

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	JURY TRIAL
)	
PLAINTIFFS,)	NO. C 07-01658 PJH
)	
VS.)	VOLUME 6
)	
SAP AG, ET AL.,)	PAGES 947 - 1187
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	TUESDAY, NOVEMBER 9, 2010

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

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1 BY MR. PICKETT:

2 Q. LET'S GO ON, THEN, TO FACTOR NO. 2, WHAT WOULD BE IN THE
3 MIND OF SAP. WE'RE MOVING FROM THEIR GOALS TO EXPECTED IMPACT
4 ON ORACLE.

5 CAN YOU REMIND THE JURY WHAT THAT FACTOR INVOLVES?

6 A. YES, THIS WAS IN THE -- FROM THE PERSPECTIVE OF THE SAP
7 NEGOTIATORS, HOW USING THE SOFTWARE WOULD THEN IMPACT ORACLE.
8 AND AS YOU RECALL FROM THE DISCUSSION YESTERDAY, THAT WAS AN
9 ISSUE, TO LAUNCH RIGHT AFTER THE ORACLE COMBINATION WITH
10 PEOPLESOFT. AND SO WE'RE GOING TO SEE SOME OF THESE DOCUMENTS,
11 I THINK, IN A MOMENT.

12 I THINK THAT -- THAT THE FIRST ITEM THERE IN THE FAR
13 RIGHT-HAND SIDE, WE'LL SEE THAT THIS WAS PRESENTED TO OR
14 RECEIVED BY MR. AGASSI, MR. OSWALD, AND MR. MACKEY. AND WITH
15 THIS PROGRAM, IT SAYS, "MAY FORCE ORACLE TO CHANGE ITS BEHAVIOR
16 OR PLANS AROUND PRICING OR POSITIONING."

17 AND THEN THE NEXT ONE, IT'S PRETTY IMPORTANT,
18 "AFFECTING ORACLE'S ABILITY TO MAINTAIN THIS REVENUE STREAM
19 COULD IMPACT THE ROI ASSUMPTIONS" -- THAT MEANS RETURN ON
20 INVESTMENT -- "OF THE ORACLE/PEOPLESOFT DEAL." SO THAT MEANS
21 THAT IT WOULD IMPACT THE ABILITY FOR ORACLE TO MAKE RETURN ON
22 THE \$11 BILLION INVESTMENT.

23 Q. SO IF -- THAT -- THE IDEA IS THAT IF SAP WAS SUCCESSFUL IN
24 CONVERTING CUSTOMERS, IT WOULD DIVERT FUNDS THAT WOULD PAY FOR
25 THE PEOPLESOFT \$11 BILLION ACQUISITION?

1 **A.** THAT'S RIGHT. WHICH WOULD THEN IMPACT CASH FLOW TO ORACLE
2 AND PEOPLESOFT, WHICH WOULD IMPACT DEVELOPMENT.

3 **Q.** AND SAP WOULD VIEW THAT HOW ENTERING THE NEGOTIATION TABLE?
4 HOW WOULD THAT FACTOR IMPACT ITS THINKING?

5 **A.** THAT CREATES ADDITIONAL VALUE FOR SAP IN THE NEGOTIATION.
6 IT'S A REASON WHY THEY WOULD PAY MORE FOR THE LICENSE.

7 (EXHIBIT PUBLISHED TO JURY.)

8 BY MR. PICKETT:

9 **Q.** ALL RIGHT. LET'S GO TO FACTOR NO. 3 IN SAP'S MIND ON THIS
10 NEGOTIATION OF A LICENSE. AND THAT'S THE SAP'S EXPECTED
11 FINANCIAL GAINS. THAT'S PRETTY OBVIOUS WHAT THAT IS.

12 WHAT HAVE YOU SUMMARIZED HERE?

13 **A.** WHAT I'VE SUMMARIZED HERE ARE SOME OF THE KEY DOCUMENTS OR
14 IMPORTANT DOCUMENTS IN THIS TIME FRAME OF DECEMBER 2004 AND
15 JANUARY 2005. AND SIMILAR TO THE OTHER CHARTS, IT'S SET UP
16 SHOWING WHO RECEIVED OR WAS PRESENTED THE DOCUMENTS AND -- AND
17 YOU'LL SEE EXECUTIVE BOARD MEMBERS IN THAT COLUMN.

18 AND I'VE NOTED IN RED SOME OF THOSE PROJECTION
19 FIGURES ABOUT THE -- POTENTIAL CONVERSION OF CUSTOMERS FROM
20 PEOPLESOFT OVER TO THE SAP APPLICATION. SO YOU SEE 3,000
21 MAINTENANCE CUSTOMERS, YOU'LL SEE 1375 CUSTOMERS TO SAP BY 2007.
22 SO THAT'S BY THE END OF 2007, A SHORT PERIOD OF TIME.

