

EXHIBIT 18

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

JASON KEES

(Rule 30(b)(6) designee of Oracle USA, Inc.)

THURSDAY, OCTOBER 15, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-423462)

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10:21:15 2 MR. COWAN: Q. Okay. I'm going to show
10:21:31 3 you what we're marking as Exhibit 732.
10:21:34 4 (Deposition Exhibit 732 was marked for
10:21:36 5 identification.)
10:21:51 6 MR. COWAN: Q. I'll represent to you that
10:21:52 7 Exhibit 732 is the deposition notice that was sent,
10:21:57 8 has an earlier date. The parties have renegotiated
10:21:59 9 the date, but sent -- it's what our understanding is
10:22:05 10 the notice under which you are testifying here
10:22:07 11 today.
10:22:08 12 Is that also your understanding?
10:22:14 13 A. Yes, it is.
10:22:15 14 Q. Okay. You've seen this document before?
10:22:17 15 A. Yes, I have.
10:22:20 16 Q. Or maybe not that exact document, that
10:22:23 17 exact copy of the document, but you've seen a
10:22:25 18 duplicate of that document?
10:22:27 19 A. Correct, yes.
10:22:27 20 Q. Okay. And let's go to lines 12 through 18
10:22:32 21 on page 2 of Exhibit 732. If you will just read
10:22:36 22 that quickly to yourself.
10:22:39 23 A. (Examining document.) Okay.
10:22:58 24 Q. And is that your -- the understanding of
10:23:00 25 the topics you are presented here today for

10:23:04 1 deposition?

10:23:05 2 A. Yes, to the best that I understand them.

10:23:07 3 Q. Okay. And do you also understand that
10:23:11 4 these topics, you are testifying on behalf of all
10:23:15 5 the plaintiffs in this case relative to these
10:23:18 6 topics?

10:23:19 7 A. I'm sorry, I don't understand that
10:23:20 8 question.

10:23:21 9 Q. Okay. If you'll turn --

10:23:32 10 (Deposition Exhibit 733 was marked for
10:23:34 11 identification.)

10:23:35 12 MR. COWAN: Q. I'm going to show you
10:23:36 13 what's been marked as Exhibit 733, which is a copy
10:23:39 14 of the current lawsuit. The current complaint in
10:23:57 15 this lawsuit.

10:23:59 16 You don't need to look past the first page.
10:24:03 17 I'm going to refer elsewhere in this deposition to
10:24:05 18 this document. But on the first page of this
10:24:08 19 lawsuit, down between lines 20 and 23, here on
10:24:15 20 Exhibit -- Exhibit 733, it lists the plaintiffs in
10:24:20 21 this case, which are Oracle USA, Incorporated;
10:24:25 22 Oracle International Corporation; Oracle EMEA,
10:24:28 23 Limited; and Siebel Systems Incorporated.

10:24:31 24 Do you see that?

10:24:32 25 A. I do.

10:24:33 1 Q. Those are the four corporate entities that
10:24:34 2 are the plaintiffs in this lawsuit.

10:24:37 3 And my question to you is, now, if you'll
10:24:40 4 look at Exhibit 732, which is the deposition notice,
10:24:43 5 are you here today to provide testimony on behalf of
10:24:45 6 all of those entities relative to that topic that's
10:24:49 7 listed in Exhibit 732?

10:24:52 8 MR. ALINDER: Objection. Calls for a legal
10:24:53 9 conclusion.

10:24:56 10 THE WITNESS: I would only have knowledge
10:24:58 11 specific to systems that are related to Siebel
10:25:01 12 Systems Incorporated.

10:25:10 13 MR. COWAN: And Zac, is it Plaintiffs'
10:25:13 14 position that he's only providing corporate
10:25:15 15 testimony from that particular plaintiff, or is it
10:25:16 16 on behalf of all plaintiffs?

10:25:18 17 MR. ALINDER: He's providing the testimony
10:25:19 18 on behalf of all plaintiffs, but we've restricted
10:25:22 19 him to the Siebel Systems, which is the notice
10:25:24 20 topic.

