

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

APPIAN CORPORATION,

Plaintiff,

vs.

Case No.

2020-07216

PEGASYSTEMS, INC. and

YOUYONG ZOU,

Defendants.

Trial - Day 26

BEFORE THE HONORABLE RICHARD GARDINER

Thursday, May 5, 2022

9:31 a.m.

REPORTED BY: AMANDA GORRONO, CLR  
CLR NO. 052005-01  
JOB NO. 210308

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<div>Page 7976</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>A P P E A R A N C E S (CONT'D)</p> <p>ON BEHALF OF PLAINTIFF APPIAN CORPORATION:</p> <p>Maggie O'Neil, Esq. Patterson Belknap Webb &amp; Tyler 1133 Avenue of the Americas New York, NY 10036</p> <p>-AND-</p> <p>Abhishek Bapna, Esq. Patterson Belknap Webb &amp; Tyler 1133 Avenue of the Americas New York, NY 10036</p> <p>ALSO ON BEHALF OF PLAINTIFF:</p> <p>Sheila Costin, Esq. Ellen Marcus, Esq. Holmes Costin &amp; Marcus 301 North Fairfax Street Alexandria, VA 22314</p> <p>ON BEHALF OF DEFENDANT PEGASYSTEMS, INC.,</p> <p>Robert Frank, Jr., Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>(CONT'D)</p> </div>	<div>Page 7977</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div> <div> <p>A P P E A R A N C E S (CONT'D)</p> <p>ON BEHALF OF DEFENDANT PEGASYSTEMS, INC.,</p> <p>Anita Spieth, Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>-AND-</p> <p>John Calhoun, Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>-AND-</p> <p>Bryana McGillycuddy, Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>-AND-</p> <p>Marina Pullerits, Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>-AND-</p> <p>Adam Bookbinder, Esq. Choate Hall &amp; Stewart Two International Place Boston, MA 02110</p> <p>(CONT'D)</p> </div>

<div>Page 7978</div> <div> 1  2 A P P E A R A N C E S (CONT'D)  3 ALSO ON BEHALF OF PEGASYSTEMS:  4 Douglas Kay, Esq.  5 Offit Kurman  6 8000 Towers Crescent Drive  7 Vienna, VA 22182  8  9 ALSO ON BEHALF OF PEGASYSTEMS:  10 Monica Monday, Esq.  11 Gentry Locke  12 801 Main Street  13 Lynchburg, VA 24505  14  15 ON BEHALF OF DEFENDANT YOUYONG ZOU:  16 Wayne Travell, Esq.  17 Hirschler Fleischer  18 8270 Greensboro Drive  19 Tysons, VA 22102  20  21  22  23  24  25 </div>	<div>Page 7979</div> <div> 1  2  3  4  5 JURY CHARGE JUDGE GARDINER  6  7 CLOSING ARGUMENTS:  8  9 PLAINTIFF APPIAN BY MR. MANGI  10 DEFENDANT PEGASYSTEMS BY MR. FRANK  11 DEFENDANT YOUYONG ZOU BY MR. TRAVELL  12 PLAINTIFF APPIAN REBUTTAL BY MR. MANGI  13  14 EXHIBITS IDENTIFIED  15  16 EXHIBIT DESCRIPTION PAGE  17 Exhibit PLT 274 Appian Forum form.....8196  18 Exhibit PLT 397 Document.....8198  19 Exhibit PX 210 Document.....8203  20 Exhibit PX 580 Document.....8204  21 Exhibit DX 1695 Document re Appian SOA.....8211  22 Exhibit PX 580 Document.....8216  23 Exhibit PLT 689 Document.....8231  24 Exhibit DX 149 Agreement.....8236  25 Exhibit PLT 29 E-mail.....8248 </div>
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<p style="text-align: right;">Page 7982</p> <p>1 Proceedings</p> <p>2 THE COURT OFFICER: Please be</p> <p>3 seated.</p> <p>4 Come to order.</p> <p>5 THE COURT: All right. Where do</p> <p>6 we stand? I understand there was some</p> <p>7 corrections made to the jury</p> <p>8 instructions, and Ms. Marcus was going</p> <p>9 to make some more copies.</p> <p>10 MR. KAY: Yeah. I'm sure she'll</p> <p>11 be out in a moment.</p> <p>12 Douglas Kay with Pegasystems.</p> <p>13 There was a sentence missing in the</p> <p>14 cause definition that we identified</p> <p>15 last night and Appian agrees it needs</p> <p>16 to be put back in. That was a prior</p> <p>17 ruling and somehow it stayed in or it</p> <p>18 came out. We found it and so</p> <p>19 Ms. Marcus has sent Ms. Perez the</p> <p>20 correct version and hopefully you have</p> <p>21 it now.</p> <p>22 THE COURT: Oh, okay.</p> <p>23 MR. KAY: I can direct the Court</p> <p>24 to where it is. It's Instruction 13</p> <p>25 in the last paragraph.</p>	<p style="text-align: right;">Page 7983</p> <p>1 Proceedings</p> <p>2 THE COURT: So that's going to</p> <p>3 need to be printed out again?</p> <p>4 MR. MANGI: Your Honor, they are</p> <p>5 being assembled, I understand, right</p> <p>6 now, so Ms. Marcus will have them for</p> <p>7 you in just a minute.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. KAY: I have just a couple</p> <p>10 of housekeeping matters --</p> <p>11 THE COURT: Sure.</p> <p>12 MR. KAY: -- if you don't mind</p> <p>13 while we're waiting for Ms. Marcus.</p> <p>14 THE COURT: No, no. Where is</p> <p>15 Ms. Marcus?</p> <p>16 MS. MARCUS: Is this about the</p> <p>17 jury instructions?</p> <p>18 MR. KAY: Yes. She's printing</p> <p>19 them, right?</p> <p>20 MS. MARCUS: Yes.</p> <p>21 MR. KAY: As I do the</p> <p>22 housekeeping, but I don't think you'll</p> <p>23 have to stand up so long. But I</p> <p>24 thought I would address them.</p> <p>25 Judge, in the initial charge</p>
<p style="text-align: right;">Page 7984</p> <p>1 Proceedings</p> <p>2 conference, you had left open Jury</p> <p>3 Instruction EE. This was -- it was an</p> <p>4 instruction that laid out the trade</p> <p>5 secrets, the specificity.</p> <p>6 THE COURT: Yes.</p> <p>7 MR. KAY: It's sort of the other</p> <p>8 side of the coin to our proposed jury</p> <p>9 verdict form.</p> <p>10 THE COURT: Right.</p> <p>11 MR. KAY: And you had never</p> <p>12 ruled on it. You had held it open and</p> <p>13 so --</p> <p>14 THE COURT: Yeah. We discussed</p> <p>15 a version of it yesterday.</p> <p>16 MR. KAY: Well, we discussed the</p> <p>17 verdict form. We did not discuss --</p> <p>18 MR. MANGI: It was ruled on.</p> <p>19 THE COURT: This instruction was</p> <p>20 actually -- it was in front me and I</p> <p>21 ruled on it.</p> <p>22 MR. MANGI: Absolutely.</p> <p>23 THE COURT: But I'll rule on it</p> <p>24 again so the record is clear.</p> <p>25 MR. KAY: Then I missed it.</p>	<p style="text-align: right;">Page 7985</p> <p>1 Proceedings</p> <p>2 When I looked at the record, it wasn't</p> <p>3 clear that it had been ruled on. What</p> <p>4 is your ruling? Just so the record is</p> <p>5 clear.</p> <p>6 THE COURT: This was Defendants'</p> <p>7 proposed Jury Instruction EE.</p> <p>8 MR. KAY: Yes, sir.</p> <p>9 THE COURT: And it says trade</p> <p>10 secrets alleged and that one is</p> <p>11 denied.</p> <p>12 MR. KAY: Okay. Thank you.</p> <p>13 THE COURT: There were several</p> <p>14 others, but I don't want to take them</p> <p>15 up now that I put question marks next</p> <p>16 to in my version. And I don't want</p> <p>17 to -- once this case is to the jury, I</p> <p>18 want to go over with counsel so I've</p> <p>19 got my record straight.</p> <p>20 MR. KAY: Do you think we should</p> <p>21 go them over now before the jury is</p> <p>22 here?</p> <p>23 THE COURT: No. No. Because I</p> <p>24 know what we're giving to the jury. I</p> <p>25 think I know on most of these what the</p>

<div data-bbox="693 119 803 140" data-label="Page-Header">Page 7986</div> <div data-bbox="99 140 755 1022" data-label="Text"> <p>1 Proceedings</p> <p>2 ruling was, but I want to do that one</p> <p>3 after the case is at the jury.</p> <p>4 MS. MARCUS: If I may explain to</p> <p>5 the Court what we're doing.</p> <p>6 THE COURT: Yes, please.</p> <p>7 MS. MARCUS: Good morning, Your</p> <p>8 Honor.</p> <p>9 MR. KAY: Go ahead.</p> <p>10 MS. MARCUS: Good morning, Your</p> <p>11 Honor. So, Your Honor, after we</p> <p>12 e-mailed Ms. Perez last night, we</p> <p>13 noticed two more typos and rather than</p> <p>14 burden the Court with making those</p> <p>15 copies, we brought a bunch of copies</p> <p>16 this morning and have since learned</p> <p>17 that Your Honor had an order that you</p> <p>18 put the instructions in.</p> <p>19 So what's going on right now, is</p> <p>20 we are reordering all of our copies to</p> <p>21 make sure that they're in the order</p> <p>22 that Your Honor wanted them in and</p> <p>23 that will probably be done in the next</p> <p>24 five to ten minutes.</p> <p>25 THE COURT: Okay. Then we can</p> </div>	<div data-bbox="1411 119 1521 140" data-label="Page-Header">Page 7987</div> <div data-bbox="821 140 1476 1022" data-label="Text"> <p>1 Proceedings</p> <p>2 use that five to ten minutes while</p> <p>3 we're waiting for that. Maybe we</p> <p>4 can --</p> <p>5 MR. MANGI: Your Honor, there is</p> <p>6 the issue of closing slides. So maybe</p> <p>7 we should do that.</p> <p>8 THE COURT: Yes, okay. Thank</p> <p>9 you, Mr. Mangi.</p> <p>10 MR. KAY: Your Honor, I have two</p> <p>11 more housekeeping matters.</p> <p>12 THE COURT: Okay.</p> <p>13 MR. KAY: So the other one</p> <p>14 relates to Instruction 14 and I'm not</p> <p>15 going to belabor this one, but when we</p> <p>16 were debating the appropriate, the</p> <p>17 appropriate way that Instruction 14</p> <p>18 should read --</p> <p>19 THE COURT: Go ahead.</p> <p>20 MR. KAY: Yeah. On the top of</p> <p>21 the second paragraph --</p> <p>22 MR. MANGI: I'm sorry. Just on</p> <p>23 a point of order here, I don't have</p> <p>24 any of these instructions. The charge</p> <p>25 conference is over. I don't think</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 7988</div> <div data-bbox="99 1071 755 1953" data-label="Text"> <p>1 Proceedings</p> <p>2 it's appropriate to be revisiting</p> <p>3 instructions now. I'm ready to close.</p> <p>4 We've got a very full day ahead of us.</p> <p>5 THE COURT: What is it you want</p> <p>6 to do on Instruction 14? I gave my</p> <p>7 ruling yesterday.</p> <p>8 MR. KAY: I withdraw the issue.</p> <p>9 The last point I want to make is</p> <p>10 a very short one, is that just simply,</p> <p>11 we do not believe that the jury should</p> <p>12 be instructed at all because we think</p> <p>13 the plea and bar should have been</p> <p>14 granted and the motions to strike</p> <p>15 should have been granted, and so I</p> <p>16 feel like I need to make that --</p> <p>17 THE COURT: I've already ruled</p> <p>18 on all the motions to strike and I</p> <p>19 think your objections were noted, so.</p> <p>20 MR. KAY: Thank you.</p> <p>21 THE COURT: All right.</p> <p>22 Mr. Mangi, on the --</p> <p>23 MR. MANGI: Your Honor, on the</p> <p>24 closing slides, the parties have</p> <p>25 exchanged just the slides that are not</p> </div>	<div data-bbox="1411 1050 1521 1071" data-label="Page-Header">Page 7989</div> <div data-bbox="821 1071 1476 1953" data-label="Text"> <p>1 Proceedings</p> <p>2 in evidence. So theirs are only</p> <p>3 pictures of witnesses so I'm not going</p> <p>4 to raise any issues from my side.</p> <p>5 They may have some.</p> <p>6 THE COURT: Okay.</p> <p>7 MS. SPIETH: One quick more</p> <p>8 housekeeping thing. This is again not</p> <p>9 evidence, but the parties have looked</p> <p>10 into the record, transcripts of the</p> <p>11 impeachment clips that were played</p> <p>12 during the case, so again, not</p> <p>13 evidence, not something that's going</p> <p>14 to the jury, but just to complete the</p> <p>15 record --</p> <p>16 MR. MANGI: Hang on a second.</p> <p>17 The record is closed. The evidentiary</p> <p>18 record is closed. We are at closing</p> <p>19 arguments now.</p> <p>20 THE COURT: Yes.</p> <p>21 MS. SPIETH: This is not</p> <p>22 evidence.</p> <p>23 MR. MANGI: Whatever it is,</p> <p>24 nothing should be going in the record</p> <p>25 now. It's closed. All sides have</p> </div>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 7990</div> <div data-bbox="115 142 753 1024" data-label="Text"> <p>1 Proceedings</p> <p>2 rested.</p> <p>3 THE COURT: Yeah. I mean,</p> <p>4 matters dealing with impeachment came</p> <p>5 up during the trial. We're not going</p> <p>6 to add anything at this point.</p> <p>7 MS. SPIETH: Right. Right, Your</p> <p>8 Honor. This is just a transcript of</p> <p>9 the impeachment clips that were played</p> <p>10 during the trial that the parties have</p> <p>11 agreed to put into the record of the</p> <p>12 case.</p> <p>13 MR. MANGI: There's no -- what</p> <p>14 we put into the record, whatever we</p> <p>15 wanted to put in the record while we</p> <p>16 were making a record.</p> <p>17 THE COURT: The evidence is</p> <p>18 closed. That is it.</p> <p>19 MS. SPIETH: Right. Your Honor,</p> <p>20 just this is in evidence. The record</p> <p>21 is actually still running because</p> <p>22 we're creating the record as we speak.</p> <p>23 So this is just a piece of the record</p> <p>24 that needs to be added to the record.</p> <p>25 THE COURT: As far as the</p> </div>	<div data-bbox="1412 121 1523 142" data-label="Page-Header">Page 7991</div> <div data-bbox="829 142 1471 1024" data-label="Text"> <p>1 Proceedings</p> <p>2 evidentiary stage goes, the record is</p> <p>3 closed.</p> <p>4 MS. SPIETH: I agree with Your</p> <p>5 Honor. This is not evidence.</p> <p>6 THE COURT: It's something that</p> <p>7 came in during the evidentiary stage.</p> <p>8 It's closed. There's no more coming</p> <p>9 in.</p> <p>10 MR. MANGI: Your Honor, we</p> <p>11 offered impeachment clips because we</p> <p>12 did offer them as evidence on the</p> <p>13 grounds that they were admissions. We</p> <p>14 properly moved them in. We didn't</p> <p>15 just hand them impeachment clips so</p> <p>16 this is improper.</p> <p>17 MS. SPIETH: The impeachments</p> <p>18 were played direct to the trial, to</p> <p>19 the --</p> <p>20 MR. MANGI: Just to be clear, if</p> <p>21 they just played an impeachment, it's</p> <p>22 not evidence. They can't use it in</p> <p>23 closing. That's just an impeachment.</p> <p>24 So I don't expect to see any of these</p> <p>25 impeachment clips in their closing</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 7992</div> <div data-bbox="115 1071 753 1953" data-label="Text"> <p>1 Proceedings</p> <p>2 slides because they're not in</p> <p>3 evidence.</p> <p>4 MS. SPIETH: You've seen our</p> <p>5 slides so --</p> <p>6 MR. MANGI: I haven't seen your</p> <p>7 evidentiary slides and so none of</p> <p>8 those should in there, to be clear.</p> <p>9 THE COURT: Anything that was</p> <p>10 used for impeachment purposes is not</p> <p>11 evidence and should not be argued. I</p> <p>12 hope that's clear.</p> <p>13 It's not evidence. If the</p> <p>14 witness testified that X and you found</p> <p>15 testimony that he said Y and you</p> <p>16 impeached him with that, then that</p> <p>17 impeachment testimony cannot be argued</p> <p>18 as evidence.</p> <p>19 MS. SPIETH: Okay.</p> <p>20 MR. MANGI: Just to be clear, I</p> <p>21 would just like a -- I don't want to</p> <p>22 interrupt closings unless I really</p> <p>23 have to.</p> <p>24 Can I have a commitment from</p> <p>25 whoever is doing the closing that none</p> </div>	<div data-bbox="1412 1050 1523 1071" data-label="Page-Header">Page 7993</div> <div data-bbox="829 1071 1471 1953" data-label="Text"> <p>1 Proceedings</p> <p>2 of that is going to show up on a</p> <p>3 slide?</p> <p>4 MR. FRANK: None of that is</p> <p>5 going to show up on the slides.</p> <p>6 (Reporter clarification.)</p> <p>7 MR. MANGI: He said none of that</p> <p>8 is going to show up on the slides,</p> <p>9 Mr. Frank.</p> <p>10 MS. SPIETH: We have a few</p> <p>11 issues with Appian's closing slides,</p> <p>12 Your Honor, and I'm hoping that Josh</p> <p>13 can pull them up onto your screen. If</p> <p>14 not, we have an extra copy here.</p> <p>15 THE COURT: Yeah. If he can put</p> <p>16 them up on the screen, that would be</p> <p>17 fine. You can even put them up on the</p> <p>18 big screens because the jury is not</p> <p>19 here.</p> <p>20 MS. SPIETH: The first --</p> <p>21 actually, Your Honor, well, scratch</p> <p>22 that.</p> <p>23 The first of the questions is in</p> <p>24 Plaintiff's Demonstrative 10.163. One</p> <p>25 back. There you go.</p> </div>

<p style="text-align: right;">Page 7994</p> <p>1 Proceedings</p> <p>2 This is a list of Appian's</p> <p>3 claimed trade secrets. And my issue</p> <p>4 is with the eighth item on this list.</p> <p>5 I forecasted this issue for Your Honor</p> <p>6 yesterday.</p> <p>7 The eighth listed trade secret</p> <p>8 here -- the first seven are the</p> <p>9 weaknesses, I suppose, of Appian's</p> <p>10 product. The eighth says:</p> <p>11 Confidential documentation from Appian</p> <p>12 Forum.</p> <p>13 This is not what has been</p> <p>14 alleged in the case and, in fact, it's</p> <p>15 not specific enough and it's</p> <p>16 misleading. I'll refresh Your Honor's</p> <p>17 memory as to an argument I made</p> <p>18 yesterday.</p> <p>19 I tried to make arguments to</p> <p>20 the -- excuse me. I tried to put it</p> <p>21 in evidence to the jury about the</p> <p>22 documentation that was on Appian's</p> <p>23 Forum and Appian objected and</p> <p>24 prevented me, successfully prevented</p> <p>25 me from admitting into evidence</p>	<p style="text-align: right;">Page 7995</p> <p>1 Proceedings</p> <p>2 documentation from Appian's Forum.</p> <p>3 So this is far too broad. They</p> <p>4 can tell you a specific piece of</p> <p>5 documentation, but I was actually</p> <p>6 forbidden from putting in evidence</p> <p>7 about documentation from Appian's</p> <p>8 Forum.</p> <p>9 THE COURT: This is a</p> <p>10 demonstrative that they are going to</p> <p>11 use during closing, though, right?</p> <p>12 MR. MANGI: Yes.</p> <p>13 MS. SPIETH: Right.</p> <p>14 THE COURT: This isn't going</p> <p>15 into -- this isn't evidence.</p> <p>16 MS. SPIETH: Right, but --</p> <p>17 THE COURT: This is just what</p> <p>18 Mr. Mangi wants -- I assume Mr. Mangi</p> <p>19 is going to be arguing, but he can</p> <p>20 argue that if he wants and when it's</p> <p>21 your turn, you can point out just what</p> <p>22 you just said.</p> <p>23 MS. SPIETH: Well, I won't be</p> <p>24 able to point it out, Your Honor,</p> <p>25 because Your Honor didn't allow me to</p>
<p style="text-align: right;">Page 7996</p> <p>1 Proceedings</p> <p>2 put it into evidence. You said I</p> <p>3 could not put the documentation from</p> <p>4 Appian Forum into evidence, so Your</p> <p>5 Honor barred me from putting that into</p> <p>6 evidence or from asking questions</p> <p>7 about it --</p> <p>8 THE COURT: Probably for a</p> <p>9 reason that was appropriate at that</p> <p>10 time, but that doesn't prevent -- if</p> <p>11 there's documentation -- if this issue</p> <p>12 came up and somebody testifies about</p> <p>13 it, it's fair game for him to argue</p> <p>14 about it.</p> <p>15 MS. SPIETH: Okay. Over my</p> <p>16 objection, Your Honor.</p> <p>17 The next slide that has an issue</p> <p>18 is 10.349. There aren't a lot of</p> <p>19 these.</p> <p>20 So 10.349, harkens back to</p> <p>21 10.348. If you wouldn't mind just</p> <p>22 putting them both up, Josh.</p> <p>23 This is an issue that Mr. Kay</p> <p>24 raised for you yesterday, Your Honor,</p> <p>25 and we were afraid might happen. You</p>	<p style="text-align: right;">Page 7997</p> <p>1 Proceedings</p> <p>2 can see from the first paragraph of</p> <p>3 the jury instruction, the key part of</p> <p>4 Jury Instruction 14 that we're worried</p> <p>5 about here is the: You may award the</p> <p>6 amount of unjust enrichment caused by</p> <p>7 misappropriation.</p> <p>8 And Your Honor said that -- in</p> <p>9 the next paragraph, Pega asked that</p> <p>10 the words "caused by misappropriation"</p> <p>11 be added to clarify the below</p> <p>12 paragraph and Your Honor denied that</p> <p>13 request.</p> <p>14 The next slide reframes that</p> <p>15 second paragraph of Jury</p> <p>16 Instruction 14. And on the left, you</p> <p>17 can see where it reframes the first</p> <p>18 part of the second paragraph of the</p> <p>19 Jury Instruction 14.</p> <p>20 It says: Appian has the burden</p> <p>21 of establishing a greater weight of,</p> <p>22 of the evidence.</p> <p>23 THE COURT: Should be by the</p> <p>24 greater weight of the evidence.</p> <p>25 MS. SPIETH: Yeah. There is a</p>

<p style="text-align: right;">Page 7998</p> <p>1 Proceedings</p> <p>2 couple typos in there, I think.</p> <p>3 THE COURT: Article missing</p> <p>4 there.</p> <p>5 MS. SPIETH: Yeah. Establishing</p> <p>6 by greater weight of the evidence</p> <p>7 Pegasystems' sales. I actually think</p> <p>8 there's two typos there.</p> <p>9 MR. MANGI: It's an exact quote.</p> <p>10 MS. SPIETH: Okay. The typo</p> <p>11 might be in the jury instruction, but</p> <p>12 the problem is that when it's</p> <p>13 disaggregated from the previous</p> <p>14 paragraph, it doesn't have the "caused</p> <p>15 by misappropriation" so it's not a</p> <p>16 fair statement of the causation</p> <p>17 standard in the case.</p> <p>18 So Your Honor ruled that the</p> <p>19 "caused by misappropriation" shouldn't</p> <p>20 be included in the second paragraph,</p> <p>21 but that was when it was in the</p> <p>22 context of the full jury instruction.</p> <p>23 THE COURT: But they are going</p> <p>24 to have the full jury instruction. If</p> <p>25 he wants to emphasize this part of it,</p>	<p style="text-align: right;">Page 7999</p> <p>1 Proceedings</p> <p>2 he can emphasize this part of it.</p> <p>3 MS. SPIETH: The next one is</p> <p>4 Plaintiff's Demonstrative 10.373.</p> <p>5 This slide has pictures of, Your Honor</p> <p>6 will remember, some bands. Now, there</p> <p>7 is --</p> <p>8 THE COURT: Yes. Now I can see</p> <p>9 who the Goo Goo girls are.</p> <p>10 MR. MANGI: Dolls, Your Honor,</p> <p>11 Dolls.</p> <p>12 THE COURT: Ms. Perez explained</p> <p>13 to me yesterday during the break who</p> <p>14 they were, and she fully acted, it was</p> <p>15 a male band and it seems that she was</p> <p>16 right despite their names.</p> <p>17 MS. SPIETH: She would not lead</p> <p>18 you astray.</p> <p>19 So Mr. Bapna, counsel for</p> <p>20 Appian, asked some questions about</p> <p>21 whether Mr. Platt, the Pegasystems</p> <p>22 damages expert, was aware that these</p> <p>23 bands had played at PegaWorld and he</p> <p>24 testified that he was not aware.</p> <p>25 So it's not in evidence that</p>
<p style="text-align: right;">Page 8000</p> <p>1 Proceedings</p> <p>2 these bands played at PegaWorld so</p> <p>3 this slide is misleading insofar as</p> <p>4 there is no evidence in the case that</p> <p>5 these bands played at PegaWorld. I</p> <p>6 think you could do a search through</p> <p>7 the transcripts for Goo Goo Dolls and</p> <p>8 you wouldn't find that they played.</p> <p>9 THE COURT: I think that's</p> <p>10 right. I think the question, he</p> <p>11 didn't know the answer.</p> <p>12 MR. MANGI: Your Honor, it's</p> <p>13 just here, I'm not saying they</p> <p>14 performed. That's not the point. The</p> <p>15 point is simply, you know, remember</p> <p>16 what -- it's a reminder, a visual</p> <p>17 reminder to the jury. Remember what</p> <p>18 he said. If these bands performed,</p> <p>19 all of that money, sorry, Appian, you</p> <p>20 can't have it back.</p> <p>21 That's all it is. I'm not</p> <p>22 saying they actually performed. They</p> <p>23 did, by the way, but I'm not going to</p> <p>24 suggest that.</p> <p>25 MR. FRANK: Of course you are.</p>	<p style="text-align: right;">Page 8001</p> <p>1 Proceedings</p> <p>2 MS. SPIETH: I think this slide</p> <p>3 does suggest it actually, Your Honor.</p> <p>4 I think Mr. Mangi --</p> <p>5 MR. MANGI: I'll make it easy.</p> <p>6 I'll take out the PegaWorld. Just</p> <p>7 pictures of the bands.</p> <p>8 Remember? We asked questions</p> <p>9 about whether these bands performed.</p> <p>10 It's just a reminder of my question,</p> <p>11 period.</p> <p>12 MR. FRANK: Questions are not</p> <p>13 evidence, Your Honor.</p> <p>14 MR. MANGI: It's argument not --</p> <p>15 it's argument. It's closing argument.</p> <p>16 I want to remind -- I'm going to</p> <p>17 remind them, Your Honor, of the</p> <p>18 question about the bands. It's not</p> <p>19 prejudice for having a picture of the</p> <p>20 band. It just breaks up a boring</p> <p>21 closing.</p> <p>22 MR. FRANK: Your Honor, on that</p> <p>23 theory, I could talk about questions I</p> <p>24 asked that Your Honor excluded.</p> <p>25 THE COURT: This slide has got</p>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8002</div> <div data-bbox="115 142 753 1024" data-label="Text"> <p>1 Proceedings</p> <p>2 to come down.</p> <p>3 MR. MANGI: Okay. That's fine.</p> <p>4 MS. SPIETH: And then there's</p> <p>5 just one more objection, Your Honor,</p> <p>6 and it applies to a couple of slides,</p> <p>7 but I think we can just argue it in</p> <p>8 the context of 10.383. And if Your</p> <p>9 Honor rules on this one, we'll know</p> <p>10 the answer to the rest.</p> <p>11 10.383 is a part of the verdict</p> <p>12 form that's completed, and I think the</p> <p>13 completed -- well, I don't think.</p> <p>14 The completed verdict forms are</p> <p>15 unfairly prejudicial insofar as they</p> <p>16 try to do the jury's job for it, and</p> <p>17 there is a couple of slides like this.</p> <p>18 THE COURT: Well, that's exactly</p> <p>19 what the closing argument is supposed</p> <p>20 to be. If your objection -- hold on,</p> <p>21 Mr. Mangi --</p> <p>22 MR. MANGI: Go ahead.</p> <p>23 THE COURT: If your objection is</p> <p>24 that he can't argue how the jury form</p> <p>25 should look, that argument is</p> </div>	<div data-bbox="1412 121 1523 142" data-label="Page-Header">Page 8003</div> <div data-bbox="821 142 1476 1024" data-label="Text"> <p>1 Proceedings</p> <p>2 rejected.</p> <p>3 MS. SPIETH: That's fine.</p> <p>4 That's the last four complaints, Your</p> <p>5 Honor. They were all in that bucket</p> <p>6 so we understand your ruling on all of</p> <p>7 those. Thank you.</p> <p>8 THE COURT: Thank you.</p> <p>9 MR. MANGI: Ready to close, Your</p> <p>10 Honor.</p> <p>11 THE COURT: We have the jury</p> <p>12 instructions first.</p> <p>13 Mr. Travell?</p> <p>14 MR. TRAVELL: I have a few</p> <p>15 minutes about closing.</p> <p>16 THE COURT: Okay. And let's get</p> <p>17 the jury instructions.</p> <p>18 MS. MARCUS: This is a set of</p> <p>19 eight, so one for Your Honor, seven</p> <p>20 for the jury. And then I have the set</p> <p>21 that Ms. Perez gave me this morning so</p> <p>22 you can see that I put them -- we put</p> <p>23 them in the same order as Your Honor</p> <p>24 did.</p> <p>25 THE COURT: All right. You can</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8004</div> <div data-bbox="115 1071 753 1953" data-label="Text"> <p>1 Proceedings</p> <p>2 hand those to the deputy, please.</p> <p>3 MS. MARCUS: Thank you.</p> <p>4 THE COURT: Those are going to</p> <p>5 be distributed to the jury when they</p> <p>6 go back to deliberate.</p> <p>7 MS. MARCUS: The one with the</p> <p>8 sticky on it is the old set.</p> <p>9 THE COURT: I need my copy.</p> <p>10 (Discussion held off the</p> <p>11 record.)</p> <p>12 THE COURT: I think we're ready</p> <p>13 to bring the jury -- oh, I'm sorry,</p> <p>14 Mr. Travell.</p> <p>15 MR. TRAVELL: That's okay.</p> <p>16 Wayne Travell for defendant</p> <p>17 Youyong Zou.</p> <p>18 Your Honor, just to avoid any</p> <p>19 unnecessary interruptions, it's my</p> <p>20 understanding that, to the extent</p> <p>21 documents are admitted in evidence, we</p> <p>22 do not need to display those to</p> <p>23 opposing counsel in advance.</p> <p>24 I plan, I plan to play just a</p> <p>25 few seconds of the video, show a few</p> </div>	<div data-bbox="1412 1050 1523 1071" data-label="Page-Header">Page 8005</div> <div data-bbox="821 1071 1476 1953" data-label="Text"> <p>1 Jury Charge</p> <p>2 e-mails, but one thing I had planned</p> <p>3 to show was the verdict form itself.</p> <p>4 I haven't disclosed that, but</p> <p>5 it's the verdict form that's here. I</p> <p>6 don't have it marked up, but I did</p> <p>7 plan to go through the jury and have</p> <p>8 them --</p> <p>9 THE COURT: Sure.</p> <p>10 MR. TRAVELL: So, again, I plan</p> <p>11 to do that.</p> <p>12 MR. MANGI: No objection.</p> <p>13 MR. TRAVELL: We do not have any</p> <p>14 objection.</p> <p>15 Thank you.</p> <p>16 THE COURT: Not a problem.</p> <p>17 And where is the jury verdict</p> <p>18 form, by the way?</p> <p>19 Thank you. All right. Let's</p> <p>20 bring the jury in, please.</p> <p>21 (Jury enters.)</p> <p>22 THE COURT: All members of the</p> <p>23 jury are present. Everyone may be</p> <p>24 seated.</p> <p>25 Ladies and gentlemen of the</p> </div>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8006</div> <div data-bbox="115 142 755 1024" data-label="Text"> <p>1 Jury Charge</p> <p>2 jury, you've now heard all the</p> <p>3 evidence in this case. Before the</p> <p>4 lawyers make their closing arguments,</p> <p>5 the Court will give you the</p> <p>6 instructions of the law that you are</p> <p>7 to apply in deciding this case.</p> <p>8 You will have -- you will each</p> <p>9 have a copy of these instructions with</p> <p>10 you in the jury room; but please,</p> <p>11 nonetheless, I would appreciate your</p> <p>12 full attention as I read them to you</p> <p>13 now.</p> <p>14 With respect to the instructions</p> <p>15 that I'm about to give you, you'll see</p> <p>16 when you get them in the jury room</p> <p>17 that some of them are numbered, some</p> <p>18 of them are lettered. Don't pay any</p> <p>19 attention to that. That's just simply</p> <p>20 our way of keeping track of what</p> <p>21 instructions have been given.</p> <p>22 Every instruction, whether the</p> <p>23 first or the last, is an important</p> <p>24 instruction. So let me give you the</p> <p>25 instructions now.</p> </div>	<div data-bbox="1414 121 1524 142" data-label="Page-Header">Page 8007</div> <div data-bbox="821 142 1466 1024" data-label="Text"> <p>1 Jury Charge</p> <p>2 You are the judges of the facts,</p> <p>3 the credibility of the witnesses, and</p> <p>4 the weight of the evidence. You may</p> <p>5 consider the appearance and manner of</p> <p>6 the witnesses on the witness stand,</p> <p>7 their intelligence, their opportunity</p> <p>8 for knowing the truth and for having</p> <p>9 observed the things on which they</p> <p>10 testified, their interest in the</p> <p>11 outcome of the case, their bias and,</p> <p>12 if any have been shown, their prior</p> <p>13 inconsistent statements, or whether</p> <p>14 they have knowingly testified</p> <p>15 untruthfully as to any material fact</p> <p>16 in the case.</p> <p>17 You may not arbitrarily</p> <p>18 disregard believable testimony of a</p> <p>19 witness. However, after you have</p> <p>20 considered all the evidence in the</p> <p>21 case, then you may accept or you may</p> <p>22 discard all or part of the testimony</p> <p>23 of a witness as you think proper.</p> <p>24 You are entitled to your common</p> <p>25 sense in judging any testimony. For</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8008</div> <div data-bbox="115 1071 755 1953" data-label="Text"> <p>1 Jury Charge</p> <p>2 these things and all the other</p> <p>3 circumstances of this case, you may</p> <p>4 determine which witnesses are more</p> <p>5 believable and weigh their testimony</p> <p>6 accordingly.</p> <p>7 You must not base your verdict</p> <p>8 in any way upon sympathy or bias or</p> <p>9 guesswork or speculation. Your</p> <p>10 verdict must be based solely upon the</p> <p>11 evidence and the instructions of the</p> <p>12 Court.</p> <p>13 Any amount of damages requested</p> <p>14 is not evidence in this case, and you</p> <p>15 should not consider it as evidence in</p> <p>16 arriving at your verdict.</p> <p>17 Any fact that may be proved by</p> <p>18 direct evidence may be proved by</p> <p>19 circumstantial evidence; that is, you</p> <p>20 may draw all reasonable inferences --</p> <p>21 all reasonable and legitimate</p> <p>22 inferences and deductions from the</p> <p>23 evidence.</p> <p>24 You may not consider any matter</p> <p>25 that was rejected or stricken by the</p> </div>	<div data-bbox="1414 1050 1524 1071" data-label="Page-Header">Page 8009</div> <div data-bbox="821 1071 1466 1953" data-label="Text"> <p>1 Jury Charge</p> <p>2 Court. It is not evidence and should</p> <p>3 be disregarded.</p> <p>4 In considering the weight to be</p> <p>5 given to the testimony of an expert</p> <p>6 witness, you should consider the basis</p> <p>7 for his opinion and the manner by</p> <p>8 which he arrived at it and the</p> <p>9 underlying facts and data upon he</p> <p>10 relied.</p> <p>11 If you believe from the evidence</p> <p>12 that a witness, other than a party,</p> <p>13 previously made a statement</p> <p>14 inconsistent with his or her testimony</p> <p>15 at this trial, the only purpose for</p> <p>16 which that statement may be considered</p> <p>17 by you is its bearing on the witness'</p> <p>18 credibility. It is not evidence of</p> <p>19 what -- of what that witness</p> <p>20 previously said is true.</p> <p>21 If you believe from the evidence</p> <p>22 that a party or a party's employee</p> <p>23 previously made a statement</p> <p>24 inconsistent with his or her testimony</p> <p>25 at this trial, that previous statement</p> </div>

<p style="text-align: right;">Page 8010</p> <p>1           Jury Charge</p> <p>2   may be considered by you as evidence</p> <p>3   that what the party previously said</p> <p>4   was true.</p> <p>5           An employer is responsible for</p> <p>6   its employees actions if the employee</p> <p>7   was trying, to some extent, to serve</p> <p>8   the employers business, even though</p> <p>9   the primary motive of the employee was</p> <p>10   to benefit himself or herself or a</p> <p>11   third party. An employee's act may be</p> <p>12   within the scope of employment even</p> <p>13   though the act is willful or</p> <p>14   malicious.</p> <p>15           The greater weight of all the</p> <p>16   evidence is sometimes called the</p> <p>17   "preponderance of the evidence." It</p> <p>18   is that evidence which you find more</p> <p>19   persuasive when evaluated against all</p> <p>20   of the evidence that's been admitted</p> <p>21   in the case. The testimony of one</p> <p>22   witness whom you believe can be the</p> <p>23   greater weight of the evidence.</p> <p>24           The issues in this case for the</p> <p>25   misappropriation of trade secret</p>	<p style="text-align: right;">Page 8011</p> <p>1           Jury Charge</p> <p>2   claims are: One, did Plaintiff Appian</p> <p>3   have a trade secret or trade secrets;</p> <p>4   two, did either or both Defendants</p> <p>5   Pegasystems and Youyong Zou</p> <p>6   misappropriate Appian's trade secret</p> <p>7   or trade secrets; and, three, if one</p> <p>8   or more of the Defendants</p> <p>9   misappropriated a trade secret or</p> <p>10   trade secrets from Appian, what is the</p> <p>11   amount of damages caused by that</p> <p>12   misappropriation?</p> <p>13           The following definitions apply</p> <p>14   to the misappropriation of trade</p> <p>15   secrets claim:</p> <p>16           "Misappropriation" means:</p> <p>17           One, acquisition of a trade</p> <p>18   secret of another by a person who</p> <p>19   knows or has reason to know that the</p> <p>20   trade secret was acquired by improper</p> <p>21   means; or</p> <p>22           Two, disclosure or use of a</p> <p>23   trade secret of another without</p> <p>24   express or implied consent of a person</p> <p>25   who: A, used improper means to</p>
<p style="text-align: right;">Page 8012</p> <p>1           Jury Charge</p> <p>2   acquire knowledge of the trade secret;</p> <p>3   or, B, at the time of the disclosure</p> <p>4   or use knew or had reason to know that</p> <p>5   his knowledge of the trade secret was</p> <p>6   derived from or through a person who</p> <p>7   had utilized improper means to acquire</p> <p>8   it; or, two, acquired under</p> <p>9   circumstances giving rise to a duty to</p> <p>10   maintain its secrecy or limit its use;</p> <p>11   or, three, derived from or through a</p> <p>12   person who owed a duty to the person</p> <p>13   seeking leave to maintain its secrecy</p> <p>14   other than its use; or, four, acquired</p> <p>15   by accident or mistake.</p> <p>16           A "trade secret" means:</p> <p>17   Information including, but not limited</p> <p>18   to, a formula, pattern, compilation,</p> <p>19   program, device, method, technique or</p> <p>20   process that, one, derives independent</p> <p>21   economic value, actual or potential,</p> <p>22   from not being generally known to or</p> <p>23   not being readily ascertainable by</p> <p>24   proper means by other persons who can</p> <p>25   obtain economic value from its</p>	<p style="text-align: right;">Page 8013</p> <p>1           Jury Charge</p> <p>2   disclosure or use and, two, is the</p> <p>3   subject of efforts that are reasonable</p> <p>4   under the circumstances to maintain</p> <p>5   its secrecy.</p> <p>6           "Improper means" includes:</p> <p>7   Theft, bribery, misrepresentation, use</p> <p>8   of a computer or computer network</p> <p>9   without authority, breach of a duty or</p> <p>10   inducement or a breach -- a breach of</p> <p>11   a duty to maintain secrecy or</p> <p>12   espionage through electronic or other</p> <p>13   means.</p> <p>14           "Person," it means: A natural</p> <p>15   person, a corporation, a business</p> <p>16   trust, an estate trust, a partnership,</p> <p>17   an association, a joint venture, a</p> <p>18   government or governmental subdivision</p> <p>19   or agency, or any other legal and</p> <p>20   commercial entity.</p> <p>21           "Damages" can include the unjust</p> <p>22   enrichment caused by misappropriation.</p> <p>23           "Cause of damages" is a cause</p> <p>24   that, in the natural and continuous</p> <p>25   sequence, produces the damages. It is</p>

<p style="text-align: right;">Page 8014</p> <p>1               Jury Charge</p> <p>2   a cause without which the damages</p> <p>3   would not have occurred.</p> <p>4               The number of users of the</p> <p>5   Appian Platform and Appian Forum</p> <p>6   licensees are not relevant to any</p> <p>7   issue in this case, and any evidences</p> <p>8   as to those numbers should be</p> <p>9   disregarded.</p> <p>10              If you find that the Plaintiff</p> <p>11   Appian has proved by the greater</p> <p>12   weight of the evidence its claim for</p> <p>13   misappropriation of trade secrets</p> <p>14   against Defendant Pegasystems, you</p> <p>15   must find your verdict for Appian and</p> <p>16   decide the issue of damages as to</p> <p>17   Pegasystems.</p> <p>18              You may award the amount of</p> <p>19   unjust enrichment caused by</p> <p>20   misappropriation.</p> <p>21              For unjust enrichment, Appian is</p> <p>22   entitled to recover Pegasystems' net</p> <p>23   profits. Appian has the burden of</p> <p>24   establishing by the greater weight of</p> <p>25   the evidence Pegasystems' sales.</p>	<p style="text-align: right;">Page 8015</p> <p>1               Jury Charge</p> <p>2               Pegasystems has the burden of</p> <p>3   establishing by the greater weight of</p> <p>4   the evidence any portion of the sales</p> <p>5   not attributable to the trade secret</p> <p>6   or trade secrets and any expenses to</p> <p>7   be deducted in determining net</p> <p>8   profits.</p> <p>9              If you find that Appian has</p> <p>10   proved by the greater weight of the</p> <p>11   evidence its claim for</p> <p>12   misappropriation of trade secrets</p> <p>13   against Defendant Youyong Zou, you</p> <p>14   must find your verdict for Appian and</p> <p>15   decide the issue of damages as to</p> <p>16   Youyong Zou.</p> <p>17              As to Youyong Zou, Appian is</p> <p>18   seeking the amount of unjust</p> <p>19   enrichment to Youyong Zou caused by</p> <p>20   misappropriation. Appian is entitled</p> <p>21   to recover Youyong Zou's net profits.</p> <p>22              Appian has the burden of proving</p> <p>23   by the greater weight of the evidence</p> <p>24   the amount paid to Youyong Zou.</p> <p>25              Youyong Zou has the burden of</p>
<p style="text-align: right;">Page 8016</p> <p>1               Jury Charge</p> <p>2   establishing by the greater weight of</p> <p>3   the evidence any portion of those</p> <p>4   amounts not attributable to the trade</p> <p>5   secret or trade secrets and any</p> <p>6   expenses to be deducted in determining</p> <p>7   net profits.</p> <p>8              If you find that Plaintiff</p> <p>9   Appian is entitled to be compensated</p> <p>10   for damages, you must also determine</p> <p>11   whether Appian has proven by the</p> <p>12   greater weight of the evidence that</p> <p>13   willful and malicious misappropriation</p> <p>14   exists.</p> <p>15              Willful conduct occurs when a</p> <p>16   party acts without regard for the</p> <p>17   rights of another knowing injury will</p> <p>18   probably follow.</p> <p>19              Malicious conduct occurs when a</p> <p>20   party acts with ill will or spite.</p> <p>21              The issues in the case for the</p> <p>22   Virginia Computer Crimes Act claim</p> <p>23   are:</p> <p>24              One, did Defendant Pegasystems</p> <p>25   use a computer or computer network</p>	<p style="text-align: right;">Page 8017</p> <p>1               Jury Charge</p> <p>2   without authority after March 29,</p> <p>3   2015, and, A, obtain property or</p> <p>4   services by false pretenses or, B,</p> <p>5   convert the property of Plaintiff</p> <p>6   Appian; and</p> <p>7              Two, was there injury to Appian</p> <p>8   by reason of the acts, regardless of</p> <p>9   whether such acts were committed with</p> <p>10   malicious intent?</p> <p>11              On these issues, Appian has the</p> <p>12   burden of proof.</p> <p>13              The following definitions apply</p> <p>14   for the Computer Crimes Act claim:</p> <p>15              "Computer" means: A device that</p> <p>16   accepts information in digital or</p> <p>17   similar form and manipulates it for a</p> <p>18   result based on a sequence of</p> <p>19   instructions. Such term does not</p> <p>20   include simple calculators, automatic</p> <p>21   typewriters, facsimile machines, or</p> <p>22   any other specialized computing</p> <p>23   devices that are preprogrammed to</p> <p>24   perform a narrow range of functions</p> <p>25   with minimal end-user or operator</p>

<p style="text-align: right;">Page 8018</p> <p>1               Jury Charge</p> <p>2   intervention and are dedicated to a</p> <p>3   specific task.</p> <p>4               "Computer network" means: Two</p> <p>5   or more computers connected to a</p> <p>6   network.</p> <p>7               To "convert property" means:</p> <p>8   Any wrongful exercise or assumption of</p> <p>9   authority over another's property</p> <p>10   depriving the owner of their</p> <p>11   possession and any active dominion</p> <p>12   wrongfully exerted over property in</p> <p>13   denial of the owner's right or</p> <p>14   inconsistent with it.</p> <p>15               "Persons" shall include: Any</p> <p>16   individual, partnership, association,</p> <p>17   corporation, or joint venture.</p> <p>18               And "property" should include:</p> <p>19   One, real property; two, computers and</p> <p>20   computer networks; three, financial</p> <p>21   instruments, computer data, computer</p> <p>22   programs, computer software, and all</p> <p>23   other personal property regardless of</p> <p>24   whether they are, A, tangible or</p> <p>25   intangible, B, in a format readable by</p>	<p style="text-align: right;">Page 8019</p> <p>1               Jury Charge</p> <p>2   humans or by a computer, C, in transit</p> <p>3   between computers or in a computer</p> <p>4   network or between any devices which</p> <p>5   comprise a computer or, D, located on</p> <p>6   any paper or in any device on which it</p> <p>7   is stored by a computer or by a human,</p> <p>8   and; four, computer services.</p> <p>9               A person uses a computer or</p> <p>10   computer network when he attempts to</p> <p>11   cause or causes a computer or computer</p> <p>12   network to perform or to stop</p> <p>13   performing a computer operation.</p> <p>14               A person is without authority</p> <p>15   when he knows or reasonably should</p> <p>16   know that he has no right, agreement,</p> <p>17   or permission or acts in a manner</p> <p>18   knowingly exceeding such right,</p> <p>19   agreement, or permission.</p> <p>20               You shall find your verdict for</p> <p>21   Plaintiff Appian and against Defendant</p> <p>22   Pegasystems under the Virginia</p> <p>23   Computer Crimes Act claim if Appian</p> <p>24   has proved by the greater weight of</p> <p>25   the evidence that:</p>
<p style="text-align: right;">Page 8020</p> <p>1               Jury Charge</p> <p>2               One, Pegasystems used a computer</p> <p>3   or computer network without authority</p> <p>4   after May 29, 2015, and, A, obtained</p> <p>5   property or services by false</p> <p>6   pretenses or, B, converted the</p> <p>7   property of another; and</p> <p>8               Two, Appian was injured by</p> <p>9   reason of these acts, regardless of</p> <p>10   whether such acts were committed with</p> <p>11   malicious intent.</p> <p>12               If you find that Appian was</p> <p>13   injured by reason of these acts, you</p> <p>14   must find your verdict for Appian and</p> <p>15   decide the issue of damages decided by</p> <p>16   Appian.</p> <p>17               If you find that no actual</p> <p>18   damages have been proved, nominal</p> <p>19   damages may be recovered.</p> <p>20               Now, those are the Court's</p> <p>21   instructions to the jury. As I told</p> <p>22   you, you will each have a copy of</p> <p>23   those instructions in the jury room</p> <p>24   when you retire to deliberate.</p> <p>25               Closing argument, Mr. Mangi?</p>	<p style="text-align: right;">Page 8021</p> <p>1   Plaintiff - Closing (Mangi)</p> <p>2               MR. MANGI: Thank you, Your</p> <p>3   Honor.</p> <p>4               While we have a demonstrative</p> <p>5   slide deck, all issues have been</p> <p>6   resolved. May I ask that Ms. Perez</p> <p>7   leave it in presentation mode for the</p> <p>8   whole?</p> <p>9               THE COURT: Yes.</p> <p>10               MR. MANGI: Thank you.</p> <p>11               Ladies and gentlemen, good</p> <p>12   morning.</p> <p>13               JURY: Good morning.</p> <p>14               MR. MANGI: Now, for the last</p> <p>15   seven weeks I have very studiously</p> <p>16   avoided all of you in the hallways of</p> <p>17   this court, and you've done a great</p> <p>18   job avoiding us, too. I'm very</p> <p>19   pleased to now be able to speak with</p> <p>20   you directly again.</p> <p>21               On behalf of my client Appian</p> <p>22   and Mr. Ross, let me thank all of you</p> <p>23   first for the careful attention and</p> <p>24   diligence you have shown throughout</p> <p>25   this trial to the evidence presented</p>

<p style="text-align: right;">Page 8022</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 by both sides. We could not have</p> <p>3 asked for anything more from all of</p> <p>4 you.</p> <p>5 Now, there is a lot of evidence</p> <p>6 here, and I'm going to take you</p> <p>7 through it this morning. But there is</p> <p>8 one document that I suggest to you</p> <p>9 really sets out the themes that you</p> <p>10 should consider as you think about</p> <p>11 this entire evidentiary record. So</p> <p>12 let's start there.</p> <p>13 Now, you may remember this</p> <p>14 e-mail. This was an e-mail that</p> <p>15 John Petronio sent to Alan Trefler and</p> <p>16 others talking about Youyong Zou. And</p> <p>17 he said, Youyong Zou, he's working on</p> <p>18 a project for Appian at</p> <p>19 healthcare.gov. It's for Serco,</p> <p>20 government contractor, and Youyong is</p> <p>21 on the project.</p> <p>22 And then you'll remember that</p> <p>23 one of the people on this chain,</p> <p>24 Douglas Kim, Mr. Petronio's boss, he</p> <p>25 forwarded it on to two other people</p>	<p style="text-align: right;">Page 8023</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 who hadn't been involved, senior</p> <p>3 executives at Pega, Mr. Adams and</p> <p>4 Mr. Ryan.</p> <p>5 And so they got this information</p> <p>6 for the first time. And you'll</p> <p>7 remember what their reaction was,</p> <p>8 yikes, who is Youyong? Our arrogance</p> <p>9 has been all world.</p> <p>10 And then later on, he said:</p> <p>11 Seems to be shady.</p> <p>12 Ladies and gentlemen, shady and</p> <p>13 arrogant. Those, I submit to you, are</p> <p>14 the themes that you will see</p> <p>15 characterizing the conduct of</p> <p>16 Pegasystems throughout the evidentiary</p> <p>17 record.</p> <p>18 Shady, because think about the</p> <p>19 conduct you have seen from a publicly</p> <p>20 traded company and from its CEO Alan</p> <p>21 Trefler. Fake names, fake identities,</p> <p>22 consultants, shady.</p> <p>23 Arrogant? Why?</p> <p>24 Because in Pegasystems' view,</p> <p>25 the rules don't apply to it. Their</p>
<p style="text-align: right;">Page 8024</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Code of Conduct that's on the website,</p> <p>3 that doesn't apply to them.</p> <p>4 And arrogance especially, ladies</p> <p>5 and gentlemen, for this reason.</p> <p>6 Did you notice that in the</p> <p>7 documents that they produced on the</p> <p>8 one hand, they are studying Appian</p> <p>9 obsessively. I wonder when they run</p> <p>10 their own business, they spend so much</p> <p>11 time studying Appian.</p> <p>12 They're looking at things in</p> <p>13 Appian that they should copy. But in</p> <p>14 those same documents, they are also</p> <p>15 trashing Appian. They go, oh, Appian.</p> <p>16 But same document, they are also</p> <p>17 saying, let's make a view like that</p> <p>18 and ship it.</p> <p>19 Think about the mindset, the</p> <p>20 arrogance. We're going to copy them.</p> <p>21 But let's also talk about how great we</p> <p>22 are and how terrible everyone else is.</p> <p>23 Shadiness and arrogance.</p> <p>24 But why are they doing all of</p> <p>25 this? It's all about corporate</p>	<p style="text-align: right;">Page 8025</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 culture.</p> <p>3 What's the culture at</p> <p>4 Pegasystems? Here's another document,</p> <p>5 an e-mail from Douglas Kim when he's</p> <p>6 circulating the materials they made</p> <p>7 with Youyong Zou, the attack</p> <p>8 materials.</p> <p>9 Look at what he's saying:</p> <p>10 Here's to winning. All capital</p> <p>11 letters. That is what Pegasystems is</p> <p>12 about: Win at all costs, do whatever</p> <p>13 you have to, the rules don't apply.</p> <p>14 Now, issues of law are for the</p> <p>15 judge, but Judge Gardiner just read</p> <p>16 you the instructions as to the law.</p> <p>17 Let me start with one of them.</p> <p>18 The judge pointed to the standard</p> <p>19 here. Now, just to be clear, this is</p> <p>20 a civil case. This is not a criminal</p> <p>21 case. There is a computer crime</p> <p>22 statute, but that's just what it's</p> <p>23 called. This is a civil case.</p> <p>24 So beyond all doubt, none of</p> <p>25 that applies here. This is the</p>

