

# EXHIBIT A

Testimony	Oracle's Objections	Defendants' Response	Court's Ruling
<b>Mark Anderson (Travel Centers) — 6/8/2009</b>			
<p>Anderson, Mark [TravelCenters] <b>Oracle objects to the deposition testimony at: 127:9 - 127:18; 128:7 - 128:22; 129:3 - 129:17; 103:3 - 130:11; 130:22 - 131:5.</b></p>	<p><u>Calls for legal conclusion.</u> Customer is asked to interpret the terms and conditions of its contract with TomorrowNow.</p>	<p><i>Lack of foundation (Legal conclusion):</i> With the exception of the question at 128:7-9 and corresponding answer at 128:11, Oracle failed to object at the deposition, thereby waiving the objection. Moreover, none of the identified testimony calls for or consists of a legal conclusion. This was a Rule 30(b)(6) deposition. As a corporate representative, the witness is competent to testify to the corporation's own understanding of and position relating to the terms of its own agreement with TomorrowNow.</p> <p><i>Note:</i> Defendants believe the reference to 103:3-130:11 should be 130:3 – 130:11.</p>	
<p>Anderson, Mark [TravelCenters] <b>Oracle objects to the deposition testimony at: 174:13 - 175:1.</b></p>	<p><b>Oracle objects to the deposition testimony at: 174:13 - 175:1.</b> <u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> These questions, and the testimony they elicit, relate to whether the customer sought advice of counsel regarding its contract with TomorrowNow. This is completely irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court</p>	<p><i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense</p>	

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	<p>granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities." (Dkt 914).</p>	<p>in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.</p>	
<b>Steven Brazile (Sara Lee) — 10/14/2009</b>			
<p>Brazile, Steven [Sara Lee] <b>Oracle objects to the deposition testimony at: 68:10 - 69:3.</b></p>	<p><u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> These questions, and the testimony they elicit, relate to whether the customer sought advice of counsel regarding its contract with TomorrowNow. This is irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities." (Dkt 914).</p>	<p><i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated,</p>	

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		unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.	
<b>Tracy Hallenberger (Baker Botts) — 11/18/2009</b>			
<p>Hallenberger, Tracy [Baker Botts]  <b>Oracle objects to the deposition testimony at: 50:21 - 50:25.</b></p>	<p><u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> These questions, and the testimony they elicit, relate to whether the customer sought advice of counsel regarding its contract with TomorrowNow. This is completely irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities." (Dkt 914).</p>	<p><i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.</p>	
<p>Hallenberger, Tracy [Baker Botts]</p>	<p><u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> These</p>	<p><i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow</p>	

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<p><b>Oracle objects to the deposition testimony at: 51:8 - 51:16.</b></p>	<p>questions, and the testimony they elicit, relate to whether the customer sought advice of counsel regarding its contract with TomorrowNow. This is completely irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities." (Dkt 914).</p>	<p>at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.</p>	
<p>Hallenberger, Tracy [Baker Botts] <b>Oracle objects to the deposition testimony at: 60:16 - 61:1.</b></p>	<p><u>FRE 402 - Not Relevant; FRE 602 - Calls For Speculation.</u> The deponent is asked about the meaning of a statement made by someone else, to someone else. This is not relevant and the witness lacks personal knowledge of the</p>	<p><i>Relevance:</i> The testimony is relevant to causation of damages because it is Rule 30(b)(6) testimony concerning the customer's view of the quality of support that it had been receiving from PeopleSoft prior to terminating its PeopleSoft support contract and joining TomorrowNow.</p> <p><i>Lack of foundation (Speculation):</i> The testimony is not speculative. The</p>	

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	matter.	witness testified based on her own personal knowledge regarding her own understanding of a statement in a document on which the witness was copied. The statement at issue was made by an employee whom the witness supervises and relates to an issue within the scope of the employee's work. In addition, this was a Rule 30(b)(6) deposition. The witness testified as a corporate representative regarding a statement by an employee of the corporation regarding a matter relating to the corporation.	
<b>Robyn Harrel (Apria Healthcare) — 9/8/2009</b>			
<p>Harrel, Robyn [Apria Healthcare]  <b>Oracle objects to the deposition testimony at: 29:8 - 30:12.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 802 - Hearsay; FRE 1002 - Requirement of Original.</u> The question asks for and the witness testifies about out of court statements contained in a memo. This is hearsay, as statements in the document are offered for the truth of the matter asserted. Hearsay is not admissible at trial just because it is provided by a 30(b)(6) witness. <i>See e.g., Cincinnati Ins. Co. v. Gray</i>, 2010 WL 3522954, at *7 (S.D. Ind. 2010). Furthermore, the original is required to prove the contents of this writing. In addition, the testimony is unfairly prejudicial as the document was</p>	<p><i>Rule 403:</i> The testimony is highly probative on the key issue of causation of damages because it addresses the reasons why the customer terminated its support agreement with Oracle and left for TomorrowNow. Neither the testimony at issue nor the memo to which it relates, a copy of which is attached for the Court's convenience to the lodged version as Attachment 1, is unfairly prejudicial. The customer created and sent the memo to Oracle to support a request for reimbursement of costs incurred by the customer in connection with the complaints described in the memo. The purpose of the memo provides a sufficient guarantee of trustworthiness for the complaints described therein. Oracle has had a fair opportunity to address the issue because the memo, which was produced by Oracle, has been in Oracle's possession for years and the witness was subject to cross examination at the deposition regarding its contents.</p> <p><i>Hearsay:</i> The testimony is not hearsay because the declarant is unavailable at trial and because Oracle had an opportunity to cross examine the witness</p>	

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	<p>created by the witness/customer for purposes of renegotiating its contract with Oracle (<i>see</i> 25:14-17) (“Q. What was your understanding of why Apria sent this memo to J.D. Edwards? A. As I recall, we -- we wanted to renegotiate the license costs.”)</p>	<p>at deposition. The memo to which the testimony relates is a business record and, in addition, falls within the FRE 807 residual exception based on the guarantees of trustworthiness described above.</p> <p><i>Rule 1002:</i> FRE 1002 does not apply when a witness testifies from personal knowledge of the events described in the document. The testimony at issue was based on the witness’s personal knowledge of the events described in the memo, as IT manager and employee of the customer for 17 years and as a participant in the events. In addition, this was a Rule 30(b)(6) deposition. As corporate representative, the witness testified based on the knowledge of the corporation.</p>	
<p>Harrel, Robyn [Apria Healthcare] <b>Oracle objects to the deposition testimony at: 30:22 - 31:4; 31:12 - 32:11.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 802 - Hearsay; FRE 1002 - Requirement of Original.</u> The question asks for and the witness testifies about out of court statements contained in a memo. This is hearsay, as statements in the document are offered for the truth of the matter asserted. Hearsay is not admissible at trial just because it is provided by a 30(b)(6) witness. <i>See e.g., Cincinnati Ins. Co. v. Gray</i>, 2010 WL 3522954, at *7 (S.D. Ind. 2010). Furthermore, the original is required to</p>	<p><i>Rule 403:</i> The testimony is highly probative on the key issue of causation of damages because it addresses the reasons why the customer terminated its support agreement with Oracle and left for TomorrowNow. Neither the testimony at issue nor the memo to which it relates, a copy of which is attached for the Court’s convenience to the lodged version as Attachment 1, is unfairly prejudicial. The customer created and sent the memo to Oracle to support a request for reimbursement of costs incurred by the customer in connection with the complaints described in the memo. The purpose of the memo provides a sufficient guarantee of trustworthiness for the complaints described therein. Oracle has had a fair opportunity to address the issue because the memo, which was produced by Oracle, has been in Oracle’s possession for years and the witness was subject to cross examination at the deposition regarding</p>	