10:25:24 21 MR. COWAN: Correct. And I'm not trying to
10:25:26 22 broaden the topic past anything other than the
10:25:28 23 Siebel product line. That's the focus of this
10:25:30 24 deposition. I just want to make sure that all the
10:25:33 25 testimony you're providing here today is on behalf

10:25:35 1 of all plaintiffs.

10:25:35 2 And I think based, Zac, on what you just
10:25:38 3 said, that the answer to that is yes. I'm asking
10:25:40 4 you now instead of the witness.

10:25:42 5 MR. ALINDER: Yes, that's correct.

10:25:43 6 MR. COWAN: Okay.

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14:32:18 14 Q. Based on the investigation and analysis
14:32:19 15 you've done and the information you obtained in
14:32:22 16 preparation for your deposition here today, what
14:32:25 17 access, if any, have you determined -- have you
14:32:31 18 determined that defendants made to any of
14:32:36 19 Plaintiffs' computer systems related in any way to
14:32:39 20 the Siebel product line?
14:32:43 21 MR. ALINDER: Objection. Sorry, vague and
14:32:44 22 ambiguous.
14:32:46 23 MR. COWAN: Q. Do you understand my
14:32:47 24 question? I'll be happy to reword it.
14:32:56 25 THE WITNESS: It's based on my knowledge of

14:32:58 1 going through the logs and based on my knowledge of
14:33:00 2 the emails that I've seen, I know that they
14:33:03 3 definitively accessed the support web system. I saw
14:33:07 4 it in the logs myself that they downloaded, you
14:33:09 5 know, files.

14:33:13 6 MR. COWAN: Q. Okay. What in the logs
14:33:14 7 yourself indicated to you that Defendants accessed
14:33:19 8 the system?

14:33:20 9 A. I saw a record in the log stated from the
14:33:24 10 IP address that was identified earlier by Uwe at
14:33:28 11 some point that had a get command and was getting,
14:33:35 12 you know -- again, the PDF files was the one I
14:33:40 13 specifically searched for, and was grabbing all of
14:33:43 14 these PDF files in a sequential order.

14:33:47 15 Q. In what time frame did that occur?

14:33:48 16 A. I cannot apply specifics on the time frames
14:33:51 17 I ran against the entire logs.

14:33:53 18 Q. So you have no idea of what you just
14:33:55 19 testified of when that occurred?

14:33:57 20 MR. ALINDER: Objection. Misstates the
14:33:58 21 testimony.

14:33:59 22 THE WITNESS: I'm sure it scrolled up the
14:34:02 23 screen. I didn't pay attention. I did all the
14:34:05 24 logs, so ...

14:34:06 25 MR. COWAN: Q. You don't recall any date

14:34:08 1 as you the sit here today?

14:34:10 2 MR. ALINDER: Objection. Vague and
14:34:11 3 ambiguous.

14:34:12 4 THE WITNESS: I know specifically that
14:34:15 5 September of 2006 was in there.

14:34:18 6 MR. COWAN: Q. Now, do you know
14:34:19 7 specifically September of 2006 there's a log entry
14:34:22 8 related to Defendants' web address?

14:34:26 9 A. I can't say with a hundred percent
14:34:28 10 certainty that -- actually, you know what? I can,
14:34:31 11 because I did run two commands. I ran one that was
14:34:34 12 specific against -- I said EX0609 asterisk, trying
14:34:42 13 to indicate, you know, 2006, September, and I ran
14:34:46 14 that through, so that I know there were hits in
14:34:48 15 September at least. I can't say a specific date.

14:34:51 16 Q. Okay. And your -- all of this is based on
14:34:54 17 an assumption that the web address you were given is
14:34:57 18 tied in some way to Defendants. Right?

14:35:00 19 A. It's based on the web address that was
14:35:02 20 given to me by Uwe, and I guess I should clarify on
14:35:06 21 that. I vaguely recall him saying it was related to
14:35:08 22 SAP when he originally gave it to me, but not
14:35:11 23 specific to TomorrowNow, which is I guess what I
14:35:14 24 know at this point.

14:35:15 25 Q. So you don't know whether -- you have no

14:35:17 1 idea for sure what entity the web address you were
14:35:22 2 given relates to as you sit here today?

