 12:17:45 14 you'll see Paragraph Number 16. It starts on Line 12:17:52 15 23. Can you read into the record the first sentence 12:17:54 16 of Paragraph 16? 12:17:56 17 MR. BUTLER: Objection to the form, and 12:17:59 18 also beyond the scope of the expert testimony of 12:18:02 19 Mr. Garmus. 12:18:04 20 THE WITNESS: I certainly can read any 12:18:08 21 paragraph, not that I would agree with what the 12:18:13 22 paragraph says. But Paragraph 16 of the report that 12:18:16 23 I was just handed and haven't read before says, 12:18:19 24 "Defendants admit that TN, on behalf of its 25 customers, downloaded and stored a large quantity of</p>	<p style="text-align: right;">Page 113</p>



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	<p>13:51:05 1 identifying that for the record. 13:51:06 2 A. Okay. 13:51:07 3 Q. You see that? 13:51:07 4 A. Yes, I do. 13:51:16 5 Q. You said earlier that you hadn't reviewed 13:51:19 6 any marketing documents from TomorrowNow, so I'm 13:51:21 7 assuming you have not seen this document before; is 13:51:21 8 that right? 13:51:27 9 A. That's correct. 13:51:30 10 Q. Can you go to -- 13:51:39 11 A. I may have -- it seems like -- I don't 13:51:47 12 know. 13:51:50 13 Q. Can you turn to the page that ends in 13:51:52 14 4592 -- 13:51:52 15 A. Correct. 13:51:56 16 Q. -- at the bottom? And it says, "Software 13:51:56 17 Supported"? 13:52:03 18 A. Yes. 13:52:05 19 Q. And under PeopleSoft, it says that they -- 13:52:10 20 TomorrowNow supports PeopleSoft 8.x and 7.x? 13:52:10 21 A. Yes. 13:52:11 22 Q. You see that? 13:52:13 23 A. I see that. 13:52:14 24 MR. BUTLER: Excuse me. Objection to the 25 form, mischaracterizes the document.</p>
Page 135	Page 137
<p>13:50:05 9 MR. ALINDER: Q. Mr. Garmus, you've been 13:50:09 10 handed a document that's been marked Exhibit 3040. 13:50:14 11 Can you identify the title of the document for the 13:50:16 12 record, please? 13:50:22 13 A. The title on Exhibit 3040 is "Maximize the 13:50:26 14 Value of your Siebel, J.D. Edwards, and PeopleSoft 13:50:30 15 Investment," evidently presented in an executive 13:50:36 16 briefing by Andrew Nelson, who it says here is 13:50:41 17 president and CEO of TomorrowNow, Inc. 13:50:44 18 Q. Thank you. And the Bates number at the 13:50:55 19 bottom is TN-OR4586 to 4602. Do you -- 13:50:57 20 A. Excuse me? Oh, okay. 13:50:58 21 Q. Referring to the Bates numbers at the 13:50:58 22 bottom. 13:50:59 23 A. Okay. 13:51:00 24 Q. Sometimes we put numbers at the bottom to 25 identify individual pages of documents, so I'm just</p>	<p>13:52:21 1 MR. ALINDER: Q. And you see that it 13:52:27 2 claims TomorrowNow supported HCM, FMS, CRM, EPM, 13:52:32 3 SRM, SCM, Public Sector, Campus Solutions, and 13:52:33 4 Federal? 13:52:34 5 MR. BUTLER: Objection to the form, 13:52:36 6 mischaracterizes the document. 13:52:39 7 THE WITNESS: I see that's included in 13:52:42 8 that page as software supported, yes. 13:52:44 9 MR. ALINDER: Q. For JD Edwards, it says, 13:52:48 10 "World (all versions and all products)"? 13:52:50 11 A. It says, "all versions and products." 13:52:56 12 Q. And for OneWorld, it says, "all versions 13:52:58 13 and products"? 13:52:59 14 A. Yes. 13:53:02 15 Q. And for Siebel, it has Versions 5.x, 6.x, 13:53:11 16 7.0x, 7.5x, 7.7x, and 7.8x. You see that? 13:53:13 17 A. I see that. 13:53:14 18 Q. And then it talks about a full product 13:53:21 19 line including a number of other modules after that. 13:53:25 20 Do you see? 13:53:27 21 A. A number of other product modules or 13:53:31 22 modules within those versions? 13:53:32 23 Q. It's probably within the versions. I'll 13:53:35 24 just read it out to be clear for the record. It 25 says under Siebel Systems, "Full product line</p>