<p style="text-align: right;">Page 8026</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 standard. The greater weight of the</p> <p>3 evidence, sometimes called</p> <p>4 preponderance.</p> <p>5 What does that mean? Simple way</p> <p>6 to think about it is if you have a</p> <p>7 scale on the issues we, Appian, have</p> <p>8 to prove to you, as long as we tip</p> <p>9 that scale ever so slightly, that is</p> <p>10 the greater weight of the evidence.</p> <p>11 And if we do that, then we've</p> <p>12 satisfied our burden in proving that</p> <p>13 issue to you.</p> <p>14 Let me go back to that</p> <p>15 instruction because there's another</p> <p>16 sentence at the end that's very</p> <p>17 important. It says: The testimony of</p> <p>18 one witness who you believe can be the</p> <p>19 greater weight of the evidence.</p> <p>20 Ladies and gentlemen, who you</p> <p>21 believe is going to be a very key</p> <p>22 issue in this case. Remember in</p> <p>23 opening statements, it was a long time</p> <p>24 ago, when I said to you, you're going</p> <p>25 to hear very conflicting accounts here</p>	<p style="text-align: right;">Page 8027</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 from different witnesses. The</p> <p>3 documents, the contemporaneous</p> <p>4 documents will guide you to the truth.</p> <p>5 But also assess the witnesses.</p> <p>6 And the judge gave you another</p> <p>7 instruction on that point, the</p> <p>8 credibility of witnesses when he said</p> <p>9 you're the judges of the facts,</p> <p>10 including the credibility of</p> <p>11 witnesses.</p> <p>12 And that means various things</p> <p>13 that are in the instruction; you know,</p> <p>14 look at their interest in the case,</p> <p>15 their bias, but also consider whether</p> <p>16 they have knowingly testified</p> <p>17 untruthfully as to any material aspect</p> <p>18 of the case. And when you assess</p> <p>19 that, the instruction notes use your</p> <p>20 common sense in judging any testimony.</p> <p>21 Ladies and gentlemen, the beauty</p> <p>22 of a jury is you all have different</p> <p>23 life experiences. You're all coming</p> <p>24 from very different places here, me</p> <p>25 especially. But when you put all of</p>
<p style="text-align: right;">Page 8028</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 that together, your life experiences,</p> <p>3 your common sense, they tell you when</p> <p>4 someone is lying to you. You can suss</p> <p>5 that out and use your common sense.</p> <p>6 And where better to start on</p> <p>7 that issue than with Don Schuerman,</p> <p>8 chief technology officer of</p> <p>9 Pegasystems.</p> <p>10 Now, you remember we played his</p> <p>11 deposition testimony in our case, and</p> <p>12 in his deposition, he said -- we asked</p> <p>13 him: Was a teardown exercise</p> <p>14 conducted on Appian?</p> <p>15 Remember, teardown, the deep</p> <p>16 dive and analysis. And he said: I</p> <p>17 don't know. And then he tried to shut</p> <p>18 the question off with BP3, one of the</p> <p>19 companies they were working with on</p> <p>20 the side, not to my knowledge.</p> <p>21 But we followed up. We said:</p> <p>22 Otherwise?</p> <p>23 And he said: You know, I was</p> <p>24 made aware after the fact that Ben</p> <p>25 Baril had access to Appian in order to</p>	<p style="text-align: right;">Page 8029</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 understand it, but nothing to see</p> <p>3 here.</p> <p>4 After I learned a bit: Ben and</p> <p>5 had a discussion. It was not</p> <p>6 appropriate. It was never used.</p> <p>7 That's his sworn deposition</p> <p>8 testimony under oath. But then after</p> <p>9 that deposition, we got all of those</p> <p>10 instant messages and then things</p> <p>11 changed.</p> <p>12 What happened here at trial?</p> <p>13 You'll remember this, I suspect.</p> <p>14 We said to him: Well, you told</p> <p>15 us at your deposition you didn't know</p> <p>16 what Mr. Baril was up to until after</p> <p>17 the fact, right?</p> <p>18 And he said: Yeah. I said at</p> <p>19 that my deposition.</p> <p>20 But then we showed the instant</p> <p>21 messages and said: But you knew at</p> <p>22 the time it was happening. You knew</p> <p>23 of this.</p> <p>24 He says: I knew of the end</p> <p>25 product in May of 2012.</p>

<p style="text-align: right;">Page 8030</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Was he telling you the truth?</p> <p>3 Didn't stop there, though.</p> <p>4 Remember, we also showed the instant</p> <p>5 messages about Mr. Le using his wife's</p> <p>6 business, Organic Living. We said:</p> <p>7 You also knew about that at the time</p> <p>8 even though you told us you didn't</p> <p>9 know until after the fact.</p> <p>10 And we said to him: Sir, your</p> <p>11 sworn deposition testimony was false.</p> <p>12 You lied.</p> <p>13 And what did he say? Look at</p> <p>14 his answer: My statement at the</p> <p>15 deposition was unclear as to the</p> <p>16 timeline of my knowledge.</p> <p>17 Your life experiences tell you</p> <p>18 when someone is not telling you the</p> <p>19 truth.</p> <p>20 Ms. Perez, I think we went off.</p> <p>21 There we go. Thank you.</p> <p>22 Now, it didn't stop there with</p> <p>23 Mr. Schuerman. Then, remember, he</p> <p>24 provided a sworn written response to</p> <p>25 an interrogatory in January of 2021.</p>	<p style="text-align: right;">Page 8031</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 He signed it under pains and penalties</p> <p>3 of perjury. And what did he say?</p> <p>4 We asked the question,</p> <p>5 Interrogatory No. 13: Identify every</p> <p>6 Pega employee who has accessed or</p> <p>7 viewed someone else accessing the</p> <p>8 Appian platform.</p> <p>9 So we wanted to know in the case</p> <p>10 everyone who did any of this because</p> <p>11 we didn't know about Mr. Baril or</p> <p>12 anyone in this document. We wanted a</p> <p>13 full list.</p> <p>14 They provided some objections.</p> <p>15 Then he says: Notwithstanding the</p> <p>16 objections. And he went on and you</p> <p>17 know what he did? He only told us</p> <p>18 about Mr. Zou.</p> <p>19 Didn't tell us about anything</p> <p>20 that happened later, under pains and</p> <p>21 penalties of perjury. And then he</p> <p>22 showed up here.</p> <p>23 And we said: At the time you</p> <p>24 attested to that accuracy, you were</p> <p>25 aware of what Mr. Baril had done.</p>
<p style="text-align: right;">Page 8032</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And he said: Yes.</p> <p>3 Does Mr. Schuerman have a shred</p> <p>4 of credibility left in your eyes after</p> <p>5 that testimony?</p> <p>6 But were it only him. Let's</p> <p>7 talk about Ben Baril himself.</p> <p>8 First deposition before we have</p> <p>9 the instant messages, what does he</p> <p>10 say? Why did you create</p> <p>11 apowersconsulting.com?</p> <p>12 He said: Oh, it's to subscribe</p> <p>13 to certain journals or things I wanted</p> <p>14 personal information that I didn't</p> <p>15 want to share.</p> <p>16 Nothing to see here. He's just</p> <p>17 subscribing to journals. Then we get</p> <p>18 the messages. And then we come back,</p> <p>19 another sworn deposition. Now, we've</p> <p>20 got to worry about perjury, right?</p> <p>21 And what does he say now? I</p> <p>22 need to correct my testimony.</p> <p>23 What's his new testimony? He</p> <p>24 wants to change his answer.</p> <p>25 Well, you know, based on new</p>	<p style="text-align: right;">Page 8033</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 information that I have. New</p> <p>3 information that he has about himself.</p> <p>4 I want to change my answer to why did</p> <p>5 I create it to obtain access to a free</p> <p>6 Appian trial.</p> <p>7 And you remember, he changed his</p> <p>8 testimony on a whole series of things.</p> <p>9 We played you this video. There's</p> <p>10 another example.</p> <p>11 Did you talk to Mr. Trefler</p> <p>12 directly? Because you remember, all</p> <p>13 of the evidence showing Trefler was</p> <p>14 directing all of this.</p> <p>15 And in his first deposition he</p> <p>16 said: Never. Mr. Trefler? No, no,</p> <p>17 he's got nothing to do with this.</p> <p>18 And then we said -- now once we</p> <p>19 have the chain of the messages and the</p> <p>20 documents: What's the correct answer</p> <p>21 you want to give?</p> <p>22 Well, yeah, I had some</p> <p>23 conversations about it. And he</p> <p>24 changed answer with meetings too and</p> <p>25 he said: Yeah, I met with Mr. Trefler</p>

<p style="text-align: right;">Page 8034</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 too.</p> <p>3 Does he have a shred of</p> <p>4 credibility left in your eyes, ladies</p> <p>5 and gentlemen?</p> <p>6 But don't stop there. You</p> <p>7 remember Kerim Akgonul, chief product</p> <p>8 officer at Pegasystems, the man in</p> <p>9 charge of all the improvements. These</p> <p>10 are not low ranking people, right?</p> <p>11 These are people who run the company.</p> <p>12 And you remember when he first</p> <p>13 came here and testified? He's got an</p> <p>14 easier one, Mr. Zou. It's a common</p> <p>15 malady over there, right?</p> <p>16 So he doesn't remember anything</p> <p>17 about Mr. Zou, but he says: I can</p> <p>18 tell you we didn't make any</p> <p>19 improvements based on Zou.</p> <p>20 So we said: How do you remember</p> <p>21 that if you don't remember anything</p> <p>22 about Mr. Zou?</p> <p>23 And his answer the first time he</p> <p>24 was here was: It's all about the</p> <p>25 backlogs. I've been through all of my</p>	<p style="text-align: right;">Page 8035</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 backlogs.</p> <p>3 Right? That's what he said.</p> <p>4 And you'll remember, it was all</p> <p>5 backlog, backlog, backlog. He said:</p> <p>6 I live in the backlog. I look at the</p> <p>7 backlog every day, even today. He</p> <p>8 said: Since this case started, I have</p> <p>9 been through all the backlogs.</p> <p>10 He was telling you, I checked</p> <p>11 the whole record from the Zou era and</p> <p>12 there's nothing there and that's why</p> <p>13 you should believe me. That's what he</p> <p>14 said to you.</p> <p>15 Then you remember, he had to</p> <p>16 come back. And what happened when he</p> <p>17 came back?</p> <p>18 Turns out the backlog, they</p> <p>19 don't have it anymore from prior to</p> <p>20 2017. The database is gone, and he</p> <p>21 never told you that.</p> <p>22 He admitted: I don't have that</p> <p>23 system anymore.</p> <p>24 And then we said to him: But</p> <p>25 you'll agree the only portion of the</p>
<p style="text-align: right;">Page 8036</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 backlog from the Zou era you looked at</p> <p>3 are some stray excerpts that people</p> <p>4 happened to attach to e-mails?</p> <p>5 And he agrees.</p> <p>6 And how many were they?</p> <p>7 Oh, a handful maybe.</p> <p>8 So he's gone from telling you,</p> <p>9 take my word for it, I looked at the</p> <p>10 backlogs, nothing from Zou was ever</p> <p>11 used to all I looked at are a handful</p> <p>12 that happened to be attached to</p> <p>13 e-mails.</p> <p>14 Was he telling you the truth</p> <p>15 when he was here the first time?</p> <p>16 But look at what else he said.</p> <p>17 He said: You know, I don't worry just</p> <p>18 about the backlog. I've looked at the</p> <p>19 operational meeting notes and take my</p> <p>20 word for it, there's nothing about</p> <p>21 Zou.</p> <p>22 Do you remember that testimony?</p> <p>23 Well, funny thing, I went back and I</p> <p>24 looked at those operational meeting</p> <p>25 minutes. Look what they say.</p>	<p style="text-align: right;">Page 8037</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 They say -- this is going to</p> <p>3 everyone, all the product management</p> <p>4 people, Alan Treffler, everyone.</p> <p>5 It says: Kerim to distribute</p> <p>6 five to ten video of Appian developer</p> <p>7 experience since it excels in ease of</p> <p>8 use.</p> <p>9 And you've heard the testimony.</p> <p>10 That's a video from Zou. It's in the</p> <p>11 operational meeting minutes where he</p> <p>12 said there's no reference to Zou</p> <p>13 anywhere.</p> <p>14 Does Mr. Akgonul have a shred of</p> <p>15 credibility left in your eyes after</p> <p>16 that performance?</p> <p>17 How about Mr. Bixby? Now, you</p> <p>18 remember Mr. Bixby. He had a whole</p> <p>19 other level of amnesia. I don't</p> <p>20 remember who Zou is. I know nothing</p> <p>21 about Zou. I remember no meeting.</p> <p>22 I said: What is this message to</p> <p>23 you on his examination by Pega was,</p> <p>24 you know, don't look at me. I've got</p> <p>25 nothing to do with the Zou guy. I</p>

<p style="text-align: right;">Page 8038</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 don't know what anyone is talking</p> <p>3 about. Nothing to do with me.</p> <p>4 Okay. Remember what I said, the</p> <p>5 contemporaneous documents will guide</p> <p>6 you to the truth. I said that seven</p> <p>7 and a half weeks ago.</p> <p>8 What do those documents show us?</p> <p>9 Very beginning, before the first</p> <p>10 meeting with Mr. Zou, February of</p> <p>11 2012, Mr. Petronio tells his boss:</p> <p>12 I'm going to meet with this guy</p> <p>13 tomorrow, contractor. You know, I</p> <p>14 want to do some research, update our</p> <p>15 attack plans. Steve Bixby is</p> <p>16 interested in learning more about them</p> <p>17 as well.</p> <p>18 And later below: Steve Bixby</p> <p>19 has expressed an interest in joining</p> <p>20 me.</p> <p>21 This all started with Steve</p> <p>22 Bixby, the guy who says: I have</p> <p>23 nothing to do with any of this.</p> <p>24 The next day, before the actual</p> <p>25 meeting, Mr. Petronio, who does he</p>	<p style="text-align: right;">Page 8039</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 e-mail? Michael Caton who works with</p> <p>3 him in competitive intelligence? But</p> <p>4 the only person he e-mails at Pega to</p> <p>5 tell him he's having the meeting is</p> <p>6 Steve Bixby.</p> <p>7 So then we ask Mr. Bixby, you'll</p> <p>8 remember, we said: You're saying you</p> <p>9 don't have anything do with this. How</p> <p>10 come the e-mails are going to you?</p> <p>11 What was his answer? He says --</p> <p>12 why are you the only guy copied? I</p> <p>13 was a pretty important person at Pega.</p> <p>14 Your life experiences guide you</p> <p>15 here. You know people who talk about</p> <p>16 themselves that way, I was a pretty</p> <p>17 important person.</p> <p>18 But you know what he does say.</p> <p>19 He says: I know that I didn't respond</p> <p>20 to any of it.</p> <p>21 Right? So even though the</p> <p>22 e-mails have come up, he's saying, no,</p> <p>23 no, no, nothing to do with me.</p> <p>24 Someone sent me e-mail. I never</p> <p>25 responded to it. I was being nice to</p>
<p style="text-align: right;">Page 8040</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Petronio.</p> <p>3 The contemporaneous documents.</p> <p>4 There he is responding to the very</p> <p>5 same e-mail asking: How did it go?</p> <p>6 This is the meeting Petronio had</p> <p>7 with Zou.</p> <p>8 How did it go? Anything new and</p> <p>9 different?</p> <p>10 Does Mr. Bixby have a shred of</p> <p>11 credibility left in your eyes?</p> <p>12 How about Stephanie Louis?</p> <p>13 Another amnesia victim. She says:</p> <p>14 You don't remember anything specific</p> <p>15 about Zou. Yeah. So Appian's</p> <p>16 out-of-the-box mobile capabilities,</p> <p>17 you don't know what information you</p> <p>18 provided?</p> <p>19 Nope, don't remember Zou.</p> <p>20 Remember, we showed you</p> <p>21 documents where she says, oh, I'm</p> <p>22 looking forward to meeting Zou,</p> <p>23 one hour from the time of her e-mail.</p> <p>24 But now she says no, no memory of it.</p> <p>25 Okay. Then we said: Since you</p>	<p style="text-align: right;">Page 8041</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 don't remember anything, how can you</p> <p>3 say that nothing was used?</p> <p>4 And she said: Well, anything we</p> <p>5 learned was general information.</p> <p>6 Well, how do you know that if</p> <p>7 you don't remember the meetings?</p> <p>8 And she says: Because we didn't</p> <p>9 take information of a competitor into</p> <p>10 account.</p> <p>11 Look at the circular logic</p> <p>12 there. You think she was prepared</p> <p>13 with that line when she came in here?</p> <p>14 Does she have a shred of credibility</p> <p>15 left in your eyes?</p> <p>16 Ken Stillwell. Now, this is a</p> <p>17 long time ago when we played this</p> <p>18 video early in our case, and I know</p> <p>19 there's been a lot of evidence. But</p> <p>20 he's a very important guy because he's</p> <p>21 the chief operating officer and the</p> <p>22 chief financial officer of the</p> <p>23 company, so he's no low ranking</p> <p>24 person.</p> <p>25 And you may remember in his</p>

<p style="text-align: right;">Page 8042</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 deposition, he was wearing like a</p> <p>3 puffy vest, maybe that will refresh</p> <p>4 you a bit.</p> <p>5 But we asked him a</p> <p>6 straightforward question: How about</p> <p>7 just making up a name; is that okay by</p> <p>8 you? Pega people do that when seeking</p> <p>9 access to a competitor?</p> <p>10 And look at what he says. You</p> <p>11 know, it's like a question about</p> <p>12 pronouns apparently according to</p> <p>13 Mr. Stillwell. He says: I won't go</p> <p>14 down that path. You know, people,</p> <p>15 they choose their own names, their own</p> <p>16 identities, they self-identify. It's</p> <p>17 not my job.</p> <p>18 He is the chief operating</p> <p>19 officer of the company. Not my job to</p> <p>20 decide if people can use fake names.</p> <p>21 He says: It's a very complicated</p> <p>22 question.</p> <p>23 You think that's a complicated</p> <p>24 question?</p> <p>25 What about Pega's own Code of</p>	<p style="text-align: right;">Page 8043</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Conduct, does that present it as a</p> <p>3 complicated question?</p> <p>4 Have a look at what their Code</p> <p>5 of Conduct says. What's forbidden?</p> <p>6 Misrepresenting your identity in the</p> <p>7 hopes of obtaining confidential</p> <p>8 information.</p> <p>9 Not a complicated question</p> <p>10 according to the Code of Conduct.</p> <p>11 Does he have a shred of</p> <p>12 credibility left in your eyes or was</p> <p>13 he coming in, not wanting to admit to</p> <p>14 anything that would hurt Pega in the</p> <p>15 litigation?</p> <p>16 But then, but then, let's talk</p> <p>17 about Paul Foon. Mr. Trefler comes</p> <p>18 up, you remember at his deposition for</p> <p>19 the first time. I'd shown him these</p> <p>20 documents we'd found.</p> <p>21 And I said to him: You signed</p> <p>22 up as Paul Foon for an Appian</p> <p>23 marketing event.</p> <p>24 And what was his response at the</p> <p>25 deposition when first confronted with</p>
<p style="text-align: right;">Page 8044</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 this? He said: I'm unprepared to say</p> <p>3 anything about this.</p> <p>4 Is that someone who's being</p> <p>5 straight?</p> <p>6 What was the document? Here are</p> <p>7 the signups we showed you for that</p> <p>8 event.</p> <p>9 I mean, look at this, ladies and</p> <p>10 gentlemen, Paul Foon is signing up</p> <p>11 under ascii0@gmail.com. That is an</p> <p>12 e-mail address that Mr. Trefler has</p> <p>13 admitted is one of his personas, as he</p> <p>14 calls it.</p> <p>15 Highly idiosyncratic prefix,</p> <p>16 ascii0 from computer code is a name he</p> <p>17 gave to his dog. That's him,</p> <p>18 ascii0@gmail.com.</p> <p>19 And look at the other sign-ups,</p> <p>20 another version of ascii0. He's</p> <p>21 calling himself Paul Foon. He</p> <p>22 describes himself as being in the</p> <p>23 grocery business, party planning,</p> <p>24 hotels and motels. This is a CEO of a</p> <p>25 publicly traded company. Look at what</p>	<p style="text-align: right;">Page 8045</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 he's up to.</p> <p>3 And then we say to him in the</p> <p>4 deposition: Can you say categorically</p> <p>5 this isn't you.</p> <p>6 He says: I'm a technical guy.</p> <p>7 I'm uncomfortable making statements</p> <p>8 without facts, and there's no facts to</p> <p>9 support that I did it.</p> <p>10 You know anyone who talks like</p> <p>11 that in your day-to-day life? There's</p> <p>12 no facts to support that I did it. Is</p> <p>13 he being straight with you?</p> <p>14 But you'll remember, that's not</p> <p>15 where it ended, because he had a whole</p> <p>16 series of personas. Remember, he also</p> <p>17 admitted he uses A. Scii and then</p> <p>18 Albert Scii, and his explanation for</p> <p>19 the Albert Scii was: Well, sometimes,</p> <p>20 you know, websites requires you fill</p> <p>21 in the name, not just the first</p> <p>22 initial, A.</p> <p>23 So I said, well, what about</p> <p>24 Alan, right? It's his name. No, no,</p> <p>25 he uses Albert Skii.</p>

<p style="text-align: right;">Page 8046</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Then you see an attempt to get</p> <p>3 information from Appian's confidential</p> <p>4 forum.</p> <p>5 Now think about this, this</p> <p>6 sign-up is in the name of Albert Skii,</p> <p>7 a name that he admits using. It is</p> <p>8 from ascii0, a prefix that he has</p> <p>9 used.</p> <p>10 Highly idiosyncratic,</p> <p>11 Telstra.com, a Pega client he was</p> <p>12 visiting in that same year, a phone</p> <p>13 number that, while a long series of</p> <p>14 numbers, starts with a 617, Boston.</p> <p>15 Company is SA0 mines.</p> <p>16 So at first we asked him about</p> <p>17 this, but he denies it, denies</p> <p>18 completely. Not me, the phone number</p> <p>19 is Australian.</p> <p>20 And what does he say to you,</p> <p>21 ladies and gentlemen? He says, you</p> <p>22 know, this is someone else, that they</p> <p>23 just happened to be using the name</p> <p>24 Albert Scii, they just happen to be</p> <p>25 using an ascii0, they just happen to</p>	<p style="text-align: right;">Page 8047</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 be seeking access to Appian's</p> <p>3 confidential information. It's just a</p> <p>4 coincidence.</p> <p>5 But then you'll remember, he</p> <p>6 came back and testified further. I</p> <p>7 started some questions. I said:</p> <p>8 Well, what's your home IP address?</p> <p>9 What's your provider?</p> <p>10 And he maybe started to get a</p> <p>11 little worried about what I might've</p> <p>12 had on him. And so then look at the</p> <p>13 answer he gave, thinking about</p> <p>14 perjury, perhaps?</p> <p>15 Is it your testimony now that</p> <p>16 you now concede it is possible that</p> <p>17 was you?</p> <p>18 Look at what he says: It's</p> <p>19 possible. It's not impossible. I</p> <p>20 cannot say it was impossible.</p> <p>21 Dr. Seuss would be proud of an</p> <p>22 answer like that.</p> <p>23 Is this someone who is telling</p> <p>24 you the truth?</p> <p>25 And, you know, I'm not going to</p>
<p style="text-align: right;">Page 8048</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 go through all of his personas, but</p> <p>3 you remember there was another one,</p> <p>4 2au. He used that one, too, used it</p> <p>5 try and sign up for Appian information</p> <p>6 just in 2021, you know, few months</p> <p>7 before his deposition. Don't remember</p> <p>8 that one either. Not him, just</p> <p>9 someone else using an ascii0 -- this</p> <p>10 time at gmail -- and trying to get</p> <p>11 access to Appian.</p> <p>12 That was Alan Trefler, the CEO</p> <p>13 of this company. Does he have a shred</p> <p>14 of credibility left in your eyes when</p> <p>15 he's willing to say all of that under</p> <p>16 oath?</p> <p>17 Why does it matter? Oh, it's a</p> <p>18 marketing event.</p> <p>19 Why does it matter? It's under</p> <p>20 oath. And leaders, they set the tone</p> <p>21 for a company, they set the culture.</p> <p>22 You've been in organizations,</p> <p>23 you've had bosses. You know how a</p> <p>24 boss can imprint on a company,</p> <p>25 especially when they've been there</p>	<p style="text-align: right;">Page 8049</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 for, in this case, almost 40 years.</p> <p>3 And he agrees, absolutely, he sets the</p> <p>4 tone at Pega. Arrogance and</p> <p>5 shadiness.</p> <p>6 And remember, who is the arbiter</p> <p>7 that they look to at Pega if they have</p> <p>8 a question about ethics?</p> <p>9 Look in their Code of Conduct.</p> <p>10 If you have a question, if you're</p> <p>11 worried you're being asked to do</p> <p>12 something that's not right, who should</p> <p>13 you go to?</p> <p>14 You go to Alan Trefler. He's</p> <p>15 the moral compass of the company. He</p> <p>16 provides the guidance.</p> <p>17 Now, think about credibility on</p> <p>18 the witnesses -- that's one level --</p> <p>19 think also about the company.</p> <p>20 Now, they came in here, and</p> <p>21 you'll remember how Mr. Trefler was so</p> <p>22 keen to talk to you about how they've</p> <p>23 disciplined people. Remember that?</p> <p>24 Because, you know, he wanted you to</p> <p>25 say, nothing to see here, you know,</p>

<p style="text-align: right;">Page 8050</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 we've dealt with this. We've</p> <p>3 disciplined everyone involved.</p> <p>4 But then I got up, and I said,</p> <p>5 well, when did you do that, because</p> <p>6 the case had been going on for</p> <p>7 two years and there had been no</p> <p>8 discipline.</p> <p>9 In fact, when we asked Kerim</p> <p>10 Akgonul at his deposition, you ever</p> <p>11 discipline all of these people in</p> <p>12 India who work with you?</p> <p>13 He said, well, you know, that</p> <p>14 might help Appian.</p> <p>15 We played you that video.</p> <p>16 But then he tells us, two weeks</p> <p>17 before this trial, suddenly they</p> <p>18 issued some discipline. Do you think</p> <p>19 they did that because they wanted to</p> <p>20 come and tell you, oh, nothing to see</p> <p>21 here, we've dealt with that?</p> <p>22 But then I asked him, let's talk</p> <p>23 about this discipline. How about</p> <p>24 Leon, your brother, the guy who's</p> <p>25 behind all of this in both time</p>	<p style="text-align: right;">Page 8051</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 frames?</p> <p>3 He's authorizing the budgets,</p> <p>4 he's on the e-mails. Did you</p> <p>5 discipline him?</p> <p>6 No, he volunteered, and he's</p> <p>7 going to do better in the future.</p> <p>8 He's going to do better.</p> <p>9 And then I said to Mr. Trefler:</p> <p>10 What about all of these senior</p> <p>11 executives we've seen, you know,</p> <p>12 Akgonul, Schuerman, did you discipline</p> <p>13 any of them?</p> <p>14 No, not disciplined. But he</p> <p>15 says: All of them have had a</p> <p>16 revelation, myself, included.</p> <p>17 So they've had a revelation,</p> <p>18 that's fine. Nothing for you to see</p> <p>19 here, jury.</p> <p>20 Then I said, okay, who is the</p> <p>21 senior-most person at the company</p> <p>22 you've disciplined?</p> <p>23 Because, you know, if a company</p> <p>24 is serious, they are not disciplining</p> <p>25 some low-ranking employees in foreign</p>
<p style="text-align: right;">Page 8052</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 countries. They're going to the</p> <p>3 people who are in charge of this. Who</p> <p>4 is the senior-most person?</p> <p>5 You know what he says? A</p> <p>6 manager in India. I don't even know</p> <p>7 his name.</p> <p>8 That's how serious this</p> <p>9 discipline was. Go to a bunch of guys</p> <p>10 in India, don't even know their name.</p> <p>11 Ladies and gentlemen, these</p> <p>12 people who I just showed you, they are</p> <p>13 not some stray group. This is the</p> <p>14 cabal that runs Pegasystems.</p> <p>15 And we showed you these pictures</p> <p>16 from their own Twitter feeds. Look at</p> <p>17 them all together. You know,</p> <p>18 there's -- look at the one on the</p> <p>19 left, there's Mr. Bixby, Mr. Trefler,</p> <p>20 and Ms. Louis, posted by Kerim</p> <p>21 Akgonul, who's in the next picture.</p> <p>22 Mr. Schuerman, he seems to spend</p> <p>23 most of his time on Twitter posting</p> <p>24 adoring pictures of Alan Trefler.</p> <p>25 This is the culture of the</p>	<p style="text-align: right;">Page 8053</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 company. He's setting the tone and</p> <p>3 the culture.</p> <p>4 And Mr. Zou, let's talk about</p> <p>5 him for a minute.</p> <p>6 Now, you know, listen, Mr. Zou,</p> <p>7 I'm not suggesting to you that he's</p> <p>8 some criminal mastermind. He's not.</p> <p>9 He's a guy who saw a chance to make</p> <p>10 some money and he took it. But was he</p> <p>11 honest with you?</p> <p>12 Look at his testimony. He says</p> <p>13 first: What computer did you use for</p> <p>14 all of this work you did?</p> <p>15 He says: My home laptop.</p> <p>16 Why? Because he thinks that's</p> <p>17 going to somehow help him. Doesn't</p> <p>18 help him at all because the only</p> <p>19 accessed he had, home laptop or</p> <p>20 otherwise, was to do work for his</p> <p>21 employers. But, you know, he thought</p> <p>22 at the time that would help him.</p> <p>23 But then testimony changes,</p> <p>24 well, wasn't that testimony wrong and</p> <p>25 you, in fact, used your Serco laptop?</p>

<p style="text-align: right;">Page 8054</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Then he admits it, yeah, I did.</p> <p>3 In fact, he did it throughout the time</p> <p>4 period from 2012 to 2014.</p> <p>5 Was he telling you the truth?</p> <p>6 Then it changed further. You</p> <p>7 remember during Mr. Petronio's</p> <p>8 testimony, I freeze-framed a video</p> <p>9 from Project Crush, and there was all</p> <p>10 Ben Baril references in there on the</p> <p>11 computer accessing Appian?</p> <p>12 Here's one image from it. You</p> <p>13 know, we freeze-framed microseconds.</p> <p>14 And it says "Ben Baril desktop taxes."</p> <p>15 And we said, well, what's all</p> <p>16 this, then? If you're only using your</p> <p>17 Serco, there's no Pega computers</p> <p>18 involved, what's happening here?</p> <p>19 So then he comes back --</p> <p>20 because, you know, Pega is completely</p> <p>21 arrogant. They think that, oh, we</p> <p>22 weren't pressing the keys, the jury's</p> <p>23 going to let us off, even though</p> <p>24 they're directing everything Zou did.</p> <p>25 So Zou comes back and he says,</p>	<p style="text-align: right;">Page 8055</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 well, yeah, it was me. I used a Pega</p> <p>3 laptop.</p> <p>4 So his story changes again.</p> <p>5 Does he have a shred of credibility</p> <p>6 left in your eyes?</p> <p>7 Credibility, why does it matter?</p> <p>8 Because, ladies and gentlemen,</p> <p>9 they have not given you any documents</p> <p>10 that evidence their position --</p> <p>11 Ms. Louis even admitted that -- and</p> <p>12 they're just saying, take my word for</p> <p>13 it. And all of them are saying that.</p> <p>14 Here is Mr. Schuerman, just take</p> <p>15 my word for it.</p> <p>16 Here's Mr. Akgonul, just take my</p> <p>17 word for it.</p> <p>18 Is their word worth anything?</p> <p>19 Now, let's talk about what led</p> <p>20 up to all of this. You remember, I</p> <p>21 showed you a Pegasystems financial</p> <p>22 statement that talked about how their</p> <p>23 stock was performing in the years</p> <p>24 running up to this conduct, and their</p> <p>25 stock was doing very, very poorly.</p>
<p style="text-align: right;">Page 8056</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 If you had invested \$108, you'd</p> <p>3 been losing money steadily over the</p> <p>4 years, from 2010 all the way to 2012,</p> <p>5 when they hired Zou, even though the</p> <p>6 Nasdaq Composite software, all of them</p> <p>7 are flying high.</p> <p>8 What was the impact on this?</p> <p>9 The impact on a company, no</p> <p>10 matter what, is you're accountable to</p> <p>11 your shareholders, but who's the</p> <p>12 biggest shareholder? It's Alan</p> <p>13 Trefler himself. He owns half the</p> <p>14 share of the company. They are worth</p> <p>15 \$3 billion with a "B." So he's got to</p> <p>16 be worried about what's happening with</p> <p>17 that performance of this company.</p> <p>18 And it's not just him, all of</p> <p>19 their executives have stock.</p> <p>20 Mr. Akgonul, he had 45,000 shares.</p> <p>21 You saw that testimony too.</p> <p>22 So they've got a problem here</p> <p>23 they've got to deal with. What do</p> <p>24 they do? Mr. Zou.</p> <p>25 Now, remember, they went to</p>	<p style="text-align: right;">Page 8057</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 K-Force, the staffing agency. Let's</p> <p>3 not do this directly because we don't</p> <p>4 want our name out there.</p> <p>5 But what did they tell K-Force?</p> <p>6 They didn't say, oh, you know, can you</p> <p>7 find someone for us who can use Google</p> <p>8 to look at what's in the public</p> <p>9 domain?</p> <p>10 They know how to use Google.</p> <p>11 They're a tech company. No, they said</p> <p>12 access to the Appian BPM Tool is a</p> <p>13 must. And in case that wasn't clear</p> <p>14 enough, must have access to the</p> <p>15 system. That's the way they saw the</p> <p>16 product.</p> <p>17 Then we asked Mr. Petronio,</p> <p>18 because he was providing the</p> <p>19 parameters, he was the guy at Pega</p> <p>20 running the show: Why did you ask for</p> <p>21 that?</p> <p>22 Because we wanted to get in and</p> <p>23 try things out and really learn how</p> <p>24 Appian worked in and out.</p> <p>25 And Mr. Schuerman, he admits,</p>

<p style="text-align: right;">Page 8058</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 they didn't have access otherwise.</p> <p>3 And they knew that Appian wouldn't</p> <p>4 have given them a license at the time.</p> <p>5 That's why they are going here.</p> <p>6 The famous sizzle document that</p> <p>7 memorializes the instructions</p> <p>8 Pegasystems gives to K-Force,</p> <p>9 remarkable document, ladies and</p> <p>10 gentlemen, because it tells you from</p> <p>11 the beginning what was really</p> <p>12 happening.</p> <p>13 Look at what it said: Person</p> <p>14 should not have worked directly for</p> <p>15 Appian. Mr. Petronio told you why,</p> <p>16 they don't want word getting back.</p> <p>17 They said it expressly in the</p> <p>18 next part: He would like us to make</p> <p>19 sure that -- "he" is Mr. Petronio --</p> <p>20 they aren't loyal to Appian.</p> <p>21 He doesn't want to get it back</p> <p>22 to Appian that Pega is doing this</p> <p>23 work. And he says: Pega needs to</p> <p>24 remain CONFIDENTIAL, in all caps at</p> <p>25 the end.</p>	<p style="text-align: right;">Page 8059</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Are these the actions of a</p> <p>3 company that is doing stuff that's</p> <p>4 entirely above board, no problems?</p> <p>5 It's just like what you can find on</p> <p>6 Google before your coffee gets cold.</p> <p>7 Is that what they are doing?</p> <p>8 We asked Ms. Saritha, the</p> <p>9 designee of K-Force, 16 years at the</p> <p>10 company, did this ever happen in any</p> <p>11 other case, where they say find us a</p> <p>12 consultant who's not loyal to someone</p> <p>13 else?</p> <p>14 No, she's never seen it before.</p> <p>15 So what happens, then, when they</p> <p>16 bring him in?</p> <p>17 Now, we showed you a long series</p> <p>18 of documents with Mr. Petronio and</p> <p>19 Mr. Zou, about how they hid all of</p> <p>20 this. They wanted to conceal it, even</p> <p>21 from their own employees. I won't</p> <p>22 take you through all of them again,</p> <p>23 but a few quick reminders.</p> <p>24 Here's one from Mr. Petronio</p> <p>25 saying, we're going to call him Matt</p>
<p style="text-align: right;">Page 8060</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 so that he isn't outed as our spy, and</p> <p>3 they talk about blurring their screens</p> <p>4 and changing his names.</p> <p>5 One of them responds, my lips</p> <p>6 are sealed. May he be known forever</p> <p>7 as Matt.</p> <p>8 We asked Mr. Petronio, why did</p> <p>9 you call him "our spy"?</p> <p>10 Because unfortunately that's</p> <p>11 what he was.</p> <p>12 One of the instructions Judge</p> <p>13 Gardiner just read to you about</p> <p>14 misappropriation talked about improper</p> <p>15 means. What are improper means? One</p> <p>16 of them, espionage. They called him a</p> <p>17 spy at the time.</p> <p>18 Do you remember this one? They</p> <p>19 put up a picture of Matt Calkins, but</p> <p>20 for Mr. Zou, they called him the other</p> <p>21 Matt. They put up a picture of a spy,</p> <p>22 they called it top secret,</p> <p>23 confidential.</p> <p>24 By the way, you know, they</p> <p>25 played a little clip from Matt</p>	<p style="text-align: right;">Page 8061</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Calkins' deposition, you remember</p> <p>3 that, just a day or two ago? There</p> <p>4 wasn't a lot there, but I hope it was</p> <p>5 enough for you to get a feel for the</p> <p>6 man and compare him to Alan Treffer</p> <p>7 and get a feel for the culture of the</p> <p>8 company.</p> <p>9 What else happened there? Well,</p> <p>10 what about Mr. Zou?</p> <p>11 He explained why they were doing</p> <p>12 this. Mr. Petronio said to him, the</p> <p>13 reason is to protect you. I wouldn't</p> <p>14 want someone to leave Pega, join</p> <p>15 Appian and tell them what's happening,</p> <p>16 because then they might stop you.</p> <p>17 Mr. Zou, he's not a criminal</p> <p>18 mastermind, but he is a willing</p> <p>19 participant going along with this</p> <p>20 every step.</p> <p>21 Look at what he says: Thanks</p> <p>22 for your thoughtful consideration.</p> <p>23 I'll change my username to a common</p> <p>24 name.</p> <p>25 A common name, that means Matt.</p>

<p style="text-align: right;">Page 8062</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And, you know, sometimes they</p> <p>3 suggest, oh, it was one presentation.</p> <p>4 They concealed this well.</p> <p>5 Look, here's an e-mail from a</p> <p>6 year later where they're asking</p> <p>7 Mr. Zou here: Why don't you submit a</p> <p>8 health ticket to Appian to get some</p> <p>9 info for us?</p> <p>10 And he says, nope, can't do</p> <p>11 that, because he knows his Forum ID --</p> <p>12 Mr. Travell over there is going to</p> <p>13 talk to you about his Forum ID -- he</p> <p>14 knows it's being tracked now by where</p> <p>15 he works, it's being tracked by Serco.</p> <p>16 And he says: If I submit one</p> <p>17 ticket post, everyone is going to see</p> <p>18 it. They're going to know this</p> <p>19 doesn't relate to my work.</p> <p>20 Active concealment throughout.</p> <p>21 Now, what about their conduct?</p> <p>22 Let's just go through it together.</p> <p>23 You know how you know when</p> <p>24 someone is up to no good? They don't</p> <p>25 want anyone to know what they are</p>	<p style="text-align: right;">Page 8063</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 doing.</p> <p>3 You saw that in K-Force with</p> <p>4 Pegasystems. What about Mr. Zou?</p> <p>5 Look at what he says: You</p> <p>6 didn't want anyone at Serco or Appian</p> <p>7 to know what you were doing, right?</p> <p>8 He admits: I didn't want anyone</p> <p>9 to know.</p> <p>10 If this is all above board, if</p> <p>11 Mr. Zou is free to do this, you know,</p> <p>12 it's just on my home laptop, I can do</p> <p>13 whatever I want, why are you keeping</p> <p>14 it a secret, then?</p> <p>15 Well, Mr. Ross, he explained</p> <p>16 this to you. For example, he said,</p> <p>17 look, why is it do you have this</p> <p>18 access?</p> <p>19 Because he worked for our</p> <p>20 trusted partners, he's a government</p> <p>21 contractor working on government</p> <p>22 projects. And so through those</p> <p>23 relationships, we gave him access to</p> <p>24 do work for the United States</p> <p>25 government. That's the only reason he</p>
<p style="text-align: right;">Page 8064</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 had access on whatever computer he's</p> <p>3 accessing it.</p> <p>4 And Mr. Zou, he admits this. He</p> <p>5 says he never paid for a license</p> <p>6 himself. He knows proprietary</p> <p>7 software isn't free, and he knows it</p> <p>8 was handled by the companies that he</p> <p>9 worked for.</p> <p>10 Mr. Ross explained to you that a</p> <p>11 registrant has to login, they've got</p> <p>12 to accept Appian's Terms of Use for</p> <p>13 Forum. Remember, he told you, the</p> <p>14 first time they log in, they've got to</p> <p>15 accept those Terms of Use.</p> <p>16 And Mr. Zou, what does he say?</p> <p>17 You remember Pega suggesting to</p> <p>18 you in the opening statement, oh, you</p> <p>19 know, Terms of Use, who's bound by</p> <p>20 those?</p> <p>21 Mr. Zou, look at what he said.</p> <p>22 He's seen Terms of Use pop up.</p> <p>23 Whether he's read them or not, he</p> <p>24 knows he's bound by them. That would</p> <p>25 be correct, he says.</p>	<p style="text-align: right;">Page 8065</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And as Mr. Ross explained, the</p> <p>3 Appian Terms of Use made clear, look,</p> <p>4 you can use the product only for the</p> <p>5 business products that you're</p> <p>6 authorized for. Certainly can't use</p> <p>7 it for competitors.</p> <p>8 Now, Mr. Zou had commitments to</p> <p>9 Serco. Look, here's his signed hiring</p> <p>10 letter at Serco. He agrees to abide</p> <p>11 by the policies and practices of</p> <p>12 Serco.</p> <p>13 And what are those? There's a</p> <p>14 lot in the record. This Code of</p> <p>15 Conduct has a lot of pages that apply.</p> <p>16 I'll give you one sample.</p> <p>17 If you're taking on a second</p> <p>18 job, that can create a conflict. Why?</p> <p>19 Well, here's a great example of why,</p> <p>20 and so you've got to report them to</p> <p>21 your line manager.</p> <p>22 Did you ever report it, Mr. Zou,</p> <p>23 to your line manager? He did not,</p> <p>24 even though the Code of Conduct</p> <p>25 required it. He admits that. Never</p>

<p style="text-align: right;">Page 8066</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 did it.</p> <p>3 And there are lots of other</p> <p>4 Serco policies that apply too:</p> <p>5 Acceptable workplace conduct,</p> <p>6 discipline.</p> <p>7 What does that policy say? You</p> <p>8 can be terminated without any prior</p> <p>9 action. Right on the spot, you're</p> <p>10 fired if you do an unauthorized</p> <p>11 release of confidential information,</p> <p>12 if you misuse or misappropriate,</p> <p>13 right, misappropriation and its</p> <p>14 information of the company, Serco, or</p> <p>15 business partners, Appian. Failure to</p> <p>16 abide by the code of ethics, all of</p> <p>17 this can get you fired on the spot.</p> <p>18 He signed a Proprietary and</p> <p>19 Confidential Information Agreement,</p> <p>20 and he's agreeing confidential</p> <p>21 information that I get, I am not going</p> <p>22 to show that to anyone else other than</p> <p>23 for Serco's business, Serco's</p> <p>24 business. And if I do it, I'll be</p> <p>25 terminated. I understand that.</p>	<p style="text-align: right;">Page 8067</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Now, Mr. Zou, he understands.</p> <p>3 We said to him: Listen, did Appian</p> <p>4 ever authorize you to do this?</p> <p>5 No.</p> <p>6 Why? Because he never told</p> <p>7 anyone what he was doing. He knew</p> <p>8 what he was doing was wrong.</p> <p>9 Now, what did they do with him?</p> <p>10 Let's just summarize the overview.</p> <p>11 You've seen this before, but let's</p> <p>12 summarize it.</p> <p>13 The very first meeting,</p> <p>14 remember, with Mr. Petronio, I showed</p> <p>15 you dozens of video clips of Mr. Zou</p> <p>16 just turning over information in those</p> <p>17 meetings. You know, the videos, the</p> <p>18 crimes in progress, you have actual</p> <p>19 videos of them there.</p> <p>20 And what was his reaction to</p> <p>21 getting that access to the</p> <p>22 confidential forum where the software</p> <p>23 and the documentation was? I was</p> <p>24 delighted, delighted.</p> <p>25 You know, they're saying, well,</p>
<p style="text-align: right;">Page 8068</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 you can find all of this on the</p> <p>3 internet. You know, you can do a</p> <p>4 Google search before your coffee gets</p> <p>5 cold. Mr. Petronio knows how to use</p> <p>6 Google.</p> <p>7 Nobody is getting access to the</p> <p>8 actual software to poke and prod, to</p> <p>9 investigate, to dig deep, and he's</p> <p>10 delighted to get it.</p> <p>11 What does he say after that</p> <p>12 first meeting? He starts distributing</p> <p>13 this information, cascading it</p> <p>14 throughout the company. He says: I</p> <p>15 had a meeting today, February 28,</p> <p>16 2012.</p> <p>17 He walked me through it.</p> <p>18 I made a video, Fantasia, and</p> <p>19 I'm going to send it around to</p> <p>20 everyone.</p> <p>21 He circulates some of his key</p> <p>22 insights from the meeting, and he</p> <p>23 starts to see the trade secrets coming</p> <p>24 out right there. He says: Concurrent</p> <p>25 development, there's no way to have</p>	<p style="text-align: right;">Page 8069</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 more than one person working at a</p> <p>3 time, data visualization, star schema.</p> <p>4 All remember what Dr. Marshall</p> <p>5 called this yesterday, gold dust.</p> <p>6 Gold dust for a company because now</p> <p>7 they have insight into a competitor's</p> <p>8 product, only one way that they can</p> <p>9 use against them.</p> <p>10 They start to circulate. Then,</p> <p>11 come December of that same year, 2012,</p> <p>12 it's a whole other flurry of activity.</p> <p>13 Lot of interesting Appian social.</p> <p>14 Mr. Petronio and Mr. Zou, they have</p> <p>15 the documentation, the confidential</p> <p>16 documentation on Forum. Can you send</p> <p>17 it to me?</p> <p>18 They have a meeting. No video</p> <p>19 of that meeting. Somehow that one's</p> <p>20 gone missing, but they have a to-do</p> <p>21 list after that.</p> <p>22 And look at all the points:</p> <p>23 Social and Tempo documentation,</p> <p>24 another demo session, live access to</p> <p>25 the platform.</p>

<p style="text-align: right;">Page 8070</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Look at the last bullet: Other</p> <p>3 there feedback on application</p> <p>4 enhancement. They say we would never</p> <p>5 look at a competitor's product to</p> <p>6 improve or enhance our own. They are</p> <p>7 too different. Why would we do that?</p> <p>8 What do the contemporaneous</p> <p>9 documents say? Application</p> <p>10 enhancement, that's what they're doing</p> <p>11 with these.</p> <p>12 Those December meetings,</p> <p>13 remember, the product management</p> <p>14 people, they're all over it too.</p> <p>15 What were they saying? Oh, we</p> <p>16 were product management. We'd never</p> <p>17 look at Appian. Why would we care?</p> <p>18 Why are they meeting with them</p> <p>19 endlessly, one after the other?</p> <p>20 Arrogance.</p> <p>21 Here's Agya Garg, right? She's</p> <p>22 just met with Mr. Zou about the social</p> <p>23 view in Appian, of work lists and</p> <p>24 tasks. Appian is more impressive.</p> <p>25 But at the same time while dismissing</p>	<p style="text-align: right;">Page 8071</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 it, what does she say? We should</p> <p>3 create a view just like this and ship</p> <p>4 with it.</p> <p>5 Arrogance and shadiness side by</p> <p>6 side. But that's not all.</p> <p>7 A very important attendee, not</p> <p>8 Mr. Bixby, he's a very important</p> <p>9 person, but there is a very important</p> <p>10 attendee, Kerim Akgonul. He is also</p> <p>11 coming to meet with Mr. Zou in</p> <p>12 December.</p> <p>13 We showed you videos from there.</p> <p>14 One of the videos is Mr. Petronio. He</p> <p>15 says at the end of the introduction:</p> <p>16 You said you might see something you</p> <p>17 like for our product, talking to</p> <p>18 Kerim.</p> <p>19 We asked him what do you mean by</p> <p>20 that? And look at what he said.</p> <p>21 Appian had strengths: Mobile, social,</p> <p>22 cloud, ease of use.</p> <p>23 What did Dr. Marshall talk to</p> <p>24 you about yesterday? Same categories.</p> <p>25 And, you know, we're looking to</p>
<p style="text-align: right;">Page 8072</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 learn from them, what they are doing</p> <p>3 in case we could make improvements in</p> <p>4 those areas.</p> <p>5 They want you to believe that we</p> <p>6 never look at customers. Look at what</p> <p>7 the people involved at the time say,</p> <p>8 the ones who are being honest about</p> <p>9 it.</p> <p>10 And then there is a meeting in</p> <p>11 2013, January of 2013, the famous</p> <p>12 meeting where Alan Trebler himself is</p> <p>13 among the attendees. Now, here's</p> <p>14 another amnesia situation, right?</p> <p>15 None of the current Pega</p> <p>16 employees, no one is willing to come</p> <p>17 up here and say Alan Trebler was at</p> <p>18 that meeting.</p> <p>19 You see the meeting invite.</p> <p>20 There he is. He's invited to see a</p> <p>21 demonstration building in Appian. And</p> <p>22 everyone agrees that means seeing the</p> <p>23 live software in operation, and</p> <p>24 everyone agrees they knew they didn't</p> <p>25 have a license to Appian and couldn't</p>	<p style="text-align: right;">Page 8073</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 get one.</p> <p>3 The CEO of a publicly traded</p> <p>4 company, this is what he's up to. And</p> <p>5 then they are going to meet with</p> <p>6 product management too.</p> <p>7 And you know what?</p> <p>8 Mr. Petronio, who is no longer there,</p> <p>9 he's the one guy who doesn't have</p> <p>10 amnesia. Look at what he said.</p> <p>11 Was Alan Trebler there?</p> <p>12 Yes.</p> <p>13 What do you remember?</p> <p>14 And, ladies and gentlemen, you</p> <p>15 rely on your life experience here.</p> <p>16 Look at the specificity he gave you.</p> <p>17 I remember the room. I remember</p> <p>18 the table. I remember where he was</p> <p>19 sitting. I remember the white board.</p> <p>20 I remember what was happening.</p> <p>21 Who's telling you the truth</p> <p>22 here?</p> <p>23 But as always, their documents,</p> <p>24 the contemporaneous documents, right?</p> <p>25 He said: I'm spending all day with</p>