23 AND THEN DOWN THE PAGE, YOU'LL SEE CONVERT THE
24 MAJORITY -- I THINK IT'S IMPORTANT TO NOTE ON ITEM 2 THERE ABOUT
25 THE TIMING ISSUE. THIS WAS PART OF A JANUARY 16TH, 2005, SORT

1 Q. WHY DID YOU FOCUS ON JANUARY -- ON DECEMBER 2004 --
2 DECEMBER 2004, JANUARY 2005?

3 A. WELL, AS I MENTIONED TO THE JURY YESTERDAY, THAT WHEN YOU
4 VALUE THE FAIR MARKET VALUE OF THE PROPERTY, THE -- PROPERTY IN
5 THIS CASE, YOU FOCUS ON WHAT'S KNOWN AT THE TIME. AND WHAT WERE
6 THE EXPECTATIONS OF THE PARTIES. AND I'M LAYING OUT FOR YOU THE
7 EXPECTATIONS OF ONE PART OF THAT NEGOTIATING GROUP, AND THAT'S
8 SAP.

9 Q. ALL RIGHT. NOW, BASED ON ALL THE EVIDENCE YOU REVIEWED,
10 MR. MEYER, DID YOU CALCULATE SAP'S EXPECTED FINANCIAL GAINS FROM
11 THE LICENSE, HOW MUCH THEY WOULD EXPECT TO GAIN FROM THIS
12 LICENSE?

13 A. YES, I HAVE.

14 Q. AND HOW DID YOU DO THAT?

15 A. WELL, I DEVELOPED A FINANCIAL MODEL. AND FROM THAT, I WAS
16 ABLE TO COME UP WITH CERTAIN FINANCIAL DATA THAT I'LL TALK TO
17 YOU ABOUT AND SHOW YOU, AND THEN CAME UP WITH WHAT I'LL CALL
18 THE -- SORT OF THE PRESENT VALUE OF -- OF THE GAINS THAT SAP
19 WOULD -- WOULD COME INTO IF THEY WERE TO ACQUIRE THE SOFTWARE IN
20 THIS NEGOTIATION. SO I HAVE A SLIDE THAT SHOWS THOSE REVENUE
21 SOURCES.

22 MR. PICKETT: LET'S SHOW THE NEXT --

23 (EXHIBIT PUBLISHED TO JURY.)

24 MR. PICKETT: THERE WE GO.

25 Q. THIS IS EXHIBIT 12 AGAIN, BUT YOU'VE ADDED SOME ANALYSIS TO

1 IT. WHAT DOES THAT SHOW?

2 **A.** RIGHT. SO WHEN YOU MENTIONED DID I DO A CALCULATION. YES,
3 I DEVELOPED A MODEL. AND I WENT BACK TO THE -- THE DOCUMENTS
4 FROM SAP. AND WHAT I FOCUSED ON WAS THE REVENUE THAT THEY WOULD
5 GAIN FROM THREE MAJOR SOURCES. AND THE BLUE THERE, I'VE
6 HIGHLIGHTED, THEY'D HAVE MAINTENANCE REVENUES THAT THEY WOULD
7 EARN FROM SERVICING PEOPLESOFT.

8 SECONDLY, THEY WOULD HAVE SALES OF OTHER SAP
9 PRODUCTS. I MENTIONED A MOMENT AGO. THAT WOULD BE THE
10 CROSS-SELL ITEMS LIKE NETWEAVER AND, ULTIMATELY, IN THE GREEN
11 THERE, THAT'S THE CONVERSION REVENUE THAT THEY WOULD EARN FROM
12 SELLING THEIR PRODUCTS TO THE SAP APPLICATIONS.

13 AND SO I WENT BACK TO THEIR PLANNING DOCUMENTS, AND I
14 BUILT A FINANCIAL MODEL TO TAKE THOSE REVENUES, PROJECT OUT --
15 TAKE THE CUSTOMERS AT THE AMOUNT OF -- THEY WOULD BE CHARGED PER
16 YEAR FOR THE VARIOUS PRODUCTS, PROJECT IT OUT OVER TIME, LOOK AT
17 THE COST THAT THEY WOULD HAVE TO SPEND TO -- TO MAKE THOSE
18 REVENUES, CAME UP WITH PROFITS AND BROUGHT THAT BACK. IT'S
19 CALLED DISCOUNTING TO JANUARY 2005.

20 AND IT PROVIDES BASICALLY THE NET PRESENT VALUE
21 PROFIT OR GAIN THAT SAP WOULD EARN IF THEY WERE TO USE THE
22 SOFTWARE.

23 **Q.** ALL RIGHT. LET'S GO TO THE NEXT SLIDE, THEN.

24 (EXHIBIT PUBLISHED TO JURY.)

