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18 │ TOMORROWNOW, INC.

19 │   UNITED STATES DISTRICT COURT

20 │   NORTHERN DISTRICT OF CALIFORNIA

21 │   OAKLAND DIVISION

22 │ ORACLE USA, INC., et al.,   │ Case No. 07-CV-1658 PJH (EDL)

23 │   Plaintiffs,   │ **DECLARATION OF BRIAN S.
                                          SOMMER IN SUPPORT OF
24 │   v.   │ DEFENDANTS' OPPOSITION TO
                                          PLAINTIFFS' MOTION NO. 2 TO
25 │ SAP AG, et al.,   │ EXCLUDE EXPERT TESTIMONY OF
                                          BRIAN S. SOMMER**
26 │   Defendants.   │
                                          Date: September 30, 2010
27 │   │ Time: 2:30 p.m.
                                          Courtroom: 3, 3rd Floor
28 │   │ Judge: Hon. Phyllis J. Hamilton

SOMMER DECLARATION ISO DEFS' OPPOSITION TO
PLAINTIFFS' MOTION NO. 2 TO EXCLUDE SOMMER
Case No. 07-CV-1658 PJH (EDL)

I, BRIAN S. SOMMER, declare as follows:

I make this declaration based on personal knowledge and, if called upon to do so, could testify competently thereto.

1. I am currently President of TechVentive, Inc., a company I founded in 2001.

2. I have worked in the ERP industry for approximately 30 years, in a variety of capacities and positions, which have given me an understanding of how enterprise resource planning ("ERP") software (including support services for that software) is bought, the decision process companies go through in selecting new ERP software, why companies change their ERP software, the costs behind such a decision, and the value companies expect to receive from the software and the timing of such decisions. [1]

I. **The First Phase of My Career Provided Me With Technical Experience in the ERP Industry**

3. My early experiences in the ERP industry gave me an understanding in the technical architectures, functionality and limitations of ERP solutions. In 1981, I began working for Arthur Andersen & Co.'s Management Information Consulting Division (later renamed as Andersen Consulting and now known as Accenture, and hereinafter "Andersen Consulting"). I began my career by assisting oil and gas clients with their ERP application software implementations. These ERP implementation projects generally involved: the design, coding and testing of software programs to convert data to a new software package; the design, coding and testing of new reports; the design, coding and testing of programs to integrate or connect the new application software with other application software in use by the client; training of client personnel on the new system; training of client personnel on new procedures for business processes such as invoice entry, check requests, and journal entry

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[1] The term ERP was coined by IT research firm Gartner around 1990. It generally refers to a group of application software products that aid in the operation of many parts of a business (e.g., financial accounting or human resources). I use "ERP" in this declaration to describe software marketed as such or software that would have been marketed with that term had the term been in use at that time.

1 input; and, training of client personnel on proper operations, backup, and security for the new

2 application software.

3   4.   My role in these ERP implementations was as a programmer and software

4 designer. This required an understanding of client and regulatory requirements, comparing

5 these to the ERP application software package's functionality, designing required programming

6 changes, making the needed changes, testing the ERP software and placing the revised ERP

7 software into production. I would also create new reports, design and code interface programs,

8 convert data and train client personnel.

9   5.   Conducting these ERP implementations gave me a set of skills with IBM's

10 System 34 (a predecessor to the AS/400 and iSeries computer) and with its programming

11 language (RPG II), its operating system, and its operational controls.

12   6.   I completed, enhanced or repaired ERP systems at several mid-sized oil and gas

13 and other companies from 1981-1982. For example, when a client needed to repair the damage

14 another consultancy had done to the client's Payroll system, and because the client possessed a

15 System 34, I was able to restore its payroll application. Because I had developed a series of

16 utilities to debug or improve the performance of that mid-range computer, I was able to

17 resurrect the disabled payroll system and get the client's payroll out by mid-day. I went on to

18 re-write their store reporting systems, their cash reporting systems and their management bonus

19 calculation routines in RPG II. I also streamlined their processing so as to reduce disk and

20 memory utilization. To do so, I re-worked the control parameters of another software package

21 they were using for their financial accounting software.

22   7.   Around 1983, Andersen Consulting moved me to larger mainframe-based ERP

23 applications software projects. I assisted with systems implementations at client companies

24 that lasted 12 to 18 months with project teams containing a dozen or more personnel. For

25 example, the first of these projects involved a large Houston-based oil and gas exploration

26 company, MCO Resources. My role on that project was to find ways to redesign the Accounts

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Payable, Materials Management and Purchase Order ERP application modules of one ERP

application software solution and make it work with a more advanced General Ledger ERP

software package from Walker Interactive. The project gave me an opportunity to understand

numerous complex accounting and systems considerations and whether they work in

combination with other application software packages.

8.   I was sent to work on the Walker Interactive General Ledger ERP

implementation at the insurance client, USAA (United Services Automobile Association)

around 1983-1984. I was the lead product expert and designer on this project.

