11

12   ANTHONY DONALD KENDER,

13 having been first duly sworn, was examined and

14 testified as follows:

15

16   EXAMINATION

17

18 BY MR. ANDEER:

19   Q.   Good morning, Mr. Kender. Could you

20 please state your full name for the record,

21 please.

22   A.   Anthony Donald Kender.

00008

1   Q.   And your business address.

2   A.   My business address is -- oh, man,

3 usually it's an airplane. It is -- you know what,

4 I could check my business card for you. I don't

5 know the address or --

6   Q.   How about your home office.

7   A.   It's in Berwin, Pennsylvania.

8 My home address is 26 Spring Meadow Drive,

9 Downingtown, Pennsylvania 19335.

10   Q.   Mr. Kender, my name is Kyle Andeer.

11 I'm an attorney with the Antitrust Division of the

12 U.S. Department of Justice representing the United

13 States of America in this matter.

14   I'm going to be asking you a series

15 of questions today dealing with Oracle's proposed

16 takeover for PeopleSoft as well as the enterprise

17 software market in general.

18   Have you ever been deposed before?

19   A.   I've been deposed once before.

20   Q.   Well, let me just go over some ground

21 rules just at the outset, so if there's any issues

22 or questions, we can address them now.

Kender 05-11-04   2

00009

1   A.   Fine.

2   Q.   First, I'm going to ask that all your

3 answers are verbal. It's very difficult for the

4 court reporter to pick up nods and "ums" and

5 "hmms" and that sort of thing. I'm going to also

6 ask that you -- I am allowed to finish my

7 questions before you begin to answer. That way we

8 both understand each other. Is that understood?

9   A.   Yes.

10   Q.   And if you don't understand any of my

11 questions, I'll -- please let me know and I'll

12 attempt to rephrase and make it a little bit more

13 clear for you.

14   A.   Fair enough.

15   Q.   And finally, is there any reason that

16 you can think of that you couldn't answer my

17 questions fully and truthfully today?

18   A.   No.

3   Q.   How do you go about making a case --
4 and I guess we'll focus on HR first. How do you
5 go about making a case to sell HR software at
6 Oracle?
7   A.   If there is a company who is doing
8 active evaluation, do you mean?
9   Q.   Sure.
10   A.   Then you go in, you understand their
11 requirements, you understand the business they're
12 in and you take their requirements, you map it to
13 what your product does, you go back and you show
14 them your product, how it operates, what the
15 requirements they have.
16   Q.   So one, you need to understand the
17 business, the unique company's requirements?
18   A.   Yes.
19   Q.   And two, you need to understand what
20 industry they're working in.
21   A.   Sometimes.
22   Q.   Why do you say "sometimes"?

00030

1   A.   Because HR is a fairly horizontal

2 product, so it is not as prone to industry

3 variations as other products. Certain industries

4 it is. Some it is not. Everybody needs payroll.

5 Everybody needs general HR recordkeeping. Within

6 the industry there are some nuances.

7   Q.   So it's not something you can ignore.

8 You need to understand what industry they're in,

9 even in HR?

10   A.   It is helpful to do so, yes.

8   Q.   Earlier you mentioned that HR -- I

9 think the term you used is more of a "horizontal"

10 application. There are differences in industry,

11 but they're not as great as other industries; is

12 that -- or other products; is that right?

13   A.   That's correct.

14   Q.   With financial -- would the same be

15 true for financial management software?

16   A.   Yes.

17   Q.   To the same extent as HR or a lesser

18 extent than HR?

19   A.   Hard to say. It's similar. The

20 example I just gave of process manufacturing is a

21 good example. Process manufacturing is very

22 specific to four or five industries who will

00057

1 actually manufacture items that require a process,

2 like toothpaste.

3   Everybody needs -- everybody company

4 has people that need to be paid. Every company

5 has a general ledger for their financials -- to

6 track their financials, so therefore, those

7 products are considered more horizontal.

8   Q. Are there differences -- I mean, I

9 understand at a broad level, a general ledger

10 everybody's got to keep track of their accounts.

11   A. Um-hmm.

12   Q. Are there differences, though, from

13 industry to industry or even company to company?

14   A. Yes.

15   Q. What are some of those differences?

16   A. Well, for example, in government the

17 accounting principles that are used are different

18 than in commercial.

19   In banking and insurance, the

20 accounting -- financial accounting requirements

21 may exist that don't exist in a manufacturer. So

22 although everybody needs a general ledger, you

00058

1 start to build out industry functionality specific

2 to those industries.

3   Sometimes it is less of actually

4 functionality requirements and more of a comfort

5 level. So if you're a bank -- and I can tell you

6 that I had a lot of banks -- you feel better.

7 Maybe you'll buy it from me because of that even

8 if the functional differences really are minimal.

9   Q.   Could you explain -- I mean, comfort

10 level is -- it's sound like customers are

11 interested in knowing whether there are other

12 people using, say, Oracle software; is that right?

13   A.   Sometimes. Um-hmm.

14   Q.   Do you have -- why is that important?

15 Why is there -- do you have an understanding of

16 why that's important to a customer?

17   A.   It varies. Sometimes it's important

18 because people want to know others like them have

19 bought the software and they feel that might lower

20 risk in their mind. It isn't always the case, but

21 it may be perceived that way.

22   Q.   Is this what I've also heard referred

1 to as references and the importance of references,

2 this kind of comfort-level idea?

3   A.   Well, the importance -- it is an

4 aspect of it. You can have references that use

5 your software that aren't in that industry that

6 are perfectly fine. You can have references that

7 are in the industry. So it touches on it.

17   How is the term -- what is -- what

18 is -- I mean, what is a reference? In your

19 industry what is a reference?

20   A.   It's a wide range. A reference might

21 simply be a name of a company who uses our

22 software that you are looking to buy.

00060

1   It may also be a company that you

2 would like to call and ask questions to. It also

3 could be a company that you would like to visit

4 and see how they use it.

5   Q. So it sounds like there's three

6 different types of references. One is simply a

7 name reference. Two is someone you can

8 actually -- a potential client can call and talk

9 about the software; is that right?

10   A. Yes.

11   Q. And third is a reference that you can

12 visit and actually see how the software is being

13 used; is that right?

14   A. I wouldn't say there's only three

15 kinds, but those are three kinds.

16   Q. Okay. How does Oracle go about

17 developing references?

18   A. It is a lot of ways. There is -- the

19 local salesperson in San Francisco knows who a few

20 of his local references are. Because sometimes I

21 want to know -- forget about my industry, do you

22 have anybody here that is a customer?

00061

1   The industries business unit or the

2 applications business unit may determine a list of

3 customers for specific products or specific

4 industries. There are references that get very

5 finite on a point solution. So there is a supply

6 chain reference, but there might be someone that

7 just uses warehouse management.

8   There might be a human resources

9 reference for someone who just uses recruitment

10 software. So there's layers of it, levels of it.

11 And that's very standard across the entire

12 software industry.

13   Q.   Are references -- developing

14 references important to Oracle?

15   A.   Yes.

14   Do you have an understanding of what

15 it means, Leveraging the Power of Integration?

16 What is -- is that a strategy? What does that

17 mean?

18   A.   Well, it means that when you have

19 various -- when you sell a suite, various products

20 are built to integrate together so that when it's

21 delivered they work together, versus a company

22 buying point solutions or best-of-breed vendors

00077

1 where they have to make them talk to each other.

2   Q.   And does -- what -- how does Oracle

3 position itself. Is it a suite provider or is it

4 a best of -- so-called best-of-breed provider?

5   A.   How it positions itself or what it

6 is?

7   Q.   What it is?

8   A.   It's both.

9   Q.   Could you explain? How is it both?

10   A.   It's both because Oracle provides a

11 suite of applications that are integrated

12 together. But if it needs to compete in -- with a

13 company who is typically buying a one-point

14 solution or best-of-breed vendor, it can take one

15 of its modules and compete there as well.

8   Q.   Total cost of ownership, what does

9 that mean? Could you define that for me?

10   A.   Well, there are various definitions.

11 Basically, what it means is it costs less to own

12 and operate this software versus that software or

13 set of software packages.

14   Q.   And how is that determined? How do

15 you come up with a total cost of ownership?

16   A.   Again, it is determined various ways,

17 and I'm no means an expert in total cost of

18 ownership, but it is things like the price of the

19 software itself, the ongoing maintenance of that

20 software, the cost to implement it, the ongoing

21 cost to support interfaces between that software

22 and other software packages.