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	<p>prove the contents of this writing. In addition, the testimony is unfairly prejudicial as the document was created by the witness/customer for purposes of renegotiating its contract with Oracle (<i>see</i> 25:14-17) (“Q. What was your understanding of why Apria sent this memo to J.D. Edwards? A. As I recall, we -- we wanted to renegotiate the license costs.”)</p>	<p>its contents.</p> <p><i>Hearsay:</i> The testimony is not hearsay because the declarant is unavailable at trial and because Oracle had an opportunity to cross examine the witness at deposition. The memo to which the testimony relates is a business record and, in addition, falls within the FRE 807 residual exception based on the guarantees of trustworthiness described above.</p> <p><i>Rule 1002:</i> FRE 1002 does not apply when a witness testifies from personal knowledge of the events described in the document. The testimony at issue was based on the witness’s personal knowledge of the events described in the memo, as IT manager and employee of the customer for 17 years and as a participant in the events. In addition, this was a Rule 30(b)(6) deposition. As corporate representative, the witness testified based on the knowledge of the corporation.</p>	
<p>Harrel, Robyn [Apria Healthcare] <b>Oracle objects to the deposition testimony at: 33:3 - 33:17; 33:20 - 34:5.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 802 - Hearsay; FRE 1002 - Requirement of Original.</u> The question asks for and the witness testifies about out of court statements contained in a memo of complaints. This is hearsay, as statements in the document are offered for the truth of the matter asserted. Hearsay is not admissible at trial just because it is provided by a 30(b)(6) witness.</p>	<p><i>Rule 403:</i> The testimony is highly probative on the key issue of causation of damages because it addresses the reasons why the customer terminated its support agreement with Oracle and left for TomorrowNow. Neither the testimony at issue nor the memo to which it relates, a copy of which is attached for the Court’s convenience to the lodged version as Attachment 1, is unfairly prejudicial. The customer created and sent the memo to Oracle to support a request for reimbursement of costs incurred by the customer in connection with the complaints described in the memo. The purpose of the memo provides a sufficient guarantee of trustworthiness for the complaints described therein. Oracle</p>	

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	<p><i>See e.g., Cincinnati Ins. Co. v. Gray</i>, 2010 WL 3522954, at *7 (S.D. Ind. 2010).</p> <p>Furthermore, the original is required to prove the contents of this writing. In addition, the testimony is unfairly prejudicial as the document was created by the witness/customer for purposes of renegotiating its contract with Oracle (<i>see</i> 25:14-17) (“Q. What was your understanding of why Apria sent this memo to J.D. Edwards? A. As I recall, we -- we wanted to renegotiate the license costs.”)</p>	<p>has had a fair opportunity to address the issue because the memo, which was produced by Oracle, has been in Oracle’s possession for years and the witness was subject to cross examination at the deposition regarding its contents.</p> <p><i>Hearsay</i>: The testimony is not hearsay because the declarant is unavailable at trial and because Oracle had an opportunity to cross examine the witness at deposition. The memo to which the testimony relates is a business record and, in addition, falls within the FRE 807 residual exception based on the guarantees of trustworthiness described above. Moreover, the deponent indicates her specific recollection of the events described in the document. Thus, even if the statement in the document is inadmissible hearsay (which it is not) the deponent’s recollection of the events is admissible.</p> <p><i>Rule 1002</i>: FRE 1002 does not apply when a witness testifies from personal knowledge of the events described in the document. The testimony at issue was based on the witness’s personal knowledge of the events described in the memo, as IT manager and employee of the customer for 17 years and as a participant in the events. In addition, this was a Rule 30(b)(6) deposition. As corporate representative, the witness testified based on the knowledge of the corporation.</p>	
<p>Harrel, Robyn [Apria Healthcare] <b>Oracle objects to the deposition testimony at:</b></p>	<p><u>FRE 402 - Not Relevant; Plaintiffs’ MIL 1.</u> These questions, and the testimony they elicit, relate to whether the customer sought advice</p>	<p><i>Relevance</i>: Oracle has put the customer’s actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow’s alleged representations to the customer concerning legality and the extent of the</p>	

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<p><b>58:8 - 58:19.</b></p>	<p>of counsel regarding its contract with TomorrowNow. This is completely irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities." (Dkt 914).</p>	<p>customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.</p>	
<b>Daniel Jerome (Electrolux)— 10/7/2009</b>			
<p>Jerome, Daniel [Electrolux] <b>Oracle objects to the deposition testimony at: 59:5 - 59:18.</b></p>	<p><u>FRE 802 - Hearsay.</u> The question elicits testimony regarding an out an out of court statement about why company left Oracle that is offered for the truth of the matter asserted, and does not fall within any hearsay exception. Hearsay is not admissible at trial just because it is provided by a 30(b)(6)</p>	<p><i>Hearsay:</i> This was a Rule 30(b)(6) deposition. The witness testified as a corporate representative regarding the information known to the corporation. The statement to which Oracle objects was made to the witness by another employee of the corporation as part of the witness's preparation for the Rule 30(b)(6) deposition. <i>See</i> Tr. at 17:6-18, 84:6-9, 85:5-14 (to prepare for his testimony on behalf of the company, the witness had a conversation with Jakob From, who has worldwide responsibility for the company's business software</p>	

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	<p>witness. <i>See e.g., Cincinnati Ins. Co. v. Gray</i>, 2010 WL 3522954, at *7 (S.D. Ind. 2010).</p>	<p>applications, regarding the reasons why the company cancelled its support with Oracle and went to TomorrowNow). Hearsay is not a proper objection to a statement from within the corporation that a corporate representative witness relied on as part of his obligation to prepare to testify on behalf of the corporation. <i>See, e.g., Med. Alert Found. U.S., Inc. v. Corel Corp.</i>, 43 F. Supp. 2d 933, 936 n.2 (N.D. Ill. 1999), (admitting 30(b)(6) testimony regarding customer phone calls and letters that demonstrating customer confusion because the statements were “within the company’s knowledge.”). If Oracle’s objection were proper, Rule 30(b)(6) would lose much of its utility as a discovery device.</p> <p>In addition, the statement is admissible under FRE 807 because it goes to the material fact of causation of damages, it is more probative than any other evidence Defendants can procure from this third party, Oracle had a fair opportunity to cross examine the corporate representative at deposition regarding the statement, and the interests of justice are served by admission of the statement because it is probative of a key issue.</p>	
<p>Jerome, Daniel [Electrolux] <b>Oracle objects to the deposition testimony at: 86:7 - 86:11.</b></p>	<p><u>FRE 802 - Hearsay.</u> The question elicits testimony regarding an out an out of court statement about why company left Oracle that is offered for the truth of the matter asserted, and does not fall within any hearsay exception. Hearsay is not admissible at trial just because it is</p>	<p><i>Hearsay:</i> This was a Rule 30(b)(6) deposition. The witness testified as a corporate representative regarding the information known to the corporation. The statement to which Oracle objects was made to the witness by another employee of the corporation as part of the witness’s preparation for the Rule 30(b)(6) deposition. <i>See Tr.</i> at 17:6-18, 84:6-9, 85:5-14 (to prepare for his testimony on behalf of the company, the witness had a conversation with Jakob From, who has worldwide responsibility</p>	

