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17 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 ORACLE USA, INC., et al.,
23 Plaintiffs,
24 v.
25 SAP AG, et al.,
26 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF JASON MCDONELL IN
SUPPORT OF DEFENDANTS' OPPOSITION
TO ORACLE'S MOTION TO MODIFY THE
PROTECTIVE ORDER AND TO COMPEL
DEPOSITION TESTIMONY AND FURTHER
RESPONSES TO REQUESTS FOR
ADMISSION**

Date: January 26, 2010; Time: 9:00 am
Courtroom: E, 15th Floor
Judge: Hon. Elizabeth D. Laporte

1 I, JASON MCDONELL, declare:

2 I am a partner with the law firm of Jones Day and counsel for Defendants in the above-
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do
4 so, could testify competently thereto.

5 1. Attached hereto as **Exhibit A** are true and correct copies of the cover page and
6 pages 9:10-21:17, 27:7-30:16, 52:17-56:2, 60:8-63:1, 79:19-80:6, 108:2-116:11, 135:8-139:13,
7 166:17-167:15 of the transcript of the October 13, 2009 Deposition of Scott Trainor.

8 2. I defended Mr. Trainor as an employee of SAP America, Inc., during his October
9 13, 2009. During that deposition, Defendants clawed back certain documents, but TN-
10 OR00852363 was neither clawed back during the deposition of Scott Trainor nor later clawed
11 back as a result of it. I have personally participated in various discussions, and exchanged
12 multiple written communications, with counsel for Plaintiffs to attempt to resolve Plaintiff's
13 objections to the documents clawed back during the deposition of Scott Trainor and their
14 objections to the instructions given to Mr. Trainor. None of those communications addressed
15 TN-OR00852363.

16 3. Plaintiffs' Deposition Exhibit 1683 reflects communications between multiple
17 SAP and TN employees. I have been personally involved in the review of this document to
18 determine whether any part of it reflects a privileged communication. Some of SAP and TN
19 employees reflected in the email were not attorneys, and of those that were attorneys, some were
20 acting in a business capacity during the emails that were exchanged and some were acting in a
21 legal capacity. The only portion of the exhibit that is now redacted is a communication between
22 Scott Trainor, an attorney for SAP America, Inc., and Mia Lee, an employee of SAP America,
23 Inc. Moreover, Defendants have offered to present Mr. Trainor for further examination regarding
24 Exhibit 1683, and that offer remains open.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 5th day of January 2010 in San Francisco, California.

/s/ Jason McDonell

Jason McDonell

EXHIBIT A

SCOTT TRAINOR October 13, 2009
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Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	No. 07 CV 1658 (PJH)
)	
SAP AG, a German corporation,)	
SAP AMERICA, INC., a Delaware)	
corporation, TOMORROWNOW,)	
INC., a Texas corporation, and)	
DOES 1 50, inclusive,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF
SCOTT TRAINOR

TUESDAY, OCTOBER 13, 2009

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1 423026)

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09:41:20 1

Redacted For Relevance

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09:41:38 10

MR. PICKETT: Q. You worked as an attorney

09:41:39 11

for PeopleSoft from February 2002 to November 2004.

09:41:42 12

Correct?

09:41:44 13

A. That is correct.

09:41:44 14

Q. You were Senior Director, Field Legal?

09:41:48 15

A. That's correct.

09:41:48 16

Q. And your client was PeopleSoft at that

09:41:49 17

time. Correct?

09:41:51 18

A. Correct.

09:41:53 19

Q. You understand that lawyers have a duty of

09:41:56 20

confidentiality, do you not?

09:41:58 21

A. I do.

09:41:58 22

Q. And you understand that lawyers have a duty

09:42:01 23

to maintain their clients' information in

09:42:05 24

confidence, even after the representation ends.

09:42:07 25

True?

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09:42:08 1 MR. McDONELL: Calls for a legal
09:42:08 2 conclusion.
09:42:10 3 THE WITNESS: I do.
09:42:13 4 MR. PICKETT: Q. You're familiar with
09:42:14 5 California Business and Professions Code 6068(e)?
09:42:18 6 A. No.
09:42:19 7 Q. A duty of an attorney is to maintain
09:42:23 8 inviolate the confidence and, at every peril to
09:42:26 9 himself or herself to preserve the secrets of his or
09:42:29 10 her clients.
09:42:30 11 You may not know the code section, but
09:42:32 12 you're familiar with that document, aren't you?
09:42:34 13 MR. McDONELL: Mr. Trainor, can you pause
09:42:36 14 for a moment and allow me time to object?
09:42:39 15 I object that it calls for a legal
09:42:40 16 conclusion and it's argumentative.
09:42:42 17 MR. PICKETT: Q. You're familiar with that
09:42:43 18 duty in California, aren't you?
09:42:44 19 MR. McDONELL: Same objections.
09:42:45 20 THE WITNESS: I am familiar with the duty,
09:42:47 21 yes, generally.
09:42:50 22 MR. PICKETT: Q. And you understood that
09:42:52 23 communications, at least some of the communications
09:42:54 24 that you had while you were an attorney at
09:42:55 25 PeopleSoft, sought advice?

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09:42:59 1 MR. McDONELL: Same objections. Calls for
09:43:01 2 a legal conclusion, argumentative, and it's vague
09:43:04 3 and ambiguous.
09:43:05 4 THE WITNESS: Yes.
09:43:06 5 MR. PICKETT: Q. And you knew that those
09:43:08 6 conversations were privileged. True?
09:43:11 7 MR. McDONELL: Same objections. Lack of
09:43:15 8 foundation, overbroad.
09:43:16 9 THE WITNESS: Yes.
09:43:19 10 MR. PICKETT: Q. What did you do to ensure
09:43:20 11 that you maintained all of PeopleSoft's information
09:43:24 12 that you had learned during your tenure as an
09:43:27 13 attorney there in confidence?
09:43:29 14 MR. McDONELL: Calls for a legal
09:43:29 15 conclusion, argumentative, overly broad, vague and
09:43:35 16 ambiguous, lack of foundation.
09:43:37 17 THE WITNESS: I didn't -- I simply
09:43:38 18 didn't --
09:43:39 19 MR. McDONELL: And one other thing. When
09:43:40 20 you answer this question, and as to all questions
09:43:43 21 you answer today, if there is anything that is
09:43:46 22 privileged or attorney work product material, do not
09:43:51 23 disclose it. So try to keep that in mind as you're
09:43:54 24 responding to the questions.
09:43:58 25 MS. PHILLIPS: Could we hear the question

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09:44:00 1 back, please?

