

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.	)	<b>JURY TRIAL</b>
	)	
PLAINTIFFS,	)	NO. C 07-01658 PJH
	)	
VS.	)	<b>CERTIFIED COPY</b>
	)	
SAP AG, ET AL.,	)	PAGES 480 - 640
	)	
DEFENDANTS.	)	OAKLAND, CALIFORNIA
	)	THURSDAY, NOVEMBER 4, 2010

(PAGES 485 THROUGH 491 ARE UNDER SEAL AND BOUND SEPARATELY)

**TRANSCRIPT OF PROCEEDINGS**

APPEARANCES:

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

**RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530**

1 OF BUSINESS, THEY STAY WITH YOU.

2 **Q.** LET'S GO TO THE SECOND REASON THAT YOU LISTED TO THE  
3 INVESTORS AND ANALYSTS, "LARGER APPLICATIONS, R&D BUDGET AND  
4 ACCELERATED INNOVATION." WHAT DID YOU MEAN BY THAT?

5 **A.** SO THESE CUSTOMERS ARE PAYING YOU EACH YEAR TO MAINTAIN THE  
6 SOFTWARE AND INVEST IN IT. SO LIKE I SAID EARLIER, THE MORE  
7 CUSTOMERS YOU HAVE, THAT MEANS MORE MONEY COMING IN BECAUSE  
8 THEY'RE PAYING ON A EITHER -- YEARLY BASIS.

9           NORMALLY YOU TAKE THAT, AND THAT'S WHAT YOU USE TO  
10 IMPROVE THE PRODUCT. SO THE MORE CUSTOMERS YOU HAVE, THE BIGGER  
11 R & D BUDGET YOU CAN HAVE, THE MORE DEVELOPERS YOU CAN HAVE.  
12 THE MORE DEVELOPERS, THE MORE INNOVATION. SO THAT'S ANOTHER WAY  
13 TO CATCH UP WITH A LARGE COMPETITOR IF YOU HAVE MORE MONEY  
14 COMING IN TO PUT IN RESEARCH AND DEVELOPMENT. BECAUSE OF ALL  
15 THOSE CUSTOMERS, YOU CAN THINK OF THINGS AND FUND DEVELOPMENT IN  
16 A WAY YOU COULDN'T BEFORE.

17 **Q.** THIRD REASON FOR THE PEOPLESOFT ACQUISITION STRONGER,  
18 "COMPETITIVE POSITIONING." WHAT DID YOU MEAN BY THAT?

19 **A.** WELL, WHEN THESE CUSTOMERS ARE MAKING A DECISION ON A  
20 SOFTWARE PARTNER TO PUT IN A NEW FINANCIAL ACCOUNTING SYSTEM,  
21 FOR INSTANCE, OR MANUFACTURING SYSTEM, THIS IS A CAREER BET.  
22 YOU DON'T PUT THESE SYSTEMS IN AND CHANGE YOUR MIND SIX MONTHS  
23 LATER. IT MAY TAKE YOU TWO TO THREE YEARS TO GET THEM FULLY  
24 INSTALLED, AND THEN YOU WILL BE LIVING WITH THAT SOFTWARE  
25 PARTNER FOR THE NEXT 15, 20 YEARS.

1 SO YOU WANT TO MAKE SURE THAT THEY'RE LARGE; THEY  
2 HAVE A LOT OF CUSTOMERS; FUNDING THE DEVELOPMENT, AS I MENTIONED  
3 BEFORE; THEY'RE GOING TO BE IN THE BUSINESS FOR A VERY LONG TIME  
4 AND NOT THINKING ABOUT GETTING OUT OF IT BECAUSE, YOU KNOW, IT'S  
5 NOT WORKING FOR THEM.

6 SO HAVING MORE CUSTOMERS MAKES YOU ACTUALLY MORE  
7 COMPETITIVE BECAUSE PEOPLE NOW ARE HAVE COMFORT THAT YOU WILL BE  
8 THERE IN 20 YEARS.

9 **Q.** AND YOUR COMPETITION AT THE TIME?