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	<p>provided by a 30(b)(6) witness. <i>See e.g., Cincinnati Ins. Co. v. Gray</i>, 2010 WL 3522954, at *7 (S.D. Ind. 2010).</p>	<p>for the company's business software applications, regarding the reasons why the company cancelled its support with Oracle and went to TomorrowNow). Hearsay is not a proper objection to a statement from within the corporation that a corporate representative witness relied on as part of his obligation to prepare to testify on behalf of the corporation <i>See, e.g., Med. Alert Found. U.S., Inc. v. Corel Corp.</i>, 43 F. Supp. 2d 933, 936 n.2 (N.D. Ill. 1999), (admitting 30(b)(6) testimony regarding customer phone calls and letters that demonstrating customer confusion because the statements were "within the company's knowledge."). If Oracle's objection were proper, Rule 30(b)(6) would lose much of its utility as a discovery device.</p> <p>In addition, the statement is admissible under FRE 807 because it goes to the material fact of causation of damages, it is more probative than any other evidence Defendants can procure from this third party, Oracle had a fair opportunity to cross examine the corporate representative at deposition regarding the statement, and the interests of justice are served by admission of the statement because it is probative of a key issue.</p>	
<b>Juan Jones — 4/24/2009</b>			
<p>Jones, Juan <b>Oracle objects to the deposition testimony at: 136:7 - 136: 15.</b></p>	<p><u>FRE 403 - Unduly Prejudicial; FRE 402 - Not Relevant.</u> This testimony, and the document it references, have no probative value. The document is an Oracle-internal communication and relates to a non-relevant customer that</p>	<p><i>Rule 403:</i> The testimony and document it references, a copy of which is attached for the Court's convenience to the lodged version as Attachment 2, go to the central issue of causation of damages and the reasons why customers cancelled Oracle support and left for TomorrowNow. The document and the testimony are highly probative. The witness and author of the document is Oracle's Senior Vice President of</p>	

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	<p>never left Oracle for TomorrowNow. This is substantially outweighed by the likelihood of undue prejudice that may be caused by the potentially inflammatory language.</p>	<p>Support Services, a managing agent of Oracle whose supervisor reports directly to Oracle's CEO, Larry Ellison. The fact that the document and testimony are unhelpful to Oracle does not make them unfairly prejudicial. The "inflammatory language" to which Oracle refers consists of a single word in a two page document that otherwise consists of information regarding the cost of support services, which Oracle contend is the primary reason customers left for TomorrowNow, and other relevant information such as customer satisfaction with Oracle's support services, Oracle's support customer retention rates, and the percentage of customers considering leaving for third party support. The minimal risk of prejudice from a single "inflammatory" word is far outweighed by the probative value of the information contained in the document. The fact that it is an internal Oracle document increases its probative value and reliability.</p> <p><i>Relevance:</i> As discussed above, the document is highly relevant to the central issue in the case, causation of damages.</p>	
<p>Jones, Juan <b>Oracle objects to the deposition testimony at: 137:11 - 138:5; 138:14 - 138:22.</b></p>	<p><u>FRE 403 - Unduly Prejudicial; FRE 402 - Not Relevant.</u> This testimony has no probative value. The testimony concerns an internal e-mail regarding an employee's personal opinions. This is substantially outweighed by the likelihood of undue prejudice that may be caused by the</p>	<p><i>Rule 403:</i> The testimony and document it references, a copy of which is attached for the Court's convenience to the lodged version as Attachment 3, are directly relevant to the extent to which Oracle considered TomorrowNow and SAP's Safe Passage Program a threat. This, in turn, is central to Oracle's massive hypothetical license damages claim. The witness and author of the document is Oracle's Senior Vice President of Support Services, a managing agent of Oracle whose supervisor reports directly to Oracle's CEO, Larry Ellison. The fact that the</p>	

