

# **EXHIBIT A**



"Alinder, Zachary J."  
<zachary.alinder@bingham.com>

11/07/2008 04:03 PM

To "Scott Cowan" <swcowan@JonesDay.com>

cc "Hann, Bree" <bree.hann@bingham.com>, "Rosenbaum, Briana Lynn" <briana.rosenbaum@bingham.com>, "Elaine Wallace" <ewallace@JonesDay.com>, "Howard, Geoff" <geoff.howard@bingham.com>, "House, Holly" <holly.house@bingham.com>, "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>, "Jason McDonell" <jmcdonell@JonesDay.com>, "Greg Lanier" <tglanier@JonesDay.com>

Subject RE: FINAL agreement re expansion of discovery time frames

Scott,  
Your last change is acceptable. So, we will consider this version to be the agreement on the expanded time frames. As I understand it, we do not need to file anything with the court on this issue, other than to the extent it is mentioned in the Joint Discovery Conference Statement,

given that the parties have come to agreement. But, let us know if you have a different understanding.

Thanks,  
Zac

-----Original Message-----

From: Scott Cowan [mailto:swcowan@JonesDay.com]  
Sent: Friday, November 07, 2008 10:17 AM  
To: Alinder, Zachary J.  
Cc: Hann, Bree; Rosenbaum, Briana Lynn; Elaine Wallace; Howard, Geoff; House, Holly; Jane L Froyd; Joshua L Fuchs; Jason McDonell; Greg Lanier  
Subject: FINAL agreement re expansion of discovery time frames

Zac,

All of your changes are acceptable, except the change you made to the last sentence of the first paragraph. I think we agree in principle on the point you are making, but the language you proposed doesn't clearly carve out the ability that both Judge Legge and Judge LaPorte have given Defendants' to revisit some of the issues on which we've been denied discovery for the time being. We think our proposed language for the end of that sentence gives you what you seek, yet still makes clear that to the extent we've been denied discovery without prejudice to seek it later in the case, we can revisit those subject matters at a later date.

Please let me know if the attached is acceptable (I've included a redline against your latest draft as well). If so, then we can consider this version as the FINAL AGREEMENT on the expanded time frames for this case.

Regards,  
SWC

\*\*\*\*\*

Scott W. Cowan  
Jones Day  
717 Texas, Suite 3300  
Houston, Texas 77002  
Direct: 832-239-3721  
Cell: 832-867-2621  
Fax: 832-239-3600  
Email: swcowan@jonesday.com

\*\*\*\*\*

(See attached file: FINAL Expanded Timeline AGREEMENT.doc) (See attached file: DVComparison\_BMC\_FINAL Expanded Timeline Proposal-FINAL Expanded Timeline AGREEMENT.rtf)

### **Expanded Discovery Timeline Agreement**

The Parties agree to expand the discovery timelines in this case as set forth below. This agreement is subject to, and not intended as a waiver of, any and all objections served by any party in response to any discovery request in this case. In other words, this agreement only relates to the expansion of the discovery time frames, and is not, by itself an agreement to produce any document. Just because a document fits the time frames and subject matters noted below, that does not mean that it will be produced, especially if it is privileged or the subject of any objections served by any party in response to any discovery request in this case. Moreover, any restrictions placed on any subject matter described below (e.g., "independent" third party support) shall not be construed as a concession or waiver of any parties' right to seek to broaden or narrow discovery on any subject matter, subject only to the terms of any non-appealable ruling by the court or special master that definitively precludes discovery regarding a particular subject matter in this case.