00079
1   So if you buy software from any suite

2   vendor, theoretically you don't have to maintain

3   those interfaces between various products because

4   they come delivered, and therefore your internal

5   IT staff costs should be less.

6   Q.   So you said the one way of messaging

7   this integration -- or one of the points of the

8   integration message is this lower cost of -- lower

9   total cost of ownership.

10   A.   Yes.

11   Q.   How does integration lower the total

12 cost of ownership?

13   A.   As I just said, you don't have to

14 have interfaces written that you support yourself

15 between various models. If the integration is

16 already there, you don't have to incur the expense

17 of maintaining those interfaces. When a release

18 changes, now you've got to go back and integrate

19 those products again.

20   Q.   Are there any other -- in terms of

21 total cost of ownership, is there any other

22 advantages in terms of a suite offering versus the

00080
1 alternatives?

2   A. Well, the -- all of the different

3 software packages are designed to work together,

4 so theoretically the interface of information

5 should be smoother.

6   The end user, people using the

7 software, learn to use one type of software versus

8 various of them. Your IT organization only needs

9 to understand one technical environment, not

10 multiple technical environments, which would lead

11 typically to lower people -- less people at lower

12 cost.

13   Q. The interfaces that you mentioned,

14 what are -- could you explain that term for me?

15 What are the interfaces between products?

16   A. Well, here you're getting a little

17 bit out of my area of expertise, so I can tell you

18 at a high level.

19   Q. Okay.

20   A. As you'd want to get lower, I

21 wouldn't be able to. But if you have a company X

22 general ledger and company Y's HR payroll system,

00081
1 you need to get transactions from HR and payroll

2 to update the general ledger.

3   If they are two different companies,

4 there has to be an interface to send the

5 information back and forth. When company X or Y

6 comes out with a new release of software, now that

7 interface may not be the same. So now you've got

8 to go back in there, make the changes, fix it,

9 maintain it, learn it, go to training on it. All

10 of that takes time and money and cost.

11   If you had a financial system and an

12 HR and payroll system from -- all from company X,

13 whenever there is a version change that interface

14 is automatically changed. There is nothing for

15 you to do. The information will still pass

16 without you spending any time at all in fixing it,

17 maintaining it, changing it.

18   Q.   So the cost with these interfaces,

19 one is just simply maintaining the interface and

20 billing it itself.

21   A.   Yes.

22   Q.   And two is updating the interface

00082

1 when, I believe you said, new releases or new

2 versions come on the market; is that right?

3   A.   That is correct.

4   Q.   Is there a difference in terminology

5 between releases and versions?

6   A.   Not really. They're typically used

7 interchangeably.

10   Q.   Okay. Do you recognize Exhibit 107?

11   A.   Yes.

12   Q.   And what is this document?

13   A.   I believe it's a presentation done by

14 Russell Pike who was part of the development --

15 specifically the financials development

16 organization.

17   Q.   And who is Russ Pike?

18   A.   Russ Pike is part of the financials

19 development team, and he had various jobs in

20 rolling out new products, communicating to the

21 field things that he did, usually not in

22 conjunction with my organization and almost

00088

1 sometimes counter to it.

2   Q.   So he wasn't a part of any of your

3 organizations?

4   A.   No.

5   Q.   And when you say "counter to it,"

6 what do you mean?

7   A.   Well, he would decide to go out and

8 present training on a product or a competitor

9 without coordinating that with marketing or with

10 the ABU, and sometimes that would confuse the

11 field because they would be hearing from different

12 organizations and people not always the same

13 message.

14   Q.   And this document is titled Attack

15 PeopleSoft. And it looks like -- you know,

16 Mr. Pike's name is on this document. And also

17 says -- it looks like it was created in November

18 2002. Does that square with your recollection?

19   A.   I don't remember exactly. Probably.

20 Probably so.

21   Q.   Do you agree with the contents of

22 this presentation?

2   THE WITNESS: I don't know. I'd have

3 to look. I mean, there is a lot there. I don't

4 necessarily agree with everything that's in there.

12   Q. I know it's a long -- well, then,

13 let's look specifically at page 45395.

14   A. 45395.

15   MR. ROSCH: Thank you. That's

16 better.

17   THE WITNESS: Okay.

18 BY MR. ANDEER:

19   Q. And before I ask any questions on

20 this specific slide, do you recall giving Mr. Pike

21 any feedback on this presentation after it was

22 given?

1   A.   Yeah. I told him I didn't agree with

2 that slide.

3   Q.   What about this slide don't you agree

4 with?

5   A.   Well, I felt that he wasn't qualified

6 to say that HRMS was a minus versus a plus to

7 PeopleSoft because he's a financials guy and that

8 he would probably be giving the field sales team

9 the wrong impression of the Oracle HR solution.

10 Something like -- something to that -- if I

11 remember correctly.

12   Q.   And this slide is titled Selling

13 Against PeopleSoft and there is a table with a

14 series of pluses and minuses; is that right?

15   A.   Yes.

16   Q.   What's your understanding of what

17 this slide is supposed to depict?

18   A.   Well, what -- in his opinion -- I'm

19 not sure where he got his information from --

20 where Oracle would have an advantage over

21 PeopleSoft from a sales and functional standpoint.

22 I -- I assume. I don't really know what he -- I

00091
1 don't know exactly what he was trying to get

2 across.

3   Q.   And on this slide the first row --

4 rather the second row is HRMS, which is -- is that

5 human resources Management?

6   A.   Yes.

7   Q.   And it has a minus sign in the Oracle

8 column and a plus sign in the PeopleSoft column,

9 and that's an area where you disagreed with

10 Mr. Pike; is that right?

11   A.   He has the minus sign in the Oracle

12 column with the word "close."

13   Q.   Thanks for the correction.

14   What is it about that you disagreed

15 with Mr. Pike? I mean, what was the source of

16 your disagreement?

17   A.   Well, as I said, I don't think he had

18 the knowledge of HR to say one way or the other.

19 And even if it were true, I'm not so sure that

20 presenting it that way to the sales force is the

21 right way to go about training them.

22   Q.   At the time did you believe this to

Kender 05-11-04

00092

1 be true?

2   A. I don't remember. I don't remember.

3 You're saying this was in 2002. Boy, I absolutely

4 don't remember.

5   Q. Do you believe it was true at any

6 time during your tenure at Oracle?

7   A. Yes.

8   Q. And when would that time be?

9   A. My earlier tenure at Oracle.

10   Q. When do you feel that it was no

11 longer true?

12   A. It's hard for me to say. You know,

13 most -- in recent years Oracle functionality has

14 become as good or better in certain areas than

15 PeopleSoft's.

16   Q. In the last two years, would you say?

17   A. It's difficult for me to appoint an

18 actual time to it.

19   Q. Why is it difficult?

20   A. Well, it's kind of an ongoing

21 process, if you will. So more likely in the last

22 two years than in my first two years at Oracle,

1 that's for sure.

2   Q.   Did you play any role in closing the

3 gap since you joined Oracle?

4   A.   Closing which gap?

5   Q.   Well, you'd mentioned there was --

6 you might have agreed with this when you first

7 joined Oracle in the sense that maybe there

8 were -- maybe Oracle didn't have everything

9 PeopleSoft may have had. Is that right?

10   A.   Well, it's hard to say what he is

11 referring to here. He says selling against

12 PeopleSoft. So I don't know if he's referring to

13 functionality or how easy it is to sell or -- it's

14 very -- it's an ambiguous slide.

15   Now, he had certain words he used to

16 present this slide back in 2002. I don't remember

17 exactly what it was he said at the time and right

18 now today. So it's hard for me to answer your

19 question unless I know more specifically what it

20 might be referring to.

21   Q.   Would you agree with this

22 characterization today?

00094
1   A.   Well, again, I don't know what -- in

2 what area.

3   Q.   Okay.

4   A.   Would it be in functionality and

5 selling?

6   Q.   Let's just say functionality. Would

7 you agree with this -- if this was referring to

8 functionality, would you agree with this slide

9 today?

10   A.   No.

11   Q.   Would you -- how would you change it?

12 What's the difference between today and perhaps

13 when the time -- at the time of this presentation?

14   A.   Specifically about HRMS?

15   Q.   HR functionality.

16   A.   I would say Oracle's HRMS is either

17 even or better than PeopleSoft's, generally

18 speaking. It gets more specific if you break the

19 modules down.

4   Q.   How often -- before I leave this

5 slide, the second or third row, depending on your

6 perspective, is Financials, and again there is a

7 plus sign in Oracle and a plus sign in PeopleSoft.