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	potentially inflammatory language.	<p>document and testimony are unhelpful to Oracle does not make them unfairly prejudicial. The “inflammatory language” to which Oracle refers consists of a single capital letter (which the witness himself testified under oath that he does not recall what that letter was intended to mean) in an eight page document that otherwise consists of highly relevant information and party admissions regarding the threat posed by third party support providers and SAP’s Safe Passage program. The minimal risk of prejudice from a single “inflammatory” word is far outweighed by the probative value of the information contained in the document. The fact that it is an internal Oracle document increases its probative value and reliability.</p> <p><i>Relevance:</i> As discussed above, the document is highly relevant to Oracle’s primary damages theory.</p>	
<b>John Kreul (Pepsi Americas) — 6/2/2009</b>			
<p>Kreul, John [Pepsi Americas] <b>Oracle objects to the deposition testimony at: 133:14 - 134:2; 135:9 - 135:17</b></p>	<p><u>FRE 402 - Not Relevant; Plaintiffs’ MIL 1.</u> These questions, and the testimony they elicit, relate to whether the customer sought advice of counsel regarding its contract with TomorrowNow. This is completely irrelevant to any issue in this case. To the extent that it is relevant, it violates Plaintiffs’ Motion in Limine No. 1. Defendants stated in Court that “[they] do not plan to put in any evidence that evidences</p>	<p><i>Relevance:</i> Oracle has put the customer’s actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow’s alleged representations to the customer concerning legality and the extent of the customer’s reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle’s MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	advice of counsel.” 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 “to the extent that any witness seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities.” (Dkt 914).	TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.	
Kreul, John [Pepsi Americas] <b>Oracle objects to the deposition testimony at: 141:12 - 141:19.</b>	<u>Calls for legal conclusion.</u> Customer is asked to interpret the terms and conditions of its contract with TomorrowNow.	<i>Lack of foundation (Legal conclusion):</i> Oracle failed to object at the deposition, thereby waiving the objection. Moreover, none of the identified testimony calls for or consists of a legal conclusion. This was a Rule 30(b)(6) deposition. As corporate representative, the witness is competent to testify to the corporation's own understanding of the terms of its own agreement with TomorrowNow.	
<b>Andrew Nelson — 2/26/2009</b>			
Nelson, Andrew <b>Oracle objects to the deposition testimony at: 260:25 - 263:4; 263:20 - 264:7.</b>	<u>FRE 802 - Hearsay; FRE 602 - Lack of Foundation.</u> The witness testifies about out of court statements made by SAP and inferred from these statements. The witness lays no foundation of his personal knowledge about what SAP allegedly instructed TomorrowNow to do and testifies only to his alleged understanding	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered. The witness was specifically asked about his “understanding” and not what was said or told to him. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of those instructions), but it is offered to show the deponent's knowledge of the instruction, his beliefs regarding that instruction, and that an instruction was given. As such, it is either not hearsay	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>of the alleged instruction. This testimony is offered only to show the truth of the matter asserted — that SAP gave instructions to TomorrowNow and is therefore hearsay that does not fall within any exception.</p>	<p>under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation:</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. Further, the deponent is the former CEO of TomorrowNow and is asked about his understanding. He certainly has personal knowledge regarding his own understanding about facts and events that he was personally involved in.</p>	
<b>Andrew Nelson — 4/29/2009</b>			
<p>Nelson, Andrew <b>Oracle objects to the deposition testimony at: 273:8 - 273:24.</b></p> <p><b>Oracle objects to the deposition testimony at: 273:25 - 274:9.</b></p>	<p><u>FRE 802 - Hearsay;</u> <u>FRE 602 - Lack of Foundation.</u> The witness testifies about out of court statements made by SAP and information inferred from these statements. The witness lays no foundation of his personal knowledge about what SAP allegedly instructed TomorrowNow to do and testifies only to his understanding of the alleged instruction. This testimony is offered only to show the truth of the matter asserted — that SAP gave instructions to TomorrowNow and is therefore hearsay that does not fall within any</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered. The witness was specifically asked about his “understanding” and not what was said or told to him. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of those instructions), but it is offered to show the deponent’s knowledge of the instruction, his beliefs regarding that instruction, and that an instruction was given. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation (Speculation):</i> This is testimony elicited by Oracle on cross-examination. The deponent is the former CEO of TomorrowNow and is asked about his understanding. He</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>exception.</p> <p><u>FRE 602 - Lack of Foundation; calls for speculation.</u> Witness testifies that he can only speculate about when SAP's alleged communication to TomorrowNow occurred and that he does not recall the details.</p>	<p>certainly has personal knowledge regarding his own understanding. Additionally, the claim of speculation again relates to something that is within the witnesses personal knowledge (i.e. whether he knows and can recall the details of the communication and the timing).</p>	
<p>Nelson, Andrew <b>Oracle objects to the deposition testimony at: 343:5 - 344:5.</b></p>	<p><u>FRE 802 - Hearsay; FRE 602 - Lack of Foundation; calls for speculation.</u> The witness testifies about out of court statements made by SAP and information inferred from these statements. The witness lays no foundation of his personal knowledge about what SAP allegedly instructed TomorrowNow to do and testifies that he does not recall. This testimony is therefore speculation. The testimony is offered only to show the truth of the matter asserted — that SAP gave instructions to TomorrowNow and is therefore hearsay that does not fall within any exception.</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of those instructions), but it is offered to show the deponent's knowledge of the instruction, his beliefs regarding that instruction, and that an instruction was given. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation (Speculation):</i> This is testimony elicited by Oracle on cross-examination. The deponent is the former CEO of TomorrowNow and is asked about his own memory and actions. He certainly has personal knowledge regarding his own memory and actions. Additionally, the claim of speculation again relates to something that is within the witnesses personal knowledge (i.e. whether he knows and</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
		can recall the details of the communication and the timing).	
Nelson, Andrew <b>Oracle objects to the deposition testimony at: 362:13 - 362-24.</b>	<u>FRE 802 - Hearsay; calls for speculation.</u> The witness testifies about out of court statements that he made to SAP. The statements are offered for the truth of the matter asserted — that he communicated often to SAP about his progress — and do not fall within a hearsay exception. The witness also speculates about the progress TomorrowNow was making.	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations and instead discusses his understanding of what was being done and his perceptions. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of those instructions), but it is offered to show the deponent's knowledge of the instruction, his beliefs regarding that instruction, and that an instruction was given. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.  <i>Lack of foundation (Speculation):</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. The deponent is the former CEO of TomorrowNow and is asked about his own memory and actions. He certainly has personal knowledge regarding his own memory and actions. Additionally, the claim of speculation (i.e. whether he knows and can recall the details of the communication and the timing).	
<b>Greg Nelson — 2/19/2009</b>			
Nelson, Greg <b>Oracle objects to the deposition testimony at: 198:20 - 199:6.</b>	<u>FRE 802 - Hearsay.</u> The deponent testifies about out of court statements made by Andrew Nelson. These out of court statements	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations and instead discusses his understanding of	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	are offered for the truth of the matter asserted, and do not fall within any exception.	what was being done and his perceptions. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of the directive), but it is offered to show the deponent's knowledge of the directive, his beliefs regarding that directive, and that a directive was given. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.	
<b>Shelley Nelson — 4/18/2008</b>			
Nelson, Shelley <b>Oracle objects to the deposition testimony at: 453:7 - 453:11; 453:17 -453:21.</b>	<u>FRE 802 - Hearsay.</u> The deponent testifies about an out of court statement she implies someone else made to her — since she “did not speak to SAP directly” —regarding what SAP allegedly told TomorrowNow to do. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception.	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations and instead discusses her understanding of what was being done and her perceptions. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of the discussions), but it is offered to show the deponent's knowledge of the discussions, her beliefs regarding those discussions, and that such discussions occurred. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.	
Nelson, Shelley <b>Oracle objects to the deposition testimony at: 459:19 - 460:7.</b>	<u>FRE 802 - Hearsay; FRE 602 - Calls for Speculation.</u> The deponent testifies about out of court statements made by SAP. These	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations and instead discusses her understanding and	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>out of court statements are offered for the truth of the matter asserted, and do not fall within any exception. Furthermore, the deponent's testimony calls for speculation because she says her answers are guesses.</p>	<p>perception of why something was done. Additionally, to the extent this testimony contains an out of court statement, it is not offered to show the truth of what was said in any discussions (i.e. the actual content of those discussions), but it is offered to show the deponent's knowledge of the discussions, her beliefs regarding those discussions, and that such discussions occurred. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation (Speculation):</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. The deponent is the former head of TomorrowNow's service of the PeopleSoft products line and is asked about her own understanding. She certainly has personal knowledge regarding her own understandings (i.e. whether she knows and can recall the details of why something was done).</p>	
<p>Nelson, Shelley <b>Oracle objects to the deposition testimony at: 462:17 - 463:3.</b></p>	<p><u>FRE 802 - Hearsay; calls for legal conclusion.</u> The deponent testifies about out of court statements made by unnamed persons. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception. Question also elicits a legal opinion about whether there was a "valid justification" for</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. The majority of the excerpt is not hearsay as there is no out of court statement. It appears Oracle's objection is to what a customer may have stated. This testimony is not offered to show the truth of any statements. Rather, it is offered to show the deponent's state of mind. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	changing it's business model.	<p><i>Lack of foundation (Legal Conclusion):</i> This is testimony elicited by Oracle on cross-examination. The deponent is the former head of TomorrowNow's service of the PeopleSoft products line and is asked about her own beliefs and thoughts. She certainly has personal knowledge regarding her own understandings and thoughts. Additionally, the testimony in no way calls for a legal conclusion as it asks the former head of TomorrowNow's service of the PeopleSoft group questions about the justification for changing TomorrowNow's PeopleSoft service business model during the time at which she was head of the group.</p>	
<b>Shelley Nelson — 9/3/2009</b>			
<p>Nelson, Shelley  <b>Oracle objects to the deposition testimony at: 631:8 - 631:24.</b></p>	<p><u>FRE 802 - Hearsay; calls for legal conclusion.</u> The deponent testifies about out of court statements, even though she could not remember whether the statements were made by John Baugh or George Lester. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception. Question elicits legal opinion testimony about witness's understanding of a license agreement.</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered as the deponent does not recite the contents of any conversations and instead is asked about her understanding. Additionally, to the extent this testimony contains an out of court statement, it is offered to show the deponent's state of mind (i.e. her beliefs and knowledge), including the basis for her understandings. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation (Legal Conclusion):</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. The deponent is the former head of TomorrowNow's PeopleSoft service of the products line and is asked about her own.</p>	

