

EXHIBIT I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	No. 07-CV-1658 (PJH)
)	
SAP AG, a German corporation,)	
SAP AMERICA, INC., a Delaware)	
corporation, TOMORROWNOW,)	
INC., a Texas corporation, and)	
DOES 1-50, inclusive,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF
TIM CREAN

THURSDAY, FEBRUARY 19, 2009
HIGHLY CONFIDENTIAL

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-416085)

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12:03:41 20 Q. When was final approval given by the Board
12:03:44 21 to proceed with the closing?

12:03:47 22 A. I believe it was January 19th, 2005.

12:03:50 23 Q. And under what circumstances did they
12:03:52 24 provide that final approval?

12:03:55 25 A. Can you try to clarify what you mean by --

12:03:58 1 Q. Was it a Board meeting, was it over the
12:03:59 2 telephone? How did it come about?

12:04:02 3 A. I believe -- my recollection is that there
12:04:06 4 was a -- I will call it a meeting of the Board. I
12:04:13 5 participated by phone. I don't know if the -- when
12:04:16 6 I say the Board, I mean the Executive Board members.
12:04:20 7 That -- I don't know whether the Executive Board
12:04:24 8 members were physically present together or not, but
12:04:27 9 I believe there was a telephone call.

12:04:32 10 Q. Well, what do you remember about that
12:04:36 11 telephone call?

12:04:37 12 MR. LANIER: So Mr. Crean, I instruct you
12:04:39 13 you may answer that question to the extent you would
12:04:41 14 be testifying about nonprivileged business
12:04:43 15 communications -- for example, the Board saying,
12:04:46 16 yes, go forward; or no, don't go forward -- but not
12:04:49 17 any legal advice given or received or discussed.

12:04:52 18 THE WITNESS: Okay. Can you repeat the
12:04:53 19 question?

12:04:55 20 MR. PICKETT: Q. What happened during the
12:04:56 21 phone call?

12:04:57 22 MR. LANIER: Same instruction.

12:05:00 23 THE WITNESS: I believe that the Executive
12:05:01 24 Board approved closing the acquisition of
12:05:08 25 TomorrowNow.

12:05:10 1 MR. PICKETT: Q. Do you remember anything
12:05:10 2 else about the phone call?

12:05:16 3 MR. LANIER: That's a "yes" or "no"
12:05:16 4 question.

12:05:17 5 THE WITNESS: Yes.

12:05:18 6 MR. PICKETT: Q. What else do you
12:05:18 7 remember?

12:05:19 8 MR. LANIER: Same instruction to you. If
12:05:20 9 what you remember is discussions of attorney-client
12:05:23 10 advice, then don't disclose that. I instruct you
12:05:25 11 not to answer.

12:05:27 12 But if you remember other things that are
12:05:28 13 not privileged, you may answer.

12:05:30 14 THE WITNESS: Given that instruction, I
12:05:32 15 won't be able to answer that question.

12:05:34 16 MR. PICKETT: Q. So there was no
12:05:35 17 discussion at the meeting, for example, about the
12:05:36 18 business pros and cons?

12:05:38 19 MR. LANIER: Object that assumes facts not
12:05:39 20 in evidence.

12:05:40 21 To the extent you were at the meeting and
12:05:42 22 you recall discussion of those business issues, you
12:05:45 23 can answer the question.

12:05:46 24 THE WITNESS: Same answer.

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MR. PICKETT: Q. What was Andrew Nelson's
response to Mr. Faye's directive from the Board?

A. That TomorrowNow would move the customer
environments off of TomorrowNow servers.

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12:18:00 11 Q. What are the specifics of the directive to
12:18:02 12 the best of your ability to recall them?

12:18:07 13 MR. LANIER: You may answer that question.

12:18:08 14 He's asking you to recite the directive as you
12:18:10 15 recall hearing it, but not any analysis of it.

12:18:14 16 You can give that testimony.

