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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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1  
2 05/05/2022  
3 9:31 a.m.  
4  
5 Proceedings of the 26th day of  
6 trial, with the witnesses and all parties  
7 and their counsel participating in person,  
8 pursuant to the Rules of the Fairfax  
9 County Circuit Court, subject to such  
10 stipulations as may be recited herein or  
11 attached hereto, heard before the  
12 Honorable Richard Gardiner; Amanda Gorrone  
13 being the Live Note Certified Court  
14 Reporter and Notary Public of the State of  
15 New York who reported the proceedings.  
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Page 7976

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5 JURY CHARGE JUDGE GARDINER  
6  
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8  
9 PLAINTIFF APPIAN BY MR. MANGI  
10 DEFENDANT PEGASYSTEMS BY MR. FRANK  
11 DEFENDANT YOUYONG ZOU BY MR. TRAVELL  
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1 Proceedings  
2 THE COURT OFFICER: Please be  
3 seated.  
4 Come to order.  
5 THE COURT: All right. Where do  
6 we stand? I understand there was some  
7 corrections made to the jury  
8 instructions, and Ms. Marcus was going  
9 to make some more copies.  
10 MR. KAY: Yeah. I'm sure she'll  
11 be out in a moment.  
12 Douglas Kay with Pegasystems.  
13 There was a sentence missing in the  
14 cause definition that we identified  
15 last night and Appian agrees it needs  
16 to be put back in. That was a prior  
17 ruling and somehow it stayed in or it  
18 came out. We found it and so  
19 Ms. Marcus has sent Ms. Perez the  
20 correct version and hopefully you have  
21 it now.  
22 THE COURT: Oh, okay.  
23 MR. KAY: I can direct the Court  
24 to where it is. It's Instruction 13  
25 in the last paragraph.

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1 Proceedings  
2 conference, you had left open Jury  
3 Instruction EE. This was -- it was an  
4 instruction that laid out the trade  
5 secrets, the specificity.  
6 THE COURT: Yes.  
7 MR. KAY: It's sort of the other  
8 side of the coin to our proposed jury  
9 verdict form.  
10 THE COURT: Right.  
11 MR. KAY: And you had never  
12 ruled on it. You had held it open and  
13 so --  
14 THE COURT: Yeah. We discussed  
15 a version of it yesterday.  
16 MR. KAY: Well, we discussed the  
17 verdict form. We did not discuss --  
18 MR. MANGI: It was ruled on.  
19 THE COURT: This instruction was  
20 actually -- it was in front me and I  
21 ruled on it.  
22 MR. MANGI: Absolutely.  
23 THE COURT: But I'll rule on it  
24 again so the record is clear.  
25 MR. KAY: Then I missed it.

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1 Proceedings  
2 THE COURT: So that's going to  
3 need to be printed out again?  
4 MR. MANGI: Your Honor, they are  
5 being assembled, I understand, right  
6 now, so Ms. Marcus will have them for  
7 you in just a minute.  
8 THE COURT: Okay.  
9 MR. KAY: I have just a couple  
10 of housekeeping matters --  
11 THE COURT: Sure.  
12 MR. KAY: -- if you don't mind  
13 while we're waiting for Ms. Marcus.  
14 THE COURT: No, no. Where is  
15 Ms. Marcus?  
16 MS. MARCUS: Is this about the  
17 jury instructions?  
18 MR. KAY: Yes. She's printing  
19 them, right?  
20 MS. MARCUS: Yes.  
21 MR. KAY: As I do the  
22 housekeeping, but I don't think you'll  
23 have to stand up so long. But I  
24 thought I would address them.  
25 Judge, in the initial charge

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1 Proceedings  
2 When I looked at the record, it wasn't  
3 clear that it had been ruled on. What  
4 is your ruling? Just so the record is  
5 clear.  
6 THE COURT: This was Defendants'  
7 proposed Jury Instruction EE.  
8 MR. KAY: Yes, sir.  
9 THE COURT: And it says trade  
10 secrets alleged and that one is  
11 denied.  
12 MR. KAY: Okay. Thank you.  
13 THE COURT: There were several  
14 others, but I don't want to take them  
15 up now that I put question marks next  
16 to in my version. And I don't want  
17 to -- once this case is to the jury, I  
18 want to go over with counsel so I've  
19 got my record straight.  
20 MR. KAY: Do you think we should  
21 go them over now before the jury is  
22 here?  
23 THE COURT: No. No. Because I  
24 know what we're giving to the jury. I  
25 think I know on most of these what the

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1 Proceedings  
2 ruling was, but I want to do that one  
3 after the case is at the jury.  
4 MS. MARCUS: If I may explain to  
5 the Court what we're doing.  
6 THE COURT: Yes, please.  
7 MS. MARCUS: Good morning, Your  
8 Honor.  
9 MR. KAY: Go ahead.  
10 MS. MARCUS: Good morning, Your  
11 Honor. So, Your Honor, after we  
12 e-mailed Ms. Perez last night, we  
13 noticed two more typos and rather than  
14 burden the Court with making those  
15 copies, we brought a bunch of copies  
16 this morning and have since learned  
17 that Your Honor had an order that you  
18 put the instructions in.  
19 So what's going on right now, is  
20 we are reordering all of our copies to  
21 make sure that they're in the order  
22 that Your Honor wanted them in and  
23 that will probably be done in the next  
24 five to ten minutes.  
25 THE COURT: Okay. Then we can

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1 Proceedings  
2 it's appropriate to be revisiting  
3 instructions now. I'm ready to close.  
4 We've got a very full day ahead of us.  
5 THE COURT: What is it you want  
6 to do on Instruction 14? I gave my  
7 ruling yesterday.  
8 MR. KAY: I withdraw the issue.  
9 The last point I want to make is  
10 a very short one, is that just simply,  
11 we do not believe that the jury should  
12 be instructed at all because we think  
13 the plea and bar should have been  
14 granted and the motions to strike  
15 should have been granted, and so I  
16 feel like I need to make that --  
17 THE COURT: I've already ruled  
18 on all the motions to strike and I  
19 think your objections were noted, so.  
20 MR. KAY: Thank you.  
21 THE COURT: All right.  
22 Mr. Mangi, on the --  
23 MR. MANGI: Your Honor, on the  
24 closing slides, the parties have  
25 exchanged just the slides that are not

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1 Proceedings  
2 use that five to ten minutes while  
3 we're waiting for that. Maybe we  
4 can --  
5 MR. MANGI: Your Honor, there is  
6 the issue of closing slides. So maybe  
7 we should do that.  
8 THE COURT: Yes, okay. Thank  
9 you, Mr. Mangi.  
10 MR. KAY: Your Honor, I have two  
11 more housekeeping matters.  
12 THE COURT: Okay.  
13 MR. KAY: So the other one  
14 relates to Instruction 14 and I'm not  
15 going to belabor this one, but when we  
16 were debating the appropriate, the  
17 appropriate way that Instruction 14  
18 should read --  
19 THE COURT: Go ahead.  
20 MR. KAY: Yeah. On the top of  
21 the second paragraph --  
22 MR. MANGI: I'm sorry. Just on  
23 a point of order here, I don't have  
24 any of these instructions. The charge  
25 conference is over. I don't think

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1 Proceedings  
2 in evidence. So theirs are only  
3 pictures of witnesses so I'm not going  
4 to raise any issues from my side.  
5 They may have some.  
6 THE COURT: Okay.  
7 MS. SPIETH: One quick more  
8 housekeeping thing. This is again not  
9 evidence, but the parties have looked  
10 into the record, transcripts of the  
11 impeachment clips that were played  
12 during the case, so again, not  
13 evidence, not something that's going  
14 to the jury, but just to complete the  
15 record --  
16 MR. MANGI: Hang on a second.  
17 The record is closed. The evidentiary  
18 record is closed. We are at closing  
19 arguments now.  
20 THE COURT: Yes.  
21 MS. SPIETH: This is not  
22 evidence.  
23 MR. MANGI: Whatever it is,  
24 nothing should be going in the record  
25 now. It's closed. All sides have

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1 Proceedings  
2 rested.  
3 THE COURT: Yeah. I mean,  
4 matters dealing with impeachment came  
5 up during the trial. We're not going  
6 to add anything at this point.  
7 MS. SPIETH: Right. Right, Your  
8 Honor. This is just a transcript of  
9 the impeachment clips that were played  
10 during the trial that the parties have  
11 agreed to put into the record of the  
12 case.  
13 MR. MANGI: There's no -- what  
14 we put into the record, whatever we  
15 wanted to put in the record while we  
16 were making a record.  
17 THE COURT: The evidence is  
18 closed. That is it.  
19 MS. SPIETH: Right. Your Honor,  
20 just this is in evidence. The record  
21 is actually still running because  
22 we're creating the record as we speak.  
23 So this is just a piece of the record  
24 that needs to be added to the record.  
25 THE COURT: As far as the

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1 Proceedings  
2 slides because they're not in  
3 evidence.  
4 MS. SPIETH: You've seen our  
5 slides so --  
6 MR. MANGI: I haven't seen your  
7 evidentiary slides and so none of  
8 those should in there, to be clear.  
9 THE COURT: Anything that was  
10 used for impeachment purposes is not  
11 evidence and should not be argued. I  
12 hope that's clear.  
13 It's not evidence. If the  
14 witness testified that X and you found  
15 testimony that he said Y and you  
16 impeached him with that, then that  
17 impeachment testimony cannot be argued  
18 as evidence.  
19 MS. SPIETH: Okay.  
20 MR. MANGI: Just to be clear, I  
21 would just like a -- I don't want to  
22 interrupt closings unless I really  
23 have to.  
24 Can I have a commitment from  
25 whoever is doing the closing that none

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1 Proceedings  
2 evidentiary stage goes, the record is  
3 closed.  
4 MS. SPIETH: I agree with Your  
5 Honor. This is not evidence.  
6 THE COURT: It's something that  
7 came in during the evidentiary stage.  
8 It's closed. There's no more coming  
9 in.  
10 MR. MANGI: Your Honor, we  
11 offered impeachment clips because we  
12 did offer them as evidence on the  
13 grounds that they were admissions. We  
14 properly moved them in. We didn't  
15 just hand them impeachment clips so  
16 this is improper.  
17 MS. SPIETH: The impeachments  
18 were played direct to the trial, to  
19 the --  
20 MR. MANGI: Just to be clear, if  
21 they just played an impeachment, it's  
22 not evidence. They can't use it in  
23 closing. That's just an impeachment.  
24 So I don't expect to see any of these  
25 impeachment clips in their closing

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1 Proceedings  
2 of that is going to show up on a  
3 slide?  
4 MR. FRANK: None of that is  
5 going to show up on the slides.  
6 (Reporter clarification.)  
7 MR. MANGI: He said none of that  
8 is going to show up on the slides,  
9 Mr. Frank.  
10 MS. SPIETH: We have a few  
11 issues with Appian's closing slides,  
12 Your Honor, and I'm hoping that Josh  
13 can pull them up onto your screen. If  
14 not, we have an extra copy here.  
15 THE COURT: Yeah. If he can put  
16 them up on the screen, that would be  
17 fine. You can even put them up on the  
18 big screens because the jury is not  
19 here.  
20 MS. SPIETH: The first --  
21 actually, Your Honor, well, scratch  
22 that.  
23 The first of the questions is in  
24 Plaintiff's Demonstrative 10.163. One  
25 back. There you go.

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1 Proceedings  
2 This is a list of Appian's  
3 claimed trade secrets. And my issue  
4 is with the eighth item on this list.  
5 I forecasted this issue for Your Honor  
6 yesterday.  
7 The eighth listed trade secret  
8 here -- the first seven are the  
9 weaknesses, I suppose, of Appian's  
10 product. The eighth says:  
11 Confidential documentation from Appian  
12 Forum.  
13 This is not what has been  
14 alleged in the case and, in fact, it's  
15 not specific enough and it's  
16 misleading. I'll refresh Your Honor's  
17 memory as to an argument I made  
18 yesterday.  
19 I tried to make arguments to  
20 the -- excuse me. I tried to put it  
21 in evidence to the jury about the  
22 documentation that was on Appian's  
23 Forum and Appian objected and  
24 prevented me, successfully prevented  
25 me from admitting into evidence

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1 Proceedings  
2 put it into evidence. You said I  
3 could not put the documentation from  
4 Appian Forum into evidence, so Your  
5 Honor barred me from putting that into  
6 evidence or from asking questions  
7 about it --  
8 THE COURT: Probably for a  
9 reason that was appropriate at that  
10 time, but that doesn't prevent -- if  
11 there's documentation -- if this issue  
12 came up and somebody testifies about  
13 it, it's fair game for him to argue  
14 about it.  
15 MS. SPIETH: Okay. Over my  
16 objection, Your Honor.  
17 The next slide that has an issue  
18 is 10.349. There aren't a lot of  
19 these.  
20 So 10.349, harkens back to  
21 10.348. If you wouldn't mind just  
22 putting them both up, Josh.  
23 This is an issue that Mr. Kay  
24 raised for you yesterday, Your Honor,  
25 and we were afraid might happen. You

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1 Proceedings  
2 documentation from Appian's Forum.  
3 So this is far too broad. They  
4 can tell you a specific piece of  
5 documentation, but I was actually  
6 forbidden from putting in evidence  
7 about documentation from Appian's  
8 Forum.  
9 THE COURT: This is a  
10 demonstrative that they are going to  
11 use during closing, though, right?  
12 MR. MANGI: Yes.  
13 MS. SPIETH: Right.  
14 THE COURT: This isn't going  
15 into -- this isn't evidence.  
16 MS. SPIETH: Right, but --  
17 THE COURT: This is just what  
18 Mr. Mangi wants -- I assume Mr. Mangi  
19 is going to be arguing, but he can  
20 argue that if he wants and when it's  
21 your turn, you can point out just what  
22 you just said.  
23 MS. SPIETH: Well, I won't be  
24 able to point it out, Your Honor,  
25 because Your Honor didn't allow me to

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1 Proceedings  
2 can see from the first paragraph of  
3 the jury instruction, the key part of  
4 Jury Instruction 14 that we're worried  
5 about here is the: You may award the  
6 amount of unjust enrichment caused by  
7 misappropriation.  
8 And Your Honor said that -- in  
9 the next paragraph, Pega asked that  
10 the words "caused by misappropriation"  
11 be added to clarify the below  
12 paragraph and Your Honor denied that  
13 request.  
14 The next slide reframes that  
15 second paragraph of Jury  
16 Instruction 14. And on the left, you  
17 can see where it reframes the first  
18 part of the second paragraph of the  
19 Jury Instruction 14.  
20 It says: Appian has the burden  
21 of establishing a greater weight of,  
22 of the evidence.  
23 THE COURT: Should be by the  
24 greater weight of the evidence.  
25 MS. SPIETH: Yeah. There is a

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1 Proceedings  
2 couple typos in there, I think.  
3 THE COURT: Article missing  
4 there.  
5 MS. SPIETH: Yeah. Establishing  
6 by greater weight of the evidence  
7 Pegasystems' sales. I actually think  
8 there's two typos there.  
9 MR. MANGI: It's an exact quote.  
10 MS. SPIETH: Okay. The typo  
11 might be in the jury instruction, but  
12 the problem is that when it's  
13 disaggregated from the previous  
14 paragraph, it doesn't have the "caused  
15 by misappropriation" so it's not a  
16 fair statement of the causation  
17 standard in the case.  
18 So Your Honor ruled that the  
19 "caused by misappropriation" shouldn't  
20 be included in the second paragraph,  
21 but that was when it was in the  
22 context of the full jury instruction.  
23 THE COURT: But they are going  
24 to have the full jury instruction. If  
25 he wants to emphasize this part of it,

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1 Proceedings  
2 these bands played at PegaWorld so  
3 this slide is misleading insofar as  
4 there is no evidence in the case that  
5 these bands played at PegaWorld. I  
6 think you could do a search through  
7 the transcripts for Goo Goo Dolls and  
8 you wouldn't find that they played.  
9 THE COURT: I think that's  
10 right. I think the question, he  
11 didn't know the answer.  
12 MR. MANGI: Your Honor, it's  
13 just here, I'm not saying they  
14 performed. That's not the point. The  
15 point is simply, you know, remember  
16 what -- it's a reminder, a visual  
17 reminder to the jury. Remember what  
18 he said. If these bands performed,  
19 all of that money, sorry, Appian, you  
20 can't have it back.  
21 That's all it is. I'm not  
22 saying they actually performed. They  
23 did, by the way, but I'm not going to  
24 suggest that.  
25 MR. FRANK: Of course you are.

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1 Proceedings  
2 he can emphasize this part of it.  
3 MS. SPIETH: The next one is  
4 Plaintiff's Demonstrative 10.373.  
5 This slide has pictures of, Your Honor  
6 will remember, some bands. Now, there  
7 is --  
8 THE COURT: Yes. Now I can see  
9 who the Goo Goo girls are.  
10 MR. MANGI: Dolls, Your Honor,  
11 Dolls.  
12 THE COURT: Ms. Perez explained  
13 to me yesterday during the break who  
14 they were, and she fully acted, it was  
15 a male band and it seems that she was  
16 right despite their names.  
17 MS. SPIETH: She would not lead  
18 you astray.  
19 So Mr. Bapna, counsel for  
20 Appian, asked some questions about  
21 whether Mr. Platt, the Pegasystems  
22 damages expert, was aware that these  
23 bands had played at PegaWorld and he  
24 testified that he was not aware.  
25 So it's not in evidence that

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1 Proceedings  
2 MS. SPIETH: I think this slide  
3 does suggest it actually, Your Honor.  
4 I think Mr. Mangi --  
5 MR. MANGI: I'll make it easy.  
6 I'll take out the PegaWorld. Just  
7 pictures of the bands.  
8 Remember? We asked questions  
9 about whether these bands performed.  
10 It's just a reminder of my question,  
11 period.  
12 MR. FRANK: Questions are not  
13 evidence, Your Honor.  
14 MR. MANGI: It's argument not --  
15 it's argument. It's closing argument.  
16 I want to remind -- I'm going to  
17 remind them, Your Honor, of the  
18 question about the bands. It's not  
19 prejudice for having a picture of the  
20 band. It just breaks up a boring  
21 closing.  
22 MR. FRANK: Your Honor, on that  
23 theory, I could talk about questions I  
24 asked that Your Honor excluded.  
25 THE COURT: This slide has got

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1 Proceedings  
2 to come down.  
3 MR. MANGI: Okay. That's fine.  
4 MS. SPIETH: And then there's  
5 just one more objection, Your Honor,  
6 and it applies to a couple of slides,  
7 but I think we can just argue it in  
8 the context of 10.383. And if Your  
9 Honor rules on this one, we'll know  
10 the answer to the rest.  
11 10.383 is a part of the verdict  
12 form that's completed, and I think the  
13 completed -- well, I don't think.  
14 The completed verdict forms are  
15 unfairly prejudicial insofar as they  
16 try to do the jury's job for it, and  
17 there is a couple of slides like this.  
18 THE COURT: Well, that's exactly  
19 what the closing argument is supposed  
20 to be. If your objection -- hold on,  
21 Mr. Mangi --  
22 MR. MANGI: Go ahead.  
23 THE COURT: If your objection is  
24 that he can't argue how the jury form  
25 should look, that argument is

Page 8004

1 Proceedings  
2 hand those to the deputy, please.  
3 MS. MARCUS: Thank you.  
4 THE COURT: Those are going to  
5 be distributed to the jury when they  
6 go back to deliberate.  
7 MS. MARCUS: The one with the  
8 sticky on it is the old set.  
9 THE COURT: I need my copy.  
10 (Discussion held off the  
11 record.)  
12 THE COURT: I think we're ready  
13 to bring the jury -- oh, I'm sorry,  
14 Mr. Travell.  
15 MR. TRAVELL: That's okay.  
16 Wayne Travell for defendant  
17 Youyong Zou.  
18 Your Honor, just to avoid any  
19 unnecessary interruptions, it's my  
20 understanding that, to the extent  
21 documents are admitted in evidence, we  
22 do not need to display those to  
23 opposing counsel in advance.  
24 I plan, I plan to play just a  
25 few seconds of the video, show a few

Page 8003

1 Proceedings  
2 rejected.  
3 MS. SPIETH: That's fine.  
4 That's the last four complaints, Your  
5 Honor. They were all in that bucket  
6 so we understand your ruling on all of  
7 those. Thank you.  
8 THE COURT: Thank you.  
9 MR. MANGI: Ready to close, Your  
10 Honor.  
11 THE COURT: We have the jury  
12 instructions first.  
13 Mr. Travell?  
14 MR. TRAVELL: I have a few  
15 minutes about closing.  
16 THE COURT: Okay. And let's get  
17 the jury instructions.  
18 MS. MARCUS: This is a set of  
19 eight, so one for Your Honor, seven  
20 for the jury. And then I have the set  
21 that Ms. Perez gave me this morning so  
22 you can see that I put them -- we put  
23 them in the same order as Your Honor  
24 did.  
25 THE COURT: All right. You can

Page 8005

1 Jury Charge  
2 e-mails, but one thing I had planned  
3 to show was the verdict form itself.  
4 I haven't disclosed that, but  
5 it's the verdict form that's here. I  
6 don't have it marked up, but I did  
7 plan to go through the jury and have  
8 them --  
9 THE COURT: Sure.  
10 MR. TRAVELL: So, again, I plan  
11 to do that.  
12 MR. MANGI: No objection.  
13 MR. TRAVELL: We do not have any  
14 objection.  
15 Thank you.  
16 THE COURT: Not a problem.  
17 And where is the jury verdict  
18 form, by the way?  
19 Thank you. All right. Let's  
20 bring the jury in, please.  
21 (Jury enters.)  
22 THE COURT: All members of the  
23 jury are present. Everyone may be  
24 seated.  
25 Ladies and gentlemen of the

Page 8006

1           Jury Charge  
2 jury, you've now heard all the  
3 evidence in this case. Before the  
4 lawyers make their closing arguments,  
5 the Court will give you the  
6 instructions of the law that you are  
7 to apply in deciding this case.  
8           You will have -- you will each  
9 have a copy of these instructions with  
10 you in the jury room; but please,  
11 nonetheless, I would appreciate your  
12 full attention as I read them to you  
13 now.  
14           With respect to the instructions  
15 that I'm about to give you, you'll see  
16 when you get them in the jury room  
17 that some of them are numbered, some  
18 of them are lettered. Don't pay any  
19 attention to that. That's just simply  
20 our way of keeping track of what  
21 instructions have been given.  
22           Every instruction, whether the  
23 first or the last, is an important  
24 instruction. So let me give you the  
25 instructions now.

Page 8008

1           Jury Charge  
2 these things and all the other  
3 circumstances of this case, you may  
4 determine which witnesses are more  
5 believable and weigh their testimony  
6 accordingly.  
7           You must not base your verdict  
8 in any way upon sympathy or bias or  
9 guesswork or speculation. Your  
10 verdict must be based solely upon the  
11 evidence and the instructions of the  
12 Court.  
13           Any amount of damages requested  
14 is not evidence in this case, and you  
15 should not consider it as evidence in  
16 arriving at your verdict.  
17           Any fact that may be proved by  
18 direct evidence may be proved by  
19 circumstantial evidence; that is, you  
20 may draw all reasonable inferences --  
21 all reasonable and legitimate  
22 inferences and deductions from the  
23 evidence.  
24           You may not consider any matter  
25 that was rejected or stricken by the

Page 8007

1           Jury Charge  
2           You are the judges of the facts,  
3 the credibility of the witnesses, and  
4 the weight of the evidence. You may  
5 consider the appearance and manner of  
6 the witnesses on the witness stand,  
7 their intelligence, their opportunity  
8 for knowing the truth and for having  
9 observed the things on which they  
10 testified, their interest in the  
11 outcome of the case, their bias and,  
12 if any have been shown, their prior  
13 inconsistent statements, or whether  
14 they have knowingly testified  
15 untruthfully as to any material fact  
16 in the case.  
17           You may not arbitrarily  
18 disregard believable testimony of a  
19 witness. However, after you have  
20 considered all the evidence in the  
21 case, then you may accept or you may  
22 discard all or part of the testimony  
23 of a witness as you think proper.  
24           You are entitled to your common  
25 sense in judging any testimony. For

Page 8009

1           Jury Charge  
2 Court. It is not evidence and should  
3 be disregarded.  
4           In considering the weight to be  
5 given to the testimony of an expert  
6 witness, you should consider the basis  
7 for his opinion and the manner by  
8 which he arrived at it and the  
9 underlying facts and data upon he  
10 relied.  
11           If you believe from the evidence  
12 that a witness, other than a party,  
13 previously made a statement  
14 inconsistent with his or her testimony  
15 at this trial, the only purpose for  
16 which that statement may be considered  
17 by you is its bearing on the witness'  
18 credibility. It is not evidence of  
19 what -- of what that witness  
20 previously said is true.  
21           If you believe from the evidence  
22 that a party or a party's employee  
23 previously made a statement  
24 inconsistent with his or her testimony  
25 at this trial, that previous statement

Page 8010

1 Jury Charge  
2 may be considered by you as evidence  
3 that what the party previously said  
4 was true.  
5 An employer is responsible for  
6 its employees actions if the employee  
7 was trying, to some extent, to serve  
8 the employers business, even though  
9 the primary motive of the employee was  
10 to benefit himself or herself or a  
11 third party. An employee's act may be  
12 within the scope of employment even  
13 though the act is willful or  
14 malicious.  
15 The greater weight of all the  
16 evidence is sometimes called the  
17 "preponderance of the evidence." It  
18 is that evidence which you find more  
19 persuasive when evaluated against all  
20 of the evidence that's been admitted  
21 in the case. The testimony of one  
22 witness whom you believe can be the  
23 greater weight of the evidence.  
24 The issues in this case for the  
25 misappropriation of trade secret

Page 8012

1 Jury Charge  
2 acquire knowledge of the trade secret;  
3 or, B, at the time of the disclosure  
4 or use knew or had reason to know that  
5 his knowledge of the trade secret was  
6 derived from or through a person who  
7 had utilized improper means to acquire  
8 it; or, two, acquired under  
9 circumstances giving rise to a duty to  
10 maintain its secrecy or limit its use;  
11 or, three, derived from or through a  
12 person who owed a duty to the person  
13 seeking leave to maintain its secrecy  
14 other than its use; or, four, acquired  
15 by accident or mistake.  
16 A "trade secret" means:  
17 Information including, but not limited  
18 to, a formula, pattern, compilation,  
19 program, device, method, technique or  
20 process that, one, derives independent  
21 economic value, actual or potential,  
22 from not being generally known to or  
23 not being readily ascertainable by  
24 proper means by other persons who can  
25 obtain economic value from its

Page 8011

1 Jury Charge  
2 claims are: One, did Plaintiff Appian  
3 have a trade secret or trade secrets;  
4 two, did either or both Defendants  
5 Pegasystems and Youyong Zou  
6 misappropriate Appian's trade secret  
7 or trade secrets; and, three, if one  
8 or more of the Defendants  
9 misappropriated a trade secret or  
10 trade secrets from Appian, what is the  
11 amount of damages caused by that  
12 misappropriation?  
13 The following definitions apply  
14 to the misappropriation of trade  
15 secrets claim:  
16 "Misappropriation" means:  
17 One, acquisition of a trade  
18 secret of another by a person who  
19 knows or has reason to know that the  
20 trade secret was acquired by improper  
21 means; or  
22 Two, disclosure or use of a  
23 trade secret of another without  
24 express or implied consent of a person  
25 who: A, used improper means to

Page 8013

1 Jury Charge  
2 disclosure or use and, two, is the  
3 subject of efforts that are reasonable  
4 under the circumstances to maintain  
5 its secrecy.  
6 "Improper means" includes:  
7 Theft, bribery, misrepresentation, use  
8 of a computer or computer network  
9 without authority, breach of a duty or  
10 inducement or a breach -- a breach of  
11 a duty to maintain secrecy or  
12 espionage through electronic or other  
13 means.  
14 "Person," it means: A natural  
15 person, a corporation, a business  
16 trust, an estate trust, a partnership,  
17 an association, a joint venture, a  
18 government or governmental subdivision  
19 or agency, or any other legal and  
20 commercial entity.  
21 "Damages" can include the unjust  
22 enrichment caused by misappropriation.  
23 "Cause of damages" is a cause  
24 that, in the natural and continuous  
25 sequence, produces the damages. It is

Page 8014

1 Jury Charge  
2 a cause without which the damages  
3 would not have occurred.  
4 The number of users of the  
5 Appian Platform and Appian Forum  
6 licensees are not relevant to any  
7 issue in this case, and any evidences  
8 as to those numbers should be  
9 disregarded.  
10 If you find that the Plaintiff  
11 Appian has proved by the greater  
12 weight of the evidence its claim for  
13 misappropriation of trade secrets  
14 against Defendant Pegasystems, you  
15 must find your verdict for Appian and  
16 decide the issue of damages as to  
17 Pegasystems.  
18 You may award the amount of  
19 unjust enrichment caused by  
20 misappropriation.  
21 For unjust enrichment, Appian is  
22 entitled to recover Pegasystems' net  
23 profits. Appian has the burden of  
24 establishing by the greater weight of  
25 the evidence Pegasystems' sales.

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1 Jury Charge  
2 establishing by the greater weight of  
3 the evidence any portion of those  
4 amounts not attributable to the trade  
5 secret or trade secrets and any  
6 expenses to be deducted in determining  
7 net profits.  
8 If you find that Plaintiff  
9 Appian is entitled to be compensated  
10 for damages, you must also determine  
11 whether Appian has proven by the  
12 greater weight of the evidence that  
13 willful and malicious misappropriation  
14 exists.  
15 Willful conduct occurs when a  
16 party acts without regard for the  
17 rights of another knowing injury will  
18 probably follow.  
19 Malicious conduct occurs when a  
20 party acts with ill will or spite.  
21 The issues in the case for the  
22 Virginia Computer Crimes Act claim  
23 are:  
24 One, did Defendant Pegasystems  
25 use a computer or computer network

Page 8015

1 Jury Charge  
2 Pegasystems has the burden of  
3 establishing by the greater weight of  
4 the evidence any portion of the sales  
5 not attributable to the trade secret  
6 or trade secrets and any expenses to  
7 be deducted in determining net  
8 profits.  
9 If you find that Appian has  
10 proved by the greater weight of the  
11 evidence its claim for  
12 misappropriation of trade secrets  
13 against Defendant Youyong Zou, you  
14 must find your verdict for Appian and  
15 decide the issue of damages as to  
16 Youyong Zou.  
17 As to Youyong Zou, Appian is  
18 seeking the amount of unjust  
19 enrichment to Youyong Zou caused by  
20 misappropriation. Appian is entitled  
21 to recover Youyong Zou's net profits.  
22 Appian has the burden of proving  
23 by the greater weight of the evidence  
24 the amount paid to Youyong Zou.  
25 Youyong Zou has the burden of

Page 8017

1 Jury Charge  
2 without authority after March 29,  
3 2015, and, A, obtain property or  
4 services by false pretenses or, B,  
5 convert the property of Plaintiff  
6 Appian; and  
7 Two, was there injury to Appian  
8 by reason of the acts, regardless of  
9 whether such acts were committed with  
10 malicious intent?  
11 On these issues, Appian has the  
12 burden of proof.  
13 The following definitions apply  
14 for the Computer Crimes Act claim:  
15 "Computer" means: A device that  
16 accepts information in digital or  
17 similar form and manipulates it for a  
18 result based on a sequence of  
19 instructions. Such term does not  
20 include simple calculators, automatic  
21 typewriters, facsimile machines, or  
22 any other specialized computing  
23 devices that are preprogrammed to  
24 perform a narrow range of functions  
25 with minimal end-user or operator

Page 8018

1 Jury Charge  
2 intervention and are dedicated to a  
3 specific task.  
4 "Computer network" means: Two  
5 or more computers connected to a  
6 network.  
7 To "convert property" means:  
8 Any wrongful exercise or assumption of  
9 authority over another's property  
10 depriving the owner of their  
11 possession and any active dominion  
12 wrongfully exerted over property in  
13 denial of the owner's right or  
14 inconsistent with it.  
15 "Persons" shall include: Any  
16 individual, partnership, association,  
17 corporation, or joint venture.  
18 And "property" should include:  
19 One, real property; two, computers and  
20 computer networks; three, financial  
21 instruments, computer data, computer  
22 programs, computer software, and all  
23 other personal property regardless of  
24 whether they are, A, tangible or  
25 intangible, B, in a format readable by

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1 Jury Charge  
2 One, Pegasystems used a computer  
3 or computer network without authority  
4 after May 29, 2015, and, A, obtained  
5 property or services by false  
6 pretenses or, B, converted the  
7 property of another; and  
8 Two, Appian was injured by  
9 reason of these acts, regardless of  
10 whether such acts were committed with  
11 malicious intent.  
12 If you find that Appian was  
13 injured by reason of these acts, you  
14 must find your verdict for Appian and  
15 decide the issue of damages decided by  
16 Appian.  
17 If you find that no actual  
18 damages have been proved, nominal  
19 damages may be recovered.  
20 Now, those are the Court's  
21 instructions to the jury. As I told  
22 you, you will each have a copy of  
23 those instructions in the jury room  
24 when you retire to deliberate.  
25 Closing argument, Mr. Mangi?

Page 8019

1 Jury Charge  
2 humans or by a computer, C, in transit  
3 between computers or in a computer  
4 network or between any devices which  
5 comprise a computer or, D, located on  
6 any paper or in any device on which it  
7 is stored by a computer or by a human,  
8 and; four, computer services.  
9 A person uses a computer or  
10 computer network when he attempts to  
11 cause or causes a computer or computer  
12 network to perform or to stop  
13 performing a computer operation.  
14 A person is without authority  
15 when he knows or reasonably should  
16 know that he has no right, agreement,  
17 or permission or acts in a manner  
18 knowingly exceeding such right,  
19 agreement, or permission.  
20 You shall find your verdict for  
21 Plaintiff Appian and against Defendant  
22 Pegasystems under the Virginia  
23 Computer Crimes Act claim if Appian  
24 has proved by the greater weight of  
25 the evidence that:

Page 8021

1 Plaintiff - Closing (Mangi)  
2 MR. MANGI: Thank you, Your  
3 Honor.  
4 While we have a demonstrative  
5 slide deck, all issues have been  
6 resolved. May I ask that Ms. Perez  
7 leave it in presentation mode for the  
8 whole?  
9 THE COURT: Yes.  
10 MR. MANGI: Thank you.  
11 Ladies and gentlemen, good  
12 morning.  
13 JURY: Good morning.  
14 MR. MANGI: Now, for the last  
15 seven weeks I have very studiously  
16 avoided all of you in the hallways of  
17 this court, and you've done a great  
18 job avoiding us, too. I'm very  
19 pleased to now be able to speak with  
20 you directly again.  
21 On behalf of my client Appian  
22 and Mr. Ross, let me thank all of you  
23 first for the careful attention and  
24 diligence you have shown throughout  
25 this trial to the evidence presented

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1 Plaintiff - Closing (Mangi)  
2 by both sides. We could not have  
3 asked for anything more from all of  
4 you.  
5 Now, there is a lot of evidence  
6 here, and I'm going to take you  
7 through it this morning. But there is  
8 one document that I suggest to you  
9 really sets out the themes that you  
10 should consider as you think about  
11 this entire evidentiary record. So  
12 let's start there.  
13 Now, you may remember this  
14 e-mail. This was an e-mail that  
15 John Petronio sent to Alan Trefler and  
16 others talking about Youyong Zou. And  
17 he said, Youyong Zou, he's working on  
18 a project for Appian at  
19 healthcare.gov. It's for Serco,  
20 government contractor, and Youyong is  
21 on the project.  
22 And then you'll remember that  
23 one of the people on this chain,  
24 Douglas Kim, Mr. Petronio's boss, he  
25 forwarded it on to two other people

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1 Plaintiff - Closing (Mangi)  
2 Code of Conduct that's on the website,  
3 that doesn't apply to them.  
4 And arrogance especially, ladies  
5 and gentlemen, for this reason.  
6 Did you notice that in the  
7 documents that they produced on the  
8 one hand, they are studying Appian  
9 obsessively. I wonder when they run  
10 their own business, they spend so much  
11 time studying Appian.  
12 They're looking at things in  
13 Appian that they should copy. But in  
14 those same documents, they are also  
15 trashing Appian. They go, oh, Appian.  
16 But same document, they are also  
17 saying, let's make a view like that  
18 and ship it.  
19 Think about the mindset, the  
20 arrogance. We're going to copy them.  
21 But let's also talk about how great we  
22 are and how terrible everyone else is.  
23 Shadiness and arrogance.  
24 But why are they doing all of  
25 this? It's all about corporate

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1 Plaintiff - Closing (Mangi)  
2 who hadn't been involved, senior  
3 executives at Pega, Mr. Adams and  
4 Mr. Ryan.  
5 And so they got this information  
6 for the first time. And you'll  
7 remember what their reaction was,  
8 yikes, who is Youyong? Our arrogance  
9 has been all world.  
10 And then later on, he said:  
11 Seems to be shady.  
12 Ladies and gentlemen, shady and  
13 arrogant. Those, I submit to you, are  
14 the themes that you will see  
15 characterizing the conduct of  
16 Pegasystems throughout the evidentiary  
17 record.  
18 Shady, because think about the  
19 conduct you have seen from a publicly  
20 traded company and from its CEO Alan  
21 Trefler. Fake names, fake identities,  
22 consultants, shady.  
23 Arrogant? Why?  
24 Because in Pegasystems' view,  
25 the rules don't apply to it. Their

Page 8025

1 Plaintiff - Closing (Mangi)  
2 culture.  
3 What's the culture at  
4 Pegasystems? Here's another document,  
5 an e-mail from Douglas Kim when he's  
6 circulating the materials they made  
7 with Youyong Zou, the attack  
8 materials.  
9 Look at what he's saying:  
10 Here's to winning. All capital  
11 letters. That is what Pegasystems is  
12 about: Win at all costs, do whatever  
13 you have to, the rules don't apply.  
14 Now, issues of law are for the  
15 judge, but Judge Gardiner just read  
16 you the instructions as to the law.  
17 Let me start with one of them.  
18 The judge pointed to the standard  
19 here. Now, just to be clear, this is  
20 a civil case. This is not a criminal  
21 case. There is a computer crime  
22 statute, but that's just what it's  
23 called. This is a civil case.  
24 So beyond all doubt, none of  
25 that applies here. This is the

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1 Plaintiff - Closing (Mangi)  
2 standard. The greater weight of the  
3 evidence, sometimes called  
4 preponderance.  
5 What does that mean? Simple way  
6 to think about it is if you have a  
7 scale on the issues we, Appian, have  
8 to prove to you, as long as we tip  
9 that scale ever so slightly, that is  
10 the greater weight of the evidence.  
11 And if we do that, then we've  
12 satisfied our burden in proving that  
13 issue to you.  
14 Let me go back to that  
15 instruction because there's another  
16 sentence at the end that's very  
17 important. It says: The testimony of  
18 one witness who you believe can be the  
19 greater weight of the evidence.  
20 Ladies and gentlemen, who you  
21 believe is going to be a very key  
22 issue in this case. Remember in  
23 opening statements, it was a long time  
24 ago, when I said to you, you're going  
25 to hear very conflicting accounts here

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1 Plaintiff - Closing (Mangi)  
2 that together, your life experiences,  
3 your common sense, they tell you when  
4 someone is lying to you. You can suss  
5 that out and use your common sense.  
6 And where better to start on  
7 that issue than with Don Schuerman,  
8 chief technology officer of  
9 Pegasystems.  
10 Now, you remember we played his  
11 deposition testimony in our case, and  
12 in his deposition, he said -- we asked  
13 him: Was a teardown exercise  
14 conducted on Appian?  
15 Remember, teardown, the deep  
16 dive and analysis. And he said: I  
17 don't know. And then he tried to shut  
18 the question off with BP3, one of the  
19 companies they were working with on  
20 the side, not to my knowledge.  
21 But we followed up. We said:  
22 Otherwise?  
23 And he said: You know, I was  
24 made aware after the fact that Ben  
25 Baril had access to Appian in order to

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1 Plaintiff - Closing (Mangi)  
2 from different witnesses. The  
3 documents, the contemporaneous  
4 documents will guide you to the truth.  
5 But also assess the witnesses.  
6 And the judge gave you another  
7 instruction on that point, the  
8 credibility of witnesses when he said  
9 you're the judges of the facts,  
10 including the credibility of  
11 witnesses.  
12 And that means various things  
13 that are in the instruction; you know,  
14 look at their interest in the case,  
15 their bias, but also consider whether  
16 they have knowingly testified  
17 untruthfully as to any material aspect  
18 of the case. And when you assess  
19 that, the instruction notes use your  
20 common sense in judging any testimony.  
21 Ladies and gentlemen, the beauty  
22 of a jury is you all have different  
23 life experiences. You're all coming  
24 from very different places here, me  
25 especially. But when you put all of

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1 Plaintiff - Closing (Mangi)  
2 understand it, but nothing to see  
3 here.  
4 After I learned a bit: Ben and  
5 had a discussion. It was not  
6 appropriate. It was never used.  
7 That's his sworn deposition  
8 testimony under oath. But then after  
9 that deposition, we got all of those  
10 instant messages and then things  
11 changed.  
12 What happened here at trial?  
13 You'll remember this, I suspect.  
14 We said to him: Well, you told  
15 us at your deposition you didn't know  
16 what Mr. Baril was up to until after  
17 the fact, right?  
18 And he said: Yeah. I said at  
19 that my deposition.  
20 But then we showed the instant  
21 messages and said: But you knew at  
22 the time it was happening. You knew  
23 of this.  
24 He says: I knew of the end  
25 product in May of 2012.