8 In terms of functionality, do you agree with that?

11   THE WITNESS: I don't know.

14   Q.   Do you have any knowledge of Oracle's

15 financial products?

16   A.   Very little. As far as functionality

17 and how it works, very little. I don't have a lot

18 of knowledge about the HR product because I'm not

19 a demonstration product specialist. I have a high

20 level of knowledge of the HR product. I have very

21 little knowledge of the financials product.

22   Q.   What knowledge do you have of

00096
1 Oracle's financials package on any level?

2   A.   Really, the highest level, that --

3 it's one of our stronger applications. It's been

4 out longer, and we have quite a few customers,

5 demonstrates well. We get selected quite often

6 when we sell it. That's pretty much it.

7   Q.   Did you have responsibility for

8 overseeing the financial sales consultants or

9 financial sales solution -- or solution

10 specialists?

11   A.   They didn't exist. No, didn't have

12 any.

13   Q.   Do they have any -- do they exist

14 today?

15   A.   No. There are financials sales

16 consultants --

17   Q.   Okay.

18   A.   -- in the field, not in my group.

19 There are no financials solution specialists

20 simply because we didn't feel the sales force

21 needed support in that area. They were already

22 very strong there.

1   Q.   Looking at this sort of presentation

2 more broadly, how often are vendor-specific

3 presentations given at Oracle?

4   A.   I'd say quite often and on various

5 levels. I mean, there's probably one given weekly

6 on some vendor.

7   Q.   Does your organization have

8 responsibility for preparing these sorts of

9 presentations?

10   A.   Not exclusively.

11   Q.   But they have prepared these sorts of

12 presentations in the past?

13   A.   We have done some in the past, yes.

14 Anyone can do one. You know, if you were running

15 a small sales team of five or six salespeople

16 right here in San Francisco and you have a weekly

17 sales meeting, which these guys typically do, one

18 of your salespeople may be seeing a vendor quite

19 often, you might sit down and say here's what I

20 know about this competitor. I've come up against

21 him X number of times. I've gathered this

22 information from their Website. I'm sure it

1 happens all the time, because you have to help

2 salespeople learn how to sell against competitors.

3   Q.   Why do you need to educate

4 salespeople to sell against competitors? Why is

5 that important?

6   A.   Because that's who they're competing

7 with and they need to know how to position their

8 solution versus what a competitor -- or how a

9 competitor is positioning their solution so that

10 they can compete and win.

11   Q.   What types of things do you feel it's

12 important to communicate in these sorts of

13 vendor-specific presentations? What are the

14 messages that you would hope to see in some -- a

15 presentation such as this?

16   A.   Well, I can't take any credit for a

17 presentation such as this. This was completely

18 out of my purview. Didn't know what was

19 happening, not something my organization came up

20 with from a content standpoint.

21   Q.   But you did say that your

22 organization has created similar presentations?

1   A.   I can answer your question. I just

2 can't answer it as a presentation such as this

3 because we didn't do this.

4   Q.   Okay.

5   A.   But in a competitive presentation

6 that my group might give, the things I think would

7 be important, is that what you're asking?

8   Q.   Yes.

9   A.   I would think it would be important

10 to understand where you have an advantage and

11 where your competitor has an advantage such that

12 you know how to position your solution against

13 those advantages and disadvantages.

14   Q.   How does your organization educate

15 itself as to where its relative advantage is?

16   A.   Oh. Well, the biggest way we do that

17 is after they're involved in a sale cycle, win or

18 lose, basically debrief with the organization what

19 did they learn.

20   Well, I learned that Microsoft is

21 positioning against us this way, and I learned

22 that ADP is positioning against us that way and

00100
1 they put their pricing together, and I heard that

2 Lawson is using their suite integration this way,

3 and I learned that PeopleSoft does that, and you

4 kind of gather that information and then you try

5 to package it and disseminate it so that you keep

6 people up to date with what they are seeing and

7 what we are seeing in the marketplace. And that

8 has been the way it's been in every company I've

9 worked for and I'm sure way before I joined the

10 work force.

11   Q.   So one is the sale cycle debriefs,

12 which after the sale's been completed, either win

13 or loss, you go back to the members of the team

14 and talk to them about what happened?

15   A.   By and large the biggest way right

16 there.

17   Q.   In that process how did they know

18 how -- whoever the vendor is that they're

19 competing with, how do they know what they're

20 doing? I mean, how do they know the sorts of

21 issues you brought up, the positioning, the

22 messaging?

1   A.   The -- most of the time it's the

2 customer saying, well, wait a minute, you know, or

3 the person who leads the evaluation, the systems

4 integrator, like maybe Accenture or KPMG or

5 something like that.

6   You know, you're saying this and

7 they're saying that or they can do these things.

8 How do you respond to that? Or this is what they

9 say about you or that they can do these things and

10 you can't. What's your response? And so, you

11 know, you need to have a response for that.

12   If you know what they're going to be

13 in advance, then you position that in advance. If

14 you don't know and you get caught, you know, with

15 your pants down on that, you need to then respond.

16 Then you learn from that next time so that you can

17 position in advance.

18   In the government world, a sale at

19 the state of Florida a few years back with SAP,

20 the state of Florida has what they called a

21 Sunshine Law, which means their demonstrations for

22 every software company is public.

1   So you can sit there and watch me

2 give me a presentation, a demonstration and take

3 as many notes as you want, as we could for the

4 others. So every vendor sits there and they watch

5 everybody else present, they listen to how they

6 position, they watch their demonstrations, then

7 they come back and say, "Here's what I learned."

8   You know, the government, AMS, is a

9 huge competitor of ours and, you know, you watch

10 and see what they do, and then you know the next

11 time you compete with them they're going to do it

12 a certain -- they do it a certain way. So things

13 like that is not unique to anybody. We all do it.

00114

4   Q.   Does this refresh your memory to some
5 of the reasons you may have been losing to
6 PeopleSoft at the time?
7   A.   Off-the-top-of-my-head response, yes.
8   Q.   And what were some of those reasons?
9   A.   Well, as I stated in here, from an HR
10 standpoint, they had been in the business much
11 longer. They had more marketing references in
12 vertical markets, et cetera.
13   I had felt that we demonstrated our
14 software as good or better in HR and that's why we
15 were able to win more than we lost versus
16 PeopleSoft in HR.
17   I think in the general applications,
18 in the field sales consultants, that their sales
19 consultants were not trained as well as mine were
20 and maybe fell into some demo traps that help the
21 customer perceive product superiority where it may
22 not have been.

00115

1   Q. So referring back -- and I know this

2 is difficult, but to Exhibit 108 in which

3 Mr. Block had asked you about the demo issue, that

4 PeopleSoft was out-demoing. At least that was his

5 understanding.

6   A. Yeah, in 2002 that -- well, right.

7   Q. Right. It's about four months

8 earlier?

9   A. Four months earlier. Yep.

10   Q. At the time of this March e-mail,

11 Exhibit 110, that problem had been solved or -- if

12 there was a problem at all?

13   A. Well, I don't know, because Keith's

14 message on December 14, 2002, isn't very specific.

15 It was --

16   (Interruption for clarity.)

17   THE WITNESS: It was not very

18 specific saying I've heard we were getting

19 out-demoed. Tell me why. I didn't know -- I

20 don't know if we had more banter on that. Was he

21 saying in general? Was he saying HR financials?

22 You know -- so I wouldn't say that the problem was

00116
1 resolved. I always felt that we had people who

2 could demonstrate very well in HR. The field,

3 different story, but I wasn't responsible for

4 them.

5 BY MR. ANDEER:

6   Q. So in Exhibit 108, if it's just

7 referring to HR, you wouldn't have agreed with

8 Mr. Block's e-mail at that time, the December

9 e-mail talking about out-demoing.

10   A. Hard to say. We improved over time.

11 Where we were at that specific point in time, hard

12 for me to say. But I felt that by the time -- the

13 end of 2002 rolled around one thing we had

14 resolved from when I was hired was our sales

15 consultants were better at demoing than they were,

16 relatively speaking, in 1999.

17   Q. Focusing on 108, do you recall

18 Mr. Block inquiring about Oracle's ability to or

19 other vendors' ability to out-demo Oracle?

20   A. He might have. I don't remember.

21   Q. You don't remember any other specific

22 instances in which he may have asked you about,

1 say, Lawson?

2   A.   I don't remember. I do know that the

3 demo issue is one that comes up about PeopleSoft a

4 lot because they're good at demoing, so that's why

5 you would expect to hear that question about them.