9.   From 1986 to 1988, I worked on additional client software and strategy projects.

My clients included one of the largest computer hardware maintenance firms in the U.S., a

large West Coast health insurer, one of the world's largest construction firms and one of the

world's largest grocery store chains. During this timeframe, I acquired additional knowledge

around other ERP application software products, most notably those of Management Science

America, McCormack & Dodge and Cullinet. I led a software evaluation effort at the health

insurer where the client evaluated solutions from Management Science America and

McCormack & Dodge.

II.   **The Second Phase of My Career Provided Me with a Broad Understanding of
Matching ERP Products With Specific Customer Needs**

10.   In 1988, I was transferred to Andersen Consulting's world headquarters in

Chicago to work in their Software Intelligence unit. The Software Intelligence unit was

responsible for: developing in-depth computer-based training for use by Andersen Consulting

personnel worldwide on popular large ERP application software products; providing in-depth

product reviews on a variety of application software products in use or being considered by

Andersen Consulting clients globally; providing on site consulting experts that would advise

clients and consulting teams on the best or most appropriate ERP solutions for a given client;

1 promoting the company's ERP practice; and, maintaining relationships with major ERP

2 vendors and their top executives.

3   11.   In 1989, I took responsibility for the Software Intelligence unit. I was its

4 worldwide director for approximately a decade. As that group's top executive, I was

5 responsible for: expanding the group's functional coverage to more ERP vendors and covering

6 more application functional areas (e.g., Accounts Receivable); expanding and enhancing the

7 firm's relationships with application software vendors and their top executives; finding

8 additional software experts to bring into the group; grooming more junior personnel into ERP

9 software experts; creating large-scale marketing events that would educate and aid clients in

10 selecting and purchasing ERP software; aiding Andersen Consulting partners in the selling of

11 additional ERP software implementation services; providing market forecasts to top Andersen

12 Consulting management so as to help the firm plan appropriately for hiring into its ERP

13 software implementation practice and to know which software products personnel should be

14 trained on.

15   12.   My expertise in ERP application software expanded when I was transferred to

16 the Software Intelligence unit. I was expected to have detailed product knowledge about a

17 variety of application software products being considered by or in use at Andersen Consulting

18 clients globally. To expand that knowledge base, I created and led several projects to develop

19 new ERP software practice aids. These products were a compendia of hundreds of functions

20 and features present in over a couple dozen major finance and human resource ERP software

21 products.

22   13.   To capture this information, I personally contacted top executives at leading

23 ERP application software companies, including J.D. Edwards, PeopleSoft, Oracle, and SAP.

24 Additionally, I contacted executives at: Coda; Collier Jackson; Computer Associates;

25 Computron; Cyborg; Data Design Associates; Genesys; Global Software; Integral; ISI-Fasbe;

26 Management Science America; McCormack & Dodge; Quality Software Products; Ross

27

1 Systems; Software 2000; Software International; Systems Union; Tesseract; Timeline; and,

2 Walker Interactive.

3 14. I arranged for myself and a team to visit the headquarters of each of these ERP

4 vendors. There, we usually spent two to three days performing an in-depth review of a specific

5 ERP module marketed by that vendor. We also reviewed the vendors' reporting tools, query

6 tools, development tools and other technologies that may be utilized by clients or Andersen

7 Consulting project teams. At the completion of these reviews, we produced several-hundred

8 page, in-depth product assessments that were printed and distributed to Andersen Consulting

9 offices worldwide. These assessments were frequently used by Andersen Consulting

10 executives to sell ERP software selection projects and by Andersen Consulting software

11 implementation personnel to complete software evaluations for clients. We developed practice

12 aids for mainframe financial software, financial software for the DEC VAX and AS/400

13 platform, human resource applications software, life insurance software and other software

14 product areas.

15 15. ERP vendors whose application functionality was documented in these practice

16 aids included Oracle, PeopleSoft, J.D. Edwards, and SAP. Other firms documented in these

17 practice aids included: Coda, Collier Jackson, Computer Associates, Computron, Cyborg, Data

18 Design Associates, Genesys, Global Software, Integral, ISI-Fasbe, Management Science

19 America, McCormack & Dodge, Quality Software Products, Ross Systems, Software 2000,

20 Software International, Systems Union, Tesseract, Timeline, and Walker Interactive.

21 16. Also while working in the Andersen Software Intelligence unit, I created

22 specific practice papers used by the consulting organizational globally on subjects such as

23 accounting code block designs for financial accounting software applications.