<p style="text-align: right;">Page 8074</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Youyong Zou on the 29th. That's all</p> <p>3 he did.</p> <p>4 The next day he sends e-mail to</p> <p>5 Alan Trefler: Thank you for your time</p> <p>6 yesterday.</p> <p>7 Do you think Alan Trefler was at</p> <p>8 that meeting? He's not willing to</p> <p>9 admit it. None of them who got up on</p> <p>10 the stand are willing to admit it.</p> <p>11 And then product management.</p> <p>12 Remember, this is a group of people</p> <p>13 that got up and to a person said: We</p> <p>14 don't care about Appian or</p> <p>15 competitors. We never look at</p> <p>16 competitors.</p> <p>17 Remember Ms. Louis: Why do you</p> <p>18 know that?</p> <p>19 We never look at competitors.</p> <p>20 Look at them all lining up. All</p> <p>21 of the top people lining up to meet</p> <p>22 with Mr. Zou and get live access to</p> <p>23 Appian: Akgonul, Bixby, Schuerman,</p> <p>24 Louis, Garg, Caton, Roland.</p> <p>25 And then they have these</p>	<p style="text-align: right;">Page 8075</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 meetings in February of the next year,</p> <p>3 2014. We showed you a whole bunch of</p> <p>4 decks. Remember, there were 222</p> <p>5 slides about Appian, the company they</p> <p>6 don't care about, the company they</p> <p>7 never look at. With all the top</p> <p>8 leadership, Alan Trefler, everyone</p> <p>9 else.</p> <p>10 This is just one of the four</p> <p>11 slide decks. And what do they say to</p> <p>12 you about this?</p> <p>13 They say, oh, Appian, you can</p> <p>14 just Google it and you'll find all of</p> <p>15 this before your coffee gets cold.</p> <p>16 Really?</p> <p>17 Then they did Project Crush.</p> <p>18 Benjamin Baril, same guy who later is,</p> <p>19 after all the shady conduct we looked</p> <p>20 at, he's working with Mr. Zou too.</p> <p>21 And what does he do in Project Crush?</p> <p>22 You know, they are so into this</p> <p>23 that he wants to take credit for</p> <p>24 hiring Mr. Zou, right? That's how</p> <p>25 much they thought this is great.</p>
<p style="text-align: right;">Page 8076</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 He says: John Petronio and I</p> <p>3 hired an Appian consultant, and we</p> <p>4 spent days with him working on this.</p> <p>5 Now, what did they do? The</p> <p>6 document that they generated.</p> <p>7 Remember I showed you these</p> <p>8 action items at the bottom of every</p> <p>9 subject area? All of them are about</p> <p>10 working with product management to</p> <p>11 give them feedback.</p> <p>12 And they say: Status underway,</p> <p>13 status underway, status completed on</p> <p>14 data modeling, CDTs; what Dr. Marshall</p> <p>15 was talking to you about.</p> <p>16 And they have the arrogance to</p> <p>17 come here and say to you, oh, we never</p> <p>18 look at competitors. Look at what the</p> <p>19 document from the time says.</p> <p>20 Then at some point, Mr. Zou</p> <p>21 calls a halt to this, right? And he</p> <p>22 says to Mr. Petronio: You know, I</p> <p>23 won't have access to Appian or Appian</p> <p>24 Forum anymore.</p> <p>25 Okay. He told you on the stand</p>	<p style="text-align: right;">Page 8077</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 that wasn't the truth. He just knew</p> <p>3 that's why they want me. If I don't</p> <p>4 have access anymore to the live</p> <p>5 software, they are not going to need</p> <p>6 him anymore and that's what happened.</p> <p>7 That's where it ended.</p> <p>8 Now, what did they do with all</p> <p>9 this information? Mr. Schuerman told</p> <p>10 you they put it into these attack</p> <p>11 documents, right? And we showed you</p> <p>12 those documents with Mr. Malackowski,</p> <p>13 right, the Understanding Appian</p> <p>14 document, the technical brief, the</p> <p>15 attack plan, business competitive</p> <p>16 brief, 12 Challenges. We went through</p> <p>17 all of these.</p> <p>18 There were all these different</p> <p>19 versions of the technical brief they</p> <p>20 were constantly updating with Zou</p> <p>21 information over time.</p> <p>22 And then that 12 Challenges</p> <p>23 document, Mr. Petronio told you</p> <p>24 exactly how that came about. It was</p> <p>25 in that January 29th meeting. They</p>

<p style="text-align: right;">Page 8078</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 had a white board up and Mr. Schuerman</p> <p>3 was there, Mr. Zou was there,</p> <p>4 Mr. Trefler is there, and they were</p> <p>5 coming up with it.</p> <p>6 And think how valuable they</p> <p>7 found this information. They wanted</p> <p>8 to pose questions for the customer to</p> <p>9 ask Appian to showcase what they</p> <p>10 thought were weaknesses in Appian.</p> <p>11 Gold dust for the sales process.</p> <p>12 And we showed you, I showed you</p> <p>13 video after video with Mr. Petronio</p> <p>14 where we traced exactly where they got</p> <p>15 each piece of information that then</p> <p>16 went into these attack pieces.</p> <p>17 Remember, we looked at those and they</p> <p>18 covered all these topics.</p> <p>19 You know, star schema. He asked</p> <p>20 Mr. Zou about that; went straight into</p> <p>21 the attack document. At hourly</p> <p>22 intervals, the checkpoint mechanisms,</p> <p>23 the specific configuration in Appian.</p> <p>24 Dr. Marshall told you why that's so</p> <p>25 important; gold dust for the sales</p>	<p style="text-align: right;">Page 8079</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 force. That went into the document.</p> <p>3 Information about unified</p> <p>4 management tools, that went into the</p> <p>5 document, all from Mr. Zou. Remember</p> <p>6 I showed you the videos tracing each</p> <p>7 one of them.</p> <p>8 Reporting tools, very detailed</p> <p>9 specifics on reporting tools. You</p> <p>10 know, can they do drag and drop, pivot</p> <p>11 table like reporting on live access to</p> <p>12 the platform.</p> <p>13 Concurrent development, we went</p> <p>14 through that too. Got that from</p> <p>15 Mr. Zou.</p> <p>16 Web services can only return</p> <p>17 data of a certain kind, can return and</p> <p>18 the focus on the process ID. That</p> <p>19 information came in.</p> <p>20 And you know, Mr. Petronio</p> <p>21 explained that whole process. They</p> <p>22 were around the white board. That's</p> <p>23 how they were getting it.</p> <p>24 And we asked him: Was this from</p> <p>25 Mr. Zou?</p>
<p style="text-align: right;">Page 8080</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Yes.</p> <p>3 On that 12 Challenges document,</p> <p>4 same themes. But you see here now is</p> <p>5 these attacks, right? But you see the</p> <p>6 same issues, concurrent development</p> <p>7 and all of the other issues in there</p> <p>8 as well.</p> <p>9 Now, what did they do?</p> <p>10 Remember, Mr. Leon Trefler, he sends</p> <p>11 his 12 Challenges right around to</p> <p>12 everyone at the company.</p> <p>13 Mr. Malackowski told you how the</p> <p>14 information cascaded through the whole</p> <p>15 company. And he says: We should</p> <p>16 never lose against Appian.</p> <p>17 Their experts got up and told</p> <p>18 you this information is trivial. It</p> <p>19 has no value.</p> <p>20 Look at what they said at the</p> <p>21 top. He says: If you're competing</p> <p>22 against Appian anywhere, make sure you</p> <p>23 get this information.</p> <p>24 And we showed you how it</p> <p>25 cascaded. They had a sales call where</p>	<p style="text-align: right;">Page 8081</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 they talked about the same</p> <p>3 information. They sent it out. They</p> <p>4 did a report of all competing</p> <p>5 opportunities with Appian, sent it out</p> <p>6 to all those people. They said great.</p> <p>7 They sent it directly to</p> <p>8 customers. They said it's under our</p> <p>9 NDA, don't share it, but have a look</p> <p>10 at this.</p> <p>11 Then they sent it out to their</p> <p>12 partners, their business partners,</p> <p>13 Accenture, Cognizant, Tech Mahindra.</p> <p>14 We took you through all of those with</p> <p>15 Mr. Malackowski.</p> <p>16 And why does that matter?</p> <p>17 Mr. Malackowski explained it.</p> <p>18 He said these are large companies. So</p> <p>19 when you share this information with</p> <p>20 them, with their thousands of</p> <p>21 employees, the potential for dramatic</p> <p>22 effect goes up exponentially. That's</p> <p>23 exactly what was happening.</p> <p>24 And then they did training of</p> <p>25 the whole sales force. Mr. Petronio</p>

<p style="text-align: right;">Page 8082</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 told you it was required training and</p> <p>3 they did not just have to view it,</p> <p>4 they have to then repeat it back</p> <p>5 through a whole series of</p> <p>6 presentations.</p> <p>7 Remember, I showed you the</p> <p>8 videos where Mr. Zou made the video</p> <p>9 and then Mr. Petronio revoiced it in</p> <p>10 his own voiceover. It's all directly</p> <p>11 from him. And I showed you the</p> <p>12 training videos of topic after topic.</p> <p>13 Their sales rep gave a review of</p> <p>14 the training. And look at their</p> <p>15 comments. They're all about access to</p> <p>16 the live system. The content brought</p> <p>17 out weaknesses using an actual system,</p> <p>18 seeing the developer portal, seeing</p> <p>19 how Appian works under the hood.</p> <p>20 They all know how to use Google,</p> <p>21 right? They can find what's on the</p> <p>22 internet. But, no, this is live</p> <p>23 access. That's what is so valuable</p> <p>24 for them.</p> <p>25 And Mr. Malackowski explained</p>	<p style="text-align: right;">Page 8083</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 the importance of this training</p> <p>3 program. It's very robust. He talks</p> <p>4 about how they have to watch it,</p> <p>5 repeat it, heard all of that. And he</p> <p>6 says at the end, a very through</p> <p>7 indoctrination of these trade secrets</p> <p>8 with the Salesforce.</p> <p>9 Now, we gave you examples of how</p> <p>10 this was used. But, ladies and</p> <p>11 gentlemen, a very important point</p> <p>12 here, I didn't pick, you know, of all</p> <p>13 the competing opportunities, I didn't</p> <p>14 go and pick my best examples.</p> <p>15 What I picked for you are their</p> <p>16 favorite examples, right, the</p> <p>17 opportunities where their expert</p> <p>18 Mr. Platt says, you've got to take</p> <p>19 these out because I've looked at the</p> <p>20 record and I can tell you as an</p> <p>21 accountant this had nothing to do with</p> <p>22 the trade secrets, okay?</p> <p>23 So let's look at two of those,</p> <p>24 the ones they chose, they think are</p> <p>25 the best cases.</p>
<p style="text-align: right;">Page 8084</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Rabobank. Here's Mr. Treffler</p> <p>3 himself saying: I'm in a meeting with</p> <p>4 them. I would like a prop I can use</p> <p>5 to blow this up.</p> <p>6 And he says: Something in the</p> <p>7 style of our previous internal</p> <p>8 two pages.</p> <p>9 What he's saying there? Because</p> <p>10 Mr. Petronio, remember, explained that</p> <p>11 technical brief, they wanted it to</p> <p>12 look like an internal Appian</p> <p>13 document -- an internal Pega document.</p> <p>14 They had a rep just happen to leave it</p> <p>15 behind with a customer.</p> <p>16 They were being dishonest about</p> <p>17 their dishonesty, okay? But that's</p> <p>18 what he's referring to there.</p> <p>19 And he says, you know, I need it</p> <p>20 by the end of the week, and he gets</p> <p>21 them the competitive brief for</p> <p>22 Rabobank. And he admits, he and</p> <p>23 Ms. van Wees, they use that at</p> <p>24 Rabobank.</p> <p>25 And then Ms. van Wees, she had</p>	<p style="text-align: right;">Page 8085</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 her document about competing in</p> <p>3 Rabobank. Look at what she said:</p> <p>4 Everyone on the team memorized</p> <p>5 John Petronio's documents.</p> <p>6 They had a call with him the day</p> <p>7 after his meeting with Zou so they</p> <p>8 could get live updates on all the</p> <p>9 Appian info to shape the POC.</p> <p>10 Remember that from the training,</p> <p>11 they're using the Zou information to</p> <p>12 shape the proof of concept.</p> <p>13 Ms. van Wees, she admits it,</p> <p>14 yeah, it was a key requirement for</p> <p>15 Rabobank, concurrent development, one</p> <p>16 of the trade secrets. We encouraged</p> <p>17 them to look at the competition as</p> <p>18 well on that issue.</p> <p>19 In her document, what are the</p> <p>20 important differentiators for</p> <p>21 Rabobank? Co-development right there</p> <p>22 at the top, and there are others in</p> <p>23 here too. Look at the data returned</p> <p>24 as process ID.</p> <p>25 This is the one they think is</p>

<p style="text-align: right;">Page 8086</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 their best example when we didn't use</p> <p>3 any of this. If this is the record,</p> <p>4 imagine what they are doing with all</p> <p>5 of the others.</p> <p>6 She sends an e-mail, Ms. van</p> <p>7 Wees, to Glen Adams. Remember him?</p> <p>8 He's the guy on the shady-arrogant</p> <p>9 e-mail.</p> <p>10 And look at what she says,</p> <p>11 sending those same competitive</p> <p>12 documents, this information from</p> <p>13 John Petronio and team had spent</p> <p>14 two days with an Appian consultant</p> <p>15 just when the battle was intensifying.</p> <p>16 And she said the information was so</p> <p>17 strong and relevant that she wanted</p> <p>18 them all to have it.</p> <p>19 They made sure the fox in the</p> <p>20 hen house, the person helping them at</p> <p>21 Rabo, made sure he had what he needed.</p> <p>22 How about Bank of America?</p> <p>23 Another example Mr. Platt says, oh,</p> <p>24 no, take this out. No way Appian</p> <p>25 would've had a shot there. They are</p>	<p style="text-align: right;">Page 8087</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 incumbent.</p> <p>3 Remember Mr. Bearden? He</p> <p>4 testified by deposition. He was one</p> <p>5 of the whistleblowers who came to</p> <p>6 Appian and told Appian it was</p> <p>7 happening.</p> <p>8 He said, we were in the fight of</p> <p>9 our lives at the Bank of America. And</p> <p>10 he explained it. He said, we were</p> <p>11 concerned not just about the</p> <p>12 opportunity but about losing the</p> <p>13 entire account at Bank of America to</p> <p>14 Appian.</p> <p>15 And Mr. Platt says, we're</p> <p>16 incumbent. Mr. Trefler says, they're</p> <p>17 the most loyal customers. There's no</p> <p>18 chance they would ever consider</p> <p>19 Appian.</p> <p>20 But look at what the document</p> <p>21 says, and what did they use there?</p> <p>22 They used information from Mr. Zou.</p> <p>23 You saw the slide deck with</p> <p>24 Mr. Bearden with all of the topology</p> <p>25 information.</p>
<p style="text-align: right;">Page 8088</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 But the competition wasn't</p> <p>3 Appian. And, you know, they like to</p> <p>4 suggest, oh, but, you know, they won</p> <p>5 that contract few months later, it had</p> <p>6 nothing to do with this.</p> <p>7 Mr. Bearden, the guy involved in</p> <p>8 it, he says, who won that contract</p> <p>9 eventually? It was a little bit</p> <p>10 later. We won it. Pega won it. And</p> <p>11 the revenues are in the case because</p> <p>12 they did; otherwise, there'd be no</p> <p>13 revenues.</p> <p>14 Now, Mr. Bearden, the</p> <p>15 whistleblower, remember, he later got</p> <p>16 fired from Pega, then he came and told</p> <p>17 Appian what had happened? And he said</p> <p>18 when he was leaving, they contacted</p> <p>19 him and said, give back the Zou</p> <p>20 documents.</p> <p>21 And he said, well, that was a</p> <p>22 turning point for me. You know, it</p> <p>23 seemed shady. But he said, when I</p> <p>24 left, they didn't ask me about any of</p> <p>25 the sensitive documents I had been</p>	<p style="text-align: right;">Page 8089</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 working on for years. The only thing</p> <p>3 asked me from back at Pega was give me</p> <p>4 back the Zou documents.</p> <p>5 And he said that's the only</p> <p>6 thing they wanted to know about. So</p> <p>7 then he came and he told Appian what</p> <p>8 happened.</p> <p>9 Now, that was some of the Zou</p> <p>10 era conduct, but let's also talk about</p> <p>11 what happened thereafter.</p> <p>12 Now, in 2017, Appian started</p> <p>13 offering trials, right, consistent</p> <p>14 with industry trends. But from the</p> <p>15 very start, Pega knew they were not</p> <p>16 authorized to get access to that.</p> <p>17 Here's a 2017 e-mail from</p> <p>18 Mayran Barak, who works in product</p> <p>19 management at Pega: I can't get any</p> <p>20 sort of access. We're not a qualified</p> <p>21 business.</p> <p>22 You remember later in that</p> <p>23 chain, she also said, you know,</p> <p>24 software's online.</p> <p>25 Mr. Davis, he also testified by</p>

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1 Plaintiff - Closing (Mangi)  
2 deposition early in the case. You  
3 know what he said? Appian's like a  
4 black box about giving out trials.  
5 It's impossible to get, or it's very  
6 difficult.  
7 He didn't know anyone that even  
8 had one. Remember, they are  
9 suggesting to you, oh, anyone can have  
10 a trial. How can there be any secrets  
11 there? It's a black box according to  
12 their own people.  
13 Even when they are up to the  
14 real shady stuff with Mr. Le, all the  
15 fake names, wives' businesses, look at  
16 what they say. They want to qualify  
17 the trial requests. Appian doesn't  
18 want everyone to have it to try out.  
19 Even Mr. Trefler is told by  
20 Mr. Baril, Appian is very tightly  
21 controlled by who has access.  
22 Mr. Baril e-mails himself the Terms of  
23 Use. They tell you no one pays  
24 attention to Terms of Use, he e-mailed  
25 them to himself at Pega.

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1 Plaintiff - Closing (Mangi)  
2 Think about the shadiness and  
3 the arrogance. Not a single person  
4 says, let's not do this.  
5 What happens, then? Ben Baril  
6 gets tossed with this. And as the  
7 project evolves, he's doing it more  
8 directly for Alan Trefler. They call  
9 it a critical CI brief, competitive  
10 intelligence.  
11 Then he starts working with  
12 these guys, Fine and Le. Look at what  
13 he says with Mr. Fine, Mr. Fine says:  
14 I'm going to set you up with an e-mail  
15 from my wife's business, Palencia  
16 Business Center. It's my wife's small  
17 business. That's how we'll get it.  
18 And Mr. Baril, he's boasting  
19 about creating his fake identity,  
20 Andrew Powers Consulting. Ha, ha,  
21 they say. They're having a grand time  
22 doing this.  
23 Mr. Fine, he didn't even tell  
24 his wife what he was doing. He told  
25 her only just before the deposition,

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1 Plaintiff - Closing (Mangi)  
2 And look at what they say, you  
3 cannot use it if you're a competitor  
4 or provide information to a competitor  
5 nor if you mask your identity. But  
6 they did it, and they did it  
7 repeatedly.  
8 Remember, in 2019, what  
9 Leon Trefler started. They say, you  
10 know, we can get free trials, but he  
11 doesn't say, let's just try and sign  
12 up. No, no, he says, let's have a  
13 Pega ventures' partner sign up for us.  
14 Remember, he said those are --  
15 Mr. Trefler said those are the small  
16 client-service businesses who we give  
17 seed money to. From the start,  
18 subterfuge, subterfuge. Let's try and  
19 get one of them to do it, BP3 maybe.  
20 Then soon enough, they raised  
21 the idea for all the senior  
22 management -- look at them all lined  
23 up there, Schuerman, Bixby, Trefler,  
24 Baril -- they're thrilled, enthusiasm  
25 all around for going and do this.

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1 Plaintiff - Closing (Mangi)  
2 and she wasn't very happy about it.  
3 They even put a cartoonish  
4 medieval meme in their own messages  
5 about this. They're going right along  
6 with it. They know exactly what  
7 they're doing.  
8 Remember this guy, Peter  
9 Bessman? He's the one who they sent  
10 Michael Fine's credentials to because  
11 he's a tech expert and he goes deep  
12 building in the Appian platform.  
13 Remember, we played a few clips  
14 with heavy metal music that he was  
15 listening to while he was doing it?  
16 He wasn't listening to the Goo Goo  
17 Dolls. He was listening to the heavy  
18 metal. You remember those clips.  
19 Then what about Mr. Le, Nguyen  
20 Le, yeah? He's also using his wife's  
21 business, beauty industry. Related to  
22 my wife's business, that's how they  
23 get this access.  
24 Did he tell his wife? No, he  
25 didn't even tell her.

<p style="text-align: right;">Page 8094</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Mr. Baril, he says candidly, all</p> <p>3 of them knew about this. Schuerman,</p> <p>4 Bessman, Fine, Le, one Trefler, the</p> <p>5 brothers Trefler. They all know what</p> <p>6 he's up to.</p> <p>7 Is it any wonder they are doing</p> <p>8 this?</p> <p>9 Remember who the CEO setting the</p> <p>10 color and culture is, it's ascii, A</p> <p>11 Skii, Albert Skii, Paul Foon, and AU</p> <p>12 sending e-mails to his own people,</p> <p>13 even they're surprised their CEO has</p> <p>14 so many personas.</p> <p>15 And he personally is running the</p> <p>16 show. Look at his testimony, he was</p> <p>17 delighted, excited. And Mr. Baril was</p> <p>18 now involved because he asked him to</p> <p>19 do an analysis of the Appian</p> <p>20 technology. He sent him e-mails with</p> <p>21 all the technical specifications that</p> <p>22 he wanted studied. He wants to spend</p> <p>23 an hour in the demo.</p> <p>24 Do you think Mr. Trefler knows</p> <p>25 how to use Google? He's been a tech</p>	<p style="text-align: right;">Page 8095</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 CEO for 39 years. Do you think he can</p> <p>3 find stuff that's online before his</p> <p>4 coffee gets cold? Why does he want a</p> <p>5 demo if it's so pointless?</p> <p>6 Mr. Baril, he knows exactly that</p> <p>7 means. He says: I can't do it</p> <p>8 because I've lost my trial access.</p> <p>9 You can work on another one,</p> <p>10 though. My spies, my spies are on the</p> <p>11 case.</p> <p>12 Remember, misappropriation</p> <p>13 involves improper means. One example</p> <p>14 of that, espionage. Here they are</p> <p>15 again, my spies.</p> <p>16 They are telling candidly what</p> <p>17 they are doing. Alan wants targeted</p> <p>18 and damning attacks. That's why it's</p> <p>19 gold dust.</p> <p>20 He says: I've been spending my</p> <p>21 time -- this is Mr. Baril -- diving</p> <p>22 deep into the Appian software.</p> <p>23 He's not using Google. He's</p> <p>24 diving deep in the software, including</p> <p>25 taking videos.</p>
<p style="text-align: right;">Page 8096</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And what's the response of the</p> <p>3 leadership, is anyone saying, what are</p> <p>4 you doing; we don't have a license.</p> <p>5 Stop?</p> <p>6 No, Mr. Leon Trefler says to</p> <p>7 him: Take this seriously. I'm going</p> <p>8 to give you more resources.</p> <p>9 I don't need to underline this</p> <p>10 one, he underlined it himself. And</p> <p>11 they got those resources. They got</p> <p>12 Peter Bessman.</p> <p>13 And look, they tell you what</p> <p>14 this is all about, though, right in</p> <p>15 the contemporaneous document. Their</p> <p>16 goal is to steal deals from Appian.</p> <p>17 And look at what he says at the</p> <p>18 top, he puts at the top there</p> <p>19 "privilege." Privilege, like it's</p> <p>20 protected by -- because it's an</p> <p>21 attorney-client communication, it</p> <p>22 shouldn't get produced in litigation.</p> <p>23 I'm afraid it did get produced</p> <p>24 because none of them are lawyers.</p> <p>25 The text messages continue. He</p>	<p style="text-align: right;">Page 8097</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 tells Mr. Schuerman -- remember</p> <p>3 Mr. Schuerman, I didn't know about any</p> <p>4 of this until after the fact.</p> <p>5 Here he is telling him about</p> <p>6 exactly what he's doing. He's asking</p> <p>7 him: Who can I ask about the legality</p> <p>8 of this?</p> <p>9 Even Mr. Baril had a moment of</p> <p>10 conscious. What does Mr. Schuerman</p> <p>11 say: How much more do you need?</p> <p>12 Mr. Baril, he's making all the</p> <p>13 videos strictly internal, he's sending</p> <p>14 them all over the company. He creates</p> <p>15 this whole analysis on Appian with all</p> <p>16 the information he's gathered.</p> <p>17 They say, you know, it's</p> <p>18 nothing. You can just Google it.</p> <p>19 And we showed you from Mr. Fine</p> <p>20 how they used all of this in realtime</p> <p>21 in the marketplace. He gave you a lot</p> <p>22 of testimony about USAA Insurance</p> <p>23 Company, where they were directly</p> <p>24 using this information coming from</p> <p>25 Mr. Baril.</p>

<p style="text-align: right;">Page 8098</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And as it went on, remember the</p> <p>3 people in India, they too circulated</p> <p>4 information they'd gotten on access to</p> <p>5 Appian. They don't capture the</p> <p>6 username if you make any recordings,</p> <p>7 because it's not legitimate access.</p> <p>8 We showed you Mr. Sarada. He</p> <p>9 says -- remember all his cousins, his</p> <p>10 cousins who work for Appian Partners,</p> <p>11 they live in the same house all</p> <p>12 together. He's using all of their</p> <p>13 credentials.</p> <p>14 He says he always used someone</p> <p>15 else's credentials. When they finally</p> <p>16 updated that Interrogatory 13 after we</p> <p>17 had all the information from instant</p> <p>18 messages, not before, then there were</p> <p>19 a lot more names that came up.</p> <p>20 The ones you looked at, Ladies</p> <p>21 and gentlemen, they even had the</p> <p>22 intern, the summer intern Harry Zhang,</p> <p>23 even had him breaking into Appian.</p> <p>24 Think about the culture, the arrogance</p> <p>25 of this company.</p>	<p style="text-align: right;">Page 8099</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Now, what are the trade secrets</p> <p>3 we're talking about here?</p> <p>4 You've seen them through these</p> <p>5 documents. You've seen them being</p> <p>6 developed. You know what they are,</p> <p>7 but I thought I would just list them</p> <p>8 to help you.</p> <p>9 Concurrent development, we</p> <p>10 talked about the specifics on the</p> <p>11 reporting tools, the process ID issue,</p> <p>12 specifics on the management tool, star</p> <p>13 schema, the specific configuration,</p> <p>14 the topology specifics, including,</p> <p>15 remember, the experiments they are</p> <p>16 doing. We showed you some videos of</p> <p>17 that.</p> <p>18 We're seeing the kbd+ file</p> <p>19 building. We're calculating how much</p> <p>20 hardware is needed. And, of course,</p> <p>21 there's confidential documentation we</p> <p>22 showed Mr. Zou sending and we have now</p> <p>23 in the record.</p> <p>24 All of this about Appian's</p> <p>25 architectural and design, things you</p>
<p style="text-align: right;">Page 8100</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 need to dig under the surface to get</p> <p>3 to.</p> <p>4 And Dr. Marshall talked to you</p> <p>5 about another set of trade secrets,</p> <p>6 how Appian designed and implemented</p> <p>7 Smart Services, CDTs, ease of editing,</p> <p>8 and out-of-the-box ability to deploy</p> <p>9 the mobile and integrated social view.</p> <p>10 And, you know, this is important</p> <p>11 because what does Pega do? They said,</p> <p>12 oh, you know, we were working on</p> <p>13 mobile. We were working on social.</p> <p>14 Look at all this other stuff we were</p> <p>15 doing.</p> <p>16 So what?</p> <p>17 They even have this, the</p> <p>18 specific trade secrets, and you saw</p> <p>19 exactly where they got it from.</p> <p>20 Let me show you -- I showed you</p> <p>21 a lot of videos. I'm not going to</p> <p>22 repeat them all. I just want to</p> <p>23 refresh you on where this is coming</p> <p>24 from, just one.</p> <p>25 (Video played.)</p>	<p style="text-align: right;">Page 8101</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 MR. MANGI: Just a little flavor</p> <p>3 to remind you of all the videos you</p> <p>4 saw of Mr. Petronio.</p> <p>5 And then Mr. Petronio took you</p> <p>6 through these, the whole list I showed</p> <p>7 you, one by one, and he told you</p> <p>8 exactly where it came from. It didn't</p> <p>9 come from Google. It came from</p> <p>10 Mr. Zou.</p> <p>11 Concurrent development, where</p> <p>12 did you get that? Zou.</p> <p>13 Weak reporting tools and the</p> <p>14 specific details, where did you get</p> <p>15 that? We learned it from Zou.</p> <p>16 Process ID, where did you get</p> <p>17 that information? We learned it from</p> <p>18 Zou.</p> <p>19 Did you know about any of this</p> <p>20 management tool stuff before Zou? No.</p> <p>21 He knows how to use Google. He</p> <p>22 didn't know it.</p> <p>23 Star schema, did you know that?</p> <p>24 Where did you get that info? That</p> <p>25 came from Zou.</p>

<p style="text-align: right;">Page 8102</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Configuration and checkpointing,</p> <p>3 came from Zou.</p> <p>4 Topology information, the</p> <p>5 specific details they learned, came</p> <p>6 from Zou.</p> <p>7 The confidential documentation</p> <p>8 that Zou shared.</p> <p>9 Experiments, we talked about</p> <p>10 this, and this really sums up a lot of</p> <p>11 what was happening. We wanted to try</p> <p>12 stuff out, pressure testing, do as</p> <p>13 many experiments as we could so we</p> <p>14 could really learn the information</p> <p>15 below the surface of what was talked</p> <p>16 about.</p> <p>17 Leave no stone unturned to find</p> <p>18 weaknesses, analyze everything. Big</p> <p>19 effort. That sums up, you know, in</p> <p>20 some ways, what this was all about.</p> <p>21 And remember in one of the</p> <p>22 videos, he had this real note of</p> <p>23 excitement in his voice. When he</p> <p>24 looked at the documentation, he said,</p> <p>25 oh, I'd love to see that. Remember</p>	<p style="text-align: right;">Page 8103</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 that video?</p> <p>3 And we explained what about</p> <p>4 that? And he said, yep, confidential</p> <p>5 documentation. I got that from Zou.</p> <p>6 Now, Mr. Schuerman, he doesn't</p> <p>7 admit all of them, but even he admits</p> <p>8 some of them not previously available</p> <p>9 to Pegasystems.</p> <p>10 Their attitude's Google, right?</p> <p>11 It's not available. They know how to</p> <p>12 use Google.</p> <p>13 And he admits they didn't know</p> <p>14 about concurrent development,</p> <p>15 checkpointing specifics, web service.</p> <p>16 He admits it afterwards.</p> <p>17 Now, one of the questions you</p> <p>18 are asked in the instructions is: Did</p> <p>19 Appian have a trade secret?</p> <p>20 Let's talk about that.</p> <p>21 Dr. Cole testified before you,</p> <p>22 right? You remember him. He has a</p> <p>23 Ph.D. in cyber security. He only has</p> <p>24 one Ph.D., but it's one he spent many</p> <p>25 years getting from a serious</p>
<p style="text-align: right;">Page 8104</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 university.</p> <p>3 And look at his career. He was</p> <p>4 a hacker for the CIA, right? This is</p> <p>5 one of the most serious guys you can</p> <p>6 find in this field. Look, he was the</p> <p>7 chief scientist at Lockheed Martin,</p> <p>8 the chief technology officer at</p> <p>9 McAfee. He was President Obama's</p> <p>10 commissioner on cyber security. He</p> <p>11 had cyber wings from the US Air Force.</p> <p>12 Remember, he said there are two</p> <p>13 key certifications in this area? I</p> <p>14 have one, I don't have the other.</p> <p>15 Why don't you have the other?</p> <p>16 Because I have the one behind it.</p> <p>17 He took you through all the</p> <p>18 books he wrote, including one about</p> <p>19 insider threats like we have from Zou.</p> <p>20 Do you remember this other book?</p> <p>21 He's the guy who Bill and Melinda</p> <p>22 Gates hired for their cyber security.</p> <p>23 President Obama, the Gates, they are</p> <p>24 not going to Dr. Easttom. They are</p> <p>25 going to Dr. Cole.</p>	<p style="text-align: right;">Page 8105</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Now, the definition of trade</p> <p>3 secrets, right, derives independent</p> <p>4 economic value, goes on from there,</p> <p>5 and is the subject of efforts that are</p> <p>6 reasonable to maintain the security.</p> <p>7 This is one of Dr. Cole slides.</p> <p>8 Now, now maybe you see why we used</p> <p>9 some of phrasing. He is tracking</p> <p>10 exactly what the statute is explaining</p> <p>11 to you why it's satisfied.</p> <p>12 Well, let's talk about, first,</p> <p>13 this issue of reasonable security. He</p> <p>14 took you through this in detail. I'm</p> <p>15 not going to read all of this, you</p> <p>16 heard it.</p> <p>17 Protecting against all manner of</p> <p>18 threats -- not just Zou, hackers,</p> <p>19 everything -- firewalls, multifactor</p> <p>20 authentication, encryption --</p> <p>21 employees focused on these policies,</p> <p>22 trainings, assessments,</p> <p>23 certifications, audits on security,</p> <p>24 written policies and procedures, Terms</p> <p>25 of Use and License Agreements.</p>

<p style="text-align: right;">Page 8106</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 And Dr. Cole told you why those</p> <p>3 terms and licenses are so key, because</p> <p>4 in the software industry, you can't</p> <p>5 lock your software in a bank vault,</p> <p>6 right? You've got to be out there</p> <p>7 selling it.</p> <p>8 Their own expert Mr. Pinto says,</p> <p>9 yeah, you know, even the presentation,</p> <p>10 well, that has trade secrets in it.</p> <p>11 You've got to be out there</p> <p>12 selling it. So how do you protect</p> <p>13 yourself? Terms of Use and License</p> <p>14 Agreements. That's what Appian had,</p> <p>15 and they didn't doubt it.</p> <p>16 Look at what Leon Trefler</p> <p>17 himself says: Does Pega use licenses</p> <p>18 and Terms of Use? Yes, Appian does</p> <p>19 too. That's what the BPM industry</p> <p>20 does to protect themselves.</p> <p>21 Their own head of sales admits</p> <p>22 that.</p> <p>23 Mr. Ross told you, we had</p> <p>24 agreements with Serco specifically,</p> <p>25 since this is about Mr. Zou, in part,</p>	<p style="text-align: right;">Page 8107</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 to protect what we were doing. And he</p> <p>3 took you through those agreements.</p> <p>4 It's a VA for Vets Agreement.</p> <p>5 These are full of protections, they're</p> <p>6 long. But I'll show you some little</p> <p>7 samples.</p> <p>8 Here's part of that agreement:</p> <p>9 Both sides agree to protect the</p> <p>10 confidential information of the other.</p> <p>11 You can only disclose it to employees</p> <p>12 who have a need to know to do their</p> <p>13 job for Serco and agree to protect the</p> <p>14 information subject to binding</p> <p>15 obligations.</p> <p>16 Dr. Easttom says, oh, Appian</p> <p>17 wasn't protecting itself with Serco.</p> <p>18 Look at what they had in the</p> <p>19 Agreement.</p> <p>20 Did Serco get Mr. Zou to enter</p> <p>21 into those binding obligations? Yes,</p> <p>22 remember, I showed it to you earlier.</p> <p>23 He signed the Confidential Information</p> <p>24 Agreement.</p> <p>25 Lots of other courses. Here's</p>
<p style="text-align: right;">Page 8108</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 just one example, permitted usage, you</p> <p>3 can only use it for your job.</p> <p>4 Employees who get it, they have to be</p> <p>5 people with a need to know who are</p> <p>6 subject to confidentiality.</p> <p>7 Appian did everything it could</p> <p>8 here.</p> <p>9 The other agreement was Appian</p> <p>10 Terms and Conditions. This is a GAO</p> <p>11 Schedule Agreement. And those Terms</p> <p>12 and Conditions, they are chockablock</p> <p>13 with protections. There is permitted</p> <p>14 usage only for the business purposes,</p> <p>15 only the identified individuals with</p> <p>16 the user accounts can have access,</p> <p>17 only people with a need to know who</p> <p>18 are subject to binding agreements.</p> <p>19 Appian protected itself every</p> <p>20 way it could.</p> <p>21 Reasonable measures, Dr. Cole</p> <p>22 told you how Appian did all of these.</p> <p>23 When they had a trial program,</p> <p>24 active measures to protect, block</p> <p>25 access by the competitors by e-mail</p>	<p style="text-align: right;">Page 8109</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 address.</p> <p>3 Now, that was the second part of</p> <p>4 the instruction. What about the first</p> <p>5 part, the independent economic value?</p> <p>6 He told you about that, too.</p> <p>7 Mr. Ross told you, listen, this</p> <p>8 information is our proprietary trade</p> <p>9 secrets. This is where we get all of</p> <p>10 our revenue from. That's why this</p> <p>11 matters. That's why they had this</p> <p>12 independent value.</p> <p>13 And Dr. Paul told you, Pega knew</p> <p>14 it had value because they used it so</p> <p>15 much. If it wasn't valuable, why</p> <p>16 would they use it?</p> <p>17 Dr. Easttom says, oh, nothing.</p> <p>18 It's trivial.</p> <p>19 Look at how they used it.</p> <p>20 Dr. Cole showed you all of the people</p> <p>21 at Pega who were spending time on this</p> <p>22 and receiving copies of this. It</p> <p>23 includes all of the top people at the</p> <p>24 company, all the Treflers, the</p> <p>25 Schuermans, the Akgonuls. They knew</p>

<p style="text-align: right;">Page 8110</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 all of this. They knew it has value.</p> <p>3 And look at what they say</p> <p>4 themselves about does this information</p> <p>5 have value.</p> <p>6 Leon Trefler: Do you agree the</p> <p>7 information assisted Pegasystems</p> <p>8 competing against Appian?</p> <p>9 Yes.</p> <p>10 He knows it's gold dust.</p> <p>11 Again, to be clear, the</p> <p>12 information was useful, yes.</p> <p>13 Mr. Bearden, he explained it pretty</p> <p>14 well. He says it was hugely useful.</p> <p>15 It gave us a level of insight that we</p> <p>16 didn't have before. We could back up</p> <p>17 claims, and he explains even why. He</p> <p>18 said: Before we had some anecdotes,</p> <p>19 but now, this gave us the details.</p> <p>20 That's why it mattered. He said</p> <p>21 it's like having access to the black</p> <p>22 box.</p> <p>23 Remember? Mr. Davison called it</p> <p>24 a black box too. He knows it has</p> <p>25 value because now you can get in, you</p>	<p style="text-align: right;">Page 8111</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 can back up your claims. You can make</p> <p>3 very convincing arguments that are</p> <p>4 hard to refute.</p> <p>5 They want to tell you this has</p> <p>6 no value? Look at what they said in</p> <p>7 their documents at the time. Here's</p> <p>8 Mr. Cardiko, he said: Excellent</p> <p>9 information. We can start shaping</p> <p>10 RFPs, et cetera.</p> <p>11 Mr. Malackowski explained to you</p> <p>12 on that e-mail why this matters;</p> <p>13 because they are shaping the sales</p> <p>14 process. They want to eliminate</p> <p>15 Appian before they even get a chance</p> <p>16 to show up. That's one of the reasons</p> <p>17 why direct competition doesn't even</p> <p>18 tell the whole story because they are</p> <p>19 eliminating Appian before they can</p> <p>20 show up.</p> <p>21 There are other documents.</p> <p>22 Look, they're saying, they are</p> <p>23 delivering information. This will</p> <p>24 help you fend off Appian. You</p> <p>25 couldn't have delivered this at a</p>
<p style="text-align: right;">Page 8112</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 better time, they say in this e-mail.</p> <p>3 It's great. Mr. Trefler himself</p> <p>4 says, yeah, well, Rabobank would value</p> <p>5 this information.</p> <p>6 Project Crush, look at what</p> <p>7 Mr. Baril says. This proved to be</p> <p>8 incredibly useful.</p> <p>9 Their experts say, oh, it's</p> <p>10 trivial. It's useless.</p> <p>11 Look at what they say in the</p> <p>12 contemporaneous instant messages. It</p> <p>13 is extremely helpful having access to</p> <p>14 the system, Mr. Baril.</p> <p>15 Even Mr. Le explains how it's</p> <p>16 valuable. It's like the analogy of a</p> <p>17 test drive of a car. Oh, you can</p> <p>18 read. You can watch a YouTube video.</p> <p>19 It's a personal experience when you're</p> <p>20 actually driving the car. That's when</p> <p>21 you can poke and prod, test, really</p> <p>22 know what the trade secrets are.</p> <p>23 Now, what about the part about</p> <p>24 it not being generally known or</p> <p>25 readily ascertainable by proper names?</p>	<p style="text-align: right;">Page 8113</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Well, simple, ladies and gentlemen.</p> <p>3 If you could Google this, why did they</p> <p>4 do all of this?</p> <p>5 Dr. Cole explained why. That's</p> <p>6 the only way they could get it. They</p> <p>7 had to go find someone who wasn't</p> <p>8 loyal. They had to get it from the</p> <p>9 protected Forum, and they told you it</p> <p>10 was hard to get. They had to get it</p> <p>11 through Zou.</p> <p>12 Now, the definition that</p> <p>13 Judge Gardiner read you of</p> <p>14 misappropriation, it's detailed. You</p> <p>15 can go through it, but you'll note it</p> <p>16 talks about acquisition of a trade</p> <p>17 secret, disclosure of a trade secret,</p> <p>18 use of a trade secret.</p> <p>19 They met all of these criteria,</p> <p>20 both Pegasystems and Zou in multiple</p> <p>21 subcategories.</p> <p>22 And focus also on improper means</p> <p>23 I told you about earlier, right? And</p> <p>24 this is that instruction. Just about</p> <p>25 all of these apply. Theft,</p>

<p style="text-align: right;">Page 8114</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 misrepresentation, use of a computer</p> <p>3 network authority, breach of a duty to</p> <p>4 maintain secrecy. Espionage. They</p> <p>5 are calling them spies.</p> <p>6 Now, what did they do with this</p> <p>7 information? Dr. Marshall took you</p> <p>8 through this, right? Remember what he</p> <p>9 said.</p> <p>10 He's also got a Ph.D., one</p> <p>11 Ph.D., the one he spent years getting,</p> <p>12 seriously. He worked all over the</p> <p>13 industry, lots of experience in</p> <p>14 software. He was the guy at Gartner</p> <p>15 who was in charge of mobile and client</p> <p>16 computing.</p> <p>17 Remember? Pega themselves went</p> <p>18 to him for advice when he was at</p> <p>19 Gartner. They had a strategy day.</p> <p>20 Look at what they said: We want to</p> <p>21 get Richard's views. What must Pega</p> <p>22 do?</p> <p>23 They didn't go to ask</p> <p>24 Dr. Easttom or Mr. Pinto. They went</p> <p>25 to Dr. Marshall before any of this</p>	<p style="text-align: right;">Page 8115</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 happened.</p> <p>3 They sent all their people. You</p> <p>4 know, Ms. Louis, apparently, they said</p> <p>5 wasn't there. Mr. Bixby,</p> <p>6 Mr. Schuerman, they are all there.</p> <p>7 And remember, they are asking</p> <p>8 Richard. They want Richard's advice.</p> <p>9 What opportunities are we missing?</p> <p>10 What should we build? They viewed him</p> <p>11 as the expert.</p> <p>12 What did Dr. Marshall tell you?</p> <p>13 He told you these changes were</p> <p>14 critical because, otherwise, they are</p> <p>15 going to go the way of Lotus 1-2-3.</p> <p>16 He went through all of these</p> <p>17 videos, 123. You saw how he had</p> <p>18 memorized all those videos. He could</p> <p>19 tell you everything that was in every</p> <p>20 one of them.</p> <p>21 And he told you they made</p> <p>22 improvements in all these five areas,</p> <p>23 three of which come under ease of use.</p> <p>24 And he told you, you know, it's the</p> <p>25 what versus the how. It's the video.</p>
<p style="text-align: right;">Page 8116</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 It's the live access. That enabled</p> <p>3 them to poke and prod, really learn</p> <p>4 how all of this worked.</p> <p>5 And he took you through why ease</p> <p>6 of use mattered so much because Pega,</p> <p>7 remember, they were the platform that</p> <p>8 was old, clunky technology. Appian,</p> <p>9 remember what they keep saying,</p> <p>10 Project Crush, intuitive, intuitive,</p> <p>11 intuitive because Appian was the</p> <p>12 modern, streamlined platform.</p> <p>13 Pega knew this. Look in their</p> <p>14 e-mails right from the beginning.</p> <p>15 Mr. Petronio saying: Appian, it's</p> <p>16 easy to use. That's the key criteria.</p> <p>17 He even talks about creating</p> <p>18 data types, CDTs. He talks about the</p> <p>19 shapes. You don't need to know our</p> <p>20 methods.</p> <p>21 That's why Pega was so</p> <p>22 complicated. You couldn't use it</p> <p>23 without knowing all of their methods,</p> <p>24 the opposite of intuitive. They</p> <p>25 recognized themselves, they're not at</p>	<p style="text-align: right;">Page 8117</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 market leadership levels of ease of</p> <p>3 use of these other key areas.</p> <p>4 Their own customers were telling</p> <p>5 them, Pega is very complicated. The</p> <p>6 product was sold as simple, but it</p> <p>7 isn't at all. You saw all what their</p> <p>8 customers had to say.</p> <p>9 Mr. Schuerman, he admitted. He</p> <p>10 said: We decided to focus on this</p> <p>11 based on the honest feedback from our</p> <p>12 clients.</p> <p>13 So what did they do?</p> <p>14 Dr. Marshall just went through this.</p> <p>15 I won't do it again in detail, but</p> <p>16 just to remind you.</p> <p>17 Smart Services, they didn't have</p> <p>18 it in 6.3. They come and they tell</p> <p>19 you, oh, you know, we just sort of</p> <p>20 kind of had it. We just made it more</p> <p>21 visible.</p> <p>22 Dr. Marshall, remember, he went</p> <p>23 through every platform, every version.</p> <p>24 He looked at exactly what was there</p> <p>25 and wasn't there, and he told you they</p>

<p style="text-align: right;">Page 8118</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 added it in 7.1. He showed you in the</p> <p>3 actual platform how it compared the</p> <p>4 old version with -- you could program</p> <p>5 it, but it's a lot of work, very hard.</p> <p>6 You need to know our methods, and the</p> <p>7 simplified, streamlined version.</p> <p>8 Where did it come from?</p> <p>9 Remember, they had videos. We showed</p> <p>10 you videos where Zou was explaining</p> <p>11 the Smart Services. And then Kerim</p> <p>12 Akgonul, he has that meeting with Zou</p> <p>13 and then he circulates screenshots to</p> <p>14 everyone off the Smart Services in</p> <p>15 Appian.</p> <p>16 And the similarities</p> <p>17 Dr. Marshall was showing you,</p> <p>18 remember, how do they end up? There's</p> <p>19 Appian and there's Pega. Now, they've</p> <p>20 all got the same key attributes, send</p> <p>21 e-mail, create PDF, add attachment,</p> <p>22 post to feed. That's where they end</p> <p>23 up.</p> <p>24 And what do they say in their</p> <p>25 own document about why customers</p>	<p style="text-align: right;">Page 8119</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 should operate? Look at what they</p> <p>3 say.</p> <p>4 Is it there in 6.3? No. Is it</p> <p>5 there in 7? Yes.</p> <p>6 Even Mr. Bixby, you know, while</p> <p>7 dancing around and trying to say, oh,</p> <p>8 we sort of had it, we kind of had it.</p> <p>9 He ultimately admits they weren't in</p> <p>10 6.3. They were in 7.1. Oh, yeah.</p> <p>11 Ease of editing. Again, we went</p> <p>12 through, Dr. Marshall, all of the</p> <p>13 platforms and he told you how</p> <p>14 important this is because developers</p> <p>15 are working on this all the time, day</p> <p>16 in and day out. Single button makes</p> <p>17 all the difference, huge economic</p> <p>18 value.</p> <p>19 Remember, he showed you there</p> <p>20 was a video with Mr. Zou showing it to</p> <p>21 Mr. Akgonul where he goes, oh, no,</p> <p>22 because he made a mistake and then he</p> <p>23 shows how they fix the mistake.</p> <p>24 And then where do they end up?</p> <p>25 Appian, Pega, and he told you, I know</p>
<p style="text-align: right;">Page 8120</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 this is in the developer because I</p> <p>3 checked it. I went through the</p> <p>4 versions when I created another</p> <p>5 identity account to check. It's not</p> <p>6 there, I tried that, no matter what</p> <p>7 everyone else said. He didn't just</p> <p>8 tell you. He showed you.</p> <p>9 Even Mr. Bixby, he doesn't</p> <p>10 dispute they added an editing button</p> <p>11 in 7.1.1.</p> <p>12 What about custom data types?</p> <p>13 Remember, Dr. Marshall said that this</p> <p>14 is complicated, and it is. But it's</p> <p>15 very important because it's how the</p> <p>16 data is managed. It's a huge</p> <p>17 difference for the people on a</p> <p>18 day-to-day level.</p> <p>19 We're not saying Appian invented</p> <p>20 this. But he shows how you deploy and</p> <p>21 use CDTs in a BPM platform. That's</p> <p>22 where Appian was innovative and ahead</p> <p>23 of the curve.</p> <p>24 And they weren't there in 6.3.</p> <p>25 He knows because he went through all</p>	<p style="text-align: right;">Page 8121</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 of them and checked, but they added in</p> <p>3 7.1. They keep refining it to keep up</p> <p>4 with Appian.</p> <p>5 We saw them in the videos.</p> <p>6 Remember, here is Mr. Akgonul, another</p> <p>7 little taste just to remind you of the</p> <p>8 videos.</p> <p>9 (Video played.)</p> <p>10 MR. MANGI: They are saying, oh,</p> <p>11 we already had CDTs. We had them</p> <p>12 since the early 2000s. Why we would</p> <p>13 care about Appian?</p> <p>14 Then why is Mr. Akgonul trying</p> <p>15 to find out all about it?</p> <p>16 Look at what happens in their</p> <p>17 own internal documents. He sends</p> <p>18 screenshots, remember, of Smart</p> <p>19 Shapes. Look at what he does with</p> <p>20 CDTs. He's sending around those</p> <p>21 screenshots too. They had that</p> <p>22 meeting the next year in February with</p> <p>23 the 222 slides.</p> <p>24 Look at what some of them say.</p> <p>25 Data models, Appian, you define your</p>

<p style="text-align: right;">Page 8122</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 own CDTs. They provide all the</p> <p>3 details. If they had this since the</p> <p>4 early 2000s, why are they doing all</p> <p>5 this?</p> <p>6 Look at how they study it, slide</p> <p>7 after slide after slide studying</p> <p>8 Appian CDTs.</p> <p>9 What about Project Crush? It</p> <p>10 has a whole section on this, on CDTs</p> <p>11 in Appian.</p> <p>12 And what do they say at the end</p> <p>13 of it? They show a screenshot of it</p> <p>14 and they say: Discuss improvement to</p> <p>15 data modeling with product management,</p> <p>16 status completed.</p> <p>17 They want you to believe we</p> <p>18 would never look at this, we had this</p> <p>19 since the early 2000s. Are they</p> <p>20 telling you the truth?</p> <p>21 Look at what they say about</p> <p>22 Project Crush. They say: Feedback</p> <p>23 delivered to product marketing,</p> <p>24 improvements underway. And they would</p> <p>25 have you believe Dr. Easttom says, oh,</p>	<p style="text-align: right;">Page 8123</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 no evidence that they ever looked at</p> <p>3 Appian for improvements. What do you</p> <p>4 call this?</p> <p>5 And Dr. Marshall told you about</p> <p>6 the striking similarities on where you</p> <p>7 end up. Remember, he told you. It's</p> <p>8 not about first name, last name. It's</p> <p>9 not about which columns you put</p> <p>10 together. It's about demonstrating a</p> <p>11 concept. Before this was complicated,</p> <p>12 fragmented. Now it's logical, the way</p> <p>13 a human brain thinks. That's why</p> <p>14 developers can manage the data. It's</p> <p>15 easier.</p> <p>16 Their own upgrade document Pega</p> <p>17 7 explains it. They say now we've got</p> <p>18 this new data model and this makes it</p> <p>19 faster and easier. They are telling</p> <p>20 you, no, we didn't change anything.</p> <p>21 Social. Now social and mobile</p> <p>22 are very interesting, ladies and</p> <p>23 gentlemen, because they say to you,</p> <p>24 oh, look, we were already working on</p> <p>25 this. And yeah, they were, but they</p>
<p style="text-align: right;">Page 8124</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 weren't succeeding.</p> <p>3 That's the whole point. And</p> <p>4 they took specific features from us</p> <p>5 for that reason.</p> <p>6 On social, they were very basic.</p> <p>7 Appian had the innovative approach</p> <p>8 here.</p> <p>9 They knew it. Look at their</p> <p>10 internal documents. Socials are hard</p> <p>11 to do for us. We admit it. Ms. Garg,</p> <p>12 she admits, we only had basic</p> <p>13 commenting capabilities, stuff that's</p> <p>14 been around for a long time.</p> <p>15 What did Appian have?</p> <p>16 Out-of-the-box integration of work</p> <p>17 lists and social. There's a note.</p> <p>18 Dr. Marshall looked through all of</p> <p>19 them and he tells you, it showed up</p> <p>20 after Zou in 7.1. Where did it come</p> <p>21 from? He sees it.</p> <p>22 He doesn't just tell you. He</p> <p>23 showed in the platform, look, here it</p> <p>24 is. Here's where it shows up and he</p> <p>25 tells you where it all came from.</p>	<p style="text-align: right;">Page 8125</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 They are working with Zou. He</p> <p>3 had Appian's documentation before they</p> <p>4 made the change. The to-do meeting,</p> <p>5 right? It's all about application</p> <p>6 enhancement on social and Tempo</p> <p>7 documents.</p> <p>8 Here he is sending the</p> <p>9 confidential documentation from within</p> <p>10 Forum. See, it says right there,</p> <p>11 Appian 6.7 documentation.</p> <p>12 And then remember how, remember</p> <p>13 how their experts say to you: Appian</p> <p>14 is terrible. Appian is not the</p> <p>15 leader. Why would we look at Appian?</p> <p>16 Look at what their own documents</p> <p>17 from the times say. They're talking</p> <p>18 about 7.1. Great job, everyone. This</p> <p>19 solution allows us to compete with</p> <p>20 other leaders like Appian Tempo.</p> <p>21 The Why Upgrade document</p> <p>22 explains it. 7.1, got something new.</p> <p>23 Here's why you should upgrade, social</p> <p>24 collaboration, fully integrated.</p> <p>25 Remember, that's what</p>