6   Q.   Looking at Exhibit 110, some of the

7 reasons you gave were the length of time

8 PeopleSoft has been in the HR business and the

9 fact that they had references in a number of

10 different vertical markets. Those were two

11 reasons you gave as to why Oracle might be losing

12 to PeopleSoft in HR; is that right?

13   A.   Yes, if/when we lost.

14   Q.   What -- focusing on the first. What

15 is the length of time in the HR business? Why is

16 that a reason that you may have been losing to

17 PeopleSoft?

18   A.   Well, if they were selling HR for 12

19 years, over that time they were able to build up a

20 large customer base, probably across various

21 vertical markets, because in 12 years it would

22 happen naturally. So that is something you have

00118
1 to overcome, and that's what companies overcome

2 all the time.

3   Q.   What was Oracle doing to overcome

4 that?

5   A.   What Oracle does to overcome that is

6 the same as what every small or large software

7 company does to overcome if they're not large in a

8 market, product or industry related. You focus on

9 that market, you try to get a foothold by getting

10 a customer or two and you expand from there.

11   It's what companies like Lawson did

12 when they said, you know, we're going to focus on

13 what I call a bowling-pin approach. Healthcare,

14 do that really well, get a couple of customers,

15 grow from there. Retail, hospitality. They did

16 that very well.

17   It's what Chronos did when they said

18 we're going to expand from our dominant position

19 as a time management niche vendor and start

20 selling human resources product. Low barrier to

21 entry. We have a customer base in time

22 management. Let's start going back to that same

00119

1 group of people selling an HR product, get a

2 couple, grow from there. So it's what we did as

3 well.

00120

10   Q.   The second point you say here is
11 "they have more references in more vertical
12 markets than we do." Why is that an advantage for
13 PeopleSoft?
14   A.   Well, if you're selling to a bank and
15 you have only a couple of banks that use your
16 product and they have a list of banks that use
17 their product, that's an advantage for them that
18 you have to overcome with other advantages you
19 might have.
20   And as I said to you earlier when you
21 asked me how do you train -- why do you train
22 salespeople on how to sell against competitors,

00121
1 that's the reason why.

2   Every situation is different. You

3 have certain advantages. They have certain

4 advantages in that given situation. You try to

5 diffuse their advantages with your advantages. In

6 that case, having more banks, selling to a bank,

7 than we do is an advantage for them.

8   But I've made an entire career out of

9 still finding a way to be successful despite

10 situations like that. And it's not difficult to

11 do. And it's how -- an example would be --

12 Brass Ring is a relatively new vendor in the

13 recruitment software business.

14   Recruitment software didn't even

15 exist a couple of years ago. I believe one of the

16 first companies, if not the first company to do

17 it, was Lawson, was considered a suite vendor.

18 But they're not the leader today. Brass Ring is

19 the leader.

20   Well, how can that be? How did

21 Brass Ring step into the leadership role when

22 Lawson was first? Because they did what I just

00122
1 said, and they weren't afraid to go head to head

2 even though Lawson may have more customers. So

3 that's how.

4   Q.   What are some of the advantages that

5 you encourage your sales consultants or even the

6 field to use in competing against PeopleSoft for

7 an HR opportunity?

8   A.   It is a difficult question to answer

9 because it is absolutely dependent on the specific

10 sales situation.

7   What are some of the -- how have you

8 seen PeopleSoft position itself in a situation

9 such as that?

10   A.   Where they have a lot of customers in

11 a vertical?

12   Q.   Let me be a little bit more specific.

13 We're using banking as kind of our example and

14 it's an HR opportunity. What sorts of messages

15 have you seen PeopleSoft push? You've mentioned

16 that Oracle has pushed a number of these different

17 areas. What's been the response?

18   A.   What's been the response?

19   Q.   Or not the response. What, in your

20 experience, has PeopleSoft been emphasizing in

21 these sorts of opportunities?

22   A.   Well, in a bank situation they will

00125

1 have a presentation, I am told, that shows other

2 banks, maybe even some speaking tracks of CFOs

3 from that bank. So when they're finished, the

4 prospective customer, who was a bank, should

5 theoretically have a comfort level -- that's the

6 idea -- to reduce their perceived risk so they

7 will buy -- so they would retrospectively have a

8 comfort level that doing business with PeopleSoft

9 would be a safe thing to do because other banks

10 like them have done it. So I would expect

11 PeopleSoft to press that advantage.

6   Q.   You mentioned that with every new

7 release some percentage of your existing customers

8 will look outside.

9   A.   I mentioned any company's existing

10 customers will look outside, not just Oracle's.

11   Q.   Right.

12   Do you have -- my question deals with

13 Oracle. Do you have a feel for what percentage of

14 your 10.7 customers looked to other vendors?

15   A.   I don't. I don't know. It would be

16 pure speculation. I do know some that -- my -- my

17 point was, Kyle, that they will do so -- they're

18 more apt to do so because a competitor is knocking

19 on their door.

20   They're more apt to listen now,

21 because the life of software is anywhere from five

22 to seven years. So if you bought software two

00130
1 years ago, you're probably not a prospect for me,

2 because you're going to -- you just bought it,

3 you're going to make it work, and it cost so much

4 money you've got to get some return on your

5 investment by keeping that. And it's typically

6 five to seven years.

7   So when a new release comes out and

8 you have your existing vendor knocking on your

9 door every six months, we'd like you to upgrade.

10 We'd like you to upgrade. We'd like you to

11 upgrade, when you finally decide you're going to

12 upgrade, your competitors -- the competitors are

13 also knocking on your door because they know

14 here's an opportunity. Maybe you'll listen to me.

15 And if I can get one of them to say, hey, you know

16 what, that's pretty good and put a compelling

17 price on the table, now I have an opportunity.

18   So it would behoove that competitor

19 to know when those inflection points are occurring

20 and put a campaign around that to go after it.

21 And that's what SAP's doing to us right now.

22   That's what I did to ADP, because ADP

1 is probably our biggest competitor in the HR

2 space. And there was a Y2K problem as we

3 approached year 2000. Many customers moved to ADP

4 because it was quick and there isn't a long-term

5 contractual requirement to fix that year 2000

6 problem.

7   We had heard that a lot of those

8 companies were unhappy. So we looked at who are

9 the ADP companies out there, especially those who

10 may already have Oracle software, like in

11 financials, and let's see if we can't unhook some

12 of them. So it's done all the time.

13   Q.   This ADP campaign, when did this take

14 place?

15   A.   I don't remember. It was a few years

16 ago. Nothing formal. It was, you know, get the

17 team together. Where do we see opportunities in

18 the marketplace. We just had a couple wins in

19 North Carolina, someone said, against ADP. This

20 is what we're hearing.

21   Okay, everybody, get your lists out.

22 Understand who the ADP customers are in your

1 specific area. Work with your local salespeople

2 and let's see if maybe a few others might be

3 upset. So it wasn't any -- it was let's go get

4 this done and train people up. What do you say?

5 You know, what are the things you do and get your

6 less together and go. So that's what we did.

7   Q.   So you said this campaign was several

8 years ago. Was it 2002? 2001?

9   A.   I don't remember the exact year. It

10 was clearly two or three years ago, maybe even

11 four. Somewhere -- more likely around three.

12   Q.   And you said that ADP is your biggest

13 competitor in the HR?

14   A.   I think ADP is -- having worked there

15 I know. In fact, half -- half -- most of the

16 people on my staff of HR worked in a service

17 bureau environment at some time. ADP, Ceridian,

18 Paychecks, Pro Business before ADP acquired them.

19   And having worked there myself, they

20 have the Procter & Gamble approach. You know,

21 when you go to the store shelf you see Cheer and

22 you see Tide and you see a few different products,

00133
1 and no matter which one you pick it's Procter &

2 Gamble.

3   Well, they have salespeople all over

4 the place. Different divisions, organizations

5 that almost overlap. And there is tension in the

6 model such that, you know, is it your account? Is

7 it my account? Doesn't matter. Someone's calling

8 on it. Even if we're fighting the company gets

9 their market share.

10   So ADP is -- they're everywhere. And

11 even if you don't see them, maybe in an RFP, you

12 think they're not in there, they're in there.

13 I've lost a sale where they weren't in the RFP and

14 they won a sale.

15   Q.   So one reason they're a big

16 competitor is their sales approach in the sense

17 that they have people calling all these different

18 accounts.

19   A.   Right.

20   Q.   Do you see them anywhere else? I

21 mean, how do you measure their significance?

