

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ATPAC, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	No.
)	2:10-CV-00294-WBS-
APTITUDE SOLUTIONS, INC., ET)	KJM
AL.,)	
)	
Defendants.)	
)	

HIGHLY CONFIDENTIAL/ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF

KATHY BARALE

FRIDAY, JANUARY 21, 2011

NOTICING ATTORNEY: MICHAEL THOMAS

REPORTED BY: DINA M. MARCUS, CSR NO. 8579

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DAVE KRUGLE

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1 (Whereupon Exhibit 1 was marked for
2 identification.)

3 THE VIDEOGRAPHER: My name is Sean McAleer. I
4 will be videotaping this proceeding on behalf of Sacramento
5 Legal Video Center, Incorporated at 3028 U Street in
6 Sacramento, California.

7 The date is January 21st, 2011. The time on the
8 video monitor is 10:04 a.m. Our location is 621 Capitol
9 Mall, 18th Floor in Sacramento, California.

10 We are here in the matter of AtPac, Incorporated
11 versus Aptitude Solutions, Incorporated, et al.

12 This is the deposition of Kathy Barale. The
13 noticing attorney is Mike Thomas. The court reporter is
14 Dina Marcus of Marcus Deposition Reporting.

15 This is a single-track recording. Overlapping
16 voices cannot be separated. Private discussions on the
17 record will also be recorded.

18 Would counsel please identify yourselves, your
19 firms and those you represent?

20 MR. THOMAS: Yes, I'm Mike Thomas from the Downey
21 Brand firm here in Sacramento representing plaintiff AtPac.

22 MR. ABU-ASSAL: I am Nabil Abu-Assal of the
23 Cypress Law Firm, LLP Law Firm, and I'm representing
24 defendant Nevada County.

25 MR. THOMAS: I'm also here with Dave Krugle of

1 AtPac.

2 ----oOo----

3 BE IT REMEMBERED that on FRIDAY, JANUARY 21, 2011,
4 at the hour of 10:04 a.m. of said day, at Downey Brand LLP,
5 621 Capitol Mall, 18th Floor, Sacramento, California
6 95814-4731 before me, DINA M. MARCUS, a Certified Shorthand
7 Reporter, personally appeared

8 KATHY BARALE

9 called as a witness, after having been first duly sworn by
10 the Certified Shorthand Reporter to tell the truth, the
11 whole truth and nothing but the truth, testified as follows:

12 EXAMINATION BY MR. THOMAS

13 Q. BY MR. THOMAS: Good morning, Ms. Barale. Can you
14 please state your name and spell it?

15 A. Kathy Barale, B as in boy, A-R-A-L-E.

16 Q. And what's your residence address?

17 A. Redacted

18 THE VIDEOGRAPHER: I think I'm getting
19 interference from your air card.

20 THE COURT REPORTER: I can't turn it off.
21 Can we go off the record?

22 (Discussion off the record.)

23 THE VIDEOGRAPHER: We're back on the record at
24 10:06 a.m.

25 Q. BY MR. THOMAS: All right. I can't remember where

1 we were, but can you tell me your address again, please?

2 A. Redacted

3 Q. Thank you. We have a trial in this case set in
4 December of 2011. Do you anticipate living at that address
5 at that time?

6 A. Yes.

7 Q. Okay.

8 MR. ABU-ASSAL: Can we mark her address
9 confidential? You can always serve her through me. I don't
10 want her home address public.

11 MR. THOMAS: I have no objection to that.

12 MR. ABU-ASSAL: Okay.

13 Q. BY MR. THOMAS: Fine. Okay. Have you been
14 deposed before?

15 A. No.

16 Q. Okay. I'm going to go through the process, tell
17 you a little bit about how this process works. I'm sure
18 you've talked about it with your counsel, but just so we're
19 clear in terms of what we both expect, I'm going to do that.
20 All right.

21 You've been given an oath by the court reporter.
22 That oath places you under penalty of perjury which requires
23 you to tell the truth. Do you understand that?

24 A. Yes.

25 Q. You'll do that today?

1 A. Yes.

2 Q. You understand that you're obligated to tell the
3 whole truth; do you understand that?

4 A. Yes.

5 Q. Okay. Because we're being recorded by a court
6 reporter, she's a stenographer, she's taking down what we
7 say, we want to do everything we can do to get a clear,
8 clean record of what is said today, and there's a few things
9 we can do to make sure that happens. One is we can make
10 sure that we give only audible responses. So, for example,
11 if I asked you a question that calls for a "yes" or a "no,"
12 I would ask that you please give a "yes" or a "no" as
13 opposed to "uh-huh" or "huh-uh" or gestures which might
14 indicate a "yes" or a "no," because those don't come out
15 clear in the transcript. Do you understand that?

16 A. Yes.

17 Q. Okay. It's important also that we not talk over
18 one another, and you're doing a great job already. I'll ask
19 you questions, you provide answers. But there are times
20 when you might understand exactly where my question's going
21 before I've finished it. And in a normal conversation we
22 might talk over one another a little bit and that's fine in
23 a conversation, but in a deposition it's not a good idea
24 because Ms. Marcus, who's our court reporter who is trying
25 to take it down, when two people are talking at the same

1 time, it makes it somewhat difficult. So will you avoid
2 that or try to?

3 A. Yes.

4 Q. And I'll do the same.

5 There are times when I'm going to ask you a
6 question and you may not understand the question or there
7 may be a piece of the question you don't understand. If
8 that's the case, please let me know and I'll try to rephrase
9 it in a way that is understandable to you. Will you let me
10 know if you don't understand a question?

11 A. Yes.

12 Q. Okay. I'm entitled to your best recollection of
13 events. On the other hand, I don't want you guessing or
14 speculating. So if you have a basis to provide information
15 in response to a question, I'm entitled to it. But if you
16 don't know and it would require you to guess or speculate to
17 provide an answer, then I want you to tell me you would have
18 to guess. I still may ask you for the guess, but I'd like
19 you to clarify when you're guessing. Do you understand
20 that?

21 A. Yes.

22 MR. ABU-ASSAL: I don't think she should guess and
23 she shouldn't speculate.

24 Q. BY MR. THOMAS: Agreed with that. But if she --
25 well, we'll get to it. We'll deal with it on a case-by-case

1 basis.

2 We may take breaks. We'll take a lunch break at
3 some point, so -- but if you need to stop for a reason, if
4 you have to use the restroom or a whatever, let me know.
5 You're not chained to the table.

6 MR. ABU-ASSAL: I'm going to try to take a break
7 like around every hour because I need to walk around.

8 MR. THOMAS: Oh, that's okay. Sure.

9 MR. ABU-ASSAL: So when you finish your line of
10 questioning, that's fine.

11 MR. THOMAS: Understood. As long as -- I'm not
12 sure about the timing. I'm actually -- I'm going to be as
13 efficient as I can today. I'm not positive I can finish it
14 in the seven hours and I know the Federal Rules provide for
15 seven-hour depositions. And if we don't finish, I'll talk
16 to you about what I plan to do about that.

17 But with respect to taking breaks, I would ask
18 that we not count those toward the seven hours, which I
19 think is consistent with the rules.

20 MR. ABU-ASSAL: I agree.

21 Q. BY MR. THOMAS: Okay. Is there any reason at all
22 that you can't give your best, clear, accurate testimony
23 today?

24 A. No.

25 Q. Okay. You're not under any influence of a

1 medication or drug that would prevent you from understanding
2 my questions and testifying clearly and honestly?

3 A. No.

4 Q. All right. Did you do anything in preparation for
5 today's deposition?

6 A. I reviewed the information provided.

7 Q. Okay. And did you meet with anyone in preparation
8 for your deposition?

9 A. Yes.

10 Q. Who did you meet with?

11 A. Nabil.

12 Q. Okay. And did you meet with anyone else in
13 preparation for your deposition?

14 A. No.

15 Q. When did you meet with Nabil?

16 A. This past Tuesday.

17 Q. Okay. This week?

18 A. Yes.

19 Q. Okay. And for how long did you meet?

20 A. I believe six hours.

21 Q. Okay. Where did you meet?

22 A. Nevada County.

23 Q. In Nevada County facilities?

24 A. Yes. At the Rood Center.

25 Q. Is that in Nevada City?

1 A. Yes.

2 THE COURT REPORTER: Did you say the Rood Center?

3 THE WITNESS: Yes.

4 Q. BY MR. THOMAS: How do you spell that?

5 A. R-O-O-D.

6 Q. Did you meet with anyone else in preparation for
7 your deposition?

8 MR. ABU-ASSAL: Asked and answered. Go ahead and
9 answer.

10 Q. BY MR. THOMAS: He can object to preserve
11 objections for the record. And when he does that, just let
12 him get his objection in, focus on the question. Unless he
13 tells you not to answer, go ahead and answer the question.

14 Did you meet with anyone else other than
15 Mr. Abu-Assal for preparation of your deposition?

16 A. No.

17 Q. Did you review documents in preparation for your
18 deposition?

19 A. Yes.

20 Q. Okay. And those were provided by Mr. Assal?

21 A. Yes.

22 Q. Did you review any documents, other than those
23 provided by Mr. Assal to prepare for your deposition?

24 A. No.

25 MR. ABU-ASSAL: By the way, Mr. Thomas, my full

1 last name is Abu-Assal, just so you know.

2 MR. THOMAS: Did I say Assal?

3 MR. ABU-ASSAL: Yeah.

4 MR. THOMAS: I actually understood, I'm sorry.

5 MR. ABU-ASSAL: It's okay. Usually you pronounce
6 it nicely, so...

7 Q. BY MR. THOMAS: I try.

8 All right. Did any of the documents you reviewed
9 with Mr. Abu-Assal tend to refresh your recollection as to
10 events that transpired in years past?

11 A. Yes.

12 Q. Okay. And what documents did you review?

13 A. E-mail.

14 MR. ABU-ASSAL: What documents did she review that
15 refreshed her recollection?

16 Q. BY MR. THOMAS: Fair enough.

17 A. E-mail messages developed before I became involved
18 with the project.

19 Q. And how did e-mail messages that you -- strike
20 that.

21 What e-mail messages; can you please identify
22 them?

23 A. Communication between Placer County and Marie
24 McCluskey.

25 Q. Anything else?

1 A. No.

2 Q. So the sum total of documents that refreshed your
3 recollection were e-mail communications between Marie
4 McCluskey and Placer County?

5 A. Yes.

6 Q. And no others?

7 A. Not that I recall.

8 Q. Okay. And in what way did those documents refresh
9 your recollection about past events?

10 A. Regarding the prior work to determine the
11 extraction of the data.

12 Q. Okay. Can you please explain that?

13 MR. ABU-ASSAL: Explain what?

14 Q. BY MR. THOMAS: What you mean by -- regarding
15 prior work to determine the extraction of data.

16 A. The communication Marie had with Placer County as
17 they were deciding how to extract the information.

18 Q. When you say "extract," what do you mean?

19 A. Determine the data elements or data elements of
20 that data.

21 Q. So the word "extract" in the last sentence, what
22 you mean by that is to determine data elements of that data;
23 that's what extract means?

24 A. I was not involved with those communications, so
25 when I reviewed that, that was what I gleaned from the

1 information.

2 Q. All right. Did you talk with Ms. McCluskey about
3 those communications?

4 A. At what point in time?

5 Q. At any time.

6 A. No. Not seriously.

7 Q. Okay. Did you talk with her in any way about
8 those communications at any point in time?

9 A. Yes.

10 Q. And when was that?

11 A. When I first took over the project.

12 Q. What were those discussions?

13 A. The communication that she had had with Placer
14 County.

15 Q. What did you talk to Ms. McCluskey about?

16 A. What Placer County was planning to do to obtain
17 the information or get the data.

18 Q. Did she tell you what Placer County was planning
19 to do?

20 A. No.

21 Q. What did she say about Placer County in that
22 communication?

23 A. That they were also looking to extract the
24 information and they -- that's -- period.

25 Q. What information?

1 A. The data, the AtPac data.

2 Q. Did you discuss with Ms. McCluskey the meetings by
3 which Placer County was contemplating extracting data?

4 A. No.

5 Q. What was the purpose of that communication? Why
6 did you have that discussion with her?

7 A. When I took over the project, that was where the
8 current status -- that was where the project was.

9 Q. What project?

10 A. The migration of AtPac into Aptitude Solutions.

11 Q. And when you say that was where the project was,
12 what do you mean by that?

13 A. The contract had been signed, preparation was
14 begun to go live with Aptitude Solutions.

15 Q. All right. And so how did Placer County relate to
16 that project?

17 A. Placer County also was a user of the AtPac system.

18 Q. And what did that have to do with the migration
19 within Nevada County?

20 A. At that time they were also contemplating leaving
21 AtPac and going to Aptitude Solutions.

22 Q. And how did that relate to any aspect of what was
23 being done within Nevada County?

24 A. Sharing of information.

25 Q. What information?

1 A. How they envisioned obtaining the information --
2 the data.

3 Q. And what was your understanding as to how Placer
4 County envisioned obtaining the information, the data?

5 A. I don't know.

6 Q. You didn't have an understanding?

7 A. It was all hearsay.

8 Q. What is the hearsay; what did you hear?

9 A. That's speculation.

10 Q. No. I want to know what someone said to you.

11 MR. ABU-ASSAL: Don't speculate, but if someone
12 told you something, he's entitled to that.

13 THE WITNESS: All I know is that Aptitude
14 Solutions had been at Placer County and had determined what
15 I -- the data files that would be needed for import into
16 their system.

17 Q. For the Nevada County migration?

18 A. Yes.

19 Q. And who told you that?

20 A. Say that again, please.

21 Q. Who told you that?

22 A. Who told me that of the data elements or...

23 Q. No. You said, "All I know is that Aptitude
24 Solutions had been at Placer County and had determined
25 what -- the data files that would be needed for import into

1 their system."

2 Who told you that Aptitude Solutions had
3 determined what data files would be needed for import into
4 their system?

5 A. Tom McGrath.

6 Q. When did he tell you that?

7 A. When we decided to migrate that data.

8 Q. Do you have a date in mind?

9 A. January 2009.

10 Q. What part of the month, if you know?

11 A. Mid January.

12 Q. All right. This is kind of an offensive question,
13 but we ask it of all witnesses: You've never been convicted
14 of a felony, have you?

15 A. No.

16 Q. When did you graduate from high school, if at all?

17 I assume you did.

18 A. 1971.

19 Q. And did you attend college?

20 A. Yes.

21 Q. And where did you go to school -- college?

22 A. California State University in Hayward.

23 Q. That's changed its name now, hasn't it?

24 A. Yes.

25 Q. What's it called?

1 A. Cal State East Bay, I think, East Bay.

2 Q. Did you graduate?

3 A. Yes.

4 Q. In what year?

5 A. 1975.

6 Q. And what degree did you receive?

7 A. Bachelors in math.

8 Q. You said math?

9 A. Yes.

10 Q. Did you take any computer programming courses with
11 respect to your studies in math at Cal State --

12 A. Yes. I had computer science. At that time it was
13 called an option, which was like a minor.

14 Q. Okay. Is it fair to say you had a minor in
15 computer science from Cal State Hayward?

16 A. Yes.

17 Q. Have you had any other training in computer
18 science other than your studies at Cal State Hayward?

19 A. Formally, no.

20 Q. Okay. Are there any particular computer
21 programming languages that you're fluent in? Can you
22 program in any language at this time?

23 A. No.

24 Q. Do you feel you have a strong familiarity with
25 Linux --

1 A. No.

2 Q. -- Operating System?

3 A. No.

4 MR. ABU-ASSAL: You got to let him finish his
5 answer and then -- I mean question and then you can answer.

6 Q. BY MR. THOMAS: He's right. I'm sorry, we'll get
7 through it.

8 Where are you currently employed?

9 A. County of Nevada.

10 Q. Do you have a job title?

11 A. Information System Analyst.

12 Q. Is that within a particular department the County?

13 A. Information Systems.

14 Q. Do you have a boss, someone you report to
15 directly?

16 A. Yes.

17 Q. Who's that?

18 A. Tom Naramore.

19 Q. Do you know how long Mr. Naramore's been in that
20 position?

21 A. Yes.

22 Q. How long?

23 A. Less than six months.

24 Q. And before that who did you report to?

25 A. Phil Russ.

1 Q. When did Phil leave the County?

2 A. June 2010.

3 Q. Do you know why he left the County?

4 A. No.

5 Q. Are you sure? This is where you have to tell the
6 truth, Ms. Barale.

7 MR. ABU-ASSAL: I think she's --

8 THE WITNESS: This is speculation: We were never
9 told.

10 Q. BY MR. THOMAS: What were you told by anyone?

11 MR. ABU-ASSAL: She just said, "We were never
12 told."

13 THE WITNESS: We were never told why.

14 Q. BY MR. THOMAS: Did anyone talk to you about why
15 Mr. Russ left Nevada County?

16 A. No.

17 Q. You've never had any discussion with any human
18 being about that subject, correct?

19 A. Right.

20 Q. Okay. Did anyone ever talk to you about what they
21 think was the reason for Mr. Russ leaving the County?

22 A. No.

23 Q. Do you have a belief as to why Mr. Russ left the
24 County?

25 A. Personally I do.

1 Q. What is that?

2 A. He wasn't supporting all of his responsible
3 persons equally and fairly.

4 Q. Favoring some?

5 A. Yes.

6 Q. Who was he favoring?

7 A. The GIS Department.

8 Q. In particular, who?

9 A. Amber Beckler.

10 Q. Is she still there?

11 A. No.

12 Q. Was she terminated?

13 A. No.

14 Q. Was he terminated?

15 A. Not that I -- I don't know that.

16 Q. You're not aware?

17 A. (Witness shakes head.)

18 Q. Okay. All right. Did you report to Mr. Russ
19 during the migration from AtPac to Aptitude software?

20 A. Yes.

21 Q. And so during the entire time you worked on that
22 project, Mr. Russ was your direct supervisor?

23 A. Yes.

24 Q. And who was his supervisor at that time?

25 A. Steve Monaghan.

1 Q. Okay. And was Mr. Monaghan Mr. Russ's supervisor
2 during the entire time of the migration from AtPac to
3 Aptitude?

4 A. Yes.

5 Q. You told me what your position is within Nevada
6 County, how long have you held that position?

7 A. I was hired in 1997.

8 Q. And what was the first position you held within
9 Nevada County?

10 A. I was hired in that position.

11 Q. Okay. So you've held the same job for
12 approximately 14 years in Nevada County?

13 A. Yes.

14 Q. Okay. And before 1997 where did you work?

15 A. Lockheed Martin Missiles and Space.

16 Q. In Sunnyvale?

17 A. Yes.

18 Q. What division?

19 A. The space division.

20 Q. Doing what?

21 A. Programming.

22 Q. Any particular type of programming?

23 A. Scientific programming on classified programs.

24 Q. Any particular languages?

25 A. Fortran and C.

1 Q. Fortran 77, what; do you remember?

2 A. It's too hard to remember.

3 Q. Okay. And you were there up until 1997?

4 A. Yes.

5 Q. And when did you start at Lockheed?

6 A. I was there 17 years, so '79.

7 Q. And how long were you a programmer at Lockheed?

8 The entire time?

9 A. Yes.

10 Q. Okay. Always programming in C or Fortran?

11 A. Yes.

12 Q. And it looks like there was about a four-year
13 period before you joined Lockheed, but after you graduated
14 from college?

15 A. Yes.

16 Q. What did you do during that period?

17 A. I worked at Microform Data Systems and also Geico
18 Insurance.

19 Q. And with respect to both of those, what did you
20 do?

21 A. GEICO Insurance was computer operations and
22 Microform Data Systems started as a computer operator,
23 migrated into programming.

24 Q. And since college, you've never -- have you taken
25 any formal courses or study courses associated with computer

1 networks since joining the County?

2 A. I took a few classes at Sierra College.

3 Q. What were those?

4 A. I think they were additional C classes.

5 Q. Anything else? Any other courses you've taken
6 since joining Nevada County regarding computers or computer
7 networks?

8 A. Not any formal classes. There's a number of
9 Web-Ex classes or courses that we take, but those are minor.

10 Q. Do you hold any professional licenses or
11 certificates?

12 A. No.

13 Q. You're not a professional engineer, for example,
14 are you?

15 A. No.

16 Q. Okay. And what are your current responsibilities
17 within Nevada County?

18 A. I support the Elections Department, Recorder
19 Department, Library, Community Development Agency, period.

20 Q. And in what way do you support those departments?

21 A. I am the analyst acting as the liaison between
22 their software and their vendor and do what's necessary to
23 get their work done.

24 Q. For example, if they have a crash system or
25 document that won't open, do they call you to help them with

1 their computer?

2 A. They'll call the help desk.

3 Q. And you're one of the people that might be called
4 out to help them?

5 A. Yes.

6 Q. And how many other analysts at your level within
7 Nevada County are there currently, if you know?

8 A. You mean at my same level?

9 Q. In the position you're at within the County, that
10 do similar work?

11 A. I think there are nine.

12 Q. Are there any others that support the Clerk
13 Recorder's Office?

14 A. No.

15 Q. You're the only one?

16 A. Yes.

17 Q. And were you supporting the Clerk Recorder's
18 Office between -- from 2008 to the present?

19 A. No.

20 Q. Okay. When did you first start supporting the
21 Clerk Recorder's Office?

22 A. 2009.

23 Q. January 2009?

24 A. Yes.

25 Q. Which is when you were assigned to work on the

1 migration project?

2 A. Yes.

3 Q. Just for our terminology, when I talk about "the
4 migration project," you understand that to be the project of
5 transferring from AtPac to Aptitude?

6 A. Yes.

7 Q. So if I use that term, you'll understand?

8 A. Yes.

9 Q. And had you done any work for the Clerk Recorder's
10 Office before January 2009?

11 A. No.

12 Q. Did you feel you had any familiarity with the
13 Clerk Recorder database software before January 2009?

14 A. No.

15 Q. What other departments did you provide service to
16 before January 2009 within the County?

17 A. Social Services, Behavioral Health, Public Health.

18 Q. Did any of those departments, to your knowledge,
19 have database needs similar to Clerk Recorder software?

20 A. No.

21 Q. Do you know why you were assigned work for the
22 Clerk Recorder's Office in January 2009?

23 A. Marie and I switched positions.

24 Q. What was the reason for that switch, if you know?

25 A. Behavioral Health was in the middle of development

1 for a contract of a new system, and Marie had extensive
2 background with the State in project procurement.

3 Q. And who made the decision to switch the two of
4 you, if you know?

5 A. Phil Russ.

6 Q. Anyone else?

7 A. Not that I know of.

8 Q. And how did you find out you were going to be
9 transitioned? Did Mr. Russ talk to you?

10 A. Yes.

11 Q. What did he say about the project that you were
12 going to be assigned to work on, the migration project?

13 A. He said that he and I and Marie would have a
14 meeting to hand off where the project was.

15 Q. Okay. Did he say anything else?

16 A. Not that I recall.

17 Q. And did such a meeting take place?

18 A. Yes.

19 Q. When was the decision made that you would be
20 transitioning to support the Clerk Recorder project?

21 A. I don't know when the decision was made. I know I
22 was told at the end of December 2008.

23 Q. Do you know if it was before or after the
24 Christmas holiday?

25 A. I just know it was at the end. I'm not sure if it

1 was before or after.

2 Q. And then when did the meeting take place?

3 A. In January.

4 Q. And who was at that meeting?

5 A. Marie and myself.

6 Q. Anyone else?

7 A. No.

8 Q. Did Dan Evers?

9 A. No.

10 Q. This was the first meeting you had had regarding
11 the migration project, true?

12 A. Yes. Formal meeting.

13 Q. Had you had any informal meetings before that?

14 A. I knew that it was going on because we as a group
15 had meetings, status meetings.

16 Q. And those status meetings included all the
17 analysts?

18 A. Yes.

19 Q. And so you heard from Marie, from time to time,
20 about a project ongoing for the Clerk Recorder?

21 A. Correct.

22 Q. Do you recall any details about what she said
23 about the project during those meetings?

24 A. No.

25 Q. Okay. So tell me about this first meeting with

1 Marie; what did you discuss?

2 A. The project plan, contacts with Aptitude
3 Solutions, the weekly teleconference status report type
4 meetings; I think that's all.

5 Q. Did she discuss with you any concerns associated
6 with AtPac's proprietary information at that first meeting?

7 A. No, no.

8 Q. Did you discuss -- I think you used the word
9 "extract" in one of my earlier questions. Did you discuss
10 with her at that first meeting the topic of extracting data?

11 A. I don't recall that.

12 Q. Did Mr. Diaz participate in that meeting?

13 A. No.

14 Q. Have you ever had meetings with Gregory Diaz
15 associated with the Clerk Recorder Migration Project?

16 A. Yes.

17 Q. As you understood it, when you first joined that
18 project, the migration project, what was your position on
19 the project; what was your role?

20 MR. ABU-ASSAL: At what point in time?

21 Q. BY MR. THOMAS: Fair enough. When you first
22 started in January.

23 A. The project manager acting between the two
24 entities.

25 Q. When you say you were the project manager, were

1 you the project manager for the Nevada County's position in
2 the migration project?

3 A. Yes.

4 Q. Okay. And if you could please, I'd like to get
5 sort of a lay -- I want to understand who was involved in
6 this project. So from Nevada County you were the project
7 manager and you reported to Mr. Russ or Russ?

8 A. Yes.

9 Q. What was his role in the project?

10 A. I provided status to him.

11 Q. Did he actively involve himself in the course of
12 the project?

13 A. Not at the point that I became involved.

14 Q. So during the entire time you were involved, you
15 reported to Mr. Russ, but he didn't actively involve himself
16 in the project; is that fair?

17 A. Yes.

18 Q. All right. And he reported to Mr. Monaghan during
19 this entire project, I think you've said; is that true?

20 A. Yes.

21 Q. What was Mr. Monaghan's role in the project?

22 A. Department head.

23 Q. Do you recall him being involved in any particular
24 aspects of the project?

25 A. Not at the level I was at.

1 Q. Well, what level was he involved in, if you know?

2 A. He normally is involved during the contract
3 negotiations, so that was already completed, so...

4 Q. When you first -- strike that.

5 Were any other analysts supporting this project
6 for Nevada County?

7 A. No.

8 Q. What was Dan Evers' role?

9 A. He had no interface on the project team, on the
10 Aptitude Solutions project team.

11 Q. Let me stop you there. What do you mean he had no
12 interface; what does that mean?

13 A. He wasn't an identified project person team
14 member.

15 Q. He was not?

16 A. True.

17 Q. Okay. But when you say there was no interface,
18 what do you mean by that?

19 A. Meaning he wasn't a project team member. He
20 became involved later.

21 Q. Okay. Well, you realize he was involved in the
22 migration process also before you became involved; you knew
23 that, right?

24 A. No.

25 Q. No one told you that?

1 A. No.

2 Q. Did he ever tell you that?

3 A. No. Oh, no, on the migration?

4 Q. Or in any way assisting with setting up the
5 migration or preparing for the migration?

6 A. I didn't know that until later.

7 Q. But I'm asking you questions today.

8 A. Right.

9 Q. And my question to you was, I said, "You realize
10 he was involved in the migration process also before you
11 became involved; you knew that, right?" You do know that
12 now, at least, right?

13 A. I know that now.

14 Q. When did you learn that?

15 MR. ABU-ASSAL: To the extent it calls for
16 attorney-client communications, don't tell him that. But if
17 you know it separate and apart from what attorneys told you,
18 then you can disclose that. Go ahead.

19 THE WITNESS: Just when the isphydoux account --

20 THE COURT REPORTER: The...

21 THE WITNESS: Isphydoux. I don't know how you
22 spell that.

23 Prior to this -- the litigation, I didn't know
24 that isphydoux account existed.

25 Q. BY MR. THOMAS: Go ahead.

1 MR. ABU-ASSAL: I think she answered the question.

2 Q. BY MR. THOMAS: I don't think so, but that's okay.
3 We'll clear it up.

4 My question was, you knew Mr. Evers was involved
5 in the migration process to some extent before you became
6 involved and you eventually learned that, right?

7 A. Eventually.

8 Q. Okay. And you mentioned something about
9 isphydoux, what's that?

10 A. Isphydoux is the account that Dan Evers created.

11 Q. Okay. And how do you know that?

12 A. By reading the e-mails.

13 Q. Okay. And who was the account created for?

14 A. I believe Aptitude Solutions.

15 Q. All right. And what else did you see in these
16 e-mails about isphydoux?

17 A. That it had been created.

18 Q. And that Mr. Evers created it?

19 A. Yes.

20 Q. And that he gave the isphydoux account to
21 Aptitude, did you see that in the e-mails?

22 A. No. Just that it had been created.

23 Q. And when did you learn that he had created the
24 isphydoux account?

25 A. Maybe June of last year.

1 Q. 2009?

2 A. No. Past that.

3 Q. Or 2010?

4 A. More like 2010.

5 Q. Okay. So it's your testimony that you first
6 learned of the isphydoux account in June of 2010?

7 A. As I recall, yes.

8 Q. And what did you learn about that account? You
9 learned that it had been created by Dan Evers according to
10 the e-mails you saw.

11 A. Yes.

12 Q. And what else did you see in documents about that
13 account?

14 A. I don't recall any other e-mails other than it
15 existed.

16 Q. And you saw documents, though, related to
17 isphydoux that were something other than e-mails, right?

18 A. I don't recall those.

19 Q. Do you remember seeing logs that showed the
20 isphydoux account being used to access the ER-Recorder
21 server?

22 MR. ABU-ASSAL: Assumes facts not in evidence.
23 Go ahead.

24 Q. BY MR. THOMAS: You saw those, right.

25 A. I saw those as a result of information that was

1 provided to you or -- I didn't -- I was not aware of those
2 prior.

3 Q. And so you looked at logs that showed access to ER
4 Recorder server using the isphydoux account, true?

5 A. I did not look at the logs.

6 Q. How do you know they were related to isphydoux,
7 then, if you didn't look at them?

8 A. They were included as documentation provided to
9 you. I didn't see those as a part of Dan Evers' logs. They
10 were extracted by the time I saw them.

11 Q. And you saw extracted portions of logs?

12 A. Yes.

13 Q. These were Red Hat logs for the ER-Recorder
14 server?

15 A. I'm assuming.

16 MR. ABU-ASSAL: Don't speculate. Okay? If you
17 know something, that's fine.

18 Q. BY MR. THOMAS: And you reviewed those extracted
19 portions of the logs, true?

20 A. Looked at and reviewed I consider two different
21 things.

22 Q. All right. What's the difference?

23 A. Looked at is you see the name. Reviewed is try to
24 determine why, who, what, where.

25 Q. All right. And did you review the extracted

1 portions of the Red Hat logs that you looked at?

2 A. No.

3 Q. Why not?

4 A. I had no interest in it.

5 Q. You weren't interested in them?

6 A. No.

7 Q. And those logs indicated access to the ER Recorder
8 server, correct?

9 MR. ABU-ASSAL: Assumes facts not in evidence.

10 Q. BY MR. THOMAS: Right?

11 A. Repeat please.

12 Q. Those logs would reflect access to the ER-Recorder
13 server.

14 A. I don't know.

15 Q. Well, what did you understand the log extracts to
16 be that you looked at?

17 A. The logs reference the isphydoux. I did not pay
18 attention as to when they were utilized, when the login was
19 utilized.

20 Q. Did you pay attention as to what was being
21 accessed?

22 A. No.

23 Q. Why did you look at these at all? How did you
24 become aware of this extracted log?

25 A. I guess I was forwarded an e-mail that had that

1 information and I had -- out of curiosity I opened it.

2 Q. Just out of curiosity?

3 A. Yes.

4 Q. And at that time you did that, were you still the
5 project manager for the migration?

6 A. At that time the migration was over.

7 Q. What is NCSP?

8 A. Nevada County Security Policy.

9 Q. Were you aware of a NCSP document created which
10 authorized the creation of the isphydoux account for
11 Aptitude?

12 MR. ABU-ASSAL: At what point in time?

13 MR. THOMAS: At any point.

14 MR. ABU-ASSAL: Overbroad.

15 Q. BY MR. THOMAS: You can answer the question.

16 A. Just through this most recent communication.

17 Q. Okay. Did you ever tell anyone that Dan Evers
18 told you to hide the fact that the NCSP authorized a login
19 for Aptitude?

20 A. No.

21 Q. Okay. Were you ever interviewed by Caroline
22 Mankey?

23 A. Yes.

24 Q. Do you remember her interviewing you on March
25 17th, 2010?

1 A. I don't remember any specific dates.

2 Q. And so if she wrote in her interview notes that
3 Kathy said that she was told by Dan Evers to hide the fact
4 that the NCSP authorized a login for Aptitude, you deny ever
5 saying that to your lawyer?

6 A. I don't remember the isphydoux account as being
7 the account that was created. I do remember Dan saying that
8 an account had been created.

9 Q. Oh, so you just didn't remember the name?

10 A. The name.

11 Q. So that's why you answered no to my question,
12 because I had used the name in the question; I see. Now I
13 understand. Let's clear it up.

14 You do remember being told by Dan Evers to hide
15 the fact that the NCSP authorized a login for Aptitude,
16 correct?

17 A. I don't think he told me to hide it. I think he
18 indicated that it was not common knowledge, maybe.

19 Q. So when Ms. Mankey wrote, "Kathy was told by Dan
20 Evers to hide the fact that the NCSP authorized the login
21 for Aptitude," you take issue with those notes. You say she
22 got it wrong and misheard you; that's your testimony, your
23 sworn testimony?

24 A. I don't believe he told me to hide it.

25 Q. He told you then what? If you're changing what

1 you said to your lawyer, what did he tell you?

2 MR. ABU-ASSAL: Assumes facts not in evidence.

3 Go ahead, answer the question.

4 Q. BY MR. THOMAS: Let me stop you for one second.
5 Let me ask a different question.

6 You understand I have all of the interview --
7 well, I don't have all of them, but I have some interview
8 notes between you and lawyers for the County; do you
9 understand that?

10 A. I do now.

11 Q. You didn't know that before this deposition?

12 A. I guess I did.

13 Q. Okay.

14 A. I don't know.

15 Q. I just want to make sure you understand you're
16 under penalty of perjury. I have a version of the story
17 you've already given to your lawyers. And so when you
18 deviate from that, it calls into question your credibility;
19 do you understand that?

20 A. Yes.

21 MR. ABU-ASSAL: She's not deviating. You're
22 assuming something that hasn't existed yet. I think your
23 questions aren't clear.

24 Q. BY MR. THOMAS: All right. What did Mr. Evers
25 tell you about an NCSP that authorized a login for Aptitude?

1 What specifically did he say to you?

2 A. Dan told me that he was not -- not for me to hide
3 it, that he was not letting that knowledge out, that that
4 account existed.

5 Q. Did he tell you why?

6 A. No.

7 Q. He didn't tell you that he was told to keep the
8 existence of the Aptitude account secret?

9 A. Not that I recall.

10 Q. And you say now that you just don't remember him
11 telling you to hide the fact that the NCSP authorized a
12 login for Aptitude; you don't remember that today?

13 A. I don't remember that.

14 Q. Does your memory tend to -- like most people, it
15 fades over time about events, so the further back something
16 is, the less clear your memory is? Is that true for you,
17 like it is for me and most other people?

18 A. Probably.

19 Q. Okay. And so is it fair to say that your
20 recollection of events that occurred in 2008, 2009 was
21 better in March of this year than it is -- excuse me, was
22 better in March of 2010 than it is now, 10 months later in
23 January of 2011; is that fair? Almost another year has
24 transpired.

25 A. Possibly.

1 Q. Okay. So your memory -- you believe your memory
2 may have been better about events during the migration
3 process back in March of 2010 than it is now in your
4 deposition, right?

5 A. Possibly.

6 Q. Okay. And did he tell you who had authorized the
7 creation of an account for Aptitude?

8 A. Greg Diaz.

9 Q. And did he tell you what access rights were given
10 to the account for Aptitude?

11 A. No.

12 Q. Okay. And do you know why he told you he had
13 created an account for Aptitude?

14 A. No.

15 Q. Did he tell you he had given the account to
16 Aptitude?

17 A. No.

18 Q. Did you ask him why he was telling you about this
19 account?

20 A. No.

21 Q. What is the context in which you were having this
22 discussion with him?

23 A. I believe when we were talking about the
24 ER-Recorder system and copying of files.

25 Q. That's when he told you about the existence of an

1 account for Aptitude?

2 A. I believe so.

3 Q. When you say an account for Aptitude or when I use
4 that term, this is an account that gave Aptitude access to
5 ER-Recorder, right?

6 MR. ABU-ASSAL: Don't speculate.

7 THE WITNESS: I don't know.

8 Q. BY MR. THOMAS: Isn't that what he told you,
9 though?

10 A. I believe so.

11 Q. Did you ever confirm whether that was true?

12 A. No.

13 Q. Why not? Weren't you the project manager?

14 A. At the time -- let's see; I didn't have a need to
15 know that. I didn't --

16 Q. Why didn't you need to know it?

17 A. If it was already authorized, it was already
18 created. I didn't need to know that.

19 Q. And to the extent that login account created for
20 Aptitude was used to login to ER-Recorder server, is that
21 something you didn't concern yourself with, you didn't care
22 one way or the other?

23 A. I would care.

24 Q. Okay. Did you take any steps to learn whether or
25 not during the course of the migration process the Aptitude

1 account was being used to access ER-Recorder?

2 A. I did not look into that.

3 Q. Why not?

4 A. I had not created the account. I wasn't
5 responsible for the account. I didn't know about the
6 account as for its use.

7 Q. Did you ask?

8 A. No.

9 Q. Why not?

10 A. I didn't see a need for that.

11 Q. Weren't you the project manager?

12 A. Yes.

13 Q. Did anyone explain to you any obligation you had
14 to safeguard AtPac's proprietary information on the
15 ER-Recorder server?

16 A. I had not authorized the creation of that account.

17 Q. Do you need the question again?

18 MR. ABU-ASSAL: Just answer his question. It was
19 very specific.

20 Q. BY MR. THOMAS: Did anyone explain to you any
21 obligation you had to safeguard AtPac's proprietary
22 information on the ER-Recorder server?

23 MR. ABU-ASSAL: Assumes facts not in evidence and
24 vague and ambiguous.

25 Go ahead.

1 THE WITNESS: I understood the importance of
2 preserving proprietary information and Aptitude Solution's
3 access to ER-Recorder. I guess I did not protect that, if
4 that -- I did not pursue that further.

5 Q. BY MR. THOMAS: And you did not pursue that or
6 protect that even in your capacity as the project manager
7 for the migration for Nevada County, correct?

8 A. It was not brought up as an issue.

9 Q. Correct?

10 A. Correct.

11 Q. The answer to my earlier question, correct?

12 A. In that context, correct.

13 Q. Well, in any context, did you take any steps to
14 protect AtPac's proprietary information on the ER-Recorder
15 server from being disclosed to Aptitude?

16 MR. ABU-ASSAL: Assumes facts not in evidence and
17 it's vague and ambiguous.

18 THE WITNESS: I came into the project after that
19 account had been created.

20 Q. BY MR. THOMAS: Ms. Barale, my question really
21 calls for a "yes" or a "no." Do you need it read back or do
22 you have it in mind?

23 A. Please read it back.

24 MR. THOMAS: Dina, could you please?

25 (Record read.)

1 THE WITNESS: No.

2 MR. ABU-ASSAL: Assumes facts not in evidence,
3 vague and ambiguous.

4 Go ahead and answer.

5 THE WITNESS: No.

6 Q. BY MR. THOMAS: Did you ever read the terms of the
7 license agreement between Nevada County and AtPac relating
8 to AtPac software?

9 A. No.

10 Q. Why not?

11 A. I don't have an answer.

12 Q. When was the first time you logged into the CRIis
13 system?

14 MR. ABU-ASSAL: Assumes facts not in evidence.

15 Q. BY MR. THOMAS: Fair enough. Did you ever log
16 into the CRIis system?

17 MR. ABU-ASSAL: Vague and ambiguous.

18 Q. BY MR. THOMAS: Did you ever log into the
19 ER-Recorder server?

20 A. No.

21 Q. Have you ever in any way accessed the ER-Recorder
22 server?

23 A. Yes.

24 Q. Oh, okay. How did you do that?

25 A. Through a putty interface that Dan Evers helped me

1 to set up.

2 Q. And did you ever utilize software that Aptitude
3 provides to Nevada County commonly known as CRIis,
4 C-R-I-I-S?

5 MR. ABU-ASSAL: Vague and ambiguous.

6 THE WITNESS: Repeat that.

7 Q. BY MR. THOMAS: Did you ever utilize software
8 that -- actually, I misstated the question. Thank you,
9 Mr. Abu-Assal.

10 Did you ever utilize software that AtPac provides
11 to Nevada County, which is commonalty called CRIis, spelled
12 C-R-I-I-S?

13 A. No.

14 Q. Have you ever -- you've never logged -- you never
15 opened up a session on the CRIis Clerk Recorder software?

16 A. No.

17 Q. Okay. Have you ever seen anyone else do that?

18 A. No.

19 Q. Okay. Did anyone ever suggest to you that it
20 would be a good idea to read the license agreement between
21 AtPac and Nevada County relating to AtPac software?

22 A. No.

23 Q. And you didn't think that was a good idea as part
24 of your role as a project manager to migrate from AtPac to
25 Aptitude?

1 MR. ABU-ASSAL: That's horribly compound and
2 vague, it's almost unintelligible.

3 THE WITNESS: No.

4 Q. BY MR. THOMAS: Did anyone ever tell you that
5 there were restrictions on what disclosures of AtPac
6 software could be made by Nevada County?

7 A. No.

8 Q. Did you believe there were any restrictions on
9 your ability to disclose AtPac software to anyone?

10 MR. ABU-ASSAL: Vague and ambiguous.

11 THE WITNESS: No.

12 Q. BY MR. THOMAS: And because you didn't believe
13 that, you didn't feel an obligation to restrict who you
14 disclosed AtPac software to, right?

15 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
16 not in evidence.

