EXHIBIT 2

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

RICHARD ALLISON

_____

THURSDAY, NOVEMBER 12, 2009

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

(1-424330)

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13:40:43   3

13:40:47   4

13:40:48   5

13:40:51   6

13:40:54   7

13:40:56   8

13:40:59   9

13:41:00   10   Q.   Do you have Exhibit 822 before you?

13:41:03   11   A.   I do.

13:41:03   12   Q.   Does that appear to be a copy of the same

13:41:05   13   Customer Connection Terms of Use document that

13:41:08   14   appears at Tab 2 in Exhibit 823?

13:41:12   15   A.   Given the Bates numbers at the bottom, yes.

13:41:14   16   Otherwise, I'd have to look word for word.

13:41:17   17   Q.   Okay.   So that does have Bates numbers.

13:41:19   18   Okay.

13:41:20   19   So I'm going to ask my questions with

13:41:23   20   reference to Exhibit 822, since it's a standalone

13:41:27   21   document.

13:41:28   22   A.   Okay.

13:41:43   23   Q.   Okay.   So you've indicated that this is

13:41:48   24   Terms of Use for the Customer Connection system.

13:41:51   25   Right?

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13:41:53   1   A.   Correct.

13:41:53   2   Q.   Or website. Is that correct?

13:41:56   3   So please explain to me how this works.

13:42:00   4   When in the process does an Oracle customer

13:42:03   5   encounter the Customer Connection Terms of Use?

13:42:10   6   A.   These specific terms of use are accessed

13:42:12   7   when the customer uses their password to access the

13:42:15   8   system.

13:42:16   9   Q.   Okay. So you only get to the Customer

13:42:18 10   Connection Terms of Use if you access the system

13:42:21 11   using a password?

13:42:22 12   A.   These particular terms of use, yes. Only

13:42:32 13   supported customers have access to that system.

13:42:34 14   Q.   Okay. And by supported customers, you mean

13:42:36 15   customers who have signed a support agreement with

13:42:38 16   Oracle that's currently in effect?

13:42:40 17   A.   Correct.

13:42:41 18

13:42:46 19

13:42:49 20

13:42:51 21

13:42:53 22

13:43:03 23

13:43:11 24

13:43:14 25

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13:44:43   1

13:44:46   2

13:45:02   3   Q.   Okay.   So then let's stay with Exhibit 822

13:45:08   4   for the moment.   You said that that -- that form of

13:45:12   5   the Terms of Use first became in effect on September

13:45:16   6   20, 2005.   Is that right?

13:45:18   7   A.   Yes, that's my understanding.

13:45:20   8   Q.   For how long was that form of the Terms --

13:45:24   9   Customer Connection Terms of Use in effect?

13:45:26 10   A.   Until February 19th, 2007.

13:45:30 11

13:45:33 12

13:45:35 13

13:45:43 14

13:45:45 15

13:45:45 16   Q.   Okay.   So then on Exhibit 822, the Customer

13:45:47 17   Connection Terms of Use that became effective

13:45:52 18   September 20, 2005, I have some questions for you.

13:45:55 19   So a customer who has a -- an existing

13:46:00 20   support agreement with Oracle could then log on to

13:46:06 21   the Customer Connection website, correct, using the

13:46:09 22   password?

13:46:10 23   A.   Correct.

13:46:10 24   Q.   And then when they would do so, they would

13:46:15 25   be confronted with the Customer Connection terms

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13:46:17 1   use.   Is that right?

13:46:18 2   A.   Correct.

13:46:19 3   Q.   Would they have to click through and

13:46:21 4   acknowledge they agree with it, or how was it set up

13:46:24 5   to work?

13:46:25 6   A.   These are click-through terms.

13:46:27 7   Q.   And what do you mean by that?

13:46:29 8   A.   You have to accept the terms in order to

13:46:31 9   proceed.

13:46:31 10

13:46:34 11

13:46:36 12

13:46:39 13

13:46:42 14

13:46:44 15

13:46:47 16

13:46:48 17

13:46:50 18

13:46:51 19

13:46:53 20

13:46:54 21

13:46:59 22

13:47:02 23

13:47:04 24

13:47:05 25   MR. McDONELL: Q.   So the Customer

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13:47:06   1   Connection Terms of Use, even though we're looking

13:47:11   2   here in Exhibit 822 at a hard copy piece of paper,

13:47:16   3   these are the terms that were on line that the

13:47:19   4   customer would see on the computer screen?