09:44:01 2 (Record read as follows:

09:44:01 3 Question: What did you do to ensure that
09:44:01 4 you maintained all of PeopleSoft's
09:44:01 5 information that you had learned during your
09:44:01 6 tenure as an attorney there in confidence?)

09:44:17 7 MR. McDONELL: Okay. It also assumes facts
09:44:20 8 not in evidence.

09:44:28 9 MR. PICKETT: Q. Go ahead, you may answer.

09:44:29 10 A. Okay. I simply didn't disclose it. The
09:44:34 11 information that I had that was confidential, I
09:44:35 12 didn't disclose.

09:44:36 13 Q. You didn't tell anyone at SAP or
09:44:38 14 TomorrowNow about any of the privileged confidential
09:44:42 15 information you had learned while you were a lawyer
09:44:44 16 at PeopleSoft. Is that correct?

09:44:45 17 MR. McDONELL: Calls for a legal
09:44:45 18 conclusion, vague and ambiguous, argumentative,
09:44:49 19 overly broad, assumes facts not in evidence.

09:44:53 20 THE WITNESS: No.

09:44:54 21 MR. PICKETT: Q. Did you reveal to anyone
09:44:58 22 at TomorrowNow or SAP information that you had
09:45:02 23 learned at PeopleSoft that you did not consider was
09:45:05 24 confidential or privileged?

09:45:07 25 MR. McDONELL: You may answer "yes" or

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09:45:08 1 "no," and do not disclose any privileged
09:45:11 2 communications with SAP or TomorrowNow.
09:45:16 3 THE WITNESS: No. Not to my recollection.
09:45:18 4 MR. PICKETT: Q. So you just walled
09:45:20 5 everything off that you had learned at PeopleSoft,
09:45:23 6 whether it was confidential or privileged or not.
09:45:26 7 Is that right?
09:45:27 8 MR. McDONELL: Same objections.
09:45:29 9 THE WITNESS: Without -- yes. On that
09:45:31 10 general question, yes, without a more specific --
09:45:34 11 not to my recollection did I disclose it.
09:45:36 12 MR. PICKETT: Q. Now, are you familiar
09:45:38 13 that a lawyer in California has an ethical
09:45:41 14 obligation not to accept employment adverse to a
09:45:46 15 former client if you have confidential information
09:45:51 16 of that former client, without informed written
09:45:54 17 consent of the former employee?
09:45:58 18 MS. PHILLIPS: Objection. Misstates the
09:45:59 19 law.
09:46:00 20 MR. McDONELL: Objection. Calls for
09:46:01 21 speculation, calls for a legal conclusion,
09:46:03 22 argumentative, vague and ambiguous.
09:46:03 23 THE WITNESS: That's not my understanding.
09:46:05 24 MR. PICKETT: Q. Let me read to you
09:46:06 25 California Rules of Professional Conduct 3-310(E).

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09:46:10 1 Quote:

09:46:10 2 "A member shall not, without the informed
09:46:13 3 written consent of the client or former
09:46:16 4 client, accept employment adverse to the
09:46:20 5 client or former client where, by reason of
09:46:23 6 the representation of the client or former
09:46:25 7 client, the member has obtained confidential
09:46:28 8 information material to the employment."

09:46:31 9 Were you aware of that ethical obligation?

09:46:33 10 MR. McDONELL: Assumes facts not in
09:46:33 11 evidence, argumentative, calls for a legal
09:46:36 12 conclusion, lack of foundation.

09:46:40 13 THE WITNESS: Of that specific, of the
09:46:42 14 wording, the exact details, no.

09:46:44 15 MR. PICKETT: Q. Well, were you generally
09:46:45 16 aware of it?

09:46:46 17 A. I was generally aware of conflicts --

09:46:48 18 MR. McDONELL: Same objections.

09:46:49 19 Please, just --

09:46:50 20 THE WITNESS: All right.

09:46:51 21 MR. McDONELL: -- count a beat before you
09:46:53 22 respond to the question.

09:46:53 23 THE WITNESS: Okay.

09:46:54 24 MR. PICKETT: Q. Were you generally aware
09:46:55 25 of any such obligations?

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09:46:56 1 MR. McDONELL: Same objections. You're
09:46:57 2 arguing with the witness, Counsel.
09:46:59 3 THE WITNESS: I was generally aware of
09:47:00 4 conflicts rules, yes.
09:47:02 5 MR. PICKETT: Q. Were you aware that there
09:47:03 6 was a specific rule under the California Rules of
09:47:05 7 Professional Conduct that related to employment?
09:47:13 8 MR. McDONELL: Vague and ambiguous, calls
09:47:14 9 for a legal conclusion, lack of foundation.
09:47:18 10 THE WITNESS: Related --
09:47:19 11 MR. McDONELL: Assumes facts not in
09:47:19 12 evidence.
09:47:21 13 THE WITNESS: Related to employment how?
09:47:23 14 MR. PICKETT: Q. Employment adverse to a
09:47:27 15 former client.
09:47:28 16 MR. McDONELL: Same objections.
09:47:32 17 THE WITNESS: I wasn't aware of that
09:47:33 18 specific wording, no.
09:47:35 19 MR. PICKETT: Q. Did you do anything at
09:47:36 20 the time you changed jobs from PeopleSoft to SAP to
09:47:43 21 comply with the rule I read you?
09:47:46 22 MR. McDONELL: Assumes facts not in
09:47:46 23 evidence. Same objections as previously stated.
09:47:53 24 MS. PHILLIPS: Lack of foundation as well.
09:47:54 25 THE WITNESS: I disclosed my new employer

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09:47:55 1 to my old employer in a face-to-face meeting with my
09:47:59 2 manager.

09:48:00 3 MR. PICKETT: Q. Did you get informed
09:48:01 4 written consent of PeopleSoft?

09:48:03 5 MS. PHILLIPS: Objection. Assumes that
09:48:05 6 such an obligation existed; therefore, is overbroad
09:48:08 7 and misstates the law.

09:48:09 8 MR. PICKETT: I object to speaking
09:48:09 9 objections. That's not proper.

09:48:12 10 Q. Go ahead.

09:48:12 11 MR. McDONELL: Let me add some objections.
09:48:14 12 It's vague and ambiguous.

09:48:15 13 MR. PICKETT: I'm going to -- go ahead.

09:48:17 14 MR. McDONELL: It's vague and ambiguous,
09:48:18 15 it's argumentative, it lacks foundation.

09:48:22 16 MR. PICKETT: Q. Go ahead.

