

# **EXHIBIT A**

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.

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

DEPOSITION OF DAVID GARMUS

June 4, 2010

Reported by:  
Natalie Y. Botelho  
CSR No. 9897

<p style="text-align: right;">Page 34</p> <p>09:39:11 09:39:15 09:39:22 09:39:25 09:39:27 09:39:29 09:39:31 09:39:33 09:39:37 09:39:39 09:39:40 09:39:45 09:39:47 09:39:48 09:39:49 09:39:50 09:39:53 09:39:56 09:39:57 09:40:01 09:40:05 09:40:09 09:40:13 09:40:15</p>	<p style="text-align: right;">Page 36</p> <p>09:41:51 09:41:53 09:41:56 09:42:00 09:42:02 09:42:03 09:42:06 09:42:12 09:42:14 09:42:19 09:42:21 09:42:26 09:42:29 09:42:31 09:42:36 09:42:44 09:42:52 09:42:53 09:42:55 09:42:56 09:42:59 09:43:01 09:43:05 09:43:11</p>
<p style="text-align: right;">Page 35</p> <p>09:40:22 09:40:25 09:40:29 09:40:31 09:40:39 09:40:42 09:40:43 09:40:45 09:40:47 09:40:51 09:40:54 09:40:55 09:40:57 09:41:02 09:41:04 09:41:08 09:41:12 09:41:14 09:41:16 09:41:19 09:41:39 09:41:42 09:41:44 09:41:45</p>	<p style="text-align: right;">Page 37</p> <p>09:43:27 09:43:30 09:43:30 09:43:31 09:43:36 09:43:42 09:43:44 09:43:52 09:43:55 09:43:57 09:44:05 09:44:09 09:44:12 09:44:15 09:44:20 09:44:26 09:44:28 09:44:30 09:44:33 09:44:41 09:44:43 09:44:44 09:44:46 09:44:49</p> <p>7 Q. Okay. And going back to Page 28 of your 8 report, that is where you do your function point 9 count of PeopleSoft Enterprise Global Payroll for 10 U.S. 8.9? 11 A. Yes, it is. 12 Q. For both of these function point counts, 13 you say, "As an exercise, to demonstrate how to 14 properly perform an FPA." Do you see that? 15 A. Yes. 16 Q. So these are exercises for you, sort of 17 academic exercises? 18 A. They were.</p>

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09:47:52	09:50:48
09:47:54	09:50:49
09:47:55	09:50:51
8 Q. You weren't intending to find a size for	
9 the same applications as Mr. Pinto, correct?	
10 A. No, I was not.	

DAVID GARMUS June 4, 2010  
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<p style="text-align: right;">Page 54</p> <p>10:28:47 10:28:50 10:28:54 10:28:58 10:29:01 10:29:03 10:29:09 10:29:13 10:29:14 10:29:17 10:29:18 10:29:21 10:29:25 10:29:27 10:29:30 10:29:35 10:29:38 10:29:41 10:29:46 10:29:51 10:30:00 10:30:04 10:30:07 10:30:09</p>	<p style="text-align: right;">Page 56</p> <p>10:31:31 10:31:38 10:31:39 10:31:43 10:31:47 10:31:49 10:31:50 10:31:52 10:31:53 10:31:56 10:31:57 10:32:00 10:32:03 10:32:03 10:32:06 10:32:07 10:32:11 10:32:15 10:32:16 10:32:19 10:32:20 10:32:21 10:32:25 10:32:30</p>
<p style="text-align: right;">Page 55</p> <p>10:30:15 10:30:16 10:30:20 10:30:23 10:30:26 10:30:29 10:30:33 10:30:34 10:30:36 10:30:37 10:30:39 10:30:41 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. 10:31:24 10:31:26</p>	<p style="text-align: right;">Page 57</p> <p>10:32:37 10:32:43 10:32:45 10:32:50 10:32:52 10:32:56 10:32:58 10:32:59 10:33:00 10:33:03 10:33:05 10:33:08 10:33:10 10:33:11 10:33:11 10:33:16 10:33:19 10:33:20 10:33:20 10:33:24 10:33:27 10:33:32 10:33:36 10:33:40</p>