Testimony	Oracle's Objections	Defendants' Response	Court's Ruling
		understanding. She certainly has personal knowledge regarding her own understandings (i.e. whether she knows and can recall the details of why something was done).	
<b>Jeffrey O'Donnell (Lexmark) — 9/15/2009</b>			
O'Donnell, Jeffrey [Lexmark] <b>Oracle objects to the deposition testimony at: 27:4 - 27:15.</b>	<u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> Customer sought advice of counsel regarding its contract with TomorrowNow. This is irrelevant to any issue in the case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities" (Dkt 914).	<i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.  <i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.	
<b>Owen O'Neil — 3/10/2009</b>			
O'Neil, Owen	<u>FRE 602 - Lack of</u>	<i>Lack of foundation:</i> This is testimony	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
<b>Oracle objects to the deposition testimony at: 109:22 - 110:9.</b>	<u>Foundation.</u> The question asks about any rules relating to use of customer software. The witness admits that he never "did any of this" and so he lacks the personal knowledge required by Rule 602.	elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. The deponent is a former TomorrowNow employee and he specifically stated that he was aware of "rules related to using customer software, including using environments" and he then explains his understanding of those rules at Oracle's request. A witness is not required to perform every activity in a company to know company policies and rules.	
<b>Seth Ravin — 5/21/2009</b>			
<b>Ravin, Seth Oracle objects to the deposition testimony at: 18:6 - 18:13.</b>	<u>FRE 802 - Hearsay.</u> Former PeopleSoft CEO's statement is not a party admission as is he is not a representative of Oracle, never worked for Oracle, and at the time, PeopleSoft's interests were adverse to Oracle's.	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered. The deponent's testimony is based on his own percipient knowledge and includes no indicia that the testimony at issue is merely repeating statements of others.	
<b>Ravin, Seth Oracle objects to the deposition testimony at: 25:3 -25:23.</b>	<u>FRE 802 - Hearsay;</u> <u>FRE 402 - Relevance;</u> <u>FRE 403 - Unduly Prejudicial.</u> Deponent is testifying about out of court statements made by him and others at an alleged meeting, and those statements are offered for the truth of the matter asserted. The statements allegedly made by former PeopleSoft employees are not party admission as they were made prior to Oracle's acquisition of the company, and at a time	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. The out of court statements are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired PeopleSoft and Oracle is a party.  <i>Relevance:</i> The testimony is relevant as to punitive damages and TomorrowNow's state of mind regarding what PeopleSoft (now Oracle) knew and acquiesced to regarding TomorrowNow's conduct.  <i>Rule 403:</i> The probative value outweighs any unfair prejudice given that the testimony shows TomorrowNow's beliefs regarding PeopleSoft's knowledge and/or acquiescence to TomorrowNow's	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>when PeopleSoft's interests were adverse to Oracle's. Even if true, the statements are also not relevant because they do not bear on any issues in this case, including whether Defendants are liable, or whether Defendants caused customers to leave. Finally, it would unduly prejudicial to admit unsubstantiated deposition testimony regarding accusations of market-fixing.</p>	<p>service offering.</p>	
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 26:8-26:19.</b></p>	<p><u>FRE 802 - Hearsay.</u> The question at 26:8-26:12 contains out of court statements from an alleged meeting, that are offered for the truth of the matter asserted, that was previously testified to at 25:3 - 25:23 and objected to herein. are previously objected to above. Deponent's answer at 26:17-26:19 relays out of court statements made by him and others at an alleged meeting, and those statements are offered for the truth of the matter asserted. The statements allegedly made by former PeopleSoft employees are not party admission as they were made prior to Oracle's</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. The portion of the testimony that contains an out of court statement is a party admission under Rule 801(d)(2)(D) as Oracle fully acquired PeopleSoft and Oracle is a party. The reference to Kevin Maddock, who was a PeopleSoft employee at the time of communication, confirms the party admission exception even though Kevin Maddock is currently employed by Rimini Street (see Plaintiffs' objections to Ravin's 7/21/10 Deposition at 346:3 – 346:16).</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	acquisition of the company, and at a time when PeopleSoft's interests were adverse to Oracle's.		
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 41:13-41:18; 41:6-41:11.</b></p> <p><b>Oracle objects to the deposition testimony at: 41:19-42:5.</b></p>	<p><u>FRE 802 - Hearsay.</u> The testimony relays out of court statements by the deponent, which are offered for the truth of the matter asserted.</p> <p><u>FRE 602 - Calls for Speculation.</u> Deponent is speculating about what PeopleSoft's company-wide policy about what was "allowed" "for years."</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement by the deponent being offered. The questioner asks the witness whether he did something (answer "yes") and the basis for that answer. Additionally, to the extent this testimony contains an out of court statement, it is offered to show the deponent's state of mind (i.e. his beliefs and knowledge) regarding his belief that it was appropriate for TomorrowNow to have customer software on TomorrowNow's systems. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation (Speculation):</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. Because the employee is discussing things he personally did and his own personal experiences, he is competent to testify on this point.</p>	
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 71:4-71:5; 71:9-71:13; 71:18-71:22.</b></p>	<p><u>FRE 802 - Hearsay; Foundation.</u> Deponent is testifying about out of court statements by SAP employees regarding Oracle, which are offered for the truth of the matter asserted. Witness admits he has no</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement by the deponent being offered. Additionally, to the extent this testimony contains an out of court statement, it is offered to show the deponent's state of mind (i.e. his beliefs and knowledge) regarding his belief of the basis for a possible Oracle lawsuit against TomorrowNow. As</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
<p><b>Oracle objects to the deposition testimony at: 71:4-71:5; 71:9-71:13; 71:18-71:23.</b></p>	<p>personal knowledge for testifying to such hearsay. Tr. at 71:16-71:17.</p> <p><u>FRE 402 - Relevance; FRE 404 - Character Evidence; FRE 403 - Unduly Prejudicial.</u></p> <p>Testimony about Oracle's "history of litigation" for "purposes of trying to stop a competitor" is improper character evidence offered to prove conformity therewith in the current action. Such testimony is also irrelevant to the issues to be resolved in this action.</p>	<p>such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation:</i> This is testimony elicited by Oracle on cross-examination and the objection is waived as no objection was made during the deposition. The witness actually refrains from speculating and only testifies to his own beliefs (as opposed to Mackey's belief) based on his own interactions with SAP and knowledge regarding Oracle.</p> <p><i>Relevance:</i> This testimony is relevant to TomorrowNow's state of mind at the time of the acquisition which is relevant as to punitive damages.</p> <p><i>Character:</i> The testimony is not being offered to show Oracle's conformity with its prior conduct, but rather that it was perceived by TomorrowNow at the time of its acquisition by SAP as being an aggressive competitor.</p> <p><i>Rule 403:</i> The probative value outweighs any unfair prejudice given that the testimony shows TomorrowNow's beliefs regarding Oracle's intentions and conduct.</p>	
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 222:4-222:8; 224:14; 226:20-226:23; 227:7-227:10; 227:20-</b></p>	<p><u>FRE 602 - Calls for Speculation; FRE 402 - Relevance; FRE 403 - Unduly Prejudicial.</u></p> <p>Deponent has no basis for knowledge that the letter testified to was ever mailed to PeopleSoft, as he</p>	<p><i>Lack of foundation (Speculation):</i> The deponent is testifying to as to his understandings and beliefs regarding the letter. He was a co-founder of TomorrowNow and worked at TomorrowNow in 2002. The deponent is the person who directed that the letter be sent and he testified that he read the letter at the time and that he understood</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
<p>227:23; 227:8-227:18; 228:24-230:8; 231:18-22.</p> <p><b>Oracle objects to the deposition testimony at: 223:23-224:9; 226:15-226:19; 226:24-227:6; 227:11-227:19; 227:24-228:6; 228:24-231:22; 232:12-17.</b></p> <p><b>Oracle objects to the deposition</b></p>	<p>alleges. Deponent admits the letter was “signed in Texas” and that he was only “told that it was mailed,” which is also inadmissible hearsay. Thus, all testimony based on the assumption of the letter being sent to PeopleSoft was made without personal knowledge as was based on inadmissible hearsay. The testimony is additionally unreliable as the referenced Exhibit 1324 is unsigned, and neither Oracle, Defendants, nor the deponent have ever located or produced a signed copy.</p> <p>Moreover, an allegation that Defendants sent PeopleSoft a letter in 2002 describing the alleged propriety of its business model is not relevant to any issue in this action, including liability or damages. Whether a letter has been sent is not probative of the fact or amount of damage, or as to causation.</p>	<p>and believed that the letter was sent.</p> <p><i>Relevance:</i> The testimony is relevant as to punitive damages and TomorrowNow’s state of mind regarding what PeopleSoft (now Oracle) knew and acquiesced to regarding TomorrowNow’s conduct.</p> <p><i>Rule 403:</i> The probative value outweighs any unfair prejudice given that the testimony shows TomorrowNow’s beliefs and state of mind regarding PeopleSoft’s acquiescence and its relevance to punitive damages. Moreover, to the extent Oracle contends that Chavez (a PeopleSoft employee and in-house lawyer) never received the letter, Oracle has the ability to put on evidence to support that contention.</p> <p><i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent’s understanding regarding the information and positions contained in the document.</p> <p><i>Hearsay:</i> There are no out of court statements offered for the truth of the matter. Oracle specifically objects to discussions with former a PeopleSoft employee. These are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired PeopleSoft and Oracle is a party. Moreover, even though the communications with PeopleSoft at issue occurred before Oracle acquired PeopleSoft, the communications were made during time periods relevant to this case.</p>	