<p style="text-align: right;">Page 8126</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Dr. Marshall is emphasizing. Now</p> <p>3 they've got this out-of-the-box</p> <p>4 capability.</p> <p>5 You know where that came from.</p> <p>6 We should create a view just like this</p> <p>7 and ship with it. That is what they</p> <p>8 did after studying Appian Tempo in a</p> <p>9 live meeting with Mr. Zou.</p> <p>10 And Mr. Bixby? Yeah, he admits</p> <p>11 it. The social view, that's part</p> <p>12 of 6.3? No. Ms. Garg is saying add</p> <p>13 it? Yes. She makes that suggestion</p> <p>14 right after attending a meeting with</p> <p>15 Zou? Yes, correct.</p> <p>16 You can see where it came from.</p> <p>17 And he admits it, one of the</p> <p>18 improvements in 7. Remember, they're</p> <p>19 saying, no, no, you now, we already</p> <p>20 had everything.</p> <p>21 Look at what he admits. One of</p> <p>22 the improvements they made was</p> <p>23 out-of-the-box integration of work</p> <p>24 lists into the social feed. That's</p> <p>25 what Dr. Marshall said. He agrees</p>	<p style="text-align: right;">Page 8127</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 with it.</p> <p>3 Now, on mobile same story. They</p> <p>4 weren't a leader before, Ms. Louis</p> <p>5 admits that. Pega was basic.</p> <p>6 Remember, they were using third</p> <p>7 parties at Sencha for a Band-Aid</p> <p>8 solution. So Appian was way ahead.</p> <p>9 Out-of-the-box solutions, what</p> <p>10 did they say themselves about their</p> <p>11 mobile? Never deployed even by a</p> <p>12 customer in the pre-Zou era.</p> <p>13 And again, remember, they are</p> <p>14 saying Appian was terrible and why</p> <p>15 would we look at Appian. Look at what</p> <p>16 their document says: Appian was the</p> <p>17 first mover to the mobile as a BPM</p> <p>18 provider.</p> <p>19 So their own contemporaneous</p> <p>20 document, that's what it says.</p> <p>21 And think about their mindset,</p> <p>22 their mindset. This is the</p> <p>23 information they were getting from a</p> <p>24 Gartner person who Mr. Trefler said he</p> <p>25 had a lot of respect for. They were</p>
<p style="text-align: right;">Page 8128</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 being told Appian's mobile was</p> <p>3 available and better than theirs, so</p> <p>4 they were worried about this.</p> <p>5 And Dr. Marshall went through</p> <p>6 them all, explains to you, no</p> <p>7 out-of-the-box capability before or</p> <p>8 after Zou, prebuilt configuration</p> <p>9 out-of-the-box.</p> <p>10 Their own software says inside</p> <p>11 of it: Now in Pega 7, no</p> <p>12 customization required.</p> <p>13 Where did it come from? Their</p> <p>14 own meeting minutes. Remember that</p> <p>15 meeting with Mr. Trefler, they are</p> <p>16 doing a comparison of Pega and Appian</p> <p>17 mobile. They said, oh, no, no, we</p> <p>18 would never look at a competitor. Do</p> <p>19 you believe that?</p> <p>20 Their own operating document</p> <p>21 says, now, Pega 7, post-Zou, no coding</p> <p>22 required, exactly what Dr. Marshall</p> <p>23 told you had come from Appian.</p> <p>24 And Mr. Bixby, he agrees, yeah,</p> <p>25 they're saying no coding required in</p>	<p style="text-align: right;">Page 8129</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Pega 7. You wouldn't just say they</p> <p>3 made an upgrade if it wasn't true, no.</p> <p>4 Dr. Marshall told you why all of</p> <p>5 this matters, because it's key to the</p> <p>6 architecture and design. They would</p> <p>7 have gone the way of Lotus 123.</p> <p>8 That's why that's so critical.</p> <p>9 And remember, Dr. Marshall told</p> <p>10 you, they kept doing this all</p> <p>11 throughout the Zou era. Remember,</p> <p>12 later he showed you some examples.</p> <p>13 Here's Ben Baril working with</p> <p>14 Ms. Barak in 2019, product management</p> <p>15 people. They're talking about, oh,</p> <p>16 what else can we do? Yeah, here's</p> <p>17 what we can do on integration. Can I</p> <p>18 play with it a bit.</p> <p>19 The people in India, remember</p> <p>20 what they are studying. They're</p> <p>21 take-away is from our study of Appian,</p> <p>22 which they got using all those</p> <p>23 cousins's credentials from Appian</p> <p>24 business partners. Can we do this,</p> <p>25 can we do that, and reach our</p>

<p style="text-align: right;">Page 8130</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 platform?</p> <p>3 Now, they admit that what they</p> <p>4 were doing was wrong, at least</p> <p>5 sometimes. And let's look at that</p> <p>6 evidence.</p> <p>7 Look at what Mr. Trefler says.</p> <p>8 And we danced around a little bit, but</p> <p>9 I played for you his sworn deposition</p> <p>10 testimony where he says: I don't</p> <p>11 think it was appropriate to hire</p> <p>12 Zou -- talking about Petronio.</p> <p>13 Why not? He didn't check he was</p> <p>14 fully clear.</p> <p>15 I said to him: I just want to</p> <p>16 understand what your testimony is</p> <p>17 going to be at trial. You're not</p> <p>18 going to show up and say, no, no, it</p> <p>19 was appropriate. This was all fine?</p> <p>20 I wouldn't say it.</p> <p>21 That's their CEO. You have to</p> <p>22 decide if this was right or not. Take</p> <p>23 his word for it.</p> <p>24 He did have access he was</p> <p>25 permitted to share. Mr. Trefler</p>	<p style="text-align: right;">Page 8131</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 himself says: I've seen evidence that</p> <p>3 suggests that Zou did things for which</p> <p>4 he was not entitled.</p> <p>5 Interesting fact, Ben Hoffman,</p> <p>6 we played his deposition. He showed</p> <p>7 up after the Zou stuff, and he worked</p> <p>8 in competitive intelligence. He</p> <p>9 didn't know about the Zou stuff,</p> <p>10 right?</p> <p>11 But look at what he said: Did</p> <p>12 you ever try to contact someone about</p> <p>13 Appian software? No, because I</p> <p>14 wouldn't feel comfortable doing that.</p> <p>15 It would be stepping over my personal</p> <p>16 ethical boundaries.</p> <p>17 He doesn't even know they'd</p> <p>18 already done it. Do you want know how</p> <p>19 pervasively they were using this</p> <p>20 stuff, why it was gold dust? Even</p> <p>21 this guy, we showed you his</p> <p>22 deposition, was circulating the</p> <p>23 Zou-created documents. He just didn't</p> <p>24 know where they'd come from.</p> <p>25 Mr. Oleksiak, who worked on the</p>
<p style="text-align: right;">Page 8132</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Census opportunity, you know, he</p> <p>3 talked about his grand idea that he</p> <p>4 got to access government systems, just</p> <p>5 like Mr. Zou had for Appian. Well,</p> <p>6 what if someone offered you money to</p> <p>7 let them use your credentials?</p> <p>8 He says: I would have reported</p> <p>9 them to the US Department of Commerce.</p> <p>10 So these are their own</p> <p>11 employees.</p> <p>12 What about Mr. Zou? You know,</p> <p>13 Mr. Zou, he doesn't want to come</p> <p>14 straight out and say, what I did was</p> <p>15 wrong, but he comes pretty close:</p> <p>16 Even using your personal laptop, you</p> <p>17 only had credentials because it was</p> <p>18 through your employer, right?</p> <p>19 He said: Yeah.</p> <p>20 We said: You only got access</p> <p>21 because you were working on government</p> <p>22 projects for all these government</p> <p>23 contractors? Yeah.</p> <p>24 He admits that his user ID,</p> <p>25 which was the same throughout, moved</p>	<p style="text-align: right;">Page 8133</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 with him from employer to employer.</p> <p>3 He admits it was associated with</p> <p>4 Serco. Yeah.</p> <p>5 And we say to him: Can you use</p> <p>6 your employer's property to make money</p> <p>7 on the side? And he admits, no.</p> <p>8 Even he, on some level, knows</p> <p>9 what he did was wrong.</p> <p>10 What about the later stuff?</p> <p>11 Well, Mr. Trefler, is this okay what</p> <p>12 Mr. Baril is doing? And he says, no,</p> <p>13 he shouldn't have done it.</p> <p>14 Masking your identity --</p> <p>15 remember, that's the phrase from the</p> <p>16 Code of Conduct -- isn't that exactly</p> <p>17 what these guys are doing? Yes, they</p> <p>18 shouldn't have done it.</p> <p>19 Take his word for on whether it</p> <p>20 was right or wrong on that issue.</p> <p>21 What about all the cousins of</p> <p>22 Mr. Sarada, right. He was using the</p> <p>23 purloined credentials. Shouldn't have</p> <p>24 done that either.</p> <p>25 Even the people down in India,</p>

<p style="text-align: right;">Page 8134</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 you know, Vijay Vaddem, remember,</p> <p>3 ladies and gentlemen, you know, these</p> <p>4 are the people who they decided to</p> <p>5 discipline. Not the people sitting in</p> <p>6 America, the Treflers or Schuermans.</p> <p>7 It's these guys. Even he admits,</p> <p>8 shouldn't have done it.</p> <p>9 Where does the buck stop, with</p> <p>10 the man who sets the culture and the</p> <p>11 tone of the company, Paul Foon, right</p> <p>12 there. He's responsible for this</p> <p>13 scheme.</p> <p>14 Now, what do they say to defend</p> <p>15 against all of this? They are going</p> <p>16 to talk about that, and then I'll come</p> <p>17 back again and I'll talk about it</p> <p>18 more. But let me give you a preview.</p> <p>19 One thing they say is they say,</p> <p>20 oh, you know, nothing to see here. We</p> <p>21 already knew all of this.</p> <p>22 Okay. Show me. Where are the</p> <p>23 documents?</p> <p>24 They showed you this one</p> <p>25 document from 2010. Well, ladies and</p>	<p style="text-align: right;">Page 8135</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 gentlemen, we can look at that all day</p> <p>3 long, there's nothing about the trade</p> <p>4 secrets that we know came from Zou.</p> <p>5 Look at the examples. This is</p> <p>6 what they showed you. They said,</p> <p>7 yeah, we knew about KX Systems.</p> <p>8 So what? We don't claim that</p> <p>9 was a secret.</p> <p>10 They say, oh, you know, we knew</p> <p>11 that they lacked AES.</p> <p>12 Who cares? That's got nothing</p> <p>13 to do with the issues in the case. If</p> <p>14 there was, they would have shown you.</p> <p>15 There's nothing in those documents on</p> <p>16 these trade secrets.</p> <p>17 Here's another one. All they</p> <p>18 knew about was that there's kdb+. So</p> <p>19 what?</p> <p>20 Mr. Schuerman, he basically</p> <p>21 admitted all of this. He showed you</p> <p>22 these two documents, but they don't</p> <p>23 talk about the checkpointing settings.</p> <p>24 Nope, they don't.</p> <p>25 We asked him, you know, what</p>
<p style="text-align: right;">Page 8136</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 about unified management chart-making</p> <p>3 issues, what is your basis for saying</p> <p>4 we knew about this?</p> <p>5 And what does he explain? He</p> <p>6 says, well, we were making assumptions</p> <p>7 that Appian had these limitations</p> <p>8 because we talked about ourselves and</p> <p>9 we weren't hearing anything back from</p> <p>10 the market.</p> <p>11 I mean, that is how tenuous</p> <p>12 their argument is when they say, we</p> <p>13 knew about all of this.</p> <p>14 And we point out that they're</p> <p>15 going to say, so this is just</p> <p>16 assumptions because you didn't have</p> <p>17 access to the live running version?</p> <p>18 And he says, yes, we did.</p> <p>19 And then after you got the</p> <p>20 access, then you no longer had to rely</p> <p>21 on the site because you could see it?</p> <p>22 He admits it, yes.</p> <p>23 And he did this on all of these</p> <p>24 issues, right? He talked about chart</p> <p>25 types: Well, you know, they don't say</p>	<p style="text-align: right;">Page 8137</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 anything in those older documents</p> <p>3 about these specifics on chart types,</p> <p>4 do they? No, he admits it.</p> <p>5 They didn't know this before,</p> <p>6 you know. Where did you get it from?</p> <p>7 Mr. Zou could run at our behest, he</p> <p>8 admits it.</p> <p>9 You know where this came from.</p> <p>10 Those documents they are showing you,</p> <p>11 the predocuments, what about process</p> <p>12 ID, did you know that? No, we learned</p> <p>13 that from Zou, too.</p> <p>14 Then you have Dr. Easttom.</p> <p>15 Let's spend a moment on him.</p> <p>16 Remember, this is a guy who says to</p> <p>17 me: I was working full time, 60 hours</p> <p>18 a week, and in the same three-year</p> <p>19 period, from online universities, I</p> <p>20 got myself three Ph.D.s and a master's</p> <p>21 degree.</p> <p>22 Who do you think is credible</p> <p>23 here? Is it this guy or Dr. Cole?</p> <p>24 I'll leave it up to you.</p> <p>25 Look at what else he said on the</p>

<p style="text-align: right;">Page 8138</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 topic of his credibility, you know, he</p> <p>3 says: I'm independent. I'm not here</p> <p>4 to help Pega. I'm so independent I</p> <p>5 don't even talk to anyone at Pega.</p> <p>6 Look at what he says: Using</p> <p>7 fake names, is that all okay?</p> <p>8 He says: I don't know of a</p> <p>9 standard it violates. It's well</p> <p>10 within the bounds of proper</p> <p>11 competitive intelligence.</p> <p>12 Dr. Cole said the opposite. Who</p> <p>13 do you think is credible?</p> <p>14 And then, don't forget this,</p> <p>15 ladies and gentlemen, he is the man</p> <p>16 for Pegasystems. He fits with them to</p> <p>17 a T. He himself used a fake name to</p> <p>18 try and get access to Appian, and it</p> <p>19 got revoked right away because their</p> <p>20 security measures are that good. But</p> <p>21 he tried, and he knew that there are</p> <p>22 Terms of Use that prohibited what he</p> <p>23 was doing.</p> <p>24 He made a false representation.</p> <p>25 He violated the Terms of Use. His</p>	<p style="text-align: right;">Page 8139</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 answer, absolutely. Is this still the</p> <p>3 conduct you'd expect from an expert</p> <p>4 coming to testify in court? Have you</p> <p>5 ever seen anything like this?</p> <p>6 Look at what he then says, he</p> <p>7 says to you: All of this information</p> <p>8 is out there, it's on Google. There's</p> <p>9 no secret. You know, I did web</p> <p>10 searches, found everything before my</p> <p>11 coffee got cold.</p> <p>12 Okay. Great, Dr. Easttom. Now</p> <p>13 show me. Remember what the judge</p> <p>14 said, don't rely on speculation, rely</p> <p>15 on evidence. Show me.</p> <p>16 What does he show you? He shows</p> <p>17 you this document, nothing about any</p> <p>18 of the trade secrets at issue. He's</p> <p>19 trying to throw up smoke.</p> <p>20 Process model, Dr. Marshall told</p> <p>21 you explicitly, yeah, process model,</p> <p>22 that's not a secret. Social, well,</p> <p>23 it's actually a part of the</p> <p>24 out-of-the-box, integrated business</p> <p>25 rules, process registry, who cares?</p>
<p style="text-align: right;">Page 8140</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 It's not showing anything.</p> <p>3 Remember, he's saying, this was</p> <p>4 all out there throughout the time</p> <p>5 period. This document, what he showed</p> <p>6 you, remember what you were instructed</p> <p>7 by the Court, this is for the purposes</p> <p>8 of what was in the public domain five</p> <p>9 months ago.</p> <p>10 So they want to say from</p> <p>11 Dr. Easttom, oh, all of this was out</p> <p>12 there, no secret. Well, two answers:</p> <p>13 One, then, why were you doing all of</p> <p>14 this; and number two, show me, where</p> <p>15 is it? They haven't shown you a</p> <p>16 thing.</p> <p>17 Mr. Petronio, he told you, I</p> <p>18 know how to use Google. I was keeping</p> <p>19 up with the public sources. Wasn't</p> <p>20 enough, it wasn't what he needed.</p> <p>21 Remember, he wanted the access.</p> <p>22 Then we have Mr. Pinto, don't</p> <p>23 forget Mr. Pinto. Remember, he's the</p> <p>24 guy they hired to rebut Dr. Marshall.</p> <p>25 That's his own job, right? Say no</p>	<p style="text-align: right;">Page 8141</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 improvements were made in the versions</p> <p>3 of the Pega platform.</p> <p>4 So, you know, remember, this is</p> <p>5 a tech company, Pega. These are their</p> <p>6 own products. What's the most basic</p> <p>7 thing they could have done to try and</p> <p>8 prove their case? Get someone to</p> <p>9 study the platform and say, I've</p> <p>10 looked at the platform. I can tell</p> <p>11 you none of this stuff was here or</p> <p>12 this stuff was there before, right?</p> <p>13 That's how you tell, you look at</p> <p>14 the platform. What did Pinto do?</p> <p>15 Look at this. He did not build</p> <p>16 in any platforms. Why do you think</p> <p>17 they didn't have him do that? If you</p> <p>18 want to compare Marshall and Pinto and</p> <p>19 decide who you want to believe, who</p> <p>20 did the work?</p> <p>21 Notice all those details I</p> <p>22 showed you, smart shape, CDTs, and you</p> <p>23 remember the level of detail</p> <p>24 Dr. Marshall -- and not just in the</p> <p>25 opinions, he explained where it came</p>

<p style="text-align: right;">Page 8142</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 from, how it works. He showed you the</p> <p>3 images in the platform.</p> <p>4 What did Mr. Pinto give you? He</p> <p>5 gave you a picture of a see-saw. This</p> <p>6 is what he gave you, and he says, oh,</p> <p>7 you know, features and functions</p> <p>8 versus usability and you've got to</p> <p>9 pick one or the other.</p> <p>10 Maybe that's how it works in</p> <p>11 Pega. That's not how it works in</p> <p>12 Appian. That's the whole point.</p> <p>13 Appian showed you can have both.</p> <p>14 That's why they came to Appian.</p> <p>15 On the specific issues</p> <p>16 Dr. Marshall talked about, he's the</p> <p>17 guy there to rebut Dr. Marshall. He</p> <p>18 gave you nothing. Why?</p> <p>19 He also says, remember, he says,</p> <p>20 oh, no one would look at Appian. We</p> <p>21 said, well, what about document after</p> <p>22 document where they're looking at</p> <p>23 Appian to consider improvement? He</p> <p>24 admits, yeah, you showed me that.</p> <p>25 You decide who you want to</p>	<p style="text-align: right;">Page 8143</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 believe between these two experts,</p> <p>3 credibility.</p> <p>4 Then they say, oh, you know,</p> <p>5 there are these VASP Agreements.</p> <p>6 Remember, they showed you all these</p> <p>7 blank templates. Zero evidence of</p> <p>8 anything that happened in the market,</p> <p>9 zero evidence that any of these trade</p> <p>10 secrets were ever discussed in any</p> <p>11 meeting with anyone.</p> <p>12 But what do they say? Well,</p> <p>13 Mr. Ross explained what this was all</p> <p>14 about. Look, these VASP Agreements,</p> <p>15 they're just so that some of Appian</p> <p>16 partners, they build solutions using</p> <p>17 Appian, they wanted to be able to</p> <p>18 market their solutions.</p> <p>19 Zero evidence of any Appian</p> <p>20 trade secret being disclosed. And by</p> <p>21 the way, these are not the agreements,</p> <p>22 just to be clear, that relate to the</p> <p>23 work Zou was doing. These are</p> <p>24 separate, unrelated agreements that</p> <p>25 happened to be with other business</p>
<p style="text-align: right;">Page 8144</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 partners.</p> <p>3 And even those templates that</p> <p>4 they showed you, the unsigned ones,</p> <p>5 look at them, they're full of</p> <p>6 restrictions and protections. Only</p> <p>7 named users with a need to know and</p> <p>8 are subject to binding agreements can</p> <p>9 have access. Anyone who is getting</p> <p>10 access has to agree to the Terms of</p> <p>11 Use.</p> <p>12 Mr. Ross told you that, too.</p> <p>13 In these agreements, there are</p> <p>14 confidentiality provisions, again,</p> <p>15 detailed protections of the kind you</p> <p>16 saw in the earlier agreements.</p> <p>17 They also showed you templates</p> <p>18 of Business Partner Agreements, again</p> <p>19 unsigned, not a shred of evidence of</p> <p>20 any trade secret ever being disclosed,</p> <p>21 but same stuff throughout, all the</p> <p>22 same protections, confidential</p> <p>23 information.</p> <p>24 Now, then in their opening</p> <p>25 statement, they said to you, Mr. Zou,</p>	<p style="text-align: right;">Page 8145</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 he was an authorized user who was</p> <p>3 given free trial to use on his own</p> <p>4 computer. It was their lawyer, Pega's</p> <p>5 lawyer who told you that. That was</p> <p>6 their defense.</p> <p>7 What did you hear from Mr. Zou?</p> <p>8 I didn't have a free trial. I never</p> <p>9 used a free trial.</p> <p>10 Here in openings, we lawyers, we</p> <p>11 made promises to you. And then with</p> <p>12 the evidence, we've got to prove those</p> <p>13 promises. Remember, I told you the</p> <p>14 documents will guide you to the truth.</p> <p>15 That's the promise I made. This is</p> <p>16 the promise that they made.</p> <p>17 Here's another promise they made</p> <p>18 to you. Remember, this slide from</p> <p>19 their opening? They said, oh, Appian</p> <p>20 has terrible security. Look at all of</p> <p>21 these users who they let into the</p> <p>22 trial.</p> <p>23 Remember, Mr. Ross looked at</p> <p>24 each one of these and explained them</p> <p>25 to you, look, all of these, he</p>

<p style="text-align: right;">Page 8146</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 testified, yeah, I looked at the full</p> <p>3 record and confirmed they're</p> <p>4 legitimate users. One wasn't, and</p> <p>5 Appian security was so good we blocked</p> <p>6 that one before access.</p> <p>7 They can't show you one example</p> <p>8 of anyone getting illicit access,</p> <p>9 other than this. This was how tight</p> <p>10 Appian security was.</p> <p>11 Then, look at all of this. They</p> <p>12 say, oh, it was software. How can</p> <p>13 software be a secret? But their own</p> <p>14 expert Mr. Pinto says, yeah, you can</p> <p>15 have trade secrets in the presentation</p> <p>16 there.</p> <p>17 This is Pega's own document.</p> <p>18 This is what they say about their own</p> <p>19 software and documentation. Look at</p> <p>20 what they say. It's confidential,</p> <p>21 subject to your license agreement.</p> <p>22 That's what they think about their own</p> <p>23 software.</p> <p>24 And, you know, when their</p> <p>25 experts say, oh, but developers could</p>	<p style="text-align: right;">Page 8147</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 see this. It's readily ascertainable</p> <p>3 to developers. How can it be a</p> <p>4 secret?</p> <p>5 The judge has instructed you,</p> <p>6 the number of users who can access</p> <p>7 from Forum is not relevant to any</p> <p>8 issues in this case. Why? Because</p> <p>9 they are all under license. If they</p> <p>10 are under license, that is how</p> <p>11 software companies protect themselves.</p> <p>12 Nothing wrong with that. Doesn't go</p> <p>13 to whether it's a secret.</p> <p>14 And then what does Mr. Trefler</p> <p>15 say about those agreements? He says,</p> <p>16 oh, they are garbage. They are</p> <p>17 garbage, but he doesn't say that about</p> <p>18 their own agreements.</p> <p>19 Their own agreements, they're</p> <p>20 important to protect them from getting</p> <p>21 sued.</p> <p>22 And, you know, what about all</p> <p>23 the fake names? Remember, those</p> <p>24 people, they had to check and agree to</p> <p>25 the Terms of Use, no competitor</p>
<p style="text-align: right;">Page 8148</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 access, every time they logged in.</p> <p>3 They say, oh, Mr. Petronio, he</p> <p>4 wasn't very good. At the time, they</p> <p>5 thought he was great. Nicely done,</p> <p>6 JP. They used all of his stuff.</p> <p>7 And then, you know, they attack</p> <p>8 Mr. Ross because they say, oh, you</p> <p>9 know, you're in deposition looking not</p> <p>10 at Appian materials, not at videos --</p> <p>11 because they hadn't given the videos</p> <p>12 to us yet -- just looking at the</p> <p>13 attack documents, we would like you to</p> <p>14 pluck out every trade secret then and</p> <p>15 there.</p> <p>16 And Mr. Ross explained it, I</p> <p>17 haven't seen the videos. I need the</p> <p>18 videos to be able to know what</p> <p>19 happened here. And he explains it,</p> <p>20 when I reviewed the videos, then it</p> <p>21 was very clear exactly what happened.</p> <p>22 On our documentation, was it</p> <p>23 made public? Yeah, in 2017, some of</p> <p>24 it was, but not all of it. The</p> <p>25 platform where the key secrets reside,</p>	<p style="text-align: right;">Page 8149</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 never made public because that</p> <p>3 protects our revenue.</p> <p>4 And then Mr. Akgonul says, oh,</p> <p>5 you know, our platforms are so</p> <p>6 fundamentally different, we would</p> <p>7 never look at anything from a</p> <p>8 competitor.</p> <p>9 Okay. Remember what happened</p> <p>10 when Mr. Baril told his product</p> <p>11 management colleagues that, oh, you</p> <p>12 know, I got access to an Appian trial,</p> <p>13 they so much interest that he sent</p> <p>14 this meme from Arrested Development</p> <p>15 say, oh, I've made a huge mistake</p> <p>16 because now everyone wants to know</p> <p>17 about Appian.</p> <p>18 They want to tell you they had</p> <p>19 no interest in this, look at what</p> <p>20 their own document says.</p> <p>21 And the people in India, don't</p> <p>22 forget them. They're sharing around</p> <p>23 all of this Appian information.</p> <p>24 There's Mr. Bixby responding:</p> <p>25 Excellent. Thanks for sending this.</p>

<p style="text-align: right;">Page 8150</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Anything we could use in 8.6?</p> <p>3 Let's talk now about the</p> <p>4 calculation of damages.</p> <p>5 Mr. Ross told you about why this</p> <p>6 hurt Appian so much, right? It's the</p> <p>7 gold dust they used competing against</p> <p>8 us and they can steal our secrets to</p> <p>9 improve their own platform.</p> <p>10 And here's a very important</p> <p>11 point, ladies and gentlemen, now the</p> <p>12 judge has explained once we've shown</p> <p>13 that they misappropriated our</p> <p>14 information, what's the burden on us?</p> <p>15 We have to show, by the greater</p> <p>16 weight of the evidence, Pegasystems's</p> <p>17 sales. We've just got to show the</p> <p>18 sales that they made. The burden is</p> <p>19 then on them.</p> <p>20 Pegasystems has the burden to</p> <p>21 show that any portion of their sales</p> <p>22 were not attributable to the trade</p> <p>23 secrets.</p> <p>24 So if any of their sales that</p> <p>25 they say were innocent, untainted by</p>	<p style="text-align: right;">Page 8151</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 this, it's on them to prove that, and</p> <p>3 they have to show any expenses to be</p> <p>4 deducted. Very important point.</p> <p>5 How does that work as a</p> <p>6 practical matter? I'm going to show</p> <p>7 you an illustration of that.</p> <p>8 So Appian has the burden of</p> <p>9 showing Pega sales, right? So here</p> <p>10 are the customers. Here are the sales</p> <p>11 Pega's making. We got to show that</p> <p>12 and Mr. Malackowski did.</p> <p>13 Pega then has the burden to</p> <p>14 show, you know, there's some part of</p> <p>15 this that's untainted by the trade</p> <p>16 secret, so we should take that out.</p> <p>17 So when you see in the graphic,</p> <p>18 okay, if they can show that, you take</p> <p>19 that piece out. But everything that</p> <p>20 is then left, where does that go.</p> <p>21 That is the unjust enrichment</p> <p>22 damages back to Appian; so that is how</p> <p>23 this is supposed to work.</p> <p>24 Now, what did Mr. Malackowski</p> <p>25 tell you? He calculated -- look,</p>
<p style="text-align: right;">Page 8152</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 there's a couple of ways you can look</p> <p>3 at this.</p> <p>4 On direct competition, if you</p> <p>5 just look at those opportunities, here</p> <p>6 are the important numbers. We'll name</p> <p>7 some of these later.</p> <p>8 He said \$479,029,000, that's a</p> <p>9 direct competition number. But if you</p> <p>10 look at the platform improvements,</p> <p>11 then the damages number for unjust</p> <p>12 enrichment, \$3,032,847,000.</p> <p>13 And let's not forget about</p> <p>14 Mr. Zou, right? His number, 23,608.</p> <p>15 Okay. How does he get there?</p> <p>16 So on the direct competition, he</p> <p>17 looked at the number of competitions,</p> <p>18 he told you in detail,</p> <p>19 Mr. Malackowski, about why this was</p> <p>20 all infected.</p> <p>21 Use your own ego. If you know</p> <p>22 your enemy and know yourself, you will</p> <p>23 not be imperiled in a hundred battles</p> <p>24 or 202 battles as they say.</p> <p>25 And remember, they kept saying,</p>	<p style="text-align: right;">Page 8153</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 oh, use this information, we'd never</p> <p>3 use this information.</p> <p>4 So remember, they've got to show</p> <p>5 you if any of their sales are innocent</p> <p>6 and untainted, right?</p> <p>7 So what are their favorite</p> <p>8 examples that they say were innocent?</p> <p>9 They didn't give you numbers on any of</p> <p>10 them, but let's just look at a couple</p> <p>11 of them.</p> <p>12 They said that the Census</p> <p>13 project, innocent and untainted.</p> <p>14 What did Mr. Oleksiak say? He</p> <p>15 said while he's working on Census</p> <p>16 project, he's downloading all the Zou</p> <p>17 materials. He says that it's an</p> <p>18 interesting war chest of materials,</p> <p>19 the stuff from Zou, while working on</p> <p>20 Census. He is working with Lockheed</p> <p>21 Martin on this.</p> <p>22 He says: I'm familiar with all</p> <p>23 of this information. He says he's</p> <p>24 having continuous conversations with</p> <p>25 Pega's competitive intelligence team</p>

<p style="text-align: right;">Page 8154</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 while working on Census. Doesn't</p> <p>3 remember what they talked about.</p> <p>4 And he says -- remember, we went</p> <p>5 through all of the people on Census</p> <p>6 who were working with Zou? There's a</p> <p>7 whole host of them: Louis, Bixby,</p> <p>8 Leon. And he says: Did you tell them</p> <p>9 that they didn't bring information</p> <p>10 from this into the Census?</p> <p>11 He can't. He admits it.</p> <p>12 And then, you know, he put up</p> <p>13 this report Census had prepared, and</p> <p>14 we showed you other things even in</p> <p>15 that report that refer to the Zou</p> <p>16 work. But he says at the time Census</p> <p>17 drafted this, did they know about</p> <p>18 this?</p> <p>19 No, they didn't. Of course</p> <p>20 there's no reference in the report.</p> <p>21 You can see how that sale was tainted.</p> <p>22 Then remember this? Mr. Kay at</p> <p>23 the end asking his own witness</p> <p>24 questions. He wanted to kind of seal</p> <p>25 the deal.</p>	<p style="text-align: right;">Page 8155</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 So he sat there, oh, you didn't</p> <p>3 find these documents useful, did you,</p> <p>4 in the competition, the Zou documents?</p> <p>5 And look at what he said. He</p> <p>6 said: Yeah, you know, it was</p> <p>7 directionally helpful.</p> <p>8 He admits it.</p> <p>9 What about Amazon? Another</p> <p>10 example they talk about. They were</p> <p>11 sent presentations that Petronio put</p> <p>12 together with Zou. Mr. Bearden</p> <p>13 connected these to the Zou work. They</p> <p>14 used it at Amazon, and they used these</p> <p>15 Appian documents.</p> <p>16 But look at what the CEO of</p> <p>17 Appian is saying: Were we even aware</p> <p>18 this was happening?</p> <p>19 Of course Appian was taken by</p> <p>20 surprise. They didn't know about what</p> <p>21 the other side had.</p> <p>22 And look, what was Amazon then</p> <p>23 expressing concerns about</p> <p>24 infrastructure? Where did all the</p> <p>25 trade secrets go to? That wasn't</p>
<p style="text-align: right;">Page 8156</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 untainted.</p> <p>3 Then Mr. Malackowski, it's not</p> <p>4 on him to do the revenue deductions,</p> <p>5 but he does them because he's being</p> <p>6 thorough. That's the number he gets</p> <p>7 through the calculation, \$479,029,000.</p> <p>8 Their own expert, he says, well,</p> <p>9 you know, there are a couple of other</p> <p>10 adjustments I think you've got to</p> <p>11 make. You've got to take out</p> <p>12 incumbency like Bank of America</p> <p>13 because there's no way Appian could</p> <p>14 win it once you're an incumbent.</p> <p>15 You saw the documents, fight of</p> <p>16 our lives. Those are real</p> <p>17 competitions. The whole reason</p> <p>18 they're on our list is because one of</p> <p>19 the other company's systems identified</p> <p>20 it as a real competition. That one's</p> <p>21 bogus.</p> <p>22 Then he said customers</p> <p>23 specifically -- that's why he's taking</p> <p>24 out things like Rabobank, nothing to</p> <p>25 do with the trade secrets.</p>	<p style="text-align: right;">Page 8157</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 But even after he does those</p> <p>3 bogus deductions, their own expert is</p> <p>4 saying it should be \$187 million in</p> <p>5 damages to Appian. You know, if there</p> <p>6 is a floor, that's what their own</p> <p>7 expert says, but it's bogus</p> <p>8 deductions.</p> <p>9 These are the categories of</p> <p>10 costs that Mr. Malackowski deducted,</p> <p>11 just so we're clear, same ones that</p> <p>12 their expert did.</p> <p>13 Now, let's talk about the real</p> <p>14 issue here: The product improvement</p> <p>15 category. You know, Mr. Malackowski</p> <p>16 went through the revenues. He talked</p> <p>17 about how he -- he was very</p> <p>18 conservative. He eliminated revenues</p> <p>19 for contracts that closed before Zou</p> <p>20 even if the revenues came in later on,</p> <p>21 right?</p> <p>22 So he took those revenues and</p> <p>23 then he deducted the appropriate</p> <p>24 expenses that are tied to that</p> <p>25 revenue. And remember,</p>

<p style="text-align: right;">Page 8158</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Mr. Malackowski specializes in trade</p> <p>3 secret and intellectual property</p> <p>4 calculations.</p> <p>5 Their expert Mr. Platt, he said:</p> <p>6 Maybe I did one or two cases many</p> <p>7 years ago.</p> <p>8 Who do you want to go with?</p> <p>9 And he came to the number</p> <p>10 finally, \$3,032,847,000. Remember</p> <p>11 now, again, the burden's on them. If</p> <p>12 they want to show you some of those</p> <p>13 sales were innocent, right, because</p> <p>14 it's about some other feature than</p> <p>15 ours, they have to show that.</p> <p>16 Their expert Mr. Platt, he said:</p> <p>17 I haven't even tried to do that.</p> <p>18 He hasn't even tried to</p> <p>19 apportion between things tied to trade</p> <p>20 secrets or not. He didn't do that.</p> <p>21 All he did is he said: Well,</p> <p>22 you've got to deduct all the costs.</p> <p>23 But remember what he said? He</p> <p>24 said: Oh, no, it's all dependent on</p> <p>25 how much you spend. If you're a</p>	<p style="text-align: right;">Page 8159</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 misappropriator and you spend all your</p> <p>3 money, then there's nothing for the</p> <p>4 victim. If you save \$5 billion, same</p> <p>5 situation, they can have \$5 billion.</p> <p>6 Does that make a moment of sense</p> <p>7 to you?</p> <p>8 Pega is hiring the Goo Goo</p> <p>9 Dolls. If they are hiring Train, oh,</p> <p>10 it's fine. Spend as much as you can.</p> <p>11 Don't leave anything for the victim to</p> <p>12 recover. That's not how this can</p> <p>13 work.</p> <p>14 Mr. Malackowski gave you the</p> <p>15 right cost deduction. These are the</p> <p>16 categories he deducted, the same</p> <p>17 categories that both experts used on</p> <p>18 the smaller number, and he explained</p> <p>19 why that makes sense, right?</p> <p>20 Because when you look at their</p> <p>21 tax returns, they show a loss. That</p> <p>22 doesn't mean they didn't get a</p> <p>23 benefit. They just took that money</p> <p>24 and redeployed it.</p> <p>25 So if you find there was</p>
<p style="text-align: right;">Page 8160</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 misappropriation, they've got to give</p> <p>3 that back. You can't steal money and</p> <p>4 then say, oh, sorry, I spent it. I</p> <p>5 would rather call a doctor than give</p> <p>6 it back to you.</p> <p>7 Once again, Mr. Zou, right, he</p> <p>8 also made money, \$23,608.19.</p> <p>9 Now briefly, coming to the end</p> <p>10 of this, let me talk about the</p> <p>11 Computer Crimes Act claim. This is</p> <p>12 important, ladies and gentlemen,</p> <p>13 because we want them to be accountable</p> <p>14 under the law for what they did, and</p> <p>15 it fit and satisfy the computer crime.</p> <p>16 The question is: Did they use a</p> <p>17 computer network without authority</p> <p>18 after 2015 to obtain property by false</p> <p>19 pretenses or converting the property</p> <p>20 of another? Absolutely they did.</p> <p>21 Why? Computer network just</p> <p>22 means two computers connected. Of</p> <p>23 course they were doing this to get the</p> <p>24 trial access.</p> <p>25 Converting property, various</p>	<p style="text-align: right;">Page 8161</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 definitions, but exerting control over</p> <p>3 property in denial or inconsistent</p> <p>4 with the owner's right contrary to our</p> <p>5 terms. Exactly what they did.</p> <p>6 Persons without authority when</p> <p>7 they know or should have known they</p> <p>8 had no right, they absolutely knew</p> <p>9 that. Mr. Baril sent himself the</p> <p>10 terms.</p> <p>11 And property includes software</p> <p>12 just to round that out for you.</p> <p>13 So clearly they satisfied all of</p> <p>14 this and, of course, Appian was</p> <p>15 injured. Mr. Ross told you why;</p> <p>16 because when they have access, they</p> <p>17 have insider knowledge, they can take</p> <p>18 our stuff and improvement it.</p> <p>19 So using all of this, ladies and</p> <p>20 gentlemen, just guide you on the</p> <p>21 verdict form you're going to have to</p> <p>22 fill out at the end of this and tell</p> <p>23 you what the questions you're going to</p> <p>24 get are.</p> <p>25 So you're going to be asked</p>

<p style="text-align: right;">Page 8162</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 first on Count 1, misappropriation of</p> <p>3 trade secrets, who do you find for?</p> <p>4 Do you find for Appian? And I submit</p> <p>5 to you your answer to that should be</p> <p>6 yes, find for Appian.</p> <p>7 Then you'll be asked: Is it</p> <p>8 just against Pega or against Zou or</p> <p>9 both? Your answer should be both</p> <p>10 based on the record we've shown you.</p> <p>11 Then you'll be asked: What</p> <p>12 should the number be? And let me say</p> <p>13 this, ladies and gentlemen. This is</p> <p>14 up to you. Okay? You decide what</p> <p>15 number you think is appropriate based</p> <p>16 on the records you have seen.</p> <p>17 But I would submit to you based</p> <p>18 on what you have seen, and remember</p> <p>19 the shifting burdens, it's their</p> <p>20 burden to show you any sales they made</p> <p>21 were innocent. Their own expert told</p> <p>22 you he hasn't even attempted to do</p> <p>23 that.</p> <p>24 And this cost deduction, they</p> <p>25 got everything so they don't have to</p>	<p style="text-align: right;">Page 8163</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 pay anything? There is no justice in</p> <p>3 the world that should allow for that.</p> <p>4 So what should the answer here</p> <p>5 be? It should be \$3,032,847,000,</p> <p>6 exactly what Mr. Malackowski</p> <p>7 calculated. And I ask when you fill</p> <p>8 out the verdict form, so there's no</p> <p>9 confusion about numbers or zeros, that</p> <p>10 you write it out like that for</p> <p>11 clarity.</p> <p>12 And as for Mr. Zou, we wrote the</p> <p>13 number for him too, \$23,608.</p> <p>14 Now, you will also be asked:</p> <p>15 Did they act willfully and</p> <p>16 maliciously? And the standard there</p> <p>17 is very simple.</p> <p>18 Willful is when they act without</p> <p>19 regard to the rights of another</p> <p>20 knowing that injury will follow.</p> <p>21 Malicious is when a party acts with</p> <p>22 ill will or spite.</p> <p>23 The record I've just taken you</p> <p>24 through shows that in spades for both</p> <p>25 of them. Let me just show you</p>
<p style="text-align: right;">Page 8164</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 one piece of evidence each to remind</p> <p>3 you. You know, look at what Mr. Baril</p> <p>4 said about what Alan and Leon were up</p> <p>5 to here.</p> <p>6 He said: They are focused on</p> <p>7 destroying Appian, like making it go</p> <p>8 away for good. Willful and malicious?</p> <p>9 There you have it.</p> <p>10 Let me say this, ladies and</p> <p>11 gentlemen. Mr. Zou, he's not a</p> <p>12 criminal mastermind, no doubt, but he</p> <p>13 doesn't get a pass. Okay? Because</p> <p>14 remember what he was doing, shoulder</p> <p>15 by shoulder, he's working with Serco</p> <p>16 and Appian people by day, and by night</p> <p>17 he's selling these same secrets to</p> <p>18 which he has access, knowing he</p> <p>19 shouldn't, to Pega. He doesn't get a</p> <p>20 pass. Willful and malicious conduct</p> <p>21 for him too.</p> <p>22 And so both of those questions</p> <p>23 you should answer yes.</p> <p>24 Then you will be asked about the</p> <p>25 Computer Crimes Act and you said yes.</p>	<p style="text-align: right;">Page 8165</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 Find your verdict for Appian against</p> <p>3 Pega. This was only against Pega.</p> <p>4 And let me be clear on the</p> <p>5 damages here. We're not asking for</p> <p>6 our money twice. Okay?</p> <p>7 We ask for our damages under the</p> <p>8 VUTSA in the way I just showed, which</p> <p>9 covers sales.</p> <p>10 But here, we want them to be</p> <p>11 held accountable in the eyes of the</p> <p>12 law for having committed the computer</p> <p>13 crimes that they did. We're asking to</p> <p>14 award us \$1 of damages to make the</p> <p>15 statement that they violated the law</p> <p>16 here.</p> <p>17 The actual damages, we're asking</p> <p>18 all of that under the misappropriation</p> <p>19 statute.</p> <p>20 Now, ladies and gentlemen, let</p> <p>21 me end here. These are all the</p> <p>22 witnesses we called in our case. It's</p> <p>23 been a while so I'll just remind you</p> <p>24 of all of them. And you will see what</p> <p>25 a record we laid before you.</p>

<p style="text-align: right;">Page 8166</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 With all of the Pega employees,</p> <p>3 we have taken you through Mr. Treffler,</p> <p>4 all the people in India, Mr. Petronio,</p> <p>5 all the product management people, and</p> <p>6 of course, our experts, Dr. Cole,</p> <p>7 Dr. Marshall, and Mr. Malackowski.</p> <p>8 All right? This sets forth for</p> <p>9 you the record of the evidence, all of</p> <p>10 the documents, the contemporaneous</p> <p>11 documents that will guide you to the</p> <p>12 truth.</p> <p>13 And I will ask you when you</p> <p>14 deliberate on this case, right, when</p> <p>15 you go back and finally talk about it,</p> <p>16 I will ask each of you to be a warrior</p> <p>17 for what is right here. Hold</p> <p>18 shadiness and arrogance to account and</p> <p>19 ensure that Appian is properly and</p> <p>20 fully compensated.</p> <p>21 And when you now hear from the</p> <p>22 very fine lawyers representing Pega</p> <p>23 and Mr. Zou, keep this in mind.</p> <p>24 Number one, then why did you do</p> <p>25 it? And number two, show me. Don't</p>	<p style="text-align: right;">Page 8167</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 just tell me. Show me the proof.</p> <p>3 Show me the evidence like we did here.</p> <p>4 After you hear from them, I'll</p> <p>5 be back. Hopefully it won't be too</p> <p>6 late. Thank you for your attention.</p> <p>7 Thank you, Your Honor.</p> <p>8 THE COURT: Ladies and</p> <p>9 gentlemen, we'll take a 15-minute</p> <p>10 recess at this point and when we come</p> <p>11 back, Mr. Frank will have the floor.</p> <p>12 (Jury exits.)</p> <p>13 (Recess taken.)</p> <p>14 MR. FRANK: Your Honor, let me</p> <p>15 ask you this. I guess we'll start up</p> <p>16 at about 12:30. When did you want me</p> <p>17 to stop?</p> <p>18 THE COURT: 12:35. No.</p> <p>19 Mr. Frank, you've got two hours and</p> <p>20 six minutes, so.</p> <p>21 MR. FRANK: So I know. I</p> <p>22 understand that, but presumably you're</p> <p>23 going to want the jury to take some</p> <p>24 lunch.</p> <p>25 THE COURT: I guess it's kind</p>
<p style="text-align: right;">Page 8168</p> <p>1 Plaintiff - Closing (Mangi)</p> <p>2 of -- it's up to you. Do you want to</p> <p>3 go all the way through to 2:30?</p> <p>4 MR. FRANK: I doubt that's a</p> <p>5 good idea.</p> <p>6 THE COURT: Do you want to take</p> <p>7 a break at some point in the middle of</p> <p>8 your or did you want to --</p> <p>9 MR. FRANK: The alternative is</p> <p>10 to send the jury to lunch now and then</p> <p>11 I can make an unbroken presentation.</p> <p>12 I think that's my preference.</p> <p>13 THE COURT: All right. I don't</p> <p>14 know what the cafeteria is like right</p> <p>15 now.</p> <p>16 THE COURT OFFICER: Hardly</p> <p>17 anyone down at this point.</p> <p>18 THE COURT: Then we'll send the</p> <p>19 jury out for lunch early today, unlike</p> <p>20 other days, and reconvene at 1:15.</p> <p>21 MR. FRANK: That would be fine.</p> <p>22 Thank you, Your Honor.</p> <p>23 THE COURT: All right. We are</p> <p>24 in recess.</p> <p>25 (Recess taken.)</p>	<p style="text-align: right;">Page 8169</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 THE COURT OFFICER: All rise.</p> <p>3 Please be seated and come to order.</p> <p>4 THE COURT: All right. Please</p> <p>5 bring the jury back in.</p> <p>6 (Jury enters.)</p> <p>7 THE COURT: All members of the</p> <p>8 jury are present. Everyone may be</p> <p>9 seated.</p> <p>10 Mr. Frank, the floor is yours.</p> <p>11 MR. FRANK: Thank you, Your</p> <p>12 Honor.</p> <p>13 Good afternoon, my name is Bob</p> <p>14 Frank.</p> <p>15 I agree with Mr. Mangi about one</p> <p>16 thing and that is that jury service is</p> <p>17 a vital, critical part of our justice</p> <p>18 system in the sense that people come</p> <p>19 to this with different backgrounds and</p> <p>20 different understandings, in the sense</p> <p>21 that they pay attention and try to</p> <p>22 reach a fair result, which is critical</p> <p>23 to the system.</p> <p>24 We thank you for that. This has</p> <p>25 been a long time, and you should know</p>

<p style="text-align: right;">Page 8170</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 that it's appreciated. And I'm</p> <p>3 speaking for everybody here.</p> <p>4 Ms. Spieth told you in her</p> <p>5 opening that you would see a lot of</p> <p>6 drama, and she was right. You've seen</p> <p>7 a lot of drama.</p> <p>8 But this is a trade secret case.</p> <p>9 I want to talk about what the trade</p> <p>10 secrets are, whether they were secret,</p> <p>11 whether they were adequately</p> <p>12 protected, whether there were real</p> <p>13 trade secrets in Pega's marketing</p> <p>14 materials, whether the product changes</p> <p>15 that Pega made were made just because</p> <p>16 they were in progress or completed or</p> <p>17 had been in Pega's products for years,</p> <p>18 or whether they are something that was</p> <p>19 taken or stolen from some secret from</p> <p>20 Amazon [sic]. And I want to talk</p> <p>21 about commercial realties and how they</p> <p>22 related to Appian's damage claim.</p> <p>23 So I somewhat regret that I</p> <p>24 don't have Mr. Mangi's flair, but I'm</p> <p>25 going to try to talk to you about the</p>	<p style="text-align: right;">Page 8171</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 facts in this case, what they show,</p> <p>3 what makes sense, and what doesn't</p> <p>4 make sense.</p> <p>5 This case is an effort by Appian</p> <p>6 to achieve in court what Appian has</p> <p>7 failed to achieve in the marketplace,</p> <p>8 because Appian's software doesn't have</p> <p>9 certain of the product designs,</p> <p>10 product features that caused Pega's</p> <p>11 customers to want to buy from Pega.</p> <p>12 And at a very high level, those</p> <p>13 product features are the ability to</p> <p>14 build applications that can serve tens</p> <p>15 of thousands of people at the same</p> <p>16 time without the slightest risk of</p> <p>17 failure or loss of data.</p> <p>18 And the ability to construct</p> <p>19 apps that work across an entire</p> <p>20 enormous business that sells different</p> <p>21 products to different people in</p> <p>22 different locations and then allows</p> <p>23 you to expand that app to meet a new</p> <p>24 situation, a new product, a new type</p> <p>25 of customer, a new location simply by</p>
<p style="text-align: right;">Page 8172</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 layering on one thing on the top and</p> <p>3 adopting -- inheriting everything else</p> <p>4 from within the system.</p> <p>5 Now, as Appian's own documents</p> <p>6 establish, Appian lost sales to Pega</p> <p>7 because Appian's software didn't have</p> <p>8 the capabilities and features that</p> <p>9 Pega's software has.</p> <p>10 And that's not -- that's not</p> <p>11 intended as a criticism of Appian's</p> <p>12 product. Appian is a successful</p> <p>13 company. There are plenty of</p> <p>14 customers who don't need what it is</p> <p>15 that Pega brings to them; but there</p> <p>16 are also plenty of customers who do,</p> <p>17 and that's what drove Pega sales.</p> <p>18 Don't take my word for it. This</p> <p>19 is the testimony of Edward Hughes.</p> <p>20 Josh, could we put that up?</p> <p>21 This is from his videotaped</p> <p>22 testimony.</p> <p>23 No, just the sound, Josh. We</p> <p>24 can't put up the image.</p> <p>25 Do you have it or should I just</p>	<p style="text-align: right;">Page 8173</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 read it? I should just read it.</p> <p>3 So during the time when you were</p> <p>4 at Appian -- this is Ms. Spieth asking</p> <p>5 Mr. Hughes these questions.</p> <p>6 So during the time when you were</p> <p>7 at Appian, at least for part of the</p> <p>8 time, were Pega and Appian competing</p> <p>9 for sales to the same customers?</p> <p>10 Answer: No.</p> <p>11 Question: Pega and Appian were</p> <p>12 not competing for sales to the same</p> <p>13 customers?</p> <p>14 Answer: Not for the same</p> <p>15 solutions, no.</p> <p>16 Were they selling different</p> <p>17 solutions?</p> <p>18 Answer: Absolutely.</p> <p>19 Question: How so?</p> <p>20 Answer: If I could use a</p> <p>21 metaphor, it's a little bit like</p> <p>22 trying to find a solution to</p> <p>23 communicate to Washington from</p> <p>24 Fairfax. One solution would be to</p> <p>25 take the subway, one solution would be</p>