17 Q. BY MR. THOMAS: Correct?

18 A. Right. I was instructed from management to do
19 what I did.

20 Q. What management?

21 A. Greg Diaz.

22 Q. What did he tell you to do?

23 A. Provide the files, the identified files.

24 Q. What files?

25 A. The data files, the raw data files.

1 Q. He told you to provide data files -- AtPac data
2 files to Aptitude?

3 MR. ABU-ASSAL: Misstates her testimony.

4 Q. BY MR. THOMAS: Correct?

5 MR. ABU-ASSAL: Misstates her testimony.

6 MR. THOMAS: She's the witness. She said
7 "correct."

8 MR. ABU-ASSAL: Well, you misstated her testimony.

9 Q. BY MR. THOMAS: Specifically, what did Mr. Diaz
10 say?

11 A. Copy the raw data files for Aptitude Solutions.

12 Q. Okay.

13 MR. ABU-ASSAL: When you're done with this line of
14 questioning, can we just take like a five-minute break?

15 MR. THOMAS: Yes. Just a couple more questions.

16 MR. ABU-ASSAL: Okay.

17 Q. BY MR. THOMAS: Do you remember providing screen
18 captures of graphical user interfaces of AtPac software to
19 anyone?

20 MR. ABU-ASSAL: Vague and ambiguous.

21 Go ahead.

22 THE WITNESS: Yes.

23 Q. BY MR. THOMAS: How did you do that if you never
24 accessed the CRIis software?

25 MR. ABU-ASSAL: Vague and ambiguous, assumes facts

1 not in evidence.

2 THE WITNESS: Recorder staff provided those to me.

3 Q. BY MR. THOMAS: You never captured any screen
4 captures yourself?

5 A. No.

6 Q. What Recorder staff provided those to you?

7 A. Eileen Moody, possibly Ann Jubane.

8 Q. Anyone else?

9 A. No.

10 Q. Did any of those people alert you to the existence
11 of obligations that Clerk-Recorder staff had to protect
12 AtPac software from being disclosed to others?

13 MR. ABU-ASSAL: Assumes facts not in evidence,
14 vague and ambiguous.

15 THE WITNESS: No.

16 MR. THOMAS: All right. Mr. Abu-Assal, certainly
17 if you need to take a break, that's fine. We're going off
18 the record.

19 MR. ABU-ASSAL: It doesn't have to be five
20 minutes. Just like a three-minute break.

21 THE VIDEOGRAPHER: Going off the record at
22 11:04 a.m.

23 (Recess taken.)

24 (Whereupon Exhibit 2 was marked for
25 identification.)

1 THE VIDEOGRAPHER: We're back on the record at
2 11:10 a.m.

3 MR. ABU-ASSAL: So the Notice of Depo was
4 Exhibit 1?

5 Q. BY MR. THOMAS: Yes, I previously marked as
6 Exhibit 1 the Notice of your deposition. I don't have any
7 questions for you about that. I just like to do that first.

8 And I'd like to mark next in order Exhibit 2. I
9 place that before you, Miss.

10 You prefer Miss Barale or Mrs.? Are you a Mrs.?

11 A. I'm a Mrs.

12 Q. I thought so. Whatever you prefer.

13 A. Mrs. is fine.

14 Q. Okay. Mrs. Barale, I've placed before you what's
15 now been marked as Exhibit 2. I'd like you to look at the
16 document and let me know if you've seen it before.

17 A. I have not seen this before.

18 Q. Okay. When it comes to knowledge associated with
19 the ER Recorder server, who do you believe is more
20 knowledgeable about that server, you or Dan Evers?

21 A. Dan Evers.

22 Q. Okay. And why is it that you believe that?

23 A. He was the network analyst assigned to that
24 server.

25 Q. Okay. And so is it your belief as a multi-year

1 veteran of the Nevada County IT Department, that Mr. Evers
2 was the most knowledgeable person regarding ER-Recorder
3 server --

4 A. Yes.

5 Q. -- within Nevada County?

6 MR. ABU-ASSAL: Wait until he finishes his
7 question.

8 Q. BY MR. THOMAS: And was it your understanding that
9 Mr. Evers also had some knowledge and familiarity with Linux
10 systems?

11 A. Yes.

12 Q. And the ER-Recorder was a Linux server?

13 A. I believe so.

14 Q. Okay. So now look back at Exhibit 2. Did
15 Mr. Evers ever provide this document to you? It concerns
16 his visit with Dave Krugle, who's here in the room with us,
17 at Nevada County in November of 2009 to look at some logs on
18 the ER-Recorder server.

19 A. I don't recall seeing this before.

20 Q. Okay. Were you aware that there was a meeting
21 between Mr. Evers and Mr. Krugle in November of 2009 to look
22 at logs on the ER-Recorder server?

23 MR. ABU-ASSAL: Vague and ambiguous.

24 THE WITNESS: No.

25 Q. BY MR. THOMAS: Turning down to item four on the

1 table on the first page of this document -- do you see item
2 four?

3 A. Yes.

4 Q. And it says, "DK" -- and he has a definition up
5 above, DK is Dave Krugle; do you see that?

6 A. Yes.

7 Q. And DE is Dan Evers; do you see that?

8 A. Yes.

9 Q. And it says, "DK and DE reviewed backup routines
10 and we determined the following."

11 It says, "One, that there is no log file
12 information on the tapes." Do you see that?

13 A. Yes.

14 Q. And in the next sentence it says, "That there is
15 AtPac source code SD file on these tapes and ERREC(P)
16 server." Do you see that?

17 A. Yes.

18 Q. Do you see his definition up above that ERREC(P)
19 is ER-Recorder Production?

20 A. Yes.

21 Q. He's a detailed-oriented person?

22 A. Yes.

23 Q. That's your familiarity with him?

24 A. Yes.

25 Q. Okay. You're smiling. Is it a fond recollection

1 of him being very detail oriented?

2 A. Yes.

3 Q. Did you know him to be truthful and accurate?

4 A. Yes.

5 Q. Okay. Did you know him to be competent?

6 A. I wasn't a network analyst, so I can't answer
7 that.

8 Q. Okay. You had no reason to think he was not
9 competent, true?

10 A. True.

11 Q. All right. And where it says, "There is AtPac
12 source code on the ER-Recorder server," that's item two of
13 row four, right?

14 A. Yes.

15 Q. And do you have any facts that you're aware of, as
16 you sit here today, to suggest that that's not true?

17 A. No.

18 Q. Do you believe that to be true?

19 A. I don't know.

20 Q. Okay. Did you ever check?

21 A. No.

22 Q. Did you think it was important as the project
23 manager for the --

24 A. I did not have a login to ER-Recorder.

25 Q. Did you ever copy files from ER-Recorder to

1 AS-Nevada?

2 A. Dan created a login to that for me to access, but
3 I never accessed ER-Recorder.

4 Q. How did you take --

5 A. -- to the server.

6 Q. How did you take data files the ER-Recorder server
7 and put them elsewhere?

8 A. Through the putty interface.

9 Q. And through the putty interface did you access the
10 ER-Recorder server?

11 A. Yes.

12 Q. Okay. So although you didn't have a login for the
13 -- so why did you -- why in response to one of my earlier
14 questions did you say, "I did not have a login to
15 ER-Recorder"?

16 A. Dan created the login so I could do the copies.

17 Q. When you say "login," what login did he create?

18 A. An ISKBarale login.

19 Q. For what server?

20 A. For ER-Recorder.

21 Q. All right. So you did have a login for
22 ER-Recorder, right?

23 A. I guess I did.

24 Q. Yes. So why did you say you didn't a couple
25 minutes ago?

1 A. Because I never -- I guess incorrectly said that
2 since I had never accessed ER-Recorder remote connect to it,
3 did any look and feel at that recorder -- or at the server.

4 Q. What did you mean, "look and feel at that
5 recorder;" what does that mean?

6 A. That means I never remote connected into
7 ER-Recorder to look at any of the other files.

8 Q. And you felt it was important to tell me that you
9 never had a login for ER-Recorder at all based on that, in a
10 sworn deposition?

11 A. I didn't recall I had a login until I had reviewed
12 the command executed to copy the files.

13 Q. And when did you recall that? You said you didn't
14 recall it until. What command are you talking about?

15 A. I think it was the PCSP recurse of copy that I
16 had.

17 Q. But that was before today, right?

18 A. Yes.

19 Q. So before today you knew you had a login to
20 ER-Recorder server?

21 A. Yes.

22 Q. And yet in my deposition about five minutes ago
23 you told me as sworn statement, "I did not have a login for
24 ER-Recorder server." That was false, right?

25 A. Yes.

1 Q. Why are you testifying falsely in a sworn
2 deposition for a federal lawsuit, Miss?

3 MR. ABU-ASSAL: She's not testifying falsely and
4 don't call her Miss, because she asked to be called Mrs.
5 And, as we all know, she's under a lot of pressure and -

6 MR. THOMAS: We don't need speaking objections,
7 sir.

8 MR. ABU-ASSAL: Okay. Well, I object to --

9 MR. THOMAS: If you have an objection, state it
10 and let's move on.

11 MR. ABU-ASSAL: I object to you harassing her.

12 Q. BY MR. THOMAS: You promised to tell the truth at
13 the beginning of this deposition, didn't you?

14 A. Yes.

15 Q. You understand it's a crime not to tell the truth
16 in this deposition?

17 A. Yes.

18 Q. And you didn't tell the truth in this deposition,
19 correct?

20 MR. ABU-ASSAL: Assumes facts not in evidence.

21 Q. BY MR. THOMAS: You did not tell the truth, right?

22 MR. ABU-ASSAL: Assumes facts not in evidence and
23 misstates her testimony.

24 Q. BY MR. THOMAS: Right?

25 A. Yes.

1 Q. How in the deposition will I know when you're
2 lying to me and when you're telling the truth? What can I
3 do to understand when you're in lying mode and when you're
4 in the truthful mode, which is it?

5 MR. ABU-ASSAL: Assumes facts not in evidence.
6 Don't harass the witness. She corrected her testimony.

7 MR. THOMAS: Only after cross-examination, sir.

8 MR. ABU-ASSAL: Well, sometimes memory needs to be
9 refreshed, as we all know.

10 Q. BY MR. THOMAS: But you've already testified you
11 knew no later than yesterday that you had a login account
12 for ER-Recorder server, correct?

13 A. Yes.

14 Q. So back to my question, how can I tell in this
15 deposition when you're telling the truth and when you're
16 not? Because we know you're willing to tell -- make
17 statements that are not true; we know that now, right?

18 MR. ABU-ASSAL: Assumes facts not in evidence.

19 THE WITNESS: No.

20 Q. BY MR. THOMAS: Why? How is that not true?
21 You've admitted that you've already done that in the
22 deposition, Mrs.

23 A. I had forgotten that I had a login other than
24 through the copy that needed a login in order to access that
25 server.

1 Q. So you accessed ER-Recorder directly with a login
2 account given to you by Dan Eves, ISBarale, right?

3 A. Yes.

4 Q. And you also connected to ER-Recorder server
5 remotely using the putty application Mr. Evers established,
6 correct?

7 A. Yes.

8 Q. And tell me what the putty application was.

9 A. It was a way to recurseably copy the identified
10 data files for preparation for copying.

11 Q. What does recurseably copy mean?

12 A. I gave it a list of files to copy. I didn't have
13 to specify each.

14 Q. And the putty application was located where?

15 A. On my PC.

16 Q. Okay. Was there a putty application on AS-Nevada?

17 A. I don't know.

18 Q. You don't know.

19 And the putty application, you said it was used to
20 copy identified data files, correct?

21 A. Yes.

22 Q. But it wasn't limited to that use, correct?

23 A. No.

24 Q. Your testimony is you used the putty application
25 to log into the ER-Recorder server and move files from

1 ER-Recorder to Aptitude's AS-Nevada server; is that what you
2 did?

3 A. I don't recall if there -- if I needed to put the
4 files -- copy them somewhere else before I moved them over
5 to AS-Nevada.

6 Q. Did you have a login account to AS-Nevada?

7 A. Yes.

8 Q. All right. And did you occasionally log into
9 AS-Nevada?

10 A. Yes.

11 Q. Did you ever log into AS-Nevada and then connect
12 to ER-Recorder and move files from ER-Recorder into
13 AS-Nevada?

14 A. I don't recall if there was an interim step.

15 Q. Did you have the ability to do that, to move files
16 directly from ER --

17 A. I don't recall.

18 Q. Okay. Did Aptitude Solutions have VPN access in
19 the network within Nevada County?

20 A. No.

21 Q. How do you know that? Because I have documents
22 that say they did.

23 A. I thought they only had access to AS-Nevada.

24 Q. Through what? Through a VPN account, right?

25 A. That was set up before I got involved.

1 Q. I understand your answer to my earlier question.

2 Let me ask it a different way.

3 You understood that Aptitude Solutions had a VPN
4 account that allowed them to remotely access their server
5 AS-Nevada within Nevada County?

6 A. Yes.

7 Q. Thank you.

8 And when was that VPN account established? Before
9 you got involved, to your knowledge?

10 A. Yes.

11 Q. Who told you that existed?

12 A. That the account existed?

13 Q. Yes.

14 A. Probably Marie McCluskey.

15 Q. And is it your -- Dan Evers has stated that
16 Aptitude Solutions had the ability to use its VPN access to
17 enter the AS-Nevada server and then from the AS-Nevada
18 server use the isphydoux account to then log into
19 ER-Recorder. Is that your understanding?

20 A. I don't know.

21 Q. You don't know one way or the other, correct?

22 A. True.

23 Q. So if Dan Evers said that is a fact, you have no
24 evidence to suggest he's wrong, correct? Correct?

25 A. Yes.

1 Q. Did that concern you that Aptitude Solutions -- if
2 in fact that's true, that Aptitude had the solution -- thank
3 you.

4 If in fact it's true that Aptitude had the ability
5 to login remotely to its server within Nevada County,
6 AS-Nevada, and then to jump to ER-Recorder and move files
7 from ER-Recorder to AS-Nevada, would that have concerned you
8 as the project manager?

9 A. Yes.

10 Q. Why?

11 A. Because that is proprietary information.

12 Q. What do you mean by "that," AtPac's information?

13 A. The access to their server.

14 Q. "Their" being AtPac's server?

15 A. Yes.

16 Q. And so you feel that if Aptitude had the ability
17 to remotely log into its server and then from that server
18 open sessions on ER-Recorder server, you felt that would
19 have been improper, correct?

20 MR. ABU-ASSAL: That question is a hypothetical
21 and assumes facts not in evidence.

22 THE WITNESS: Yes.

23 Q. BY MR. THOMAS: Let's focus a little bit more on
24 Exhibit No. 2. I think we've already covered item four.
25 Let's go to item No. 5. Do you see row five?

1 A. Yes.

2 Q. At the very bottom it says, "This means that
3 Aptitude user, isphydoux, has access to all of AtPac's
4 software. This was done as per NCSP-102, signed by Gregory
5 Diaz and dated 31 October 2008." Do you see that?

6 A. Yes.

7 Q. Does that concern you at all?

8 MR. ABU-ASSAL: Assumes facts not in evidence and
9 it's vague and ambiguous.

10 Q. BY MR. THOMAS: Does that concern you?

11 A. This does, yes.

12 Q. Tell me why it concerns you.

13 A. To allow Aptitude Solutions access to AtPac's
14 ER-Recorder server.

15 Q. Inappropriate?

16 A. Yes.

17 Q. Wrongful?

18 A. If this is true, yes.

19 Q. Well, do you know Dan Evers to be a liar?

20 A. Not personally, I don't know him as a liar.

21 Q. And as you sit here today, you don't know one way
22 or the other whether granting Aptitude access to AtPac
23 software would be a breach of the license agreement because
24 you as the project manager for the migration never read the
25 license agreement, correct?

1 A. Correct.

2 Q. And never thought it was important to do so,
3 right?

4 A. Yes.

5 Q. And Gregory Diaz never told you what the terms of
6 the license were, right?

7 A. Yes.

8 Q. Did Mr. Diaz ever alert you to the fact that the
9 license placed obligations and restrictions on Nevada County
10 and its personnel as to what they could disclose about
11 AtPac's software?

12 MR. ABU-ASSAL: Assumes facts not in evidence,
13 vague and ambiguous.

14 THE WITNESS: I don't recall.

15 Q. BY MR. THOMAS: So you're saying it's possible
16 Mr. Diaz did tell you there were restrictions on what could
17 be disclosed regarding AtPac software and you just
18 disregarded it; is that what you're saying?

19 A. I don't recall him identifying information that
20 could be provided or not provided.

21 Q. If he had told you there were restrictions on what
22 could be disclosed to AtPac, you would have complied with
23 those requests or guidelines, right?

24 A. Yes.

25 Q. Do you feel he was superior to you, that he was

1 above you in the chain of command at Nevada County?

2 A. Yes.

3 Q. Okay. He's an elected official, right?

4 A. Yes.

5 Q. Do you have the ability to say "No, Mr. Diaz, I'm
6 not going to do what you say"?

7 A. Yes.

8 Q. Okay. But still you feel like as long as his
9 request of you is reasonable, you need to follow his
10 directive?

11 A. Yes.

12 Q. And as you sit here today, you don't recall him
13 ever telling you, you need to take steps to protect or
14 restrict access to AtPac software, right?

15 A. Yes.

16 Q. Okay. Let's move on to page -- second page of
17 Exhibit 2. Okay. Item six; do you see that?

18 A. Yes.

19 Q. And at the last sentence it says, "This file shows
20 system access by Aptitude user isphydoux;" do you see that?

21 A. Yes.

22 Q. And this is talking about the ER-Recorder, this
23 entire document; you understand that, right?

24 A. Yes.

25 Q. Okay. And that concerns you also, doesn't it?

1 MR. ABU-ASSAL: Assumes facts not in evidence.

2 She testified that she's never seen this document before.

3 MR. THOMAS: No, but now that she has --

4 MR. ABU-ASSAL: And you're asking -- and you're
5 asking hypotheticals.

6 MR. THOMAS: Let's try to keep the speaking
7 objections to a minimal; I'd appreciate it.

8 MR. ABU-ASSAL: Objection, that's a hypothetical
9 question and assumes facts not in evidence and lacks
10 foundation.

11 MR. THOMAS: It's an admission by a party
12 opponent.

13 MR. ABU-ASSAL: It is not.

14 Q. BY MR. THOMAS: Well, on November 24th, 2009,
15 Mrs. Barale, Mr. Evers worked for Nevada County, right?

16 A. Yes.

17 Q. All right. Now, this statement, "This file shows
18 system access by Aptitude user isphydoux." Do you see that?

19 A. Yes.

20 Q. Assuming that's true, that concerns you --

21 A. Yes.

22 Q. -- doesn't it?

23 A. Yes.

24 Q. Because it shows Aptitude having access to AtPac's
25 proprietary information, right?

1 MR. ABU-ASSAL: Assumes facts not in evidence,
2 calls for a legal conclusion and lacks foundation.

3 Q. BY MR. THOMAS: Correct?

4 A. Repeat the last question.

5 Q. This concerns you because it shows Aptitude having
6 access to AtPac's server and AtPac's proprietary
7 information, right?

8 A. Yes.

9 MR. ABU-ASSAL: Assumes -- you've got to let me
10 object.

11 Assumes facts not in evidence, calls for a legal
12 conclusion, lacks foundation.

13 Q. BY MR. THOMAS: As a computer programmer, you've
14 been a computer person or computer professional for like 25
15 years or more, right?

16 A. Yes.

17 Q. Okay. You understand that source code can be
18 sensitive, confidential information, right?

19 A. Yes.

20 Q. Okay. You understand that data files and data
21 file structure can be confidential proprietary information,
22 right?

23 MR. ABU-ASSAL: Compound, vague and ambiguous.

24 Q. BY MR. THOMAS: It is compound. Thank you.

25 You understand data files can be confidential

1 information?

2 MR. ABU-ASSAL: Assumes facts not in evidence and
3 lacks foundation and calls for expert testimony.

4 Q. BY MR. THOMAS: You understand that, right?

5 A. Yes.

6 Q. And you understand that data file structures can
7 be confidential, right?

8 MR. ABU-ASSAL: Assumes facts not in evidence,
9 lacks foundation, calls for expert testimony.

10 THE WITNESS: Yes.

11 Q. BY MR. THOMAS: And you understand that data
12 schema can be important to a company to keep confidential,
13 right?

14 MR. ABU-ASSAL: Assumes facts not in evidence,
15 lacks foundation, calls for expert testimony.

16 THE WITNESS: Yes.

17 MR. THOMAS: We'll just point out that you've
18 refused to provide information to us, Mr. Abu-Assal,
19 regarding Aptitude alleging that its data and schema are
20 confidential, so your objection is contrary to your own
21 statements, sir.

22 MR. ABU-ASSAL: The objection stands.

23 Q. BY MR. THOMAS: What is data schema? What do you
24 understand data schema to be?

25 MR. ABU-ASSAL: Calls for expert testimony.

1 THE WITNESS: Data definition as to variables.

2 Q. BY MR. THOMAS: Anything else?

3 A. Size, type.

4 Q. What do you mean by size?

5 A. Length of the data element.

6 Q. Okay. So data schema includes the length of a
7 data element; that constitutes, at least in part, data
8 schema?

9 A. In the broad sense, yes.

10 Q. Okay. Let's sort of drill down on that for a
11 moment. When you say the length of the data schema,
12 suppose, for example, a data file includes first names,
13 among other things. Okay?

14 A. Yes.

15 Q. Would the data schema include the amount of
16 characters allocated to the first name portion of the data?

17 A. Yes.

18 MR. ABU-ASSAL: Calls for expert testimony.

19 You must let me object before you answer, so just
20 pause.

21 Q. BY MR. THOMAS: The answer's yes?

22 A. Yes.

23 Q. And so, for example, if a data file has space in a
24 data file allocated to first names -- some people's names
25 are Joe or Jill or Kathy, and other person's names are

1 Rumpelstiltskin, lots more letters, right? And so even
2 though names in the data file are -- some are longer than
3 others, the total amount of space allocated to the first
4 name represents data schema, correct?

5 MR. ABU-ASSAL: Calls for expert testimony.

6 THE WITNESS: Yes.

7 Q. BY MR. THOMAS: And as a computer professional,
8 you understand data schema to be something that software
9 companies typically protect and hold as confidential,
10 correct?

11 MR. ABU-ASSAL: Calls for expert testimony, lacks
12 foundation.

13 MR. THOMAS: Please allow me to finish. I
14 understand you want to get it in before she talks, but let's
15 try to gather -- to not talk over one another.

16 Q. Correct?

17 A. Yes.

18 MR. THOMAS: Actually, can I have that read back?

19 (Record read.)

20 MR. ABU-ASSAL: Same objections.

21 THE WITNESS: Yes.

22 Q. BY MR. THOMAS: Let's turn to the next page of
23 this exhibit. Turning to the -- there's a paragraph here
24 that starts, "It should be pointed out;" do you see that?

25 A. Yes.

1 Q. The word "that" is -- I notice you've written on
2 the exhibit. This is an official exhibit. I guess if you
3 want to write on them, you can. But no, it's okay, it's
4 okay. But I just -- typically witnesses don't write on
5 exhibits unless they're asked to. All right?

6 A. Okay.

7 Q. But it says, "Aptitude via the user isphydoux was
8 able to access the AtPac software;" do you see that?

9 A. Yes.

10 Q. And, once again, that's a concern to you?

11 MR. ABU-ASSAL: Vague and ambiguous, hypothetical,
12 assumes facts not in evidence.

13 Q. BY MR. THOMAS: Okay. And in the next paragraph
14 it says -- did you answer my question?

15 A. No.

16 Q. Okay. Can you please?

17 MR. ABU-ASSAL: Same objections.

18 Q. BY MR. THOMAS: Once again, that's a concern to
19 you?

20 A. Yes.

21 Q. All right. And then turning to the next
22 paragraph, it says, "Related to this is the fact that AtPac
23 software exists in both compiled non-readable and text
24 formats readable, as described in item four above."

25 Do you see that?

1 A. Yes.

2 Q. It says, "The following screen shot shows some of
3 the text readable code which ends in S --" I think that's a
4 typo. It says "SB" and then down below he highlights "SD;"
5 do you see that?

6 A. Yes.

7 Q. With respect to text formats that are readable,
8 you understand that to be source code, right?

9 MR. ABU-ASSAL: Vague and ambiguous, lacks
10 foundation, calls for expert testimony.

11 THE WITNESS: No.

12 Q. BY MR. THOMAS: Well, do you know what a screen
13 description is?

14 A. Yes.

15 Q. What's a screen description?

16 A. A layout of the screen.

17 Q. Well, .SD file; do you see that?

18 A. Yes.

19 Q. Do you know what a .SD file is?

20 A. No.

21 Q. Okay. So this is something that you don't know?

22 A. Yes.

23 Q. Okay. And where he says, "The following screen
24 shot shows some of the text readable code;" do you see that?

25 A. Yes.

1 Q. And he's comparing that to the compiled
2 non-readable in the sentence above; do you see that?

3 MR. ABU-ASSAL: Well, assumes facts not in
4 evidence, lacks foundation.

5 She's never seen this document before and she
6 testified she's never -- we don't even know who created this
7 document. Who did create this document?

8 Q. BY MR. THOMAS: Mrs. Barale, what is compiled
9 code? That's binary code, right?

10 A. Yes.

11 Q. Zeros and ones?

12 A. Yes.

13 Q. Typically human beings, unless they're
14 extraordinary, really can't make heads or tails of binary
15 code.

16 A. Yes.

17 Q. And text-readable code, you understand that
18 code -- that is written in some language that's readable to
19 a human being?

20 A. Yes.

21 Q. And you understand that's source code?

22 A. Yes.

23 Q. Okay. All right. I'm done with this exhibit.

24 Let's move on. All right.

25 (Whereupon Exhibit 3 was marked for

1 identification.)

2 Q. BY MR. THOMAS: I made a mistake. I'm sorry, Mrs.
3 Barale. I didn't mean to pull that back while you were
4 reaching for it. I hate it when people do that, but...

5 Here's some copies for you.

6 All right. I've placed before you a document, can
7 you please identify this for the record, Mrs. Barale?

8 A. It discusses Nevada VPN from Tom McGrath to Frank
9 Barnes.

10 Q. And what's the date of the this e-mail?

11 A. November 6th, 2008.

12 Q. Okay. All right. And so I'd like you to focus on
13 the first e-mail, where at the top it says, "Frank;" do you
14 see that?

15 A. Yes.

16 Q. It says, "I will be --" and Frank is Frank Barnes?

17 A. Yes.

18 Q. He was someone on the Aptitude side of this
19 project?

20 A. Yes.

21 Q. He's internal to Aptitude?

22 A. Yes.

23 Q. And Zahn Gamboa, who's that?

24 A. Aptitude Solutions internal staff.

25 Q. Who's Jesse Dion?

1 A. Aptitude Solutions internal staff.

2 Q. Okay. And Tom McGrath?

3 A. Aptitude Solutions vice president.

4 Q. And what was his role with respect to the
5 migration project?

6 A. He assisted with the project as project manager
7 with Alana.

8 Q. Okay. Alana Wittig?

9 A. Alana Wittig, yes.

10 Q. And she was also an Aptitude employee?

11 A. Yes.

12 Q. And so you interacted with both Tom and Alana
13 Wittig from time to time?

14 A. Yes.

15 Q. All right. It says, "Frank, I will be in the
16 County at 7:30 a.m., 10:30 a.m. your time." Do you see
17 that.

18 A. Yes.

19 Q. And do you know -- what time do you believe he's
20 referring to there, Florida time?

21 A. Yes.

22 Q. Because these individuals were based out of
23 Florida; is that true?

24 A. Yes.

25 Q. All right. "And we'll call you shortly

1 thereafter." It says, "Please get with Zahn to ensure you
2 have VPN access prior to my call."

3 And you did understand that Aptitude had VPN
4 access at some point from Florida to access the AS-Nevada
5 server within Nevada County, correct?

6 A. Yes.

7 Q. All right. It says, "I will lead you through the
8 GUI software." What's GUI?

9 MR. ABU-ASSAL: Wait. Lacks foundation.

10 You haven't established that she's ever seen this
11 document. Her name doesn't --

12 MR. THOMAS: If we can hold the speaking
13 objections down.

14 MR. ABU-ASSAL: Okay. Objection, lacks
15 foundation.

16 Q. BY MR. THOMAS: Do you know what G-U-I means?

17 A. It's a GUI user interface.

18 Q. Graphical user interface?

19 A. Graphical, yes.

20 Q. It says, "I will lead you through the graphical
21 user interface software to connect to the AtPac UNIX box."
22 Do you see that?

23 A. Yes.

24 Q. Are you aware of any AtPac UNIX box? Does that
25 fit the description of ER-Recorder?

1 A. I believe ER-Recorder was UNIX.

2 Q. And it was AtPac?

3 A. Yes.

4 Q. All right. It says, "Connect to the AtPac UNIX
5 box and also show you where the previously copied data files
6 are on the support box." Do you see that?

7 A. Yes.

8 Q. Now, during the project there was a server
9 AS-Nevada sometimes called the support box or the support
10 server?

11 A. Yes.

12 Q. All right. And he's referring to previously
13 copied data files on the support box; do you see that?

14 A. Yes.

15 Q. Did you know before you started this project that
16 as early as November 16th, 2008 that there had already been
17 data files copied to the AS-Nevada support box?

18 A. No.

19 Q. And look at the next line, it says, "The UNIX box
20 connection information --" the UNIX box, that's AS-Nevada,
21 right?

22 A. No.

23 Q. Well, the -- thank you; I appreciate that.

24 The UNIX box is ER-Recorder, right?

25 A. Yes.

1 Q. And it says, "The UNIX box connection
2 information." It says, "Name, ER-Recorder, IP 172276264."
3 Do you recognize that IP address as ER-Recorder's address?

4 A. No.

5 Q. It says, "User isphydoux." Do you see that?

6 A. Yes.

7 Q. And it says, "password wuff-wuff." Do you see
8 that?

9 A. Yes.

10 Q. Did anybody ever tell you the password for
11 isphydoux was wuff-wuff?

12 A. No.

13 Q. It's actually -- that's W-0-0-F-W-0-0-F, right?

14 A. Yes.

15 Q. Okay. Do the passwords require both numbers and
16 letters?

17 A. At this time, there was no definition for
18 password.

19 Q. Okay. And does it concern you to see an e-mail
20 dated November 2008, which indicates that Aptitude Solution
21 personnel are talking amongst themselves about remotely
22 logging in to ER-Recorder server?

23 MR. ABU-ASSAL: That's a hypothetical question,
24 lacks foundation.

25 Q. BY MR. THOMAS: That concerns you, correct?

1 A. Yes.

2 Q. And it does because Aptitude Solutions, if in fact
3 that is what they're doing in this e-mail, is accessing
4 AtPac's proprietary and confidential information on
5 ER-Recorder server, correct?

6 MR. ABU-ASSAL: Assumes facts not in evidence,
7 lacks foundation and calls for a legal conclusion.

8 THE WITNESS: Yes.

9 Q. BY MR. THOMAS: And it also shows that data files
10 have already been copied to AS-Nevada, right? It talks
11 about it having already been done; do you see that?

12 A. Yes.

13 Q. Did anyone from Aptitude ever tell you when you
14 were asked to copy data files, that we've already copied
15 data files? Did anyone tell you that?

16 A. No.

17 Q. Does that disturb you?

18 A. Yes.

19 Q. Did you feel like Mr. McGrath on some level was
20 dishonest with you by not telling you about the prior
21 access?

22 A. Not categorize it as dishonest.

23 Q. How would you characterize it?

24 A. Maybe didn't think it was necessary. I don't
25 know.

1 (Whereupon Exhibit 4 was marked for
2 identification.)

3 Q. BY MR. THOMAS: I did it again. I've got notes on
4 the top document and I put the sticker on the one with my
5 notes and it doesn't help anything.

6 Marked as Exhibit 4, Mrs. Barale, and I'm going to
7 ask you again to identify this for the record. And when I
8 do that, if you could, if you know, and what I'd like to do
9 is have you describe this is an e-mail from me to Tom
10 McGrath, cc to Greg Diaz, dated December 31, 2008. Is that
11 true?

12 A. Yes.

13 Q. Okay. And next time I'll probably ask you to do
14 it.

15 And did you send this e-mail?

16 A. Yes.

17 Q. Okay. And down below is another -- it's an e-mail
18 in a string from Tom McGrath to you, right?

19 A. Yes.

20 Q. Okay. And if we look at the second paragraph of
21 Mr. McGrath's e-mail to you -- do you see that?

22 A. Yes.

23 Q. It says, "Regarding the database and image
24 structures at Nevada and Placer, they're certainly similar
25 if not identical." Do you see that?

1 A. Yes.

2 Q. Okay. Did that e-mail concern you?

3 MR. ABU-ASSAL: Vague and ambiguous.

4 THE WITNESS: No.

5 Q. BY MR. THOMAS: Does it concern you now?

6 MR. ABU-ASSAL: Vague and ambiguous.

7 THE WITNESS: I don't have an answer.

8 Q. BY MR. THOMAS: Well, you know what? I'm sorry,

9 but --

10 A. Okay. Then --

11 Q. -- you need to answer.

12 MR. ABU-ASSAL: Vague and ambiguous.

13 THE WITNESS: Yes.

14 Q. BY MR. THOMAS: And the reason it concerned you is

15 because Mr. McGrath of Aptitude is telling you he has

16 analyzed the database structure of AtPac's database,

17 correct? That's why it concerns you.

18 MR. ABU-ASSAL: Assumes facts not in evidence,

19 lacks foundation.

20 THE WITNESS: Yes.

21 Q. BY MR. THOMAS: He's admitting he's seen the

22 database structure, correct?

23 MR. ABU-ASSAL: Vague and ambiguous, overbroad.

24 THE WITNESS: I don't believe he's admitting that

25 he has seen the structure.

1 Q. BY MR. THOMAS: He says, "The database structure
2 of Nevada and Placer are similar if not identical." How
3 would he know that, unless he's seen the database structure?

4 MR. ABU-ASSAL: Calls for speculation, lacks
5 foundation.

6 THE WITNESS: I don't know.

7 Q. BY MR. THOMAS: And you forwarded this e-mail to
8 Gregory Diaz, correct?

9 A. Yes.

10 Q. So Mr. Greg Diaz had that information as well, as
11 early as December 31, 2008, correct?

12 A. Yes.

13 Q. Now, it says, "Tom --" this is your e-mail at the
14 top. "Tom, we are concerned that if AtPac gets wind of us
15 combining forces with Placer, that they may increase their
16 fees regarding the data extractions." Do you see that?

17 A. Yes.

18 Q. So did you actively conceal the fact that you were
19 coordinating your efforts with Placer County from AtPac?

20 MR. ABU-ASSAL: Assumes facts not in evidence,
21 lacks foundation.

22 THE WITNESS: I was not in communication with
23 AtPac. That was regarding the data files.

24 Q. BY MR. THOMAS: Did Mr. Diaz instruct you to not
25 tell AtPac that Nevada County was cooperating with Placer

1 County about data extraction or data copying?

2 A. No.

3 Q. Then when you say whose idea was it -- why were
4 you concerned about AtPac getting wind of us combining
5 forces with Placer? You say in your e-mail, "we are
6 concerned." Who's "we"?

7 A. This may have been conversation with Marie.

8 Q. So you and Marie are the "we" who are concerned?

9 A. I believe so.

10 (Whereupon Exhibit 5 was marked for
11 identification.)

12 Q. BY MR. THOMAS: I'm done with Exhibit 4.

13 Okay. I gave you Exhibit No. 5. Can you please
14 identify this document for the record.

15 A. It is an e-mail from Tom McGrath to myself with
16 cc's to Alana Wittig, Frank Barnes, Shawn Cimock, Marie
17 McCluskey and Greg Diaz with the subject matter AtPac data
18 exports for Nevada County.

19 Q. Now, and this is an e-mail he sent to you and you
20 received it, right?

21 A. Yes.

22 Q. All right. I'd like you to turn your attention to
23 the fourth paragraph, it says "regarding data access;" do
24 you see that?

25 A. Yes.

1 Q. It says, "Both Placer and Nevada Counties have
2 provided Aptitude Solutions with, quote, read-only access of
3 AtPac images and data files." Do you see that?

4 A. Yes.

5 Q. When you received this e-mail, did that concern
6 you at the time?

7 MR. ABU-ASSAL: Vague and ambiguous.

8 THE WITNESS: At the time, no.

9 Q. BY MR. THOMAS: But as you sit here today, you
10 recognize that that's a problem, right?

11 MR. ABU-ASSAL: Vague and ambiguous, calls for a
12 legal conclusion.

13 THE WITNESS: Yes.

14 Q. BY MR. THOMAS: And it's a problem why?

15 A. Access to the images and the raw data files.

16 Q. BY MR. THOMAS: Well, you say "raw data files,"
17 that doesn't say "raw data files," does it?

18 A. No.

19 Q. It just says "data files."

20 A. True.

21 Q. There is nothing raw about them in this e-mail,
22 right?

23 A. Right.

24 Q. That's why it's even more of a concern to you,
25 correct?

1 MR. ABU-ASSAL: Vague and ambiguous.

2 THE WITNESS: Not more of a concern.

3 Q. BY MR. THOMAS: Equally concerning?

4 MR. ABU-ASSAL: Vague and ambiguous.

5 THE WITNESS: Yes.

6 Q. BY MR. THOMAS: And the fact that there's a cc
7 line on this, does that indicate other people who are copied
8 with this e-mail?

9 A. Yes.

10 Q. And do you see Gregory Diaz at the end?

11 A. Yes.

12 Q. Did you ever talk with Gregory Diaz about the fact
13 that Mr. McGrath was saying in his e-mail on January 2nd
14 that he had access to AtPac's data files?

15 A. No.

16 Q. Did you read this e-mail when you got it?

17 A. Yes.

18 Q. And what did you do with this information when you
19 learned that Aptitude had access to AtPac's data files?

20 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
21 not in evidence.

22 THE WITNESS: I had just taken over the project or
23 I was migrating over with Marie.

24 Q. BY MR. THOMAS: Did you say it to anyone, "Hey,
25 that's not appropriate. We need to change this. You can't

1 have access to AtPac'S data files." Did you say that to
2 anyone?

3 A. No, I didn't.

4 Q. Did Mr. Diaz say that to you?

5 A. No.

6 Q. Did Mr. Diaz express in any way any concern about
7 what he read in this -- or about this e-mail?

8 A. No.

9 Q. Within Nevada County when someone's cc'd on an
10 e-mail, are you aware of any reason to think that e-mail
11 doesn't actually show up in the person's in-box?

12 MR. ABU-ASSAL: Calls for speculation.

13 THE WITNESS: No.

14 Q. BY MR. THOMAS: Okay. You received this e-mail,
15 right?

16 A. Yes.

17 Q. Okay. And you believe Mr. Diaz received it,
18 right?

19 MR. ABU-ASSAL: Calls for speculation.

20 THE WITNESS: Yes.

21 (Whereupon Exhibit 6 was marked for
22 identification.)

23 Q. BY MR. THOMAS: All right. I'd like you to turn
24 your attention to Exhibit 6. Please identify this for the
25 record.

1 A. An e-mail to myself from Alana Wittig on January
2 23rd, 2009, subject OnCore supervisor training.

3 Q. Okay. Do you see this as a chain of e-mails?

4 A. Yes.

5 Q. And it's a chain of e-mails that include you, at
6 least on some of them?

7 A. Yes.

8 Q. But ultimately all of them were sent to you in the
9 last e-mail, right?

10 A. Yes.

11 Q. All right. Let's turn to the second page. There
12 is an e-mail from you to Alana Wittig, right? And that's
13 dated January 22nd, 2009 at 8:30?

14 A. Yes.

15 Q. Okay. And this is after you had been project
16 manager for about three weeks?

17 A. Yes.

18 Q. For the migration project?

19 A. Yes.

20 Q. And did you write this e-mail?

21 A. Yes.

22 Q. Okay. And it says, "Sounds like a date. Thank
23 you." Do you see that?

24 A. Yes.

25 Q. And then several paragraphs down it says, "Could

1 you also check with Frank and David regarding the
2 noticor.dat file that I was not able to locate on the AtPac
3 server." Do you see that?

4 A. Yes.

5 Q. Who's Frank?

6 A. Aptitude Solutions migration team.

7 Q. And what is his last name?

8 A. Barnes.

9 Q. And who is David; what is his name?

10 A. Cox, David Cox.

11 Q. Another Aptitude computer person?

12 A. Yes.

13 Q. And you said, "Could you check with Frank and
14 David regarding the noticor.dat file that I was not able to
15 locate on the AtPac server." What did you mean by AtPac
16 server?

17 A. That was -- I had provided them files, this one
18 was missing.

19 Q. But when you talk about the AtPac server, what
20 server is that, ER-Recorder?

21 A. Yes.

22 Q. Okay. Then let's look at the next sentence. It
23 says, "Is this file possibly named something else or located
24 somewhere else?" Do you see that?

25 A. Yes.

1 Q. And you're asking Ms. Wittig that question, right?

2 A. Yes.

3 Q. You're asking her where else on ER-Recorder might
4 this file be, correct?

5 A. It appears so.

6 Q. Why did you ask her that?

7 A. I don't know.

8 Q. You asked her that because you knew that they had
9 already been in ER-Recorder server and knew the location of
10 files, correct? That's the only reason --

11 A. No.

12 Q. -- you would ask her that.

13 MR. ABU-ASSAL: Assumes facts not in evidence.

14 THE WITNESS: No.

15 Q. BY MR. THOMAS: Why else would you ask an Aptitude
16 person where else on ER-Recorder something would be located?
17 Can you explain that?

18 A. Possibly it was a different named file.

19 Q. How would they know unless they had information
20 about ER-Recorder?

21 A. Tom McGrath.

22 Q. How would Tom know unless he had information about
23 ER-Recorder?

24 A. From work he had done at Placer County.

25 Q. Are you speculating?

1 A. From the comment, yes.

2 Q. We've already seen documents which show that they
3 already had access to ER-Recorder before you wrote this
4 e-mail, right?

