

EXHIBIT G

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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10:52:02		10:54:21	
10:52:04		10:54:23	
10:52:05		10:54:26	
10:52:06		10:54:29	
10:52:10		10:54:32	
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10:52:12		10:54:36	
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10:52:37		10:54:57	15
10:52:39		10:55:00	16
10:52:42		10:55:00	17
10:52:46		10:55:02	18
10:52:48		10:55:03	19
10:52:51		10:55:05	20
10:52:57		10:55:08	21
10:52:58		10:55:12	22
10:53:01		10:55:15	23
10:53:08		10:55:17	24
10:53:10		10:55:17	25
			Q. So staying with Exhibit 591 on the Bates page ending -849, referring again to the information that says, 20 to 30 percent of license revenues is from new customers.
			Do you see that?
			A. Yes.
			Q. Is that a metric that Oracle was relying on in valuing PeopleSoft for purposes of the acquisition?
			MR. HOWARD: Objection. Lacks foundation.
			THE WITNESS: I don't recall whether it is, but it would have been something that Safra Catz and Larry Ellison would have utilized in terms of coming to a determination as to what the incremental revenue and expenses would come from the PeopleSoft transaction.
			MR. McDONELL: Q. Do you know whether after the acquisition you were able to determine
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10:53:13		10:55:19	1
10:53:14		10:55:23	2
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10:53:22		10:55:28	5
10:53:25		10:55:30	6
10:53:27		10:55:34	7
10:53:29		10:55:37	8
10:53:32		10:55:40	9
10:53:36		10:55:42	10
10:53:41		10:55:46	11
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10:53:47		10:55:53	14
10:53:55		10:55:55	15
10:53:56		10:55:56	16
10:53:59		10:56:01	17
10:54:02		10:56:03	18
10:54:06		10:56:04	19
10:54:07		10:56:04	20
10:54:09		10:56:08	21
10:54:12		10:56:11	22
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10:54:15		10:56:16	24
10:54:19		10:56:18	25
			whether 20 to 30 percent of PeopleSoft license revenue in fact continued to be generated from new customers?
			MR. HOWARD: Objection. Vague and ambiguous.
			THE WITNESS: I don't recall for that doing that effort. But to be clear, my role is one in which we establish the financial model at the time of the acquisition, and the financial figures from which we'll -- we'll gauge it, and then we do comparables.
			So things of this detailed nature are, you know, not things that show up in -- oftentimes in our tracking models.
			MR. McDONELL: Q. Let's take the next line there, on the same page. It says: 30 percent cross-sell to installed base.
			Do you see that?
			A. I do.
			Q. What does that mean to you?
			A. Again, I could venture a guess, an educated guess, as I mentioned, as to related to how they are defining it.
			But again, without having talked, spoken with PeopleSoft directly, there would be no way to