24 17. While running the Software Intelligence unit, my organization and I produced

25 six major shows for an audience of approximately 500 or more top client executives. The

26 shows were titled "The Finance and Human Resources Software Spectacular". The Finance

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and Human Resources Software Spectacular show was aimed at top executives in major

corporations globally and helped them decide which ERP solutions they should consider on

their short list of new application software technology. As part of most conducts, we offered

two major activities of interest to software buyers globally. The first was a CEO panel that I

chaired. I personally called and invited the CEOs of six major software companies for each

event. Dave Duffield, CEO of PeopleSoft (now owned by Oracle), was a frequent participant

in the CEO panel (1992, 1993, 1994, 1995). Hasso Plattner, co-founder of SAP, was also a

panelist (1993). Charles Phillips, formerly a co-President of Oracle and formerly of Kidder

Peabody and Morgan Stanley, joined me on stage (1994, 1995, 1996) to discuss the specifics

behind different financial accounting software vendors. Another critical aspect of this annual

event was the use of highly detailed and specific business case scenarios that my staff and I

knew were needed by major companies but often found lacking in most package software

solutions on the market at that time. A business case scenario might describe a problem like a

company needing to change its accounting code block to accommodate new lines of business,

new currencies, new legal entities and other factors.

18.   In the Software Intelligence role at Andersen Consulting, my staff and I were

requested at client sites globally to assist their ERP software and support services selection

decision-making. My assistance typically included :

- **A pre-client meeting with the Andersen Consulting client executives.**
  During this discussion, I would be briefed on a number of software,
  technical, financial, political, economic, and other factors that the client is
  weighing relative to a new software solution.

  I often learned whether the existing ERP solution was still on vendor
  provided maintenance support, whether the existing ERP software had
  been heavily modified or whether the ERP software was current or behind
  in the application of software maintenance and updates.

- **An initial meeting with the client CFO or CIO.** This meeting gave me
  insights into the top client executives' real business concerns and needs
  with regards to new software and support services, data center
  consolidation, technology refresh, inorganic business expansion, shared
  service or other business change driver. This discussion usually put a

context around the rest of the day's discussions and the client's software selection decision process.

- **A large group meeting with the steering committee, executive committee or technology team evaluating the future software selection decision**. This meeting often ran the bulk of the day. Generally, I provided an ERP software market overview presentation to kick things off. I discussed who the leaders were in the market segment of interest to the client. I then discussed some of the up-and-coming vendors and new technologies that were going to be available in the near future for that same application software space. Sometimes, the discussions would include subjects such as business process reengineering, expected new process efficiencies and effectiveness levels the customer could anticipate from different vendors, implementation costs, maintenance support costs, timing of warranty and maintenance support, vendor or product specific risk factors, general pricing data on the different software vendors, negotiating tactics and other relevant subjects.

- **Frequently, I would meet with a subset of the customer's selection committee or executive committee.** This often included the CFO, Controller and the CIO. In this discussion, we would often cover subjects such as how will the new technology affect existing workers, who should lead the negotiation effort with the vendor, how receptive specific vendors might be to partnership overtures from the customer, how likely would it be that specific vendors could be acquired, were certain vendors more likely to face financial difficulty or bankruptcy, how can a customer protect itself in the event that the chosen software vendor is acquired or becomes insolvent, etc.

19.   I made dozens, if not hundreds, of these trips during my tenure at Andersen Consulting to assist in a customer's ERP software and support services selection process.

20.   In client consultations, I covered detailed product attributes of numerous ERP software vendors that the potential ERP customer might want to consider as well as potential areas they would need to gain clarity with the vendor before making any final decision. This included the support services of the ERP software that a client might buy, which were usually sold together by an ERP software vendor. In my experience, I could not offer this type of consultation without first gaining an understanding of the client's old (or existing) ERP software and support services. As a result, in my consultations, I gained an understanding of both a client's software and support services needs and the factors that were driving them to seek a replacement. The aggregate of these consultations has given me an understanding of

1 what may motivate a customer to replace their ERP software and support services and what

2 options may be available for such replacements.

3   21.   Additionally, I consulted numerous Andersen Consulting clients about their

4 plans to standardize their IT (information technology) operations, including their ERP

5 software. For example, I helped a Swiss pharmaceutical firm consolidate over sixty different

6 ERP solutions globally to one system in Europe. I advised clients on specific ERP issues they

7 would need to consider relative to deployment of shared service centers globally. For example,

8 I would discuss how some ERP solutions could perform complex consolidations of financial

9 accounting data across multiple currencies, multiple accounting periods, multiple legal entities

10 and multiple accounting calendars. I also advised clients on negotiating strategies and terms. I

11 advised clients on project estimating factors for the implementation of ERP application

12 software. I advised clients on best practices regarding software evaluations, software

13 negotiations, software implementations and long-term software vendor and client relationships.