5 MR. ABU-ASSAL: That's vague and ambiguous and
6 lacks foundation and assumes facts not in evidence.

7 Q. BY MR. THOMAS: How would Ms. Wittig have known
8 where something is located on the ER-Recorder server unless
9 you knew Aptitude had already looked at ER-Recorder server?

10 MR. ABU-ASSAL: Vague and ambiguous, lacks
11 foundation, calls for speculation.

12 THE WITNESS: I was asking as a general comment,
13 not --

14 Q. BY MR. THOMAS: But you didn't ask just anyone;
15 you asked Alana Witting, right?

16 A. She was my interface.

17 Q. Well, you could have asked Dan Evers or someone
18 else in Nevada County, right? But you directed your
19 question to someone from Aptitude, right?

20 A. Yes.

21 Q. And you wouldn't have asked them unless you
22 thought they might know the answer, right?

23 MR. ABU-ASSAL: Calls for speculation.

24 Q. BY MR. THOMAS: You wouldn't bother to ask a
25 question of someone that you know that they don't know the

1 answer, right?

2 MR. ABU-ASSAL: Calls for speculation.

3 THE WITNESS: Not necessarily.

4 Q. BY MR. THOMAS: You'd do something illogical? If
5 you knew they didn't know the answer, you'd still ask the
6 question?

7 A. Sometimes.

8 Q. Why would you do that?

9 A. Because what I think, I always try.

10 Q. That's your best explanation for this e-mail?

11 A. I can't -- I guess -- well, let's see; yes.

12 MR. ABU-ASSAL: Can we take a short bathroom
13 break?

14 MR. THOMAS: Yes.

15 MR. ABU-ASSAL: Super short.

16 THE VIDEOGRAPHER: We are going off the record at
17 12:03 p.m. This is the end of disk No. 1.

18 (Recess taken.)

19 (Whereupon Exhibit 7 was marked for
20 identification.)

21 THE VIDEOGRAPHER: We're back on the record at
22 12:10 p.m. This is the beginning of disk No. 2 in the
23 deposition of Kathy Barale.

24 Q. BY MR. THOMAS: Okay. I've placed before you
25 Exhibit No. 7. Do you have that?

1 A. Yes.

2 Q. And what is this document?

3 A. An e-mail to Gregory Diaz from Tom McGrath, dated
4 Wednesday, November 19th, 2008, subject information from
5 Nevada County AtPac.

6 Q. And based on your knowledge of Nevada County's
7 computer network, is it your belief that Mr. Diaz would
8 have -- this would have come to his in-box?

9 A. Yes.

10 Q. Okay. And I'd like you to look at this e-mail,
11 this is before you were assigned to the project, correct?

12 A. Yes.

13 Q. And it's an e-mail from Tom McGrath to Marie,
14 copied to Greg Diaz. It says -- and this is in the second
15 paragraph, third line down, there's the word "during," right
16 by your hand there, to the right. Do you see that "during"?

17 A. Yes.

18 Q. It says, "During my recent visit to your county,
19 however, I found the AtPac schema to be somewhat different
20 from the one encountered in our prior project." Do you see
21 that?

22 A. Yes.

23 Q. Did Ms. Marie -- that's Marie McCluskey?

24 A. Yes.

25 Q. Did she ever tell you that Tom McGrath had

1 inspected AtPac schema?

2 MR. ABU-ASSAL: Vague and ambiguous.

3 THE WITNESS: No.

4 Q. BY MR. THOMAS: Did Gregory Diaz ever tell you
5 that Tom McGrath had inspected AtPac schema?

6 MR. ABU-ASSAL: Vague and ambiguous, lacks
7 foundation.

8 THE WITNESS: No.

9 Q. BY MR. THOMAS: If you had received this e-mail on
10 November 19th, 2008, would it have concerned you?

11 MR. ABU-ASSAL: Calls for a hypothetical, lacks
12 foundation.

13 THE WITNESS: I would have inquired.

14 Q. BY MR. THOMAS: Because you would have been
15 concerned, right?

16 MR. ABU-ASSAL: Lacks foundation, hypothetical.

17 THE WITNESS: I would need more explanation.

18 Q. BY MR. THOMAS: About what?

19 A. About what the AtPac schema refers to.

20 Q. Do you understand Mr. McGrath to be a computer
21 professional?

22 A. Yes.

23 Q. Have you heard alternative definitions of the word
24 "schema" other than the one you provided to us earlier in
25 your deposition?

1 A. No.

2 Q. Did you ever know Mr. McGrath to use terms
3 incorrectly or atypically?

4 MR. ABU-ASSAL: Overbroad, vague and ambiguous.

5 THE WITNESS: Not that I'm aware of.

6 Q. BY MR. THOMAS: And you worked with him for about
7 a year, right?

8 A. Yes.

9 Q. Had you ever seen this e-mail before today?

10 A. I believe I may have been given it, but never
11 studied it.

12 Q. Who gave it to you?

13 A. Marie may have had it in the e-mails that she
14 provided to me.

15 Q. Tell me about that. Did she give you a file of
16 e-mails to transition the project to you?

17 A. I don't recall the transfer.

18 Q. You do recall receiving information from her about
19 the status of the project, right?

20 A. Orally.

21 Q. You don't recall receiving e-mails?

22 A. Not forwarded e-mails.

23 Q. What do you mean by that?

24 A. Access to -- I don't recall.

25 Q. That was Exhibit 7.

1 (Whereupon Exhibit 8 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Exhibit 8. Do you have this
4 e-mail in front of you?

5 A. Yes.

6 MR. ABU-ASSAL: Could you please give me a copy?

7 MR. KRUGLE: Sorry. Did you get one of the last
8 e-mail?

9 MR. KRUGLE: Okay.

10 MR. ABU-ASSAL: Yes.

11 MR. THOMAS: Sorry.

12 MR. ABU-ASSAL: Wait a second. We're on Exhibit
13 8?

14 MR. THOMAS: Yeah.

15 MR. ABU-ASSAL: All right.

16 Q. BY MR. THOMAS: Do you have Exhibit 8 in front of
17 you?

18 A. Yes.

19 Q. All right. And do you see this is an April 12th,
20 2010 e-mail from Tom McGrath?

21 A. Yes.

22 Q. Okay. And have you seen this e-mail before?

23 A. No.

24 Q. All right. I notice you're not one of the
25 addressees, are you?

1 A. No.

2 Q. The last sentence of the first paragraph, do you
3 see that? It says "I believe." Do you see that?

4 A. Where was that?

5 Q. First paragraph, last sentence, it says, "I
6 believe."

7 A. Yes.

8 Q. It says, "I believe subsequent use of the login
9 after initial password setup would have been to get
10 directory locations and listings of the necessary data and
11 image files for the County to copy to our server." Do you
12 see that?

13 A. Yes.

14 Q. Does that refresh your recollection as to why you
15 would have been asking Aptitude about the location of a file
16 on ER-Recorder like you did in your earlier e-mail?

17 A. No.

18 Q. Okay. That's all I have on that exhibit.

19 (Whereupon Exhibit 9 was marked for
20 identification.)

21 Q. BY MR. THOMAS: Exhibit 9 in front of you.

22 A. Yes.

23 MR. ABU-ASSAL: Copy, please.

24 Q. BY MR. THOMAS: Do you recognize this e-mail?

25 A. Yes.

1 Q. Would you please identify it for the record?

2 A. It's an e-mail to myself and Caroline Mankey from
3 Scott McLeran with the subject AtPac, Inc.

4 Q. And there's a series of e-mails, a chain of
5 e-mails?

6 A. Yes.

7 Q. And what it appears to be, in part -- if you look
8 at the second page, it's an e-mail where you're being asked
9 questions and you provide answers in red, so that one can
10 understand the answer as opposed to the question.

11 A. Yes.

12 Q. Is that what you did?

13 A. Yes.

14 Q. Okay. And let's turn back to the first page of
15 this e-mail -- chain of e-mails. It says -- it's an e-mail
16 from you to Caroline Mankey, dated April 13, 2010 at 11:06
17 a.m. Do you see that?

18 A. Yes.

19 Q. And did you send that e-mail?

20 A. Yes.

21 Q. And it says, "Hi Carolyn, our network analyst,
22 Giovanni Paredes, looked within our existing VPN access logs
23 for any account activity for the isphydoux login ID."

24 And then it says, "The VPN logs only go back as
25 far as 11/17/2009." Did I read that correctly?

1 A. Yes.

2 Q. Okay. Who is Giovanni Paredes? I realize he's a
3 network analyst, but what is his role in Nevada County?

4 A. He took over for Dan Evers.

5 Q. Is he still there?

6 A. Yes.

7 Q. Do you know what his experience level is?

8 MR. ABU-ASSAL: Vague and ambiguous.

9 Q. BY MR. THOMAS: New graduate, 20-year veteran? Do
10 you have any sense of his experience?

11 A. He previously was a desktop services analyst and
12 then he moved into the network arena maybe a year ago.

13 Q. Okay. And who asked him to look at VPN access
14 logs, if you know?

15 A. I believe Scott McLeran.

16 Q. Okay. And that's a lawyer for the County?

17 A. County Counsel.

18 Q. Okay. Now, you understood the isphydoux account
19 to be an account that Aptitude could use to -- from the
20 AS-Nevada server to access to ER-Recorder server, right?
21 We've seen that in the documents already, correct?

22 MR. ABU-ASSAL: Vague and ambiguous, calls for
23 speculation.

24 Q. BY MR. THOMAS: Do you understand that?

25 A. I'm aware it was created.

1 Q. And you're aware it would be used to log -- or to
2 connect from AS-Nevada to ER-Recorder?

3 MR. ABU-ASSAL: Vague and ambiguous, lacks
4 foundation, calls for speculation.

5 THE WITNESS: I understand that's what it was
6 created for.

7 Q. BY MR. THOMAS: Okay. And VPN access logs are
8 logs that would identify connections from outside the County
9 into the County, right?

10 A. Yes.

11 Q. Okay. Why was Mr. Paredes looking for isphydoux
12 login activity on the VPN account? That seems to make no
13 sense to me because the isphydoux account would be an
14 internal account, not one that would -- you'd use to connect
15 from outside the County into AS-Nevada.

16 A. I don't know.

17 Q. Is what I said -- do you believe what I said is
18 correct, that you wouldn't expect to see isphydoux login
19 activity on the VPN access logs?

20 MR. ABU-ASSAL: Lacks foundation, calls for
21 speculation.

22 Q. BY MR. THOMAS: You don't know one way or the
23 other?

24 A. Correct.

25 Q. Who asked him to look at VPN logs? Oh, you told

1 me that; Scott McLeran.

2 A. Right.

3 Q. Did Scott McLeran ask you to ask him or...

4 A. Scott either asked myself or Steve Monaghan.

5 Q. Okay. And as you sit here today, you don't know
6 whether or not that exercise made no sense because one
7 wouldn't expect to see isphydoux logins on a VPN log? You
8 don't know one way or the other?

9 A. Right.

10 Q. And then it says, "The VPN logs only go back as
11 far as 11/17/09." Do you see that?

12 A. Yes.

13 Q. Is that true?

14 MR. ABU-ASSAL: Calls for speculation, lacks
15 foundation.

16 Q. BY MR. THOMAS: That's what --

17 A. That's what Gio had told me.

18 Q. Did he tell you why?

19 A. Either that was the retention or they were not
20 created prior to then.

21 Q. You don't know which?

22 A. True.

23 Q. Or if there was some other explanation?

24 A. It was one of those two.

25 Q. Well, were there VPN logs kept before November

1 2009 for the County?

2 MR. ABU-ASSAL: Calls for speculation, lacks
3 foundation.

4 THE WITNESS: I don't have knowledge of those.

5 Q. BY MR. THOMAS: All right. Okay. Now, the next
6 sentence in this e-mail that you sent to Caroline, it says,
7 "The 172.27.2.80 IP address is Aptitude Solutions' AS-Nevada
8 support server." Did you say that?

9 A. Yes.

10 Q. And how did you determine that?

11 A. You can do a ping to that AS-Nevada and it
12 provides you the IP address.

13 Q. Did you do that to provide that information to
14 Ms. Mankey?

15 A. I either did that or knew that from prior
16 knowledge.

17 Q. When you say "knew that," you had the IP address
18 memorized because you had seen it so many times?

19 A. No, no.

20 Q. Okay. Then what did you mean?

21 A. I either did a ping or I asked for its gielow.

22 THE COURT REPORTER: For its what?

23 THE WITNESS: Gielow, G-I-E-L-O-W.

24 Q. BY MR. THOMAS: And you knew it was important to
25 give Ms. Mankey accurate information, right?

1 A. Yes.

2 Q. And you did that?

3 A. Yes.

4 Q. Okay. Turning to the next page where you see some
5 red words?

6 A. Yes.

7 Q. The red words are words you wrote?

8 A. Yes.

9 Q. All right. If we go down to item three --

10 A. Yes.

11 Q. -- this is an e-mail from Ms. Mankey to you,
12 right?

13 A. Yes.

14 Q. It says, "I have been reviewing certain logs that
15 were copied into disks for AtPac and I am hoping you can
16 help me interpret them. The following is an example."

17 And then she has an extract from a log; do you see
18 that?

19 A. Yes.

20 Q. Is that what you were referring to earlier in your
21 testimony about seeing an extract?

22 A. Probably so.

23 Q. Okay. And then it says, "Are these log entries
24 showing that someone gained access to ER-Recorder server
25 using the isphydoux login subsequent to November 2008?" Do

1 you see that?

2 A. Yes.

3 Q. And your answer is "yes." Do you see that?

4 A. Yes.

5 Q. All right. And you believe that to be true as you
6 sit here today, right?

7 A. Yes.

8 Q. Okay. And then it says, "My name is additionally
9 included, but I was logging into ER-Recorder from AS-Nevada
10 to copy the image and data files are we have discussed." Do
11 you see that?

12 A. Yes.

13 Q. And is that what you did, you logged into
14 ER-Recorder from AS-Nevada and copied image and data files
15 to AS-Nevada from ER-Recorder?

16 A. Using the putty interface I have to assume -- no,
17 I don't want to say that. That I pulled the files.

18 Q. From AS-Nevada?

19 A. From AS-Nevada, pulled them onto -- from
20 ER-Recorder.

21 Q. I misstated that, didn't I? Let me get a clean
22 question and answer. I apologize. My fault.

23 You pulled files from ER-Recorder onto AS-Nevada,
24 correct?

25 A. I believe so.

1 Q. Using the putty interface?

2 A. Yes.

3 Q. All right. Now, it says, "Who was using the
4 isphydoux login? I assume it was 2009."

5 And you say, "I don't know. And yes, it would be
6 2009." Do you see that?

7 A. Yes.

8 Q. And you're referring to the log records above that
9 portion of the e-mail?

10 A. Yes.

11 Q. Okay. And looking at those log records, do you
12 see -- if you look at the first entry on June 17th; do you
13 see that?

14 A. Yes.

15 Q. It says, "June 17th ER-Recorder, accepted password
16 from isphydoux." Do you see that?

17 A. Yes.

18 Q. And it says, "From 172.27.2.80." Do you see that?

19 A. Yes.

20 Q. And that's the AS-Nevada Aptitude server, correct?

21 A. Yes.

22 Q. And what that is saying, then, is that on June
23 17th, 2009 a secure file transfer protocol session was
24 initiated from the AS-Nevada server to the ER-Recorder
25 server; that's what that says, correct?

1 MR. ABU-ASSAL: Calls for expert testimony,
2 assumes facts not in evidence and calls for speculation.

3 THE WITNESS: So the question?

4 Q. BY MR. THOMAS: What that entry says -- the first
5 June 17th entry says is that on June 17th, 2009 someone used
6 the isphydoux account to login from the AS-Nevada server to
7 the ER-Recorder server.

8 MR. ABU-ASSAL: Calls for speculation, expert
9 testimony and lacks foundation.

10 Q. BY MR. THOMAS: Right?

11 MR. ABU-ASSAL: Don't guess.

12 THE WITNESS: I don't have knowledge of Red Hat
13 logs.

14 Q. BY MR. THOMAS: Well, why didn't you tell that to
15 Ms. Mankey when she asked you that question? She asked you
16 this question. Why didn't you say, "I don't know. I don't
17 have knowledge of Red Hat logs." You didn't say that to
18 Ms. Mankey when she asked you, did you? Mrs. Barale, did
19 you?

20 A. Where was the question that she asked me that?

21 Q. "Well, I have been reviewing certain logs --" it's
22 item No. 3 -- "that were copied onto disks for AtPac. I'm
23 hoping you can help me interpret them. The following is an
24 example. Are these logs entries showing that someone gained
25 access to ER-Recorder server using isphydoux login

1 subsequent to November 2008?"

2 And your answer was, "Yes."

3 You didn't say, "Gee, I don't know about Red Hat
4 logs," did you?

5 A. No.

6 Q. So in response to her question, you were willing
7 to provide an answer. When I ask you in a deposition, you
8 say, "I don't know."

9 MR. ABU-ASSAL: No, that's not what you asked her.
10 You asked her a very specific question about a June 17th
11 entry, so that misstates her testimony and it's misleading.

12 Q. BY MR. THOMAS: Ms. Barale, on June 17th -- you're
13 looking at this log with me, right? Do you see the first
14 June 17th entry?

15 A. Yes.

16 Q. And it accepted a password for isphydoux, correct?

17 A. Yes.

18 Q. And this is a login record for ER-Recorder,
19 correct?

20 A. Yes.

21 Q. And you recognize the isphydoux account as the
22 Aptitude account, correct?

23 A. Yes.

24 Q. And you see that that account was from the IP
25 address for AS-Nevada?

1 A. Yes.

2 Q. And that was the Aptitude server?

3 A. Yes.

4 Q. Okay. And it says in the e-mail -- she asked you
5 who was using the isphydoux login in June, and you say, "I
6 do not know, and yes, it would be 2009." Do you see that?

7 A. Yes.

8 Q. Since you wrote this e-mail, have you learned who
9 was using that isphydoux account --

10 A. No.

11 Q. -- on June 17th, 2009?

12 A. No.

13 Q. Has anyone told you who they believe used that
14 account on June 17th, 2009?

15 A. No.

16 Q. And I'll get to a document later, but for the
17 record, that particular secure file transfer protocol
18 section lasted for five days.

19 MR. ABU-ASSAL: Lacks foundation, calls for
20 speculation.

21 Q. BY MR. THOMAS: Did you know that?

22 A. No.

23 Q. Okay. Now, let me ask you this: What time do IT
24 professionals for Nevada County typically get to work?

25 A. 8:00 a.m.

1 Q. May I see this for a moment? I'm just going to
2 borrow the exhibit. Typically, IT employees get to work at
3 8:00 a.m. for Nevada County?

4 A. Yes.

5 Q. And what time do they leave work?

6 A. 5:00 p.m.

7 Q. Okay. And there is nothing wrong with that, but
8 people working for the County typically -- they work their
9 hours, they come in at 8:00, they leave at 5:00, fair
10 enough?

11 A. Are you asking me or are you asking --

12 Q. Let me ask you about you. Is that your protocol;
13 that's your standard practice?

14 A. No.

15 Q. What is yours?

16 A. 8:30.

17 Q. You come in a little bit later?

18 A. Yes.

19 Q. Are the -- does the County have policies where
20 they don't want you to work after hours because they have to
21 pay some sort of extra overtime or something?

22 A. I'm a professional, so I do not get paid for
23 overtime.

24 Q. Who from the county typically shows up, you know,
25 at 4:00 in the morning and starts working in the IT

1 Department? Are there lots of folks that do that?

2 A. No.

3 Q. Anyone you can think of?

4 A. No.

5 Q. Who from the County typically shows up 5:00 a.m.
6 routinely to come in and work in the IT Department?

7 A. None that I'm aware of.

8 Q. Who from the County typically comes in at 6:00
9 a.m. to start work fresh in the day? 6:00 a.m. in the
10 morning in the IT Department.

11 A. None that I'm aware of.

12 Q. Who from the County typically comes in, in the IT
13 Department at, you know, 7:00 a.m. sharp to start work fresh
14 in the day?

15 A. There are desktop analysts and network analysts
16 that come in at 7:00.

17 Q. How many people involved -- and your testimony
18 regarding the times of people coming into work at the IT
19 Department in Nevada, your understanding of people's
20 practices is the same today as it was in 2008, 2009?

21 A. Yes.

22 Q. Okay. How many people involved -- let's focus on
23 Mr. Evers. Do you have an understanding when he typically
24 would come in to work?

25 A. No.

1 Q. Okay. Do you have an understanding of when Marie
2 McCluskey would typically come in to work?

3 A. 8:00 a.m.

4 Q. Do you have an understanding of -- there is
5 another woman in here. What's her name? She's another one
6 that I'm not -- Moody, Eileen Moody, when would she
7 typically come into work?

8 A. Recorder staff had different hours.

9 Q. She wasn't an IT person, was she?

10 A. No.

11 Q. Okay. Thank you.

12 How about Mr. Monaghan, when would he typically
13 come to work?

14 A. 8:00 a.m.

15 Q. Okay. And how about Mr. Diaz, when does he
16 typically come to work, if you know?

17 A. I don't know.

18 Q. Okay. So let's go back to Exhibit 9, circling
19 back to the second page, we've got this isphydoux login
20 record of June 17th, do you see that, the one we've been
21 talking about?

22 A. Yes.

23 Q. First entry?

24 A. Yes.

25 Q. And what is the -- after it says June 15th there's

1 a series of numbers, it says 05:13:02; what is that?

2 A. I would say the time of day.

3 Q. Yeah, the time of day. That's 5:00 a.m., right?

4 A. I would believe so.

5 Q. Okay. So based on the time, do you have an
6 expectation that this login account would have been done by
7 someone other than within Nevada County because of the time?

8 A. I don't know.

9 Q. Well, who do you think -- you just testified
10 you're not aware of anyone who comes in to work at 5:00
11 a.m., right?

12 A. But this was during migration, so I don't know if
13 Recorder staff came in any earlier.

14 Q. Well, who from the Recorder staff had the
15 isphydoux account?

16 A. No one.

17 Q. Well, then how could it have been Recorder staff?

18 A. It couldn't have been.

19 Q. Okay. So...

20 A. The doors were locked.

21 Q. When would the doors be unlocked?

22 A. 7:00 a.m.

23 Q. Okay. So it's impossible for Recorder staff to
24 have initiated the June 15th 5:13 a.m. isphydoux session,
25 correct?

1 MR. ABU-ASSAL: Calls for speculation.

2 Q. BY MR. THOMAS: To your knowledge?

3 A. To my knowledge, yes.

4 Q. All right. Have you ever told anyone who you
5 believe initiated this login?

6 A. No.

7 Q. Doesn't the fact that it's 5:00 a.m. suggest to
8 you that it's someone in Florida doing it at 8:00 a.m. in
9 Florida?

10 MR. ABU-ASSAL: Calls for speculation.

11 THE WITNESS: I don't know.

12 Q. BY MR. THOMAS: Do you have any facts or evidence
13 to suggest that's not the case?

14 A. No.

15 Q. Now, you say next -- in the sentence it says,
16 "This account was created and access provided before I
17 became involved with the Recorder's office." Do you see
18 that?

19 A. Yes.

20 Q. And that's because you knew -- you learned after
21 you became the project manager that in fact Aptitude had
22 been provided access to ER-Recorder; that's what you say,
23 right?

24 A. Yes.

25 Q. Okay. So you knew that. When did you learn

1 Aptitude was given access to ER-Recorder server?

2 A. I believe I previously said June of last year,
3 2010, in that time frame.

4 Q. Well, you said that when I asked you about
5 isphydoux, but then we learned after the fact, because I had
6 included isphydoux in my question, you said June 2010. Of
7 course, this e-mail is dated April 2010, right? So it can't
8 be later than April 2010.

9 And it's also true that you've admitted that Dan
10 Evers told you very early on in the process that at least he
11 was keeping confidential a login account for Aptitude.

12 Remember that testimony?

13 A. Yes.

14 Q. So you knew Aptitude had a login account early on
15 in your involvement in the transition, correct?

16 A. Yes.

17 Q. Okay. So having said that, the next sentence
18 says, "I was never given access," and is that true, you
19 never used the isphydoux account?

20 A. Yes.

21 Q. It says, "And did not even know the login ID
22 existed until the week before last when we had the telephone
23 conference with you." Do you see that?

24 A. Yes.

25 Q. That's not a true statement, is it? You knew the

1 login existed when Dan Evers told you he was hiding it back
2 in 2009?

3 A. This was login ID.

4 Q. What does that mean?

5 A. Isphydoux.

6 Q. Oh, okay. So what you were saying is "I didn't
7 know the name of the login"?

8 A. Yes.

9 Q. But you did in fact know the existence of the
10 login for Aptitude early on, right? When Dan Evers --

11 A. From what I had been told, I had no knowledge of
12 that other than from what Dan told me.

13 Q. Fair enough.

14 Why didn't you tell your lawyers that, that you
15 knew about it, you just didn't know the name of it?

16 A. I don't know.

17 Q. Were you trying to cover?

18 A. No.

19 Q. Are you sure?

20 A. Yes.

21 Q. And the next sentence you say, "The June 17th,
22 5:13 entry appears to indicate the server was accessed using
23 the isphydoux login from the same computer or server --" oh,
24 no. That's what Ms. Mankey said, I'm sorry.

25 And then in the next sentence, on the last page

1 here, you again confirm the 172.27.2.80 address is Aptitude
2 Solution's AS-Nevada support server; do you see that?

3 A. Yes.

4 Q. And that's the second time you've confirmed that,
5 correct?

6 A. Yes.

7 Q. So you have no doubts about that?

8 A. Yes.

9 Q. Now, the next sentence on paragraph four, the next
10 paragraph, and I'm on the last page of this exhibit, it
11 says, "We need to identify every time ER-Recorder server was
12 accessed using isphydoux and try to determine who accessed
13 it. What is the best way of doing that?" Do you see that?

14 A. Yes.

15 Q. And then you answer, you say, "The VPN access logs
16 would have been able to provide information regarding when
17 isphydoux was accessed, the isphydoux login account was
18 accessed, but these logs are only available currently to
19 11/17/09." Do you see that?

20 A. Yes.

21 Q. But I think since -- during our deposition today
22 you've confirmed that you really don't know whether or not
23 the VPN logs would be a good place to find any information
24 about the use of isphydoux, correct?

25 A. I believe Steve Monaghan is the one that suggested

1 the VPN access logs.

2 Q. So you don't know whether that's an accurate
3 statement or not, whether the VPN access logs would be able
4 to do anything with respect to isphydoux; you don't know?

5 A. Yes, I don't know.

6 (Whereupon Exhibit 10 was marked for
7 identification.)

8 Q. BY MR. THOMAS: Turning to Exhibit 10 -- do you
9 have Exhibit 10 in front of you?

10 A. Yes.

11 Q. And I'm actually not interested in the top e-mail,
12 but I'm interested in the one below it. It starts with
13 Kathy Barale to Scott McLeran. Do you see that?

14 A. Yes.

15 Q. And can you please identify that for the record?

16 A. It's an e-mail to myself and Caroline Mankey from
17 Scott McLeran, dated April 13th, 2010 with the subject of
18 AtPac, Inc.

19 Q. All right. And the e-mail you sent says, "I
20 confirmed the Red Hat logs will not provide information as
21 to where the isphydoux login originated from, just that the
22 login was active at certain times as noted." Do you see
23 that?

24 A. Yes.

25 Q. Now, when we looked at the login accounts earlier,

1 and that's Exhibit 9, do you see where it tells you where
2 the access was from and it lists the AS-Nevada IP address?

3 A. Yes.

4 Q. Okay. So then turning back to your e-mail to
5 Scott McLeran and Caroline Mankey, why did you tell them the
6 Red Hat logs will not provide access as to where the
7 isphydoux login originated from?

8 A. This is information I received from Gio.

9 Q. And what did Gio say?

10 A. Gio said what I have documented here.

11 Q. Do you know if that's true or false?

12 A. I have no reason to doubt that he -- it's true.

13 Q. Does this mean that the Red Hat logs will show
14 where the isphydoux account was initiated from? It says
15 from 172.27.2.80. But the Red Hat logs will not show
16 whether or not the AS-Nevada server was being accessed by
17 VPN or perhaps within the County. Is that what this means?

18 MR. ABU-ASSAL: Vague and ambiguous, lacks
19 foundation, calls for speculation.

20 Q. BY MR. THOMAS: Did you understand the question,
21 though?

22 A. But we also said that only Dan Evers is familiar
23 with the Red Hat logs.

24 Q. Who said that?

25 A. We have said that.

1 Q. Who's "we"?

2 A. Us here at this table.

3 Q. Well, I never said that, so that's not true, is
4 it? Is that true, that I said that?

5 A. I thought that was a question. If not, I
6 apologize.

7 Q. Well, you didn't say that to Caroline Mankey in
8 Exhibit 9 when she was asking you questions about the Red
9 Hat log, correct? You didn't tell her only Dan Evers knows
10 about the Red Hat logs, correct? You answered her
11 questions.

12 A. To the best of my knowledge.

13 Q. So just to sum this up, this statement you made to
14 McLeran and Mankey, you don't know if it's correct or not,
15 right? You're just parroting or communicating information
16 passed on to you by Giovanni.

17 A. Yes.

18 Q. All right. Fair enough.

19 (Whereupon Exhibit 11 was marked for
20 identification.)

21 Q. BY MR. THOMAS: Okay. Looking at Exhibit 11, do
22 you have that?

23 A. Yes.

24 Q. And please identify this for the record?

25 A. This is an e-mail to Caroline Mankey from myself

1 on November 17th, 2010, with the subject phone call.

2 Q. Okay. And you wrote this e-mail?

3 A. Yes.

4 Q. It says, "I know she --" and you're referring to
5 Marie, correct? I'm looking at the last sentence.

6 A. No.

7 Q. Oh, I'm sorry. You're talking about Alana Wittig.

8 A. Yes.

9 Q. It says, "I know she was on maternity leave
10 earlier in the year, so I'm not sure if you have spoken with
11 her regarding possible utilization of the isphydoux account
12 during the June 12 through 22nd time frames." Do you see
13 that?

14 A. Yes.

15 Q. Do you know if Ms. Wittig ever used that account?

16 A. No.

17 Q. You don't know one way or the other?

18 A. No.

19 Q. Because you weren't monitoring the use of that
20 account, correct?

21 A. Correct.

22 Q. Do you know if anyone within Nevada County was
23 monitoring Aptitude Solution's use of the isphydoux account?

24 A. No.

25 Q. Do you know that nobody within the County was

1 monitoring Aptitude Solution's use of the isphydoux account?

2 A. No.

3 Q. As the project manager, if someone was monitoring
4 the account, don't you think you would have known?

5 A. I can't say yes or no.

6 Q. Probably, though, you would have known?

7 A. Probably.

8 (Whereupon Exhibit 12 was marked for
9 identification.)

10 Q. BY MR. THOMAS: Exhibit 12, do you have that in
11 front of you?

12 A. Yes.

13 Q. All right. And do you recognize these as Red Hat
14 logs?

15 A. I recognize this as what was in prior e-mails.

16 Q. Okay. So you recognize this as perhaps the source
17 of what was extracted into earlier e-mails provided to you?

18 A. Yes.

19 Q. Okay. Now, if we turn to the second page, could
20 you do that, please? Do you see the June -- this is again
21 the June 17th, the first entry on June 17th, at 5:13 a.m.

22 A. Yes.

23 Q. And you recognize that as the same entry we saw in
24 the earlier e-mail, correct?

25 A. Yes.

1 Q. And do you understand that the isphydoux
2 accounts -- there's a number assigned to the initiation of
3 that session, it's a 27874?

4 A. Yes.

5 Q. Okay. And that's a number that's associated with
6 that particular session; do you see that?

7 A. Yes.

8 Q. And so as I understand this log, and tell me --
9 you know, hopefully you can confirm this. The first portion
10 of the session is when the password is accepted; do you see
11 that, at 5:13:02?

12 A. Yes.

13 Q. And then the next entry shows that the session was
14 open, and that's at the very same time; do you see that?

15 A. Yes.

16 Q. And the same number 27874?

17 A. Yes.

18 Q. That indicates it's the same session?

19 A. Yes.

20 Q. And then if we turn down to the last page, on June
21 22nd, the last page -- do you have that in front of you?

22 A. Yes.

23 Q. And do you see June 22nd at 14:17:03, that the
24 session closed, it's the 27874 session?

25 A. Yes.

1 Q. And does that indicate to you that's when the
2 session closed?

3 A. Yes.

4 Q. Okay. And so the start time is June 17th at 5:13,
5 right?

6 A. Yes.

7 Q. And the close of the session is June 22nd at 2:17
8 in the afternoon, right?

9 A. Yes.

10 Q. Okay. And you would agree with me, that's about
11 five-and-a-half days?

12 A. Yes.

13 Q. And do you have an understanding, as an IT
14 professional, about the total amount of data that could be
15 moved between -- or from ER-Recorder to AS-Nevada over a
16 five-and-a-half-day file transfer protocol session?

17 MR. ABU-ASSAL: Calls for speculation, lacks
18 foundation.

19 THE WITNESS: I don't -- I just see a login
20 access. I don't see anything else.

21 Q. BY MR. THOMAS: That's not my question. You don't
22 know what -- these logs have all the information that's
23 provided about these logins, right?

24 MR. ABU-ASSAL: The document speaks for itself, it
25 calls for speculation and it's vague and ambiguous.

1 Q. BY MR. THOMAS: Do you need the question again?

2 A. Yes.

3 Q. Let's look at the first page of the log. There's
4 a number of instances where you logged in; do you see that?

5 A. Yes.

6 Q. Why did you log into ER-Recorder?

7 A. I don't recall.

8 Q. Do you remember -- you used the putty interface to
9 move files from time to time, right?

10 A. Yes.

11 Q. Do you see any indication on these logs that
12 indicate what files you moved or how many you moved?

13 A. No.

14 Q. All right. And yet you know you moved files,
15 right?

16 A. Yes.

17 Q. Okay. So my question to you is, do you have an
18 understanding of how much data could be moved during -- from
19 ER-Recorder to AS-Nevada over a five-and-a-half-day secure
20 file transfer protocol session?

21 MR. ABU-ASSAL: Lacks foundation, calls for
22 speculation, vague and ambiguous.

23 THE WITNESS: No.

24 Q. BY MR. THOMAS: What is a file transfer protocol
25 session?

1 MR. ABU-ASSAL: Calls for expert testimony.

2 THE WITNESS: A session to transfer files from two
3 different locations.

4 Q. BY MR. THOMAS: Or from one location to another?

5 A. Yes.

6 Q. And you understand these are secure file transfer
7 protocol logs, right?

8 MR. ABU-ASSAL: Calls for speculation, lacks
9 foundation and it's vague and ambiguous.

10 THE WITNESS: I'm not familiar with what Red Hat
11 logs, the purpose of, so I can't say that they trace FTP
12 sessions.

13 Q. BY MR. THOMAS: You would defer to Dan Evers on a
14 question like that, right?

15 A. Yes.

16 Q. And to Mr. Krugle, you would defer to him?

17 A. Yes.

18 Q. Okay. You would agree that Mr. Krugle is more
19 knowledgeable about the Red Hat logs than you are, right?

20 A. Yes.

21 Q. He's more knowledgeable about the ER-Recorder
22 server?

23 A. Yes.

24 Q. And he's more knowledgeable about Linux Systems,
25 right?

1 A. Yes.

2 MR. THOMAS: We have one more exhibit. It's right
3 here.

4 Mike, what number are we on?

5 MR. SCHAPS: 13.

6 (Whereupon Exhibit 13 was marked for
7 identification.)

8 Q. BY MR. THOMAS: And in Exhibit 13 I really just
9 have a question about the top paragraph. It's the fifth
10 line down. Yeah. Can you identify this document for the
11 record?

12 A. It is an e-mail from Steve Monaghan to Mike
13 Jamison, Allison Barratt-Green and Scott McLeran on December
14 1st, 2010, with the subject AtPac versus Aptitude/Evers
15 interview.

16 Q. And based on your knowledge of the Nevada County
17 IT system, you believe this e-mail was sent between Nevada
18 County people?

19 A. Yes.

20 Q. Okay. And look at the fifth line down. I think
21 your finger was there before. It says, "Any activity seen
22 on the logs that shows that AS-Nevada server accessed
23 ER-Recorder server would have been performed by Aptitude
24 employees only." Do you see that?

25 A. Yes.

1 Q. And that's a statement by Steve Monaghan?

2 A. Yes.

3 Q. Do you concur with his statement?

4 MR. ABU-ASSAL: Lacks foundation.

5 THE WITNESS: Not when I see my name in the logs.

6 Q. BY MR. THOMAS: Fair enough.

7 A. So...

8 Q. But with respect to the use of the isphydoux
9 account.

10 A. Oh.

11 Q. If I qualify the statement as limited to the
12 isphydoux account, would you concur that any activities seen
13 in the logs that shows that the AS-Nevada server accessed
14 the ER-Recorder server would have been performed by Aptitude
15 employees, would you agree with that?

16 MR. ABU-ASSAL: Calls for speculation, lacks
17 foundation.

18 THE WITNESS: I can't assume that.

19 Q. BY MR. THOMAS: But you're not personally aware of
20 any County employees ever using the isphydoux account?

21 MR. ABU-ASSAL: Calls for speculation, lacks
22 foundation.

23 THE WITNESS: True.

24 Q. BY MR. THOMAS: I'm just asking you your
25 awareness.

1 A. (Witness nods head.)

2 Q. The answer's true?

3 A. Yes.

4 Q. Now, there's a sentence a couple of lines up, it
5 says, "As far as I understand, no County employees had a
6 login account or access to this server." Do you see that?

7 A. Yes.

8 Q. And he's referring to the AS-Nevada server,
9 correct?

10 A. Yes.

11 Q. And you must never have told him that you had
12 access to AS-Nevada server, right?

13 A. Yes.

14 Q. Because you did?

15 A. Yes.

16 Q. Was he asleep at the switch?

17 MR. ABU-ASSAL: Vague and ambiguous.

18 THE WITNESS: No.

19 Q. BY MR. THOMAS: Well, how could he be so wrong
20 about such a fundamental fact as to whether or not Nevada
21 County employees had access to the AS-Nevada server?

22 MR. ABU-ASSAL: Calls for speculation.

23 THE WITNESS: I don't know.

24 Q. BY MR. THOMAS: You would agree that Mr. Monaghan
25 is giving information to lawyers for Nevada County that you

1 know for a fact is false and wrong, right?

2 A. It's false.

3 MR. THOMAS: Okay. It's about two minutes to
4 1:00. I'd like to take our lunch break. I can come back as
5 soon as you guys would like, but, you know, it would be
6 traditional to take nearly an hour. We can take less. I'm
7 really -- I don't know what your flight plans are.

8 MR. ABU-ASSAL: Yeah. Let me -- let's step
9 outside and let me talk to her a second.

10 MR. THOMAS: It kind of depends on your thoughts
11 in terms of -- I would like to try to finish, but -- and I
12 don't know where you're at in terms of whether you'll
13 stipulate to more time with this witness.

14 MR. ABU-ASSAL: I will not.

15 Q. BY MR. THOMAS: Okay. Well, then we'll take all
16 seven hours today.

17 MR. ABU-ASSAL: Yeah, that's fine.

18 THE VIDEOGRAPHER: Going off the record at
19 12:58 p.m.

20 (Lunch recess.)

21 AFTERNOON SESSION

22 (Whereupon Exhibit 14 was marked for
23 identification.)

24 THE VIDEOGRAPHER: We're back on the record at
25 1:46 p.m.

1 Q. BY MR. THOMAS: Ms. Barale, we've taken a break, a
2 lunch break. We're back on the record and I want to inform
3 you that although we've gone back on the record, you're not
4 readministered an oath to tell the truth. The oath you gave
5 this morning still applies for the afternoon; do you
6 understand that?

7 A. Yes.

8 Q. And you'll tell the truth this afternoon?

9 A. Yes.

10 Q. I'd like you to turn to page 20 of the document in
11 front of you. And, for the record, this is a memorandum
12 dated July 21, 2010 to Nabil Abu-Assal from Caroline Mankey.
13 Do you have that in front of you?

14 A. Yes.

15 Q. And do you see at the top it says, "Kathy Barale,
16 Information Systems Analyst 3 for Nevada County."

17 A. Yes.

18 Q. Do you see the phone number?

19 A. Yes.

20 Q. Is that your phone number at work?

21 A. Yes.

22 Q. And do you see the e-mail address?

23 A. Yes.

24 Q. That's your e-mail address at work?

25 A. Yes.

1 Q. Okay. It says, "Interview, Telephone Interview,
2 March 17, 2010." Do you recall being interviewed by
3 Caroline Mankey on March 17th, 2010?

4 A. I remember the interview. I don't remember the
5 specific date.

6 Q. You recall a telephone interview with Ms. Mankey?

7 A. Yes.

8 Q. And how long did that conversation last?

9 A. I don't recall.

10 Q. Do you have an estimate?

11 A. Over an hour.

12 Q. Okay. Over two hours?

13 A. I don't know.

14 Q. Okay. And these notes are typewritten. On the
15 back is a series of handwritten notes, far into the back of
16 the various telephone conversations Ms. Mankey had. I'd
17 like to focus on the typewritten ones, though, starting on
18 page 22. Do you see the bullet points?

19 A. Yes.

20 Q. And I'd like to focus on the fourth bullet point;
21 do you see that?

22 A. Yes.

23 Q. It says, "Although the County set up a login for
24 Aptitude, the County never gave it to Aptitude and Aptitude
25 never used it." Do you see that?

