

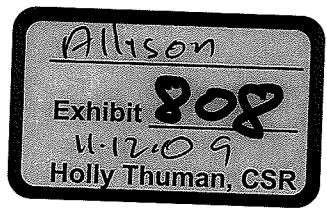
EXHIBIT E

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SAP AG, SAP AMERICA, INC., and
19 TOMORROWNOW, INC.



20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 ORACLE USA, INC., et al.,
24 Plaintiffs,
25 v.
26 SAP AG, et al.,
27 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DEFENDANTS' AMENDED THIRD
NOTICE OF DEPOSITION OF
PLAINTIFF ORACLE USA, INC.
PURSUANT TO FED. R. CIV. P.
30(b)(6)**

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil
3 Procedure, Defendants SAP AG, SAP America (together, "SAP"), and TomorrowNow, Inc.
4 ("TN") will take the deposition of Plaintiff Oracle USA, Inc. on November 12, 2009,
5 commencing at 9:00 a.m. at the law offices of Jones Day, 555 California Street, 26th Floor, San
6 Francisco, CA 94104.

7 The deposition will be recorded stenographically, using real time transcription, by a
8 certified court reporter, and by video and audio by a certified videographer.

9 Oracle USA, Inc. is hereby requested and required, pursuant to Federal Rule of Civil
10 Procedure 30(b)(6), to designate and produce a witness or witnesses to testify on its behalf on the
11 following topics:

12 **1. Oracle's customer-specific financial reports i.e. Analytics Contracts Reports**
13 **OKI3 Reports, and Analytics Licenses Reports (the "Reports"):**

14 (a) An explanation of each column in each type of Report.

15 (b) The data contained in the Reports, including: (i) how customer cancellations and/or
16 terminations are reflected in the Reports; (ii) how customer reinstatements are reflected in the
17 Reports, how customer re-licensing is reflected in the Reports (e.g. when a customer cancels
18 support and returns to Oracle by re-purchasing their licenses instead of paying back-support and
19 reinstatement fees); (iii) how any migration from JD Edwards pricing to PeopleSoft pricing is
20 reflected in the Reports; (iv) a description of each of the categories in the "Status Code" column
21 of the Analytics Contracts Reports, including Active, Badserv, Buslost, Cancelled,
22 Contract_Priced, Duplicate, Migrated, Terminated, and Underutil; (v) a description of each of the
23 categories in the "Status Type" column of the Analytics Contracts Reports, including Active,
24 Cancelled, Entered, Entered/Backlog, Expired, Hold, Signed, and Terminated; (vi) a description
25 of each of the categories in the "Contract Status Code" column of the OKI3 Reports, including
26 Approval Rejected, Cancel/Replace, Duplicate Cancellation, X – Obsolete – Customer Declined,
27 X – Obsolete – Move to Competitor; and (vii) a description of the Service Levels described in
28 the Analytics Contracts Reports and the OKI3 Reports, including Product Support, Product

1 **6. Tracking and Accounting for Escalated Support and Research and Development**

2 **Expenses:**

3 (a) Whether work on escalated support issues (such as bug fixes) is done by support
4 employees or by research and development employees.

5 (b) Whether Oracle's support or research and development employees report or otherwise
6 track their time and, if so, where such information is stored.

7 (c) Whether the cost of work done by research and development employees on escalated
8 support issues (such as bug fixes) is allocated to research and development or to support services.

9 **7. Revenue Recognition:**

10 How revenues relating to PeopleSoft and JD Edwards sales were recognized in the
11 financial statements, including how discounts were allocated, whether maintenance for the first
12 year was included in license sales, and how services, including consulting, training, and
13 implementation, were allocated to which line of business.

14 **8. Support Cancellation Rates and Reports:**

15 Support cancellation rates for PeopleSoft and JD Edwards products from January 1, 2002
16 through October 31, 2008, and the types of reports Oracle has, or can generate, reflecting such
17 information.

18 **9. Relationship Among or Between Oracle Entities:**

19 The relationship among or between the Oracle entities identified in Oracle's charts of
20 accounts.

21 **10. Terms of Agreements With Customers:**

22 The terms of the agreements between customers and PeopleSoft, J.D. Edwards, Siebel
23 and/or Oracle upon which Oracle relies for its allegations in paragraphs 52 and 53 of Fourth
24 Amended Complaint, as well as the terms of the agreements between customers and Oracle for
25 Oracle database software (*see e.g.*, ORCL00609210 through ORCL00622263).

1 **11. Terms of Use, Special Terms of Use, Legal Download Agreements, and Software**

2 **Application Request ("SAR"):**

3 (a) The terms of the Terms of Use, Special Terms of Use, Legal Download Agreements,
4 SAR, Support Web Terms of Use and Developer's License upon which Oracle relies for its
5 allegations in paragraphs 54 through 61, and 105 and 124 of Fourth Amended Complaint.

6 (b) Oracle's efforts to enforce those terms against any customer, third party support
7 provider, Oracle partner, or any other third party.

8 **12. PeopleSoft's July 10, 2002 Cease and Desist Letter to TomorrowNow:**

9 (a) The facts relating to PeopleSoft's July 10, 2002 letter to TomorrowNow (the "2002
10 Cease and Desist Letter"), including the reasons why PeopleSoft sent the letter and the identities
11 of the individuals involved in the decision to send the letter.

12 (b) The facts relating to TomorrowNow's July 27, 2002 response to the "2002 Cease and
13 Desist Letter," including what actions, if any, PeopleSoft took in response to TomorrowNow
14 letter, the identities of the individuals involved in the actions, and the reasons for the actions.

15
16 Dated: October 26, 2009

JONES DAY

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18 By: /s/ Elaine Wallace
19 Elaine Wallace

20 Counsel for Defendants
21 SAP AG, SAP AMERICA, INC., and
22 TOMORROWNOW, INC.
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1 **PROOF OF SERVICE**

2 I, Jacqueline K. S. Lee, declare:

3 I am a citizen of the United States and employed in Santa Clara County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 1755 Embarcadero Road, Palo Alto, California 94303. On October 26, 2009, I served a copy
6 of the attached document(s):

7 **DEFENDANTS' AMENDED THIRD NOTICE OF DEPOSITION OF**
8 **PLAINTIFF ORACLE USA, INC. PURSUANT TO FED. R. CIV. P. 30(b)(6)**

- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- 10 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.
- 11 by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- 12 by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- 13 by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- 14 by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Executed on October 26, 2009, at Palo Alto, California.

By: /s/ Jacqueline K. S. Lee
 Jacqueline K. S. Lee