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1 Plaintiff - Closing (Mangi)  
2 Was he telling you the truth?  
3 Didn't stop there, though.  
4 Remember, we also showed the instant  
5 messages about Mr. Le using his wife's  
6 business, Organic Living. We said:  
7 You also knew about that at the time  
8 even though you told us you didn't  
9 know until after the fact.  
10 And we said to him: Sir, your  
11 sworn deposition testimony was false.  
12 You lied.  
13 And what did he say? Look at  
14 his answer: My statement at the  
15 deposition was unclear as to the  
16 timeline of my knowledge.  
17 Your life experiences tell you  
18 when someone is not telling you the  
19 truth.  
20 Ms. Perez, I think we went off.  
21 There we go. Thank you.  
22 Now, it didn't stop there with  
23 Mr. Schuerman. Then, remember, he  
24 provided a sworn written response to  
25 an interrogatory in January of 2021.

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1 Plaintiff - Closing (Mangi)  
2 And he said: Yes.  
3 Does Mr. Schuerman have a shred  
4 of credibility left in your eyes after  
5 that testimony?  
6 But were it only him. Let's  
7 talk about Ben Baril himself.  
8 First deposition before we have  
9 the instant messages, what does he  
10 say? Why did you create  
11 apowersconsulting.com?  
12 He said: Oh, it's to subscribe  
13 to certain journals or things I wanted  
14 personal information that I didn't  
15 want to share.  
16 Nothing to see here. He's just  
17 subscribing to journals. Then we get  
18 the messages. And then we come back,  
19 another sworn deposition. Now, we've  
20 got to worry about perjury, right?  
21 And what does he say now? I  
22 need to correct my testimony.  
23 What's his new testimony? He  
24 wants to change his answer.  
25 Well, you know, based on new

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1 Plaintiff - Closing (Mangi)  
2 He signed it under pains and penalties  
3 of perjury. And what did he say?  
4 We asked the question,  
5 Interrogatory No. 13: Identify every  
6 Pega employee who has accessed or  
7 viewed someone else accessing the  
8 Appian platform.  
9 So we wanted to know in the case  
10 everyone who did any of this because  
11 we didn't know about Mr. Baril or  
12 anyone in this document. We wanted a  
13 full list.  
14 They provided some objections.  
15 Then he says: Notwithstanding the  
16 objections. And he went on and you  
17 know what he did? He only told us  
18 about Mr. Zou.  
19 Didn't tell us about anything  
20 that happened later, under pains and  
21 penalties of perjury. And then he  
22 showed up here.  
23 And we said: At the time you  
24 attested to that accuracy, you were  
25 aware of what Mr. Baril had done.

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1 Plaintiff - Closing (Mangi)  
2 information that I have. New  
3 information that he has about himself.  
4 I want to change my answer to why did  
5 I create it to obtain access to a free  
6 Appian trial.  
7 And you remember, he changed his  
8 testimony on a whole series of things.  
9 We played you this video. There's  
10 another example.  
11 Did you talk to Mr. Trefler  
12 directly? Because you remember, all  
13 of the evidence showing Trefler was  
14 directing all of this.  
15 And in his first deposition he  
16 said: Never. Mr. Trefler? No, no,  
17 he's got nothing to do with this.  
18 And then we said -- now once we  
19 have the chain of the messages and the  
20 documents: What's the correct answer  
21 you want to give?  
22 Well, yeah, I had some  
23 conversations about it. And he  
24 changed answer with meetings too and  
25 he said: Yeah, I met with Mr. Trefler

1 Plaintiff - Closing (Mangi)  
 2 too.  
 3 Does he have a shred of  
 4 credibility left in your eyes, ladies  
 5 and gentlemen?  
 6 But don't stop there. You  
 7 remember Kerim Akgonul, chief product  
 8 officer at Pegasystems, the man in  
 9 charge of all the improvements. These  
 10 are not low ranking people, right?  
 11 These are people who run the company.  
 12 And you remember when he first  
 13 came here and testified? He's got an  
 14 easier one, Mr. Zou. It's a common  
 15 malady over there, right?  
 16 So he doesn't remember anything  
 17 about Mr. Zou, but he says: I can  
 18 tell you we didn't make any  
 19 improvements based on Zou.  
 20 So we said: How do you remember  
 21 that if you don't remember anything  
 22 about Mr. Zou?  
 23 And his answer the first time he  
 24 was here was: It's all about the  
 25 backlogs. I've been through all of my

1 Plaintiff - Closing (Mangi)  
 2 backlog from the Zou era you looked at  
 3 are some stray excerpts that people  
 4 happened to attach to e-mails?  
 5 And he agrees.  
 6 And how many were they?  
 7 Oh, a handful maybe.  
 8 So he's gone from telling you,  
 9 take my word for it, I looked at the  
 10 backlogs, nothing from Zou was ever  
 11 used to all I looked at are a handful  
 12 that happened to be attached to  
 13 e-mails.  
 14 Was he telling you the truth  
 15 when he was here the first time?  
 16 But look at what else he said.  
 17 He said: You know, I don't worry just  
 18 about the backlog. I've looked at the  
 19 operational meeting notes and take my  
 20 word for it, there's nothing about  
 21 Zou.  
 22 Do you remember that testimony?  
 23 Well, funny thing, I went back and I  
 24 looked at those operational meeting  
 25 minutes. Look what they say.

1 Plaintiff - Closing (Mangi)  
 2 backlogs.  
 3 Right? That's what he said.  
 4 And you'll remember, it was all  
 5 backlog, backlog, backlog. He said:  
 6 I live in the backlog. I look at the  
 7 backlog every day, even today. He  
 8 said: Since this case started, I have  
 9 been through all the backlogs.  
 10 He was telling you, I checked  
 11 the whole record from the Zou era and  
 12 there's nothing there and that's why  
 13 you should believe me. That's what he  
 14 said to you.  
 15 Then you remember, he had to  
 16 come back. And what happened when he  
 17 came back?  
 18 Turns out the backlog, they  
 19 don't have it anymore from prior to  
 20 2017. The database is gone, and he  
 21 never told you that.  
 22 He admitted: I don't have that  
 23 system anymore.  
 24 And then we said to him: But  
 25 you'll agree the only portion of the

1 Plaintiff - Closing (Mangi)  
 2 They say -- this is going to  
 3 everyone, all the product management  
 4 people, Alan Treffler, everyone.  
 5 It says: Kerim to distribute  
 6 five to ten video of Appian developer  
 7 experience since it excels in ease of  
 8 use.  
 9 And you've heard the testimony.  
 10 That's a video from Zou. It's in the  
 11 operational meeting minutes where he  
 12 said there's no reference to Zou  
 13 anywhere.  
 14 Does Mr. Akgonul have a shred of  
 15 credibility left in your eyes after  
 16 that performance?  
 17 How about Mr. Bixby? Now, you  
 18 remember Mr. Bixby. He had a whole  
 19 other level of amnesia. I don't  
 20 remember who Zou is. I know nothing  
 21 about Zou. I remember no meeting.  
 22 I said: What is this message to  
 23 you on his examination by Pega was,  
 24 you know, don't look at me. I've got  
 25 nothing to do with the Zou guy. I

1 Plaintiff - Closing (Mangi)  
 2 don't know what anyone is talking  
 3 about. Nothing to do with me.  
 4 Okay. Remember what I said, the  
 5 contemporaneous documents will guide  
 6 you to the truth. I said that seven  
 7 and a half weeks ago.  
 8 What do those documents show us?  
 9 Very beginning, before the first  
 10 meeting with Mr. Zou, February of  
 11 2012, Mr. Petronio tells his boss:  
 12 I'm going to meet with this guy  
 13 tomorrow, contractor. You know, I  
 14 want to do some research, update our  
 15 attack plans. Steve Bixby is  
 16 interested in learning more about them  
 17 as well.  
 18 And later below: Steve Bixby  
 19 has expressed an interest in joining  
 20 me.  
 21 This all started with Steve  
 22 Bixby, the guy who says: I have  
 23 nothing to do with any of this.  
 24 The next day, before the actual  
 25 meeting, Mr. Petronio, who does he

1 Plaintiff - Closing (Mangi)  
 2 Petronio.  
 3 The contemporaneous documents.  
 4 There he is responding to the very  
 5 same e-mail asking: How did it go?  
 6 This is the meeting Petronio had  
 7 with Zou.  
 8 How did it go? Anything new and  
 9 different?  
 10 Does Mr. Bixby have a shred of  
 11 credibility left in your eyes?  
 12 How about Stephanie Louis?  
 13 Another amnesia victim. She says:  
 14 You don't remember anything specific  
 15 about Zou. Yeah. So Appian's  
 16 out-of-the-box mobile capabilities,  
 17 you don't know what information you  
 18 provided?  
 19 Nope, don't remember Zou.  
 20 Remember, we showed you  
 21 documents where she says, oh, I'm  
 22 looking forward to meeting Zou,  
 23 one hour from the time of her e-mail.  
 24 But now she says no, no memory of it.  
 25 Okay. Then we said: Since you

1 Plaintiff - Closing (Mangi)  
 2 e-mail? Michael Caton who works with  
 3 him in competitive intelligence? But  
 4 the only person he e-mails at Pega to  
 5 tell him he's having the meeting is  
 6 Steve Bixby.  
 7 So then we ask Mr. Bixby, you'll  
 8 remember, we said: You're saying you  
 9 don't have anything do with this. How  
 10 come the e-mails are going to you?  
 11 What was his answer? He says --  
 12 why are you the only guy copied? I  
 13 was a pretty important person at Pega.  
 14 Your life experiences guide you  
 15 here. You know people who talk about  
 16 themselves that way, I was a pretty  
 17 important person.  
 18 But you know what he does say.  
 19 He says: I know that I didn't respond  
 20 to any of it.  
 21 Right? So even though the  
 22 e-mails have come up, he's saying, no,  
 23 no, no, nothing to do with me.  
 24 Someone sent me e-mail. I never  
 25 responded to it. I was being nice to

1 Plaintiff - Closing (Mangi)  
 2 don't remember anything, how can you  
 3 say that nothing was used?  
 4 And she said: Well, anything we  
 5 learned was general information.  
 6 Well, how do you know that if  
 7 you don't remember the meetings?  
 8 And she says: Because we didn't  
 9 take information of a competitor into  
 10 account.  
 11 Look at the circular logic  
 12 there. You think she was prepared  
 13 with that line when she came in here?  
 14 Does she have a shred of credibility  
 15 left in your eyes?  
 16 Ken Stillwell. Now, this is a  
 17 long time ago when we played this  
 18 video early in our case, and I know  
 19 there's been a lot of evidence. But  
 20 he's a very important guy because he's  
 21 the chief operating officer and the  
 22 chief financial officer of the  
 23 company, so he's no low ranking  
 24 person.  
 25 And you may remember in his

Page 8042

1 Plaintiff - Closing (Mangi)  
2 deposition, he was wearing like a  
3 puffy vest, maybe that will refresh  
4 you a bit.  
5 But we asked him a  
6 straightforward question: How about  
7 just making up a name; is that okay by  
8 you? Pega people do that when seeking  
9 access to a competitor?  
10 And look at what he says. You  
11 know, it's like a question about  
12 pronouns apparently according to  
13 Mr. Stillwell. He says: I won't go  
14 down that path. You know, people,  
15 they choose their own names, their own  
16 identities, they self-identify. It's  
17 not my job.  
18 He is the chief operating  
19 officer of the company. Not my job to  
20 decide if people can use fake names.  
21 He says: It's a very complicated  
22 question.  
23 You think that's a complicated  
24 question?  
25 What about Pega's own Code of

Page 8044

1 Plaintiff - Closing (Mangi)  
2 this? He said: I'm unprepared to say  
3 anything about this.  
4 Is that someone who's being  
5 straight?  
6 What was the document? Here are  
7 the signups we showed you for that  
8 event.  
9 I mean, look at this, ladies and  
10 gentlemen, Paul Foon is signing up  
11 under ascii0@gmail.com. That is an  
12 e-mail address that Mr. Trefler has  
13 admitted is one of his personas, as he  
14 calls it.  
15 Highly idiosyncratic prefix,  
16 ascii0 from computer code is a name he  
17 gave to his dog. That's him,  
18 ascii0@gmail.com.  
19 And look at the other sign-ups,  
20 another version of ascii0. He's  
21 calling himself Paul Foon. He  
22 describes himself as being in the  
23 grocery business, party planning,  
24 hotels and motels. This is a CEO of a  
25 publicly traded company. Look at what

Page 8043

1 Plaintiff - Closing (Mangi)  
2 Conduct, does that present it as a  
3 complicated question?  
4 Have a look at what their Code  
5 of Conduct says. What's forbidden?  
6 Misrepresenting your identity in the  
7 hopes of obtaining confidential  
8 information.  
9 Not a complicated question  
10 according to the Code of Conduct.  
11 Does he have a shred of  
12 credibility left in your eyes or was  
13 he coming in, not wanting to admit to  
14 anything that would hurt Pega in the  
15 litigation?  
16 But then, but then, let's talk  
17 about Paul Foon. Mr. Trefler comes  
18 up, you remember at his deposition for  
19 the first time. I'd shown him these  
20 documents we'd found.  
21 And I said to him: You signed  
22 up as Paul Foon for an Appian  
23 marketing event.  
24 And what was his response at the  
25 deposition when first confronted with

Page 8045

1 Plaintiff - Closing (Mangi)  
2 he's up to.  
3 And then we say to him in the  
4 deposition: Can you say categorically  
5 this isn't you.  
6 He says: I'm a technical guy.  
7 I'm uncomfortable making statements  
8 without facts, and there's no facts to  
9 support that I did it.  
10 You know anyone who talks like  
11 that in your day-to-day life? There's  
12 no facts to support that I did it. Is  
13 he being straight with you?  
14 But you'll remember, that's not  
15 where it ended, because he had a whole  
16 series of personas. Remember, he also  
17 admitted he uses A. Scii and then  
18 Albert Scii, and his explanation for  
19 the Albert Scii was: Well, sometimes,  
20 you know, websites requires you fill  
21 in the name, not just the first  
22 initial, A.  
23 So I said, well, what about  
24 Alan, right? It's his name. No, no,  
25 he uses Albert Skii.

Page 8046

1 Plaintiff - Closing (Mangi)  
2 Then you see an attempt to get  
3 information from Appian's confidential  
4 forum.  
5 Now think about this, this  
6 sign-up is in the name of Albert Skii,  
7 a name that he admits using. It is  
8 from ascii0, a prefix that he has  
9 used.  
10 Highly idiosyncratic,  
11 Telstra.com, a Pega client he was  
12 visiting in that same year, a phone  
13 number that, while a long series of  
14 numbers, starts with a 617, Boston.  
15 Company is SA0 mines.  
16 So at first we asked him about  
17 this, but he denies it, denies  
18 completely. Not me, the phone number  
19 is Australian.  
20 And what does he say to you,  
21 ladies and gentlemen? He says, you  
22 know, this is someone else, that they  
23 just happened to be using the name  
24 Albert Scii, they just happen to be  
25 using an ascii0, they just happen to

Page 8048

1 Plaintiff - Closing (Mangi)  
2 go through all of his personas, but  
3 you remember there was another one,  
4 2au. He used that one, too, used it  
5 try and sign up for Appian information  
6 just in 2021, you know, few months  
7 before his deposition. Don't remember  
8 that one either. Not him, just  
9 someone else using an ascii0 -- this  
10 time at gmail -- and trying to get  
11 access to Appian.  
12 That was Alan Trefler, the CEO  
13 of this company. Does he have a shred  
14 of credibility left in your eyes when  
15 he's willing to say all of that under  
16 oath?  
17 Why does it matter? Oh, it's a  
18 marketing event.  
19 Why does it matter? It's under  
20 oath. And leaders, they set the tone  
21 for a company, they set the culture.  
22 You've been in organizations,  
23 you've had bosses. You know how a  
24 boss can imprint on a company,  
25 especially when they've been there

Page 8047

1 Plaintiff - Closing (Mangi)  
2 be seeking access to Appian's  
3 confidential information. It's just a  
4 coincidence.  
5 But then you'll remember, he  
6 came back and testified further. I  
7 started some questions. I said:  
8 Well, what's your home IP address?  
9 What's your provider?  
10 And he maybe started to get a  
11 little worried about what I might've  
12 had on him. And so then look at the  
13 answer he gave, thinking about  
14 perjury, perhaps?  
15 Is it your testimony now that  
16 you now concede it is possible that  
17 was you?  
18 Look at what he says: It's  
19 possible. It's not impossible. I  
20 cannot say it was impossible.  
21 Dr. Seuss would be proud of an  
22 answer like that.  
23 Is this someone who is telling  
24 you the truth?  
25 And, you know, I'm not going to

Page 8049

1 Plaintiff - Closing (Mangi)  
2 for, in this case, almost 40 years.  
3 And he agrees, absolutely, he sets the  
4 tone at Pega. Arrogance and  
5 shadiness.  
6 And remember, who is the arbiter  
7 that they look to at Pega if they have  
8 a question about ethics?  
9 Look in their Code of Conduct.  
10 If you have a question, if you're  
11 worried you're being asked to do  
12 something that's not right, who should  
13 you go to?  
14 You go to Alan Trefler. He's  
15 the moral compass of the company. He  
16 provides the guidance.  
17 Now, think about credibility on  
18 the witnesses -- that's one level --  
19 think also about the company.  
20 Now, they came in here, and  
21 you'll remember how Mr. Trefler was so  
22 keen to talk to you about how they've  
23 disciplined people. Remember that?  
24 Because, you know, he wanted you to  
25 say, nothing to see here, you know,

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1 Plaintiff - Closing (Mangi)  
2 we've dealt with this. We've  
3 disciplined everyone involved.  
4 But then I got up, and I said,  
5 well, when did you do that, because  
6 the case had been going on for  
7 two years and there had been no  
8 discipline.  
9 In fact, when we asked Kerim  
10 Akgonul at his deposition, you ever  
11 discipline all of these people in  
12 India who work with you?  
13 He said, well, you know, that  
14 might help Appian.  
15 We played you that video.  
16 But then he tells us, two weeks  
17 before this trial, suddenly they  
18 issued some discipline. Do you think  
19 they did that because they wanted to  
20 come and tell you, oh, nothing to see  
21 here, we've dealt with that?  
22 But then I asked him, let's talk  
23 about this discipline. How about  
24 Leon, your brother, the guy who's  
25 behind all of this in both time

Page 8052

1 Plaintiff - Closing (Mangi)  
2 countries. They're going to the  
3 people who are in charge of this. Who  
4 is the senior-most person?  
5 You know what he says? A  
6 manager in India. I don't even know  
7 his name.  
8 That's how serious this  
9 discipline was. Go to a bunch of guys  
10 in India, don't even know their name.  
11 Ladies and gentlemen, these  
12 people who I just showed you, they are  
13 not some stray group. This is the  
14 cabal that runs Pegasystems.  
15 And we showed you these pictures  
16 from their own Twitter feeds. Look at  
17 them all together. You know,  
18 there's -- look at the one on the  
19 left, there's Mr. Bixby, Mr. Trefler,  
20 and Ms. Louis, posted by Kerim  
21 Akgonul, who's in the next picture.  
22 Mr. Schuerman, he seems to spend  
23 most of his time on Twitter posting  
24 adoring pictures of Alan Trefler.  
25 This is the culture of the

Page 8051

1 Plaintiff - Closing (Mangi)  
2 frames?  
3 He's authorizing the budgets,  
4 he's on the e-mails. Did you  
5 discipline him?  
6 No, he volunteered, and he's  
7 going to do better in the future.  
8 He's going to do better.  
9 And then I said to Mr. Trefler:  
10 What about all of these senior  
11 executives we've seen, you know,  
12 Akgonul, Schuerman, did you discipline  
13 any of them?  
14 No, not disciplined. But he  
15 says: All of them have had a  
16 revelation, myself, included.  
17 So they've had a revelation,  
18 that's fine. Nothing for you to see  
19 here, jury.  
20 Then I said, okay, who is the  
21 senior-most person at the company  
22 you've disciplined?  
23 Because, you know, if a company  
24 is serious, they are not disciplining  
25 some low-ranking employees in foreign

Page 8053

1 Plaintiff - Closing (Mangi)  
2 company. He's setting the tone and  
3 the culture.  
4 And Mr. Zou, let's talk about  
5 him for a minute.  
6 Now, you know, listen, Mr. Zou,  
7 I'm not suggesting to you that he's  
8 some criminal mastermind. He's not.  
9 He's a guy who saw a chance to make  
10 some money and he took it. But was he  
11 honest with you?  
12 Look at his testimony. He says  
13 first: What computer did you use for  
14 all of this work you did?  
15 He says: My home laptop.  
16 Why? Because he thinks that's  
17 going to somehow help him. Doesn't  
18 help him at all because the only  
19 accessed he had, home laptop or  
20 otherwise, was to do work for his  
21 employers. But, you know, he thought  
22 at the time that would help him.  
23 But then testimony changes,  
24 well, wasn't that testimony wrong and  
25 you, in fact, used your Serco laptop?

Page 8054

1 Plaintiff - Closing (Mangi)  
2 Then he admits it, yeah, I did.  
3 In fact, he did it throughout the time  
4 period from 2012 to 2014.  
5 Was he telling you the truth?  
6 Then it changed further. You  
7 remember during Mr. Petronio's  
8 testimony, I freeze-framed a video  
9 from Project Crush, and there was all  
10 Ben Baril references in there on the  
11 computer accessing Appian?  
12 Here's one image from it. You  
13 know, we freeze-framed microseconds.  
14 And it says "Ben Baril desktop taxes."  
15 And we said, well, what's all  
16 this, then? If you're only using your  
17 Serco, there's no Pega computers  
18 involved, what's happening here?  
19 So then he comes back --  
20 because, you know, Pega is completely  
21 arrogant. They think that, oh, we  
22 weren't pressing the keys, the jury's  
23 going to let us off, even though  
24 they're directing everything Zou did.  
25 So Zou comes back and he says,

Page 8056

1 Plaintiff - Closing (Mangi)  
2 If you had invested \$108, you'd  
3 been losing money steadily over the  
4 years, from 2010 all the way to 2012,  
5 when they hired Zou, even though the  
6 Nasdaq Composite software, all of them  
7 are flying high.  
8 What was the impact on this?  
9 The impact on a company, no  
10 matter what, is you're accountable to  
11 your shareholders, but who's the  
12 biggest shareholder? It's Alan  
13 Trefler himself. He owns half the  
14 share of the company. They are worth  
15 \$3 billion with a "B." So he's got to  
16 be worried about what's happening with  
17 that performance of this company.  
18 And it's not just him, all of  
19 their executives have stock.  
20 Mr. Akgonul, he had 45,000 shares.  
21 You saw that testimony too.  
22 So they've got a problem here  
23 they've got to deal with. What do  
24 they do? Mr. Zou.  
25 Now, remember, they went to

Page 8055

1 Plaintiff - Closing (Mangi)  
2 well, yeah, it was me. I used a Pega  
3 laptop.  
4 So his story changes again.  
5 Does he have a shred of credibility  
6 left in your eyes?  
7 Credibility, why does it matter?  
8 Because, ladies and gentlemen,  
9 they have not given you any documents  
10 that evidence their position --  
11 Ms. Louis even admitted that -- and  
12 they're just saying, take my word for  
13 it. And all of them are saying that.  
14 Here is Mr. Schuerman, just take  
15 my word for it.  
16 Here's Mr. Akgonul, just take my  
17 word for it.  
18 Is their word worth anything?  
19 Now, let's talk about what led  
20 up to all of this. You remember, I  
21 showed you a Pegasystems financial  
22 statement that talked about how their  
23 stock was performing in the years  
24 running up to this conduct, and their  
25 stock was doing very, very poorly.

Page 8057

1 Plaintiff - Closing (Mangi)  
2 K-Force, the staffing agency. Let's  
3 not do this directly because we don't  
4 want our name out there.  
5 But what did they tell K-Force?  
6 They didn't say, oh, you know, can you  
7 find someone for us who can use Google  
8 to look at what's in the public  
9 domain?  
10 They know how to use Google.  
11 They're a tech company. No, they said  
12 access to the Appian BPM Tool is a  
13 must. And in case that wasn't clear  
14 enough, must have access to the  
15 system. That's the way they saw the  
16 product.  
17 Then we asked Mr. Petronio,  
18 because he was providing the  
19 parameters, he was the guy at Pega  
20 running the show: Why did you ask for  
21 that?  
22 Because we wanted to get in and  
23 try things out and really learn how  
24 Appian worked in and out.  
25 And Mr. Schuerman, he admits,

Page 8058

1 Plaintiff - Closing (Mangi)  
2 they didn't have access otherwise.  
3 And they knew that Appian wouldn't  
4 have given them a license at the time.  
5 That's why they are going here.  
6 The famous sizzle document that  
7 memorializes the instructions  
8 Pegasystems gives to K-Force,  
9 remarkable document, ladies and  
10 gentlemen, because it tells you from  
11 the beginning what was really  
12 happening.  
13 Look at what it said: Person  
14 should not have worked directly for  
15 Appian. Mr. Petronio told you why,  
16 they don't want word getting back.  
17 They said it expressly in the  
18 next part: He would like us to make  
19 sure that -- "he" is Mr. Petronio --  
20 they aren't loyal to Appian.  
21 He doesn't want to get it back  
22 to Appian that Pega is doing this  
23 work. And he says: Pega needs to  
24 remain CONFIDENTIAL, in all caps at  
25 the end.

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1 Plaintiff - Closing (Mangi)  
2 so that he isn't outed as our spy, and  
3 they talk about blurring their screens  
4 and changing his names.  
5 One of them responds, my lips  
6 are sealed. May he be known forever  
7 as Matt.  
8 We asked Mr. Petronio, why did  
9 you call him "our spy"?  
10 Because unfortunately that's  
11 what he was.  
12 One of the instructions Judge  
13 Gardiner just read to you about  
14 misappropriation talked about improper  
15 means. What are improper means? One  
16 of them, espionage. They called him a  
17 spy at the time.  
18 Do you remember this one? They  
19 put up a picture of Matt Calkins, but  
20 for Mr. Zou, they called him the other  
21 Matt. They put up a picture of a spy,  
22 they called it top secret,  
23 confidential.  
24 By the way, you know, they  
25 played a little clip from Matt

Page 8059

1 Plaintiff - Closing (Mangi)  
2 Are these the actions of a  
3 company that is doing stuff that's  
4 entirely above board, no problems?  
5 It's just like what you can find on  
6 Google before your coffee gets cold.  
7 Is that what they are doing?  
8 We asked Ms. Saritha, the  
9 designee of K-Force, 16 years at the  
10 company, did this ever happen in any  
11 other case, where they say find us a  
12 consultant who's not loyal to someone  
13 else?  
14 No, she's never seen it before.  
15 So what happens, then, when they  
16 bring him in?  
17 Now, we showed you a long series  
18 of documents with Mr. Petronio and  
19 Mr. Zou, about how they hid all of  
20 this. They wanted to conceal it, even  
21 from their own employees. I won't  
22 take you through all of them again,  
23 but a few quick reminders.  
24 Here's one from Mr. Petronio  
25 saying, we're going to call him Matt

Page 8061

1 Plaintiff - Closing (Mangi)  
2 Calkins' deposition, you remember  
3 that, just a day or two ago? There  
4 wasn't a lot there, but I hope it was  
5 enough for you to get a feel for the  
6 man and compare him to Alan Trefler  
7 and get a feel for the culture of the  
8 company.  
9 What else happened there? Well,  
10 what about Mr. Zou?  
11 He explained why they were doing  
12 this. Mr. Petronio said to him, the  
13 reason is to protect you. I wouldn't  
14 want someone to leave Pega, join  
15 Appian and tell them what's happening,  
16 because then they might stop you.  
17 Mr. Zou, he's not a criminal  
18 mastermind, but he is a willing  
19 participant going along with this  
20 every step.  
21 Look at what he says: Thanks  
22 for your thoughtful consideration.  
23 I'll change my username to a common  
24 name.  
25 A common name, that means Matt.

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1 Plaintiff - Closing (Mangi)  
2 And, you know, sometimes they  
3 suggest, oh, it was one presentation.  
4 They concealed this well.  
5 Look, here's an e-mail from a  
6 year later where they're asking  
7 Mr. Zou here: Why don't you submit a  
8 health ticket to Appian to get some  
9 info for us?  
10 And he says, nope, can't do  
11 that, because he knows his Forum ID --  
12 Mr. Travell over there is going to  
13 talk to you about his Forum ID -- he  
14 knows it's being tracked now by where  
15 he works, it's being tracked by Serco.  
16 And he says: If I submit one  
17 ticket post, everyone is going to see  
18 it. They're going to know this  
19 doesn't relate to my work.  
20 Active concealment throughout.  
21 Now, what about their conduct?  
22 Let's just go through it together.  
23 You know how you know when  
24 someone is up to no good? They don't  
25 want anyone to know what they are

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1 Plaintiff - Closing (Mangi)  
2 had access on whatever computer he's  
3 accessing it.  
4 And Mr. Zou, he admits this. He  
5 says he never paid for a license  
6 himself. He knows proprietary  
7 software isn't free, and he knows it  
8 was handled by the companies that he  
9 worked for.  
10 Mr. Ross explained to you that a  
11 registrant has to login, they've got  
12 to accept Appian's Terms of Use for  
13 Forum. Remember, he told you, the  
14 first time they log in, they've got to  
15 accept those Terms of Use.  
16 And Mr. Zou, what does he say?  
17 You remember Pega suggesting to  
18 you in the opening statement, oh, you  
19 know, Terms of Use, who's bound by  
20 those?  
21 Mr. Zou, look at what he said.  
22 He's seen Terms of Use pop up.  
23 Whether he's read them or not, he  
24 knows he's bound by them. That would  
25 be correct, he says.

Page 8063

1 Plaintiff - Closing (Mangi)  
2 doing.  
3 You saw that in K-Force with  
4 Pegasystems. What about Mr. Zou?  
5 Look at what he says: You  
6 didn't want anyone at Serco or Appian  
7 to know what you were doing, right?  
8 He admits: I didn't want anyone  
9 to know.  
10 If this is all above board, if  
11 Mr. Zou is free to do this, you know,  
12 it's just on my home laptop, I can do  
13 whatever I want, why are you keeping  
14 it a secret, then?  
15 Well, Mr. Ross, he explained  
16 this to you. For example, he said,  
17 look, why is it do you have this  
18 access?  
19 Because he worked for our  
20 trusted partners, he's a government  
21 contractor working on government  
22 projects. And so through those  
23 relationships, we gave him access to  
24 do work for the United States  
25 government. That's the only reason he

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1 Plaintiff - Closing (Mangi)  
2 And as Mr. Ross explained, the  
3 Appian Terms of Use made clear, look,  
4 you can use the product only for the  
5 business products that you're  
6 authorized for. Certainly can't use  
7 it for competitors.  
8 Now, Mr. Zou had commitments to  
9 Serco. Look, here's his signed hiring  
10 letter at Serco. He agrees to abide  
11 by the policies and practices of  
12 Serco.  
13 And what are those? There's a  
14 lot in the record. This Code of  
15 Conduct has a lot of pages that apply.  
16 I'll give you one sample.  
17 If you're taking on a second  
18 job, that can create a conflict. Why?  
19 Well, here's a great example of why,  
20 and so you've got to report them to  
21 your line manager.  
22 Did you ever report it, Mr. Zou,  
23 to your line manager? He did not,  
24 even though the Code of Conduct  
25 required it. He admits that. Never

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1 Plaintiff - Closing (Mangi)  
2 did it.  
3 And there are lots of other  
4 Serco policies that apply too:  
5 Acceptable workplace conduct,  
6 discipline.  
7 What does that policy say? You  
8 can be terminated without any prior  
9 action. Right on the spot, you're  
10 fired if you do an unauthorized  
11 release of confidential information,  
12 if you misuse or misappropriate,  
13 right, misappropriation and its  
14 information of the company, Serco, or  
15 business partners, Appian. Failure to  
16 abide by the code of ethics, all of  
17 this can get you fired on the spot.  
18 He signed a Proprietary and  
19 Confidential Information Agreement,  
20 and he's agreeing confidential  
21 information that I get, I am not going  
22 to show that to anyone else other than  
23 for Serco's business, Serco's  
24 business. And if I do it, I'll be  
25 terminated. I understand that.

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1 Plaintiff - Closing (Mangi)  
2 you can find all of this on the  
3 internet. You know, you can do a  
4 Google search before your coffee gets  
5 cold. Mr. Petronio knows how to use  
6 Google.  
7 Nobody is getting access to the  
8 actual software to poke and prod, to  
9 investigate, to dig deep, and he's  
10 delighted to get it.  
11 What does he say after that  
12 first meeting? He starts distributing  
13 this information, cascading it  
14 throughout the company. He says: I  
15 had a meeting today, February 28,  
16 2012.  
17 He walked me through it.  
18 I made a video, Fantasia, and  
19 I'm going to send it around to  
20 everyone.  
21 He circulates some of his key  
22 insights from the meeting, and he  
23 starts to see the trade secrets coming  
24 out right there. He says: Concurrent  
25 development, there's no way to have

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1 Plaintiff - Closing (Mangi)  
2 Now, Mr. Zou, he understands.  
3 We said to him: Listen, did Appian  
4 ever authorize you to do this?  
5 No.  
6 Why? Because he never told  
7 anyone what he was doing. He knew  
8 what he was doing was wrong.  
9 Now, what did they do with him?  
10 Let's just summarize the overview.  
11 You've seen this before, but let's  
12 summarize it.  
13 The very first meeting,  
14 remember, with Mr. Petronio, I showed  
15 you dozens of video clips of Mr. Zou  
16 just turning over information in those  
17 meetings. You know, the videos, the  
18 crimes in progress, you have actual  
19 videos of them there.  
20 And what was his reaction to  
21 getting that access to the  
22 confidential forum where the software  
23 and the documentation was? I was  
24 delighted, delighted.  
25 You know, they're saying, well,

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1 Plaintiff - Closing (Mangi)  
2 more than one person working at a  
3 time, data visualization, star schema.  
4 All remember what Dr. Marshall  
5 called this yesterday, gold dust.  
6 Gold dust for a company because now  
7 they have insight into a competitor's  
8 product, only one way that they can  
9 use against them.  
10 They start to circulate. Then,  
11 come December of that same year, 2012,  
12 it's a whole other flurry of activity.  
13 Lot of interesting Appian social.  
14 Mr. Petronio and Mr. Zou, they have  
15 the documentation, the confidential  
16 documentation on Forum. Can you send  
17 it to me?  
18 They have a meeting. No video  
19 of that meeting. Somehow that one's  
20 gone missing, but they have a to-do  
21 list after that.  
22 And look at all the points:  
23 Social and Tempo documentation,  
24 another demo session, live access to  
25 the platform.

