

EXHIBIT V

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
DANIEL LEVY, PH.D.

FRIDAY, APRIL 30, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427360)

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10:03:21 1 that can be supported by your analysis Is that
10:03:23 2 fair?
10:03:23 3 A Well, it would be from wherever that
10:03:26 4 sample was drawn from for the population that it
10:03:31 5 was drawn from
10:03:33 6 Q And it's your understanding that that's
10:03:34 7 PeopleSoft HRMS payroll tax and regulatory updates?
10:03:38 8 A That's correct
10:03:41 9 Q Where did you get the abbreviation for
10:03:43 10 SAP TN?
10:03:50 11 A The abbreviation for -- I don't recall
10:03:53 12 where I got the abbreviation
10:03:55 13 Q Would it surprise you to know that
10:03:56 14 TomorrowNow never went by SAP TN?
10:04:02 15 A No Not -- not particularly
10:04:06 16 Q Is that something that counsel told you to
10:04:08 17 use?
10:04:12 18 A I don't -- I don't recall
10:04:18 19 Q What if any is your basis for saying that
10:04:20 20 TomorrowNow infringed Oracle copyrights in this
10:04:24 21 sentence?
10:04:27 22 A Well, I'm saying that I've been retained
10:04:29 23 to do a sample to investigate data related to that
10:04:36 24 I'm not saying in this sentence that there was a --
10:04:39 25 that -- I'm not making a claim here I'm

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10:04:42 1 describing what I was asked to do.
10:04:45 2 Q. So you're not claiming that TomorrowNow
10:04:47 3 infringed Oracle's copyrights. Is that correct?
10:04:50 4 MR. PICKETT: In that sentence, you mean,
10:04:51 5 or elsewhere?
10:04:52 6 I'm sorry. Objection. Ambiguous.
10:04:54 7 THE WITNESS: As I said, in this sentence,
10:04:56 8 I'm just stating what I was asked to do.
10:04:59 9 MR. WILKES: Q. Now, in your report as a
10:05:01 10 whole, are you making any claims about whether or
10:05:02 11 not TomorrowNow infringed Oracle's copyrights?
10:05:06 12 A. In the report as a whole, what I'm finding
10:05:09 13 is that there's significant occurrences that I
10:05:14 14 understand to be related to, quote, what's called
10:05:18 15 contamination, and inappropriate, impermissible
10:05:24 16 cross-use that I understand to be related to
10:05:27 17 infringement.
10:05:29 18 And so I'm providing information about
10:05:34 19 those measures that are related to infringement.
10:05:48 20 Q. What did you do to investigate, quote,
10:05:51 21 "contamination," if anything?
10:06:02 22 A. I don't know what you mean by -- can you
10:06:04 23 be more specific?
10:06:05 24 Q. Sure. Did you do anything to determine
10:06:08 25 whether or not the data that you were counting

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10:06:11 1 actually reflected, quote, "contamination"?
10:06:17 2 A Well, I have a general understanding of
10:06:18 3 what contamination is, and I spoke about it with
10:06:23 4 Mr Mandia, what he was measuring And from there,
10:06:29 5 I received information from him, his measurements
10:06:37 6 on various aspects of impermissible cross-use and
10:06:45 7 contamination
10:06:46 8 Q And so other than your discussion with
10:06:50 9 Mandia, did you do anything to verify his claims of
10:06:54 10 cross-use or contamination?
10:07:02 11 A Well, I did the analysis that I did So I
10:07:05 12 just -- I discussed it with him, received his data,
10:07:09 13 and performed the analysis that I performed, with a
10:07:12 14 background of a general understanding of what
10:07:14 15 contamination and impermissible cross-use is
10:07:18 16 Q And so my question is, did you do anything
10:07:20 17 to verify the claim of contamination? Did you look
10:07:25 18 at any TomorrowNow fixes?
10:07:28 19 A I -- actually, I did look at them to
10:07:31 20 understand what they were in general
10:07:33 21 Q And what are they?
10:07:35 22 A What is a fix?
10:07:36 23 Q Uh-huh
10:07:37 24 A It's a set of code
10:07:39 25 Q Did you look at the code?