09:48:24 17 A. Not to my recollection, no.

09:48:26 18 Q. Now, you did have confidential information
09:48:30 19 material to your employment at SAP. You had
09:48:35 20 PeopleSoft confidential information material to your
09:48:37 21 SAP employment. True?

09:48:39 22 MR. McDONELL: Calls for a legal
09:48:39 23 conclusion, vague and ambiguous, argumentative.

09:48:43 24 THE WITNESS: I don't know.

09:48:45 25 MR. PICKETT: Q. You don't know what

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09:48:46 1 information -- well, what's the basis for your lack
09:48:50 2 of knowledge?

09:48:52 3 MR. McDONELL: Vague and ambiguous.

09:48:56 4 THE WITNESS: Material how? To what?

09:48:59 5 MR. PICKETT: Q. Material to the duties
09:49:00 6 that you were assigned at SAP?

09:49:03 7 MR. McDONELL: Vague and ambiguous, calls
09:49:04 8 for a legal conclusion, lack of foundation, overly
09:49:07 9 broad.

09:49:12 10 THE WITNESS: I don't know. I don't know
09:49:13 11 that -- I don't believe so. Certainly not when I
09:49:15 12 started my employment there.

09:49:16 13 MR. PICKETT: Q. Well, you were assigned
09:49:17 14 to deal with TomorrowNow's customers. Correct?

09:49:22 15 MR. McDONELL: Vague and ambiguous.

09:49:25 16 THE WITNESS: Eventually, but not when I
09:49:27 17 took the position.

09:49:28 18 MR. PICKETT: Q. You helped negotiate the
09:49:29 19 contracts with the TomorrowNow customers. Correct?

09:49:35 20 A. I helped negotiate some contracts with the
09:49:37 21 customers, yes.

09:49:38 22 Q. Quite a few of them.

09:49:39 23 A. I don't know.

09:49:40 24 MR. McDONELL: Vague and ambiguous.

09:49:40 25 MR. PICKETT: Q. Wasn't that your primary

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09:49:42 1 job?

09:49:42 2 MR. McDONELL: Vague and ambiguous.

09:49:43 3 THE WITNESS: No.

09:49:46 4 MR. PICKETT: Q. When you negotiated --
09:49:47 5 well, and let me ask you this: Did anyone at SAP
09:49:49 6 indicate in any way to you that you were attractive
09:49:53 7 to them as an employee because of your prior
09:49:55 8 knowledge of PeopleSoft?

09:49:57 9 MR. McDONELL: Don't disclose any
09:49:58 10 privileged communications in giving your response.

09:50:02 11 THE WITNESS: No.

09:50:05 12 MR. PICKETT: Q. The topic of your prior
09:50:07 13 employment at PeopleSoft just never came up at all.
09:50:09 14 Is that your testimony?

09:50:10 15 MR. McDONELL: Same instruction to you.

09:50:12 16 MS. PHILLIPS: Objection. Misstates the
09:50:13 17 answer.

09:50:14 18 THE WITNESS: I didn't say that.

09:50:15 19 MR. PICKETT: Q. Well, what -- could you
09:50:16 20 answer my question?

09:50:19 21 MR. McDONELL: Can you restate it? I think
09:50:21 22 it's gotten lost.

09:50:22 23 MR. PICKETT: Q. Did the subject of your
09:50:23 24 employment at PeopleSoft come up at any time at
09:50:26 25 either SAP or TomorrowNow?

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09:50:28 1 MR. McDONELL: Don't disclose any
09:50:28 2 privileged communications.
09:50:29 3 THE WITNESS: Yes. During the interview
09:50:31 4 process, they wanted to know where I had worked.
09:50:34 5 MR. PICKETT: Q. And what did -- what was
09:50:37 6 the discussion?
09:50:40 7 MR. McDONELL: Overly broad.
09:50:43 8 THE WITNESS: I don't recall the specifics.
09:50:44 9 It was years ago. General -- it was a general
09:50:49 10 discussion about the work I did at PeopleSoft in an
09:50:51 11 interview setting to determine whether they were
09:50:55 12 going to hire me or not.
09:51:01 13 MR. PICKETT: Q. You knew when you
09:51:02 14 accepted employment at SAP that SAP was -- well, let
09:51:13 15 me ask you this:
09:51:15 16 Did you know that SAP was going to acquire
09:51:17 17 TomorrowNow?
09:51:19 18 MR. McDONELL: Vague as to time. Don't
09:51:20 19 disclose anything privileged.
09:51:23 20 THE WITNESS: When?
09:51:24 21 MR. PICKETT: Q. Any time.
09:51:28 22 A. When -- yeah, obviously I knew at some
09:51:35 23 point that they were going to be acquired by SAP,
09:51:37 24 yes.
09:51:38 25 MR. PICKETT: Q. When did you learn that?

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09:51:40 1 A. When it was announced is when I learned
09:51:42 2 that it had occurred.

09:51:44 3 Q. Okay. I want to make sure that in this
09:51:51 4 deposition you do not reveal any PeopleSoft
09:51:58 5 attorney-client communications or work product. And
09:51:59 6 as the representative of PeopleSoft's successor, I'm
09:52:02 7 instructing you not to reveal such information.

09:52:05 8 If you feel that any of my questions would
09:52:08 9 cause you to reveal that kind of privileged
09:52:10 10 information, please let me know, do not respond, and
09:52:13 11 we can work out that problem.

09:52:16 12 A. Okay.

09:52:17 13 Q. Is that all right?

09:52:18 14 MR. McDONELL: But Counsel, I also would
09:52:20 15 submit you have a burden not to ask those questions.
09:52:22 16 So be very, very careful in the questions you ask,
09:52:25 17 please. It's just my request of you.

09:52:26 18 MR. PICKETT: I'm always careful in the
09:52:28 19 question I ask.

09:52:29 20 MR. McDONELL: That's the spirit.

09:52:51 21 MR. PICKETT: Q. What were your duties as
09:52:53 22 Senior Director of Field Legal at PeopleSoft?

09:52:56 23 MR. McDONELL: Vague as to time.

09:52:58 24 THE WITNESS: I managed a group of lawyers
09:53:01 25 and contracts negotiators who supported the Western

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09:53:04 1 Region of the United States. I helped maintain
09:53:13 2 template documents, I participated in various
09:53:18 3 committees as the representative of field legal.
09:53:27 4 That's a good description of my day-to-day
09:53:29 5 activities.

09:53:30 6 MR. PICKETT: Q. Did you work on
09:53:31 7 negotiations of contracts with PeopleSoft customers?

09:53:33 8 A. I did.