14:35:24 3 MR. ALINDER: Objection. Misstates
14:35:25 4 testimony.

14:35:27 5 THE WITNESS: I only know that it was an IP
14:35:29 6 address.

14:35:30 7 MR. COWAN: Q. Did you record the IP
14:35:31 8 address in any -- any place?

14:35:33 9 A. I did not.

14:35:35 10 Q. So you typed it in into your query, and
14:35:37 11 after you ran your query, you don't have any record
14:35:40 12 of the IP address you typed in?

14:35:42 13 A. I had it in there. I believe I had it in
14:35:43 14 my copy/paste buffer for a few minutes while I did
14:35:47 15 the work, but I did not put it into any electronic
14:35:50 16 document, and I didn't write it down.

14:35:52 17 Q. And you don't -- as sit here today, don't
14:35:56 18 know whether -- what if any of the defendants in
14:35:59 19 this case that IP address allegedly relates to, do
14:36:02 20 you?

14:36:03 21 MR. ALINDER: Objection. Misstates the
14:36:03 22 testimony.

14:36:04 23 THE WITNESS: I can't specifically say for
14:36:05 24 sure, no.

14:36:06 25 MR. COWAN: Q. Can you say for sure that

14:36:07 1 the web address that you typed in and did your
14:36:11 2 analysis on is one that is registered or otherwise
14:36:14 3 owned by SAP AG?

14:36:16 4 A. You mean the IP address? Is that --

14:36:19 5 Q. Yeah, let me rephrase the question.

14:36:21 6 Can you say for sure that the IP address
14:36:23 7 that you typed in to your search that you did your
14:36:25 8 analysis on is one that is registered or otherwise
14:36:28 9 owned by SAP AG?

14:36:32 10 MR. ALINDER: Objection. Vague and
14:36:34 11 ambiguous, calls for speculation, lacks foundation,
14:36:36 12 outside the scope.

14:36:39 13 THE WITNESS: To the best of my knowledge,
14:36:40 14 it was -- I have a recollection of -- I think I have
14:36:44 15 a recollection of Uwe saying it was SAP-related.
14:36:47 16 But I have no -- I can't guarantee -- or -- you
14:36:50 17 know, I can't guarantee 100 percent that it was tied
14:36:53 18 back to them. I did not do that analysis.

14:36:59 19 MR. COWAN: Q. Can you say for sure that
14:37:00 20 the IP address you typed in to do your search and
14:37:04 21 your analysis is one that is registered to or
14:37:08 22 otherwise owned by SAP America, Inc.?

14:37:11 23 MR. ALINDER: Same objections.

14:37:13 24 THE WITNESS: I cannot. The limit of my
14:37:15 25 knowledge on it is that it ended in dot 98. That's

14:37:19 1 what I can remember.

14:37:21 2 MR. COWAN: Q. Can you say for sure as you
14:37:22 3 sit here today that the IP address you typed in to
14:37:27 4 perform your search and your analysis is one that is
14:37:29 5 registered to or otherwise owned by TomorrowNow
14:37:32 6 Incorporated?

14:37:33 7 MR. ALINDER: Same objections. Asked and
14:37:35 8 answered.

14:37:36 9 THE WITNESS: Again, I cannot -- I cannot.
14:37:38 10 I don't --

14:37:39 11 MR. COWAN: Q. You don't know which of
14:37:40 12 those three entities I just asked you about, if any,
14:37:43 13 it relates to. Correct?

14:37:46 14 THE WITNESS: I have --

14:37:46 15 MR. ALINDER: Objection. Misstates
14:37:47 16 testimony.

14:37:47 17 THE WITNESS: I have no idea what entity
14:37:50 18 that IP address is owned or registered to.

14:37:54 19 MR. COWAN: Q. And nor did Mr. Koehler
14:37:56 20 tell you that, did he?

14:37:58 21 MR. ALINDER: Objection. Misstates the
14:37:58 22 testimony. He's already told you that it was
14:38:05 23 SAP-related.

