ANTHONY DONALD KENDER,
having been first duly sworn, was examined and
testified as follows:

EXAMINATION

BY MR. ANDEER:

Q. Good morning, Mr. Kender. Could you please state your full name for the record, please.

A. Anthony Donald Kender.

00008

Q. And your business address.

A. My business address is -- oh, man, usually it's an airplane. It is -- you know what, I could check my business card for you. I don't know the address or --

Q. How about your home office.

A. It's in Berwin, Pennsylvania. My home address is 26 Spring Meadow Drive, Downingtown, Pennsylvania 19335.

Q. Mr. Kender, my name is Kyle Andeer. I'm an attorney with the Antitrust Division of the U.S. Department of Justice representing the United States of America in this matter.

I'm going to be asking you a series of questions today dealing with Oracle's proposed takeover for PeopleSoft as well as the enterprise software market in general.

Have you ever been deposed before?

A. I've been deposed once before.

Q. Well, let me just go over some ground rules just at the outset, so if there's any issues or questions, we can address them now.

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A. Fine.

Q. First, I'm going to ask that all your answers are verbal. It's very difficult for the court reporter to pick up nods and "ums" and "hmms" and that sort of thing. I'm going to also ask that you -- I am allowed to finish my questions before you begin to answer. That way we both understand each other. Is that understood?

A. Yes.

Q. And if you don't understand any of my questions, I'll -- please let me know and I'll attempt to rephrase and make it a little bit more clear for you.

A. Fair enough.

Q. And finally, is there any reason that you can think of that you couldn't answer my questions fully and truthfully today?

A. No.

Q. How do you go about making a case -- and I guess we'll focus on HR first. How do you go about making a case to sell HR software at Oracle?

A. If there is a company who is doing active evaluation, do you mean?

Q. Sure.

A. Then you go in, you understand their requirements, you understand the business they're in and you take their requirements, you map it to what your product does, you go back and you show them your product, how it operates, what the requirements they have.

Q. So one, you need to understand the business, the unique company's requirements?

A. Yes.

Q. And two, you need to understand what industry they're working in.

A. Sometimes.

Q. Why do you say "sometimes"?

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A. Because HR is a fairly horizontal product, so it is not as prone to industry variations as other products. Certain industries it is. Some it is not. Everybody needs payroll. Everybody needs general HR recordkeeping. Within the industry there are some nuances.

Q. So it's not something you can ignore. You need to understand what industry they're in, even in HR?

A. It is helpful to do so, yes.

Q. Earlier you mentioned that HR -- I think the term you used is more of a "horizontal" application. There are differences in industry, but they're not as great as other industries; is that -- or other products; is that right?

A. That's correct.

Q. With financial -- would the same be true for financial management software?

A. Yes.

Q. To the same extent as HR or a lesser extent than HR?

A. Hard to say. It's similar. The example I just gave of process manufacturing is a good example. Process manufacturing is very specific to four or five industries who will

actually manufacture items that require a process, like toothpaste.

Everybody needs -- everybody company has people that need to be paid. Every company has a general ledger for their financials -- to track their financials, so therefore, those products are considered more horizontal.

Q. Are there differences -- I mean, I understand at a broad level, a general ledger everybody's got to keep track of their accounts.

A. Um-hmm.

Q. Are there differences, though, from industry to industry or even company to company?

A. Yes.

Q. What are some of those differences?

A. Well, for example, in government the accounting principles that are used are different than in commercial.

In banking and insurance, the accounting -- financial accounting requirements may exist that don't exist in a manufacturer. So although everybody needs a general ledger, you

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start to build out industry functionality specific to those industries.

Sometimes it is less of actually functionality requirements and more of a comfort level. So if you're a bank -- and I can tell you that I had a lot of banks -- you feel better. Maybe you'll buy it from me because of that even if the functional differences really are minimal.

Q. Could you explain -- I mean, comfort level is -- it's sound like customers are interested in knowing whether there are other people using, say, Oracle software; is that right?

A. Sometimes. Um-hmm.

Q. Do you have -- why is that important? Why is there -- do you have an understanding of why that's important to a customer?

A. It varies. Sometimes it's important because people want to know others like them have bought the software and they feel that might lower risk in their mind. It isn't always the case, but it may be perceived that way.

Q. Is this what I've also heard referred

to as references and the importance of references, this kind of comfort-level idea?

A. Well, the importance -- it is an aspect of it. You can have references that use your software that aren't in that industry that are perfectly fine. You can have references that are in the industry. So it touches on it.

How is the term -- what is -- what is -- I mean, what is a reference? In your industry what is a reference?

A. It's a wide range. A reference might simply be a name of a company who uses our software that you are looking to buy.

It may also be a company that you would like to call and ask questions to. It also could be a company that you would like to visit and see how they use it.

Q. So it sounds like there's three different types of references. One is simply a name reference. Two is someone you can actually -- a potential client can call and talk about the software; is that right?

A. Yes.

Q. And third is a reference that you can visit and actually see how the software is being used; is that right?

A. I wouldn't say there's only three kinds, but those are three kinds.

Q. Okay. How does Oracle go about developing references?

A. It is a lot of ways. There is -- the local salesperson in San Francisco knows who a few of his local references are. Because sometimes I want to know -- forget about my industry, do you have anybody here that is a customer?

The industries business unit or the applications business unit may determine a list of customers for specific products or specific industries. There are references that get very finite on a point solution. So there is a supply chain reference, but there might be someone that just uses warehouse management.

There might be a human resources reference for someone who just uses recruitment software. So there's layers of it, levels of it. And that's very standard across the entire software industry.

Q. Are references -- developing references important to Oracle?

A. Yes.

Do you have an understanding of what it means, Leveraging the Power of Integration? What is -- is that a strategy? What does that mean?

A. Well, it means that when you have various -- when you sell a suite, various products are built to integrate together so that when it's delivered they work together, versus a company buying point solutions or best-of-breed vendors

00077
where they have to make them talk to each other.

Q. And does -- what -- how does Oracle position itself. Is it a suite provider or is it a best of -- so-called best-of-breed provider?

A. How it positions itself or what it is?

Q. What it is?

A. It's both.

Q. Could you explain? How is it both?

A. It's both because Oracle provides a suite of applications that are integrated together. But if it needs to compete in -- with a company who is typically buying a one-point solution or best-of-breed vendor, it can take one of its modules and compete there as well.

Q. Total cost of ownership, what does that mean? Could you define that for me?

A. Well, there are various definitions. Basically, what it means is it costs less to own and operate this software versus that software or set of software packages.