14   22.   These advisory roles were numerous. This is a partial list of the clients I served

15 in providing advice and counsel regarding ERP software: A. O. Smith, Adecco, Aetna,

16 Ameritech, Amtrak, Astra-Merck, AT&T, Bath Iron Works, BOC, BC Gas, Bell Atlantic, Bell

17 South, Boeing, Boise Cascade, Budget Rent-a-Car, Burger King, Canadian National Railway,

18 Carolina Power & Light, CASE, Ceridian, Chrysler, CIBC, Club Corp., Credit Suisse First

19 Boston, Delta Airlines, Eli Lilly, Emerson Electric, Exxon, FDC Anixter, Federal Express,

20 FMC, GTE, Honda, ITT, J. P. Morgan, John Deere, Johnson Controls, S C Johnson Wax, Kelly

21 Services, Koch Industries, Kohler, Lenscrafters, Levi Strauss, M&M Mars, Manville, Martin

22 Marietta Energy Systems, McDonnell Douglas, Molson, New York Times, Novartis Pharma,

23 Nynex, PacTel, Pemex, Port of Seattle, Providence Journal, Quebec Telephone, Rand, Rand

24 McNally, Random House, Sara Lee, Scripps Howard, Sears, Shell Oil, Simon & Schuster,

25 Singapore Ministry of Finance, State of Kansas, Subaru/Isuzu, Tenneco, Toshiba, Tribune

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1   Corporation, US Air, US West, Utilicorp, Velo, Walgreens, Whirlpool, WR Grace, and

2   Yellow Freight.

3   23.   My role in ERP software selections while at Andersen Consulting included

4   extensive consultations with some ERP software buyers choosing between Oracle, PeopleSoft,

5   and SAP. Those consultations included discussions involving vendor provided support

6   services. For example, I was the lead Andersen Consulting executive on the ERP software

7   selection efforts at Alcoa, McDonnell Douglas and Tenneco (McDonnell Douglas considered

8   PeopleSoft and SAP ERP products; Alcoa considered Oracle and McCormack & Dodge ERP

9   software; and, Tenneco considered SAP, PeopleSoft and Oracle products). Additionally, I

10   introduced PeopleSoft to accounts like Kodak and Corning.

11   24.   In the 1990s, I helped to rework Andersen Consulting's ERP software selection

12   methodology to be used by the company's personnel on ERP software evaluation projects with

13   clients. I helped introduce a more problem-based method using business case scenarios and

14   conference room pilots instead of the older style of function/feature checklists. I also led the

15   development of a shared services methodology. This methodology assisted Andersen

16   Consulting and client project teams in consolidating and standardizing business processes and

17   ERP solutions.

18   25.   I conducted a sales training keynote address for the PeopleSoft sales

19   organization in 1999 because Dave Duffield asked me to address his sales organization on how

20   to sell value more like a consultancy and less like a software firm.

21   26.   Throughout these ERP software selection projects and many of the advisory

22   assignments indicated above, I discussed with clients matters such as: time frames for

23   implementing ERP application software; functionality differences between ERP software

24   products; potential costs associated with the purchase, implementation and maintenance

25   support of these ERP software products; methods available to clients to extract maximum value

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1   from the ERP application software; and, business process reengineering opportunities that

2   could be utilized as part of the ERP implementation effort.

3   27.   Client executives of ERP customers shared with me ERP software and support

4   services decision concerns, such as:

5   •   Which short-listed ERP software vendor would make a better long-term
            business partner for the client?

6

7   •   What factors (e.g., timing of annual maintenance inception date) should the
            client focus on in their discussions with the short-listed ERP vendors?

8   •   What is the culture of each short-listed ERP vendor and how will it work
            with the client's culture?

9

10   28.   During my career, I had numerous discussions with ERP customers involving

11 topics about their software and support services. This is a partial list of those topics:

12   •   How will the vendor charge for application maintenance support?

13   •   When will the maintenance support begin and when does the software
            warranty end?

14   •   Since our implementation will run over many months, can we expect the
            vendor to extend the warranty period and delay the start date for the annual

15   maintenance?

16   •   How will the maintenance support charges change should additional
            software licenses or incremental license fees come into play?

17

18   •   How long will our firm be committed to paying annual application
            software maintenance to the vendor?

19   •   Does being current on annual maintenance support provide us access to all
            new products or product lines or just to the one we have licensed?

20

21   29.   In my capacity as a consultant at Andersen Consulting and TechVentive, I

22 reviewed or assisted in the development of cost comparisons between ERP vendors under

23 consideration. I was asked to review their accuracy and how customers could negotiate

    different aspects of the cost model. These cost comparisons would include factors such as:

24

25   •   Initial software license cost (both as negotiated and at full retail);

26   •   Annual maintenance cost (as a percent of the purchase price and in
            dollars);

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- Cost escalation factor to be applied to the annual maintenance fee for subsequent years;

- Cost of additional modules (e.g., for reporting tools, integration tools, etc.);

- Cost of third party tools, if applicable (e.g., database management software); and

- Cost of incremental hardware needed to operate each vendor's ERP solution.