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10:56:20	1	validate the -- what their assumption was. But the	10:59:03	1	Oracle Board?
10:56:23	2	general -- a general educated guess could start with	10:59:04	2	A. I don't recall being given that
10:56:26	3	the premise that it related to, you know, selling of	10:59:05	3	opportunity. I was not part of any -- anything like
10:56:29	4	new modules that hadn't been -- hadn't been deployed	10:59:08	4	that.
10:56:33	5	to an existing customer of other products that	10:59:08	5	Q. What is your understanding of what the term
10:56:35	6	PeopleSoft possessed, as opposed to additional seats	10:59:10	6	"upsell" means as contrasted with the term
10:56:38	7	of an existingly deployed license.	10:59:14	7	"cross-sell"?
10:56:43	8	Q. Is it your understanding that that was	10:59:17	8	A. Again, I can provide you with my educated
10:56:45	9	consistent with PeopleSoft's historical trends?	10:59:20	9	guess as to -- as it relates to the industry. And
10:56:51	10	A. I don't recall if this was a piece of	10:59:23	10	my educated understanding is, cross-sell again is
10:56:53	11	information that was publicly available.	10:59:26	11	the selling of new modules of software or new
10:56:56	12	Q. Do you know one way or the other if that is	10:59:29	12	products; as opposed to upselling, which is selling
10:57:00	13	representative of PeopleSoft's historical trends	10:59:33	13	more of an existing product, in terms of added
10:57:02	14	pre-acquisition?	10:59:36	14	functionality of that product or added seats.
10:57:03	15	A. I don't recall.	10:59:47	15	But as I mentioned, many software providers
10:57:09	16	Q. Do you know whether that 30 percent is a	10:59:50	16	have different ways of defining. This isn't an
10:57:12	17	percentage of all customers of PeopleSoft?	10:59:51	17	exact science.
10:57:18	18	A. I do not. But again, the -- you know,	10:59:53	18	Q. Is it your interpretation of this document
10:57:22	19	again, you'd have to make educated guesses simply	10:59:54	19	that PeopleSoft had historically been generating
10:57:25	20	based on the information that was provided.	10:59:57	20	approximately 40 percent of its license revenues
10:57:27	21	Q. Let's look at the next -- well, do you know	11:00:00	21	from upsell -- up sell sales to the installed base?
10:57:34	22	whether the PeopleSoft installed base continued to	11:00:07	22	A. Previous to this document?
10:57:42	23	generate 30 percent of its license revenues from	11:00:09	23	Q. No.
10:57:45	24	cross-selling after the acquisition?	11:00:10	24	A. Or in -- now that I have this document?
10:57:50	25	A. Again, I'm not even sure what that would	11:00:12	25	Q. Now that you have the document.
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10:57:53	1	mean as part of Oracle. But as it relates to our	11:00:14	1	A. I would have assumed that that was their
10:57:55	2	tracking, our focus is on actual license revenue as	11:00:15	2	thing. If I had made the educated guess what the
10:57:58	3	opposed to individual metrics like this.	11:00:19	3	definition of upsell was, then I would assume that
10:58:01	4	Q. As opposed to individual metrics like what	11:00:21	4	they were being truthful and saying that that was
10:58:04	5	percentage of it was generated from cross-selling?	11:00:24	5	consistent with their historical trends.
10:58:07	6	A. Right.	11:00:26	6	Q. Do you have any reason to doubt that?
10:58:11	7	Q. So let's look at the next line item, which	11:00:27	7	A. Of course not.
10:58:13	8	is, 40 percent upsell to installed base.	11:00:30	8	Q. And do you know what the 40 percent was?
10:58:17	9	What does that mean to you?	11:00:33	9	Was it of all active maintenance customers? Would
10:58:19	10	A. Like I said, first I would assume that's a	11:00:36	10	that have been your assumption?
10:58:21	11	typo, that she meant -- Faith meant base rather than	11:00:38	11	A. Again, that's where the -- that's where the
10:58:27	12	based.	11:00:40	12	nuance comes in. You've added a new wrinkle in the
10:58:27	13	But as it relates to upsell, again, an	11:00:44	13	concept of even understanding this.
10:58:30	14	educated guess would be that they're referring to	11:00:47	14	You're correct. It could be as it relates
10:58:33	15	selling additional seats or other sort of license	11:00:49	15	to the total installed base, it could be related to
10:58:35	16	revenue that existing -- existing customers on	11:00:51	16	the total customers that ever existed, it could be
10:58:40	17	existing modules.	11:00:53	17	related to the total active customers. It's not --
10:58:42	18	But again, without -- that oftentimes	11:00:56	18	they haven't provided definitions here.
10:58:45	19	happens in these matters. You know, you would sit	11:01:03		
10:58:48	20	down and have that conversation, just as you're	11:01:05		
10:58:50	21	asking me what the PeopleSoft management team, for	11:01:07		
10:58:52	22	which we weren't given that opportunity.	11:01:08		
10:58:55	23	Q. Were you ever given the opportunity to sit	11:01:09		
10:58:58	24	face-to-face with the PeopleSoft management time	11:01:10		
10:59:01	25	prior to the final price being approved by the	11:01:12		