09:53:34 9 Q. And what did you do in that regard?

09:53:37 10 MR. McDONELL: Overly broad, vague and
09:53:38 11 ambiguous.

09:53:39 12 THE WITNESS: Primarily, I took escalations
09:53:43 13 from the folks who were talking directly to the
09:53:48 14 customer, and once in a while, I would handle a
09:53:51 15 negotiation myself and negotiate with the sales
09:53:54 16 team, with the procurement and legal team of the
09:53:58 17 customer.

09:53:59 18 **Redacted for Relevance**

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Redacted For Relevance

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Q. At the time you switched from PeopleSoft to Oracle, did you ever consider whether it implicated any obligation on your part as an attorney of PeopleSoft?

MR. McDONELL: Vague and ambiguous, lack of foundation, calls for a legal conclusion.

THE WITNESS: I certainly considered that I had to keep confidential information confidential, yes.

MR. PICKETT: Q. Anything else?

Oh, I'm sorry, I misspoke. I said at the time you switched from PeopleSoft to Oracle. I meant --

A. I didn't catch it at the time.

Q. -- at the time you switched from PeopleSoft to SAP.

A. Yes. My recollection is, the confidential protecting of confidential information, as I said before.

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10:00:54 1 Q. And anything else?

10:00:54 2 A. No, not that I can recall.

10:01:01 3 Q. Did you take any data with you from

10:01:07 4 PeopleSoft?

10:01:08 5 A. I did not.

10:01:12 6 Q. Was there any separation agreement at

10:01:17 7 PeopleSoft?

10:01:20 8 A. There was --

10:01:20 9 MR. McDONELL: Vague and ambiguous.

10:01:23 10 THE WITNESS: There was not.

10:01:24 11 MR. PICKETT: Q. Was there an exit

10:01:26 12 interview?

10:01:27 13 A. Yes.

10:01:28 14 Q. And did that consist of reminders that you

10:01:31 15 need to keep certain things confidential?

10:01:33 16 MR. McDONELL: Vague and ambiguous.

10:01:36 17 THE WITNESS: I don't recall the specific

10:01:42 18 conversation.

10:01:48 19 MR. PICKETT: Q. When did you first start

10:01:50 20 working with TomorrowNow?

10:01:55 21 A. I don't recall the dates.

10:01:58 22 Q. I don't need -- when I ask you a question

10:02:00 23 about when, if you can recall the date, that's

10:02:02 24 great. But if you can't, just give me your best

10:02:04 25 estimate.

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10:02:04 1 A. Okay. Somewhere towards the end of two
10:02:13 2 thousand and -- I guess it would be 2005, and a
10:02:16 3 couple of months, I guess, after the acquisition.

10:02:21 4 Q. The acquisition was January 2005.

10:02:23 5 A. Oh. All right. So it was a couple of
10:02:26 6 months after the acquisition took place, is my --
10:02:29 7 that's my recollection.

10:02:30 8 Q. And when you started working with
10:02:34 9 TomorrowNow, did that trigger any thoughts on your
10:02:37 10 part that your prior work for PeopleSoft was
10:02:40 11 implicated?

10:02:41 12 MR. McDONELL: Vague and ambiguous, calls
10:02:42 13 for a legal conclusion. Don't disclose any
10:02:45 14 privileged communications.

10:02:49 15 THE WITNESS: It was the similar thought
10:02:51 16 that I had when I went -- when I went to SAP, that
10:02:53 17 there was confidential information that I needed to
10:02:55 18 protect.

10:02:56 19 MR. PICKETT: Q. Did you take any steps to
10:02:57 20 ensure that you kept all confidential information
10:03:01 21 secure?

10:03:02 22 MR. McDONELL: Asked and answered. Vague
10:03:03 23 and ambiguous. Calls for a legal conclusion.

10:03:07 24 THE WITNESS: I simply --

10:03:08 25 MR. PICKETT: Q. That's when you started

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10:03:10 1 working at TomorrowNow.

10:03:11 2 MR. McDONELL: Same objections.

10:03:12 3 THE WITNESS: I simply ensured that I did
10:03:14 4 not disclose that information in conversations.

10:03:18 5 MR. PICKETT: Q. By self-policing your
10:03:20 6 comments?

10:03:20 7 MR. McDONELL: Vague and ambiguous, same
10:03:21 8 objections.

10:03:24 9 THE WITNESS: Yes.

10:03:28 10 MR. PICKETT: Q. And to your recollection,
10:03:30 11 that worked?

10:03:32 12 MR. McDONELL: Vague and ambiguous, lack
10:03:33 13 of -- or calls for a legal conclusion. Same
10:03:36 14 objections.

10:03:38 15 THE WITNESS: Yeah. As I have said, I did
10:03:40 16 not disclose that information.

10:03:45 17 **Redacted For Relevance**

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10:39:18 15

10:39:21 16

10:39:23 17

10:39:25 18

10:39:29 19

10:39:34 20

10:39:37 21

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10:39:40 23

10:39:49 24

10:39:51 25

MR. PICKETT: Q. And you represented
TomorrowNow in connection with negotiations with
potential customers and talked about the downloading
from Customer Connection. True?

A. I don't recall --

MR. McDONELL: Objection -- let -- he's
answered the question.

THE WITNESS: To be precise, yes, I
represented them.

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10:39:53 1 The second part, I don't recall having
10:39:55 2 that -- and the second part being, about Customer
10:39:59 3 Connection.

10:40:09 4 MR. PICKETT: Q. Did you ever advise
10:40:14 5 anyone at TomorrowNow or SAP on the general subject
10:40:18 6 matter of software licenses?

10:40:23 7 MR. McDONELL: You may answer "yes" or
10:40:24 8 "no."

10:40:25 9 THE WITNESS: Yes.

10:40:26 10 MR. PICKETT: Q. And did you ever advise
10:40:28 11 anyone at TomorrowNow or SAP on the subject of
10:40:33 12 whether TomorrowNow's practices were appropriate
10:40:38 13 pursuant to the Oracle licenses?

10:40:42 14 MR. McDONELL: I instruct you not to answer
10:40:43 15 that question on the grounds of privilege.

10:40:55 16 MR. PICKETT: Q. Did you ever utilize the
10:40:56 17 information you developed at PeopleSoft regarding
10:40:59 18 the terms of the PeopleSoft licenses?

10:41:02 19 MR. McDONELL: Vague and ambiguous, lack of
10:41:04 20 foundation. Don't disclose privileged information.