10 **A.** WELL, THE COMPETITION WAS MUCH LARGER. THERE WAS NO  
11 QUESTION ABOUT SAP'S STAYING POWER AND COMMITMENT TO THE  
12 BUSINESS. THAT WAS THEIR BUSINESS. AND THEY HAD, YOU KNOW,  
13 THOUSANDS AND THOUSANDS OF CUSTOMERS. SO WE WOULD SOMETIMES  
14 LOSE TO SAP BECAUSE THEY WERE VIEWED AS THE SAFE DECISION  
15 BECAUSE THEY HAVE THE MOST CUSTOMERS. THEY BEEN DOING THIS A  
16 LONG TIME.

17 THERE'S NO ONE JUST GOING TO CATCH THEM. SO IF YOU  
18 WERE A CONSERVATIVE DECISION-MAKER, YOU DIDN'T WANT TO TAKE ANY  
19 RISK, THEY WERE THE SAFE PURCHASE AT THAT TIME.

20 **Q.** NOW, MR. PHILLIPS, THE FOURTH REASON ON YOUR SLIDE, "MORE  
21 HIGH-MARGIN RECURRING REVENUE." CAN YOU EXPLAIN TO THE JURY  
22 WHAT YOU MEANT BY THAT?

23 **A.** WELL, THE SUPPORT REVENUE IS PROFITABLE REVENUE, AND YOU  
24 TAKE THAT SUPPORT DOLLARS THAT THEY'RE PAYING EACH YEAR. IT'S  
25 KIND OF LIKE A -- ALMOST LIKE A MAGAZINE SUBSCRIPTION. THAT

1 MONEY IS COMING INTO US EVERY YEAR. AND YOU TAKE THAT MONEY,  
2 AND THAT'S WHAT YOU USE TO PUT IN RESEARCH AND DEVELOPMENT TO  
3 FIGURE OUT WAYS TO MAKE THE PRODUCT BETTER.

4 SO LONG AS THAT'S IMPROVING AND INCREASING, THAT'S  
5 HOW THE PRODUCTS GET BETTER.

6 **Q.** FIFTH REASON, "ACCRETIVE TRANSACTION FROM OPERATIONS TO  
7 ORACLE'S SHAREHOLDERS." WHAT DOES THAT MEAN?

8 **A.** SO WHAT THE "ACCRETIVE" MEANS, IN THIS CONTEXT ANYWAY, IS  
9 THAT THERE ARE SOME ACQUISITIONS THAT ON DAY ONE WHEN YOU BUY  
10 THEM, BECAUSE YOU'RE LOSING MONEY, THEY ACTUALLY YOU MAKE LESS  
11 MONEY OVERALL. AND THEY ARE WHAT'S CALL DILUTIVE TO YOUR  
12 EARNINGS.

13 BUT THIS ONE WAS ACCRETIVE, WHICH MEANS BECAUSE IT  
14 PROFITABLE AND BECAUSE IT'S A LARGE CUSTOMER BASE WITH ALL THAT  
15 RECURRING REVENUE, ON DAY ONE, WE ACTUALLY MAKE MONEY WITH THIS  
16 COMPANY. THEY ADD TO OUR EARNINGS. SO THE NUMBER YOU REPORT TO  
17 THE PUBLIC, TO YOUR SHAREHOLDERS, WILL BE HIGHER NOW ON DAY ONE.  
18 SO IT'S ACCRETIVE TO YOUR EARNINGS, ADDS TO YOUR EARNINGS, AND,  
19 YOU KNOW, INVESTORS AND RATING AGENCIES LIKE TO SEE THAT.

20 THEY DON'T LIKE ACQUISITIONS WHERE, OKAY. YOU'RE  
21 BUYING IT, BUT YOU'RE ACTUALLY GOING TO MAKE LESS MONEY FOR THE  
22 FIRST YEAR OR TWO. THEY DON'T LIKE THAT.

23 **Q.** NOT SO MUCH?

24 **A.** NOT SO MUCH.

25 **Q.** THEN FINALLY, "LOW-RISK ACQUISITION BASED ON PLANNED

1 UMBRELLA OF ENTERPRISE APPLICATIONS.

2 AND ONCE AGAIN, THERE, ORACLE'S PRESENCE THERE  
3 PRE-SIEBEL WAS PRETTY SMALL. SAP HAD A LARGE PRESENCE THERE.  
4 THE ONLY WAY TO CATCH UP, YOU HAVE TO LOOK AROUND AND FIND WHAT  
5 CAN I BUY TO HAVE AS MANY CUSTOMERS OR AT LEAST APPROACH THE  
6 SAME SIZE THEY HAVE SO I CAN SPEND AS MUCH ON THE PRODUCT.

