

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)
)
PLAINTIFFS,)
)
VS.)
)
SAP AG, ET AL.,)
)
DEFENDANTS.)

NO. C 07-01658 PJH

Certified Copy

PAGES 1 - 124

OAKLAND, CALIFORNIA
WEDNESDAY, SEPTEMBER 30, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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BY: THARAN GREGORY LANIER, ATTORNEY AT LAW

(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

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TEXT REMOVED - NOT RELEVANT TO MOTION

THE COURT: THE THIRD ONE IS THE MOTION TO EXCLUDE THE CUSTOMER STATEMENTS IN ORACLE'S AT-RISK REPORTS. I REVIEWED THE ARGUMENTS. IT CERTAINLY DOES APPEAR TO ME THAT THOSE STATEMENTS ARE HEARSAY IF THEY'RE OFFERED TO PROVE THE TRUTH, THAT IS, THAT THE CUSTOMERS WERE LEAVING FOR PARTICULAR REASONS. BUT IT DOES APPEAR TO ME THAT SAP IS CORRECT THAT THERE ARE NON-HEARSAY PURPOSES FOR WHICH THESE CUSTOMER STATEMENTS CERTAINLY COULD BE PERTINENT.

BUT MOST IMPORTANTLY, THE -- MEYER'S REPORT, AS I -- AS I UNDERSTAND IT, RELIES VERY HEAVILY UPON THESE STATEMENTS; ISN'T IT CORRECT?

1 AND AS I -- AS I UNDERSTAND IT, WASN'T THE AT-RISK
2 REPORT THAT CONTAINS THESE STATEMENTS PREPARED BY ORACLE? SO
3 ISN'T THERE A HIGH DEGREE OF RELIABILITY, I MEAN, GIVEN THE
4 EXPERT RELIED UPON THAT THEY WERE PREPARED BY PLAINTIFF?

5 (OFF-THE-RECORD DISCUSSION.)

6 **MR. HOWARD:** I'M SORRY. JEFF HOWARD.

7 YOUR HONOR, WE'RE NOT CONTENDING THAT THE REPORTS
8 THEMSELVES ARE NOT --

9 **THE COURT:** -- COMING INTO EVIDENCE, RIGHT?

10 **MR. PICKETT:** YEAH, THEY'RE NOT -- WE'RE NOT SAYING
11 THEY'RE NOT BUSINESS RECORDS. WE'RE FOCUSED ON JUST THIS ONE
12 PART OF THE REPORT WHICH ARE TRANSCRIBED COMMENTS FROM
13 CUSTOMERS.

14 AND WHAT THE CASES SAY IS THAT THAT THIRD-PARTY
15 STATEMENT IS HEARSAY UNLESS THAT THIRD PARTY WAS UNDER A DUTY TO
16 STATE IT IN THE REGULAR COURSE OF THEIR BUSINESS, WHICH THERE'S
17 NO EVIDENCE ON, OR ORACLE WAS UNDER A DUTY TO VERIFY IT OR DID
18 VERIFY IT IN SOME WAY, WHICH THEY DID NOT DO. TO THE CONTRARY,
19 THEY DIDN'T -- THEY DID NOT RELY ON THOSE STATEMENTS AS THE
20 CUSTOMER SAID THEM BECAUSE THEY WERE SHOWN TO BE NOT TRUE FROM
21 TIME TO TIME BECAUSE CUSTOMERS SAY CERTAIN THINGS IN THE COURSE
22 OF NEGOTIATING THAT THEY DON'T REALLY MEAN OR KNOW.

23 AND SO IT'S JUST THOSE SPECIFIC STATEMENTS IN THE
24 REPORT WHICH DON'T RISE TO THE LEVEL OF RELIABILITY OR MEET
25 THESE STANDARDS WHICH WE'RE SEEKING TO EXCLUDE.

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THE COURT: AND YOUR EXPERT DIDN'T RELY UPON THOSE STATEMENTS?