Q. And how is that determined? How do you come up with a total cost of ownership?

A. Again, it is determined various ways, and I'm no means an expert in total cost of ownership, but it is things like the price of the software itself, the ongoing maintenance of that software, the cost to implement it, the ongoing cost to support interfaces between that software and other software packages.

So if you buy software from any suite vendor, theoretically you don't have to maintain those interfaces between various products because they come delivered, and therefore your internal IT staff costs should be less.

Q. So you said the one way of messaging this integration -- or one of the points of the integration message is this lower cost of -- lower total cost of ownership.

A. Yes.

Q. How does integration lower the total cost of ownership?

A. As I just said, you don't have to have interfaces written that you support yourself between various models. If the integration is already there, you don't have to incur the expense of maintaining those interfaces. When a release changes, now you've got to go back and integrate those products again.

Q. Are there any other -- in terms of total cost of ownership, is there any other advantages in terms of a suite offering versus the

alternatives?

A. Well, the -- all of the different software packages are designed to work together, so theoretically the interface of information should be smoother.

The end user, people using the software, learn to use one type of software versus various of them. Your IT organization only needs to understand one technical environment, not multiple technical environments, which would lead typically to lower people -- less people at lower cost.

Q. The interfaces that you mentioned, what are -- could you explain that term for me? What are the interfaces between products?

A. Well, here you're getting a little bit out of my area of expertise, so I can tell you at a high level.

Q. Okay.

A. As you'd want to get lower, I wouldn't be able to. But if you have a company X general ledger and company Y's HR payroll system,

you need to get transactions from HR and payroll to update the general ledger.

If they are two different companies, there has to be an interface to send the information back and forth. When company X or Y comes out with a new release of software, now that interface may not be the same. So now you've got to go back in there, make the changes, fix it, maintain it, learn it, go to training on it. All of that takes time and money and cost.

If you had a financial system and an HR and payroll system from -- all from company X, whenever there is a version change that interface is automatically changed. There is nothing for you to do. The information will still pass without you spending any time at all in fixing it, maintaining it, changing it.

Q. So the cost with these interfaces, one is just simply maintaining the interface and billing it itself.

A. Yes.

Q. And two is updating the interface

when, I believe you said, new releases or new versions come on the market; is that right?

A. That is correct.

Q. Is there a difference in terminology between releases and versions?

A. Not really. They're typically used interchangeably.

Q. Okay. Do you recognize Exhibit 107?
A. Yes.
Q. And what is this document?
A. I believe it's a presentation done by Russell Pike who was part of the development -- specifically the financials development organization.
Q. And who is Russ Pike?
A. Russ Pike is part of the financials development team, and he had various jobs in rolling out new products, communicating to the field things that he did, usually not in conjunction with my organization and almost

sometimes counter to it.

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

A. No.

Q. And when you say "counter to it," what do you mean?

A. Well, he would decide to go out and present training on a product or a competitor without coordinating that with marketing or with the ABU, and sometimes that would confuse the field because they would be hearing from different organizations and people not always the same message.

Q. And this document is titled Attack PeopleSoft. And it looks like -- you know, Mr. Pike's name is on this document. And also says -- it looks like it was created in November 2002. Does that square with your recollection?

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

Q. Do you agree with the contents of this presentation?

THE WITNESS: I don't know. I'd have to look. I mean, there is a lot there. I don't necessarily agree with everything that's in there.

Q. I know it's a long -- well, then, let's look specifically at page 45395.

A. 45395.

MR. ROSCH: Thank you. That's better.

THE WITNESS: Okay.

BY MR. ANDEER:

Q. And before I ask any questions on this specific slide, do you recall giving Mr. Pike any feedback on this presentation after it was given?

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A. Yeah. I told him I didn't agree with that slide.

Q. What about this slide don't you agree with?

A. Well, I felt that he wasn't qualified to say that HRMS was a minus versus a plus to PeopleSoft because he's a financials guy and that he would probably be giving the field sales team the wrong impression of the Oracle HR solution. Something like -- something to that -- if I remember correctly.

Q. And this slide is titled Selling Against PeopleSoft and there is a table with a series of pluses and minuses; is that right?

A. Yes.

Q. What's your understanding of what this slide is supposed to depict?

A. Well, what -- in his opinion -- I'm not sure where he got his information from -- where Oracle would have an advantage over PeopleSoft from a sales and functional standpoint. I -- I assume. I don't really know what he -- I

don't know exactly what he was trying to get across.

Q. And on this slide the first row -- rather the second row is HRMS, which is -- is that human resources Management?

A. Yes.

Q. And it has a minus sign in the Oracle column and a plus sign in the PeopleSoft column, and that's an area where you disagreed with Mr. Pike; is that right?

A. He has the minus sign in the Oracle column with the word "close."

Q. Thanks for the correction.

What is it about that you disagreed with Mr. Pike? I mean, what was the source of your disagreement?

A. Well, as I said, I don't think he had the knowledge of HR to say one way or the other. And even if it were true, I'm not so sure that presenting it that way to the sales force is the right way to go about training them.

Q. At the time did you believe this to

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,

00093
that's for sure.

Q. Did you play any role in closing the gap since you joined Oracle?

A. Closing which gap?

Q. Well, you'd mentioned there was -- you might have agreed with this when you first joined Oracle in the sense that maybe there were -- maybe Oracle didn't have everything PeopleSoft may have had. Is that right?

A. Well, it's hard to say what he is referring to here. He says selling against PeopleSoft. So I don't know if he's referring to functionality or how easy it is to sell or -- it's very -- it's an ambiguous slide.

Now, he had certain words he used to present this slide back in 2002. I don't remember exactly what it was he said at the time and right now today. So it's hard for me to answer your question unless I know more specifically what it might be referring to.

Q. Would you agree with this characterization today?

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

Q. Okay.

A. Would it be in functionality and selling?

Q. Let's just say functionality. Would you agree with this -- if this was referring to functionality, would you agree with this slide today?

A. No.

Q. Would you -- how would you change it? What's the difference between today and perhaps when the time -- at the time of this presentation?

A. Specifically about HRMS?

Q. HR functionality.

A. I would say Oracle's HRMS is either even or better than PeopleSoft's, generally speaking. It gets more specific if you break the modules down.

Q. How often -- before I leave this slide, the second or third row, depending on your perspective, is Financials, and again there is a plus sign in Oracle and a plus sign in PeopleSoft. In terms of functionality, do you agree with that?

THE WITNESS: I don't know.

Q. Do you have any knowledge of Oracle's financial products?

A. Very little. As far as functionality and how it works, very little. I don't have a lot of knowledge about the HR product because I'm not a demonstration product specialist. I have a high level of knowledge of the HR product. I have very little knowledge of the financials product.