14:38:06 24 THE WITNESS: I vaguely recall him saying
14:38:07 25 it was SAP-related. I mean, the case was known

14:38:10 1 then. That's the extent of my recollection.

14:38:13 2 MR. COWAN: Q. I'm talking about the --

14:38:15 3 this is when you are -- the search you did in mid to

14:38:18 4 late '08. Right?

14:38:20 5 A. Correct.

14:38:26 6 Q. But you also did a search related to an IP

14:38:28 7 address this week.

14:38:30 8 A. That is correct.

14:38:31 9 Q. How do you know that the search -- IP

14:38:34 10 address you searched for in mid to late '08 is the

14:38:38 11 same IP address you searched for this week?

14:38:41 12 A. I -- I can't guarantee that with any

14:38:43 13 certainty.

14:38:43 14 Q. Okay. What IP address did you use this

14:38:47 15 week?

14:38:48 16 A. The one that ends in dot 98, and that's the

14:38:51 17 extent of my memory on it.

14:38:53 18 Q. Did the one you used in mid to late '08 end

14:38:56 19 in dot 98?

14:38:58 20 A. I have no recollection of that.

14:38:59 21 Q. Okay. Who gave you the IP address that you

14:39:05 22 used this week?

14:39:07 23 MR. ALINDER: Objection. I'm going to

14:39:09 24 caution you, to the extent that would require you to

14:39:12 25 reveal attorney-client privileged information,

14:39:13 1 instruct you not to answer.

14:39:15 2 THE WITNESS: I'm not going to answer.

14:39:18 3 MR. COWAN: Q. Did you do the analysis
14:39:20 4 related to the search you used this IP address to
14:39:24 5 prepare for your deposition here today?

14:39:27 6 A. I'll say yes.

14:39:27 7 Q. Okay. I'll ask you again: Who gave you
14:39:31 8 the IP address that you used to type in to do the
14:39:34 9 search that's related to your preparation here
14:39:35 10 today?

14:39:36 11 MR. ALINDER: I give you the same caution,
14:39:37 12 the same instruction.

14:39:39 13 MR. COWAN: You're not going to let him
14:39:40 14 answer who?

14:39:43 15 MR. ALINDER: I think that reveals
14:39:45 16 attorney-client privileged information, Scott.

14:39:49 17 MR. COWAN: Just the name?

14:39:53 18 MR. ALINDER: Well, you know the content --
14:39:56 19 if -- yeah. Yeah. It would be the content of the
14:39:59 20 information connected with an attorney, and that's
14:40:02 21 what you're asking for.

14:40:09 22 MR. COWAN: Q. Is there any way, sir, as
14:40:10 23 you sit here today to know whether the IP address
14:40:12 24 you typed in relates -- that you typed in this week
14:40:15 25 relates in any way to the defendants in this case?

14:40:18 1 A. Only --

14:40:18 2 Q. And if the answer is -- let me just ask
14:40:22 3 again and make sure it's clear, and he can instruct
14:40:25 4 you however he wants.

14:40:27 5 Is there any way, sir, as you sit here
14:40:29 6 today, to know whether the IP address that you typed
14:40:32 7 in to do your search and analysis to determine
14:40:35 8 whether defendants accessed any computer, computer
14:40:38 9 system or computer network related in any way to the
14:40:41 10 Siebel product line is linked in any way to any of
14:40:49 11 the defendants in this case?

14:40:51 12 A. I have no way to definitively tell you
14:40:54 13 that.

14:40:57 14 Q. So when you provide testimony here today
14:40:59 15 about what you believe defendants did or didn't do
14:41:02 16 with respect to access, you have no factual basis
14:41:05 17 whatsoever to base that testimony on, do you?

14:41:08 18 MR. ALINDER: Objection. Misstates the
14:41:09 19 testimony, argumentative.

14:41:12 20 THE WITNESS: I was given the IP address
14:41:14 21 with the knowledge that it was the correct one, and
14:41:16 22 that's the extent of what I have.

14:41:18 23 MR. COWAN: Q. The correct one for what?

14:41:19 24 A. For TomorrowNow systems that accessed this.

