

# EXHIBIT S

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  
CHARLES PHILLIPS

\_\_\_\_\_

FRIDAY, APRIL 17, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-418649)

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12:51:55		12:54:41
12:52:04		12:54:43
12:52:06		12:54:45
12:52:08		12:54:47
12:52:09	5 MR. LANIER: Q. Okay. As you sit here	12:54:49
12:52:11	6 today -- well, I'll ask a different question, then	12:54:51
12:52:15	7 I'll come back to that one.	12:54:53
12:52:16	8 Would you have been involved, back in	12:54:57
12:52:18	9 January of 2005, with the consideration of whether	12:54:59
12:52:21	10 or not to grant such a license, a license to SAP?	12:55:00
12:52:26	11 A. Yes.	12:55:03
12:52:28	12 Q. Don't tell me anything you've discussed	12:55:06
12:52:30	13 with the lawyers.	12:55:10
12:52:31	14 What areas or aspects of that decision	12:55:14
12:52:33	15 would you have made a contribution to?	12:55:16
12:52:38	16 A. Look at the impact on our business by	12:55:19
12:52:46	17 granting a competitor intellectual property, by not	12:55:20
12:52:50	18 having those customers directly ourselves, lost	12:55:25
12:52:55	19 license sales, and kind of reflect the point of view	12:55:32
12:52:58	20 of what does it mean for ongoing future sales for	12:55:34
12:53:01	21 the field if we do this. And if we do do this, we	12:55:35
12:53:09	22 better get enough to replace the lost sales that	12:55:36
12:53:11	23 we're going to give up.	12:55:38
12:53:14	24 Q. And how would you have calculated how much	12:55:40
12:53:15	25 that was?	12:55:43
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12:53:17	1 MS. HOUSE: Calls for speculation.	12:55:48
12:53:21	2 THE WITNESS: I probably would have modeled	12:55:59
12:53:23	3 the number of customers leaving, the -- looking at	12:56:02
12:53:27	4 the growing size of the -- our product portfolio and	12:56:03
12:53:31	5 all the cross-sell and up-sell we could have	12:56:06
12:53:33	6 obtained over that -- in perpetuity, because you	12:56:08
12:53:37	7 have to go out many, many years, because this is an	12:56:12
12:53:39	8 ongoing thing, not just 3 or 5 years, but the next	12:56:14
12:53:43	9 20 years. Model in the related support revenue that	12:56:16
12:53:46	10 you get after you sell the license, model in the	12:56:17
12:53:49	11 relationship benefit for future acquisitions, now	12:56:20
12:53:52	12 that we have a great relationship, and they're	12:56:23
12:53:55	13 standardizing our projects we can make other	12:56:25
12:53:57	14 acquisitions and do the same thing with. So try to	12:56:57
12:54:00	15 model all that potential in and make sure that	12:56:57
12:54:05	16 whatever we're getting is greater than that.	12:56:59
12:54:08		12:57:00
12:54:09		12:57:03
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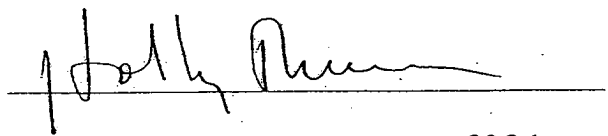
CERTIFICATE OF REPORTER

I, HOLLY THUMAN, 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 cause; that said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the 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 April 27, 2009



HOLLY THUMAN, CSR No. 6834