Q. What knowledge do you have of

Oracle's financials package on any level?

A. Really, the highest level, that -- it's one of our stronger applications. It's been out longer, and we have quite a few customers, demonstrates well. We get selected quite often when we sell it. That's pretty much it.

Q. Did you have responsibility for overseeing the financial sales consultants or financial sales solution -- or solution specialists?

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

Q. Do they have any -- do they exist today?

A. No. There are financials sales consultants --

Q. Okay.

A. -- in the field, not in my group. There are no financials solution specialists simply because we didn't feel the sales force needed support in that area. They were already very strong there.

00097

Q. Looking at this sort of presentation more broadly, how often are vendor-specific presentations given at Oracle?

A. I'd say quite often and on various levels. I mean, there's probably one given weekly on some vendor.

Q. Does your organization have responsibility for preparing these sorts of presentations?

A. Not exclusively.

Q. But they have prepared these sorts of presentations in the past?

A. We have done some in the past, yes. Anyone can do one. You know, if you were running a small sales team of five or six salespeople right here in San Francisco and you have a weekly sales meeting, which these guys typically do, one of your salespeople may be seeing a vendor quite often, you might sit down and say here's what I know about this competitor. I've come up against him X number of times. I've gathered this information from their Website. I'm sure it

happens all the time, because you have to help salespeople learn how to sell against competitors.

Q. Why do you need to educate salespeople to sell against competitors? Why is that important?

A. Because that's who they're competing with and they need to know how to position their solution versus what a competitor -- or how a competitor is positioning their solution so that they can compete and win.

Q. What types of things do you feel it's important to communicate in these sorts of vendor-specific presentations? What are the messages that you would hope to see in some -- a presentation such as this?

A. Well, I can't take any credit for a presentation such as this. This was completely out of my purview. Didn't know what was happening, not something my organization came up with from a content standpoint.

Q. But you did say that your organization has created similar presentations?

A. I can answer your question. I just can't answer it as a presentation such as this because we didn't do this.

Q. Okay.

A. But in a competitive presentation that my group might give, the things I think would be important, is that what you're asking?

Q. Yes.

A. I would think it would be important to understand where you have an advantage and where your competitor has an advantage such that you know how to position your solution against those advantages and disadvantages.

Q. How does your organization educate itself as to where its relative advantage is?

A. Oh. Well, the biggest way we do that is after they're involved in a sale cycle, win or lose, basically debrief with the organization what did they learn.

Well, I learned that Microsoft is positioning against us this way, and I learned that ADP is positioning against us that way and

00100
they put their pricing together, and I heard that Lawson is using their suite integration this way, and I learned that PeopleSoft does that, and you kind of gather that information and then you try to package it and disseminate it so that you keep people up to date with what they are seeing and what we are seeing in the marketplace. And that has been the way it's been in every company I've worked for and I'm sure way before I joined the work force.

Q. So one is the sale cycle debriefs, which after the sale's been completed, either win or loss, you go back to the members of the team and talk to them about what happened?

A. By and large the biggest way right there.

Q. In that process how did they know how -- whoever the vendor is that they're competing with, how do they know what they're doing? I mean, how do they know the sorts of issues you brought up, the positioning, the messaging?

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A. The -- most of the time it's the customer saying, well, wait a minute, you know, or the person who leads the evaluation, the systems integrator, like maybe Accenture or KPMG or something like that.

You know, you're saying this and they're saying that or they can do these things. How do you respond to that? Or this is what they say about you or that they can do these things and you can't. What's your response? And so, you know, you need to have a response for that.

If you know what they're going to be in advance, then you position that in advance. If you don't know and you get caught, you know, with your pants down on that, you need to then respond. Then you learn from that next time so that you can position in advance.

In the government world, a sale at the state of Florida a few years back with SAP, the state of Florida has what they called a Sunshine Law, which means their demonstrations for every software company is public.

00102
So you can sit there and watch me give me a presentation, a demonstration and take as many notes as you want, as we could for the others. So every vendor sits there and they watch everybody else present, they listen to how they position, they watch their demonstrations, then they come back and say, "Here's what I learned."

You know, the government, AMS, is a huge competitor of ours and, you know, you watch and see what they do, and then you know the next time you compete with them they're going to do it a certain -- they do it a certain way. So things like that is not unique to anybody. We all do it.

Q. Does this refresh your memory to some of the reasons you may have been losing to PeopleSoft at the time?

A. Off-the-top-of-my-head response, yes.

Q. And what were some of those reasons?

A. Well, as I stated in here, from an HR standpoint, they had been in the business much longer. They had more marketing references in vertical markets, et cetera.

I had felt that we demonstrated our software as good or better in HR and that's why we were able to win more than we lost versus PeopleSoft in HR.

I think in the general applications, in the field sales consultants, that their sales consultants were not trained as well as mine were and maybe fell into some demo traps that help the customer perceive product superiority where it may not have been.

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Q. So referring back -- and I know this is difficult, but to Exhibit 108 in which Mr. Block had asked you about the demo issue, that PeopleSoft was out-demoing. At least that was his understanding.

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

Q. Right. It's about four months earlier?

A. Four months earlier. Yep.

Q. At the time of this March e-mail, Exhibit 110, that problem had been solved or -- if there was a problem at all?

A. Well, I don't know, because Keith's message on December 14, 2002, isn't very specific. It was --

(Interruption for clarity.)

THE WITNESS: It was not very specific saying I've heard we were getting out-demoed. Tell me why. I didn't know -- I don't know if we had more banter on that. Was he saying in general? Was he saying HR financials? You know -- so I wouldn't say that the problem was

00116
resolved. I always felt that we had people who could demonstrate very well in HR. The field, different story, but I wasn't responsible for them.

BY MR. ANDEER:

Q. So in Exhibit 108, if it's just referring to HR, you wouldn't have agreed with Mr. Block's e-mail at that time, the December e-mail talking about out-demoing.

A. Hard to say. We improved over time. Where we were at that specific point in time, hard for me to say. But I felt that by the time -- the end of 2002 rolled around one thing we had resolved from when I was hired was our sales consultants were better at demoing than they were, relatively speaking, in 1999.

Q. Focusing on 108, do you recall Mr. Block inquiring about Oracle's ability to or other vendors' ability to out-demo Oracle?

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

Q. You don't remember any other specific instances in which he may have asked you about,

00117
say, Lawson?

A. I don't remember. I do know that the demo issue is one that comes up about PeopleSoft a lot because they're good at demoing, so that's why you would expect to hear that question about them.

Q. Looking at Exhibit 110, some of the reasons you gave were the length of time PeopleSoft has been in the HR business and the fact that they had references in a number of different vertical markets. Those were two reasons you gave as to why Oracle might be losing to PeopleSoft in HR; is that right?