<p style="text-align: right;">Page 138</p> <p>13:53:41 1 including Marketing Automation, Sales Force 13:53:42 2 Automation, Call Center and Service, Self Service &amp; 13:53:47 3 eBilling, Customer Order Management, Partner 13:53:51 4 Relationship Management, Business Analytics." Do 13:53:52 5 you see that? 13:53:58 6 A. Yes. 13:53:59 7 Q. Is that different from what your 13:54:01 8 understanding of the software that TomorrowNow 13:54:05 9 supported when you generated your report? 13:54:06 10 MR. BUTLER: Objection to the form, vague, 13:54:14 11 ambiguous, and mischaracterizes this document. 13:54:15 12 THE WITNESS: Yes, it is totally 13:54:17 13 different. In fact, I believe this is just like 13:54:21 14 marketing material that would advertise capabilities 13:54:25 15 to support things that providers don't necessarily 13:54:27 16 have the capability to do at that particular time 13:54:34 17 when they advertise. 13:54:35 18 MR. ALINDER: Q. Do you think -- 13:54:39 19 A. I've never seen this page before. 13:54:42 20 Q. You understand it's TomorrowNow's CEO and 13:54:45 21 president, and this states the software he claims 13:54:47 22 they can support, correct? 13:54:48 23 MR. BUTLER: Objection to the form, 13:55:43 24 mischaracterizes the document, vague and ambiguous. 25 THE WITNESS: I see that that's what that</p>	<p style="text-align: right;">Page 140</p>
<p style="text-align: right;">Page 139</p> <p>13:55:51 1 page says, yes. I see other things too in the 13:55:56 2 document, like languages.</p>	<p style="text-align: right;">Page 141</p>

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14:39:47	16	Q.	Well, we were just looking at the
14:39:51	17		PeopleSoft HRMS 8.8 PeopleBooks. Do you recall?
14:39:56	18	A.	Yeah, but we didn't look and see if it had
14:40:01	19		Global Payroll for U.S. on it, right.
14:40:04	20	Q.	No, we found Global Payroll for Brazil on
14:40:09	21		it, which is one of your modules on Page 10. You
14:40:10	22		remember that?
14:40:14	23	A.	Yes. I remember it's in my Page 10 that
14:40:18	24		TomorrowNow was not using -- not providing support
	25		for Global Payroll for Brazil.

41 (Pages 158 to 161)

<p style="text-align: right;">Page 162</p> <p>11:40:23 1 Q. And you didn't take into account the fact 14:40:27 2 that TomorrowNow had copies of the PeopleBooks for 14:40:30 3 Global Payroll for Brazil in doing your analysis? 14:40:31 4 MR. BUTLER: Objection to the form, lack 14:40:33 5 of foundation, assumes facts not in evidence, vague 14:40:36 6 and ambiguous. 14:40:39 7 THE WITNESS: I had no idea what 14:41:14 8 TomorrowNow had.</p>	<p style="text-align: right;">Page 164</p>
<p style="text-align: right;">Page 163</p>	<p style="text-align: right;">Page 165</p>