<p style="text-align: right;">Page 8174</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 to take an automobile, another one</p> <p>3 would be to walk or take a helicopter.</p> <p>4 So are they competing?</p> <p>5 Well, no. Appian and Pega have</p> <p>6 fundamentally different technologies,</p> <p>7 so it was a different way of looking</p> <p>8 at a problem and solving it in a</p> <p>9 different way.</p> <p>10 Appian and Pega are both BPM</p> <p>11 companies, but their products are</p> <p>12 designed differently. And to a large</p> <p>13 extent, those design features are</p> <p>14 different and address different types</p> <p>15 of customers and different types of</p> <p>16 customer needs.</p> <p>17 When the drama and when the</p> <p>18 sideshows and distractions are</p> <p>19 stripped away from this case, Appian</p> <p>20 makes two extraordinary claims. One</p> <p>21 claim is that 6 out of 21 statements</p> <p>22 in the "Understanding Appian"</p> <p>23 documents and 4 of 12 entries in that</p> <p>24 "12 Challenges" document, that are</p> <p>25 referred to as marketing material,</p>	<p style="text-align: right;">Page 8175</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 identify weaknesses in Appian</p> <p>3 software.</p> <p>4 And that, Appian says, were the</p> <p>5 trade secrets, those 6. And then</p> <p>6 Appian says that those 6 statements</p> <p>7 out of 21 were the cause of every</p> <p>8 single sale that Pega made in</p> <p>9 competition with Appian over a 9-year</p> <p>10 period to 201 separate customers.</p> <p>11 Appian's claim is that every</p> <p>12 single time Pega won, Appian,</p> <p>13 Appian -- that is unjust enrichment.</p> <p>14 And the first question that</p> <p>15 you're going to be asked, or a</p> <p>16 question that you're going to be</p> <p>17 asked, is: Does that, does that meet</p> <p>18 the test of common sense?</p> <p>19 You're asked that no sale was</p> <p>20 attributable to any of the 15</p> <p>21 statements in the Understanding Appian</p> <p>22 documents or the other 8 statements in</p> <p>23 the 12 Challenges documents.</p> <p>24 You're asked to believe that no</p> <p>25 sale made by Pega to any customer</p>
<p style="text-align: right;">Page 8176</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 during an almost 9-year period was the</p> <p>3 result of the capabilities and</p> <p>4 qualities of Pega's products or the</p> <p>5 result of the different capabilities</p> <p>6 of Appian's products or the result of</p> <p>7 particular customer's needs.</p> <p>8 You're asked to believe that</p> <p>9 even clients who are using both Pega</p> <p>10 and Appian, big, sophisticated clients</p> <p>11 who had their hands on both parties'</p> <p>12 software, that they made their buying</p> <p>13 decision based upon two-page marketing</p> <p>14 document and not on their own</p> <p>15 experience over a period of years with</p> <p>16 both companies' software.</p> <p>17 You're asked to believe that</p> <p>18 what Appian says were trade secrets</p> <p>19 that were used in Pega's marketing</p> <p>20 materials and sales efforts were</p> <p>21 actually trade secrets as</p> <p>22 distinguished from something that Pega</p> <p>23 had in its marketing materials before</p> <p>24 it ever met Mr. Zou.</p> <p>25 And the evidence is going to</p>	<p style="text-align: right;">Page 8177</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 establish that the 6 of 21 statements</p> <p>3 weren't trade secrets at all. They</p> <p>4 were facts that Pega knew, facts that</p> <p>5 you can see in Pega's market coaching</p> <p>6 materials from before it saw, and</p> <p>7 trade secrets that Appian's own</p> <p>8 employees were unable to point out</p> <p>9 during discovery in this case.</p> <p>10 The -- Appian now says -- Appian</p> <p>11 now -- sorry -- the other thing I'd</p> <p>12 like to ask you to keep in</p> <p>13 consideration is that the marketing</p> <p>14 side of this case has said that</p> <p>15 somehow Pega discovered weaknesses in</p> <p>16 Appian's product that Appian was</p> <p>17 entitled to keep secret, was -- that</p> <p>18 Appian was entitled to broadcast to</p> <p>19 the world the good things about its</p> <p>20 product, but to take the things that</p> <p>21 were disadvantages or weaknesses or</p> <p>22 absences of capabilities and treat</p> <p>23 them as trade secrets, keep them from</p> <p>24 their customers and that, they say, is</p> <p>25 extremely valuable, that they could</p>

<p style="text-align: right;">Page 8178</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 hide the deficiencies in their</p> <p>3 product.</p> <p>4 And you're also asked to ignore</p> <p>5 the buying decisions of actual very</p> <p>6 sophisticated customers. Amazon,</p> <p>7 United States Census Bureau,</p> <p>8 U.S. Air Force, Bank of America, these</p> <p>9 are some of the smartest buyers in the</p> <p>10 world.</p> <p>11 And you're asked to believe that</p> <p>12 two pages of marketing materials</p> <p>13 caused them to make million-dollar</p> <p>14 purchases or larger.</p> <p>15 Now, that's the first</p> <p>16 extraordinary overreach.</p> <p>17 The second is an even more</p> <p>18 spectacular overreach, and it's an</p> <p>19 even less plausible claim.</p> <p>20 Dr. Marshall testified and</p> <p>21 Mr. Malackowski relied on the</p> <p>22 remarkable statement that without the</p> <p>23 information provided to Mr. Zou --</p> <p>24 provided by Mr. Zou to Appian in 2012</p> <p>25 and 2013, Pegasystems would have</p>	<p style="text-align: right;">Page 8179</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 instantly become -- it's product would</p> <p>3 have instantly become obsolete and,</p> <p>4 therefore, every single sale that Pega</p> <p>5 made to anyone, whether or not they</p> <p>6 were in competition with Appian or</p> <p>7 competing with somebody else for --</p> <p>8 who had, gosh knows, what products</p> <p>9 they were selling, that every single</p> <p>10 sale made by Pega for the next</p> <p>11 eight years was attributable to the</p> <p>12 information that they received.</p> <p>13 According to Appian -- Appian</p> <p>14 asked you to conclude that, although</p> <p>15 Pega was, in Dr. Marshall's words, a</p> <p>16 leading supplier of BPM software in</p> <p>17 2012 and although Pega's sales had</p> <p>18 been growing, as you've seen, on a</p> <p>19 steady, indeed, rapid basis for eight</p> <p>20 or nine consecutive years up to then,</p> <p>21 that Pega would have been unable to</p> <p>22 sell anything to anybody substantially</p> <p>23 and immediately and that the product</p> <p>24 features that they point to were the</p> <p>25 only drivers of sales.</p>
<p style="text-align: right;">Page 8180</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 Customer relationships didn't</p> <p>3 matter, product features didn't</p> <p>4 matter, just the points that Appian</p> <p>5 says Pega got and declares are the</p> <p>6 driving force, that's what would have</p> <p>7 taken -- that you can attribute every</p> <p>8 single sale that Pega made for the</p> <p>9 next eight years to information that</p> <p>10 was provided in 2012 and 2013, and</p> <p>11 I'll talk about that in great detail.</p> <p>12 But I want to start first with</p> <p>13 what I respectfully suggest are</p> <p>14 intentional distractions in this case.</p> <p>15 No thanks, Josh.</p> <p>16 First, it's absolutely correct</p> <p>17 that between 2017 and 2019, eight</p> <p>18 employees of Pega -- Pega has 6,000</p> <p>19 employees -- eight employees of Pega</p> <p>20 obtained copies of Appian's free trial</p> <p>21 software by misrepresenting their</p> <p>22 identities. And in the case of the</p> <p>23 Indian employees -- certain Indian</p> <p>24 employees were getting copies from a</p> <p>25 cousin one of the employees.</p>	<p style="text-align: right;">Page 8181</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 That shouldn't have happened.</p> <p>3 I'm not here to defend someone</p> <p>4 misrepresenting their identity and</p> <p>5 using that to get something that they</p> <p>6 couldn't have otherwise have gotten.</p> <p>7 That was wrong, and Mr. Trefler</p> <p>8 has acknowledged that it was wrong.</p> <p>9 And all of the employees have been</p> <p>10 reprimanded. Technical measures have</p> <p>11 been taken to make sure it doesn't</p> <p>12 happen again. But none of that is in</p> <p>13 dispute, and I'm not here to defend</p> <p>14 any of that.</p> <p>15 But it's also not what this case</p> <p>16 is about. We're talking about a</p> <p>17 period of time when Appian had made</p> <p>18 free trials broadly available to</p> <p>19 virtually anyone who asked, anyone</p> <p>20 with a .edu address, whether they were</p> <p>21 a student or not.</p> <p>22 They made copies available to</p> <p>23 IBM. IBM and IBM employees who were</p> <p>24 permitted to pass them around to other</p> <p>25 IBM employees. IBM was at the time</p>

<p style="text-align: right;">Page 8182</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 one of their principal competitors.</p> <p>3 At the same time, Appian had</p> <p>4 made a conscious business decision to</p> <p>5 make its documentation available to</p> <p>6 anyone who wanted to Google that</p> <p>7 documentation.</p> <p>8 And they did that, because as</p> <p>9 Dr. Marshall, their expert testified,</p> <p>10 they concluded that it was in Appian's</p> <p>11 interest, that it was beneficial to</p> <p>12 Appian to make that documentation</p> <p>13 available.</p> <p>14 And the decision was made to</p> <p>15 give real free trials, make</p> <p>16 documentation available, even though</p> <p>17 competitors could see the</p> <p>18 documentation.</p> <p>19 And Appian offered no evidence</p> <p>20 of any information obtained in those</p> <p>21 free trials that wasn't available</p> <p>22 right from the Appian website. And</p> <p>23 Dr. Easttom testified, and wasn't</p> <p>24 challenged, that everything in the</p> <p>25 memorandum that summarized what the</p>	<p style="text-align: right;">Page 8183</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 findings were from the free trials,</p> <p>3 which should not have happened, was</p> <p>4 readily available at docs.appian.com,</p> <p>5 where Appian's documentation was</p> <p>6 placed -- was located.</p> <p>7 Now, there are two -- three</p> <p>8 salient facts here.</p> <p>9 One, Dr. Cole, their trade</p> <p>10 secret expert, did not identify any</p> <p>11 trade secret that was obtained by the</p> <p>12 use of free trials. That's not</p> <p>13 contested.</p> <p>14 And he didn't because he</p> <p>15 couldn't, and he couldn't because a</p> <p>16 very large -- he couldn't because free</p> <p>17 trials were being offered without,</p> <p>18 without material limitations, except</p> <p>19 to Pega employees. I'm not suggesting</p> <p>20 that that makes it right for the Pega</p> <p>21 employees. It just -- the point is</p> <p>22 that it's not a trade secret issue,</p> <p>23 it's a bad behavior issue.</p> <p>24 Second, Mr. Malackowski, their</p> <p>25 damages expert, did not identify any</p>
<p style="text-align: right;">Page 8184</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 damages arising from those -- from the</p> <p>3 access to the free trials.</p> <p>4 And third, the proof in the</p> <p>5 pudding is that with respect to the</p> <p>6 Computer Crime -- the Virginia</p> <p>7 Computer Crimes Act, Appian told you</p> <p>8 today that they were not seeking</p> <p>9 anymore \$1 of damages. That's the</p> <p>10 statute that applies to the behavior</p> <p>11 that's in question there. And the</p> <p>12 reason that they are only claiming \$1</p> <p>13 in damages -- Mr. Mangi's statements</p> <p>14 not to the -- to the contrary</p> <p>15 notwithstanding -- is they didn't and</p> <p>16 couldn't prove any damages arising</p> <p>17 from that behavior.</p> <p>18 So that -- and a large amount of</p> <p>19 what you heard this morning was</p> <p>20 focusing attention on that, the \$1</p> <p>21 claim, and not on questions like</p> <p>22 what's a trade secret, how is it</p> <p>23 protected, was it really a trade</p> <p>24 secret, and so on.</p> <p>25 Now, the next point that I want</p>	<p style="text-align: right;">Page 8185</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 to make or the next distraction that I</p> <p>3 want to point to is sort of impugning</p> <p>4 various of Pega's employees,</p> <p>5 including, particularly, Mr. Trefler.</p> <p>6 In opening day of this trial and</p> <p>7 for the next two following days,</p> <p>8 three days in a row, Mr. Mangi spent</p> <p>9 pages and pages of transcript</p> <p>10 cross-examining Mr. Trefler about</p> <p>11 Mr. Trefler's use of the name</p> <p>12 "ascii0."</p> <p>13 But what he didn't say this</p> <p>14 morning but which I'm going to say now</p> <p>15 is that, first, Mr. Trefler used that</p> <p>16 as a way of getting access to</p> <p>17 materials that he could divert to a</p> <p>18 separate place so they didn't get in</p> <p>19 the way of his Pega e-mail, so he</p> <p>20 didn't get tons of e-mail.</p> <p>21 What Mr. Mangi didn't say is</p> <p>22 that anything that was secret,</p> <p>23 anything that was not available to the</p> <p>24 world was obtained by Mr. Trefler's</p> <p>25 use of the ascii0 name, nothing that</p>

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1 Defendant - Pega - Closing (Frank)  
2 was -- that wasn't publicly available.  
3 What he got was an Appian blog  
4 that you or I or anyone else could  
5 have gotten at the same period of  
6 time. And there's nothing, there is  
7 no evidence that Mr. Trefler ever  
8 obtained anything that any member of  
9 the public couldn't obtain.  
10 So a lot of character  
11 assassination, not a lot of substance.  
12 Now I want to talk a little  
13 bit -- so now I want to get closer to  
14 the merits of the case and talk a  
15 little bit about the people that  
16 Appian called as their witnesses.  
17 Let me just start with that.  
18 The first is John Petronio.  
19 And I'm going to ask Josh to put  
20 up the very last slide that we saw  
21 from Appian. I hope he's going to put  
22 it up.  
23 John Petronio was -- there we  
24 go.  
25 You'll see him right there in

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1 Defendant - Pega - Closing (Frank)  
2 trade secret misappropriation.  
3 John Petronio is the person who  
4 was constantly pressing inside Pega  
5 for more assets to do more work with  
6 Mr. Zou.  
7 Well, where is Mr. Petronio  
8 today? He's employed by Appian, and  
9 they have put him in charge of their  
10 competitive intelligence activity,  
11 their competitive intelligence  
12 activity. When he allegedly told them  
13 about these events, they kept him on  
14 as the head of their competitive  
15 intelligence activities at Appian,  
16 raised his salary, indemnified him  
17 against the suit by Pega.  
18 And this is the guy who,  
19 according to Appian, caused Appian to  
20 lose the business of 201 customers  
21 over an 8-year period, worth enormous  
22 amounts of money, and they have him  
23 today running their competitive  
24 intelligence activities and today have  
25 him responsible -- have kept him in

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1 Defendant - Pega - Closing (Frank)  
2 the middle, second line, second row  
3 right in the center, John Petronio.  
4 John Petronio is now an Appian  
5 employee, but in 2012 through 2014 he  
6 was a Pega employee. He's the person  
7 who Appian claims failed to determine  
8 whether Mr. Zou was authorized to  
9 provide to Pega the information that  
10 Mr. Zou did provide to Pega.  
11 John Petronio is the person who,  
12 by his own testimony, directed  
13 Mr. Zou's activities, supposedly  
14 concealed Mr. Zou's activities from  
15 Appian, used valuable trade secret  
16 information that Mr. Zou provided --  
17 that Mr. Zou provided, which  
18 Mr. Petronio then wrote into sales  
19 materials to train Pega sales people.  
20 John Petronio is the person who  
21 created the spy image that you've been  
22 shown, who called Mr. Zou "the other  
23 Matt," and who brought Mr. Baril into  
24 the Project Crush project to  
25 participate in what Appian accuses of

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1 Defendant - Pega - Closing (Frank)  
2 that position, even though they have  
3 sued Mr. Zou, the person that he  
4 brought into this, and even though  
5 they have sued Pega for John  
6 Petronio's activities.  
7 The second witness I want to  
8 talk about is Malcolm Ross. Mr. Ross  
9 is deputy chief technology officer at  
10 Appian, and he's been here at the  
11 trial as Appian's corporate  
12 representative.  
13 He's also the person that Appian  
14 put up as its corporate representative  
15 during pretrial discovery. His  
16 Twitter handle is mrappian.  
17 Mr. Ross, testifying on behalf  
18 of Appian, denied that that which is  
19 today described as Appian trade  
20 secrets denied that they were trade  
21 secrets.  
22 Mr. Ross came to this trial a  
23 17-year Appian veteran, an Appian  
24 spokesman and said that he didn't  
25 really know, at the time of his

<p style="text-align: right;">Page 8190</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 deposition, what were Appian trade</p> <p>3 secrets.</p> <p>4 This is a case that had been</p> <p>5 pending for 16 months at the time,</p> <p>6 involving documents that had been in</p> <p>7 Appian's possession for months before</p> <p>8 the deposition. And he testified here</p> <p>9 at trial that at the time of his</p> <p>10 deposition, he didn't know what</p> <p>11 Appian's trade secrets were. And it's</p> <p>12 for you to judge the credibility of</p> <p>13 that statement.</p> <p>14 We also showed a clip, a short</p> <p>15 clip, of Matt Calkins' deposition.</p> <p>16 Matt Calkins is the founder and chief</p> <p>17 executive officer at Appian. At his</p> <p>18 deposition, in January of this year,</p> <p>19 that is two months before this trial,</p> <p>20 I asked Mr. Calkins to tell us what</p> <p>21 were Appian's trade secrets. And he</p> <p>22 testified under oath that he did not</p> <p>23 know what they were.</p> <p>24 His testimony, his company is</p> <p>25 claiming that it lost 201 customers to</p>	<p style="text-align: right;">Page 8191</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 Pega over an eight-year period</p> <p>3 claiming \$479 million of unjust</p> <p>4 enrichment to Pega. And he said he</p> <p>5 was asked to identify the trade</p> <p>6 secrets that were misappropriated and</p> <p>7 responded that he didn't know.</p> <p>8 Do you believe that Appian</p> <p>9 concealed or treated as secret any</p> <p>10 observable feature or functionality of</p> <p>11 Appian's Tempo product?</p> <p>12 Answer: I can't tell you for</p> <p>13 sure what Appian considered to be a</p> <p>14 secret and protected as such with</p> <p>15 regards to the Tempo product.</p> <p>16 Can you tell me anything that</p> <p>17 Appian regarded as secret with regard</p> <p>18 to the observable features or</p> <p>19 functionality of Tempo observable by</p> <p>20 users of Tempo?</p> <p>21 The crux of that question is in</p> <p>22 the word "observable," I believe,</p> <p>23 because if you ask that question</p> <p>24 without the word "observable," I could</p> <p>25 have just said no. I'm not involved</p>
<p style="text-align: right;">Page 8192</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 in what we decide is a secret and what</p> <p>3 we don't. We have engineers. We have</p> <p>4 marketers to decide things like that,</p> <p>5 so I'm not involved.</p> <p>6 But I want to come back to you</p> <p>7 and say, what do you mean observable?</p> <p>8 Like, does that mean -- does that</p> <p>9 effectively mean not a secret? Is</p> <p>10 that what you're trying to say, right?</p> <p>11 But what do you mean observable?</p> <p>12 Question: I mean by observable,</p> <p>13 any capability that a developer of</p> <p>14 Appian apps could ascertain by using</p> <p>15 the product. I'm asking whether</p> <p>16 Appian considered any of the</p> <p>17 observable features and functionality</p> <p>18 of Appian Tempo to be a trade secret</p> <p>19 in 2011 and 2012.</p> <p>20 Answer: I'm just going to fall</p> <p>21 back on the core of secret. And since</p> <p>22 I don't know, I'm not going to get</p> <p>23 tangled up in what's observable or</p> <p>24 not. I just don't know where we drew</p> <p>25 the line between what we considered a</p>	<p style="text-align: right;">Page 8193</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 secret in Tempo and what we thought</p> <p>3 was not a secret.</p> <p>4 Two months prior to the trial,</p> <p>5 an allegation of \$479 million of</p> <p>6 unjust enrichment and the CEO of</p> <p>7 Appian didn't know what the trade</p> <p>8 secrets were, just as Mr. Ross said at</p> <p>9 his deposition that he didn't know</p> <p>10 what the trade secrets were six months</p> <p>11 ago.</p> <p>12 That's what we're dealing with</p> <p>13 here.</p> <p>14 Now, I want to talk about what</p> <p>15 those trade secrets are claimed to be</p> <p>16 and I want to talk about whether they</p> <p>17 were secrets or not secrets.</p> <p>18 Judge Gardiner has explained to</p> <p>19 you that in order for something to</p> <p>20 qualify as a trade secret, it must</p> <p>21 derive independent economic value by</p> <p>22 not being generally known to and not</p> <p>23 being readily ascertainable by proper</p> <p>24 means by other persons who can obtain</p> <p>25 economic value from its disclosure or</p>

<p style="text-align: right;">Page 8194</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 use.</p> <p>3 So there are two parts to that:</p> <p>4 One, it has to have independent</p> <p>5 economic value from not being</p> <p>6 generally known to or being readily</p> <p>7 ascertainable by proper means by other</p> <p>8 persons who can obtain economic value</p> <p>9 from this disclosure and, two, it must</p> <p>10 be the subject of efforts that are</p> <p>11 reasonable under the circumstances to</p> <p>12 maintain its secrecy. Those are the</p> <p>13 tests.</p> <p>14 Now, the test is not if you keep</p> <p>15 it secret from one competitor. The</p> <p>16 test is far broader than that.</p> <p>17 The first question for you to</p> <p>18 address with respect to Appian's claim</p> <p>19 that Pega used Appian's trade secret</p> <p>20 is whether the information contained</p> <p>21 in Appian Forum from the 2012 to 2014</p> <p>22 period, whether that was actually --</p> <p>23 was an actual trade secret and, in</p> <p>24 particular, whether it was the subject</p> <p>25 of efforts which were reasonable under</p>	<p style="text-align: right;">Page 8195</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 the circumstances to protect the</p> <p>3 information in Appian Forum.</p> <p>4 And that's relevant because</p> <p>5 that's where Mr. Zou got copies of</p> <p>6 Appian's software. That's where he</p> <p>7 accessed Appian's documentation.</p> <p>8 Now, let me start by saying that</p> <p>9 Mr. Travell is going to argue this at</p> <p>10 further length, but I want to touch on</p> <p>11 a couple of things.</p> <p>12 Mr. Zou learned a lot about</p> <p>13 Appian software when he was an</p> <p>14 employee at Lockheed Martin. Not at</p> <p>15 issue here. Then he went to work for</p> <p>16 company called CollabraLink and he</p> <p>17 worked for CollabraLink for a period</p> <p>18 of time, but he worked for -- that he</p> <p>19 was consulting for Pega. He didn't</p> <p>20 join Serco until September or October</p> <p>21 of 2012, but he started collaborating</p> <p>22 with Pega or consulting with Pega in</p> <p>23 February of 2012.</p> <p>24 And there's no evidence that</p> <p>25 Mr. Zou had any obligation either to</p>
<p style="text-align: right;">Page 8196</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 Lockheed or CollabraLink not to share</p> <p>3 his knowledge about Appian software</p> <p>4 with anybody.</p> <p>5 Now, let's get to the Appian</p> <p>6 Forum which is where the supposed</p> <p>7 secrets were kept.</p> <p>8 Josh, can we put up Plaintiff's</p> <p>9 Exhibit 274?</p> <p>10 (Whereupon, Exhibit PLT 274,</p> <p>11 Appian Forum form, was identified.)</p> <p>12 MR. FRANK: This is, this is the</p> <p>13 form that Appian was using for people</p> <p>14 to register in the first instance for</p> <p>15 the opportunity to use Appian Forum.</p> <p>16 And as you can see, what it -- it is</p> <p>17 the form and certain information has</p> <p>18 to be filled in. Over on the right,</p> <p>19 you're encouraged to -- you're told</p> <p>20 about the good things about Appian</p> <p>21 Forum. And down at the very bottom,</p> <p>22 there are six things listed across the</p> <p>23 bottom.</p> <p>24 And one of them, the one in the</p> <p>25 lower left-hand corner of the slide</p>	<p style="text-align: right;">Page 8197</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 says: Terms of Use.</p> <p>3 Mr. Ross testified that if you</p> <p>4 clicked on those Terms of Use, that</p> <p>5 you did not get the Terms of Use for</p> <p>6 Appian Forum. Mr. Ross' testimony was</p> <p>7 that -- Mr. Ross' testimony is as</p> <p>8 follows:</p> <p>9 Question: So if you click on</p> <p>10 Terms of Use --</p> <p>11 Answer: Correct.</p> <p>12 Question: -- what do you get?</p> <p>13 Answer: Terms of Use for</p> <p>14 Appian.com website, not Forum.</p> <p>15 Question: Which are different</p> <p>16 from the Terms of Use for Appian</p> <p>17 Forum; is that right?</p> <p>18 Answer: Correct. Appian Forum</p> <p>19 Terms of Use were presented on the</p> <p>20 log-on to the Forum environment, not</p> <p>21 the registration.</p> <p>22 Okay. So let's look at the --</p> <p>23 let's look at the -- what you got when</p> <p>24 you logged on to Appian Forum.</p> <p>25 Plaintiff's 397, please, Josh.</p>

<p style="text-align: right;">Page 8198</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 (Whereupon, Exhibit PLT 397,</p> <p>3 Document, was identified.)</p> <p>4 MR. FRANK: Now, this is here --</p> <p>5 the only protection here is if you put</p> <p>6 in your user name and a password,</p> <p>7 which you've been given by Appian.</p> <p>8 Now I'm going to ask you to take</p> <p>9 a minute and see if you can notice how</p> <p>10 conspicuously reference is made to the</p> <p>11 Terms of Use. You'll find it in the</p> <p>12 extreme lower right-hand corner</p> <p>13 against a background that makes it as</p> <p>14 inconspicuous, I suggest, as possible,</p> <p>15 and you are not invited to read it.</p> <p>16 There's no warning that if you</p> <p>17 don't read it, you may be subject to</p> <p>18 its -- to the terms of Appian Forum.</p> <p>19 And the point here is not -- the point</p> <p>20 here, I guess, is to ask you or I</p> <p>21 suppose I could ask myself, but I</p> <p>22 probably should ask you, when you get</p> <p>23 a -- when you're offered an</p> <p>24 opportunity to -- when you get sent a</p> <p>25 new version of software on your</p>	<p style="text-align: right;">Page 8199</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 iPhone, when you buy new software,</p> <p>3 when you rent a car, do you read -- do</p> <p>4 you read those Terms of Use?</p> <p>5 And the question I'd ask</p> <p>6 yourself is: Not are you bound by the</p> <p>7 Terms of Use, but can you reasonably</p> <p>8 expect people who don't read Terms of</p> <p>9 Use to comply with the Terms of Use?</p> <p>10 In my view, that's a</p> <p>11 self-answering question. If you don't</p> <p>12 read something, you're not going to</p> <p>13 know what it says and you're not going</p> <p>14 to know what restrictions apply to</p> <p>15 you.</p> <p>16 So Appian placed that notice in</p> <p>17 as inconspicuous a place as possible.</p> <p>18 It did not warn people that they</p> <p>19 should read it. There's no evidence</p> <p>20 that they required anybody to click on</p> <p>21 anything and that, that alone is the</p> <p>22 sole protection for all the</p> <p>23 information that's on Appian Forum.</p> <p>24 Now, you're going to -- you</p> <p>25 heard during this trial that Appian</p>
<p style="text-align: right;">Page 8200</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 has firewalls and Appian has</p> <p>3 two-factor identification and Appian</p> <p>4 has a lot of other things, but none of</p> <p>5 that was the protection for Appian</p> <p>6 Forum.</p> <p>7 The protection for Appian Forum</p> <p>8 is what I just showed you. And if you</p> <p>9 assume, form a percentage in your</p> <p>10 head of how many -- what percentage of</p> <p>11 the people -- Appian, I should say,</p> <p>12 has no records of who read the Terms</p> <p>13 of Use. Appian has no records of what</p> <p>14 percentage of users use the Terms of</p> <p>15 Use, and so we are left to try and</p> <p>16 decide ourselves.</p> <p>17 Pick whatever percentage you</p> <p>18 like and then consider the number of</p> <p>19 people who never read the Appian Forum</p> <p>20 Terms of Use and, therefore, had no</p> <p>21 idea what restrictions they were</p> <p>22 under, if they were under any</p> <p>23 restrictions at all. And that's the</p> <p>24 sole protection.</p> <p>25 Now, Mr. Ross testified that</p>	<p style="text-align: right;">Page 8201</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 Appian users were required to accept</p> <p>3 Appian Forum Terms of Use before they</p> <p>4 got access to Appian Forum. But</p> <p>5 Appian has never shown us any document</p> <p>6 that contains those terms, that</p> <p>7 contains that requirement. And if</p> <p>8 there were any, you can be sure that</p> <p>9 we would have been shown such a thing.</p> <p>10 I asked Mr. Ross if he could</p> <p>11 identify any such document, and he</p> <p>12 told me he could not.</p> <p>13 I understand that Mr. Travell is</p> <p>14 going to be coming after me, but it's</p> <p>15 also my understanding that he's going</p> <p>16 show you a clip that will show Mr. Zou</p> <p>17 logging on and you can see what he</p> <p>18 encountered. And to deprive</p> <p>19 Mr. Travell of the drama associated</p> <p>20 with showing that, I suspect you're</p> <p>21 not going to see anyone being</p> <p>22 presented with the Terms of Use to</p> <p>23 consider.</p> <p>24 Now, so that's the first</p> <p>25 question: Is the source of the</p>

<p style="text-align: right;">Page 8202</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 material that Mr. Zou obtained</p> <p>3 adequately protected?</p> <p>4 Mr. Mangi did not address that</p> <p>5 question. He'll have a chance after</p> <p>6 me and we'll see what he says.</p> <p>7 The second question is: Are the</p> <p>8 things that are said to be trade</p> <p>9 secrets, were they something that Pega</p> <p>10 learned from Mr. Zou or did Pega know</p> <p>11 those things before it ever met</p> <p>12 Mr. Zou?</p> <p>13 And there were six identified by</p> <p>14 Dr. Cole. I'm going to go through</p> <p>15 each one of them one at a time and try</p> <p>16 to show you exactly what -- what the</p> <p>17 statement was in the Understanding</p> <p>18 Appian document that's said to be a</p> <p>19 trade secret and compare that against</p> <p>20 what the documentary evidence of what</p> <p>21 Pega knew in the period of time 2010</p> <p>22 or 2011 before it had any contact with</p> <p>23 Mr. Zou at all.</p> <p>24 Now, Josh, let's go to Slide 1,</p> <p>25 first.</p>	<p style="text-align: right;">Page 8203</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 (Whereupon, Exhibit PX 210,</p> <p>3 Document, was identified.)</p> <p>4 MR. FRANK: That's -- you'll</p> <p>5 recognize that. That's PX 210.</p> <p>6 You've seen it lots of times. It's</p> <p>7 the Understanding Appian document,</p> <p>8 sometimes called an Appian technical</p> <p>9 brief.</p> <p>10 And the first of the -- the</p> <p>11 first of the so-called trade secrets</p> <p>12 is said to be found in the first</p> <p>13 paragraph with a headline on the top</p> <p>14 of it, the one that says: All</p> <p>15 in-flight processes and application</p> <p>16 logic lives in a risky in-memory</p> <p>17 database with undesirable tradeoffs.</p> <p>18 What I'm going to do in each</p> <p>19 case is present to you on the</p> <p>20 left-hand side of the screen the</p> <p>21 statement that is said to be a trade</p> <p>22 secret, put up on the right-hand side</p> <p>23 of the screen documents that</p> <p>24 preexisted Pega's contact with Mr. Zou</p> <p>25 and show you what Pega knew about the</p>
<p style="text-align: right;">Page 8204</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 subject matter so that you can look</p> <p>3 for them yourself. I will be</p> <p>4 incapable of smoke and mirrors here</p> <p>5 because you're going to have</p> <p>6 everything right in front of you.</p> <p>7 Slide 3, please, Josh.</p> <p>8 (Whereupon, Exhibit PX 580,</p> <p>9 Document, was identified.)</p> <p>10 MR. FRANK: This is taken from a</p> <p>11 document which is PX 580 and it's in</p> <p>12 evidence. And I asked Mr. Schuerman</p> <p>13 about it at his deposition. And what</p> <p>14 I'm showing you is --</p> <p>15 Actually, Josh, could we</p> <p>16 first -- maybe it would be helpful to</p> <p>17 show the jury the cover of PX 580 so</p> <p>18 that they understand what they are</p> <p>19 looking at and then we'll go back to</p> <p>20 this slide. It must be the next --</p> <p>21 yes. Yes, thanks. And would you just</p> <p>22 blow up the half of the page?</p> <p>23 This is Appian attack plan,</p> <p>24 April 2010, written by Mr. Petronio,</p> <p>25 the man who said he learned everything</p>	<p style="text-align: right;">Page 8205</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 brand-new from Mr. Zou. This is</p> <p>3 written by Mr. Petronio and you'll see</p> <p>4 that it's sourced to publicly</p> <p>5 available materials. And I'm going to</p> <p>6 be asking about internal pages in this</p> <p>7 document as we go along.</p> <p>8 So let's go back to Slide 3,</p> <p>9 please, Josh.</p> <p>10 This is from Page 4 of the</p> <p>11 document that I just showed you.</p> <p>12 And perhaps you could help us a</p> <p>13 little bit by blowing up the very</p> <p>14 first of the entries on the right</p> <p>15 side.</p> <p>16 Referring to Appian, it says:</p> <p>17 They use a proprietary database of a</p> <p>18 strategic partner, KX Systems, see</p> <p>19 www.KX.com.</p> <p>20 And the third line down is:</p> <p>21 Large memory requirements for the</p> <p>22 machine and if there is a failure,</p> <p>23 data can be lost.</p> <p>24 Now, bring that down in size and</p> <p>25 blow up the next.</p>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8206</div> <div data-bbox="175 140 800 1024" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>That is a drawing of the architecture of Appian's system from a publicly available source, and the thing that is second from the right is a drawing of Appian's in-memory database. And you can see all of the data going into that database and out of that database which is right in the center of the architecture.</p> <p>And then the third thing in the same document, which refers to the in-memory database, is at the bottom and it says: Realtime data tier, a unique feature of Appian Enterprises, is its realtime in-memory database. I think it's our real in-memory database. It's very fast slash -- it's very fast read/write access supports both realtime process performance, monitoring, and system error recovery. The realtime in-memory database realtime synchronous transaction allows for capture of all events that occur</p> </div>	<div data-bbox="1412 121 1523 142" data-label="Page-Header">Page 8207</div> <div data-bbox="889 140 1523 1024" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>between in-memory checkpoints.</p> <p>So there's the knowledge of checkpoints. And it's undisputed that with checkpoints go a set of tradeoffs.</p> <p>On the one hand, there -- an in-memory database, as Dr. Cole testified and as Dr. Marshall testified yesterday, run the risk of data loss because if the server goes down, whatever is in the in-memory database at the moment the server goes down is lost, same as you could lose something if your own laptop goes down.</p> <p>The reason for checkpointing is that if you can move data out of the in-memory database on a periodic basis and move it to disk, you can put that much data beyond risk, but there's new data coming in so there's always some risk of data loss.</p> <p>The longer between checkpoints, the greater the amount of data</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8208</div> <div data-bbox="175 1068 800 1953" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>potentially in the in-memory database if there is a failure. The shorter, the lesser the amount of data that's at risk. But as Dr. Montgomery [sic] testified yesterday, it was well known that the moving checkpointing slows the process down so that there is a kind of a known tradeoff between those two things.</p> <p>Now, what did Pega not know about the all in-flight processes? What did they -- the only thing that Pega did not know, and Mr. Schuerman acknowledged this forthrightly, is the time interval between checkpoints, which everyone agrees is a default setting in which the customer can change, depending upon the customer's own judgment as to what the right amount of risk and cost, cost is.</p> <p>And as I think the example Mr. Schuerman gave, if your phone is set -- if your phone when you first get it is set to ring, give you a ring</p> </div>	<div data-bbox="1412 1050 1523 1071" data-label="Page-Header">Page 8209</div> <div data-bbox="889 1068 1523 1953" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>tone, that's the default setting. You can switch to the phone shouldn't ring simply by flicking a switch and because a default setting is a default setting and it's changeable by the customer.</p> <p>And as Mr. Schuerman testified, the commercial value of knowing what the default setting is zero because if you attack the customer by the choice of the default setting, all they do is change the default setting. There's no commercial value to that.</p> <p>Nevertheless, there's one bit of information, perhaps not enough to drive all sales to 201 customers over the next eight years.</p> <p>Here's the second, the --</p> <p>Josh, can you take that down?</p> <p>And the second is -- the second so-called trade secret is Appian's integration is limited and requires time-consuming workarounds.</p> <p>On the left side is the text</p> </div>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8210</div> <div data-bbox="99 142 797 1024" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 from the Understanding Appian</p> <p>3 document. And as you can see that it,</p> <p>4 it is criticizing Appian for</p> <p>5 supporting a small number of</p> <p>6 integration connectors and services.</p> <p>7 And I'll give just a little time to</p> <p>8 read it so you understand what the</p> <p>9 context is and so you're confident</p> <p>10 you're getting it yourself.</p> <p>11 And then I'm going to ask Josh</p> <p>12 to blow up what's on the right, which</p> <p>13 is taken from another document that</p> <p>14 Mr. Petronio created prior to meeting</p> <p>15 Mr. Zou.</p> <p>16 And perhaps we can put that the</p> <p>17 cover sheet of that up, Josh -- it's</p> <p>18 DX 1695. And its title is Why Appian</p> <p>19 is Not the Choice for Enterprise BPM.</p> <p>20 And the excerpts that I have are</p> <p>21 Slides 62, 66, and 67. They should be</p> <p>22 in Slide 5, please, Josh.</p> <p>23 So the criticism on the left in</p> <p>24 the marketing materials that are</p> <p>25 excluded is: Appian supports a small</p> </div>	<div data-bbox="1412 121 1523 142" data-label="Page-Header">Page 8211</div> <div data-bbox="821 142 1513 1024" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 number of integration connectors and</p> <p>3 services, it's implementation of web</p> <p>4 services is limited, and this</p> <p>5 additional text there.</p> <p>6 Now, Josh, let's look at the</p> <p>7 material from DX 1695. First, the one</p> <p>8 on the top.</p> <p>9 (Whereupon, Exhibit DX 1695,</p> <p>10 Document re Appian SOA, was</p> <p>11 identified.)</p> <p>12 MR. FRANK: Appian SOA, SOA</p> <p>13 refers to the connectability of this</p> <p>14 to other systems. But when you -- I</p> <p>15 should stop and say that when you</p> <p>16 install a new app, of course, you have</p> <p>17 to connect it up to all the other</p> <p>18 software from which it receives</p> <p>19 information.</p> <p>20 And so the simpler that process</p> <p>21 is, particularly in a big company, the</p> <p>22 better it is.</p> <p>23 So the first criticism is</p> <p>24 that -- this is by Mr. Petronio before</p> <p>25 anybody met Mr. Zou in 2011, Appian's</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8212</div> <div data-bbox="99 1071 797 1953" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 SOA is less capable than Pega's SOA</p> <p>3 capabilities, not many out-of-the-box</p> <p>4 connectors, and some further</p> <p>5 information about Appian -- and</p> <p>6 doesn't have, for example,</p> <p>7 wizard-driven interfaces to pull data</p> <p>8 from databases or consume WSDL and SOA</p> <p>9 services, et cetera.</p> <p>10 Could we have the next</p> <p>11 criticism, pre-Zou criticism of</p> <p>12 Appian's work?</p> <p>13 Strong support for</p> <p>14 integration -- this is describing</p> <p>15 Pega. Strong support for integration</p> <p>16 with wizards, protocols include stuff</p> <p>17 that you can read there.</p> <p>18 Now, while it's still up there,</p> <p>19 why don't you bring the No. 3 entry</p> <p>20 up, which is describing Appian.</p> <p>21 The No. 3, thank you.</p> <p>22 So there is a direct comparison</p> <p>23 between Pega and Appian, and it is</p> <p>24 saying almost exactly what is said in</p> <p>25 the supposed trade secret</p> </div>	<div data-bbox="1412 1050 1523 1071" data-label="Page-Header">Page 8213</div> <div data-bbox="821 1071 1513 1953" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 that appeared in Exhibit 210.</p> <p>3 Bring that down, Josh, so the</p> <p>4 jury can see and match it against what</p> <p>5 is said in Exhibit 210.</p> <p>6 Now, at his deposition, Mr. Ross</p> <p>7 described that as not a trade secret,</p> <p>8 as a false statement. Here at the</p> <p>9 trial, he testified that he</p> <p>10 misunderstood at his deposition and</p> <p>11 that he thought it was a trade secret,</p> <p>12 and he did that because he saw videos</p> <p>13 that had been created by Mr. Zou after</p> <p>14 his deposition testimony.</p> <p>15 But wait a minute, he's the</p> <p>16 deputy chief technology officer of the</p> <p>17 company. He's been there 17 years.</p> <p>18 You would think he would know at the</p> <p>19 time of his deposition what Appian</p> <p>20 thought was a trade secret, what was</p> <p>21 secret, what had value because it was</p> <p>22 secret, and what was properly</p> <p>23 protected at that time.</p> <p>24 He testified at trial that at</p> <p>25 the time of his deposition, he didn't</p> </div>

<p style="text-align: right;">Page 8214</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 know.</p> <p>3 The -- let's go to the next --</p> <p>4 to the next thing that is said to be a</p> <p>5 trade secret in Exhibit 210. And it's</p> <p>6 the one that is headlined "Appian</p> <p>7 doesn't support exporting process data</p> <p>8 in a way that can be leveraged by</p> <p>9 external BI systems."</p> <p>10 So there you can see that, see</p> <p>11 the statement in Exhibit 210.</p> <p>12 And on the right, I've asked</p> <p>13 Josh to bring up a statement from</p> <p>14 DX 1695, which is -- and so let's look</p> <p>15 at the first one, please, Josh, the</p> <p>16 one at the top.</p> <p>17 And Pega, in 2011, before it met</p> <p>18 Mr. Zou, is saying to its sales folks:</p> <p>19 Appian has limited capacities for</p> <p>20 learning and gaining insight from</p> <p>21 operational and historic data and</p> <p>22 limited integration with external BI</p> <p>23 applications.</p> <p>24 And bring that down in size,</p> <p>25 bring the other one up, please.</p>	<p style="text-align: right;">Page 8215</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 And this is a drawing of Pega's</p> <p>3 BI system. BIX stands for business</p> <p>4 information exchange.</p> <p>5 So the point that's being made</p> <p>6 in the Understanding Appian document</p> <p>7 and the point that was being made a</p> <p>8 year before anyone at Pega met Mr. Zou</p> <p>9 is that Pega had this capability and</p> <p>10 Appian didn't have much.</p> <p>11 I appreciate that this is not as</p> <p>12 exciting as some other stuff, but</p> <p>13 these are the real facts in this case.</p> <p>14 And it's important for you to</p> <p>15 understand how we've seen nothing so</p> <p>16 far that could possibly be -- have</p> <p>17 been taught to Pega by Mr. Zou because</p> <p>18 in every instance Pega knew it.</p> <p>19 Now I'm going to go on to the</p> <p>20 next -- before it ever met Dr. Zou</p> <p>21 [sic].</p> <p>22 The next supposed trade secret</p> <p>23 is the paragraph that says: Can't</p> <p>24 report with -- I'm sorry.</p> <p>25 It's the paragraph that says:</p>
<p style="text-align: right;">Page 8216</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 No unified management tools.</p> <p>3 Administrators have no unified</p> <p>4 management tools.</p> <p>5 On the left is the statement</p> <p>6 that Mr. Petronio drafted in 2012 to</p> <p>7 2013, after he met with Mr. Zou. On</p> <p>8 the right is a statement that</p> <p>9 Mr. Petronio drafted before he met</p> <p>10 Mr. Zou in PX 580.</p> <p>11 (Whereupon, Exhibit PX 580,</p> <p>12 Document, was identified.)</p> <p>13 MR. FRANK: Now, the</p> <p>14 statement -- and this requires</p> <p>15 slightly more explanation. The text</p> <p>16 in 2010 -- I'm sorry, in Exhibit 210,</p> <p>17 the accused information, is that</p> <p>18 Appian lacks a set of management tools</p> <p>19 to manage the performance and health</p> <p>20 of applications running across an</p> <p>21 enterprise. The system lacks tools to</p> <p>22 detect and remediate problems before</p> <p>23 the failures.</p> <p>24 On the right, you see a</p> <p>25 reference to something called AES and</p>	<p style="text-align: right;">Page 8217</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 JMX. AES, Mr. Schuerman testified and</p> <p>3 it's undisputed, is a system that runs</p> <p>4 inside Pega apps that determines</p> <p>5 when -- in a particular company, it</p> <p>6 looks across all of the company's Pega</p> <p>7 apps and determines when there's signs</p> <p>8 of trouble before they have actually</p> <p>9 manifested themselves in a specific --</p> <p>10 in a specific outcome, in a specific</p> <p>11 bad outcome. It alerts the system.</p> <p>12 Administrator tells them what to do to</p> <p>13 deal with it.</p> <p>14 JMX is a capability that's</p> <p>15 provided in connection with Java</p> <p>16 programming, and it allows an</p> <p>17 administrator at a client to look</p> <p>18 across all of its Java-based programs,</p> <p>19 whether they're Pega programs or</p> <p>20 anyone else, and manage them as a kind</p> <p>21 of a unit.</p> <p>22 That's what Pega was touting and</p> <p>23 what Pega was saying it had and Appian</p> <p>24 didn't have before Pega met Mr. Zou.</p> <p>25 Can you blow up the right side,</p>

<p style="text-align: right;">Page 8218</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 please, Josh, so we can see it?</p> <p>3 Referring to Appian, it says:</p> <p>4 Lacks AES -- AES and JMX. They have</p> <p>5 the ability to create a process that</p> <p>6 wakes up and pings. And if it doesn't</p> <p>7 get anything back, they can trigger a</p> <p>8 process not as sophisticated as AES.</p> <p>9 On the right side is before</p> <p>10 Mr. Zou was involved. On the left is</p> <p>11 after Mr. Zou was involved. They are</p> <p>12 different articulations of the same</p> <p>13 idea.</p> <p>14 Next, the weak reporting tools,</p> <p>15 weak reporting tools and limited chart</p> <p>16 types. This is two paragraphs, and</p> <p>17 this is, again, PX 210.</p> <p>18 The first paragraph says: With</p> <p>19 Appian's developer-centric approach to</p> <p>20 reporting, business users must wait</p> <p>21 for developers to create reports.</p> <p>22 Business users must define the</p> <p>23 requirements and then hope that the</p> <p>24 report meets their needs.</p> <p>25 As Mr. Schuerman explained, and</p>	<p style="text-align: right;">Page 8219</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 he was not challenged on</p> <p>3 cross-examination with respect to</p> <p>4 this, this refers to a Pega feature</p> <p>5 called DCO, directly captured</p> <p>6 objectives, which in Pega allows a</p> <p>7 businessperson to create a design for</p> <p>8 a business process and put that, put</p> <p>9 that person's ideas directly into the</p> <p>10 software as to how the process should</p> <p>11 work, and the software interprets the</p> <p>12 inputs and builds the process from the</p> <p>13 information provided by the</p> <p>14 businessperson, as distinguished from</p> <p>15 the businessperson handing the design</p> <p>16 off to a classical developer and the</p> <p>17 developer uses the Pega or Appian</p> <p>18 business process software development.</p> <p>19 The -- this goes back to a core</p> <p>20 idea that underlies Pega's technology.</p> <p>21 It goes back nearly to the beginning.</p> <p>22 Now, that's what's being</p> <p>23 described on the left so-called trade</p> <p>24 secret.</p> <p>25 On the right, I have put -- I've</p>
<p style="text-align: right;">Page 8220</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 asked Josh to put up statements both</p> <p>3 from the 2011 pre-Zou document and the</p> <p>4 statements from the 2010 pre-Zou</p> <p>5 document.</p> <p>6 So, Josh, can we put up for the</p> <p>7 jury that which is on the top and</p> <p>8 which is sort of criticizing Appian?</p> <p>9 Lacks support for</p> <p>10 software-enabled methodology, DCO</p> <p>11 testing and project management,</p> <p>12 rule-approval flow, direct feedback,</p> <p>13 lacks horizontal frameworks.</p> <p>14 Now, let's drop down to the next</p> <p>15 one.</p> <p>16 This is in the 2011 pre-Zou</p> <p>17 document, and it's talking about DCO</p> <p>18 including -- it lists the benefits of</p> <p>19 directly capturing objectives.</p> <p>20 And one of them, if you -- in</p> <p>21 the column that is inside the</p> <p>22 enclosure, Josh -- against the blue</p> <p>23 background specifically talks about</p> <p>24 report building. And it's talking</p> <p>25 about the benefits of DCO.</p>	<p style="text-align: right;">Page 8221</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 Count down -- I think it is</p> <p>3 three. Left, go left, go left, go</p> <p>4 left. There you go.</p> <p>5 Now go down, one, two, three.</p> <p>6 Maybe you see the word "reports"?</p> <p>7 Let me just walk up and point to</p> <p>8 it. There you go.</p> <p>9 High tech, I hope you all note.</p> <p>10 And so there is -- there in</p> <p>11 2011, before Pega met Mr. Zou, is</p> <p>12 exactly what is being said by Mr. --</p> <p>13 this is Mr. Petronio on the right and</p> <p>14 Mr. Petronio on the left, except that</p> <p>15 Mr. Petronio told you that he learned</p> <p>16 all the stuff on the left when, in</p> <p>17 fact, he knew all the stuff on the</p> <p>18 right from the year before.</p> <p>19 The second thing -- now, there's</p> <p>20 a second paragraph under the weak</p> <p>21 reporting tools and limited chart</p> <p>22 types. And I'll give you a minute to</p> <p>23 read that.</p> <p>24 And now, let me show what's on</p> <p>25 the right.</p>

<p style="text-align: right;">Page 8222</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 First, blow up the one at the</p> <p>3 top, please, Josh.</p> <p>4 This is from the 2011 document</p> <p>5 before Mr. Zou was in contact with</p> <p>6 Mr. Petronio: Appian has limited</p> <p>7 capabilities for learning and gaining</p> <p>8 insight from operational and historic</p> <p>9 data, no ability to rapidly model,</p> <p>10 execute, and modify visually such as</p> <p>11 Pega's VBD.</p> <p>12 Next slide down, next entry</p> <p>13 down, please.</p> <p>14 A whole page full of chart types</p> <p>15 that Pega has and that Mr. Schuerman</p> <p>16 described and are illustrative of the</p> <p>17 charts that Pega thought then that it</p> <p>18 had that other people didn't have.</p> <p>19 And drop down to the one on the</p> <p>20 bottom, please, Josh.</p> <p>21 More on another page, rapidly</p> <p>22 model, execute, and modify strategies.</p> <p>23 Same argument being made in 2011 that</p> <p>24 was being made later in 2012.</p> <p>25 Now, Mr. Ross acknowledged</p>	<p style="text-align: right;">Page 8223</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 that -- at the trial that the</p> <p>3 statement about not supporting 3D</p> <p>4 charts is -- was false, possibly</p> <p>5 false, he said, and not a trade</p> <p>6 secret.</p> <p>7 The statement about lacks</p> <p>8 visualization, such as drill-downs,</p> <p>9 Mr. Ross had said at his deposition</p> <p>10 was not true and, therefore, was not a</p> <p>11 trade secret.</p> <p>12 Next, concurrent development,</p> <p>13 concurrent development.</p> <p>14 Appian lacks concurrent</p> <p>15 developer support, greatly slowing</p> <p>16 down time to market.</p> <p>17 We don't have a slide here.</p> <p>18 Sorry. Let's put up the language,</p> <p>19 please, from Exhibit 210, because I</p> <p>20 don't have a graphic on the other</p> <p>21 slide.</p> <p>22 And you'll find this on the</p> <p>23 second page, Josh, "Appian lacks</p> <p>24 concurrent developer support."</p> <p>25 At his deposition, Mr. Ross</p>
<p style="text-align: right;">Page 8224</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 testified that the statement that</p> <p>3 Appian lacks concurrent developer</p> <p>4 support, greatly slowing down time to</p> <p>5 market, was in his opinion a false</p> <p>6 statement and, therefore, not a trade</p> <p>7 secret.</p> <p>8 Appian now claims that having</p> <p>9 seen -- or Mr. Ross testified that</p> <p>10 when he saw something in</p> <p>11 Mr. Petronio's videos, he never could</p> <p>12 identify what the something was, he</p> <p>13 all of the sudden realized that the</p> <p>14 fact that Appian lacked concurrent</p> <p>15 developer support really wasn't false</p> <p>16 and really was a trade secret, but</p> <p>17 there is no explanation for how that</p> <p>18 could possibly have changed.</p> <p>19 He is the deputy chief technical</p> <p>20 officer. It's a trade secret or it's</p> <p>21 not a trade secret. It's a trade</p> <p>22 secret because it's important because</p> <p>23 you keep it secret and you don't not</p> <p>24 know what you're trying to keep</p> <p>25 secret. You don't not know if you're</p>	<p style="text-align: right;">Page 8225</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 the deputy chief technology officer</p> <p>3 what is and what isn't secret.</p> <p>4 Doctor -- furthermore,</p> <p>5 Dr. Easttom testified that the fact</p> <p>6 that only a single developer could</p> <p>7 work on a process at one time was not</p> <p>8 a trade secret because, if true, it</p> <p>9 would be apparent to every Appian</p> <p>10 developer, and Appian developers were</p> <p>11 under no obligation to maintain --</p> <p>12 took my watch off cleverly to make</p> <p>13 sure I wasn't running for too long and</p> <p>14 then I dropped it on the floor to make</p> <p>15 it very obvious that I'm picking my</p> <p>16 watch up. I'm one of these slick</p> <p>17 lawyers.</p> <p>18 I was going to resist that, but</p> <p>19 I was given a cue.</p> <p>20 Now, the point that Dr. Easttom</p> <p>21 made is that if you have a product</p> <p>22 feature that anybody can observe, that</p> <p>23 is whether two people can -- it used</p> <p>24 to be, until recently, for example,</p> <p>25 two people couldn't be on the same</p>