14:41:30 25 Q. So it's based on that assumption that the

14:41:32 1 IP address was tied to TomorrowNow, is what your
14:41:35 2 testimony is based on here today?

14:41:39 3 I'm trying to separate fact from your
14:41:41 4 assumption, what you know to be true based on your
14:41:44 5 own investigation or what facts you were provided.

14:41:47 6 A. I had to assume that the IP address given
14:41:49 7 to me was the correct one.

14:41:51 8 Q. Related to TomorrowNow?

14:41:52 9 A. Correct.

14:42:03 10 Q. And you've already testified that based on
14:42:05 11 that analysis, the only computers that you believe
14:42:08 12 you were able to determine there was any access
14:42:11 13 through that IP address was SCE01 and SRE01.
14:42:15 14 Correct?

14:42:16 15 A. Those are the only ones I have a
14:42:18 16 recollection of.

14:42:18 17 Q. And did you get hits back on both of those
14:42:21 18 servers?

14:42:21 19 A. Yes.

14:42:24 20 Q. Were you able to tell how that access was
14:42:27 21 obtained on either of those servers?

14:42:29 22 MR. ALINDER: Objection. Lacks foundation,
14:42:30 23 calls for speculation.

14:42:31 24 THE WITNESS: I did not. I did not do an
14:42:33 25 analysis to that level.

14:42:34 1 MR. COWAN: Q. So as you sit here today,
14:42:36 2 you have no idea whether there was a password or ID
14:42:40 3 used to log into the Support Web site using that IP
14:42:44 4 address. Is that correct?
14:42:46 5 A. I did not --
14:42:47 6 MR. ALINDER: Objection. Lacks foundation,
14:42:48 7 calls for speculation, outside the scope.
14:42:51 8 THE WITNESS: I didn't do an analysis to
14:42:52 9 that level.
14:42:54 10 MR. COWAN: Q. So you have no way of
14:42:56 11 knowing as you sit here today to know whether the
14:42:58 12 access using that IP address was authorized or not,
14:43:02 13 do you?
14:43:03 14 MR. ALINDER: Same objections. Outside the
14:43:04 15 scope.
14:43:05 16 THE WITNESS: I have no knowledge of that.
14:43:07 17 MR. COWAN: Q. You don't know whether it's
14:43:09 18 authorized access or an unauthorized access, do you?
14:43:12 19 MR. ALINDER: Same objections.
14:43:13 20 THE WITNESS: I don't know if it was an
14:43:14 21 authorized or unauthorized access, no.
14:43:19 22 MR. COWAN: Q. And you don't know whether
14:43:20 23 there was a password or user ID used or not, do you?
14:43:24 24 MR. ALINDER: Same objections.
14:43:25 25 THE WITNESS: To the best of my knowledge,

14:43:26 1 that system required a user ID and password.

14:43:29 2 MR. COWAN: Q. So your assumption would be
14:43:30 3 based that if there was access, it would have had to
14:43:32 4 have had a password and user ID to get on it?

14:43:35 5 A. To the best of my recollection.

14:43:36 6 Q. Based on physically how the website's set
14:43:39 7 up?

14:43:39 8 A. Yes.

14:43:43 9 Q. Did you do any analysis to determine what
14:43:45 10 if any customer, Siebel customer, was related to the
14:43:50 11 IP address?

14:43:52 12 MR. ALINDER: Same objections.

14:43:53 13 THE WITNESS: I did not.

14:43:59 14 MR. COWAN: Q. What if any information did
14:44:00 15 you do to determine whether the access on SCE01 and
14:44:09 16 SCR --

14:44:11 17 A. SRE?

14:44:12 18 Q. Yeah, let me start over.

14:44:13 19 What if any information did you find
14:44:19 20 regarding the actual computer that was using the IP
14:44:22 21 address to communicate with the servers SCE01 and
14:44:29 22 SRE01?

14:44:33 23 MR. ALINDER: Same objections.

14:44:36 24 THE WITNESS: I don't understand the
14:44:37 25 question.

14:44:37 1 MR. COWAN: Q. Okay. You were given an IP
14:44:40 2 address that you assumed to be a TomorrowNow IP
14:44:43 3 address. Correct?