#### **01-01-02 through 01-01-04 Documents:**

- (1) Relevant financial data including revenues, costs and profits to be agreed upon by the parties or per court order.
- (2) Customer related documents (contracts and licensing for TN customers and related emails/negotiations to the extent kept in centralized files; on-boarding documents; the independent third party support market; TN, PeopleSoft, and JD Edwards key custodian documents re early TN customers).
- (3) Damages Causation and Mitigation Documents (win/loss reports, at-risk reports, and other customer-specific reports kept in centralized locations (or with key custodians) or that can be generated from electronic sources).
- (4) TomorrowNow Business Model Related Documents (documents re TomorrowNow's business model from centralized sources or key custodians from both sides, including the planning and formation of TN's business, communications between PeopleSoft and TN, documents re download servers/environments and fix/update development documents, and documents regarding PeopleSoft's or JD Edwards' knowledge of TN's support activities).
- (5) Relevant TN, PeopleSoft, and JD Edwards employee emails from key custodians.
- (6) The Parties' copyright-related documents to be agreed upon by the parties or per court order.

**03-22-07 through 10-31-08 Documents:**

(7) Updated relevant financial data including revenues, costs and profits.

(8) "TN/SAP customer"<sup>1</sup> related documents (documents from centralized sources and key custodians from both sides concerning those customers and created after the complaint, including the SAS database post-shutdown, the pathfinder database, customer off-boarding or transfer documents, TN, SAP and Oracle customer contracts, customers returning to Oracle from TN, customers lost by Oracle and efforts by Oracle to mitigate its damages, customers gained by TN or SAP).

(9) Damages Causation and Mitigation Documents (updated win/loss reports, at-risk reports, and other customer-specific reports kept in centralized locations (or with key custodians) or that can be generated from electronic sources).

(10) TomorrowNow Business Model Related Documents (documents from centralized sources or key custodians from both sides concerning: TN-related policies created or modified in any way since filing of complaint, including related to Project Blue; continued use of Oracle intellectual property, including transfer to third parties; Mark White's placement as head of TN; SAP's efforts to sell TN; documents related to independent third party support).

(11) The Parties' copyright-related documents to be agreed upon by the parties or per court order.

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<sup>1</sup> "TN/SAP customers" shall be mean those customers involving at least one of the following: (a) all TN customers; (b) Safe Passage deals with TN as a component; or (c) SAP sales to TN customers after acquisition of TN.

# **EXHIBIT B-1**

JOHN M. BAUGH February 6, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Case No. 07-CV-01658 (MJJ)

ORACLE CORPORATION, a Delaware corporation, ORACLE  
USA, INC., a Colorado corporation, and ORACLE  
INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP AMERICA, INC., a  
Delaware corporation, TOMORROWNOW, INC., a Texas  
corporation, and DOES 1-50, inclusive,

Defendants.

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VIDEOTAPE RULE 30(b)(6) DEPOSITION OF:  
JOHN M. BAUGH - February 6, 2008  
TomorrowNow, Inc.  
(Highly Confidential - Attorneys' Eyes Only)

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PURSUANT TO NOTICE, the Videotape Rule  
30(b)(6) deposition of JOHN M. BAUGH was taken on  
behalf of the Plaintiffs at 1700 Lincoln Street, Suite  
4100, Denver, Colorado 80203, on February 6, 2008, at  
1:17 p.m., before Sandra L. Bray, Registered Diplomate  
Reporter, Certified Realtime Reporter, and Notary Public  
within Colorado.

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JOHN M. BAUGH February 6, 2008  
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14:16:41 16 Q. Was that the case in the majority of  
14:16:46 17 environments that were built using customer software?  
14:16:57 18 In how many instances where an environment was created  
14:17:00 19 for a customer was it also the case that a database  
14:17:05 20 was created to support that particular environment?  
14:17:11 21 A. It should be all, all cases.  
14:17:16 22 Q. And is it fair to say that those  
14:17:20 23 databases were from a variety of different vendors?  
14:17:30 24 A. The database platform?  
14:17:31 25 Q. Yes.

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JOHN M. BAUGH February 6, 2008  
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14:17:32 1 A. Yes.

14:17:32 2 Q. How did TomorrowNow obtain the database  
14:17:39 3 software that was used to support the individual  
14:17:46 4 application environments?