A. Yes, if/when we lost.

Q. What -- focusing on the first. What is the length of time in the HR business? Why is that a reason that you may have been losing to PeopleSoft?

A. Well, if they were selling HR for 12 years, over that time they were able to build up a large customer base, probably across various vertical markets, because in 12 years it would happen naturally. So that is something you have

to overcome, and that's what companies overcome all the time.

Q. What was Oracle doing to overcome that?

A. What Oracle does to overcome that is the same as what every small or large software company does to overcome if they're not large in a market, product or industry related. You focus on that market, you try to get a foothold by getting a customer or two and you expand from there.

It's what companies like Lawson did when they said, you know, we're going to focus on what I call a bowling-pin approach. Healthcare, do that really well, get a couple of customers, grow from there. Retail, hospitality. They did that very well.

It's what Chronos did when they said we're going to expand from our dominant position as a time management niche vendor and start selling human resources product. Low barrier to entry. We have a customer base in time management. Let's start going back to that same

00119
group of people selling an HR product, get a couple, grow from there. So it's what we did as well.

Q. The second point you say here is "they have more references in more vertical markets than we do." Why is that an advantage for PeopleSoft?

A. Well, if you're selling to a bank and you have only a couple of banks that use your product and they have a list of banks that use their product, that's an advantage for them that you have to overcome with other advantages you might have.

And as I said to you earlier when you asked me how do you train -- why do you train salespeople on how to sell against competitors,

00121
that's the reason why.

Every situation is different. You have certain advantages. They have certain advantages in that given situation. You try to diffuse their advantages with your advantages. In that case, having more banks, selling to a bank, than we do is an advantage for them.

But I've made an entire career out of still finding a way to be successful despite situations like that. And it's not difficult to do. And it's how -- an example would be -- Brass Ring is a relatively new vendor in the recruitment software business.

Recruitment software didn't even exist a couple of years ago. I believe one of the first companies, if not the first company to do it, was Lawson, was considered a suite vendor. But they're not the leader today. Brass Ring is the leader.

Well, how can that be? How did Brass Ring step into the leadership role when Lawson was first? Because they did what I just

00122
said, and they weren't afraid to go head to head even though Lawson may have more customers. So that's how.

Q. What are some of the advantages that you encourage your sales consultants or even the field to use in competing against PeopleSoft for an HR opportunity?

A. It is a difficult question to answer because it is absolutely dependent on the specific sales situation.

What are some of the -- how have you seen PeopleSoft position itself in a situation such as that?

A. Where they have a lot of customers in a vertical?

Q. Let me be a little bit more specific. We're using banking as kind of our example and it's an HR opportunity. What sorts of messages have you seen PeopleSoft push? You've mentioned that Oracle has pushed a number of these different areas. What's been the response?

A. What's been the response?

Q. Or not the response. What, in your experience, has PeopleSoft been emphasizing in these sorts of opportunities?

A. Well, in a bank situation they will

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have a presentation, I am told, that shows other banks, maybe even some speaking tracks of CFOs from that bank. So when they're finished, the prospective customer, who was a bank, should theoretically have a comfort level -- that's the idea -- to reduce their perceived risk so they will buy -- so they would retrospectively have a comfort level that doing business with PeopleSoft would be a safe thing to do because other banks like them have done it. So I would expect PeopleSoft to press that advantage.

Q. You mentioned that with every new release some percentage of your existing customers will look outside.

A. I mentioned any company's existing customers will look outside, not just Oracle's.

Q. Right.

Do you have -- my question deals with Oracle. Do you have a feel for what percentage of your 10.7 customers looked to other vendors?

A. I don't. I don't know. It would be pure speculation. I do know some that -- my -- my point was, Kyle, that they will do so -- they're more apt to do so because a competitor is knocking on their door.

They're more apt to listen now, because the life of software is anywhere from five to seven years. So if you bought software two

00130
years ago, you're probably not a prospect for me, because you're going to -- you just bought it, you're going to make it work, and it cost so much money you've got to get some return on your investment by keeping that. And it's typically five to seven years.

So when a new release comes out and you have your existing vendor knocking on your door every six months, we'd like you to upgrade. We'd like you to upgrade. We'd like you to upgrade, when you finally decide you're going to upgrade, your competitors -- the competitors are also knocking on your door because they know here's an opportunity. Maybe you'll listen to me. And if I can get one of them to say, hey, you know what, that's pretty good and put a compelling price on the table, now I have an opportunity.

So it would behoove that competitor to know when those inflection points are occurring and put a campaign around that to go after it. And that's what SAP's doing to us right now.

That's what I did to ADP, because ADP

00131
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

00132
specific area. Work with your local salespeople and let's see if maybe a few others might be upset. So it wasn't any -- it was let's go get this done and train people up. What do you say? You know, what are the things you do and get your less together and go. So that's what we did.

Q. So you said this campaign was several years ago. Was it 2002? 2001?

A. I don't remember the exact year. It was clearly two or three years ago, maybe even four. Somewhere -- more likely around three.

Q. And you said that ADP is your biggest competitor in the HR?

A. I think ADP is -- having worked there I know. In fact, half -- half -- most of the people on my staff of HR worked in a service bureau environment at some time. ADP, Ceridian, Paychecks, Pro Business before ADP acquired them.

And having worked there myself, they have the Procter & Gamble approach. You know, when you go to the store shelf you see Cheer and you see Tide and you see a few different products,

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

Well, they have salespeople all over the place. Different divisions, organizations that almost overlap. And there is tension in the model such that, you know, is it your account? Is it my account? Doesn't matter. Someone's calling on it. Even if we're fighting the company gets their market share.

So ADP is -- they're everywhere. And even if you don't see them, maybe in an RFP, you think they're not in there, they're in there. I've lost a sale where they weren't in the RFP and they won a sale.

Q. So one reason they're a big competitor is their sales approach in the sense that they have people calling all these different accounts.

A. Right.

Q. Do you see them anywhere else? I mean, how do you measure their significance?

A. I message their significance -- if

you look at IDC -- and I don't have the numbers off the top of my head. I think they're in the top two, three or four as far as HR vendors' customer size.

I see -- if I look at a pipeline report and I ask my salespeople who they're competing with, I typically -- you know, I have seen it so many times I can tell you, generally speaking, ADP's in many of those accounts, plus from personal experience.

I still have friends there. I know how aggressive they are. They have a very wide offering for their product. They're in a lot of industries. They're in a lot of sized organizations. They sell their HR product. It's priced inexpensively which makes it difficult to compete with them.

