

# 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

\_\_\_\_\_  
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)

TEXT REMOVED - NOT RELEVANT TO MOTION

12:47:33            15                      Q.    Why wouldn't a combination of a lost  
12:47:36            16                      profits remedy and a disgorgement remedy measure  
12:47:41            17                      the impact on Oracle in this case?  
12:47:45            18                      A.    From my perspective, it -- it would not be  
12:47:51            19                      appropriate, in these circumstances, because of the  
12:47:54            20                      very particular facts of December and January.  And  
12:48:01            21                      I don't have the information prior to December of  
12:48:03            22                      2004, but to have a circumstance where the two  
12:48:08            23                      major competitors in a marketplace aligned side by  
12:48:13            24                      side, and the smaller entity, Oracle, is making an  
12:48:20            25                      acquisition in a -- in the enterprise market now to

12:48:24 1 become more competitive with SAP, and in that  
12:48:31 2 process, at the same time, SAP is making business  
12:48:36 3 plans and acquiring resources and dedicating  
12:48:40 4 significant senior management to thinking along the  
12:48:44 5 lines of, we need now to impact Oracle's 11 billion  
12:48:50 6 dollar acquisition, we need to now take advantage  
12:48:53 7 of this situation and team up with an entity to  
12:48:56 8 allow us to take the next 2 or 3 years and provide  
12:49:01 9 this link, this service link, to then move  
12:49:06 10 customers off of PeopleSoft systems and  
12:49:09 11 enterprise systems and JDE onto the SAP platform.  
12:49:12 12 And because of the timing, and because of the --  
12:49:17 13 how quickly the TomorrowNow entity was identified,  
12:49:22 14 negotiated with, the deal was agreed upon, and then  
12:49:25 15 the announcement of the deal -- and to me, the  
12:49:29 16 phone call with Mr. Agassi is very -- on January  
12:49:33 17 19th, I believe, is very indicative of how this was  
12:49:37 18 done, in a very large way to economically set back  
12:49:42 19 Oracle, and what it has spent of 11 billion dollars  
12:49:46 20 of shareholder cash.

12:49:47 21 And so from my perspective, we'll never  
12:49:49 22 know the total impact of the planning and the  
12:49:53 23 orchestration and execution of SAP/Tomorrow Now's  
12:49:58 24 Safe Passage program. We never will be able to  
12:50:00 25 quantify that. Because once it happens and there's

12:50:03 1 a dissemination of this information about Safe  
12:50:05 2 Passage out to thousands of customers, and there's  
12:50:09 3 sales calls and there's technical calls and there's  
12:50:12 4 follow-up emails, and there's always things that go  
12:50:14 5 on, you never really fully understand the total  
12:50:17 6 impact about why a customer is not returning phone  
12:50:20 7 calls or they're not going down a certain way of  
12:50:23 8 upgrading, or they're not changing their service  
12:50:26 9 program, and Oracle will never know that.

12:50:29 10 And so in many respects, after this all,  
12:50:31 11 from my perspective, was developed by SAP, you'll  
12:50:35 12 never know the true impact on Oracle. And so to  
12:50:39 13 try to say that that's just measured by the  
12:50:42 14 customers and the lost profits, or to look at the  
12:50:45 15 subset of the 86 customers that remain in the  
12:50:49 16 infringer's profits, just don't get you there  
12:50:52 17 economically based on the facts of this case.

12:50:55 18 And that's just how I see it from the  
12:50:57 19 financial perspective.

12:50:59 20 MR. McDONELL: Change tape.

12:51:00 21 THE VIDEO OPERATOR: Going off the record,  
12:51:01 22 the time now is 12:51. This also is the conclusion  
12:51:05 23 of Tape 2.

13:49:20 24 (Lunch recess from 12:51 p.m. to 1:49  
13:49:41 25 p.m.)

13:42:45 1 --o0o--

2 AFTERNOON SESSION

13:49:46 3 THE VIDEO OPERATOR: The time now is 1:49,  
13:49:48 4 we are back on the videotape record. This also  
13:49:50 5 marks the beginning of Tape 3 of Meyer. Please  
13:49:55 6 continue.

13:49:56 7 MR. McDONELL: Q. Mr. Meyer, I'm going to  
13:49:57 8 start with a request of you, because we at least  
13:49:59 9 for now have limited time for this deposition, I've  
13:50:03 10 noticed that some of your answers have been quite  
13:50:06 11 lengthy, and, at least in my view, included  
13:50:08 12 information that was not necessarily responsive to  
13:50:10 13 the request.

13:50:11 14 Could I ask you to try to listen to my  
13:50:13 15 questions and respond to them concisely, but  
13:50:16 16 completely?

13:50:17 17 A. I'll do my best.