<p>Page 198</p>	<p>Page 200</p> <p>15:36:30 1 MR. ALINDER: Q. Those four spreadsheets?</p> <p>15:36:32 2 A. Yes, I referred to those as facts, right.</p> <p>15:36:35 3 I accepted them as factual, like you said.</p> <p>15:36:37 4 Q. Right. You assumed that they were factual</p> <p>15:36:39 5 and that they constitute everything that TomorrowNow</p> <p>15:36:43 6 did, and there wasn't anything else, correct?</p> <p>15:36:44 7 MR. BUTLER: Objection to the form, vague,</p> <p>15:36:48 8 ambiguous, mischaracterizes prior testimony.</p> <p>15:36:53 9 THE WITNESS: It was my belief that that</p> <p>15:36:55 10 was the work that TomorrowNow did, yes.</p> <p>15:36:58 11 MR. ALINDER: Q. And you didn't do any</p> <p>15:37:00 12 checking or question anyone to make sure that was a</p> <p>15:37:01 13 well-founded belief?</p> <p>15:37:06 14 MR. BUTLER: Objection; mischaracterizes</p> <p>15:37:08 15 earlier testimony.</p> <p>15:37:09 16 THE WITNESS: I doubt that Mr. Pinto did,</p> <p>15:37:10 17 either.</p>
<p>Page 199</p>	<p>Page 201</p>

Page 210	Page 212
Page 211	Page 213  16:20:57 3 Q. Mr. Garmus, did you have an opportunity to 16:21:00 4 review Mr. Clarke's report on damages? 16:21:02 5 A. No. 16:21:05 6 Q. Are you aware that Mr. Clarke relies on 16:21:09 7 your opinions in your report for his damages 16:21:11 8 analysis? 16:21:14 9 A. No, I was not aware of that. 16:21:17 10 Q. Did you speak to Mr. Clarke at any point 16:21:19 11 prior to today? 16:21:23 12 A. I'm not sure I've even met Mr. Clarke. 16:21:26 13 Have I? 16:21:26 14 MR. BUTLER: (Shrugs.) 16:21:28 15 MR. ALINDER: Q. You don't recall ever 16:21:29 16 providing information to Mr. Clarke? 16:21:31 17 A. I never provided any information to 16:21:43 18 Mr. Clarke. 16:21:45 19 Q. And you don't hold yourself out as a 16:21:47 20 damages expert, correct? 16:21:54 21 A. No. I almost said, "Heavens, no." 16:22:03 22 MR. BUTLER: Well, ultimately you did. 16:22:03 23 MR. ALINDER: Q. Have you ever heard of 16:22:11 24 the phrase "avoided costs"? 25 A. Avoided costs? I've heard it, yeah, when

<p style="text-align: right;">Page 214</p> <p>16:22:18 1 I sent -- when I keep my wife at home instead of 16:22:21 2 letting her go out shopping, that's avoided costs. 16:22:22 3 Q. Fair enough. 16:22:24 4 A. With regard to software? It's not a 16:22:28 5 common term. It could be a legal term. I'm not 16:22:31 6 sure, certain. 16:22:34 7 Q. It is somewhat of a legal term. Are you 16:22:36 8 aware of the law of recovery of avoided costs in 16:22:38 9 copyright litigation? 16:22:38 10 MR. BUTLER: Objection to the form, vague, 16:22:41 11 ambiguous, and beyond the scope of Mr. Garmus's 16:22:42 12 expertise. 16:22:44 13 THE WITNESS: No, I'm not aware of that. 16:22:45 14 MR. ALINDER: Q. Do you agree that's 16:22:46 15 beyond the scope of your expertise? 16:22:48 16 A. Yes. 16:22:50 17 Q. How about the term "unjust enrichment"; 16:22:52 18 have you heard that before? 16:22:52 19 MR. BUTLER: Same objections. 16:22:57 20 THE WITNESS: No. 16:22:58 21 MR. ALINDER: Q. And you agree that 16:23:00 22 unjust enrichment damages is beyond the scope of 16:23:01 23 your expertise? 16:23:08 24 A. Definitely.</p>	<p style="text-align: right;">Page 216</p>
<p style="text-align: right;">Page 215</p>	<p style="text-align: right;">Page 217</p>