14:44:44 4 A. Correct.

14:44:45 5 Q. Did you review any data that would reflect
14:44:49 6 any data about the computer on the TomorrowNow end,
14:44:54 7 alleged TomorrowNow end, that was using the IP
14:44:56 8 address you've assumed to be a TomorrowNow IP
14:44:59 9 address?

14:44:59 10 A. I was given no information on that.

14:45:02 11 Q. Does the logging information that's
14:45:04 12 contained in Exhibit 738-A to your knowledge contain
14:45:08 13 any information about the computer on the user's
14:45:11 14 side of the communication?

14:45:13 15 MR. ALINDER: Same objections.

14:45:15 16 THE WITNESS: To the best of my
14:45:16 17 recollection, I -- I don't know. It -- it might be
14:45:19 18 in there. I did not look to that level.

14:45:22 19 MR. COWAN: Q. So other than the IP
14:45:23 20 address that you've assumed is a TomorrowNow IP
14:45:26 21 address, you have no other information regarding any
14:45:29 22 hardware or other computer that may have been used
14:45:32 23 in conjunction with that IP address. Correct?

14:45:34 24 MR. ALINDER: Same objections, and this
14:45:36 25 whole line calls for expert testimony.

14:45:39 1 THE WITNESS: I am not privy to any
14:45:40 2 information to that IP address.

14:45:54 3 MR. COWAN: Q. Other than your analysis of
14:45:55 4 the PDF files in approximately a thousand PDF files
14:46:01 5 that you believe were downloaded using the
14:46:03 6 particular IP address you were given, did you do any
14:46:06 7 other analysis of any content that was downloaded
14:46:09 8 using that IP address?

14:46:12 9 A. I did not.

14:46:13 10 Q. Did you do any analysis to go see what the
14:46:16 11 PDF files were that you concluded were downloaded?

14:46:19 12 A. I did not go view those PDF files. I did
14:46:23 13 not do any further examination of what they actually
14:46:26 14 contained.

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15:05:26 16 Q. Okay. I've got a number of questions, and
15:05:28 17 this may go fairly quickly.
15:05:30 18 Are you aware -- relative to the access
15:05:35 19 that you determined was made through the IP address
15:05:37 20 that was given to you that you assumed was a
15:05:40 21 TomorrowNow IP address, are you aware of whether
15:05:46 22 that access involved adding any information or data
15:05:50 23 to the existing dataset that was accessible on the
15:05:56 24 computers, computer systems or computer networks
15:05:59 25 comprising Oracle's Siebel-related customer support

15:06:01 1 website?

15:06:03 2 MR. ALINDER: Objection. Vague and
15:06:03 3 ambiguous, calls for speculation, lacks foundation,
15:06:05 4 outside the scope.

15:06:08 5 THE WITNESS: I have no knowledge of any
15:06:10 6 data being added other than the log file entries.

15:06:22 7 MR. COWAN: Q. Relative to the access that
15:06:24 8 you determined was made through the IP address that
15:06:26 9 was given to you and that you assumed was a
15:06:29 10 TomorrowNow IP address, are you aware of whether
15:06:33 11 that access involved modifying or otherwise altering
15:06:37 12 in any way any information or data on the existing
15:06:43 13 dataset that was accessible on the computers,
15:06:46 14 computer systems, or computer networks comprising
15:06:49 15 Oracle's Siebel-related customer support website?

15:06:52 16 MR. ALINDER: Same objections.

15:06:53 17 THE WITNESS: To the best of my knowledge,
15:06:54 18 no.

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15:17:55 9 MR. COWAN: Q. Okay. Relative to the
15:18:00 10 analysis you did by searching the IP address that
15:18:02 11 you assume was related to TomorrowNow, are you aware
15:18:06 12 of whether the access from that IP address deleted
15:18:11 13 any of the information or data in the existing
15:18:13 14 dataset accessible on the computers, computer
15:18:16 15 systems, computer networks, related in any way to
15:18:20 16 Oracle's Siebel-related customer support website?
15:18:23 17 MR. ALINDER: Same objections.
15:18:24 18 THE WITNESS: I have no knowledge of that.
15:18:31 19 MR. COWAN: Q. Relative to the analysis
15:18:32 20 you did by searching the IP address that you assume
15:18:34 21 was related to TomorrowNow, are you aware of whether
15:18:36 22 the access from that IP address destroyed any of the
15:18:42 23 information or data in the existing dataset
15:18:45 24 accessible on the computers, computer systems or
15:18:47 25 computer networks comprising Oracle's Siebel-related

15:18:51 1 customer support website?