14:17:49 5 A. From the database vendor.

14:18:01 6 Q. Who were those database vendors that  
14:18:04 7 TomorrowNow obtained the database software from to  
14:18:08 8 support the individual customer application  
14:18:12 9 environments?

14:18:16 10 A. Microsoft, IBM, Sybase, Oracle, and we  
14:18:39 11 also have INFORMIX. I think INFORMIX is owned by IBM  
14:18:50 12 now, but I'm not sure.

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JOHN M. BAUGH            February 6, 2008  
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16:09:30            21                            Q.    And with respect to the database  
16:09:32            22                            platform, was that always obtained from the customer  
16:09:34            23                            or did it ever happen that the existing database  
16:09:37            24                            platform that you had at TomorrowNow was used to  
16:09:39            25                            support a new local environment?

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JOHN M. BAUGH February 6, 2008  
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16:09:44 1 A. Yes, we did always ask the customer for  
16:09:50 2 that information, but yes, we did have to support  
16:09:54 3 clients on database platforms that we had available to  
16:09:57 4 us.

16:10:06 5 Q. And just staying on that subject for a  
16:10:10 6 second, in the extended support model, did you use  
16:10:16 7 database platforms that you had already at TomorrowNow  
16:10:20 8 to support any of the extended support local  
16:10:23 9 environments?

16:10:26 10 A. Right, we used SQL server 7.

16:10:31 11 Q. For all of the extended support  
16:10:33 12 environments?

16:10:33 13 A. Initially, yes.

16:10:35 14 Q. Were there any other database platforms  
16:10:37 15 used for extended support environments?

16:10:40 16 A. SQL server 2000 I think was used. I'm  
16:11:01 17 not sure if any of the other platforms were used for  
16:11:06 18 extended support.

16:11:06 19 Q. And in the direct support local  
16:11:09 20 environment model, which database platforms of the  
16:11:15 21 ones that were used generally to support the local  
16:11:18 22 environments did TomorrowNow use from its own existing  
16:11:25 23 software resources?

16:11:26 24 A. Could you restate that question?

16:11:30 25 Q. In the direct support model, which

JOHN M. BAUGH February 6, 2008  
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16:11:34 1 database software did TomorrowNow use that it didn't  
16:11:37 2 obtain from a customer in order to support a local  
16:11:39 3 environment?

16:11:40 4 A. We didn't use any -- we obtained all our  
16:11:45 5 own database software. We did not obtain database  
16:11:50 6 software -- any database software from a client.

16:11:52 7 Q. So you sourced that software directly  
16:11:54 8 from the vendors?

16:11:56 9 A. Correct.

JOHN M. BAUGH February 6, 2008  
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18:07:49 17 MR. HOWARD: Let's mark as Plaintiffs'  
18:07:52 18 Exhibit 31 a document titled PeopleSoft Demo  
18:08:02 19 Environments, consisting of 10 pages, which is --  
18:08:07 20 which was produced as Bates Number TN-OR 169315, but  
18:08:18 21 there's no Bates number on the hard copy because it  
18:08:20 22 was produced natively with the Bates number on the CD.  
18:08:23 23 (Deposition Exhibit 31 was marked.)  
18:08:33 24 MR. FUCHS: Just add on the record per  
18:08:34 25 party's agreements to produce all Excel files in

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JOHN M. BAUGH February 6, 2008  
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18:08:41 1 native form.

18:09:03 2 Q. (BY MR. HOWARD) Mr. Baugh, are you  
18:09:05 3 familiar with the document that's been marked as  
18:09:07 4 Exhibit 31?

18:09:08 5 A. Yes.

18:09:08 6 Q. What is it?

18:09:09 7 A. This is a document that was generated  
18:09:14 8 from looking at information in our project management  
18:09:19 9 system and in SAS.