12:18:16 17 THE WITNESS: That the customer
12:18:20 18 environments were to be moved to the computers of
12:18:28 19 the customer, or to -- potentially to facilities
12:18:43 20 owned or leased by the customer.

12:18:47 21 MR. PICKETT: Q. Any other specifics?

12:18:48 22 A. Not that I recall.

12:18:51 23 Q. To your knowledge, that's what Mr. Faye
12:18:54 24 conveyed to Andrew Nelson?

12:18:56 25 A. Mr. Faye.

12:18:57 1 Q. Sorry.

12:18:59 2 A. Yes.

12:19:01 3 Q. Mr. Nelson's response was what?

12:19:07 4 MR. LANIER: Asked and answered, but you
12:19:08 5 can -- again, you can give an answer.

12:19:11 6 THE WITNESS: Yes. I believe I previously
12:19:12 7 answered that, but my understanding is that
12:19:16 8 Mr. Andrew Nelson indicated that he would comply
12:19:21 9 with the Board directive.

12:19:29 10 MR. PICKETT: Q. Was that conversation
12:19:31 11 recorded in any way? Written, otherwise?

12:19:36 12 MR. LANIER: You can answer that "yes" or
12:19:37 13 "no."

12:19:38 14 THE WITNESS: Yes.

12:19:38 15 MR. PICKETT: Q. How so?

12:19:43 16 MR. LANIER: You can describe the nature of
12:19:44 17 the document or recording to which you are
12:19:48 18 referring.

12:19:49 19 THE WITNESS: In an email.

12:19:56 20 MR. PICKETT: Q. Is the email on or about
12:19:58 21 the date -- well first of all, is the -- who are the
12:20:02 22 addressees -- who is the writer and addressee of the
12:20:05 23 email?

12:20:06 24 MR. LANIER: You can provide that
12:20:07 25 information.

12:20:07 1 THE WITNESS: Mr. Faye.

12:20:09 2 MR. PICKETT: Q. To whom?

12:20:10 3 A. To myself. Possibly others, but to myself.

12:20:16 4 Q. Do you recall the date, approximately, of

12:20:19 5 the email?

12:20:19 6 A. I don't remember the exact date. I believe

12:20:21 7 it was shortly after Mr. Faye communicated the Board

12:20:26 8 directive to Mr. Andrew Nelson.

12:20:31 9 Q. January?

12:20:33 10 A. I don't remember -- as I said before, so if

12:20:36 11 the close happened on January 19th I believe that

12:20:40 12 communication happened, you know, within weeks after

12:20:50 13 that.

12:20:52 14 Q. So it could be January, it could be

12:20:55 15 February?

12:20:56 16 A. Yes, I believe so.

12:20:58 17 Q. Not March? I --

12:21:03 18 A. I have to think about that a little bit

12:21:06 19 more --

12:21:07 20 Q. All right. Let me ask a question of your

12:21:09 21 counsel. Maybe that cuts through it.

12:21:11 22 This is presumably subject to some

12:21:14 23 privilege log? We can identify the date of this

12:21:16 24 email, I would take it.

12:21:18 25 MR. LANIER: I confess, I absolutely don't

12:21:19 1 know, but I will --
12:21:20 2 MR. PICKETT: Could you find out?
12:21:21 3 MR. LANIER: I will inquire.
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MR. PICKETT: Q. Did you know of a project
to investigate removal of customer local
environments from the TomorrowNow computers?

A. Yes.

Q. Whether it was by that name or not?

12:31:44 1 A. Yes.

12:31:46 2 Q. What did you you know about that project?

12:31:51 3 MR. LANIER: If you have factual

12:31:51 4 information that you can sort out from privileged

12:31:53 5 communications and analyses and opinions and

12:31:55 6 impressions, then you may answer that question.

12:31:59 7 THE WITNESS: I believe there was a project

12:32:01 8 to investigate means by which the Board directive

12:32:15 9 could be complied with.

