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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TECHSAVIES, LLC,	)	
	)	
Plaintiff(s),	)	No. C10-1213 BZ
	)	
v.	)	<b>ORDER GOVERNING</b>
	)	<b>HAJJOUBI TESTIMONY</b>
WDFA MARKETING INC.,,	)	
	)	
	)	
Defendant(s).	)	
	)	
	)	

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Before the court is defendant's motion to exclude Mr. Hajjoubi's trial testimony. It is **ORDERED** as follows:


1. Mr. Hajjoubi's testimony as a percipient witness is admissible, even if it involves technical matters, but not if it is inconsistent with his deposition testimony. The precise line may have to be resolved at pretrial or trial. But as an example, to the extent that he testified that he had not yet had an opportunity to completely form his opinions on various issues, he will not be permitted to state any completed opinions because they would not have been formed by his

1 observations as a percipient witness.

2 2. Mr. Hajjoubi cannot testify as an expert witness in  
3 the areas in which he was designated as an expert. He does  
4 not appear to have the expertise to qualify as an expert  
5 witness in these areas. And this is one of those instances in  
6 which an expert report would have been helpful, even though he  
7 has not been specially retained to testify as an expert. For  
8 example, had he prepared an expert report, it would have been  
9 apparent from the report what portions of the copyrighted  
10 source code he has concluded were copied by defendants.  
11 Absent such a report, his general testimony was that he could  
12 not identify specific sections of copied code from memory.  
13 The combination of his omitted report, and his being  
14 designated as an expert the day before his deposition,  
15 resulted in incomplete testimony and denied defendant a proper  
16 opportunity to discover plaintiff's position on these issues  
17 in advance of trial.

18 The Court finds no need for argument and **VACATES** the  
19 hearing on this motion scheduled for **February 16, 2011**.

20 Dated: February 15, 2011

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22   
23 Bernard Zimmerman  
24 United States Magistrate Judge

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