30.   When I assisted customers in doing a cost-benefit analysis for new ERP software and support services, it was typically represented in a spreadsheet. This allowed one or more cost models to be computed to ascertain the total cost of ownership over a fixed time frame, often ten years. I recently completed such an exercise for a higher-education client in 2008. I evaluated the cost differences between two ERP providers, Sungard Higher Education and Campus Management.

31.   When I took over the Software Intelligence unit, Andersen Consulting had three relationships with different ERP software vendors for product training purposes. I helped increase the number of ERP vendors Andersen Consulting had relationships with. My team and I opened significant doors at ERP vendors like Coda, Ross systems, ISI-Fasbe, SSA, Walker Interactive, Hyperion (now part of Oracle), Data Design Associates, Cyborg, Tesseract, Integral, J.D. Edwards (now part of Oracle) and many more. These relationships were often at the highest levels at each firm, usually including the CEO and/or founder of the company.

32.   I developed the firm's initial relationship with PeopleSoft around 1991 and shepherded it throughout my career. For example, I negotiated a deal between PeopleSoft, Arthur Andersen and Andersen Consulting to use PeopleSoft human resources ERP software globally. Additionally, I fostered Andersen Consulting's relationship with Adaytum.

III.   **My Technical and Consulting Experience Has Been Augmented by Attending and Speaking at ERP Software Conferences and Publications About the Industry**

33.   I have spoken about ERP software and support services at multiple events. For example, at the Software 2005 conference in April 2005, I co-presented with Vinnie

1 Mirchandani a topic called "Vendors are from Mars, Buyers are from Venus."

2 Mr. Mirchandani was my competitive Software Intelligence counterpart at the consulting firm

3 PriceWaterhouse before he moved to IT Research firm Gartner Group. The session was

4 described as an overview of how ERP software and support services buyers and sellers could

5 better meet each other's needs. Mr. Mirchandani and I co-wrote a related article on the same

6 subject for the IT industry publication Optimize. That article, "Buyers are from Mars, Vendors

7 are from Venus" ran in the July 1, 2005 issue of that publication.

8   34.   ERP vendors frequently requested that I speak at their marketing events. This is

9 a partial list of the events that I spoke at in the 1990s:

10
- "Vision 2000 – Using New Age Technology for Financial Systems" – Chicago (1992);
11

12
- "Ideas & Technology" – 14 city tour sponsored by D&B Software (1994);

- "Financial Seminar" – Oracle events in various cities (1992);
13

14
- "Client/Server Business Solutions" – 20 city tour hosted by PeopleSoft (1993); and

15
- "Client/Server Making it Work" – 30 city simulcast hosted by PeopleSoft and Hewlett Packard (1993),
16

      35.   In the last ten years, I have been a speaker at:
17

18
- NetSuite SuiteCloud, 2010, a conference for ERP channel partners of NetSuite;

19
- Progress Partner Conference, January 2010, a channel partner conference for developers, resellers and vendors of Progress tools;
20

21
- Sage Insights, 2009, an ERP user conference;

22
- Primavera 24th Annual Conference, 2007, a project management software user conference; and

23
- SoftSummit, 2005, a conference attended predominately by marketers of enterprise software.
24

      36.   I continue to expand my knowledge of ERP software through attendance at ERP
25

26 software and technology events. This is a partial list of the events I have attended in the last

ten years:
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1   •   Microsoft Convergence – 2010;

2   •   Workday Technology Summit – 2010;

3   •   HR Technology Show – 2007-2010;

4   •   SAP's Influencer Summit – 2009;

5   •   Sapience – 2009 (a conference on third party maintenance);

6   •   DreamForce – 2009;

7   •   SAP TechEd – 2009;

8   •   Oracle Open World – 2008;

9   •   HR Week NYC – 2008;

10   •   SAP's Sapphire conference – 2007, 2008;

11   •   REA – 25 – 2007;

12   •   IDC Directions – 2007, 2009;

13   •   Merrill Lynch Technology Conference – 2007;

14   •   Progress Exchange 07 – 2007;

15   •   Workstream – 2007;

16   •   QuickArrow Shared Vision – 2006;

17   •   Distribution/Computer Expo 2006;

18   •   Software 2006;

19   •   TieCon '05 – 2005;

20   •   Software 2005;

21   •   Software 2004;

22   •   The 2004 CIO Symposium – 2004;

23   •   FreeMarkets – WorldSource conference – 2003;

24   •   Microsoft Worldwide Partner Conference – 2003;

25   •   HRO World – 2003;

26   •   RFID Journal Live – 2003;

27   •   FileNet Insight – 2003;

28

- COMDEX Chicago – 2002;

- PeopleSoft Connect – 2002;

- FreeMarkets – WorldSource conference – 2002;

- i2 Planet – 2002; and

- PeopleSoft on Tour – 2001.