1 A. Yes.

2 Q. That's not a correct statement, is it?

3 A. Not from what we've seen, no.

4 Q. Correct. You gave her misinformation, right?

5 MR. ABU-ASSAL: It lacks foundation and it
6 misstates her prior testimony.

7 Q. BY MR. THOMAS: That's not a correct statement
8 based on what you've seen, correct?

9 A. As of today it's not a correct statement.

10 Q. When you made that statement to Ms. Mankey, what
11 was your basis for making it?

12 A. Information received from Marie McCluskey.

13 Q. What did she say to you?

14 A. That she had not recalled giving the login
15 information to Aptitude.

16 Q. When did she say that to you?

17 A. After I took over and this started, I don't have a
18 specific date.

19 Q. When you say "this started" what do you mean
20 "this"?

21 A. This disclosure of information request.

22 Q. After the dispute between AtPac and the County
23 arose?

24 A. Yes.

25 Q. All right. Now, in your statement to Ms. Mankey

1 you don't say Marie McCluskey never gave Aptitude the login
2 and Aptitude never used it. You say the County never gave
3 it to Aptitude, correct?

4 MR. ABU-ASSAL: Lacks foundation.

5 Q. BY MR. THOMAS: Is that what you said to
6 Ms. Mankey?

7 MR. ABU-ASSAL: Is what what she said?

8 Q. BY MR. THOMAS: Are the notes accurate, the fourth
9 bullet point, is this when you said to Ms. Mankey?

10 MR. ABU-ASSAL: Is this all she said to Ms. Mankey
11 or --

12 MR. THOMAS: Did you -- if you're going to make
13 objections, make a speaking objection, I'm not here to
14 answer your questions.

15 MR. ABU-ASSAL: The question is vague and
16 ambiguous and imprecise.

17 Q. BY MR. THOMAS: The fourth bullet point has a
18 series of statements attributed to you; do you see that?

19 A. Yes.

20 Q. Did you make those statements?

21 A. Yes.

22 Q. All right. And when you made the statement, "The
23 County never gave it to Aptitude," focusing on that portion,
24 you base that solely on what Ms. McGrath (sic) said to you?

25 MR. ABU-ASSAL: No. Misstates her testimony.

1 Q. BY MR. THOMAS: Ms. McCluskey?

2 A. Marie McCluskey, and I don't believe there was
3 anyone else in that conversation.

4 Q. Hadn't you already learned from Dan Evers that he
5 created the login account and gave it to Aptitude?

6 MR. ABU-ASSAL: Vague and ambiguous, lacks
7 foundation and assumes facts not in evidence.

8 THE WITNESS: He told me he had created it. I did
9 not know if he had given it to them.

10 Q. BY MR. THOMAS: And because you didn't know, why
11 did you say then to Ms. Mankey, "The County never gave it to
12 Aptitude" --

13 MR. ABU-ASSAL: Asked and answered.

14 Q. BY MR. THOMAS: -- if you didn't know?

15 MR. ABU-ASSAL: Asked and answered.

16 THE WITNESS: That's what I had been told.

17 Q. BY MR. THOMAS: By Ms. McCluskey?

18 A. Yes.

19 Q. Well, she told you she hadn't give it to Aptitude,
20 right?

21 A. Yes.

22 Q. Did she tell you that she interviewed everyone
23 else in the County and confirmed no one else in the County
24 gave Aptitude an account to ER-Recorder server?

25 A. No one else but Marie or Dan that I knew of had

1 access to that knowledge.

2 Q. Correct. And you didn't know whether or not Dan
3 had given Aptitude the login, right?

4 A. Right.

5 Q. And so then why did you tell Ms. Mankey the County
6 never gave it to Aptitude when you didn't know?

7 MR. ABU-ASSAL: Misstates her testimony.

8 THE WITNESS: Based on the knowledge that I have
9 on that date, that's what I thought.

10 Q. BY MR. THOMAS: Did you tell her that's what you
11 thought or did you tell her you were certain?

12 A. I didn't declare thought versus absolute
13 knowledge.

14 Q. Now, let's look at the next portion of the
15 statement. You then say, "Aptitude never used it." Do you
16 see that?

17 A. Which bullet?

18 Q. First sentence of the fourth bullet, "The County
19 never gave it to Aptitude and Aptitude never used it." Do
20 you see that?

21 A. Yes.

22 MR. ABU-ASSAL: All he's asking you is if you see
23 it.

24 THE WITNESS: Yes.

25 Q. BY MR. THOMAS: And we know that's not correct as

1 well, right?

2 MR. ABU-ASSAL: No. Lacks foundation, misstates
3 her testimony.

4 THE WITNESS: Today we know that.

5 Q. BY MR. THOMAS: Today we know that's not correct,
6 right?

7 MR. ABU-ASSAL: Misstates her testimony and lacks
8 foundation.

9 THE WITNESS: Yes.

10 Q. BY MR. THOMAS: And you know that because of the
11 Red Hat logs you looked at, right?

12 MR. ABU-ASSAL: Lacks foundation, calls for
13 speculation.

14 THE WITNESS: Yes.

15 Q. MR. THOMAS: Now, the next sentence you state,
16 "Aptitude could not access it remotely and would have had to
17 have someone from the County login for them if they were on
18 site." Do you see that?

19 A. Yes.

20 Q. Now, you don't know that to be a true statement,
21 right, based on your testimony today?

22 MR. ABU-ASSAL: Misstates her testimony and it
23 lacks foundation.

24 THE WITNESS: True, yes.

25 Q. BY MR. THOMAS: And, in other words, that's not

1 correct, right?

2 MR. ABU-ASSAL: Lacks foundation, calls for
3 speculation.

4 THE WITNESS: Based on my being provided the Red
5 Hat logs and my knowledge of those, yes this is not true.

6 MR. THOMAS: Okay. All right. We'll come back to
7 that. I'm done with that exhibit for the moment.

8 MR. ABU-ASSAL: What did you mark that as?

9 MR. THOMAS: That should have been 14.

10 MR. SCHAPS: I have it as 14.

11 MR. THOMAS: Yeah. Now, this is 15.

12 (Whereupon Exhibit 15 was marked for
13 identification.)

14 Q. BY MR. THOMAS: All right. I've given you Exhibit
15 15, Ms. Barale. Could you please identify this for the
16 record?

17 A. It's an e-mail to Tom McGrath, Frank Barnes,
18 Jonathan Price, David Cox, Amir Haghighi and cc to Jesse
19 Dion, from Alana Wittig, dated December 21st, 2009 with the
20 subject hosting of Aptitude's support box on Virtual server.

21 Q. Okay. Have you ever seen this e-mail before?

22 A. Not that I recall.

23 Q. Okay. Now, what I'd like to do, then, is look
24 down the chain in the e-mail, and if we go to page 2 at the
25 bottom, there is an e-mail from you; do you see that?

1 A. Yes.

2 Q. And that's December 17, 2009, e-mail at 8:22 p.m.?

3 A. Yes.

4 Q. Okay. And you sent that e-mail?

5 A. Yes.

6 Q. Do you believe the date on this e-mail would
7 indicate this is received in Florida at 8:22? Would you
8 have expected to be accepting e-mails at 8:22 p.m. on
9 December 17th, 2009?

10 A. I could have.

11 Q. Okay. You may have worked late that day?

12 A. Yes.

13 Q. All right. And then turning to the next page,
14 there is another series of e-mails and there is one from
15 Alana Wittig to you, dated December 14, 2009, it's to you
16 and Gregory Diaz; do you see that?

17 A. Yes.

18 Q. Did you receive that e-mail?

19 A. Yes.

20 Q. Okay. And I'd like to focus, you know, on the
21 first e-mail and work our way up the chain. So starting
22 with this last page, it says, "Hi Kathy. We spoke to our
23 corporate office about possible concern over the use of
24 County-owned Virtual server with programs licensed to us and
25 their answer is below." Do you see that?

1 A. Yes.

2 Q. What's the topic being discussed in this e-mail,
3 if you know?

4 A. Nevada County wanted to move their physical
5 AS-Nevada into our virtual server domain.

6 Q. Okay. Let me back up for a second. You said
7 "physical AS-Nevada," what is that?

8 A. A physical server is one that you can touch.

9 Q. Okay. And AS-Nevada, we've used that term
10 throughout this deposition so far periodically, and when
11 you've used the term "AS-Nevada" with respect to the
12 questions I've asked you thus far, were you referring to a
13 physical server that you could touch?

14 A. Yes.

15 Q. Okay. And then what kind of a server was the
16 AS-Nevada or is it? What is this physical AS-Nevada server?
17 Do you know what type of server it is?

18 A. No.

19 Q. Do you know if it was an HP server?

20 A. I don't know.

21 Q. Did you know if it was a Dell server?

22 A. I don't know.

23 Q. Okay. And do you know if it was a Windows-based
24 server, ran Windows Operating or Windows software?

25 A. Yes.

1 Q. It was not a Linux server?

2 A. No.

3 Q. Okay. And do you know how the server came to be
4 in Nevada County, the physical AS-Nevada server?

5 A. Aptitude Solutions provided it.

6 Q. Did that happen before or after you became project
7 manager?

8 A. Before.

9 Q. Okay. And do you know who -- what's the term to
10 format or set up a server? Is there a term you use for
11 that?

12 A. That's sufficient.

13 Q. Okay. And do you know who set up or formatted
14 AS-Nevada with the physical server within the Nevada County?

15 A. Aptitude Solutions.

16 Q. Do you know who from Aptitude?

17 A. No.

18 Q. Okay. And who gave you the account that you used
19 to access AS-Nevada?

20 MR. ABU-ASSAL: Vague and ambiguous.

21 Q. BY MR. THOMAS: You had an account at AS-Nevada;
22 it was ISBarale, right?

23 A. Yes.

24 Q. And who gave you that account?

25 A. Aptitude Solutions.

1 Q. Did the County have the ability to create logins
2 to AS-Nevada, the physical server?

3 MR. ABU-ASSAL: Calls for speculation.

4 Q. BY MR. THOMAS: Do you know if the County had the
5 ability to create login accounts for the AS-Nevada physical
6 server?

7 A. I don't know.

8 Q. Okay. And was the AS-Nevada physical server -- it
9 was installed at the County and formed or set up sometime
10 before January 1st, 2009, correct?

11 A. Yes.

12 Q. And was it used throughout the time frame up until
13 at least when the County went live with Aptitude Solutions
14 software for the Clerk-Recorders Office?

15 MR. ABU-ASSAL: Vague and ambiguous.

16 THE WITNESS: AS-Nevada continues to be used.

17 Q. BY MR. THOMAS: Was the AS -- how long was the
18 AS-Nevada physical server used within Nevada County?

19 A. Until it was migrated into a virtual server.

20 Q. Okay. And when did that happen? If this document
21 doesn't give you the answer, there's other documents I have
22 regarding --

23 A. Okay.

24 Q. Is the answer to my question not found in this
25 particular e-mail set?

1 A. I don't see that.

2 Q. Okay. Is it your recollection that the AS-Nevada
3 physical server was migrated into a virtual server in 2010?

4 A. Yes.

5 Q. Okay. So that process happened after January 1st,
6 2010?

7 A. Yes.

8 Q. Okay. And up until that point in time, the
9 Aptitude Solutions software providing Clerk-Recorder
10 functionality was operating off of the physical AS-Nevada
11 server; is that correct?

12 A. Production. No.

13 Q. When you say "production," what does that mean?

14 A. That was their test server.

15 Q. Okay. Was there another server that Aptitude
16 established inside Nevada County?

17 A. No.

18 Q. When you said "production," what does that mean
19 then?

20 A. Nevada County had their own server in which the
21 OnCore ran.

22 Q. And what was the name of that server?

23 A. OCRC.

24 Q. OCRC, okay. And for how long was the AS-Nevada
25 production server used?

1 A. It was never used.

2 MR. ABU-ASSAL: Can I have that question read
3 back, please?

4 MR. THOMAS: I'll ask a better question.

5 MR. ABU-ASSAL: Well, I want to hear that
6 question.

7 MR. THOMAS: That's fine. Go ahead.

8 (Record read.)

9 Q. BY MR. THOMAS: There's no such thing as an
10 AS-Nevada production server, is there?

11 A. No.

12 Q. There's an AS-Nevada -- what is it? A test
13 server?

14 A. Test server.

15 Q. Test server. And then there's OCRC?

16 A. Yes.

17 Q. Which is -- or was the production server for
18 Aptitude software?

19 A. It is the production server, yes.

20 Q. Okay. And when was OCRC established?

21 A. Early 2009.

22 Q. And for how long did the AS-Nevada test server
23 operate?

24 A. It's still operating.

25 Q. How long did the AS-Nevada -- let me get this

1 physical -- is the AS-Nevada physical server something
2 different than the AS-Nevada test server?

3 A. The contents are the same. We migrated.

4 Q. To a virtual server?

5 A. Yes.

6 Q. And what is the migrated server called, the
7 current server?

8 A. AS-Nevada.

9 Q. Okay. And it's a virtual server?

10 A. Yes.

11 Q. And the AS-Nevada physical server was migrated to
12 the virtual server?

13 A. Yes.

14 Q. Okay. And which of those two, if either, is
15 referred to as the AS-Nevada test server?

16 A. The physical server.

17 Q. Okay. So when you refer to the AS-Nevada physical
18 server, that's synonymous with the AS-Nevada test server?

19 A. Yes.

20 Q. Okay. And for how long was the AS-Nevada test
21 server used?

22 A. Until Go-Live and after Go-Live.

23 Q. Until --

24 A. It's still used.

25 Q. The AS-Nevada test server?

1 A. Yes.

2 Q. Used by who?

3 A. Aptitude Solutions.

4 Q. Where?

5 MR. ABU-ASSAL: Calls for speculation.

6 Q. BY MR. THOMAS: Is the virtualized server -- do
7 you also refer to that as a test server?

8 A. Yes.

9 Q. Okay. So the AS-Nevada test server can refer to
10 either the AS-Nevada physical server or the AS-Nevada
11 virtual server?

12 A. Since we've retained the same name, yes.

13 Q. Okay. That's where I was getting confused. Now
14 I'm following.

15 So for how long was the AS-Nevada physical server
16 used?

17 A. Until we migrated to the virtual server.

18 Q. Which happened sometime after January 1, 2010?

19 A. Yes.

20 Q. Okay. And was OCRC ever used?

21 A. It's used today.

22 Q. For what?

23 A. For the production system.

24 Q. That runs the data elements' day-to-day operations
25 and the use of Aptitude's Clerk-Recorder software?

1 A. Yes.

2 Q. And what is the purpose of the current AS-Nevada
3 test server, the virtual server; what is that used for?

4 A. Provides Aptitude Solutions a way to test problems
5 prior to implementation.

6 Q. Do you know if Aptitude Solutions has source code
7 on the AS-Nevada server currently?

8 MR. ABU-ASSAL: Calls for speculation.

9 THE WITNESS: I don't know.

10 Q. BY MR. THOMAS: Do you have an account to the
11 AS-Nevada virtual test server?

12 A. Yes.

13 Q. Have you used it?

14 A. Yes.

15 Q. For what purpose do you use it currently, if you
16 do use it currently?

17 A. Not used currently.

18 Q. All right. So the e-mail we're looking at here,
19 this Exhibit 15, this is an e-mail, the subject of which is
20 the virtualization of the AS-Nevada physical server,
21 correct?

22 A. Yes.

23 Q. Okay. And whose idea was it to virtualize the
24 AS-Nevada test server, the physical server?

25 MR. ABU-ASSAL: Answer only if you know. Go

1 ahead.

2 THE WITNESS: Nevada County.

3 Q. BY MR. THOMAS: Okay. Who within Nevada County
4 proposed virtualizing the AS-Nevada physical server?

5 A. Steve Monaghan.

6 Q. Okay. Did he tell you that directly, that he
7 wanted do that?

8 A. Not directly.

9 Q. How did you hear that?

10 A. Through Fritz Gielow.

11 Q. And what did Fritz tell you specifically?

12 A. We would like to return AS-Nevada to Aptitude
13 Solutions.

14 Q. And when you say "AS-Nevada," you mean the
15 physical server?

16 A. Yes.

17 Q. And did he say why?

18 A. We need the rack space.

19 Q. And can you please tell me who Fritz Gielow is?

20 A. He's the network analyst responsible for the
21 servers.

22 Q. About how much space does -- did the AS-Nevada
23 physical server take on a rack?

24 A. I don't know.

25 Q. You've never seen it?

1 A. I saw it.

2 Q. Can you describe it for me, please?

3 MR. ABU-ASSAL: Do you know whether you saw it or
4 not?

5 THE WITNESS: I don't think I did see it.

6 Q. BY MR. THOMAS: Well, what's your expectation of
7 what the size of that server would be physically?

8 MR. ABU-ASSAL: Hypothetical, calls for
9 speculation.

10 Q. BY MR. THOMAS: You have no idea?

11 A. I can surmise.

12 MR. ABU-ASSAL: Don't guess.

13 THE WITNESS: But I don't.

14 Q. BY MR. THOMAS: Could it be as big as a Volkswagen
15 bus?

16 A. No.

17 Q. Okay. Well, then please describe a typical server
18 like AS-Nevada, please?

19 MR. ABU-ASSAL: Lacks foundation.

20 Q. BY MR. THOMAS: What does it look like?

21 A. Bigger than a laptop.

22 Q. Oh, okay. Like a desktop computer, essentially?

23 A. Smaller than that.

24 Q. Smaller than a typical desktop computer?

25 A. Yes.

1 Q. Okay. And did Mr. Gielow explain to you why he
2 needed to get rid of something smaller than a desktop
3 computer to save space?

4 A. It's the direction the County is going.

5 Q. What direction is that?

6 A. Virtualizing servers.

7 Q. Can you explain to me what it means to virtualize
8 a server?

9 A. You are able -- you do not have a physical box, a
10 lot of which is wasted space, saved resources, physical
11 resources.

12 Q. What do you mean physical resources?

13 A. Size and the rack.

14 Q. And who communicated -- whose job was it, if you
15 know, to communicate with Aptitude about virtualizing the
16 AS-Nevada server?

17 A. That was my responsibility.

18 Q. Okay. And was this -- it looks like the e-mail we
19 have at the back of this exhibit is one from Alana Wittig to
20 you responding to something you must have said to her
21 regarding virtualizing the server; is that right?

22 A. Yes.

23 Q. Did you send her an e-mail?

24 A. Yes.

25 Q. What did that e-mail say, because I don't have it?

1 A. This e-mail?

2 Q. No. The one you sent to her.

3 A. The idea that we wanted to virtualize that -- the
4 AS-Nevada and return the physical server to them.

5 Q. So as of December 14th, 2009, there was an intact
6 AS-Nevada physical server, right?

7 A. Yes.

8 Q. That was still being used at that time for test
9 purposes?

10 A. It was identified for test server -- test
11 purposes.

12 Q. What do you mean by that, "identified"?

13 A. That's what its purpose was.

14 Q. Okay. Well, do you know as of December whether it
15 was being used, December 2009?

16 A. I don't know if Aptitude Solution's staff
17 regularly logged into it.

18 Q. All right. Now, if we turn to the next e-mail,
19 that's from you to Ms. Wittig on December 17, 2009, at the
20 bottom of page 2; do you see that?

21 A. Yes.

22 Q. And did you write this e-mail?

23 A. Yes.

24 Q. It says, "Hi Alana. Before we'll start to move
25 the current AS-Nevada server to the County virtual domain,

1 we will need you to remove the unnecessary data files,
2 especially all the images used during the conversion from
3 the server. In particular, those on the E-drive." Do you
4 see that?

5 A. Yes.

6 Q. Okay. And whose idea was it to have Ms. Barale
7 remove unnecessary data files and other materials from this
8 server, as you stated in your e-mail?

9 A. I think you mean whose idea was it for Alana.

10 Q. You're writing to Alana, right?

11 A. Yes.

12 Q. And you say, "Before we will start to move the
13 current AS-Nevada server into the virtual domain, we will
14 need you to remove the unnecessary data files." Do you see
15 that?

16 A. Yes.

17 Q. Whose idea was it to make that request to Alana?

18 A. Fritz Gielow.

19 Q. And did he say why he made that request?

20 A. Yes.

21 Q. What was it; what did he say?

22 A. The data files that are the image files that are
23 taking up a lot of space that had already been migrated onto
24 the OCRC server.

25 Q. Including the data files?

1 A. Yes.

2 Q. So this was a directive to remove all unnecessary
3 data from that server; is that right?

4 A. The image files.

5 Q. Well, it says "unnecessary data files" also,
6 right?

7 A. Yes.

8 Q. So didn't your request include -- or request to
9 remove data files, right?

10 A. Unnecessary data files, yes.

11 Q. Okay. And at this point in time, do you know if
12 the AS-Nevada physical server had AtPac data files on it?

13 MR. ABU-ASSAL: Calls for speculation, lacks
14 foundation.

15 THE WITNESS: I don't know.

16 Q. BY MR. THOMAS: There was a time when you had
17 copied AtPac data files onto the AS-Nevada server, right?

18 A. Yes.

19 Q. Okay. And at this point in time, as of December
20 17th, 2009 you don't know whether those were still there?

21 A. Yes, I do not know.

22 Q. Okay. Did you make any effort to take an
23 inventory of what else was on the AS-Nevada server, the
24 physical server, at the time you made this request to
25 Ms. Wittig to remove files from that server?

1 A. No.

2 Q. Have you ever -- or did you ever make a
3 physical -- inventory of the physical AS-Nevada server to
4 determine what was on that server?

5 A. I relied on Fritz Gielow to do that.

6 Q. Did Mr. Gielow take a physical -- or excuse me,
7 did Mr. Gielow investigate the AS-Nevada server to determine
8 what was on it before you sent this e-mail on December 17,
9 2009?

10 A. Yes.

11 Q. And how do you know he did that?

12 A. He let me know there was all the TIFF images still
13 on that server.

14 Q. Okay. What else did he say?

15 A. Check with Aptitude Solutions if there are any
16 other files that are not necessary to be migrated.

17 Q. Okay. And because he told you there were TIFF
18 images on the server, you concluded that he had looked at
19 the directories on the server?

20 MR. ABU-ASSAL: Calls for speculation, lacks
21 foundation.

22 Answer only if you know.

23 THE WITNESS: I don't know.

24 Q. BY MR. THOMAS: Well, what did you conclude? How
25 did you draw the conclusion that he looked at the files and

1 directories and determined what was on the AS-Nevada server?

2 MR. ABU-ASSAL: Assumes facts not in evidence,
3 lacks foundation.

4 Q. BY MR. THOMAS: Fair enough. Did Mr. Gielow tell
5 you that he had investigated and determined everything that
6 was on the AS-Nevada server before you sent the December
7 17th, 2009 e-mail?

8 MR. ABU-ASSAL: Vague and ambiguous.

9 THE WITNESS: In particular, he mentioned the TIFF
10 files since those took a lot of disk space.

11 Q. BY MR. THOMAS: So is it fair to say you don't
12 know what he did to inspect or investigate the AS-Nevada
13 physical server before you sent that e-mail, other than that
14 you know he told you there were TIFF files present?

15 A. Yes.

16 Q. Okay. Now, moving up, Ms. Wittig responded to
17 your e-mail; do you see that?

18 A. Yes.

19 Q. And she says, "Please let us remove any files we
20 don't need from the support box so that we can start the
21 migration into the virtual server. I'll notify Kathy once
22 we are complete and then have her send the support box back
23 to us." Do you see that?

24 A. Yes.

25 Q. And now that actually looks like it's an internal

1 Aptitude e-mail.

2 At some point in time, did Aptitude remove files
3 from the AS-Nevada physical server?

4 MR. ABU-ASSAL: Calls for speculation, lacks
5 foundation.

6 Q. BY MR. THOMAS: Let me ask a different question.
7 Are you aware of whether Aptitude Solutions at some point
8 removed files from the AS-Nevada physical server in
9 response --

10 A. Yes.

11 Q. -- to your request?

12 A. Yes.

13 Q. And how do you know that?

14 A. The TIFF files Fritz previously saw were no longer
15 on the server.

16 Q. How do you know that?

17 A. He told me.

18 Q. Fritz told you?

19 A. Yes.

20 Q. Did you ever look at the directories on the
21 AS-Nevada physical server to determine whether the TIFF
22 files had been removed?

23 A. No.

24 Q. You're basing that solely on what Fritz told you?

25 A. Yes.

1 Q. Okay. Do you know what else had been removed from
2 the AS-Nevada physical server other than TIFF files, as told
3 to you by Mr. Gielow?

4 A. No.

5 Q. Did you ask?

6 A. No.

7 Q. Did Mr. Gielow tell you about any other files that
8 had been removed from the AS-Nevada physical server?

9 A. No.

10 Q. Do you know whether or not Aptitude Solutions
11 followed your request to remove, quote, unnecessary data
12 files, end quote, from the physical AS-Nevada server?

13 A. My request to remove unnecessary files, I don't
14 have any proof as to what they removed.

15 Q. Okay. Was it your intention that they remove all
16 unnecessary files regardless of whether they were TIFF
17 images or data files or whatever? You wanted to minimize
18 that physical server to its bare essentials before it was
19 virtualized; is that fair?

20 A. Yes, yes.

21 Q. Okay. And with respect to minimizing that server
22 to its bear essentials, would it also have been your intent
23 or expectation that Aptitude Solutions remove any log files
24 from that server or delete unnecessary log files?

25 MR. ABU-ASSAL: That assumes facts not in

1 evidence.

2 THE WITNESS: No.

3 Q. BY MR. THOMAS: Why not? Why would those be
4 necessary?

5 A. They -- I don't -- I was referring more to data
6 files. I don't consider the log files or if there were log
7 files.

8 Q. You don't know whether there were log files on the
9 AS-Nevada physical server?

10 A. No.

11 Q. All right. If, for example, AtPac's source code
12 were on the AS-Nevada server and it was unnecessary, would
13 it have been your expectation that those files would have
14 also been removed from the AS-Nevada physical server?

15 MR. ABU-ASSAL: Hypothetical question, calls for
16 speculation, assumes facts not in evidence.

17 THE WITNESS: I have no proof there were source
18 files.

19 Q. BY MR. THOMAS: No. I asked you if, for example,
20 there were source code files, AtPac source code files, on
21 the AS-Nevada physical server that were unnecessary for the
22 operating of the server, would it have been your expectation
23 that those files would have been removed per your request?

24 MR. ABU-ASSAL: Calls for speculation, lacks
25 foundation, is a hypothetical question.

1 THE WITNESS: Yeah. I can't answer that.

2 Q. BY MR. THOMAS: Why not?

3 A. Because I don't know -- how could -- I do not know
4 what was on the server other than what they put there in
5 order for their OnCore application.

6 Q. It was your expectation that only necessary files
7 would have been retained on that server, the physical server
8 before it was virtualized, right?

9 A. Yes.

10 Q. And to the extent AtPac source code was on that
11 server, if hypothetically it was there, and not necessary
12 for the operation of the AS-Nevada physical server, it would
13 have been your expectation that that would be removed as
14 well, right?

15 MR. ABU-ASSAL: Hypothetical, lacks foundation,
16 assumes facts not in evidence.

17 Q. BY MR. THOMAS: Why?

18 A. I have no proof of any source files that were even
19 known about, so how can I -- I have no knowledge of any
20 source files.

21 Q. Well, we looked at documents earlier today where
22 Dan Evers showed screen description, text readable files on
23 ER-Recorder. You saw that earlier today, right?

24 A. I --

25 MR. ABU-ASSAL: Misstates her testimony and

1 misstates the document itself.

2 Q. BY MR. THOMAS: Remember that?

3 A. I remember that.

4 Q. Right. So when you say you have no knowledge of
5 source files, you're certainly --

6 A. That was --

7 Q. -- do, right?

8 MR. ABU-ASSAL: You know, just because you showed
9 her a document doesn't mean she has knowledge of anything.
10 The question --

11 MR. THOMAS: We really need to stop the speaking
12 observations.

13 MR. ABU-ASSAL: Question lacks foundation, calls
14 for speculation.

15 Don't answer unless you have knowledge.

16 Q. BY MR. THOMAS: You have to answer.

17 A. I have no knowledge of source files.

18 Q. Because you never inspected the directories of the
19 AS-Nevada server to determine what was there, right?

20 A. Correct.

21 Q. And you would agree that the AtPac source code, if
22 it was on the AS-Nevada server, would have been unnecessary
23 for functioning of the AS-Nevada physical server?

24 MR. ABU-ASSAL: Calls for a hypothetical.

25 Q. BY MR. THOMAS: Let me finish my question, sir.

1 You would agree that the AtPac source code would
2 not be necessary for the functioning of the AS-Nevada
3 physical server, correct?

4 MR. ABU-ASSAL: Calls for speculation, lacks
5 foundation, calls for expert testimony.

6 THE WITNESS: Their files are not necessary for
7 OnCore.

8 Q. BY MR. THOMAS: AtPac's files?

9 A. Yes.

10 Q. All right. So moving on through this e-mail
11 chain, do you see another internal e-mail? It says -- and
12 this is Tom McGrath to Frank Barnes and others on December
13 21, 2009; do you see that?

14 A. Yes.

15 Q. It says, "I have not completed all my workup for
16 Nevada. Please give me an opportunity to get on the support
17 box and look around to make sure there's nothing I need.
18 I'll reply by tomorrow."

19 And I guess this indicates to me that in fact that
20 physical server wasn't hacked as of December 21, 2009. That
21 again was your understanding, right?

22 A. Yes.

23 Q. Okay. Okay. Done with that document.

24 (Whereupon Exhibit 16 was marked for
25 identification.)

1 Q. BY MR. THOMAS: On to No. 16. Do you have Exhibit
2 16 in front of you?

3 A. Yes.

4 Q. Please identify this for the record.

5 A. This is an e-mail to myself and Jesse Dion from
6 Alana Wittig on December 21st, 2009 with the subject,
7 hosting of Aptitude support box on virtual server.

8 Q. Did you receive this e-mail from Ms. Wittig?

9 A. Yes.

10 Q. Okay. If we look at the bottom, there is also --
11 there is two e-mails here. One from Ms. Wittig to you and
12 others at the top. And then the bottom half of the first
13 page is an e-mail from you to Ms. Wittig on December 17,
14 2009; do you see that?

15 A. Yes.

16 Q. And did you send that e-mail?

17 A. Yes, I did.

18 Q. Okay. And this is the same e-mail we looked at
19 before, I believe, where you're talking about asking her to
20 remove the unnecessary files, right?

21 A. Yes.

22 Q. Okay. And at the bottom of that e-mail --
23 actually, no. At the top of the e-mail it -- strike that.

24 At the bottom of this first page there's a
25 sentence, it says, "After your current AS-Nevada has been

1 migrated, what would you like us to do with this server
2 have (sic) it has been scrubbed?" Did I read that
3 correctly.

4 A. That -- it should have said, "Do with this server
5 after it has been scrubbed?"

6 Q. That's just a typo in the e-mail, right?

7 A. Yes.

8 Q. Okay. And so after -- you're talking about
9 requesting directions on what Aptitude wants to have done
10 with this physical box, correct?

11 A. Yes.

12 Q. Okay. And eventually what became of the AS-Nevada
13 physical box, if you know?

14 A. We shifted back to their address provided here.

15 Q. When you say "we," who is "we?" How do you know
16 that was done?

17 A. I know that was done because they told me it was
18 done.

19 Q. Who's "they"?

20 A. Aptitude Solutions.

21 Q. Okay. So they confirmed receipt of the physical
22 box?

23 A. Yes.

24 Q. Okay. And it says in the same sentence at the
25 bottom of this e-mail you say, "After your current AS-Nevada

1 has been migrated, what would you like us to do with this
2 server after it has been scrubbed?" Right, that's what you
3 said?

4 A. Yes.

5 Q. And what did you mean by "scrubbed"?

6 A. Any servers that leave the County are
7 reinitialized based on Department of Defense standards.

8 Q. And why is that?

9 A. It's a security policy of Nevada County.

10 Q. What's the purpose of the policy, if you know?

11 A. To give the information -- I don't know.

12 Q. All you know is it's a policy that you followed?

13 A. Yes.

14 Q. And the policy was to scrub the AS-Nevada physical
15 server?

16 A. Yes.

17 Q. And this is a server that had been used certainly
18 in the first half of 2009 during the migration process
19 from --

20 A. Yes.

21 Q. -- from AtPac software to Aptitude software?

22 A. Yes.

23 Q. This is a server that was used for the extended
24 file transfer protocol sessions we saw on the Red Hat logs,
25 correct?

1 A. Yes.

2 Q. Okay. And can you please describe for me the
3 process of scrubbing that AS-Nevada physical server?

4 A. That is something the network group would do.

5 Q. Okay. And do you have an understanding of what
6 that process is?

7 A. Basically, delete all information on it.

8 Q. Okay. And to just wipe the drives clean; is that
9 the --

10 A. Yes.

11 Q. Okay. And that was done, to your knowledge?

12 A. Yes.

13 Q. Okay. And this e-mail doesn't specifically
14 identify when that AS-Nevada physical server was wiped clean
15 and scrubbed. Does this e-mail, to your knowledge, indicate
16 when that happened? I don't see it on this particular
17 document, do you?

18 A. No.

19 Q. Okay. And I notice that Gregory Diaz is copied on
20 your e-mail of December 17, 2009, at 8:22 p.m. Do you see
21 that?

22 A. Yes.

23 Q. Why would you have copied Mr. Diaz on this?

24 A. He's the manager or the director of that
25 department.

1 Q. Okay. Did you ever talk with him about the plan
2 to scrub clean the AS-Nevada physical server that had been
3 used for the Aptitude/AtPac migration?

4 A. I doubt if I would have mentioned to him scrubbing
5 of the server.

6 Q. Well, did you talk to him at all about the topic
7 of wiping clean or removing all the files from the AS-Nevada
8 physical server, regardless of whether or not you used the
9 word "scrub"?

10 A. I doubt it, no.

11 MR. THOMAS: All right. Let's move to the next
12 document.

13 (Whereupon Exhibit 17 was marked for
14 identification.)

15 Q. BY MR. THOMAS: Exhibit 17. Okay. There's a
16 series of e-mails here. Can you please identify this
17 document for the record, Exhibit 17?

18 A. This is an e-mail to Alana Wittig from myself,
19 subject of Virtualization of the Support Server, dated
20 January 21st, 2010.

21 Q. All right. And it looks like it's a series of
22 e-mails back and forth between the two of you; do you see
23 that?

24 A. Yes.

25 Q. Okay. So let's go to the first e-mail on the

1 second page. When I say the first, the earliest in time.

2 And could you please identify that for the record? We're on
3 the second page of Exhibit 17.

4 A. This is an e-mail to myself from Alana on January
5 21st, 2010, Virtualization of Support Server.

6 Q. Okay. And you received this e-mail?

7 A. Yes.

8 Q. Okay. And it says, "Hi Kathy. We are in the
9 process deleting everything we don't need from the support
10 server." Do you see that?

11 A. Yes.

12 Q. Do you have any reason or facts to suggest that
13 that's not true?

14 A. No.

15 Q. Okay. Did they ever tell you, "We left stuff on
16 there even though we didn't need it"?

17 A. No.

18 Q. Okay. She then says, "We do have a backup." She
19 says, "One question: We do have a backup of all the source
20 images and data from pre-Go Live on that server, which takes
21 up a large amount of space." Do you see that?

22 A. Yes.

23 Q. With respect to the data, do you have an
24 understanding of whether that was AtPac data?

25 MR. ABU-ASSAL: Vague and ambiguous and calls for

1 a legal conclusion.

2 THE WITNESS: From here I don't know what she's
3 referring to.

4 Q. BY MR. THOMAS: Okay. And then if you go down to
5 the next paragraph that starts with the word "otherwise," do
6 you see that?

7 A. Yes.

8 Q. The second line says, "Because everything that
9 will be left by Monday morning --" and this is written on
10 Thursday -- "everything that will be left by Monday morning
11 will be the items that we need in order to support and
12 troubleshoot in case of any problems down the road." Do you
13 see that?

14 A. Yes.

15 Q. Okay. Did you have an understanding of what those
16 items were?

17 A. Aptitude Solution's items.

18 Q. With respect to specifically what they were, is
19 that something you'd be aware of or no?

20 A. Supporting the OnCore application.

21 Q. And to the extent there was AtPac source code on
22 that server, the physical server, there would be no need to
23 retain that as an item, would it?

24 MR. ABU-ASSAL: Calls for speculation, assumes
25 facts not in evidence, lacks foundation, and it's a

1 hypothetical.

2 THE WITNESS: Once again, I have no proof there
3 was any source files, AtPac at source files on that server.

4 Q. BY MR. THOMAS: Other than the five-day FTP
5 session, right?

6 MR. ABU-ASSAL: That misstates her testimony,
7 lacks foundation.

8 Q. BY MR. THOMAS: Correct?

9 MR. ABU-ASSAL: Misstates her testimony, lacks
10 foundation and calls for speculation.

11 She never testified to that.

12 Q. BY MR. THOMAS: Now, when Ms. Wittig said to you,
13 "We are in the process of deleting everything we don't need
14 from the server," did you ever question that or suggest no,
15 that you should retain more than that on the server?

16 MR. ABU-ASSAL: Vague and ambiguous.

17 THE WITNESS: No.

18 Q. BY MR. THOMAS: Did you ever encourage her to
19 preserve any information on the AS-Nevada physical server?

20 A. No.

21 Q. Do you know if anyone from the County ever did
22 request Aptitude to preserve any information on the physical
23 server?

24 A. No. No one else but myself would have
25 communicated with Alana.

1 Q. Did you ever contemplate making a backup or mirror
2 image of the AS-Nevada physical server before Aptitude
3 deleted everything on it that they don't need, except what
4 they need?

5 A. No.

6 Q. Why not?

7 A. That was Aptitude Solution's server. It was not
8 Nevada County's test server.

9 Q. So you felt you didn't have the ability to back up
10 or make an image of that server?

11 A. We didn't have the need.

12 Q. You didn't have the need?

13 A. Right.

14 Q. All right. So turning now to the first page, it
15 looks like you responded to her e-mail.

16 A. Yes.

17 Q. And it says, no -- and this is an e-mail you wrote
18 on January 21, correct --

19 A. Yes.

20 Q. -- 2010, at 12:16 p.m.?

21 A. Yes.

22 Q. And you said, "No, we don't have a backup of
23 anything currently residing on your AS-Nevada server." Do
24 you see that?

25 A. Yes.

1 Q. Okay. And so that -- as a consequence, whatever
2 was on that AS-Nevada server, to your knowledge, Aptitude
3 deleted everything they did not need from that physical
4 server, correct?

5 MR. ABU-ASSAL: Calls for speculation, lacks
6 foundation.

7 Q. BY MR. THOMAS: Based on what they told you; they
8 told you they were deleting everything they did not need
9 from the server, right?

10 A. Yes.

11 Q. And so to the extent they deleted items from the
12 server, to your knowledge, there is no backup of what was on
13 that server, right?

14 A. Yes.

15 Q. And to your knowledge, Aptitude -- excuse me,
16 Nevada County never did back up what was on the AS-Nevada
17 server before Aptitude began deleting files from it?

18 MR. ABU-ASSAL: Assumes facts not in evidence.

19 THE WITNESS: Yes.

20 Q. BY MR. THOMAS: All right. Now, it looks like she
21 then responded to your e-mail, which is in the middle of
22 this first page of Exhibit 17. Do you see that?

23 A. Yes.

24 Q. And it's dated -- Alana Wittig to you, dated
25 January 21, 2010 at 10:12 a.m. Do you see that?

1 A. Yes.

2 Q. Did you receive that e-mail?

3 A. Yes.

4 Q. And it says, "Hi Kathy. I was just saying that we
5 have a copy of your source images and data." Do you see
6 that?

7 A. Yes.

8 Q. Do you know if that referred to AtPac data?

9 MR. ABU-ASSAL: Calls for speculation.

10 Don't guess. Just tell him what you know.

11 THE WITNESS: It doesn't say AtPac data.

12 Q. BY MR. THOMAS: Okay. Let's look down at the
13 last -- or the last portion. On the fourth line down it
14 says, "It's up to you as to whether or not you keep it. We
15 have no need for it, but it's your last record of the
16 original data and images prior to us converting them." Do
17 you see that?

18 A. Yes.

19 Q. Does that tell you that that was referring to
20 AtPac data?

21 MR. ABU-ASSAL: Calls for speculation.

22 Tell him just what you know.

23 MR. THOMAS: You need to stop coaching this
24 witness, sir; it's improper.

25 MR. ABU-ASSAL: I'm instructing her to give you

1 only her personal knowledge.

2 THE WITNESS: Can't assume from that.

3 Q. MR. THOMAS: What did you understand that to mean
4 when you received it?

5 A. I would understand it to be the AtPac data.

6 Q. All right. And that's what you understood when
7 you received it?

8 A. Yes.

9 Q. And did that concern you at all that in January
10 21, 2010, Aptitude Solutions still had AtPac data in its
11 possession? Did that concern you?

12 A. No.

13 Q. Why not?

14 A. They had already migrated the data and hadn't
15 deleted it off from their server.

16 Q. And didn't that concern you?

17 A. No.

18 Q. Wasn't the County obligated after the termination
19 of the AtPac contract, to make sure that all copies of AtPac
20 data and files and computer programs were removed and
21 deleted?

22 MR. ABU-ASSAL: Calls for a legal conclusion,
23 assumes facts not in evidence and lacks foundation, also
24 calls for speculation.

25 THE WITNESS: Definition of whose data is that?

1 Q. BY MR. THOMAS: Well, it says original data before
2 it was converted.

3 MR. ABU-ASSAL: Vague and ambiguous, calls for
4 speculation.

5 Q. BY MR. THOMAS: Right?

6 A. Right.

7 Q. Wasn't that AtPac's data?

8 MR. ABU-ASSAL: Calls for a legal conclusion.

9 THE WITNESS: Raw data.

10 Q. BY MR. THOMAS: You already testified that your
11 presumption was it was AtPac's data; that was your
12 testimony.

13 MR. ABU-ASSAL: Calls for a legal conclusion,
14 misstates her testimony.

15 Q. BY MR. THOMAS: You need me to read it back?

16 A. It's AtPac's raw data.

17 Q. BY MR. THOMAS: Did you use the word "raw data"
18 here? Ms. Wittig used the word "original data," right? And
19 you understood that at the time to be AtPac data, right?
20 That's what your testimony was.

21 MR. ABU-ASSAL: That misstates her testimony.
22 Your question was vague and ambiguous and I objected to it.
23 Same objections, calls for speculation, calls for legal
24 conclusion, lacks foundation.