10:41:13 21 THE WITNESS: I had a general understanding
10:41:17 22 of the marketplace. I did not specifically use any
10:41:20 23 knowledge that I gained while working at PeopleSoft.

10:41:26 24 MR. PICKETT: Q. What was your general
10:41:27 25 understanding of the marketplace?

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10:41:29 1 A. Based on my experience at PeopleSoft, at
10:41:33 2 Annuncio, working with multiple third-party
10:41:38 3 consultants, my understanding was that third-party
10:41:42 4 implementation services were a key portion of the
10:41:49 5 industry.

10:41:57 6 Q. Well, who else was a third-party service
10:42:00 7 provider other than TomorrowNow?

10:42:03 8 MR. McDONELL: Asked -- misstates the
10:42:04 9 testimony, vague and ambiguous.

10:42:05 10 Make sure you don't disclose privileged
10:42:07 11 information for any of these parties in the process
10:42:12 12 of your answer.

10:42:13 13 THE WITNESS: Well, I believe that -- I
10:42:15 14 don't need to talk about their relationship to the
10:42:16 15 companies to say that Accenture and IBM and PWC all
10:42:22 16 provide services.

10:42:23 17 MR. PICKETT: Q. So you're not limiting it
10:42:25 18 to support services --

10:42:26 19 A. That's correct.

10:42:30 20 Q. What was your general understanding of the
10:42:31 21 marketplace with respect to support services?

10:42:34 22 MR. McDONELL: Vague and ambiguous. Don't
10:42:36 23 disclose privileged information.

10:42:39 24 THE WITNESS: Yeah, I -- some of this is --
10:42:42 25 I can't really -- some of this is yours as well. I

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10:42:46 1 can't --

10:42:47 2 MR. McDONELL: Don't disclose -- he doesn't
10:42:48 3 want you to disclose privileged information. I'm
10:42:50 4 instructing you not to disclose privileged
10:42:52 5 information. So if you would need to, I will
10:42:54 6 instruct you not to answer.

10:42:57 7 THE WITNESS: Okay. I'm not comfortable
10:43:00 8 answering.

10:43:03 9 MR. PICKETT: Q. Did you understand that
10:43:04 10 TomorrowNow would use, on occasion, software
10:43:09 11 provided by one of its customers to build
10:43:11 12 environments for use to support other customers?

10:43:15 13 MR. McDONELL: Lack of foundation, vague
10:43:16 14 and ambiguous. And don't disclose privileged
10:43:21 15 information. If you have information and it came to
10:43:25 16 you in your capacity as an attorney, don't disclose
10:43:28 17 it, if it was intended to be part of the legal
10:43:31 18 communication.

10:43:33 19 THE WITNESS: I never had that specific
10:43:35 20 knowledge, no.

10:43:36 21 MR. PICKETT: Q. Did you ever ask?

10:43:41 22 MS. PHILLIPS: Objection.

10:43:42 23 MR. McDONELL: Instruct not to answer.

10:43:43 24 MR. PICKETT: It's not privileged if it's a
10:43:45 25 question that's not answered.

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10:43:47	1	MS. PHILLIPS: That is not correct.
10:43:49	2	Objection. Instruction not to answer.
10:43:51	3	Redacted For Relevance
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Q. And you assisted in the negotiation of
TomorrowNow customer contracts.

10:48:52 9

10:48:54 10

A. I did.

10:49:11 11

10:49:13 12

Q. Do you know why it was decided that SAP
legal counsel would have that role?

10:49:15 13

10:49:16 14

MR. McDONELL: Don't disclose privileged
information. Assumes facts not in evidence.

10:49:20 15

10:49:21 16

THE WITNESS: I don't have any knowledge as
to why that final decision was made.

10:49:24 17

10:49:26 18

MR. PICKETT: Q. You were the principal
SAP legal counsel assisting in the negotiation of
the TomorrowNow customer contracts in 2005. Right?

10:49:28 19

10:49:32 20

MR. McDONELL: Vague and ambiguous.

10:49:34 21

10:49:38 22

THE WITNESS: What -- what do you mean by
"principal"?

10:49:39 23

10:49:40 24

MR. PICKETT: Q. Well, answer -- who
else -- what other SAP counsel were assisting in the
negotiation of customer contracts, in 2005?

10:49:45 25

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10:49:49 1 A. Other regional contracts people or
10:49:53 2 attorneys could have worked on it as well, and I
10:49:56 3 could have taken escalations. I'm -- honestly don't
10:50:00 4 know what you mean by "principal," sir. So ...
10:50:04 5 Q. Well, you did that job. Right?
10:50:06 6 A. Yeah.
10:50:06 7 MR. McDONELL: Vague and ambiguous.
10:50:07 8 MR. PICKETT: Q. Who else did it?
10:50:08 9 MR. McDONELL: Asked and answered.
10:50:08 10 MR. PICKETT: Q. As opposed to could have
10:50:09 11 done it. Who else did it?
10:50:12 12 A. I can't -- I don't recall, but there were
10:50:14 13 multiple deals, and I was not the lead negotiator on
10:50:17 14 the vast, vast majority. In fact, I don't remember
10:50:20 15 one where I was the lead negotiator.
10:50:23 16 Q. Were there other lawyers involved?
10:50:24 17 A. Some of our contracts people are lawyers,
10:50:26 18 and escalations might have taken place that I can't
10:50:29 19 be aware of as I sit here.
10:50:34 20 Q. What percentage of your team in 2005 was
10:50:37 21 spent negotiating contracts or advising with respect
10:50:40 22 to the negotiation of contracts?
10:50:42 23 MR. McDONELL: Lack of foundation.
10:50:44 24 THE WITNESS: For clarification, any
10:50:46 25 contract?

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10:50:48 1 MR. PICKETT: Q. Yes.

10:50:51 2 A. 60 or 70 percent. Towards the end of the
10:50:53 3 year I took on a new client, the SAP Ventures Group,
10:50:57 4 so --

10:50:58 5 Q. Prior to the time you took on the new
10:51:00 6 client, what percentage of your time was spent on
10:51:02 7 TomorrowNow activities?

10:51:03 8 MR. McDONELL: Vague and ambiguous.

10:51:09 9 THE WITNESS: 20, 20 percent maybe. It was
10:51:11 10 not my primary.

10:51:14 11 MR. PICKETT: Q. And was your time with
10:51:16 12 TomorrowNow principally on the negotiation of
10:51:18 13 contracts?

10:51:19 14 MR. McDONELL: Vague and ambiguous.

10:51:22 15 THE WITNESS: Yes, principally.