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1 Plaintiff - Closing (Mangi)  
2 Look at the last bullet: Other  
3 there feedback on application  
4 enhancement. They say we would never  
5 look at a competitor's product to  
6 improve or enhance our own. They are  
7 too different. Why would we do that?  
8 What do the contemporaneous  
9 documents say? Application  
10 enhancement, that's what they're doing  
11 with these.  
12 Those December meetings,  
13 remember, the product management  
14 people, they're all over it too.  
15 What were they saying? Oh, we  
16 were product management. We'd never  
17 look at Appian. Why would we care?  
18 Why are they meeting with them  
19 endlessly, one after the other?  
20 Arrogance.  
21 Here's Agya Garg, right? She's  
22 just met with Mr. Zou about the social  
23 view in Appian, of work lists and  
24 tasks. Appian is more impressive.  
25 But at the same time while dismissing

Page 8072

1 Plaintiff - Closing (Mangi)  
2 learn from them, what they are doing  
3 in case we could make improvements in  
4 those areas.  
5 They want you to believe that we  
6 never look at customers. Look at what  
7 the people involved at the time say,  
8 the ones who are being honest about  
9 it.  
10 And then there is a meeting in  
11 2013, January of 2013, the famous  
12 meeting where Alan Trefler himself is  
13 among the attendees. Now, here's  
14 another amnesia situation, right?  
15 None of the current Pega  
16 employees, no one is willing to come  
17 up here and say Alan Trefler was at  
18 that meeting.  
19 You see the meeting invite.  
20 There he is. He's invited to see a  
21 demonstration building in Appian. And  
22 everyone agrees that means seeing the  
23 live software in operation, and  
24 everyone agrees they knew they didn't  
25 have a license to Appian and couldn't

Page 8071

1 Plaintiff - Closing (Mangi)  
2 it, what does she say? We should  
3 create a view just like this and ship  
4 with it.  
5 Arrogance and shadiness side by  
6 side. But that's not all.  
7 A very important attendee, not  
8 Mr. Bixby, he's a very important  
9 person, but there is a very important  
10 attendee, Kerim Akgonul. He is also  
11 coming to meet with Mr. Zou in  
12 December.  
13 We showed you videos from there.  
14 One of the videos is Mr. Petronio. He  
15 says at the end of the introduction:  
16 You said you might see something you  
17 like for our product, talking to  
18 Kerim.  
19 We asked him what do you mean by  
20 that? And look at what he said.  
21 Appian had strengths: Mobile, social,  
22 cloud, ease of use.  
23 What did Dr. Marshall talk to  
24 you about yesterday? Same categories.  
25 And, you know, we're looking to

Page 8073

1 Plaintiff - Closing (Mangi)  
2 get one.  
3 The CEO of a publicly traded  
4 company, this is what he's up to. And  
5 then they are going to meet with  
6 product management too.  
7 And you know what?  
8 Mr. Petronio, who is no longer there,  
9 he's the one guy who doesn't have  
10 amnesia. Look at what he said.  
11 Was Alan Trefler there?  
12 Yes.  
13 What do you remember?  
14 And, ladies and gentlemen, you  
15 rely on your life experience here.  
16 Look at the specificity he gave you.  
17 I remember the room. I remember  
18 the table. I remember where he was  
19 sitting. I remember the white board.  
20 I remember what was happening.  
21 Who's telling you the truth  
22 here?  
23 But as always, their documents,  
24 the contemporaneous documents, right?  
25 He said: I'm spending all day with

Page 8074

1 Plaintiff - Closing (Mangi)  
2 Youyong Zou on the 29th. That's all  
3 he did.  
4 The next day he sends e-mail to  
5 Alan Trefler: Thank you for your time  
6 yesterday.  
7 Do you think Alan Trefler was at  
8 that meeting? He's not willing to  
9 admit it. None of them who got up on  
10 the stand are willing to admit it.  
11 And then product management.  
12 Remember, this is a group of people  
13 that got up and to a person said: We  
14 don't care about Appian or  
15 competitors. We never look at  
16 competitors.  
17 Remember Ms. Louis: Why do you  
18 know that?  
19 We never look at competitors.  
20 Look at them all lining up. All  
21 of the top people lining up to meet  
22 with Mr. Zou and get live access to  
23 Appian: Akgonul, Bixby, Schuerman,  
24 Louis, Garg, Caton, Roland.  
25 And then they have these

Page 8076

1 Plaintiff - Closing (Mangi)  
2 He says: John Petronio and I  
3 hired an Appian consultant, and we  
4 spent days with him working on this.  
5 Now, what did they do? The  
6 document that they generated.  
7 Remember I showed you these  
8 action items at the bottom of every  
9 subject area? All of them are about  
10 working with product management to  
11 give them feedback.  
12 And they say: Status underway,  
13 status underway, status completed on  
14 data modeling, CDTs; what Dr. Marshall  
15 was talking to you about.  
16 And they have the arrogance to  
17 come here and say to you, oh, we never  
18 look at competitors. Look at what the  
19 document from the time says.  
20 Then at some point, Mr. Zou  
21 calls a halt to this, right? And he  
22 says to Mr. Petronio: You know, I  
23 won't have access to Appian or Appian  
24 Forum anymore.  
25 Okay. He told you on the stand

Page 8075

1 Plaintiff - Closing (Mangi)  
2 meetings in February of the next year,  
3 2014. We showed you a whole bunch of  
4 decks. Remember, there were 222  
5 slides about Appian, the company they  
6 don't care about, the company they  
7 never look at. With all the top  
8 leadership, Alan Trefler, everyone  
9 else.  
10 This is just one of the four  
11 slide decks. And what do they say to  
12 you about this?  
13 They say, oh, Appian, you can  
14 just Google it and you'll find all of  
15 this before your coffee gets cold.  
16 Really?  
17 Then they did Project Crush.  
18 Benjamin Baril, same guy who later is,  
19 after all the shady conduct we looked  
20 at, he's working with Mr. Zou too.  
21 And what does he do in Project Crush?  
22 You know, they are so into this  
23 that he wants to take credit for  
24 hiring Mr. Zou, right? That's how  
25 much they thought this is great.

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1 Plaintiff - Closing (Mangi)  
2 that wasn't the truth. He just knew  
3 that's why they want me. If I don't  
4 have access anymore to the live  
5 software, they are not going to need  
6 him anymore and that's what happened.  
7 That's where it ended.  
8 Now, what did they do with all  
9 this information? Mr. Schuerman told  
10 you they put it into these attack  
11 documents, right? And we showed you  
12 those documents with Mr. Malackowski,  
13 right, the Understanding Appian  
14 document, the technical brief, the  
15 attack plan, business competitive  
16 brief, 12 Challenges. We went through  
17 all of these.  
18 There were all these different  
19 versions of the technical brief they  
20 were constantly updating with Zou  
21 information over time.  
22 And then that 12 Challenges  
23 document, Mr. Petronio told you  
24 exactly how that came about. It was  
25 in that January 29th meeting. They

Page 8078

1 Plaintiff - Closing (Mangi)  
2 had a white board up and Mr. Schuerman  
3 was there, Mr. Zou was there,  
4 Mr. Trefler is there, and they were  
5 coming up with it.  
6 And think how valuable they  
7 found this information. They wanted  
8 to pose questions for the customer to  
9 ask Appian to showcase what they  
10 thought were weaknesses in Appian.  
11 Gold dust for the sales process.  
12 And we showed you, I showed you  
13 video after video with Mr. Petronio  
14 where we traced exactly where they got  
15 each piece of information that then  
16 went into these attack pieces.  
17 Remember, we looked at those and they  
18 covered all these topics.  
19 You know, star schema. He asked  
20 Mr. Zou about that; went straight into  
21 the attack document. At hourly  
22 intervals, the checkpoint mechanisms,  
23 the specific configuration in Appian.  
24 Dr. Marshall told you why that's so  
25 important; gold dust for the sales

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1 Plaintiff - Closing (Mangi)  
2 Yes.  
3 On that 12 Challenges document,  
4 same themes. But you see here now is  
5 these attacks, right? But you see the  
6 same issues, concurrent development  
7 and all of the other issues in there  
8 as well.  
9 Now, what did they do?  
10 Remember, Mr. Leon Trefler, he sends  
11 his 12 Challenges right around to  
12 everyone at the company.  
13 Mr. Malackowski told you how the  
14 information cascaded through the whole  
15 company. And he says: We should  
16 never lose against Appian.  
17 Their experts got up and told  
18 you this information is trivial. It  
19 has no value.  
20 Look at what they said at the  
21 top. He says: If you're competing  
22 against Appian anywhere, make sure you  
23 get this information.  
24 And we showed you how it  
25 cascaded. They had a sales call where

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1 Plaintiff - Closing (Mangi)  
2 force. That went into the document.  
3 Information about unified  
4 management tools, that went into the  
5 document, all from Mr. Zou. Remember  
6 I showed you the videos tracing each  
7 one of them.  
8 Reporting tools, very detailed  
9 specifics on reporting tools. You  
10 know, can they do drag and drop, pivot  
11 table like reporting on live access to  
12 the platform.  
13 Concurrent development, we went  
14 through that too. Got that from  
15 Mr. Zou.  
16 Web services can only return  
17 data of a certain kind, can return and  
18 the focus on the process ID. That  
19 information came in.  
20 And you know, Mr. Petronio  
21 explained that whole process. They  
22 were around the white board. That's  
23 how they were getting it.  
24 And we asked him: Was this from  
25 Mr. Zou?

Page 8081

1 Plaintiff - Closing (Mangi)  
2 they talked about the same  
3 information. They sent it out. They  
4 did a report of all competing  
5 opportunities with Appian, sent it out  
6 to all those people. They said great.  
7 They sent it directly to  
8 customers. They said it's under our  
9 NDA, don't share it, but have a look  
10 at this.  
11 Then they sent it out to their  
12 partners, their business partners,  
13 Accenture, Cognizant, Tech Mahindra.  
14 We took you through all of those with  
15 Mr. Malackowski.  
16 And why does that matter?  
17 Mr. Malackowski explained it.  
18 He said these are large companies. So  
19 when you share this information with  
20 them, with their thousands of  
21 employees, the potential for dramatic  
22 effect goes up exponentially. That's  
23 exactly what was happening.  
24 And then they did training of  
25 the whole sales force. Mr. Petronio

Page 8082

1 Plaintiff - Closing (Mangi)  
2 told you it was required training and  
3 they did not just have to view it,  
4 they have to then repeat it back  
5 through a whole series of  
6 presentations.  
7 Remember, I showed you the  
8 videos where Mr. Zou made the video  
9 and then Mr. Petronio revoiced it in  
10 his own voiceover. It's all directly  
11 from him. And I showed you the  
12 training videos of topic after topic.  
13 Their sales rep gave a review of  
14 the training. And look at their  
15 comments. They're all about access to  
16 the live system. The content brought  
17 out weaknesses using an actual system,  
18 seeing the developer portal, seeing  
19 how Appian works under the hood.  
20 They all know how to use Google,  
21 right? They can find what's on the  
22 internet. But, no, this is live  
23 access. That's what is so valuable  
24 for them.  
25 And Mr. Malackowski explained

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1 Plaintiff - Closing (Mangi)  
2 Rabobank. Here's Mr. Trefler  
3 himself saying: I'm in a meeting with  
4 them. I would like a prop I can use  
5 to blow this up.  
6 And he says: Something in the  
7 style of our previous internal  
8 two pages.  
9 What he's saying there? Because  
10 Mr. Petronio, remember, explained that  
11 technical brief, they wanted it to  
12 look like an internal Appian  
13 document -- an internal Pega document.  
14 They had a rep just happen to leave it  
15 behind with a customer.  
16 They were being dishonest about  
17 their dishonesty, okay? But that's  
18 what he's referring to there.  
19 And he says, you know, I need it  
20 by the end of the week, and he gets  
21 them the competitive brief for  
22 Rabobank. And he admits, he and  
23 Ms. van Wees, they use that at  
24 Rabobank.  
25 And then Ms. van Wees, she had

Page 8083

1 Plaintiff - Closing (Mangi)  
2 the importance of this training  
3 program. It's very robust. He talks  
4 about how they have to watch it,  
5 repeat it, heard all of that. And he  
6 says at the end, a very through  
7 indoctrination of these trade secrets  
8 with the Salesforce.  
9 Now, we gave you examples of how  
10 this was used. But, ladies and  
11 gentlemen, a very important point  
12 here, I didn't pick, you know, of all  
13 the competing opportunities, I didn't  
14 go and pick my best examples.  
15 What I picked for you are their  
16 favorite examples, right, the  
17 opportunities where their expert  
18 Mr. Platt says, you've got to take  
19 these out because I've looked at the  
20 record and I can tell you as an  
21 accountant this had nothing to do with  
22 the trade secrets, okay?  
23 So let's look at two of those,  
24 the ones they chose, they think are  
25 the best cases.

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1 Plaintiff - Closing (Mangi)  
2 her document about competing in  
3 Rabobank. Look at what she said:  
4 Everyone on the team memorized  
5 John Petronio's documents.  
6 They had a call with him the day  
7 after his meeting with Zou so they  
8 could get live updates on all the  
9 Appian info to shape the POC.  
10 Remember that from the training,  
11 they're using the Zou information to  
12 shape the proof of concept.  
13 Ms. van Wees, she admits it,  
14 yeah, it was a key requirement for  
15 Rabobank, concurrent development, one  
16 of the trade secrets. We encouraged  
17 them to look at the competition as  
18 well on that issue.  
19 In her document, what are the  
20 important differentiators for  
21 Rabobank? Co-development right there  
22 at the top, and there are others in  
23 here too. Look at the data returned  
24 as process ID.  
25 This is the one they think is

1 Plaintiff - Closing (Mangi)  
2 their best example when we didn't use  
3 any of this. If this is the record,  
4 imagine what they are doing with all  
5 of the others.

6 She sends an e-mail, Ms. van  
7 Wees, to Glen Adams. Remember him?  
8 He's the guy on the shady-arrogant  
9 e-mail.

10 And look at what she says,  
11 sending those same competitive  
12 documents, this information from  
13 John Petronio and team had spent  
14 two days with an Appian consultant  
15 just when the battle was intensifying.  
16 And she said the information was so  
17 strong and relevant that she wanted  
18 them all to have it.

19 They made sure the fox in the  
20 hen house, the person helping them at  
21 Rabo, made sure he had what he needed.

22 How about Bank of America?  
23 Another example Mr. Platt says, oh,  
24 no, take this out. No way Appian  
25 would've had a shot there. They are

1 Plaintiff - Closing (Mangi)  
2 But the competition wasn't  
3 Appian. And, you know, they like to  
4 suggest, oh, but, you know, they won  
5 that contract few months later, it had  
6 nothing to do with this.

7 Mr. Bearden, the guy involved in  
8 it, he says, who won that contract  
9 eventually? It was a little bit  
10 later. We won it. Pega won it. And  
11 the revenues are in the case because  
12 they did; otherwise, there'd be no  
13 revenues.

14 Now, Mr. Bearden, the  
15 whistleblower, remember, he later got  
16 fired from Pega, then he came and told  
17 Appian what had happened? And he said  
18 when he was leaving, they contacted  
19 him and said, give back the Zou  
20 documents.

21 And he said, well, that was a  
22 turning point for me. You know, it  
23 seemed shady. But he said, when I  
24 left, they didn't ask me about any of  
25 the sensitive documents I had been

1 Plaintiff - Closing (Mangi)  
2 incumbent.

3 Remember Mr. Bearden? He  
4 testified by deposition. He was one  
5 of the whistleblowers who came to  
6 Appian and told Appian it was  
7 happening.

8 He said, we were in the fight of  
9 our lives at the Bank of America. And  
10 he explained it. He said, we were  
11 concerned not just about the  
12 opportunity but about losing the  
13 entire account at Bank of America to  
14 Appian.

15 And Mr. Platt says, we're  
16 incumbent. Mr. Trefler says, they're  
17 the most loyal customers. There's no  
18 chance they would ever consider  
19 Appian.

20 But look at what the document  
21 says, and what did they use there?  
22 They used information from Mr. Zou.  
23 You saw the slide deck with  
24 Mr. Bearden with all of the topology  
25 information.

1 Plaintiff - Closing (Mangi)  
2 working on for years. The only thing  
3 asked me from back at Pega was give me  
4 back the Zou documents.

5 And he said that's the only  
6 thing they wanted to know about. So  
7 then he came and he told Appian what  
8 happened.

9 Now, that was some of the Zou  
10 era conduct, but let's also talk about  
11 what happened thereafter.

12 Now, in 2017, Appian started  
13 offering trials, right, consistent  
14 with industry trends. But from the  
15 very start, Pega knew they were not  
16 authorized to get access to that.

17 Here's a 2017 e-mail from  
18 Mayran Barak, who works in product  
19 management at Pega: I can't get any  
20 sort of access. We're not a qualified  
21 business.

22 You remember later in that  
23 chain, she also said, you know,  
24 software's online.

25 Mr. Davis, he also testified by

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.

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,

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.

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.

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1 Plaintiff - Closing (Mangi)  
2 Mr. Baril, he says candidly, all  
3 of them knew about this. Schuerman,  
4 Bessman, Fine, Le, one Trefler, the  
5 brothers Trefler. They all know what  
6 he's up to.  
7 Is it any wonder they are doing  
8 this?  
9 Remember who the CEO setting the  
10 color and culture is, it's ascii, A  
11 Skii, Albert Skii, Paul Foon, and AU  
12 sending e-mails to his own people,  
13 even they're surprised their CEO has  
14 so many personas.  
15 And he personally is running the  
16 show. Look at his testimony, he was  
17 delighted, excited. And Mr. Baril was  
18 now involved because he asked him to  
19 do an analysis of the Appian  
20 technology. He sent him e-mails with  
21 all the technical specifications that  
22 he wanted studied. He wants to spend  
23 an hour in the demo.  
24 Do you think Mr. Trefler knows  
25 how to use Google? He's been a tech

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1 Plaintiff - Closing (Mangi)  
2 And what's the response of the  
3 leadership, is anyone saying, what are  
4 you doing; we don't have a license.  
5 Stop?  
6 No, Mr. Leon Trefler says to  
7 him: Take this seriously. I'm going  
8 to give you more resources.  
9 I don't need to underline this  
10 one, he underlined it himself. And  
11 they got those resources. They got  
12 Peter Bessman.  
13 And look, they tell you what  
14 this is all about, though, right in  
15 the contemporaneous document. Their  
16 goal is to steal deals from Appian.  
17 And look at what he says at the  
18 top, he puts at the top there  
19 "privilege." Privilege, like it's  
20 protected by -- because it's an  
21 attorney-client communication, it  
22 shouldn't get produced in litigation.  
23 I'm afraid it did get produced  
24 because none of them are lawyers.  
25 The text messages continue. He

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1 Plaintiff - Closing (Mangi)  
2 CEO for 39 years. Do you think he can  
3 find stuff that's online before his  
4 coffee gets cold? Why does he want a  
5 demo if it's so pointless?  
6 Mr. Baril, he knows exactly that  
7 means. He says: I can't do it  
8 because I've lost my trial access.  
9 You can work on another one,  
10 though. My spies, my spies are on the  
11 case.  
12 Remember, misappropriation  
13 involves improper means. One example  
14 of that, espionage. Here they are  
15 again, my spies.  
16 They are telling candidly what  
17 they are doing. Alan wants targeted  
18 and damning attacks. That's why it's  
19 gold dust.  
20 He says: I've been spending my  
21 time -- this is Mr. Baril -- diving  
22 deep into the Appian software.  
23 He's not using Google. He's  
24 diving deep in the software, including  
25 taking videos.

Page 8097

1 Plaintiff - Closing (Mangi)  
2 tells Mr. Schuerman -- remember  
3 Mr. Schuerman, I didn't know about any  
4 of this until after the fact.  
5 Here he is telling him about  
6 exactly what he's doing. He's asking  
7 him: Who can I ask about the legality  
8 of this?  
9 Even Mr. Baril had a moment of  
10 conscious. What does Mr. Schuerman  
11 say: How much more do you need?  
12 Mr. Baril, he's making all the  
13 videos strictly internal, he's sending  
14 them all over the company. He creates  
15 this whole analysis on Appian with all  
16 the information he's gathered.  
17 They say, you know, it's  
18 nothing. You can just Google it.  
19 And we showed you from Mr. Fine  
20 how they used all of this in realtime  
21 in the marketplace. He gave you a lot  
22 of testimony about USAA Insurance  
23 Company, where they were directly  
24 using this information coming from  
25 Mr. Baril.

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1 Plaintiff - Closing (Mangi)  
2 And as it went on, remember the  
3 people in India, they too circulated  
4 information they'd gotten on access to  
5 Appian. They don't capture the  
6 username if you make any recordings,  
7 because it's not legitimate access.  
8 We showed you Mr. Sarada. He  
9 says -- remember all his cousins, his  
10 cousins who work for Appian Partners,  
11 they live in the same house all  
12 together. He's using all of their  
13 credentials.  
14 He says he always used someone  
15 else's credentials. When they finally  
16 updated that Interrogatory 13 after we  
17 had all the information from instant  
18 messages, not before, then there were  
19 a lot more names that came up.  
20 The ones you looked at, Ladies  
21 and gentlemen, they even had the  
22 intern, the summer intern Harry Zhang,  
23 even had him breaking into Appian.  
24 Think about the culture, the arrogance  
25 of this company.

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1 Plaintiff - Closing (Mangi)  
2 need to dig under the surface to get  
3 to.  
4 And Dr. Marshall talked to you  
5 about another set of trade secrets,  
6 how Appian designed and implemented  
7 Smart Services, CDTs, ease of editing,  
8 and out-of-the-box ability to deploy  
9 the mobile and integrated social view.  
10 And, you know, this is important  
11 because what does Pega do? They said,  
12 oh, you know, we were working on  
13 mobile. We were working on social.  
14 Look at all this other stuff we were  
15 doing.  
16 So what?  
17 They even have this, the  
18 specific trade secrets, and you saw  
19 exactly where they got it from.  
20 Let me show you -- I showed you  
21 a lot of videos. I'm not going to  
22 repeat them all. I just want to  
23 refresh you on where this is coming  
24 from, just one.  
25 (Video played.)

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1 Plaintiff - Closing (Mangi)  
2 Now, what are the trade secrets  
3 we're talking about here?  
4 You've seen them through these  
5 documents. You've seen them being  
6 developed. You know what they are,  
7 but I thought I would just list them  
8 to help you.  
9 Concurrent development, we  
10 talked about the specifics on the  
11 reporting tools, the process ID issue,  
12 specifics on the management tool, star  
13 schema, the specific configuration,  
14 the topology specifics, including,  
15 remember, the experiments they are  
16 doing. We showed you some videos of  
17 that.  
18 We're seeing the kbd+ file  
19 building. We're calculating how much  
20 hardware is needed. And, of course,  
21 there's confidential documentation we  
22 showed Mr. Zou sending and we have now  
23 in the record.  
24 All of this about Appian's  
25 architectural and design, things you

Page 8101

1 Plaintiff - Closing (Mangi)  
2 MR. MANGI: Just a little flavor  
3 to remind you of all the videos you  
4 saw of Mr. Petronio.  
5 And then Mr. Petronio took you  
6 through these, the whole list I showed  
7 you, one by one, and he told you  
8 exactly where it came from. It didn't  
9 come from Google. It came from  
10 Mr. Zou.  
11 Concurrent development, where  
12 did you get that? Zou.  
13 Weak reporting tools and the  
14 specific details, where did you get  
15 that? We learned it from Zou.  
16 Process ID, where did you get  
17 that information? We learned it from  
18 Zou.  
19 Did you know about any of this  
20 management tool stuff before Zou? No.  
21 He knows how to use Google. He  
22 didn't know it.  
23 Star schema, did you know that?  
24 Where did you get that info? That  
25 came from Zou.

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1 Plaintiff - Closing (Mangi)  
2 Configuration and checkpointing,  
3 came from Zou.  
4 Topology information, the  
5 specific details they learned, came  
6 from Zou.  
7 The confidential documentation  
8 that Zou shared.  
9 Experiments, we talked about  
10 this, and this really sums up a lot of  
11 what was happening. We wanted to try  
12 stuff out, pressure testing, do as  
13 many experiments as we could so we  
14 could really learn the information  
15 below the surface of what was talked  
16 about.  
17 Leave no stone unturned to find  
18 weaknesses, analyze everything. Big  
19 effort. That sums up, you know, in  
20 some ways, what this was all about.  
21 And remember in one of the  
22 videos, he had this real note of  
23 excitement in his voice. When he  
24 looked at the documentation, he said,  
25 oh, I'd love to see that. Remember

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1 Plaintiff - Closing (Mangi)  
2 university.  
3 And look at his career. He was  
4 a hacker for the CIA, right? This is  
5 one of the most serious guys you can  
6 find in this field. Look, he was the  
7 chief scientist at Lockheed Martin,  
8 the chief technology officer at  
9 McAfee. He was President Obama's  
10 commissioner on cyber security. He  
11 had cyber wings from the US Air Force.  
12 Remember, he said there are two  
13 key certifications in this area? I  
14 have one, I don't have the other.  
15 Why don't you have the other?  
16 Because I have the one behind it.  
17 He took you through all the  
18 books he wrote, including one about  
19 insider threats like we have from Zou.  
20 Do you remember this other book?  
21 He's the guy who Bill and Melinda  
22 Gates hired for their cyber security.  
23 President Obama, the Gates, they are  
24 not going to Dr. Easttom. They are  
25 going to Dr. Cole.

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1 Plaintiff - Closing (Mangi)  
2 that video?  
3 And we explained what about  
4 that? And he said, yep, confidential  
5 documentation. I got that from Zou.  
6 Now, Mr. Schuerman, he doesn't  
7 admit all of them, but even he admits  
8 some of them not previously available  
9 to Pegasystems.  
10 Their attitude's Google, right?  
11 It's not available. They know how to  
12 use Google.  
13 And he admits they didn't know  
14 about concurrent development,  
15 checkpointing specifics, web service.  
16 He admits it afterwards.  
17 Now, one of the questions you  
18 are asked in the instructions is: Did  
19 Appian have a trade secret?  
20 Let's talk about that.  
21 Dr. Cole testified before you,  
22 right? You remember him. He has a  
23 Ph.D. in cyber security. He only has  
24 one Ph.D., but it's one he spent many  
25 years getting from a serious

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1 Plaintiff - Closing (Mangi)  
2 Now, the definition of trade  
3 secrets, right, derives independent  
4 economic value, goes on from there,  
5 and is the subject of efforts that are  
6 reasonable to maintain the security.  
7 This is one of Dr. Cole slides.  
8 Now, now maybe you see why we used  
9 some of phrasing. He is tracking  
10 exactly what the statute is explaining  
11 to you why it's satisfied.  
12 Well, let's talk about, first,  
13 this issue of reasonable security. He  
14 took you through this in detail. I'm  
15 not going to read all of this, you  
16 heard it.  
17 Protecting against all manner of  
18 threats -- not just Zou, hackers,  
19 everything -- firewalls, multifactor  
20 authentication, encryption --  
21 employees focused on these policies,  
22 trainings, assessments,  
23 certifications, audits on security,  
24 written policies and procedures, Terms  
25 of Use and License Agreements.

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1 Plaintiff - Closing (Mangi)  
2 And Dr. Cole told you why those  
3 terms and licenses are so key, because  
4 in the software industry, you can't  
5 lock your software in a bank vault,  
6 right? You've got to be out there  
7 selling it.  
8 Their own expert Mr. Pinto says,  
9 yeah, you know, even the presentation,  
10 well, that has trade secrets in it.  
11 You've got to be out there  
12 selling it. So how do you protect  
13 yourself? Terms of Use and License  
14 Agreements. That's what Appian had,  
15 and they didn't doubt it.  
16 Look at what Leon Trefler  
17 himself says: Does Pega use licenses  
18 and Terms of Use? Yes, Appian does  
19 too. That's what the BPM industry  
20 does to protect themselves.  
21 Their own head of sales admits  
22 that.  
23 Mr. Ross told you, we had  
24 agreements with Serco specifically,  
25 since this is about Mr. Zou, in part,

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1 Plaintiff - Closing (Mangi)  
2 just one example, permitted usage, you  
3 can only use it for your job.  
4 Employees who get it, they have to be  
5 people with a need to know who are  
6 subject to confidentiality.  
7 Appian did everything it could  
8 here.  
9 The other agreement was Appian  
10 Terms and Conditions. This is a GAO  
11 Schedule Agreement. And those Terms  
12 and Conditions, they are chockablock  
13 with protections. There is permitted  
14 usage only for the business purposes,  
15 only the identified individuals with  
16 the user accounts can have access,  
17 only people with a need to know who  
18 are subject to binding agreements.  
19 Appian protected itself every  
20 way it could.  
21 Reasonable measures, Dr. Cole  
22 told you how Appian did all of these.  
23 When they had a trial program,  
24 active measures to protect, block  
25 access by the competitors by e-mail

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1 Plaintiff - Closing (Mangi)  
2 to protect what we were doing. And he  
3 took you through those agreements.  
4 It's a VA for Vets Agreement.  
5 These are full of protections, they're  
6 long. But I'll show you some little  
7 samples.  
8 Here's part of that agreement:  
9 Both sides agree to protect the  
10 confidential information of the other.  
11 You can only disclose it to employees  
12 who have a need to know to do their  
13 job for Serco and agree to protect the  
14 information subject to binding  
15 obligations.  
16 Dr. Easttom says, oh, Appian  
17 wasn't protecting itself with Serco.  
18 Look at what they had in the  
19 Agreement.  
20 Did Serco get Mr. Zou to enter  
21 into those binding obligations? Yes,  
22 remember, I showed it to you earlier.  
23 He signed the Confidential Information  
24 Agreement.  
25 Lots of other courses. Here's

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1 Plaintiff - Closing (Mangi)  
2 address.  
3 Now, that was the second part of  
4 the instruction. What about the first  
5 part, the independent economic value?  
6 He told you about that, too.  
7 Mr. Ross told you, listen, this  
8 information is our proprietary trade  
9 secrets. This is where we get all of  
10 our revenue from. That's why this  
11 matters. That's why they had this  
12 independent value.  
13 And Dr. Paul told you, Pega knew  
14 it had value because they used it so  
15 much. If it wasn't valuable, why  
16 would they use it?  
17 Dr. Easttom says, oh, nothing.  
18 It's trivial.  
19 Look at how they used it.  
20 Dr. Cole showed you all of the people  
21 at Pega who were spending time on this  
22 and receiving copies of this. It  
23 includes all of the top people at the  
24 company, all the Treflers, the  
25 Schuermans, the Akgonuls. They knew

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1 Plaintiff - Closing (Mangi)  
2 all of this. They knew it has value.  
3 And look at what they say  
4 themselves about does this information  
5 have value.  
6 Leon Trefler: Do you agree the  
7 information assisted Pegasystems  
8 competing against Appian?  
9 Yes.  
10 He knows it's gold dust.  
11 Again, to be clear, the  
12 information was useful, yes.  
13 Mr. Bearden, he explained it pretty  
14 well. He says it was hugely useful.  
15 It gave us a level of insight that we  
16 didn't have before. We could back up  
17 claims, and he explains even why. He  
18 said: Before we had some anecdotes,  
19 but now, this gave us the details.  
20 That's why it mattered. He said  
21 it's like having access to the black  
22 box.  
23 Remember? Mr. Davison called it  
24 a black box too. He knows it has  
25 value because now you can get in, you

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1 Plaintiff - Closing (Mangi)  
2 better time, they say in this e-mail.  
3 It's great. Mr. Trefler himself  
4 says, yeah, well, Rabobank would value  
5 this information.  
6 Project Crush, look at what  
7 Mr. Baril says. This proved to be  
8 incredibly useful.  
9 Their experts say, oh, it's  
10 trivial. It's useless.  
11 Look at what they say in the  
12 contemporaneous instant messages. It  
13 is extremely helpful having access to  
14 the system, Mr. Baril.  
15 Even Mr. Le explains how it's  
16 valuable. It's like the analogy of a  
17 test drive of a car. Oh, you can  
18 read. You can watch a YouTube video.  
19 It's a personal experience when you're  
20 actually driving the car. That's when  
21 you can poke and prod, test, really  
22 know what the trade secrets are.  
23 Now, what about the part about  
24 it not being generally known or  
25 readily ascertainable by proper names?

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1 Plaintiff - Closing (Mangi)  
2 can back up your claims. You can make  
3 very convincing arguments that are  
4 hard to refute.  
5 They want to tell you this has  
6 no value? Look at what they said in  
7 their documents at the time. Here's  
8 Mr. Cardiko, he said: Excellent  
9 information. We can start shaping  
10 RFPs, et cetera.  
11 Mr. Malackowski explained to you  
12 on that e-mail why this matters;  
13 because they are shaping the sales  
14 process. They want to eliminate  
15 Appian before they even get a chance  
16 to show up. That's one of the reasons  
17 why direct competition doesn't even  
18 tell the whole story because they are  
19 eliminating Appian before they can  
20 show up.  
21 There are other documents.  
22 Look, they're saying, they are  
23 delivering information. This will  
24 help you fend off Appian. You  
25 couldn't have delivered this at a

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1 Plaintiff - Closing (Mangi)  
2 Well, simple, ladies and gentlemen.  
3 If you could Google this, why did they  
4 do all of this?  
5 Dr. Cole explained why. That's  
6 the only way they could get it. They  
7 had to go find someone who wasn't  
8 loyal. They had to get it from the  
9 protected Forum, and they told you it  
10 was hard to get. They had to get it  
11 through Zou.  
12 Now, the definition that  
13 Judge Gardiner read you of  
14 misappropriation, it's detailed. You  
15 can go through it, but you'll note it  
16 talks about acquisition of a trade  
17 secret, disclosure of a trade secret,  
18 use of a trade secret.  
19 They met all of these criteria,  
20 both Pegasystems and Zou in multiple  
21 subcategories.  
22 And focus also on improper means  
23 I told you about earlier, right? And  
24 this is that instruction. Just about  
25 all of these apply. Theft,

1 Plaintiff - Closing (Mangi)  
2 misrepresentation, use of a computer  
3 network authority, breach of a duty to  
4 maintain secrecy. Espionage. They  
5 are calling them spies.

6 Now, what did they do with this  
7 information? Dr. Marshall took you  
8 through this, right? Remember what he  
9 said.

10 He's also got a Ph.D., one  
11 Ph.D., the one he spent years getting,  
12 seriously. He worked all over the  
13 industry, lots of experience in  
14 software. He was the guy at Gartner  
15 who was in charge of mobile and client  
16 computing.

17 Remember? Pega themselves went  
18 to him for advice when he was at  
19 Gartner. They had a strategy day.  
20 Look at what they said: We want to  
21 get Richard's views. What must Pega  
22 do?

23 They didn't go to ask  
24 Dr. Easttom or Mr. Pinto. They went  
25 to Dr. Marshall before any of this

1 Plaintiff - Closing (Mangi)  
2 It's the live access. That enabled  
3 them to poke and prod, really learn  
4 how all of this worked.

5 And he took you through why ease  
6 of use mattered so much because Pega,  
7 remember, they were the platform that  
8 was old, clunky technology. Appian,  
9 remember what they keep saying,  
10 Project Crush, intuitive, intuitive,  
11 intuitive because Appian was the  
12 modern, streamlined platform.

13 Pega knew this. Look in their  
14 e-mails right from the beginning.  
15 Mr. Petronio saying: Appian, it's  
16 easy to use. That's the key criteria.

17 He even talks about creating  
18 data types, CDTs. He talks about the  
19 shapes. You don't need to know our  
20 methods.

21 That's why Pega was so  
22 complicated. You couldn't use it  
23 without knowing all of their methods,  
24 the opposite of intuitive. They  
25 recognized themselves, they're not at

1 Plaintiff - Closing (Mangi)  
2 happened.

3 They sent all their people. You  
4 know, Ms. Louis, apparently, they said  
5 wasn't there. Mr. Bixby,  
6 Mr. Schuerman, they are all there.

7 And remember, they are asking  
8 Richard. They want Richard's advice.  
9 What opportunities are we missing?  
10 What should we build? They viewed him  
11 as the expert.

12 What did Dr. Marshall tell you?  
13 He told you these changes were  
14 critical because, otherwise, they are  
15 going to go the way of Lotus 1-2-3.

16 He went through all of these  
17 videos, 123. You saw how he had  
18 memorized all those videos. He could  
19 tell you everything that was in every  
20 one of them.

21 And he told you they made  
22 improvements in all these five areas,  
23 three of which come under ease of use.  
24 And he told you, you know, it's the  
25 what versus the how. It's the video.

1 Plaintiff - Closing (Mangi)  
2 market leadership levels of ease of  
3 use of these other key areas.

4 Their own customers were telling  
5 them, Pega is very complicated. The  
6 product was sold as simple, but it  
7 isn't at all. You saw all what their  
8 customers had to say.

9 Mr. Schuerman, he admitted. He  
10 said: We decided to focus on this  
11 based on the honest feedback from our  
12 clients.

13 So what did they do?  
14 Dr. Marshall just went through this.  
15 I won't do it again in detail, but  
16 just to remind you.

17 Smart Services, they didn't have  
18 it in 6.3. They come and they tell  
19 you, oh, you know, we just sort of  
20 kind of had it. We just made it more  
21 visible.

22 Dr. Marshall, remember, he went  
23 through every platform, every version.  
24 He looked at exactly what was there  
25 and wasn't there, and he told you they

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1 Plaintiff - Closing (Mangi)  
2 added it in 7.1. He showed you in the  
3 actual platform how it compared the  
4 old version with -- you could program  
5 it, but it's a lot of work, very hard.  
6 You need to know our methods, and the  
7 simplified, streamlined version.  
8 Where did it come from?  
9 Remember, they had videos. We showed  
10 you videos where Zou was explaining  
11 the Smart Services. And then Kerim  
12 Akgonul, he has that meeting with Zou  
13 and then he circulates screenshots to  
14 everyone off the Smart Services in  
15 Appian.  
16 And the similarities  
17 Dr. Marshall was showing you,  
18 remember, how do they end up? There's  
19 Appian and there's Pega. Now, they've  
20 all got the same key attributes, send  
21 e-mail, create PDF, add attachment,  
22 post to feed. That's where they end  
23 up.  
24 And what do they say in their  
25 own document about why customers

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1 Plaintiff - Closing (Mangi)  
2 this is in the developer because I  
3 checked it. I went through the  
4 versions when I created another  
5 identity account to check. It's not  
6 there, I tried that, no matter what  
7 everyone else said. He didn't just  
8 tell you. He showed you.  
9 Even Mr. Bixby, he doesn't  
10 dispute they added an editing button  
11 in 7.1.1.  
12 What about custom data types?  
13 Remember, Dr. Marshall said that this  
14 is complicated, and it is. But it's  
15 very important because it's how the  
16 data is managed. It's a huge  
17 difference for the people on a  
18 day-to-day level.  
19 We're not saying Appian invented  
20 this. But he shows how you deploy and  
21 use CDTs in a BPM platform. That's  
22 where Appian was innovative and ahead  
23 of the curve.  
24 And they weren't there in 6.3.  
25 He knows because he went through all

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1 Plaintiff - Closing (Mangi)  
2 should operate? Look at what they  
3 say.  
4 Is it there in 6.3? No. Is it  
5 there in 7? Yes.  
6 Even Mr. Bixby, you know, while  
7 dancing around and trying to say, oh,  
8 we sort of had it, we kind of had it.  
9 He ultimately admits they weren't in  
10 6.3. They were in 7.1. Oh, yeah.  
11 Ease of editing. Again, we went  
12 through, Dr. Marshall, all of the  
13 platforms and he told you how  
14 important this is because developers  
15 are working on this all the time, day  
16 in and day out. Single button makes  
17 all the difference, huge economic  
18 value.  
19 Remember, he showed you there  
20 was a video with Mr. Zou showing it to  
21 Mr. Akgonul where he goes, oh, no,  
22 because he made a mistake and then he  
23 shows how they fix the mistake.  
24 And then where do they end up?  
25 Appian, Pega, and he told you, I know

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1 Plaintiff - Closing (Mangi)  
2 of them and checked, but they added in  
3 7.1. They keep refining it to keep up  
4 with Appian.  
5 We saw them in the videos.  
6 Remember, here is Mr. Akgonul, another  
7 little taste just to remind you of the  
8 videos.  
9 (Video played.)  
10 MR. MANGI: They are saying, oh,  
11 we already had CDTs. We had them  
12 since the early 2000s. Why we would  
13 care about Appian?  
14 Then why is Mr. Akgonul trying  
15 to find out all about it?  
16 Look at what happens in their  
17 own internal documents. He sends  
18 screenshots, remember, of Smart  
19 Shapes. Look at what he does with  
20 CDTs. He's sending around those  
21 screenshots too. They had that  
22 meeting the next year in February with  
23 the 222 slides.  
24 Look at what some of them say.  
25 Data models, Appian, you define your

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1 Plaintiff - Closing (Mangi)  
2 own CDTs. They provide all the  
3 details. If they had this since the  
4 early 2000s, why are they doing all  
5 this?  
6       Look at how they study it, slide  
7 after slide after slide studying  
8 Appian CDTs.  
9       What about Project Crush? It  
10 has a whole section on this, on CDTs  
11 in Appian.  
12       And what do they say at the end  
13 of it? They show a screenshot of it  
14 and they say: Discuss improvement to  
15 data modeling with product management,  
16 status completed.  
17       They want you to believe we  
18 would never look at this, we had this  
19 since the early 2000s. Are they  
20 telling you the truth?  
21       Look at what they say about  
22 Project Crush. They say: Feedback  
23 delivered to product marketing,  
24 improvements underway. And they would  
25 have you believe Dr. Easttom says, oh,

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1 Plaintiff - Closing (Mangi)  
2 weren't succeeding.  
3       That's the whole point. And  
4 they took specific features from us  
5 for that reason.  
6       On social, they were very basic.  
7 Appian had the innovative approach  
8 here.  
9       They knew it. Look at their  
10 internal documents. Socials are hard  
11 to do for us. We admit it. Ms. Garg,  
12 she admits, we only had basic  
13 commenting capabilities, stuff that's  
14 been around for a long time.  
15       What did Appian have?  
16 Out-of-the-box integration of work  
17 lists and social. There's a note.  
18 Dr. Marshall looked through all of  
19 them and he tells you, it showed up  
20 after Zou in 7.1. Where did it come  
21 from? He sees it.  
22       He doesn't just tell you. He  
23 showed in the platform, look, here it  
24 is. Here's where it shows up and he  
25 tells you where it all came from.