25

1 YEAR. THAT WAS 3.5 PERCENT, AND THAT CAME FROM SOME EXPECTED
2 ATTRITION RATES WE SAW YESTERDAY.

3 **Q.** LET ME GO BACK FOR A MOMENT, MR. MEYER, TO THE CUSTOMERS.
4 YOU SAID YOU START WITH THE NUMBER OF CUSTOMERS. WHY DO YOU --
5 WHAT'S THE SIGNIFICANCE OF THAT?

6 **A.** BECAUSE THE CUSTOMERS REPRESENT POTENTIAL REVENUES. SO IF
7 YOU HAVE A CUSTOMER THAT YOU'RE PROVIDING MAINTENANCE SERVICE TO
8 OR LICENSE PRODUCT TO, YOU CHARGE THEM FOR THE LICENSE, OR YOU
9 CHARGE THEM FOR THE MAINTENANCE.

10 SO IT STARTS WITH A NUMBER OF CUSTOMERS, AND THEN YOU
11 LOOK AT HOW MANY WILL LEAVE PER YEAR BASED ON HISTORICAL TRENDS,
12 AND YOU PUT A VALUE ON THOSE CUSTOMERS PER YEAR, AND THAT GIVES
13 YOU YOUR REVENUE. SO IT'S CUSTOMERS, AVERAGE AMOUNT PER YEAR IN
14 REVENUE, TOTAL REVENUES, AND THEN YOU DEDUCT COSTS FROM THAT.

15 **Q.** AND DID YOU SEE EVIDENCE THAT SAP'S TOP MANAGEMENT WAS
16 THINKING ABOUT THIS DEAL IN TERMS OF THE NUMBER OF CUSTOMERS IT
17 COULD CONVERT?

18 **A.** YES.

19 **Q.** AND SO HOW DID YOU BASE YOUR ESTIMATES IN YOUR FINANCIAL
20 MODEL, THE 3,000, AND THEN THE CONVERSIONS TO MYSAP APPLICATIONS
21 AND THE CROSS-SELLS?

22 **A.** I USED THEIR PROJECTIONS.

23 **Q.** SAP'S OWN PROJECTIONS?

24 **A.** THAT'S CORRECT.

25 **Q.** ALL RIGHT. GO AHEAD.

1 **A.** SO I STARTED WITH THEIR PROJECTIONS. I WENT TO THE
2 ATTRITION RATES. AND THEN THE THIRD ROW THERE, I MULTIPLIED THE
3 AVERAGE REVENUE PER CUSTOMER BASICALLY TIMES THE NUMBER OF
4 CUSTOMERS.

5 AND SO FOR MAINTENANCE, IT WAS \$68,000 A YEAR.
6 THAT'S THE AVERAGE YOU GET FOR EACH CUSTOMER THAT'S TAKING
7 MAINTENANCE. AND THAT WAS PER SAP'S BUSINESS RECORDS. AND THEN
8 FROM THERE, I WENT AND IT CAME UP WITH -- AND THEN ON THE
9 RIGHT-HAND SIDE, I DEALT WITH -- WHEN THEY CONVERT A CUSTOMER,
10 THEY MAKE \$358,000 IN A CONVERSION AND THEN FOR THE OTHER SALES
11 WHICH IS THE CROSS-SELL ITEM, THEY MAKE \$86,000 PER CROSS-SELL.

12 SO I USED THOSE ITEMS TO COME UP WITH THE AVERAGE
13 REVENUE PER YEAR AND THEN MULTIPLIED THAT TIMES THE NUMBER OF
14 CUSTOMERS AND CAME UP WITH TOTAL REVENUE. AND SEE, THAT'S THE
15 NEXT ROW. SO THAT'S YOUR CALCULATIONS THERE. AND AS YOU WORK
16 DOWN, YOU THEN HAVE TO DEDUCT COSTS, AND I SAW FROM SAP'S
17 FINANCIAL RECORDS THAT THEY BASICALLY WOULD HAVE PROFIT MARGINS
18 OF 70 PERCENT. SO I DEDUCT COST OF 30 PERCENT, AND THAT LEAVES
19 70 PERCENT THERE FOR THE PROFIT THAT -- THAT SAP WOULD MAKE.

20 **Q.** THAT'S SAP'S PROFIT AS PROJECTED BY WHOM?

21 **A.** THAT'S BASED ON SAP'S OWN RECORDS.

22 **Q.** UM-HMM.