10:51:37 16 MR. PICKETT: Q. Did you ever become aware
10:51:38 17 of a directive issued by SAP that TomorrowNow should
10:51:41 18 remove copies of Oracle's software from its systems?

10:51:48 19 MR. McDONELL: Don't disclose privileged
10:51:49 20 information in responding to that question.

10:51:52 21 THE WITNESS: No, sir.

10:51:53 22 MR. PICKETT: Q. No one ever told you
10:51:54 23 anything like that?

10:51:55 24 A. I don't recall anybody telling me anything
10:51:56 25 like that or reading anything like that or having

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10:51:58 1 that knowledge.

10:52:15 2 **Redacted For Relevance**

10:52:17 3

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11:29:37 1
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11:31:01 22
11:31:03 23
11:31:04 24
11:31:07 25

MR. PICKETT: Q. Did you discuss with any customer or prospective customer what rights they might have under their PeopleSoft or Oracle license?

A. Not to my recollection -- sorry, go ahead.

MR. McDONELL: Vague and ambiguous.

THE WITNESS: Not to my recollection.

MR. PICKETT: Q. Did you ever advise them

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11:31:08 1 of how you thought PeopleSoft or Oracle interpreted
11:31:12 2 or applied certain provisions of the license with
11:31:15 3 the customer?

11:31:16 4 MR. McDONELL: Same objections.

11:31:18 5 THE WITNESS: Not to my recollection. I
11:31:20 6 don't believe so.

11:31:57 7 **Redacted For Relevance**

11:31:58 8

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MR. PICKETT: Q. Do you recall ever explaining to a customer or prospective customer what their rights were under licenses with PeopleSoft, JD Edwards, or Oracle?

MR. McDONELL: Asked and answered several times.

THE WITNESS: I don't.

MR. PICKETT: Q. This doesn't refresh your recollection?

A. It does not. I don't have any specific recollection after reading that.

Q. Do you have a general recollection?

A. No. I apologize. No.

Q. The contract language goes on after the bracket: Client will either provide TomorrowNow with direct and unrestricted access to copies of the following, or client will provide TomorrowNow with remote dialup or VPN access via the internet to the following during the support period. And then it lists a number of products and software.

And then there's a bracket that's highlighted. Bracket: Think this is to WM's advantage, because you don't want us accessing production, testing, and development environment.

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12:52:37 1 Is that a comment that you were conveying
12:52:39 2 to Waste Management?

12:52:41 3 MR. McDONELL: Vague and ambiguous.

12:52:43 4 THE WITNESS: I don't know. As I read it,
12:52:45 5 it doesn't -- I don't remember doing it, I don't
12:52:47 6 remember any thinking about it.

12:52:50 7 MR. PICKETT: Q. Do you deny that you were
12:52:52 8 telling Waste Management that it was to their
12:52:57 9 advantage to provide access to software?

12:53:01 10 MR. McDONELL: Vague and ambiguous, lack of
12:53:02 11 foundation, asked and answered.

12:53:05 12 THE WITNESS: I don't recall if I drafted
12:53:09 13 this, first of all. And second of all, as I read
12:53:13 14 this, I don't believe it coincides with what you
12:53:16 15 just concluded.

12:53:17 16 MR. PICKETT: Q. Why not?

12:53:18 17 MR. McDONELL: Okay. Assumes facts not in
12:53:19 18 evidence. Same objections. And don't disclose
12:53:23 19 privileged information, and don't speculate about
12:53:26 20 it.

12:53:37 21 THE WITNESS: Could you repeat the way he
12:53:39 22 characterized it, please, his last sentence? Not
12:53:45 23 the why not, but the one before?

12:53:50 24 MR. PICKETT: Actually, I don't think
12:53:51 25 that's proper.

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12:53:52 1 What I'm doing is -- you're a lawyer, but
12:53:55 2 you're not a lawyer -- you're a witness.

12:53:59 3 MS. PHILLIPS: He's asking you for the
12:54:00 4 question, that's all.

12:54:01 5 MR. McDONELL: He wants to hear the
12:54:01 6 question.

12:54:01 7 MR. PICKETT: He's not asking for the
12:54:02 8 question. He's asking for something else. My
12:54:05 9 question came back from his answer. And his answer
12:54:07 10 was -- you said, I don't recall if I drafted this,
12:54:10 11 first of all; and second of all, as I read this, I
12:54:14 12 don't believe it coincides with what you just
12:54:16 13 concluded.

12:54:17 14 And what I said was that it was -- you were
12:54:20 15 conveying to Waste Management that it was to their
12:54:22 16 advantage to allow access to the software.

12:54:26 17 Q. So I want to know why you don't think that
12:54:28 18 coincides.

12:54:29 19 MR. McDONELL: It assumes facts not in
12:54:29 20 evidence, it's vague and ambiguous, lack of
12:54:32 21 foundation, and don't disclose your privileged legal
12:54:37 22 analysis.

12:54:38 23 MS. PHILLIPS: And if you want to hear the
12:54:40 24 question back, you're free to do that. Everybody
12:54:42 25 else has it on the screen.

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12:54:45 1 THE WITNESS: That's not how I read the
12:54:46 2 "you don't want us accessing."

12:54:49 3 MR. PICKETT: Q. How did you read it?

12:54:51 4 MR. McDONELL: Same objections and same
12:54:52 5 instruction to you not to disclose privileged
12:54:55 6 information.

12:55:00 7 THE WITNESS: I feel like I'm going into
12:55:01 8 where I'm drawing legal conclusions as I interpret
12:55:04 9 this.

12:55:05 10 MR. McDONELL: Okay. So I instruct you not
12:55:07 11 to disclose your mental legal analysis.

12:55:10 12 MR. PICKETT: Q. Do you recall other
12:55:11 13 instances in which SAP told TomorrowNow prospective
12:55:19 14 customers that it was to their advantage to allow
12:55:25 15 access to software?

12:55:28 16 MR. McDONELL: Lack of foundation, calls
12:55:29 17 for speculation.

12:55:31 18 THE WITNESS: I don't.

12:55:34 19 MR. PICKETT: Q. Let's turn to page 5 of
12:55:35 20 the document.

12:55:55 21 Under -- and this is -- actually, if you go
12:56:03 22 back to page 4, you'll see the title is, paragraph
12:56:06 23 9, "Indemnity."

12:56:07 24 A. Yes.

12:56:08 25 Q. And that goes on for several paragraphs.

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12:56:10 1 Do you see that?

12:56:11 2 A. I do.

12:56:14 3 Q. There's a bracket right after the title

12:56:16 4 which begins page 5 of the agreement: We do not

12:56:20 5 have access to the terms of the PeopleSoft license.

