

# 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  
PAUL K. MEYER

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VOLUME 1; PAGES 1 - 331

WEDNESDAY, MAY 12, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-427362)

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10:55:48 12 Q. Okay. I don't see any damage item on  
10:56:00 13 Exhibit 2017 for infringer's profits against  
10:56:08 14 TomorrowNow.  
10:56:08 15 Do you know what I'm referring to when I  
10:56:10 16 say infringer's profits against TomorrowNow?  
10:56:13 17 A. Yes, I believe in general sense, I do.  
10:56:16 18 Q. As you sit here today, are you computing a  
10:56:17 19 claim for damages of -- well, a claim of  
10:56:21 20 infringer's profits against TomorrowNow?  
10:56:35 21 A. I can't speak to the position of Oracle  
10:56:38 22 and its lawyers. From my perspective -- and this  
10:56:48 23 will evolve as we talk about Mr. Clarke's report --  
10:56:51 24 from my perspective, when it relates to the  
10:56:54 25 infringer's profit side of the remedies, that from

10:57:03 1 the standpoint of the analysis, that TomorrowNow,  
10:57:09 2 as a separate entity within the SAP organization,  
10:57:12 3 does not have any profits to disgorge is sort of my  
10:57:17 4 position. But I don't want to be speaking on  
10:57:19 5 behalf of Oracle or its lawyers, so I'll defer to  
10:57:22 6 them on that issue.

10:57:23 7 Q. But let's stick with your position as you  
10:57:26 8 sit here today.

10:57:27 9 As you sit here today, you are not  
10:57:29 10 claiming that there are -- that TomorrowNow has  
10:57:34 11 received infringer's profits that should be  
10:57:36 12 disgorged. Is that true?

10:57:39 13 A. Setting aside the lawyers and the court,  
10:57:41 14 that would be my position from the standpoint of  
10:57:43 15 the finance and economic and accounting issues, the  
10:57:47 16 damage issues.

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11:39:56 6 MR. McDONELL: Q. With respect to what's  
11:39:58 7 been marked as Exhibit 2020, can you tell us the  
11:40:01 8 general purpose of the document?

11:40:06 9 A. Yes. The general purpose was, there's  
11:40:08 10 listed out, I believe it's 86 customers, and I've  
11:40:13 11 gone through and categorized them and provided  
11:40:17 12 information by column.

11:40:19 13 So I note whether they're a Safe Passage  
11:40:22 14 customer or not --

11:40:24 15 Q. And what is the significance of noting  
11:40:26 16 whether they're a Safe Passage customer?

11:40:28 17 A. Well, ultimately from my perspective if  
11:40:31 18 they're found to have become a Safe Passage  
11:40:33 19 customer, I would then leave them in the  
11:40:35 20 determination of the infringer's profits, so --

11:40:38 21 Q. And why would you do that?

11:40:40 22 A. Because from my perspective, it would  
11:40:41 23 relate to the marketing, solicitation, the business  
11:40:49 24 efforts that were taken by SAP in conjunction with  
11:40:53 25 TomorrowNow to improve and change and upgrade the

11:41:01            1            service that was being provided to one of these  
11:41:06            2            customers.

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14:01:57 12 MR. McDONELL: Q. Okay. Can I ask you to  
14:01:58 13 take your report, which has been marked  
14:02:02 14 Exhibit 2018, please.  
14:02:06 15 Turn to paragraph 95. Take a moment to  
14:02:15 16 look over paragraph 95, please.  
14:02:19 17 A. (Examining document.)  
14:02:28 18 Q. Have you had a chance to look at that?  
14:02:30 19 MS. HOUSE: Give him a second.  
14:02:31 20 THE WITNESS: Okay.  
14:02:32 21 MR. McDONELL: Q. There you indicate that  
14:02:33 22 there are four approaches to determining valuation,  
14:02:40 23 and you cite the market approach, the income  
14:02:43 24 approach, the cost approach, and the Georgia  
14:02:47 25 Pacific hypothetical license negotiation approach.

