

EXHIBIT E

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-01658-PJH (EDL)

SAP AG, a German Corporation,
SAP AMERICA, INC., a Delaware
Corporation, TOMORROWNOW, INC.,
a Texas Corporation, and DOES
1-50, Inclusive,

Defendants.

*** HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

DEPOSITION OF STEPHEN GRAY

VOLUME I

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June 8, 2010

Reported by:
Natalie Y. Botelho
CSR No. 9897

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16:28:47		16:31:35
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16:30:01		16:32:38
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16:30:08		16:32:48
16:30:10		16:32:51
16:30:11		16:32:53
16:30:12		16:32:54
16:30:17		16:32:56
16:30:19	6 Q. Do you intend to express an opinion at	16:32:59
16:30:21	7 trial that TomorrowNow did not provide any	16:33:04
16:30:26	8 infringing support to that list of 51 customers?	16:33:07
16:30:29	9 MR. FUCHS: Objection; form.	16:33:14
16:30:35	10 THE WITNESS: I think what the list of 51	16:33:16
16:30:37	11 customers -- I don't know that I would -- that I	16:33:17
16:30:45	12 would necessarily offer an opinion at trial that	16:33:19
16:30:49	13 there was no -- that TomorrowNow -- regarding	16:33:21
16:30:53	14 tomorrow -- any of TomorrowNow's conduct with	16:33:25
16:30:55	15 respect to that list of 51 customers. I didn't say	16:33:27
16:30:57	16 that very clearly. I don't know that I have an	16:33:29
16:30:59	17 opinion regarding all of TomorrowNow's conduct or	16:33:29
16:31:04	18 support for any of those 51 customers.	16:33:32
16:31:06		16:33:34
16:31:11		16:33:35
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17:07:56	17:10:41
17:07:59	17:10:45
17:08:01	17:10:48
17:08:03	17:10:53
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17:08:41	17:11:38
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17:08:48	17:11:58
17:08:53	17:12:00
17:08:56	17:12:05
17:09:00	17:12:16
17:09:08	17:12:17
17:09:09	17:12:22
17:09:14	17:12:36
17:09:19	17:12:40
17:09:23	17:12:43
17:09:26	17:12:47
17:09:29	17:12:51
17:09:32	17:12:54
17:09:36	17:12:57
17:09:38	17:13:00
17:09:41	17:13:04
17:09:46	17:13:06
17:09:51	17:13:14
17:09:53	17:13:17
17:09:54	17:13:25
17:09:54	17:13:28
17:09:59	17:13:33
	16 Q. To be clear, your list of 51 customers is 17 not intended to be a summary of all available 18 evidence relating to TomorrowNow's support of its 19 customers? 20 MR. FUCHS: Objection; form. 21 THE WITNESS: I didn't look for evidence 22 outside the Mandiant report's identification of 23 improper conduct. I didn't look outside that. My 24 assignment was to analyze the Mandiant report and 25 offer comments relative to the Mandiant report. So

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17:13:36	1 I didn't -- I didn't try to do what -- I mean, I	17:16:48
17:13:40	2 didn't try to do that other thing that -- you know,	17:16:48
17:13:42	3 the other job.	17:51:52
17:13:43	4 MR. POLITO: Q. Would you agree that the	17:51:52
17:13:45	5 presence or absence of a customer in your list of 51	17:51:52
17:13:49	6 is not a basis for an assertion that a customer	17:51:57
17:13:53	7 support was or was not infringing or improper?	17:51:57
17:13:59	8 MR. FUCHS: Objection; form.	17:52:01
17:14:03	9 THE WITNESS: I -- read that to me again.	17:52:04
17:14:04	10 That's --	17:52:05
17:14:06	11 MR. POLITO: Q. Sure. Would you agree	17:52:07
17:14:06	12 that the presence or absence of a customer on your	17:52:08
17:14:09	13 list of 51 is not a basis for an assertion that a	17:52:09
17:14:15	14 customer was -- was or was not supported in an	17:52:11
17:14:18	15 infringing or an improper manner?	17:52:32
17:14:23	16 MR. FUCHS: Objection; form.	17:52:36
17:14:29	17 THE WITNESS: Well, once again, I haven't	17:52:39
17:14:30	18 done that work. I mean, it's hard for me to say --	17:52:53
17:14:33	19 to answer that question. So what I've done is try	17:52:57
17:14:36	20 to apply the Mandiant report's analysis to the data	17:52:58
17:14:43	21 and to -- and in that I have come up with a list of	17:53:01
17:14:46	22 51 customers for which there appears to have not	17:53:03
17:14:48	23 been the execution of what Mandiant refers to as	17:53:06
17:14:57	24 improper conduct. I didn't try to look at other	17:53:11
17:15:02	25 things. And so -- I mean, I didn't try to look	17:53:14
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17:15:04	1 outside that. So it's hard for me to make a	17:53:20
17:15:07	2 declarative statement about that. I know -- I don't	17:53:24
17:15:09	3 feel comfortable answering it. I just don't know.	17:53:28
17:15:12	4 MR. POLITO: Q. Do you intend to testify	17:53:28
17:15:14	5 in trial that the list of 51 customers represents a	17:53:28
17:15:18	6 list of 51 customers for whom TomorrowNow provided	17:53:31
17:15:22	7 support properly and correctly?	17:53:32
17:15:27	8 MR. FUCHS: Objection; form.	17:53:32
17:15:36	9 THE WITNESS: I don't think I, sitting	17:53:33
17:15:38	10 here today, prepared to offer an -- that I'd	17:53:34
17:15:47	11 necessarily offer an opinion that states that the 51	17:53:36
17:15:50	12 were or were not -- that either the 51 were or --	17:53:42
17:16:01	13 the 51 were customers for which there was not	17:53:45
17:16:08	14 improper activity. What I am talking about is	17:53:55
17:16:11	15 improper activity which Mandiant defines. I didn't	17:53:56
17:16:14	16 look at that other -- I didn't make a determination	17:53:58
17:16:16	17 with regard to the other, so I don't think I can	17:53:59
17:16:18	18 testify about it.	17:54:03
17:16:20	19 But again, the list may grow; the list may	17:54:07
17:16:23	20 shrink; there may be some information that does	17:54:10
17:16:29	21 pertain. Just sitting here today, I don't plan to	17:54:14
17:16:34	22 testify to that.	17:54:20
17:16:38	23 MR. POLITO: Move to strike everything	17:54:23
17:16:40	24 starting with, "But again, the list may grow."	17:54:27
17:16:46		17:54:30

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CERTIFICATE OF REPORTER

I, Natalie Y. Botelho, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled.

The said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

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

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

DATED: June 17, 2010

Natalie Y. Botelho
Natalie Y. Botelho, CSR No. 9897