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1 Plaintiff - Closing (Mangi)  
2 no evidence that they ever looked at  
3 Appian for improvements. What do you  
4 call this?  
5       And Dr. Marshall told you about  
6 the striking similarities on where you  
7 end up. Remember, he told you. It's  
8 not about first name, last name. It's  
9 not about which columns you put  
10 together. It's about demonstrating a  
11 concept. Before this was complicated,  
12 fragmented. Now it's logical, the way  
13 a human brain thinks. That's why  
14 developers can manage the data. It's  
15 easier.  
16       Their own upgrade document Pega  
17 7 explains it. They say now we've got  
18 this new data model and this makes it  
19 faster and easier. They are telling  
20 you, no, we didn't change anything.  
21       Social. Now social and mobile  
22 are very interesting, ladies and  
23 gentlemen, because they say to you,  
24 oh, look, we were already working on  
25 this. And yeah, they were, but they

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1 Plaintiff - Closing (Mangi)  
2       They are working with Zou. He  
3 had Appian's documentation before they  
4 made the change. The to-do meeting,  
5 right? It's all about application  
6 enhancement on social and Tempo  
7 documents.  
8       Here he is sending the  
9 confidential documentation from within  
10 Forum. See, it says right there,  
11 Appian 6.7 documentation.  
12       And then remember how, remember  
13 how their experts say to you: Appian  
14 is terrible. Appian is not the  
15 leader. Why would we look at Appian?  
16       Look at what their own documents  
17 from the times say. They're talking  
18 about 7.1. Great job, everyone. This  
19 solution allows us to compete with  
20 other leaders like Appian Tempo.  
21       The Why Upgrade document  
22 explains it. 7.1, got something new.  
23 Here's why you should upgrade, social  
24 collaboration, fully integrated.  
25       Remember, that's what

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1 Plaintiff - Closing (Mangi)  
2 Dr. Marshall is emphasizing. Now  
3 they've got this out-of-the-box  
4 capability.  
5 You know where that came from.  
6 We should create a view just like this  
7 and ship with it. That is what they  
8 did after studying Appian Tempo in a  
9 live meeting with Mr. Zou.  
10 And Mr. Bixby? Yeah, he admits  
11 it. The social view, that's part  
12 of 6.3? No. Ms. Garg is saying add  
13 it? Yes. She makes that suggestion  
14 right after attending a meeting with  
15 Zou? Yes, correct.  
16 You can see where it came from.  
17 And he admits it, one of the  
18 improvements in 7. Remember, they're  
19 saying, no, no, you now, we already  
20 had everything.  
21 Look at what he admits. One of  
22 the improvements they made was  
23 out-of-the-box integration of work  
24 lists into the social feed. That's  
25 what Dr. Marshall said. He agrees

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1 Plaintiff - Closing (Mangi)  
2 being told Appian's mobile was  
3 available and better than theirs, so  
4 they were worried about this.  
5 And Dr. Marshall went through  
6 them all, explains to you, no  
7 out-of-the-box capability before or  
8 after Zou, prebuilt configuration  
9 out-of-the-box.  
10 Their own software says inside  
11 of it: Now in Pega 7, no  
12 customization required.  
13 Where did it come from? Their  
14 own meeting minutes. Remember that  
15 meeting with Mr. Trefler, they are  
16 doing a comparison of Pega and Appian  
17 mobile. They said, oh, no, no, we  
18 would never look at a competitor. Do  
19 you believe that?  
20 Their own operating document  
21 says, now, Pega 7, post-Zou, no coding  
22 required, exactly what Dr. Marshall  
23 told you had come from Appian.  
24 And Mr. Bixby, he agrees, yeah,  
25 they're saying no coding required in

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1 Plaintiff - Closing (Mangi)  
2 with it.  
3 Now, on mobile same story. They  
4 weren't a leader before, Ms. Louis  
5 admits that. Pega was basic.  
6 Remember, they were using third  
7 parties at Sencha for a Band-Aid  
8 solution. So Appian was way ahead.  
9 Out-of-the-box solutions, what  
10 did they say themselves about their  
11 mobile? Never deployed even by a  
12 customer in the pre-Zou era.  
13 And again, remember, they are  
14 saying Appian was terrible and why  
15 would we look at Appian. Look at what  
16 their document says: Appian was the  
17 first mover to the mobile as a BPM  
18 provider.  
19 So their own contemporaneous  
20 document, that's what it says.  
21 And think about their mindset,  
22 their mindset. This is the  
23 information they were getting from a  
24 Gartner person who Mr. Trefler said he  
25 had a lot of respect for. They were

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1 Plaintiff - Closing (Mangi)  
2 Pega 7. You wouldn't just say they  
3 made an upgrade if it wasn't true, no.  
4 Dr. Marshall told you why all of  
5 this matters, because it's key to the  
6 architecture and design. They would  
7 have gone the way of Lotus 123.  
8 That's why that's so critical.  
9 And remember, Dr. Marshall told  
10 you, they kept doing this all  
11 throughout the Zou era. Remember,  
12 later he showed you some examples.  
13 Here's Ben Baril working with  
14 Ms. Barak in 2019, product management  
15 people. They're talking about, oh,  
16 what else can we do? Yeah, here's  
17 what we can do on integration. Can I  
18 play with it a bit.  
19 The people in India, remember  
20 what they are studying. They're  
21 take-away is from our study of Appian,  
22 which they got using all those  
23 cousins's credentials from Appian  
24 business partners. Can we do this,  
25 can we do that, and reach our

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1 Plaintiff - Closing (Mangi)  
2 platform?  
3 Now, they admit that what they  
4 were doing was wrong, at least  
5 sometimes. And let's look at that  
6 evidence.  
7 Look at what Mr. Trefler says.  
8 And we danced around a little bit, but  
9 I played for you his sworn deposition  
10 testimony where he says: I don't  
11 think it was appropriate to hire  
12 Zou -- talking about Petronio.  
13 Why not? He didn't check he was  
14 fully clear.  
15 I said to him: I just want to  
16 understand what your testimony is  
17 going to be at trial. You're not  
18 going to show up and say, no, no, it  
19 was appropriate. This was all fine?  
20 I wouldn't say it.  
21 That's their CEO. You have to  
22 decide if this was right or not. Take  
23 his word for it.  
24 He did have access he was  
25 permitted to share. Mr. Trefler

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1 Plaintiff - Closing (Mangi)  
2 Census opportunity, you know, he  
3 talked about his grand idea that he  
4 got to access government systems, just  
5 like Mr. Zou had for Appian. Well,  
6 what if someone offered you money to  
7 let them use your credentials?  
8 He says: I would have reported  
9 them to the US Department of Commerce.  
10 So these are their own  
11 employees.  
12 What about Mr. Zou? You know,  
13 Mr. Zou, he doesn't want to come  
14 straight out and say, what I did was  
15 wrong, but he comes pretty close:  
16 Even using your personal laptop, you  
17 only had credentials because it was  
18 through your employer, right?  
19 He said: Yeah.  
20 We said: You only got access  
21 because you were working on government  
22 projects for all these government  
23 contractors? Yeah.  
24 He admits that his user ID,  
25 which was the same throughout, moved

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1 Plaintiff - Closing (Mangi)  
2 himself says: I've seen evidence that  
3 suggests that Zou did things for which  
4 he was not entitled.  
5 Interesting fact, Ben Hoffman,  
6 we played his deposition. He showed  
7 up after the Zou stuff, and he worked  
8 in competitive intelligence. He  
9 didn't know about the Zou stuff,  
10 right?  
11 But look at what he said: Did  
12 you ever try to contact someone about  
13 Appian software? No, because I  
14 wouldn't feel comfortable doing that.  
15 It would be stepping over my personal  
16 ethical boundaries.  
17 He doesn't even know they'd  
18 already done it. Do you want know how  
19 pervasively they were using this  
20 stuff, why it was gold dust? Even  
21 this guy, we showed you his  
22 deposition, was circulating the  
23 Zou-created documents. He just didn't  
24 know where they'd come from.  
25 Mr. Oleksiak, who worked on the

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1 Plaintiff - Closing (Mangi)  
2 with him from employer to employer.  
3 He admits it was associated with  
4 Serco. Yeah.  
5 And we say to him: Can you use  
6 your employer's property to make money  
7 on the side? And he admits, no.  
8 Even he, on some level, knows  
9 what he did was wrong.  
10 What about the later stuff?  
11 Well, Mr. Trefler, is this okay what  
12 Mr. Baril is doing? And he says, no,  
13 he shouldn't have done it.  
14 Masking your identity --  
15 remember, that's the phrase from the  
16 Code of Conduct -- isn't that exactly  
17 what these guys are doing? Yes, they  
18 shouldn't have done it.  
19 Take his word for on whether it  
20 was right or wrong on that issue.  
21 What about all the cousins of  
22 Mr. Sarada, right. He was using the  
23 purloined credentials. Shouldn't have  
24 done that either.  
25 Even the people down in India,

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1 Plaintiff - Closing (Mangi)  
2 you know, Vijay Vaddem, remember,  
3 ladies and gentlemen, you know, these  
4 are the people who they decided to  
5 discipline. Not the people sitting in  
6 America, the Treflers or Schuermans.  
7 It's these guys. Even he admits,  
8 shouldn't have done it.

9       Where does the buck stop, with  
10 the man who sets the culture and the  
11 tone of the company, Paul Foon, right  
12 there. He's responsible for this  
13 scheme.

14       Now, what do they say to defend  
15 against all of this? They are going  
16 to talk about that, and then I'll come  
17 back again and I'll talk about it  
18 more. But let me give you a preview.

19       One thing they say is they say,  
20 oh, you know, nothing to see here. We  
21 already knew all of this.

22       Okay. Show me. Where are the  
23 documents?

24       They showed you this one  
25 document from 2010. Well, ladies and

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1 Plaintiff - Closing (Mangi)  
2 about unified management chart-making  
3 issues, what is your basis for saying  
4 we knew about this?

5       And what does he explain? He  
6 says, well, we were making assumptions  
7 that Appian had these limitations  
8 because we talked about ourselves and  
9 we weren't hearing anything back from  
10 the market.

11       I mean, that is how tenuous  
12 their argument is when they say, we  
13 knew about all of this.

14       And we point out that they're  
15 going to say, so this is just  
16 assumptions because you didn't have  
17 access to the live running version?  
18 And he says, yes, we did.

19       And then after you got the  
20 access, then you no longer had to rely  
21 on the site because you could see it?  
22 He admits it, yes.

23       And he did this on all of these  
24 issues, right? He talked about chart  
25 types: Well, you know, they don't say

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1 Plaintiff - Closing (Mangi)  
2 gentlemen, we can look at that all day  
3 long, there's nothing about the trade  
4 secrets that we know came from Zou.

5       Look at the examples. This is  
6 what they showed you. They said,  
7 yeah, we knew about KX Systems.

8       So what? We don't claim that  
9 was a secret.

10       They say, oh, you know, we knew  
11 that they lacked AES.

12       Who cares? That's got nothing  
13 to do with the issues in the case. If  
14 there was, they would have shown you.  
15 There's nothing in those documents on  
16 these trade secrets.

17       Here's another one. All they  
18 knew about was that there's kdb+. So  
19 what?

20       Mr. Schuerman, he basically  
21 admitted all of this. He showed you  
22 these two documents, but they don't  
23 talk about the checkpointing settings.  
24 Nope, they don't.

25       We asked him, you know, what

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1 Plaintiff - Closing (Mangi)  
2 anything in those older documents  
3 about these specifics on chart types,  
4 do they? No, he admits it.

5       They didn't know this before,  
6 you know. Where did you get it from?  
7 Mr. Zou could run at our behest, he  
8 admits it.

9       You know where this came from.  
10 Those documents they are showing you,  
11 the predocuments, what about process  
12 ID, did you know that? No, we learned  
13 that from Zou, too.

14       Then you have Dr. Easttom.  
15 Let's spend a moment on him.  
16 Remember, this is a guy who says to  
17 me: I was working full time, 60 hours  
18 a week, and in the same three-year  
19 period, from online universities, I  
20 got myself three Ph.D.s and a master's  
21 degree.

22       Who do you think is credible  
23 here? Is it this guy or Dr. Cole?  
24 I'll leave it up to you.  
25       Look at what else he said on the

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1 Plaintiff - Closing (Mangi)  
2 topic of his credibility, you know, he  
3 says: I'm independent. I'm not here  
4 to help Pega. I'm so independent I  
5 don't even talk to anyone at Pega.  
6 Look at what he says: Using  
7 fake names, is that all okay?  
8 He says: I don't know of a  
9 standard it violates. It's well  
10 within the bounds of proper  
11 competitive intelligence.  
12 Dr. Cole said the opposite. Who  
13 do you think is credible?  
14 And then, don't forget this,  
15 ladies and gentlemen, he is the man  
16 for Pegasystems. He fits with them to  
17 a T. He himself used a fake name to  
18 try and get access to Appian, and it  
19 got revoked right away because their  
20 security measures are that good. But  
21 he tried, and he knew that there are  
22 Terms of Use that prohibited what he  
23 was doing.  
24 He made a false representation.  
25 He violated the Terms of Use. His

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1 Plaintiff - Closing (Mangi)  
2 It's not showing anything.  
3 Remember, he's saying, this was  
4 all out there throughout the time  
5 period. This document, what he showed  
6 you, remember what you were instructed  
7 by the Court, this is for the purposes  
8 of what was in the public domain five  
9 months ago.  
10 So they want to say from  
11 Dr. Easttom, oh, all of this was out  
12 there, no secret. Well, two answers:  
13 One, then, why were you doing all of  
14 this; and number two, show me, where  
15 is it? They haven't shown you a  
16 thing.  
17 Mr. Petronio, he told you, I  
18 know how to use Google. I was keeping  
19 up with the public sources. Wasn't  
20 enough, it wasn't what he needed.  
21 Remember, he wanted the access.  
22 Then we have Mr. Pinto, don't  
23 forget Mr. Pinto. Remember, he's the  
24 guy they hired to rebut Dr. Marshall.  
25 That's his own job, right? Say no

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1 Plaintiff - Closing (Mangi)  
2 answer, absolutely. Is this still the  
3 conduct you'd expect from an expert  
4 coming to testify in court? Have you  
5 ever seen anything like this?  
6 Look at what he then says, he  
7 says to you: All of this information  
8 is out there, it's on Google. There's  
9 no secret. You know, I did web  
10 searches, found everything before my  
11 coffee got cold.  
12 Okay. Great, Dr. Easttom. Now  
13 show me. Remember what the judge  
14 said, don't rely on speculation, rely  
15 on evidence. Show me.  
16 What does he show you? He shows  
17 you this document, nothing about any  
18 of the trade secrets at issue. He's  
19 trying to throw up smoke.  
20 Process model, Dr. Marshall told  
21 you explicitly, yeah, process model,  
22 that's not a secret. Social, well,  
23 it's actually a part of the  
24 out-of-the-box, integrated business  
25 rules, process registry, who cares?

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1 Plaintiff - Closing (Mangi)  
2 improvements were made in the versions  
3 of the Pega platform.  
4 So, you know, remember, this is  
5 a tech company, Pega. These are their  
6 own products. What's the most basic  
7 thing they could have done to try and  
8 prove their case? Get someone to  
9 study the platform and say, I've  
10 looked at the platform. I can tell  
11 you none of this stuff was here or  
12 this stuff was there before, right?  
13 That's how you tell, you look at  
14 the platform. What did Pinto do?  
15 Look at this. He did not build  
16 in any platforms. Why do you think  
17 they didn't have him do that? If you  
18 want to compare Marshall and Pinto and  
19 decide who you want to believe, who  
20 did the work?  
21 Notice all those details I  
22 showed you, smart shape, CDTs, and you  
23 remember the level of detail  
24 Dr. Marshall -- and not just in the  
25 opinions, he explained where it came

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1 Plaintiff - Closing (Mangi)  
2 from, how it works. He showed you the  
3 images in the platform.  
4 What did Mr. Pinto give you? He  
5 gave you a picture of a see-saw. This  
6 is what he gave you, and he says, oh,  
7 you know, features and functions  
8 versus usability and you've got to  
9 pick one or the other.  
10 Maybe that's how it works in  
11 Pega. That's not how it works in  
12 Appian. That's the whole point.  
13 Appian showed you can have both.  
14 That's why they came to Appian.  
15 On the specific issues  
16 Dr. Marshall talked about, he's the  
17 guy there to rebut Dr. Marshall. He  
18 gave you nothing. Why?  
19 He also says, remember, he says,  
20 oh, no one would look at Appian. We  
21 said, well, what about document after  
22 document where they're looking at  
23 Appian to consider improvement? He  
24 admits, yeah, you showed me that.  
25 You decide who you want to

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1 Plaintiff - Closing (Mangi)  
2 partners.  
3 And even those templates that  
4 they showed you, the unsigned ones,  
5 look at them, they're full of  
6 restrictions and protections. Only  
7 named users with a need to know and  
8 are subject to binding agreements can  
9 have access. Anyone who is getting  
10 access has to agree to the Terms of  
11 Use.  
12 Mr. Ross told you that, too.  
13 In these agreements, there are  
14 confidentiality provisions, again,  
15 detailed protections of the kind you  
16 saw in the earlier agreements.  
17 They also showed you templates  
18 of Business Partner Agreements, again  
19 unsigned, not a shred of evidence of  
20 any trade secret ever being disclosed,  
21 but same stuff throughout, all the  
22 same protections, confidential  
23 information.  
24 Now, then in their opening  
25 statement, they said to you, Mr. Zou,

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1 Plaintiff - Closing (Mangi)  
2 believe between these two experts,  
3 credibility.  
4 Then they say, oh, you know,  
5 there are these VASP Agreements.  
6 Remember, they showed you all these  
7 blank templates. Zero evidence of  
8 anything that happened in the market,  
9 zero evidence that any of these trade  
10 secrets were ever discussed in any  
11 meeting with anyone.  
12 But what do they say? Well,  
13 Mr. Ross explained what this was all  
14 about. Look, these VASP Agreements,  
15 they're just so that some of Appian  
16 partners, they build solutions using  
17 Appian, they wanted to be able to  
18 market their solutions.  
19 Zero evidence of any Appian  
20 trade secret being disclosed. And by  
21 the way, these are not the agreements,  
22 just to be clear, that relate to the  
23 work Zou was doing. These are  
24 separate, unrelated agreements that  
25 happened to be with other business

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1 Plaintiff - Closing (Mangi)  
2 he was an authorized user who was  
3 given free trial to use on his own  
4 computer. It was their lawyer, Pega's  
5 lawyer who told you that. That was  
6 their defense.  
7 What did you hear from Mr. Zou?  
8 I didn't have a free trial. I never  
9 used a free trial.  
10 Here in openings, we lawyers, we  
11 made promises to you. And then with  
12 the evidence, we've got to prove those  
13 promises. Remember, I told you the  
14 documents will guide you to the truth.  
15 That's the promise I made. This is  
16 the promise that they made.  
17 Here's another promise they made  
18 to you. Remember, this slide from  
19 their opening? They said, oh, Appian  
20 has terrible security. Look at all of  
21 these users who they let into the  
22 trial.  
23 Remember, Mr. Ross looked at  
24 each one of these and explained them  
25 to you, look, all of these, he

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1 Plaintiff - Closing (Mangi)  
2 testified, yeah, I looked at the full  
3 record and confirmed they're  
4 legitimate users. One wasn't, and  
5 Appian security was so good we blocked  
6 that one before access.  
7 They can't show you one example  
8 of anyone getting illicit access,  
9 other than this. This was how tight  
10 Appian security was.  
11 Then, look at all of this. They  
12 say, oh, it was software. How can  
13 software be a secret? But their own  
14 expert Mr. Pinto says, yeah, you can  
15 have trade secrets in the presentation  
16 there.  
17 This is Pega's own document.  
18 This is what they say about their own  
19 software and documentation. Look at  
20 what they say. It's confidential,  
21 subject to your license agreement.  
22 That's what they think about their own  
23 software.  
24 And, you know, when their  
25 experts say, oh, but developers could

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1 Plaintiff - Closing (Mangi)  
2 access, every time they logged in.  
3 They say, oh, Mr. Petronio, he  
4 wasn't very good. At the time, they  
5 thought he was great. Nicely done,  
6 JP. They used all of his stuff.  
7 And then, you know, they attack  
8 Mr. Ross because they say, oh, you  
9 know, you're in deposition looking not  
10 at Appian materials, not at videos --  
11 because they hadn't given the videos  
12 to us yet -- just looking at the  
13 attack documents, we would like you to  
14 pluck out every trade secret then and  
15 there.  
16 And Mr. Ross explained it, I  
17 haven't seen the videos. I need the  
18 videos to be able to know what  
19 happened here. And he explains it,  
20 when I reviewed the videos, then it  
21 was very clear exactly what happened.  
22 On our documentation, was it  
23 made public? Yeah, in 2017, some of  
24 it was, but not all of it. The  
25 platform where the key secrets reside,

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1 Plaintiff - Closing (Mangi)  
2 see this. It's readily ascertainable  
3 to developers. How can it be a  
4 secret?  
5 The judge has instructed you,  
6 the number of users who can access  
7 from Forum is not relevant to any  
8 issues in this case. Why? Because  
9 they are all under license. If they  
10 are under license, that is how  
11 software companies protect themselves.  
12 Nothing wrong with that. Doesn't go  
13 to whether it's a secret.  
14 And then what does Mr. Trefler  
15 say about those agreements? He says,  
16 oh, they are garbage. They are  
17 garbage, but he doesn't say that about  
18 their own agreements.  
19 Their own agreements, they're  
20 important to protect them from getting  
21 sued.  
22 And, you know, what about all  
23 the fake names? Remember, those  
24 people, they had to check and agree to  
25 the Terms of Use, no competitor

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1 Plaintiff - Closing (Mangi)  
2 never made public because that  
3 protects our revenue.  
4 And then Mr. Akgonul says, oh,  
5 you know, our platforms are so  
6 fundamentally different, we would  
7 never look at anything from a  
8 competitor.  
9 Okay. Remember what happened  
10 when Mr. Baril told his product  
11 management colleagues that, oh, you  
12 know, I got access to an Appian trial,  
13 they so much interest that he sent  
14 this meme from Arrested Development  
15 say, oh, I've made a huge mistake  
16 because now everyone wants to know  
17 about Appian.  
18 They want to tell you they had  
19 no interest in this, look at what  
20 their own document says.  
21 And the people in India, don't  
22 forget them. They're sharing around  
23 all of this Appian information.  
24 There's Mr. Bixby responding:  
25 Excellent. Thanks for sending this.

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1 Plaintiff - Closing (Mangi)  
2 Anything we could use in 8.6?  
3 Let's talk now about the  
4 calculation of damages.  
5 Mr. Ross told you about why this  
6 hurt Appian so much, right? It's the  
7 gold dust they used competing against  
8 us and they can steal our secrets to  
9 improve their own platform.  
10 And here's a very important  
11 point, ladies and gentlemen, now the  
12 judge has explained once we've shown  
13 that they misappropriated our  
14 information, what's the burden on us?  
15 We have to show, by the greater  
16 weight of the evidence, Pegasystems's  
17 sales. We've just got to show the  
18 sales that they made. The burden is  
19 then on them.  
20 Pegasystems has the burden to  
21 show that any portion of their sales  
22 were not attributable to the trade  
23 secrets.  
24 So if any of their sales that  
25 they say were innocent, untainted by

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1 Plaintiff - Closing (Mangi)  
2 there's a couple of ways you can look  
3 at this.  
4 On direct competition, if you  
5 just look at those opportunities, here  
6 are the important numbers. We'll name  
7 some of these later.  
8 He said \$479,029,000, that's a  
9 direct competition number. But if you  
10 look at the platform improvements,  
11 then the damages number for unjust  
12 enrichment, \$3,032,847,000.  
13 And let's not forget about  
14 Mr. Zou, right? His number, 23,608.  
15 Okay. How does he get there?  
16 So on the direct competition, he  
17 looked at the number of competitions,  
18 he told you in detail,  
19 Mr. Malackowski, about why this was  
20 all infected.  
21 Use your own ego. If you know  
22 your enemy and know yourself, you will  
23 not be imperiled in a hundred battles  
24 or 202 battles as they say.  
25 And remember, they kept saying,

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1 Plaintiff - Closing (Mangi)  
2 this, it's on them to prove that, and  
3 they have to show any expenses to be  
4 deducted. Very important point.  
5 How does that work as a  
6 practical matter? I'm going to show  
7 you an illustration of that.  
8 So Appian has the burden of  
9 showing Pega sales, right? So here  
10 are the customers. Here are the sales  
11 Pega's making. We got to show that  
12 and Mr. Malackowski did.  
13 Pega then has the burden to  
14 show, you know, there's some part of  
15 this that's untainted by the trade  
16 secret, so we should take that out.  
17 So when you see in the graphic,  
18 okay, if they can show that, you take  
19 that piece out. But everything that  
20 is then left, where does that go.  
21 That is the unjust enrichment  
22 damages back to Appian; so that is how  
23 this is supposed to work.  
24 Now, what did Mr. Malackowski  
25 tell you? He calculated -- look,

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1 Plaintiff - Closing (Mangi)  
2 oh, use this information, we'd never  
3 use this information.  
4 So remember, they've got to show  
5 you if any of their sales are innocent  
6 and untainted, right?  
7 So what are their favorite  
8 examples that they say were innocent?  
9 They didn't give you numbers on any of  
10 them, but let's just look at a couple  
11 of them.  
12 They said that the Census  
13 project, innocent and untainted.  
14 What did Mr. Oleksiak say? He  
15 said while he's working on Census  
16 project, he's downloading all the Zou  
17 materials. He says that it's an  
18 interesting war chest of materials,  
19 the stuff from Zou, while working on  
20 Census. He is working with Lockheed  
21 Martin on this.  
22 He says: I'm familiar with all  
23 of this information. He says he's  
24 having continuous conversations with  
25 Pega's competitive intelligence team

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1 Plaintiff - Closing (Mangi)  
2 while working on Census. Doesn't  
3 remember what they talked about.  
4 And he says -- remember, we went  
5 through all of the people on Census  
6 who were working with Zou? There's a  
7 whole host of them: Louis, Bixby,  
8 Leon. And he says: Did you tell them  
9 that they didn't bring information  
10 from this into the Census?  
11 He can't. He admits it.  
12 And then, you know, he put up  
13 this report Census had prepared, and  
14 we showed you other things even in  
15 that report that refer to the Zou  
16 work. But he says at the time Census  
17 drafted this, did they know about  
18 this?  
19 No, they didn't. Of course  
20 there's no reference in the report.  
21 You can see how that sale was tainted.  
22 Then remember this? Mr. Kay at  
23 the end asking his own witness  
24 questions. He wanted to kind of seal  
25 the deal.

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1 Plaintiff - Closing (Mangi)  
2 untainted.  
3 Then Mr. Malackowski, it's not  
4 on him to do the revenue deductions,  
5 but he does them because he's being  
6 thorough. That's the number he gets  
7 through the calculation, \$479,029,000.  
8 Their own expert, he says, well,  
9 you know, there are a couple of other  
10 adjustments I think you've got to  
11 make. You've got to take out  
12 incumbency like Bank of America  
13 because there's no way Appian could  
14 win it once you're an incumbent.  
15 You saw the documents, fight of  
16 our lives. Those are real  
17 competitions. The whole reason  
18 they're on our list is because one of  
19 the other company's systems identified  
20 it as a real competition. That one's  
21 bogus.  
22 Then he said customers  
23 specifically -- that's why he's taking  
24 out things like Rabobank, nothing to  
25 do with the trade secrets.

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1 Plaintiff - Closing (Mangi)  
2 So he sat there, oh, you didn't  
3 find these documents useful, did you,  
4 in the competition, the Zou documents?  
5 And look at what he said. He  
6 said: Yeah, you know, it was  
7 directionally helpful.  
8 He admits it.  
9 What about Amazon? Another  
10 example they talk about. They were  
11 sent presentations that Petronio put  
12 together with Zou. Mr. Bearden  
13 connected these to the Zou work. They  
14 used it at Amazon, and they used these  
15 Appian documents.  
16 But look at what the CEO of  
17 Appian is saying: Were we even aware  
18 this was happening?  
19 Of course Appian was taken by  
20 surprise. They didn't know about what  
21 the other side had.  
22 And look, what was Amazon then  
23 expressing concerns about  
24 infrastructure? Where did all the  
25 trade secrets go to? That wasn't

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1 Plaintiff - Closing (Mangi)  
2 But even after he does those  
3 bogus deductions, their own expert is  
4 saying it should be \$187 million in  
5 damages to Appian. You know, if there  
6 is a floor, that's what their own  
7 expert says, but it's bogus  
8 deductions.  
9 These are the categories of  
10 costs that Mr. Malackowski deducted,  
11 just so we're clear, same ones that  
12 their expert did.  
13 Now, let's talk about the real  
14 issue here: The product improvement  
15 category. You know, Mr. Malackowski  
16 went through the revenues. He talked  
17 about how he -- he was very  
18 conservative. He eliminated revenues  
19 for contracts that closed before Zou  
20 even if the revenues came in later on,  
21 right?  
22 So he took those revenues and  
23 then he deducted the appropriate  
24 expenses that are tied to that  
25 revenue. And remember,

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1 Plaintiff - Closing (Mangi)  
2 Mr. Malackowski specializes in trade  
3 secret and intellectual property  
4 calculations.  
5 Their expert Mr. Platt, he said:  
6 Maybe I did one or two cases many  
7 years ago.  
8 Who do you want to go with?  
9 And he came to the number  
10 finally, \$3,032,847,000. Remember  
11 now, again, the burden's on them. If  
12 they want to show you some of those  
13 sales were innocent, right, because  
14 it's about some other feature than  
15 ours, they have to show that.  
16 Their expert Mr. Platt, he said:  
17 I haven't even tried to do that.  
18 He hasn't even tried to  
19 apportion between things tied to trade  
20 secrets or not. He didn't do that.  
21 All he did is he said: Well,  
22 you've got to deduct all the costs.  
23 But remember what he said? He  
24 said: Oh, no, it's all dependent on  
25 how much you spend. If you're a

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1 Plaintiff - Closing (Mangi)  
2 misappropriation, they've got to give  
3 that back. You can't steal money and  
4 then say, oh, sorry, I spent it. I  
5 would rather call a doctor than give  
6 it back to you.  
7 Once again, Mr. Zou, right, he  
8 also made money, \$23,608.19.  
9 Now briefly, coming to the end  
10 of this, let me talk about the  
11 Computer Crimes Act claim. This is  
12 important, ladies and gentlemen,  
13 because we want them to be accountable  
14 under the law for what they did, and  
15 it fit and satisfy the computer crime.  
16 The question is: Did they use a  
17 computer network without authority  
18 after 2015 to obtain property by false  
19 pretenses or converting the property  
20 of another? Absolutely they did.  
21 Why? Computer network just  
22 means two computers connected. Of  
23 course they were doing this to get the  
24 trial access.  
25 Converting property, various

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1 Plaintiff - Closing (Mangi)  
2 misappropriator and you spend all your  
3 money, then there's nothing for the  
4 victim. If you save \$5 billion, same  
5 situation, they can have \$5 billion.  
6 Does that make a moment of sense  
7 to you?  
8 Pega is hiring the Goo Goo  
9 Dolls. If they are hiring Train, oh,  
10 it's fine. Spend as much as you can.  
11 Don't leave anything for the victim to  
12 recover. That's not how this can  
13 work.  
14 Mr. Malackowski gave you the  
15 right cost deduction. These are the  
16 categories he deducted, the same  
17 categories that both experts used on  
18 the smaller number, and he explained  
19 why that makes sense, right?  
20 Because when you look at their  
21 tax returns, they show a loss. That  
22 doesn't mean they didn't get a  
23 benefit. They just took that money  
24 and redeployed it.  
25 So if you find there was

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1 Plaintiff - Closing (Mangi)  
2 definitions, but exerting control over  
3 property in denial or inconsistent  
4 with the owner's right contrary to our  
5 terms. Exactly what they did.  
6 Persons without authority when  
7 they know or should have known they  
8 had no right, they absolutely knew  
9 that. Mr. Baril sent himself the  
10 terms.  
11 And property includes software  
12 just to round that out for you.  
13 So clearly they satisfied all of  
14 this and, of course, Appian was  
15 injured. Mr. Ross told you why;  
16 because when they have access, they  
17 have insider knowledge, they can take  
18 our stuff and improvement it.  
19 So using all of this, ladies and  
20 gentlemen, just guide you on the  
21 verdict form you're going to have to  
22 fill out at the end of this and tell  
23 you what the questions you're going to  
24 get are.  
25 So you're going to be asked

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1 Plaintiff - Closing (Mangi)  
2 first on Count 1, misappropriation of  
3 trade secrets, who do you find for?  
4 Do you find for Appian? And I submit  
5 to you your answer to that should be  
6 yes, find for Appian.  
7 Then you'll be asked: Is it  
8 just against Pega or against Zou or  
9 both? Your answer should be both  
10 based on the record we've shown you.  
11 Then you'll be asked: What  
12 should the number be? And let me say  
13 this, ladies and gentlemen. This is  
14 up to you. Okay? You decide what  
15 number you think is appropriate based  
16 on the records you have seen.  
17 But I would submit to you based  
18 on what you have seen, and remember  
19 the shifting burdens, it's their  
20 burden to show you any sales they made  
21 were innocent. Their own expert told  
22 you he hasn't even attempted to do  
23 that.  
24 And this cost deduction, they  
25 got everything so they don't have to

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1 Plaintiff - Closing (Mangi)  
2 one piece of evidence each to remind  
3 you. You know, look at what Mr. Baril  
4 said about what Alan and Leon were up  
5 to here.  
6 He said: They are focused on  
7 destroying Appian, like making it go  
8 away for good. Willful and malicious?  
9 There you have it.  
10 Let me say this, ladies and  
11 gentlemen. Mr. Zou, he's not a  
12 criminal mastermind, no doubt, but he  
13 doesn't get a pass. Okay? Because  
14 remember what he was doing, shoulder  
15 by shoulder, he's working with Serco  
16 and Appian people by day, and by night  
17 he's selling these same secrets to  
18 which he has access, knowing he  
19 shouldn't, to Pega. He doesn't get a  
20 pass. Willful and malicious conduct  
21 for him too.  
22 And so both of those questions  
23 you should answer yes.  
24 Then you will be asked about the  
25 Computer Crimes Act and you said yes.

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1 Plaintiff - Closing (Mangi)  
2 pay anything? There is no justice in  
3 the world that should allow for that.  
4 So what should the answer here  
5 be? It should be \$3,032,847,000,  
6 exactly what Mr. Malackowski  
7 calculated. And I ask when you fill  
8 out the verdict form, so there's no  
9 confusion about numbers or zeros, that  
10 you write it out like that for  
11 clarity.  
12 And as for Mr. Zou, we wrote the  
13 number for him too, \$23,608.  
14 Now, you will also be asked:  
15 Did they act willfully and  
16 maliciously? And the standard there  
17 is very simple.  
18 Willful is when they act without  
19 regard to the rights of another  
20 knowing that injury will follow.  
21 Malicious is when a party acts with  
22 ill will or spite.  
23 The record I've just taken you  
24 through shows that in spades for both  
25 of them. Let me just show you

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1 Plaintiff - Closing (Mangi)  
2 Find your verdict for Appian against  
3 Pega. This was only against Pega.  
4 And let me be clear on the  
5 damages here. We're not asking for  
6 our money twice. Okay?  
7 We ask for our damages under the  
8 VUTSA in the way I just showed, which  
9 covers sales.  
10 But here, we want them to be  
11 held accountable in the eyes of the  
12 law for having committed the computer  
13 crimes that they did. We're asking to  
14 award us \$1 of damages to make the  
15 statement that they violated the law  
16 here.  
17 The actual damages, we're asking  
18 all of that under the misappropriation  
19 statute.  
20 Now, ladies and gentlemen, let  
21 me end here. These are all the  
22 witnesses we called in our case. It's  
23 been a while so I'll just remind you  
24 of all of them. And you will see what  
25 a record we laid before you.

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1 Plaintiff - Closing (Mangi)  
2 With all of the Pega employees,  
3 we have taken you through Mr. Trefler,  
4 all the people in India, Mr. Petronio,  
5 all the product management people, and  
6 of course, our experts, Dr. Cole,  
7 Dr. Marshall, and Mr. Malackowski.  
8 All right? This sets forth for  
9 you the record of the evidence, all of  
10 the documents, the contemporaneous  
11 documents that will guide you to the  
12 truth.  
13 And I will ask you when you  
14 deliberate on this case, right, when  
15 you go back and finally talk about it,  
16 I will ask each of you to be a warrior  
17 for what is right here. Hold  
18 shadiness and arrogance to account and  
19 ensure that Appian is properly and  
20 fully compensated.  
21 And when you now hear from the  
22 very fine lawyers representing Pega  
23 and Mr. Zou, keep this in mind.  
24 Number one, then why did you do  
25 it? And number two, show me. Don't

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1 Plaintiff - Closing (Mangi)  
2 of -- it's up to you. Do you want to  
3 go all the way through to 2:30?  
4 MR. FRANK: I doubt that's a  
5 good idea.  
6 THE COURT: Do you want to take  
7 a break at some point in the middle of  
8 your or did you want to --  
9 MR. FRANK: The alternative is  
10 to send the jury to lunch now and then  
11 I can make an unbroken presentation.  
12 I think that's my preference.  
13 THE COURT: All right. I don't  
14 know what the cafeteria is like right  
15 now.  
16 THE COURT OFFICER: Hardly  
17 anyone down at this point.  
18 THE COURT: Then we'll send the  
19 jury out for lunch early today, unlike  
20 other days, and reconvene at 1:15.  
21 MR. FRANK: That would be fine.  
22 Thank you, Your Honor.  
23 THE COURT: All right. We are  
24 in recess.  
25 (Recess taken.)