Q. Do you consider their product to be a functional equivalent to Oracle's product?

A. In many areas, yes. In some areas, no.

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

00135
put it on a percentage basis of where they have an equivalent product in the HR suite?

A. I would say 75 percent of what we offer they offer just as well. We have things like iLearning and iRecruitment. They don't have that. So they'll oftentimes -- they'll partner with someone to make up for the fact that they don't have it.

Like they partner with Chronos for time management. They resell. They just don't partner. They resell the Chronos product for time management. So they have -- they have quite a bit of functionality, quite a bit of a footprint, and where they don't have a footprint, they partner.

Q. Now, you think they have a footprint in about 75 percent of the HR offering?

A. Yeah. And so does Ceridian.

Q. And you had mentioned that one of the sources of your information is the IDC data. Do you find that -- you mentioned there were two, three, four, somewhere in there; is that right?

A. You know, I vaguely remember

00136
seeing -- and IDC isn't the, you know, definitive answer, but they're one of the places. And they list size of -- and ADP's up there with the top HR vendors, and we clearly see them.

Q. Is IDC something you typically rely on, the figures in there?

A. No. But I've seen IDC reports in the past, even at previous companies I worked for. It's one data point, if you will. It's nothing definitive. In fact, I used to --

MR. ROSCH: Wait the question.

BY MR. ANDEER:

Q. You mentioned also the pipeline report is another source of -- or another basis for the fact that ADP is a significant competitor to Oracle.

A. Um-hmm.

Q. What is the pipeline report telling you?

A. I don't have specifics on it, but I have my HR sales team when I manage them specifically list what sales cycles they're

00137
working on and who the competitors were. And we would do strategy, account reviews. Tell us about your sales you're working on right now and let's see if we can help each other. ADP would come up more often than not.

Q. For HR opportunities?

A. Oh, absolutely. Absolutely.

Q. You mentioned the sales campaign against SAP several years ago -- or ADP rather.

Actually, before we go into that, going back to the releases, you mentioned currently SAP is attacking your 10.7 customer base; is that right?

A. That is true.

Q. Are you aware of any other vendor attacking your 10.7 customer base?

A. I am aware that all of them are, but I am aware that SAP has a formal campaign.

Q. How many 10.7 customers have you lost to a competing vendor?

A. I don't know. I don't have the actual specifics on that. I do know that we had

00138
to try and respond and protect that 10.7 customer base because it was under attack, the ones that weren't the early adopters, obviously the ones that are still on 10.7, we try to protect them. And we know from our sales force that SAP is in -- giving away software and doing some things to try to unhook them.

Q. Are you aware of any other specific vendor doing the same sorts of -- or pursuing a similar strategy?

A. I am aware that every vendor sees that as an opportunity and a weakness and is competing to get in there. I'm not aware that every -- other vendors have a formal program, but I wouldn't be surprised if they did because that's what they do.

Q. And so the only vendor you know by name that was targeting your 10.7 base was SAP, or at least it had a formal campaign in place?

A. That's the only one I knew about, but I -- but as I said before, it's such common practice that every software vendor would try to do something like that. So the overall idea was protect that 10.7 base.

In SAP's case, they were having a similar situation to we were, with their 4.6c release and forcing some customers to upgrade off of it to new software. So one of our items on

00141
this e-mail, as you'll see, is attack SAP's install at the point down below.

So force them to defend their base so that they can't only be on the offensive as they were doing to us. Because they had an inflection point such that there was a change in release levels, so we wanted to go after that, which we also did to PeopleSoft because they had a change in release -- major releases, but also did some things that upset their customer base. So clearly SAP went after their customer base as well. That's what they do.

Q. So looking at SAP, this meeting and the conference call about 10.7 install base, was that in response to a specific threat by SAP or was it just generally how do we defend our 10.7 install base?

A. It was both. See, Lawson did that to us as well. Early on when 11i first came out, Lawson ran ads and did some things to try and unhook 10.7 customers.

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.

MR. ANDEER: Ask the reporter to mark the following Exhibit 116.

00182

(Exhibit No. 116 was marked for identification by the reporter.)

MR. ANDEER: For the record, Exhibit 116 is Bates stamped ORLITF0055295, and it's a one-page e-mail and attached presentation.

THE WITNESS: Yes, I remember it. This is the Webcast that I mentioned that we gave to the field.

BY MR. ANDEER:

Q. And the Webcast was given sometime in the March -- March 2002 time frame?

A. I'm assuming it was since this e-mail is dated March 10th and it was the final cut of the presentation, therefore we must have given the actual Webcast soon thereafter.

Q. Do you recall why the focus of this was on PeopleSoft HRMS Version 7 customers? We talked about the version difference, but why HR?

A. Because we had had some success in unhooking some of the HR customers -- they have a large customer base -- and that was an opportunity for us to replace those customers who were

00183
unhappy.

Q. You had mentioned you had replaced some. At the time of this presentation, do you recall -- you'd given a number of eight to ten. Was that about right, eight to ten customers that switched from PeopleSoft 7 to Oracle?

A. I don't remember how many at the time of this presentation, although we may have made reference to it in this presentation, if you'd like me to look. We list -- we do list a couple in more specifics.

Q. Let me ask you, do you recall the expectations for this program? Was there a quota or a target set?

A. I don't recall that there was. I mean, there may have been, but I don't recall if there was or not. I would have been -- I was happy with -- actually here it says 18 customers have replaced PeopleSoft HR recently.

Q. Does that square with your recollection that there were about 18?

A. Yeah. I think that was worldwide, a

00184
list of companies worldwide. As far as goals, I don't remember if there were goals or not.

My feeling about any campaign like this, when there is an inflection point in the industry with a version release, a major version release, it's hard to put a goal on it. Now, some people like to do that.

I believe if you can get one or two, then that can mushroom into multiple others because of the comfort factor and the risk factor I mentioned to you earlier. Who else has replaced Version 7 with Oracle HR? Well, I've got some.

So the fact that we had some momentum and this many takeaways and the fact that the window of time was closing, it was impetus to have a more formal campaign to get the last few that we probably could.

Q. What was the pitch associated with this campaign? What were you offering PeopleSoft 7 HRMS customers?

A. Oh, boy, I don't remember. I'm sure it's listed in here.

00185
As I recall, we weren't really giving anything. We were trying to point out that -- a comparison of what it would cost to acquire and implement Oracle HR compared to not a -- not an upgrade as it was being billed by PeopleSoft, but a new reimplementation, because the technology platform was so different it was a new implementation. And that was said by third parties, not by us.

And the fact that other customers were so unhappy that they were looking to bring lawsuits against PeopleSoft; that the perceived risk of upgrading and the possibility of a lower total cost of ownership with a new Oracle system could be impetus enough for some of these customers to move and getting just a handful more was fine with us.