22   A.   I message their significance -- if

1 you look at IDC -- and I don't have the numbers

2 off the top of my head. I think they're in the

3 top two, three or four as far as HR vendors'

4 customer size.

5   I see -- if I look at a pipeline

6 report and I ask my salespeople who they're

7 competing with, I typically -- you know, I have

8 seen it so many times I can tell you, generally

9 speaking, ADP's in many of those accounts, plus

10 from personal experience.

11   I still have friends there. I know

12 how aggressive they are. They have a very wide

13 offering for their product. They're in a lot of

14 industries. They're in a lot of sized

15 organizations. They sell their HR product. It's

16 priced inexpensively which makes it difficult to

17 compete with them.

18   Q.   Do you consider their product to be a

19 functional equivalent to Oracle's product?

20   A.   In many areas, yes. In some areas,

21 no.

22   Q.   How many -- how many areas? Can you

1 put it on a percentage basis of where they have an

2 equivalent product in the HR suite?

3   A.   I would say 75 percent of what we

4 offer they offer just as well. We have things

5 like iLearning and iRecruitment. They don't have

6 that. So they'll oftentimes -- they'll partner

7 with someone to make up for the fact that they

8 don't have it.

9   Like they partner with Chronos for

10 time management. They resell. They just don't

11 partner. They resell the Chronos product for time

12 management. So they have -- they have quite a bit

13 of functionality, quite a bit of a footprint, and

14 where they don't have a footprint, they partner.

15   Q.   Now, you think they have a footprint

16 in about 75 percent of the HR offering?

17   A.   Yeah. And so does Ceridian.

18   Q.   And you had mentioned that one of the

19 sources of your information is the IDC data. Do

20 you find that -- you mentioned there were two,

21 three, four, somewhere in there; is that right?

22   A.   You know, I vaguely remember

1 seeing -- and IDC isn't the, you know, definitive

2 answer, but they're one of the places. And they

3 list size of -- and ADP's up there with the top HR

4 vendors, and we clearly see them.

5　　Q.　Is IDC something you typically rely

6 on, the figures in there?

7　　A.　No. But I've seen IDC reports in the

8 past, even at previous companies I worked for.

9 It's one data point, if you will. It's nothing

10 definitive. In fact, I used to --

11　　　　MR. ROSCH: Wait the question.

12 BY MR. ANDEER:

13　　Q.　You mentioned also the pipeline

14 report is another source of -- or another basis

15 for the fact that ADP is a significant competitor

16 to Oracle.

17　　A.　Um-hmm.

18　　Q.　What is the pipeline report telling

19 you?

20　　A.　I don't have specifics on it, but I

21 have my HR sales team when I manage them

22 specifically list what sales cycles they're

00137
1 working on and who the competitors were. And we

2 would do strategy, account reviews. Tell us about

3 your sales you're working on right now and let's

4 see if we can help each other. ADP would come up

5 more often than not.

6   Q.   For HR opportunities?

7   A.   Oh, absolutely. Absolutely.

8   Q.   You mentioned the sales campaign

9 against SAP several years ago -- or ADP rather.

10   Actually, before we go into that,

11 going back to the releases, you mentioned

12 currently SAP is attacking your 10.7 customer

13 base; is that right?

14   A.   That is true.

15   Q.   Are you aware of any other vendor

16 attacking your 10.7 customer base?

17   A.   I am aware that all of them are, but

18 I am aware that SAP has a formal campaign.

19   Q.   How many 10.7 customers have you lost

20 to a competing vendor?

21   A.   I don't know. I don't have the

22 actual specifics on that. I do know that we had

1 to try and respond and protect that 10.7 customer

2 base because it was under attack, the ones that

3 weren't the early adopters, obviously the ones

4 that are still on 10.7, we try to protect them.

5 And we know from our sales force that SAP is in --

6 giving away software and doing some things to try

7 to unhook them.

8   Q.   Are you aware of any other specific

9 vendor doing the same sorts of -- or pursuing a

10 similar strategy?

11   A.   I am aware that every vendor sees

12 that as an opportunity and a weakness and is

13 competing to get in there. I'm not aware that

14 every -- other vendors have a formal program, but

15 I wouldn't be surprised if they did because that's

16 what they do.

11   Q.   And so the only vendor you know by

12 name that was targeting your 10.7 base was SAP, or

13 at least it had a formal campaign in place?

14   A.   That's the only one I knew about, but

15 I -- but as I said before, it's such common

16 practice that every software vendor would try to

17 do something like that. So the overall idea was

18 protect that 10.7 base.

19   In SAP's case, they were having a

20 similar situation to we were, with their 4.6c

21 release and forcing some customers to upgrade off

22 of it to new software. So one of our items on

00141

1 this e-mail, as you'll see, is attack SAP's

2 install at the point down below.

3   So force them to defend their base so

4 that they can't only be on the offensive as they

5 were doing to us. Because they had an inflection

6 point such that there was a change in release

7 levels, so we wanted to go after that, which we

8 also did to PeopleSoft because they had a change

9 in release -- major releases, but also did some

10 things that upset their customer base. So clearly

11 SAP went after their customer base as well.

12 That's what they do.

13   Q.   So looking at SAP, this meeting and

14 the conference call about 10.7 install base, was

15 that in response to a specific threat by SAP or

16 was it just generally how do we defend our 10.7

17 install base?

18   A.   It was both. See, Lawson did that to

19 us as well. Early on when 11i first came out,

20 Lawson ran ads and did some things to try and

21 unhook 10.7 customers.

22   So this was in general protect the

00142
1 10.7 base, find a way to upgrade them, no matter

2 who they might be looking at, those that didn't do

3 it already, but also go back and attack SAP's

4 install base because they were forcing people on

5 to a new release.

00181

21   MR. ANDEER: Ask the reporter to mark

22 the following Exhibit 116.

00182

1   (Exhibit No. 116 was marked for

2 identification by the reporter.)

3   MR. ANDEER: For the record,

4 Exhibit 116 is Bates stamped ORLITF0055295, and

5 it's a one-page e-mail and attached presentation.

6   THE WITNESS: Yes, I remember it.

7 This is the Webcast that I mentioned that we gave

8 to the field.

9 BY MR. ANDEER:

10   Q.   And the Webcast was given sometime in

11 the March -- March 2002 time frame?

12   A.   I'm assuming it was since this e-mail

13 is dated March 10th and it was the final cut of

14 the presentation, therefore we must have given the

15 actual Webcast soon thereafter.

16   Q.   Do you recall why the focus of this

17 was on PeopleSoft HRMS Version 7 customers? We

18 talked about the version difference, but why HR?

19   A.   Because we had had some success in

20 unhooking some of the HR customers -- they have a

21 large customer base -- and that was an opportunity

22 for us to replace those customers who were

1 unhappy.

2   Q.   You had mentioned you had replaced

3 some. At the time of this presentation, do you

4 recall -- you'd given a number of eight to ten.

5 Was that about right, eight to ten customers that

6 switched from PeopleSoft 7 to Oracle?

7   A.   I don't remember how many at the time

8 of this presentation, although we may have made

9 reference to it in this presentation, if you'd

10 like me to look. We list -- we do list a couple

11 in more specifics.

12   Q.   Let me ask you, do you recall the

13 expectations for this program? Was there a quota

14 or a target set?

15   A.   I don't recall that there was. I

16 mean, there may have been, but I don't recall if

17 there was or not. I would have been -- I was

18 happy with -- actually here it says 18 customers

19 have replaced PeopleSoft HR recently.

20   Q.   Does that square with your

21 recollection that there were about 18?

22   A.   Yeah. I think that was worldwide, a

00184

1 list of companies worldwide. As far as goals, I

2 don't remember if there were goals or not.

3   My feeling about any campaign like

4 this, when there is an inflection point in the

5 industry with a version release, a major version

6 release, it's hard to put a goal on it. Now, some

7 people like to do that.

8   I believe if you can get one or two,

9 then that can mushroom into multiple others

10 because of the comfort factor and the risk factor

11 I mentioned to you earlier. Who else has replaced

12 Version 7 with Oracle HR? Well, I've got some.

13   So the fact that we had some momentum

14 and this many takeaways and the fact that the

15 window of time was closing, it was impetus to have

16 a more formal campaign to get the last few that we

17 probably could.

18   Q.   What was the pitch associated with

19 this campaign? What were you offering PeopleSoft

20 7 HRMS customers?

21   A.   Oh, boy, I don't remember. I'm sure

22 it's listed in here.