13:50:18 18 Q. Okay. And I want to let you know that if  
13:50:21 19 there's a pattern from this point on in which we  
13:50:26 20 think that your answers are going beyond the  
13:50:29 21 question and taking up a lot of time, we might very  
13:50:32 22 well have to ask the Court for additional time with  
13:50:35 23 you, and we prefer not to do that. Understood?

13:50:38 24 MS. HOUSE: I'm going to object, Jason.  
13:50:39 25 That's completely uncalled you. You ask a

13:50:42 1 question, he's entitled to give you a full answer.  
13:50:44 2 You are here 3 days, which is unprecedented.  
13:50:47 3 There's no way you're getting additional time, so  
13:50:51 4 maybe you ought to ask your questions and focus on  
13:50:55 5 what really matters.

13:50:56 6 MR. McDONELL: Q. Okay. Mr. Meyer,  
13:50:58 7 before the break, you testified that in your view  
13:51:01 8 the value-of-use measure damages was better than  
13:51:05 9 looking at lost profits and infringer's profits  
13:51:08 10 combined. Do you recall that?

13:51:10 11 A. In these circumstances, that's correct.

13:51:12 12 Q. Now, I want you to tell me as precisely as  
13:51:15 13 you can why a lost-profits measure of damages in  
13:51:19 14 this case is not sufficient to identify the lost  
13:51:23 15 profits experienced by Oracle.

13:51:25 16 MS. HOUSE: Objection. Asked and  
13:51:26 17 answered. You say you want to continue, and yet  
13:51:30 18 you go back to the same stuff that we've already  
13:51:32 19 done.

13:51:35 20 And object to the word "sufficient."  
13:51:38 21 Calls for a legal conclusion.

13:51:40 22 THE WITNESS: I gave you a complete answer  
13:51:41 23 before the break, and I can repeat that answer, and  
13:51:44 24 I went into I think a lot of detail about the  
13:51:47 25 impact on Oracle due to the Safe Passage program,

13:51:51 1 which from my perspective was driven by

13:51:54 2 TomorrowNow, and it's well documented, the

13:51:56 3 motivations of that program.

13:51:58 4 And because of that, we will never know

13:52:01 5 the total impact on Oracle, having spent 11 billion

13:52:05 6 dollars to acquire PeopleSoft, and the very next

13:52:07 7 day this program is launched. And there's 4,000

13:52:11 8 joint customers. So 4,000 of the 9,920 customers

13:52:15 9 were joint customers. That means that SAP and

13:52:19 10 PeopleSoft share that customer.

13:52:21 11 And it was the intention of SAP to convert

13:52:24 12 those customers, not just for service, but, more

13:52:27 13 importantly, for the cross- and upsell.

13:52:30 14 And we will never know the total impact of

13:52:32 15 that, because you cannot undo what happened.

13:52:35 16 MR. McDONELL: Q. Okay. If you'll never

13:52:36 17 know the impact --

13:52:37 18 MS. HOUSE: Don't interrupt him. He

13:52:39 19 wasn't done with his answer.

13:52:40 20 MR. McDONELL: Well, I'm not going to just

13:52:42 21 let him go on forever when he's not really

13:52:45 22 responding to the question.

13:52:46 23 MS. HOUSE: I object to that

13:52:47 24 characterization.

13:52:48 25 MR. McDONELL: Q. My question for you is



13:52:49 1 this, sir: Do you believe that Oracle has  
13:52:52 2 experienced lost profits as a result of the alleged  
13:52:55 3 actions in this cause that cannot be measured  
13:52:58 4 through a lost profits analysis?

13:53:02 5 A. I don't follow that question.

13:53:03 6 Q. Do you believe -- let me state it again.

13:53:06 7 You know what lost profits are. Correct?

13:53:08 8 A. Yes.

13:53:08 9 Q. And you know what the -- what you contend  
13:53:11 10 to be the alleged actions in this case that you are  
13:53:15 11 assuming caused damage. Correct?

13:53:17 12 A. Yes.

13:53:19 13 Q. Is it your position that Oracle  
13:53:21 14 experienced lost profits as a result of the alleged  
13:53:25 15 actions that cannot be quantified through a  
13:53:29 16 lost-profits measure?

13:53:33 17 A. It's my position that there's many  
13:53:35 18 financial impacts on Oracle that cannot be  
13:53:40 19 quantified. We've done our best to quantify the  
13:53:42 20 damages caused by TomorrowNow, and we've been  
13:53:43 21 through that. And those damages have been --  
13:53:47 22 obviously impacted Oracle and the companies it  
13:53:50 23 acquired and those service revenues and other  
13:53:53 24 implications. And we've dealt with the issue of  
13:53:56 25 the infringer's gains, but we will not totally know

13:53:59 1 the total impact on Oracle because of how closely  
13:54:02 2 aligned the two parties were in the marketplace and  
13:54:05 3 the timing of this transaction with TomorrowNow.

