

EXHIBIT M

DOUGLAS KEHRING August 28, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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
DOUGLAS KEHRING

FRIDAY, AUGUST 28, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-422504)

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10:54:38 8 Q. So staying with Exhibit 591 on the Bates
10:54:41 9 page ending -849, referring again to the information
10:54:47 10 that says, 20 to 30 percent of license revenues is
10:54:52 11 from new customers.

10:54:53 12 Do you see that?

10:54:53 13 A. Yes.

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10:55:17 24 MR. McDONELL: Q. Do you know whether

10:55:17 25 after the acquisition you were able to determine

10:55:19 1 whether 20 to 30 percent of PeopleSoft license
10:55:23 2 revenue in fact continued to be generated from new
10:55:26 3 customers?

10:55:28 4 MR. HOWARD: Objection. Vague and
10:55:28 5 ambiguous.

10:55:30 6 THE WITNESS: I don't recall for that doing
10:55:34 7 that effort. But to be clear, my role is one in
10:55:37 8 which we establish the financial model at the time
10:55:40 9 of the acquisition, and the financial figures from
10:55:42 10 which we'll -- we'll gauge it, and then we do
10:55:46 11 comparables.

10:55:47 12 So things of this detailed nature are, you
10:55:49 13 know, not things that show up in -- oftentimes in
10:55:53 14 our tracking models.

10:55:55 15 MR. McDONELL: Q. Let's take the next line
10:55:56 16 there, on the same page. It says: 30 percent
10:56:01 17 cross-sell to installed base.

10:56:03 18 Do you see that?

10:56:04 19 A. I do.

10:56:04 20 Q. What does that mean to you?

10:56:08 21 A. Again, I could venture a guess, an educated
10:56:11 22 guess, as I mentioned, as to related to how they are
10:56:15 23 defining it.

10:56:16 24 But again, without having talked, spoken
10:56:18 25 with PeopleSoft directly, there would be no way to

10:56:20 1 validate the -- what their assumption was. But the
10:56:23 2 general -- a general educated guess could start with
10:56:26 3 the premise that it related to, you know, selling of
10:56:29 4 new modules that hadn't been -- hadn't been deployed
10:56:33 5 to an existing customer of other products that
10:56:35 6 PeopleSoft possessed, as opposed to additional seats
10:56:38 7 of an existingly deployed license.

10:56:43 8 Q. Is it your understanding that that was
10:56:45 9 consistent with PeopleSoft's historical trends?

10:56:51 10 A. I don't recall if this was a piece of
10:56:53 11 information that was publicly available.

10:56:56 12 Q. Do you know one way or the other if that is
10:57:00 13 representative of PeopleSoft's historical trends
10:57:02 14 pre-acquisition?

10:57:03 15 A. I don't recall.

10:57:09 16 Q. Do you know whether that 30 percent is a
10:57:12 17 percentage of all customers of PeopleSoft?

10:57:18 18 A. I do not. But again, the -- you know,
10:57:22 19 again, you'd have to make educated guesses simply
10:57:25 20 based on the information that was provided.

10:57:27 21 Q. Let's look at the next -- well, do you know
10:57:34 22 whether the PeopleSoft installed base continued to
10:57:42 23 generate 30 percent of its license revenues from
10:57:45 24 cross-selling after the acquisition?

10:57:50 25 A. Again, I'm not even sure what that would

10:57:53 1 mean as part of Oracle. But as it relates to our
10:57:55 2 tracking, our focus is on actual license revenue as
10:57:58 3 opposed to individual metrics like this.

10:58:01 4 Q. As opposed to individual metrics like what
10:58:04 5 percentage of it was generated from cross-selling?

10:58:07 6 A. Right.

10:58:11 7 Q. So let's look at the next line item, which
10:58:13 8 is, 40 percent upsell to installed base.

10:58:17 9 What does that mean to you?

10:58:19 10 A. Like I said, first I would assume that's a
10:58:21 11 typo, that she meant -- Faith meant base rather than
10:58:27 12 based.

10:58:27 13 But as it relates to upsell, again, an
10:58:30 14 educated guess would be that they're referring to
10:58:33 15 selling additional seats or other sort of license
10:58:35 16 revenue that existing -- existing customers on
10:58:40 17 existing modules.

10:58:42 18 But again, without -- that oftentimes
10:58:45 19 happens in these matters. You know, you would sit
10:58:48 20 down and have that conversation, just as you're
10:58:50 21 asking me what the PeopleSoft management team, for
10:58:52 22 which we weren't given that opportunity.

