

EXHIBIT HH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

-----)
ORACLE CORPORATION, a Delaware) Case No.
corporation, ORACLE USA, INC., a) 07-CV-01658 PJH (EDL)
Colorado corporation, and ORACLE)
INTERNATIONAL CORPORATION, a)
California corporation,)
)
) Plaintiffs,)
)
) vs.)
)
SAP AG, a German corporation,)
SAP AMERICA, INC., a Delaware)
Corporation, TOMORROWNOW, INC.,)
a Texas corporation, and DOES)
1-50, inclusive,)
)
) Defendants.)
-----)
Friday, March 6, 2009
8:02 a.m.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of MARK WHITE,
held at the offices of Bingham McCutchen, LLP,
399 Park Avenue, New York, New York 10022,
pursuant to Notice, before Otis Davis, a
Notary Public of the State of New York.

MARK WHITE March 6, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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08:53:56		08:56:48	
08:53:58	?	08:56:48	2 Q. Do you recall if there was a point in
08:54:02		08:56:49	3 time that Mr. Nelson was removed as a director, a
08:54:04		08:56:51	4 member of the board of directors?
08:54:08		08:56:53	5 A. Mr. Nelson was removed as a director in
08:54:09		08:56:56	6 November of 2007 upon his resignation.
08:54:13		08:56:59	7 Q. And prior to that, he remained as a
08:54:19		08:57:01	8 member of the board of directors?
08:54:28		08:57:02	9 A. As far as I know, yes.
08:54:28		08:57:06	
08:54:30		08:57:09	
08:54:34		08:57:09	
08:54:37		08:57:10	
08:54:40		08:57:13	
08:54:42		08:57:17	
08:54:47		08:57:21	
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08:54:54		08:57:25	
08:54:55		08:57:30	
08:54:59		08:57:32	
08:55:06		08:57:33	
08:55:11		08:57:37	
08:55:16		08:57:40	
08:55:20		08:57:45	
08:55:24		08:57:46	
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08:55:26		08:57:47	
08:55:28	.	08:57:49	
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08:55:35		08:57:51	
08:55:38		08:57:52	
08:55:42		08:57:56	
08:55:43		08:57:59	
08:55:44		08:58:01	
08:55:47		08:58:04	
08:55:50		08:58:05	
08:55:53		08:58:06	
08:55:57		08:58:07	
08:56:02		08:58:10	
08:56:06		08:58:10	
08:56:11		08:58:12	
08:56:12		08:58:15	
08:56:15		08:58:18	
08:56:18		08:58:18	
08:56:22	o	08:58:20	
08:56:25		08:58:24	
08:56:26		08:58:26	
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08:56:44		08:58:40	