13:54:07 4 Q. Okay. What lost profits do you believe  
13:54:09 5 Oracle experienced that you cannot measure with a  
13:54:13 6 lost profits analysis?

13:54:14 7 MS. HOUSE: Objection. Vague.

13:54:16 8 MR. McDONELL: Q. Are there any, sir?

13:54:18 9 A. You say what -- I said, I quantified the  
13:54:20 10 lost profits due to TomorrowNow. Are you asking  
13:54:23 11 about something other than that?

13:54:26 12 Q. So let me move on.

13:54:28 13 So you have quantified the lost profits  
13:54:30 14 that you believe Oracle experienced as a result of  
13:54:31 15 the alleged actions. Right?

13:54:33 16 A. That were caused by the TomorrowNow  
13:54:34 17 servicing, I've quantified that.

13:54:37 18 Q. Have you also quantified the infringer's  
13:54:41 19 profits to the defendants in this case?

13:54:48 20 A. As best as can be done in the  
13:54:50 21 circumstances, being that the 86 customers were  
13:54:55 22 identified by SAP. And we've worked with that  
13:54:58 23 data, we've responded to Mr. Clarke's analysis at a  
13:55:03 24 preliminary level, but we have a calculation of  
13:55:05 25 those infringer profits now, we have that

13:55:08 1 information, so we have addressed that.

13:55:11 2 Q. Okay. Are there any infringer's profits  
13:55:13 3 that you believe are attributable to the alleged  
13:55:16 4 actions in this case that you have not been able to  
13:55:18 5 measure?

13:55:25 6 A. And see, when you get into those  
13:55:27 7 situations, we don't have visibility into every  
13:55:32 8 specific relationship at SAP across the 4,000  
13:55:37 9 customers.

13:55:38 10 There's 4,000 joint customers, as  
13:55:40 11 Mr. Agassi informed the market on January 19th,  
13:55:43 12 2005. And the intention, and he says in that phone  
13:55:46 13 call, was to convert all of those 4,000. And we  
13:55:51 14 don't have visibility into every single situation  
13:55:53 15 that involves those customers to see if those  
13:55:56 16 customers -- how they would have related to Oracle  
13:55:59 17 in some other fashion. We just don't have that  
13:56:02 18 information, and it's not something we can  
13:56:04 19 quantify.

13:56:05 20 Q. So if you can't quantify it, then you'd  
13:56:08 21 have to speculate, wouldn't you, to know -- to  
13:56:10 22 determine whether or not there are such effects.  
13:56:13 23 Isn't that right?

13:56:13 24 A. No, it's not speculation. You're not  
13:56:15 25 listening -- let me finish. You cut me off all

13:56:18 1 day.

13:56:18 2 We know, particularly in January 2005, the  
13:56:21 3 senior management at SAP have gone out and  
13:56:23 4 chronicled, of the 9,920 customers at PeopleSoft,  
13:56:28 5 they believed that 4,000 are joint customers. And  
13:56:31 6 they can basically go in with this TomorrowNow  
13:56:34 7 vehicle and do tremendous economic transition with  
13:56:40 8 having this Safe Passage program.

13:56:43 9 And we don't have visibility into all  
13:56:45 10 4,000 customers to see what else would have  
13:56:47 11 happened to Oracle when we know Oracle just went  
13:56:50 12 out and spent 11 billion dollars acquiring  
13:56:53 13 basically 10,000 customer accounts that were  
13:56:55 14 protected by intellectual property and had no idea  
13:57:00 15 that they would be seeing in the next day a  
13:57:03 16 tremendous impact, not just on their potential  
13:57:07 17 revenues, the ability to invest in future R&D, but  
13:57:11 18 impacts on also the ability to keep the JDE and  
13:57:14 19 PeopleSoft employees, you know, busy and  
13:57:17 20 productive, because there's a disruption that  
13:57:20 21 occurs.

13:57:20 22 And that's not quantifiable. And that's  
13:57:22 23 what I mentioned was the reason why the fair market  
13:57:24 24 value of the license was a much better measure.  
13:57:27 25 That's why I said it.

13:57:28 1 Q. Okay. If the damage you just referred to  
13:57:30 2 is unquantifiable, then what makes you think that  
13:57:34 3 using a license, a hypothetical license approach  
13:57:39 4 for it, is going to quantify it without  
13:57:41 5 speculation?

13:57:42 6 A. You can do that, because you can look at  
13:57:44 7 the financial and economic licensing parameters  
13:57:48 8 that I've been -- examined in detail, you can do  
13:57:53 9 that in January of 2005, and you can match it up  
13:57:55 10 with the infringing activities.