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17:01:50 1 Q. You currently speak for IFPUG?  
17:01:53 2 A. As a past president, I speak for IFPUG.  
17:01:55 3 and as a member of the counting practices committee.  
17:01:58 4 I speak for the standards that IFPUG applies. Yes,  
17:02:00 5 I'm eligible to speak for IFPUG.  
17:02:03 6 Q. Has anyone from IFPUG reviewed your report  
17:02:05 7 to confirm the accuracy of your assertions?  
17:02:09 8 A. No. If you would like, we could send it  
17:02:11 9 to them, though.  
17:02:12 10 Q. I might do that.  
17:02:16 11 A. Okay. That would be good. Much like any  
17:02:18 12 other organization, the people that work on the  
17:02:21 13 staff at the IFPUG office are not function point  
17:02:28 14 counters. They're managers.

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<p style="text-align: right;">Page 254</p> <p>17:19:21 15 MR. ALINDER: Q. And these are postings 17:19:26 16 on the IFPUG bulletin board from 2001 to 2009, 17:19:31 17 correct? 17:19:38 18 A. Yes, I believe so. 17:19:40 19 Q. So for approximately eight years you found 17:19:44 20 eight total comments on the IFPUG bulletin board 17:19:45 21 about backfiring? 17:19:46 22 A. I collected those when I was preparing my 17:19:51 23 report, so I'm not sure how many comments were there 17:19:53 24 before that were no longer there.</p>	<p style="text-align: right;">Page 256</p> <p>17:21:46 11 MR. ALINDER: Q. The IFPUG bulletin board 17:21:49 12 often identifies the name of the person who posts 17:21:51 13 the comment, correct? 17:21:53 14 A. Not always. 17:21:56 15 Q. But sometimes it does? 17:22:00 16 A. Only if the person signs it, right. 17:22:03 17 Otherwise, there's an alias or something like that. 17:22:05 18 Q. In this case you removed all the names of 17:22:08 19 the people who posted these comments? 17:22:11 20 A. Only in the headers. So there's names 17:22:15 21 that appear. I eliminated the headers on the 17:22:19 22 comments. 17:22:21 23 Q. You don't know who posted each of these 17:22:25 24 comments, though, correct? 25 A. No. Unless it says inside, no. I think</p>
<p style="text-align: right;">Page 255</p>	<p style="text-align: right;">Page 257</p> <p>17:22:43 1 some of them say inside the comments themselves who 17:22:50 2 they were and so on. But in a lot of cases, there 17:22:52 3 wasn't any identity of the person who made the 17:22:56 4 comment. 17:23:01 5 Q. So these are essentially anonymous 17:23:04 6 postings on a bulletin board that you found that 17:23:09 7 relate to backfiring from 2001 to 2009? 17:23:13 8 A. I -- that I found on the bulletin board 17:23:17 9 that had indicated a 2001 indicator. But I didn't 17:23:20 10 collect them over that particular period of time. I 17:23:22 11 collected them at one instance in time what was 17:23:25 12 there listed under backfiring, right, when I did a 17:23:38 13 search on backfiring. 17:23:40 14 Q. Did you investigate the credentials or 17:23:42 15 experience of any of the people whose comments 17:23:48 16 you've included in the report? 17:23:55 17 A. Did I investigate? I guess some of the 17:23:58 18 people included in this report I'm familiar with, 17:24:05 19 right. Carol Dekkers, Luca Santillo. I mean, some 17:24:08 20 people I have no idea -- even looking today at the 17:24:21 21 IFPUG bulletin board, I have no idea who they are. 17:24:22 22 Q. You don't know who provided all these 17:24:32 23 comments, and you didn't check their expertise? 17:24:34 24 A. What would their expertise be? You mean 25 were they certified?</p>