25 THE WITNESS: I previously used the word "data"

1 and erroneously didn't preface it with the word "raw."

2 Q. BY MR. THOMAS: You also previously testified that
3 you presumed that meant AtPac data.

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. And do you stand by that testimony, that it was
8 AtPac data?

9 A. That's not a definite answer, that it was AtPac
10 data. You asked if I would think that it was AtPac data.

11 Q. Okay. Well, let's see what you thought at the
12 time.

13 So she's asking you -- she's saying we have no
14 need for it, but it's your last record of the original data
15 and images prior to us converting them. That's what she
16 says to you, right?

17 A. Yes.

18 Q. And let's look at your response at the top.
19 What's at the top? It's an e-mail from you to her at 11:22
20 a.m. Do you see that?

21 A. Yes.

22 Q. And you wrote that e-mail, correct?

23 A. Yes.

24 Q. And it says, "Yes, we had CDs made of our prior
25 AtPac data." Right?

1 A. Yes.

2 Q. So you were referring to AtPac data.

3 A. All right.

4 Q. Agreed?

5 A. All right.

6 Q. So didn't that concern you that you still had
7 possession of AtPac data on CDs and that Aptitude had
8 possession of AtPac data on the physical AS-Nevada server as
9 late as January 21, 2010? Didn't that concern you?

10 MR. ABU-ASSAL: Vague and ambiguous.

11 THE WITNESS: No.

12 Q. BY MR. THOMAS: Why not?

13 A. The data had already been migrated. It was
14 basically of no more use to us.

15 Q. BY MR. THOMAS: Thank you. So why were you
16 keeping it in breach of a contract with AtPac?

17 MR. ABU-ASSAL: That -- okay, look, you've got to
18 quit coming to legal conclusions. The objection is a legal
19 conclusion, it lacks foundation and it's misleading, and
20 it's also just flat out false.

21 You don't have to assume that anything he says is
22 true.

23 MR. THOMAS: Okay. These speaking objections have
24 got to stop. You've got stop that, Mr. Abu-Assal. You're
25 delaying the deposition.

1 MR. ABU-ASSAL: You're misleading the witness.

2 MR. THOMAS: State your objection, then stop
3 speaking.

4 MR. ABU-ASSAL: You're misleading the witness and
5 it's burdensome and harassing and it also calls for a legal
6 conclusion and lacks foundation.

7 MR. THOMAS: This deposition's going to take four
8 days with these objections.

9 Q. Do you have an answer to my question?

10 A. Ask it again, please.

11 Q. You understand that the County had an obligation
12 to remove AtPac software and data files from its system
13 after the contract ended, didn't you?

14 MR. ABU-ASSAL: Vague and ambiguous, lacks
15 foundation.

16 THE WITNESS: My understanding was the non-use of
17 the AtPac system.

18 Q. BY MR. THOMAS: What do you mean by that?

19 A. Using their interface, the AtPac interface to
20 access our data.

21 Q. I didn't understand that answer. I'm sorry, can
22 you explain that?

23 A. I thought the contract, the ending of the contract
24 was that Nevada County would no longer utilize AtPac to
25 access the data supporting Nevada County images.

1 Q. What was your understanding based on? Who told
2 you that?

3 A. No one told me that.

4 Q. Well, why did you have that understanding?

5 A. The contract was ending, we no longer used the
6 interface, the software.

7 Q. Did you ever read the contract with AtPac to
8 figure out what your obligations were at the conclusion of
9 the AtPac contract?

10 A. No.

11 Q. Didn't you think that was important as a project
12 manager?

13 MR. ABU-ASSAL: Asked and answered, both
14 questions.

15 THE WITNESS: No.

16 Q. BY MR. THOMAS: And because you never read the
17 contract, you weren't concerned that AtPac and the County
18 had retained AtPac data, because you didn't realize that
19 that deletion of those files was required under the
20 contract, right?

21 MR. ABU-ASSAL: Compound, misstates her testimony.

22 Q. BY MR. THOMAS: I'll ask a different question.

23 Because you never read the contract between AtPac
24 and the County, you weren't concerned that Aptitude and the
25 County had retained AtPac data as late as January 2010; is

1 that right?

2 MR. ABU-ASSAL: Misstates her testimony, assumes
3 facts not in evidence.

4 THE WITNESS: No.

5 Q. BY MR. THOMAS: That's not right?

6 A. I wasn't concerned.

7 Q. All right.

8 (Whereupon Exhibit 18 was marked for
9 identification.)

10 Q. BY MR. THOMAS: Exhibit 18, this is an internal
11 AtPac e-mail or Aptitude e-mail. Have you seen this before?

12 A. No.

13 Q. Okay. It looks like it's February 5th, 2010; do
14 you see that?

15 A. Yes.

16 Q. And it says, "I removed the conversion and bond
17 paper directories from the E-drive and copied them to the
18 FTP site. Do you see that?

19 A. Yes.

20 Q. Do you know what the conversion directories are?

21 A. No.

22 Q. Do you know what the bond paper directories are?

23 A. No.

24 Q. Do you know what the E-drive is?

25 A. No.

1 Q. Does the E-drive refer to the driver on the
2 AS-Nevada physical server?

3 MR. ABU-ASSAL: Calls for speculation.

4 Q. BY MR. THOMAS: Do you know?

5 A. From the content here, I would assume.

6 Q. But you don't know?

7 A. I don't know that, no.

8 Q. Okay. And it says, "And copied them to the FTP
9 site." Do you see that?

10 A. Yes.

11 Q. Do you know what FTP site that is?

12 A. No.

13 Q. And no one from Aptitude ever told you they
14 removed from the AS-Nevada server the conversion and bond
15 paper directories and copied them to the FTP site, correct?
16 You were never told that?

17 A. No.

18 Q. No, you were never told that?

19 A. True, I was never told that.

20 (Whereupon Exhibit 19 was marked for
21 identification.)

22 Q. BY MR. THOMAS: Exhibit 19 is in front of you.
23 Exhibit 19 is two e-mails. There is one at the bottom, one
24 at the top. Can you please identify for the record the one
25 at the bottom?

1 A. It's an e-mail to Alana Wittig from myself, dated
2 February 19th, 2010, subject AS-Nevada.

3 Q. And did you send this e-mail?

4 A. Yes, I did.

5 Q. Okay. And you said, "I believe virtualization of
6 the AS-Nevada work is as expected." Do you see that?

7 A. Yes.

8 Q. That's February 19, 2010. When was the
9 virtualization done, if you know?

10 A. I don't know.

11 Q. Do you believe it was close in time to February
12 19th, 2010?

13 A. Yes.

14 Q. Okay. How close? Matter of days?

15 A. I don't know.

16 Q. More than 10 days?

17 A. I don't know.

18 Q. Okay. And then it says, "Please let me know when
19 you feel comfortable enough for us to scrub your AS-Nevada
20 server in preparation in mailing the server back to you."
21 Do you see that?

22 A. Yes.

23 Q. Did I read that correctly?

24 A. Yes.

25 Q. And so as of February 19th, 2010 you had not yet

1 scrubbed clean the AS-Nevada physical server, right?

2 A. Yes.

3 Q. And then you say, "No rush, but just wanted to
4 arrange a time sometime in the future when everyone feels
5 comfortable with the current environment and we can close
6 this issue." Do you see that?

7 A. Yes.

8 Q. What did you mean "close"? Why in quotes?

9 A. So we can finish the virtualization.

10 Q. And what did you mean by "this issue"?

11 A. To virtualize AS-Nevada.

12 Q. And scrub clean the AS-Nevada physical server?

13 A. Yes.

14 Q. And again that scrubbing was to take place after
15 Aptitude Solutions had removed everything off the server
16 that it felt it didn't need, correct?

17 A. Yes.

18 Q. And did Aptitude Solutions ever tell you when they
19 actually completed removing all the materials off of the
20 AS-Nevada physical server that they felt they didn't need?

21 A. I don't remember the date she told me, Alana told
22 me.

23 Q. You just don't remember?

24 A. No.

25 Q. Okay.

1 MR. ABU-ASSAL: Are we done with that exhibit?

2 MR. THOMAS: Yes.

3 MR. ABU-ASSAL: Can I take a short, short break?

4 MR. THOMAS: Of course.

5 MR. ABU-ASSAL: Okay.

6 THE VIDEOGRAPHER: We're going off the record at

7 2:54 p.m. This is the end of tape No. 2.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We are back on the record at

10 3:01 p.m. This is the beginning of disk No. 3 in the

11 deposition of Kathy Barale.

12 (Whereupon Exhibit 20 was marked for

13 identification.)

14 Q. BY MR. THOMAS: Exhibit 20 for you, Mrs. Barale.

15 All right. Can you please identify Exhibit 20 for

16 the record?

17 A. This is an e-mail to Tom McGrath from myself,

18 dated February 22nd, 2010, subject server to use during

19 testing of Acclaim for Nevada County.

20 Q. All right. And this is one where -- and you sent

21 this e-mail, correct?

22 A. Yes.

23 Q. And now it says, "We have moved Aptitude

24 Solution's prior AS-Nevada server into our virtual domain.

25 We will be working in the next few weeks to scrub the prior

1 AS-Nevada server to prepare for shipment back to you. So I
2 trust we will be using our test AS-Nevada server for testing
3 of Acclaim." Do you see that?

4 A. Yes.

5 Q. Okay. Did I read that correctly?

6 A. Yes.

7 Q. Do you have personal knowledge as to when
8 AS-Nevada server was actually scrubbed?

9 MR. ABU-ASSAL: That was asked and answered.

10 Q. BY MR. THOMAS: After this e-mail was sent?

11 A. No.

12 Q. It's not something that was your responsibility to
13 accomplish, right?

14 A. True.

15 Q. It was done with your cooperation and direction;
16 is that true?

17 A. Yes.

18 Q. Okay. Back to Exhibit 13. Do you have that in
19 front of you?

20 A. Yes.

21 Q. Okay. And do you recall this is an e-mail from
22 Steve Monaghan to Mike Jamison, Allison Barrett-Green and
23 Scott McLeran. Do you see that?

24 A. Yes.

25 Q. Who is Allison Barrett-Green, if you know?

1 A. I don't know.

2 Q. Do you know if that's a lawyer for the County?

3 A. I don't know.

4 Q. Turning to this e-mail, it's written December 1 of
5 2010, that's just a couple months ago, roughly.

6 A. Yes.

7 Q. Less than a month -- two months ago, right?

8 A. Yes.

9 Q. Okay. And if we read down on paragraph -- the
10 second paragraph, it says, "In the last few weeks IS staff
11 finally got around to --

12 THE COURT REPORTER: I'm sorry, in the last few
13 weeks...

14 MR. THOMAS: IS, capital I, capital S?

15 THE COURT REPORTER: Sorry.

16 Q. MR. THOMAS: That means Information Systems; is
17 that true, Ms. Barale?

18 A. Yes.

19 Q. And that's your department?

20 A. Yes.

21 Q. It says, "IS staff finally got around to removing
22 the physical server from our data center, wiping its hard
23 drives clean and shipping it back to Aptitude." Do you see
24 that?

25 A. Yes.

1 Q. And that's a statement by the head of your entire
2 department.

3 A. Yes.

4 Q. Steve Monaghan, right?

5 A. Yes.

6 Q. And do you have any facts to suggest that's not
7 true?

8 A. No.

9 Q. Okay. Now, were you ever told by anyone that
10 Aptitude Solutions filed a tort claim against Nevada County
11 and Gregory Diaz in September of 2009?

12 A. No.

13 Q. You didn't know that?

14 A. No.

15 Q. Okay. And so nobody told you after the filing of
16 Nevada County's -- of the tort claim by AtPac against Nevada
17 County and Gregory Diaz to preserve evidence, no one told
18 you to do that?

19 A. I was told not to delete any prior e-mails, but
20 not in reference to the tort.

21 Q. Let me back up for a second. I asked the question
22 incorrectly.

23 Were you ever told by anyone that AtPac had filed
24 a tort claim against Nevada County and Gregory Diaz in
25 September of 2009?

1 A. I don't recall that.

2 Q. Were you ever told?

3 A. I don't recall that.

4 Q. Were you told that AtPac filed a lawsuit against
5 Nevada County?

6 A. Yes.

7 Q. And do you know when that lawsuit was filed?

8 A. Thinking back, I think it was midyear of last
9 year, if not before.

10 Q. You think it might have been as early as 2009?

11 A. Possibly.

12 Q. I'll represent to you the tort claim was filed in
13 September of 2009, and the lawsuit was filed February 4th,
14 2010, a federal piece of litigation. Does that refresh your
15 recollection?

16 A. I'm not familiar with the term "tort."

17 Q. You're familiar with the lawsuit and federal
18 court, right?

19 A. Yes.

20 Q. Okay. And so it's after February 4th, 2010 that
21 Nevada County scrubbed clean the AS-Nevada physical server
22 that was used for multi-day file transfer protocol sessions
23 with ER-Recorder, my client's server, in June of 2009,
24 correct?

25 MR. ABU-ASSAL: Assumes facts not in evidence,

1 lacks foundation and misstates her testimony.

2 Q. BY MR. THOMAS: Correct?

3 A. Yes.

4 Q. And before the AS-Nevada physical server was wiped
5 clean, at your request, Aptitude Solutions wiped everything
6 it felt was not necessary for the operation of that server
7 off the physical server, correct? That's what you were
8 told.

9 A. Yes.

10 Q. And assuming that my client filed its tort claim
11 against Nevada County in September of 2009, which is true,
12 Aptitude's removal of all unnecessary files from that
13 AS-Nevada physical server happened after my client filed its
14 tort claim, correct?

15 MR. ABU-ASSAL: Assumes facts not in evidence.

16 THE WITNESS: Yes.

17 Q. BY MR. THOMAS: It's your testimony that nobody
18 suggested to you on any level that it would be a good idea
19 not to wipe clean and destroy evidence or servers or data
20 files or logs; no one ever suggested that to you?

21 MR. ABU-ASSAL: Calls for a legal conclusion,
22 compound, assumes facts not in evidence.

23 THE WITNESS: No.

24 Q. BY MR. THOMAS: And just so we're clear -- well,
25 this e-mail of December 1, 2010, Exhibit 13, where

1 Mr. Monaghan says that the ER-Recorder physical server was
2 wiped clean just in the last few weeks, so late in 2010,
3 that e-mail was copied to Mike Jamison, right?

4 A. Yes.

5 Q. And you know he's a lawyer for the County, right?

6 A. Yes.

7 Q. He's County Counsel, right?

8 A. Yes.

9 Q. He's the head lawyer for the entire County of
10 Nevada, right? It's your understanding?

11 A. I believe so.

12 Q. And now that the AS-Nevada server -- physical
13 server was wiped clean after Aptitude deleted everything off
14 of it that they thought was not necessary, we'll never know
15 exactly what was on that server, will we?

16 MR. ABU-ASSAL: Assumes facts not in evidence.

17 THE WITNESS: No.

18 Q. BY MR. THOMAS: Correct?

19 A. Correct.

20 Q. Do you think that's fair?

21 MR. ABU-ASSAL: Don't answer that question.

22 Q. BY MR. THOMAS: Do you think that's fair to my
23 client?

24 MR. ABU-ASSAL: Don't answer that question. I'm
25 instructing her not to answer.

1 Q. How do you feel about that? Feel good about that?

2 MR. ABU-ASSAL: Vague and ambiguous.

3 THE WITNESS: It wasn't done intentionally.

4 Q. BY MR. THOMAS: Are you saying that the AS-Nevada
5 physical server was wiped clean by accident; is that what
6 you're saying?

7 A. No.

8 Q. It was intentionally wiped clean, correct?

9 MR. ABU-ASSAL: Vague and ambiguous.

10 Q. BY MR. THOMAS: Correct?

11 A. Someone intentionally executed the commands to do
12 that, but not intentionally as a result of the lawsuit.

13 Q. BY MR. THOMAS: And what evidence do you have of
14 that other than your statement in a deposition where you've
15 acknowledged already at least once testifying falsely?

16 MR. ABU-ASSAL: That is false and it misstates the
17 testimony on the record.

18 THE WITNESS: Nevada County has nothing to hide.

19 Q. BY MR. THOMAS: Well, there is nothing to hide now
20 because it destroyed what it was trying to hide, correct?

21 MR. ABU-ASSAL: Assumes facts not in evidence and
22 misstates her testimony.

23 THE WITNESS: We weren't hiding anything.

24 Q. BY MR. THOMAS: You were just deleting and
25 destroying things, correct?

1 MR. ABU-ASSAL: Assumes facts not in evidence,
2 misstates her testimony and now you're harassing the
3 witness.

4 THE WITNESS: We were getting --

5 Q. BY MR. THOMAS: That's correct. Nevada County was
6 destroying data, deleting data and wiping servers clean
7 after this lawsuit was filed; that's correct, right?

8 MR. ABU-ASSAL: Misstates her testimony.

9 Q. BY MR. THOMAS: Tell me if that's not correct.
10 You need it read back? What I said is correct, isn't it?

11 A. We scrubbed the server after the lawsuit, yes.

12 Q. And according to Mr. Monaghan -- how would I
13 determine exactly when that server was scrubbed? What would
14 you look for to know that exactly?

15 A. I would reference the IS help desk ticket that I
16 created for that.

17 Q. And there would be records in there when people
18 actually accomplished certain tasks?

19 A. There should be.

20 Q. And that document would relate to Aptitude to the
21 extent it relates to the AS-Nevada server, right?

22 A. I don't understand your question.

23 MR. THOMAS: Fair enough.

24 Mr. Assal, has that help ticket been produced?

25 It's clearly responsive.

1 MR. ABU-ASSAL: I don't know.

2 MR. THOMAS: I'd ask that you please look into
3 that.

4 MR. ABU-ASSAL: You're going to have to tell us
5 exactly what is, because we've produced, I think, over
6 10,000 documents, if I'm not mistaken.

7 MR. THOMAS: Well --

8 MR. ABU-ASSAL: Can you just tell us the exact
9 number? And I know we've produced a zillion help tickets.

10 MR. THOMAS: I don't think you produced this one,
11 the one that confirms destruction of AS-Nevada's physical
12 server after the lawsuit was filed. Do you think you've
13 produced that?

14 MR. ABU-ASSAL: I don't know. Do you have a
15 number or a way to specify?

16 Q. BY MR. THOMAS: Let's have the witness -- what
17 documents would be necessary for you to understand when the
18 AS-Nevada -- well, strike that.

19 You have no reason to think Mr. Monaghan is wrong
20 in terms of saying that was done a few weeks back, before
21 December 1, 2010, right? I think you've already testified
22 you have no facts to suggest that's not correct.

23 A. I don't know when it was done.

24 Q. Okay. Did anyone tell you that on October 15th,
25 2010 County of Nevada was ordered by a federal judge to

1 produce documents to my client responsive to requests for
2 production of documents? Did anyone ever tell you that?

3 A. Yes.

4 Q. And according to Mr. Monaghan's e-mail, it looks
5 like the AS-Nevada physical server was scrubbed clean and
6 sent back to Aptitude after that order. That's how I read
7 that. Is that how you read it?

8 MR. ABU-ASSAL: That lacks foundation.

9 Q. BY MR. THOMAS: Is that how you read it?

10 MR. ABU-ASSAL: Calls for speculation.

11 THE WITNESS: What is the question referring to,
12 Mr. Monaghan's e-mail?

13 Q. BY MR. THOMAS: The statement that in the last few
14 weeks IS staff finally got around to removing the physical
15 server from our data center, wiping its hard drive clean and
16 shipping it back to Aptitude, that sentence written on
17 December 1st, 2010. Looks like that was done after October
18 15th, doesn't it?

19 A. I don't know what last few weeks may reference.

20 (Whereupon Exhibit 21 was marked for
21 identification.)

22 Q. BY MR. THOMAS: All right. I've placed before you
23 a document, it's dated November 20th, 2008 from Kirk Weir
24 and Marie McCluskey. Do you know Kirk Weir?

25 A. No.

1 Q. Okay. And if you turn to the next page, it's a
2 memo to Marie McCluskey from Kirk Weir, dated November 20th,
3 2008; do you see that?

4 A. Yes.

5 Q. Do you recall receiving this as part of the
6 materials, if any, provided by Ms. McCluskey to you when she
7 transitioned the project over to you in early 2009?

8 A. I trust this was included.

9 Q. Okay. Do you have a recollection of receiving
10 some stack of papers of some kind?

11 A. Yes.

12 Q. Okay. Did you retain that stack?

13 A. I -- it wasn't a physical stack; it was e-mails.

14 Q. It was electronic?

15 A. Yes.

16 Q. Okay. And if you look at the fourth paragraph, do
17 you see that it starts with the word "Third"?

18 A. Yes.

19 Q. It says, "Third, the format and structure of our
20 data files is proprietary, so we will need to create exports
21 for all of the Clerk-Recorders files groups of files in
22 CRiis." Do you see that?

23 A. Yes.

24 Q. All right. When you came on board on this project
25 in early January 2009, did you have an understanding that

1 AtPac was taking the position that its data files were
2 proprietary?

3 MR. ABU-ASSAL: Vague and ambiguous as to what
4 data files are.

5 Q. BY MR. THOMAS: Let me ask a better question.
6 Thank you.

7 Did you understand when you came onto the project
8 that it was AtPac'S position that the format and structure
9 of its data files was proprietary?

10 A. Yes.

11 Q. Okay. But you don't have a specific recollection
12 of reading this letter or do you, now that you've seen it
13 for a moment?

14 A. No.

15 Q. Okay. I'm done with that.

16 (Whereupon Exhibit 22 was marked for
17 identification.)

18 Q. BY MR. THOMAS: Do you have Exhibit 22 in front of
19 you?

20 A. Yes.

21 Q. All right. And this is an internal AtPac e-mail.
22 Why don't you take a look at it and let me know if you've
23 seen it before, if they ever showed it to you.

24 I said this was an internal AtPac e-mail. I
25 should have said Aptitude.

1 A. I don't remember seeing that.

2 Q. Okay. And turning specifically to the second
3 e-mail on the first page between Shawn Cimock and presumably
4 David Cox; do you see that?

5 A. Yes.

6 Q. Who's Shawn Cimock, if you know?

7 A. I don't know.

8 Q. Okay. It says, "That's great that you have the
9 ability to pull the data from the files. However, I still
10 think we need to get a full backup from AtPac with the file
11 layouts because technically we were not supposed to have
12 connection to their database." Do you see that?

13 A. Yes.

14 Q. You agree with that statement, don't you, that
15 Aptitude was not supposed to have a connection to AtPac's
16 database?

17 MR. ABU-ASSAL: Vague and ambiguous, calls for a
18 legal conclusion.

19 THE WITNESS: Connection to the database is
20 different from connection to the server.

21 Q. BY MR. THOMAS: Well, the database you've
22 acknowledged to the extent it contains data file, data
23 schema, data structure would be proprietary. We've already
24 covered that, right?

25 MR. ABU-ASSAL: Vague and ambiguous, overbroad.

1 THE WITNESS: Yes, we covered that.

2 Q. BY MR. THOMAS: So wouldn't you agree that
3 Aptitude was not supposed to have a connection to AtPac's
4 database?

5 MR. ABU-ASSAL: Calls for a legal conclusion and
6 vague and ambiguous.

7 THE WITNESS: We've only referred to the data
8 files, not anything regarding the schema or the definition
9 of those files.

10 Q. BY MR. THOMAS: I'm not sure I understand that.
11 Can you please clarify?

12 THE WITNESS: We've only referenced, if I can
13 utilize the word raw data files, and nothing regarding the
14 schema or the definition of those data files.

15 Q. You mean other than the e-mail where Mr. McGrath
16 said he looked AtPac's schema, you mean other than that
17 e-mail that we saw; is that what you mean?

18 MR. ABU-ASSAL: Vague and ambiguous, assumes --
19 misstates her testimony.

20 Q. BY MR. THOMAS: You saw that e-mail, right?

21 A. I -- yes.

22 Q. So what did you mean when you said "We've only
23 referenced raw data," that's not true?

24 MR. ABU-ASSAL: Vague and ambiguous, misstates her
25 testimony.

1 THE WITNESS: I don't know what they accessed, so
2 all I can do is know what I accessed, it's all. I don't
3 know what he accessed other than the e-mails.

4 Q. BY MR. THOMAS: And the reason you don't know what
5 Aptitude accessed on my client'S server is because you
6 weren't watching or monitoring that, correct?

7 MR. ABU-ASSAL: Vague and ambiguous, misstates her
8 testimony and lacks foundation.

9 THE WITNESS: I was not monitoring their logins,
10 no.

11 Q. BY MR. THOMAS: Logins to ER-Recorder, correct?

12 MR. ABU-ASSAL: Assumes facts not in evidence.

13 THE WITNESS: If those logins existed, no, I was
14 not monitoring that.

15 Q. Okay. Look at Exhibit 23.

16 (Whereupon Exhibit 23 was marked for
17 identification.)

18 Q. BY MR. THOMAS: Okay. This is a December 24th,
19 2008 memo; do you see that?

20 A. Yes.

21 Q. And it says it's from Tom McGrath to David Cox,
22 and those are internal Aptitude people?

23 A. Yes.

24 Q. And it says, "The overriding issue is that AtPac
25 files such as gendoc.dat are considered AtPac's intellectual

1 property by both counties. Therefore, we cannot use them."

2 Do you see that?

3 A. Yes.

4 Q. Do you agree with that statement?

5 MR. ABU-ASSAL: Wait, wait. Read the whole
6 document before you answer.

7 MR. THOMAS: You're trying to slow the deposition
8 down. I don't have questions about the entire document,
9 sir. Just the first e-mail.

10 MR. ABU-ASSAL: It's misleading, your question.
11 I'm instructing her to read the whole document. And,
12 moreover, I don't think she's ever seen this document, so
13 whatever your question is, it lacks foundation.

14 THE WITNESS: And the question?

15 Q. BY MR. THOMAS: Do you agree with the first
16 sentence of the first e-mail which says, "AtPac files such
17 as gendoc.dat are considered AtPac's intellectual property
18 by both counties, therefore, we cannot use them"?

19 MR. ABU-ASSAL: Vague and ambiguous, overbroad
20 and lacks foundation.

21 THE WITNESS: I don't -- I don't know what this
22 particular .dat file contains, so I do not know why he would
23 identify that one in particular.

24 Q. BY MR. THOMAS: Well, he says, "AtPac files such
25 as gendoc.dat," so apparently that's an example; wouldn't

1 you agree?

2 MR. ABU-ASSAL: Agree with what? The question's
3 vague and ambiguous.

4 THE WITNESS: Since he pulls that one out in
5 particular, there must be something unique on that
6 particular file that doesn't reference -- that doesn't
7 include all the files.

8 Q. BY MR. THOMAS: Okay. And because he pulled that
9 out, your belief is he pulled out that specific document as
10 being uniquely different, that would mean Mr. McGrath had
11 seen that document, that file, wouldn't it?

12 MR. ABU-ASSAL: That assumes facts clearly not in
13 evidence and calls for a speculation.

14 Q. BY MR. THOMAS: Well, your answer necessarily
15 presumes he understood what was in that .dat file and that's
16 why you say you can't answer the question, right?

17 MR. ABU-ASSAL: Assumes --

18 THE WITNESS: No, it doesn't.

19 MR. ABU-ASSAL: -- facts not in evidence, calls for
20 speculation.

21 Q. BY MR. THOMAS: Why not?

22 A. I don't know where he saw that document, if it was
23 within Placer County's domain.

24 Q. Do you know where he got the information to state
25 that both counties believe gendoc.dat or files such as that

1 are confidential or proprietary?

2 MR. ABU-ASSAL: Calls for speculation.

3 THE WITNESS: This was before I got involved in
4 the project, so I do not know where.

5 Q. BY MR. THOMAS: Did anyone tell you that AtPac
6 .dat files are intellectual property of AtPac?

7 A. No.

8 Q. No one told you that?

9 A. No.

10 Q. Okay. You didn't believe that?

11 MR. ABU-ASSAL: Wait.

12 Q. BY MR. THOMAS: I'll ask a different question.
13 Did you believe AtPac's .dat data files were
14 confidential and proprietary?

15 MR. ABU-ASSAL: Calls for a legal conclusion.

16 THE WITNESS: No.

17 Q. BY MR. THOMAS: The answer's no?

18 A. The answer's no.

19 Q. Okay. Now, before this project, did you have any
20 particular expertise in data files?

21 MR. ABU-ASSAL: Vague and ambiguous.

22 Q. BY MR. THOMAS: Database management systems?

23 MR. ABU-ASSAL: Vague and ambiguous.

24 Q. BY MR. THOMAS: Can you answer the question,
25 please?

1 A. I've worked with data files, not the CRIis data
2 files.

3 Q. So why didn't you think the CRIis data files were
4 proprietary and confidential?

5 A. They had no schema attached to them.

6 Q. How do you know; did you inspect them?

7 A. I opened one up and it was just a continuous line
8 of data, there was no line breakage.

9 Q. Which one did you open up?

10 A. I don't recall.

11 Q. Now, in response to my earlier question about the
12 other e-mail, you indicated that there must be something
13 different or special about gendoc.dat that makes it
14 different than other data files; isn't that your testimony?

15 MR. ABU-ASSAL: Misstates her testimony.

16 THE WITNESS: If he identified that file uniquely,
17 I would think there would be something unique on that file.

18 Q. BY MR. THOMAS: And so you looked at one AtPac
19 data file that you can't remember at the moment and drew a
20 conclusion about all of the data files; is that what you
21 did?

22 A. They were raw data files.

23 Q. How do you know? How many did you look at?

24 A. No, I didn't look at all the data files.

25 Q. How many data files did you look at? You told me

1 you looked at one a moment ago. Did you look at any more
2 than one?

3 A. Yes.

4 Q. How many?

5 A. Maybe five or ten.

6 Q. And why did you look at them?

7 A. To see what was contained in them.

8 Q. Why?

9 A. Because I was interested.

10 Q. For what reason?

11 A. Curiosity.

12 Q. Just curiosity?

13 A. Yes.

14 Q. And these were continuous lines of numbers and
15 letters; is that true?

16 A. Numbers and letters.

17 Q. Okay. With no breaks?

18 A. No breaks.

19 Q. Okay. And some of these lines you looked at, did
20 they contain names and dates, things of that nature?

21 A. Yes.

22 MR. ABU-ASSAL: Vague and ambiguous.

23 Q. BY MR. THOMAS: They contained names?

24 MR. ABU-ASSAL: Vague and ambiguous.

25 Q. BY MR. THOMAS: Did the data files you looked at

1 contain names?

2 A. They contained characters that could be perceived
3 as names. There was nothing indicating it was a name.

4 Q. BY MR. THOMAS: Well, did you see any combination
5 of characters that looked like a name you had heard before
6 when you looked at the data files?

7 MR. ABU-ASSAL: Vague and ambiguous.

8 THE WITNESS: No names that I recognized. No
9 alphabetic characters in a string that I would recognize as
10 a name.

11 Q. Do you know what files you looked at, at all? Do
12 you have any idea what they related to?

13 MR. ABU-ASSAL: Vague and ambiguous.

14 Q. BY MR. THOMAS: You said you looked at five or
15 ten?

16 A. I would -- maybe the marriage file.

17 Q. And in looking at the marriage file, you didn't
18 see a single name?

19 A. I saw characters that I would assume were names.
20 There was nothing that told me it was a name field.

21 Q. Okay. And there's nothing about any of these
22 things you assumed were names such as the fact that it was a
23 traditional name that indicated to you it was a name like
24 Smith or Jones or something like that; you didn't see any
25 indicators like that in the data files?

1 A. No.

2 MR. ABU-ASSAL: Vague and ambiguous.

3 You must let me have time to object.

4 Vague and ambiguous.

5 Go ahead and answer.

6 THE WITNESS: There were common names or common

7 last names that you would assume were names.

8 Q. BY MR. THOMAS: And then not all names are the
9 same length, right? Some names have more letters than
10 others, true?

11 A. Yes.

12 Q. Okay. In the data files after a particular name,
13 were there characters in certain places after the names
14 before other data showed up?

15 A. No.

16 Q. Are you sure?

17 A. From what I saw, all the data was concatenated.

18 Q. Tell me what that means?

19 A. There was no delimiters, no spaces, nothing to
20 break the data fields up.

21 Q. Is it possible you just didn't recognize what the
22 divided characters were from one data -- piece of data to
23 another were?

24 MR. ABU-ASSAL: Vague and ambiguous.

25 THE WITNESS: I don't believe so.

1 Q. BY MR. THOMAS: And when did you look at these
2 data files? Early on in the project, get yourself oriented?

3 A. When I was identifying where they were in order to
4 copy them.

5 (Whereupon Exhibit 24 was marked for
6 identification.)

7 Q. BY MR. THOMAS: All right. Turning to Exhibit 24,
8 do you have that in front of you, it's an e-mail?

9 A. Yes.

10 Q. Did you write this e-mail?

11 MR. ABU-ASSAL: Can I see the e-mail, please?

12 MR. SCHAPS: I gave it to you.

13 MR. ABU-ASSAL: Oh, sorry.

14 MR. THOMAS: Do you have Exhibit 24?

15 MR. ABU-ASSAL: Yes.

16 Q. BY MR. THOMAS: Did you write that e-mail?

17 A. I wrote -- yes, the e-mail.

18 Q. Okay. And there is an attached document; do you
19 see that?

20 A. Yes.

21 Q. And you say -- and you're writing this to Gregory
22 Diaz and others?

23 A. Yes.

24 Q. And it says, "Attached is the letter to be sent to
25 AtPac regarding our plans for acquiring our Recorder data

1 and data images," right?

2 A. Yes.

3 Q. And attached to that is a draft letter dated
4 January 7, 2009; do you see that?

5 A. Yes.

6 Q. Okay. Whose idea was it for you to circulate this
7 letter to Mr. Diaz and others?

8 A. As I recall, the letter was developed internally
9 and given to him for review.

10 Q. And who developed it internally?

11 A. I believe Debra Russell.

12 Q. Anyone else?

13 A. Not that I recall.

14 Q. Did you help write this letter?

15 A. Debra Russell had just started at the County, so
16 I'm sure that she and I worked on it together.

17 Q. Okay. And who is Debra Russell?

18 A. She was a prior assistant Clerk-Reporter.

19 Q. Do you know if she's a computer professional like
20 you?

21 A. No.

22 Q. All right. And it's your recollection that you
23 did assist her or she assisted you in creating this letter?

24 A. Yes.

25 Q. Anyone else participate in writing this letter?

1 A. This letter was written after we had met with Tom
2 McGrath.

3 Q. Okay. And did he participate in helping form the
4 content of this letter?

5 A. I don't remember what he asked to be included or
6 suggested; I don't remember that.

7 Q. Okay. And so turning to the letter, it says,
8 "Nevada County will be extracting the County's official
9 records and clerk records data from AtPac's CRIis system
10 data files, right?

11 A. Yes.

12 Q. And so that says Nevada County will be extracting
13 things.

14 The next sentence says, "We are not asking for any
15 definition or schema information from AtPac." Do you see
16 that?

17 A. Yes.

18 Q. And you've already testified what schema means in
19 this deposition, as I recall. What did you mean by
20 definition, definition information.

21 A. Another word for schema.

22 Q. It's the same thing?

23 A. In this context, yes.

24 Q. The next paragraph says, "Nevada County will dump
25 the data to flat files." Okay. What does that mean to dump

1 data?

2 A. Normally it would be copy from one format like a
3 database file into another format --

4 Q. Like what?

5 A. -- that doesn't need the database application to
6 read it.

7 Q. Would that include a text file?

8 A. No.

9 MR. ABU-ASSAL: Vague and ambiguous.

10 Q. BY MR. THOMAS: No?

11 A. A text file is a flat file.

12 Q. So the County -- it says the County will dump the
13 data to flat files. And when you're referring to data in
14 that sentence, are you referring to, for example, the .dat
15 files in AtPac's ER-Recorder server?

16 MR. ABU-ASSAL: Vague and ambiguous.

17 THE WITNESS: The data files identified, the AtPac
18 data files identified.

19 Q. BY MR. THOMAS: Identified by who?

20 A. Tom McGrath.

21 Q. Okay. So when you were talking about dumping data
22 to flat files, the dumping means copying, right?

23 A. Uh-huh.

24 Q. And the data files referred to at least some of
25 the AtPac .dat files, right?

1 A. Yes.

2 Q. And to flat files. Again, what did that refer to?

3 A. Normally it would refer to non-database files.

4 Q. Is that what you meant in this letter?

5 A. Yes, I believe so.

6 Q. All right. And then after that was done, you then
7 say, "The County will extract individual data elements from
8 those files." Do you see that?

9 A. Yes.

10 Q. What did that mean?

11 A. We did not do that.

12 Q. Let's -- okay. We'll get to that. My question
13 is, what did you mean when you wrote this letter that says
14 extract individual data elements? What did that mean at the
15 time you wrote it?

16 A. To find the string of data into the individual
17 data elements. So if there was a name field, that name
18 field would be delimited with only the name that it
19 referenced.

20 Q. You'd remove extra characters, for example?

21 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
22 not in evidence.

23 THE WITNESS: We hadn't gotten to that point.

24 Q. BY MR. THOMAS: Okay. All right. And the next
25 sentence says, "We have no intention of utilizing, saving or

1 preserving AtPac's tables in their current format for future
2 use." Do you see that?

3 A. Yes.

4 Q. The next sentence says, "Aptitude Solutions will
5 be working only with the extracted flat files," right?

6 A. Yes.

7 Q. And that's referring to the step up above that
8 says you would extract individual data elements, right?

9 A. Yes.

10 Q. And that's something you didn't do --

11 MR. ABU-ASSAL: Assumes facts not in evidence.

12 Q. BY MR. THOMAS: -- correct?

13 Well, didn't you just testify that you didn't
14 extract data elements?

15 A. Yes, we did not extract data elements.

16 Q. Okay. And therefore, you did not work only with
17 extracted flat files, correct, because you didn't extract?

18 MR. ABU-ASSAL: Misstates her testimony.

19 THE WITNESS: We copied flat files.

20 Q. BY MR. THOMAS: Let me back up. It says,
21 "Aptitude will be working only with extracted flat files,"
22 correct?

23 A. Yes.

24 Q. And you didn't extract anything from any files,
25 correct?

1 MR. ABU-ASSAL: Misstates her testimony.

2 Q. BY MR. THOMAS: Well, you said you did not extract
3 individual data elements, right? You didn't do that, right?

4 A. Right.

5 Q. And therefore Aptitude did not work only with
6 extracted flat files.

7 MR. ABU-ASSAL: That misstates her testimony.

8 MR. THOMAS: That's a question.

9 MR. ABU-ASSAL: It's a misleading question because
10 it misstates her testimony.

11 THE WITNESS: This here is incorrect because up
12 above it refers to extracted data elements and down here
13 it's referencing extracted flat files. This is not the
14 same.

15 Q. BY MR. THOMAS: So what's incorrect, the first or
16 the second paragraph or the third or both? Are both
17 incorrect?

18 A. We didn't -- the term "extracted flat files" would
19 refer to removing, copying those -- copying those in the
20 format that they existed and -- in the format they existed.

21 Q. As opposed to extracting individual data elements?

22 A. Yes.

23 Q. But you were representing to AtPac in this letter
24 that individual data elements would be extracted, correct?

25 A. To AtPac? When this letter was dated, that's what

1 the plan was.

2 Q. Right. And that's what the representation was to
3 AtPac, right?

4 A. Yes.

5 Q. And that was a misrepresentation, that never
6 happened?

7 A. Yes.

8 Q. Did you ever tell AtPac, "Hey, we've changed the
9 plan; we're not doing what we promised you we would do"?

10 A. I did not do that.

11 Q. Why not?

12 A. I didn't communicate with AtPac.

13 Q. Why not?

14 A. There is no reason. I didn't communicate with
15 AtPac.

16 Q. Well, wasn't one reason to communicate with them
17 the fact that you weren't doing what the County said it
18 would do; isn't that a reason?

19 MR. ABU-ASSAL: Vague and ambiguous.

20 THE WITNESS: It didn't appear to me to be so.

21 Q. BY MR. THOMAS: What didn't appear to you to be
22 so?

23 A. That I needed to communicate with Aptitude --
24 excuse me, AtPac.

25 Q. Even though you weren't doing what was promised?

1 A. This letter wasn't from me.

2 Q. But you circulated the letter and you participated
3 in writing it, right?

4 A. Debra Russell wrote the letter.

5 Q. Excuse me, I think you testified that you worked
6 on the letter with her.

7 A. I worked on the letter with her.

8 Q. Okay. And you knew the content of the letter
9 because you circulated it, right? You're the one who
10 circulated it to Mr. Diaz.

11 A. All right, yes.

12 Q. And, nevertheless, you felt no qualms whatsoever
13 about the fact that you weren't doing what was promised and
14 you had no intention of alerting AtPac to that fact,
15 correct?

16 MR. ABU-ASSAL: Vague and ambiguous, misstates her
17 testimony.

18 THE WITNESS: Yes.

19 MR. THOMAS: All right.

20 (Whereupon Exhibit 25 was marked for
21 identification.)

22 Q. BY MR. THOMAS: Next exhibit, this is Exhibit 25
23 and this is an -- can you identify this e-mail for the
24 record?

25 A. An e-mail to Gregory Diaz from Rob Shulman, dated

1 January 7th, 2009, subject revision to letter to AtPac.

2 Q. And you're copied on this?

3 A. Yes, I am.

4 Q. Did you receive this?

5 A. Yes, I did.

6 Q. Okay. And turning to the next page, there's a
7 paragraph at the top that looks like it's been added to the
8 letter you worked on with Ms. Russell; do you see that?

9 A. I don't know if this came before the other letter.

10 Q. All right. It says, "Additions with track
11 changes," and then there's underlined with an entire
12 paragraph. That wasn't in the earlier letter. Do you see
13 that?

14 A. Yes.

15 Q. Okay. And do you know why Mrs. Russell or
16 Ms. Russell wasn't copied on this e-mail since you say she
17 is the one who was writing the letter with your help?