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10:07:42 1 A I didn't look at individual sets of code
10:07:44 2 I looked at the process they used to record
10:07:47 3 information about the fixes
10:07:48 4 Q And how did you make a determination that
10:07:50 5 that -- what you looked at was actually
10:07:53 6 contaminated?
10:07:54 7 A I didn't do that
10:07:57 8 MR PICKETT: And as appropriate, we've
10:07:59 9 been going a little over an hour Maybe we could
10:08:01 10 take a break
10:08:02 11 MR WILKES: Yeah, let me finish my line
10:08:07 12 MR PICKETT: How much longer do you have?
10:08:08 13 MR WILKES: Probably 5 minutes
10:08:11 14 Q You never read any documents or testimony
10:08:14 15 describing TomorrowNow's retrofit or critical
10:08:17 16 support model, did you?
10:08:30 17 A Well, again, I don't know exactly how to
10:08:34 18 characterize that I mean, I saw how the process
10:08:37 19 was set up from some descriptions provided by -- by
10:08:46 20 Mr Mandia or other folks at Mandiant So I looked
10:08:50 21 at what the process was, how it was recorded They
10:08:53 22 showed me examples of it
10:08:55 23 Q And just so I'm clear, you're talking
10:08:58 24 about looking at what Mandia had put together and
10:09:01 25 what Mandia had done Is that right?

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10:09:03 1 A They were -- they were -- there was
10:09:06 2 material produced by Mr Mandia, but there was also
10:09:09 3 just screenshots of the -- or computer records that
10:09:19 4 were things that were not produced by Mr Mandia
10:09:25 5 Q And what were those screenshots of?
10:09:28 6 A They were just -- they were records or --
10:09:33 7 of what a fix looked like or what the -- and what
10:09:35 8 the recordkeeping on a fix, related to a fix,
10:09:40 9 looked like Examples of them
10:09:43 10 Q You're not providing any opinions
10:09:44 11 regarding the ultimate determination of whether or
10:09:46 12 not Defendants infringed any of Plaintiffs'
10:09:50 13 copyrights Is that correct?
10:09:51 14 MR PICKETT: Objection Ambiguous
10:09:54 15 THE WITNESS: I'm providing a
10:09:54 16 quantification of the number of times that
10:10:06 17 contamination or impermissible cross-use were found
10:10:11 18 in the data that Mr Mandia looked at And so in
10:10:14 19 that, I'm providing information that's related to
10:10:19 20 that
10:10:20 21 MR WILKES: Q And you didn't do
10:10:20 22 anything to check Mandia's data Is that correct?
10:10:24 23 A I didn't do anything to check his what?
10:10:27 24 Q Data
10:10:33 25 A Well, I received his data, and the data I

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10:10:37 1 received I looked at
10:10:41 2 Q Other than receiving it, you didn't do
10:10:43 3 anything to independently verify the numbers that
10:10:45 4 he had arrived at Is that correct?
10:10:47 5 A Ah, sorry I didn't understand what you
10:10:49 6 were saying
10:10:51 7 No We didn't go and redo Mr Mandia's
10:10:54 8 analysis
10:10:56 9 Q And so is it --
10:10:57 10 A To check that
10:10:58 11 Q Is it fair to say that you were assuming
10:11:00 12 contamination based on your discussion with Mandia?
10:11:04 13 A No I don't think I am What I'm doing
10:11:07 14 is, I'm quantifying what the -- the measures are
10:11:11 15 that Mr Mandia provided And I am in some cases
10:11:16 16 counting them up in total, and in some cases I'm
10:11:20 17 extrapolating to a broader population based on
10:11:23 18 those numbers
10:11:24 19 I'm not really making an assumption either
10:11:26 20 way
10:11:28 21 Q And you're not making an assumption, then,
10:11:30 22 either way on cross-use, either Same thing?
10:11:33 23 A Similar -- similar answer for cross-use
10:11:38 24 MR WILKES: Let's take a break
10:11:42 25 THE VIDEO OPERATOR: Going off the record,

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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 state, 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 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: May 19, 2010
Holly Thuman
HOLLY THUMAN, CSR