15:18:52 2 MR. ALINDER: Same objections.

15:18:53 3 THE WITNESS: Destroyed as in permanently
15:18:55 4 removed content?

15:18:57 5 MR. COWAN: Q. Yes.

15:18:57 6 A. I have no knowledge of that.

15:19:02 7 Q. Relative to the analysis you did by
15:19:04 8 searching the IP address that you assumed was
15:19:08 9 related to TomorrowNow, are you aware of whether the
15:19:10 10 access from that IP address impacted in any way the
15:19:17 11 accessibility or availability of the information or
15:19:19 12 data in the existing dataset accessible on the
15:19:23 13 computers, computer systems, computer networks that
15:19:27 14 relate and comprise -- relate to and comprise
15:19:30 15 Oracle's Siebel-related customer support website?

15:19:33 16 MR. ALINDER: Objection. Vague and
15:19:34 17 ambiguous, calls for speculation.

15:19:37 18 THE WITNESS: This has to be specifically
15:19:38 19 related to the analysis that I did?

15:19:40 20 MR. COWAN: Q. Yes.

15:19:42 21 A. Then in that case, no.

15:19:48 22 Q. Did you find any evidence based on the
15:19:50 23 analysis that you did that -- whether there was any
15:19:54 24 disruption in service at all to Oracle's
15:19:58 25 Siebel-related customer support website related in

15:20:01 1 any way to Defendants' alleged access to Oracle's
15:20:07 2 Siebel-relate customer support website?
15:20:10 3 A. I'm sorry, what --
15:20:11 4 MR. ALINDER: Same objections.
15:20:11 5 THE WITNESS: Was that question prefaced
15:20:14 6 again with an analysis of the logs?
15:20:16 7 MR. COWAN: Q. It was based on the
15:20:16 8 analysis that you did, yes.
15:20:18 9 A. Yeah. And again, on limited analysis, no.
15:20:21 10 Based off the analysis.
15:20:23 11 Q. Okay. Let me make sure you understand the
15:20:24 12 question, because I want to --
15:20:26 13 A. Okay.
15:20:26 14 Q. Based on your question.
15:20:29 15 Did you find any evidence based on the
15:20:31 16 analysis you actually did whether there was any
15:20:37 17 disruption in service to any aspect of Oracle's
15:20:44 18 Siebel-related customer support website caused by
15:20:47 19 any of Defendants' alleged access to those systems?
15:20:52 20 MR. ALINDER: Same objections.
15:20:53 21 THE WITNESS: I can't conclusively say
15:20:55 22 they've caused any disruption of anything based off
15:20:58 23 the analysis I did.
15:21:10 24 MR. COWAN: Q. Did you learn of any
15:21:11 25 complaints by any of Oracle's or Siebel's customers

15:21:15 1 relating in any way to their ability to access
15:21:19 2 Oracle's Siebel-related customer support website
15:21:22 3 that as a result of the analysis you did would be
15:21:26 4 related in any way to Defendants' alleged access to
15:21:30 5 Oracle's Siebel-related Customer Support website?
15:21:35 6 A. I was not aware of any customer-related
15:21:37 7 complaints specifically around the analysis of my --
15:21:44 8 of the log files that I did, no.
15:21:46 9 Q. Are you aware of any customer complaints
15:21:48 10 from any customer regarding their ability to access
15:21:52 11 Oracle's Siebel-related customer support website
15:21:55 12 that you believe relates in any way to Defendants'
15:21:58 13 alleged access to Oracle's Siebel-related customer
15:22:01 14 support website?
15:22:03 15 MR. ALINDER: Objection. Outside the
15:22:04 16 scope, calls for speculation, lacks foundation.
15:22:07 17 THE WITNESS: It wouldn't have come to me.
15:22:08 18 And no, I'm not aware of any.
15:22:11 19 MR. COWAN: Q. You didn't learn of
15:22:11 20 anything like that in your preparation for this
15:22:13 21 deposition today?
15:22:15 22 A. To the best of my recollection, no.
15:22:18 23 Q. Based on the analysis that you performed,
15:22:21 24 are you aware of any crash of any computer, computer
15:22:28 25 system or computer network related to Oracle's