<p style="text-align: right;">Page 8226</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 document on Microsoft Word at the same</p> <p>3 time. It's my -- that's, I think, no</p> <p>4 longer true, but it was true back at</p> <p>5 this point for sure.</p> <p>6 But in any event, as soon as you</p> <p>7 get the product and look at the</p> <p>8 product, this is something you're</p> <p>9 going to see. It's an observable</p> <p>10 feature of the product that anyone,</p> <p>11 you or even at my level of skill, is</p> <p>12 going to be able to tell.</p> <p>13 And we have been shown no</p> <p>14 document, there is no document that</p> <p>15 says that one developer employed by an</p> <p>16 Appian client or a Pega client, for</p> <p>17 that matter, is somehow restricted</p> <p>18 from saying to anyone what it observes</p> <p>19 with respect to the capabilities of</p> <p>20 Appian's product.</p> <p>21 It's -- they have to keep the</p> <p>22 software itself confidential; but what</p> <p>23 the software can do, there is nothing</p> <p>24 in any of the documents that you have</p> <p>25 been shown that what the software can</p>	<p style="text-align: right;">Page 8227</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 do, what the observable features of</p> <p>3 the software are is somehow a secret</p> <p>4 that no one can describe.</p> <p>5 Do you believe -- I say, bring</p> <p>6 you're common sense to this, do you</p> <p>7 believe that, that with respect to any</p> <p>8 software program, it's one thing to</p> <p>9 give away the software to somebody</p> <p>10 else; but is it within your experience</p> <p>11 that you can't even talk about whether</p> <p>12 you like the software or don't like</p> <p>13 the software or whether the software</p> <p>14 is good or you think it does what you</p> <p>15 want it to do or you've got a problem</p> <p>16 with it and you don't like it because</p> <p>17 there is a particular problem?</p> <p>18 The short answer is, Appian's</p> <p>19 shown us nothing in any contract that</p> <p>20 Appian has entered with anyone that</p> <p>21 restricts users of Appian's software</p> <p>22 from talking to other people about</p> <p>23 what the software can do and what it</p> <p>24 can't do.</p> <p>25 That's different from giving the</p>
<p style="text-align: right;">Page 8228</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 software away. But there's nothing</p> <p>3 that restricts people from talking</p> <p>4 about that. If there's no control</p> <p>5 over it, then it's not a trade secret.</p> <p>6 And so, and so that's the kind</p> <p>7 of thing we're talking about here.</p> <p>8 Now, I pause here for a little</p> <p>9 context. This has to do the</p> <p>10 advertising. The marketing materials</p> <p>11 claim is the subject of a \$479 million</p> <p>12 damage claim. This is the 201</p> <p>13 customer claim.</p> <p>14 But Mr. Malackowski testified</p> <p>15 that his number, his \$479 million</p> <p>16 number, depended upon all six of the</p> <p>17 things that I just showed you being</p> <p>18 trade secrets that were not known by</p> <p>19 Pega prior to the time that it met</p> <p>20 with Mr. Zou.</p> <p>21 He testified that if less than</p> <p>22 all of the six were trade secrets,</p> <p>23 that his number was no longer</p> <p>24 effective. It was for you to figure</p> <p>25 out what that number was, you the</p>	<p style="text-align: right;">Page 8229</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 jury.</p> <p>3 And he had done no calculation,</p> <p>4 made no analysis of what his number</p> <p>5 would be, his so-called unjust</p> <p>6 enrichment number would be if only</p> <p>7 five or three or one of those supposed</p> <p>8 trade secrets were trade secrets.</p> <p>9 So the whole structure of</p> <p>10 Appian's damage claim depends on their</p> <p>11 maintaining that every one of the six</p> <p>12 things that I described to you was</p> <p>13 brand-new to Pega and was a trade</p> <p>14 secret because Pega hadn't learned the</p> <p>15 same thing from some other public</p> <p>16 source in 2010 or 2009 or before.</p> <p>17 And if I have persuaded you as</p> <p>18 to any one of the six, Appian's</p> <p>19 \$479 million number is unsupported</p> <p>20 because Mr. Malackowski declined to</p> <p>21 support it on cross-examination.</p> <p>22 And I -- so that's the reason</p> <p>23 for the time spent on this, and it is</p> <p>24 my attempt to show that Mr. Petronio,</p> <p>25 who said at trial here for the benefit</p>

<p style="text-align: right;">Page 8230</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 of his employer, Appian, that, oh, no,</p> <p>3 everything I learned from Mr. Zou was</p> <p>4 brand-new stuff, the same Mr. Petronio</p> <p>5 had been putting that in Pega's sales</p> <p>6 coaching materials in 2010 and 2011.</p> <p>7 And of course, you know what my</p> <p>8 suggestion is here, that is that none</p> <p>9 of the six were unknown to Pega, were</p> <p>10 trade secrets that Pega just learned.</p> <p>11 And -- but in a sense, I don't</p> <p>12 have to persuade you that six out of</p> <p>13 six were not trade secrets.</p> <p>14 Dr. Malackowski's number falls away if</p> <p>15 I have persuaded you that one of the</p> <p>16 six was not a trade secret.</p> <p>17 Change of subject, product</p> <p>18 improvements, this is the other half.</p> <p>19 This is the \$3.03 billion claim, and</p> <p>20 this is -- this makes the assumption</p> <p>21 that all -- well, first, yesterday you</p> <p>22 heard from Mr. Marshall that Pega was</p> <p>23 a leader in the BPM field as of 2012,</p> <p>24 immediately before.</p> <p>25 You have also been shown -- you</p>	<p style="text-align: right;">Page 8231</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 were shown a graph yesterday that</p> <p>3 pointed to Pega's sales performance in</p> <p>4 the period of time leading up to the</p> <p>5 time when it met with Mr. Zou.</p> <p>6 And I wonder if we can put that</p> <p>7 up, Josh. It's -- it's Plaintiff's</p> <p>8 689, Slide 13. 689, Slide 13.</p> <p>9 (Whereupon, Exhibit PLT 689,</p> <p>10 Document, was identified.)</p> <p>11 MR. FRANK: While Josh is</p> <p>12 looking for that, I'll keep going</p> <p>13 there so as not to waste your time.</p> <p>14 The question is whether the</p> <p>15 product -- there we go, better late</p> <p>16 than never.</p> <p>17 This is Pega's performance in</p> <p>18 the period between 2004, I believe.</p> <p>19 And, Josh, would you run a line</p> <p>20 under the period 2004 through 2011 so</p> <p>21 the jury is looking at a period of</p> <p>22 time that's indisputably unrelated to</p> <p>23 anything Mr. Zou did?</p> <p>24 And that's Pega sales</p> <p>25 performance year by year. You were</p>
<p style="text-align: right;">Page 8232</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 told by Mr. Mangi this morning that</p> <p>3 the stock price wasn't doing too well</p> <p>4 between 2010 and 2012, but the stock</p> <p>5 price is not the measure of the</p> <p>6 success of a company.</p> <p>7 Bring it up again, please, Josh.</p> <p>8 The measure of the success of a</p> <p>9 software company is whether people are</p> <p>10 buying product. If the people, if</p> <p>11 people stop buying the product, that</p> <p>12 build goes the other direction.</p> <p>13 I don't have it either, I'm</p> <p>14 sorry. Plaintiff's 689, Slide 13. It</p> <p>15 will appear. Might not be the fault</p> <p>16 on my side but we'll see. There we</p> <p>17 go. Thanks. I'm sorry.</p> <p>18 So look at it yourself. Apply</p> <p>19 your common sense.</p> <p>20 Is this a company that was not</p> <p>21 doing well or is this a company whose</p> <p>22 sales are almost quadrupling over a</p> <p>23 period from 2004 to 2011? And is this</p> <p>24 a company that was a steady rise or</p> <p>25 not.</p>	<p style="text-align: right;">Page 8233</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 And this was presented to Mr. --</p> <p>3 the reason this was before you</p> <p>4 yesterday is because it was presented</p> <p>5 to Mr. Marshall [sic] in 2014. And</p> <p>6 when Mr. Marshall was asked about it,</p> <p>7 he was asked whether this was the sign</p> <p>8 of a company -- the question by my</p> <p>9 partner Ms. Spieth was: Does this</p> <p>10 graph on Slide 13 of the presentation</p> <p>11 show concern about Pega's financial</p> <p>12 trajectory as of 2011?</p> <p>13 Answer from Appian's witness</p> <p>14 Mr. Marshall: No. It's demonstrating</p> <p>15 quite the reverse.</p> <p>16 As you can see, it's not really</p> <p>17 controversial.</p> <p>18 Now, product improvements, the</p> <p>19 theory that you heard from Mr. Mangi</p> <p>20 was that Pega was in trouble, it was</p> <p>21 old technology, and so they had to do</p> <p>22 something to get some bright ideas,</p> <p>23 and this is what they did.</p> <p>24 So the first question is: Is</p> <p>25 information -- and so Appian's theory</p>

<p style="text-align: right;">Page 8234</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 is that when Mr. Zou told bad stuff to</p> <p>3 Pega about Appian's product, that Pega</p> <p>4 used that and put it in its marketing</p> <p>5 material. And according to Appian,</p> <p>6 they were entitled actually to keep</p> <p>7 the bad stuff secret and they were</p> <p>8 entitled to keep it from customers.</p> <p>9 Now, the good stuff is what's</p> <p>10 involved in this side of the claim;</p> <p>11 that is, Appian's theory is that</p> <p>12 Appian -- when Mr. Zou brought</p> <p>13 something good to Pega, Pega snapped</p> <p>14 it up, and put it in Pega's product</p> <p>15 and that saved the day. This company</p> <p>16 that was on the way was then</p> <p>17 rejuvenated by Mr. Zou's information.</p> <p>18 So Question 1 is: Was the stuff</p> <p>19 that Pega provided, was it actually a</p> <p>20 trade secret?</p> <p>21 And again, I want to come back</p> <p>22 to the question that is ultimately in</p> <p>23 the jury charge.</p> <p>24 Is this something that -- are</p> <p>25 the features of a product that are out</p>	<p style="text-align: right;">Page 8235</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 on the market that are observable by</p> <p>3 existing customers and potential</p> <p>4 future customers, are those secrets</p> <p>5 or, to the contrary, the good stuff,</p> <p>6 is it very likely that the people who</p> <p>7 are trying to sell the software are</p> <p>8 pointing to the very same positive</p> <p>9 features so that -- and the legal</p> <p>10 question is, is whether this is</p> <p>11 information that obtained its value</p> <p>12 from being kept in secret.</p> <p>13 So the question about positive</p> <p>14 features about a product is whether it</p> <p>15 was valuable to Appian to keep the</p> <p>16 positive features of its product in</p> <p>17 secret and protect them from other</p> <p>18 people.</p> <p>19 Now, with due respect, that is a</p> <p>20 self-answering question because, of</p> <p>21 course, when you go out to sell your</p> <p>22 product if you have a really good</p> <p>23 feature, you don't talk about -- you</p> <p>24 talk about that feature, and you want</p> <p>25 to sell your product. You don't</p>
<p style="text-align: right;">Page 8236</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 hide -- you don't get value from</p> <p>3 keeping the good product features in</p> <p>4 secret.</p> <p>5 So let's -- during the course of</p> <p>6 discovery, we asked Appian to produce</p> <p>7 all of their Agreements that relate to</p> <p>8 their software. They said, no, no, we</p> <p>9 won't do that, but we will give you</p> <p>10 template Agreements so that -- are</p> <p>11 representative of our Agreements.</p> <p>12 One of those Agreements is</p> <p>13 DX 149. Could we put that up, Josh?</p> <p>14 (Whereupon, Exhibit DX 149,</p> <p>15 Agreement, was identified.)</p> <p>16 MR. FRANK: This is a Partner</p> <p>17 Agreement, and it essentially sets out</p> <p>18 a license to people who are Appian's</p> <p>19 business partners, and it -- I'm going</p> <p>20 to show you in a minute what it</p> <p>21 expects the partners to do.</p> <p>22 The partners in -- Mr. Ross</p> <p>23 testified in many instances are</p> <p>24 resellers, people who resell software</p> <p>25 on Appian's behalf. And first, I'd</p>	<p style="text-align: right;">Page 8237</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 ask you to take a look at what is</p> <p>3 defined as Appian's software. It</p> <p>4 means the object code version of</p> <p>5 Appian's software that is -- and the</p> <p>6 associated documentation and all</p> <p>7 updates and refinements and so on. So</p> <p>8 that's the ones and zeros that runs</p> <p>9 inside a laptop, let's say, that</p> <p>10 causes you to see what you see on the</p> <p>11 screen.</p> <p>12 Now, let's drop down, if you</p> <p>13 could, to the Paragraph 2.2, and in</p> <p>14 particular 2.2.1 and maybe you could</p> <p>15 bring that up, Josh.</p> <p>16 These are contracts that were --</p> <p>17 this is an example of a contract that</p> <p>18 was enforced at the relevant time and</p> <p>19 it says: Commencing upon the</p> <p>20 effective date, Appian shall grant to</p> <p>21 the business partner a nonexclusive</p> <p>22 nontransferable license -- there's</p> <p>23 some other words in there -- without</p> <p>24 right of sublicense to install the</p> <p>25 Appian software on a business</p>

<p style="text-align: right;">Page 8238</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 partner's computers and to allow a</p> <p>3 reasonable number of named users to</p> <p>4 use the Appian software for business</p> <p>5 partner's internal purposes.</p> <p>6 Now, comes the critical item,</p> <p>7 the business partner, the reseller, is</p> <p>8 licensed to market, promote and</p> <p>9 demonstrate Appian's software without</p> <p>10 any limitation. They can market the</p> <p>11 software.</p> <p>12 They can promote it. How do you</p> <p>13 promote it? You promote it, of</p> <p>14 course, by saying what's good about</p> <p>15 it. And there's no restriction that</p> <p>16 says, oh, by the way, you can't point</p> <p>17 to the social or mobile features of</p> <p>18 our product. There's no limitation on</p> <p>19 that.</p> <p>20 And they can demonstrate the</p> <p>21 product. Demonstrate, how do you</p> <p>22 demonstrate the product? You try to</p> <p>23 show the customer what you can do with</p> <p>24 this software.</p> <p>25 And how do you do that? Why,</p>	<p style="text-align: right;">Page 8239</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 you build a sample app and you show</p> <p>3 off the good features of the product</p> <p>4 and you show off completed apps that</p> <p>5 demonstrate what the completed apps</p> <p>6 can do.</p> <p>7 And so far from being</p> <p>8 confidential information, the</p> <p>9 permitted behavior here is to -- is to</p> <p>10 promote the product, to sell the</p> <p>11 product, to call out its good features</p> <p>12 with no limitation, none, as to what</p> <p>13 observable features may be described</p> <p>14 or demonstrated to the customer.</p> <p>15 So no control over -- over who</p> <p>16 gets access or who is told about what</p> <p>17 particular product feature. All of</p> <p>18 the product features that Appian now</p> <p>19 claims are good product features may</p> <p>20 be displayed. And furthermore, no</p> <p>21 limitation, no confidentiality</p> <p>22 obligation, and there's nothing in</p> <p>23 this Agreement that says you must put</p> <p>24 the person who receives the</p> <p>25 demonstration, you must put that</p>
<p style="text-align: right;">Page 8240</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 person under a Confidentiality</p> <p>3 Agreement.</p> <p>4 So it's not just that a reseller</p> <p>5 like the kind of person who would have</p> <p>6 this Agreement, it's not just that</p> <p>7 that person could demonstrate the</p> <p>8 software to anyone who is a</p> <p>9 prospective -- that that reseller</p> <p>10 deemed was a prospective customer, but</p> <p>11 the prospective customer was perfectly</p> <p>12 free to talk about what the</p> <p>13 prospective customer saw in the</p> <p>14 promotional materials and in the</p> <p>15 demonstrations that the prospective</p> <p>16 customer received.</p> <p>17 So how is it that that is</p> <p>18 adequately protecting the observable</p> <p>19 features of your product? I</p> <p>20 respectfully submit that it's not.</p> <p>21 Now, let's look, if we could,</p> <p>22 Josh, at the agreement with Serco,</p> <p>23 which is a VASP, a Value-Added Resale</p> <p>24 Agreement, and I believe it's</p> <p>25 Plaintiff's 2028. Just blow up the</p>	<p style="text-align: right;">Page 8241</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 very top part first so the jury can</p> <p>3 see that this is a Value-Added</p> <p>4 Services Reseller Agreement.</p> <p>5 It's just like other -- it's an</p> <p>6 Appian Value-Added Service Provider</p> <p>7 Agreement.</p> <p>8 So what is Serco? Serco is a</p> <p>9 company that, by and large, provides</p> <p>10 its services to third persons to build</p> <p>11 apps using the Appian software.</p> <p>12 If we drop down to same, or</p> <p>13 virtually the same definition of</p> <p>14 software, come back for one second, so</p> <p>15 you can glance at it, you'll see it's</p> <p>16 the same definition of Appian</p> <p>17 software.</p> <p>18 Let's go down to 2.2.1 again and</p> <p>19 here's the license grant at 2.2.1.</p> <p>20 Same language: Commencing on the</p> <p>21 effective date, subject to the terms</p> <p>22 and provisions of this Agreement,</p> <p>23 Appian shall grant the service</p> <p>24 provider a nonexclusive license to do</p> <p>25 what's in A or in B.</p>

<p style="text-align: right;">Page 8242</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 A says: Market, promote, and</p> <p>3 demonstrate the Appian software to</p> <p>4 prospective end-users in the</p> <p>5 territory. And in Serco's case,</p> <p>6 there's no limitation to the</p> <p>7 territory.</p> <p>8 So Serco, Mr. Zou's own</p> <p>9 employer, had the right, indeed, was</p> <p>10 expected to market, promote, and</p> <p>11 demonstrate Appian's software.</p> <p>12 And how do you do that? Well,</p> <p>13 if you're trying to promote -- you do</p> <p>14 it two ways. First, you talk about</p> <p>15 how -- if you're Serco, you talk about</p> <p>16 how good the software is. All sorts</p> <p>17 of things can be done with the</p> <p>18 software. You should, you know, you</p> <p>19 should license a copy.</p> <p>20 And, indeed, Serco was empowered</p> <p>21 to market Appian's software to</p> <p>22 prospective customers. The other</p> <p>23 thing you do if Serco wasn't a service</p> <p>24 provider is that you show not just</p> <p>25 what the software can do but what you</p>	<p style="text-align: right;">Page 8243</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 can do with the software. I think</p> <p>3 that's John Kennedy or something like</p> <p>4 that.</p> <p>5 So what is a company like Serco</p> <p>6 going to do to market the product?</p> <p>7 They are going to demonstrate what can</p> <p>8 be done with the product. They are</p> <p>9 going to give demonstrations to people</p> <p>10 of the good features of the Serco</p> <p>11 [sic] product and there's no</p> <p>12 restriction on here that says, for</p> <p>13 example, you can't show the social and</p> <p>14 mobile features.</p> <p>15 To the contrary, Appian was</p> <p>16 promoting the social and mobile</p> <p>17 features and had no reason to believe</p> <p>18 that Serco itself would promote the</p> <p>19 same features.</p> <p>20 So the threshold question is:</p> <p>21 Is anything being done here to assure</p> <p>22 that particular -- that particular</p> <p>23 information is not being shared with</p> <p>24 customers? Answer: Nothing.</p> <p>25 Now, now I want to talk about</p>
<p style="text-align: right;">Page 8244</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 the history of Appian's -- let me</p> <p>3 stop.</p> <p>4 I want to talk about the history</p> <p>5 of the growth of social and mobile in</p> <p>6 general, and I think the next minute</p> <p>7 and a half is completely undisputed</p> <p>8 material.</p> <p>9 Facebook started up around 2006.</p> <p>10 Shortly after Facebook started up,</p> <p>11 there was lots of social activity and</p> <p>12 it has grown ever since.</p> <p>13 In 2007, Apple introduced the</p> <p>14 iPhone and it did away with prior</p> <p>15 competitors and became extraordinarily</p> <p>16 widely used.</p> <p>17 The apps became available on the</p> <p>18 iPhone starting in 2008. In 2009,</p> <p>19 Pega announced the introduction of</p> <p>20 social features on Pega platform and</p> <p>21 that includes both the intake of</p> <p>22 information from other social media</p> <p>23 and the ability of people within a</p> <p>24 given organization to engage in social</p> <p>25 media-type collaboration, which is</p>	<p style="text-align: right;">Page 8245</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 productive business-related</p> <p>3 communication.</p> <p>4 In 2010, salesforce.com</p> <p>5 introduced the use of social forms of</p> <p>6 communication in business environments</p> <p>7 and that product was called Chatter.</p> <p>8 In 2010, in Pega Version 6.1,</p> <p>9 Pega introduced social features called</p> <p>10 What's Happening that included</p> <p>11 features very similar to the Facebook</p> <p>12 wall, undisputed.</p> <p>13 2011, Pega's Sales Coaching,</p> <p>14 actually, I'll show you something from</p> <p>15 Pega Sales Coaching in 2011.</p> <p>16 Slide 39, please, Josh. This is</p> <p>17 from DX 1695 in evidence. Let's drop</p> <p>18 the cover. Doesn't matter. Would you</p> <p>19 blow up what's on the right-hand side?</p> <p>20 That is Pega training its sales</p> <p>21 force, and it is a demonstration of</p> <p>22 what Pega knew at the time was its</p> <p>23 social capability.</p> <p>24 In June of 2011, Appian</p> <p>25 introduced Tempo, a product that</p>

<p style="text-align: right;">Page 8246</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 included both social and mobile</p> <p>3 features and widely publicized it.</p> <p>4 In October of 2011, Pega</p> <p>5 announced a collaboration with a</p> <p>6 company called Sencha and, in October</p> <p>7 of 2011, Pega announced the</p> <p>8 collaboration with Sencha and, in</p> <p>9 January of 2012, Pega launched and</p> <p>10 made available a Pega Mobile product</p> <p>11 for sale as part of Pega Version 6.</p> <p>12 At PegaWorld in the spring of</p> <p>13 2012, Pega announced Pega Pulse. Pega</p> <p>14 Pulse had additional social features</p> <p>15 like the ability to attach files to</p> <p>16 the wall, attach links to the wall,</p> <p>17 create a text to the wall.</p> <p>18 All of this was in response to</p> <p>19 what was going on in the world around</p> <p>20 Pega. We certainly don't suggest that</p> <p>21 Pega invented the use of social media</p> <p>22 or the use of mobile devices, but</p> <p>23 neither did I. I use mobile devices</p> <p>24 and occasionally social media.</p> <p>25 Now, that brings us to what is</p>	<p style="text-align: right;">Page 8247</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 in dispute. Mr. Marshall testified</p> <p>3 that as the start of the events that</p> <p>4 are at issue that Pega was a very</p> <p>5 powerful platform. He testified that</p> <p>6 he had -- yesterday he testified that</p> <p>7 in Pega 7, which is what he accused</p> <p>8 Pega of adding -- he accused Pega of</p> <p>9 adding these new features.</p> <p>10 He said he had a very large</p> <p>11 spreadsheet that was many things that</p> <p>12 he discovered that Pega had added in</p> <p>13 Version 7. And he was asked how many</p> <p>14 of these things and he said, oh, 50 or</p> <p>15 60 new things were added to Pega</p> <p>16 Version 7 as compared to the prior</p> <p>17 version which is 6.3.</p> <p>18 He's picked out 5 of the 60 and</p> <p>19 attributes every sale to Pega after</p> <p>20 the introduction of those features,</p> <p>21 every sale regardless of who Pega was</p> <p>22 competing against and regardless of</p> <p>23 who the customer was to those five</p> <p>24 features.</p> <p>25 So let's talk about the</p>
<p style="text-align: right;">Page 8248</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 features.</p> <p>3 The first is social features.</p> <p>4 It's -- Appian says correctly that on</p> <p>5 December 19, 2012, Mr. Zou</p> <p>6 demonstrated Appian's Tempo social</p> <p>7 features to John Petronio, his</p> <p>8 assistant Michael Caton, a man named</p> <p>9 Robert Schwartz, and a woman named</p> <p>10 Agya Garg, all Pega employees.</p> <p>11 Ms. Garg, whose picture I'm</p> <p>12 hoping that Josh will put up, was the</p> <p>13 product development person within</p> <p>14 Pega's product management facility who</p> <p>15 was responsible for Pega's social</p> <p>16 features.</p> <p>17 And the next day, December 20,</p> <p>18 2012, she wrote an e-mail that is PLT</p> <p>19 Plaintiff's Exhibit 29.</p> <p>20 Could we put that up, please,</p> <p>21 Josh?</p> <p>22 (Whereupon, Exhibit PLT 29,</p> <p>23 E-mail, was identified.)</p> <p>24 MR. FRANK: And I want to go</p> <p>25 through that in some detail because</p>	<p style="text-align: right;">Page 8249</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 this -- because Appian points to this</p> <p>3 as its proof that Pega was copying</p> <p>4 something from Appian. I'm going to</p> <p>5 take it paragraph by paragraph, so</p> <p>6 there's no doubting what's going on</p> <p>7 here.</p> <p>8 First paragraph, please, Josh.</p> <p>9 Drop down just a little bit.</p> <p>10 Tempo PowerPoints, this was</p> <p>11 quite an eye opener for me. That's</p> <p>12 the sentence that Appian calls out.</p> <p>13 Then the next sentence says:</p> <p>14 Huge difference between what Appian</p> <p>15 has been marketing for the last year</p> <p>16 and a half and their actual product</p> <p>17 offering.</p> <p>18 Then she says -- then there's a</p> <p>19 line that says something like here's</p> <p>20 what I observed.</p> <p>21 Drop down one more. That's</p> <p>22 better.</p> <p>23 The next thing she says: Tempo</p> <p>24 has its own portal outside of an</p> <p>25 average work user portal that just</p>

<p style="text-align: right;">Page 8250</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 contains an activity stream and a fat</p> <p>3 grid view of tasks, ugh. Why isn't it</p> <p>4 integrated and in context?</p> <p>5 Parentheses, I think our approach was</p> <p>6 much stronger with all of that showing</p> <p>7 the stream in context rather than</p> <p>8 going to a whole separate portal.</p> <p>9 Appian didn't show you that</p> <p>10 paragraph.</p> <p>11 Let's go to the next paragraph</p> <p>12 which Appian didn't show you.</p> <p>13 The activity stream (or the</p> <p>14 wall) is a list of human and</p> <p>15 system-generated posts with only the</p> <p>16 ability to comment. Parentheses, we</p> <p>17 have them beat here. We have a</p> <p>18 plethora of capabilities on each and</p> <p>19 every point. Ability to attach</p> <p>20 files/links/create tasks/take action.</p> <p>21 I guess some of their screenshots</p> <p>22 about in-line express actions were all</p> <p>23 just marketing.</p> <p>24 Appian didn't show you that</p> <p>25 paragraph either. Here's another</p>	<p style="text-align: right;">Page 8251</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 paragraph.</p> <p>3 Drop down, Josh.</p> <p>4 There's a paragraph that says:</p> <p>5 No concept of context. Over and over</p> <p>6 again, I saw in the demo a post about</p> <p>7 Case 123 but nowhere could I click on</p> <p>8 it to see the case itself. It feels</p> <p>9 like it's two separate products, one</p> <p>10 for doing work, one for social with</p> <p>11 little insight into each other.</p> <p>12 And finally, if we get down to</p> <p>13 the paragraph that Appian made a great</p> <p>14 deal about. It starts with the word</p> <p>15 "social view," Josh. There you are.</p> <p>16 Okay. So can we blow -- can we take</p> <p>17 the highlighting off the other</p> <p>18 paragraphs? And I just want to see</p> <p>19 that sentence so that it's easy to</p> <p>20 read.</p> <p>21 Okay. Now, when Appian showed</p> <p>22 this during the trial, it highlighted</p> <p>23 the words "social view of work lists</p> <p>24 and tasks," and then it highlighted</p> <p>25 the last sentence that says: We</p>
<p style="text-align: right;">Page 8252</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 should just create a view like this</p> <p>3 and ship with it.</p> <p>4 The impression you get is that</p> <p>5 Ms. Garg was talk -- that the sentence</p> <p>6 at the beginning and the second</p> <p>7 sentence at the end were tightly</p> <p>8 linked to each other, but, in fact,</p> <p>9 let's take down the highlighting first</p> <p>10 and I'll focus on the part that's</p> <p>11 talking about Appian.</p> <p>12 It says: Social view of work</p> <p>13 lists and tasks, eh. And then it</p> <p>14 says --</p> <p>15 Now you can take down that,</p> <p>16 Josh, and highlight the next sentence.</p> <p>17 -- IBM has a more impressive</p> <p>18 view in their screenshots. We should</p> <p>19 just create a view like this and ship</p> <p>20 with it.</p> <p>21 Now, jurors are supposed to</p> <p>22 bring their common sense, and I'll ask</p> <p>23 you to judge what's likely being said</p> <p>24 there. And my suggestion, of course,</p> <p>25 is that she's talking about IBM, which</p>	<p style="text-align: right;">Page 8253</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 is the more impressive view, rather</p> <p>3 than, than -- and that certainly isn't</p> <p>4 an Appian trade secret -- rather than</p> <p>5 the social view of work lists and</p> <p>6 tasks after which she had said, eh.</p> <p>7 And again, common sense, none of</p> <p>8 us know exactly what was intended by</p> <p>9 that, but we can all draw conclusions.</p> <p>10 Now finally, let's get to --</p> <p>11 let's take a moment and go down to the</p> <p>12 bottom of the paragraph near the</p> <p>13 conclusion that starts with the word</p> <p>14 "overall," Josh. Can you find that?</p> <p>15 This is Ms. Garg's</p> <p>16 contemporaneous reaction: Overall, I</p> <p>17 am not impressed with their product</p> <p>18 offering at all. I'm extremely</p> <p>19 impressed by their marketing. For a</p> <p>20 year and a half, they've pushed the</p> <p>21 messaging really hard on this so I</p> <p>22 presumed that they had more</p> <p>23 capabilities. They have some nice</p> <p>24 videos on their website and some</p> <p>25 really slick collateral. Can we come</p>

<p style="text-align: right;">Page 8254</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 up with a plan to brief the sales</p> <p>3 force on this in January especially</p> <p>4 when they're competing against Appian?</p> <p>5 And at her deposition, Ms. Garg</p> <p>6 was asked about this language. She</p> <p>7 testified, "It seems that my belief</p> <p>8 was that the marketing was pretty</p> <p>9 good, the product was not, and if</p> <p>10 we're just -- if this was just</p> <p>11 marketing on a product that's not that</p> <p>12 great, I believed our product to be</p> <p>13 superior so we should at a minimum --</p> <p>14 at the minimum be marketing it as</p> <p>15 well."</p> <p>16 This is the evidence of</p> <p>17 Appian -- of Pega supposedly stealing</p> <p>18 ideas from Appian. And the enthusiasm</p> <p>19 for stealing ideas from Appian is</p> <p>20 pretty limited here because Ms. Garg</p> <p>21 is saying that in her view -- and</p> <p>22 she's the manager, that in her view</p> <p>23 what Pega already had was better than</p> <p>24 what Appian had.</p> <p>25 So I suggest a couple of</p>	<p style="text-align: right;">Page 8255</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 conclusions would follow from that.</p> <p>3 One is that Ms. Garg was the central</p> <p>4 person with respect to Pega Social and</p> <p>5 that her assessment of Appian social</p> <p>6 capabilities in 2012, nearly</p> <p>7 eight years before this case began in</p> <p>8 which she had no motive to be</p> <p>9 misleading anybody, that her</p> <p>10 observation at the time could not</p> <p>11 possibly have been influenced by this</p> <p>12 case.</p> <p>13 The second thing I suggest to</p> <p>14 you is that Mr. Zou's demonstration of</p> <p>15 Appian's product, that by the time</p> <p>16 Mr. Zou's demonstration of Appian's</p> <p>17 product, Pega had in its product in an</p> <p>18 advanced state of development social</p> <p>19 features that corresponded to the</p> <p>20 futures in Appian's social features</p> <p>21 before Pega was given any</p> <p>22 demonstration of Appian's social</p> <p>23 features by Mr. Zou. Pega didn't</p> <p>24 create what Ms. Garg was describing</p> <p>25 between the 19th and the 20th of</p>
<p style="text-align: right;">Page 8256</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 December in 2012.</p> <p>3 Third, there's nothing in</p> <p>4 Ms. Garg e-mail, I'd suggest, that</p> <p>5 suggests any intent by Pega to use</p> <p>6 anything arising from Mr. Zou's</p> <p>7 demonstration in the next version of</p> <p>8 the Pega platform to be released in</p> <p>9 7.1. It's just the opposite.</p> <p>10 In general, Ms. Garg is</p> <p>11 commenting that what Pega had was</p> <p>12 better. You wouldn't replace the</p> <p>13 features she was described with that</p> <p>14 which she was describing as</p> <p>15 nondisclosed.</p> <p>16 Now, I want to link this to</p> <p>17 damages again. The 3 billion,</p> <p>18 \$3.03 billion number that you heard</p> <p>19 from Mr. Mangi, is subject to the same</p> <p>20 qualification by Appian's expert</p> <p>21 Mr. Malackowski. He testified that if</p> <p>22 any of the product features that are</p> <p>23 at issue with respect to product</p> <p>24 improvements, if the jury would</p> <p>25 conclude that any of the product</p>	<p style="text-align: right;">Page 8257</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 features were not derived from trade</p> <p>3 secret information that Pega got from</p> <p>4 Appian, that the \$3.03 billion number</p> <p>5 drops away.</p> <p>6 He has no opinion as to what</p> <p>7 that number would be if any one of</p> <p>8 these product features was not deemed</p> <p>9 to be the result of a trade secret</p> <p>10 misappropriation by Pega.</p> <p>11 With that in mind, I repeat to</p> <p>12 cause Mr. Malackowski to concede that</p> <p>13 his number is inapplicable, the</p> <p>14 number, the \$3 billion number, I just</p> <p>15 have to persuade you, and you don't</p> <p>16 have to be persuaded, that only one of</p> <p>17 these is not an Appian trade secret.</p> <p>18 And I'm not finished for sure.</p> <p>19 The next, mobile. Dr. Marshall</p> <p>20 told you that Pega copied Appian's</p> <p>21 mobile features by adding in Pega</p> <p>22 Version 7, deployment of mobile</p> <p>23 applications completely out of the box</p> <p>24 with no further configuration.</p> <p>25 Ms. Garg's memo as of</p>

<p style="text-align: right;">Page 8258</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 December 2009 is addressed to --</p> <p>3 that's the relevance of the I like the</p> <p>4 IBM feature and it doesn't suggest</p> <p>5 that there was any intent to copy the</p> <p>6 Pega feature -- to copy the Appian</p> <p>7 feature.</p> <p>8 I've got myself confused. I</p> <p>9 need to say it right because I'm</p> <p>10 confusing -- I confused myself and,</p> <p>11 therefore, confusing you.</p> <p>12 The feature accused in the</p> <p>13 context of social is the concept of</p> <p>14 the work list, giving work lists and</p> <p>15 tasks. That is the subject of that</p> <p>16 sentence that I spent a lot of time</p> <p>17 talking about that where Ms. Garg said</p> <p>18 she liked the feature, but that is no</p> <p>19 indication of an intent to somehow use</p> <p>20 confidential information to steal</p> <p>21 something from Appian.</p> <p>22 For mobile, the claim is that</p> <p>23 Appian -- that the benefit of Appian's</p> <p>24 Tempo was that it came to developers</p> <p>25 with an out-of-the-box ability to</p>	<p style="text-align: right;">Page 8259</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 connect the standard platform to a</p> <p>3 mobile device. And so the -- and</p> <p>4 Dr. Marshall told you that that was</p> <p>5 the key feature and that developers</p> <p>6 didn't have to do anything more than</p> <p>7 sort of one-click connection.</p> <p>8 There's no question that Pega</p> <p>9 had been in the mobile business from</p> <p>10 as early as 2011. Ms. Louis testified</p> <p>11 that there was a fully operational</p> <p>12 product available for sale in January</p> <p>13 of 2012.</p> <p>14 Mr. Bixby testified that, that</p> <p>15 in January of 2012, Pega's mobile</p> <p>16 product worked out of the box without</p> <p>17 any need for further configuration.</p> <p>18 That capability was available in</p> <p>19 Pega 6.2 and 6.3.</p> <p>20 Ms. Louis explained that it just</p> <p>21 worked. You build the screen. You</p> <p>22 build your process. You build your</p> <p>23 application in the Pega designer</p> <p>24 studio.</p> <p>25 This is all stuff that was</p>
<p style="text-align: right;">Page 8260</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 available in January of 2012. Pega's</p> <p>3 first contact with Mr. Zou was in</p> <p>4 February of 2012.</p> <p>5 In order to conclude that Pega,</p> <p>6 A, got an idea that Appian was</p> <p>7 concealing, that is, it was a secret</p> <p>8 that Appian had this out-of-the-box</p> <p>9 capability, that Appian was actually</p> <p>10 keeping that secret, that's the first</p> <p>11 thing.</p> <p>12 And second, that somehow you</p> <p>13 should just disbelieve Mr. Bixby and</p> <p>14 Ms. Garg -- sorry, Mr. Bixby and</p> <p>15 Ms. Louis, who were the people doing</p> <p>16 it at the time. And no doubt</p> <p>17 Mr. Mangi will tell you that they were</p> <p>18 liars and thieves and you shouldn't</p> <p>19 believe them, but they are the people</p> <p>20 who built the product.</p> <p>21 Dr. Marshall, someone who came</p> <p>22 along years later, had rendered an</p> <p>23 opinion on this subject. I believe he</p> <p>24 was hired on something like</p> <p>25 November 10th of 2021, rendered a</p>	<p style="text-align: right;">Page 8261</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 written Report, a long written Report</p> <p>3 on November 24, 2021, meaning</p> <p>4 two weeks after he was first retained.</p> <p>5 And based upon -- a very smart</p> <p>6 man, I'm not suggesting otherwise --</p> <p>7 two weeks with software that you're</p> <p>8 completely unfamiliar with before you</p> <p>9 start is a heavy lift for anybody, no</p> <p>10 matter how capable they are.</p> <p>11 Next, the -- Pega moved on, that</p> <p>12 is, Pega purchased a company called</p> <p>13 Antenna in October of 2013. Nobody</p> <p>14 suggests that Mr. Zou had any</p> <p>15 relationship with Antenna, any</p> <p>16 involvement at all, and everyone</p> <p>17 agrees that adding Antenna added more</p> <p>18 skill to Pega and increased Pega's</p> <p>19 sales and bookings and so on.</p> <p>20 And Appian was found during</p> <p>21 trial -- Mr. Mangi didn't go to it</p> <p>22 during his closing, but they were</p> <p>23 found during the trial that in 2013,</p> <p>24 in 2014, Pega's booking increased two</p> <p>25 times and its mobile pipeline</p>

<div data-bbox="693 119 805 142" data-label="Page-Header">Page 8262</div> <div data-bbox="170 140 795 210" data-label="Text"> <p>Defendant - Pega - Closing (Frank) increased four times.</p> </div> <div data-bbox="217 214 784 350" data-label="Text"> <p>Sure, it bought a company that was in the mobile business and that's what happens when you buy another company.</p> </div> <div data-bbox="217 357 800 636" data-label="Text"> <p>Now, in 2013, January of 2013, Mr. Petronio created a mobile analysis. He was asked to create an analysis that contained a list of what Pega's features were, a list of what Appian's features were, and a list of what salesforce.com features were. They were a competitor.</p> </div> <div data-bbox="217 640 769 812" data-label="Text"> <p>Ms. Louis contributed the Pega part, and Mr. Zou contributed the Appian part. They didn't have anything to do with each other. Mr. Petronio put this together.</p> </div> <div data-bbox="217 816 677 882" data-label="Text"> <p>Here's the result. It's Plaintiff's 40.</p> </div> <div data-bbox="217 888 719 953" data-label="Text"> <p>(Whereupon, Exhibit PLT 40, Mobile Analysis, was identified.)</p> </div> <div data-bbox="217 957 784 1024" data-label="Text"> <p>MR. FRANK: January of 2013, do you recall the --</p> </div>	<div data-bbox="1411 119 1523 142" data-label="Page-Header">Page 8263</div> <div data-bbox="886 140 1411 172" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> </div> <div data-bbox="930 176 1529 279" data-label="Text"> <p>I believe there is a -- is there a second page, Josh, with a chart on it? There we go.</p> </div> <div data-bbox="930 283 1529 636" data-label="Text"> <p>So this is -- the column on the left, which is in green, is a set of tick marks that are reflective of characteristics that the Pega product had at the time, created by Ms. Louis. The column in the center, light blue, indicates characteristics that Mr. Zou told Mr. Petronio Appian had and the column on the right is salesforce.com, a third competitor.</p> </div> <div data-bbox="930 640 1513 882" data-label="Text"> <p>And it lists the features and the benefits of the features. And as you can see, the perception at the time was that Pega's product was -- had all of those features, had everything that Appian had, and had a bunch more as well.</p> </div> <div data-bbox="930 888 1513 1024" data-label="Text"> <p>Again, in fairness, you'll see it says at the top: External positioning, assuming mobile features in 7.1. So those are features that</p> </div>
<div data-bbox="693 1050 805 1073" data-label="Page-Header">Page 8264</div> <div data-bbox="170 1068 784 1205" data-label="Text"> <p>Defendant - Pega - Closing (Frank) were present at the time, not yet introduced, but present in January of 2013.</p> </div> <div data-bbox="217 1211 800 1491" data-label="Text"> <p>The summary is the out-of-box capabilities, which is with one-click and with no further configuration, was already in Pega's product in -- long before this and before the relevant information was provided to Pega -- relevant information related to Appian provided to Pega.</p> </div> <div data-bbox="217 1497 784 1633" data-label="Text"> <p>And there are three remaining features and I'll address them fairly quickly. I don't want to take too much of Mr. Travell's time.</p> </div> <div data-bbox="217 1638 800 1738" data-label="Text"> <p>They are a bunch of ease-of-use features, one of which is called Smart Services.</p> </div> <div data-bbox="217 1745 784 1881" data-label="Text"> <p>And, Josh, if we can put up DX 721. This is going to be an image of Appian's Process Modeler. It must be -- there we go.</p> </div> <div data-bbox="217 1885 769 1953" data-label="Text"> <p>(Whereupon, Exhibit DX 721, Image of Appian Process Modeler, was</p> </div>	<div data-bbox="1411 1050 1523 1073" data-label="Page-Header">Page 8265</div> <div data-bbox="886 1068 1411 1136" data-label="Text"> <p>Defendant - Pega - Closing (Frank) identified.)</p> </div> <div data-bbox="930 1140 1529 1526" data-label="Text"> <p>MR. FRANK: And if you're -- just to repeat some stuff you've heard during the trial, but the listing down on the left side is called a palette and it provides a set of functions. The way this works is you can click on something that's in the palette somewhere, drag it onto the canvas and it's used to build a process, and there's programming that is associated with each of the things you click on.</p> </div> <div data-bbox="930 1530 1464 1598" data-label="Text"> <p>Now, could we look please at Plaintiff's Demonstrative 5.33?</p> </div> <div data-bbox="930 1602 1464 1669" data-label="Text"> <p>(Whereupon, Exhibit PLT 5.33 Demonstrative, was identified.)</p> </div> <div data-bbox="930 1673 1529 1953" data-label="Text"> <p>MR. FRANK: In Pega 7.1, there was added a bar that says: Smart Services, and if you click on that bar, you got a listing of the ten most popular things that could be dragged onto the canvas. And the benefit of these things in Pega and Appian is that underneath them, there's a bunch</p> </div>

<p style="text-align: right;">Page 8266</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 of programming that does the work for</p> <p>3 the designer. It's already</p> <p>4 preprogrammed, a preconfigured</p> <p>5 activity.</p> <p>6 The very same things were</p> <p>7 available in prior versions of Pega</p> <p>8 sitting underneath other shapes that</p> <p>9 existed in the palette on the</p> <p>10 left-hand side of Pega's canvas. So,</p> <p>11 for example, if you had clicked on</p> <p>12 utility in the prior version, you</p> <p>13 would have gotten something like</p> <p>14 access to 300-some-odd of these</p> <p>15 preconfigured actions.</p> <p>16 All that Pega did was to group</p> <p>17 ten of them under the heading Smart</p> <p>18 Shapes and put them into a drop-down</p> <p>19 menu that you could access more</p> <p>20 easily. It actually put the box</p> <p>21 around the Smart Shapes, the blue bar,</p> <p>22 and then around what you get when you</p> <p>23 click on Smart Shapes.</p> <p>24 Every one of those capabilities</p> <p>25 was present in the prior version</p>	<p style="text-align: right;">Page 8267</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 except that they were under the</p> <p>3 utility -- I'll call it a bar rather</p> <p>4 than the Smart Shape bar. And all</p> <p>5 Pega did was sort out the more popular</p> <p>6 of the utilities, put them under Smart</p> <p>7 Shapes and the one that's underneath</p> <p>8 that is called something else. And if</p> <p>9 you clicked on immediately underneath</p> <p>10 it --</p> <p>11 Josh, I wish my eyesight were</p> <p>12 better.</p> <p>13 It's called Advanced Shapes. If</p> <p>14 you click on that, you get the rest of</p> <p>15 them. That was the innovation. That</p> <p>16 is \$3 billion worth of value</p> <p>17 supposedly.</p> <p>18 The next one is ease of editing.</p> <p>19 That's it. That's it with respect to</p> <p>20 the first. It is literally the</p> <p>21 ability to get the same thing you</p> <p>22 could get at 6.3. It's only that that</p> <p>23 is accessed by clicking on one bar as</p> <p>24 distinguished from a different bar.</p> <p>25 Nothing else.</p>
<p style="text-align: right;">Page 8268</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 The next, ease of editing, can</p> <p>3 we pull up Dr. Marshall's Slide 5.3,</p> <p>4 5.39, please, Josh?</p> <p>5 You saw this yesterday. It's on</p> <p>6 the left, as I understand it, from</p> <p>7 Appian's product and it's a button</p> <p>8 that allows you to move from the user</p> <p>9 environment back to the developer</p> <p>10 environment. And it's supposed to be</p> <p>11 an ease-of-use feature.</p> <p>12 The thing on the right in the</p> <p>13 red square is, in fact, something that</p> <p>14 does nothing of the kind. It is a</p> <p>15 button that exists in the user</p> <p>16 function, as you can see, immediately</p> <p>17 below and to the left of that button</p> <p>18 are a bunch of icons.</p> <p>19 Those icons exist on a dashboard</p> <p>20 and user function. If you click on</p> <p>21 that button, what you get is the</p> <p>22 ability to move the icons around on</p> <p>23 the screen if you're a user for your</p> <p>24 convenience. It would be like taking</p> <p>25 the icons on the screen that you see</p>	<p style="text-align: right;">Page 8269</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 when you first pull out a cell phone</p> <p>3 and moving them around into a</p> <p>4 different location.</p> <p>5 That's it. Nobody suggests that</p> <p>6 edit buttons like this is something</p> <p>7 brand new. But these two edit buttons</p> <p>8 are doing completely different things;</p> <p>9 and that is, I say respectfully to</p> <p>10 Dr. Marshall, he just misunderstood</p> <p>11 what he was looking at.</p> <p>12 The last is custom data types.</p> <p>13 And there's a long explanation that</p> <p>14 goes with this, but the short of it is</p> <p>15 that in a particular type of business,</p> <p>16 say a banking business, the bank</p> <p>17 collects certain information with</p> <p>18 respect to a customer.</p> <p>19 And Mr. Bixby testified and he</p> <p>20 did a drawing, DX 10.2.</p> <p>21 (Whereupon, Exhibit DX 10.2,</p> <p>22 Drawing, was identified.)</p> <p>23 MR. FRANK: Sorry. He jot down</p> <p>24 in the drawing, but basically it's a</p> <p>25 way of organizing data values relevant</p>

<p style="text-align: right;">Page 8270</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 to a particular business. It could be</p> <p>3 a bank. It could be a pizza shop.</p> <p>4 And it collects all of a class of</p> <p>5 information in one place in a way that</p> <p>6 makes the same information usable,</p> <p>7 transferable to other aspects of the</p> <p>8 bank's business or the pizza shop's</p> <p>9 business.</p> <p>10 And of course, that's not unique</p> <p>11 to Pega, but something that's been in</p> <p>12 Pega's product since 2002 or '3. The</p> <p>13 argument is, yes, it was in Pega's</p> <p>14 product, but we made it much easier.</p> <p>15 But you were never told, as I</p> <p>16 stand here, I don't know what it is</p> <p>17 that supposedly would be made easier.</p> <p>18 This is stuff that was in Pega's</p> <p>19 product for two decades -- or</p> <p>20 one decade at that time, two decades</p> <p>21 now.</p> <p>22 Both Mr. Bixby and Mr. Trefler</p> <p>23 testified that the same stuff had been</p> <p>24 in Pega's product since 2002.</p> <p>25 I want to switch now to the</p>	<p style="text-align: right;">Page 8271</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 damages part of the case and to focus</p> <p>3 you first on the jury instructions.</p> <p>4 Josh, could we have Jury</p> <p>5 Instruction No. 12 and, in particular,</p> <p>6 No. 3 there, if you would?</p> <p>7 And the instruction is: If one</p> <p>8 or both of the Defendants</p> <p>9 misappropriated a trade secret or</p> <p>10 trade secrets. And I hope you</p> <p>11 conclude that they didn't and you</p> <p>12 never get there.</p> <p>13 The question for damages purpose</p> <p>14 is: What is the amount of damages</p> <p>15 caused by the misappropriation?</p> <p>16 And now let's go to Jury</p> <p>17 Instruction No. 13. Go to the very</p> <p>18 last one, Josh. It's on the second</p> <p>19 page.</p> <p>20 Cause of damages is a cause that</p> <p>21 that in the natural and continuous</p> <p>22 sequence produces the damages. It is</p> <p>23 a cause without which the damages</p> <p>24 would not have occurred.</p> <p>25 Cause of damages is a cause that</p>
<p style="text-align: right;">Page 8272</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 in natural and continuous sequence</p> <p>3 produces the damages. It's a cause</p> <p>4 without which the damages would not</p> <p>5 have occurred.</p> <p>6 Now, I want to return to</p> <p>7 something I said in the very beginning</p> <p>8 which is that Pega's product is</p> <p>9 designed for very large companies, and</p> <p>10 it is designed to handle tens of</p> <p>11 thousands of users. They're allowed</p> <p>12 to build an application once and then</p> <p>13 expand it and expand it and expand it</p> <p>14 without changing very much to make it</p> <p>15 very easy to add new products, add new</p> <p>16 places, add a new country, add new</p> <p>17 customer types.</p> <p>18 And it runs heavily on something</p> <p>19 called rules and rule sets, which are</p> <p>20 a set of rules that guide the whole</p> <p>21 process. Some of them being if you</p> <p>22 were a bank officer and the loan is</p> <p>23 more than \$10,000, you have to get</p> <p>24 approval by somebody higher up. There</p> <p>25 are many, many of them.</p>	<p style="text-align: right;">Page 8273</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 And there are other features</p> <p>3 like the directly captured objectives</p> <p>4 feature and the fact that Pega had an</p> <p>5 online mobile, an offline mobile</p> <p>6 feature, and other things that made</p> <p>7 Pega's product different from its</p> <p>8 competitors' products, different from</p> <p>9 Appian's products.</p> <p>10 And as I said very early on,</p> <p>11 the -- some people like that, need</p> <p>12 that, are prepared to pay for it.</p> <p>13 Other people who have smaller less</p> <p>14 complex businesses don't necessarily</p> <p>15 need it, and so I'm not standing here</p> <p>16 to give you a sales pitch on behalf of</p> <p>17 Pega. I'm simply saying that the Pega</p> <p>18 product has features that the Appian</p> <p>19 product doesn't have, and those</p> <p>20 features matter for certain customers</p> <p>21 and they drive customer decisions.</p> <p>22 I'm going to give you a half</p> <p>23 dozen examples, give you each fairly</p> <p>24 quickly but this is all in evidence.</p> <p>25 The first is Amazon.</p>