Kender 05-11-04

62

00185
1   As I recall, we weren't really giving

2 anything. We were trying to point out that -- a

3 comparison of what it would cost to acquire and

4 implement Oracle HR compared to not a -- not an

5 upgrade as it was being billed by PeopleSoft, but

6 a new reimplementation, because the technology

7 platform was so different it was a new

8 implementation. And that was said by third

9 parties, not by us.

10   And the fact that other customers

11 were so unhappy that they were looking to bring

12 lawsuits against PeopleSoft; that the perceived

13 risk of upgrading and the possibility of a lower

14 total cost of ownership with a new Oracle system

15 could be impetus enough for some of these

16 customers to move and getting just a handful more

17 was fine with us.

18   So that was pretty much the approach.

19 I don't recall there being anything we wanted to

20 give away or offer.

Kender 05-11-04

3   Q.   Was this merely an educational piece

4 to let the field know that there is this set of

5 customers you should be calling upon?

6   A.   As I recall. I don't remember if

7 there was some sort of a reward for the

8 salesperson over and above the normal commission

9 they would get for making a new sale, which is

10 usually found in sales of this size.

11   Q.   Do you recall what the result of this

12 campaign was?

13   A.   No. I'm sure we got a few more

14 customers as a result of it, though.

15   Q.   Look at page 5 of the presentation

16 Bates stamped ORLITF0055300, entitled Target

17 Accounts (Segmentation). Do you mind looking at

18 that?

19   A.   Okay.

20   Q.   What does it mean here saying

21 segmentation? What is it referencing?

22   A.   Well, as I mentioned earlier, if you

00187
1 take your whole list of accounts and you find out

2 where they have Oracle financials already, but

3 PeopleSoft HR, that's a place to start because you

4 already -- if you're not my people, but the

5 salespeople, you should already know that account.

6 They're a customer.

7   The customer already has the Oracle

8 footprint and technology and they're running it.

9 To extend to another application, be it HR or

10 supply chain, it doesn't matter, is a very easy

11 thing to do. So that's the place to start.

12   You have a relationship. They have

13 an Oracle footprint already. Extending it out to

14 Oracle HR is logical and oftentimes makes very

15 good business sense.

16   Q.   Um-hmm.

17   A.   The second area is if they have

18 PeopleSoft HR and they're running an Oracle

19 database, because we may have had an opportunity

20 with the CIO, who's already an Oracle database

21 customer.

22   So it's simply a matter of where are

1   the quickest, easiest places to contact because

2   the relationship may already exist.

3   Q.   So in this case the relationship is,

4   one, there are -- the customer's already -- or

5   prospect's already an existing Oracle financial

6   customer. That's one group, right?

7   A.   Yes.

8   Q.   And the second group would be an

9   existing Oracle technology customer.

10   A.   Yes.

11   Q.   And were lists generated for both

12 target groups?

13   A.   As much as the individual salesperson

14 knew. Once again, that's a difficult list to come

15 up with. So I expect the local salesperson to

16 know who their database accounts are.

17   My HR salespeople had a decent idea

18 of who had PeopleSoft HR and Oracle financials

19 because we asked them to look at that sometime

20 earlier. That list needed to be updated. So they

21 worked with these salespeople they're assigned to

22 in concert to -- contact into those accounts and

00189

1 see if there were some interest. And as I recall,

2 there -- we started to build a little bit of a

3 list of companies who were willing to talk with

4 us.

5   Q. Do you recall who -- you had

6 referenced a list that you attached that some of

7 your people were to come up with, Oracle

8 financials and PeopleSoft HR. Who put together

9 that list?

10   A. My solution specialists put together

11 that list and then it was -- it was consolidated

12 into a spreadsheet, and then it kind of went away,

13 because we didn't focus on it very much after

14 that, and then we dusted it off and dug it out for

15 this and tried to get it updated as to what the

16 latest information would be since it was a couple

17 years old, as I remember.

18   Q. And when did you ask him to put

19 together the original list?

20   A. It was probably early on when I -- I

21 asked them as part of their job maybe in 2000, I'm

22 guessing, that they should know the accounts that

1 they're responsible for, you know, basic selling,

2 what do they have now? Go find out. If you don't

3 know, call them and find out what do they use for

4 applications, HR, et cetera. So that's what we

5 did. It's just as a matter of understanding who

6 was out there and who to sell to.

7   Q.   Do you recall in that 2000 time frame

8 or later whether you asked your solution

9 specialists to make similar lists for other

10 vendors so, say, Oracle financials and Lawson HR

11 or --

12   A.   I'm sorry. I misspoke. That list

13 was for all vendors.

14   Q.   Oh, it was.

15   A.   Yes. That original list was not

16 about PeopleSoft. That original list was about

17 the entire market and the customers or the

18 accounts that they are responsible for. What do

19 they use today? Cyborg, PDS, ADP, PeopleSoft,

20 what do they use?

21   Q.   And it was all accounts?

22   A.   All accounts as best as they could

00191
1 identify.

00192

21   Q.   So just -- but there was no other

22 campaign similar to this one for any of the other

00193
1 vendors we talked about, ADP or Lawson?

2   A.   No. The other campaigns we had -- we

3 did campaigns with, I didn't have to involve the

4 field sales force because my team could do it with

5 the field sales force without this.

6   Q.   And so those campaigns, those were

7 simply -- and when you say "campaigns," are you

8 talking about conversations with your solution

9 specialists?

10   A.   No more than that.

11   Q.   What more?

12   A.   Well, formal training, what to say,

13 who the accounts are that have ADP, et cetera. It

14 wasn't just a conversation.

15   Q.   In terms of the training, were there

16 documents or were there presentations given at

17 those trainings to kind of detail exactly how you

18 should message in these trainings?

19   A.   I'm certain there were. I am certain

20 there were.

21   Q.   Do you recall any specifically?

22   A.   No.

00194

1   Q. Do you recall anything similar to

2 the -- did any of them have a name such as, you

3 know, "PeopleSoft 7 replacement campaign" or

4 anything similar to that?

5   A. Probably. They probably had the name

6 of who the vendor was and what we were trying to

7 replace.

8   Q. Do you recall any of the names?

9   A. No, I don't. I'm sure it was a

10 replace ADP campaign. I don't remember the exact

11 terminology that we might have used. This is not

12 anything special to say -- the page you pointed

13 out to me segmenting PeopleSoft HR and Oracle

14 financials, that's just basic common sense.

15 That's not a -- nothing fancy.

00195

20   Q.   Did he express any interest in your

21 later PeopleSoft 7 replacement campaign?

22   A.   Very well may have been. Part of it

00196
1 may have been the result of him commenting on

2 this, although we probably had it already

3 underway. And he may have said get it out the

4 door as fast as you can because the window of

5 opportunity is short, as I mentioned earlier. I

6 don't remember exactly, though.

7   Q.   Has that window of opportunity closed

8 today?

9   A.   I don't think it's completely closed.

10 It's not as wide open as it was. I think you

11 still have the opportunity to replace PeopleSoft

12 where there is an Oracle footprint if the customer

13 has a strategy to consolidate vendors and if they

14 feel that we're the one that should be kept versus

15 the other.

16   It is clearly not as open as it was

17 then because I think they'd fixed much of the

18 quality problems they had in Version 8 and have

19 had more customers upgrade, but there still are

20 opportunities.

21   Q.   Were you aware of quality problems

22 with PeopleSoft 8 Version at the time of these

1 e-mails, February, March of 2003?

2   A.   I don't remember. I probably was.

3 Whenever they existed I was aware of them. I

4 don't remember if they were at this specific time

5 or not as we sit here today.

6   Q.   But you believe those quality issues

7 have been resolved today?

8   A.   I think a lot of them have, which is

9 the natural course of any release after a couple

10 years go by, as when I told you when we had a

11 problem with our 11i release. After a couple

12 years that went away.

13   Q.   And what's the basis or source of

14 that understanding? How do you know that those

15 issues have been solved?

16   A.   Well, you see that more customers

17 upgrade. You see -- you don't see articles in the

18 trade press that there's still massive problems.

19 You see multiple releases being put out. You hear

20 what prospective customers that you might want to

21 upgrade tell you, no, everything's okay now.

22 That's how.

1   Q.   You mentioned two groups -- or two

2 targets that you encourage both your sales

3 consultants in the field in general to go after

4 and that was existing Oracle FMS customers that

5 may be using PeopleSoft HR as well as other

6 existing Oracle customers.

7   Do you recall the relative success --

8 level of success at either target -- target

9 customer groupings?