14:02:50 1 Right?

14:02:51 2 A. I mention those four approaches, that's  
14:02:52 3 correct.

14:02:53 4 Q. And you claim to have applied each of  
14:02:56 5 those four approaches in this case?

14:02:58 6 A. That's what I've done, that's correct.

14:02:59 7 Q. In your opinion, are each of those  
14:03:01 8 approaches equally appropriate in this case?

14:03:07 9 A. No, no, I wouldn't say that. I certainly  
14:03:09 10 have done the analyses, and I believe I point out  
14:03:13 11 in the report some of the issues, like with the  
14:03:15 12 cost approach. But I believe that the market  
14:03:18 13 approach and the income approach can be looked very  
14:03:22 14 closely in conjunction with the hypothetical  
14:03:24 15 negotiation.

14:03:25 16 The cost approach is a little more -- is a  
14:03:27 17 little different. Just because you're looking at  
14:03:30 18 cost it would take to design different software  
14:03:35 19 systems, you're not always looking at the future  
14:03:37 20 value, so there are probably some more limits on  
14:03:40 21 that. But it's still an approach that should be  
14:03:42 22 considered.

14:03:42 23 Q. Okay. Which of these approaches do you  
14:03:44 24 consider the best?

14:03:47 25 MS. HOUSE: Objection. Assumes facts not



14:03:48 1 in evidence.

14:03:50 2 THE WITNESS: In this situation, I  
14:03:51 3 certainly think that the hypothetical negotiation  
14:03:54 4 brings together the results of all the analyses, so  
14:03:57 5 it's probably the most comprehensive. But the  
14:04:00 6 market approach and the income approach I would say  
14:04:02 7 also have aspects that are very valuable to  
14:04:07 8 figuring out the value of the copyrighted  
14:04:09 9 materials.

14:04:09 10 MR. McDONELL: Q. Okay. Why do you think  
14:04:10 11 the hypothetical license approach is the best?

14:04:12 12 A. Because basically, in Factor 15, you get  
14:04:16 13 to look back at what you did in the first 14  
14:04:18 14 factors or 13 factors, and you get to also address  
14:04:26 15 market and income and cost in those approaches and  
14:04:30 16 techniques in the entire analysis.

14:04:32 17 And so in some respects, you get the  
14:04:34 18 benefits of all that to figure out the value of the  
14:04:40 19 copyrighted materials that are in suit here.

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Q. So let me ask you one more time.

14:13:21 1 With respect to the copyrights listed on  
14:13:23 2 pages 52 to 56 of the Fourth Amended Complaint, did  
14:13:27 3 you assume that each and every one of those  
14:13:29 4 copyrights was infringed by the defendant?

14:13:31 5 MS. HOUSE: Asked and answered now four  
14:13:33 6 times.

14:13:33 7 THE WITNESS: I've given you my answer on  
14:13:34 8 that many times, and I did not have to assume that  
14:13:37 9 all of those were infringed.

14:13:39 10 But whatever that group would be, and has  
14:13:41 11 proven to be, and I understand it's going to be  
14:13:44 12 extensive, would be the group of copyrighted  
14:13:46 13 properties that are in the scope of the license.

14:13:49 14 MR. McDONELL: Q. Would you take a look  
14:13:49 15 at your report in Exhibit 2018 at paragraph 105,  
14:13:53 16 please.

14:13:58 17 MR. PICKETT: Which paragraph again?

14:14:01 18 MR. McDONELL: Q. Paragraph 104. I said  
14:14:03 19 105. I mean 104. Page 70.

14:14:16 20 A. Thank you.

14:14:50 21 Q. Have you had a chance to read that?

14:14:52 22 A. Yes, I have.

14:14:52 23 Q. Is it fair to summarize what you've said  
14:14:54 24 there as a statement that the fair market value of  
14:14:57 25 the license must reflect the fair market value of

14:15:00 1 the infringement that actually occurred?

14:15:05 2 A. Well, let me --

14:15:06 3 MS. HOUSE: Objection. Vague.