37.   I was invited to speak at major universities (e.g., Harvard Graduate School of Business (1998), Kellogg Graduate School of Management (2001), Northern Illinois University (2007), Arizona State University (most years from 2005-2010)) Wall Street investor conferences (e.g., Morgan Stanley (1996) and Credit Suisse Boston(1997)), and, most relevantly, at numerous IT trade shows and software conferences. I spoke about ERP products, the market for ERP products and the changing technology affecting this sector at these events.

38.   I spoke not only at the first PeopleSoft user conference but I also spoke at other PeopleSoft user conferences (1991, 1994, 1995 and 1996). I spoke about the ERP software market and what customers could expect to see in the near future.

39.   I spoke at user conferences for ERP vendors: Walker Interactive (1990, 1991), Systems Union (1991), Platinum (1993 - Keynote), Coda (1994 – Keynote), Quality Software Products (1994 – Keynote), Computron (1995 – Keynote), Dun & Bradstreet Software (1996), FlexiInternational (1997) and Lawson Software (1998). I continue to speak at software conferences. Recently, I spoke at: NetSuite/OpenAir User Conference (2008), NetSuite Revolution (2007), Progress Exchange (2007), NetSuite SuiteCloud (2010 – Keynote), Sage Insights (2009) and Primavera (2007). Most of these presentations were to cover the current state of the ERP software market and what new changes customers should expect in the future.

40.   I have spoken about ERP and application software at other events, too. For example, I spoke at Software World Canada (1992), Downsizing Expo Canada (1992), NetWorld (1992), Client/Server World (1992), Software World (1993), Financial Executives Institute (1994), CFO Rising (1995), Southern Gas Association Roundtable (1996), Canadian Consulate General (1996), Software Mergers and Acquisitions Forum (1996), Morgan Stanley

1   Enterprise Software Conference (1996), Chartech Forum (1997), HRMS Expo (1997),

2   Software Marketing Forum (1997), Credit Suisse First Boston Role of Information Technology

3   Conference (1997), The Future of Finance (1998), the Controllers Council for the Conference

4   Board (1998), the Institute of Management Accountants (1999), KCG Velocity 2000 Executive

5   Summit (2000), HR Outsourcing World (2003), Brainstorm Group (2004), Philadelphia

6   Venture Conference (2004), Zweig-White AEC Conference (2004 – Keynote), CURT (2004 –

7   Keynote), InformationWeek CIO Conference (2005), SoftSummit (2005), Software 2005

8   (2005), IHRIM Global Forum 2006 (2006), Best Practices Xchange (2006 and 2007 –

9   keynotes), REA – 25 (2007), PSVillage Chicago Executive Breakfast (2008), American

10   Accounting Association (2010). Each of these talks covered ERP software, with each talk's

11   subject matter tailored to the audience. Usually, these discussions covered the state of the ERP

12   industry and new changes about to alter the ERP competitive and technical landscape.

13   41.   I was guest faculty at Andersen Consulting's global training center in St. Charles

14   Illinois. From approximately 1992-1999, I taught at over a dozen different courses. There, I

15   taught consultants on software industry and financial accounting matters.

16 **IV.   The Third Phase of My Career Involved a Shift from the Buy Side to the Sell Side of**

17   **ERP Software**

18   42.   After I left Andersen Consulting in 1999, I went on to form the Internet startup

19   firm with my competitive counterpart in Price Waterhouse. That company, IQ4HIRE, assisted

20   ERP software buyers in finding the best possible project team to implement their solution from

21   dozens of potential service providers. Investors in IQ4Hire included: Ken Ross (of Ross

22   Systems and Pillar (now part of Oracle)), Ray Lane (former Oracle COO) and Dave Duffield of

23   PeopleSoft.

24   43.   After IQ4Hire, I went on to form my own firm, TechVentive, in 2001. It is a

25   company that advises software companies on better ways to succeed in the marketplace. I used

26   my knowledge of software buyers and how they behave toward, think about and approach ERP

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1 software decisions to help ERP and other technology companies improve their ability to sell

2 ERP products and services.

3   44.   My work with TechVentive often involved partnering with other firms on

4 different ERP-related assignments. In 2001-2002, I partnered with B2B Analysts to create an

5 in-depth product review of strategic sourcing software products. I helped evaluate forty-four

6 vendors, many of which are ERP vendors, and their products including: Agile (now owned by

7 Oracle), Ariba, Baan (now part of Infor), Frictionless (now owned by SAP), Manugistics (now

8 part of JDA), Oracle, PeopleSoft, SAP and SAS.

9   45.   In 2002, I spoke at two marketing events for the strategic sourcing firm

10 FreeMarkets (now part of Ariba). One event was a general sourcing event in Boston while the

11 other was targeted to utilities and oil & gas sourcing executives.

12   46.   In 2003, I created a sourcing and supply management software selection buyer's

13 guide that FreeMarkets made available to its software sales prospects. This buyer's guide, the

14 first of many produced by TechVentive, contained a number of business case scenarios,

15 organized and written for different executives of FreeMarkets' ERP software potential

16 customers, and aided FreeMarkets in driving more successful pre-sales product demonstrations.