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1 Plaintiff - Closing (Mangi)  
2 just tell me. Show me the proof.  
3 Show me the evidence like we did here.  
4 After you hear from them, I'll  
5 be back. Hopefully it won't be too  
6 late. Thank you for your attention.  
7 Thank you, Your Honor.  
8 THE COURT: Ladies and  
9 gentlemen, we'll take a 15-minute  
10 recess at this point and when we come  
11 back, Mr. Frank will have the floor.  
12 (Jury exits.)  
13 (Recess taken.)  
14 MR. FRANK: Your Honor, let me  
15 ask you this. I guess we'll start up  
16 at about 12:30. When did you want me  
17 to stop?  
18 THE COURT: 12:35. No.  
19 Mr. Frank, you've got two hours and  
20 six minutes, so.  
21 MR. FRANK: So I know. I  
22 understand that, but presumably you're  
23 going to want the jury to take some  
24 lunch.  
25 THE COURT: I guess it's kind

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1 Defendant - Pega - Closing (Frank)  
2 THE COURT OFFICER: All rise.  
3 Please be seated and come to order.  
4 THE COURT: All right. Please  
5 bring the jury back in.  
6 (Jury enters.)  
7 THE COURT: All members of the  
8 jury are present. Everyone may be  
9 seated.  
10 Mr. Frank, the floor is yours.  
11 MR. FRANK: Thank you, Your  
12 Honor.  
13 Good afternoon, my name is Bob  
14 Frank.  
15 I agree with Mr. Mangi about one  
16 thing and that is that jury service is  
17 a vital, critical part of our justice  
18 system in the sense that people come  
19 to this with different backgrounds and  
20 different understandings, in the sense  
21 that they pay attention and try to  
22 reach a fair result, which is critical  
23 to the system.  
24 We thank you for that. This has  
25 been a long time, and you should know

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1 Defendant - Pega - Closing (Frank)  
2 that it's appreciated. And I'm  
3 speaking for everybody here.  
4 Ms. Spieth told you in her  
5 opening that you would see a lot of  
6 drama, and she was right. You've seen  
7 a lot of drama.  
8 But this is a trade secret case.  
9 I want to talk about what the trade  
10 secrets are, whether they were secret,  
11 whether they were adequately  
12 protected, whether there were real  
13 trade secrets in Pega's marketing  
14 materials, whether the product changes  
15 that Pega made were made just because  
16 they were in progress or completed or  
17 had been in Pega's products for years,  
18 or whether they are something that was  
19 taken or stolen from some secret from  
20 Amazon [sic]. And I want to talk  
21 about commercial realties and how they  
22 related to Appian's damage claim.  
23 So I somewhat regret that I  
24 don't have Mr. Mangi's flair, but I'm  
25 going to try to talk to you about the

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1 Defendant - Pega - Closing (Frank)  
2 layering on one thing on the top and  
3 adopting -- inheriting everything else  
4 from within the system.  
5 Now, as Appian's own documents  
6 establish, Appian lost sales to Pega  
7 because Appian's software didn't have  
8 the capabilities and features that  
9 Pega's software has.  
10 And that's not -- that's not  
11 intended as a criticism of Appian's  
12 product. Appian is a successful  
13 company. There are plenty of  
14 customers who don't need what it is  
15 that Pega brings to them; but there  
16 are also plenty of customers who do,  
17 and that's what drove Pega sales.  
18 Don't take my word for it. This  
19 is the testimony of Edward Hughes.  
20 Josh, could we put that up?  
21 This is from his videotaped  
22 testimony.  
23 No, just the sound, Josh. We  
24 can't put up the image.  
25 Do you have it or should I just

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1 Defendant - Pega - Closing (Frank)  
2 facts in this case, what they show,  
3 what makes sense, and what doesn't  
4 make sense.  
5 This case is an effort by Appian  
6 to achieve in court what Appian has  
7 failed to achieve in the marketplace,  
8 because Appian's software doesn't have  
9 certain of the product designs,  
10 product features that caused Pega's  
11 customers to want to buy from Pega.  
12 And at a very high level, those  
13 product features are the ability to  
14 build applications that can serve tens  
15 of thousands of people at the same  
16 time without the slightest risk of  
17 failure or loss of data.  
18 And the ability to construct  
19 apps that work across an entire  
20 enormous business that sells different  
21 products to different people in  
22 different locations and then allows  
23 you to expand that app to meet a new  
24 situation, a new product, a new type  
25 of customer, a new location simply by

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1 Defendant - Pega - Closing (Frank)  
2 read it? I should just read it.  
3 So during the time when you were  
4 at Appian -- this is Ms. Spieth asking  
5 Mr. Hughes these questions.  
6 So during the time when you were  
7 at Appian, at least for part of the  
8 time, were Pega and Appian competing  
9 for sales to the same customers?  
10 Answer: No.  
11 Question: Pega and Appian were  
12 not competing for sales to the same  
13 customers?  
14 Answer: Not for the same  
15 solutions, no.  
16 Were they selling different  
17 solutions?  
18 Answer: Absolutely.  
19 Question: How so?  
20 Answer: If I could use a  
21 metaphor, it's a little bit like  
22 trying to find a solution to  
23 communicate to Washington from  
24 Fairfax. One solution would be to  
25 take the subway, one solution would be

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1 Defendant - Pega - Closing (Frank)  
2 to take an automobile, another one  
3 would be to walk or take a helicopter.  
4 So are they competing?  
5 Well, no. Appian and Pega have  
6 fundamentally different technologies,  
7 so it was a different way of looking  
8 at a problem and solving it in a  
9 different way.  
10 Appian and Pega are both BPM  
11 companies, but their products are  
12 designed differently. And to a large  
13 extent, those design features are  
14 different and address different types  
15 of customers and different types of  
16 customer needs.  
17 When the drama and when the  
18 sideshows and distractions are  
19 stripped away from this case, Appian  
20 makes two extraordinary claims. One  
21 claim is that 6 out of 21 statements  
22 in the "Understanding Appian"  
23 documents and 4 of 12 entries in that  
24 "12 Challenges" document, that are  
25 referred to as marketing material,

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1 Defendant - Pega - Closing (Frank)  
2 during an almost 9-year period was the  
3 result of the capabilities and  
4 qualities of Pega's products or the  
5 result of the different capabilities  
6 of Appian's products or the result of  
7 particular customer's needs.  
8 You're asked to believe that  
9 even clients who are using both Pega  
10 and Appian, big, sophisticated clients  
11 who had their hands on both parties'  
12 software, that they made their buying  
13 decision based upon two-page marketing  
14 document and not on their own  
15 experience over a period of years with  
16 both companies' software.  
17 You're asked to believe that  
18 what Appian says were trade secrets  
19 that were used in Pega's marketing  
20 materials and sales efforts were  
21 actually trade secrets as  
22 distinguished from something that Pega  
23 had in its marketing materials before  
24 it ever met Mr. Zou.  
25 And the evidence is going to

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1 Defendant - Pega - Closing (Frank)  
2 identify weaknesses in Appian  
3 software.  
4 And that, Appian says, were the  
5 trade secrets, those 6. And then  
6 Appian says that those 6 statements  
7 out of 21 were the cause of every  
8 single sale that Pega made in  
9 competition with Appian over a 9-year  
10 period to 201 separate customers.  
11 Appian's claim is that every  
12 single time Pega won, Appian,  
13 Appian -- that is unjust enrichment.  
14 And the first question that  
15 you're going to be asked, or a  
16 question that you're going to be  
17 asked, is: Does that, does that meet  
18 the test of common sense?  
19 You're asked that no sale was  
20 attributable to any of the 15  
21 statements in the Understanding Appian  
22 documents or the other 8 statements in  
23 the 12 Challenges documents.  
24 You're asked to believe that no  
25 sale made by Pega to any customer

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1 Defendant - Pega - Closing (Frank)  
2 establish that the 6 of 21 statements  
3 weren't trade secrets at all. They  
4 were facts that Pega knew, facts that  
5 you can see in Pega's market coaching  
6 materials from before it saw, and  
7 trade secrets that Appian's own  
8 employees were unable to point out  
9 during discovery in this case.  
10 The -- Appian now says -- Appian  
11 now -- sorry -- the other thing I'd  
12 like to ask you to keep in  
13 consideration is that the marketing  
14 side of this case has said that  
15 somehow Pega discovered weaknesses in  
16 Appian's product that Appian was  
17 entitled to keep secret, was -- that  
18 Appian was entitled to broadcast to  
19 the world the good things about its  
20 product, but to take the things that  
21 were disadvantages or weaknesses or  
22 absences of capabilities and treat  
23 them as trade secrets, keep them from  
24 their customers and that, they say, is  
25 extremely valuable, that they could

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1 Defendant - Pega - Closing (Frank)  
2 hide the deficiencies in their  
3 product.  
4 And you're also asked to ignore  
5 the buying decisions of actual very  
6 sophisticated customers. Amazon,  
7 United States Census Bureau,  
8 U.S. Air Force, Bank of America, these  
9 are some of the smartest buyers in the  
10 world.  
11 And you're asked to believe that  
12 two pages of marketing materials  
13 caused them to make million-dollar  
14 purchases or larger.  
15 Now, that's the first  
16 extraordinary overreach.  
17 The second is an even more  
18 spectacular overreach, and it's an  
19 even less plausible claim.  
20 Dr. Marshall testified and  
21 Mr. Malackowski relied on the  
22 remarkable statement that without the  
23 information provided to Mr. Zou --  
24 provided by Mr. Zou to Appian in 2012  
25 and 2013, Pegasystems would have

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1 Defendant - Pega - Closing (Frank)  
2 Customer relationships didn't  
3 matter, product features didn't  
4 matter, just the points that Appian  
5 says Pega got and declares are the  
6 driving force, that's what would have  
7 taken -- that you can attribute every  
8 single sale that Pega made for the  
9 next eight years to information that  
10 was provided in 2012 and 2013, and  
11 I'll talk about that in great detail.  
12 But I want to start first with  
13 what I respectfully suggest are  
14 intentional distractions in this case.  
15 No thanks, Josh.  
16 First, it's absolutely correct  
17 that between 2017 and 2019, eight  
18 employees of Pega -- Pega has 6,000  
19 employees -- eight employees of Pega  
20 obtained copies of Appian's free trial  
21 software by misrepresenting their  
22 identities. And in the case of the  
23 Indian employees -- certain Indian  
24 employees were getting copies from a  
25 cousin one of the employees.

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1 Defendant - Pega - Closing (Frank)  
2 instantly become -- it's product would  
3 have instantly become obsolete and,  
4 therefore, every single sale that Pega  
5 made to anyone, whether or not they  
6 were in competition with Appian or  
7 competing with somebody else for --  
8 who had, gosh knows, what products  
9 they were selling, that every single  
10 sale made by Pega for the next  
11 eight years was attributable to the  
12 information that they received.  
13 According to Appian -- Appian  
14 asked you to conclude that, although  
15 Pega was, in Dr. Marshall's words, a  
16 leading supplier of BPM software in  
17 2012 and although Pega's sales had  
18 been growing, as you've seen, on a  
19 steady, indeed, rapid basis for eight  
20 or nine consecutive years up to then,  
21 that Pega would have been unable to  
22 sell anything to anybody substantially  
23 and immediately and that the product  
24 features that they point to were the  
25 only drivers of sales.

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1 Defendant - Pega - Closing (Frank)  
2 That shouldn't have happened.  
3 I'm not here to defend someone  
4 misrepresenting their identity and  
5 using that to get something that they  
6 couldn't have otherwise have gotten.  
7 That was wrong, and Mr. Trefler  
8 has acknowledged that it was wrong.  
9 And all of the employees have been  
10 reprimanded. Technical measures have  
11 been taken to make sure it doesn't  
12 happen again. But none of that is in  
13 dispute, and I'm not here to defend  
14 any of that.  
15 But it's also not what this case  
16 is about. We're talking about a  
17 period of time when Appian had made  
18 free trials broadly available to  
19 virtually anyone who asked, anyone  
20 with a .edu address, whether they were  
21 a student or not.  
22 They made copies available to  
23 IBM. IBM and IBM employees who were  
24 permitted to pass them around to other  
25 IBM employees. IBM was at the time

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1 Defendant - Pega - Closing (Frank)  
2 one of their principal competitors.  
3 At the same time, Appian had  
4 made a conscious business decision to  
5 make its documentation available to  
6 anyone who wanted to Google that  
7 documentation.  
8 And they did that, because as  
9 Dr. Marshall, their expert testified,  
10 they concluded that it was in Appian's  
11 interest, that it was beneficial to  
12 Appian to make that documentation  
13 available.  
14 And the decision was made to  
15 give real free trials, make  
16 documentation available, even though  
17 competitors could see the  
18 documentation.  
19 And Appian offered no evidence  
20 of any information obtained in those  
21 free trials that wasn't available  
22 right from the Appian website. And  
23 Dr. Easttom testified, and wasn't  
24 challenged, that everything in the  
25 memorandum that summarized what the

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1 Defendant - Pega - Closing (Frank)  
2 damages arising from those -- from the  
3 access to the free trials.  
4 And third, the proof in the  
5 pudding is that with respect to the  
6 Computer Crime -- the Virginia  
7 Computer Crimes Act, Appian told you  
8 today that they were not seeking  
9 anymore \$1 of damages. That's the  
10 statute that applies to the behavior  
11 that's in question there. And the  
12 reason that they are only claiming \$1  
13 in damages -- Mr. Mangi's statements  
14 not to the -- to the contrary  
15 notwithstanding -- is they didn't and  
16 couldn't prove any damages arising  
17 from that behavior.  
18 So that -- and a large amount of  
19 what you heard this morning was  
20 focusing attention on that, the \$1  
21 claim, and not on questions like  
22 what's a trade secret, how is it  
23 protected, was it really a trade  
24 secret, and so on.  
25 Now, the next point that I want

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1 Defendant - Pega - Closing (Frank)  
2 findings were from the free trials,  
3 which should not have happened, was  
4 readily available at docs.appian.com,  
5 where Appian's documentation was  
6 placed -- was located.  
7 Now, there are two -- three  
8 salient facts here.  
9 One, Dr. Cole, their trade  
10 secret expert, did not identify any  
11 trade secret that was obtained by the  
12 use of free trials. That's not  
13 contested.  
14 And he didn't because he  
15 couldn't, and he couldn't because a  
16 very large -- he couldn't because free  
17 trials were being offered without,  
18 without material limitations, except  
19 to Pega employees. I'm not suggesting  
20 that that makes it right for the Pega  
21 employees. It just -- the point is  
22 that it's not a trade secret issue,  
23 it's a bad behavior issue.  
24 Second, Mr. Malackowski, their  
25 damages expert, did not identify any

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1 Defendant - Pega - Closing (Frank)  
2 to make or the next distraction that I  
3 want to point to is sort of impugning  
4 various of Pega's employees,  
5 including, particularly, Mr. Trefler.  
6 In opening day of this trial and  
7 for the next two following days,  
8 three days in a row, Mr. Mangi spent  
9 pages and pages of transcript  
10 cross-examining Mr. Trefler about  
11 Mr. Trefler's use of the name  
12 "ascii0."  
13 But what he didn't say this  
14 morning but which I'm going to say now  
15 is that, first, Mr. Trefler used that  
16 as a way of getting access to  
17 materials that he could divert to a  
18 separate place so they didn't get in  
19 the way of his Pega e-mail, so he  
20 didn't get tons of e-mail.  
21 What Mr. Mangi didn't say is  
22 that anything that was secret,  
23 anything that was not available to the  
24 world was obtained by Mr. Trefler's  
25 use of the ascii0 name, nothing that

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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

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1 Defendant - Pega - Closing (Frank)  
2 deposition, what were Appian trade  
3 secrets.  
4 This is a case that had been  
5 pending for 16 months at the time,  
6 involving documents that had been in  
7 Appian's possession for months before  
8 the deposition. And he testified here  
9 at trial that at the time of his  
10 deposition, he didn't know what  
11 Appian's trade secrets were. And it's  
12 for you to judge the credibility of  
13 that statement.  
14 We also showed a clip, a short  
15 clip, of Matt Calkins' deposition.  
16 Matt Calkins is the founder and chief  
17 executive officer at Appian. At his  
18 deposition, in January of this year,  
19 that is two months before this trial,  
20 I asked Mr. Calkins to tell us what  
21 were Appian's trade secrets. And he  
22 testified under oath that he did not  
23 know what they were.  
24 His testimony, his company is  
25 claiming that it lost 201 customers to

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1 Defendant - Pega - Closing (Frank)  
2 in what we decide is a secret and what  
3 we don't. We have engineers. We have  
4 marketers to decide things like that,  
5 so I'm not involved.  
6 But I want to come back to you  
7 and say, what do you mean observable?  
8 Like, does that mean -- does that  
9 effectively mean not a secret? Is  
10 that what you're trying to say, right?  
11 But what do you mean observable?  
12 Question: I mean by observable,  
13 any capability that a developer of  
14 Appian apps could ascertain by using  
15 the product. I'm asking whether  
16 Appian considered any of the  
17 observable features and functionality  
18 of Appian Tempo to be a trade secret  
19 in 2011 and 2012.  
20 Answer: I'm just going to fall  
21 back on the core of secret. And since  
22 I don't know, I'm not going to get  
23 tangled up in what's observable or  
24 not. I just don't know where we drew  
25 the line between what we considered a

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1 Defendant - Pega - Closing (Frank)  
2 Pega over an eight-year period  
3 claiming \$479 million of unjust  
4 enrichment to Pega. And he said he  
5 was asked to identify the trade  
6 secrets that were misappropriated and  
7 responded that he didn't know.  
8 Do you believe that Appian  
9 concealed or treated as secret any  
10 observable feature or functionality of  
11 Appian's Tempo product?  
12 Answer: I can't tell you for  
13 sure what Appian considered to be a  
14 secret and protected as such with  
15 regards to the Tempo product.  
16 Can you tell me anything that  
17 Appian regarded as secret with regard  
18 to the observable features or  
19 functionality of Tempo observable by  
20 users of Tempo?  
21 The crux of that question is in  
22 the word "observable," I believe,  
23 because if you ask that question  
24 without the word "observable," I could  
25 have just said no. I'm not involved

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1 Defendant - Pega - Closing (Frank)  
2 secret in Tempo and what we thought  
3 was not a secret.  
4 Two months prior to the trial,  
5 an allegation of \$479 million of  
6 unjust enrichment and the CEO of  
7 Appian didn't know what the trade  
8 secrets were, just as Mr. Ross said at  
9 his deposition that he didn't know  
10 what the trade secrets were six months  
11 ago.  
12 That's what we're dealing with  
13 here.  
14 Now, I want to talk about what  
15 those trade secrets are claimed to be  
16 and I want to talk about whether they  
17 were secrets or not secrets.  
18 Judge Gardiner has explained to  
19 you that in order for something to  
20 qualify as a trade secret, it must  
21 derive independent economic value by  
22 not being generally known to and not  
23 being readily ascertainable by proper  
24 means by other persons who can obtain  
25 economic value from its disclosure or

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1 Defendant - Pega - Closing (Frank)  
2 use.  
3 So there are two parts to that:  
4 One, it has to have independent  
5 economic value from not being  
6 generally known to or being readily  
7 ascertainable by proper means by other  
8 persons who can obtain economic value  
9 from this disclosure and, two, it must  
10 be the subject of efforts that are  
11 reasonable under the circumstances to  
12 maintain its secrecy. Those are the  
13 tests.  
14 Now, the test is not if you keep  
15 it secret from one competitor. The  
16 test is far broader than that.  
17 The first question for you to  
18 address with respect to Appian's claim  
19 that Pega used Appian's trade secret  
20 is whether the information contained  
21 in Appian Forum from the 2012 to 2014  
22 period, whether that was actually --  
23 was an actual trade secret and, in  
24 particular, whether it was the subject  
25 of efforts which were reasonable under

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1 Defendant - Pega - Closing (Frank)  
2 Lockheed or CollabraLink not to share  
3 his knowledge about Appian software  
4 with anybody.  
5 Now, let's get to the Appian  
6 Forum which is where the supposed  
7 secrets were kept.  
8 Josh, can we put up Plaintiff's  
9 Exhibit 274?  
10 (Whereupon, Exhibit PLT 274,  
11 Appian Forum form, was identified.)  
12 MR. FRANK: This is, this is the  
13 form that Appian was using for people  
14 to register in the first instance for  
15 the opportunity to use Appian Forum.  
16 And as you can see, what it -- it is  
17 the form and certain information has  
18 to be filled in. Over on the right,  
19 you're encouraged to -- you're told  
20 about the good things about Appian  
21 Forum. And down at the very bottom,  
22 there are six things listed across the  
23 bottom.  
24 And one of them, the one in the  
25 lower left-hand corner of the slide

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1 Defendant - Pega - Closing (Frank)  
2 the circumstances to protect the  
3 information in Appian Forum.  
4 And that's relevant because  
5 that's where Mr. Zou got copies of  
6 Appian's software. That's where he  
7 accessed Appian's documentation.  
8 Now, let me start by saying that  
9 Mr. Travell is going to argue this at  
10 further length, but I want to touch on  
11 a couple of things.  
12 Mr. Zou learned a lot about  
13 Appian software when he was an  
14 employee at Lockheed Martin. Not at  
15 issue here. Then he went to work for  
16 company called CollabraLink and he  
17 worked for CollabraLink for a period  
18 of time, but he worked for -- that he  
19 was consulting for Pega. He didn't  
20 join Serco until September or October  
21 of 2012, but he started collaborating  
22 with Pega or consulting with Pega in  
23 February of 2012.  
24 And there's no evidence that  
25 Mr. Zou had any obligation either to

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1 Defendant - Pega - Closing (Frank)  
2 says: Terms of Use.  
3 Mr. Ross testified that if you  
4 clicked on those Terms of Use, that  
5 you did not get the Terms of Use for  
6 Appian Forum. Mr. Ross' testimony was  
7 that -- Mr. Ross' testimony is as  
8 follows:  
9 Question: So if you click on  
10 Terms of Use --  
11 Answer: Correct.  
12 Question: -- what do you get?  
13 Answer: Terms of Use for  
14 Appian.com website, not Forum.  
15 Question: Which are different  
16 from the Terms of Use for Appian  
17 Forum; is that right?  
18 Answer: Correct. Appian Forum  
19 Terms of Use were presented on the  
20 log-on to the Forum environment, not  
21 the registration.  
22 Okay. So let's look at the --  
23 let's look at the -- what you got when  
24 you logged on to Appian Forum.  
25 Plaintiff's 397, please, Josh.

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1 Defendant - Pega - Closing (Frank)  
2 (Whereupon, Exhibit PLT 397,  
3 Document, was identified.)  
4 MR. FRANK: Now, this is here --  
5 the only protection here is if you put  
6 in your user name and a password,  
7 which you've been given by Appian.  
8 Now I'm going to ask you to take  
9 a minute and see if you can notice how  
10 conspicuously reference is made to the  
11 Terms of Use. You'll find it in the  
12 extreme lower right-hand corner  
13 against a background that makes it as  
14 inconspicuous, I suggest, as possible,  
15 and you are not invited to read it.  
16 There's no warning that if you  
17 don't read it, you may be subject to  
18 its -- to the terms of Appian Forum.  
19 And the point here is not -- the point  
20 here, I guess, is to ask you or I  
21 suppose I could ask myself, but I  
22 probably should ask you, when you get  
23 a -- when you're offered an  
24 opportunity to -- when you get sent a  
25 new version of software on your

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1 Defendant - Pega - Closing (Frank)  
2 has firewalls and Appian has  
3 two-factor identification and Appian  
4 has a lot of other things, but none of  
5 that was the protection for Appian  
6 Forum.  
7 The protection for Appian Forum  
8 is what I just showed you. And if you  
9 assume, form a percentage in your  
10 head of how many -- what percentage of  
11 the people -- Appian, I should say,  
12 has no records of who read the Terms  
13 of Use. Appian has no records of what  
14 percentage of users use the Terms of  
15 Use, and so we are left to try and  
16 decide ourselves.  
17 Pick whatever percentage you  
18 like and then consider the number of  
19 people who never read the Appian Forum  
20 Terms of Use and, therefore, had no  
21 idea what restrictions they were  
22 under, if they were under any  
23 restrictions at all. And that's the  
24 sole protection.  
25 Now, Mr. Ross testified that

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1 Defendant - Pega - Closing (Frank)  
2 iPhone, when you buy new software,  
3 when you rent a car, do you read -- do  
4 you read those Terms of Use?  
5 And the question I'd ask  
6 yourself is: Not are you bound by the  
7 Terms of Use, but can you reasonably  
8 expect people who don't read Terms of  
9 Use to comply with the Terms of Use?  
10 In my view, that's a  
11 self-answering question. If you don't  
12 read something, you're not going to  
13 know what it says and you're not going  
14 to know what restrictions apply to  
15 you.  
16 So Appian placed that notice in  
17 as inconspicuous a place as possible.  
18 It did not warn people that they  
19 should read it. There's no evidence  
20 that they required anybody to click on  
21 anything and that, that alone is the  
22 sole protection for all the  
23 information that's on Appian Forum.  
24 Now, you're going to -- you  
25 heard during this trial that Appian

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1 Defendant - Pega - Closing (Frank)  
2 Appian users were required to accept  
3 Appian Forum Terms of Use before they  
4 got access to Appian Forum. But  
5 Appian has never shown us any document  
6 that contains those terms, that  
7 contains that requirement. And if  
8 there were any, you can be sure that  
9 we would have been shown such a thing.  
10 I asked Mr. Ross if he could  
11 identify any such document, and he  
12 told me he could not.  
13 I understand that Mr. Travell is  
14 going to be coming after me, but it's  
15 also my understanding that he's going  
16 show you a clip that will show Mr. Zou  
17 logging on and you can see what he  
18 encountered. And to deprive  
19 Mr. Travell of the drama associated  
20 with showing that, I suspect you're  
21 not going to see anyone being  
22 presented with the Terms of Use to  
23 consider.  
24 Now, so that's the first  
25 question: Is the source of the

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1 Defendant - Pega - Closing (Frank)  
2 material that Mr. Zou obtained  
3 adequately protected?  
4 Mr. Mangi did not address that  
5 question. He'll have a chance after  
6 me and we'll see what he says.  
7 The second question is: Are the  
8 things that are said to be trade  
9 secrets, were they something that Pega  
10 learned from Mr. Zou or did Pega know  
11 those things before it ever met  
12 Mr. Zou?  
13 And there were six identified by  
14 Dr. Cole. I'm going to go through  
15 each one of them one at a time and try  
16 to show you exactly what -- what the  
17 statement was in the Understanding  
18 Appian document that's said to be a  
19 trade secret and compare that against  
20 what the documentary evidence of what  
21 Pega knew in the period of time 2010  
22 or 2011 before it had any contact with  
23 Mr. Zou at all.  
24 Now, Josh, let's go to Slide 1,  
25 first.

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1 Defendant - Pega - Closing (Frank)  
2 subject matter so that you can look  
3 for them yourself. I will be  
4 incapable of smoke and mirrors here  
5 because you're going to have  
6 everything right in front of you.  
7 Slide 3, please, Josh.  
8 (Whereupon, Exhibit PX 580,  
9 Document, was identified.)  
10 MR. FRANK: This is taken from a  
11 document which is PX 580 and it's in  
12 evidence. And I asked Mr. Schuerman  
13 about it at his deposition. And what  
14 I'm showing you is --  
15 Actually, Josh, could we  
16 first -- maybe it would be helpful to  
17 show the jury the cover of PX 580 so  
18 that they understand what they are  
19 looking at and then we'll go back to  
20 this slide. It must be the next --  
21 yes. Yes, thanks. And would you just  
22 blow up the half of the page?  
23 This is Appian attack plan,  
24 April 2010, written by Mr. Petronio,  
25 the man who said he learned everything

Page 8203

1 Defendant - Pega - Closing (Frank)  
2 (Whereupon, Exhibit PX 210,  
3 Document, was identified.)  
4 MR. FRANK: That's -- you'll  
5 recognize that. That's PX 210.  
6 You've seen it lots of times. It's  
7 the Understanding Appian document,  
8 sometimes called an Appian technical  
9 brief.  
10 And the first of the -- the  
11 first of the so-called trade secrets  
12 is said to be found in the first  
13 paragraph with a headline on the top  
14 of it, the one that says: All  
15 in-flight processes and application  
16 logic lives in a risky in-memory  
17 database with undesirable tradeoffs.  
18 What I'm going to do in each  
19 case is present to you on the  
20 left-hand side of the screen the  
21 statement that is said to be a trade  
22 secret, put up on the right-hand side  
23 of the screen documents that  
24 preexisted Pega's contact with Mr. Zou  
25 and show you what Pega knew about the

Page 8205

1 Defendant - Pega - Closing (Frank)  
2 brand-new from Mr. Zou. This is  
3 written by Mr. Petronio and you'll see  
4 that it's sourced to publicly  
5 available materials. And I'm going to  
6 be asking about internal pages in this  
7 document as we go along.  
8 So let's go back to Slide 3,  
9 please, Josh.  
10 This is from Page 4 of the  
11 document that I just showed you.  
12 And perhaps you could help us a  
13 little bit by blowing up the very  
14 first of the entries on the right  
15 side.  
16 Referring to Appian, it says:  
17 They use a proprietary database of a  
18 strategic partner, KX Systems, see  
19 www.KX.com.  
20 And the third line down is:  
21 Large memory requirements for the  
22 machine and if there is a failure,  
23 data can be lost.  
24 Now, bring that down in size and  
25 blow up the next.

Page 8206

1 Defendant - Pega - Closing (Frank)  
2 That is a drawing of the  
3 architecture of Appian's system from a  
4 publicly available source, and the  
5 thing that is second from the right is  
6 a drawing of Appian's in-memory  
7 database. And you can see all of the  
8 data going into that database and out  
9 of that database which is right in the  
10 center of the architecture.  
11 And then the third thing in the  
12 same document, which refers to the  
13 in-memory database, is at the bottom  
14 and it says: Realtime data tier, a  
15 unique feature of Appian Enterprises,  
16 is its realtime in-memory database. I  
17 think it's our real in-memory  
18 database. It's very fast slash --  
19 it's very fast read/write access  
20 supports both realtime process  
21 performance, monitoring, and system  
22 error recovery. The realtime  
23 in-memory database realtime  
24 synchronous transaction allows for  
25 capture of all events that occur

Page 8208

1 Defendant - Pega - Closing (Frank)  
2 potentially in the in-memory database  
3 if there is a failure. The shorter,  
4 the lesser the amount of data that's  
5 at risk. But as Dr. Montgomery [sic]  
6 testified yesterday, it was well known  
7 that the moving checkpointing slows  
8 the process down so that there is a  
9 kind of a known tradeoff between those  
10 two things.  
11 Now, what did Pega not know  
12 about the all in-flight processes?  
13 What did they -- the only thing that  
14 Pega did not know, and Mr. Schuerman  
15 acknowledged this forthrightly, is the  
16 time interval between checkpoints,  
17 which everyone agrees is a default  
18 setting in which the customer can  
19 change, depending upon the customer's  
20 own judgment as to what the right  
21 amount of risk and cost, cost is.  
22 And as I think the example  
23 Mr. Schuerman gave, if your phone is  
24 set -- if your phone when you first  
25 get it is set to ring, give you a ring

Page 8207

1 Defendant - Pega - Closing (Frank)  
2 between in-memory checkpoints.  
3 So there's the knowledge of  
4 checkpoints. And it's undisputed that  
5 with checkpoints go a set of  
6 tradeoffs.  
7 On the one hand, there -- an  
8 in-memory database, as Dr. Cole  
9 testified and as Dr. Marshall  
10 testified yesterday, run the risk of  
11 data loss because if the server goes  
12 down, whatever is in the in-memory  
13 database at the moment the server goes  
14 down is lost, same as you could lose  
15 something if your own laptop goes  
16 down.  
17 The reason for checkpointing is  
18 that if you can move data out of the  
19 in-memory database on a periodic basis  
20 and move it to disk, you can put that  
21 much data beyond risk, but there's new  
22 data coming in so there's always some  
23 risk of data loss.  
24 The longer between checkpoints,  
25 the greater the amount of data

Page 8209

1 Defendant - Pega - Closing (Frank)  
2 tone, that's the default setting. You  
3 can switch to the phone shouldn't ring  
4 simply by flicking a switch and  
5 because a default setting is a default  
6 setting and it's changeable by the  
7 customer.  
8 And as Mr. Schuerman testified,  
9 the commercial value of knowing what  
10 the default setting is zero because if  
11 you attack the customer by the choice  
12 of the default setting, all they do is  
13 change the default setting. There's  
14 no commercial value to that.  
15 Nevertheless, there's one bit of  
16 information, perhaps not enough to  
17 drive all sales to 201 customers over  
18 the next eight years.  
19 Here's the second, the --  
20 Josh, can you take that down?  
21 And the second is -- the second  
22 so-called trade secret is Appian's  
23 integration is limited and requires  
24 time-consuming workarounds.  
25 On the left side is the text

Page 8210

1 Defendant - Pega - Closing (Frank)  
2 from the Understanding Appian  
3 document. And as you can see that it,  
4 it is criticizing Appian for  
5 supporting a small number of  
6 integration connectors and services.  
7 And I'll give just a little time to  
8 read it so you understand what the  
9 context is and so you're confident  
10 you're getting it yourself.  
11 And then I'm going to ask Josh  
12 to blow up what's on the right, which  
13 is taken from another document that  
14 Mr. Petronio created prior to meeting  
15 Mr. Zou.  
16 And perhaps we can put that the  
17 cover sheet of that up, Josh -- it's  
18 DX 1695. And its title is Why Appian  
19 is Not the Choice for Enterprise BPM.  
20 And the excerpts that I have are  
21 Slides 62, 66, and 67. They should be  
22 in Slide 5, please, Josh.  
23 So the criticism on the left in  
24 the marketing materials that are  
25 excluded is: Appian supports a small

Page 8212

1 Defendant - Pega - Closing (Frank)  
2 SOA is less capable than Pega's SOA  
3 capabilities, not many out-of-the-box  
4 connectors, and some further  
5 information about Appian -- and  
6 doesn't have, for example,  
7 wizard-driven interfaces to pull data  
8 from databases or consume WSDL and SOA  
9 services, et cetera.  
10 Could we have the next  
11 criticism, pre-Zou criticism of  
12 Appian's work?  
13 Strong support for  
14 integration -- this is describing  
15 Pega. Strong support for integration  
16 with wizards, protocols include stuff  
17 that you can read there.  
18 Now, while it's still up there,  
19 why don't you bring the No. 3 entry  
20 up, which is describing Appian.  
21 The No. 3, thank you.  
22 So there is a direct comparison  
23 between Pega and Appian, and it is  
24 saying almost exactly what is said in  
25 the supposed trade secret

Page 8211

1 Defendant - Pega - Closing (Frank)  
2 number of integration connectors and  
3 services, it's implementation of web  
4 services is limited, and this  
5 additional text there.  
6 Now, Josh, let's look at the  
7 material from DX 1695. First, the one  
8 on the top.  
9 (Whereupon, Exhibit DX 1695,  
10 Document re Appian SOA, was  
11 identified.)  
12 MR. FRANK: Appian SOA, SOA  
13 refers to the connectability of this  
14 to other systems. But when you -- I  
15 should stop and say that when you  
16 install a new app, of course, you have  
17 to connect it up to all the other  
18 software from which it receives  
19 information.  
20 And so the simpler that process  
21 is, particularly in a big company, the  
22 better it is.  
23 So the first criticism is  
24 that -- this is by Mr. Petronio before  
25 anybody met Mr. Zou in 2011, Appian's

Page 8213

1 Defendant - Pega - Closing (Frank)  
2 that appeared in Exhibit 210.  
3 Bring that down, Josh, so the  
4 jury can see and match it against what  
5 is said in Exhibit 210.  
6 Now, at his deposition, Mr. Ross  
7 described that as not a trade secret,  
8 as a false statement. Here at the  
9 trial, he testified that he  
10 misunderstood at his deposition and  
11 that he thought it was a trade secret,  
12 and he did that because he saw videos  
13 that had been created by Mr. Zou after  
14 his deposition testimony.  
15 But wait a minute, he's the  
16 deputy chief technology officer of the  
17 company. He's been there 17 years.  
18 You would think he would know at the  
19 time of his deposition what Appian  
20 thought was a trade secret, what was  
21 secret, what had value because it was  
22 secret, and what was properly  
23 protected at that time.  
24 He testified at trial that at  
25 the time of his deposition, he didn't

Page 8214

1 Defendant - Pega - Closing (Frank)  
2 know.  
3 The -- let's go to the next --  
4 to the next thing that is said to be a  
5 trade secret in Exhibit 210. And it's  
6 the one that is headlined "Appian  
7 doesn't support exporting process data  
8 in a way that can be leveraged by  
9 external BI systems."  
10 So there you can see that, see  
11 the statement in Exhibit 210.  
12 And on the right, I've asked  
13 Josh to bring up a statement from  
14 DX 1695, which is -- and so let's look  
15 at the first one, please, Josh, the  
16 one at the top.  
17 And Pega, in 2011, before it met  
18 Mr. Zou, is saying to its sales folks:  
19 Appian has limited capacities for  
20 learning and gaining insight from  
21 operational and historic data and  
22 limited integration with external BI  
23 applications.  
24 And bring that down in size,  
25 bring the other one up, please.