7 THE ONLY THING AVAILABLE WAS SIEBEL, AND IT WAS THE  
8 LEADER IN THAT AREA, SO IT WAS THE OBVIOUS THING TO BUY.

9 **Q.** HOW MUCH DID ORACLE PAY FOR SIEBEL?

10 **A.** JUST OVER 6 BILLION.

11 **Q.** 6 BILLION?

12 **A.** RIGHT.

13 **Q.** NOW, I WANT YOU TO ASSUME NOW A SECOND NEGOTIATION, ONLY  
14 THIS TIME IT'S FOR SAP AND TOMORROWNOW TO GAIN ACCESS TO THE  
15 SIEBEL SOFTWARE STARTING IN SEPTEMBER 2006 WHEN THEY STARTED TO  
16 SERVICE SIEBEL CUSTOMERS.

17 HOW WOULD YOU VALUE A LICENSE, HOW WOULD YOU APPROACH  
18 THE NEGOTIATIONS FOR A LICENSE FOR THE SIEBEL SOFTWARE?

19 **A.** WELL, MUCH THE SAME WAY AS -- AS WE DISCUSSED EARLIER WITH  
20 PEOPLESOFT. IF I JUST PAID 6 BILLION AND I'M NOW GOING TO GIVE  
21 SAP, OF ALL PEOPLE, ACCESS TO THE CODE AND TO THOSE CUSTOMERS  
22 AND LOSE THOSE CUSTOMERS, I'D HAVE TO GET PAID A GOOD CHUNK OF  
23 THAT UPFRONT TO JUSTIFY DOING THAT TO MY BOARD.

24 **Q.** WHAT WAS THE --

25 SORRY, GO AHEAD.

1 **A.** OTHERWISE, WHY WOULD I DO THAT? IT WOULD JUST -- IT'S  
2 ALMOST -- DOESN'T MAKE MUCH SENSE.

3 **Q.** WHAT WAS THE SIEBEL CUSTOMER BASE THAT YOU ACQUIRED IN THE  
4 ACQUISITION?

5 **A.** IF I REMEMBER RIGHT, IT WAS AROUND 4,000 CUSTOMERS OR SO.

6 **Q.** AND IN THAT NEGOTIATION, WHAT WOULD YOU RECOMMEND ORACLE'S  
7 POSITION BE IN THE NEGOTIATION FOR THE LICENSE FOR SIEBEL?

8 **A.** THE NUMBER, OPENING NUMBER FOR ME WOULD HAVE A "B" ON IT IN  
9 BILLIONS IF I JUST PAID 6 BILLION AND I'M ABOUT TO GIVE THOSE  
10 CUSTOMERS AWAY TO MY LARGEST COMPETITOR.

11 I KNOW THERE'S VARIOUS WAYS OF ANALYZING THIS, AND  
12 THERE MAY BE OTHER MODELS. BUT FOR ME, IT'S JUST PRETTY SIMPLE.  
13 I JUST PAID 6 BILLION, AND MY BIGGEST COMPETITOR WANTS WHAT I  
14 JUST BOUGHT. I CAN'T GIVE IT TO HIM FOR NOTHING.

15 **MR. PICKETT:** THANK YOU. I HAVE NO FURTHER  
16 QUESTIONS.

17 THANK YOU, MR. PHILLIPS.

18 **THE COURT:** ALL RIGHT. CROSS?

19 **MR. LANIER:** YOUR HONOR, WE HAVE A COUPLE OF  
20 DOCUMENTS FOR MR. PHILLIPS AS WELL. CAN I GIVE HIM THAT?

21 **THE COURT:** SURE. YOU CAN GIVE HIM THOSE.

22 **MR. LANIER:** THANK YOU.

23 **CROSS-EXAMINATION**

24 BY MR. LANIER:

25 **Q.** MORNING, MR. PHILLIPS. GOOD TO SEE YOU AGAIN.

**CERTIFICATE OF REPORTER**

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, THURSDAY, NOVEMBER 4, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



DIANE E. SKILLMAN, CSR, RPR, FCRR

FRIDAY, NOVEMBER 5, 2010