17   47.   Also in 2003, TechVentive assisted a venture based startup in the Seattle area

18 with understanding the potential market for this application software solution and what value

19 propositions prospective customers would find most attractive. Also that year, I completed six

20 advisory calls for Wall Street investors on ERP software subjects. These advisory calls usually

21 involved me providing a market assessment of an application software segment (e.g., CRM)

22 and then a short discussion of the market prospects for some of the vendors involved in that

23 space. I usually spoke with hedge fund managers or private equity firm executives.

24   48.   The HR business process outsourcing firm, Exult (now owned by Hewitt),

25 became a TechVentive client in 2003-2004. I created the Smart HR BPO Buyers Guide for

26 them. This seventy-plus page guide included a large number of business case scenarios and a

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multi-step process to help executives transfer their HR software and processes to an outsourcer. This guide contained sections on: Getting Organized; Alignment; Self-Assessment; Desirable Partner Strategy; Pricing Strategy; Shortlisting; RFX & Contract Design; Provider Interaction; Deal Completion; and, Plan the Handoff. This sales tool also included a number of points involving typical contractual items such as:

- License transfers and ownership of application software;

- Commitments to keep software current;

- Service level commitments, performance measures, KPIs, escalation procedures, reporting content & frequency, penalties and recourse;

- Use of external process performance benchmark service;

- Commitment to continuous improvement;

- Change orders, fees and procedures for same;

- Transfer of personnel, benefits, costs, seniority;

- Dispute resolution, arbitration process;

- Integration to/from customer systems: who pays & who is responsible for maintenance cost of interfaces;

- Who pays special fees assessed by third parties and regulators;

- Reduce reliance on third parties;

- Control over selection of underlying solutions used;

- Security controls and procedures to be employed by outsourcer;

- Transition plans (for moving to and from the outsourcer);

- Use of offshore facilities and/or personnel;

- Non-solicitation agreements;

- Role of Relationship Managers (on both sides);

- Access to data & systems not part of the outsourced process;

- Real, tangible and other assets to be transferred to outsourcer;

- Acceptable publicity;

- Restrictions vis-à-vis competitors;

- Guaranteed performance during cessation of outsourcing arrangement;

- Additional fees, inflation adjustments, volume discounts/surcharges, etc.;

- Warranties, guarantees, indemnities;

- Your rights to review work, working papers, phone calls, etc.;

- Tax payments;

- Global payment, privacy and enforcement concerns;

- Program/project management;

- Who pays for special projects;

- Payment terms, conditions, credits;

- Dissolution terms, fees, assistance;

- Dispute resolution/Arbitration;

- Renewal terms & obligations; and

- Internal and External Auditor access to people, systems, controls, data.

49.   In 2004, I assisted the engineering and design firm Design Continuum in a PSA/PPM (professional services automation/project portfolio management) ERP software selection. Project accounting and project management functionality is now offered in some ERP solution suites.

50.   In 2006, I created and conducted a unique sales training course for the ERP software company Agresso. This two-day event was designed to focus their sales force on delivering a client-relevant point of view instead of selling non-differentiated ERP functions and features.

51.   Also in 2006, I teamed with Azul Partners to create and deliver another software sales training course for the sourcing software company OpenRatings (acquired by Dun & Bradstreet). Sourcing software applications are present in most ERP software suites. This training was designed to move the OpenRatings sales force to a more customer focused and

vertically oriented point of view. This helped the sales force speak in terms that potential ERP customers understand and want instead of the technical jargon or function/feature banter in many software sales situations.

52.　　Progress Software, a long-time TechVentive customer, asked me to develop a sales training course for many of its software resellers, many of which offer ERP software solutions. I created a course for Progress and then delivered it to resellers in South America, Australia, Europe and North America.

53.　　Workday, an ERP startup founded by ex-PeopleSoft CEO Dave Duffield, invited me out in 2006 to provide two-days of briefings to their executives and to their entire company. I spoke about the strategy Workday would need to employ if it was to successfully compete in the ERP software market of 2006 and beyond.

54.　　In 2007, I teamed with The MPower Group to modify and deliver training to strategic sourcing and procurement executives at a South Korean manufacturer of heavy industrial equipment.

55.　　In 2007, I branded the research and analysis services of TechVentive under the Vital Analysis brand.

56.　　In 2009, I developed a new training program for Progress Software, a software database and tools vendor whose products are often used to create ERP applications. This course helped Progress executives deliver better guidance to the software executives of their most important resellers. This course was delivered in the U.S., Australia and the Netherlands.

57.　　In 2010, I developed another new course for Progress Software's Australian resellers who are moving to SaaS (Software as a Service). This material focused on the marketing approaches, sales methods, economics and buyer values of a new kind of buyer and solution emerging in the ERP software market today.