<p style="text-align: right;">Page 8274</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 DX 1382, please, Josh.</p> <p>3 (Whereupon, Exhibit DX 1382,</p> <p>4 Document, was identified.)</p> <p>5 MR. FRANK: Amazon, I'll talk</p> <p>6 generally. Appian had been along to</p> <p>7 their facility to license them to</p> <p>8 Amazon for years before these events,</p> <p>9 2004. And it's the Amazon's Financial</p> <p>10 Services. And Amazon Financial</p> <p>11 Services came to be dissatisfied with</p> <p>12 the ability of the Appian product to</p> <p>13 scale, so they decided that they would</p> <p>14 go outside and, and they would look</p> <p>15 for other people who could supply what</p> <p>16 they needed.</p> <p>17 And so they went to -- they put</p> <p>18 it out to bid to Pega and IBM --</p> <p>19 And if you scroll down, please,</p> <p>20 Josh, to Scott Ulrichs' e-mails.</p> <p>21 Mr. Ulrichs was a salesman who</p> <p>22 was dealing with Amazon. He was</p> <p>23 reporting to the most senior people in</p> <p>24 Amazon -- the most senior people at</p> <p>25 Appian that we know Amazon was moving</p>	<p style="text-align: right;">Page 8275</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 away from Appian for backup recovery</p> <p>3 scalability reasons for the last year</p> <p>4 plus.</p> <p>5 And further up in the e-mail,</p> <p>6 Bob Kramer who's a founder of Appian</p> <p>7 says: We worked at length with the</p> <p>8 Amazon folks, including their senior</p> <p>9 business folks, earlier this year to</p> <p>10 get them over their concerns about</p> <p>11 Appian's architecture. We knew there</p> <p>12 was a risk. We weren't sure it was</p> <p>13 Pega they were considering. Now we</p> <p>14 know.</p> <p>15 In the very top, CEO Matt</p> <p>16 Calkins says: I'm surprised that we</p> <p>17 had zero. Amazon had fully paid up</p> <p>18 for its license but we had zero.</p> <p>19 Can't top Pega in a friendly account</p> <p>20 with bilateral activity.</p> <p>21 Pega simply had something that</p> <p>22 Appian didn't have. It's not -- and</p> <p>23 Amazon is a very sophisticated</p> <p>24 customer and concluded what Appian had</p> <p>25 didn't meet Amazon's need.</p>
<p style="text-align: right;">Page 8276</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 I'm not here to tell you that</p> <p>3 Appian was right or wrong. I'm simply</p> <p>4 here to tell you that that's what</p> <p>5 happened.</p> <p>6 Next one is DX 341. Go to the</p> <p>7 first page, please, Josh.</p> <p>8 (Whereupon, Exhibit DX 341,</p> <p>9 E-mail, was identified.)</p> <p>10 MR. FRANK: This is Edward</p> <p>11 Hughes in the middle of the page. He</p> <p>12 reports: We now saw three very</p> <p>13 recent -- this is in the text, in an</p> <p>14 e-mail to Matt Calkins who's the</p> <p>15 CEO -- we now have three very recent</p> <p>16 examples where Pega has beaten us on a</p> <p>17 technical evaluation, Telstra, Poste</p> <p>18 Italiane, and Ryder.</p> <p>19 These were all very recent so</p> <p>20 they establish a break from the past.</p> <p>21 The punitive reasons in each case are</p> <p>22 as follows:</p> <p>23 Telstra, out-of-the-box</p> <p>24 governance framework. That's</p> <p>25 something that Pega had, Appian didn't</p>	<p style="text-align: right;">Page 8277</p> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 have.</p> <p>3 Poste Italiane, ease of use</p> <p>4 because of the process discovery</p> <p>5 module and DCO, directly captured</p> <p>6 objectives, on the governance. And</p> <p>7 those again are features that Pega</p> <p>8 has, Appian didn't have.</p> <p>9 And as we go forward in the</p> <p>10 e-mail --</p> <p>11 To Page 741, please, Josh.</p> <p>12 -- there's an e-mail from a man</p> <p>13 named Sid Nazareth to -- I beg your</p> <p>14 pardon, there's an e-mail from Karen</p> <p>15 Astley who got -- starting at the</p> <p>16 beginning of the page, and she says --</p> <p>17 just wait, the first full line --</p> <p>18 Edward was correct in this e-mail. We</p> <p>19 have process governance coming up, and</p> <p>20 I do see us being weak when competing</p> <p>21 against Pega in that area.</p> <p>22 Next is on the next page -- I</p> <p>23 beg your pardon?</p> <p>24 The next are two interesting</p> <p>25 e-mails. One is on Page 746, Josh,</p>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8278</div> <div data-bbox="99 142 803 1024" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 last e-mail in the string.</p> <p>3 It's from a man named Tony</p> <p>4 Durso, who was the vice president for</p> <p>5 solutions consulting at Appian at the</p> <p>6 time. And in the third paragraph down</p> <p>7 from he says roughly what Mr. Hughes</p> <p>8 said at his deposition: I may be in</p> <p>9 the minority with this opinion, but I</p> <p>10 think that Appian and Pega are two</p> <p>11 fundamentally different platforms that</p> <p>12 happen to be categorized under the</p> <p>13 same three-letter acronym.</p> <p>14 And second up to the next e-mail</p> <p>15 in time is an e-mail from -- on 745,</p> <p>16 please, Josh -- from a man named Joe</p> <p>17 Aleardi. And Mr. Aleardi says, in the</p> <p>18 first sentence of his e-mail, second</p> <p>19 or third sentence: They do some</p> <p>20 things better, just like we do.</p> <p>21 What's now important are those things</p> <p>22 to the customer that leads to wins and</p> <p>23 losses.</p> <p>24 That, ladies and gentlemen, is</p> <p>25 the real world, not from the world of</p> </div>	<div data-bbox="1412 121 1523 142" data-label="Page-Header">Page 8279</div> <div data-bbox="821 142 1523 1024" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 litigation.</p> <p>3 Next, 2013, DX 1288.</p> <p>4 (Whereupon, Exhibit DX 1288,</p> <p>5 E-mail, was identified.)</p> <p>6 MR. FRANK: The Ed Hughes</p> <p>7 e-mail, it's the first in time. It's</p> <p>8 on Page 585.</p> <p>9 Ed Hughes, again, is head of</p> <p>10 Appian's sales function: We have run</p> <p>11 into three or four encounters with</p> <p>12 clients in which they are challenging</p> <p>13 our ability to do rules inheritance.</p> <p>14 This is apparently hitting a cord with</p> <p>15 clients. They have spoken with Pega</p> <p>16 and in some cases have become the more</p> <p>17 important selection.</p> <p>18 We need a simple, killer answer</p> <p>19 that goes further than, yes, we do it</p> <p>20 but we do it differently. It has to</p> <p>21 say Pega does it all wrong or does it</p> <p>22 by necessity because it's so complex.</p> <p>23 Appian has a simple and elegant</p> <p>24 answer.</p> <p>25 And then in the next sentence,</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8280</div> <div data-bbox="99 1071 803 1953" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 he says: This is a top competitive</p> <p>3 priority.</p> <p>4 Skipping a sentence: We just</p> <p>5 lost Rabo on this point. It's</p> <p>6 critical that we develop an answer and</p> <p>7 counter -- I think that's intended to</p> <p>8 be ASAP.</p> <p>9 Then if you go to the very</p> <p>10 top -- go up one e-mail, Tony Durso,</p> <p>11 the head of sales consulting says: A</p> <p>12 few initial thoughts.</p> <p>13 Next sentence: They are correct</p> <p>14 in saying that we don't have rules</p> <p>15 today and a weakness has been exposed.</p> <p>16 I'm not suggesting that</p> <p>17 everybody would want that. I'm just</p> <p>18 suggesting that many customers do</p> <p>19 that.</p> <p>20 I'll give you one more. I may</p> <p>21 be taking more time than I should.</p> <p>22 Let's go to DX 1288. This is a</p> <p>23 discussion between -- 1288 is Bates</p> <p>24 585. I'm sorry, I'm showing you the</p> <p>25 same thing, my mistake, and not very</p> </div>	<div data-bbox="1412 1050 1523 1071" data-label="Page-Header">Page 8281</div> <div data-bbox="821 1071 1523 1953" data-label="Text"> <p>1 Defendant - Pega - Closing (Frank)</p> <p>2 impressive.</p> <p>3 Let's talk about Census for just</p> <p>4 a minute. And, Josh, can you put up</p> <p>5 DX 1820 and go to, first, to Page 68?</p> <p>6 (Whereupon, Exhibit DX 1820,</p> <p>7 Slide, was identified.)</p> <p>8 MR. FRANK: The slide shown</p> <p>9 here, the Census -- well, first point,</p> <p>10 Census awarded this contract to</p> <p>11 Appian -- to Pega because Pega was</p> <p>12 able to build an offline mobile</p> <p>13 capability that Census needed and</p> <p>14 Appian couldn't do in the defined</p> <p>15 amount of time.</p> <p>16 That's completely undisputed.</p> <p>17 It had nothing to do with Mr. Zou.</p> <p>18 It's a 2016 event, years after Zou</p> <p>19 left. He didn't do anything having to</p> <p>20 do with Pega Mobile. But Pega could</p> <p>21 build something, Appian couldn't build</p> <p>22 it. Pega got the job.</p> <p>23 But besides that, the Census</p> <p>24 Bureau did an overall evaluation of</p> <p>25 the qualities of the two products, and</p> </div>

<div data-bbox="693 119 805 140" data-label="Page-Header">Page 8282</div> <div data-bbox="170 138 784 1022" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>that's what you see in the bar chart on the right.</p> <p>And in every one of five criteria, every one, Pega, which is the blue bar on the right, outscores Appian, which is the salmon-colored bar on the left, in every single instance by a completely neutral source who was trying to do the best they could for the benefit of the United States government and the rest of us, right, taxpayers.</p> <p>And if you go now -- in each of those criteria, which have to do with system design and functionality and ability to meet the schedule and cost and overall liability, on every single criteria that the Census created, it is -- Pega outscores.</p> <p>You can't blame that on Mr. Zou, that doesn't make sense.</p> <p>Now go to the next Page 69.</p> <p>This is the overall evaluation.</p> <p>Pega is in the yellow on the right,</p> </div>	<div data-bbox="1411 119 1523 140" data-label="Page-Header">Page 8283</div> <div data-bbox="888 138 1523 1022" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>Appian is the salmon on the left. In the aggregate and by score is that Pega is at 87.something, the in-house solution of the Census is at 70.5, and Appian is at 67.0.</p> <p>So Appian is the third-place finisher there, not even the second-place finisher. Completely independent evaluation.</p> <p>Next, DX 1346, please, Josh.</p> <p>(Whereupon, Exhibit DX 1346, E-Mail string, was identified.)</p> <p>MR. FRANK: This is an exchange involving a man named Dave Dantus. Mr. Dantus was an Appian regional vice president for Department of Defense sales.</p> <p>If you go to Page 274, middle of the page, second paragraph down.</p> <p>Mr. Dantus said: I'd like to continue this discussion and see if we can take it to another level on our own from loss to Pega earlier this year. I've attached the loss analysis</p> </div>
<div data-bbox="693 1045 805 1066" data-label="Page-Header">Page 8284</div> <div data-bbox="170 1064 800 1950" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>document to this message.</p> <p>And then in the next memo he writes -- we can skip over the next: I'd like to see if we can substantiate our claims with more compelling content.</p> <p>And then the next three paragraphs going down, he points out that the Air Force concluded that Pega was simply easier to use and the Air Force found Appian to be more complex and that Pega was able to make their arguments in a side-by-side comparison, Appian versus Pega.</p> <p>Now, this is a 2018 document, four years after last contact with Mr. Zou, no suggestion that that's driven by anything related to Mr. Zou.</p> <p>It's relating to the product features of the two products that have nothing to do with Mr. Zou and nothing to do with what is claimed to be the trade secrets that Mr. Zou provided.</p> <p>Before I wear out my welcome,</p> </div>	<div data-bbox="1411 1045 1523 1066" data-label="Page-Header">Page 8285</div> <div data-bbox="888 1064 1523 1950" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>I'll stop reading this to you because I think I've made the point, hopefully.</p> <p>The larger question, then, is: What underlies Appian's damage claim?</p> <p>The claim here is that Mr. Zou provided to Pega his experience as an Appian developer between 2012 and 2014 and, as a result of that, every single sale that Pega made between October 1st, 2013, and September 30, 2021, to any customer in competition with anybody, every one of Pega's sales -- not just Pega's sales in competition with Appian, but Pega's sales in competition with anyone, that every such sale was attributable to information provided by Mr. Zou.</p> <p>That is a spectacular, unreasonable overreach just by comparing the two numbers, 479 million where Pega was competing with Appian and 3 billion where it was competing with everyone.</p> </div>

<div data-bbox="693 121 803 142" data-label="Page-Header">Page 8286</div> <div data-bbox="172 140 800 1024" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>It's not hard to figure out that 84 percent of the sales data being claimed in this unjust enrichment claim are for sales made by Pega against other people other than Appian with no description of who the other people were, no description of what was being sold in competition, and it's simply out there and completely unlinked in any other way to the product features that are said to justify an award of \$3 billion.</p> <p>So that's the first problem with it.</p> <p>The second problem with it is that sort of a problem of economics. If you're going to claim all the revenues of a business -- let me make this distinction. If I -- if I'm the last one into a restaurant one night, the marginal cost of serving me dinner, if I'm the last one in, is pretty small. They have all the tables, the walls, and the kitchen,</p> </div>	<div data-bbox="1411 121 1521 142" data-label="Page-Header">Page 8287</div> <div data-bbox="888 140 1531 1024" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>and it's mostly the cost of the food they're going to serve to me and the little labor cost in the kitchen and that's it.</p> <p>So if you're looking at a small increase in sales, what you compare is that small increase in costs driven by those sales.</p> <p>Now, if you ask what is it that drives the revenue of that restaurant if you're going to claim that all the revenues of the restaurant are unjust enrichment?</p> <p>And the answer is, it's all the costs of the business because now you have to -- you know, it's the cost of the tables and the chairs and the kitchen equipment and the food and all of the service personnel and the chef and all of that.</p> <p>So it depends on what you're claiming. When you're claiming all of the revenues of the business, you have to -- write off, you have to deduct</p> </div>
<div data-bbox="693 1050 803 1071" data-label="Page-Header">Page 8288</div> <div data-bbox="172 1071 800 1953" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>from that all of the costs of the business.</p> <p>Don't believe me. Don't believe Mr. Platt, who said what I just said. Believe Mr. Malackowski who testified as follows: If the jury were to conclude that all of Pega's -- if the jury were to conclude that -- included all of Pega revenues, you should include all of Pega's costs that in respect of your product change theory.</p> <p>You would agree, would you not, that the product -- I butchered that.</p> <p>This is me asking the question, by the way: If the jury were to conclude that all of Pega's -- if the jury were to conclude that if you included all of Pega's revenues, you should include all of Pega's costs with respect to your product change theory, you would agree that damages for the product change theory are zero?</p> <p>Answer from Mr. Malackowski:</p> </div>	<div data-bbox="1411 1050 1521 1071" data-label="Page-Header">Page 8289</div> <div data-bbox="888 1071 1531 1953" data-label="Text"> <p>Defendant - Pega - Closing (Frank)</p> <p>Yes, and you would award damages under the competition scenario. That's competition against Appian, direct competition against Appian.</p> <p>That's what Mr. Platt said. That's what Mr. Malackowski said. The two experts are saying the same thing.</p> <p>Now, there was criticism of Mr. Platt yesterday when he said that, but the inescapable fact is that that is exactly what Mr. Malackowski agreed was correct.</p> <p>Now, the argument I bet you're going to hear come rebuttal time is, well, gee, yeah, some of those expenditures, though, would have assisted sales in future periods.</p> <p>And the answer to that is maybe so. But when you're looking at a single block of time, it's always true that some expenditures prior to the block of time would have assisted revenues within the block of time and some expenditures within the block of</p> </div>

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1 Defendant - Pega - Closing (Frank)  
2 time would have assisted sales after  
3 the block of time. They tend to wash  
4 each other out.  
5 So the accounting, the way this  
6 stuff is accounted for is to take the  
7 revenues of the business, to subtract  
8 the costs of the business. And when  
9 you do that, what you get in this  
10 particular case are these particular  
11 facts, there's no damages at all.  
12 Now, the -- and regardless of  
13 what you hear next from Mr. Mangi --  
14 and I will not get a chance to  
15 respond, I should say, so I should  
16 protect myself here -- the fact is the  
17 two experts said the same thing. And  
18 the fact is that as a matter of  
19 accounting and economics, it's an  
20 appropriate thing to say.  
21 So with respect to this theory,  
22 even if there was a demonstration of a  
23 trade secret misappropriation -- and I  
24 surely hope you don't get there -- the  
25 damages for the large claim would be

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1 Defendant - Pega - Closing (Frank)  
2 prejudice your decision. We can't  
3 prejudice your decision.  
4 Thank you. Thank you for being  
5 willing to listen to me. Thank you  
6 for your patience.  
7 And the last thing I would say  
8 is, remember, I don't get a chance to  
9 respond. The rules are such that at  
10 some point this has to end and,  
11 therefore, I don't get a chance to  
12 respond. So if I sit there grimacing  
13 and don't say anything, it isn't  
14 because I don't have something to say,  
15 it's that the rules say I get a  
16 chance.  
17 Thank you very, very much.  
18 THE COURT: We'll take the  
19 afternoon recess at this point.  
20 (Jury exits.)  
21 MR. MANGI: Your Honor, I'm  
22 slightly concerned about the  
23 disproportional utilization of time  
24 here given now we now used 2 hours and  
25 20, and that's only one of the two

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1 Defendant - Pega - Closing (Frank)  
2 zero.  
3 We offered Mr. Platt's testimony  
4 on the question of what should be the  
5 damages in the event that you were,  
6 you were to find that there was trade  
7 secret misappropriation on the sales  
8 and marketing claim, and his  
9 testimony -- I believe, it was  
10 \$187 million.  
11 The defendant in this situation  
12 always has a puzzle because we  
13 affirmatively believe that there was  
14 no trade secret misappropriation, but  
15 we don't make the decision. You make  
16 the decision. Therefore, we try to  
17 provide some assistance if, in the  
18 unfortunate case, you find against us.  
19 That's not a suggestion. The  
20 thing you worry about if you are  
21 defendants, you wonder whether that  
22 suggests they concede they really are  
23 liable.  
24 And the answer is, we certainly  
25 do not do think that. We can't

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1 Defendant - Pega - Closing (Frank)  
2 defendants. And we talked about  
3 proportionate time per side.  
4 Could I just ask how long  
5 Mr. Travell intends to have?  
6 MR. TRAVELL: You may. When I  
7 was shaving this morning, Your Honor,  
8 it took me 21 minutes. I think I can  
9 do better.  
10 MR. MANGI: Okay.  
11 THE COURT: So as I calculated,  
12 Mr. Mangi's used 2 hours and  
13 6 minutes, and Mr. Frank has used  
14 2 hours, 17 minutes. So we'll balance  
15 it out.  
16 MR. MANGI: Thank you.  
17 THE COURT: Okay. Court is in  
18 recess for 15 minutes.  
19 (Recess taken.)  
20 THE COURT: All right. Why  
21 don't you bring the jury in?  
22 (Jury enters.)  
23 THE COURT: All members of the  
24 jury are present. Everyone may be  
25 seated.

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1 Defendant - Zou - Closing (Travell)  
2 And, Mr. Travell, you have the  
3 floor.  
4 MR. TRAVELL: Thank you, Your  
5 Honor.  
6 Good afternoon. My name is  
7 Wayne Travell. I am lead counsel for  
8 Mr. Youyong Zou, who's present today  
9 in the courtroom.  
10 He spent most of the last seven  
11 weeks in the trophy box behind third  
12 base back there, so it's nice to be  
13 able to see you all at once.  
14 But I'd like to join both  
15 Mr. Mangi and Mr. Frank in thanking  
16 you for hanging in with us for the  
17 last seven weeks. And you're getting  
18 to see how cases are decided and how  
19 laws made and stuff. It's sort of  
20 like asking how the sausage was made.  
21 It's a messy process, but this is  
22 actually how these things are done.  
23 So I don't need to tell you that  
24 the vast amount of time and energy the  
25 lawyers have spent in this case have

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1 Defendant - Zou - Closing (Travell)  
2 of trade secrets -- and I'll come back  
3 to that in just a moment -- then the  
4 actual amount that he profited, the  
5 amount of money that he put into his  
6 pocket was \$18,465.10.  
7 Pega is claiming \$23,600, which  
8 is actually the gross amount before  
9 taxes that he was paid.  
10 So to the extent that becomes  
11 relevant to your deliberations, I  
12 commend you look at Plaintiff's  
13 Exhibit No. 5, which are the actual  
14 payment records that show when Mr. Zou  
15 started and when he finished for his  
16 consulting work.  
17 And Mr. Josh has actually put  
18 that on the screen, so you can see  
19 what that looks like. It's a document  
20 that you've seen before.  
21 But no matter, as Judge Gardiner  
22 has instructed you, before you get to  
23 the issue of damages, you must first  
24 find that the information that Mr. Zou  
25 provided to Pega were Appian's trade

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1 Defendant - Zou - Closing (Travell)  
2 been advocating for Appian and for  
3 Pega, and now it's my chance to have  
4 your undivided attention for the next  
5 brief time -- I promise not to be more  
6 than about 20 minutes -- to talk to  
7 you about Mr. Zou and his involvement  
8 in this case.  
9 As you have heard, on the basis  
10 of a theory called unjust enrichment,  
11 Appian is claiming \$3 billion in  
12 damages against Pegasystems. Under  
13 the same theory, the unjust  
14 enrichment, they are seeking to  
15 disgorge from Mr. Zou what he profited  
16 from his alleged misappropriation of  
17 trade secrets.  
18 Now, again in his case, the  
19 disgorgement of profits is the amount  
20 that he was paid by K-Force for the  
21 consultant services that he did for  
22 Pegasystems between February of 2012  
23 and September of 2014.  
24 If you decide that Mr. Zou was,  
25 in fact, involved in misappropriation

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1 Defendant - Zou - Closing (Travell)  
2 secrets, and we submit that is not a  
3 question that is easily answered or  
4 should be reflexively answered.  
5 In considering whether or not  
6 the information that Mr. Zou provided,  
7 there are a couple of things that I  
8 would like you to keep in mind. First  
9 of all, by the time Mr. Zou was  
10 working at Lockheed in 2005 through  
11 2011, he had been -- as Ms. Marcus  
12 brought out on cross-examination, had  
13 years of schooling for -- in computer  
14 science and as a program developer in  
15 codes like JavaScript, CC+, and the  
16 other things that he's testified  
17 about.  
18 So he was a very experienced  
19 software developer by that point in  
20 his life.  
21 He became an Appian developer in  
22 May of 2011 and worked as a Appian  
23 developer for a relatively brief  
24 period of time, from May until about  
25 August of 2011.

<p style="text-align: right;">Page 8298</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 And during that time Mr. Zou had</p> <p>3 a chance to work in that environment,</p> <p>4 and he learned quite a bit about it.</p> <p>5 And what Mr. Zou learned about it is</p> <p>6 not anything that's not everything</p> <p>7 that's contained in the documentation</p> <p>8 that you've heard so much about by his</p> <p>9 experience as a developer, what it's</p> <p>10 like to actually code in the Appian</p> <p>11 program itself, what he learned about</p> <p>12 its limitations, what he learned about</p> <p>13 what its qualities were.</p> <p>14 As Mr. Frank mentioned to you</p> <p>15 during his closing statement, much of</p> <p>16 what Mr. Zou imparted to Pegasystems</p> <p>17 in his conversations, principally with</p> <p>18 Mr. Petronio, are shortcomings or</p> <p>19 limitations of the Appian software</p> <p>20 product itself, things that Appian</p> <p>21 didn't have or that Mr. Zou knew,</p> <p>22 based upon his experience working in</p> <p>23 other types of software products, that</p> <p>24 Appian did not have.</p> <p>25 In this case, however, Appian is</p>	<p style="text-align: right;">Page 8299</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 taking the position that the fact that</p> <p>3 its product didn't have certain</p> <p>4 features or had certain limitations is</p> <p>5 itself a trade secret.</p> <p>6 Now, again, how would Mr. Zou</p> <p>7 know that? Mr. Zou would know that</p> <p>8 only by his experience in actually</p> <p>9 doing the key strokes, looking for</p> <p>10 features that he's seen in other</p> <p>11 products, and trying to use that in</p> <p>12 Appian.</p> <p>13 So in your deliberations of</p> <p>14 whether or not these are, in fact,</p> <p>15 trade secrets, please keep in mind</p> <p>16 that much of what Appian is trying to</p> <p>17 protect are things that are</p> <p>18 deficiencies in its product or</p> <p>19 features that its product did not, in</p> <p>20 fact, have.</p> <p>21 We believe that after careful</p> <p>22 consideration, if you find that Appian</p> <p>23 has failed to prove that the</p> <p>24 information that Mr. Zou provided</p> <p>25 were, in fact, trade secrets by the</p>
<p style="text-align: right;">Page 8300</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 greater weight of the evidence -- and</p> <p>3 Mr. Mangi had the scale that you all</p> <p>4 have seen in these types cases where</p> <p>5 you have to balance the evidence, and</p> <p>6 plaintiff has the burden making the</p> <p>7 evidence just a little heavier on</p> <p>8 their side. But it is a very real</p> <p>9 burden, and it is the Plaintiff's</p> <p>10 burden.</p> <p>11 And unless you're convinced by</p> <p>12 that preponderance of the evidence</p> <p>13 that they've proven their claims that</p> <p>14 these are, in fact, trade secrets and</p> <p>15 that they were misappropriated, then</p> <p>16 you must find that Appian is not</p> <p>17 entitled to damages either against</p> <p>18 Mr. Zou or against Pegasystems.</p> <p>19 So what are the trade secrets?</p> <p>20 Mr. Mangi talked to you a little bit</p> <p>21 about that this morning, but what I'm</p> <p>22 going to focus on is where those trade</p> <p>23 secrets are alleged to have lived,</p> <p>24 where they have alleged to have</p> <p>25 resided.</p>	<p style="text-align: right;">Page 8301</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 So one place are the screen</p> <p>3 displays. Now, again, Mr. Mangi used</p> <p>4 the term that Mr. Zou provided access</p> <p>5 to Pega to the Appian software, but</p> <p>6 you've had a chance to actually see</p> <p>7 the videotapes and see what was going</p> <p>8 on.</p> <p>9 What you saw was Mr. Zou doing a</p> <p>10 demonstration of the Appian software.</p> <p>11 Now, certainly, it's clear that Appian</p> <p>12 was asking him to demonstrate certain</p> <p>13 features of the software. So they</p> <p>14 were saying, can you do this? Can you</p> <p>15 show us how this is done?</p> <p>16 But in fact, what he was doing</p> <p>17 was looking at what I think Mr. Platt</p> <p>18 called the presentation level -- I</p> <p>19 guess that was Mr. Pinto -- the</p> <p>20 presentation level, the actual what</p> <p>21 you see when you turn on your computer</p> <p>22 and you're looking at the screen and</p> <p>23 doing the key strokes and manipulating</p> <p>24 those key strokes to go from one</p> <p>25 element of the platform to another.</p>

<p style="text-align: right;">Page 8302</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 But at no time did Mr. Zou ever</p> <p>3 provide the software itself to</p> <p>4 Pegasystems or allow anyone at</p> <p>5 Pegasystems to actually use his access</p> <p>6 to the program.</p> <p>7 Of course, in that very first</p> <p>8 video we saw, there was a point in</p> <p>9 time when Mr. Petronio tried to take</p> <p>10 over, but that didn't happen.</p> <p>11 Mr. Petronio did not, in fact, get</p> <p>12 access to the program itself.</p> <p>13 So the evidence is pretty clear</p> <p>14 that what Mr. Zou did was give a</p> <p>15 demonstration of how the Appian</p> <p>16 software itself worked.</p> <p>17 Now, again, you've been implored</p> <p>18 by both Mr. Mangi and Mr. Frank not to</p> <p>19 leave your common sense outside of</p> <p>20 your deliberations.</p> <p>21 If what Mr. Zou did was provide</p> <p>22 a demonstration, again, that's what</p> <p>23 software is meant to be done, the</p> <p>24 purpose of software, the purpose of</p> <p>25 marketing. It's to show the world</p>	<p style="text-align: right;">Page 8303</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 what your program or your software can</p> <p>3 do, and Mr. Zou, in fact, did that.</p> <p>4 They were also saying that</p> <p>5 Mr. Zou provided user manuals, what's</p> <p>6 called the documentation that was</p> <p>7 housed in the Appian Forum, and that</p> <p>8 that user -- those user manuals were,</p> <p>9 in fact, somehow proprietary trade</p> <p>10 secrets to Appian.</p> <p>11 So to put this in context, so,</p> <p>12 again, those are where the trade</p> <p>13 secrets are alleged to have resided.</p> <p>14 What's clearly not a trade</p> <p>15 secret is what's between Mr. Zou's</p> <p>16 ears, okay? And to the extent that he</p> <p>17 worked in the product, he learned</p> <p>18 things about the product and he was</p> <p>19 able to talk to others about his</p> <p>20 experience in that product, that</p> <p>21 cannot possibly be a trade secret.</p> <p>22 And when Mr. Zou said, well, I'd</p> <p>23 like to see the program do this</p> <p>24 better, but it doesn't do it. That's</p> <p>25 not a trade secret. That's what</p>
<p style="text-align: right;">Page 8304</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Mr. Zou knew. That's what he calls</p> <p>3 his head knowledge.</p> <p>4 And I would submit that in</p> <p>5 thinking about this, please keep that</p> <p>6 concept in mind.</p> <p>7 So the other issue is not only</p> <p>8 does Appian have to prove that these</p> <p>9 are trade secrets, but they also have</p> <p>10 to prove that they took reasonable</p> <p>11 steps to keep those secrets</p> <p>12 confidential.</p> <p>13 And in order to do that, they</p> <p>14 principally rely on an expert</p> <p>15 Eric Cole. Now, again, there's been a</p> <p>16 lot said about Mr. Cole -- pardon me</p> <p>17 while I get a drink of water -- I'm</p> <p>18 sorry, I guess he calls himself</p> <p>19 Dr. Cole -- that he's the cyber</p> <p>20 security expert for President Obama,</p> <p>21 for Bill and Melinda Gates. And</p> <p>22 that's undoubtedly true.</p> <p>23 But what did Dr. Cole say in</p> <p>24 this case and how should you credit</p> <p>25 his testimony?</p>	<p style="text-align: right;">Page 8305</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 What I'd like to do is just take</p> <p>3 take a few minutes and go through what</p> <p>4 Dr. Cole told you about his review of</p> <p>5 the Appian program and show you three</p> <p>6 different places where he was clearly</p> <p>7 wrong about his observations about the</p> <p>8 program itself.</p> <p>9 So one of the first things that</p> <p>10 he did was he spent time talking about</p> <p>11 the registration for Appian Forum.</p> <p>12 And, Josh, if you could display</p> <p>13 Plaintiff's Exhibit No. 274.</p> <p>14 (Whereupon, Exhibit PTX 274,</p> <p>15 Document, was identified.)</p> <p>16 MR. TRAVELL: Mr. Frank gave you</p> <p>17 a spoiler alert during closing</p> <p>18 arguments. He said I might talk about</p> <p>19 that, and he's, in fact, right. I am</p> <p>20 going to talk about it.</p> <p>21 So Dr. Cole testified that every</p> <p>22 registrant for Appian Forum had to use</p> <p>23 this process of filling out this</p> <p>24 information in the Appian Forum user</p> <p>25 registration in order to be able to</p>

<p style="text-align: right;">Page 8306</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 get access to the Appian Forum itself.</p> <p>3 Again, brief reminder, the</p> <p>4 Appian Forum is the place where Appian</p> <p>5 stored its documentation, again, user</p> <p>6 manuals, where Appian developers could</p> <p>7 go and initiate a chat or read chats</p> <p>8 that other developers had written and</p> <p>9 support and service personnel from</p> <p>10 Appian that was behind the Appian</p> <p>11 Forum, where a developer could</p> <p>12 initiate a trouble ticket or a service</p> <p>13 ticket when they were having issues</p> <p>14 with the program or having questions</p> <p>15 about the program, and where they</p> <p>16 could also download an instance of</p> <p>17 Appian for whatever purposes for which</p> <p>18 they needed it.</p> <p>19 Dr. Cole testified,</p> <p>20 unequivocally, that everyone had to go</p> <p>21 through this process and, as a result</p> <p>22 of going through this process, they</p> <p>23 automatically accepted the Terms of</p> <p>24 Use that were part of this and that,</p> <p>25 in essence, formed a direct contract</p>	<p style="text-align: right;">Page 8307</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 between people like Mr. Zou and</p> <p>3 Appian, where the user, again,</p> <p>4 undertook all of those obligations of</p> <p>5 confidentiality to keep this secret.</p> <p>6 Now, the reason I'm talking</p> <p>7 about this is not just to show that</p> <p>8 Dr. Cole was clearly wrong in this</p> <p>9 issue, but how casual Appian was, in</p> <p>10 fact, about these types of licenses</p> <p>11 and registrations, which completely</p> <p>12 undercuts the notion that somehow that</p> <p>13 these were the crown jewels and they</p> <p>14 were keeping these under tight lock</p> <p>15 and key and that they took steps which</p> <p>16 they would require under law to</p> <p>17 protect their trade secrets. They</p> <p>18 didn't do it, and I'll show you why.</p> <p>19 So after Dr. Cole testified</p> <p>20 about this, you know, I asked him on</p> <p>21 cross-examination: Is it your</p> <p>22 testimony that Mr. Zou, in fact, went</p> <p>23 through this registration process?</p> <p>24 And again, it was his belief</p> <p>25 that, in fact, he did. However, I</p>
<p style="text-align: right;">Page 8308</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 asked Mr. Malcolm Ross the same</p> <p>3 question, and Malcolm Ross said, no,</p> <p>4 that's not true. In fact, there are</p> <p>5 two different types of registration</p> <p>6 processes.</p> <p>7 This process that Dr. Cole</p> <p>8 testified about, again, to try to</p> <p>9 convince all of you that this was the</p> <p>10 keys to the crown -- well, it was the</p> <p>11 keys too, I'm not exactly sure what</p> <p>12 they're saying at this point -- but</p> <p>13 Mr. Ross, in fact, acknowledged that</p> <p>14 there are two different types.</p> <p>15 This is for self-registration.</p> <p>16 To the extent that someone wishes to</p> <p>17 register themselves, they, in fact, go</p> <p>18 through this process. Then in 2011,</p> <p>19 when Mr. Zou was first registered for</p> <p>20 Forum, when he worked for Lockheed and</p> <p>21 then later today, as a matter of fact,</p> <p>22 the same type of process is used.</p> <p>23 But what Mr. Ross said and what</p> <p>24 Mr. Zou also testified to was that</p> <p>25 there is a second process, and the</p>	<p style="text-align: right;">Page 8309</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 second process is, in fact, what</p> <p>3 Mr. Zou went through.</p> <p>4 And under that process, the way</p> <p>5 a person, a developer, or somebody</p> <p>6 who's new to Appian registers for the</p> <p>7 first time for Forum is their project</p> <p>8 manager, in fact, registers that</p> <p>9 person for the Appian Forum.</p> <p>10 And as a result of that</p> <p>11 registration, which is the process</p> <p>12 that Mr. Zou, in fact, went through,</p> <p>13 Mr. Zou didn't fill out this actual</p> <p>14 registration, his project manager did.</p> <p>15 And what happens as a result of that</p> <p>16 is that Mr. Zou has credentials, and</p> <p>17 we'll look at this in just a moment.</p> <p>18 And then once he does that, all</p> <p>19 he has to do to enter into Forum in</p> <p>20 the future and for the hundreds or</p> <p>21 perhaps thousands of times Mr. Zou</p> <p>22 used Forum both for his consulting</p> <p>23 work at Pega and for his employer over</p> <p>24 the next decade or so, he put in his</p> <p>25 username and password and never had to</p>

<p style="text-align: right;">Page 8310</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 accept Terms of Use.</p> <p>3 Again, that's important, because</p> <p>4 without the Terms of Use, there's no</p> <p>5 contract between Zou and Appian, and</p> <p>6 there's, in fact, no obligation of</p> <p>7 confidentiality on a person like</p> <p>8 Mr. Zou to demonstrate the product for</p> <p>9 whatever purposes he would like.</p> <p>10 Josh, if you could -- so to the</p> <p>11 extent that Dr. Cole, the cyber</p> <p>12 security expert, the world's foremost</p> <p>13 expert on how to keep your software</p> <p>14 and your trade secrets secret,</p> <p>15 testified that this was the process</p> <p>16 that did it was clearly wrong, just</p> <p>17 dead wrong about that.</p> <p>18 Now, Mr. Ross suggested to you</p> <p>19 that, well, even if you go through the</p> <p>20 other process, there has to be some</p> <p>21 sort of Terms of Use registration the</p> <p>22 first time the person actually uses</p> <p>23 the Appian Forum.</p> <p>24 But, again, the issue I'll go</p> <p>25 back to, the burden of proof and what</p>	<p style="text-align: right;">Page 8311</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 that means, is Mr. Ross has said that,</p> <p>3 but Mr. Zou has testified that he</p> <p>4 didn't go through this process.</p> <p>5 So where's the evidence, then?</p> <p>6 You're going to go back to the jury</p> <p>7 room and you'll be given more</p> <p>8 documents than you ever wanted to see.</p> <p>9 And you can look through every one of</p> <p>10 those documents and there is no</p> <p>11 document in the record in this case</p> <p>12 that shows that Appian has any record</p> <p>13 that Mr. Zou ever accepted the Terms</p> <p>14 of Use in 2011, 2012, all the way up</p> <p>15 to 2021, which was the last time</p> <p>16 Mr. Zou worked as an Appian developer.</p> <p>17 So what I'd like to do next,</p> <p>18 Josh, is, let's take a look at the</p> <p>19 first video deposition, the first</p> <p>20 video that Mr. Petronio created in</p> <p>21 February 20th of 2012, at the very</p> <p>22 beginning of their relationship.</p> <p>23 Excuse me, that's Plaintiff's</p> <p>24 Exhibit 855.</p> <p>25 (Whereupon, Exhibit PTX 855,</p>
<p style="text-align: right;">Page 8312</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Video, was identified.)</p> <p>3 MR. TRAVELL: And this is a</p> <p>4 video that Mr. Petronio took using the</p> <p>5 famous Camtasia video, an</p> <p>6 off-the-shelf product that you've</p> <p>7 heard about throughout the testimony</p> <p>8 in this case.</p> <p>9 And during that time, what</p> <p>10 Mr. -- this was the very first</p> <p>11 conversation between Mr. Petronio and</p> <p>12 Mr. Zou. You may recall that this was</p> <p>13 a -- there were a series, I think, of</p> <p>14 four different videos that were taken</p> <p>15 that day.</p> <p>16 And at one point during those</p> <p>17 videos, Mr. Petronio says, well, my</p> <p>18 family is coming here, I want to say</p> <p>19 good-bye. Let's interrupt for a few</p> <p>20 minutes, then we'll come back. I</p> <p>21 don't know if they remember that, but</p> <p>22 that actually occurred during this</p> <p>23 process.</p> <p>24 So at this point we're going</p> <p>25 back and forth between Mr. Zou and</p>	<p style="text-align: right;">Page 8313</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Mr. Petronio. Mr. Zou is, in fact,</p> <p>3 creating a very short proof of</p> <p>4 concept. And Mr. Petronio is asking</p> <p>5 Mr. Zou how does -- what is this thing</p> <p>6 about, the documentation, what does</p> <p>7 that mean?</p> <p>8 So if you could go ahead and</p> <p>9 play that, Josh. We're actually</p> <p>10 looking at the screen that</p> <p>11 Mr. Petronio is recording.</p> <p>12 (Video played.)</p> <p>13 MR. TRAVELL: You can stop that</p> <p>14 right there.</p> <p>15 What we're looking at is,</p> <p>16 Mr. Zou in realtime, at Mr. Petronio's</p> <p>17 request, is saying, can you navigate</p> <p>18 to Appian Forum and show me what the</p> <p>19 documentation looks like?</p> <p>20 So that's what Mr. Zou does. He</p> <p>21 goes to -- you can see at the top the</p> <p>22 address, forum.Appian.com. And what</p> <p>23 you're seeing is a screen that Mr. Zou</p> <p>24 and Mr. Petronio are looking at. It's</p> <p>25 recording in realtime.</p>

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1 Defendant - Zou - Closing (Travell)  
2 Josh, can you go ahead and roll  
3 the tape?  
4 (Video played.)  
5 MR. TRAVELL: That's Mr. Zou  
6 putting in his username and password.  
7 Stop it right there. Can you  
8 roll it back just a second?  
9 So again, to the extent that  
10 there was any suggestion that each  
11 time a developer like Mr. Zou logged  
12 into Appian Forum that he was -- there  
13 was a pop-up of Terms of Use that he  
14 had to accept to go beyond that, take  
15 your time and look at that, but it's  
16 not there.  
17 Go ahead and roll it forward  
18 just a little bit.  
19 (Video played.)  
20 MR. TRAVELL: So again, now he's  
21 inside Forum and they are looking at  
22 the feature inside Forum, where are  
23 these sketches amongst different folks  
24 about the product. And he navigates  
25 to different places inside Forum to

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1 Defendant - Zou - Closing (Travell)  
2 deliberations.  
3 So the other thing that Dr. Cole  
4 talked about was the actual access to  
5 the Appian platform itself. You may  
6 recall -- and again, it's not what I  
7 recall, it's what you recall -- that  
8 Dr. Cole testified that there was  
9 something that he described as a  
10 developer environment. And what he  
11 described as a developer environment  
12 is something that he said resided  
13 inside of Forum and where a developer  
14 like Mr. Zou would go for the purposes  
15 of doing this coding work for his  
16 employer -- for the customers of his  
17 employer.  
18 Again, Dr. Cole was dead wrong  
19 about that. The actual work  
20 environment of developers using the  
21 Appian Forum -- the Appian platform is  
22 not inside Forum, it's really in the  
23 portal that the employer has.  
24 Again, there was a great deal of  
25 testimony by Mr. Zou in response to

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1 Defendant - Zou - Closing (Travell)  
2 look at documentation, open service  
3 tickets.  
4 But again, as you look through  
5 it, there is no time where you see any  
6 types of pop-up of a Terms of Use once  
7 your inside. And again, at this time,  
8 there's no information that we've seen  
9 that shows that any of the documents  
10 are marked confidential.  
11 So on that point, again, we go  
12 back to Dr. Cole, the cyber security  
13 expert, and to the extent that he  
14 testified, again, that these Terms of  
15 Use were an automatic part to the  
16 Forum process, he's just wrong about  
17 that.  
18 And again, if there was any  
19 evidence, any document that Appian had  
20 that proved -- that showed that  
21 Mr. Zou accepted the Terms of Use, it  
22 would have been a banner, it would've  
23 been on a flagpole being waved around  
24 the courtroom. You haven't seen it,  
25 and you won't see it during your

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1 Defendant - Zou - Closing (Travell)  
2 Ms. Marcus' questions how that's done,  
3 and it's done either through what they  
4 referred to as an on-premise version  
5 of the Forum software, which again is  
6 accessed through a portal at the  
7 employer's place of business or  
8 remotely through a VPN, where the  
9 developer has to use a password and a  
10 login name and perhaps a token for  
11 purposes of actually getting to that  
12 website.  
13 But what is clear from the  
14 testimony in this case, and which  
15 Dr. Cole got dead wrong, was where the  
16 actual software resided.  
17 Now, again, Dr. Cole seemed to  
18 suggest that because it was inside  
19 Forum -- that this developer  
20 environment was inside Forum, that  
21 would be another opportunity for the  
22 Terms of Use to pop up and be  
23 accepted, but he's just wrong about  
24 that.  
25 So again, to the extent, that

<p style="text-align: right;">Page 8318</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 you're looking for a contract, a</p> <p>3 binding agreement between Appian and</p> <p>4 Mr. Zou that would bind him to keep</p> <p>5 Appian's secrets confidential, you're</p> <p>6 not going to find it.</p> <p>7 The other thing that Mr. Mangi</p> <p>8 suggested during his closing</p> <p>9 statement, closing argument this</p> <p>10 morning was that Mr. Zou admitted that</p> <p>11 there are opportunities or features of</p> <p>12 proprietary software where in order to</p> <p>13 use it, there is a pop-up screen and</p> <p>14 you have to click on it in order to go</p> <p>15 through. Whether you read it or not,</p> <p>16 you have to click on it to go through.</p> <p>17 But again, that was a general</p> <p>18 question about features that are</p> <p>19 common in proprietary software. That</p> <p>20 was not a question about the Appian</p> <p>21 product. There's no testimony and</p> <p>22 there's no evidence in this case that</p> <p>23 there's any pop-up feature in any</p> <p>24 thing that a developer uses for the</p> <p>25 purposes of accepting Terms of Use.</p>	<p style="text-align: right;">Page 8319</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 So, again, to the extent that</p> <p>3 Dr. Cole believed or testified</p> <p>4 otherwise, he was just wrong about</p> <p>5 that.</p> <p>6 The other very critical fact</p> <p>7 about which Dr. Cole was wrong is he</p> <p>8 was under the impression and testified</p> <p>9 to all of you -- actually, to more of</p> <p>10 you that aren't here anymore -- that</p> <p>11 all of the work that Mr. Zou did was</p> <p>12 while he was employed at Serco.</p> <p>13 That's not true.</p> <p>14 The record in this case is</p> <p>15 unequivocal that at the time that</p> <p>16 Mr. Zou was speaking with</p> <p>17 Mr. Petronio, in January --</p> <p>18 February 20th of 2012, he was, in</p> <p>19 fact, employed by a company called</p> <p>20 CollabraLink.</p> <p>21 And I'll just take a moment to</p> <p>22 talk about that. Because, to the</p> <p>23 extent, again, that Dr. Cole was</p> <p>24 looking on third-party agreements or</p> <p>25 an agreement between Mr. Zou and his</p>
<p style="text-align: right;">Page 8320</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 employer to impose upon Mr. Zou any</p> <p>3 obligations of confidentiality, you</p> <p>4 haven't seen any agreement between</p> <p>5 Lockheed and Zou. You haven't seen</p> <p>6 any agreement between CollabraLink and</p> <p>7 Mr. Zou.</p> <p>8 So to the extent, that's</p> <p>9 important to your deliberations,</p> <p>10 Appian has failed to put any</p> <p>11 evidence -- even though they've got</p> <p>12 the burden, they've failed to put any</p> <p>13 evidence on that issue.</p> <p>14 So during the time that Mr. Zou</p> <p>15 worked for -- did his consulting work</p> <p>16 for Pega, as I said, he testified that</p> <p>17 he had been at Lockheed through August</p> <p>18 of 2011. That he went to work for a</p> <p>19 company called Clovis, where he did</p> <p>20 something not related to his work as a</p> <p>21 developer on the Appian platform.</p> <p>22 But the fact -- despite the fact</p> <p>23 that while he was at Lockheed that he</p> <p>24 had downloaded an instance of the</p> <p>25 Appian software onto his personal</p>	<p style="text-align: right;">Page 8321</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 computer, when he left, there was no</p> <p>3 oversight by Appian nor by the Appian</p> <p>4 business partners, which in that case</p> <p>5 was Lockheed, to determine what he did</p> <p>6 with that, with he did with that</p> <p>7 software program.</p> <p>8 And the fact of the matter is,</p> <p>9 he kept it and he still had that same</p> <p>10 Appian instance on his software when</p> <p>11 he went to work with CollabraLink in</p> <p>12 January of 2012 and later in September</p> <p>13 2012 when he went to work for Serco.</p> <p>14 So to the extent that Appian</p> <p>15 gave that out to Mr. Zou in May of</p> <p>16 2011 when he worked at Lockheed,</p> <p>17 Appian made no effort to determine</p> <p>18 what happened with that.</p> <p>19 And to the extent that Mr. Zou</p> <p>20 had access to the Appian Forum through</p> <p>21 that entire time, he testified and the</p> <p>22 evidence is unequivocal that he used</p> <p>23 the same username and same password</p> <p>24 throughout that entire time.</p> <p>25 So that takes us, then, to the</p>

<p style="text-align: right;">Page 8322</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 work that Mr. Cole said was all done</p> <p>3 under the ages of Serco, the initial</p> <p>4 conversations that Mr. Zou had with</p> <p>5 Mr. Petronio on February 20, 2012.</p> <p>6 The e-mails that they had</p> <p>7 throughout the spring of 2012 were all</p> <p>8 done while he was working for</p> <p>9 CollabraLink.</p> <p>10 Now, again, the reason I bring</p> <p>11 that up is because, clearly, again,</p> <p>12 there's no TOUs, there is no evidence</p> <p>13 of any contractual arrangements</p> <p>14 between Zou and his employer.</p> <p>15 But what you have is Mr. Zou</p> <p>16 doing these demonstrations. And</p> <p>17 during those very first</p> <p>18 demonstrations, Mr. Zou, again,</p> <p>19 provided his head knowledge, told</p> <p>20 Mr. Petronio about the things that he</p> <p>21 felt in his opinion were shortcomings</p> <p>22 or features of the Appian product that</p> <p>23 were missing from the type of programs</p> <p>24 that Mr. Zou was, again, using. He</p> <p>25 did provide some documentation, and he</p>	<p style="text-align: right;">Page 8323</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 did demonstrate the actual product</p> <p>3 itself.</p> <p>4 So in your deliberations, again,</p> <p>5 to the extent that's something you</p> <p>6 wish to consider, I would typically</p> <p>7 flash this up on the screen, but given</p> <p>8 the challenges we've had today, I will</p> <p>9 give you the numbers of the documents</p> <p>10 that you may want to look at.</p> <p>11 But if you look at Plaintiff's</p> <p>12 Exhibit 240, which is an e-mail from</p> <p>13 Zou to Petronio, dated February 22,</p> <p>14 2012. Mr. Zou is responding to</p> <p>15 Mr. Petronio about specific questions.</p> <p>16 And the thing that you'll see in</p> <p>17 that document and in the next few</p> <p>18 documents that I'll give to you is</p> <p>19 they talk about some of these very</p> <p>20 essential features that Appian is now</p> <p>21 claiming are trade secrets, but were,</p> <p>22 again, in fact, the type of thing that</p> <p>23 were shortcomings or limitations of</p> <p>24 the Appian product itself.</p> <p>25 The next document would be</p>
<p style="text-align: right;">Page 8324</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Plaintiff's Exhibit 549, which is an</p> <p>3 e-mail from Petronio to other people</p> <p>4 inside of Pega, dated February 24,</p> <p>5 2012. And that's an e-mail in which</p> <p>6 Mr. Petronio sets out his findings or</p> <p>7 conclusions based upon the three-hour</p> <p>8 session he had with Mr. Zou on</p> <p>9 February 20th of 2012.</p> <p>10 So, again, Mr. Zou actually</p> <p>11 answered some questions, Mr. Petronio</p> <p>12 came up with a paper. That's in</p> <p>13 evidence, and you can take a look at</p> <p>14 that. And again, that was done</p> <p>15 without any TOUs or any contract</p> <p>16 between Mr. Zou and any employer in</p> <p>17 evidence in this case.</p> <p>18 And those findings that</p> <p>19 Mr. Petronio was circulating inside of</p> <p>20 Pega included results of the proof of</p> <p>21 concept, again, a phrase that you've</p> <p>22 heard throughout this trial, where</p> <p>23 Mr. Zou actually performed a sample</p> <p>24 solution to a problem to show</p> <p>25 Mr. Petronio how that would work in</p>	<p style="text-align: right;">Page 8325</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 the Appian program.</p> <p>3 The next document I'll cite you</p> <p>4 to is Plaintiff's Exhibit 2305 which</p> <p>5 is an e-mail dated August 6th of 2012.</p> <p>6 (Whereupon, Exhibit PLT 2305,</p> <p>7 August 6, 2012 E-mail, was</p> <p>8 identified.)</p> <p>9 MR. TRAVELL: Again, before Zou</p> <p>10 was even working for Serco, in which</p> <p>11 Mr. Caton, a name you've heard that</p> <p>12 was Mr. Petronio's assistant, was</p> <p>13 mailing to Mr. Petronio a revised copy</p> <p>14 of the Pega competitive brief, which</p> <p>15 is again a sales and marketing</p> <p>16 material, and incorporated comments</p> <p>17 that Mr. Zou had made to Mr. Petronio</p> <p>18 and were now part of those sales</p> <p>19 materials, again, all before Mr. Zou</p> <p>20 worked for Serco.</p> <p>21 And the last document, I've</p> <p>22 already given you Plaintiff's</p> <p>23 Exhibit 2378.</p> <p>24 (Whereupon, Exhibit PLT 2378,</p> <p>25 E-mail, was identified.)</p>

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1 Defendant - Zou - Closing (Travell)  
2 MR. TRAVELL: If I haven't,  
3 that's an e-mail, again from Michael  
4 Caton to John Petronio, which has a  
5 revised addition of the Appian attack  
6 plan. Again, a document that we've  
7 seen in various iterations throughout  
8 the time that Mr. Zou was working as a  
9 consultant for Pegasystems.  
10 So that brings us to Mr. Zou's  
11 employment with Serco. Again, there's  
12 been a lot made about the fact that in  
13 August -- I'm sorry -- September of  
14 2012, Mr. Zou then left CollabraLink  
15 and went to work at Serco.  
16 Now, very briefly, when Mr. Zou  
17 started at CollabraLink, he'd just  
18 closed up his job at Clovis. He went  
19 back to work for an Appian business  
20 partner, CollabraLink, and before he  
21 even started, that project that he was  
22 hired for was subject to a government  
23 protest.  
24 So Mr. Zou was worried about his  
25 job, got the call from K-force, are

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1 Defendant - Zou - Closing (Travell)  
2 to say anything about that was  
3 improper was far as CollabraLink was  
4 concerned. And Mr. Zou worked for the  
5 CollabraLink only until September of  
6 2012.  
7 And at that time, he took his  
8 new job with Serco. Now, Mr. --  
9 Dr. Cole pointed to the Employee  
10 Proprietary and Confidential  
11 Information Agreement, which is  
12 Plaintiff's Exhibit Number 9.  
13 Can you call that up, Josh?  
14 (Whereupon, Exhibit PLT 9, Serco  
15 Employee Proprietary and Confidential  
16 Information Agreement, was  
17 identified.)  
18 MR. TRAVELL: So Dr. Cole  
19 testified that -- and again, Dr. Cole  
20 is not a lawyer. He's the world's  
21 foremost cyber security expert,  
22 according to Appian.  
23 Looked at this document and said  
24 that this document bound Mr. Zou to  
25 keep Appian's information

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1 Defendant - Zou - Closing (Travell)  
2 you interested in being an Appian  
3 consultant? And Mr. Zou said yes,  
4 right away. I think the evidence  
5 shows that was within an hour or  
6 45 minutes within the first e-mail  
7 from Matt Sovatella [phonetic]. He  
8 wrote back and sent his résumé and  
9 said: I'm interested in talking.  
10 Again, Mr. Zou is looking for  
11 his next opportunity to the extent  
12 that his livelihood depends upon  
13 whether his employer of a few weeks  
14 wins the protest or not.  
15 So he talks with Mr. Sovatella,  
16 eventually talks to Mr. Petronio.  
17 That leads to the engagement.  
18 So, so the issue there is there  
19 is no restriction that is in evidence  
20 in this case by any employer that says  
21 it's improper, subject to firing, if  
22 you take a part-time job without  
23 consulting with us first.  
24 Mr. Zou did that while he was at  
25 CollabraLink, and there's no evidence