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<p style="text-align: right;">Page 58</p> <p>10:33:44 10:33:47 10:33:49 10:33:50 10:33:53 10:33:58 10:34:03 10:34:11 10:34:13 10:34:14 10:34:19 10:34:26 10:34:28 10:34:29 10:34:29 10:34:33 10:34:39 10:34:40 10:34:41 10:34:42 10:34:42 10:34:46 10:34:51 10:34:55</p>	<p style="text-align: right;">Page 60</p> <p>10:36:25 10:36:26 10:36:38 10:36:40 10:36:40 10:36:40 10:36:50 10:36:52 10:36:56 10:36:58 10:37:03 10:37:05 10:37:11 10:37:12 10:37:20 10:37:22 10:37:26 10:37:31 10:37:32 10:37:33 10:37:44 10:37:47 10:37:54 10:37:58 10:38:01</p> <p>4 Q. Do you hold yourself out as being a 5 copyright expert? 6 A. No, I do not. 7 Q. Do you hold yourself out as being an 8 expert in enterprise software licensing? 9 A. No, I do not. 10 Q. Do you hold yourself out as being expert 11 in damages? 12 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>10:34:59 10:35:01 10:35:06 10:35:07 10:35:10 10:35:19 10:35:22 10:35:23 10:35:25 10:35:27 10:35:31 10:35:35 10:35:39 10:35:42 10:35:45 10:35:55 10:35:59 10:35:59 10:36:01 10:36:02 10:36:05 10:36:08 10:36:12 10:36:17</p>	<p style="text-align: right;">Page 61</p> <p>10:38:07 10:38:09 10:38:11 10:38:13 10:38:19 10:38:26 10:38:31 10:38:34 10:38:35 10:38:38 10:39:15 10:39:18 10:39:23 10:39:26 10:39:37 10:39:44 10:39:46 10:39:54 10:39:57 10:39:59 10:40:04 10:40:07 10:40:09 10:40:11</p>

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<p>11:42:29 11:42:32 11:42:44 11:42:47 11:42:50 11:42:52 11:42:54 11:42:57 11:42:58 11:43:03 11:43:06 11:43:09 11:43:10 11:43:15 11:43:17 11:43:18 11:43:27 11:43:28 11:43:31 11:43:36 11:43:40 11:43:44 11:43:49 11:43:53</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? 11:46:41 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 11:47:11 25 customers, right?</p>
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<p>11:44:00 11:44:04 11:44:07 11:44:12 11:44:17 11:44:20 11:44:24 11:44:28 11:44:33 11:44:37 11:44:41 11:44:48 11:44:51 13 Q. And if you were provided information that 11:44:59 14 showed TomorrowNow had copies of software that you 11:45:15 15 list on your report on Pages 10 to 14 -- 11:45:16 16 A. On Page -- excuse me? 11:45:17 17 Q. Ten to 14. 11:45:21 18 A. Ten to 14, yes. 11:45:23 19 Q. If you were provided information that 11:45:26 20 TomorrowNow had copies of software that you list on 11:45:34 21 those pages, wouldn't that change your opinion? 11:45:36 22 A. No, probably not. 11:45:37 23 Q. Why not? 11:45:40 24 A. Because they weren't using those. 11:45:40 25 Q. And that's -- you don't have any idea what</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. 11:47:43 11:47:45 11:47:48 11:47:49 11:47:54 11:47:57 11:47:58 11:48:05 11:48:07 11:48:10 11:48:11 11:48:33 11:48:38 11:48:41 11:48:47 11:48:51 11:48:54 11:48:56</p>

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16:19:23	16:21:54
16:19:26	16:22:03
16:19:28	16:22:03
16:19:30	16:22:11
	19 Q. And you don't hold yourself out as a
	20 damages expert, correct?
	21 A. No. I almost said, "Heavens, no."
	22 MR. BUTLER: Well, ultimately you did.
	23 MR. ALINDER: Q. Have you ever heard of
	24 the phrase "avoided costs"?
	25 A. Avoided costs? I've heard it, yeah, when