<p style="text-align: right;">Page 258</p> <p>17:24:41 1 Q. Doesn't appear to me that they have any 17:24:44 2 expertise. I'm actually wondering if you have 17:24:48 3 checked that there's any expertise provided by, you 17:24:51 4 know, the people that have left comments that you've 17:24:54 5 put in your expert report. 17:24:56 6 A. Some of the people on here I was familiar 17:25:03 7 with, yes, and they did have expertise. 17:25:05 8 Q. You didn't provide the names of those 17:25:07 9 people in your report for Oracle to check on their 17:25:11 10 expertise, though, correct? 17:25:14 11 A. No. I know a lot of the people that were 17:25:16 12 mentioned did have expertise. Some of the people I 17:25:20 13 didn't know, but some of the people's that's names 17:25:23 14 are mentioned on these particular pages are function 17:25:27 15 point experts, experts in software measurement and 17:25:33 16 so on, some in other countries, some in the States 17:25:36 17 itself. When it refers to "I agree with Carol," 17:25:41 18 Carol is Carol Dekkers. She was a past president of 17:25:42 19 IFPUG as well and a competitor of the David 17:25:51 20 Consulting Group. 17:25:53 21 Q. Which one are you referring to? 17:25:58 22 A. I was referring to the one on top of -- 17:26:03 23 towards the top of Page 20. "I agree with Carol and 17:26:13 24 Gene." Luca Santillo was -- is indicated at the 25 bottom. He's currently a participant in the</p>	<p style="text-align: right;">Page 260</p> <p>17:27:43 1 exception of a few comments, I cannot.</p>
<p style="text-align: right;">Page 259</p> <p>17:26:24 1 international software non-functional assessment 17:26:27 2 process, which is an estimation process. 17:26:30 3 Q. Now, you said -- you quoted, "I agree with 17:26:33 4 Carol and Gene," which is part of a posting on 17:26:36 5 January 7th, 2003, according to your expert report 17:26:41 6 on Page 20. Do you have any idea who wrote that 17:26:42 7 post? 17:26:45 8 A. No, I don't. 17:26:47 9 Q. So you have no idea what expertise or 17:26:57 10 credentials whoever wrote this report had? 17:27:00 11 A. At this current time, I don't. 17:27:01 12 Q. Do you know what expertise any of the 17:27:04 13 people who posted comments that you put in your 17:27:08 14 report had? 17:27:10 15 A. Yes, there were a number of people that 17:27:14 16 were -- had been members of IFPUG for some period of 17:27:21 17 time. Like I said, I eliminated their names. I 17:27:23 18 think I can go back and figure out what their names 17:27:25 19 were, or you could look at the IFPUG Web site 17:27:28 20 yourself and find these same articles. 17:27:30 21 Q. As you sit here today, do you know the 17:27:32 22 expertise of any of the people who left these 17:27:35 23 postings on the IFPUG Web site that you've put into 17:27:37 24 your report? 25 A. As I look at these today, with the</p>	<p style="text-align: right;">Page 261</p>