<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>acquisition of the company, and at a time when PeopleSoft's interests were adverse to Oracle's. Even if true, the statements are also not relevant because they do not bear on any issues in this case, including whether Defendants are liable, or whether Defendants causes customers to leave. Finally, it would unduly prejudicial to admit unsubstantiated deposition testimony regarding accusations of market-fixing.</p> <p><u>FRE 802 - Hearsay.</u> Deponent is testifying about a previous statement he allegedly made in 2002, and that statement is being offered for the truth of the matter asserted.</p> <p><u>FRE 1002 - Requirement of Original.</u> The testimony is offered to prove the contents of the referenced letter. To prove the content in the writing, Defendants are required to use the original document, not the proffered testimony. Attorney</p>		

Testimony	Oracle's Objections	Defendants' Response	Court's Ruling
	<p>even notes on the record to reporter that "Just one second. Are you getting all this? Because he is reading pretty fast. Do you have a copy of the document to help review the transcript?" Oracle objects to the deposition testimony at: 228:19-228:23.</p>		
<p>Ravin, Seth  <b>Oracle objects to the deposition testimony at: 236:3-236:8; 236:25-237:5; 237:9-12; 237:18-238:20; 239:20-240:4; 240:8-240:15; 240:20-241:2.</b></p> <p><b>Oracle objects to the deposition testimony at: 238:23-239:7</b></p> <p><b>Oracle objects to the deposition testimony at: 241:6-241:11.</b></p>	<p><u>FRE 1002 - Requirement of Original.</u> The testimony is offered to prove the contents of the referenced letter. To prove the content in the writing, Defendants are required to use the original document, not the preferred testimony.</p> <p><u>FRE 802 - Hearsay</u>  Deponent is testifying to his prior statement, and an out of court response, both of which are out of court statements offered for the truth of the matter asserted.</p> <p><u>FRE 602 - Lack of Foundation</u>  Deponent has no basis for knowing whether anyone at PeopleSoft may have contacted anyone at TomorrowNow,</p>	<p>The document and testimony at issue was previously the subject of Oracle's MIL #6 that was denied by the Court. <i>See</i> Dkt. 914 ¶ 6. For the same reasons the Court Denied Oracle's MIL #6, the Court should overrule these objections.</p> <p><i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the declarant's understanding regarding the document. As allowed by the Court in its prior ruling on Oracle's MIL #6, the document itself will be offered as the best evidence of the contents of the document at trial.</p> <p><i>Hearsay:</i> The testimony is not offered to show the truth of what was said. Rather, it is offered to show the deponent's state of mind. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.</p> <p><i>Lack of foundation:</i> The objection is waived as no objection was made during</p>	