18 A. No.

19 Q. Did you talk with Mr. Diaz about the content of
20 this letter?

21 A. I don't believe I did.

22 Q. I'd like to give you Exhibit 27?

23 MR. ABU-ASSAL: Aren't we on 26?

24 THE WITNESS: Yeah, 26.

25 MR. THOMAS: Pardon me.

1 (Whereupon Exhibit 26 was marked for
2 identification.)

3 MR. ABU-ASSAL: Now we're on 26?

4 MR. THOMAS: Twenty-six.

5 MR. ABU-ASSAL: Thanks.

6 Q. BY MR. THOMAS: Okay. And then please identify
7 this document for the record.

8 A. This is a letter from Gregory Diaz to myself,
9 dated January 13th, 2009 and the subject matter AtPac
10 letter.

11 Q. Okay. And did you receive this e-mail?

12 A. Yes, I did.

13 Q. And do you recognize this as the final version of
14 this letter?

15 A. I believe so.

16 Q. Okay. And do you know who was responsible for
17 sending this letter out?

18 A. Gregory Diaz.

19 Q. By the time this letter went out, had you already
20 decided you weren't going to extract individual data
21 elements from the AtPac files?

22 A. I don't believe so.

23 Q. You didn't know at that time?

24 A. I don't believe so, no.

25 Q. Okay. That's all I have for that.

1 (Whereupon Exhibit 27 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Turning to Exhibit 27, can you
4 please identify this for the record?

5 A. An e-mail to Gregory Diaz from myself, dated
6 January 15th, 2009, subject Aptitude/OnCore update.

7 Q. And you wrote this e-mail?

8 A. Yes.

9 Q. It says, "I was able to get access to the
10 ER-Recorder server today where the AtPac data and data
11 images reside. I spoke with Tom." Is that Tom McGrath?

12 A. I believe so.

13 Q. It says, "He created an .XLS --" that's Excel?

14 A. Yes.

15 Q. "-- spreadsheet defining where the files are
16 located that he would like me to copy to the AS-Nevada
17 server." Do you see that?

18 A. Yes.

19 Q. So internally you were telling Mr. Diaz you would
20 be copying files to the AS-Nevada server, correct?

21 A. Yes.

22 Q. Okay. You didn't use the words "extract
23 internally" when you're telling Mr. Diaz what you're going
24 to do, right?

25 A. Yes, correct.

1 Q. And so by the 15th of January, had you already
2 decided you would not be extracting data elements?

3 MR. ABU-ASSAL: Could you please read the entire
4 document before you answer?

5 MR. THOMAS: I don't have questions about the
6 whole documents, so I think it slows down the deposition.

7 MR. ABU-ASSAL: Well, no, it doesn't slow down
8 because you're asking questions way out of context. This is
9 an entire document. She has a right to read all of it
10 before you start questioning her.

11 MR. THOMAS: You're wasting time.

12 THE WITNESS: I don't know at what point we
13 decided that we did not have the knowledge to extract the
14 individual data elements and that Tom McGrath indicated that
15 they would figure it out, they being the Aptitude Solutions.

16 Q. BY MR. THOMAS: But at some point -- so the reason
17 you didn't extract individual data elements is because you,
18 being you Ms. Barale, didn't know how to extract individual
19 data elements? Is that right, you didn't have that
20 knowledge?

21 A. Not just myself. I don't think no one at the
22 County knew how to do that.

23 Q. Okay. Did you tell AtPac that you -- contrary to
24 the letter you wrote, you didn't know how to do that?

25 A. No.

1 Q. Did you feel an obligation to tell AtPac that?

2 A. No.

3 Q. Okay. And now this reference to an Excel
4 spreadsheet that Mr. McGrath created, do you see that?

5 A. Yes.

6 Q. That spreadsheet was defining -- this is a quote,
7 "defining where the files are located that he would like me
8 to copy to the AS-Nevada server." Did I read that
9 correctly?

10 A. Yes.

11 Q. And he's talking about files located on the
12 ER-Recorder server, right? You're talking about files
13 located on the ER-Recorder server.

14 A. I believe so, yes.

15 Q. And the question was, how did Mr. McGrath know
16 where files were located on the ER-Recorder server?

17 A. I don't know.

18 Q. Well, doesn't that indicate that -- to you that he
19 would have had to have inspected to ER-Recorder server to
20 know specifically for you where files are located on that
21 server?

22 MR. ABU-ASSAL: Calls for speculation.

23 THE WITNESS: No.

24 Q. BY MR. THOMAS: How else would he know?

25 MR. ABU-ASSAL: Calls for speculation.

1 THE WITNESS: By observing files possibly at
2 Placer County.

3 Q. BY MR. THOMAS: That's speculation on your part,
4 correct? You don't know.

5 A. I don't know.

6 Q. Well, did anyone ever tell you that the
7 ER-Recorder server was set up exactly the same as any
8 servers in Placer County?

9 A. No.

10 Q. And that all the file directory names and trees
11 were perfectly identical?

12 A. No.

13 Q. For that -- for Mr. McGrath to have gotten his
14 information from Placer County, that would have to be true,
15 right? Everything would have to be perfectly identical,
16 wouldn't it?

17 MR. ABU-ASSAL: Calls for speculation.

18 THE WITNESS: No.

19 Q. BY MR. THOMAS: Why not? At least the directory
20 trees would have to be identical.

21 MR. ABU-ASSAL: Wait, wait, wait. What -- you
22 didn't let her answer your prior question. So reask a
23 question or ask a question.

24 THE WITNESS: Search functions are available to
25 find files.

1 Q. BY MR. THOMAS: Okay. I'm listening. So what's
2 that got to the do with the Excel spreadsheet he created for
3 you to tell you exactly where files were located?

4 A. He gave me file names.

5 Q. How would he know the file names in ER-Recorder
6 unless he had been in ER-Recorder?

7 A. I don't know.

8 Q. You can't explain that?

9 MR. ABU-ASSAL: Calls for speculation. She just
10 said, "I don't know."

11 Q. BY MR. THOMAS: You don't have an explanation for
12 that?

13 A. No.

14 Q. All right. What did you assume at the time?

15 MR. ABU-ASSAL: Lacks foundation, calls for
16 speculation.

17 THE WITNESS: I didn't know.

18 Q. BY MR. THOMAS: You didn't ask?

19 A. No.

20 Q. All right. Moving onto the next e-mail it says,
21 "I thought -- no, the next paragraph. It says, "I thought
22 initially that Tom could copy the file into DocuShare to
23 avoid using e-mail." Do you see that?

24 A. Yes.

25 Q. What was your thought in terms of avoiding using

1 e-mail? Why avoid e-mail?

2 A. I don't recall.

3 Q. The next sentence says, "I suggested to Tom that
4 he e-mail the information to me at my home address." Do you
5 see that?

6 A. Yes.

7 Q. What was your purpose in suggesting that?

8 A. I don't recall.

9 Q. Why would you have used your home address?

10 A. I don't recall.

11 Q. Was it to avoid creating a paper trail at the
12 County?

13 A. I doubt it.

14 Q. You doubt it, but you're not sure?

15 A. I don't know.

16 Q. You don't know. Fair enough.

17 On how many other occasions have you suggested
18 that people send you e-mails to your home address for work-
19 related purposes?

20 A. It has happened.

21 Q. It happened with respect to the Excel spreadsheet
22 that you thought Mr. McGrath should send to you. But other
23 than that, how many times has it happened?

24 A. Just this last weekend.

25 Q. How many times before the suggestion to

1 Mr. McGrath had it happened?

2 A. I don't recall any others.

3 Q. Okay.

4 (Whereupon Exhibit 28 was marked for
5 identification.)

6 Q. BY MR. THOMAS: Exhibit 28 has been marked. Would
7 you please identify this for the record?

8 A. It's an e-mail to Alana Wittig and Tom McGrath
9 from myself, dated January 16th, 2009 with the subject
10 initial copy of AtPac data.

11 Q. Okay. And if we look down at the third sentence,
12 it says, "I found photonam.dat." Do you see that?

13 A. Yes, I do.

14 Q. Paren, "Rather than the requested photonam.dat"
15 end paren, "and copy that file as photocopiesname.txt." Do
16 I have that right?

17 A. Yes.

18 Q. Okay. What are you referring to there? What did
19 you do, if you could put that into plain English?

20 A. From a list of file names that Mr. McGrath had
21 provided to me, one of those was the photoname.dat without
22 the E -- or excuse me, with the E.

23 Q. Uh-huh.

24 A. And I didn't find that particular file, but I
25 found this other one similarly named.

1 Q. All right.

2 A. And I'm letting him know that that was the one
3 that I copied.

4 Q. And was photoname.dat -- or photonam.dat, was that
5 one of the files you had looked at previously, the five or
6 ten files you looked at?

7 A. I don't recall.

8 Q. You don't recall? Okay.

9 And you then copied that onto the AS-Nevada
10 server; is that right?

11 A. Yes.

12 Q. Okay. And you copied all of it?

13 A. The entire file, yes.

14 Q. Okay. And you renamed it a .txt file; is that
15 right?

16 A. Yes.

17 Q. Why did you do that?

18 A. That's what Mr. McGrath had asked me.

19 Q. And do you know why?

20 A. No.

21 Q. Okay. Can you think of any reason why you would
22 do that?

23 A. No.

24 Q. And you never asked; you just followed his
25 instructions?

1 A. Yes.

2 Q. Okay. But to your knowledge, there was no
3 difference between the photonam.dat file and the
4 photonam.txt file other than a different name, right?

5 A. Right.

6 Q. And when you did that, you didn't extract any
7 individual data elements from the photonam.dat file before
8 you gave those elements to Mr. McGrath, correct?

9 A. Correct.

10 Q. And that was contrary to the letter given to my
11 client, correct?

12 A. Yes.

13 (Whereupon Exhibit 29 was marked for
14 identification.)

15 Q. BY MR. THOMAS: I've placed before you,
16 Mrs. Barale, Exhibit 29. Could you please identify this for
17 the record?

18 A. This is an e-mail to Sandy Sjoberg and Gregory
19 Diaz from myself, dated February 26, 2009, subject questions
20 about Nevada data.

21 Q. And did you sign this e-mail?

22 A. Yes.

23 Q. And if you would turn to the second page, there's
24 a number of bullet points.

25 A. Yes.

1 Q. And these are questions from Aptitude; is that
2 right?

3 A. Yes.

4 Q. And the seventh bullet point down, can you look at
5 that, it says, "What do these doctype codes represent? They
6 aren't listed on the AtPac site or the hard copy doctype
7 codes." Do you see that?

8 A. Yes.

9 Q. Do you understand that question? Can you
10 interpret that for me, for someone who's not a computer
11 professional like yourself?

12 A. I'm not a professional in Recorder software, but
13 doctype codes uniquely identify the type of document that's
14 being recorded.

15 Q. And are those doctype codes -- are those codes
16 that were found in the data files you copied to the
17 AS-Nevada server?

18 A. I don't know.

19 Q. You don't know?

20 Okay. That's all I have for that.

21 (Whereupon Exhibit 30 was marked for
22 identification.)

23 Q. BY MR. THOMAS: Moving onto Exhibit 30, can you
24 please identify this for the record?

25 A. Sent to Alana Wittig, David Cox, Frank Barnes,

1 from myself, dated May 4th, 2009, subject thank you for all
2 your hard work.

3 Q. Okay. And why did you send this on May 4th?

4 A. To thank them for working on the conversion.

5 Q. Had the conversion of the data been completed by
6 May 4th?

7 A. No.

8 Q. Okay. It was a midstream thank you letter?

9 A. Yes.

10 Q. All right. And now it says, "I would like to
11 personally thank you for all of your work to convert our
12 AtPac data into the OnCore data structures." Do you see
13 that?

14 A. Yes.

15 Q. What were the OnCore data structures?

16 A. The sequel database behind their application.

17 Q. Did you inspect that database ever?

18 MR. ABU-ASSAL: Vague and ambiguous.

19 THE WITNESS: I have, yes.

20 Q. BY MR. THOMAS: How does it compare to AtPac? Is
21 it similar?

22 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
23 not in evidence.

24 THE WITNESS: I don't know OnCore's database --
25 excuse me, AtPac's database.

1 Q. BY MR. THOMAS: All right. Well, you looked at
2 AtPac's data files right, the .dat files, correct?

3 A. In a text editor.

4 Q. Well, you looked at the .dat files before they
5 were converted to text files. That was your testimony,
6 wasn't it? On five or ten files you did that.

7 MR. ABU-ASSAL: Misstates her testimony.

8 THE WITNESS: As text as in the -- it's just a
9 flat file.

10 Q. BY MR. THOMAS: Is it your testimony that you
11 never looked at an AtPac data file until after you had
12 converted it to a text file; is that true?

13 A. There was no conversion. It was a copy, the same
14 data was included in the .dat versus the .txt.

15 Q. And you have no explanation, other than you were
16 told to, why you would have bothered to rename them to text
17 files?

18 A. No.

19 Q. It served no purpose in your mind?

20 A. In my mind, no.

21 Q. Could it have been an effort to present the
22 appearance that somehow the data was being changed in its
23 format, but really it wasn't?

24 MR. ABU-ASSAL: Calls for speculation.

25 Q. BY MR. THOMAS: Do you think that was one of the

1 reasons Mr. McGrath asked you to rename them text files?

2 A. No.

3 MR. ABU-ASSAL: Calls for speculation.

4 THE WITNESS: No.

5 Q. BY MR. THOMAS: That never occurred to you?

6 MR. ABU-ASSAL: Calls for speculation.

7 A. No.

8 Q. BY MR. THOMAS: All right. Now, going to the
9 second sentence in this letter -- this e-mail, it says, "The
10 AtPac data structures are not static over all years." What
11 did you mean by that?

12 A. During the conversion effort, Aptitude Solutions
13 reported that identical data elements were found in
14 different locations within the same data file provided.

15 Q. That's what you meant?

16 A. Yes.

17 (Whereupon Exhibit 31 was marked for
18 identification.)

19 Q. BY MR. THOMAS: Exhibit 31 is a series of e-mails.
20 I'm focused with you on the one in the middle. Please
21 identify that for the record.

22 A. This is an e-mail from myself to Alana Wittig on
23 May 11, 2009, subject request for Nevada data and image
24 dump.

25 Q. It says you plan to -- in that e-mail in the last

1 sentence it says, "I then plan to give you a complete new
2 dump of the data similar to what was previously provided."
3 Do you see that?

4 A. The last line?

5 Q. Yes.

6 A. Yes.

7 MR. ABU-ASSAL: May I ask what time it is?

8 MR. THOMAS: It's seven minutes after 4:00.

9 MR. ABU-ASSAL: Okay. After you're done with this
10 document, can we take a short break?

11 MR. THOMAS: Yes.

12 MR. ABU-ASSAL: Okay.

13 Q. BY MR. THOMAS: When you say "similar to what was
14 previously provided," what was previously provided?

15 A. A copy of the data files.

16 Q. Is that when you pulled the data files from
17 AS-Nevada -- excuse me, you pulled data files from
18 ER-Recorder onto AS-Nevada.

19 MR. ABU-ASSAL: Vague and ambiguous.

20 THE WITNESS: I copied them more than once.

21 Q. BY MR. THOMAS: How many times did you copy the
22 files?

23 A. Three times.

24 Q. Why three?

25 A. I copied them the first time to get them started

1 on the migration.

2 Q. Right.

3 A. I copied them the second time as requested by them
4 and I copied them the third time for Go Live.

5 MR. THOMAS: All right. I'm done with Exhibit 31.

6 MR. ABU-ASSAL: Okay. Take a real short break.

7 THE VIDEOGRAPHER: We are going off the record at
8 4:09 p.m.

9 (Recess taken.)

10 (Whereupon Exhibit 32 was marked for
11 identification.)

12 THE VIDEOGRAPHER: We're back on the record at
13 4:21 p.m.

14 Q. BY MR. THOMAS: Okay. Ms. Barale, welcome back.
15 I've placed before you Exhibit 32. Can you please identify
16 the two-page Exhibit 32?

17 A. First page is a list of the files that I copied,
18 the .dat file name and the reflective .txt file name that I
19 copied them to.

20 Q. Okay. And the left-hand column, column A, is the
21 names of files on the ER-Recorder server?

22 A. Yes.

23 Q. And the names in the B column are the names you
24 gave those files on the AS-Nevada physical server, correct?

25 A. Yes.

1 Q. Okay. And this list was given to you by
2 Mr. McGrath?

3 A. Yes.

4 Q. Okay. Turning to the next page, can you please
5 identify that?

6 A. This is a script that I had developed that was
7 copying the files noted on the prior page onto the AS-Nevada
8 server.

9 Q. Okay. This script -- let me ask you, does this
10 script have anything in it that would suggest to you that it
11 would move files from one server to another or copy files
12 from one server to another? I didn't see that. I'm just
13 asking you if you see that?

14 MR. ABU-ASSAL: Excuse me, can you read that
15 question back?

16 Q. BY MR. THOMAS: I'll reask it, Nabil.

17 Is there anything about this script that you
18 developed that would cause files to be copied from one
19 server to another server?

20 MR. ABU-ASSAL: Vague and ambiguous.

21 THE WITNESS: The script was used on the putty
22 application. The putty application had set up the "from"
23 and "to" servers from which this was utilized.

24 Q. BY MR. THOMAS: And that putty application was
25 located -- was it on AS-Nevada?

1 A. It was on my PC desktop.

2 Q. Was there another application called WIN-SCP
3 located on AS-Nevada, W-I-N-S-C-P?

4 A. I don't know.

5 Q. Are you familiar with that application?

6 A. No.

7 Q. So this is a script you used with the putty
8 application. Can you spell that, "putty"?

9 A. P-U-T-T-Y.

10 Q. And it allowed you to move files from one server
11 to another?

12 A. Yes.

13 Q. All right.

14 (Whereupon Exhibit 33 was marked for
15 identification.)

16 Q. BY MR. THOMAS: Exhibit 33 I've placed before you.
17 Can you please identify that for the record?

18 A. This is a letter from Richard Sandblade to myself
19 on June 8, 2009 with the subject marriage license data file
20 on ER-Recorder.

21 Q. Okay. And did you receive this e-mail?

22 A. Yeah. Are we all looking at the same thing?

23 Q. I don't know. May I see it?

24 MR. ABU-ASSAL: I don't think so.

25 MR. THOMAS: Sorry, Nabil. Well, I've got the

1 same document as the witness, but obviously something's
2 happened with what we've given Nabil.

3 This is it right here (indicating).

4 MR. ABU-ASSAL: So this is Exhibit 33?

5 MR. THOMAS: Yes.

6 MR. ABU-ASSAL: Okay.

7 Q. BY MR. THOMAS: Okay. And you received this
8 e-mail, Ms. Barale, did you?

9 A. Yes.

10 Q. Okay. And this -- it looks like this is in
11 response to two e-mails you sent to him. Do you see those
12 lower on the page?

13 A. Yes.

14 Q. Let's go back to the first e-mail. It's at the
15 bottom and it says it's June 6th at 5:06 p.m. Do you see
16 that?

17 A. Yes.

18 Q. And you're asking him about marriage license data?

19 A. Yes.

20 Q. Okay. And thus far within your e-mails internally
21 within the County you've talked about copying files from
22 ER-Recorder to AS-Nevada, correct?

23 A. Yes.

24 Q. And when you wrote to Mr. Sandblade on June 6th,
25 you said, "Hi Richard. I'm trying to extract the marriage

1 license information within the AtPac system." Do you see
2 that?

3 A. Yes.

4 Q. Why did you use the word "extract" when you were
5 writing to Richard Sandblade of AtPac? And why didn't you
6 just tell him you were trying to copy the marriage license
7 information?

8 A. I don't know why I didn't use the word "copy"
9 rather than "extract" in this sentence.

10 Q. Did you use the word "extract" because that's the
11 word used in the January 8th letter where the County
12 promised AtPac it would extract individual data elements,
13 the letter you helped write and you wanted to make sure you
14 were telling Mr. Sandblade AtPac that you were doing what
15 you promised you would do?

16 A. No.

17 Q. Are you sure?

18 A. Yes.

19 Q. So you have no -- you have no explanation as to
20 why you used the "extract" term in an e-mail with Mr.
21 Sandblade?

22 A. No.

23 Q. And when you wrote this to him, you knew for a
24 fact you were not extracting any data files, correct?

25 MR. ABU-ASSAL: Vague and ambiguous.

1 THE WITNESS: The word "extract" can mean copy --
2 in my definition, I'm extracting something from location A
3 and moving it to location B.

4 Q. BY MR. THOMAS: But that's not what you said on
5 January 7th and 8th to AtPac, is it?

6 MR. ABU-ASSAL: Vague and ambiguous, misstates her
7 testimony.

8 Q. BY MR. THOMAS: Is it?

9 A. That was not a letter that I wrote myself, but
10 with Debra Russell.

11 Q. It's a letter you knew told AtPac that the County
12 would be extracting individual data elements, right.

13 A. Data elements.

14 Q. Right. And then when you wrote to Mr. Sandblade,
15 you said you were trying to extract marriage license
16 information, right? And you knew that you certainly weren't
17 extracting data elements as represented in the January 7th
18 letter, correct?

19 MR. ABU-ASSAL: Vague and ambiguous, misstates her
20 testimony.

21 THE WITNESS: When this e-mail was written, I did
22 not think about that e-mail that had been written six months
23 prior.

24 Q. BY MR. THOMAS: But you knew you were not
25 extracting data elements when you wrote this letter, this

1 e-mail to Mr. Sandblade, correct?

2 A. I wasn't extracting data elements.

3 Q. Okay. And then Mr. Sandblade responded to your
4 e-mail, right, to both of them? At the top; do you see that
5 e-mail?

6 A. Yes.

7 Q. And in the second paragraph it says, "I would like
8 you to please confirm that you are not providing the .dat
9 files to Aptitude solutions." Do you see that?

10 A. Yes.

11 Q. And he asked you to do that on June 8th?

12 A. Yes.

13 Q. Okay. And did that concern you because you knew
14 you had been providing copies of the .dat files to Aptitude
15 Solutions?

16 A. I was concerned as -- what he has written here,
17 was concerned.

18 Q. Yeah, you were concerned about it, and why were
19 you concerned?

20 A. The connotation of the comment, I was concerned.

21 Q. You were concerned because he was saying he wanted
22 you to confirm that you weren't doing what in fact you had
23 been doing, right?

24 A. Yes.

25 MR. ABU-ASSAL: Misstates her testimony, vague and

1 ambiguous.

2 Q. BY MR. THOMAS: Correct?

3 MR. ABU-ASSAL: Misstates her testimony, vague and
4 ambiguous.

5 THE WITNESS: I was concerned that he was making
6 mention of this.

7 Q. BY MR. THOMAS: Well, you were concerned that you
8 were doing exactly what he didn't want -- that he -- you
9 were concerned that you had been doing exactly what he was
10 telling you you were not allowed to do, correct?

11 MR. ABU-ASSAL: Vague and ambiguous.

12 THE WITNESS: I don't know what you refer to
13 exactly.

14 Q. BY MR. THOMAS: Well, you were copying data files
15 and giving them to AtPac and he was telling you, you can't
16 do that, right?

17 A. In this e-mail he is.

18 Q. Right. And that caused you concern, right?

19 A. Yes.

20 Q. All right. So what did you do about that concern?

21 A. I brought this to Gregory Diaz.

22 Q. And how did you do that?

23 A. He was cc'd on this.

24 Q. Okay.

25 A. And I believe I mentioned this to him.

1 Q. And what did you say?

2 A. I believe I asked him if he had seen this e-mail.

3 Q. And what did he say?

4 A. I don't recall what he said.

5 Q. What was his -- what was the tenor of the
6 conversation? Were you both worried?

7 A. I believe he said he would take -- he would
8 respond to this.

9 Q. Do you know if he did?

10 A. No.

11 Q. And that was on June 8th, right, when you received
12 that e-mail?

13 A. Yes.

14 Q. When did you have that conversation with him?
15 That day?

16 A. As I recall.

17 Q. Did you have it immediately? As soon as you saw
18 the e-mail, were you worried and ran to him and talked to
19 him about it?

20 A. I doubt if I ran and talked to him. I may have
21 called him or gone into his office. I don't recall what I
22 did to communicate with him.

23 Q. Did you state your concerns to him?

24 A. Yes.

25 Q. And how did you describe your concerns to him?

1 A. What is written in this first line here.

2 Q. How did you describe your concern? What did you
3 say to him?

4 A. "What would you like me to do about this, Greg?"

5 Q. Did you say, "This is a problem because I've been
6 doing this all along," or words to that effect?

7 A. No.

8 Q. Were you thinking that?

9 A. I don't recall that.

10 Q. Do you recall anything else about that
11 conversation?

12 A. Other than he said he would take care of it.

13 Q. Okay.

14 (Whereupon Exhibit 34 was marked for
15 identification.)

16 Q. BY MR. THOMAS: All right, Exhibit 34. Please
17 identify this.

18 A. This is an e-mail to Mike Jamison, myself, Debra
19 Russell, Steve Monaghan and Phil Russ from Gregory Diaz on
20 June 10, 2009 with the subject of marriage license data file
21 on ER-Recorder.

22 Q. Did you receive this e-mail from him?

23 A. Yes.

24 Q. And it says, "To all: I believe we need an
25 urgent, impromptu meeting re the below e-mail. Can we meet

1 later today or early tomorrow. Thanks, Greg." Do you see
2 that?

3 A. Yes.

4 Q. And was an impromptu, urgent meeting convened?

5 A. I don't recall that meeting, but from this it
6 indicates there was a meeting.

7 (Whereupon Exhibit 35 was marked for
8 identification.)

9 Q. BY MR. THOMAS: Exhibit 35, please identify this
10 for the record?

11 A. An e-mail to Gregory Diaz, Mike Jamison, myself,
12 Debra Russell, Phil Russ from Steve Monaghan, subject
13 marriage license data file on ER-Recorder.

14 Q. And this is a follow up to the e-mail from Richard
15 Sandblade?

16 A. Yes.

17 Q. And Mr. Diaz's urgent meeting request?

18 A. Yes.

19 Q. And Steve Monaghan giving his availability?

20 A. Yes.

21 Q. Okay.

22 (Whereupon Exhibit 36 was marked for
23 identification.)

24 Q. BY MR. THOMAS: Exhibit 36, can you please
25 identify this for the record?

1 A. This is an e-mail to Greg Diaz from Phil Russ,
2 dated June 10th, same subject of marriage license data file
3 on ER-Recorder.

4 Q. BY MR. THOMAS: And he's giving his availability?

5 A. Yes.

6 (Whereupon Exhibit 37 was marked for
7 identification.)

8 Q. BY MR. THOMAS: Put before you Exhibit 37, please
9 identify it.

10 A. An e-mail to myself from Phil Russ, dated June
11 10th, 2009, same subject of marriage license data file on
12 ER-Recorder.

13 Q. Okay. And did you receive this e-mail?

14 A. Yes.

15 Q. He's asking you to call him on his mobile phone;
16 do you see that?

17 A. Yes.

18 Q. And did you do that?

19 A. I assume that I did.

20 Q. Do you remember that discussion?

21 A. At this point, no.

22 Q. You don't remember anything about it?

23 A. I don't remember conversation with Phil regarding
24 this subject.

25 Q. Okay.

1 (Whereupon Exhibit 38 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Giving you Exhibit 38, do you
4 remember if by the 10th of June you all had had your
5 meeting, your urgent meeting?

6 A. I don't recall that meeting. I don't know if I
7 was invited to it or if I attended. It -- I don't recall
8 that right now.

9 Q. So you have no recollection?

10 A. I don't recall that.

11 Q. Do you recall what the result of what to do about
12 Mr. Sandblade's e-mail was?

13 A. No.

14 Q. Okay. And so can you identify Exhibit 39, please
15 for the record. Or is it 38? Excuse me, 38.

16 A. This is an e-mail to Greg Diaz and Frank Barnes
17 from Alana Wittig, dated June 11, 2009, subject AtPac data
18 and images.

19 Q. Okay. And this says, "We received all of our data
20 from your county in text files." Do you see that?

21 A. Yes.

22 Q. Now, you've confirmed already that there was no
23 distinction between the .dat files and the txt files, right?

24 A. Yes.

25 Q. So by emphasizing that text files were received,

1 it really is sort of meaningless in terms of distinguishing
2 that from .dat files, right?

3 MR. ABU-ASSAL: Misstates her testimony, vague and
4 ambiguous.

5 Q. BY MR. THOMAS: Correct?

6 A. I provided information as .txt files.

7 Q. But you've also testified you couldn't understand
8 why you were renaming them as .txt files since the exact
9 same information as the .dat files was included, right?

10 A. Right.

11 Q. Do you know why this e-mail was sent?

12 A. No.

13 Q. It looks like a CYA e-mail where Greg Diaz called
14 her and said send me an e-mail that and said you didn't get
15 any schema, and then she did that in response as a way to
16 cover for Mr. Sandblade's e-mail. Does that make sense to
17 you? Is that what the outcome of the urgent meeting was?

18 A. I don't know.

19 Q. Now, does it suggest to you that by the time of
20 this e-mail that Mr. Diaz has already addressed this issue,
21 figure out to what to do about it, since he had received
22 that e-mail from Ms. Wittig?

23 A. I can't assume that, no.

24 Q. Had you already looked into this issue by then, by
25 the 11th of June, three days after getting your e-mail from

1 Mr. Sandblade?

2 A. Gregory Diaz told me he would take care of it.

3 Q. Okay. And did he ever tell you that he took care
4 of it?

5 A. I don't recall that conversation.

6 Q. All right. So did you ever look into this issue
7 and figured out what had happened, how it had been resolved?

8 A. I don't believe so.

9 Q. You never checked into that?

10 A. No.

11 Q. Okay.

12 (Whereupon Exhibit 39 was marked for
13 identification.)

14 Q. BY MR. THOMAS: Exhibit 39, please identify this
15 for the record.

16 A. This is an e-mail to Richard Sandblade from
17 myself, dated June 11, 2009, same subject of marriage
18 license data file on ER-Recorder.

19 Q. Did you send this e-mail?

20 A. Yes.

21 Q. And this is in response to his e-mail regarding
22 his concern about providing .dat files?

23 A. Yes.

24 Q. Can you please read what you said to
25 Mr. Sandblade?

1 A. "I have received your e-mail and will be checking
2 into it."

3 Q. Okay. And, of course, you didn't do that, because
4 you testified a moment ago you didn't check into it, right?

5 A. I checked into it by handing it over to Greg Diaz.

6 Q. Oh, no, but you had already done that before June
7 11th, correct?

8 A. I was told to respond back to the e-mail to let
9 him know that we were checking into it.

10 Q. Who told you to do that?

11 A. Either County Counsel or Greg Diaz.

12 Q. Okay. And you said, "I have received your e-mail
13 and will be checking into it," right?

14 A. Yes.

15 Q. And you never did that. You just testified a
16 moment ago you didn't check into it, correct?

17 A. I personally did not check into it.

18 Q. Okay. So that was false, right?

19 MR. ABU-ASSAL: Misstates her testimony.

20 Q. BY MR. THOMAS: You were not being honest with
21 Mr. Sandblade, were you?

22 MR. ABU-ASSAL: That misstates her testimony. It
23 assumes facts not in evidence.

24 Q. BY MR. THOMAS: It's a new question.

25 A. I'm going to -- I'm an employee of the County.

1 Q. Did they tell you --

2 A. So when I say, "will be checking into it," I
3 didn't distinctly say I will be checking into it.

4 Q. No. You just said, "I have received your e-mail
5 and will be collecting into it."

6 A. Sorry, I left out the word "we."

7 Q. Well, even "we" would have been incorrect because
8 you're not one of the people that checked into it, are you?

9 A. No.

10 Q. Why didn't you say Greg Diaz and the County are
11 checking into it? Why didn't you say that?

12 A. I don't know.

13 Q. Is it because they told you to write this, the
14 words you chose?

15 A. No.

16 Q. It was your choice?

17 A. Yes.

18 Q. At the time you wrote this, did you know you had
19 already received or Mr. Diaz had already received the e-mail
20 from Ms. Wittig referencing text files?

21 A. Say that question again.

22 Q. At the time you wrote this, did you know that
23 Mr. Diaz had already received the CYA e-mail from
24 Ms. Wittig?

25 A. I don't recall.

1 MR. THOMAS: Well, let's just do this now.

2 (Whereupon Exhibit 40 was marked for
3 identification.)

4 Q. BY MR. THOMAS: It's a little bit out of order,
5 but let's just get this document out of the way. Exhibit 40
6 is in front of you.

7 A. Yes.

8 Q. This is an e-mail internally when you're talking
9 to Frank Barnes, and you wrote this e-mail, right?

10 A. Yes.

11 Q. Okay. And this is one where you're talking about
12 transferring files onto AS-Nevada, right?

13 A. Yes.

14 Q. From ER-Recorder, right?

15 A. Yes.

16 Q. And when you're talking internally and not
17 including Mr. Sandblade, you use the word "copy." "I have
18 copied the imagedoc.dat file." Do you see that? Right?

19 A. Yes.

20 Q. You don't use the word "extract" internally?
21 Right, you didn't use the word "extract."

22 A. I did not use the word "extract."

23 Q. Like you had used in your e-mail only about eight
24 days before to Mr. Sandblade, right?

25 A. Right.

1 (Whereupon Exhibit 41 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Exhibit 41, can you please
4 identify this?

5 A. This is to Phil Russ from myself, dated June 18th,
6 2009, AtPac data and images.

7 Q. Okay. And did you sign this e-mail?

8 A. Yes.

9 Q. And there is an e-mail from Phil Russ to you right
10 below yours; do you see that?

11 A. Yes.

12 Q. June 15th at 7:35 p.m.?

13 A. Yes.

14 Q. And did you receive that e-mail?

15 A. Yes.

16 Q. And it says, "Hello, Kathy. Why did we think they
17 received the data in tables? We would have been the ones to
18 extract the data from the table to text for them, right?
19 Did we just forget doing this?" Do you see that?

20 A. Yes.

21 Q. And you responded to him, right?

22 A. Yes.

23 Q. Okay. And in that response you said, "I'm not
24 sure what you're referring to regarding extraction of the
25 data into tables. I do not know how I would have extracted

1 the data and placed it into tables since that was a large
2 part of the activity Aptitude has been working on for the
3 past six months and we opted to use them for that service."

4 Do you see that?

5 A. Yes.

6 Q. Did I read that correctly?

7 A. I think I have a typo here. "Activity Aptitude
8 has been working on."

9 Q. Okay. But other than the typo, I read that
10 correctly?

11 A. Yes.

12 Q. Okay. And this statement here suggests or doesn't
13 suggest. You're stating that you have no idea how to
14 extract data elements, right? That's what you're saying.

15 A. But that's in response back to Greg's e-mail
16 further on down below, right?

17 Q. That's the e-mail from Ms. Wittig, the CYA e-mail
18 that he had her send, right? That's the one at the bottom.

19 A. I don't necessarily call it a CYA e-mail.

20 Q. Not necessarily, but that's one way to interpret
21 it; wouldn't you agree?

22 A. No.

23 Q. No? Not at all?

24 A. I don't want to use that, no.

25 Q. You wouldn't agree that's even one way to describe

1 it?

2 A. No.

3 Q. Why not?

4 A. Because I don't like that terminology.

5 Q. Okay. But apart from not liking it, wouldn't you
6 agree it's accurate?

7 A. No.

8 Q. How about cover or protect instead of CYA, if
9 that's a foul term.

10 A. If I don't have any proof of that, I don't like
11 that term used.

12 Q. Okay. But the fact of the matter is you're
13 acknowledging here to Mr. Russ that you have no idea how to
14 extract data elements, right?

15 MR. ABU-ASSAL: Vague and ambiguous.

16 THE WITNESS: I use the terms extract and copy
17 interchangeably.

18 Q. BY MR. THOMAS: Well, okay.

19 A. And here when we're using the word "extract," that
20 indicates pulling out the individual data elements.

21 Q. Are you done? Are you done?

22 A. I don't know how to extract the data.

23 Q. Right. And the reason -- you don't know how to
24 extract the data. You do know how to copy the data, right?

25 A. Yes.

1 Q. And so you don't use the word extract and copy the
2 same, clearly you don't, because one you know how to do and
3 one you don't know how to do, correct?

4 A. I used the word "extract" in my response to
5 Mr. Russ because he used the word "extract" in his question
6 to me.

7 Q. Yes. And in that context "extract" means
8 something entirely different than "copy," doesn't it?

9 A. When he uses -- we would have been the ones to
10 extract the data from the table. That is physically pulling
11 out the data elements.

12 Q. And that's not something you know how to do?

13 A. No one in Nevada County knew how to do that.

14 Q. And that's exactly what Nevada County promised my
15 client it would do on January 8th, 2009 in a letter,
16 correct?

17 A. At that time we thought we could.

18 Q. Okay. And you never told my client you couldn't,
19 correct?

20 A. Correct.

21 Q. You concealed that information, correct?

22 A. I personally did not conceal that information.

23 Q. Well, did you ever tell my client that? When you
24 say you didn't conceal it --

25 A. I didn't, no.

1 Q. And why not? You had just e-mailed Mr. Sandblade
2 a week before asking him for help, yet you decided not to
3 tell him, "By the way, we're not extracting the data like we
4 promised. We've delegated that entire function to
5 Aptitude." Why didn't you tell him that?

6 A. I turned that e-mail over to Greg Diaz and County
7 Counsel.

8 Q. Before you received that e-mail, why didn't you
9 tell Mr. Sandblade, "We're not extracting the data; Aptitude
10 is. We're not doing what we promised."

11 A. Because I wasn't -- I was not communicating with
12 AtPac. I did not send that letter.

13 Q. Please look at Exhibit 37. Okay. Looking at the
14 bottom of Exhibit 37, that's an e-mail, right?

15 A. Yes.

16 Q. From you; you wrote that e-mail?

17 A. Yes.

18 Q. On June 8th, 2009?

19 A. Yes.

20 Q. And who did you write that e-mail to?

21 A. Richard Sandblade.

22 Q. And where does he work?

23 A. AtPac.

24 Q. Okay. So when you said you weren't communicating
25 with AtPac, that was another lie in this deposition, wasn't

1 it?

2 MR. ABU-ASSAL: Misstates her testimony.

3 Q. BY MR. THOMAS: Wasn't it?

4 A. My question, did the original e-mail go to Richard
5 Sandblade?

6 Q. That's a good --

7 A. Excuse me, the original letter?

8 Q. You know, excuse me, Ms. Barale, with all due
9 respect, I'm asking the questions in this deposition.

10 And my question is when you said you weren't
11 communicating with AtPac, Exhibit 37 proves that when you
12 said that in this deposition, that was false because you
13 were communicating with AtPac.

14 MR. ABU-ASSAL: Misstates her testimony and
15 misleading.

16 THE WITNESS: I was not communicating to AtPac
17 regarding the content of the letter. I was communicating
18 based on the data files.

19 Q. BY MR. THOMAS: Right. And you were using words
20 like "extract" in a misleading way in your communicating
21 with AtPac, and you were not informing AtPac that you had
22 delegated the extraction function or task to Aptitude.

23 MR. ABU-ASSAL: Misstates her testimony,
24 misleading and misstates the record.

25 THE WITNESS: No, I did not communicate that to

1 AtPac.

2 Q. BY MR. THOMAS: Why not?

3 A. I guess because I didn't think of it.

4 Q. Isn't it true you didn't tell AtPac because you
5 knew it would be a problem?

6 A. No.

7 Q. Why do you think Phil Russ was confused? Why did
8 he think you'd be extracting the individual data elements?

9 A. You'll have to ask him.

10 Q. Well, did he tell you? Didn't you have a phone
11 call with him? He asked you to call him on his cell phone.

12 A. I don't recall what we discussed on that date.

13 Q. Isn't the reason he was confused is because he
14 thought in fact you had been extracting the data elements?

15 A. No.

16 Q. And you never told him you weren't?

17 A. No.

18 Q. Did you tell him you weren't?

19 A. I told him I was copying files.

20 Q. Did you tell him we weren't doing what the letter
21 said we would do? The letter being the January 8th letter
22 to AtPac. Did you tell him that was not being done?

23 A. Phil knew that Aptitude Solutions agreed to
24 determine the breakage for how the data was configured in
25 the data files. He knew that.

1 Q. Did Steve Monaghan know that?

2 A. Yes.

3 Q. Did Greg Diaz know that?

4 A. Yes.

5 Q. So everybody knew that?

6 A. Yes.

7 Q. Except my client, correct? Except AtPac.

8 A. I don't know that.

9 Q. Well, are you aware of any facts to suggest that
10 anyone from the County or Aptitude ever told --

11 A. I don't know that.

12 Q. Let me finish. Ever told my client that Aptitude
13 would be the one extracting data elements, contrary to the
14 letter given to my client?

15 A. I know there was a letter where we let them know
16 that we did not need their services to do that information.

17 Q. Yeah. That's the January 7th letter where you
18 promised them you would be extracting individual data
19 elements. It's in that letter.

20 A. We originally were going do a service contract
21 with them.

22 Q. Whose decision was it not to do that?

23 A. The County.

24 Q. Okay. What's that got to do with anything? It's
25 not an excuse to misrepresent what the County would do and

1 then breach its agreement to AtPac and let Aptitude extract
2 the data elements, is it?

3 MR. ABU-ASSAL: Misstates her testimony and your
4 question is compound. You're making all sorts of
5 conclusions that are false.

6 Q. BY MR. THOMAS: Whose decision was it to not have
7 a contract with AtPac to extract the data, if you know?

8 A. Gregory Diaz.

9 Q. Did he say why?

10 A. The expense and the time frame.

11 Q. Okay. And what was the time frame that AtPac
12 proposed to do the data extraction?

13 A. I don't recall that other than it was not going to
14 meet our deadline.

15 Q. Do you recall it being approximately 30 days?

16 A. I don't know that for sure.

17 Q. Do you recall the expense?

18 A. I don't know the expense.

19 Q. As the project manager, do you have any idea
20 whether the expense or the cost that AtPac proposed for that
21 project was more or less than what the County paid Aptitude
22 to extract the data? Do you know one way or the other?