14:15:07 4 THE WITNESS: Let me use my words, because  
14:15:08 5 that's the best way to tell you what I've done.

14:15:11 6 That when you say what actually occurred,  
14:15:13 7 it's -- whatever the scope of the infringing  
14:15:16 8 activities are, and those begin in 2005, January,  
14:15:20 9 and those are analyzed. And so that scope, that  
14:15:23 10 ongoing scope, downloading and copying and creating  
14:15:26 11 environments and all this sharing, and back at  
14:15:29 12 paragraph 162 of my report, I do tie back to the  
14:15:33 13 analysis of Mr. Mandia, and I refer to basically  
14:15:37 14 the Registered Works and to all those activities.

14:15:41 15 And that is the actual set of infringing  
14:15:44 16 activities. And so those Registered Works that are  
14:15:47 17 addressed in paragraph 162 is exactly what's in the  
14:15:50 18 scope of the -- of use license. That's what's in  
14:15:55 19 there.

14:15:55 20 MR. McDONELL: Q. So is it fair to say  
14:15:57 21 that your assumption is that the fair market value  
14:15:59 22 of the license must reflect the fair market value  
14:16:02 23 of the infringement that actually occurred?

14:16:07 24 A. I will say yes, with the caveat that the  
14:16:10 25 lawyers may argue about what it means by the fair

14:16:12 1 market value of the -- or the infringement that  
14:16:15 2 occurred.

14:16:16 3 And my understanding is, it's the actual  
14:16:17 4 scope of the infringing activities that relate to  
14:16:20 5 all the properties under copyright, and that that  
14:16:23 6 is what the fair market value of the license has to  
14:16:25 7 relate to.

14:16:27 8 Q. So for example, if the list of infringed  
14:16:32 9 copyrights in the complaint were not accurate, and,  
14:16:36 10 say, half of those registrations were not  
14:16:38 11 infringed, would that affect your calculation of  
14:16:40 12 value?

14:16:43 13 A. Not necessarily. Because from my  
14:16:44 14 perspective, once again, I understand that all  
14:16:46 15 those registrations are not equivalent, they're not  
14:16:53 16 equal, some are more important than others.

14:16:56 17 So whatever the registrations that relate  
14:16:57 18 to the property that SAP/Tomorrow Now planned to  
14:16:59 19 have and executed on taking and ultimately  
14:17:01 20 downloaded and used and copied, whatever that scope  
14:17:03 21 is, that's the scope that ultimately is part of the  
14:17:07 22 fair market value of the license.

14:17:08 23 And that's what my paragraph 162 and I  
14:17:10 24 think paragraph 220 lay out for PeopleSoft and JDE.

14:17:13 25 Q. Okay. So if Mr. Mandia only analyzed a

14:17:15 1 subset of the Registered Works, does that mean that  
14:17:19 2 your damages opinion only relates to the same  
14:17:21 3 subset?

14:17:24 4 A. That's not correct. My understanding is  
14:17:25 5 that there was an expectation of SAP for what  
14:17:30 6 materials it would need, and that Mr. Mandia and  
14:17:33 7 others are addressing the scope of what was  
14:17:36 8 actually taken.

14:17:38 9 And my understanding was that the scope of  
14:17:40 10 what's been taken, whether it relates to the human  
14:17:42 11 resource application for PeopleSoft, or financial,  
14:17:46 12 whatever that may be, and with JDE for their  
14:17:49 13 enterprises, whatever that scope is, has enabled,  
14:17:53 14 put SAP/Tomorrow Now in that position to carry out  
14:17:57 15 their business plans. And that his actual results  
14:17:59 16 and the results of others on the team matched up  
14:18:02 17 with the expectations going on.

14:18:05 18 Q. What I'm trying to understand is, how do  
14:18:06 19 you -- when you're doing your value-of-use  
14:18:08 20 calculation of the copyrighted works, how do you  
14:18:15 21 associate the value you find with the works  
14:18:17 22 themselves?