10:58:55 23 Q. Were you ever given the opportunity to sit
10:58:58 24 face-to-face with the PeopleSoft management time
10:59:01 25 prior to the final price being approved by the

10:59:03 1 Oracle Board?

10:59:04 2 A. I don't recall being given that
10:59:05 3 opportunity. I was not part of any -- anything like
10:59:08 4 that.

10:59:08 5 Q. What is your understanding of what the term
10:59:10 6 "upsell" means as contrasted with the term
10:59:14 7 "cross-sell"?

10:59:17 8 A. Again, I can provide you with my educated
10:59:20 9 guess as to -- as it relates to the industry. And
10:59:23 10 my educated understanding is, cross-sell again is
10:59:26 11 the selling of new modules of software or new
10:59:29 12 products; as opposed to upselling, which is selling
10:59:33 13 more of an existing product, in terms of added
10:59:36 14 functionality of that product or added seats.

10:59:47 15 But as I mentioned, many software providers
10:59:50 16 have different ways of defining. This isn't an
10:59:51 17 exact science.

10:59:53 18 Q. Is it your interpretation of this document
10:59:54 19 that PeopleSoft had historically been generating
10:59:57 20 approximately 40 percent of its license revenues
11:00:00 21 from upsell -- up sell sales to the installed base?

11:00:07 22 A. Previous to this document?

11:00:09 23 Q. No.

11:00:10 24 A. Or in -- now that I have this document?

11:00:12 25 Q. Now that you have the document.

11:00:14 1 A. I would have assumed that that was their
11:00:15 2 thing. If I had made the educated guess what the
11:00:19 3 definition of upsell was, then I would assume that
11:00:21 4 they were being truthful and saying that that was
11:00:24 5 consistent with their historical trends.

11:00:26 6 Q. Do you have any reason to doubt that?

11:00:27 7 A. Of course not.

11:00:30 8 Q. And do you know what the 40 percent was?
11:00:33 9 Was it of all active maintenance customers? Would
11:00:36 10 that have been your assumption?

11:00:38 11 A. Again, that's where the -- that's where the
11:00:40 12 nuance comes in. You've added a new wrinkle in the
11:00:44 13 concept of even understanding this.

11:00:47 14 You're correct. It could be as it relates
11:00:49 15 to the total installed base, it could be related to
11:00:51 16 the total customers that ever existed, it could be
11:00:53 17 related to the total active customers. It's not --
11:00:56 18 they haven't provided definitions here.

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Q. Okay. Do you see the note in the second
bullet point on the right-hand side of this page in
Exhibit 596 that reads:
Scorecard license revenue metrics
potentially underreported due to favorable

14:03:34 1 Oracle apps cross-sales uplift that would not
14:03:39 2 be reflected or customers that purchased
14:03:42 3 Oracle apps that would have otherwise
14:03:45 4 purchased PeopleSoft apps.

14:03:46 5 Do you see that?

14:03:47 6 A. Yeah.

14:03:48 7 Q. Can you explain that?

14:03:49 8 A. The -- the notion that we were trying to
14:03:53 9 call out -- and this is probably -- this is, among
14:03:57 10 other things that can occur, the notion that this is
14:04:01 11 an imperfect science. We are doing our best to
14:04:07 12 provide the Executive Team and the Board information
14:04:09 13 that -- based on what we can glean from our systems,
14:04:11 14 and there are other impacts that may or may not
14:04:14 15 occur that may or may not be included here.

14:04:17 16 Q. So one of those impacts was favorable
14:04:21 17 Oracle apps cross-sales uplift.

14:04:24 18 Do you see that?

14:04:26 19 A. Yeah.

14:04:26 20 Q. What is that?

14:04:31 21 A. I can't recall specifically what we were
14:04:33 22 trying to do with putting "uplift" in quotes, but
14:04:39 23 the notion was whether there was the -- was that the
14:04:44 24 scorecard didn't include things such as the
14:04:48 25 possibility of whether a customer made a purchase or

14:04:51 1 didn't make a purchase of other applications that,
14:04:57 2 you know, we can't track and reflect in this
14:05:00 3 analysis.
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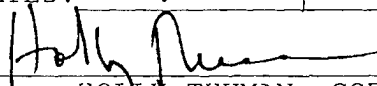
CERTIFICATE OF REPORTER

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 [X] 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: 9.9.09

HOLLY THUMAN, CSR