13:47:21   5   A.   Correct.

13:47:22   6   Q.   And to the best of your knowledge, would

13:47:24   7   they see the exact content that's reflected here in

13:47:26   8   Exhibit 822?

13:47:28   9   A.   Yes.   For the date prior to two thousand --

13:47:31   10   between 2005 and 2007, this is the version that was

13:47:34   11   used.

13:47:34   12

13:47:38   13

13:47:40   14

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13:47:53   18

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13:48:00   21

13:48:03   22

13:48:11   23

13:48:16   24

13:48:19   25

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13:51:30 1

13:51:33 2

13:51:35 3   Q.   All right. In the -- in your binder of

13:51:38 4   exhibits, which is marked 823, could you turn to Tab

13:51:44 5   11, please?

13:51:46 6   A.   Yes.

13:51:46 7   Q.   And this is a document with Bates

13:51:50 8   numbers ORCL00051969 through -970.

13:51:59 9   Can you identify this for the record?

13:52:00 10   A.   Yes.   The PeopleSoft Customer Connection

13:52:02 11 Terms of Use that was in use prior to September

13:52:06 12 20th, 2005.

13:52:13 13   Q.   When was this agreement first in use?

13:52:15 14   A.   I do not know.

13:52:16 15   Q.   Did you ask anybody?

13:52:17 16   A.   I didn't.

13:52:24 17   Q.   Do you believe it was in effect upon the

13:52:26 18 acquisition by Oracle of PeopleSoft?

13:52:28 19   A.   I do.

13:52:30 20   Q.   Why do you say that?

13:52:32 21   A.   This was the last version that was -- as

13:52:34 22 part of their system that we then changed. So this

13:52:36 23 was the one in use.

13:52:55 24

13:52:59 25

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13:56:28	1	
13:56:31	2	
13:56:35	3	
13:56:47	4	
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13:56:50	6	
13:56:52	7	
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13:57:00	9	
13:57:02	10	
13:57:03	11	

13:57:11 12   Q.   Okay.   So I will focus my questions on

13:57:13 13   Exhibit 824.

13:57:18 14   Can you identify that for the record,

13:57:18 15   please?

13:57:19 16   A.   Customer Connection Terms of Use with an

13:57:21 17   effective date of 2-19-07.

13:57:25 18   Q.   And with reference to Exhibit 821, which is

13:57:27 19   your table, is this the document then that's

13:57:31 20   referred to as the February 19, 2007 version?

13:57:37 21   A.   Yes.   There's two references actually.

13:57:39 22   There's an Oracle and a PeopleSoft reference.   So if

13:57:41 23   you look at the PeopleSoft reference, this is the

13:57:43 24   February 19th, 2007 PeopleSoft.   Because it's

13:57:48 25   Customer Connection, not MetaLink.

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13:57:51   1   Q.   Oh.   So this is a PeopleSoft document.

13:57:55   2   Customer Connection?

13:57:56   3   A.   It's -- for the PeopleSoft and JDE

13:58:00   4   programs, correct.

13:58:01   5   Q.   So during what period of time was this form

13:58:03   6   of the Customer Connection Terms of Use in effect?

13:58:07   7   A.   It was effective February 19th, 2007

13:58:09   8   through March 1st, 2008.