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10:47:20		10:49:41	1 Q. Arakib?
10:47:22		10:49:41	2 A. The person who copied the DST solution.
10:47:22		10:49:46	3 Q. Hadi? I thought you said Patty.
10:47:26		10:49:50	4 A. No, Hadi.
10:47:30		10:49:51	5 Q. Last name is Arakib?
10:47:36		10:49:54	6 A. Yes. And he was terminated from the
10:47:36		10:49:57	7 company.
10:47:41		10:50:01	8 Q. Do you recall when that was?
10:47:43		10:50:08	9 A. It was -- I don't recall the specific
10:47:43		10:50:11	10 date. I'm pretty sure it was before the end of
10:47:45		10:50:13	11 August of '07, it could have even been in July.
10:47:45		10:50:19	12 Q. Anyone else that you recall?
10:47:51		10:50:21	13 A. There was -- you may have to help me with
10:47:51		10:50:33	14 the name. There is a person in Denver who was
10:47:52		10:50:40	15 terminated, Keith Surrette, thank you, Keith
10:47:53		10:50:48	16 Surrette. I don't know why I'm thanking you, but I
10:47:55		10:50:48	17 looked at you and I remembered. Keith Surrette, who
10:47:58		10:50:49	18 was terminated for deleting files after the lawsuit
10:47:59		10:50:51	19 was -- after litigation commenced.
10:48:07		10:50:59	20 Later on, Greg Nelson was put on a leave
10:48:10		10:51:03	21 of absence while I evaluated whether or not he
10:48:13		10:51:08	22 warranted further disciplinary action, and during the
10:48:19		10:51:11	23 time period he was on leave of absence, he was not
10:48:23		10:51:13	24 eligible for bonus.
10:48:27		10:51:16	25 Shelley Nelson received a warning letter,
Page 131		Page 133	
10:48:33		10:51:20	1 reprimanding her for improper oversight for her
10:48:34		10:51:24	2 employee copying the DST solution, as did John Baugh.
10:48:37		10:51:31	3 Q. Anyone else that you recall?
10:48:41		10:51:35	4 A. It depends on your point of view. Andrew
10:48:43		10:51:37	5 Nelson and Bob Geib, Nigel Pullan were asked to
10:48:49		10:51:52	6 resign or they were told they would be terminated if
10:48:51		10:51:55	7 they did not resign.
10:48:53		10:51:59	8 Q. Why was Andrew Nelson asked to resign?
10:48:57		10:52:02	9 A. Failure as a manager, as an executive for
10:48:59		10:52:07	10 all the problems that happened on his watch.
10:49:01		10:52:09	11 Q. What problems happened on his watch?
10:49:01		10:52:11	12 A. The DST solution, the extensive
10:49:01		10:52:14	13 downloading, the charges that were in the Oracle
10:49:04		10:52:21	14 Complaint. It was sloppy.
10:49:08	15 Q. Did your duties as executive chairman	10:52:29	15 Q. Was he fired for improper use of Oracle
10:49:12	16 include disciplinary actions against TomorrowNow	10:52:32	16 intellectual property?
10:49:14	17 personnel?	10:52:33	17 MR. COWAN: Objection, form.
10:49:15	18 A. Yes.	10:52:36	18 A. He was terminated also because he had not
10:49:15	19 Q. Against whom?	10:52:41	19 implemented the directive. It was not up to me to
10:49:16	20 A. There were several actions, and I won't	10:52:45	20 decide, because I'm not a lawyer. While I understand
10:49:23	21 get the names right, because I don't recall the	10:52:55	21 some things about intellectual property protection
10:49:26	22 names. So if someone wants to correct me, I'm open	10:52:59	22 and laws, I don't understand all of them, so it's not
10:49:30	23 to that.	10:53:02	23 up to me to decide. I just know he did not implement
10:49:31	24 Q. Okay.	10:53:06	24 the company directive for two and a half years.
10:49:31	25 A. Hadi I think was the first name.	10:53:08	25 So the combination of everything that had

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10:53:10	1	occurred under his watch was enough to terminate him.	11:07:14
10:53:15	2	There is one other person who was	11:07:20
10:53:16	3	terminated, and that was Nick Rawls in the U.K.	11:07:23
10:53:25	4	Laura Sweetman was going to be	11:07:26
10:53:27	5	terminated. She was on maternity leave for most of	11:07:29
10:53:32	6	the time. I don't know if she was already on leave	11:07:32
10:53:34	7	by the time I got there in July, I think she was,	11:07:33
10:53:36	8	because I never spoke with her, and she was going to	11:07:36
10:53:44	9	be also terminated, but she decided to resign.	11:07:36
10:53:48	10	Q. Were all these terminations or	11:07:38
10:53:51	11	warnings -- disciplinary actions your decision?	11:07:43
10:53:56	12	A. Yes.	11:07:44
10:53:57			11:07:45
10:53:58			11:07:49
10:54:01			11:07:51
10:54:05			11:07:53
10:54:22			11:07:55
11:04:57			11:07:55
11:04:57			11:07:59
11:05:06			11:08:02
11:05:08			11:08:02
11:05:20			11:08:17
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11:05:43			11:08:41
11:05:45			11:08:43
11:05:45			11:08:43
11:05:50			11:08:46
11:06:09			11:08:47
11:06:17			11:08:49
11:06:22			11:08:50
11:06:25			11:09:00
11:06:28			11:09:06
11:06:29			11:09:12
11:06:35			11:09:12
11:06:37			11:09:15
11:06:40			11:09:17
11:06:44			11:09:23
11:06:53			11:09:24
11:06:56			11:09:28
11:06:59			11:09:29
11:07:02			11:09:31
11:07:10			11:09:33
11:07:13			11:09:39