Page 8216

1 Defendant - Pega - Closing (Frank)  
2 No unified management tools.  
3 Administrators have no unified  
4 management tools.  
5 On the left is the statement  
6 that Mr. Petronio drafted in 2012 to  
7 2013, after he met with Mr. Zou. On  
8 the right is a statement that  
9 Mr. Petronio drafted before he met  
10 Mr. Zou in PX 580.  
11 (Whereupon, Exhibit PX 580,  
12 Document, was identified.)  
13 MR. FRANK: Now, the  
14 statement -- and this requires  
15 slightly more explanation. The text  
16 in 2010 -- I'm sorry, in Exhibit 210,  
17 the accused information, is that  
18 Appian lacks a set of management tools  
19 to manage the performance and health  
20 of applications running across an  
21 enterprise. The system lacks tools to  
22 detect and remediate problems before  
23 the failures.  
24 On the right, you see a  
25 reference to something called AES and

Page 8215

1 Defendant - Pega - Closing (Frank)  
2 And this is a drawing of Pega's  
3 BI system. BIX stands for business  
4 information exchange.  
5 So the point that's being made  
6 in the Understanding Appian document  
7 and the point that was being made a  
8 year before anyone at Pega met Mr. Zou  
9 is that Pega had this capability and  
10 Appian didn't have much.  
11 I appreciate that this is not as  
12 exciting as some other stuff, but  
13 these are the real facts in this case.  
14 And it's important for you to  
15 understand how we've seen nothing so  
16 far that could possibly be -- have  
17 been taught to Pega by Mr. Zou because  
18 in every instance Pega knew it.  
19 Now I'm going to go on to the  
20 next -- before it ever met Dr. Zou  
21 [sic].  
22 The next supposed trade secret  
23 is the paragraph that says: Can't  
24 report with -- I'm sorry.  
25 It's the paragraph that says:

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1 Defendant - Pega - Closing (Frank)  
2 JMX. AES, Mr. Schuerman testified and  
3 it's undisputed, is a system that runs  
4 inside Pega apps that determines  
5 when -- in a particular company, it  
6 looks across all of the company's Pega  
7 apps and determines when there's signs  
8 of trouble before they have actually  
9 manifested themselves in a specific --  
10 in a specific outcome, in a specific  
11 bad outcome. It alerts the system.  
12 Administrator tells them what to do to  
13 deal with it.  
14 JMX is a capability that's  
15 provided in connection with Java  
16 programming, and it allows an  
17 administrator at a client to look  
18 across all of its Java-based programs,  
19 whether they're Pega programs or  
20 anyone else, and manage them as a kind  
21 of a unit.  
22 That's what Pega was touting and  
23 what Pega was saying it had and Appian  
24 didn't have before Pega met Mr. Zou.  
25 Can you blow up the right side,

Page 8218

1 Defendant - Pega - Closing (Frank)  
2 please, Josh, so we can see it?  
3 Referring to Appian, it says:  
4 Lacks AES -- AES and JMX. They have  
5 the ability to create a process that  
6 wakes up and pings. And if it doesn't  
7 get anything back, they can trigger a  
8 process not as sophisticated as AES.  
9 On the right side is before  
10 Mr. Zou was involved. On the left is  
11 after Mr. Zou was involved. They are  
12 different articulations of the same  
13 idea.  
14 Next, the weak reporting tools,  
15 weak reporting tools and limited chart  
16 types. This is two paragraphs, and  
17 this is, again, PX 210.  
18 The first paragraph says: With  
19 Appian's developer-centric approach to  
20 reporting, business users must wait  
21 for developers to create reports.  
22 Business users must define the  
23 requirements and then hope that the  
24 report meets their needs.  
25 As Mr. Schuerman explained, and

Page 8220

1 Defendant - Pega - Closing (Frank)  
2 asked Josh to put up statements both  
3 from the 2011 pre-Zou document and the  
4 statements from the 2010 pre-Zou  
5 document.  
6 So, Josh, can we put up for the  
7 jury that which is on the top and  
8 which is sort of criticizing Appian?  
9 Lacks support for  
10 software-enabled methodology, DCO  
11 testing and project management,  
12 rule-approval flow, direct feedback,  
13 lacks horizontal frameworks.  
14 Now, let's drop down to the next  
15 one.  
16 This is in the 2011 pre-Zou  
17 document, and it's talking about DCO  
18 including -- it lists the benefits of  
19 directly capturing objectives.  
20 And one of them, if you -- in  
21 the column that is inside the  
22 enclosure, Josh -- against the blue  
23 background specifically talks about  
24 report building. And it's talking  
25 about the benefits of DCO.

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1 Defendant - Pega - Closing (Frank)  
2 he was not challenged on  
3 cross-examination with respect to  
4 this, this refers to a Pega feature  
5 called DCO, directly captured  
6 objectives, which in Pega allows a  
7 businessperson to create a design for  
8 a business process and put that, put  
9 that person's ideas directly into the  
10 software as to how the process should  
11 work, and the software interprets the  
12 inputs and builds the process from the  
13 information provided by the  
14 businessperson, as distinguished from  
15 the businessperson handing the design  
16 off to a classical developer and the  
17 developer uses the Pega or Appian  
18 business process software development.  
19 The -- this goes back to a core  
20 idea that underlies Pega's technology.  
21 It goes back nearly to the beginning.  
22 Now, that's what's being  
23 described on the left so-called trade  
24 secret.  
25 On the right, I have put -- I've

Page 8221

1 Defendant - Pega - Closing (Frank)  
2 Count down -- I think it is  
3 three. Left, go left, go left, go  
4 left. There you go.  
5 Now go down, one, two, three.  
6 Maybe you see the word "reports"?  
7 Let me just walk up and point to  
8 it. There you go.  
9 High tech, I hope you all note.  
10 And so there is -- there in  
11 2011, before Pega met Mr. Zou, is  
12 exactly what is being said by Mr. --  
13 this is Mr. Petronio on the right and  
14 Mr. Petronio on the left, except that  
15 Mr. Petronio told you that he learned  
16 all the stuff on the left when, in  
17 fact, he knew all the stuff on the  
18 right from the year before.  
19 The second thing -- now, there's  
20 a second paragraph under the weak  
21 reporting tools and limited chart  
22 types. And I'll give you a minute to  
23 read that.  
24 And now, let me show what's on  
25 the right.

Page 8222

1 Defendant - Pega - Closing (Frank)  
2 First, blow up the one at the  
3 top, please, Josh.  
4 This is from the 2011 document  
5 before Mr. Zou was in contact with  
6 Mr. Petronio: Appian has limited  
7 capabilities for learning and gaining  
8 insight from operational and historic  
9 data, no ability to rapidly model,  
10 execute, and modify visually such as  
11 Pega's VBD.  
12 Next slide down, next entry  
13 down, please.  
14 A whole page full of chart types  
15 that Pega has and that Mr. Schuerman  
16 described and are illustrative of the  
17 charts that Pega thought then that it  
18 had that other people didn't have.  
19 And drop down to the one on the  
20 bottom, please, Josh.  
21 More on another page, rapidly  
22 model, execute, and modify strategies.  
23 Same argument being made in 2011 that  
24 was being made later in 2012.  
25 Now, Mr. Ross acknowledged

Page 8224

1 Defendant - Pega - Closing (Frank)  
2 testified that the statement that  
3 Appian lacks concurrent developer  
4 support, greatly slowing down time to  
5 market, was in his opinion a false  
6 statement and, therefore, not a trade  
7 secret.  
8 Appian now claims that having  
9 seen -- or Mr. Ross testified that  
10 when he saw something in  
11 Mr. Petronio's videos, he never could  
12 identify what the something was, he  
13 all of the sudden realized that the  
14 fact that Appian lacked concurrent  
15 developer support really wasn't false  
16 and really was a trade secret, but  
17 there is no explanation for how that  
18 could possibly have changed.  
19 He is the deputy chief technical  
20 officer. It's a trade secret or it's  
21 not a trade secret. It's a trade  
22 secret because it's important because  
23 you keep it secret and you don't not  
24 know what you're trying to keep  
25 secret. You don't not know if you're

Page 8223

1 Defendant - Pega - Closing (Frank)  
2 that -- at the trial that the  
3 statement about not supporting 3D  
4 charts is -- was false, possibly  
5 false, he said, and not a trade  
6 secret.  
7 The statement about lacks  
8 visualization, such as drill-downs,  
9 Mr. Ross had said at his deposition  
10 was not true and, therefore, was not a  
11 trade secret.  
12 Next, concurrent development,  
13 concurrent development.  
14 Appian lacks concurrent  
15 developer support, greatly slowing  
16 down time to market.  
17 We don't have a slide here.  
18 Sorry. Let's put up the language,  
19 please, from Exhibit 210, because I  
20 don't have a graphic on the other  
21 slide.  
22 And you'll find this on the  
23 second page, Josh, "Appian lacks  
24 concurrent developer support."  
25 At his deposition, Mr. Ross

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1 Defendant - Pega - Closing (Frank)  
2 the deputy chief technology officer  
3 what is and what isn't secret.  
4 Doctor -- furthermore,  
5 Dr. Easttom testified that the fact  
6 that only a single developer could  
7 work on a process at one time was not  
8 a trade secret because, if true, it  
9 would be apparent to every Appian  
10 developer, and Appian developers were  
11 under no obligation to maintain --  
12 took my watch off cleverly to make  
13 sure I wasn't running for too long and  
14 then I dropped it on the floor to make  
15 it very obvious that I'm picking my  
16 watch up. I'm one of these slick  
17 lawyers.  
18 I was going to resist that, but  
19 I was given a cue.  
20 Now, the point that Dr. Easttom  
21 made is that if you have a product  
22 feature that anybody can observe, that  
23 is whether two people can -- it used  
24 to be, until recently, for example,  
25 two people couldn't be on the same

1 Defendant - Pega - Closing (Frank)  
2 document on Microsoft Word at the same  
3 time. It's my -- that's, I think, no  
4 longer true, but it was true back at  
5 this point for sure.

6 But in any event, as soon as you  
7 get the product and look at the  
8 product, this is something you're  
9 going to see. It's an observable  
10 feature of the product that anyone,  
11 you or even at my level of skill, is  
12 going to be able to tell.

13 And we have been shown no  
14 document, there is no document that  
15 says that one developer employed by an  
16 Appian client or a Pega client, for  
17 that matter, is somehow restricted  
18 from saying to anyone what it observes  
19 with respect to the capabilities of  
20 Appian's product.

21 It's -- they have to keep the  
22 software itself confidential; but what  
23 the software can do, there is nothing  
24 in any of the documents that you have  
25 been shown that what the software can

1 Defendant - Pega - Closing (Frank)  
2 software away. But there's nothing  
3 that restricts people from talking  
4 about that. If there's no control  
5 over it, then it's not a trade secret.

6 And so, and so that's the kind  
7 of thing we're talking about here.

8 Now, I pause here for a little  
9 context. This has to do the  
10 advertising. The marketing materials  
11 claim is the subject of a \$479 million  
12 damage claim. This is the 201  
13 customer claim.

14 But Mr. Malackowski testified  
15 that his number, his \$479 million  
16 number, depended upon all six of the  
17 things that I just showed you being  
18 trade secrets that were not known by  
19 Pega prior to the time that it met  
20 with Mr. Zou.

21 He testified that if less than  
22 all of the six were trade secrets,  
23 that his number was no longer  
24 effective. It was for you to figure  
25 out what that number was, you the

1 Defendant - Pega - Closing (Frank)  
2 do, what the observable features of  
3 the software are is somehow a secret  
4 that no one can describe.

5 Do you believe -- I say, bring  
6 you're common sense to this, do you  
7 believe that, that with respect to any  
8 software program, it's one thing to  
9 give away the software to somebody  
10 else; but is it within your experience  
11 that you can't even talk about whether  
12 you like the software or don't like  
13 the software or whether the software  
14 is good or you think it does what you  
15 want it to do or you've got a problem  
16 with it and you don't like it because  
17 there is a particular problem?

18 The short answer is, Appian's  
19 shown us nothing in any contract that  
20 Appian has entered with anyone that  
21 restricts users of Appian's software  
22 from talking to other people about  
23 what the software can do and what it  
24 can't do.

25 That's different from giving the

1 Defendant - Pega - Closing (Frank)  
2 jury.

3 And he had done no calculation,  
4 made no analysis of what his number  
5 would be, his so-called unjust  
6 enrichment number would be if only  
7 five or three or one of those supposed  
8 trade secrets were trade secrets.

9 So the whole structure of  
10 Appian's damage claim depends on their  
11 maintaining that every one of the six  
12 things that I described to you was  
13 brand-new to Pega and was a trade  
14 secret because Pega hadn't learned the  
15 same thing from some other public  
16 source in 2010 or 2009 or before.

17 And if I have persuaded you as  
18 to any one of the six, Appian's  
19 \$479 million number is unsupported  
20 because Mr. Malackowski declined to  
21 support it on cross-examination.

22 And I -- so that's the reason  
23 for the time spent on this, and it is  
24 my attempt to show that Mr. Petronio,  
25 who said at trial here for the benefit

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1 Defendant - Pega - Closing (Frank)  
2 of his employer, Appian, that, oh, no,  
3 everything I learned from Mr. Zou was  
4 brand-new stuff, the same Mr. Petronio  
5 had been putting that in Pega's sales  
6 coaching materials in 2010 and 2011.  
7 And of course, you know what my  
8 suggestion is here, that is that none  
9 of the six were unknown to Pega, were  
10 trade secrets that Pega just learned.  
11 And -- but in a sense, I don't  
12 have to persuade you that six out of  
13 six were not trade secrets.  
14 Dr. Malackowski's number falls away if  
15 I have persuaded you that one of the  
16 six was not a trade secret.  
17 Change of subject, product  
18 improvements, this is the other half.  
19 This is the \$3.03 billion claim, and  
20 this is -- this makes the assumption  
21 that all -- well, first, yesterday you  
22 heard from Mr. Marshall that Pega was  
23 a leader in the BPM field as of 2012,  
24 immediately before.  
25 You have also been shown -- you

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1 Defendant - Pega - Closing (Frank)  
2 told by Mr. Mangi this morning that  
3 the stock price wasn't doing too well  
4 between 2010 and 2012, but the stock  
5 price is not the measure of the  
6 success of a company.  
7 Bring it up again, please, Josh.  
8 The measure of the success of a  
9 software company is whether people are  
10 buying product. If the people, if  
11 people stop buying the product, that  
12 build goes the other direction.  
13 I don't have it either, I'm  
14 sorry. Plaintiff's 689, Slide 13. It  
15 will appear. Might not be the fault  
16 on my side but we'll see. There we  
17 go. Thanks. I'm sorry.  
18 So look at it yourself. Apply  
19 your common sense.  
20 Is this a company that was not  
21 doing well or is this a company whose  
22 sales are almost quadrupling over a  
23 period from 2004 to 2011? And is this  
24 a company that was a steady rise or  
25 not.

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1 Defendant - Pega - Closing (Frank)  
2 were shown a graph yesterday that  
3 pointed to Pega's sales performance in  
4 the period of time leading up to the  
5 time when it met with Mr. Zou.  
6 And I wonder if we can put that  
7 up, Josh. It's -- it's Plaintiff's  
8 689, Slide 13. 689, Slide 13.  
9 (Whereupon, Exhibit PLT 689,  
10 Document, was identified.)  
11 MR. FRANK: While Josh is  
12 looking for that, I'll keep going  
13 there so as not to waste your time.  
14 The question is whether the  
15 product -- there we go, better late  
16 than never.  
17 This is Pega's performance in  
18 the period between 2004, I believe.  
19 And, Josh, would you run a line  
20 under the period 2004 through 2011 so  
21 the jury is looking at a period of  
22 time that's indisputably unrelated to  
23 anything Mr. Zou did?  
24 And that's Pega sales  
25 performance year by year. You were

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1 Defendant - Pega - Closing (Frank)  
2 And this was presented to Mr. --  
3 the reason this was before you  
4 yesterday is because it was presented  
5 to Mr. Marshall [sic] in 2014. And  
6 when Mr. Marshall was asked about it,  
7 he was asked whether this was the sign  
8 of a company -- the question by my  
9 partner Ms. Spieth was: Does this  
10 graph on Slide 13 of the presentation  
11 show concern about Pega's financial  
12 trajectory as of 2011?  
13 Answer from Appian's witness  
14 Mr. Marshall: No. It's demonstrating  
15 quite the reverse.  
16 As you can see, it's not really  
17 controversial.  
18 Now, product improvements, the  
19 theory that you heard from Mr. Mangi  
20 was that Pega was in trouble, it was  
21 old technology, and so they had to do  
22 something to get some bright ideas,  
23 and this is what they did.  
24 So the first question is: Is  
25 information -- and so Appian's theory

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1 Defendant - Pega - Closing (Frank)  
2 is that when Mr. Zou told bad stuff to  
3 Pega about Appian's product, that Pega  
4 used that and put it in its marketing  
5 material. And according to Appian,  
6 they were entitled actually to keep  
7 the bad stuff secret and they were  
8 entitled to keep it from customers.  
9 Now, the good stuff is what's  
10 involved in this side of the claim;  
11 that is, Appian's theory is that  
12 Appian -- when Mr. Zou brought  
13 something good to Pega, Pega snapped  
14 it up, and put it in Pega's product  
15 and that saved the day. This company  
16 that was on the way was then  
17 rejuvenated by Mr. Zou's information.  
18 So Question 1 is: Was the stuff  
19 that Pega provided, was it actually a  
20 trade secret?  
21 And again, I want to come back  
22 to the question that is ultimately in  
23 the jury charge.  
24 Is this something that -- are  
25 the features of a product that are out

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1 Defendant - Pega - Closing (Frank)  
2 hide -- you don't get value from  
3 keeping the good product features in  
4 secret.  
5 So let's -- during the course of  
6 discovery, we asked Appian to produce  
7 all of their Agreements that relate to  
8 their software. They said, no, no, we  
9 won't do that, but we will give you  
10 template Agreements so that -- are  
11 representative of our Agreements.  
12 One of those Agreements is  
13 DX 149. Could we put that up, Josh?  
14 (Whereupon, Exhibit DX 149,  
15 Agreement, was identified.)  
16 MR. FRANK: This is a Partner  
17 Agreement, and it essentially sets out  
18 a license to people who are Appian's  
19 business partners, and it -- I'm going  
20 to show you in a minute what it  
21 expects the partners to do.  
22 The partners in -- Mr. Ross  
23 testified in many instances are  
24 resellers, people who resell software  
25 on Appian's behalf. And first, I'd

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1 Defendant - Pega - Closing (Frank)  
2 on the market that are observable by  
3 existing customers and potential  
4 future customers, are those secrets  
5 or, to the contrary, the good stuff,  
6 is it very likely that the people who  
7 are trying to sell the software are  
8 pointing to the very same positive  
9 features so that -- and the legal  
10 question is, is whether this is  
11 information that obtained its value  
12 from being kept in secret.  
13 So the question about positive  
14 features about a product is whether it  
15 was valuable to Appian to keep the  
16 positive features of its product in  
17 secret and protect them from other  
18 people.  
19 Now, with due respect, that is a  
20 self-answering question because, of  
21 course, when you go out to sell your  
22 product if you have a really good  
23 feature, you don't talk about -- you  
24 talk about that feature, and you want  
25 to sell your product. You don't

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1 Defendant - Pega - Closing (Frank)  
2 ask you to take a look at what is  
3 defined as Appian's software. It  
4 means the object code version of  
5 Appian's software that is -- and the  
6 associated documentation and all  
7 updates and refinements and so on. So  
8 that's the ones and zeros that runs  
9 inside a laptop, let's say, that  
10 causes you to see what you see on the  
11 screen.  
12 Now, let's drop down, if you  
13 could, to the Paragraph 2.2, and in  
14 particular 2.2.1 and maybe you could  
15 bring that up, Josh.  
16 These are contracts that were --  
17 this is an example of a contract that  
18 was enforced at the relevant time and  
19 it says: Commencing upon the  
20 effective date, Appian shall grant to  
21 the business partner a nonexclusive  
22 nontransferable license -- there's  
23 some other words in there -- without  
24 right of sublicense to install the  
25 Appian software on a business

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1 Defendant - Pega - Closing (Frank)  
2 partner's computers and to allow a  
3 reasonable number of named users to  
4 use the Appian software for business  
5 partner's internal purposes.  
6 Now, comes the critical item,  
7 the business partner, the reseller, is  
8 licensed to market, promote and  
9 demonstrate Appian's software without  
10 any limitation. They can market the  
11 software.  
12 They can promote it. How do you  
13 promote it? You promote it, of  
14 course, by saying what's good about  
15 it. And there's no restriction that  
16 says, oh, by the way, you can't point  
17 to the social or mobile features of  
18 our product. There's no limitation on  
19 that.  
20 And they can demonstrate the  
21 product. Demonstrate, how do you  
22 demonstrate the product? You try to  
23 show the customer what you can do with  
24 this software.  
25 And how do you do that? Why,

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1 Defendant - Pega - Closing (Frank)  
2 person under a Confidentiality  
3 Agreement.  
4 So it's not just that a reseller  
5 like the kind of person who would have  
6 this Agreement, it's not just that  
7 that person could demonstrate the  
8 software to anyone who is a  
9 prospective -- that that reseller  
10 deemed was a prospective customer, but  
11 the prospective customer was perfectly  
12 free to talk about what the  
13 prospective customer saw in the  
14 promotional materials and in the  
15 demonstrations that the prospective  
16 customer received.  
17 So how is it that that is  
18 adequately protecting the observable  
19 features of your product? I  
20 respectfully submit that it's not.  
21 Now, let's look, if we could,  
22 Josh, at the agreement with Serco,  
23 which is a VASP, a Value-Added Resale  
24 Agreement, and I believe it's  
25 Plaintiff's 2028. Just blow up the

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1 Defendant - Pega - Closing (Frank)  
2 you build a sample app and you show  
3 off the good features of the product  
4 and you show off completed apps that  
5 demonstrate what the completed apps  
6 can do.  
7 And so far from being  
8 confidential information, the  
9 permitted behavior here is to -- is to  
10 promote the product, to sell the  
11 product, to call out its good features  
12 with no limitation, none, as to what  
13 observable features may be described  
14 or demonstrated to the customer.  
15 So no control over -- over who  
16 gets access or who is told about what  
17 particular product feature. All of  
18 the product features that Appian now  
19 claims are good product features may  
20 be displayed. And furthermore, no  
21 limitation, no confidentiality  
22 obligation, and there's nothing in  
23 this Agreement that says you must put  
24 the person who receives the  
25 demonstration, you must put that

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1 Defendant - Pega - Closing (Frank)  
2 very top part first so the jury can  
3 see that this is a Value-Added  
4 Services Reseller Agreement.  
5 It's just like other -- it's an  
6 Appian Value-Added Service Provider  
7 Agreement.  
8 So what is Serco? Serco is a  
9 company that, by and large, provides  
10 its services to third persons to build  
11 apps using the Appian software.  
12 If we drop down to same, or  
13 virtually the same definition of  
14 software, come back for one second, so  
15 you can glance at it, you'll see it's  
16 the same definition of Appian  
17 software.  
18 Let's go down to 2.2.1 again and  
19 here's the license grant at 2.2.1.  
20 Same language: Commencing on the  
21 effective date, subject to the terms  
22 and provisions of this Agreement,  
23 Appian shall grant the service  
24 provider a nonexclusive license to do  
25 what's in A or in B.

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1 Defendant - Pega - Closing (Frank)  
2 A says: Market, promote, and  
3 demonstrate the Appian software to  
4 prospective end-users in the  
5 territory. And in Serco's case,  
6 there's no limitation to the  
7 territory.  
8 So Serco, Mr. Zou's own  
9 employer, had the right, indeed, was  
10 expected to market, promote, and  
11 demonstrate Appian's software.  
12 And how do you do that? Well,  
13 if you're trying to promote -- you do  
14 it two ways. First, you talk about  
15 how -- if you're Serco, you talk about  
16 how good the software is. All sorts  
17 of things can be done with the  
18 software. You should, you know, you  
19 should license a copy.  
20 And, indeed, Serco was empowered  
21 to market Appian's software to  
22 prospective customers. The other  
23 thing you do if Serco wasn't a service  
24 provider is that you show not just  
25 what the software can do but what you

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1 Defendant - Pega - Closing (Frank)  
2 the history of Appian's -- let me  
3 stop.  
4 I want to talk about the history  
5 of the growth of social and mobile in  
6 general, and I think the next minute  
7 and a half is completely undisputed  
8 material.  
9 Facebook started up around 2006.  
10 Shortly after Facebook started up,  
11 there was lots of social activity and  
12 it has grown ever since.  
13 In 2007, Apple introduced the  
14 iPhone and it did away with prior  
15 competitors and became extraordinarily  
16 widely used.  
17 The apps became available on the  
18 iPhone starting in 2008. In 2009,  
19 Pega announced the introduction of  
20 social features on Pega platform and  
21 that includes both the intake of  
22 information from other social media  
23 and the ability of people within a  
24 given organization to engage in social  
25 media-type collaboration, which is

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1 Defendant - Pega - Closing (Frank)  
2 can do with the software. I think  
3 that's John Kennedy or something like  
4 that.  
5 So what is a company like Serco  
6 going to do to market the product?  
7 They are going to demonstrate what can  
8 be done with the product. They are  
9 going to give demonstrations to people  
10 of the good features of the Serco  
11 [sic] product and there's no  
12 restriction on here that says, for  
13 example, you can't show the social and  
14 mobile features.  
15 To the contrary, Appian was  
16 promoting the social and mobile  
17 features and had no reason to believe  
18 that Serco itself would promote the  
19 same features.  
20 So the threshold question is:  
21 Is anything being done here to assure  
22 that particular -- that particular  
23 information is not being shared with  
24 customers? Answer: Nothing.  
25 Now, now I want to talk about

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1 Defendant - Pega - Closing (Frank)  
2 productive business-related  
3 communication.  
4 In 2010, salesforce.com  
5 introduced the use of social forms of  
6 communication in business environments  
7 and that product was called Chatter.  
8 In 2010, in Pega Version 6.1,  
9 Pega introduced social features called  
10 What's Happening that included  
11 features very similar to the Facebook  
12 wall, undisputed.  
13 2011, Pega's Sales Coaching,  
14 actually, I'll show you something from  
15 Pega Sales Coaching in 2011.  
16 Slide 39, please, Josh. This is  
17 from DX 1695 in evidence. Let's drop  
18 the cover. Doesn't matter. Would you  
19 blow up what's on the right-hand side?  
20 That is Pega training its sales  
21 force, and it is a demonstration of  
22 what Pega knew at the time was its  
23 social capability.  
24 In June of 2011, Appian  
25 introduced Tempo, a product that

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1 Defendant - Pega - Closing (Frank)  
2 included both social and mobile  
3 features and widely publicized it.  
4 In October of 2011, Pega  
5 announced a collaboration with a  
6 company called Sencha and, in October  
7 of 2011, Pega announced the  
8 collaboration with Sencha and, in  
9 January of 2012, Pega launched and  
10 made available a Pega Mobile product  
11 for sale as part of Pega Version 6.  
12 At PegaWorld in the spring of  
13 2012, Pega announced Pega Pulse. Pega  
14 Pulse had additional social features  
15 like the ability to attach files to  
16 the wall, attach links to the wall,  
17 create a text to the wall.  
18 All of this was in response to  
19 what was going on in the world around  
20 Pega. We certainly don't suggest that  
21 Pega invented the use of social media  
22 or the use of mobile devices, but  
23 neither did I. I use mobile devices  
24 and occasionally social media.  
25 Now, that brings us to what is

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1 Defendant - Pega - Closing (Frank)  
2 features.  
3 The first is social features.  
4 It's -- Appian says correctly that on  
5 December 19, 2012, Mr. Zou  
6 demonstrated Appian's Tempo social  
7 features to John Petronio, his  
8 assistant Michael Caton, a man named  
9 Robert Schwartz, and a woman named  
10 Agya Garg, all Pega employees.  
11 Ms. Garg, whose picture I'm  
12 hoping that Josh will put up, was the  
13 product development person within  
14 Pega's product management facility who  
15 was responsible for Pega's social  
16 features.  
17 And the next day, December 20,  
18 2012, she wrote an e-mail that is PLT  
19 Plaintiff's Exhibit 29.  
20 Could we put that up, please,  
21 Josh?  
22 (Whereupon, Exhibit PLT 29,  
23 E-mail, was identified.)  
24 MR. FRANK: And I want to go  
25 through that in some detail because

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1 Defendant - Pega - Closing (Frank)  
2 in dispute. Mr. Marshall testified  
3 that as the start of the events that  
4 are at issue that Pega was a very  
5 powerful platform. He testified that  
6 he had -- yesterday he testified that  
7 in Pega 7, which is what he accused  
8 Pega of adding -- he accused Pega of  
9 adding these new features.  
10 He said he had a very large  
11 spreadsheet that was many things that  
12 he discovered that Pega had added in  
13 Version 7. And he was asked how many  
14 of these things and he said, oh, 50 or  
15 60 new things were added to Pega  
16 Version 7 as compared to the prior  
17 version which is 6.3.  
18 He's picked out 5 of the 60 and  
19 attributes every sale to Pega after  
20 the introduction of those features,  
21 every sale regardless of who Pega was  
22 competing against and regardless of  
23 who the customer was to those five  
24 features.  
25 So let's talk about the

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1 Defendant - Pega - Closing (Frank)  
2 this -- because Appian points to this  
3 as its proof that Pega was copying  
4 something from Appian. I'm going to  
5 take it paragraph by paragraph, so  
6 there's no doubting what's going on  
7 here.  
8 First paragraph, please, Josh.  
9 Drop down just a little bit.  
10 Tempo PowerPoints, this was  
11 quite an eye opener for me. That's  
12 the sentence that Appian calls out.  
13 Then the next sentence says:  
14 Huge difference between what Appian  
15 has been marketing for the last year  
16 and a half and their actual product  
17 offering.  
18 Then she says -- then there's a  
19 line that says something like here's  
20 what I observed.  
21 Drop down one more. That's  
22 better.  
23 The next thing she says: Tempo  
24 has its own portal outside of an  
25 average work user portal that just

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1 Defendant - Pega - Closing (Frank)  
2 contains an activity stream and a fat  
3 grid view of tasks, ugh. Why isn't it  
4 integrated and in context?  
5 Parentheses, I think our approach was  
6 much stronger with all of that showing  
7 the stream in context rather than  
8 going to a whole separate portal.  
9 Appian didn't show you that  
10 paragraph.  
11 Let's go to the next paragraph  
12 which Appian didn't show you.  
13 The activity stream (or the  
14 wall) is a list of human and  
15 system-generated posts with only the  
16 ability to comment. Parentheses, we  
17 have them beat here. We have a  
18 plethora of capabilities on each and  
19 every point. Ability to attach  
20 files/links/create tasks/take action.  
21 I guess some of their screenshots  
22 about in-line express actions were all  
23 just marketing.  
24 Appian didn't show you that  
25 paragraph either. Here's another

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1 Defendant - Pega - Closing (Frank)  
2 should just create a view like this  
3 and ship with it.  
4 The impression you get is that  
5 Ms. Garg was talk -- that the sentence  
6 at the beginning and the second  
7 sentence at the end were tightly  
8 linked to each other, but, in fact,  
9 let's take down the highlighting first  
10 and I'll focus on the part that's  
11 talking about Appian.  
12 It says: Social view of work  
13 lists and tasks, eh. And then it  
14 says --  
15 Now you can take down that,  
16 Josh, and highlight the next sentence.  
17 -- IBM has a more impressive  
18 view in their screenshots. We should  
19 just create a view like this and ship  
20 with it.  
21 Now, jurors are supposed to  
22 bring their common sense, and I'll ask  
23 you to judge what's likely being said  
24 there. And my suggestion, of course,  
25 is that she's talking about IBM, which

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1 Defendant - Pega - Closing (Frank)  
2 paragraph.  
3 Drop down, Josh.  
4 There's a paragraph that says:  
5 No concept of context. Over and over  
6 again, I saw in the demo a post about  
7 Case 123 but nowhere could I click on  
8 it to see the case itself. It feels  
9 like it's two separate products, one  
10 for doing work, one for social with  
11 little insight into each other.  
12 And finally, if we get down to  
13 the paragraph that Appian made a great  
14 deal about. It starts with the word  
15 "social view," Josh. There you are.  
16 Okay. So can we blow -- can we take  
17 the highlighting off the other  
18 paragraphs? And I just want to see  
19 that sentence so that it's easy to  
20 read.  
21 Okay. Now, when Appian showed  
22 this during the trial, it highlighted  
23 the words "social view of work lists  
24 and tasks," and then it highlighted  
25 the last sentence that says: We

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1 Defendant - Pega - Closing (Frank)  
2 is the more impressive view, rather  
3 than, than -- and that certainly isn't  
4 an Appian trade secret -- rather than  
5 the social view of work lists and  
6 tasks after which she had said, eh.  
7 And again, common sense, none of  
8 us know exactly what was intended by  
9 that, but we can all draw conclusions.  
10 Now finally, let's get to --  
11 let's take a moment and go down to the  
12 bottom of the paragraph near the  
13 conclusion that starts with the word  
14 "overall," Josh. Can you find that?  
15 This is Ms. Garg's  
16 contemporaneous reaction: Overall, I  
17 am not impressed with their product  
18 offering at all. I'm extremely  
19 impressed by their marketing. For a  
20 year and a half, they've pushed the  
21 messaging really hard on this so I  
22 presumed that they had more  
23 capabilities. They have some nice  
24 videos on their website and some  
25 really slick collateral. Can we come

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1 Defendant - Pega - Closing (Frank)  
2 up with a plan to brief the sales  
3 force on this in January especially  
4 when they're competing against Appian?  
5 And at her deposition, Ms. Garg  
6 was asked about this language. She  
7 testified, "It seems that my belief  
8 was that the marketing was pretty  
9 good, the product was not, and if  
10 we're just -- if this was just  
11 marketing on a product that's not that  
12 great, I believed our product to be  
13 superior so we should at a minimum --  
14 at the minimum be marketing it as  
15 well."  
16 This is the evidence of  
17 Appian -- of Pega supposedly stealing  
18 ideas from Appian. And the enthusiasm  
19 for stealing ideas from Appian is  
20 pretty limited here because Ms. Garg  
21 is saying that in her view -- and  
22 she's the manager, that in her view  
23 what Pega already had was better than  
24 what Appian had.  
25 So I suggest a couple of

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1 Defendant - Pega - Closing (Frank)  
2 December in 2012.  
3 Third, there's nothing in  
4 Ms. Garg e-mail, I'd suggest, that  
5 suggests any intent by Pega to use  
6 anything arising from Mr. Zou's  
7 demonstration in the next version of  
8 the Pega platform to be released in  
9 7.1. It's just the opposite.  
10 In general, Ms. Garg is  
11 commenting that what Pega had was  
12 better. You wouldn't replace the  
13 features she was described with that  
14 which she was describing as  
15 nondisclosed.  
16 Now, I want to link this to  
17 damages again. The 3 billion,  
18 \$3.03 billion number that you heard  
19 from Mr. Mangi, is subject to the same  
20 qualification by Appian's expert  
21 Mr. Malackowski. He testified that if  
22 any of the product features that are  
23 at issue with respect to product  
24 improvements, if the jury would  
25 conclude that any of the product

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1 Defendant - Pega - Closing (Frank)  
2 conclusions would follow from that.  
3 One is that Ms. Garg was the central  
4 person with respect to Pega Social and  
5 that her assessment of Appian social  
6 capabilities in 2012, nearly  
7 eight years before this case began in  
8 which she had no motive to be  
9 misleading anybody, that her  
10 observation at the time could not  
11 possibly have been influenced by this  
12 case.  
13 The second thing I suggest to  
14 you is that Mr. Zou's demonstration of  
15 Appian's product, that by the time  
16 Mr. Zou's demonstration of Appian's  
17 product, Pega had in its product in an  
18 advanced state of development social  
19 features that corresponded to the  
20 futures in Appian's social features  
21 before Pega was given any  
22 demonstration of Appian's social  
23 features by Mr. Zou. Pega didn't  
24 create what Ms. Garg was describing  
25 between the 19th and the 20th of

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1 Defendant - Pega - Closing (Frank)  
2 features were not derived from trade  
3 secret information that Pega got from  
4 Appian, that the \$3.03 billion number  
5 drops away.  
6 He has no opinion as to what  
7 that number would be if any one of  
8 these product features was not deemed  
9 to be the result of a trade secret  
10 misappropriation by Pega.  
11 With that in mind, I repeat to  
12 cause Mr. Malackowski to concede that  
13 his number is inapplicable, the  
14 number, the \$3 billion number, I just  
15 have to persuade you, and you don't  
16 have to be persuaded, that only one of  
17 these is not an Appian trade secret.  
18 And I'm not finished for sure.  
19 The next, mobile. Dr. Marshall  
20 told you that Pega copied Appian's  
21 mobile features by adding in Pega  
22 Version 7, deployment of mobile  
23 applications completely out of the box  
24 with no further configuration.  
25 Ms. Garg's memo as of

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1 Defendant - Pega - Closing (Frank)  
2 December 2009 is addressed to --  
3 that's the relevance of the I like the  
4 IBM feature and it doesn't suggest  
5 that there was any intent to copy the  
6 Pega feature -- to copy the Appian  
7 feature.  
8 I've got myself confused. I  
9 need to say it right because I'm  
10 confusing -- I confused myself and,  
11 therefore, confusing you.  
12 The feature accused in the  
13 context of social is the concept of  
14 the work list, giving work lists and  
15 tasks. That is the subject of that  
16 sentence that I spent a lot of time  
17 talking about that where Ms. Garg said  
18 she liked the feature, but that is no  
19 indication of an intent to somehow use  
20 confidential information to steal  
21 something from Appian.  
22 For mobile, the claim is that  
23 Appian -- that the benefit of Appian's  
24 Tempo was that it came to developers  
25 with an out-of-the-box ability to

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1 Defendant - Pega - Closing (Frank)  
2 available in January of 2012. Pega's  
3 first contact with Mr. Zou was in  
4 February of 2012.  
5 In order to conclude that Pega,  
6 A, got an idea that Appian was  
7 concealing, that is, it was a secret  
8 that Appian had this out-of-the-box  
9 capability, that Appian was actually  
10 keeping that secret, that's the first  
11 thing.  
12 And second, that somehow you  
13 should just disbelieve Mr. Bixby and  
14 Ms. Garg -- sorry, Mr. Bixby and  
15 Ms. Louis, who were the people doing  
16 it at the time. And no doubt  
17 Mr. Mangi will tell you that they were  
18 liars and thieves and you shouldn't  
19 believe them, but they are the people  
20 who built the product.  
21 Dr. Marshall, someone who came  
22 along years later, had rendered an  
23 opinion on this subject. I believe he  
24 was hired on something like  
25 November 10th of 2021, rendered a

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1 Defendant - Pega - Closing (Frank)  
2 connect the standard platform to a  
3 mobile device. And so the -- and  
4 Dr. Marshall told you that that was  
5 the key feature and that developers  
6 didn't have to do anything more than  
7 sort of one-click connection.  
8 There's no question that Pega  
9 had been in the mobile business from  
10 as early as 2011. Ms. Louis testified  
11 that there was a fully operational  
12 product available for sale in January  
13 of 2012.  
14 Mr. Bixby testified that, that  
15 in January of 2012, Pega's mobile  
16 product worked out of the box without  
17 any need for further configuration.  
18 That capability was available in  
19 Pega 6.2 and 6.3.  
20 Ms. Louis explained that it just  
21 worked. You build the screen. You  
22 build your process. You build your  
23 application in the Pega designer  
24 studio.  
25 This is all stuff that was

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1 Defendant - Pega - Closing (Frank)  
2 written Report, a long written Report  
3 on November 24, 2021, meaning  
4 two weeks after he was first retained.  
5 And based upon -- a very smart  
6 man, I'm not suggesting otherwise --  
7 two weeks with software that you're  
8 completely unfamiliar with before you  
9 start is a heavy lift for anybody, no  
10 matter how capable they are.  
11 Next, the -- Pega moved on, that  
12 is, Pega purchased a company called  
13 Antenna in October of 2013. Nobody  
14 suggests that Mr. Zou had any  
15 relationship with Antenna, any  
16 involvement at all, and everyone  
17 agrees that adding Antenna added more  
18 skill to Pega and increased Pega's  
19 sales and bookings and so on.  
20 And Appian was found during  
21 trial -- Mr. Mangi didn't go to it  
22 during his closing, but they were  
23 found during the trial that in 2013,  
24 in 2014, Pega's booking increased two  
25 times and its mobile pipeline

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1 Defendant - Pega - Closing (Frank)  
2 increased four times.  
3 Sure, it bought a company that  
4 was in the mobile business and that's  
5 what happens when you buy another  
6 company.  
7 Now, in 2013, January of 2013,  
8 Mr. Petronio created a mobile  
9 analysis. He was asked to create an  
10 analysis that contained a list of what  
11 Pega's features were, a list of what  
12 Appian's features were, and a list of  
13 what salesforce.com features were.  
14 They were a competitor.  
15 Ms. Louis contributed the Pega  
16 part, and Mr. Zou contributed the  
17 Appian part. They didn't have  
18 anything to do with each other.  
19 Mr. Petronio put this together.  
20 Here's the result. It's  
21 Plaintiff's 40.  
22 (Whereupon, Exhibit PLT 40,  
23 Mobile Analysis, was identified.)  
24 MR. FRANK: January of 2013, do  
25 you recall the --

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1 Defendant - Pega - Closing (Frank)  
2 were present at the time, not yet  
3 introduced, but present in January of  
4 2013.  
5 The summary is the out-of-box  
6 capabilities, which is with one-click  
7 and with no further configuration, was  
8 already in Pega's product in -- long  
9 before this and before the relevant  
10 information was provided to Pega --  
11 relevant information related to Appian  
12 provided to Pega.  
13 And there are three remaining  
14 features and I'll address them fairly  
15 quickly. I don't want to take too  
16 much of Mr. Travell's time.  
17 They are a bunch of ease-of-use  
18 features, one of which is called Smart  
19 Services.  
20 And, Josh, if we can put up  
21 DX 721. This is going to be an image  
22 of Appian's Process Modeler. It must  
23 be -- there we go.  
24 (Whereupon, Exhibit DX 721,  
25 Image of Appian Process Modeler, was

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1 Defendant - Pega - Closing (Frank)  
2 I believe there is a -- is there  
3 a second page, Josh, with a chart on  
4 it? There we go.  
5 So this is -- the column on the  
6 left, which is in green, is a set of  
7 tick marks that are reflective of  
8 characteristics that the Pega product  
9 had at the time, created by Ms. Louis.  
10 The column in the center, light blue,  
11 indicates characteristics that Mr. Zou  
12 told Mr. Petronio Appian had and the  
13 column on the right is salesforce.com,  
14 a third competitor.  
15 And it lists the features and  
16 the benefits of the features. And as  
17 you can see, the perception at the  
18 time was that Pega's product was --  
19 had all of those features, had  
20 everything that Appian had, and had a  
21 bunch more as well.  
22 Again, in fairness, you'll see  
23 it says at the top: External  
24 positioning, assuming mobile features  
25 in 7.1. So those are features that

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1 Defendant - Pega - Closing (Frank)  
2 identified.)  
3 MR. FRANK: And if you're --  
4 just to repeat some stuff you've heard  
5 during the trial, but the listing down  
6 on the left side is called a palette  
7 and it provides a set of functions.  
8 The way this works is you can click on  
9 something that's in the palette  
10 somewhere, drag it onto the canvas and  
11 it's used to a build a process, and  
12 there's programming that is associated  
13 with each of the things you click on.  
14 Now, could we look please at  
15 Plaintiff's Demonstrative 5.33?  
16 (Whereupon, Exhibit PLT 5.33  
17 Demonstrative, was identified.)  
18 MR. FRANK: In Pega 7.1, there  
19 was added a bar that says: Smart  
20 Services, and if you click on that  
21 bar, you got a listing of the ten most  
22 popular things that could be dragged  
23 onto the canvas. And the benefit of  
24 these things in Pega and Appian is  
25 that underneath them, there's a bunch

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1 Defendant - Pega - Closing (Frank)  
2 of programming that does the work for  
3 the designer. It's already  
4 preprogrammed, a preconfigured  
5 activity.  
6 The very same things were  
7 available in prior versions of Pega  
8 sitting underneath other shapes that  
9 existed in the palette on the  
10 left-hand side of Pega's canvas. So,  
11 for example, if you had clicked on  
12 utility in the prior version, you  
13 would have gotten something like  
14 access to 300-some-odd of these  
15 preconfigured actions.  
16 All that Pega did was to group  
17 ten of them under the heading Smart  
18 Shapes and put them into a drop-down  
19 menu that you could access more  
20 easily. It actually put the box  
21 around the Smart Shapes, the blue bar,  
22 and then around what you get when you  
23 click on Smart Shapes.  
24 Every one of those capabilities  
25 was present in the prior version

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1 Defendant - Pega - Closing (Frank)  
2 The next, ease of editing, can  
3 we pull up Dr. Marshall's Slide 5.3,  
4 5.39, please, Josh?  
5 You saw this yesterday. It's on  
6 the left, as I understand it, from  
7 Appian's product and it's a button  
8 that allows you to move from the user  
9 environment back to the developer  
10 environment. And it's supposed to be  
11 an ease-of-use feature.  
12 The thing on the right in the  
13 red square is, in fact, something that  
14 does nothing of the kind. It is a  
15 button that exists in the user  
16 function, as you can see, immediately  
17 below and to the left of that button  
18 are a bunch of icons.  
19 Those icons exist on a dashboard  
20 and user function. If you click on  
21 that button, what you get is the  
22 ability to move the icons around on  
23 the screen if you're a user for your  
24 convenience. It would be like taking  
25 the icons on the screen that you see

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1 Defendant - Pega - Closing (Frank)  
2 except that they were under the  
3 utility -- I'll call it a bar rather  
4 than the Smart Shape bar. And all  
5 Pega did was sort out the more popular  
6 of the utilities, put them under Smart  
7 Shapes and the one that's underneath  
8 that is called something else. And if  
9 you clicked on immediately underneath  
10 it --  
11 Josh, I wish my eyesight were  
12 better.  
13 It's called Advanced Shapes. If  
14 you click on that, you get the rest of  
15 them. That was the innovation. That  
16 is \$3 billion worth of value  
17 supposedly.  
18 The next one is ease of editing.  
19 That's it. That's it with respect to  
20 the first. It is literally the  
21 ability to get the same thing you  
22 could get at 6.3. It's only that that  
23 is accessed by clicking on one bar as  
24 distinguished from a different bar.  
25 Nothing else.