MR. HOWARD: HE RELIED -- HE USED THE REPORTS BUT DID NOT RELY ON OR ASCRIBE VERACITY TO ANY OF THE COMMENTS THAT ARE IN THERE AND -- AND THE -- THE -- MR. CLARKE, THE DEFENDANT'S EXPERT, IS NOT USING THOSE STATEMENTS TO SHOW THE -- THE REASONS -- AND IF HE WAS, THEN IT WOULD BE FOR THE TRUTH -- BUT FOR THE FACT THAT CUSTOMERS WERE GOING TO LEAVE ANYWAY.

AND SO THAT GETS RIGHT BACK TO THE TRUTH OF THE MATTER ASSERTED. AND THERE IS NO INDICIA OF RELIABILITY, AND YOU HAVEN'T HAD THESE OTHER CRITERIA MET, EITHER FROM THE THIRD-PARTY SIDE OR FROM THE ORACLE SIDE, TO MAKE THAT ADMISSIBLE.

TEXT REMOVED - NOT RELEVANT TO MOTION

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MR. HOWARD: WELL, YOUR HONOR, AS TO WHY IT WAS PRODUCED IN THE LITIGATION, IT'S FOUNDATIONAL. YOU GO ASK A CUSTOMER, YOU KNOW, WHAT WOULD YOU HAVE DONE. WHAT THEY SAY AND WHAT IS REPORTED IN THIS CONTEXT IS STILL HEARSAY. AND WHAT MR. MCDONELL JUST SAID IS WHAT I SAID AT THE BEGINNING, IT'S BEING OFFERED -- IF IT'S BEING OFFERED FOR THE STATE OF MIND, THAT STATE OF MIND IS THE TRUTH FOR WHICH IT'S BEING ASSERTED, WHICH IS, AS MR. CLARKE SAYS, THAT THEY WOULD HAVE LEFT ANYWAY. AND THAT IS JUST BRINGING HEARSAY IN FOR THE TRUTH OF THE MATTER ASSERTED UNDER THE GUISE OF THE EXCEPTION.

AND WE'VE PROVIDED TO YOUR HONOR ORACLE'S OWN STATEMENTS ABOUT THESE REPORTS, WHICH IS THE CUSTOMERS WERE PURPOSELY DISHONEST WHEN THEY MADE THEM, SO IT'S NOT -- IT'S NOT RELIABLE FOR PURPOSES OF 807.

TEXT REMOVED - NOT RELEVANT TO MOTION

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I'LL GIVE SOME FURTHER THOUGHT TO THAT WHOLE STATE-OF-MIND ISSUE. I TEND TO THINK THAT TRUTH OF THE MATTER STATE OF MIND IS -- TENDS TO MELD IN THESE CIRCUMSTANCES. WELL, THERE VERY WELL MIGHT, HOWEVER, BE A BASIS UNDER THE RESIDUAL EXCEPTION PERHAPS GIVEN HOW MUCH RELIANCE THERE IS ON THE REPORT AND EVERYTHING CONTAINED THEREIN. THAT MIGHT BE A BASIS FOR ALLOWING IT IN.

TEXT REMOVED - NOT RELEVANT TO MOTION

1 MR. PINTO AND, BY EXTENSION, MR. MEYER, YOU KNOW, OUR ARGUMENT
2 IS THAT THERE IS A LOT IN THERE THAT DOESN'T GO TO SAVED
3 ACQUISITION COSTS PER SE. IT'S A QUESTION OF EVALUATION
4 METHODOLOGIES, IT'S A QUESTION OF NON-INFRINGING ALTERNATIVES,
5 AND THINGS LIKE THAT. AND WE READ YOUR SUMMARY JUDGMENT'S
6 ORDER, OBVIOUSLY, VERY, VERY CAREFULLY AND REMAIN CONVINCED THAT
7 THERE'S A LOT IN THERE THAT DOES GO FAR -- YOU KNOW, IT IS
8 BEYOND THAT.

9 **THE COURT:** OKAY. ALL RIGHT. THAT'S IT.

10 **MR. LANIER:** THANK YOU VERY MUCH, YOUR HONOR.

11 **THE COURT:** ALL RIGHT.

12 **MR. PICKETT:** THANK YOU, YOUR HONOR.

13 (PROCEEDINGS WERE CONCLUDED AT 12:03 P.M.)

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CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658 PJH, ORACLE CORPORATION, ET AL. V. SAP AG, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

Raynee H. Mercado

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR

MONDAY, OCTOBER 4, 2010