18:09:26 10 Q. The project management system is the  
18:09:28 11 dotProject?

18:09:29 12 A. DotProject, yes.

18:09:30 13 Q. And where in SAS did you look to find  
18:09:33 14 the information that's contained on Exhibit 31?

18:09:38 15 A. The SAS Environment Portal and I also  
18:09:43 16 think the SAS Enterprise. I was not the only person  
18:09:53 17 that worked on this doc.

18:09:59 18 Q. But you were one of the people that  
18:10:01 19 authored this doc by referencing dotProject and SAS?

18:10:05 20 A. Yes.

18:10:05 21 Q. And what was the purpose for which you  
18:10:09 22 participated in the creation of Exhibit 31?

18:10:10 23 A. Trying to generate a document that would  
18:10:15 24 show all the PeopleSoft -- all our current PeopleSoft  
18:10:23 25 demo support environments that we're supporting for

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JOHN M. BAUGH February 6, 2008  
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18:10:29 1 our customers.

18:10:35 2 Q. And is it fair to say that Exhibit 31 is  
18:10:38 3 a compilation of information which is created and  
18:10:43 4 maintained in the ordinary course of business of  
18:10:45 5 TomorrowNow?

18:10:46 6 A. Yes.

18:10:46 7 Q. And is it a true and accurate reflection  
18:10:52 8 of that information as you found it in dotProject and  
18:10:56 9 in the SAS database?

18:10:59 10 A. Yes.

18:10:59 11 Q. And you're familiar with the information  
18:11:08 12 from the dotProject and SAS database as part of your  
18:11:12 13 responsibilities at TomorrowNow?

18:11:14 14 A. Yes.

18:11:14 15 Q. So how many environments does Exhibit 31  
18:11:23 16 reflect? Do you know?

18:11:28 17 A. I'm not sure of the number. I think  
18:11:45 18 there's -- I'd say at least a couple of hundred.

18:11:48 19 Q. If I said that I had counted this up to  
18:11:52 20 be 227, would that sound accurate to you?

18:11:56 21 A. That sounds about right, yes.

JOHN M. BAUGH February 6, 2008  
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18:26:34 11 Q. Were you involved at all in and was this  
18:26:40 12 created as part of an effort to respond to Oracle's  
18:26:46 13 discovery requests in this case?

18:26:48 14 A. Yes, that is my understanding.

18:26:50 15 Q. And did you participate in helping  
18:26:55 16 develop the answer to an interrogatory that Oracle  
18:26:59 17 asked about the number of PeopleSoft environments that  
18:27:02 18 had been created and maintained at TomorrowNow?

18:27:11 19 A. I was asked to provide information on  
18:27:14 20 the number of environments.

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JOHN M. BAUGH      February 6, 2008  
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18:29:10      24                      Q.      "TomorrowNow has maintained  
18:29:12      25                      approximately 183 PeopleSoft environments on behalf of

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JOHN M. BAUGH February 6, 2008  
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18:29:15 1 approximately 122 different customers."

18:29:18 2 A. No, based on the research, that's not an  
18:29:30 3 accurate number.

18:29:32 4 Q. And, in fact, really even the  
18:29:38 5 environments reflected on Exhibit 31, the 227, that's  
18:29:43 6 not all of them either, right?

18:29:44 7 A. That's correct.

18:29:46 8 Q. To get the total number, you've got to  
18:29:49 9 look at this BakTrak reporting that you generated to  
18:29:54 10 include the backup environments and all of the total  
18:30:01 11 environments?

18:30:01 12 A. Yes.

18:30:01 13 Q. And that's the several thousand number  
18:30:04 14 that we talked about?

18:30:05 15 MR. FUCHS: Objection, form.

18:30:06 16 A. No, that would not be correct. We have  
18:30:13 17 not had several thousand environments.