So that was pretty much the approach. I don't recall there being anything we wanted to give away or offer.

Q. Was this merely an educational piece to let the field know that there is this set of customers you should be calling upon?

A. As I recall. I don't remember if there was some sort of a reward for the salesperson over and above the normal commission they would get for making a new sale, which is usually found in sales of this size.

Q. Do you recall what the result of this campaign was?

A. No. I'm sure we got a few more customers as a result of it, though.

Q. Look at page 5 of the presentation Bates stamped ORLITF0055300, entitled Target Accounts (Segmentation). Do you mind looking at that?

A. Okay.

Q. What does it mean here saying segmentation? What is it referencing?

A. Well, as I mentioned earlier, if you

take your whole list of accounts and you find out where they have Oracle financials already, but PeopleSoft HR, that's a place to start because you already -- if you're not my people, but the salespeople, you should already know that account. They're a customer.

The customer already has the Oracle footprint and technology and they're running it. To extend to another application, be it HR or supply chain, it doesn't matter, is a very easy thing to do. So that's the place to start.

You have a relationship. They have an Oracle footprint already. Extending it out to Oracle HR is logical and oftentimes makes very good business sense.

Q. Um-hmm.

A. The second area is if they have PeopleSoft HR and they're running an Oracle database, because we may have had an opportunity with the CIO, who's already an Oracle database customer.

So it's simply a matter of where are

00188
the quickest, easiest places to contact because the relationship may already exist.

Q. So in this case the relationship is, one, there are -- the customer's already -- or prospect's already an existing Oracle financial customer. That's one group, right?

A. Yes.

Q. And the second group would be an existing Oracle technology customer.

A. Yes.

Q. And were lists generated for both target groups?

A. As much as the individual salesperson knew. Once again, that's a difficult list to come up with. So I expect the local salesperson to know who their database accounts are.

My HR salespeople had a decent idea of who had PeopleSoft HR and Oracle financials because we asked them to look at that sometime earlier. That list needed to be updated. So they worked with these salespeople they're assigned to in concert to -- contact into those accounts and

see if there were some interest. And as I recall, there -- we started to build a little bit of a list of companies who were willing to talk with us.

Q. Do you recall who -- you had referenced a list that you attached that some of your people were to come up with, Oracle financials and PeopleSoft HR. Who put together that list?

A. My solution specialists put together that list and then it was -- it was consolidated into a spreadsheet, and then it kind of went away, because we didn't focus on it very much after that, and then we dusted it off and dug it out for this and tried to get it updated as to what the latest information would be since it was a couple years old, as I remember.

Q. And when did you ask him to put together the original list?

A. It was probably early on when I -- I asked them as part of their job maybe in 2000, I'm guessing, that they should know the accounts that

they're responsible for, you know, basic selling, what do they have now? Go find out. If you don't know, call them and find out what do they use for applications, HR, et cetera. So that's what we did. It's just as a matter of understanding who was out there and who to sell to.

Q. Do you recall in that 2000 time frame or later whether you asked your solution specialists to make similar lists for other vendors so, say, Oracle financials and Lawson HR or --

A. I'm sorry. I misspoke. That list was for all vendors.

Q. Oh, it was.

A. Yes. That original list was not about PeopleSoft. That original list was about the entire market and the customers or the accounts that they are responsible for. What do they use today? Cyborg, PDS, ADP, PeopleSoft, what do they use?

Q. And it was all accounts?

A. All accounts as best as they could

00191
1 identify.

Q. So just -- but there was no other campaign similar to this one for any of the other

vendors we talked about, ADP or Lawson?

A. No. The other campaigns we had -- we did campaigns with, I didn't have to involve the field sales force because my team could do it with the field sales force without this.

Q. And so those campaigns, those were simply -- and when you say "campaigns," are you talking about conversations with your solution specialists?

A. No more than that.

Q. What more?

A. Well, formal training, what to say, who the accounts are that have ADP, et cetera. It wasn't just a conversation.

Q. In terms of the training, were there documents or were there presentations given at those trainings to kind of detail exactly how you should message in these trainings?

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

Q. Do you recall any specifically?

A. No.

00194

Q. Do you recall anything similar to the -- did any of them have a name such as, you know, "PeopleSoft 7 replacement campaign" or anything similar to that?

A. Probably. They probably had the name of who the vendor was and what we were trying to replace.

Q. Do you recall any of the names?

A. No, I don't. I'm sure it was a replace ADP campaign. I don't remember the exact terminology that we might have used. This is not anything special to say -- the page you pointed out to me segmenting PeopleSoft HR and Oracle financials, that's just basic common sense. That's not a -- nothing fancy.

Q. Did he express any interest in your later PeopleSoft 7 replacement campaign?

A. Very well may have been. Part of it

may have been the result of him commenting on this, although we probably had it already underway. And he may have said get it out the door as fast as you can because the window of opportunity is short, as I mentioned earlier. I don't remember exactly, though.

Q. Has that window of opportunity closed today?

A. I don't think it's completely closed. It's not as wide open as it was. I think you still have the opportunity to replace PeopleSoft where there is an Oracle footprint if the customer has a strategy to consolidate vendors and if they feel that we're the one that should be kept versus the other.

It is clearly not as open as it was then because I think they'd fixed much of the quality problems they had in Version 8 and have had more customers upgrade, but there still are opportunities.

Q. Were you aware of quality problems with PeopleSoft 8 Version at the time of these

e-mails, February, March of 2003?

A. I don't remember. I probably was. Whenever they existed I was aware of them. I don't remember if they were at this specific time or not as we sit here today.

Q. But you believe those quality issues have been resolved today?

A. I think a lot of them have, which is the natural course of any release after a couple years go by, as when I told you when we had a problem with our 11i release. After a couple years that went away.

Q. And what's the basis or source of that understanding? How do you know that those issues have been solved?

A. Well, you see that more customers upgrade. You see -- you don't see articles in the trade press that there's still massive problems. You see multiple releases being put out. You hear what prospective customers that you might want to upgrade tell you, no, everything's okay now. That's how.

Q. You mentioned two groups -- or two targets that you encourage both your sales consultants in the field in general to go after and that was existing Oracle FMS customers that may be using PeopleSoft HR as well as other existing Oracle customers.

Do you recall the relative success -- level of success at either target -- target customer groupings?

A. It was probably -- I don't recall specifically. It was probably better on the financials customers. The only reason we listed the database -- Oracle database customers is because if they don't have any Oracle database, since we only run on an Oracle database, it could be more difficult to make that sale. So that's why we had the second category.