23 A. We did not pay Aptitude Solutions additionally to
24 extract the data.

25 Q. Do you know if the time frame proposed by AtPac to

1 extract the data was more or less than the time it took
2 Aptitude to extract the data?

3 A. From what Greg Diaz has told me, AtPac could not
4 commit to having the data available for Aptitude Solutions
5 prior to when we needed -- prior to when the AtPac contract
6 was expiring.

7 Q. When did he tell you that?

8 A. During the time this decision was being made.

9 Q. Do you know if that was true?

10 A. I never saw the dates. This was done prior to my
11 involvement on the project.

12 Q. So you have no personal knowledge as to what
13 decision was made. All you know is what Greg Diaz told you,
14 right?

15 A. Right.

16 MR. ABU-ASSAL: Court reporter, it is now 5:00
17 p.m. How much time have we been on the record?

18 THE COURT REPORTER: I'm sorry, I don't know.

19 MR. ABU-ASSAL: Don't you keep track of when we go
20 on and when we go off?

21 THE COURT REPORTER: Yes, I can tell you the
22 beginning and the ending and --

23 MR. THOMAS: It's been less than 40 minutes, sir.

24 MR. ABU-ASSAL: What?

25 MR. THOMAS: It's been less than 40 minutes.

1 MR. ABU-ASSAL: No, no. I'm talking about the
2 total time.

3 THE COURT REPORTER: The total time --

4 MR. THOMAS: I don't think she has breaks.

5 MR. SCHAPS: Let's take a break right now and talk
6 about this and get that figured out.

7 MR. THOMAS: Yeah, I agree.

8 MR. ABU-ASSAL: But wait a second. I want to ask
9 her a question. Most court reporters -- well, not most --

10 MR. THOMAS: I'm not paying for this on the record
11 while you talk to the court reporter.

12 MR. ABU-ASSAL: Just a second. I have a right to
13 talk to her. She's not here just for you.

14 MR. THOMAS: Not on the record, you don't.

15 MR. ABU-ASSAL: Yeah, I do.

16 MR. SCHAPS: You're using up our deposition time.

17 MR. ABU-ASSAL: I want to know whether this court
18 reporter, like all other court reporters, has the time stamp
19 of when we -- you do, right?

20 THE COURT REPORTER: Yes.

21 MR. ABU-ASSAL: So you can go off the record and
22 calculate the time, right?

23 THE COURT REPORTER: I suppose I can do that for
24 you, yes.

25 MR. ABU-ASSAL: Okay. Because --

1 MR. THOMAS: For each break, everything?

2 MR. ABU-ASSAL: Yeah, I want to know.

3 MR. THOMAS: Well, I don't know. I'd rather hear
4 her tell us the times and then I want to independently
5 calculate as well.

6 MR. ABU-ASSAL: That's fine.

7 THE VIDEOGRAPHER: We're going off the record at
8 4:59 p.m. This is the end of disk No. 3.

9 (Recess taken.)

10 (Whereupon Exhibit 42 was marked for
11 identification.)

12 THE VIDEOGRAPHER: We are back on the record at
13 5:09 p.m. This is the beginning of disk No. 4 in the
14 deposition of Kathy Barale.

15 Q. BY MR. THOMAS: Looking at Exhibit 42, have you
16 ever seen that?

17 MR. ABU-ASSAL: Can I have a copy of it, please?
18 (Discussion off the record.)

19 MR. ABU-ASSAL: Okay. Go ahead.

20 Q. BY MR. THOMAS: Have you ever seen this before?

21 A. Not this front e-mail.

22 Q. What about the bottom half of the e-mail?

23 A. I don't recall seeing that before.

24 Q. All right.

25 (Whereupon Exhibit 43 was marked for

1 identification.)

2 Q. BY MR. THOMAS: Okay. Exhibit 43, please identify
3 this.

4 A. This is an e-mail from myself to Tom McGrath,
5 dated February 20th, 2009 with the subject bond paper number
6 tracking.

7 Q. Okay. And did you receive this e-mail?

8 A. Yes.

9 Q. And it says, "In our phone conversation earlier
10 this week, it was identified that the vitals bond paper
11 number tracking was done in the AtPac system." Do you see
12 that?

13 A. Yes.

14 Q. Who told Mr. McGrath that the vitals bond paper
15 number tracking was done in the AtPac system?

16 A. I don't know.

17 Q. At the time this e-mail was written in February of
18 '09, do you know if Aptitude had a bond paper tracking
19 functionality in its software package?

20 A. I don't know.

21 Q. Is it your understanding that it did not?

22 A. I don't know.

23 Q. All right. The next sentence says, "To this point
24 we've been unable to locate supporting data in the
25 conversion files provided by Nevada County. Is there any

1 insight you can provide regarding this functionality?" Do
2 you see that?

3 A. Yes.

4 Q. Is this the first time he had asked you about how
5 the AtPac system functions?

6 A. Considering I don't recall this particular e-mail,
7 I'd have to say yes.

8 Q. Did it concern you that Tom McGrath was asking you
9 to provide information regarding the functionality of
10 AtPac's software?

11 A. No.

12 Q. Didn't you think that was confidential, how AtPac
13 software functions?

14 A. I did not interpret this as AtPac functionality,
15 but bond paper functionality.

16 Q. Do bond papers function? What is a bond paper?
17 It's piece of paper, right?

18 A. Certified paper that is used for certified birth
19 certificates, death certificates, marriage licenses, of that
20 nature.

21 Q. Right. And he's asking you to provide insight
22 regarding this functionality, right? Was it your
23 interpretation that he had never -- he didn't know anything
24 about how bond paper tracking functions at all?

25 A. I don't know that.

1 Q. Did you provide him with details or information
2 regarding AtPac bond paper functionality?

3 A. I don't know if there was a response to this
4 e-mail. I assume there was.

5 Q. So did you believe you did provide him with
6 information as to how AtPac bond paper tracking functions?

7 A. I believe I would have provided him some type of
8 information. If not, I don't know, but I tried to be very
9 thorough in communication.

10 Q. Even when he was asking you for you to disclose
11 the functionality of AtPac software, you tried to be
12 thorough, correct?

13 A. I don't interpret this as AtPac software.

14 Q. Well, what other bond paper functionality was
15 active with the Clerk-Recorder system in February of 2009
16 other than AtPac software?

17 A. I can't -- let's see; I trust -- no, that's not --

18 Q. Do you have an answer? What other bond paper
19 functionality was active in the Clerk Recorder system in
20 February 2009, other than AtPac software?

21 A. None.

22 Q. Thank you. Exhibit 44.

23 (Whereupon Exhibit 44 was marked for
24 identification.)

25 MR. THOMAS: Now, Exhibit 44, and perhaps -- one

1 moment. Forty-four we've marked highly confidential,
2 attorneys' eyes only. And I just wanted to make that clear
3 for the record.

4 MR. ABU-ASSAL: Where -- is this somewhere?

5 MR. THOMAS: On the bottom-right corner,
6 Mr. Abu-Assal. Oh, let me see. You must have gotten one
7 that's not marked. I will give you mine. This is somewhat
8 frustrating.

9 Can you look along with the witness, please,
10 Mr. Abu-Assal? Just on this document. I apologize. Thank
11 you.

12 Q. Okay. So do you have Exhibit 44 in front of you?

13 A. Yes.

14 Q. Okay. And the second page of this e-mail appears
15 to be the earlier e-mail from Mr. McGrath asking you for
16 insight regarding functionality of the bond paper.

17 A. Yes.

18 Q. And then the next page is an e-mail from you at
19 the bottom to Alana Wittig and Tom McGrath. Did you write
20 that e-mail?

21 A. The one on the first page?

22 Q. Yes, at the bottom.

23 A. Yes.

24 Q. And it says, "I have placed on our DocuShare
25 server screen shots Eileen provided to me showing how the

1 vitals bond paper number tracking is done in AtPac." Did I
2 read that correctly?

3 A. Yes.

4 Q. Did you do that?

5 A. I gave him a screen shot.

6 Q. And posted it to DocuShare?

7 A. Yes.

8 Q. And you've since confirmed that DocuShare was not
9 a secure website, correct? In other words, the public, if
10 they found it, could get to it over the internet, correct?

11 MR. ABU-ASSAL: Vague and ambiguous, misstates her
12 testimony.

13 THE WITNESS: The location that I placed the
14 screen shots in was not accessible on a website.

15 Q. BY MR. THOMAS: Are you sure?

16 A. Yes.

17 Q. Then how did we find them using Google in July of
18 2009?

19 A. I don't know.

20 Q. We did because they were accessible.

21 A. I don't know.

22 Q. Now, so you placed -- in this particular e-mail
23 you're talking about how vitals bond paper number tracking
24 is done in AtPac, specifically, right?

25 A. Yes.

1 Q. So contrary to your earlier statement, you
2 answered his e-mail where you thought he was asking about
3 bond paper functionality in general and you gave him
4 specific information of how AtPac does that, right?

5 A. That's a system that we had on record at that
6 time.

7 Q. Right. It's the system the County agreed to keep
8 confidential and not disclose it to its competitors also,
9 correct?

10 MR. ABU-ASSAL: Calls for a legal conclusion.

11 Q. BY MR. THOMAS: Correct?

12 MR. ABU-ASSAL: Calls for a legal conclusion and
13 vague and ambiguous.

14 THE WITNESS: If that includes screen shots.

15 Q. BY MR. THOMAS: Well, you weren't just providing
16 screen shots. You were providing screen shots -- and it
17 does, by the way. You were providing --

18 MR. ABU-ASSAL: That's your conclusion.

19 Q. BY MR. THOMAS: You were providing screen shots
20 which show how the vitals bond paper number tracking is done
21 in AtPac, correct? Correct? That's what you said.

22 A. Where's the screen shot? I would have to see the
23 screen shot to see if that's -- defines that.

24 Q. And at the time you wrote this e-mail you did have
25 the screen shot, right?

1 A. Yes.

2 Q. And at that time when you had the screen shot, you
3 told Tom and Alana that the screen shot shows how the vitals
4 bond paper number tracking is done in AtPac, correct?

5 A. It -- yes.

6 Q. How many screen shots did you provide, because you
7 refer to them in the plural?

8 A. I don't recall.

9 Q. Do you have an estimate?

10 A. No.

11 MR. ABU-ASSAL: Could I have a copy of that
12 document and I will mark it highly confidential, attorneys'
13 eyes only?

14 MR. THOMAS: Can we make a copy for you when we're
15 done? It's just --

16 MR. ABU-ASSAL: Okay.

17 MR. THOMAS: If you wouldn't mind. I don't want
18 to take time off the record.

19 MR. ABU-ASSAL: That's Exhibit 44?

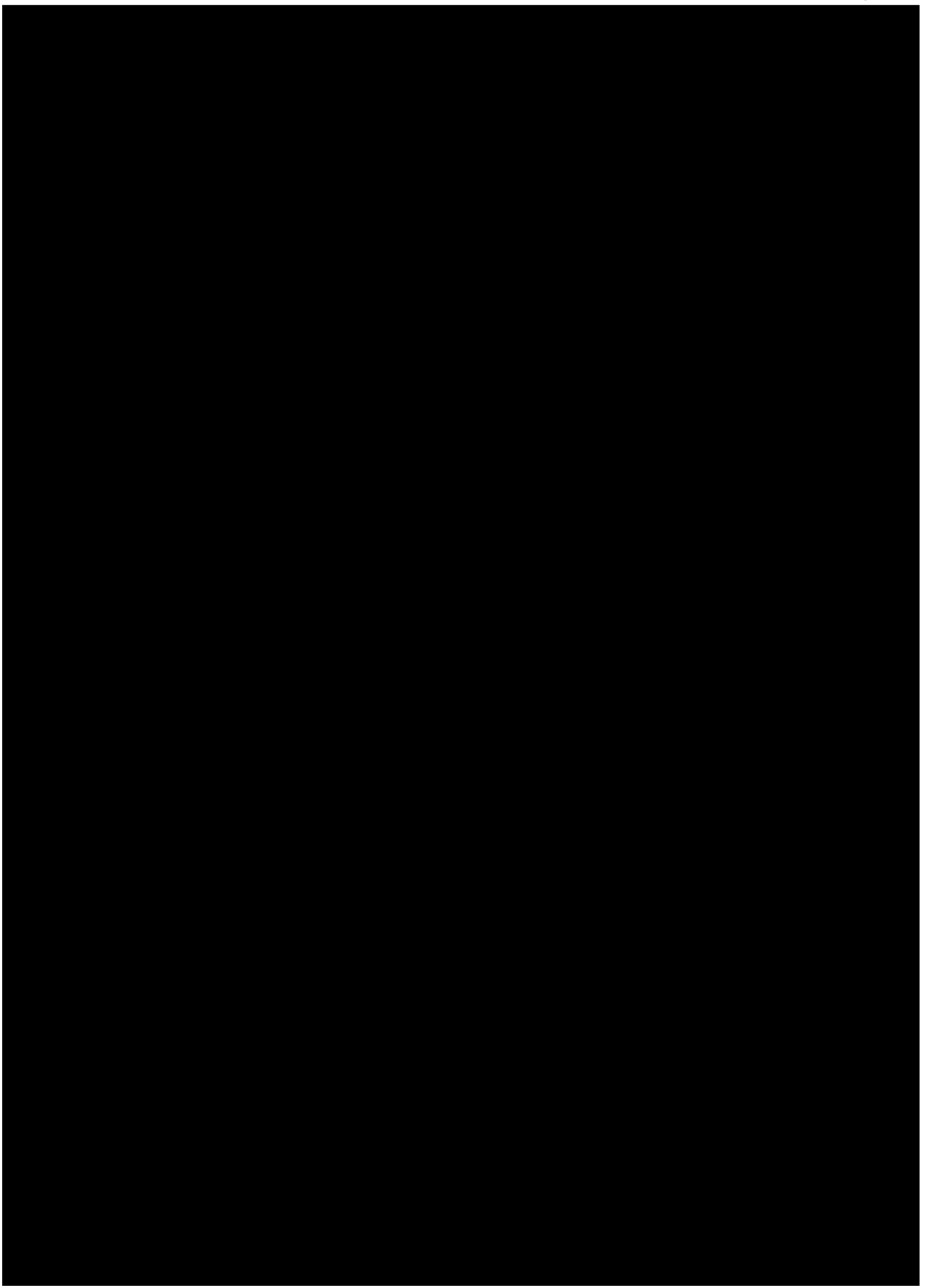
20 MR. THOMAS: Forty-four, yeah. We'll make a copy
21 before we leave today, Nabil.

22 Q. Actually, at the top of this Exhibit 44 you then
23 send another e-mail; do you see that? It's at the very top.

24 A. Yes.

25 Q. Did you send that e-mail?

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1 done in AtPac if all you were interested was conversion of
2 data?

3 A. When I look at the original e-mail that he sent to
4 me, I use those same words in his response -- in my response
5 to him, and also indicated that I can't find the supporting
6 data in the conversion files that I provided.

7 Q. I didn't understand that at all.

8 I think the e-mail speaks for itself.

9 MR. ABU-ASSAL: Can I see it?

10 (Whereupon Exhibit 45 was marked for
11 identification.)

12 Q. BY MR. THOMAS: Exhibit 45. Here's an e-mail.
13 Did you send this e-mail, Exhibit 45?

14 A. Yes.

15 Q. And this has an attachment to it, Aptitude
16 Implementation is the project?

17 A. Yes.

18 Q. February 18, 2009?

19 A. Yes.

20 Q. Who prepared this, if you know?

21 A. I believe I did.

22 Q. Okay. And let's look at the second row. It says,
23 "Functionality not available with delayed Go-Live date." Do
24 you see that? It's an agenda item.

25 A. Yes.

1 Q. And one of the functionalities not available is
2 item No. 2, vital bond certificate tracking. Do you see
3 that?

4 A. Yes.

5 Q. So what you're saying here is at this point in
6 time, as of February, functionality of vital bond paper
7 tracking is not available within the AtPac system; is that
8 right? The Aptitude system, thank you.

9 Let me reask that.

10 A. Yes.

11 Q. So what you're saying here is that at this point
12 in time, February 18, 2009, the Aptitude system does not
13 have bond paper tracking functionality, right?

14 A. As of this date, yes.

15 Q. Correct. And e-mails we looked at before, the
16 Aptitude employees were asking you to tell them how AtPac
17 performed bond paper tracking functions, right?

18 A. To show them the screen shots of the setup of bond
19 paper tracking.

20 Q. And you provided that in response to their request
21 for information about how it's done in AtPac?

22 A. Yes.

23 Q. Were you concerned at all about that, providing
24 that information to AtPac's competitor?

25 A. No.

1 Q. Why not?

2 A. I wasn't giving them software.

3 Q. You were just telling them -- you were telling
4 Aptitude how AtPac software worked, right?

5 A. I don't know how a screen shot you can develop
6 software from.

7 Q. But Aptitude knows how to do that, don't they?

8 A. We have it now.

9 Q. Yes, you have it now and Aptitude provided it,
10 right?

11 A. Yes.

12 Q. And they didn't have it in February of 2009,
13 correct?

14 MR. ABU-ASSAL: Calls for speculation. Don't
15 guess.

16 Q. BY MR. THOMAS: That's what you said in your
17 status report, correct?

18 A. Information provided by Aptitude Solutions on that
19 date.

20 Q. BY MR. THOMAS: Told that they did not have vital
21 bond paper tracking?

22 A. Yes.

23 Q. And then sometime after you provided them screen
24 shots which showed how it's done in AtPac, sometime
25 thereafter they then had vitals bond paper tracking,

1 correct?

2 MR. ABU-ASSAL: Misleading, misstates her
3 testimony.

4 THE WITNESS: Screen shots do not show how it is
5 done.

6 Q. BY MR. THOMAS: You didn't answer my question.
7 Sometime after you provided Aptitude with screen shots
8 showing how vitals bonds paper tracking is done in AtPac,
9 Aptitude then developed vitals bond paper tracking, right?
10 The sequence of events I have that --

11 A. I can't assume that a screen shot is showing
12 Aptitude Solutions how it is done.

13 Q. You can't? Let me read to you your e-mail from
14 February 24th, 2009, see if you remember this: "I have
15 placed on our DocuShare server screen shots Eileen provided
16 to me showing how the vitals bond paper tracking is done in
17 AtPac." You said that.

18 A. What the screen shot provided as to what
19 information is retrieved from the user, not anything how
20 that -- there's a difference between a screen shot and what
21 goes behind it in order to retrieve that information and
22 utilize it.

23 Q. The screen shot shows the steps -- shows how it's
24 done, that's what you said in your e-mail. Were you lying
25 in your e-mail?

1 A. No.

2 Q. Okay. You were telling the truth in your e-mail,
3 right?

4 A. I hope so.

5 Q. Okay. And that's where you said the vitals bond
6 paper track -- number tracking is done in AtPac. That's
7 what you said, right?

8 A. By "done" I can't assume that that refers to the
9 software behind it that supports the screen.

10 Q. But showing AtPac the screen shots, don't you
11 agree that -- by showing Aptitude the screen shots regarding
12 AtPac's vital bond papers tracking, don't you think that
13 gave Aptitude information that helped them to develop vitals
14 bond paper tracking?

15 MR. ABU-ASSAL: Misleading, calls for expert
16 testimony.

17 THE WITNESS: I can't assume that.

18 Q. BY MR. THOMAS: Well, why would they have asked
19 for it if it wasn't something that would help them?

20 A. I can't answer that.

21 Q. You don't know. You don't know?

22 A. No.

23 Q. And you never asked them why they were asking for
24 that information about AtPac's functionality?

25 A. No.

1 Q. You just provided it?

2 A. Yes.

3 Q. Now, you said the information regarding bond paper
4 tracking was for data conversion, right? That's what you
5 said earlier. And my question to you is, how do you convert
6 data into a function that does not exist?

7 A. They didn't have the function, but they still had
8 the data. So once the function was developed, they would
9 have the historical data in order to populate their data
10 tables with.

11 Q. And that's not a conversion, though. That's just
12 giving them data. So you just gave them bonds paper data,
13 but not to convert, because there was no function to convert
14 them to, right?

15 MR. ABU-ASSAL: Vague and ambiguous.

16 THE WITNESS: For that one particular file, I
17 guess that would be a correct description.

18 (Whereupon Exhibit 46 was marked for
19 identification.)

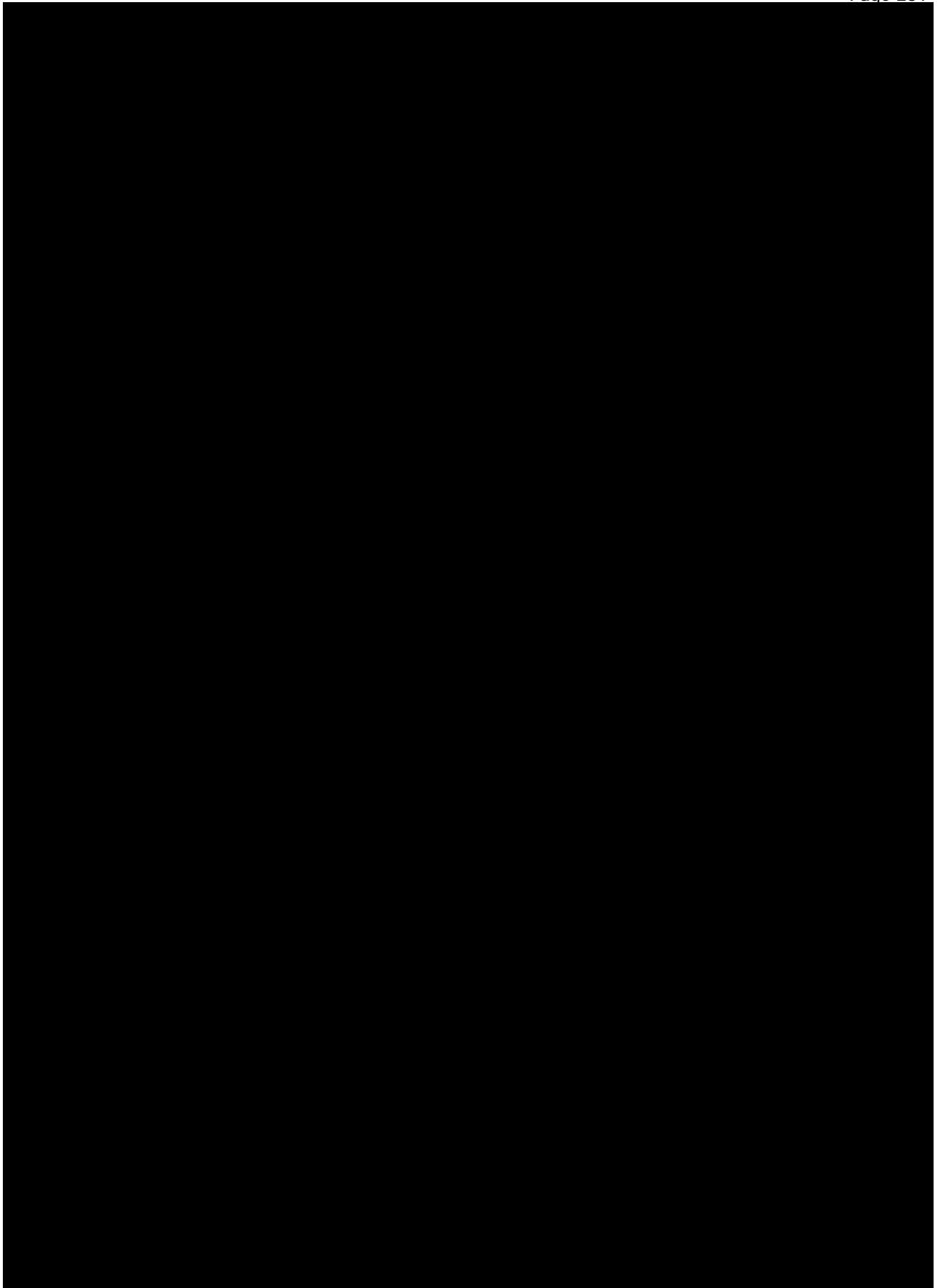
20 Q. BY MR. THOMAS: Giving you Exhibit 46 --

21 A. You gave me the same thing as 47.

22 Q. Oh, really? Have you already -- okay. Yeah, I'm
23 sorry. She's got 46, that's fine.

24 Okay. With respect to Exhibit 46, please identify
25 this e-mail.

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1 Q. So, in other words, you think there was a
2 conversation between Eileen and Alana, and Eileen was
3 restating the steps told to her and trying to make sure she
4 had it straight?

5 A. Yes.

6 Q. Okay. And were you party to that conversation?

7 A. No.

8 Q. Okay. How did you know that conversation took
9 place?

10 A. I know they had conversations.

11 Q. Okay. You knew they had that conversation?

12 A. I knew they had conversations regarding
13 functionality.

14 Q. Okay. How did you know that?

15 A. I knew they were in communication.

16 Q. But specifically about functionality, you knew
17 they were talking about that as well; how did you know that?

18 A. I didn't know specifically they had a conversation
19 regarding bond paper numbering.

20 Q. I thought you just said you did. How did you know
21 that this e-mail was generated from a conversation, then,
22 the e-mail from Alana to Eileen Moody?

23 A. I did not have intimate knowledge as to the
24 conversations they had and the subject matter, so I misspoke
25 knowing that I -- that they had a bond paper either

1 telephone conversation or -- telephone conversation, I'm
2 assuming.

3 Q. Had you known that Ms. Moody was having specific
4 conversations with Ms. Wittig where she was disclosing, she
5 being Ms. Moody, disclosing the steps in the AtPac bond
6 paper function to Aptitude, would that have concerned you?

7 A. No.

8 Q. Why not?

9 A. They were trying to understand the process.

10 Q. Because they didn't understand it at the time.

11 A. They wanted to clarify it.

12 Q. They wanted to know how to do bond paper tracking,
13 right? Because you told me earlier in the deposition that
14 the exhibit you created on February 18th said that Aptitude
15 did not have bond paper tracking functionality, so they
16 wanted to learn how to do that, right?

17 A. They wanted to clarify their understanding.

18 Q. Well, they didn't have any understanding because
19 they didn't have the functionality as of February 2009;
20 isn't that true?

21 MR. ABU-ASSAL: Assumes facts not in evidence.

22 THE WITNESS: I cannot speak to this because I was
23 not involved with the contract and the procurement.

24 Q. Well, you can speak to it as of February 18th,
25 2009 because you were told by Aptitude that they did not

1 have bond paper tracking functionality, correct?

2 A. Correct.

3 (Whereupon Exhibit 47 was marked for
4 identification.)

5 Q. BY MR. THOMAS: Okay. Looking at Exhibit 47 in
6 front of you, do you see Ms. Moody answered the question?
7 She said, "Yes, this is correct."

8 A. Yes.

9 Q. Did you ever see this e-mail?

10 A. Not that I'm aware of.

11 Q. Did you know that she had disclosed AtPac bond
12 paper functionality and the steps of AtPac's bond paper
13 tracking to Ms. Wittig before today?

14 A. Not that I know of.

15 Q. Do you know if Mr. Diaz knew about that?

16 A. I don't know.

17 (Whereupon Exhibit 48 marked was for
18 identification.)

19 MR. THOMAS: Exhibit 48, all right. Of course
20 this entire portion of the transcript associated with all of
21 these confidential exhibits I designate confidential.

22 MR. ABU-ASSAL: I'm not sure how you can designate
23 something confidential that we produced to you.

24 MR. THOMAS: Well --

25 MR. ABU-ASSAL: How is that possible?

1 MR. SCHAPS: We're not going to repeat or
2 ratify --

3 MR. THOMAS: Just because your clients disclosed
4 my information to Aptitude wrongfully doesn't mean I'm going
5 to let that happen.

6 Aptitude cannot have these e-mails. These
7 disclose my client's trade secrets. I'll let you have
8 them -- it's under the protective order -- because you're
9 litigation counsel. Ms. Moody, I have no choice. She
10 signed the agreement to keep them confidential.

11 MR. ABU-ASSAL: She's not Ms. Moody, by the way.

12 MR. THOMAS: Thank you, yeah. Thank you.

13 MR. ABU-ASSAL: Well, we disagree that these
14 contain any trade secrets.

15 MR. THOMAS: Well, you can make a motion then to
16 have us undesignate them, because they're designated now.

17 Q. Okay. Exhibit 48, do you have that?

18 A. Yes.

19 Q. Please identify this for the record?

20 A. It's an e-mail to Debra Russell, myself and Eileen
21 Moody from Alana Wittig, dated May 6th, 2009, subject vital
22 bonds certificate tracking.

23 Q. Okay. And did you receive this e-mail from
24 Ms. Wittig?

25 A. Yes.

1 Q. And she's asking further questions about how bond
2 paper tracking is done in AtPac system; do you see that?

3 A. Yes.

4 Q. And it says, "If this is confusing, let's set up a
5 call tomorrow, so we can better explain what we are seeing
6 in the data versus what we think we should code the program
7 to do." Do you see that?

8 A. Yes.

9 Q. When she says "code the program," they are
10 building their bond paper program at this time in May 2009,
11 right?

12 A. Yes.

13 Q. You're a coder, you know what that means, right?

14 A. Yes.

15 (Whereupon Exhibit 49 was marked for
16 identification.)

17 Q. BY MR. THOMAS: Exhibit 49. Please identify this
18 Exhibit 49 for the record.

19 A. This is an e-mail to Alana Wittig from myself,
20 sent on May 21st, 2009 with the subject bond paper in file.

21 Q. Okay. And there is an e-mail below that from
22 Alana Wittig to you at 1:24 p.m.; do you see that?

23 A. Yes.

24 Q. Did you receive that e-mail?

25 A. Yes.

1 Q. Okay.

2 (Whereupon Exhibit 50 was marked for
3 identification.)

4 Q. BY MR. THOMAS: No more questions about that.
5 Exhibit 50, please identify that for the record.

6 A. This is to Stacey Morningstar from myself, sent
7 August 20th, 2009, subject update of pre OnCore marriage
8 records.

9 Q. This is August 20th, 2010; do you see that?

10 A. Oh, yes, 2010.

11 Q. You know, only six months ago or so.

12 And there's a request apparently made to you from
13 Ms. Morningstar requesting data other AtPac data.

14 A. Yes.

15 Q. And in response you say, "Hi Stacey, our County
16 Counsel has asked us that we do not supply you with the
17 AtPac files containing the marriage license information, as
18 we had spoken." Do you see that?

19 A. Yes.

20 Q. Did you have that discussion with County Counsel?

21 A. Gregory Diaz did.

22 Q. And when you say County Counsel, who was that
23 specifically, if you know?

24 A. I don't know specifically.

25 Q. Greg Diaz told you that?

1 A. Yes.

2 Q. Has Greg Diaz ever told you that he felt that the
3 County breached its contract with AtPac?

4 A. No.

5 Q. Has anyone told you that?

6 A. No.

7 Q. Has anyone told you they believe the County has
8 made mistakes and is liable to AtPac?

9 A. No.

10 Q. Any words to that effect?

11 A. No.

12 Q. So when you say "Our County Counsel," is that the
13 Board of Supervisors, that type of County, like a council or
14 is it --

15 A. No.

16 Q. It's a lawyer. You're referring to a lawyer?

17 A. Yes, yes.

18 Q. Okay. And then it says in the next paragraph,
19 "despite providing these files to Aptitude Solutions in the
20 past, there is still the concern that providing the files
21 also supplies AtPac schema which was in part what the
22 lawsuit recently settled argued." Do you see that?

23 A. Yes.

24 Q. Now, when you say there's still a concern that
25 providing the files also supplies AtPac schema, you had that

1 concern previously, right, and it's still a concern you
2 have, right?

3 MR. ABU-ASSAL: Vague and ambiguous, misstates her
4 testimony.

5 THE WITNESS: I didn't have that concern of
6 AtPac's schema.

7 Q. BY MR. THOMAS: What did you mean when you said
8 "there is still a concern that providing the files also
9 supplies AtPac's schema"? Whose concern was it?

10 A. AtPac's concern.

11 Q. What did you mean by "the lawsuit recently
12 settled"?

13 A. I thought there was something that was agreed to
14 or a portion that was excused.

15 MR. THOMAS: Okay. Can we take a short break,
16 couple of minutes?

17 THE VIDEOGRAPHER: We're going off the record at
18 5:42 p.m.

19 (Recess taken.)

20 THE VIDEOGRAPHER: We're back on the record at
21 5:47 p.m.

22 Q. BY MR. THOMAS: Okay. So I'm looking at these
23 notes of your conversation with Ms. Mankey, and I've lost
24 it.

25 In here there's an indication that you indicated

1 to her that you thought you had provided about five or so
2 screen shots to Aptitude, screen captures.

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. Which bullet point is that on?

7 A. Seven.

8 Q. Okay. On page what?

9 A. Twenty-one.

10 Q. Thank you. Okay. And now when you said you
11 provided them with five or six screen shots, how many screen
12 shots did Ms. Moody provide to Aptitude Solutions, if you
13 know?

14 A. I don't know that.

15 Q. Do you know how many screen shots total were
16 provided to Aptitude Solutions?

17 A. No.

18 Q. And then -- okay. It then says, "She has since
19 learned that lots of AtPac screen shots were available on
20 line to the public." Do you see that?

21 A. Yes.

22 Q. Do you remember saying that to Ms. Mankey?

23 A. I don't remember that line in particular.

24 Q. Do you remember learning that from someone?

25 A. Because I don't know what AtPac screens were

1 available to the public.

2 Q. So that's not something you know?

3 A. No.

4 Q. Fair enough. Okay. Exhibit -- I'm done with that
5 exhibit. Moving on.

6 (Whereupon Exhibit 51 was marked for
7 identification.)

8 Q. BY MR. THOMAS: Exhibit 51, this is the
9 clip-through license at the beginning of anyone who's using
10 the CRIis software. Have you ever seen this?

11 A. No.

12 Q. Did anyone working within the Clerk-Recorders
13 Office ever show this to you?

14 A. No.

15 Q. Greg Diaz ever show this to you?

16 A. No.

17 Q. All right. Done with questions about that.

18 THE COURT REPORTER: Can you identify whether
19 you're done with the confidential documents?

20 MR. THOMAS: Yeah. I don't have any right now.
21 This is a good spot to do that.

22 THE COURT REPORTER: Thank you.

23 MR. THOMAS: Thanks, Dina.

24 (Whereupon Exhibit 52 was marked for
25 identification.)

1 Q. BY MR. THOMAS: Fifty-two, please identify this
2 document.

3 A. This is an e-mail to Eileen Moody from myself,
4 dated January 20th, 2009, subject help needed obtaining
5 AtPac screen shots.

6 Q. And it says you provided Aptitude on Friday the
7 AtPac data files Tom requested. Do you see that?

8 A. Yes.

9 Q. And then it says, "In order to help their
10 developers determine the data layouts of this data, they
11 have asked for some assistance." And then you list three
12 screen shots.

13 A. Yes.

14 Q. And you're asking Ms. Moody to gather screen shots
15 for you, right?

16 A. Yes.

17 Q. And did she do that?

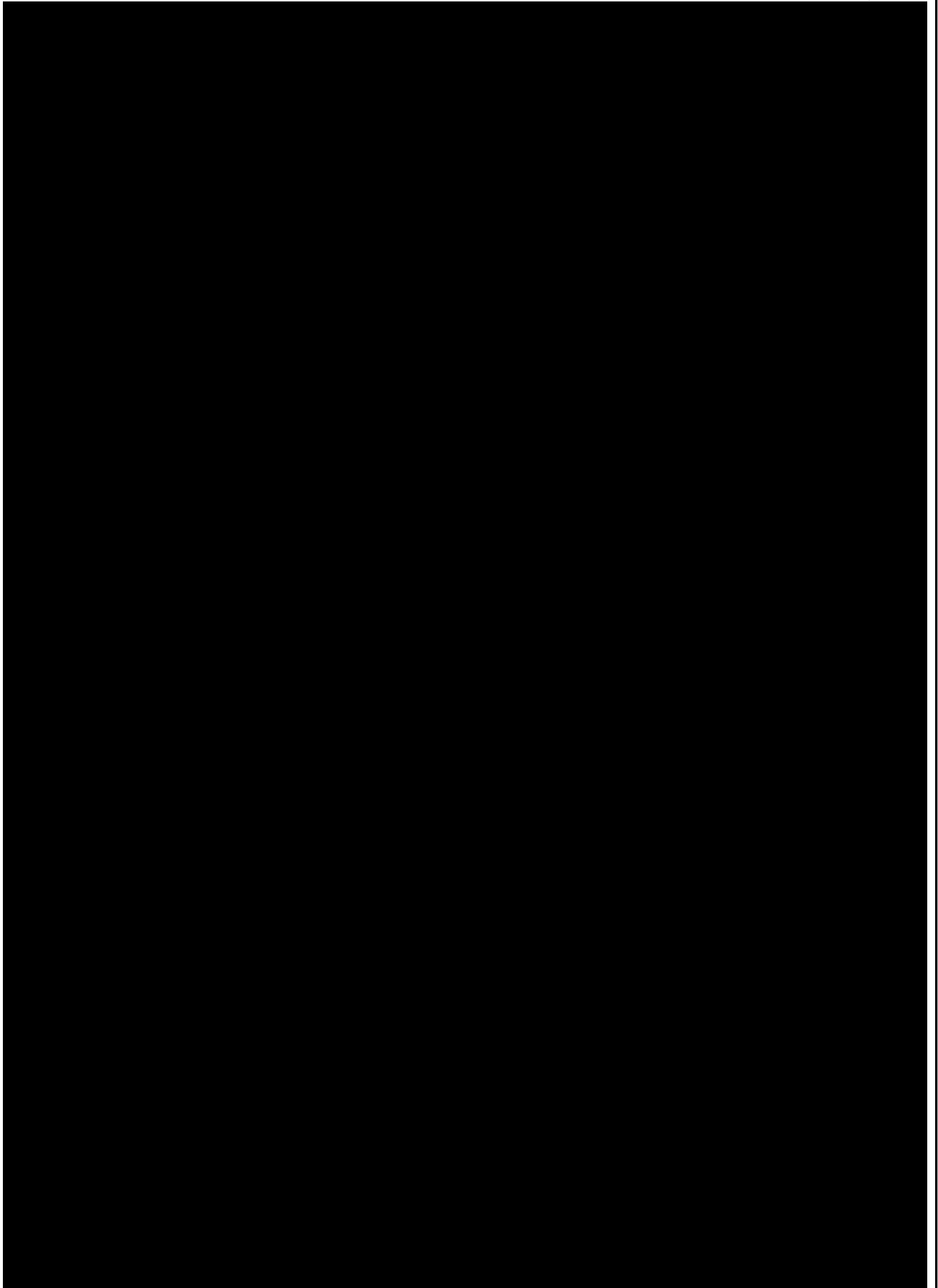
18 A. Yes.

19 (Whereupon Exhibit 53 was marked for
20 identification.)

21 Q. BY MR. THOMAS: Okay. Next in order, 53. Please
22 identify this for the record.

23 A. This is an e-mail to Alana Wittig from myself,
24 dated January 20th, 2009, subject VPN connection and screen
25 shots.

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1 Q. Did you receive this e-mail?

2 A. Yes.

3 Q. And I'd like you to turn to the third page. What
4 is that document?

5 A. This is a screen shot from the AtPac system.

6 Q. An AtPac graphical user interface?

7 A. Yes.

8 Q. What's the next page?

9 A. A screen shot of the marriage license supporting
10 the AtPac GUI in face on the prior page.

11 Q. So what this did is it would give Aptitude both
12 the vital record, the actual vital record, and then show
13 them the fields where the information on the vital records
14 were collected and how they were collected?

15 MR. ABU-ASSAL: Vague and ambiguous.

16 Can you read that question again?

17 (Record read.)

18 MR. ABU-ASSAL: Vague and ambiguous.

19 Q. BY MR. THOMAS: All right.

20 A. It showed them in particular what date fields were
21 attached to which date elements.

22 Q. It showed them the names as well, correct?

23 A. Yes.

24 Q. It showed them all the data collected in the data
25 fields.

1 MR. ABU-ASSAL: Vague and ambiguous.

2 Q. BY MR. THOMAS: Correct?

3 A. I don't know that.

4 Q. Well, it showed -- by showing Aptitude the
5 graphical user interface, it shows all the types of data
6 collected in the AtPac system for this type of vital record,
7 correct?

8 MR. ABU-ASSAL: Vague and ambiguous, assumes facts
9 not in evidence.

10 THE WITNESS: This is one screen shot for a
11 marriage license. Since I'm not familiar with the system, I
12 don't know if there was other -- other marriage license
13 screen shots.

14 Q. BY MR. THOMAS: And so moving on, do you see the
15 vital record, the next page, it's dated 1/2/2009, that's
16 another AtPac graphical user interface?

17 A. Yes.

18 Q. And then moving on, there's now an attached
19 e-mail; do you see that?

20 A. Yes.

21 Q. And then after that, more screen shots?

22 A. Yes.

23 Q. And after that more screen shots?

24 A. Yes.

25 Q. And then after that more screen shots?

1 A. Yes.

2 Q. And then another screen shot?

3 A. Yes.

4 Q. And another screen shot?

5 A. Yes.

6 Q. How many screen shots are contained in this
7 exhibit in front of you? Can you count them up, please,
8 Exhibit 54?

9 MR. ABU-ASSAL: Is that really necessary? I mean,
10 they are what they are.

11 Q. BY MR. THOMAS: I count 15 graphical user
12 interface screen shots.

13 A. Yes.

14 Q. These are all AtPac graphical user interface
15 screen shots?

16 A. Yes.

17 Q. And to your knowledge, are any of these 15
18 graphical user interface screen shots of AtPac System
19 screens that are available to the public?

20 A. I don't know.

21 Q. Thank you.

22 And, to your knowledge, all of those screen shots
23 were provided to Aptitude, correct?

24 A. To my knowledge, yes.

25 (EXHIBIT MARKED OUT OF ORDER.)