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1 Defendant - Pega - Closing (Frank)  
2 when you first pull out a cell phone  
3 and moving them around into a  
4 different location.  
5 That's it. Nobody suggests that  
6 edit buttons like this is something  
7 brand new. But these two edit buttons  
8 are doing completely different things;  
9 and that is, I say respectfully to  
10 Dr. Marshall, he just misunderstood  
11 what he was looking at.  
12 The last is custom data types.  
13 And there's a long explanation that  
14 goes with this, but the short of it is  
15 that in a particular type of business,  
16 say a banking business, the bank  
17 collects certain information with  
18 respect to a customer.  
19 And Mr. Bixby testified and he  
20 did a drawing, DX 10.2.  
21 (Whereupon, Exhibit DX 10.2,  
22 Drawing, was identified.)  
23 MR. FRANK: Sorry. He jot down  
24 in the drawing, but basically it's a  
25 way of organizing data values relevant

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1 Defendant - Pega - Closing (Frank)  
2 to a particular business. It could be  
3 a bank. It could be a pizza shop.  
4 And it collects all of a class of  
5 information in one place in a way that  
6 makes the same information usable,  
7 transferable to other aspects of the  
8 bank's business or the pizza shop's  
9 business.  
10 And of course, that's not unique  
11 to Pega, but something that's been in  
12 Pega's product since 2002 or '3. The  
13 argument is, yes, it was in Pega's  
14 product, but we made it much easier.  
15 But you were never told, as I  
16 stand here, I don't know what it is  
17 that supposedly would be made easier.  
18 This is stuff that was in Pega's  
19 product for two decades -- or  
20 one decade at that time, two decades  
21 now.  
22 Both Mr. Bixby and Mr. Trefler  
23 testified that the same stuff had been  
24 in Pega's product since 2002.  
25 I want to switch now to the

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1 Defendant - Pega - Closing (Frank)  
2 in natural and continuous sequence  
3 produces the damages. It's a cause  
4 without which the damages would not  
5 have occurred.  
6 Now, I want to return to  
7 something I said in the very beginning  
8 which is that Pega's product is  
9 designed for very large companies, and  
10 it is designed to handle tens of  
11 thousands of users. They're allowed  
12 to build an application once and then  
13 expand it and expand it and expand it  
14 without changing very much to make it  
15 very easy to add new products, add new  
16 places, add a new country, add new  
17 customer types.  
18 And it runs heavily on something  
19 called rules and rule sets, which are  
20 a set of rules that guide the whole  
21 process. Some of them being if you  
22 were a bank officer and the loan is  
23 more than \$10,000, you have to get  
24 approval by somebody higher up. There  
25 are many, many of them.

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1 Defendant - Pega - Closing (Frank)  
2 damages part of the case and to focus  
3 you first on the jury instructions.  
4 Josh, could we have Jury  
5 Instruction No. 12 and, in particular,  
6 No. 3 there, if you would?  
7 And the instruction is: If one  
8 or both of the Defendants  
9 misappropriated a trade secret or  
10 trade secrets. And I hope you  
11 conclude that they didn't and you  
12 never get there.  
13 The question for damages purpose  
14 is: What is the amount of damages  
15 caused by the misappropriation?  
16 And now let's go to Jury  
17 Instruction No. 13. Go to the very  
18 last one, Josh. It's on the second  
19 page.  
20 Cause of damages is a cause that  
21 that in the natural and continuous  
22 sequence produces the damages. It is  
23 a cause without which the damages  
24 would not have occurred.  
25 Cause of damages is a cause that

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1 Defendant - Pega - Closing (Frank)  
2 And there are other features  
3 like the directly captured objectives  
4 feature and the fact that Pega had an  
5 online mobile, an offline mobile  
6 feature, and other things that made  
7 Pega's product different from its  
8 competitors' products, different from  
9 Appian's products.  
10 And as I said very early on,  
11 the -- some people like that, need  
12 that, are prepared to pay for it.  
13 Other people who have smaller less  
14 complex businesses don't necessarily  
15 need it, and so I'm not standing here  
16 to give you a sales pitch on behalf of  
17 Pega. I'm simply saying that the Pega  
18 product has features that the Appian  
19 product doesn't have, and those  
20 features matter for certain customers  
21 and they drive customer decisions.  
22 I'm going to give you a half  
23 dozen examples, give you each fairly  
24 quickly but this is all in evidence.  
25 The first is Amazon.

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1 Defendant - Pega - Closing (Frank)  
2 DX 1382, please, Josh.  
3 (Whereupon, Exhibit DX 1382,  
4 Document, was identified.)  
5 MR. FRANK: Amazon, I'll talk  
6 generally. Appian had been along to  
7 their facility to license them to  
8 Amazon for years before these events,  
9 2004. And it's the Amazon's Financial  
10 Services. And Amazon Financial  
11 Services came to be dissatisfied with  
12 the ability of the Appian product to  
13 scale, so they decided that they would  
14 go outside and, and they would look  
15 for other people who could supply what  
16 they needed.  
17 And so they went to -- they put  
18 it out to bid to Pega and IBM --  
19 And if you scroll down, please,  
20 Josh, to Scott Ulrichs' e-mails.  
21 Mr. Ulrichs was a salesman who  
22 was dealing with Amazon. He was  
23 reporting to the most senior people in  
24 Amazon -- the most senior people at  
25 Appian that we know Amazon was moving

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1 Defendant - Pega - Closing (Frank)  
2 I'm not here to tell you that  
3 Appian was right or wrong. I'm simply  
4 here to tell you that that's what  
5 happened.  
6 Next one is DX 341. Go to the  
7 first page, please, Josh.  
8 (Whereupon, Exhibit DX 341,  
9 E-mail, was identified.)  
10 MR. FRANK: This is Edward  
11 Hughes in the middle of the page. He  
12 reports: We now saw three very  
13 recent -- this is in the text, in an  
14 e-mail to Matt Calkins who's the  
15 CEO -- we now have three very recent  
16 examples where Pega has beaten us on a  
17 technical evaluation, Telstra, Poste  
18 Italiane, and Ryder.  
19 These were all very recent so  
20 they establish a break from the past.  
21 The punitive reasons in each case are  
22 as follows:  
23 Telstra, out-of-the-box  
24 governance framework. That's  
25 something that Pega had, Appian didn't

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1 Defendant - Pega - Closing (Frank)  
2 away from Appian for backup recovery  
3 scaleability reasons for the last year  
4 plus.  
5 And further up in the e-mail,  
6 Bob Kramer who's a founder of Appian  
7 says: We worked at length with the  
8 Amazon folks, including their senior  
9 business folks, earlier this year to  
10 get them over their concerns about  
11 Appian's architecture. We knew there  
12 was a risk. We weren't sure it was  
13 Pega they were considering. Now we  
14 know.  
15 In the very top, CEO Matt  
16 Calkins says: I'm surprised that we  
17 had zero. Amazon had fully paid up  
18 for its license but we had zero.  
19 Can't top Pega in a friendly account  
20 with bilateral activity.  
21 Pega simply had something that  
22 Appian didn't have. It's not -- and  
23 Amazon is a very sophisticated  
24 customer and concluded what Appian had  
25 didn't meet Amazon's need.

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1 Defendant - Pega - Closing (Frank)  
2 have.  
3 Poste Italiane, ease of use  
4 because of the process discovery  
5 module and DCO, directly captured  
6 objectives, on the governance. And  
7 those again are features that Pega  
8 has, Appian didn't have.  
9 And as we go forward in the  
10 e-mail --  
11 To Page 741, please, Josh.  
12 -- there's an e-mail from a man  
13 named Sid Nazareth to -- I beg your  
14 pardon, there's an e-mail from Karen  
15 Astley who got -- starting at the  
16 beginning of the page, and she says --  
17 just wait, the first full line --  
18 Edward was correct in this e-mail. We  
19 have process governance coming up, and  
20 I do see us being weak when competing  
21 against Pega in that area.  
22 Next is on the next page -- I  
23 beg your pardon?  
24 The next are two interesting  
25 e-mails. One is on Page 746, Josh,

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1 Defendant - Pega - Closing (Frank)  
2 last e-mail in the string.  
3 It's from a man named Tony  
4 Durso, who was the vice president for  
5 solutions consulting at Appian at the  
6 time. And in the third paragraph down  
7 from he says roughly what Mr. Hughes  
8 said at his deposition: I may be in  
9 the minority with this opinion, but I  
10 think that Appian and Pega are two  
11 fundamentally different platforms that  
12 happen to be categorized under the  
13 same three-letter acronym.  
14 And second up to the next e-mail  
15 in time is an e-mail from -- on 745,  
16 please, Josh -- from a man named Joe  
17 Aleardi. And Mr. Aleardi says, in the  
18 first sentence of his e-mail, second  
19 or third sentence: They do some  
20 things better, just like we do.  
21 What's now important are those things  
22 to the customer that leads to wins and  
23 losses.  
24 That, ladies and gentlemen, is  
25 the real world, not from the world of

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1 Defendant - Pega - Closing (Frank)  
2 he says: This is a top competitive  
3 priority.  
4 Skipping a sentence: We just  
5 lost Rabo on this point. It's  
6 critical that we develop an answer and  
7 counter -- I think that's intended to  
8 be ASAP.  
9 Then if you go to the very  
10 top -- go up one e-mail, Tony Durso,  
11 the head of sales consulting says: A  
12 few initial thoughts.  
13 Next sentence: They are correct  
14 in saying that we don't have rules  
15 today and a weakness has been exposed.  
16 I'm not suggesting that  
17 everybody would want that. I'm just  
18 suggesting that many customers do  
19 that.  
20 I'll give you one more. I may  
21 be taking more time than I should.  
22 Let's go to DX 1288. This is a  
23 discussion between -- 1288 is Bates  
24 585. I'm sorry, I'm showing you the  
25 same thing, my mistake, and not very

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1 Defendant - Pega - Closing (Frank)  
2 litigation.  
3 Next, 2013, DX 1288.  
4 (Whereupon, Exhibit DX 1288,  
5 E-mail, was identified.)  
6 MR. FRANK: The Ed Hughes  
7 e-mail, it's the first in time. It's  
8 on Page 585.  
9 Ed Hughes, again, is head of  
10 Appian's sales function: We have run  
11 into three or four encounters with  
12 clients in which they are challenging  
13 our ability to do rules inheritance.  
14 This is apparently hitting a cord with  
15 clients. They have spoken with Pega  
16 and in some cases have become the more  
17 important selection.  
18 We need a simple, killer answer  
19 that goes further than, yes, we do it  
20 but we do it differently. It has to  
21 say Pega does it all wrong or does it  
22 by necessity because it's so complex.  
23 Appian has a simple and elegant  
24 answer.  
25 And then in the next sentence,

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1 Defendant - Pega - Closing (Frank)  
2 impressive.  
3 Let's talk about Census for just  
4 a minute. And, Josh, can you put up  
5 DX 1820 and go to, first, to Page 68?  
6 (Whereupon, Exhibit DX 1820,  
7 Slide, was identified.)  
8 MR. FRANK: The slide shown  
9 here, the Census -- well, first point,  
10 Census awarded this contract to  
11 Appian -- to Pega because Pega was  
12 able to build an offline mobile  
13 capability that Census needed and  
14 Appian couldn't do in the defined  
15 amount of time.  
16 That's completely undisputed.  
17 It had nothing to do with Mr. Zou.  
18 It's a 2016 event, years after Zou  
19 left. He didn't do anything having to  
20 do with Pega Mobile. But Pega could  
21 build something, Appian couldn't build  
22 it. Pega got the job.  
23 But besides that, the Census  
24 Bureau did an overall evaluation of  
25 the qualities of the two products, and

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1 Defendant - Pega - Closing (Frank)  
2 that's what you see in the bar chart  
3 on the right.  
4 And in every one of five  
5 criteria, every one, Pega, which is  
6 the blue bar on the right, outscores  
7 Appian, which is the salmon-colored  
8 bar on the left, in every single  
9 instance by a completely neutral  
10 source who was trying to do the best  
11 they could for the benefit of the  
12 United States government and the rest  
13 of us, right, taxpayers.  
14 And if you go now -- in each of  
15 those criteria, which have to do with  
16 system design and functionality and  
17 ability to meet the schedule and cost  
18 and overall liability, on every single  
19 criteria that the Census created, it  
20 is -- Pega outscores.  
21 You can't blame that on Mr. Zou,  
22 that doesn't make sense.  
23 Now go to the next Page 69.  
24 This is the overall evaluation.  
25 Pega is in the yellow on the right,

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1 Defendant - Pega - Closing (Frank)  
2 document to this message.  
3 And then in the next memo he  
4 writes -- we can skip over the next:  
5 I'd like to see if we can substantiate  
6 our claims with more compelling  
7 content.  
8 And then the next three  
9 paragraphs going down, he points out  
10 that the Air Force concluded that Pega  
11 was simply easier to use and the  
12 Air Force found Appian to be more  
13 complex and that Pega was able to make  
14 their arguments in a side-by-side  
15 comparison, Appian versus Pega.  
16 Now, this is a 2018 document,  
17 four years after last contact with  
18 Mr. Zou, no suggestion that that's  
19 driven by anything related to Mr. Zou.  
20 It's relating to the product  
21 features of the two products that have  
22 nothing to do with Mr. Zou and nothing  
23 to do with what is claimed to be the  
24 trade secrets that Mr. Zou provided.  
25 Before I wear out my welcome,

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1 Defendant - Pega - Closing (Frank)  
2 Appian is the salmon on the left. In  
3 the aggregate and by score is that  
4 Pega is at 87.something, the in-house  
5 solution of the Census is at 70.5, and  
6 Appian is at 67.0.  
7 So Appian is the third-place  
8 finisher there, not even the  
9 second-place finisher. Completely  
10 independent evaluation.  
11 Next, DX 1346, please, Josh.  
12 (Whereupon, Exhibit DX 1346,  
13 E-Mail string, was identified.)  
14 MR. FRANK: This is an exchange  
15 involving a man named Dave Dantus.  
16 Mr. Dantus was an Appian regional vice  
17 president for Department of Defense  
18 sales.  
19 If you go to Page 274, middle of  
20 the page, second paragraph down.  
21 Mr. Dantus said: I'd like to  
22 continue this discussion and see if we  
23 can take it to another level on our  
24 own from loss to Pega earlier this  
25 year. I've attached the loss analysis

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1 Defendant - Pega - Closing (Frank)  
2 I'll stop reading this to you because  
3 I think I've made the point,  
4 hopefully.  
5 The larger question, then, is:  
6 What underlies Appian's damage claim?  
7 The claim here is that Mr. Zou  
8 provided to Pega his experience as an  
9 Appian developer between 2012 and 2014  
10 and, as a result of that, every single  
11 sale that Pega made between  
12 October 1st, 2013, and September 30,  
13 2021, to any customer in competition  
14 with anybody, every one of Pega's  
15 sales -- not just Pega's sales in  
16 competition with Appian, but Pega's  
17 sales in competition with anyone, that  
18 every such sale was attributable to  
19 information provided by Mr. Zou.  
20 That is a spectacular,  
21 unreasonable overreach just by  
22 comparing the two numbers, 479 million  
23 where Pega was competing with Appian  
24 and 3 billion where it was competing  
25 with everyone.

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1 Defendant - Pega - Closing (Frank)  
2 It's not hard to figure out that  
3 84 percent of the sales data being  
4 claimed in this unjust enrichment  
5 claim are for sales made by Pega  
6 against other people other than Appian  
7 with no description of who the other  
8 people were, no description of what  
9 was being sold in competition, and  
10 it's simply out there and completely  
11 unlinked in any other way to the  
12 product features that are said to  
13 justify an award of \$3 billion.  
14 So that's the first problem with  
15 it.  
16 The second problem with it is  
17 that sort of a problem of economics.  
18 If you're going to claim all the  
19 revenues of a business -- let me make  
20 this distinction. If I -- if I'm the  
21 last one into a restaurant one night,  
22 the marginal cost of serving me  
23 dinner, if I'm the last one in, is  
24 pretty small. They have all the  
25 tables, the walls, and the kitchen,

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1 Defendant - Pega - Closing (Frank)  
2 from that all of the costs of the  
3 business.  
4 Don't believe me. Don't believe  
5 Mr. Platt, who said what I just said.  
6 Believe Mr. Malackowski who testified  
7 as follows: If the jury were to  
8 conclude that all of Pega's -- if the  
9 jury were to conclude that -- included  
10 all of Pega revenues, you should  
11 include all of Pega's costs that in  
12 respect of your product change theory.  
13 You would agree, would you not,  
14 that the product -- I butchered that.  
15 This is me asking the question,  
16 by the way: If the jury were to  
17 conclude that all of Pega's -- if the  
18 jury were to conclude that if you  
19 included all of Pega's revenues, you  
20 should include all of Pega's costs  
21 with respect to your product change  
22 theory, you would agree that damages  
23 for the product change theory are  
24 zero?  
25 Answer from Mr. Malackowski:

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1 Defendant - Pega - Closing (Frank)  
2 and it's mostly the cost of the food  
3 they're going to serve to me and the  
4 little labor cost in the kitchen and  
5 that's it.  
6 So if you're looking at a small  
7 increase in sales, what you compare is  
8 that small increase in costs driven by  
9 those sales.  
10 Now, if you ask what is it that  
11 drives the revenue of that restaurant  
12 if you're going to claim that all the  
13 revenues of the restaurant are unjust  
14 enrichment?  
15 And the answer is, it's all the  
16 costs of the business because now you  
17 have to -- you know, it's the cost of  
18 the tables and the chairs and the  
19 kitchen equipment and the food and all  
20 of the service personnel and the chef  
21 and all of that.  
22 So it depends on what you're  
23 claiming. When you're claiming all of  
24 the revenues of the business, you have  
25 to -- write off, you have to deduct

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1 Defendant - Pega - Closing (Frank)  
2 Yes, and you would award damages under  
3 the competition scenario. That's  
4 competition against Appian, direct  
5 competition against Appian.  
6 That's what Mr. Platt said.  
7 That's what Mr. Malackowski said. The  
8 two experts are saying the same thing.  
9 Now, there was criticism of  
10 Mr. Platt yesterday when he said that,  
11 but the inescapable fact is that that  
12 is exactly what Mr. Malackowski agreed  
13 was correct.  
14 Now, the argument I bet you're  
15 going to hear come rebuttal time is,  
16 well, gee, yeah, some of those  
17 expenditures, though, would have  
18 assisted sales in future periods.  
19 And the answer to that is maybe  
20 so. But when you're looking at a  
21 single block of time, it's always true  
22 that some expenditures prior to the  
23 block of time would have assisted  
24 revenues within the block of time and  
25 some expenditures within the block of

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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.

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1 Defendant - Zou - Closing (Travell)  
2 And during that time Mr. Zou had  
3 a chance to work in that environment,  
4 and he learned quite a bit about it.  
5 And what Mr. Zou learned about it is  
6 not anything that's not everything  
7 that's contained in the documentation  
8 that you've heard so much about by his  
9 experience as a developer, what it's  
10 like to actually code in the Appian  
11 program itself, what he learned about  
12 its limitations, what he learned about  
13 what its qualities were.  
14 As Mr. Frank mentioned to you  
15 during his closing statement, much of  
16 what Mr. Zou imparted to Pegasystems  
17 in his conversations, principally with  
18 Mr. Petronio, are shortcomings or  
19 limitations of the Appian software  
20 product itself, things that Appian  
21 didn't have or that Mr. Zou knew,  
22 based upon his experience working in  
23 other types of software products, that  
24 Appian did not have.  
25 In this case, however, Appian is

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1 Defendant - Zou - Closing (Travell)  
2 greater weight of the evidence -- and  
3 Mr. Mangi had the scale that you all  
4 have seen in these types cases where  
5 you have to balance the evidence, and  
6 plaintiff has the burden making the  
7 evidence just a little heavier on  
8 their side. But it is a very real  
9 burden, and it is the Plaintiff's  
10 burden.  
11 And unless you're convinced by  
12 that preponderance of the evidence  
13 that they've proven their claims that  
14 these are, in fact, trade secrets and  
15 that they were misappropriated, then  
16 you must find that Appian is not  
17 entitled to damages either against  
18 Mr. Zou or against Pegasystems.  
19 So what are the trade secrets?  
20 Mr. Mangi talked to you a little bit  
21 about that this morning, but what I'm  
22 going to focus on is where those trade  
23 secrets are alleged to have lived,  
24 where they have alleged to have  
25 resided.

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1 Defendant - Zou - Closing (Travell)  
2 taking the position that the fact that  
3 its product didn't have certain  
4 features or had certain limitations is  
5 itself a trade secret.  
6 Now, again, how would Mr. Zou  
7 know that? Mr. Zou would know that  
8 only by his experience in actually  
9 doing the key strokes, looking for  
10 features that he's seen in other  
11 products, and trying to use that in  
12 Appian.  
13 So in your deliberations of  
14 whether or not these are, in fact,  
15 trade secrets, please keep in mind  
16 that much of what Appian is trying to  
17 protect are things that are  
18 deficiencies in its product or  
19 features that its product did not, in  
20 fact, have.  
21 We believe that after careful  
22 consideration, if you find that Appian  
23 has failed to prove that the  
24 information that Mr. Zou provided  
25 were, in fact, trade secrets by the

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1 Defendant - Zou - Closing (Travell)  
2 So one place are the screen  
3 displays. Now, again, Mr. Mangi used  
4 the term that Mr. Zou provided access  
5 to Pega to the Appian software, but  
6 you've had a chance to actually see  
7 the videotapes and see what was going  
8 on.  
9 What you saw was Mr. Zou doing a  
10 demonstration of the Appian software.  
11 Now, certainly, it's clear that Appian  
12 was asking him to demonstrate certain  
13 features of the software. So they  
14 were saying, can you do this? Can you  
15 show us how this is done?  
16 But in fact, what he was doing  
17 was looking at what I think Mr. Platt  
18 called the presentation level -- I  
19 guess that was Mr. Pinto -- the  
20 presentation level, the actual what  
21 you see when you turn on your computer  
22 and you're looking at the screen and  
23 doing the key strokes and manipulating  
24 those key strokes to go from one  
25 element of the platform to another.

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1 Defendant - Zou - Closing (Travell)  
2 But at no time did Mr. Zou ever  
3 provide the software itself to  
4 Pegasystems or allow anyone at  
5 Pegasystems to actually use his access  
6 to the program.  
7 Of course, in that very first  
8 video we saw, there was a point in  
9 time when Mr. Petronio tried to take  
10 over, but that didn't happen.  
11 Mr. Petronio did not, in fact, get  
12 access to the program itself.  
13 So the evidence is pretty clear  
14 that what Mr. Zou did was give a  
15 demonstration of how the Appian  
16 software itself worked.  
17 Now, again, you've been implored  
18 by both Mr. Mangi and Mr. Frank not to  
19 leave your common sense outside of  
20 your deliberations.  
21 If what Mr. Zou did was provide  
22 a demonstration, again, that's what  
23 software is meant to be done, the  
24 purpose of software, the purpose of  
25 marketing. It's to show the world

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1 Defendant - Zou - Closing (Travell)  
2 Mr. Zou knew. That's what he calls  
3 his head knowledge.  
4 And I would submit that in  
5 thinking about this, please keep that  
6 concept in mind.  
7 So the other issue is not only  
8 does Appian have to prove that these  
9 are trade secrets, but they also have  
10 to prove that they took reasonable  
11 steps to keep those secrets  
12 confidential.  
13 And in order to do that, they  
14 principally rely on an expert  
15 Eric Cole. Now, again, there's been a  
16 lot said about Mr. Cole -- pardon me  
17 while I get a drink of water -- I'm  
18 sorry, I guess he calls himself  
19 Dr. Cole -- that he's the cyber  
20 security expert for President Obama,  
21 for Bill and Melinda Gates. And  
22 that's undoubtedly true.  
23 But what did Dr. Cole say in  
24 this case and how should you credit  
25 his testimony?

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1 Defendant - Zou - Closing (Travell)  
2 what your program or your software can  
3 do, and Mr. Zou, in fact, did that.  
4 They were also saying that  
5 Mr. Zou provided user manuals, what's  
6 called the documentation that was  
7 housed in the Appian Forum, and that  
8 that user -- those user manuals were,  
9 in fact, somehow proprietary trade  
10 secrets to Appian.  
11 So to put this in context, so,  
12 again, those are where the trade  
13 secrets are alleged to have resided.  
14 What's clearly not a trade  
15 secret is what's between Mr. Zou's  
16 ears, okay? And to the extent that he  
17 worked in the product, he learned  
18 things about the product and he was  
19 able to talk to others about his  
20 experience in that product, that  
21 cannot possibly be a trade secret.  
22 And when Mr. Zou said, well, I'd  
23 like to see the program do this  
24 better, but it doesn't do it. That's  
25 not a trade secret. That's what

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1 Defendant - Zou - Closing (Travell)  
2 What I'd like to do is just take  
3 take a few minutes and go through what  
4 Dr. Cole told you about his review of  
5 the Appian program and show you three  
6 different places where he was clearly  
7 wrong about his observations about the  
8 program itself.  
9 So one of the first things that  
10 he did was he spent time talking about  
11 the registration for Appian Forum.  
12 And, Josh, if you could display  
13 Plaintiff's Exhibit No. 274.  
14 (Whereupon, Exhibit PTX 274,  
15 Document, was identified.)  
16 MR. TRAVELL: Mr. Frank gave you  
17 a spoiler alert during closing  
18 arguments. He said I might talk about  
19 that, and he's, in fact, right. I am  
20 going to talk about it.  
21 So Dr. Cole testified that every  
22 registrant for Appian Forum had to use  
23 this process of filling out this  
24 information in the Appian Forum user  
25 registration in order to be able to

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1 Defendant - Zou - Closing (Travell)  
2 get access to the Appian Forum itself.  
3 Again, brief reminder, the  
4 Appian Forum is the place where Appian  
5 stored its documentation, again, user  
6 manuals, where Appian developers could  
7 go and initiate a chat or read chats  
8 that other developers had written and  
9 support and service personnel from  
10 Appian that was behind the Appian  
11 Forum, where a developer could  
12 initiate a trouble ticket or a service  
13 ticket when they were having issues  
14 with the program or having questions  
15 about the program, and where they  
16 could also download an instance of  
17 Appian for whatever purposes for which  
18 they needed it.  
19 Dr. Cole testified,  
20 unequivocally, that everyone had to go  
21 through this process and, as a result  
22 of going through this process, they  
23 automatically accepted the Terms of  
24 Use that were part of this and that,  
25 in essence, formed a direct contract

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1 Defendant - Zou - Closing (Travell)  
2 asked Mr. Malcolm Ross the same  
3 question, and Malcolm Ross said, no,  
4 that's not true. In fact, there are  
5 two different types of registration  
6 processes.  
7 This process that Dr. Cole  
8 testified about, again, to try to  
9 convince all of you that this was the  
10 keys to the crown -- well, it was the  
11 keys too, I'm not exactly sure what  
12 they're saying at this point -- but  
13 Mr. Ross, in fact, acknowledged that  
14 there are two different types.  
15 This is for self-registration.  
16 To the extent that someone wishes to  
17 register themselves, they, in fact, go  
18 through this process. Then in 2011,  
19 when Mr. Zou was first registered for  
20 Forum, when he worked for Lockheed and  
21 then later today, as a matter of fact,  
22 the same type of process is used.  
23 But what Mr. Ross said and what  
24 Mr. Zou also testified to was that  
25 there is a second process, and the

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1 Defendant - Zou - Closing (Travell)  
2 between people like Mr. Zou and  
3 Appian, where the user, again,  
4 undertook all of those obligations of  
5 confidentiality to keep this secret.  
6 Now, the reason I'm talking  
7 about this is not just to show that  
8 Dr. Cole was clearly wrong in this  
9 issue, but how casual Appian was, in  
10 fact, about these types of licenses  
11 and registrations, which completely  
12 undercuts the notion that somehow that  
13 these were the crown jewels and they  
14 were keeping these under tight lock  
15 and key and that they took steps which  
16 they would require under law to  
17 protect their trade secrets. They  
18 didn't do it, and I'll show you why.  
19 So after Dr. Cole testified  
20 about this, you know, I asked him on  
21 cross-examination: Is it your  
22 testimony that Mr. Zou, in fact, went  
23 through this registration process?  
24 And again, it was his belief  
25 that, in fact, he did. However, I

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1 Defendant - Zou - Closing (Travell)  
2 second process is, in fact, what  
3 Mr. Zou went through.  
4 And under that process, the way  
5 a person, a developer, or somebody  
6 who's new to Appian registers for the  
7 first time for Forum is their project  
8 manager, in fact, registers that  
9 person for the Appian Forum.  
10 And as a result of that  
11 registration, which is the process  
12 that Mr. Zou, in fact, went through,  
13 Mr. Zou didn't fill out this actual  
14 registration, his project manager did.  
15 And what happens as a result of that  
16 is that Mr. Zou has credentials, and  
17 we'll look at this in just a moment.  
18 And then once he does that, all  
19 he has to do to enter into Forum in  
20 the future and for the hundreds or  
21 perhaps thousands of times Mr. Zou  
22 used Forum both for his consulting  
23 work at Pega and for his employer over  
24 the next decade or so, he put in his  
25 username and password and never had to

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1 Defendant - Zou - Closing (Travell)  
2 accept Terms of Use.  
3 Again, that's important, because  
4 without the Terms of Use, there's no  
5 contract between Zou and Appian, and  
6 there's, in fact, no obligation of  
7 confidentiality on a person like  
8 Mr. Zou to demonstrate the product for  
9 whatever purposes he would like.  
10 Josh, if you could -- so to the  
11 extent that Dr. Cole, the cyber  
12 security expert, the world's foremost  
13 expert on how to keep your software  
14 and your trade secrets secret,  
15 testified that this was the process  
16 that did it was clearly wrong, just  
17 dead wrong about that.  
18 Now, Mr. Ross suggested to you  
19 that, well, even if you go through the  
20 other process, there has to be some  
21 sort of Terms of Use registration the  
22 first time the person actually uses  
23 the Appian Forum.  
24 But, again, the issue I'll go  
25 back to, the burden of proof and what

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1 Defendant - Zou - Closing (Travell)  
2 Video, was identified.)  
3 MR. TRAVELL: And this is a  
4 video that Mr. Petronio took using the  
5 famous Camtasia video, an  
6 off-the-shelf product that you've  
7 heard about throughout the testimony  
8 in this case.  
9 And during that time, what  
10 Mr. -- this was the very first  
11 conversation between Mr. Petronio and  
12 Mr. Zou. You may recall that this was  
13 a -- there were a series, I think, of  
14 four different videos that were taken  
15 that day.  
16 And at one point during those  
17 videos, Mr. Petronio says, well, my  
18 family is coming here, I want to say  
19 good-bye. Let's interrupt for a few  
20 minutes, then we'll come back. I  
21 don't know if they remember that, but  
22 that actually occurred during this  
23 process.  
24 So at this point we're going  
25 back and forth between Mr. Zou and

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1 Defendant - Zou - Closing (Travell)  
2 that means, is Mr. Ross has said that,  
3 but Mr. Zou has testified that he  
4 didn't go through this process.  
5 So where's the evidence, then?  
6 You're going to go back to the jury  
7 room and you'll be given more  
8 documents than you ever wanted to see.  
9 And you can look through every one of  
10 those documents and there is no  
11 document in the record in this case  
12 that shows that Appian has any record  
13 that Mr. Zou ever accepted the Terms  
14 of Use in 2011, 2012, all the way up  
15 to 2021, which was the last time  
16 Mr. Zou worked as an Appian developer.  
17 So what I'd like to do next,  
18 Josh, is, let's take a look at the  
19 first video deposition, the first  
20 video that Mr. Petronio created in  
21 February 20th of 2012, at the very  
22 beginning of their relationship.  
23 Excuse me, that's Plaintiff's  
24 Exhibit 855.  
25 (Whereupon, Exhibit PTX 855,

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1 Defendant - Zou - Closing (Travell)  
2 Mr. Petronio. Mr. Zou is, in fact,  
3 creating a very short proof of  
4 concept. And Mr. Petronio is asking  
5 Mr. Zou how does -- what is this thing  
6 about, the documentation, what does  
7 that mean?  
8 So if you could go ahead and  
9 play that, Josh. We're actually  
10 looking at the screen that  
11 Mr. Petronio is recording.  
12 (Video played.)  
13 MR. TRAVELL: You can stop that  
14 right there.  
15 What we're looking at is,  
16 Mr. Zou in realtime, at Mr. Petronio's  
17 request, is saying, can you navigate  
18 to Appian Forum and show me what the  
19 documentation looks like?  
20 So that's what Mr. Zou does. He  
21 goes to -- you can see at the top the  
22 address, forum.Appian.com. And what  
23 you're seeing is a screen that Mr. Zou  
24 and Mr. Petronio are looking at. It's  
25 recording in realtime.

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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

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1 Defendant - Zou - Closing (Travell)  
2 you're looking for a contract, a  
3 binding agreement between Appian and  
4 Mr. Zou that would bind him to keep  
5 Appian's secrets confidential, you're  
6 not going to find it.  
7 The other thing that Mr. Mangi  
8 suggested during his closing  
9 statement, closing argument this  
10 morning was that Mr. Zou admitted that  
11 there are opportunities or features of  
12 proprietary software where in order to  
13 use it, there is a pop-up screen and  
14 you have to click on it in order to go  
15 through. Whether you read it or not,  
16 you have to click on it to go through.  
17 But again, that was a general  
18 question about features that are  
19 common in proprietary software. That  
20 was not a question about the Appian  
21 product. There's no testimony and  
22 there's no evidence in this case that  
23 there's any pop-up feature in any  
24 thing that a developer uses for the  
25 purposes of accepting Terms of Use.