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	including Mr. Nelson.	the deposition. Further, in the response that Oracle objects to, the deponent makes clear that he is only testifying as to his own personal knowledge ("I'm not aware of any").	
<b>Seth Ravin — 7/21/2010</b>			
<p>Ravin, Seth  <b>Oracle objects to the deposition testimony at: 346:3 - 346:16.</b></p>	<p><u>FRE 402 - Not Relevant; FRE 602 - Lack Of Foundation/Speculation</u>          . The questions concern what the deponent knew about what someone else knew. These questions are not relevant to any issue in this case, and there is no evidence that the deponent has personal knowledge of this matter.</p>	<p><i>Relevance:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. Mr. Maddock is an employee at Rimini Street who is a former PeopleSoft/JDE/Oracle employee and has first hand knowledge of JDE (Oracle) practices and license agreements, see discussion above. This is relevant to rebut evidence Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.</p> <p><i>Lack of foundation (speculation):</i> The deponent works with, and oversees, Mr. Maddock. He has direct knowledge of Mr. Maddock's prior work experience.</p>	
<p>Ravin, Seth  <b>Oracle objects to the deposition testimony at: 348:3-10.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; Dkt 914 (P MIL 7).</u> This testimony was the specifically subject of Oracle's MIL 7, which the court granted. See Dkt 914 at 24:7 - 24:8. Furthermore, this</p>	<p><i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the</p>	

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	testimony is not relevant to any issue in the case, and it is unduly prejudicial.	ability to introduce this testimony. This is relevant to rebut evidence Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.	
Ravin, Seth <b>Oracle objects to the deposition testimony at: 350:5 - 351:1.</b>	<u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; FRE 802 - Hearsay; FRE 1002 - Best Evidence; Dkt 914 (P MIL 7).</u> This testimony was the subject of Oracle's MIL 7, which the court granted. <i>See</i> Dkt 914 at 24:7 - 24:8. Furthermore, this testimony is not relevant to any issue in the case, and it is unduly prejudicial. In addition, the testimony refers to the contents of a letter. To prove the contents of this writing, defendants are required to use the original. Finally, the testimony concerns a communication from Siebel (prior to the Oracle acquisition), and it is offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception.	<i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. This is relevant to rebut evidence Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.  <i>Hearsay:</i> These are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired Siebel and Oracle is a party.  <i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent's understanding regarding the document. The document itself will be offered as the best evidence of the contents of the document at trial.	
Ravin, Seth <b>Oracle objects to the deposition</b>	<u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; FRE 802</u>	<i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
<p><b>testimony at: 351:19 - 352:2; 352:7 - 352:19.</b></p> <p><b>Oracle objects to the deposition testimony at: 352:3 - 352:6.</b></p>	<p>- <u>Hearsay; FRE 1002 - Best Evidence; Dkt 914 (P MIL 7).</u> This testimony was Oracle's MIL 7, which the court granted. <i>See</i> Dkt 914 at 24:7 - 24:8. Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony refers to the contents of letters. To prove the contents of these writings, defendants are required to use the original. Finally, the testimony concerns communication from Siebel (prior to the Oracle acquisition), and is offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception.</p> <p><u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant.</u> This testimony is not relevant to any issue in the case, and is unfairly prejudicial.</p>	<p>regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. This is relevant to rebut evidence Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.</p> <p><i>Hearsay:</i> These are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired Siebel and Oracle is a party.</p> <p><i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent's understanding regarding the document. The document itself will be offered as the best evidence of the contents of the document at trial.</p>	
<p>Ravin, Seth</p> <p><b>Oracle objects to the deposition testimony at: 353:15-20.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; FRE 802 - Hearsay; FRE 1002 - Best Evidence; Dkt 914 (P MIL 7).</u> This testimony was Oracle's</p>	<p><i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>MIL 7, which the court granted. <i>See</i> Dkt 914 at 24:7 - 24:8.</p> <p>Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony refers to statements made in letters. To prove the contents of these writings, defendants are required to use the originals.</p> <p>Finally, the testimony concerns communications from Siebel (prior to the Oracle acquisition), and is offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception.</p>	<p>to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. This is relevant to rebut evidence</p> <p>Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.</p> <p><i>Hearsay:</i> These are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired Siebel and Oracle is a party.</p> <p><i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent's understanding regarding the document. The document itself will be offered as the best evidence of the contents of the document at trial.</p>	
<p>Ravin, Seth</p> <p><b>Oracle objects to the deposition testimony at: 354:6 -354:25; 355:7 - 355:14.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; FRE 802 - Hearsay; FRE 1002 - Best Evidence; Dkt 914 (P MIL 7).</u> This testimony was specifically moved on in Oracle's MIL 7, which the court granted. <i>See</i> Dkt 914 at 24:7 - 24:8.</p> <p>Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony refers to statements</p>	<p><i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. This is relevant to rebut evidence</p> <p>Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.</p> <p><i>Hearsay:</i> These are party admissions</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>made by Oracle and Rimini Street in a series of letters. To prove the contents of these writings, defendants are required to use the originals. Finally, the testimony concerns out of court statements and are offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception.</p>	<p>under Rule 801(d)(2)(D) as Oracle fully acquired Siebel and Oracle is a party.</p> <p><i>Rule 1002:</i> The testimony is not being offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent's understanding regarding the document. The document itself will be offered as the best evidence of the contents of the document at trial.</p>	
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 356:16 - 357:12.</b></p> <p><b>Oracle objects to the deposition testimony at: 357:19 - 358:11.</b></p>	<p><u>FRE 403 - Probative value outweighed by prejudice; FRE 402 - Not Relevant; FRE 802 - Hearsay; FRE 1002 - Best Evidence; Dkt 914 (P MIL 7).</u> This testimony was specifically moved on in Oracle's MIL 7, which the court granted. <i>See</i> Dkt 914 at 24:7 - 24:8. Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony refers to statements in a Rimini Street Press Release. To prove the contents of these writings, defendants are required to use the originals. Finally, the testimony concerns out of court statements and are offered for the truth of the matter asserted.</p>	<p><b>Defendants are withdrawing their designations as to 357:7 – 358:11. As for the remaining objections to the remaining sections, Defendants respond as follows:</b></p> <p><i>Relevance, Rule 403, P MIL #7:</i> Defendants request that this testimony be conditionally allowed. Defendants plan to open the door to discussions regarding Rimini Street (without mentioning or discussing the lawsuit). And, as noted at the pre-trial conference, Defendants anticipate that Oracle plans to combat this by discussing the legality of Rimini Street's business model. If this occurs, Defendants request the ability to introduce this testimony. This is relevant to rebut evidence Defendants' expect Oracle will elicit regarding Rimini Street's business model and does not mention the Rimini Street lawsuit or any allegations in the lawsuit against Oracle.</p> <p><i>Hearsay:</i> These are party admissions under Rule 801(d)(2)(D) as Oracle fully acquired Siebel and Oracle is a party.</p> <p><i>Rule 1002:</i> The testimony is not being</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>It is therefore hearsay and does not fall under any exception.</p> <p><u>FRE 602 - Lack Of Foundation; FRE 402 - Not Relevant; FRE 403 - Probative value outweighed by prejudice; FRE 802 - Hearsay; Dkt 914 (P MIL 7).</u> The deponent admits that he was not on the call he is then asked about. (357:13 - 357:17) As a result, the deponent has no personal knowledge of the matter. Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony concerns out of court statements and are offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception. Finally, the testimony was excluded by Oracle's MIL 7 as it relates to Rimini Street's allegations in that separate litigation.</p>	<p>offered in lieu of the document in an attempt to prove up the contents of the document itself. Rather, it is being offered to demonstrate the existence of the document and the deponent's understanding regarding the document. The document itself will be offered as the best evidence of the contents of the document at trial.</p>	
<p>Ravin, Seth <b>Oracle objects to the deposition testimony at: 360:12 - 361:18.</b></p>	<p><u>FRE 402 - Not Relevant; FRE 403 - Probative value outweighed by prejudice; FRE 802 - Hearsay; Dkt 914 (P MIL 7).</u> The deponent</p>	<p><b>Defendants are withdrawing their designations as to 360:8 – 361:18.</b></p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
	<p>admits that he was not on the call he is then asked about. (357:13 - 357:17) As a result, the deponent has no personal knowledge of the matter.</p> <p>Furthermore, this testimony is not relevant to any issue in the case, and it is unfairly prejudicial. In addition, the testimony concerns out of court statements and are offered for the truth of the matter asserted. It is therefore hearsay and does not fall under any exception. Finally, the testimony was excluded by Oracle's MIL 7 as it relates to Rimini Street's allegations in that separate litigation.</p>		
<b>Elizabeth Shippy — 9/25/2008</b>			
<p>Shippy, Elizabeth</p> <p><b>Oracle objects to the deposition testimony at: 42:10 - 42:17.</b></p>	<p><u>FRE 802 - Hearsay.</u></p> <p>The deponent testifies about out of court statements made by unnamed persons. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception.</p>	<p><i>Hearsay:</i> There is no out of court statement being offered. To the extent it does contain an out of court statement, the statement is not offered for the truth regarding feedback from customers. The statement was in response to a question regarding the witness's responsibilities and general understandings and is offered for that purpose.</p>	
<b>Pete Surette — 6/16/2009</b>			
<p>Surette, Peter</p> <p><b>Oracle objects to the deposition</b></p>	<p><u>FRE 802 - Hearsay.</u></p> <p>The deponent testifies about out of court statements made by</p>	<p><i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. The majority of this excerpt contains no out of court statement. As to the fact that he</p>	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
<b>testimony at: 30:6 - 30:19.</b>	unnamed persons. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception.	was "told to stop," it is offered to show the deponent's state of mind (i.e. his beliefs and knowledge), including the basis for his understanding. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.	
Surette, Peter <b>Oracle objects to the deposition testimony at: 77:7 - 77:17.</b>	<u>FRE 802 - Hearsay.</u> The deponent testifies about out of court statements made by unnamed persons. These out of court statements are offered for the truth of the matter asserted, and do not fall within any exception.	<i>Hearsay:</i> This is testimony elicited by Oracle on cross-examination. There is no out of court statement being offered. To the extent there are any out of court statements, they are offered to show the deponent's state of mind (i.e. his beliefs and knowledge), including the basis for his understandings. As such, it is either not hearsay under Rule 801(c), or qualifies as an exception under Rule 803(3) as the state of mind of TomorrowNow and its former employees is at issue in this case with regard to punitive damages.	
<b>Robert Wasson (McLennan County) — 7/23/2009</b>			
Wasson, Robert [McLennan County] <b>Oracle objects to the deposition testimony at: 101:16 - 101:19.</b>	<u>Calls for legal conclusion; FRE 602 - Lack of Foundation.</u> The question asks whether the lay witness believes Rimini Street "infringes on Oracle's intellectual property rights" and therefore calls for a legal conclusion. Witness lacks foundation to answer to legal question.	<i>Lack of foundation (Legal conclusion):</i> This is testimony elicited by Oracle. Oracle has thus waived any objection and are estopped from objecting to admission of the testimony at trial. Moreover, this was a Rule 30(b)(6) deposition. As a corporate representative, the witness is competent to testify to the corporation's own understanding of and position relating to the service provided to the corporation by Rimini Street.  <i>Lack of foundation:</i> This is testimony elicited by Oracle. Oracle has thus waived any objection and are estopped from objecting to admission of the testimony at trial. Moreover, this was a Rule 30(b)(6) deposition. As a corporate representative, the witness is	