12:56:22 6 We therefore need this protection.

12:56:24 7 Were those your words?

12:56:25 8 A. I don't know.

12:56:26 9 Q. Were they SAP or TomorrowNow words?

12:56:30 10 A. I --

12:56:30 11 MR. McDONELL: Lack of foundation, calls

12:56:31 12 for speculation.

12:56:32 13 Don't disclose privileged information.

12:56:35 14 THE WITNESS: I can't tell from this

12:56:38 15 redline who said it.

12:56:43 16 MR. PICKETT: Q. Well, this was a redline

12:56:45 17 that you sent to their outside counsel for purposes

12:56:49 18 of negotiating the agreement. True?

12:56:52 19 A. Yes.

12:56:53 20 Q. So you think that this bracketed

12:56:55 21 information was not your position?

12:56:58 22 A. I did not say that. You asked me if I --

12:57:00 23 if these were my words or -- and if I knew if they

12:57:03 24 were SAP words. I don't know the answer to that.

12:57:05 25 Q. Was this the explanation that was provided

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12:57:07 1 to Waste Management for inclusion of an indemnity
12:57:11 2 clause?

12:57:13 3 MR. McDONELL: Lack of foundation.

12:57:15 4 THE WITNESS: That's -- from reading the
12:57:17 5 document, yes, that appears that's what it is.

12:57:20 6 MR. PICKETT: Q. Now, is it true that you
12:57:23 7 did not have access to the terms of PeopleSoft
12:57:26 8 licenses?

12:57:29 9 A. Yes.

12:57:30 10 Q. You had worked with them for some time when
12:57:34 11 you worked as an attorney for PeopleSoft. True?

12:57:38 12 A. True.

12:57:38 13 Q. And so did you compartmentalize that --
12:57:44 14 your experience?

12:57:46 15 MR. McDONELL: Calls for mental impressions
12:57:48 16 of an attorney. I'll instruct you not to answer on
12:57:52 17 work product grounds.

12:57:53 18 MR. PICKETT: Q. Did you take any steps to
12:57:55 19 avoid relying on your memory of the PeopleSoft
12:57:57 20 licenses in negotiating the terms of these licenses
12:58:01 21 with TomorrowNow customers?

12:58:03 22 MR. McDONELL: Same objection, same
12:58:04 23 instruction not to answer.

12:58:08 24 MR. PICKETT: Q. If you take a look at
12:58:09 25 paragraph 9A of the agreement, "TomorrowNow

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12:58:11 1 Indemnity," there's a bracket that states: This
12:58:14 2 will need to be different from the license. Our
12:58:17 3 rights to use the PeopleSoft software come entirely
12:58:20 4 by way of the Waste Management license with
12:58:23 5 PeopleSoft.
12:58:24 6 Is it true that you were conveying to Waste
12:58:26 7 Management the position that TomorrowNow's rights to
12:58:30 8 use the PeopleSoft software come entirely by way of
12:58:34 9 the Waste Management license with PeopleSoft?
12:58:37 10 MR. McDONELL: The document speaks for
12:58:38 11 itself.
12:58:39 12 THE WITNESS: I don't recall drafting this.
12:58:42 13 However, that -- what you recited is what the
12:58:45 14 document represents, yes.
12:58:47 15 MR. PICKETT: Q. Was that SAP's position?
12:58:51 16 MR. McDONELL: Document speaks for itself.
12:58:54 17 THE WITNESS: Was that --
12:58:57 18 MR. McDONELL: By position, do you mean,
12:58:58 19 was that what SAP conveyed to the customer?
12:59:01 20 MR. PICKETT: Q. Yes. Was that your
12:59:03 21 position to the customer?
12:59:07 22 A. It appears -- yes, it appears that in this
12:59:10 23 document, that's the position we took.
12:59:11 24 Q. Was that a true statement so far as you
12:59:13 25 knew?

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12:59:15 1 MR. McDONELL: I have -- hold on for a
12:59:17 2 second.
12:59:24 3 Calls for a legal conclusion and legal
12:59:26 4 analysis. I'll instruct you not to answer.
12:59:30 5 MR. PICKETT: Q. So you can't tell me
12:59:31 6 whether it's true or not?
12:59:32 7 MR. McDONELL: I've instructed you not to
12:59:34 8 answer on grounds of work product. You're asking
12:59:36 9 him to sit here and do legal analysis.
12:59:39 10 MR. PICKETT: Q. To your knowledge, did
12:59:40 11 SAP or TomorrowNow ever misrepresent facts to
12:59:43 12 customers during negotiation of terms?
12:59:45 13 MR. McDONELL: I instruct you not to
12:59:46 14 answer. It's argumentative, calling for legal
12:59:50 15 conclusions and work product and potential
12:59:53 16 attorney-client. And it's argumentative. I've
13:00:00 17 already said that.
13:00:05 18 MR. PICKETT: You probably think it's
13:00:06 19 argumentative.
13:00:07 20 MR. McDONELL: It's overbroad.
13:00:27 21 MR. PICKETT: Q. Did SAP or TomorrowNow
13:00:29 22 take any steps to determine whether a particular
13:00:33 23 customer's allowance of access to software
13:00:38 24 constituted copyright infringement?
13:00:42 25 MR. McDONELL: Instruct you not to answer

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13:00:43 1 on grounds of legal -- privilege and work product.

13:00:46 2 MR. PICKETT: It's take any steps. It's

13:00:48 3 not what they did.

13:00:51 4 MR. McDONELL: Stand by my instruction.

13:00:56 5 MR. PICKETT: Q. Did TomorrowNow or SAP

13:00:59 6 ever analyze in connection with a negotiation of a

13:01:01 7 contract the general topic of a customer's rights to

13:01:06 8 provide access to software?

13:01:08 9 MR. McDONELL: Instruct you not to answer

13:01:09 10 on the grounds of attorney-client privilege and work

13:01:10 11 product.

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Q. Weren't you revealing confidential information that you learned from PeopleSoft?

13:23:04 10

MR. McDONELL: Argumentative.

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13:23:06 12

MR. PICKETT: Q. When you were helping Mr. Phillips negotiate this contract?

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MR. McDONELL: Assumes facts not in evidence, argumentative, lack of foundation, calls for speculation. And I don't want you to disclose any privileged information.

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He's testified that he was --

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13:23:20 19

THE WITNESS: I don't recall saying this to Mr. Phillips at any time.

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MR. PICKETT: Q. If you had told Mr. Phillips this information, it would have

13:23:26 22

violated your confidentiality obligations. True?