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1 Defendant - Zou - Closing (Travell)  
2 employer to impose upon Mr. Zou any  
3 obligations of confidentiality, you  
4 haven't seen any agreement between  
5 Lockheed and Zou. You haven't seen  
6 any agreement between CollabraLink and  
7 Mr. Zou.  
8 So to the extent, that's  
9 important to your deliberations,  
10 Appian has failed to put any  
11 evidence -- even though they've got  
12 the burden, they've failed to put any  
13 evidence on that issue.  
14 So during the time that Mr. Zou  
15 worked for -- did his consulting work  
16 for Pega, as I said, he testified that  
17 he had been at Lockheed through August  
18 of 2011. That he went to work for a  
19 company called Clovis, where he did  
20 something not related to his work as a  
21 developer on the Appian platform.  
22 But the fact -- despite the fact  
23 that while he was at Lockheed that he  
24 had downloaded an instance of the  
25 Appian software onto his personal

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1 Defendant - Zou - Closing (Travell)  
2 So, again, to the extent that  
3 Dr. Cole believed or testified  
4 otherwise, he was just wrong about  
5 that.  
6 The other very critical fact  
7 about which Dr. Cole was wrong is he  
8 was under the impression and testified  
9 to all of you -- actually, to more of  
10 you that aren't here anymore -- that  
11 all of the work that Mr. Zou did was  
12 while he was employed at Serco.  
13 That's not true.  
14 The record in this case is  
15 unequivocal that at the time that  
16 Mr. Zou was speaking with  
17 Mr. Petronio, in January --  
18 February 20th of 2012, he was, in  
19 fact, employed by a company called  
20 CollabraLink.  
21 And I'll just take a moment to  
22 talk about that. Because, to the  
23 extent, again, that Dr. Cole was  
24 looking on third-party agreements or  
25 an agreement between Mr. Zou and his

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1 Defendant - Zou - Closing (Travell)  
2 computer, when he left, there was no  
3 oversight by Appian nor by the Appian  
4 business partners, which in that case  
5 was Lockheed, to determine what he did  
6 with that, with he did with that  
7 software program.  
8 And the fact of the matter is,  
9 he kept it and he still had that same  
10 Appian instance on his software when  
11 he went to work with CollabraLink in  
12 January of 2012 and later in September  
13 2012 when he went to work for Serco.  
14 So to the extent that Appian  
15 gave that out to Mr. Zou in May of  
16 2011 when he worked at Lockheed,  
17 Appian made no effort to determine  
18 what happened with that.  
19 And to the extent that Mr. Zou  
20 had access to the Appian Forum through  
21 that entire time, he testified and the  
22 evidence is unequivocal that he used  
23 the same username and same password  
24 throughout that entire time.  
25 So that takes us, then, to the

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1 Defendant - Zou - Closing (Travell)  
2 work that Mr. Cole said was all done  
3 under the ages of Serco, the initial  
4 conversations that Mr. Zou had with  
5 Mr. Petronio on February 20, 2012.  
6 The e-mails that they had  
7 throughout the spring of 2012 were all  
8 done while he was working for  
9 CollabraLink.  
10 Now, again, the reason I bring  
11 that up is because, clearly, again,  
12 there's no TOUs, there is no evidence  
13 of any contractual arrangements  
14 between Zou and his employer.  
15 But what you have is Mr. Zou  
16 doing these demonstrations. And  
17 during those very first  
18 demonstrations, Mr. Zou, again,  
19 provided his head knowledge, told  
20 Mr. Petronio about the things that he  
21 felt in his opinion were shortcomings  
22 or features of the Appian product that  
23 were missing from the type of programs  
24 that Mr. Zou was, again, using. He  
25 did provide some documentation, and he

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1 Defendant - Zou - Closing (Travell)  
2 Plaintiff's Exhibit 549, which is an  
3 e-mail from Petronio to other people  
4 inside of Pega, dated February 24,  
5 2012. And that's an e-mail in which  
6 Mr. Petronio sets out his findings or  
7 conclusions based upon the three-hour  
8 session he had with Mr. Zou on  
9 February 20th of 2012.  
10 So, again, Mr. Zou actually  
11 answered some questions, Mr. Petronio  
12 came up with a paper. That's in  
13 evidence, and you can take a look at  
14 that. And again, that was done  
15 without any TOUs or any contract  
16 between Mr. Zou and any employer in  
17 evidence in this case.  
18 And those findings that  
19 Mr. Petronio was circulating inside of  
20 Pega included results of the proof of  
21 concept, again, a phrase that you've  
22 heard throughout this trial, where  
23 Mr. Zou actually performed a sample  
24 solution to a problem to show  
25 Mr. Petronio how that would work in

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1 Defendant - Zou - Closing (Travell)  
2 did demonstrate the actual product  
3 itself.  
4 So in your deliberations, again,  
5 to the extent that's something you  
6 wish to consider, I would typically  
7 flash this up on the screen, but given  
8 the challenges we've had today, I will  
9 give you the numbers of the documents  
10 that you may want to look at.  
11 But if you look at Plaintiff's  
12 Exhibit 240, which is an e-mail from  
13 Zou to Petronio, dated February 22,  
14 2012. Mr. Zou is responding to  
15 Mr. Petronio about specific questions.  
16 And the thing that you'll see in  
17 that document and in the next few  
18 documents that I'll give to you is  
19 they talk about some of these very  
20 essential features that Appian is now  
21 claiming are trade secrets, but were,  
22 again, in fact, the type of thing that  
23 were shortcomings or limitations of  
24 the Appian product itself.  
25 The next document would be

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1 Defendant - Zou - Closing (Travell)  
2 the Appian program.  
3 The next document I'll cite you  
4 to is Plaintiff's Exhibit 2305 which  
5 is an e-mail dated August 6th of 2012.  
6 (Whereupon, Exhibit PLT 2305,  
7 August 6, 2012 E-mail, was  
8 identified.)  
9 MR. TRAVELL: Again, before Zou  
10 was even working for Serco, in which  
11 Mr. Caton, a name you've heard that  
12 was Mr. Petronio's assistant, was  
13 mailing to Mr. Petronio a revised copy  
14 of the Pega competitive brief, which  
15 is again a sales and marketing  
16 material, and incorporated comments  
17 that Mr. Zou had made to Mr. Petronio  
18 and were now part of those sales  
19 materials, again, all before Mr. Zou  
20 worked for Serco.  
21 And the last document, I've  
22 already given you Plaintiff's  
23 Exhibit 2378.  
24 (Whereupon, Exhibit PLT 2378,  
25 E-mail, was identified.)

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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

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1 Defendant - Zou - Closing (Travell)  
2 confidential information, if Mr. Zou  
3 already knew it, then the fact that  
4 Serco later disclosed to him the same  
5 information doesn't make that  
6 information confidential.  
7 So what do you know? You know  
8 that prior to this time Mr. Zou had  
9 already had his first meeting or  
10 videoconference with Mr. Petronio and  
11 had provided him a great deal of  
12 information about the program, which  
13 shows what Mr. Zou knew about the  
14 Appian platform.  
15 So that information that Mr. Zou  
16 provided to Petronio in February of  
17 2012 is by definition not part of this  
18 Agreement because he already knew it  
19 prior to the time that Serco disclosed  
20 it or didn't disclose it to him.  
21 And then it says, if you go to  
22 Paragraph (c), it says: Or that was  
23 already known by the employee at the  
24 time of its disclosure by Serco as  
25 evidenced by written documentation

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1 Defendant - Zou - Closing (Travell)  
2 through about May of 2014. There was  
3 a period there, I guess a year and a  
4 half, two years or so, in fits and  
5 starts. So it's not like he was doing  
6 something every day.  
7 Petronio would have a project  
8 for him -- and if you look at  
9 Plaintiff's Exhibit No. 5, it will  
10 show you.  
11 (Whereupon, Exhibit PLT 5,  
12 Document, was identified.)  
13 MR. TRAVELL: There are kind of  
14 little spots where Mr. Zou may be  
15 working 10, 15, 20, 50 hours over a  
16 period of a month and a half and then  
17 he'll go several months where there's  
18 actually nothing, because there's  
19 nothing that came to him.  
20 So during the time that Mr. Zou  
21 was working for -- doing his  
22 consulting work for Pegasystems, he,  
23 again, was doing this work based upon  
24 information that he came into the  
25 relationship with.

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1 Defendant - Zou - Closing (Travell)  
2 that existed prior to such disclosure.  
3 Now, again, what we know,  
4 because it's in the record, are these  
5 meetings between Mr. Petronio and  
6 Mr. Zou in February 2012, the e-mails  
7 between Mr. Petronio and Mr. Zou in  
8 March of 2012 that Mr. Zou already  
9 knew what those limitations were.  
10 So again, to the extent that  
11 Dr. Cole was testifying as an expert  
12 that this document controlled all of  
13 Mr. Zou's relationships with  
14 Pegasystems, he's clearly wrong on  
15 that count, but even to the extent  
16 that this document controls after  
17 Mr. Zou becomes an employee of Serco,  
18 the information that Mr. Zou had  
19 already departed to Pega is by  
20 definition not covered by this  
21 Agreement.  
22 So Mr. Zou, in fact, worked for  
23 Pegasystems as a consultant through  
24 K-Force between September of 2012,  
25 while he was employed by Serco,

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1 Defendant - Zou - Closing (Travell)  
2 Again, to the extent he was  
3 demonstrating software, again, I think  
4 the record also shows that there were  
5 upgrades to the Appian program, and  
6 Mr. Zou downloaded those and he then  
7 demonstrated those to Pegasystems.  
8 That's in the record and that's what  
9 it says.  
10 But to the extent that Mr. Zou,  
11 in fact, continued to do that work,  
12 there's been a lot made of whether or  
13 not that violated his terms of  
14 employment with Serco. And maybe  
15 having a part-time job did, but this  
16 is not a job where Serco was suing  
17 Mr. Zou for having part-time work.  
18 This is a case about  
19 misappropriation of trade secrets, so  
20 whether or not having a part-time job  
21 while he was -- that he began before  
22 he even worked for Serco and continued  
23 after he had his work for Serco is  
24 really not relevant to your  
25 deliberations.

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1 Defendant - Zou - Closing (Travell)  
2 Again, whether or not that was a  
3 violation of the Code of Conduct with  
4 Serco, it is what it is. Serco has  
5 not raised it. Serco has not sued  
6 Mr. Zou. Appian has.  
7 So I would ask you again to very  
8 carefully consider what it was Mr. Zou  
9 was doing, when he was doing it, did  
10 he, in fact, provide information that  
11 was secret, and whether or not, you  
12 know, information that was in his head  
13 about deficiencies in the product  
14 could even qualify as trade secret.  
15 Now, independent of what Mr. Zou  
16 did here, you've heard testimony from  
17 experts. No surprise. We've seen  
18 experts from Appian saying that  
19 deficiencies in products can be trade  
20 secret. It's a trade secret that my  
21 product doesn't have a particular  
22 widget in it.  
23 Again, don't leave your common  
24 sense outside the deliberation room.  
25 But you also heard from

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1 Defendant - Zou - Closing (Travell)  
2 software developer make the claim that  
3 the user interface, the presentation  
4 level, what you look at on the screen  
5 in your computer was itself a trade  
6 secret.  
7 And one of the reasons he gave  
8 is, well, again that defies common  
9 sense. Part of the sales efforts for  
10 any software product is to show it to  
11 people. You go to -- you put it at  
12 the Appian World to have bloggers come  
13 in and have the press write about the  
14 fact that your program can do this  
15 type of work.  
16 So the idea that if I'm working  
17 on a program on my computer screen and  
18 somebody walks by and they see the  
19 image, that somehow that image is  
20 itself proprietary and a trade secret,  
21 again, that's the claim.  
22 Your job is to decide whether or  
23 not you think that's a credible claim  
24 and you think that's the basis for a  
25 \$18,000 judgment against Mr. Zou or a

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1 Defendant - Zou - Closing (Travell)  
2 Dr. Easttom who said that, in fact,  
3 the lack of a product -- the absence  
4 of a feature in a product cannot be a  
5 trade secret.  
6 Again, there's been a big effort  
7 made by Appian's lawyers to denigrate  
8 Dr. Easttom because he got three Ph.D.  
9 in a period of whatever period time it  
10 was. But again, that's a red herring.  
11 Whether or not Dr. Easttom has  
12 acquired degrees in a time that has  
13 been deemed to be unreasonable or  
14 whatever the theory is there, the fact  
15 is you had a chance to observe his  
16 demeanor. And irrespective of whether  
17 he had any Ph.D.s, you have to decide  
18 whether or not Dr. Easttom was  
19 credible and made findings and  
20 expressed opinions which were, in  
21 fact, consistent with what you believe  
22 to be credible and true.  
23 What Dr. Easttom said is in his  
24 30 years of experience in software  
25 development, he had never heard any

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1 Defendant - Zou - Closing (Travell)  
2 \$3 billion judgment against  
3 Pegasystems.  
4 So the last thing I'd like to do  
5 is to look at the jury verdict form.  
6 So Mr. Mangi talked you through that  
7 this morning, and he sort of gave you  
8 some ideas about how to fill it out.  
9 Spoiler alert. I have different  
10 ideas on how you should fill it out.  
11 So again, as to Count 1 for  
12 misappropriation of trade secrets,  
13 does the jury find its verdict for  
14 Plaintiff? So again, in order to  
15 check yes on that, you would have to  
16 find that the information that Mr. Zou  
17 provided to Pegasystems between 2012  
18 and 2014 was, in fact, secret; was not  
19 in the public domain; and that Appian  
20 took reasonable steps to maintain the  
21 secrecy of that information.  
22 I suggest that based on the  
23 evidence and your weighing of that  
24 evidence, you should check the box no,  
25 but unlike Mr. Mangi -- look at that.

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1 Defendant - Zou - Closing (Travell)  
2 He can check it for me.  
3 Thank you, Josh.  
4 So second count is if you do  
5 find -- if you hit no, then your job  
6 is done on that one. The rest of the  
7 form doesn't matter.  
8 Only if you find yes, then you  
9 go to Count 1. That says only against  
10 Pegasystems, only against Youyong Zou,  
11 against both Pegasystems and Youyong  
12 Zou. Again, if you hit no on No. 1,  
13 then it's against neither party on  
14 Part 2.  
15 With regard to the amount,  
16 again, if you were to find yes and if  
17 you were to find that it's against  
18 either Mr. Zou by himself or with  
19 Pega, then you have to turn the page  
20 and look at the next one.  
21 It says: As to Count 1, if the  
22 jury finds its verdict for Appian and  
23 against Youyong Zou, what amount does  
24 the jury award damages against Youyong  
25 Zou?

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1 Defendant - Zou - Closing (Travell)  
2 in his pocket?  
3 And he says: Yes. But then if  
4 he later pays it, then he may be  
5 eligible for a deduction on future tax  
6 returns and so he shouldn't get the  
7 benefit of that if, in fact, he was  
8 involved in wrongdoing.  
9 But he also acknowledged that  
10 the tax laws may change. The IRS may  
11 determine that the -- Mr. Zou, that  
12 the payment that he made for a  
13 judgment here is not an ordinary  
14 business expense or business in  
15 furtherance -- an expense of  
16 furtherance of business. So he may or  
17 may not get the deductions.  
18 Mr. Malackowski's response was,  
19 well, doesn't matter. That's how we  
20 do it. It's \$23,600.  
21 Again, if you're going to go in  
22 that direction, those are your  
23 choices.  
24 The last thing I want to talk to  
25 you about is this next series of

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1 Defendant - Zou - Closing (Travell)  
2 So again, while I'm not urging  
3 you to find that Mr. Zou  
4 misappropriated trade secrets, if you  
5 do, I think you've got two choices.  
6 You can go with -- again, the theory  
7 is unjust enrichment; so the idea is  
8 to take back from the person who  
9 misappropriated the trade secrets the  
10 profits that they made in that  
11 activity and give it to Appian.  
12 So there are really only two  
13 choices and there's no dispute that's  
14 what those two choices are.  
15 In the first instance, Appian  
16 claims \$23,600 and change. But,  
17 Mr. Zou didn't put that in his pocket.  
18 That was the amount that K-Force paid  
19 on his behalf before taxes and  
20 withholding. And you may recall, you  
21 may not, it wouldn't hurt my feelings  
22 too much if you didn't, but I asked  
23 Mr. Malackowski: Well, isn't it true,  
24 Mr. Malackowski, that Mr. Zou only  
25 benefited, only put \$18,000 and change

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1 Defendant - Zou - Closing (Travell)  
2 questions about willful and malicious  
3 misappropriation, one question for  
4 Pegasystems and one question is for  
5 Mr. Zou. So I'll focus in the time  
6 remaining to me just on the bottom  
7 question about willful and malicious  
8 misappropriation by Mr. Zou.  
9 If you were to find that Mr. Zou  
10 was -- had misappropriated Appian's  
11 trade secrets and you made some sort  
12 of dollar award, then you're asked the  
13 question: Was his misappropriation  
14 willful and malicious?  
15 So not willful or malicious.  
16 It's willful and malicious. So if one  
17 in this case, if seven, I want to look  
18 at what does willful and malicious  
19 mean? You will get in your packet  
20 jury instructions and ask you to look  
21 at Jury Instruction No. 14. And it  
22 talks about what is willful and  
23 malicious.  
24 And the last sentence of Jury  
25 Instruction No. 14 says: Willful

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1 Defendant - Zou - Closing (Travell)  
2 conduct occurs when a party acts  
3 without regards for the right of  
4 another knowing that the injury will  
5 probably follow.  
6 So again, that's a determination  
7 you have to make.  
8 Malicious conduct occurs when a  
9 party acts with ill will or spite.  
10 You also have to find that. So  
11 even if you were to find that  
12 Mr. Zou's conduct was without regard  
13 to the rights of another knowing that  
14 injury will probably follow, that's  
15 not enough to find that he was guilty  
16 of willful and malicious conduct.  
17 You have to also find that he  
18 acted with ill will or spite. I  
19 submit to you there's nothing in the  
20 record in this case that shows that  
21 Mr. Zou had any motive to hurt Appian.  
22 And when I say hurt Appian, he was not  
23 there out of spite doing this  
24 consulting work for Pega.  
25 I think the record is pretty

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1 Defendant - Zou - Closing (Travell)  
2 good humor and your sticking with us.  
3 And good luck with your deliberations.  
4 THE COURT: Ladies and  
5 gentlemen, under our procedure,  
6 Mr. Mangi gets a rebuttal and he has  
7 by my calculation about an hour.  
8 Would you like to hear that  
9 today or would you like to hear it  
10 tomorrow morning?  
11 MR. MANGI: Your Honor, I'm not  
12 going to take an hour.  
13 THE COURT: You're not.  
14 MR. MANGI: I can't promise  
15 5:00, but, you know, I'm going to try  
16 to get done soon after 5:00 hopefully.  
17 THE COURT: All right.  
18 MR. MANGI: If people need to  
19 leave exactly at 5:00, I understand.  
20 THE COURT: Is there anybody  
21 against -- who would like to call it a  
22 day? Speak up if there is.  
23 JUROR: I want to call it a day.  
24 THE COURT: We're going to call  
25 it a day. It's been a long day for

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1 Defendant - Zou - Closing (Travell)  
2 clear that Mr. Zou was doing this for  
3 the purposes of making money. It was  
4 his side hustle.  
5 Mr. Mangi graciously  
6 acknowledged that Mr. Zou is not a  
7 criminal mastermind. That's the  
8 nicest thing Mr. Mangi has ever said  
9 about Mr. Zou. Thank you. We'll take  
10 it.  
11 But I think what that also  
12 indicates is that after carefully  
13 considering this, you really cannot  
14 find that Mr. Zou was guilty of both.  
15 This is not a criminal case, but  
16 engaged in both willful and malicious  
17 conduct.  
18 So thank you for your time.  
19 Again, it's been a long run. Run a  
20 marathon together for the past seven  
21 weeks. Actually could have run from  
22 here to New York and Boston and back  
23 again during that time, at least some  
24 of us could, probably not me.  
25 But again, thank you for your

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 everybody.  
3 But is 9:30 tomorrow morning  
4 available for everybody?  
5 MR. MANGI: Your Honor, may I  
6 just note a point so people can  
7 account for it?  
8 I'm going to be about  
9 20 minutes. So I'm happy to do it  
10 tomorrow, happy to do it today.  
11 Whatever you want.  
12 JUROR: Take the stand.  
13 THE COURT: Twenty minutes.  
14 MR. MANGI: Folks, I'm back.  
15 When I was here last, I asked  
16 you in their discussions, ask yourself  
17 two questions: Why did you do it  
18 then? And show me, right? Those are  
19 the two things I said to look out for.  
20 Did anyone explain to you if all  
21 of that is true, why did you do it?  
22 And what did they show you? Next to  
23 nothing.  
24 Let's go through some specific  
25 points. Let's call up PLT D 10.163 to

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 164.  
3 (Whereupon, Exhibit PLT D  
4 10.163, Demonstrative, was  
5 identified.)  
6 (Whereupon, Exhibit PLT D  
7 10.164, Demonstrative, was  
8 identified.)  
9 MR. MANGI: Now, the trade  
10 secrets. Here are the trade secrets,  
11 ladies and gentlemen. You have them  
12 all listed right there.  
13 And what is the point that you  
14 heard from them on some of the first  
15 ones?  
16 Go to the previous one, please.  
17 They said, well, look, they say  
18 these are limitations. How can this  
19 be a trade secret?  
20 But, ladies and gentlemen, what  
21 are these? They want to call them  
22 limitations, but these are  
23 identifications of technical features  
24 and aspects of the product and how it  
25 works.

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 weeks ago, I said there is a  
3 difference between watching a fighter  
4 jet go overhead and actual riding in  
5 it and driving it and feeling what  
6 works and what doesn't.  
7 Both sides are a trade secret  
8 just as well, and they know the value  
9 of it because they said it in e-mail  
10 after e-mail that I showed you.  
11 Now, then you heard from them  
12 that, well, you know, Mr. Zou, he  
13 worked for CollabraLink first before  
14 he came to Serco. How could he have  
15 done anything wrong?  
16 And they kept on and on about  
17 the Terms of Use, right?  
18 Ladies and gentlemen, this is  
19 not a breach of contract case. This  
20 is a misappropriation case.  
21 Let's call up PLT D 10.217.  
22 (Whereupon, Exhibit PLT D  
23 10.217, Demonstrative, was  
24 identified.)  
25 MR. MANGI: The definition of

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 And Dr. Marshall told you these  
3 are gold dust in a competitive  
4 situation. That's exactly what they  
5 are.  
6 Now, does the law say if it's  
7 something that can be used against  
8 you, then it's not a trade secret?  
9 Absolutely not. There's nothing in  
10 the instructions to that effect.  
11 Let's call up PLT D 10.183.  
12 (Whereupon, Exhibit PLT D  
13 10.183, Demonstrative, was  
14 identified.)  
15 MR. MANGI: This is the legal  
16 test of a trade secret: Does it  
17 derive independent economic value of  
18 not being generally known or readily  
19 ascertainable, and so on.  
20 That's the test, whether it can  
21 be used against you, whether it can be  
22 copied from makes not a wit of  
23 difference to what the legal test is  
24 here.  
25 Remember, in opening statements

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 improper means: Misrepresentation,  
3 use of a computer network without  
4 authority, breach of a duty to  
5 maintain secrecy, espionage.  
6 That's what is at issue here,  
7 not what box he clicked on or didn't  
8 click on, but the evidence on that  
9 point is replete too.  
10 Mr. Travell showed you Mr. Zou's  
11 signing on. Do you remember that?  
12 What was he signing on to? A GSA  
13 government version using credentials  
14 from when he worked at Lockheed in a  
15 period after he worked there. Even in  
16 the very clip he showed you, he was  
17 doing what he is not supposed to do.  
18 And the un rebutted testimony in  
19 the record from Mr. Ross right over  
20 there is when you register for Forum,  
21 whether yourself or your company  
22 registers you, the first time you log  
23 on you have to accept the Terms of  
24 Use.  
25 I showed you a slide on that

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 earlier today. So Mr. Zou absolutely  
3 had to do that, just like everyone  
4 else.  
5 But you know what? Beyond that,  
6 I showed you all the Serco agreements  
7 and policies. They said in the  
8 document Mr. Travell showed you,  
9 information made available to employee  
10 as a direct or indirect consequence of  
11 his employment is confidential  
12 information. That's what he had.  
13 Through access to the Appian platform.  
14 What about the policies I showed  
15 you? Remember the termination policy?  
16 It said: Misappropriation of  
17 information from a business partner  
18 will get you terminated.  
19 He knew what he was doing was  
20 wrong. How was he getting access to  
21 Forum? Using credentials he knew were  
22 from his employers when he said he  
23 knew he's not allowed to use his  
24 information for other purposes.  
25 Remember, I showed you all of

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 Remember, he's using a Serco  
3 laptop that says provide -- Microsoft  
4 internet provided by Serco.  
5 He's handing over reams of  
6 documentation from the  
7 password-protected Forum website. He  
8 admits he's not authorized to do any  
9 of this. He says: I kept it all  
10 secret. He admits he shouldn't have  
11 been doing any of this.  
12 And Mr. Travell and Mr. Frank  
13 want to tell you he didn't do anything  
14 wrong, nothing to see. Okay.  
15 Then Mr. Frank says to you --  
16 I'm going to keep my word on the time.  
17 That's why I keep looking back.  
18 JUROR: That's okay.  
19 MR. MANGI: He says to you: We  
20 knew it.  
21 Right? That's what Mr. Frank's  
22 argument is. We knew all of this in  
23 advance.  
24 And what was my answer? Don't  
25 tell me. Show me. Show me you knew

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 the Agreements Appian has with Serco,  
3 the VA Agreement, the government GSA  
4 Schedule Agreement, all of those  
5 confidentiality terms.  
6 They want to say we didn't take  
7 any efforts to protect ourselves? You  
8 could scarcely have more paper  
9 protecting ourselves with Terms of  
10 Use, licenses.  
11 What everyone agrees in the  
12 software industry is all the best you  
13 can do because you have to sell your  
14 product.  
15 Then they showed you these VASP  
16 Agreements, the blank templates. And  
17 they said, oh, you know, what if  
18 someone did this or that? Zero  
19 evidence of any of those trade secrets  
20 I showed you being shown to anyone.  
21 Absolutely none.  
22 And Mr. Zou, remember, he is  
23 using GSA instances. He's logging on  
24 with government credentials. It's all  
25 on video. You've seen it all happen.

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 it.  
3 And what did he show you?  
4 Let's talk about that. He  
5 showed you documents from the pre-Zou  
6 era that are all talking about Pega  
7 has this feature, Pega has that  
8 feature, Pega can do these charts,  
9 Pega can do those charts.  
10 Yeah. They know about Pega.  
11 Shocker.  
12 Did they know the trade secrets  
13 I put on the screen about Appian?  
14 They did not, and there was not a word  
15 in those documents to suggest  
16 otherwise.  
17 You know, what was the closest  
18 they came? It was about the kdb+  
19 in-memory database.  
20 Yeah? What about the  
21 configuration of the checkpointing in  
22 Appian? That's the trade secret on  
23 the list I showed you.  
24 Is there any wit of an  
25 indication that they knew that? None.

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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 Trefler. 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

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 issues. They were continuing to look  
3 at us time and time again, studying  
4 the black box which they knew they  
5 could not otherwise have access to.  
6 You know, they keep referring  
7 back to Dr. Easttom and saying, oh,  
8 you know, Dr. Easttom says this and  
9 that. Now, by the way, even  
10 Mr. Travell now clearly agrees with me  
11 that his Ph.D.s are pretty sketchy,  
12 right?  
13 But why is that important?  
14 Credibility, ladies and gentlemen.  
15 You compare him to Dr. Cole on these  
16 trade secret issues. Compare him to  
17 Dr. Marshall. You decide who's the  
18 serious player and person here.  
19 But their access and continued  
20 access, let me be unmistakable. It is  
21 relevant, important, critical to both  
22 of our claims here.  
23 Now, then they say about  
24 Mr. Petronio, oh, you know,  
25 Mr. Petronio, he must be out there

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 Very important point.  
3 If you find there's even one  
4 trade secret at issue here, right, I  
5 would submit to you all of these that  
6 I have on that list, two pages, they  
7 are all trade secrets. We've  
8 established that in spades.  
9 But if you find even one is,  
10 then it's up to you to determine what  
11 you think the damages should be. But  
12 now Mr. Frank, he gave you a long  
13 explanation saying, you know, Appian,  
14 they haven't proved this, they haven't  
15 proved that. You know what he's  
16 ignoring there completely? The law.  
17 He's ignoring the law.  
18 The burdens of proof that I took  
19 you through, those are critical here.  
20 So let's talk about that.  
21 Let me go to PLT D 10.348.  
22 (Whereupon, Exhibit PLT 10.348,  
23 Document, was identified.)  
24 MR. MANGI: Remember I showed  
25 you the graphic of how the money comes

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 doing this on his own. Okay. Let's  
3 go to PLT D 10.305, please.  
4 (Whereupon, Exhibit PLT D  
5 10.305, Document, was identified.)  
6 MR. MANGI: If anything  
7 inappropriate was done, who does the  
8 buck stop with? It was done by  
9 Petronio, Baril, anyone. It's  
10 Mr. Trefler. It's the company.  
11 Petronio wasn't out there doing  
12 some stuff in a corner on his own.  
13 They were all right there with him  
14 guiding his work. He was a very  
15 honest guy, but he wasn't coming up  
16 with all of this on his own.  
17 When he testified on the stand,  
18 he told you all of these people. He  
19 was honest about all of these people  
20 who were involved in the conduct that  
21 he did, and now he's telling you the  
22 truth. He's coming clean about  
23 everything that he did.  
24 Now, then here's a very  
25 important point, ladies and gentlemen.

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 and what part goes where? Let's  
3 refocus on that for a moment.  
4 Appian, once we've shown  
5 misappropriation, Appian has the  
6 burden of establishing by greater  
7 weight of the evidence Pegasystems'  
8 sales. We just got to show all the  
9 money that flowed in, the 6 billion  
10 plus from their customers, right?  
11 That's what we have to show.  
12 He's suggesting to you, no, we  
13 have to show that every customer was  
14 only there because of a trade secret.  
15 It is their burden that is identified  
16 in the jury instruction. He didn't  
17 show you this instruction.  
18 It says: Pegasystems has the  
19 burden of establishing by greater  
20 weight of the evidence any portion of  
21 the sales not attributable to the  
22 trade secrets.  
23 So what does that mean? That  
24 means if they think there is a sale  
25 that is innocent, that is untainted by

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 any of this, it is on them to prove  
3 that.  
4 The law puts that burden on the  
5 misappropriator, not on the victim.  
6 They've got to show that the sale was  
7 innocent, and I showed you this  
8 morning why they can't show that even  
9 for their prized examples.  
10 And then when it comes to the  
11 product improvements theory where we  
12 have our primary damages claim, the  
13 \$3.03 billion claim, on that issue,  
14 there, the same burden shifting  
15 applies.  
16 He's saying, well, Appian hasn't  
17 proven, what if there was some other  
18 feature, and what if something else  
19 was important, what if they added  
20 another feature not the trade secret  
21 that mattered to a sale.  
22 If they wanted to argue that  
23 there were sales that are innocent,  
24 untainted by the trade secret that  
25 happened because of some other

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 that Dr. Marshall was making. He  
3 explained why all of that is the case.  
4 Let me talk a little bit about  
5 the product improvements issues. Now,  
6 on Smart Services, right, Dr. Marshall  
7 gave you such detailed evidence.  
8 Remember, he's been through all of  
9 these, right? And he told you exactly  
10 what, when, and how they took it.  
11 What's the answer to that?  
12 Nothing. Nothing at all. They just  
13 say take our word, we must have had  
14 this before.  
15 He looked at them. He told you  
16 different. The Why Upgrade document  
17 confirms it. No, 6.3; yes, 7.1.  
18 CDTs, what did they say? It's  
19 been the same for decades. We've had  
20 it forever.  
21 Well, then why did you do all  
22 this? Why does your Project Crush  
23 memo study Appian CDTs and say  
24 improvements underway? Why do you  
25 have 222 slides that you're studying

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 feature, they had to prove that to  
3 you. It's right there in the jury  
4 instruction.  
5 But what did their expert  
6 Mr. Platt do? He said he hasn't done  
7 that. He hasn't even tried to do  
8 that.  
9 And you can imagine why.  
10 Because the truth is as Dr. Marshall  
11 gave it to you. These are fundamental  
12 features and they were fundamental to  
13 this product not becoming Lotus 1-2-3.  
14 They were at the core of  
15 everything here. And you know, the  
16 investors, we talked about the stock  
17 charts, they saw this. Why? Because  
18 investors, they are not looking at  
19 what, do you still have revenue now?  
20 They're looking at what's going to  
21 happen in the future, and they were  
22 selling Pega stock in droves before  
23 this happened and buying other  
24 software.  
25 That proves to you the point

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 with your CEO, including whole series  
3 on CDTs?  
4 Is any of that credible?  
5 And on editing, Dr. Marshall  
6 showed you exactly where the button  
7 was, how it worked and why it worked.  
8 Now, on this issue of high technology,  
9 you want to believe Dr. Marshall or do  
10 you want to believe Mr. Frank? You  
11 make up your minds on that issue.  
12 And on social and mobile, folks,  
13 all you hear from Pega is, oh, you  
14 know, we had a Sencha Band-Aid. We  
15 had a lot.  
16 Nothing to do with the trade  
17 secret we are asserting here. The  
18 out-of-the-box functionality with no  
19 configuration required. And again, if  
20 they wanted to show that some other  
21 feature got us sales untainted by the  
22 trade secrets, it's their burden to  
23 show that and they didn't even try.  
24 Their expert didn't even try to do  
25 that.

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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

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 this situation.  
3 Now, what's their only response  
4 here? Oh, let me point out by the  
5 way, the other methodology, the  
6 479 million, the alternative  
7 methodology, you don't add those  
8 together, right? That's the -- zoomed  
9 in here because this covers all sales,  
10 including those. So this is the  
11 number that I would urge you to focus  
12 on.  
13 Now, then they say, oh, you  
14 know, but you've got to take out all  
15 the costs, right? So even if they are  
16 going out there and admitting we stole  
17 money, we stole trade secrets. Now we  
18 got a lot of money. Let's go spend  
19 every penny.  
20 They say, oh, you know, then  
21 sorry, we don't have to pay anything  
22 back. We've spent all the money.  
23 That is not how this works.  
24 Mr. Malackowski, an experienced  
25 intellectual property accounting

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 the Goo Goo girls and concerts -- I  
3 said that on purpose -- and now, oh,  
4 no, no, I don't have to pay a penny  
5 back. Sorry, I spent it all.  
6 Does that make sense to anyone  
7 here? That's not how this works.  
8 Mr. Malackowski explained exactly how  
9 it works. He gave you the number.  
10 Let's go back to PLT 384,  
11 please.  
12 (Whereupon, Exhibit PLT 384,  
13 Document, was identified.)  
14 MR. MANGI: Last points, ladies  
15 and gentlemen.  
16 You know, they said to you  
17 something that I've been thinking  
18 about for seven and a half weeks,  
19 since the opening statement, and I  
20 want to come back to it now.  
21 They said to you, this is all a  
22 drama. Remember when they gave their  
23 opening statement, the word "drama,"  
24 dozens of times. Drama, this is all  
25 drama. And they returned to that

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 expert, told you exactly how it works.  
3 He did the math. And let's call up  
4 again PLT D 10.372.  
5 (Whereupon, Exhibit PLT D  
6 10.372, Document, was identified.)  
7 MR. MANGI: Here is where  
8 Mr. Malackowski explained very  
9 directly and simply exactly why this  
10 cost argument is utterly bogus. Look  
11 at what he said.  
12 He said, look, you know, for tax  
13 reasons, otherwise, they want to  
14 operate at a loss, fine, but they got  
15 a benefit.  
16 Here's what they are asking you  
17 to believe. If I stole trade secrets,  
18 right, and I made \$5 billion from it  
19 and I put it in the bank, the victim  
20 can come along, they can get that back  
21 from me.  
22 But then this guy over here, he  
23 steals the same trade secrets, he  
24 makes the same \$5 billion, he chooses  
25 to spend it all on Superbowl ads and

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1 Plaintiff - Rebuttal Closing (Mangi)  
2 theme today.  
3 Now, I showed you almost 400  
4 slides of evidence this morning, new  
5 record for me, but is that drama?  
6 That was evidence.  
7 And let me say this, ladies and  
8 gentlemen. It's outrageous,  
9 outrageous what happened here.  
10 This is a publicly traded  
11 company. This is not, you know, two  
12 people in a basement somewhere.  
13 Think about the conduct that you  
14 saw here. It is outrageous. And they  
15 want to come here and wave their hands  
16 and say it's all a drama, just ignore  
17 it.  
18 Your common sense, your  
19 experience in life, your work in  
20 sophisticated organizations, you have  
21 seen people your whole life who don't  
22 tell the truth. You have been through  
23 businesses. You have experience with  
24 government organizations. You know  
25 how accounting works.

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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

1 Plaintiff - Rebuttal Closing (Mangi)  
 2 with Karen tomorrow and go through  
 3 everything, and then Deputy Creed will  
 4 take -- start taking things into the  
 5 jury room.  
 6 If you want to come back earlier  
 7 tomorrow morning, 9 o'clock tomorrow,  
 8 and start going through that.  
 9 MR. MANGI: We'll have a  
 10 designee here to go through. It might  
 11 not be me.  
 12 THE COURT: Okay. That's what  
 13 we need to do. And then once you've  
 14 agreed on what the evidence is that  
 15 was admitted and it goes back to the  
 16 jury, we'll just need a phone number,  
 17 cell phone from one -- each from one  
 18 side so we can be in touch with you if  
 19 there's a question.  
 20 MR. MANGI: Judge, could we hang  
 21 out here tomorrow?  
 22 THE COURT: Sure.  
 23 MR. MANGI: Okay. Will you be  
 24 telling the jury tomorrow morning  
 25 about the early end of the day? Just

1 Plaintiff - Rebuttal Closing (Mangi)  
 2 so they know how much time they have.  
 3 THE COURT: I will definitely  
 4 tell them that we have to break at  
 5 3:30 tomorrow.  
 6 MR. MANGI: Thank you.  
 7 THE COURT: All right. See you  
 8 tomorrow morning at 9:30. Court is in  
 9 recess.  
 10 (Whereupon, the proceedings of  
 11 the 26th day of trial were recessed at  
 12 5:13 p.m. until Friday at 9:30 a.m.)  
 13  
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1  
 2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY  
 3 PUBLIC  
 4 I, Amanda Gorrano, the officer  
 5 before whom the foregoing trial was  
 6 taken, do hereby certify that the  
 7 foregoing transcript is a true and  
 8 correct record of the testimony given;  
 9 that said testimony was taken by me  
 10 stenographically and thereafter  
 11 reduced to typewriting under my  
 12 direction; and that I am neither  
 13 counsel for, related to, nor employed  
 14 by any of the parties to this case and  
 15 have no interest, financial or  
 16 otherwise, in its outcome.  
 17 IN WITNESS WHEREOF, I have  
 18 hereunto set my hand this 6th day of  
 19 May, 2022.  
 20 *Amanda Gorrano*  
 21 AMANDA GORRANO, CLR  
 22 CLR NO: 052005 - 01  
 23  
 24 Notary Public in and for the State of New  
 25 York  
 County of Suffolk  
 My Commission No. 01G06041701  
 Expires: 01/07/2023

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