So I'm sure that there were more that were in the financials Oracle customer list. But we didn't only approach those. Anybody who had Version 7 was somebody we contacted.

Q. Do you remember any names of the

00199
accounts that may have switched subsequent to this campaign being announced from PeopleSoft HR to Oracle HR?

A. I remember Merrill-Lynch.

Q. Was that prior to this campaign or was that after the campaign?

A. I want to believe it was finally decided after this campaign. I don't remember specifically. I think it may have been a result of this campaign that it got started. A phone call from a salesperson saying, yes, let's talk. I could be incorrect, though.

Q. All right. Were you aware of the opportunity at the Gap for switching from Oracle HR to -- or switching from PeopleSoft HR to Oracle HR?

A. I do remember that and then I believe it was stopped and then rekindled again.

Q. And do you know what the current status of that opportunity is?

A. I believe they are still evaluating Oracle HR and hopefully making a decision to

00200

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

Q. So they're evaluating Oracle HR versus upgrading their PeopleSoft to HR?

A. I think so. I think so. I don't know all the specifics on the Gap, just at a high level that they, I believe, re -- stopped, started again and maybe close to a decision point right now. I don't know much specifics other than that.

Q. Are you aware of the MacroMedia opportunity?

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

Q. Do you know whether that was a PeopleSoft switchout -- or switchout of PeopleSoft HR to Oracle HR?

A. I believe it was. I don't know if it was before or after this campaign, though. I don't remember.

Q. Are you aware of an opportunity by Crawford Group?

A. I don't remember that one.

Q. FDX, are you aware of that opportunity?

00201

A. I remember the name. I don't know anything about the opportunity specifically. But there was an e-mail I think I put out, and I gathered from my sales solution specialist in HR, can you tell me what we've replaced so far and what might be in the pipeline?

I'm not sure of the timing of it, but if it was after this we started to try and track, okay, now, let me know weekly. Anyone else -- is it a real opportunity or do they just kick tires? And let's try and track it through to see how we ultimately can do with this.

So there was a list of names in those categories that I -- if I heard names, I might remember the names. I wasn't specifically involved, except I did get involved in Merrill-Lynch when that did occur.

Q. And what was the goal of this e-mail?
A. The goal was to let them know about the campaign that we've already discussed, the plans for it, that it was coming.
Q. Looking at the -- some of this echoes what we talked about earlier, but the third paragraph specifically, "We are scrubbing a list of about 300 of the largest accounts that will include Oracle financials users who have PeopleSoft HR." Do you see that?
A. I sure do.
Q. Why do you -- do you recall what you meant by saying scrubbing a list. What were you doing at that point with this 300-account list?

00209

A. Remember when I told you earlier that early on in the formation of the HR sales team I asked help to put a list together of their entire territory and who they use and that we had not touched it for a couple of years and we dug it back up and dusted it off, that was the list we were scrubbing to go back and determine is this still the case since it's a couple years old? Are these still the PeopleSoft customers?

And so we had -- I had my sales -- my solution specialist contact or find out from various ways, they might be able to find out were they still using PeopleSoft and were they on Version 7. So when we finished that, we can then give that to the field salespeople because they wouldn't by normal course of their job do that. And that's what I was referring to when I mentioned it to you earlier.

Q. And so you have this whole -- a list of all Oracle customers and you come up with 300. Now, are these the only 300 customers that are 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.

Q. So we've talked about this campaign targeted at PeopleSoft 7 customers. We've talked about at least discussions surrounding an SAP campaign to target their older versions.

Are there other companies -- we've also talked about ADP a little bit, that you believe that there was a campaign three or four years ago targeting ADP.

00221

A. Right.

Q. Are there others?

A. Yes, there was.

Q. And who were some of those other companies that you focused on?

A. I have not.

Q. Okay.

A. But they're -- one that comes to mind is Baan, B-a-a-n. Let me see. It's just not people -- companies with big customer bases. Baan had a small customer base. They had dwindled over the years. And I think there was something happening where they were being acquired or something was being discontinued and people besides me, some of the Europeans and some of the people in our sales force, I think maybe even Lisa Pope at the time, did some things to look at replacing some Baan accounts. So as I said to you, you know, where there is an opportunity it's what you want to do.

Q. Why were you not involved in this Baan campaign at all?

00222

A. I think because at the time -- let's see. It happened when I had the ABU. Even if it did, I didn't have many manufacturing -- they're primarily a manufacturing. I have a suite, but a lot of manufacturers use it. I didn't have a lot of manufacturing expertise in my organization, no solution specialists, maybe one sales consultant, who I think then subsequently left us and went to work at Microsoft, the other competitor I'm most worried about, and therefore there was no expertise I could deliver, so they did it on their own.

Q. And do you know who had ownership of this Baan campaign?

A. No. I think some of the Europeans drove it and it spilled into the U.S. I don't know who actually formally owned it, if they did.

Q. Do you recall if there was any presentation or similar announcements to what you did with the PeopleSoft 7 campaign?

A. I never knew, so I don't know that -- so I couldn't recall one way or the other. I

would be certain that there was a presentation, because again you have to explain to the salespeople what are you selling? What are the key message points here? And I never saw that.

Q. So the Baan campaign may have been in the last year. Do you recall any other campaigns --

A. It would have been in the last two years.

Q. Two years?

A. Probably.

Q. Do you recall any other campaigns or initiatives targeting specific vendors?

A. I'm trying to think. Nothing that comes to mind. I know that if there was something that was peculiar to a particular local region or market, as I mentioned earlier, you know, a regional sales team would get together and say, you know, I've had some success here. You guys should do the same thing. And that sort of thing goes on all the time. But I've not been involved in one myself personally.

Q. And why is that? Why is the fourth quarter the biggest out of the four quarters?

A. Many intelligent men have asked that question. It's because there is just such a focus by the sales force. It's the end of the year and just things happen because of that energy and

00245
focus that it has brought to the sales process.

The other reason is, like it or not, software companies have trained their customers to -- on how to buy. So they knew. And if they wait until the fourth quarter, in fact, the end of the fourth quarter, sometimes it's midnight, that they may be more apt to get a better price as they negotiate with us because we want that sale in our last fiscal quarter. And every software company has never changed from everywhere I worked. That one thing remains the same company to company.

Q. Earlier you talked about one of your significant competitors was ADP. Do you consider PeopleSoft a significant competitor in the HR space?

A. Absolutely.

Q. Would you consider them one of your top one or two competitors in HR?

A. You know, it depends on the market or the industry really. You know, in government AMS is strong. In healthcare, Lawson is the toughest. In retail, Lawson is difficult. So is PeopleSoft. ADP is everywhere.