13:57:57 11 And I've been provided the scope of the  
13:57:59 12 infringement. I get to look at that in January  
13:58:02 13 2005, match it up to those financial and economic  
13:58:07 14 projections and plans at that point in time, and  
13:58:10 15 you can do that analysis. That's what I've been  
13:58:12 16 doing for 20 years, when I've analyzed intellectual  
13:58:16 17 property value. That's a much more focused and  
13:58:18 18 defined thing that you can do in analysis than  
13:58:22 19 trying to understand all these other impacts.

13:58:26 20 So you asked what my opinions were on the  
13:58:28 21 best form of damages, actual damages, and I gave it  
13:58:31 22 to you. I gave it to you as clearly as I can, and  
13:58:33 23 you don't like the answer, and you just want to  
13:58:37 24 argue about it.

13:58:38 25 Q. Okay. How does that measure of this

13:58:39 1 hypothetical license for these effects that you say  
13:58:43 2 are unquantifiable, how does it measure the actual  
13:58:46 3 damage to Oracle?

13:58:48 4 A. What it does, it allows to you look at the  
13:58:51 5 other economic side of it. Oracle has made the  
13:58:54 6 investment. And the investment in the company like  
13:58:57 7 PeopleSoft is not really an investment at all in  
13:58:59 8 tangible assets. In fact, almost 90 percent of  
13:59:02 9 their assets are intangible assets, because it's a  
13:59:06 10 company that's built on intellectual property,  
13:59:08 11 built on licensing, and built on servicing.

13:59:12 12 So when you go out and spend those kinds  
13:59:14 13 of resources, 11 billion dollars to buy a company  
13:59:17 14 like that, you're basically saying, I'm going to  
13:59:20 15 pay well over the value of the intangible assets,  
13:59:23 16 the hard assets, because I understand how this  
13:59:25 17 business works. And Oracle was very successful in  
13:59:27 18 understanding the model of licensing and having  
13:59:29 19 great licenses on great software, and how then to  
13:59:32 20 keep customers safe and comfortable through the  
13:59:34 21 servicing model.

13:59:35 22 That's what they did do, and that's  
13:59:37 23 what -- they invested 11 billion dollars doing  
13:59:39 24 that. And that expenditure was impacted  
13:59:43 25 significantly in January 2005.

13:59:45 1 And so that's why you have to look at it  
13:59:47 2 at that point in time. That's the real analysis,  
13:59:48 3 and we have metrics to do it at that point in time.  
13:59:51 4 Q. So you have measured the alleged lost  
13:59:55 5 profits relating to the 358 TomorrowNow customers.  
14:00:00 6 Correct?  
14:00:00 7 A. That's been measured.  
14:00:02 8 Q. You've also measured the alleged  
14:00:04 9 infringer's profits relating both to those -- well,  
14:00:06 10 relating to those customers as well. Correct?  
14:00:09 11 A. To a subset of those customers, that's  
14:00:11 12 correct.  
14:00:12 13 Q. Which is the up to 86 of those customers?  
14:00:14 14 A. The 86 list, that's correct.  
14:00:16 15 Q. So I'm going to ask you one more time.  
14:00:18 16 What lost profits do you contend that  
14:00:22 17 Oracle experienced that you were unable to measure?  
14:00:25 18 MS. HOUSE: Asked and answered now three  
14:00:29 19 times.  
14:00:29 20 THE WITNESS: I believe I provided my best  
14:00:32 21 answer on that already.  
14:00:33 22 MR. McDONELL: Q. Okay. I'm going to ask  
14:00:34 23 you one more time.  
14:00:36 24 What infringer's profits do you contend  
14:00:39 25 you've been unable to answer?

14:00:40            1                            MS. HOUSE: Same thing. Now asked and  
14:00:41            2                            answered now multiple times, Jason.  
14:00:44            3                            THE WITNESS: I mentioned a moment ago on  
14:00:46            4                            the infringer's profits, we don't have visibility  
14:00:48            5                            into the 4,000 joint customer accounts to  
14:00:50            6                            understand fully all the benefits that have been  
14:00:52            7                            realized by SAP. We just don't have that  
14:00:54            8                            information. It would be SAP and all those  
14:00:56            9                            customers and how they relate to SAP and how they  
14:00:59            10                           related to PeopleSoft or JDE.  
14:01:00            11                           That's just a whole 'nother part of SAP's  
14:01:02            12                           business, so that's beyond what we have.

TEXT REMOVED - NOT RELEVANT TO MOTION



TEXT REMOVED - NOT RELEVANT TO MOTION

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.

TEXT REMOVED - NOT RELEVANT TO MOTION

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  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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