<p style="text-align: right;">Page 274</p>	<p style="text-align: right;">Page 276</p> <p>18:20:55 1 A. Everything on these pages is based upon 18:21:01 2 those spreadsheets, correct. 18:21:05 3 Q. And you did not consider TomorrowNow's 18:21:06 4 downloads from Customer Connection in creating this 18:21:12 5 list for 8.12 modules, correct? 18:21:13 6 MR. BUTLER: Objection to the form, 18:21:21 7 assumes facts not in evidence, vague and ambiguous. 18:21:23 8 THE WITNESS: I don't know whether 18:21:28 9 TomorrowNow downloaded those or not. So your 18:21:32 10 question is not something I can answer. 18:21:35 11 MR. ALINDER: Q. You recall the 18:21:40 12 TomorrowNow Answer in Affirmative Defenses document 18:21:42 13 we discussed earlier where in Paragraph 16 18:21:45 14 TomorrowNow admitted that it downloaded and stored a 18:21:47 15 large quantity of software and support materials, 18:21:51 16 and further admitted that they used those materials 18:21:53 17 for customer support? 18:21:56 18 A. Which document? 18:21:58 19 Q. That's from Exhibit 3039. 18:21:59 20 MR. BUTLER: Objection to the form of the 18:22:01 21 question, mischaracterizes the document and earlier 18:22:11 22 testimony. 18:22:12 23 THE WITNESS: I haven't read this document 18:22:16 24 in detail, so what paragraph are you referring to, 25 which is -- would be out of context anyway, but --</p>
<p style="text-align: right;">Page 275</p> <p>18:20:09 16 Q. From 11 to Page 14, you talk about 18:20:13 17 EnterpriseOne 8.12? 18:20:15 18 A. Yes. I thought we were through with 18:20:16 19 these. 18:20:24 20 Q. I said, "for now." You answered the other 18:20:33 21 questions too quickly. Get to other things. 18:20:36 22 In -- for these 8.12 modules, is the basis 18:20:41 23 for your belief that TomorrowNow did not provide 18:20:47 24 support for them the same four Excel spreadsheets 25 and the Appendix L that we discussed earlier?</p>	<p style="text-align: right;">Page 277</p> <p>18:22:20 1 MR. ALINDER: Q. Paragraph 16. 18:22:31 2 A. Sixteen. 18:22:33 3 Q. Do you recall that we discussed earlier 18:22:35 4 the first sentence of Paragraph 16? 18:22:36 5 A. Yes, "Defendants admit that TomorrowNow, 18:22:40 6 on behalf of its customers," who I assume were 18:22:44 7 customers of one of the Oracle's predecessors, 18:22:49 8 "downloaded and stored a large quantity of software 18:22:52 9 and support materials, and further admits that 18:22:56 10 TomorrowNow used this material for customer 18:23:01 11 support," which would go hand in hand with the four 18:23:04 12 spreadsheets that I used to evaluate, because those 18:23:11 13 were -- if they're using them for customer support, 18:23:13 14 it doesn't describe which software was downloaded, 18:23:17 15 which -- excuse me -- which software or support 18:23:20 16 materials were downloaded either. I mean, it just 18:23:22 17 makes a blanket statement there. 18:23:25 18 Q. Right, it does make a blanket statement; I 18:23:34 19 agree. But you did not examine downloads by 18:23:40 20 TomorrowNow in determining whether TomorrowNow 18:23:44 21 provided support for these EnterpriseOne 8.12 18:23:46 22 modules, correct? 18:23:47 23 MR. BUTLER: Objection to the form, asked 18:23:51 24 and answered, and vague and ambiguous. 25 THE WITNESS: No, I did not examine them.</p>

<p style="text-align: right;">Page 278</p> <p>18:23:57 1 but did Mr. Pinto? I didn't make a claim to that 18:24:00 2 regard. Mr. Pinto did, however. Did he examine 18:24:01 3 them? 18:24:02 4 MR. ALINDER: Q. Actually, you have made 18:24:05 5 a claim in that regard, I believe, on from Page 11 18:24:09 6 to Page 14. If you're willing to withdraw your 18:24:12 7 claim that there's no support for EnterpriseOne 8.12 18:24:15 8 modules listed here, then I don't need to ask you 18:24:16 9 further questions about it. 18:24:20 10 A. I don't -- I in no case claimed that they 18:24:25 11 downloaded information. I said they had contracts 18:24:29 12 or they worked on, for various clients, certain 18:24:32 13 applications, none of which were included on my 18:24:36 14 pages. I didn't look at or make any claim about 18:24:40 15 anything that was downloaded or any documentation 18:24:47 16 that they used.</p>	<p style="text-align: right;">Page 280</p>
<p style="text-align: right;">Page 279</p>	<p style="text-align: right;">Page 281</p> <p>18:28:57 17 MR. ALINDER: Q. So you ignored what 18:29:00 18 TomorrowNow could have told you about their support; 18:29:05 19 you ignored the documentation that was on 18:29:08 20 TomorrowNow's system; ignored the software that was 18:29:11 21 on TomorrowNow's system; you ignored the support 18:29:14 22 materials that were on TomorrowNow's system; and you 18:29:17 23 ignored the admissions that they have made in the 18:29:20 24 case, including their answer; is that right? 18:29:20 25 MR. BUTLER: Object to the form, calls for</p>