You know, even when you think ADP is not in the RFP, they still can show up because of

their sales force. And we lost a sale we thought we were winning at Aramark to ADP and we didn't even know they were in there.

So it really needs to be qualified on, you know, the industry. If we are working on very small companies, a lot of outsourcers, a lot of other software vendors like Ultimate are there. So it does vary.

Q. You mentioned AMS in the government space. Did they offer an HR application?

A. I don't know. I know they have the financials. They may have an HR system. I don't know.

Q. How does it show that? I mean, it looks -- HRMS 2,400 for Oracle versus 3,500 for PeopleSoft.

A. Because 3,500 is the largest number of HR customers, if it's accurate, in the HR

space.

Q. And so you're simply responding to the Giga information here?

A. Right.

Q. You have no independent knowledge of whether -- strike that.

You have no other source of information that you're referencing in your e-mail?

A. No. I do know that these numbers vary and oftentimes are dubious, because when I worked at SAP, similar issue, how many customers does SAP have, how many does Oracle have, how many does PeopleSoft have, and it almost changes depending on who the -- is it IDC? Is it Giga? Is it Meta? Who is it?

So they don't seem to have any rhyme or reason. So sometimes we don't put a lot of faith in those types of numbers. But from what I saw that was the largest amount -- if it's true -- I don't know that it is -- of the largest amount of HR customers.

Q. How do you know that would be the largest amount? Why would 3,500 be the number and why would --

A. I believe SAP's was somewhere similar but just slightly less and PeopleSoft was trying to show that they had the most. But if the number's accurate, I don't know.

Q. Do you have any reason to think that number isn't accurate?

A. Yes.

Q. And what's that reason?

A. Just different people who work in the industry claim that PeopleSoft would do whatever they could to show that they had more numbers than SAP. And if we're talking about financials, they would say something else, but they didn't always fit. We added them up. But nothing empirical that I have.

MR. ANDEER: And for the record, Government Exhibit 125 is a two-page e-mail exchange between you, Mr. Kender, and Bob Greene cc'ing several other folks. The identifying Bates number is ORLITF0050734.

THE WITNESS: Okay.

BY MR. ANDEER:

Q. Government Exhibit 125, the originating e-mail is from a Bob Greene to you. Who is Robert Greene?

A. He is my manager of the sales consultants for HR at that time.

Q. And what were his responsibilities in that role?

A. He managed the sales consultants. He trained people. He did speaking engagements like

this one.

Q. And so in this e-mail he's talking about his speaking engagement in Washington, D.C.; is that right?

A. Yes, that's what he said.

Q. Do you recall this e-mail or that engagement?

A. I don't recall the engagement. I somewhat recall the e-mail. I don't recall the slide he's referring to.

Q. In your response you say -- and this is starting in the second -- "Remember, SAP is not the enemy, as" -- and I'm guessing that's as much, but you can correct me if I'm wrong -- "as much as you'll want to spank them. PeopleSoft is the enemy. Bury them."

What do you mean by saying "SAP is not the enemy"?

A. That PeopleSoft is in HR more of a competitor in the United States than SAP is.

Q. And why is that? Why do you think that SAP is not the competitor in the United

States that PeopleSoft is?

A. Because SAP's market share in the United States is not as big as PeopleSoft's. SAP's market share in Europe, since they're a European company, is much larger than PeopleSoft's.

Q. What's -- given your experience with SAP America, your experience generally in the HR market, what's been -- what are the challenges for SAP America in selling its HR in the United States?

A. The challenges are the image people have of SAP in the United States as being large and -- their software being large and unwieldy to use.

Q. What does that mean, large and -- could you explain?

A. Yeah. It's not very pretty. It doesn't look nice. It's not very user friendly or very easy to use. And there are stories about it being very difficult to implement, maintain, not all of which are true, but that is the impression

people have.

Q. What are the -- you've mentioned stories of SAP being difficult to implement. Can you explain, what is -- what is -- what is that positioning? I mean --

A. It's well documented that there have been implementations for SAP software that have cost millions and millions and millions, tens of millions just to implement it. Over cost, overbudget, and that gets used against them fairly or unfairly in HR or anything else they sell.

Q. Do you use that against them? Does your sales -- HR sales consulting force use that against them?

A. Probably. I would imagine they would. I don't know specifically if they do or not on an individual basis, but they probably do.

Q. Would it be something you would expect them to use in a sales cycle?

A. Only if it were accurate. And if it was not accurate I would not want them to use it. In any case it was accurate.

Q. Can you think of specific instances in which an SAP implementation was -- cost millions and millions of dollars?

A. Yes.

Q. And what are those?

A. Coca-Cola comes to mind.

Q. Any other specific to HR perhaps?

A. Not off the top of my head. I knew there were some, though. Even when I worked there, there were some.

Q. Is this a problem faced by other companies, other vendors, such as Oracle -- since you've been at Oracle, had there been instances in which an implementation may have been -- may have cost millions and millions of dollars?

A. Every company faces that occasionally. PeopleSoft does, too. Lawson does. Lawson had a large account at McDonald's, very costly, but more so for SAP because of the architecture of their product than anyone else.

Q. What is it about their architecture that makes it costly to implement?

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MR. ROSCH: Objection.

THE WITNESS: Well, I don't know all the details --

MR. ROSCH: I was going to say objection; lacks of foundation from this witness.

THE WITNESS: I don't know all the details -- the technical details that would cause that.

BY MR. ANDEER:

Q. Well, you mentioned that one of the reasons that it's costly to implement is this architecture. What is your understanding of why it makes it costly to implement?

MR. ROSCH: Same objection, but go ahead if you have the knowledge.

THE WITNESS: Sometimes the -- their product is very tightly integrated more than anyone's. So to implement something here you need to consider what it does to a ripple effect down the line as best as I can explain it.

So you're just not putting in this. You're considering everything else. We call it

business process reengineering. The consultants grab on to that and really expand it and it has created many cost overruns over the years, and that had been their Achilles heel for many years for real. But some people will take that and embellish it and make it seem worse than it is, and that occurs -- and that happens to them more than others because of the real issue at hand.

BY MR. ANDEER:

Q. Turning to 125 again. In it you say, "PeopleSoft is the enemy." And you said that because -- why is PeopleSoft the enemy in this -- in this chain, in this context?

A. Because in HR they had been selling in the U.S. market for 12 years, as I had mentioned earlier, therefore, they had a longer time to build a larger customer base and had the mindshare of many of the people in that room. And although Bob had recently come from SAP and knew a lot about them, he would be so inclined to set them up negatively compared to what we were able to do, I want to tell him that PeopleSoft is our

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1 bigger competitor than SAP right now.