14:18:18 23 MS. HOUSE: Asked and answered. You can  
14:18:20 24 answer again.

14:18:21 25 THE WITNESS: I believe I answered that.

14:18:22 1 I mean, the way you do it is that there's an  
14:18:26 2 expectation that SAP has. And in SAP's 1-2-3  
14:18:29 3 document in January 2005, it lays out what  
14:18:35 4 SAP/Tomorrow Now believes are the types of  
14:18:39 5 applications being run by the PeopleSoft and JDE  
14:18:42 6 customers.

14:18:43 7 And they -- and it lays out where they --  
14:18:46 8 they will most likely focus.

14:18:48 9 And then if you take the phone call as an  
14:18:51 10 example from January 19th, Mr. Agassi lays out and  
14:18:55 11 he provided examples. He says, we have two  
14:18:57 12 scenarios here. There are 4,000 customers. And he  
14:18:59 13 lays out specifically what he believes the customer  
14:19:01 14 base looks like.

14:19:02 15 And that customer base that he lays out I  
14:19:04 16 believe will match up with the work that Mr. Mandia  
14:19:07 17 is doing, and others in the case. And therefore,  
14:19:09 18 you have the expectation of the license, you have  
14:19:12 19 the infringing activities that have been identified  
14:19:13 20 that are the scope of the license, and then from  
14:19:15 21 there, you value it. And that's how you do it.

14:19:18 22 Q. Okay. But my question is, the SAP  
14:19:20 23 expectation that you're saying exists doesn't  
14:19:24 24 necessarily translate into any particular  
14:19:27 25 copyrighted works. Isn't that right?

14:19:30 1 A. I think --

14:19:30 2 MS. HOUSE: Assumes facts not in evidence.

14:19:31 3 THE WITNESS: I think that from my

14:19:33 4 perspective, at least from the valuation

14:19:35 5 perspective, if -- let me give you an example.

14:19:40 6 SAP's expectation was that you'd have a

14:19:43 7 situation where SAP was providing financial and

14:19:50 8 manufacturing enterprise software to a customer,

14:19:54 9 and that same customer is taking human resource

14:19:57 10 from PeopleSoft. That's in Mr. Agassi's phone call

14:20:02 11 and his discussion with the analysts and with the

14:20:04 12 public. Okay? And that's one expectation that

14:20:07 13 they have, "they" being SAP, across the 4,000

14:20:10 14 customers. There's a large portion of customers

14:20:12 15 that have that mixed-platform IT shop. Okay?

14:20:16 16 And so my understanding is that Mr. Mandia

14:20:18 17 has come to findings about the human resource

14:20:22 18 application and the taking of property that's under

14:20:26 19 copyrights by SAP and TomorrowNow.

14:20:28 20 And so that's how it matches up. From my

14:20:31 21 perspective, I just need to know that from the

14:20:34 22 standpoint of what SAP needs from -- from the

14:20:37 23 software that's copyrighted to carry out its

14:20:40 24 business plans in 2005 was actually part of the

14:20:42 25 infringing acts. And my understanding is that that



14:20:45 1 would be proven by the lawyers and the technical  
14:20:48 2 experts.

14:20:48 3 Q. Okay. So you yourself, Mr. Meyer, are not  
14:20:50 4 specifically associating your value-of-use  
14:20:53 5 calculation with any particular identified  
14:20:58 6 copyrights.

14:21:02 7 A. If you listen to me, it's not by a  
14:21:04 8 particular copyrighted work, but the scope of the  
14:21:07 9 license contemplates that you'll have a sufficient  
14:21:10 10 number of copyright -- copyrighted properties in  
14:21:13 11 there to cover the product families that SAP had  
14:21:19 12 planned to execute on.

14:21:20 13 Q. But as you sit here today, you couldn't  
14:21:22 14 tell me which copyrights those are?

14:21:24 15 A. I can't take you down, nor is it -- it's  
14:21:26 16 beyond the scope of my expertise to take you down,  
14:21:29 17 because it's really an infringement analysis, an  
14:21:32 18 analysis of software, to take you down to some  
14:21:34 19 level of, by copyright.