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MR. McDONELL: Instruct you not to answer. That's an improper question.

13:23:32 25

MR. PICKETT: On what grounds?

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13:23:33 1 MR. McDONELL: Legal analysis, privilege,
13:23:36 2 work product.

13:23:37 3 MR. PICKETT: Q. You understand that you
13:23:38 4 have certain ethical obligations as an attorney in
13:23:40 5 the State of California. Correct?

13:23:42 6 MR. McDONELL: Calls for a legal
13:23:42 7 conclusion.

13:23:43 8 THE WITNESS: I do.

13:23:43 9 MR. PICKETT: Q. And you understood that
13:23:45 10 you have the obligation to keep information you
13:23:48 11 learned from a former -- a client strictly
13:23:51 12 confidential. True?

13:23:52 13 MR. McDONELL: Depends on the
13:23:53 14 circumstances. It calls for a legal conclusion.
13:23:56 15 Object to the form of the question.

13:24:00 16 MS. PHILLIPS: Overbroad.

13:24:01 17 THE WITNESS: I do.

13:24:01 18 MR. PICKETT: Q. And if you revealed this
13:24:02 19 type of information to Mr. Phillips, that violated
13:24:06 20 your ethical obligation. True?

13:24:09 21 MR. McDONELL: Object to the form of the
13:24:09 22 question, and I'm going to instruct you not to
13:24:11 23 answer on the grounds of attorney work product and
13:24:13 24 privilege.

13:24:15 25 MR. PICKETT: Q. Is this information

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13:24:16 1 confidential?

13:24:17 2 MR. McDONELL: Vague and ambiguous,

13:24:18 3 overbroad, calls for a legal conclusion, calls for a

13:24:22 4 legal analysis by an attorney of a legal issue

13:24:24 5 collaterally related to the case.

13:24:27 6 I'm going to instruct you not to answer.

13:24:29 7 MR. PICKETT: Q. Is it private? Is it

13:24:30 8 confidential? That's not a privilege issue.

13:24:33 9 MR. McDONELL: Same objections. Same

13:24:34 10 instruction.

13:24:39 11 MR. PICKETT: On what ground?

13:24:40 12 MR. McDONELL: Privilege, work product.

13:24:43 13 MR. PICKETT: And you're joining in that,

13:24:46 14 Ms. Phillips?

13:24:48 15 MS. PHILLIPS: I think the question is so

13:24:49 16 imprecise, I don't even know what you guys are

13:24:52 17 fighting about. So object. Vague and ambiguous.

13:24:55 18 MR. PICKETT: Q. PeopleSoft's negotiations

13:24:56 19 with its customers were confidential. True?

13:24:58 20 MR. McDONELL: Asked and answered. Vague

13:24:59 21 and ambiguous, overly broad.

13:25:02 22 THE WITNESS: Yes.

13:25:04 23 MR. PICKETT: Q. If you conveyed the

13:25:05 24 substance of those negotiations to Mr. Phillips,

13:25:09 25 that was wrong.

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13:25:10 1 MR. McDONELL: Argumentative. I'm going to
13:25:12 2 instruct you not to answer. Grounds of
13:25:14 3 attorney-client privilege, attorney work product.

13:25:23 4 And it's vague and ambiguous.

13:25:24 5 MR. PICKETT: Q. Mr. Phillips' email to
13:25:26 6 Ms. Jagger goes on:

13:25:27 7 PeopleSoft did not do so proactively, but
13:25:30 8 many customers insisted that the previously
13:25:31 9 one-sided nondisclosure language be expanded
13:25:34 10 to include a more mutual agreement --
13:25:36 11 arrangement. When asked to do so, PeopleSoft
13:25:40 12 would provide the newer, more expansive
13:25:43 13 nondisclosure language that includes the
13:25:44 14 verbiage above. This might be a place to
13:25:49 15 look. Additionally, Scott seemed to think
13:25:51 16 that if you had an exhibit to cover
13:25:52 17 nondisclosure, that the exhibit should speak
13:25:54 18 to this or similar language.

13:25:56 19 Was that information you conveyed to
13:25:58 20 Mr. Phillips?

13:25:59 21 MR. McDONELL: Don't disclose privileged
13:26:00 22 information or attorney work product information.

13:26:03 23 THE WITNESS: I have no recollection of
13:26:04 24 discussing any of this with Mr. Phillips at any
13:26:06 25 time.

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13:26:12 1 MR. PICKETT: Q. Is there another source
13:26:13 2 from which Mr. Phillips could have gained this
13:26:16 3 information?

13:26:16 4 MR. McDONELL: Lack of foundation, calls
13:26:17 5 for speculation, assumes facts not in evidence.

13:26:20 6 THE WITNESS: I don't know.

13:26:32 7 MR. PICKETT: Q. If you did convey it,
13:26:33 8 would you have felt comfortable conveying it, the
13:26:37 9 portion that I just read?

13:26:38 10 MR. McDONELL: Instruct you not to answer.
13:26:39 11 Grounds of attorney-client, attorney work product.
13:26:41 12 It's unduly argumentative. I object to the form of
13:26:45 13 the question.

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MR. PICKETT: Q. Turning to Exhibit 1684,
page ending -861, under the indemnification
provision, it reads, "Key term -- no removing this."
Was that true, that this was a key term for
SAP, and it would not negotiate this term away?
MR. McDONELL: Instruct not to answer on
the grounds of attorney-client and work product.
MR. PICKETT: Q. Did SAP and TomorrowNow
ever negotiate a service contract which did not

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14:19:28 1 include an indemnification?

14:19:33 2 MR. McDONELL: Lack of foundation.

14:19:34 3 MR. PICKETT: Q. To your knowledge?

14:19:35 4 A. Not to my knowledge.

14:19:36 5 Q. Did they negotiate a service agreement

14:19:39 6 which did not include the right for access to the

14:19:43 7 PeopleSoft or JD Edwards software?

14:19:46 8 MR. McDONELL: Lack of foundation. Calls

14:19:48 9 for speculation.

14:19:51 10 THE WITNESS: I don't know. I don't -- not

14:19:53 11 to my knowledge.

14:19:54 12 MR. PICKETT: Q. To your knowledge, that

14:19:56 13 was always put in the agreement. Wasn't it?

14:19:59 14 MR. McDONELL: Same objections.

14:20:00 15 THE WITNESS: Yes, that was my belief, yes.

14:20:02 16 **Redacted For Relevance**

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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: 10.16.09

Holly Thuman
HOLLY THUMAN, CSR