23 **A.** AND THEN IT'S MULTIPLIED BY A DISCOUNT FACTOR, BECAUSE I RUN
24 THE CALCULATIONS FROM 2005 OUT TO 2008. SO THEY'RE DISCOUNTED
25 BACK TO JANUARY 2005, WHICH BECOMES -- THAT'S THAT 14 PERCENT,

1 AND THAT'S FROM SAP VALUATION DOCUMENTS.

2 AND THEN I BRING IT BACK TO JANUARY 2005, AND THAT
3 SAYS "AS CALCULATED." AND THEN ONCE I DO THAT, I KNOW THE VALUE
4 OF THOSE CUSTOMERS. THEN I RUN IT OVER, REALLY, TWO PERIODS,
5 THROUGH THE END OF 2007, RIGHT -- BASED ON HOW THEY DID IT FOR
6 THE FIRST THREE YEARS. AND I ALSO RUN IT OUT THROUGH THE END OF
7 OCTOBER 28, WHICH WAS THE END OF THE LICENSE PERIOD.

8 AND THEN I HAD ONE MORE ITEM TO ADD TO THAT, AND I
9 KNOW THAT ONCE A CUSTOMER IS CONVERTED, IT HAS FUTURE VALUE. SO
10 I DO A CALCULATION SAYING THAT -- THAT A CONVERTED CUSTOMER HAS
11 VALUE OUT INTO THE FUTURE, AS MS. CATZ TESTIFIED TO YESTERDAY,
12 CAN BE FOR DECADES ONCE YOU CONVERTED.

13 AND SO I SAY WHATEVER CUSTOMERS CONVERT, I LOOK AT
14 THAT VALUE, AND I DO IT TWO WAYS. ONE IS CALLED A REVENUE
15 MULTIPLE, WHICH YOU MULTIPLY THE LAST YEAR'S REVENUE BY FOUR
16 TIMES, AND THAT'S THE FUTURE VALUE OF HAVING THAT CUSTOMER.

17 AND THEN, SECONDLY, A PER-CUSTOMER VALUE, WHICH MEANS
18 THAT FOR EVERY CUSTOMER, YOU HAVE -- YOU -- THERE'S A PRESENT
19 VALUE OF THAT, AND THEN I USED \$1 MILLION. AND SO I TAKE ALL
20 THOSE ITEMS, AND I PRESENT THEM AS OF JANUARY 2005, AND THAT'S
21 HOW DO I MY FINANCIAL GAIN CALCULATIONS.

22 **Q.** SO YOU CAN CALCULATE, BASED ON SAP'S THINKING AT THE TIME,
23 HOW MUCH MONEY THEY THOUGHT THEY WERE GOING TO PROFIT FROM DOING
24 THAT?

25 **A.** THAT'S RIGHT. FROM MAINTENANCE AND CONVERTING CUSTOMERS.

1 PROFIT NUMBER. AND THEN THE INFRINGER (SIC) PROFIT'S NUMBER IS
2 \$288 MILLION. AND THAT REFLECTS NOT ALL THE CUSTOMERS THAT --
3 THAT WERE SAP CUSTOMERS AND ALSO TOMORROWNOW CUSTOMERS BUT A
4 SUBSET, SO I THINK IT'S ABOUT 60--SOME CUSTOMERS ARE IN THE
5 288 MILLION.

6 AND THEN THERE'S THREE CUSTOMERS, I THINK IN THAT
7 GROUP OF THE 288,000,000 WHERE THERE'S SOME ISSUES STILL THAT
8 SORT OF EXIST ABOUT THE ROLE OF TOMORROWNOW IN CONVERTING THOSE
9 CUSTOMERS TO SAP.

10 AND SO IF I LOOK AT THE IMPACT OF THOSE THREE
11 CUSTOMERS, I THINK THE NUMBER WOULD BE 236 MILLION. SO MY
12 INFRINGER PROFIT'S (SIC) NUMBERS, 288 MILLION, AND THEN RANGES
13 DOWN TO 236 MILLION DEPENDING ON THESE THREE CUSTOMERS.

14 AND SO THAT'S WHERE I'VE COME OUT WITH THOSE
15 CALCULATIONS.

16 **Q.** SO IF I COMBINE THE 120 MILLION IN LOST PROFITS WITH THE 288
17 MILLION IN INFRINGER'S PROFITS, WHAT DO WE GET?

18 **A.** I THINK IT'S 408,000,408.

19 **Q.** BUT DOES THAT FULLY COMPENSATE ORACLE IN THIS CASE?

20 **A.** NO, IT WOULD NOT. IT WOULD NOT COMPENSATE FOR THE VALUE OF
21 INTELLECTUAL PROPERTY.

22 **Q.** WHAT COMPENSATES ORACLE FOR THE VALUE OF WHAT SAP TOOK?

23 **A.** THE ONLY WAY TO DO IT IS THE FAIR MARKET VALUE OF THE
24 LICENSE APPROACH AT THE 1.5 BILLION.

25 **Q.** SO THAT'S THE ANALYSIS YOU DID WITH THE 1.5 BILLION OR MORE,

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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, TUESDAY, NOVEMBER 9, 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

WEDNESDAY, NOVEMBER 10, 2010