10   A.   It was probably -- I don't recall

11 specifically. It was probably better on the

12 financials customers. The only reason we listed

13 the database -- Oracle database customers is

14 because if they don't have any Oracle database,

15 since we only run on an Oracle database, it could

16 be more difficult to make that sale. So that's

17 why we had the second category.

18   So I'm sure that there were more that

19 were in the financials Oracle customer list. But

20 we didn't only approach those. Anybody who had

21 Version 7 was somebody we contacted.

22   Q.   Do you remember any names of the

1 accounts that may have switched subsequent to this

2 campaign being announced from PeopleSoft HR to

3 Oracle HR?

4   A.   I remember Merrill-Lynch.

5   Q.   Was that prior to this campaign or

6 was that after the campaign?

7   A.   I want to believe it was finally

8 decided after this campaign. I don't remember

9 specifically. I think it may have been a result

10 of this campaign that it got started. A phone

11 call from a salesperson saying, yes, let's talk.

12 I could be incorrect, though.

13   Q.   All right. Were you aware of the

14 opportunity at the Gap for switching from Oracle

15 HR to -- or switching from PeopleSoft HR to Oracle

16 HR?

17   A.   I do remember that and then I believe

18 it was stopped and then rekindled again.

19   Q.   And do you know what the current

20 status of that opportunity is?

21   A.   I believe they are still evaluating

22 Oracle HR and hopefully making a decision to

1 switch. I don't know much more than that.

2   Q. So they're evaluating Oracle HR

3 versus upgrading their PeopleSoft to HR?

4   A. I think so. I think so. I don't

5 know all the specifics on the Gap, just at a high

6 level that they, I believe, re -- stopped, started

7 again and maybe close to a decision point right

8 now. I don't know much specifics other than that.

9   Q. Are you aware of the MacroMedia

10 opportunity?

11   A. That was the name I'd heard, yeah.

12   Q. Do you know whether that was a

13 PeopleSoft switchout -- or switchout of PeopleSoft

14 HR to Oracle HR?

15   A. I believe it was. I don't know if it

16 was before or after this campaign, though. I

17 don't remember.

18   Q. Are you aware of an opportunity by

19 Crawford Group?

20   A. I don't remember that one.

21   Q. FDX, are you aware of that

22 opportunity?

00201

1   A.   I remember the name. I don't know

2 anything about the opportunity specifically. But

3 there was an e-mail I think I put out, and I

4 gathered from my sales solution specialist in HR,

5 can you tell me what we've replaced so far and

6 what might be in the pipeline?

7   I'm not sure of the timing of it, but

8 if it was after this we started to try and track,

9 okay, now, let me know weekly. Anyone else -- is

10 it a real opportunity or do they just kick tires?

11 And let's try and track it through to see how we

12 ultimately can do with this.

13   So there was a list of names in those

14 categories that I -- if I heard names, I might

15 remember the names. I wasn't specifically

16 involved, except I did get involved in

17 Merrill-Lynch when that did occur.

9   Q.   And what was the goal of this e-mail?

10   A.   The goal was to let them know about

11 the campaign that we've already discussed, the

12 plans for it, that it was coming.

13   Q.   Looking at the -- some of this echoes

14 what we talked about earlier, but the third

15 paragraph specifically, "We are scrubbing a list

16 of about 300 of the largest accounts that will

17 include Oracle financials users who have

18 PeopleSoft HR." Do you see that?

19   A.   I sure do.

20   Q.   Why do you -- do you recall what you

21 meant by saying scrubbing a list. What were you

22 doing at that point with this 300-account list?

00209
1   A.   Remember when I told you earlier that

2   early on in the formation of the HR sales team I

3   asked help to put a list together of their entire

4   territory and who they use and that we had not

5   touched it for a couple of years and we dug it

6   back up and dusted it off, that was the list we

7   were scrubbing to go back and determine is this

8   still the case since it's a couple years old? Are

9   these still the PeopleSoft customers?

10   And so we had -- I had my sales -- my

11 solution specialist contact or find out from

12 various ways, they might be able to find out were

13 they still using PeopleSoft and were they on

14 Version 7. So when we finished that, we can then

15 give that to the field salespeople because they

16 wouldn't by normal course of their job do that.

17 And that's what I was referring to when I

18 mentioned it to you earlier.

19   Q.   And so you have this whole -- a list

20 of all Oracle customers and you come up with 300.

21 Now, are these the only 300 customers that are

22 using Oracle financials and PeopleSoft 7 HR? Is

00210
1 that what that list represents?

2   A.   I don't know if they're the only

3 ones. Believe it or not it's difficult to

4 determine all of the financials and HR and

5 intersect them. So we wanted to take the ones

6 that we thought we knew of, verify we knew -- they

7 were approximately about 300 -- and get those out

8 as opposed to waiting and making sure it's perfect

9 and scrubbing and getting another source, well,

10 too much time would go by. So use the ones we

11 knew -- it's a pretty robust list -- get that out

12 and go executive on the plan.

00220

15   Q. So we've talked about this campaign

16 targeted at PeopleSoft 7 customers. We've talked

17 about at least discussions surrounding an SAP

18 campaign to target their older versions.

19   Are there other companies -- we've

20 also talked about ADP a little bit, that you

21 believe that there was a campaign three or four

22 years ago targeting ADP.

00221
1   A.   Right.

2   Q.   Are there others?

3   A.   Yes, there was.

4   Q.   And who were some of those other

5 companies that you focused on?

6   A.   I have not.

7   Q.   Okay.

8   A.   But they're -- one that comes to mind

9 is Baan, B-a-a-n. Let me see. It's just not

10 people -- companies with big customer bases. Baan

11 had a small customer base. They had dwindled over

12 the years. And I think there was something

13 happening where they were being acquired or

14 something was being discontinued and people

15 besides me, some of the Europeans and some of the

16 people in our sales force, I think maybe even

17 Lisa Pope at the time, did some things to look at

18 replacing some Baan accounts. So as I said to

19 you, you know, where there is an opportunity it's

20 what you want to do.

21   Q.   Why were you not involved in this

22 Baan campaign at all?

00222

1   A.   I think because at the time -- let's

2 see. It happened when I had the ABU. Even if it

3 did, I didn't have many manufacturing -- they're

4 primarily a manufacturing. I have a suite, but a

5 lot of manufacturers use it. I didn't have a lot

6 of manufacturing expertise in my organization, no

7 solution specialists, maybe one sales consultant,

8 who I think then subsequently left us and went to

9 work at Microsoft, the other competitor I'm most

10 worried about, and therefore there was no

11 expertise I could deliver, so they did it on their

12 own.

13   Q.   And do you know who had ownership of

14 this Baan campaign?

15   A.   No. I think some of the Europeans

16 drove it and it spilled into the U.S. I don't

17 know who actually formally owned it, if they did.

18   Q.   Do you recall if there was any

19 presentation or similar announcements to what you

20 did with the PeopleSoft 7 campaign?

21   A.   I never knew, so I don't know that --

22 so I couldn't recall one way or the other. I

00223
1 would be certain that there was a presentation,

2 because again you have to explain to the

3 salespeople what are you selling? What are the

4 key message points here? And I never saw that.

5   Q. So the Baan campaign may have been in

6 the last year. Do you recall any other

7 campaigns --

8   A. It would have been in the last two

9 years.

10   Q. Two years?

11   A. Probably.

12   Q. Do you recall any other campaigns or

13 initiatives targeting specific vendors?

14   A. I'm trying to think. Nothing that

15 comes to mind. I know that if there was something

16 that was peculiar to a particular local region or

17 market, as I mentioned earlier, you know, a

18 regional sales team would get together and say,

19 you know, I've had some success here. You guys

20 should do the same thing. And that sort of thing

21 goes on all the time. But I've not been involved

22 in one myself personally.

17   Q.   And why is that? Why is the fourth

18 quarter the biggest out of the four quarters?

19   A.   Many intelligent men have asked that

20 question. It's because there is just such a focus

21 by the sales force. It's the end of the year and

22 just things happen because of that energy and

00245
1 focus that it has brought to the sales process.

2   The other reason is, like it or not,

3 software companies have trained their customers

4 to -- on how to buy. So they knew. And if they

5 wait until the fourth quarter, in fact, the end of

6 the fourth quarter, sometimes it's midnight, that

7 they may be more apt to get a better price as they

8 negotiate with us because we want that sale in our

9 last fiscal quarter. And every software company

10 has never changed from everywhere I worked. That

11 one thing remains the same company to company.

9   Q.   Earlier you talked about one of your

10 significant competitors was ADP. Do you consider

11 PeopleSoft a significant competitor in the HR

12 space?