18:30:15 18 Q. What's your best understanding of what  
18:30:22 19 the total number of environments that PeopleSoft has  
18:30:25 20 ever -- that TomorrowNow has ever maintained of  
18:30:28 21 PeopleSoft applications?

18:30:31 22 MR. FUCHS: Objection, form.

18:30:32 23 A. It's my understanding that TomorrowNow  
18:30:37 24 has had a little over 300 environments on our hardware  
18:30:46 25 at one time.

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JOHN M. BAUGH February 6, 2008  
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1 I, JOHN M. BAUGH, do hereby certify that I  
2 have read the above and foregoing deposition and that  
3 the same is a true and accurate transcription of my  
4 testimony, except for attached amendments, if any.

5 Amendments attached ( ) Yes ( ) No

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JOHN M. BAUGH

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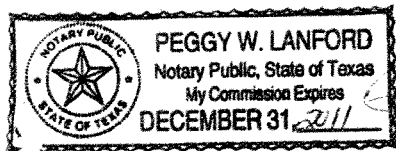
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13

The signature above of JOHN M. BAUGH was  
14 subscribed and sworn to before me in the county of  
15 Brazos, state of Texas,  
16 this 5th day of March, 2008.

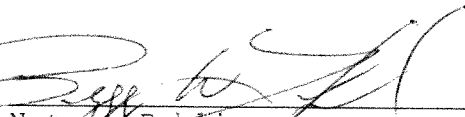
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Notary Public  
My commission expires:

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Oracle Corporation, et al. 2/6/08 (sb)

JOHN M. BAUGH February 6, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, SANDRA L. BRAY, Registered Diplomate Reporter, Certified Realtime Reporter, and Notary Public, State of Colorado, do hereby certify that previous to the commencement of the examination, the said JOHN M. BAUGH was duly sworn by me to testify to the truth in relations to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 10th of February, 2008.

My commission expires January 16, 2012.

Reading and Signing was requested.

Reading and Signing was waived.

Reading and Signing is not required.

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**EXHIBIT B-2**

JOHN M. BAUGH            February 7, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Case No. 07-CV-01658 (MJJ)

ORACLE CORPORATION, a Delaware corporation, ORACLE  
USA, INC., a Colorado corporation, and ORACLE  
INTERNATIONAL CORPORATION, \a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP AMERICA, INC., a  
Delaware corporation, TOMORROWNOW, INC., a Texas  
corporation, and DOES 1-50, inclusive,

Defendants.

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VIDEOTAPE RULE 30(b)(6) DEPOSITION OF:  
JOHN M. BAUGH - February 7, 2008 - Volume II  
TomorrowNow, Inc.  
(Highly Confidential - Attorneys' Eyes Only)

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PURSUANT TO NOTICE, the Videotape Rule  
30(b)(6) deposition of JOHN M. BAUGH was continued on  
behalf of the Plaintiffs at 1700 Lincoln Street, Suite  
4100, Denver, Colorado 80203, on February 7, 2008, at  
8:40 a.m., before Sandra L. Bray, Registered Diplomate  
Reporter, Certified Realtime Reporter, and Notary Public  
within Colorado.

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JOHN M. BAUGH      February 7, 2008  
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09:34:47

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A. When we first compiled this document, I

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JOHN M. BAUGH            February 7, 2008  
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09:34:56            1            had thought that all of our environments were in SAS  
09:35:12            2            Environment Portal and dotProject, but it was only in  
09:35:14            3            performing research over the last few days in  
09:35:19            4            preparation for this deposition that we found, looking  
09:35:24            5            at BakTrak, that there was some additional  
09:35:27            6            environments that were not in this document.

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JOHN M. BAUGH February 7, 2008  
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1 I, JOHN M. BAUGH, do hereby certify that I  
2 have read the above and foregoing deposition and that  
3 the same is a true and accurate transcription of my  
4 testimony, except for attached amendments, if any.