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16:22:18	1 I sent -- when I keep my wife at home instead of	16:25:34
16:22:21	2 letting her go out shopping, that's avoided costs.	16:25:37
16:22:22	3 Q. Fair enough.	16:25:40
16:22:24	4 A. With regard to software? It's not a	16:25:44
16:22:28	5 common term. It could be a legal term. I'm not	16:25:46
16:22:31	6 sure, certain.	16:25:49
16:22:34	7 Q. It is somewhat of a legal term. Are you	16:25:52
16:22:36	8 aware of the law of recovery of avoided costs in	16:25:55
16:22:38	9 copyright litigation?	16:25:56
16:22:38	10 MR. BUTLER: Objection to the form, vague,	16:25:59
16:22:41	11 ambiguous, and beyond the scope of Mr. Garmus's	16:26:02
16:22:42	12 expertise.	16:26:05
16:22:44	13 THE WITNESS: No, I'm not aware of that.	16:26:08
16:22:45	14 MR. ALINDER: Q. Do you agree that's	16:26:11
16:22:46	15 beyond the scope of your expertise?	16:26:17
16:22:48	16 A. Yes.	16:26:20
16:22:50	17 Q. How about the term "unjust enrichment";	16:26:22
16:22:52	18 have you heard that before?	16:26:23
16:22:52	19 MR. BUTLER: Same objections.	16:26:26
16:22:57	20 THE WITNESS: No.	16:26:28
16:22:58	21 MR. ALINDER: Q. And you agree that	16:26:39
16:23:00	22 unjust enrichment damages is beyond the scope of	16:26:40
16:23:01	23 your expertise?	16:26:48
16:23:08	24 A. Definitely.	16:26:50
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<p style="text-align: right;">Page 279</p> <p>18:25:14 18:25:16 18:25:17 18:25:22 18:25:27 18:25:29 18:25:32 18:25:36 18:25:42 18:25:46 18:25:50 18:25:53 18:25:56 18:25:59 18:26:00 18:26:02 18:26:06 18:26:09 18:26:10 18:26:11 18:26:13 18:26:17 18:26:18 18:26:21</p>	<p style="text-align: right;">Page 281</p> <p>18:27:48 18:27:50 18:27:55 18:27:56 18:27:58 18:28:05 18:28:07 18:28:08 18:28:12 18:28:28 18:28:32 18:28:36 18:28:39 18:28:46 18:28:50 18:28:56 18:28:57 18:29:00 18:29:05 18:29:08 18:29:11 18:29:14 18:29:17 18:29:20</p> <p>17 MR. ALINDER: Q. So you ignored what 18 TomorrowNow could have told you about their support; 19 you ignored the documentation that was on 20 TomorrowNow's system; ignored the software that was 21 on TomorrowNow's system; you ignored the support 22 materials that were on TomorrowNow's system; and you 23 ignored the admissions that they have made in the 24 case, including their answer; is that right? 25 MR. BUTLER: Object to the form, calls for</p>

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<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. 18:29:41 18:29:43 18:29:45 18:29:50 18:29:56 18:29:58 18:30:01 18:30:07 18:30:10 18:30:13 18:30:16 18:30:17 18:30:19 18:30:21 18:30:30 18:30:33 18:30:38 18:30:40 18:30:43</p>	<p>18:32:53 18:32:56 18:32:59 18:33:04 18:33:09 18:33:11 18:33:21 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>
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<p>18:31:17 18:31:24 18:31:31 18:31:35 18:31:40 18:31:41 18:31:43 18:31:45 18:31:47 18:31:52 18:31:59 18:32:04 18:32:06 18:32:10 18:32:15 18:32:20 18:32:24 18:32:28 18:32:30 18:32:33 18:32:37 18:32:41 18:32:45 18:32:47</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 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. 18:36:05 18:36:06 18:36:10 18:36:10 18:36:11 18:36:14 18:36:15 18:36:19 18:36:19 18:36:20 18:36:23 18:36:26 18:36:29 18:36:36 18:36:38 18:36:39 18:36:40 18:36:45 18:36:47 18:36:54</p>	<p style="text-align: right;">Page 288</p> <p>18:38:14 18:38:19 18:38:20 18:38:25 18:38:31 18:38:33 18:38:39 18:38:42 18:38:45 18:38:47 18:38:50 18:38:51 18:38:51 18:38:58 18:38:59 18:39:01 18:39:07 18:39:12 18:39:13 18:39:16 18:39:16 18:39:20 18:39:22 18:39:24</p>
<p style="text-align: right;">Page 287</p> <p>18:37:01 18:37:03 18:37:04 18:37:05 18:37:09 18:37:11 18:37:13 18:37:14 18:37:16 18:37:21 18:37:23 18:37:24 18:37:34 18:37:35 18:37:38 18:37:42 18:37:45 18:37:49 18:37:52 18:37:55 18:37:58 18:38:01 18:38:05 18:38:06</p>	<p style="text-align: right;">Page 289</p> <p>18:39:29 18:39:32 18:39:36 18:39:38 18:39:41 18:39:43 18:39:43 18:39:44 18:39:45 18:39:51 18:39:57 18:40:01 18:40:04 18:40:09 18:40:12 18:40:16 18:40:20 18:40:22 18:40:23 18:40:26 18:40:27 18:40:29 18:40:29 18:40:32</p>