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1 Defendant - Zou - Closing (Travell)  
2 confidential.  
3 And of course, you can study  
4 this Agreement when you deliberate  
5 after closing statements and closing  
6 arguments are done today.  
7 But you won't see any mention of  
8 Appian in this document. This is a  
9 document in which Mr. Zou promises to  
10 keep his information of his employer  
11 confidential. It -- one thing, it  
12 doesn't define confidential  
13 information --  
14 And, Josh, I would ask you to  
15 blow up Paragraph 1(a) through (c).  
16 You know, again, this is what  
17 Mr. Zou's promises were to Serco and  
18 what he promised to do.  
19 So what is defined as not being  
20 confidential information, again, this  
21 is perfect common sense. Information  
22 that was already in the public domain  
23 at the time of the disclosure by Serco  
24 to employee, so even if the Appian  
25 information comes within this ambit of

<p style="text-align: right;">Page 8330</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 confidential information, if Mr. Zou</p> <p>3 already knew it, then the fact that</p> <p>4 Serco later disclosed to him the same</p> <p>5 information doesn't make that</p> <p>6 information confidential.</p> <p>7 So what do you know? You know</p> <p>8 that prior to this time Mr. Zou had</p> <p>9 already had his first meeting or</p> <p>10 videoconference with Mr. Petronio and</p> <p>11 had provided him a great deal of</p> <p>12 information about the program, which</p> <p>13 shows what Mr. Zou knew about the</p> <p>14 Appian platform.</p> <p>15 So that information that Mr. Zou</p> <p>16 provided to Petronio in February of</p> <p>17 2012 is by definition not part of this</p> <p>18 Agreement because he already knew it</p> <p>19 prior to the time that Serco disclosed</p> <p>20 it or didn't disclose it to him.</p> <p>21 And then it says, if you go to</p> <p>22 Paragraph (c), it says: Or that was</p> <p>23 already known by the employee at the</p> <p>24 time of its disclosure by Serco as</p> <p>25 evidenced by written documentation</p>	<p style="text-align: right;">Page 8331</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 that existed prior to such disclosure.</p> <p>3 Now, again, what we know,</p> <p>4 because it's in the record, are these</p> <p>5 meetings between Mr. Petronio and</p> <p>6 Mr. Zou in February 2012, the e-mails</p> <p>7 between Mr. Petronio and Mr. Zou in</p> <p>8 March of 2012 that Mr. Zou already</p> <p>9 knew what those limitations were.</p> <p>10 So again, to the extent that</p> <p>11 Dr. Cole was testifying as an expert</p> <p>12 that this document controlled all of</p> <p>13 Mr. Zou's relationships with</p> <p>14 Pegasystems, he's clearly wrong on</p> <p>15 that count, but even to the extent</p> <p>16 that this document controls after</p> <p>17 Mr. Zou becomes an employee of Serco,</p> <p>18 the information that Mr. Zou had</p> <p>19 already departed to Pega is by</p> <p>20 definition not covered by this</p> <p>21 Agreement.</p> <p>22 So Mr. Zou, in fact, worked for</p> <p>23 Pegasystems as a consultant through</p> <p>24 K-Force between September of 2012,</p> <p>25 while he was employed by Serco,</p>
<p style="text-align: right;">Page 8332</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 through about May of 2014. There was</p> <p>3 a period there, I guess a year and a</p> <p>4 half, two years or so, in fits and</p> <p>5 starts. So it's not like he was doing</p> <p>6 something every day.</p> <p>7 Petronio would have a project</p> <p>8 for him -- and if you look at</p> <p>9 Plaintiff's Exhibit No. 5, it will</p> <p>10 show you.</p> <p>11 (Whereupon, Exhibit PLT 5,</p> <p>12 Document, was identified.)</p> <p>13 MR. TRAVELL: There are kind of</p> <p>14 little spots where Mr. Zou may be</p> <p>15 working 10, 15, 20, 50 hours over a</p> <p>16 period of a month and a half and then</p> <p>17 he'll go several months where there's</p> <p>18 actually nothing, because there's</p> <p>19 nothing that came to him.</p> <p>20 So during the time that Mr. Zou</p> <p>21 was working for -- doing his</p> <p>22 consulting work for Pegasystems, he,</p> <p>23 again, was doing this work based upon</p> <p>24 information that he came into the</p> <p>25 relationship with.</p>	<p style="text-align: right;">Page 8333</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Again, to the extent he was</p> <p>3 demonstrating software, again, I think</p> <p>4 the record also shows that there were</p> <p>5 upgrades to the Appian program, and</p> <p>6 Mr. Zou downloaded those and he then</p> <p>7 demonstrated those to Pegasystems.</p> <p>8 That's in the record and that's what</p> <p>9 it says.</p> <p>10 But to the extent that Mr. Zou,</p> <p>11 in fact, continued to do that work,</p> <p>12 there's been a lot made of whether or</p> <p>13 not that violated his terms of</p> <p>14 employment with Serco. And maybe</p> <p>15 having a part-time job did, but this</p> <p>16 is not a job where Serco was suing</p> <p>17 Mr. Zou for having part-time work.</p> <p>18 This is a case about</p> <p>19 misappropriation of trade secrets, so</p> <p>20 whether or not having a part-time job</p> <p>21 while he was -- that he began before</p> <p>22 he even worked for Serco and continued</p> <p>23 after he had his work for Serco is</p> <p>24 really not relevant to your</p> <p>25 deliberations.</p>

<p style="text-align: right;">Page 8334</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2       Again, whether or not that was a</p> <p>3 violation of the Code of Conduct with</p> <p>4 Serco, it is what it is. Serco has</p> <p>5 not raised it. Serco has not sued</p> <p>6 Mr. Zou. Appian has.</p> <p>7       So I would ask you again to very</p> <p>8 carefully consider what it was Mr. Zou</p> <p>9 was doing, when he was doing it, did</p> <p>10 he, in fact, provide information that</p> <p>11 was secret, and whether or not, you</p> <p>12 know, information that was in his head</p> <p>13 about deficiencies in the product</p> <p>14 could even qualify as trade secret.</p> <p>15       Now, independent of what Mr. Zou</p> <p>16 did here, you've heard testimony from</p> <p>17 experts. No surprise. We've seen</p> <p>18 experts from Appian saying that</p> <p>19 deficiencies in products can be trade</p> <p>20 secret. It's a trade secret that my</p> <p>21 product doesn't have a particular</p> <p>22 widget in it.</p> <p>23       Again, don't leave your common</p> <p>24 sense outside the deliberation room.</p> <p>25       But you also heard from</p>	<p style="text-align: right;">Page 8335</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 Dr. Easttom who said that, in fact,</p> <p>3 the lack of a product -- the absence</p> <p>4 of a feature in a product cannot be a</p> <p>5 trade secret.</p> <p>6       Again, there's been a big effort</p> <p>7 made by Appian's lawyers to denigrate</p> <p>8 Dr. Easttom because he got three Ph.D.</p> <p>9 in a period of whatever period time it</p> <p>10 was. But again, that's a red herring.</p> <p>11 Whether or not Dr. Easttom has</p> <p>12 acquired degrees in a time that has</p> <p>13 been deemed to be unreasonable or</p> <p>14 whatever the theory is there, the fact</p> <p>15 is you had a chance to observe his</p> <p>16 demeanor. And irrespective of whether</p> <p>17 he had any Ph.D.s, you have to decide</p> <p>18 whether or not Dr. Easttom was</p> <p>19 credible and made findings and</p> <p>20 expressed opinions which were, in</p> <p>21 fact, consistent with what you believe</p> <p>22 to be credible and true.</p> <p>23       What Dr. Easttom said is in his</p> <p>24 30 years of experience in software</p> <p>25 development, he had never heard any</p>
<p style="text-align: right;">Page 8336</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 software developer make the claim that</p> <p>3 the user interface, the presentation</p> <p>4 level, what you look at on the screen</p> <p>5 in your computer was itself a trade</p> <p>6 secret.</p> <p>7       And one of the reasons he gave</p> <p>8 is, well, again that defies common</p> <p>9 sense. Part of the sales efforts for</p> <p>10 any software product is to show it to</p> <p>11 people. You go to -- you put it at</p> <p>12 the Appian World to have bloggers come</p> <p>13 in and have the press write about the</p> <p>14 fact that your program can do this</p> <p>15 type of work.</p> <p>16       So the idea that if I'm working</p> <p>17 on a program on my computer screen and</p> <p>18 somebody walks by and they see the</p> <p>19 image, that somehow that image is</p> <p>20 itself proprietary and a trade secret,</p> <p>21 again, that's the claim.</p> <p>22       Your job is to decide whether or</p> <p>23 not you think that's a credible claim</p> <p>24 and you think that's the basis for a</p> <p>25 \$18,000 judgment against Mr. Zou or a</p>	<p style="text-align: right;">Page 8337</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 \$3 billion judgment against</p> <p>3 Pegasystems.</p> <p>4       So the last thing I'd like to do</p> <p>5 is to look at the jury verdict form.</p> <p>6 So Mr. Mangi talked you through that</p> <p>7 this morning, and he sort of gave you</p> <p>8 some ideas about how to fill it out.</p> <p>9       Spoiler alert. I have different</p> <p>10 ideas on how you should fill it out.</p> <p>11 So again, as to Count 1 for</p> <p>12 misappropriation of trade secrets,</p> <p>13 does the jury find its verdict for</p> <p>14 Plaintiff? So again, in order to</p> <p>15 check yes on that, you would have to</p> <p>16 find that the information that Mr. Zou</p> <p>17 provided to Pegasystems between 2012</p> <p>18 and 2014 was, in fact, secret; was not</p> <p>19 in the public domain; and that Appian</p> <p>20 took reasonable steps to maintain the</p> <p>21 secrecy of that information.</p> <p>22       I suggest that based on the</p> <p>23 evidence and your weighing of that</p> <p>24 evidence, you should check the box no,</p> <p>25 but unlike Mr. Mangi -- look at that.</p>

<div data-bbox="695 121 803 142" data-label="Page-Header">Page 8338</div> <div data-bbox="99 142 803 1024" data-label="Text"> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 He can check it for me.</p> <p>3 Thank you, Josh.</p> <p>4 So second count is if you do</p> <p>5 find -- if you hit no, then your job</p> <p>6 is done on that one. The rest of the</p> <p>7 form doesn't matter.</p> <p>8 Only if you find yes, then you</p> <p>9 go to Count 1. That says only against</p> <p>10 Pegasystems, only against Youyong Zou,</p> <p>11 against both Pegasystems and Youyong</p> <p>12 Zou. Again, if you hit no on No. 1,</p> <p>13 then it's against neither party on</p> <p>14 Part 2.</p> <p>15 With regard to the amount,</p> <p>16 again, if you were to find yes and if</p> <p>17 you were to find that it's against</p> <p>18 either Mr. Zou by himself or with</p> <p>19 Pega, then you have to turn the page</p> <p>20 and look at the next one.</p> <p>21 It says: As to Count 1, if the</p> <p>22 jury finds its verdict for Appian and</p> <p>23 against Youyong Zou, what amount does</p> <p>24 the jury award damages against Youyong</p> <p>25 Zou?</p> </div>	<div data-bbox="1414 121 1523 142" data-label="Page-Header">Page 8339</div> <div data-bbox="821 142 1523 1024" data-label="Text"> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 So again, while I'm not urging</p> <p>3 you to find that Mr. Zou</p> <p>4 misappropriated trade secrets, if you</p> <p>5 do, I think you've got two choices.</p> <p>6 You can go with -- again, the theory</p> <p>7 is unjust enrichment; so the idea is</p> <p>8 to take back from the person who</p> <p>9 misappropriated the trade secrets the</p> <p>10 profits that they made in that</p> <p>11 activity and give it to Appian.</p> <p>12 So there are really only two</p> <p>13 choices and there's no dispute that's</p> <p>14 what those two choices are.</p> <p>15 In the first instance, Appian</p> <p>16 claims \$23,600 and change. But,</p> <p>17 Mr. Zou didn't put that in his pocket.</p> <p>18 That was the amount that K-Force paid</p> <p>19 on his behalf before taxes and</p> <p>20 withholding. And you may recall, you</p> <p>21 may not, it wouldn't hurt my feelings</p> <p>22 too much if you didn't, but I asked</p> <p>23 Mr. Malackowski: Well, isn't it true,</p> <p>24 Mr. Malackowski, that Mr. Zou only</p> <p>25 benefited, only put \$18,000 and change</p> </div>
<div data-bbox="695 1050 803 1071" data-label="Page-Header">Page 8340</div> <div data-bbox="99 1071 803 1953" data-label="Text"> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 in his pocket?</p> <p>3 And he says: Yes. But then if</p> <p>4 he later pays it, then he may be</p> <p>5 eligible for a deduction on future tax</p> <p>6 returns and so he shouldn't get the</p> <p>7 benefit of that if, in fact, he was</p> <p>8 involved in wrongdoing.</p> <p>9 But he also acknowledged that</p> <p>10 the tax laws may change. The IRS may</p> <p>11 determine that the -- Mr. Zou, that</p> <p>12 the payment that he made for a</p> <p>13 judgment here is not an ordinary</p> <p>14 business expense or business in</p> <p>15 furtherance -- an expense of</p> <p>16 furtherance of business. So he may or</p> <p>17 may not get the deductions.</p> <p>18 Mr. Malackowski's response was,</p> <p>19 well, doesn't matter. That's how we</p> <p>20 do it. It's \$23,600.</p> <p>21 Again, if you're going to go in</p> <p>22 that direction, those are your</p> <p>23 choices.</p> <p>24 The last thing I want to talk to</p> <p>25 you about is this next series of</p> </div>	<div data-bbox="1414 1050 1523 1071" data-label="Page-Header">Page 8341</div> <div data-bbox="821 1071 1523 1953" data-label="Text"> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 questions about willful and malicious</p> <p>3 misappropriation, one question for</p> <p>4 Pegasystems and one question is for</p> <p>5 Mr. Zou. So I'll focus in the time</p> <p>6 remaining to me just on the bottom</p> <p>7 question about willful and malicious</p> <p>8 misappropriation by Mr. Zou.</p> <p>9 If you were to find that Mr. Zou</p> <p>10 was -- had misappropriated Appian's</p> <p>11 trade secrets and you made some sort</p> <p>12 of dollar award, then you're asked the</p> <p>13 question: Was his misappropriation</p> <p>14 willful and malicious?</p> <p>15 So not willful or malicious.</p> <p>16 It's willful and malicious. So if one</p> <p>17 in this case, if seven, I want to look</p> <p>18 at what does willful and malicious</p> <p>19 mean? You will get in your packet</p> <p>20 jury instructions and ask you to look</p> <p>21 at Jury Instruction No. 14. And it</p> <p>22 talks about what is willful and</p> <p>23 malicious.</p> <p>24 And the last sentence of Jury</p> <p>25 Instruction No. 14 says: Willful</p> </div>

<p style="text-align: right;">Page 8342</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 conduct occurs when a party acts</p> <p>3 without regards for the right of</p> <p>4 another knowing that the injury will</p> <p>5 probably follow.</p> <p>6 So again, that's a determination</p> <p>7 you have to make.</p> <p>8 Malicious conduct occurs when a</p> <p>9 party acts with ill will or spite.</p> <p>10 You also have to find that. So</p> <p>11 even if you were to find that</p> <p>12 Mr. Zou's conduct was without regard</p> <p>13 to the rights of another knowing that</p> <p>14 injury will probably follow, that's</p> <p>15 not enough to find that he was guilty</p> <p>16 of willful and malicious conduct.</p> <p>17 You have to also find that he</p> <p>18 acted with ill will or spite. I</p> <p>19 submit to you there's nothing in the</p> <p>20 record in this case that shows that</p> <p>21 Mr. Zou had any motive to hurt Appian.</p> <p>22 And when I say hurt Appian, he was not</p> <p>23 there out of spite doing this</p> <p>24 consulting work for Pega.</p> <p>25 I think the record is pretty</p>	<p style="text-align: right;">Page 8343</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 clear that Mr. Zou was doing this for</p> <p>3 the purposes of making money. It was</p> <p>4 his side hustle.</p> <p>5 Mr. Mangi graciously</p> <p>6 acknowledged that Mr. Zou is not a</p> <p>7 criminal mastermind. That's the</p> <p>8 nicest thing Mr. Mangi has ever said</p> <p>9 about Mr. Zou. Thank you. We'll take</p> <p>10 it.</p> <p>11 But I think what that also</p> <p>12 indicates is that after carefully</p> <p>13 considering this, you really cannot</p> <p>14 find that Mr. Zou was guilty of both.</p> <p>15 This is not a criminal case, but</p> <p>16 engaged in both willful and malicious</p> <p>17 conduct.</p> <p>18 So thank you for your time.</p> <p>19 Again, it's been a long run. Run a</p> <p>20 marathon together for the past seven</p> <p>21 weeks. Actually could have run from</p> <p>22 here to New York and Boston and back</p> <p>23 again during that time, at least some</p> <p>24 of us could, probably not me.</p> <p>25 But again, thank you for your</p>
<p style="text-align: right;">Page 8344</p> <p>1 Defendant - Zou - Closing (Travell)</p> <p>2 good humor and your sticking with us.</p> <p>3 And good luck with your deliberations.</p> <p>4 THE COURT: Ladies and</p> <p>5 gentlemen, under our procedure,</p> <p>6 Mr. Mangi gets a rebuttal and he has</p> <p>7 by my calculation about an hour.</p> <p>8 Would you like to hear that</p> <p>9 today or would you like to hear it</p> <p>10 tomorrow morning?</p> <p>11 MR. MANGI: Your Honor, I'm not</p> <p>12 going to take an hour.</p> <p>13 THE COURT: You're not.</p> <p>14 MR. MANGI: I can't promise</p> <p>15 5:00, but, you know, I'm going to try</p> <p>16 to get done soon after 5:00 hopefully.</p> <p>17 THE COURT: All right.</p> <p>18 MR. MANGI: If people need to</p> <p>19 leave exactly at 5:00, I understand.</p> <p>20 THE COURT: Is there anybody</p> <p>21 against -- who would like to call it a</p> <p>22 day? Speak up if there is.</p> <p>23 JUROR: I want to call it a day.</p> <p>24 THE COURT: We're going to call</p> <p>25 it a day. It's been a long day for</p>	<p style="text-align: right;">Page 8345</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 everybody.</p> <p>3 But is 9:30 tomorrow morning</p> <p>4 available for everybody?</p> <p>5 MR. MANGI: Your Honor, may I</p> <p>6 just note a point so people can</p> <p>7 account for it?</p> <p>8 I'm going to be about</p> <p>9 20 minutes. So I'm happy to do it</p> <p>10 tomorrow, happy to do it today.</p> <p>11 Whatever you want.</p> <p>12 JUROR: Take the stand.</p> <p>13 THE COURT: Twenty minutes.</p> <p>14 MR. MANGI: Folks, I'm back.</p> <p>15 When I was here last, I asked</p> <p>16 you in their discussions, ask yourself</p> <p>17 two questions: Why did you do it</p> <p>18 then? And show me, right? Those are</p> <p>19 the two things I said to look out for.</p> <p>20 Did anyone explain to you if all</p> <p>21 of that is true, why did you do it?</p> <p>22 And what did they show you? Next to</p> <p>23 nothing.</p> <p>24 Let's go through some specific</p> <p>25 points. Let's call up PLT D 10.163 to</p>

<p style="text-align: right;">Page 8346</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 164.</p> <p>3 (Whereupon, Exhibit PLT D</p> <p>4 10.163, Demonstrative, was</p> <p>5 identified.)</p> <p>6 (Whereupon, Exhibit PLT D</p> <p>7 10.164, Demonstrative, was</p> <p>8 identified.)</p> <p>9 MR. MANGI: Now, the trade</p> <p>10 secrets. Here are the trade secrets,</p> <p>11 ladies and gentlemen. You have them</p> <p>12 all listed right there.</p> <p>13 And what is the point that you</p> <p>14 heard from them on some of the first</p> <p>15 ones?</p> <p>16 Go to the previous one, please.</p> <p>17 They said, well, look, they say</p> <p>18 these are limitations. How can this</p> <p>19 be a trade secret?</p> <p>20 But, ladies and gentlemen, what</p> <p>21 are these? They want to call them</p> <p>22 limitations, but these are</p> <p>23 identifications of technical features</p> <p>24 and aspects of the product and how it</p> <p>25 works.</p>	<p style="text-align: right;">Page 8347</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 And Dr. Marshall told you these</p> <p>3 are gold dust in a competitive</p> <p>4 situation. That's exactly what they</p> <p>5 are.</p> <p>6 Now, does the law say if it's</p> <p>7 something that can be used against</p> <p>8 you, then it's not a trade secret?</p> <p>9 Absolutely not. There's nothing in</p> <p>10 the instructions to that effect.</p> <p>11 Let's call up PLT D 10.183.</p> <p>12 (Whereupon, Exhibit PLT D</p> <p>13 10.183, Demonstrative, was</p> <p>14 identified.)</p> <p>15 MR. MANGI: This is the legal</p> <p>16 test of a trade secret: Does it</p> <p>17 derive independent economic value of</p> <p>18 not being generally known or readily</p> <p>19 ascertainable, and so on.</p> <p>20 That's the test, whether it can</p> <p>21 be used against you, whether it can be</p> <p>22 copied from makes not a wit of</p> <p>23 difference to what the legal test is</p> <p>24 here.</p> <p>25 Remember, in opening statements</p>
<p style="text-align: right;">Page 8348</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 weeks ago, I said there is a</p> <p>3 difference between watching a fighter</p> <p>4 jet go overhead and actual riding in</p> <p>5 it and driving it and feeling what</p> <p>6 works and what doesn't.</p> <p>7 Both sides are a trade secret</p> <p>8 just as well, and they know the value</p> <p>9 of it because they said it in e-mail</p> <p>10 after e-mail that I showed you.</p> <p>11 Now, then you heard from them</p> <p>12 that, well, you know, Mr. Zou, he</p> <p>13 worked for CollabraLink first before</p> <p>14 he came to Serco. How could he have</p> <p>15 done anything wrong?</p> <p>16 And they kept on and on about</p> <p>17 the Terms of Use, right?</p> <p>18 Ladies and gentlemen, this is</p> <p>19 not a breach of contract case. This</p> <p>20 is a misappropriation case.</p> <p>21 Let's call up PLT D 10.217.</p> <p>22 (Whereupon, Exhibit PLT D</p> <p>23 10.217, Demonstrative, was</p> <p>24 identified.)</p> <p>25 MR. MANGI: The definition of</p>	<p style="text-align: right;">Page 8349</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 improper means: Misrepresentation,</p> <p>3 use of a computer network without</p> <p>4 authority, breach of a duty to</p> <p>5 maintain secrecy, espionage.</p> <p>6 That's what is at issue here,</p> <p>7 not what box he clicked on or didn't</p> <p>8 click on, but the evidence on that</p> <p>9 point is replete too.</p> <p>10 Mr. Travell showed you Mr. Zou's</p> <p>11 signing on. Do you remember that?</p> <p>12 What was he signing on to? A GSA</p> <p>13 government version using credentials</p> <p>14 from when he worked at Lockheed in a</p> <p>15 period after he worked there. Even in</p> <p>16 the very clip he showed you, he was</p> <p>17 doing what he is not supposed to do.</p> <p>18 And the un rebutted testimony in</p> <p>19 the record from Mr. Ross right over</p> <p>20 there is when you register for Forum,</p> <p>21 whether yourself or your company</p> <p>22 registers you, the first time you log</p> <p>23 on you have to accept the Terms of</p> <p>24 Use.</p> <p>25 I showed you a slide on that</p>

<p style="text-align: right;">Page 8350</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 earlier today. So Mr. Zou absolutely</p> <p>3 had to do that, just like everyone</p> <p>4 else.</p> <p>5 But you know what? Beyond that,</p> <p>6 I showed you all the Serco agreements</p> <p>7 and policies. They said in the</p> <p>8 document Mr. Travell showed you,</p> <p>9 information made available to employee</p> <p>10 as a direct or indirect consequence of</p> <p>11 his employment is confidential</p> <p>12 information. That's what he had.</p> <p>13 Through access to the Appian platform.</p> <p>14 What about the policies I showed</p> <p>15 you? Remember the termination policy?</p> <p>16 It said: Misappropriation of</p> <p>17 information from a business partner</p> <p>18 will get you terminated.</p> <p>19 He knew what he was doing was</p> <p>20 wrong. How was he getting access to</p> <p>21 Forum? Using credentials he knew were</p> <p>22 from his employers when he said he</p> <p>23 knew he's not allowed to use his</p> <p>24 information for other purposes.</p> <p>25 Remember, I showed you all of</p>	<p style="text-align: right;">Page 8351</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 the Agreements Appian has with Serco,</p> <p>3 the VA Agreement, the government GSA</p> <p>4 Schedule Agreement, all of those</p> <p>5 confidentiality terms.</p> <p>6 They want to say we didn't take</p> <p>7 any efforts to protect ourselves? You</p> <p>8 could scarcely have more paper</p> <p>9 protecting ourselves with Terms of</p> <p>10 Use, licenses.</p> <p>11 What everyone agrees in the</p> <p>12 software industry is all the best you</p> <p>13 can do because you have to sell your</p> <p>14 product.</p> <p>15 Then they showed you these VASP</p> <p>16 Agreements, the blank templates. And</p> <p>17 they said, oh, you know, what if</p> <p>18 someone did this or that? Zero</p> <p>19 evidence of any of those trade secrets</p> <p>20 I showed you being shown to anyone.</p> <p>21 Absolutely none.</p> <p>22 And Mr. Zou, remember, he is</p> <p>23 using GSA instances. He's logging on</p> <p>24 with government credentials. It's all</p> <p>25 on video. You've seen it all happen.</p>
<p style="text-align: right;">Page 8352</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 Remember, he's using a Serco</p> <p>3 laptop that says provide -- Microsoft</p> <p>4 internet provided by Serco.</p> <p>5 He's handing over reams of</p> <p>6 documentation from the</p> <p>7 password-protected Forum website. He</p> <p>8 admits he's not authorized to do any</p> <p>9 of this. He says: I kept it all</p> <p>10 secret. He admits he shouldn't have</p> <p>11 been doing any of this.</p> <p>12 And Mr. Travell and Mr. Frank</p> <p>13 want to tell you he didn't do anything</p> <p>14 wrong, nothing to see. Okay.</p> <p>15 Then Mr. Frank says to you --</p> <p>16 I'm going to keep my word on the time.</p> <p>17 That's why I keep looking back.</p> <p>18 JUROR: That's okay.</p> <p>19 MR. MANGI: He says to you: We</p> <p>20 knew it.</p> <p>21 Right? That's what Mr. Frank's</p> <p>22 argument is. We knew all of this in</p> <p>23 advance.</p> <p>24 And what was my answer? Don't</p> <p>25 tell me. Show me. Show me you knew</p>	<p style="text-align: right;">Page 8353</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 it.</p> <p>3 And what did he show you?</p> <p>4 Let's talk about that. He</p> <p>5 showed you documents from the pre-Zou</p> <p>6 era that are all talking about Pega</p> <p>7 has this feature, Pega has that</p> <p>8 feature, Pega can do these charts,</p> <p>9 Pega can do those charts.</p> <p>10 Yeah. They know about Pega.</p> <p>11 Shocker.</p> <p>12 Did they know the trade secrets</p> <p>13 I put on the screen about Appian?</p> <p>14 They did not, and there was not a word</p> <p>15 in those documents to suggest</p> <p>16 otherwise.</p> <p>17 You know, what was the closest</p> <p>18 they came? It was about the kdb+</p> <p>19 in-memory database.</p> <p>20 Yeah? What about the</p> <p>21 configuration of the checkpointing in</p> <p>22 Appian? That's the trade secret on</p> <p>23 the list I showed you.</p> <p>24 Is there any wit of an</p> <p>25 indication that they knew that? None.</p>

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 And all the other trade secrets that  
3 were on there, nothing in those  
4 documents touching on any of them.  
5 That's why Mr. Schuerman  
6 admitted, we didn't have any of that.  
7 We were just assuming based on  
8 silence.  
9 That's when Mr. Petronio told  
10 you, we got all of this from Zou.  
11 Before we were just guessing. Now we  
12 knew.  
13 That's why Mr. Bearden said:  
14 It's hugely valuable because now we  
15 know and we can see it and we can go  
16 out and talk about what's there.  
17 You know, there is a colleague  
18 on my team, I'm not going to tell you  
19 who, you have to guess, but he loves  
20 My Cousin Vinny, right? Can't stop  
21 talking about it. His favorite line  
22 is to say "identical" when comparing  
23 two things, right?  
24 Were those identical or  
25 identical? They were not. There was

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 Concurrent development? Just by  
3 example, remember, Mr. Malackowski  
4 said that's the show stopper because  
5 you see it all over. They're using it  
6 everywhere.  
7 Is there a shred of evidence  
8 they knew anything about that? Zero.  
9 So then they say, oh, you know,  
10 developers can see this stuff. How  
11 can it be a trade secret? They are  
12 all under license.  
13 Remember, I showed you the jury  
14 instruction that says the number of  
15 people who have access doesn't matter  
16 because they are all under license.  
17 They are bound to protect the terms  
18 and confidences. And by the way, if  
19 everyone knew all of this, well, why  
20 did you do it? Why didn't you know  
21 it? They clearly didn't.  
22 Mr. Petronio told you that.  
23 It's gold dust for their sales force.  
24 That's why they used it all over the  
25 place. That's why they were digging

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 nothing in the list that matches with  
3 what is on those older documents.  
4 It's just their guesses on irrelevant  
5 issues.  
6 And you can see that from  
7 Mr. Petronio's testimony. You can see  
8 that from Mr. Schuerman's testimony.  
9 Mr. Frank said to you, oh, you  
10 know, telling you why these are  
11 similar. Takes some explanation. He  
12 said not very exciting.  
13 You know why it takes some  
14 explanation? Because they are not the  
15 same.  
16 You know what doesn't take  
17 explanation? The truth. When things  
18 are the same, you know how long it  
19 takes? It takes as long as when I  
20 showed you the slide comparing  
21 Appian's Smart Services and Pega's  
22 Smart Shapes. It takes five seconds  
23 because you can see when something is  
24 the same. Those things are not the  
25 same.

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 beneath the surface.  
3 This was about live access. It  
4 was about testing the car. It was  
5 about flying the jets. It's not about  
6 running a Google search.  
7 So then Mr. Frank said to you,  
8 he said, oh, you know, there's one  
9 part we'll admit. Some stray people  
10 out there, you know, they logged on to  
11 some stuff. They shouldn't have done  
12 it.  
13 Okay. Who was that? Was that a  
14 some low ranking employee no one's  
15 ever heard of? It was Ben Baril  
16 working for Alan Treffer. It was the  
17 people in India working directly with  
18 Bixby and Akgonul. Those were the  
19 people who were doing this.  
20 He says it's irrelevant to our  
21 claims. It is not. It applies  
22 directly to both of our claims in this  
23 case because all the information they  
24 were getting was studying our  
25 platform, reinforcing all of these

<p style="text-align: right;">Page 8358</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 issues. They were continuing to look</p> <p>3 at us time and time again, studying</p> <p>4 the black box which they knew they</p> <p>5 could not otherwise have access to.</p> <p>6 You know, they keep referring</p> <p>7 back to Dr. Easttom and saying, oh,</p> <p>8 you know, Dr. Easttom says this and</p> <p>9 that. Now, by the way, even</p> <p>10 Mr. Travell now clearly agrees with me</p> <p>11 that his Ph.D.s are pretty sketchy,</p> <p>12 right?</p> <p>13 But why is that important?</p> <p>14 Credibility, ladies and gentlemen.</p> <p>15 You compare him to Dr. Cole on these</p> <p>16 trade secret issues. Compare him to</p> <p>17 Dr. Marshall. You decide who's the</p> <p>18 serious player and person here.</p> <p>19 But their access and continued</p> <p>20 access, let me be unmistakable. It is</p> <p>21 relevant, important, critical to both</p> <p>22 of our claims here.</p> <p>23 Now, then they say about</p> <p>24 Mr. Petronio, oh, you know,</p> <p>25 Mr. Petronio, he must be out there</p>	<p style="text-align: right;">Page 8359</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 doing this on his own. Okay. Let's</p> <p>3 go to PLT D 10.305, please.</p> <p>4 (Whereupon, Exhibit PLT D</p> <p>5 10.305, Document, was identified.)</p> <p>6 MR. MANGI: If anything</p> <p>7 inappropriate was done, who does the</p> <p>8 buck stop with? It was done by</p> <p>9 Petronio, Baril, anyone. It's</p> <p>10 Mr. Trefler. It's the company.</p> <p>11 Petronio wasn't out there doing</p> <p>12 some stuff in a corner on his own.</p> <p>13 They were all right there with him</p> <p>14 guiding his work. He was a very</p> <p>15 honest guy, but he wasn't coming up</p> <p>16 with all of this on his own.</p> <p>17 When he testified on the stand,</p> <p>18 he told you all of these people. He</p> <p>19 was honest about all of these people</p> <p>20 who were involved in the conduct that</p> <p>21 he did, and now he's telling you the</p> <p>22 truth. He's coming clean about</p> <p>23 everything that he did.</p> <p>24 Now, then here's a very</p> <p>25 important point, ladies and gentlemen.</p>
<p style="text-align: right;">Page 8360</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 Very important point.</p> <p>3 If you find there's even one</p> <p>4 trade secret at issue here, right, I</p> <p>5 would submit to you all of these that</p> <p>6 I have on that list, two pages, they</p> <p>7 are all trade secrets. We've</p> <p>8 established that in spades.</p> <p>9 But if you find even one is,</p> <p>10 then it's up to you to determine what</p> <p>11 you think the damages should be. But</p> <p>12 now Mr. Frank, he gave you a long</p> <p>13 explanation saying, you know, Appian,</p> <p>14 they haven't proved this, they haven't</p> <p>15 proved that. You know what he's</p> <p>16 ignoring there completely? The law.</p> <p>17 He's ignoring the law.</p> <p>18 The burdens of proof that I took</p> <p>19 you through, those are critical here.</p> <p>20 So let's talk about that.</p> <p>21 Let me go to PLT D 10.348.</p> <p>22 (Whereupon, Exhibit PLT 10.348,</p> <p>23 Document, was identified.)</p> <p>24 MR. MANGI: Remember I showed</p> <p>25 you the graphic of how the money comes</p>	<p style="text-align: right;">Page 8361</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 and what part goes where? Let's</p> <p>3 refocus on that for a moment.</p> <p>4 Appian, once we've shown</p> <p>5 misappropriation, Appian has the</p> <p>6 burden of establishing by greater</p> <p>7 weight of the evidence Pegasystems'</p> <p>8 sales. We just got to show all the</p> <p>9 money that flowed in, the 6 billion</p> <p>10 plus from their customers, right?</p> <p>11 That's what we have to show.</p> <p>12 He's suggesting to you, no, we</p> <p>13 have to show that every customer was</p> <p>14 only there because of a trade secret.</p> <p>15 It is their burden that is identified</p> <p>16 in the jury instruction. He didn't</p> <p>17 show you this instruction.</p> <p>18 It says: Pegasystems has the</p> <p>19 burden of establishing by greater</p> <p>20 weight of the evidence any portion of</p> <p>21 the sales not attributable to the</p> <p>22 trade secrets.</p> <p>23 So what does that mean? That</p> <p>24 means if they think there is a sale</p> <p>25 that is innocent, that is untainted by</p>

<p style="text-align: right;">Page 8362</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 any of this, it is on them to prove</p> <p>3 that.</p> <p>4 The law puts that burden on the</p> <p>5 misappropriator, not on the victim.</p> <p>6 They've got to show that the sale was</p> <p>7 innocent, and I showed you this</p> <p>8 morning why they can't show that even</p> <p>9 for their prized examples.</p> <p>10 And then when it comes to the</p> <p>11 product improvements theory where we</p> <p>12 have our primary damages claim, the</p> <p>13 \$3.03 billion claim, on that issue,</p> <p>14 there, the same burden shifting</p> <p>15 applies.</p> <p>16 He's saying, well, Appian hasn't</p> <p>17 proven, what if there was some other</p> <p>18 feature, and what if something else</p> <p>19 was important, what if they added</p> <p>20 another feature not the trade secret</p> <p>21 that mattered to a sale.</p> <p>22 If they wanted to argue that</p> <p>23 there were sales that are innocent,</p> <p>24 untainted by the trade secret that</p> <p>25 happened because of some other</p>	<p style="text-align: right;">Page 8363</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 feature, they had to prove that to</p> <p>3 you. It's right there in the jury</p> <p>4 instruction.</p> <p>5 But what did their expert</p> <p>6 Mr. Platt do? He said he hasn't done</p> <p>7 that. He hasn't even tried to do</p> <p>8 that.</p> <p>9 And you can imagine why.</p> <p>10 Because the truth is as Dr. Marshall</p> <p>11 gave it to you. These are fundamental</p> <p>12 features and they were fundamental to</p> <p>13 this product not becoming Lotus 1-2-3.</p> <p>14 They were at the core of</p> <p>15 everything here. And you know, the</p> <p>16 investors, we talked about the stock</p> <p>17 charts, they saw this. Why? Because</p> <p>18 investors, they are not looking at</p> <p>19 what, do you still have revenue now?</p> <p>20 They're looking at what's going to</p> <p>21 happen in the future, and they were</p> <p>22 selling Pega stock in droves before</p> <p>23 this happened and buying other</p> <p>24 software.</p> <p>25 That proves to you the point</p>
<p style="text-align: right;">Page 8364</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 that Dr. Marshall was making. He</p> <p>3 explained why all of that is the case.</p> <p>4 Let me talk a little bit about</p> <p>5 the product improvements issues. Now,</p> <p>6 on Smart Services, right, Dr. Marshall</p> <p>7 gave you such detailed evidence.</p> <p>8 Remember, he's been through all of</p> <p>9 these, right? And he told you exactly</p> <p>10 what, when, and how they took it.</p> <p>11 What's the answer to that?</p> <p>12 Nothing. Nothing at all. They just</p> <p>13 say take our word, we must have had</p> <p>14 this before.</p> <p>15 He looked at them. He told you</p> <p>16 different. The Why Upgrade document</p> <p>17 confirms it. No, 6.3; yes, 7.1.</p> <p>18 CDTs, what did they say? It's</p> <p>19 been the same for decades. We've had</p> <p>20 it forever.</p> <p>21 Well, then why did you do all</p> <p>22 this? Why does your Project Crush</p> <p>23 memo study Appian CDTs and say</p> <p>24 improvements underway? Why do you</p> <p>25 have 222 slides that you're studying</p>	<p style="text-align: right;">Page 8365</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 with your CEO, including whole series</p> <p>3 on CDTs?</p> <p>4 Is any of that credible?</p> <p>5 And on editing, Dr. Marshall</p> <p>6 showed you exactly where the button</p> <p>7 was, how it worked and why it worked.</p> <p>8 Now, on this issue of high technology,</p> <p>9 you want to believe Dr. Marshall or do</p> <p>10 you want to believe Mr. Frank? You</p> <p>11 make up your minds on that issue.</p> <p>12 And on social and mobile, folks,</p> <p>13 all you hear from Pega is, oh, you</p> <p>14 know, we had a Sencha Band-Aid. We</p> <p>15 had a lot.</p> <p>16 Nothing to do with the trade</p> <p>17 secret we are asserting here. The</p> <p>18 out-of-the-box functionality with no</p> <p>19 configuration required. And again, if</p> <p>20 they wanted to show that some other</p> <p>21 feature got us sales untainted by the</p> <p>22 trade secrets, it's their burden to</p> <p>23 show that and they didn't even try.</p> <p>24 Their expert didn't even try to do</p> <p>25 that.</p>

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 Then on Dr. Marshall, they said,  
3 oh, you know, he only spent a couple  
4 of weeks after his Expert Report  
5 looking at this. He testified he  
6 spent 100 to 150 hours building apps  
7 in Pega. He's the only one that did  
8 it. Mr. Pinto didn't do a thing.  
9 And he has laid it out for you  
10 in absolute detail, and he addressed  
11 every other point just yesterday they  
12 raised. I won't go through them all  
13 again.  
14 You know, they acquired Antenna,  
15 unrelated last mile technology. And  
16 the 7.1 upgrade document, that's all  
17 you need to see to know if this was  
18 new and added to this.  
19 On the specific customers they  
20 raised, let me point this up. They  
21 pointed just a few.  
22 They talked about Amazon and  
23 they looked at an Appian e-mail from  
24 the time, but Appian had no idea what  
25 was happening. You see Appian people

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 in our damages methodology.  
3 Mr. Malackowski took them out  
4 because their contracts predated Zou.  
5 I told you he was being very  
6 conservative.  
7 When it comes to Rabo and  
8 Census, I addressed those this  
9 morning. Fundamentally tainted by  
10 this whole thing and ultimately no way  
11 to say they had nothing do with this.  
12 Again, though, their burden,  
13 their customers. Were they here? If  
14 not, why not? You can answer that  
15 question.  
16 And by the way, the Zou  
17 information? Don't forget, this kept  
18 on going for years and years and years  
19 long after Zou had left. That's why  
20 Mr. Hoffman, he said I would never do  
21 this. He was doing it too. He was  
22 circulating these all throughout this  
23 time period, and the evidence in the  
24 record that we have put in shows that.  
25 Now, getting to the end, let's

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 saying what happened here? We didn't  
3 know. We were guessing.  
4 They knew because they are the  
5 ones that did it. And you saw what  
6 their documents show, Zou documents  
7 being used in all of these  
8 opportunities.  
9 And with all of these customers,  
10 right, it's their burden to show if a  
11 sale is innocent. It's their  
12 customers we're talking about.  
13 Where are they? They could have  
14 customers come in and say, you know, I  
15 bought this for reasons that have  
16 nothing to do with this. That's why I  
17 chose Pega.  
18 They even don't carry their  
19 burden. There's not one customer they  
20 called, and you can guess why. Why  
21 wouldn't they with \$3 billion on the  
22 line?  
23 Mr. Frank talked about Telstra,  
24 Poste, Ryder. He spent a lot of time  
25 on those. Those aren't even customers

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 go to PLT D 10.384.  
3 (Whereupon, Exhibit PLT D  
4 10.384, Document, was identified.)  
5 MR. MANGI: Back to the verdict  
6 form. Now, ladies and gentlemen, let  
7 me know, one of you is about to become  
8 a foreperson. Whoever is that lucky  
9 person, other people are going to look  
10 to them and say, did you write this  
11 down? So if there's anything you need  
12 to write down, I see you writing.  
13 I'll pause and slow down. Okay?  
14 Now, let's talk about these  
15 issues. \$3 billion? Yeah, it's a big  
16 number, right? The exact number, of  
17 course, \$3,032,847,000. It is a big  
18 number.  
19 Why? Because they make a  
20 billion dollars a year. And you saw  
21 the conduct that they engaged in. It  
22 is the just and appropriate outcome.  
23 And Mr. Zou should be held  
24 accountable too. Of course, it  
25 depends on how taxes are handled in

<p style="text-align: right;">Page 8370</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 this situation.</p> <p>3 Now, what's their only response</p> <p>4 here? Oh, let me point out by the</p> <p>5 way, the other methodology, the</p> <p>6 479 million, the alternative</p> <p>7 methodology, you don't add those</p> <p>8 together, right? That's the -- zoomed</p> <p>9 in here because this covers all sales,</p> <p>10 including those. So this is the</p> <p>11 number that I would urge you to focus</p> <p>12 on.</p> <p>13 Now, then they say, oh, you</p> <p>14 know, but you've got to take out all</p> <p>15 the costs, right? So even if they are</p> <p>16 going out there and admitting we stole</p> <p>17 money, we stole trade secrets. Now we</p> <p>18 got a lot of money. Let's go spend</p> <p>19 every penny.</p> <p>20 They say, oh, you know, then</p> <p>21 sorry, we don't have to pay anything</p> <p>22 back. We've spent all the money.</p> <p>23 That is not how this works.</p> <p>24 Mr. Malackowski, an experienced</p> <p>25 intellectual property accounting</p>	<p style="text-align: right;">Page 8371</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 expert, told you exactly how it works.</p> <p>3 He did the math. And let's call up</p> <p>4 again PLT D 10.372.</p> <p>5 (Whereupon, Exhibit PLT D</p> <p>6 10.372, Document, was identified.)</p> <p>7 MR. MANGI: Here is where</p> <p>8 Mr. Malackowski explained very</p> <p>9 directly and simply exactly why this</p> <p>10 cost argument is utterly bogus. Look</p> <p>11 at what he said.</p> <p>12 He said, look, you know, for tax</p> <p>13 reasons, otherwise, they want to</p> <p>14 operate at a loss, fine, but they got</p> <p>15 a benefit.</p> <p>16 Here's what they are asking you</p> <p>17 to believe. If I stole trade secrets,</p> <p>18 right, and I made \$5 billion from it</p> <p>19 and I put it in the bank, the victim</p> <p>20 can come along, they can get that back</p> <p>21 from me.</p> <p>22 But then this guy over here, he</p> <p>23 steals the same trade secrets, he</p> <p>24 makes the same \$5 billion, he chooses</p> <p>25 to spend it all on Superbowl ads and</p>
<p style="text-align: right;">Page 8372</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 the Goo Goo girls and concerts -- I</p> <p>3 said that on purpose -- and now, oh,</p> <p>4 no, no, I don't have to pay a penny</p> <p>5 back. Sorry, I spent it all.</p> <p>6 Does that make sense to anyone</p> <p>7 here? That's not how this works.</p> <p>8 Mr. Malackowski explained exactly how</p> <p>9 it works. He gave you the number.</p> <p>10 Let's go back to PLT 384,</p> <p>11 please.</p> <p>12 (Whereupon, Exhibit PLT 384,</p> <p>13 Document, was identified.)</p> <p>14 MR. MANGI: Last points, ladies</p> <p>15 and gentlemen.</p> <p>16 You know, they said to you</p> <p>17 something that I've been thinking</p> <p>18 about for seven and a half weeks,</p> <p>19 since the opening statement, and I</p> <p>20 want to come back to it now.</p> <p>21 They said to you, this is all a</p> <p>22 drama. Remember when they gave their</p> <p>23 opening statement, the word "drama,"</p> <p>24 dozens of times. Drama, this is all</p> <p>25 drama. And they returned to that</p>	<p style="text-align: right;">Page 8373</p> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 theme today.</p> <p>3 Now, I showed you almost 400</p> <p>4 slides of evidence this morning, new</p> <p>5 record for me, but is that drama?</p> <p>6 That was evidence.</p> <p>7 And let me say this, ladies and</p> <p>8 gentlemen. It's outrageous,</p> <p>9 outrageous what happened here.</p> <p>10 This is a publicly traded</p> <p>11 company. This is not, you know, two</p> <p>12 people in a basement somewhere.</p> <p>13 Think about the conduct that you</p> <p>14 saw here. It is outrageous. And they</p> <p>15 want to come here and wave their hands</p> <p>16 and say it's all a drama, just ignore</p> <p>17 it.</p> <p>18 Your common sense, your</p> <p>19 experience in life, your work in</p> <p>20 sophisticated organizations, you have</p> <p>21 seen people your whole life who don't</p> <p>22 tell the truth. You have been through</p> <p>23 businesses. You have experience with</p> <p>24 government organizations. You know</p> <p>25 how accounting works.</p>

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 You know from your experience  
3 getting out there in the world and  
4 starting to make your way, you know  
5 what is right. You know what is  
6 wrong. And what they did is  
7 outrageous, and they must be held to  
8 account for it.  
9 I said to you when this case  
10 started seven and a half weeks ago, I  
11 said this case is simple, but it's  
12 important, and oh, boy is it.  
13 Why is it simple? Because the  
14 conduct is outrageous. You've seen  
15 everything that they did, and you have  
16 seen -- I've shown you word for word  
17 in the jury instructions why it  
18 violates the law, violates the law  
19 fundamentally.  
20 But it's important. It's so  
21 important because think about the era  
22 we're in with corporations.  
23 I told you in opening, this is  
24 the most important case in the history  
25 of Virginia courts when it comes to

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 matters in a fundamental way to hold  
3 this conduct to account and to ensure  
4 that the victim of this conduct,  
5 Appian, receives a full, just, and  
6 appropriate resolution.  
7 And in this industry with these  
8 dollars at stake, the only just and  
9 appropriate resolution is what you see  
10 there on that screen. That is the  
11 award I ask you to make, and I ask you  
12 to hold them accountable under the  
13 Computer Crimes statute.  
14 I cannot thank you enough for  
15 your attention and diligence for these  
16 few last weeks. After this trial is  
17 over, though I don't know you, I will  
18 miss you. Thank you.  
19 THE COURT: Ladies and  
20 gentlemen, this is the last time  
21 you're going to hear me say tell you  
22 this.  
23 Please do not discuss the case  
24 with anyone. Tomorrow morning I will  
25 read brief final instructions and then

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 trade secrets, not just in the  
3 software industry, but in any  
4 industry.  
5 Eyes are on this courthouse, not  
6 just for Johnny Depp, but for this  
7 trial. Eyes are on you to see how  
8 this will be handled.  
9 Does this kind of conduct get a  
10 pass, or are they held fundamentally  
11 to account?  
12 You know who told you the truth.  
13 You know who is lying to you.  
14 Very shortly now the judge who  
15 has been telling you for a long time  
16 don't discuss the case and one juror  
17 who's been telling you don't discuss  
18 the case, they are both going to say  
19 now it's time to discuss the case.  
20 When you do that, ladies and  
21 gentlemen, I implore each and every  
22 one of you, bring your life experience  
23 to that discussion. Your life has  
24 brought you to this moment where you  
25 play a critical role in something that

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 the case will be yours. So see you  
3 tomorrow morning at 9:30.  
4 (Jury excused.)  
5 THE COURT: All right. I  
6 presume there's nothing we need to  
7 bring up at this point?  
8 MR. FRANK: Yes, Your Honor.  
9 But let me just ask you what you want  
10 of us tomorrow and tell us and we'll  
11 do it. By way of presence, for  
12 example.  
13 THE COURT: We'll start at 9:30.  
14 And I have a very brief final page or  
15 two of instructions to give them.  
16 And what we'll need to do  
17 tomorrow is first of all review the  
18 copies of the jury instructions that  
19 they are going to get and make sure  
20 everybody is in agreement that those  
21 are the correct ones that I gave.  
22 And second of all, the evidence,  
23 the documents, and everything that's  
24 going back to them. We're going to  
25 have to designate somebody to meet

<div>Page 8378</div> <div> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 with Karen tomorrow and go through</p> <p>3 everything, and then Deputy Creed will</p> <p>4 take -- start taking things into the</p> <p>5 jury room.</p> <p>6 If you want to come back earlier</p> <p>7 tomorrow morning, 9 o'clock tomorrow,</p> <p>8 and start going through that.</p> <p>9 MR. MANGI: We'll have a</p> <p>10 designee here to go through. It might</p> <p>11 not be me.</p> <p>12 THE COURT: Okay. That's what</p> <p>13 we need to do. And then once you've</p> <p>14 agreed on what the evidence is that</p> <p>15 was admitted and it goes back to the</p> <p>16 jury, we'll just need a phone number,</p> <p>17 cell phone from one -- each from one</p> <p>18 side so we can be in touch with you if</p> <p>19 there's a question.</p> <p>20 MR. MANGI: Judge, could we hang</p> <p>21 out here tomorrow?</p> <p>22 THE COURT: Sure.</p> <p>23 MR. MANGI: Okay. Will you be</p> <p>24 telling the jury tomorrow morning</p> <p>25 about the early end of the day? Just</p> </div>	<div>Page 8379</div> <div> <p>1 Plaintiff - Rebuttal Closing (Mangi)</p> <p>2 so they know how much time they have.</p> <p>3 THE COURT: I will definitely</p> <p>4 tell them that we have to break at</p> <p>5 3:30 tomorrow.</p> <p>6 MR. MANGI: Thank you.</p> <p>7 THE COURT: All right. See you</p> <p>8 tomorrow morning at 9:30. Court is in</p> <p>9 recess.</p> <p>10 (Whereupon, the proceedings of</p> <p>11 the 26th day of trial were recessed at</p> <p>12 5:13 p.m. until Friday at 9:30 a.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>
<div>Page 8380</div> <div> <p>1</p> <p>2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY</p> <p>3 PUBLIC</p> <p>4 I, Amanda Gorrano, the officer</p> <p>5 before whom the foregoing trial was</p> <p>6 taken, do hereby certify that the</p> <p>7 foregoing transcript is a true and</p> <p>8 correct record of the testimony given;</p> <p>9 that said testimony was taken by me</p> <p>10 stenographically and thereafter</p> <p>11 reduced to typewriting under my</p> <p>12 direction; and that I am neither</p> <p>13 counsel for, related to, nor employed</p> <p>14 by any of the parties to this case and</p> <p>15 have no interest, financial or</p> <p>16 otherwise, in its outcome.</p> <p>17 IN WITNESS WHEREOF, I have</p> <p>18 hereunto set my hand this 6th day of</p> <p>19 May, 2022.</p> <p>20 <u><i>Amanda Gorrano</i></u></p> <p>21 AMANDA GORRANO, CLR</p> <p>22 CLR NO: 052005 - 01</p> <p>23</p> <p>24 Notary Public in and for the State of New</p> <p>25 York</p> <p>County of Suffolk</p> <p>My Commission No. 01G06041701</p> <p>Expires: 01/07/2023</p> </div>	

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