58.　　At TechVentive, I produced Guidance a newsletter for software company CEOs. That newsletter had approximately 400 subscribers and often covered ERP related issues.

1   59.   I began blogging in 2006. I initially created two separate blogs, Software Safari

2   and Services Safari. Software Safari was oriented around issues affecting the application

3   software space and the vendors within it. ERP software and support services vendors or

4   product lines were covered in this blog. Services Safari focused on the professional services

5   marketplace and often highlighted systems integrators, outsourcers, offshore providers and

6   management consultants. Many of these firms derive much of their revenue designing,

7   implementing and operating ERP systems. Services Safari was one of five blogs singled out by

8   leading IT magazine, InformationWeek, in May 2006, as a blog giving conventional research

9   firms competition in the IT services (and services around ERP implementations) space. In

10   2008, I effectively stopped blogging on these two sites and concentrated most of my blogging

11   activity on a blog I currently write at ZDNet.

12   60.   I now write a blog for ZDNet titled Software and Services Safari. This blog

13   focuses on the application software space (including ERP) and the service providers who

14   implement and update these products. Because of the reach of this blog and the subjects I

15   cover, I am contacted regularly by ERP vendors, public relations and analyst relations

16   professionals to assess my interest in getting a briefing from an ERP vendor. Many of these

17   briefings by ERP vendors cover new products while others often focus on new product

18   functionality, new vertical expansions and newly released research. This flow of product

19   knowledge and updates keeps my software product knowledge constantly updated and current.

20   61.   I am compensated by ZDNet to write this blog, and I understand that this

21   requires me to stay informed of developments in the ERP industry. My efforts to stay informed

22   include reviewing other blogs on the internet and other online news sources. In my experience,

23   this has been a good way to keep informed of news within the ERP industry due. I understand

24   from communicating with other industry experts and analysts that they use the same method of

25   staying current with the ERP industry, which includes reviewing my blog and publications on

26   the internet.

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1   62.   I wrote four articles for the late Optimize magazine, two of those articles are "A

2 New Kind of Business Case" and "Software's Diminishing Returns." The first article is a

3 lengthy piece that describes how companies must look at a number of levers to achieve value

4 from an ERP application software implementation. The article utilized many of the factors

5 found in a DuPont return on investment analysis and how an ERP solution must positively

6 impact some of these drivers if the solution is to be greenlighted by a company's executive

7 team. That particular article was utilized by graduate business programs. The second article

8 describes how to re-automation of previously automated processes remains costly yet the

9 incremental benefits companies are receiving from newer versions of ERP software may be

10 inadequate to cover the incremental costs.

11   63.   I am frequently quoted in articles involving ERP. For example, I was quoted in

12 a story on software contracts in the January 2009 issue of Go. The article states: "In terms of

13 maintenance and support, Brian Sommer, president of technology research firm Vital Analysis,

14 suggests carefully spelling out what you'll get, what it will cost and how long the vendor is

15 obliged to provide it. In addition, ask to be upgraded to successive versions rather than getting

16 only minor fixes; you don't want to buy version 1.0 only to learn that 2.0 – released a few

17 months later – is far superior, and then get stuck having to buy it as if you were a brand-new

18 customer. Finally, try to spell out when the vendor will 'sunset' the product – which means

19 stop supporting it – so you know how long it will be before you need to revisit another

20 technology purchase contract."

21   64.   I've also been co-author of academic papers on the ERP space and presented

22 before groups of academics regarding a new type of ERP software concept called REA. Most

23 recently, I gave a keynote presentation at the American Accounting Association conference in

24 San Francisco in July 2010 where I spoke on concepts involving REA and other future aspects

25 of enterprise software.

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65.   In 2008, I negotiated a large ERP software and support contract for a large higher education client. That negotiation saved the client a substantial amount of money and once in production it will serve approximately several thousand users. I achieved these savings by:

- Comparing each vendor's standard contract to the terms and conditions I expect in deals. I also compared them the vendor contracts to terms identified in a book by software negotiations expert: Jeffrey Gordon.

- Next, I identified how far apart the vendors and the client were on several areas such as: license, warranty, maintenance, incremental license monies, rights to future product enhancements and more.

- A big part of the savings was derived from getting greater clarity around the specific implementation services to be provided by the vendors.

- I produced detailed 10-year cost projections of each solution and reviewed these with the client at every negotiation phase. I could then show them differences in costs that they could expect over this time frame due to the effect of organic growth, mergers, acquisitions, organic decline, etc. I also showed them cost scenarios involving the effect of timing on costs. These scenarios looked at the effect of delaying or expediting software conversions or of implementing additional modules that the ERP vendor offered.

- I ran approximately four rounds of negotiation sessions with each vendor before concluding.

I declare under penalty of perjury, under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on this 9th day of September, 2010 in Wharton, Texas.

Brian S. Sommer

SFI#649498v1