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13:40:15	13:43:44		
13:40:16	13:43:45		
13:40:19	13:43:46	3	Q. Okay. So under -- on Exhibit 595 on the
13:40:19	13:43:49	4	first page is a heading that reads "Preliminary
13:40:21	13:43:52	5	Purchase Price Allocation."
13:40:24	13:43:56	6	Do you see that?
13:40:25	13:43:57	7	A. Yes.
13:40:25	13:43:58	8	Q. And in that section, it says, among other
13:40:27	13:44:00	9	things, that the total preliminary purchase price
13:40:29	13:44:03	10	was allocated to PeopleSoft's net tangible and
13:40:32	13:44:06	11	identifiable intangible assets based on their
13:40:36	13:44:10	12	estimated fair values as of December 29, 2004 as set
13:40:36	13:44:14	13	forth below. The excess of the purchase price over
13:40:39	13:44:17	14	the net tangible and identifiable intangible assets
13:40:40	13:44:22	15	was recorded as goodwill.
13:40:43	13:44:24	16	Do you see that?
13:40:47	13:44:25	17	A. I do.
13:40:50	13:44:25	18	Q. And if you turn the page to Bates number
13:40:55	13:44:28	19	ending -870, do you see there's a table there
13:40:56	13:44:34	20	showing various categories of tangible assets,
13:40:59	13:44:36	21	identifiable intangible assets, and goodwill?
13:41:00	13:44:42	22	A. I do. I do see it.
13:41:02	13:44:44	23	Q. And then the Goodwill line item has a
13:41:04	13:44:51	24	number of 6.487 billion dollars. Do you see that?
13:41:05	13:44:55	25	A. I do.
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13:41:08	13:44:56	1	Q. And then just beneath that, there are
13:41:10	13:44:59	2	intangible assets valued at 3.384 billion.
13:41:13	13:45:03	3	Do you see that?
13:41:17	13:45:03	4	A. I do.
13:41:20	13:45:04	5	Q. And then if you look below, you'll see some
13:41:23	13:45:06	6	detail of the components of the 3.384 billion. Do
13:41:27	13:45:13	7	you see that?
13:41:28	13:45:17	8	A. I do.
13:42:19	13:45:18	9	Q. Do you see what I'm referring to?
13:42:21	13:45:19	10	A. Yes.
13:42:21	13:45:20	11	Q. To the best of your knowledge, was this
13:42:24	13:45:21	12	information that was published by Oracle to the
13:42:29	13:45:24	13	public and submitted to the SEC?
13:42:31	13:45:27	14	A. I would assume so. This is standard
13:42:41	13:45:30	15	accounting --
13:42:43	13:45:31	16	Q. Were you involved in any way in preparing
13:42:47	13:45:33	17	any of the valuations that we've just talked about
13:42:50	13:45:36	18	on this page?
13:42:53	13:45:38	19	A. You know, as I mentioned, this was part of
13:42:55	13:45:40	20	the finance accounting team as it relates to -- as
13:42:58	13:45:43	21	it relates to what's required for standard
13:43:00	13:45:48	22	accounting practices, so I wasn't involved in the
13:43:02	13:45:51	23	preparation of this. I certainly may have been
13:43:41	13:45:54	24	involved at some point in explaining the original
13:43:43	13:45:57	25	model, in terms of, you know, how it was structured,

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13:46:00	1 if they used that at all.	13:50:15
13:46:04	2 Q. Who would have been responsible for	13:50:18
13:46:06	3 preparing this information?	13:50:20
13:46:09	4 A. The -- this information being what? Being	13:50:21
13:46:13	5 just the text, or --	13:50:26
13:46:14	6 Q. No. The -- the numbers that we just walked	13:50:30
13:46:17	7 through, for goodwill and intangible assets.	13:50:31
13:46:20	8 A. The CFO's office.	13:50:33
13:46:23	9 Q. Pardon me?	13:50:36
13:46:23	10 A. The CFO's office.	13:50:38
13:46:26	11 Q. Okay. So as of May of 2005, who was the	13:50:39
13:46:30	12 CFO?	13:50:41
13:46:33	13 A. Again, I -- it's not that I don't want to	13:50:50
13:46:36	14 recall; it's that we had a sequence of CFOs at one	13:50:54
13:46:40	15 point in time.	13:50:56
13:46:48	16 Q. Do you recall any individuals who were --	13:51:00
13:46:50	17 what --	13:51:04
13:46:52	18 A. This likely was Safra at this point in	13:51:06
13:46:54	19 time, but I don't ...	13:51:09
13:46:56	20 Q. Do you recall who were any of the CFO's	13:51:12
13:47:01	21 main reports who would have been actively involved	13:51:13
13:47:05	22 in preparing SEC financial statements like this	13:51:15
13:47:11	23 during that time frame?	13:51:19
13:47:12	24 A. Again, I have never been involved in the	13:51:22
13:47:14	25 preparation of these sort of documents. So	13:51:24
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13:47:15	1 underneath the CFO's office, I actually don't have	13:51:30
13:47:18	2 any idea how the work is divvied up, who's	13:51:37
13:47:21	3 responsible for what, and how the process works.	13:51:37
13:47:23		13:51:39
13:47:57		13:51:41
13:48:09		13:51:44
13:48:10		13:51:47
13:48:15		13:51:49
13:48:19		13:51:52
13:48:21		13:51:53
13:48:23		13:51:55
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13:49:40		13:52:00
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13:49:46		13:52:07
13:49:52		13:52:10
13:49:54		13:52:14
13:49:57		13:52:15
13:50:01		13:52:18
13:50:03		13:52:23
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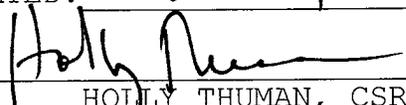
CERTIFICATE OF REPORTER

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