14:21:36 20 And from my perspective, I adopted the  
14:21:38 21 appropriate scope, and I believe that scope will be  
14:21:40 22 also addressed by the experts on infringement and  
14:21:43 23 on the use of the software.

14:21:46 24 Q. Can you tell me how many copyrights you've  
14:21:49 25 valued? I'm sorry, how many copyright --

14:21:53 1 registered copyrights you've valued?

14:21:55 2 A. I think you're not listening to what I've  
14:21:57 3 said.

14:21:58 4 Q. I'm trying to, but --

14:21:59 5 A. I didn't have to go to that level, because  
14:22:01 6 it -- for example, and this is a hypothetical, it  
14:22:04 7 could turn out that of the 120 registrations, maybe  
14:22:10 8 five or ten were the most important and provided  
14:22:12 9 the most value to SAP.

14:22:15 10 And they're the ones that are part of the  
14:22:17 11 analysis. And so that's something that has to be  
14:22:19 12 determined by Mr. Mandia and others that are doing  
14:22:22 13 that analysis.

14:22:23 14 I'm very comfortable saying, though, that  
14:22:25 15 my understanding of SAP's expectations, and laid  
14:22:29 16 out in their documents contemporaneously, outside  
14:22:32 17 of this litigation, just as they planned to execute  
14:22:34 18 on their business plans in January 2005, are  
14:22:36 19 consistent with my understanding of the scope of  
14:22:38 20 infringement that's going to be, you know, part of  
14:22:42 21 the case that we're involved with.

14:22:44 22 Q. One more time.

14:22:45 23 As you sit here today, can you tell me how  
14:22:47 24 many copyright registrations you valued in your  
14:22:52 25 value-of-use calculation?

14:22:54            1                                      MS. HOUSE:   Asked and answered.  
14:22:55            2                                      THE WITNESS:   A specific number?  
14:22:56            3                                      MR. McDONELL:   Q.   Yes.  
14:22:56            4                                      A.   I did not approach the analysis that way.  
14:22:58            5                                      I don't believe it's necessary, and I can't tell  
14:23:01            6                                      you an exact number for all the reasons I've  
14:23:03            7                                      already mentioned.  
14:23:04            8                                      Q.   Thank you.

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14:40:47            16                      Q.    Sir, does a market approach involve  
14:40:49            17                      determining the fair market value of a license to  
14:40:51            18                      intellectual property?  
14:40:53            19                      A.    I'm using a valuation approach called the  
14:40:57            20                      market approach to come to a value of the license  
14:41:02            21                      in these circumstances.    That's what I'm doing.  
14:41:04            22                      Q.    And by license, you're talking about the  
14:41:06            23                      fair market value of a license to use the subject  
14:41:10            24                      intellectual property?  
14:41:12            25                      A.    The same scope of the license we talked

14:41:16 1 about in the hypothetical, that same scope of  
14:41:19 2 infringing activity is now being bundled into a  
14:41:22 3 license. And then the question becomes, what's the  
14:41:24 4 fair market value that one has to pay to have those  
14:41:29 5 rights?

14:41:30 6 Q. Under the market approach, to try to  
14:41:33 7 determine the value of that license, you look at --  
14:41:37 8 or you purport to look at comparable transactions  
14:41:40 9 for the same or similar intellectual property. Is  
14:41:42 10 that right?

14:41:44 11 A. Well, you -- the objective is, you try to  
14:41:47 12 identify the transactions in the marketplace that  
14:41:52 13 either provide something that's directly comparable  
14:41:55 14 or something that gives you instruction on what the  
14:42:00 15 market value would be of your subject license here,  
14:42:06 16 what's being -- the scope of that license. You're  
14:42:08 17 trying to find information that enlightens you on  
14:42:11 18 that value.