12:32:20 10 MR. PICKETT: Q. Who was involved with

12:32:21 11 that project?

12:32:31 12 A. Andrew Nelson, Greg Nelson, Chris Faye, on

12:32:40 13 my team.

12:32:44 14 Q. Did that project ever reach a point where

12:32:49 15 the group concluded that there was a means by which

12:32:53 16 the Board directive could be complied with?

12:32:56 17 MR. LANIER: You may answer that question

12:32:57 18 to the extent you know about the business or

12:32:59 19 technical issues. Put aside any legal analysis.

12:33:02 20 So if you know about the business or

12:33:03 21 technical issues, you can answer that.

12:33:35 22 THE WITNESS: Let me consult with my

12:33:37 23 counsel on that question.

12:33:39 24 THE VIDEO OPERATOR: Going off the record,

12:33:40 25 the time is 12:33.

12:33:42 1 (Recess from 12:33 p.m. to 12:37 p.m.)

12:37:32 2 THE VIDEO OPERATOR: Back on the record,

12:37:34 3 12:37.

12:37:37 4 MR. LANIER: Do you have the question in

12:37:37 5 mind?

12:37:38 6 THE WITNESS: If you could repeat the

12:37:39 7 question, that would be great.

12:37:41 8 MR. PICKETT: Q. Did that project ever

12:37:42 9 reach a point where the group concluded that there

12:37:44 10 was a means by which the Board directive could be

12:37:47 11 complied with by TomorrowNow?

12:37:49 12 A. As --

12:37:49 13 MR. LANIER: Go ahead.

12:37:50 14 THE WITNESS: As I sit here today, I can't

12:37:52 15 separate out what I understood from -- on the

12:37:57 16 technical business perspective from a legal

12:38:02 17 perspective, so I don't believe I can answer that

12:38:05 18 question.

12:38:06 19 MR. LANIER: Based on that, I instruct you

12:38:08 20 not to answer.

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Q. Who made the decision to put compliance
with the Board's directive in the hands of Mr. Faye
and you?

A. My recollection is that Mr. Brandt asked me

12:41:12 1 to ensure that TomorrowNow was informed of the Board
12:41:25 2 directive, and I asked Mr. Faye to convey the Board
12:41:34 3 directive to Mr. Nelson.

12:41:36 4 Now, I believe your question was to ensure
12:41:44 5 compliance. I don't believe that I was asked to
12:41:46 6 ensure compliance. I believe I was asked to convey
12:41:51 7 the Board directive -- to ensure that the Board
12:41:56 8 directive was conveyed to TomorrowNow senior
12:41:59 9 management.

12:42:03 10 Q. Why did Mr. Faye continue to have a role
12:42:07 11 with Mr. Andrew Nelson concerning compliance after
12:42:12 12 he initially conveyed the Board directive?

12:42:16 13 A. To provide legal advice into complying with
12:42:21 14 the Board directive.

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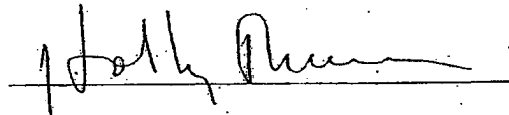
CERTIFICATE OF REPORTER

1
2 I, HOLLY THUMAN, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell the
5 truth, the whole truth, and nothing but the truth in the
6 within-entitled cause; that said deposition was taken
7 down in shorthand by me, a disinterested person, at the
8 time and place therein stated, and that the testimony of
9 the said witness was thereafter reduced to typewriting,
10 by computer, under my direction and supervision;

11 That before completion of the deposition,
12 review of the transcript was [] was not requested.
13 If requested, any changes made by the deponent (and
14 provided to the reporter) during the period allowed are
15 appended hereto.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties to the said
18 deposition, nor in any way interested in the event of
19 this cause, and that I am not related to any of the
20 parties thereto.

21
22 DATED February 23, 2009.

23
24 
25
HOLLY THUMAN, CSR No. 6834