15:22:32 1 Siebel-related customer support website that relates
15:22:34 2 in any way to any alleged access by any of the
15:22:38 3 defendants in this case?

15:22:39 4 MR. ALINDER: Objection. Vague and
15:22:39 5 ambiguous.

15:22:40 6 THE WITNESS: Based on my analysis of the
15:22:42 7 log files, no.

15:22:51 8 MR. COWAN: Q. Based on the analysis that
15:22:52 9 you have done relative to your preparation for your
15:22:57 10 deposition here today, are you aware of any change,
15:23:02 11 modification or other impact of any hardware
15:23:05 12 component related in any way to Oracle's
15:23:09 13 Siebel-related customer support website that was
15:23:11 14 caused in any way by any alleged access by
15:23:16 15 defendants to Oracle's Siebel-related customer
15:23:18 16 support website?

15:23:19 17 MR. ALINDER: Objection. Vague and
15:23:20 18 ambiguous.

15:23:23 19 THE WITNESS: Based on my limited analysis,
15:23:24 20 again, no, I am not aware.

15:23:33 21 MR. ALINDER: Scott, are you talking about
15:23:34 22 for his entire preparation, or just the limited log
15:23:36 23 analysis that he's talking about right now?

15:23:38 24 MR. COWAN: Q. I'm talking about anything
15:23:39 25 you did looking at any data available to you related

15:23:44 1 to your analysis that you did. Okay?

15:23:49 2 A. Okay. I understand.

15:23:50 3 Q. Does that change any of your answers?

15:23:52 4 A. It does not. In both cases, my analysis
15:23:56 5 was very limited.

15:23:57 6 Q. Okay. And with that same understanding in
15:24:06 7 mind, based on the analysis you did, did you learn
15:24:11 8 at any point whether there was ever any need to
15:24:14 9 restore any data or any information as a result of
15:24:18 10 any alleged access by Defendants to any computer,
15:24:22 11 computer system, or computer network related in any
15:24:25 12 way to Oracle's Siebel-related customer support
15:24:28 13 website?

15:24:31 14 MR. ALINDER: Same objections.

15:24:33 15 THE WITNESS: No, I'm not aware of any
15:24:35 16 manual effort to restore anything.

15:24:45 17 MR. COWAN: Q. Based on the analysis that
15:24:46 18 you have done to date, are you aware of any impact
15:24:52 19 at all to the functionality of Oracle's
15:24:56 20 Siebel-related customer support website caused by
15:25:01 21 any alleged access by Defendants to that
15:25:09 22 Siebel-related customer support website?

15:25:11 23 MR. ALINDER: Objection. Vague and
15:25:11 24 ambiguous, and vague specifically as to the meaning
15:25:13 25 of "the analysis that you have done."

TEXT REMOVED - NOT RELEVANT TO MOTION

16:17:14

25

I declare under penalty of perjury that

Merrill Legal Solutions
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16:17:14

the foregoing is true and correct. Subscribed at

16:17:14

SAN FRANCISCO, California, this 17 day of

16:17:14

November 2009.

16:17:14

16:17:14



A handwritten signature in cursive script, appearing to read 'J. Kees', is written over a horizontal line.

16:17:14

JASON KEES

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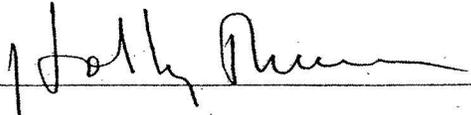
CERTIFICATE OF REPORTER

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 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 October 23, 2009.


HOLLY THUMAN, CSR No. 6834