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14:59:59            19                      Q.    Would you agree that it would be  
15:00:02            20                      preferable in this case if you had comparable  
15:00:05            21                      licenses to look at as opposed to having to  
15:00:09            22                      indirectly do your calculation by looking at the  
15:00:11            23                      purchase of PeopleSoft by Oracle?  
15:00:14            24                      MS. HOUSE:    Objection.    Vague.  
15:00:15            25                      THE WITNESS:    No.    The enormity of this

15:00:18 1 license transaction is so large, and it's actually  
15:00:21 2 on the same day or same week as the PeopleSoft  
15:00:25 3 transaction, that we have virtually the perfect  
15:00:28 4 metric. We have a fair market value transaction  
15:00:30 5 between two large companies to acquire a series of  
15:00:34 6 assets, but one of the most important assets was  
15:00:36 7 the customer relationships and the related premium  
15:00:40 8 that was paid to get those relationships, and that  
15:00:42 9 ties back to being protected by the software and  
15:00:44 10 the copyrighted property.

15:00:46 11 That's a very compelling metric to use.  
15:00:48 12 And what you have to do is break it down. And if  
15:00:52 13 you break it down properly, you're in a great place  
15:00:54 14 to be, and it's much better data than trying to  
15:00:57 15 take license agreements to don't look at really the  
15:00:59 16 total value of what happened here.

15:01:01 17 MR. McDONELL: Q. Okay. Would you agree  
15:01:02 18 with me that if you had a comparable out there that  
15:01:04 19 was a license for the actual use that TomorrowNow  
15:01:09 20 made of this material, but with a different  
15:01:12 21 company, that that would be preferable to the  
15:01:14 22 approach you used?

15:01:15 23 MS. HOUSE: Incomplete hypothetical,  
15:01:16 24 vague.

15:01:17 25 THE WITNESS: I would have to take what

15:01:18            1            you just said and break it down and really vent  
15:01:20            2            that, because we have to go back to the scope of  
15:01:23            3            the license and all the other terms. And also,  
15:01:27            4            you'd have to deal with the dynamics of the two  
15:01:30            5            parties here, because we're looking at once again  
15:01:32            6            value between two large companies, and we're  
15:01:35            7            looking at value that Oracle just paid for another  
15:01:38            8            large company, which included those intangible  
15:01:40            9            assets.  
15:01:41            10                            And so I don't believe that what you  
15:01:42            11            proffered would necessarily be anything  
15:01:45            12            instructive.

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16:34:04            2                      Q. To the best of your knowledge, Oracle's  
16:34:06            3                      never recorded any kind of impairment to its  
16:34:09            4                      goodwill related to the activities of defendants in  
16:34:11            5                      this case. Isn't that right?

16:34:12            6                      A. If we're talking about on its balance  
16:34:14            7                      sheet for accounting purposes, that's correct.

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18:10:50 1 of what Oracle owns with the acquisition of  
18:10:53 2 PeopleSoft.  
18:11:01 3 MS. HOUSE: Are we at 7 hours?  
18:11:04 4 THE VIDEO OPERATOR: We're at 7.  
18:11:06 5 MR. McDONELL: What's that?  
18:11:08 6 THE VIDEO OPERATOR: We're at 7 hours.  
18:11:09 7 MR. McDONELL: We're done?  
18:11:11 8 MS. HOUSE: That's it. We're at 7 hours.  
18:11:13 9 MR. McDONELL: That's it for today, sir.  
18:11:14 10 THE VIDEO OPERATOR: Going off the record,  
18:11:14 11 the time now is 6:11. This also is the conclusion  
18:11:18 12 of Tape 5 in the deposition of Paul Meyer.  
18:11:27 13 (Time noted, 6:11 p.m.)

14 --o0o--

15 I declare under penalty of perjury that  
16 the foregoing is true and correct. Subscribed at  
17 San Francisco, California, this 17 day of  
18 June, 2010.

19 Subject to the attached errata

20 Paul K. Meyer

21 PAUL K. MEYER  
22  
23  
24  
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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  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: May 19, 2010  
Holly Thuman  
HOLLY THUMAN, CSR