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12:12:08	,	12:14:37	1 A. No.
12:12:11		12:14:38	2 Q. When was this meeting?
12:12:15		12:14:57	3 A. It was -- I have to go by the weather in
12:12:25		12:15:00	4 San Francisco, because the weather was good. I got
12:12:27		12:15:04	5 to believe it was September or October of 2007.
12:12:29		12:15:06	
12:12:37		12:15:08	
12:12:44		12:15:12	
12:12:51		12:15:13	
12:12:54		12:15:14	
12:12:57		12:15:20	
12:12:58		12:15:21	
12:13:01		12:15:25	
12:13:02		12:15:27	
12:13:09		12:15:30	
12:13:11		12:15:38	
12:13:13		12:15:39	
12:13:13		12:15:41	
12:13:14		12:15:41	
12:13:17		12:15:42	
12:13:19		12:15:50	
12:13:21		12:15:53	
12:13:23		12:15:56	
12:13:23		12:16:01	
12:13:26		12:16:03	
Page 187		Page 189	
12:13:29		12:16:06	
12:13:33		12:16:10	s.
12:13:36		12:16:13	
12:13:39		12:16:15	
12:13:41		12:16:17	
12:13:42		12:16:19	
12:13:51	7 Q. At this time, in the fall of 2007, was	12:16:22	
12:13:54	8 one of your responsibilities to assist with the DOJ	12:16:24	
12:13:56	9 investigation?	12:16:27	
12:14:01	10 MR. COWAN: It's a yes-or-no question.	12:16:28	
12:14:03	11 A. Yes.	12:16:35	
12:14:03	12 Q. Is that one of your responsibilities	12:16:37	
12:14:05	13 today?	12:16:44	
12:14:09	14 MR. COWAN: Same yes-or-no question.	12:16:46	
12:14:14	15 A. Yes, to the extent they want me to	12:16:47	
12:14:16	16 assist.	12:16:48	
12:14:16	17 Q. Have you met with anyone from the DOJ?	12:16:53	
12:14:18	18 A. Yes.	12:16:55	
12:14:19	19 Q. Who?	12:16:56	
12:14:20	20 A. I don't recall their names.	12:16:58	
12:14:22	21 Q. How many?	12:17:05	
12:14:27	22 A. It was two people.	12:17:05	
12:14:28	23 Q. Do you recall their gender?	12:17:07	
12:14:29	24 A. Male.	12:17:10	
12:14:32	25 Q. Do you recall their title?	12:17:12	

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13:39:30	13:42:07
13:39:30	13:42:10
13:39:30	13:42:17
13:39:44	13:42:19
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13:39:48	13:42:26
13:40:02	13:42:28
13:40:06	13:42:29
13:40:09	13:42:32
13:40:11	13:42:34
13:40:14	13:42:37
13:40:15	13:42:41
13:40:21	13:42:43
13:40:22	13:42:49
13:40:24	13:42:52
13:40:25	13:42:54 16 Q. And you lost --
13:40:25	13:42:56 17 TomorrowNow lost some customers because
13:40:27	13:42:58 18 of the change to remote support model, right?
13:40:31	13:43:01 19 A. Correct.
13:40:34	13:43:02 20 Q. Did some customers cancel because they
13:40:34	13:43:05 21 did not want to sign the Level Set agreement?
13:40:39	13:43:06 22 A. Yes.
13:40:46	13:43:07 23 Q. What reasons did they give?
13:40:47	13:43:10 24 A. Increased costs, change in model, wanting
13:40:51	13:43:14 25 to get out from under a company that was the target
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13:40:51	13:43:16 1 of litigation and a Department of Justice
13:40:52	13:43:19 2 investigation.
13:40:54	13:43:21 3 Q. Any other reasons given?
13:40:57	13:43:22 4 A. No.
13:41:06	13:43:22
13:41:08	13:43:22
13:41:10	13:43:29
13:41:12	13:43:29
13:41:14	13:43:39
13:41:15	13:43:43
13:41:19	13:43:51
13:41:28	13:43:54
13:41:30	13:43:55
13:41:34	13:43:58
13:41:34	13:43:58
13:41:35	13:44:00
13:41:37	13:44:01
13:41:39	13:44:04
13:41:41	13:44:06
13:41:46	13:44:14
13:41:49	13:44:19
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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, OTIS DAVIS, a Notary Public within and for the State of New York, do hereby certify:

That MARK WHITE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of March 2009.



OTIS DAVIS