13:58:15   9

13:58:17   10

13:58:21   11

13:58:35   12

13:58:39   13

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13:58:43   15

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13:59:00   20

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13:59:03   22

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13:59:21   24

13:59:22   25

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14:22:11   1

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14:23:05   6

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14:23:10   9

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14:23:15 11

14:23:15 12

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14:23:25 14

14:23:26 15

14:23:27 16

14:23:31 17

14:23:35 18

14:23:37 19

14:23:39 20

14:23:41 21

14:23:43 22

14:24:03 23

14:24:05 24

14:24:14 25   MR. McDONELL: Q.   Showing you what's been

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14:24:15	1	marked as Exhibit 827, and it's a 1-page document
14:24:19	2	entitled "Legal Disclaimer," Bates number
14:24:23	3	ORCL00051976.
14:24:28	4	Does that appear to be the same document
14:24:30	5	that appears in Exhibit 823, your binder, at Tab 10?
14:24:36	6	A. It does.
14:24:42	7	Q. What is it?
14:24:44	8	A. It's a PeopleSoft download agreement. It's
14:24:49	9	the agreement that they click through when they
14:24:51	10	chose to download software off of Customer
14:24:53	11	Connection.
14:24:54	12	Q. During what period of time was this in
14:24:56	13	effect?
14:24:58	14	A. This is again prior to the acquisition.
14:25:11	15	Q. Okay. And the -- did this get replaced by
14:25:19	16	some later Oracle agreement after the acquisition?
14:25:27	17	A. It did.
14:25:28	18	Q. And what did it get replaced with?
14:25:30	19	A. If got replaced with the Oracle download
14:25:33	20	agreement, which is in my Tab 8 of the -- the
14:25:39	21	binder, which is Exhibit 823.
14:25:43	22	Q. And when did the Oracle download agreement
14:25:50	23	become effective?
14:25:51	24	A. I do not have the effective date for that
14:25:53	25	agreement. It was relatively early, because it has

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14:26:00	1	an Oracle bar PeoplSoft, which was a brand that we
14:26:05	2	used at the beginning of the acquisition.
14:26:07	3	Later on that was replaced by Oracle, so
14:26:10	4	the early part of acquisition we used that branding.
14:26:13	5	So it would be at the early part that this would
14:26:15	6	have been put in place.
14:26:16	7	
14:26:18	8	
14:26:30	9	MR. McDONELL: Q. Showing you what's been
14:26:30	10	marked as Exhibit 828, it's a document with
14:26:34	11	Bates No. ORCL000511974 to -75.
14:26:42	12	Do you have that before you?
14:26:43	13	A. I do.
14:26:44	14	Q. Does it appear to be the same document that
14:26:46	15	appears in your binder, Exhibit 823, at Tab 8?
14:26:51	16	A. It does.
14:26:54	17	Q. So this is the -- what you call the Oracle
14:26:57	18	download agreement?
14:26:58	19	A. Yes.
14:27:00	20	Q. And what point in the process -- I think
14:27:03	21	you've already told us.
14:27:04	22	After a customer logs onto Customer
14:27:07	23	Connection, clicks through the Customer Connection
14:27:10	24	agreement, then if they're downloading material they
14:27:13	25	might encounter this agreement. Is that right?

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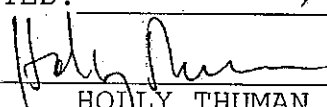|			
14:27:15	1	A.	Yes.
14:27:16	2	Q.	And this is also a click-through agreement?
14:27:18	3	A.	It is.
14:27:27	4		
14:27:29	5		
14:27:34	6		
14:27:37	7		
14:27:41	8		
14:27:50	9		
14:27:50	10		
14:27:58	11		
14:27:59	12		
14:28:02	13		
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1   CERTIFICATE OF REPORTER

2   I, HOLLY THUMAN, a Certified Shorthand

3 Reporter, hereby certify that the witness in the

4 foregoing deposition was by me duly sworn to tell

5 the truth, the whole truth, and nothing but the

6 truth in the within-entitled cause;

7   That said deposition was taken down in

8 shorthand by me, a disinterested person, at the time

9 and place therein state, and that the testimony of

10 said witness was thereafter reduced to typewriting,

11 by computer, under my direction and supervision;

12   That before completion of the deposition review

13 of the transcript [X] was [] was not requested. If

14 requested, any changes made by the deponent (and

15 provided to the reporter) during the period allowed

16 are appended hereto.

17   I further certify that I am not of counsel or

18 attorney for either or any of the parties to the

19 said deposition, nor in any way interested in the

20 event of this cause, and that I am not related to

21 any of the parties thereto.

22

23 DATED: 11.19.09

24 _____
                HOLLY THUMAN, CSR

25

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Please read your transcript carefully. If you find any errors or changes you wish to make, insert the changes and/or corrections on the errata sheet by listing the page and the line number reference and then the change you wish to make and the reason.

Please do not make any changes and /or corrections on the face of the transcript.

Please do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line and return the Errata sheets to Merrill Legal Solutions at 135 Main Street, 4th Floor, San Francisco, CA 94105 or fax them to (415) 357.4301.

Errata sheet

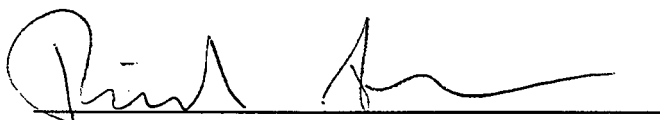Page   Line

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_____ Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.

_____   1/10/09
(signature)   (date)