<i>Testimony</i>	<i>Oracle's Objections</i>	<i>Defendants' Response</i>	<i>Court's Ruling</i>
		competent to testify to the corporation's own understanding of and position relating to the service provided to the corporation by Rimini Street.	
Wasson, Robert [McLennan County] <b>Oracle objects to the deposition testimony at: 139:24 - 140:14.</b>	<u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> Customer sought advice of counsel regarding its contract with TomorrowNow. This is irrelevant to any issue in the case. It also violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities" (Dkt 914).	<i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.  <i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.	
Wasson, Robert [McLennan County] <b>Oracle objects</b>	<u>FRE 402 - Not Relevant; Plaintiffs' MIL 1.</u> Customer sought advice of	<i>Relevance:</i> Oracle has put the customer's actions and state of mind regarding the legality of TomorrowNow at issue by designating testimony on	

<b>Testimony</b>	<b>Oracle's Objections</b>	<b>Defendants' Response</b>	<b>Court's Ruling</b>
<p><b>to the deposition testimony at: 141:13 - 141:24.</b></p>	<p>counsel regarding its contract with TomorrowNow. This is irrelevant to any issue in the case. To the extent that it is relevant, it violates Plaintiffs' Motion in Limine No. 1. Defendants stated in Court that "[they] do not plan to put in any evidence that evidences advice of counsel." 9/30/10 Hrg Tr. at 8:18 - 8:19. The Court granted Plaintiffs' MIL 1 "to the extent that <i>any witness</i> seeks to testify that he/she relied on advice of counsel with regard to TomorrowNow's operational activities" (Dkt 914).</p>	<p>TomorrowNow's alleged representations to the customer concerning legality and the extent of the customer's reliance thereon, and testimony on whether the customer would have entered into a business relationship with TomorrowNow had it believed there to be legality issues. The testimony to which Oracle objects is relevant to rebut the testimony Oracle has put at issue.</p> <p><i>Oracle's MIL #1:</i> This is a Rule 30(b)(6) deposition of a TomorrowNow customer, who is not a party to this litigation and is not under TomorrowNow's control. Oracle's MIL # 1 does not concern reliance by a third party on advice of that third party's counsel. MIL # 1 was clearly limited to Defendants' reliance on the advice of their own counsel as a potential defense in this case, and the Court's order must be read in that context. Defendants have no access to/control over this third party's privileged information. Oracle's new claim regarding this MIL would lead to an absurd series of results, including the ability of unrelated, unaffiliated entities with no common interests to claim privilege over communications and, alternatively, to waive such communications.</p>	
<p>Wasson, Robert [McLennan County] <b>Oracle objects to the deposition testimony at: 142:18 - 143:5.</b></p>	<p><u>Calls for legal conclusion.</u> Customer is asked to interpret the terms and conditions of its contract with TomorrowNow.</p>	<p><i>Lack of foundation (Legal conclusion):</i> Oracle failed to object at the deposition, thereby waiving the objection. Moreover, none of the identified testimony calls for or consists of a legal conclusion. This was a Rule 30(b)(6) deposition. As corporate representative, the witness is competent to testify to the corporation's own understanding of the terms of its own agreement with TomorrowNow.</p>	