<p style="text-align: right;">Page 282</p> <p>18:29:26 1 a legal conclusion, misstates the prior testimony, 18:29:29 2 assumes facts not in evidence, and beyond the scope 18:29:31 3 of Mr. Garmus's expertise. 18:29:33 4 THE WITNESS: I think it was beyond the 18:29:40 5 scope of what I was assigned to do.</p>	<p style="text-align: right;">Page 284</p> <p>18:33:29 8 MR. ALINDER: Q. You took the four 18:33:33 9 spreadsheets from Jones Day and the Appendix L, 18:33:40 10 which you asked them to provide you to show what 18:33:44 11 products were supported by TomorrowNow, and you 18:33:49 12 transcribed them into your report here from Pages 9 18:33:52 13 to 14? 18:33:53 14 MR. BUTLER: Objection to the form, 18:33:55 15 mischaracterizes the testimony and the expert 18:34:00 16 report, vague and ambiguous. 18:34:01 17 THE WITNESS: No, I took the information 18:34:05 18 that Mr. Pinto claimed he used, and as I went 18:34:09 19 through there, anything he claimed that they used 18:34:13 20 that I found in the documentation on the four 18:34:18 21 spreadsheets, I eliminated those from the ones that 18:34:24 22 I found were not included in order to determine 18:34:27 23 these applications that remained, and I couldn't 18:34:32 24 find any evidence of TomorrowNow providing support. 25 Now, I'm not sure -- I mean, I firmly</p>
<p style="text-align: right;">Page 283</p> <p>18:34:41 1 believe that if I had gone anyplace else and found 18:34:45 2 that you had information which I haven't seen that 18:34:51 3 said they supported other applications at other 18:34:54 4 client sites, that that might have made a difference 18:34:56 5 in what I included in that particular report, but I 18:35:00 6 haven't seen anything of that nature. 18:35:02 7 MR. ALINDER: Q. And you never asked 18:35:08 8 Jones Day for anything of that nature either? 18:35:11 9 A. I asked Jones Day for the information on 18:35:14 10 the support that they were providing, and I asked 18:35:17 11 after that, once again, when I got Appendix L, to -- 18:35:21 12 "Is there any way I can review what was included on 18:35:24 13 the spreadsheets, to make sure that I'm not 18:35:27 14 excluding anything that they, in fact, were working 18:35:31 15 on?" 18:35:33 16 Q. And you received -- 18:35:35 17 A. That's what I relied upon. That's all 18:35:36 18 I've relied upon. 18:35:38 19 Q. So you relied upon Jones Day for that? 18:35:39 20 MR. BUTLER: Objection to the form, vague, 18:35:41 21 ambiguous, assumes facts not in evidence, 18:35:46 22 mischaracterizes the testimony. 18:35:48 23 THE WITNESS: I relied upon Jones Day for 18:35:52 24 all the information, including Mr. Pinto's report 25 itself, right.</p>	<p style="text-align: right;">Page 285</p>

<p style="text-align: right;">Page 286</p> <p>18:35:55 1 MR. ALINDER: Q. And including these 18:35:57 2 spreadsheets and the exhibits that we've been 18:36:00 3 talking about right now? 18:36:03 4 A. Yes. I relied upon Jones Day, right.</p>	<p style="text-align: right;">Page 288</p>
<p style="text-align: right;">Page 287</p>	<p style="text-align: right;">Page 289</p>

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CERTIFICATE OF REPORTER

I, Natalie Y. Botelho, 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.

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

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

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

DATED: June 8, 2010

Natalie Y. Botelho  
Natalie Y. Botelho, CSR No. 9897