1 Whereupon Exhibit 57 was marked for
2 identification.)

3 Q. MR. THOMAS: Exhibit 57, e-mail from Eileen Moody
4 to you.

5 A. Yes.

6 Q. And you asked her for a screen shot about a death
7 record; do you see that?

8 A. Yes.

9 Q. And she provided it to you?

10 A. Yes.

11 Q. And is that graphical user interface screen shot
12 from the AtPac System?

13 A. Yes.

14 Q. And that was provided to Aptitude?

15 A. I believe so.

16 Q. And do you know if this graphical user interface
17 would have been available to the public?

18 A. I don't know.

19 (Whereupon Exhibit 55 was marked for
20 identification.)

21 Q. BY MR. THOMAS: Exhibit 55. Several of these have
22 been confidential, Dina.

23 Please identify Exhibit 55 for the record.

24 A. This is an e-mail to myself from Eileen Moody,
25 dated February 4th, 2009, subject help needed extracting

1 AtPac screen shots.

2 Q. And she attaches a screen shot of vital records,
3 correct?

4 A. Yes.

5 Q. And that's from an AtPac graphical user interface?

6 A. Yes.

7 Q. Do you know if that was publicly available?

8 A. I don't know.

9 Q. And do you believe you provided that to Aptitude
10 Solutions?

11 A. I believe I did.

12 (Whereupon Exhibit 56 was marked for
13 identification.)

14 Q. BY MR. THOMAS: Exhibit 56 placed before you.
15 Would you please identify this for the record?

16 A. An e-mail to myself and Eileen Moody from Alana
17 Wittig from -- sent March 6th, 2009, subject Nevada.

18 Q. Okay. And this is an e-mail where Ms. Wittig is
19 looking and asking you for more screen shots, correct?

20 A. Yes.

21 Q. And no more questions on that. Was that 55?

22 A. Fifty-six.

23 Q. I've lost 57.

24 (EXHIBIT NUMBER USED TWICE.)

25 Whereupon Exhibit 57 was marked for

1 identification.)

2 Q. BY MR. THOMAS: This is another confidential.
3 Please identify Exhibit 57.

4 A. An e-mail to Alana Wittig from Eileen Moody, dated
5 April 6th, 2009, subject block/lot numbers.

6 Q. This is copied to you as well?

7 A. Yes.

8 Q. Did you receive this e-mail?

9 A. Yes.

10 Q. Okay. If you turn to the last four pages of this
11 e-mail, do you see those?

12 A. Yes.

13 Q. And do you recognize those as AtPac graphical user
14 interfaces that were provided to Aptitude Solutions?

15 A. Yes.

16 Q. And I count eight graphical user interfaces on
17 this one e-mail?

18 A. Yes.

19 Q. I'm done with Exhibit 57.

20 (Whereupon Exhibit 58 was marked for
21 identification.)

22 Q. BY MR. THOMAS: Exhibit 58, please identify this
23 for the record.

24 A. An e-mail to myself from Eileen Moody, dated April
25 8th 2009, subject request record examples.

1 Q. And this is an e-mail -- this is an e-mail that
2 Ms. Moody sent to you and copied Ms. Wittig?

3 A. Yes.

4 Q. And she sends her another screen shot, correct,
5 attached?

6 A. Yes.

7 Q. And that's another graphical user interface from
8 the AtPac System that was provided to Aptitude?

9 A. Yes.

10 Q. And do you know if that one was publicly
11 available?

12 A. I don't know.

13 Q. I'm done with that.

14 (Whereupon Exhibit 59 was marked for?
15 identification.)

16 Q. BY MR. THOMAS: Moving on to Exhibit 59. Can you
17 please identify this for the record?

18 A. An e-mail to Alana Wittig from Eileen Moody, dated
19 April 8th, 2009, subject marriage records for questions.

20 Q. And this is another -- did you receive this
21 e-mail?

22 A. Yes.

23 Q. And is this another e-mail where Aptitude was
24 provided by Ms. Moody yet another graphical user interface
25 from the AtPac System which is attached to this e-mail?

1 A. Yes.

2 Q. And do you know if this graphical user interface
3 was publicly available?

4 A. I don't know.

5 MR. THOMAS: Just for record, this Exhibit 59,
6 it's at the top. Thank you, Nabil.

7 MR. ABU-ASSAL: You know, for future reference, I
8 think you should put whatever stickers you want in the same
9 place. Okay?

10 MR. THOMAS: Agreed.

11 MR. ABU-ASSAL: Just so it's easier on everybody.

12 MR. THOMAS: Yeah, I agree. We'll work on that.
13 Okay. Next.

14 (Whereupon Exhibit 60 was marked for
15 identification.)

16 Q. BY MR. THOMAS: Please identify Exhibit 60.

17 A. E-mail to Debra Russell, myself and Eileen Moody
18 from Alana Wittig, dated April 8th, 2009, subject multi-doc
19 question.

20 Q. Okay. And this is yet another e-mail where
21 Aptitude is asking for more screen shots from the AtPac
22 System?

23 A. Yes.

24 Q. And they're not limiting their screen shot
25 requests to those that are publicly available, are they?

1 MR. ABU-ASSAL: Calls for speculation.

2 Q. BY MR. THOMAS: Well, they didn't say that in the
3 e-mail, right?

4 MR. ABU-ASSAL: The document speaks for itself.

5 Q. BY MR. THOMAS: Did they?

6 A. That's not indicated, no.

7 (Whereupon Exhibit 61 was marked for
8 identification.)

9 Q. BY MR. THOMAS: Exhibit 61, please identify this
10 for the record.

11 A. E-mail to Alana Wittig from Eileen Moody, on April
12 8th, 2009, subject multi-doc questions.

13 Q. And this is yet another e-mail -- did you receive
14 this?

15 A. Yes.

16 Q. And what I'd like you to do is start turning to
17 the attachments and once we get to them, let's count the
18 screen shots provided here. There's three on the first
19 page, four, five, six, seven, eight, nine, ten, eleven,
20 twelve, thirteen, fourteen, fifteen, sixteen graphical user
21 interface pages?

22 A. Yes.

23 Q. So there's sixteen provided with this one e-mail,
24 correct?

25 A. Yes.

1 Q. And you're not aware if any of those were publicly
2 available on the AtPac System, correct?

3 A. True.

4 Q. And they were all AtPac graphical user interfaces?

5 A. Yes.

6 (Whereupon Exhibit 62 was marked for
7 identification.)

8 Q. BY MR. THOMAS: Exhibit 62, here's an e-mail you
9 sent to your own County Counsel on July 2nd, 2009. Do you
10 see that?

11 A. Yes.

12 Q. All the screen shots we've looked at, what was the
13 means you used to transmit them to the Aptitude people? Did
14 you use DocuShare?

15 A. Yes.

16 Q. Okay.

17 A. Wait. I used DocuShare. The ones that Eileen
18 sent, I believe she sent those through the e-mail.

19 Q. Okay. All right. And it says then in this e-mail
20 to County Counsel, "The DocuShare collection created and
21 additionally used to help to answer questions for Aptitude
22 is:" And you gave them the address to your outside network?

23 A. Yes.

24 Q. Do you see that? And it says, "This includes a
25 few screen shots, but nothing provided thought to be breach

1 of contract at the time they were supplied." Do you see
2 that?

3 A. Yes.

4 Q. Have you since learned that that was a breach of
5 contract?

6 MR. ABU-ASSAL: Calls for a legal conclusion and
7 also don't disclose any attorney-client communications.

8 Q. BY MR. THOMAS: Have you?

9 A. No.

10 (Whereupon Exhibit 63 was marked for
11 identification.)

12 Q. BY MR. THOMAS: And one reason you wouldn't know
13 that is because you still haven't read the contract with
14 AtPac in Nevada County, right?

15 A. True, yes.

16 Q. Did you the think it was a breach of contract when
17 you sent that e-mail?

18 MR. ABU-ASSAL: Calls for a legal conclusion.

19 Q. BY MR. THOMAS: I just want to know what you were
20 thinking.

21 A. I didn't think so.

22 Q. Why did you say it was not thought to be a breach
23 of contract at the time? Why did you qualify it with
24 respect to the time? Had your thinking changed?

25 MR. ABU-ASSAL: Assumes facts not in evidence.

1 THE WITNESS: No.

2 Q. BY MR. THOMAS: Did you think graphical user
3 interfaces were confidential, pertaining to proprietary
4 information?

5 A. No.

6 Q. You didn't think that?

7 A. No.

8 Q. Did anyone from Aptitude ever tell you they
9 thought graphical user interfaces were confidential?

10 A. No.

11 Q. Okay. So you've never in your life thought
12 graphical user interfaces contained confidential
13 information; is that your testimony?

14 A. When I worked in a scientific classified program,
15 that would be yes.

16 Q. But AtPac and Aptitude, your thinking would be
17 that they're not working in that type of environment, right?

18 A. Yes.

19 Q. Okay. I've placed before you Exhibit 63, can you
20 please identify that?

21 A. An e-mail to myself --

22 MR. ABU-ASSAL: Can I have a copy of that, please?

23 THE WITNESS: E-mail to myself from Dee Murphy,
24 subject -- on July 16th, 2009, subject list of e-mails with
25 info proprietary to Aptitude Solutions.

1 Q. And then below that is your e-mail to Scott
2 McLeran; do you see that?

3 A. Yes.

4 Q. And you sent that, right?

5 A. Yes.

6 Q. It says, "Attached below is a list of the e-mails
7 identified by Aptitude Solutions which they feel contain
8 confidential or intellectual property information regarding
9 their OnCore product." Do you see that?

10 A. Yes.

11 Q. Did I read that correctly?

12 A. Yes.

13 Q. And the list provided by Aptitude, is that on the
14 second page?

15 A. Yes.

16 Q. Okay. And could you look at the entry that's
17 about three-quarters of the way down, it's dated May 8th,
18 2009?

19 A. There's two entries there.

20 Q. Okay. What's the first one say?

21 A. "Screen shots of posting boards and all."

22 Q. What is the next portion? It says, "Contains
23 screen shots of Fish and Game postings in OnCore." Do you
24 see that?

25 A. Yes.

1 Q. Did you read this e-mail?

2 A. I believe I did.

3 Q. Okay. Well, did you tell Aptitude that you
4 disagreed with their position that screen shots were
5 confidential, since you don't believe they are, other than
6 in the defense contracting field?

7 A. I didn't -- I guess I didn't look closely at that.

8 Q. Because you would disagree with that, right?

9 A. I guess I would ask them about it.

10 Q. At any point in time, did Aptitude personnel tell
11 you, "We think the screen shots you're giving us from AtPac
12 System are confidential"? Did they ever say that with
13 respect to AtPac screen shots?

14 A. I don't recall that.

15 Q. Yeah. They only say that about their own screen
16 shots, right?

17 MR. ABU-ASSAL: Assumes facts not in evidence and
18 it's vague and ambiguous.

19 Q. BY MR. THOMAS: Actually, you've authenticated
20 this e-mail as having received it from Aptitude, right?

21 A. Right.

22 MR. THOMAS: Right. And so I think it's in
23 evidence, sir.

24 MR. ABU-ASSAL: No, it's not.

25 MR. THOMAS: It's admission by a party opponent.

1 MR. ABU-ASSAL: Just -- it's vague and ambiguous.
2 You haven't proven anything.

3 MR. THOMAS: Okay. Nice try.

4 All right. Exhibit 64.

5 (Whereupon Exhibit 64 was marked for
6 identification.)

7 Q. BY MR. THOMAS: Exhibit 64, okay. Actually, let
8 me see this for a second. Sorry to snatch that from you.

9 You remember testifying about DocuShare, right?

10 A. Yes.

11 Q. And how under oath you told me that it was only
12 available internally and to public like me it would not be
13 available, to get information you posted to DocuShare,
14 right? And I told you how did we get that. Do you remember
15 that testimony?

16 A. I remember that.

17 Q. Yeah. And you swore that DocuShare was not
18 available publicly, right?

19 A. That link was not available publicly on a website.

20 Q. All right. Let's look at Exhibit 64. Scott
21 McLeran writes an e-mail to you on August 12th, and that's
22 the e-mail on the bottom half; do you see that?

23 A. Yes.

24 Q. It says, "Files provided to Aptitude Solutions via
25 DocuShare collection," that's the title of the e-mail?

1 A. Yes.

2 Q. And you received that, right?

3 A. Yes.

4 Q. And it says, "Kathy, in reviewing my notes from
5 our meeting last week, I thought I had asked whether the FTP
6 files that you deleted from DocuShare were actually
7 available to the public. Please clarify."

8 So he's asking you a question kind of just like I
9 asked you, right? Pretty much the same question, right?

10 MR. ABU-ASSAL: Vague and ambiguous.

11 Q. BY MR. THOMAS: Ms. Barale, are you with me?

12 A. I'm with you.

13 Q. He's asking you the same question I asked you
14 under oath, right?

15 A. There's a -- I consider there's a difference
16 between a collection easily -- or accessible by the public
17 and one that has public security rights on it.

18 Q. All right. And your answer to his question is,
19 "The DocuShare collection had no security rights defined, so
20 it was open to the public." Did I read that correctly?

21 A. Yes.

22 Q. Did I misstate any part of what you told him?

23 A. No.

24 Q. Okay. So when you answered my question before,
25 that was another false statement, correct?

1 A. I believe I answered that the link was not on a
2 public website.

3 Q. The public could -- without breaching any security
4 protocol whatsoever, people in the public could use the
5 internet to get to DocuShare and see those graphical user
6 interfaces of AtPac that you posted to DocuShare, correct?
7 That's what you're telling Mr. McLeran, right?

8 A. They could get to the Public DocuShare Collection,
9 but not easily to that collection that I provided those
10 screen shots in.

11 Q. What to you mean "not easily"? What does that
12 mean? You ever heard of Google? You've heard of a thing
13 called Google, haven't you?

14 A. Yes.

15 Q. And Google allows you to find things on the
16 internet easily, doesn't it? That's why it's a
17 fifty- billion-dollar company, right?

18 A. I don't know what they -- I don't know what their
19 profits are.

20 Q. Maybe it's a hundred. So what do you mean not
21 easily? Did you ever test how easily the public could get
22 to the DocuShare graphical user interfaces of my client that
23 you posted?

24 A. No.

25 Q. You never checked, right?

1 A. No, no.

2 Q. So when you say it wasn't easy, you really don't
3 know, right?

4 A. Right.

5 Q. Okay. Do you remember what we talked at the
6 beginning of the deposition? If you don't know, you need to
7 tell me; do you remember that?

8 A. Yes.

9 Q. Okay. So when you said it wasn't easy to get to,
10 why did you say that when you don't know?

11 A. I guess I didn't think of Google.

12 Q. Oh, you never just -- when you think of searching
13 on the internet, Google just doesn't come to mind?

14 A. Yes, it does.

15 Q. Okay. Of course it does, which is why your
16 testimony was false, isn't it?

17 MR. ABU-ASSAL: Misstates her testimony.

18 Q. BY MR. THOMAS: Correct?

19 A. False. The public couldn't get to it through
20 Google.

21 Q. The public could find it through Google, right?
22 Like my associate did?

23 A. I don't know what search capability you put in.

24 Q. What do you mean by that? That sounds like
25 gibberish to me.

1 A. Did you know what you were looking for when you
2 went into Google? Did you put in the DocuShare collection?

3 Q. No.

4 A. What did you put in? Oh, I'm not supposed to ask
5 questions.

6 Q. We didn't know you had done this. You never told
7 my client, remember? You were communicating with my client,
8 remember? Do you remember that testimony? Do you?

9 A. Richard Sandblade.

10 Q. You told Richard Sandblade you were posting his
11 graphical user interfaces to DocuShare which is publicly
12 available; you're not saying that, are you?

13 A. No.

14 Q. Okay. You never did that?

15 A. No.

16 Q. You never told anyone from AtPac you were doing
17 that.

18 A. No.

19 Q. You kept that secret from AtPac.

20 MR. ABU-ASSAL: Assumes facts not in evidence,
21 mischaracterizes her testimony.

22 Q. BY MR. THOMAS: Right?

23 A. I did not tell AtPac.

24 (Whereupon Exhibit 65 was marked for
25 identification.)

1 Q. BY MR. THOMAS: Okay. Exhibit 65, please identify
2 this.

3 A. An e-mail to Scott McLeran from myself, dated
4 March 13th, 2010, subject meeting with Caroline.

5 Q. And did you sign that e-mail?

6 A. Yes.

7 MR. THOMAS: Okay. Can we take short break?

8 THE VIDEOGRAPHER: We're going off the record at
9 6:18 p.m.

10 (Whereupon Exhibit 66 was marked for
11 identification.)

12 THE VIDEOGRAPHER: We're are back on the record at
13 6:30 p.m.

14 Q. BY MR. THOMAS: I've given you Exhibit 66, what's
15 been marked, Mrs. Barale.

16 A. Yes.

17 Q. What I'd like you to do is tell me --

18 MR. ABU-ASSAL: Can I have a copy of it, please?

19 Q. BY MR. THOMAS: Do you recognize this as the
20 document -- printout of the DocuShare?

21 A. Yes.

22 MR. ABU-ASSAL: That's marked 67?

23 Q. BY MR. THOMAS: Well, it's not official. It's 66.
24 Sorry about that.

25 Can you please look through that and confirm for

1 me that that, to your knowledge, represents the content, at
2 least at some point in time, of the DocuShare site that you
3 set up to provide information to Aptitude?

4 A. Yes.

5 Q. Okay. Can you look through the content and just
6 make sure that reflects information that you posted to
7 DocuShare for Aptitude, screen shots and the like.

8 A. Yes.

9 Q. Let me ask you some of these screen shots, the
10 background is a dog, picture of a dog?

11 A. Yes.

12 Q. Do you know whose computer that was? Is this
13 Moody's?

14 A. I believe so.

15 Q. She had pictures of dogs on her screensaver?

16 A. At that time.

17 Q. Sure. That's your recollection?

18 A. Yes.

19 Q. You must have seen these when you posted them,
20 right?

21 A. Not necessarily.

22 Q. Oh, okay. All right. Thank you.

23 I'm done with that.

24 I'd like to mark next in order Exhibit 67, it's
25 also confidential material.

1 (Whereupon Exhibit 67 was marked for
2 identification.)

3 Q. BY MR. THOMAS: Can you please identify that for
4 the record?

5 A. This is --

6 MR. ABU-ASSAL: Can I have a copy?

7 THE WITNESS: This is to Christian Curtis from
8 Scott McLeran on March 1st, 2010, subject AtPac versus
9 Aptitude, E-T, A-L.

10 Q. BY MR. THOMAS: And below that is an e-mail from
11 you to Scott McLeran; do you see that?

12 A. Yes.

13 Q. Okay. And you sent that e-mail to Mr. McLeran on
14 March 1st, 2010?

15 A. Yes.

16 Q. And it says you attached what you found concerning
17 information you provided to Aptitude? That was your purpose
18 in providing this e-mail?

19 A. Yes.

20 Q. All right. No more questions on that.

21 (Whereupon Exhibits 68 was marked for
22 identification.)

23 Q. BY MR. THOMAS: Exhibit 68. Look at Exhibit 68,
24 it's a memorandum; do you see that?

25 A. Yes.

1 Q. It's to Michael Jamison from Christian Curtis; do
2 you see that?

3 A. Yes.

4 Q. Do you know a Christian Curtis?

5 A. No.

6 Q. Do you remember being interviewed by a lawyer for
7 the County early on, shortly after the litigation was filed
8 in February; do you remember that?

9 A. By the name of Christian Curtis?

10 Q. Yeah.

11 A. Doesn't ring a bell.

12 Q. Who do you remember being interviewed by early on?

13 A. I just remember Ms. Mankey.

14 Q. Ms. Mankey, but not Christian Curtis?

15 A. It doesn't ring a bell with me.

16 Q. Okay. Any other lawyer besides Ms. Mankey you
17 remember being interviewed by?

18 A. One of the interviews I believe -- I didn't catch
19 the name of the other person that was --

20 Q. Was it a man? Man or a woman?

21 A. A man.

22 Q. Were you ever interviewed in a face-to-face
23 meeting by lawyers concerning that litigation, not including
24 your meeting with Mr. Abu-Assal last Tuesday?

25 A. No.

1 Q. Okay. And I like you to turn the page 7 of this
2 document. The sentence at the top with the words "In
3 particular;" do you see that?

4 A. Yes.

5 Q. It says, "In particular, it is extremely clear
6 that Nevada County failed to complete the CRiis software
7 after termination of the contract." Do you see that?

8 A. Yes.

9 Q. Is that a true statement, to your knowledge?

10 A. Yes.

11 Q. Okay. Thank you.

12 I'm done with that. I already did this. Okay.
13 And what exhibit was that?

14 A. Sixty-eight.

15 (Whereupon Exhibit 69 was marked for
16 identification.)

17 Q. BY MR. THOMAS: I'm just going to mark these by
18 hand right now and the court reporter will put stickers over
19 my labels.

20 Please identify that for the record.

21 A. This is to myself from Debra Russell, dated May
22 29th, 2009, subject termination of AtPac contract inspection
23 of equipment.

24 Q. And did you receive that e-mail?

25 A. Yes.

1 Q. Okay. I'm done with Exhibit 69.

2 (Whereupon Exhibit 70 was marked for
3 identification.)

4 Q. BY MR. THOMAS: Exhibit 70, please identify that
5 for the record.

6 A. To myself from Marie McCluskey, dated June 8th,
7 2009, subject AtPac.

8 Q. Okay. And did you receive that e-mail?

9 A. Yes.

10 Q. Okay. I'm done with that.

11 (Whereupon Exhibit 71 was marked for
12 identification.)

13 Q. BY MR. THOMAS: Exhibit 71, can you please
14 identify that?

15 A. An e-mail to Alana Wittig from myself, dated June
16 16th, 2009, any update available.

17 Q. Okay. And in that e-mail you say, "Thank you.
18 Ultimately I need to arrange enough time to remove AtPac
19 from all PCs so the AtPac cops are not more painful than
20 necessary." Do you see that?

21 A. Yes.

22 Q. What did you mean by that? It doesn't sound very
23 nice. What did you mean by that?

24 A. We needed to remove AtPac application from the
25 Recorder PCs.

1 Q. Well, from all the computers in the County,
2 correct?

3 A. Yes.

4 Q. Okay. And that wasn't done, correct?

5 A. Yes, it was done.

6 Q. Entirely from all computers in the County? I
7 thought you agreed with Mr. Curtis that the AtPac software
8 was not removed?

9 A. The software was not removed from the server after
10 there was a question as to what would be removed.

11 Q. Okay. Done with that.

12 (Whereupon Exhibit 72 was marked for
13 identification.)

14 Q. BY MR. THOMAS: Done with that.

15 Exhibit 72, please identify that for the record?

16 MR. ABU-ASSAL: Can I have a copy?

17 THE WITNESS: E-mail to myself from Phil Russ,
18 dated June 18th, 2009, subject removal of CRIis and other
19 software.

20 Q. BY MR. THOMAS: Go ahead and look. And did you
21 receive that e-mail?

22 A. Yes.

23 Q. Okay. I'm done with that.

24 (Whereupon Exhibit 73 was marked for
25 identification.)

1 Q. BY MR. THOMAS: Exhibit 73.

2 MR. ABU-ASSAL: I need a copy.

3 MR. THOMAS: We'll give you one.

4 Q. BY MR. THOMAS: Exhibit 73, can you please
5 identify that?

6 A. E-mail to Dan Evers from myself, dated June 30th
7 2009, subject power down of prior AtPac servers.

8 Q. BY MR. THOMAS: Now, in the Red Hat logs if we see
9 activity access to the ER-Recorder after June 30th, that
10 means the ER-Recorder was powered back up, correct? It
11 would have to mean that, wouldn't it?

12 MR. ABU-ASSAL: Lacks foundation, calls for
13 speculation.

14 THE WITNESS: I sent this e-mail on the 30th. I
15 don't have confirmation as to what date he powered them
16 down.

17 Q. BY MR. THOMAS: I see. So you don't know whether
18 Dan Evers powered down the server?

19 A. No.

20 Q. Even if he had done it on the 30th, if you see Red
21 Hat log activity on the server after the 30th, that means
22 the server was powered back up, right?

23 MR. ABU-ASSAL: Lacks foundation, calls for
24 speculation.

25 Q. BY MR. THOMAS: Correct?

1 A. I would think so.

2 Q. Because the server can't do things like create Red
3 Hat logs and log active if it has no power.

4 MR. ABU-ASSAL: Lacks foundation, calls for
5 speculation.

6 Q. BY MR. THOMAS: You know that, right?

7 A. Right.

8 Q. Laws of physics require that, right?

9 A. Yes.

10 Q. Thank you.

11 (Whereupon Exhibit 74 was marked for
12 identification.)

13 THE COURT REPORTER: Seventy-four is in front of
14 her.

15 MR. THOMAS: Okay. I'm done with 74.

16 (Whereupon Exhibit 75 was marked for
17 identification.)

18 Q. BY MR. THOMAS: Exhibit 75, please identify this
19 for the record?

20 A. E-mail to myself from the Nevada County Service
21 Desk, dated June 30th, 2009, completed, service desk request
22 No. HD-09-005200.

23 Q. Okay. Do you know -- it's from the Service Desk,
24 but do you know who wrote the content of this e-mail? Was
25 it you?

1 A. Yes.

2 Q. Okay. If we look in the middle it says, "To
3 clarify." Do you see that?

4 A. Yes.

5 Q. "All AtPac software and CRIis database must be
6 removed from the ER-Recorder server along with removing of
7 the itemized items on the identified work stations." Did
8 you write that?

9 A. Yes.

10 Q. All right. No more questions.

11 (Whereupon Exhibit 76 was marked for
12 identification.)

13 Q. BY MR. THOMAS: Exhibit 76, I'd like you to
14 authenticate this. Did you write this e-mail?

15 A. Yes.

16 Q. Okay. Please identify it for the record?

17 A. E-mail to Scott McLeran and Dee Murphy, dated July
18 2nd, 2009, subject AtPac communications.

19 Q. Okay. All right.

20 (Whereupon Exhibit 77 was marked for
21 identification.)

22 Q. BY MR. THOMAS: I'd like to have you look at
23 Exhibit 77. Please identify that for the record.

24 A. E-mail to Debra Russell from Tom McGrath, sent
25 July 3rd, 2009, subject birth document numbering.

1 Q. Did you receive that e-mail?

2 A. Yes.

3 (Whereupon Exhibit 78 was marked for
4 identification.)

5 Q. BY MR. THOMAS: Okay. Exhibit 78, please identify
6 that for the record.

7 A. E-mail to Phil Russ and myself from Dan Evers on
8 July 9th, 2009, subject missing images, specifically
9 G:/AtPac images/cd9707 directory.

10 Q. Okay. And if you look at Mr. Evers' e-mail to
11 you -- you received this e-mail, right?

12 A. Yes.

13 Q. Okay. And if you look at this e-mail, it says,
14 "I've changed and logged the ER-Recorder SU password and
15 will now power it down." Do you see that?

16 A. Yes.

17 Q. And that's dated July 9th, 2009, correct?

18 A. Yes.

19 Q. And you recognize that as approximately nine days
20 after the AtPac contract ended, correct?

21 A. Yes.

22 Q. Okay. No more questions on that.

23 (Whereupon Exhibit 79 was marked for
24 identification.)

25 Q. BY MR. THOMAS: Exhibit 79, please identify that

1 for the record.

2 A. E-mail to Scott McLeran from myself, dated July
3 15th, 2009, subject follow-up questions.

4 Q. Okay. And this was July -- and the e-mail below
5 that says Kathy Barale. You wrote an e-mail on July 17th,
6 2009; do you see that?

7 A. Yes.

8 Q. And you said "The AtPac files were copied to the
9 Aptitude Solutions support server AS-Nevada where they still
10 reside," correct?

11 A. Yes.

12 Q. No more questions about that.

13 (Whereupon Exhibit 80 was marked for
14 identification.)

15 Q. BY MR. THOMAS: Here's Exhibit 80, please identify
16 that for the record.

17 A. E-mail to Frank Barnes, David Cox and Tom McGrath
18 from myself on August 13th, 2009, subject removal of AtPac
19 data files from AS-Nevada.

20 Q. Did you send that e-mail?

21 A. Yes.

22 Q. Okay.

23 (Whereupon Exhibit 81 was marked for?
24 identification.)

25 Q. BY MR. THOMAS: That's fine. Exhibit 81, please

1 identify that e-mail?

2 A. E-mail to myself from Scott McLeran, dated August
3 13th, 2009, another AtPac question.

4 Q. Okay. And below that you send an e-mail to
5 Mr. McLeran; do you see that?

6 A. Yes.

7 Q. And you sent that e-mail?

8 A. Yes.

9 Q. On August 13th, 2009?

10 A. Yes.

11 Q. Okay. Thank you.

12 (Whereupon Exhibit 82 was marked for
13 identification.)

14 Q. BY MR. THOMAS: Exhibit 82, please identify that
15 for the record.

16 A. E-mail to Scott McLeran from myself, dated August
17 14th, 2009, subject follow-up.

18 Q. And did you send that e-mail?

19 A. Yes.

20 Q. Okay. Exhibit 83.

21 (Whereupon Exhibit 83 was marked for
22 identification.)

23 Q. BY MR. THOMAS: Exhibit 83, please identify that
24 for the record.

25 A. E-mail to myself, Frank Barnes, David Cox, from

1 Tom McGrath, dated August 16th, 2009, subject removal of
2 AtPac data files from AS-Nevada.

3 Q. And did you receive that e-mail?

4 A. Yes.

5 Q. Okay.

6 (Whereupon Exhibit 84 was marked for
7 identification.)

8 Q. BY MR. THOMAS: Exhibit 84, please identify that?

9 A. E-mail to myself from Scott McLeran, dated August
10 19th, 2009, subject data files.

11 Q. And did you receive that -- or send that?

12 A. I sent the e-mail.

13 Q. Okay.

14 (Whereupon Exhibit 85 was marked for
15 identification.)

16 Q. BY MR. THOMAS: Exhibit 86, please identify that.

17 MR. ABU-ASSAL: Aren't we on -- I thought we were
18 on 85?

19 MR. THOMAS: You're right, sorry.

20 Q. BY MR. THOMAS: Please identify 85.

21 A. E-mail to myself, Gary Spriggs, Dan Evers, Steve
22 Humes, Fritz Gielow, from Scott McLeran, dated August 20th,
23 2009, subject erasing ER-Recorder, classification request.

24 Q. Okay.

25 A. Or clarification request.

1 Q. All right. And did you receive that?

2 A. Yes.

3 (Whereupon Exhibit 86 was marked for
4 identification.)

5 Q. BY MR. THOMAS: Exhibit 86, did you send or
6 receive that e-mail?

7 A. I received this e-mail.

8 Q. Okay.

9 (Whereupon Exhibit 87 was marked for
10 identification.)

11 Q. BY MR. THOMAS: Exhibit 87, did you send or
12 receive that e-mail?

13 MR. ABU-ASSAL: Can I have a copy?

14 THE WITNESS: I received this e-mail.

15 MR. THOMAS: Okay.

16 (Whereupon Exhibit 88 was marked for
17 identification.)

18 Q. BY MR. THOMAS: Exhibit 88. What I'd like you to
19 do, Ms. Barale, is I've got a collection of -- it's about
20 eight or so documents. I'd like you to tell me if any of
21 these documents -- what exhibit would this be, 87? These
22 are collectively marked as Exhibit 88, as one group. Please
23 let me know if there are any e-mails in there that -- please
24 confirm that all those e-mails are e-mails that you sent or
25 received within Nevada County?

1 A. I assume these go together.

2 Q. Let me see. Yes.

3 A. This one, the top part, maybe down below, I
4 don't --

5 Q. Yes, down below you see.

6 A. Okay.

7 Q. Okay.

8 MR. ABU-ASSAL: Okay. Time is up, but I'll let
9 her finish this answer.

10 THE WITNESS: I don't see my name on this top
11 part.

12 Q. BY MR. THOMAS: Well, we'll just take it out.

13 A. It is farther down, but not that.

14 Q. It's all right. We'll just take it out.

15 So you can confirm that you've sent or received
16 each and every e-mail collectively marked --

17 A. Yes.

18 Q. -- in Exhibit 88?

19 A. Yes.

20 Q. Okay.

21 MR. THOMAS: Well, we've gone approximately seven
22 hours. I'm disappointed, Mr. Abu-Assal, that you're not
23 willing to allow me to finish my examination of this witness
24 and I do think there are documents which haven't been
25 produced, and I think some of them were revealed today,

1 specifically some e-mails and other materials that you
2 haven't provided, so my examination isn't done of this
3 witness and I'll try to meet and confer with you and
4 hopefully we will be able to reach an agreement on my
5 ability to finish my examination, which I don't think will
6 take very long, but I do have some more questions?

7 MR. ABU-ASSAL: Well, as you know, you've been
8 nothing but harsh with us and strictly pounding the judges
9 and us with the idea that rules must be strictly followed.
10 This is a federal rule that you only have seven hours. You
11 asked for more depositions. The judge did not allow you to
12 have more depositions. Seven hours have expired. We've
13 calculated it amongst ourselves very accurately and we
14 didn't include any breaks or the lunch break, and it's
15 exactly seven hours and, in fact, I gave you a few minutes
16 more --

17 MR. THOMAS: Well, we took the lunch break --

18 MR. ABU-ASSAL: -- and that's that.

19 MR. THOMAS: Yeah. We -- I disagree.

20 MR. SCHAPS: Mr. Abu-Assal, there is no federal
21 rule that would prevent you from allowing Mr. Thomas to
22 finish this deposition.

23 MR. THOMAS: That's correct. You certainly can
24 stipulate to more time. And the federal rules do allow us
25 to seek relief from the court where we have good cause for

1 additional time beyond the seven hours, and I guess we'll
2 have to do that.

3 MR. ABU-ASSAL: I don't see any good cause. I
4 really don't. You've had more than ample time.

5 Court Reporter, I would like copies of -- because
6 I didn't get a copy of Exhibit 44, 72 and all of the
7 collective e-mails that Mr. Thomas marked as 88. Can you
8 just -- because I've got a plane to catch, can you please
9 just copy those and Fed Ex them to me? Is that okay?

10 THE COURT REPORTER: Sure, no problem.

11 MR. ABU-ASSAL: Like Monday?

12 MR. THOMAS: Just so we're clear, I'm designating
13 all portions of the transcript asking any questions
14 associated with either the confidential designated documents
15 and/or bond paper tracking, graphical user interfaces and my
16 clients other confidential information so --

17 MR. ABU-ASSAL: Well, on that point -- on that
18 point, I disagree that they are confidential or even highly
19 confidential. But leaving that aside for a second, I think
20 it's really important that the court reporter make it
21 crystal clear which documents are highly confidential,
22 because we saw the stamps all over the place, and I think
23 one of them did or did not have one; I was unclear. But I
24 leave it up to her and to make sure --

25 MR. THOMAS: It's up to us too, because we

1 designated it.

2 MR. ABU-ASSAL: Yeah. Well, that's find. I mean,
3 you already designated them, but --

4 MR. THOMAS: Yeah, I think the way the transcript
5 rules work is everything is provisionally designated. The
6 whole transcript, everything is confidential, attorneys'
7 eyes only, until a certain time lapses. I actually think
8 the order provides for that. And then we have time to go
9 back look at the rough draft transcript and if we want to
10 dial it in more specifically, we have that right. It's in
11 order.

12 MR. ABU-ASSAL: I don't remember what the
13 protective order says, but whatever it is, we're going to
14 follow it.

15 MR. THOMAS: Yeah. Then at this point, then,
16 until we have further clarification, then I'm designating
17 this entire transcript attorneys' eyes only, highly
18 confidential and all exhibits.

19 MR. ABU-ASSAL: Well, I don't think that's
20 reasonable. I mean, you can do whatever you want to do, but
21 that's not reasonable and I don't think that follows the
22 protective order, certainly not the intent of it.

23 MR. SCHAPS: But we're not doing that permanently.
24 We're doing that temporarily while we clarify exactly what
25 we will ultimately designate.

1 MR. ABU-ASSAL: Okay.

2 MR. THOMAS: For the time being that's our
3 position. It is designated; we have done it.

4 MR. ABU-ASSAL: Yeah, I vehemently disagree with
5 your position and you should have been prepared to designate
6 things that truly are confidential before the deposition was
7 taken and, in fact, you attempted to do that and --

8 MR. SCHAPS: We did attempt to do that and you've
9 raised questions --

10 MR. THOMAS: No, no, no. We didn't attempt to do
11 anything. We did that, sir. This entire transcript is
12 attorneys' eyes only, highly confidential. If you breach
13 that, you are in contempt. Do you understand? And so is
14 the witness.

15 MR. ABU-ASSAL: You know what? You're not the
16 judge and I don't like you to threaten me. Okay? What --

17 MR. THOMAS: It's not a threat.

18 MR. ABU-ASSAL: What I'm saying is that it's
19 clearly not logical, absurd -- and absurd for you to
20 designate everything post hoc as highly confidential. It
21 doesn't make any sense.

22 MR. THOMAS: Well, I think you may be calling the
23 protective order absurd, because it provides for that, sir.

24 MR. ABU-ASSAL: Well, I told you I don't remember
25 what it says. If it does provide for that, then so be it,

1 but through the entire deposition you were only marking
2 specific documents and specific parts.

3 MR. SCHAPS: Nabil, I believe this is one of those
4 unnecessary disputes. We're simply saying that we need a
5 couple days in order to -- once we get the transcript, make
6 sure that we can accurately and precisely address the very
7 concern that you raised about imprecision in what was
8 designated. We're simply trying to work with you on a good
9 faith basis to do that, and you're saying that our attempt
10 to resolve the concern you raised is absurd; that's absurd.

11 MR. THOMAS: I'm going to read to you: Prior to
12 the expiration of a 20-day period, deposition transcripts
13 will be treated as highly confidential, attorneys' eyes
14 only, period, end quote.

15 MR. ABU-ASSAL: Well --

16 MR. THOMAS: It's on page 7, line 21 through 23 of
17 the protective order.

18 MR. ABU-ASSAL: That's assuming that along the way
19 you did that, but you didn't do that. There were certain
20 parts of it that you specifically said are highly
21 confidential and there are certain parts of it you didn't
22 say that. There's certain documents -- I mean, let's look
23 at the documents. There are certain documents that are
24 marked highly confidential and there are certain documents
25 that are not.

1 MR. THOMAS: Right.

2 MR. ABU-ASSAL: So if you had the ability to mark
3 something as confidential, it is now waived, right?

4 MR. SCHAPS: Nabil --

5 MR. THOMAS: No, wrong.

6 MR. SCHAPS: -- you just said that there was one
7 document -- you just said that there was document that we
8 designated as highly confidential that you think didn't have
9 a sticker on it. We want to make sure that if that's true,
10 we resolve and rectify that before something untoward
11 happens. That's all we're trying to do here. It's not
12 unreasonable and it's exactly built into the protective
13 order. So why don't you give us the time that we need to
14 resolve the very issue that you raised and then you will
15 know exactly what is highly confidential and exactly what
16 isn't. Okay?

17 MR. ABU-ASSAL: Well, what I don't like about it
18 is that you all took the position that we waived our
19 confidentiality rights because of various reasons and now --
20 you know, what's good for the goose is good for the gander.

21 MR. THOMAS: There's no waiver. You're making
22 things up.

23 MR. ABU-ASSAL: You produced --

24 MR. THOMAS: You're manufacturing something out of
25 nothing.

1 MR. ABU-ASSAL: You produced documents that you
2 didn't mark as confidential, you didn't --- throughout the
3 deposition.

4 MR. THOMAS: Right. The documents --

5 MR. ABU-ASSAL: There were portions that you
6 didn't say were confidential and, in fact, you distinguished
7 between the two.

8 MR. THOMAS: That's correct.

9 MR. ABU-ASSAL: I don't think you can post hoc,
10 designate the entire deposition as confidential.

11 MR. THOMAS: The order does so.

12 MR. ABU-ASSAL: We disagree.

13 MR. THOMAS: Okay, fine, we disagree. But if you
14 choose to act on your disagreement, you'll be in violation
15 of page 7, line 20 through 23.

16 MR. ABU-ASSAL: Once again, don't tell me --
17 you're not the judge. Okay. I know how to read protective
18 orders. I told you --

19 MR. THOMAS: But you haven't read this one.

20 MR. ABU-ASSAL: -- I haven't read it recently and
21 I will. Okay? And I will comply with all court orders.

22 MR. THOMAS: Yeah, but we're designating
23 everything in this transcript as highly confidential,
24 attorneys' eyes only, all testimony associated with bond
25 paper tracking, all testimony associated with exhibits

1 concerning bond paper tracking, all testimony concerning any
2 graphical user interfaces that were improperly disclosed by
3 the witness at the relevant time period back a year or so
4 ago, and all graphical user interfaces, any other material
5 that relates to any of the confidential designations we made
6 in this depo transcript?

7 MR. ABU-ASSAL: Okay.

8 MR. THOMAS: So there we go.

9 MR. ABU-ASSAL: I don't need to repeat myself, but
10 we disagree.

11 THE VIDEOGRAPHER: We are going off the record at
12 6:48 p.m. This is the end of disk No. 4 and the end of
13 today's deposition.

14 (The deposition concluded at 6:47 p.m.)
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CERTIFICATE OF REPORTER

1
2
3 I certify that the witness in the foregoing deposition,
4 KATHY BARALE, was by me duly sworn to testify in the
5 within-entitled cause; that said deposition was taken at the
6 time and place therein named; that the testimony of said
7 witness was reported by me, a duly Certified Shorthand
8 Reporter of the State of California authorized to administer
9 oaths and affirmations, and said testimony was thereafter
10 transcribed into typewriting.

11 I further certify that I am not of counsel or attorney
12 for either or any of the parties to said deposition, nor in
13 any way interested in the outcome of the cause named in
14 said deposition.

15 IN WITNESS WHEREOF, I have hereunto set my hand this
16 26th day of January 2011.

17
18
19 _____
20 DINA M. MARCUS
21 Certified Shorthand Reporter
22 Certificate No. 8579
23
24
25