13   A.   Absolutely.

14   Q.   Would you consider them one of your

15 top one or two competitors in HR?

16   A.   You know, it depends on the market or

17 the industry really. You know, in government AMS

18 is strong. In healthcare, Lawson is the toughest.

19 In retail, Lawson is difficult. So is PeopleSoft.

20 ADP is everywhere.

21   You know, even when you think ADP is

22 not in the RFP, they still can show up because of

00249

1 their sales force. And we lost a sale we thought

2 we were winning at Aramark to ADP and we didn't

3 even know they were in there.

4   So it really needs to be qualified

5 on, you know, the industry. If we are working on

6 very small companies, a lot of outsourcers, a lot

7 of other software vendors like Ultimate are there.

8 So it does vary.

9   Q.   You mentioned AMS in the government

10 space. Did they offer an HR application?

11   A.   I don't know. I know they have the

12 financials. They may have an HR system. I don't

13 know.

18   Q.   How does it show that? I mean, it

19 looks -- HRMS 2,400 for Oracle versus 3,500 for

20 PeopleSoft.

21   A.   Because 3,500 is the largest number

22 of HR customers, if it's accurate, in the HR

00252

1 space.

2   Q.   And so you're simply responding to

3 the Giga information here?

4   A.   Right.

5   Q.   You have no independent knowledge of

6 whether -- strike that.

7   You have no other source of

8 information that you're referencing in your

9 e-mail?

10   A.   No. I do know that these numbers

11 vary and oftentimes are dubious, because when I

12 worked at SAP, similar issue, how many customers

13 does SAP have, how many does Oracle have, how many

14 does PeopleSoft have, and it almost changes

15 depending on who the -- is it IDC? Is it Giga?

16 Is it Meta? Who is it?

17   So they don't seem to have any rhyme

18 or reason. So sometimes we don't put a lot of

19 faith in those types of numbers. But from what I

20 saw that was the largest amount -- if it's true --

21 I don't know that it is -- of the largest amount

22 of HR customers.

00253
1   Q.   How do you know that would be the

2 largest amount? Why would 3,500 be the number

3 and why would --

4   A.   I believe SAP's was somewhere similar

5 but just slightly less and PeopleSoft was trying

6 to show that they had the most. But if the

7 number's accurate, I don't know.

8   Q.   Do you have any reason to think that

9 number isn't accurate?

10   A.   Yes.

11   Q.   And what's that reason?

12   A.   Just different people who work in the

13 industry claim that PeopleSoft would do whatever

14 they could to show that they had more numbers than

15 SAP. And if we're talking about financials, they

16 would say something else, but they didn't always

17 fit. We added them up. But nothing empirical

18 that I have.

00260

7   MR. ANDEER: And for the record,

8 Government Exhibit 125 is a two-page e-mail

9 exchange between you, Mr. Kender, and Bob Greene

10 cc'ing several other folks. The identifying Bates

11 number is ORLITF0050734.

12   THE WITNESS: Okay.

13 BY MR. ANDEER:

14   Q. Government Exhibit 125, the

15 originating e-mail is from a Bob Greene to you.

16 Who is Robert Greene?

17   A. He is my manager of the sales

18 consultants for HR at that time.

19   Q. And what were his responsibilities in

20 that role?

21   A. He managed the sales consultants. He

22 trained people. He did speaking engagements like

00261
1   this one.

2   Q. And so in this e-mail he's talking

3   about his speaking engagement in Washington, D.C.;

4   is that right?

5   A. Yes, that's what he said.

6   Q. Do you recall this e-mail or that

7   engagement?

8   A. I don't recall the engagement. I

9   somewhat recall the e-mail. I don't recall the

10 slide he's referring to.

11   Q. In your response you say -- and this

12 is starting in the second -- "Remember, SAP is not

13 the enemy, as" -- and I'm guessing that's as much,

14 but you can correct me if I'm wrong -- "as much as

15 you'll want to spank them. PeopleSoft is the

16 enemy. Bury them."

17   What do you mean by saying "SAP is

18 not the enemy"?

19   A. That PeopleSoft is in HR more of a

20 competitor in the United States than SAP is.

21   Q. And why is that? Why do you think

22 that SAP is not the competitor in the United

00262

1 States that PeopleSoft is?

2   A.   Because SAP's market share in the

3 United States is not as big as PeopleSoft's.

4 SAP's market share in Europe, since they're a

5 European company, is much larger than

6 PeopleSoft's.

7   Q.   What's -- given your experience with

8 SAP America, your experience generally in the HR

9 market, what's been -- what are the challenges for

10 SAP America in selling its HR in the United

11 States?

12   A.   The challenges are the image people

13 have of SAP in the United States as being large

14 and -- their software being large and unwieldy to

15 use.

16   Q.   What does that mean, large and --

17 could you explain?

18   A.   Yeah. It's not very pretty. It

19 doesn't look nice. It's not very user friendly or

20 very easy to use. And there are stories about it

21 being very difficult to implement, maintain, not

22 all of which are true, but that is the impression

00263
1 people have.

2   Q.   What are the -- you've mentioned

3 stories of SAP being difficult to implement. Can

4 you explain, what is -- what is -- what is that

5 positioning? I mean --

6   A.   It's well documented that there have

7 been implementations for SAP software that have

8 cost millions and millions and millions, tens of

9 millions just to implement it. Over cost,

10 overbudget, and that gets used against them fairly

11 or unfairly in HR or anything else they sell.

12   Q.   Do you use that against them? Does

13 your sales -- HR sales consulting force use that

14 against them?

15   A.   Probably. I would imagine they

16 would. I don't know specifically if they do or

17 not on an individual basis, but they probably do.

18   Q.   Would it be something you would

19 expect them to use in a sales cycle?

20   A.   Only if it were accurate. And if it

21 was not accurate I would not want them to use it.

22 In any case it was accurate.

00264

1   Q.   Can you think of specific instances

2 in which an SAP implementation was -- cost

3 millions and millions of dollars?

4   A.   Yes.

5   Q.   And what are those?

6   A.   Coca-Cola comes to mind.

7   Q.   Any other specific to HR perhaps?

8   A.   Not off the top of my head. I knew

9 there were some, though. Even when I worked

10 there, there were some.

11   Q.   Is this a problem faced by other

12 companies, other vendors, such as Oracle -- since

13 you've been at Oracle, had there been instances in

14 which an implementation may have been -- may have

15 cost millions and millions of dollars?

16   A.   Every company faces that

17 occasionally. PeopleSoft does, too. Lawson does.

18 Lawson had a large account at McDonald's, very

19 costly, but more so for SAP because of the

20 architecture of their product than anyone else.

21   Q.   What is it about their architecture

22 that makes it costly to implement?

00265

1   MR. ROSCH: Objection.

2   THE WITNESS: Well, I don't know all

3 the details --

4   MR. ROSCH: I was going to say

5 objection; lacks of foundation from this witness.

6   THE WITNESS: I don't know all the

7 details -- the technical details that would cause

8 that.

9 BY MR. ANDEER:

10   Q.   Well, you mentioned that one of the

11 reasons that it's costly to implement is this

12 architecture. What is your understanding of why

13 it makes it costly to implement?

14   MR. ROSCH: Same objection, but go

15 ahead if you have the knowledge.

16   THE WITNESS: Sometimes the -- their

17 product is very tightly integrated more than

18 anyone's. So to implement something here you need

19 to consider what it does to a ripple effect down

20 the line as best as I can explain it.

21   So you're just not putting in this.

22 You're considering everything else. We call it

00266

1 business process reengineering. The consultants

2 grab on to that and really expand it and it has

3 created many cost overruns over the years, and

4 that had been their Achilles heel for many years

5 for real. But some people will take that and

6 embellish it and make it seem worse than it is,

7 and that occurs -- and that happens to them more

8 than others because of the real issue at hand.

9 BY MR. ANDEER:

10   Q.   Turning to 125 again. In it you say,

11 "PeopleSoft is the enemy." And you said that

12 because -- why is PeopleSoft the enemy in this --

13 in this chain, in this context?

14   A.   Because in HR they had been selling

15 in the U.S. market for 12 years, as I had

16 mentioned earlier, therefore, they had a longer

17 time to build a larger customer base and had the

18 mindshare of many of the people in that room. And

19 although Bob had recently come from SAP and knew a

20 lot about them, he would be so inclined to set

21 them up negatively compared to what we were able

22 to do, I want to tell him that PeopleSoft is our

00267
1 bigger competitor than SAP right now.

Kender 05-11-04

101