5 Amendments attached ( ) Yes ( ) No

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JOHN M. BAUGH

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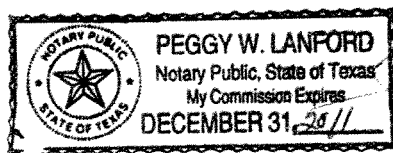
17

The signature above of JOHN M. BAUGH was  
subscribed and sworn to before me in the county of  
Brazos, state of Texas,  
this 5th day of March, 2008.

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Notary Public  
My commission expires:

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Oracle Corporation, 2/7/08 - Volume II (sb)

JOHN M. BAUGH February 7, 2008  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, SANDRA L. BRAY, Registered Diplomate Reporter, Certified Realtime Reporter, and Notary Public, State of Colorado, do hereby certify that previous to the commencement of the examination, the said JOHN M. BAUGH was duly sworn by me to testify to the truth in relations to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 12th of February, 2008.

My commission expires January 16, 2012.

- Reading and Signing was requested.
- Reading and Signing was waived.
- Reading and Signing is not required.

# **EXHIBIT B-3**

KATHERINE WALKER WILLIAMS April 1, 2008

HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, ET AL, \*  
Plaintiffs, \*  
VS. \* CASE NO. 07-CV-01658 (MJJ)  
SAP AG, ET AL, \*  
Defendants. \*

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HIGHLY CONFIDENTIAL  
ORAL AND VIDEOTAPED 30(b)(6) DEPOSITION OF  
KATHERINE WALKER WILLIAMS  
APRIL 1, 2008

\*\*\*\*\*

REPORTED BY:  
CAROL JENKINS, CSR, RPR, CRR  
CERTIFICATE NO. 2660

KATHERINE WALKER WILLIAMS April 1, 2008

HIGHLY CONFIDENTIAL

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09:53:22 7 Q. And what does the last letter in the name  
09:53:26 8 indicate?  
09:53:26 9 A. Which database platform it's on, which  
09:53:28 10 relational database platform it's built on.  
09:53:30 11 Q. So this first one would be on an Oracle  
09:53:33 12 platform?  
09:53:37 13 A. Yes.

KATHERINE WALKER WILLIAMS April 1, 2008  
HIGHLY CONFIDENTIAL

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11:29:43 13 Q. For clarity, actually, why don't we -- why  
11:29:46 14 don't you describe the different pieces of what would  
11:29:49 15 constitute a complete client environment including the  
11:29:52 16 database piece.

11:29:52 17 A. Again, I'm not a technician, so -- and I know  
11:29:56 18 that you questioned this with John Baugh, so I can refer  
11:29:59 19 back to some of my notes from -- some of my memory from  
11:30:03 20 his notes or his deposition.

11:30:04 21 You have a -- the environment includes  
11:30:07 22 having a database built on some relational database  
11:30:12 23 platform. And that -- then you would have a PS home  
11:30:16 24 which includes all the objects that you need to run this  
11:30:22 25 COBOL, the SQRs. And then you would have a library for

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KATHERINE WALKER WILLIAMS April 1, 2008

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11:30:27 1 your portal objects. And then there would be another  
11:30:30 2 library for your third-party environments. Products,  
11:30:37 3 not environments, products, third-party products.

11:30:40 4 Q. So in your early testimony when you're  
11:30:43 5 referring to database, you're referring to the totality  
11:30:46 6 of the environment?

11:30:47 7 MR. McDONELL: Vague and ambiguous.

11:30:50 8 A. In most cases. I couldn't say that was the  
11:30:51 9 case everywhere.

KATHERINE WALKER WILLIAMS April 1, 2008  
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*K Walker*

KATHERINE WALKER WILLIAMS

THE STATE OF TEXAS )

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned  
authority, by the said KATHERINE WALKER WILLIAMS on this  
the 17<sup>th</sup> day of April, 2008.

*[Signature]*

Notary Public in and for  
the State of Texas

My Commission Expires: \_\_\_\_\_

