

EXHIBIT 19

ANDREW NELSON February 26, 2009
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

ORACLE CORPORATION, a)	
Delaware corporation, ORACLE)	
USA, INC., a Colorado)	
corporation, and ORACLE)	
INTERNATIONAL CORPORATION, a)	
California corporation,)	
)	
Plaintiffs,)	
)	
vs.)	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.)	
)	

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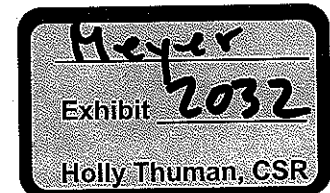
VIDEOTAPED DEPOSITION OF ANDREW NELSON

FEBRUARY 26, 2009

VOLUME I

(Pages 1 - 266)

REPORTED BY: SARAH LUCIA BRANN, CSR 3887 (#416642)



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14:19:36 1 the monetary amount of the TomorrowNow contract,
14:19:39 2 that -- where we would support them.

14:19:41 3 And so in that -- that is the
14:19:42 4 TomorrowNow -- when I say TN's key compensation
14:19:48 5 KPIs, that support would have been most directly --
14:19:51 6 that KPI would have been most directly pertinent to
14:19:54 7 this group, for that reason.

14:19:57 8 Q. All right. And that was a way of
14:20:00 9 compensating them so that they would support the
14:20:03 10 long-term strategy of migrating customers over to
14:20:06 11 SAP applications.

14:20:09 12 A. So that our business would align with that
14:20:12 13 when it happened, when a -- if there was a sales
14:20:16 14 deal involved where the two collaborating made more
14:20:22 15 business sense.

14:20:23 16 Q. Now, you have a series of five points that
14:20:33 17 you list as things that TomorrowNow and SAP will
14:20:38 18 keep doing under this fiercely independent strategy,
14:20:44 19 as you call it. Do you see that, in the middle of
14:20:47 20 the page?

14:20:47 21 A. I do.

14:20:54 22 Q. And the first of those is that it allows
14:20:55 23 you -- you say, "It allows us to build \$10 of
14:20:56 24 strategic future SAP license pipeline for every \$1
14:21:01 25 of TN stand-alone business" that you get.

14:21:07 1 Do you see that?

14:21:08 2 A. I see it.

14:21:08 3 Q. And that was something that you clearly

14:21:10 4 believe was agreed to by the SAP stakeholders,

14:21:13 5 Mr. Apotheker, Mr. Oswald, and Mr. Agassi?

14:21:19 6 MR. FUCHS: Objection. Form.

14:21:20 7 THE WITNESS: I think it was more of a

14:21:22 8 mechanical fact, as opposed to an opinion.

14:21:26 9 MR. HOWARD: Q. What do you mean by that?

14:21:29 10 A. Well, we -- our business model was to sell

14:21:32 11 at half of whatever the vendor had. The vendor's

14:21:39 12 typical model was to sell at 20 percent of the

14:21:42 13 license annually. So at half of that we were

14:21:45 14 10 percent of the original product purchase.

14:21:49 15 And so for every -- for that \$10 of

14:21:51 16 product, we would get \$1 of maintenance. And when

14:22:01 17 whoever bought that had to go and replace that

14:22:04 18 system, a benchmark would be -- you know, it was

14:22:05 19 \$10. So if we are getting a dollar for every dollar

14:22:09 20 of maintenance, there is a potential, if that

14:22:11 21 customer down the road made a purchase of SAP, you

14:22:15 22 know, our -- every \$1 of maintenance reflected that

14:22:20 23 as a potential.

14:22:23 24 Q. And that's what you called the strategic

14:22:25 25 future SAP pipeline in point number one?

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14:22:30 1 A. Yes.

14:22:30 2 Q. In point number two you said that "Over
14:22:32 3 the long term, every \$1 of TN's stand-alone revenue
14:22:36 4 this year represents \$18 of originally expected
14:22:39 5 Oracle revenue from their misguided acquisition
14:22:45 6 strategy."

14:22:46 7 A. Yes.

14:22:46 8 Q. What did you mean by that?

14:22:47 9 A. Well, as I talked to you about sort of the
14:22:49 10 financial -- my understanding of the financial
14:22:51 11 reasons driving Oracle's takeover battle with
14:22:54 12 PeopleSoft, I recall -- I am not sure the
14:22:59 13 publication, but I recall reading a financial
14:23:03 14 analysis saying that the reason for the acquisition
14:23:07 15 is to get, you know, a million or a billion dollars
14:23:12 16 of maintenance over 10 years.

14:23:16 17 And so my understanding was that there was
14:23:18 18 a 10-year plan that involved taking the annual
14:23:20 19 maintenance and multiplying it by 10 years. So a
14:23:25 20 billion a year for -- and it may have included the
14:23:28 21 JD Edwards at the time, because during that that had
14:23:31 22 happened, too. But somewhere it was this billion --
14:23:34 23 you know, \$10 billion.

14:23:36 24 So this was in 2006, which would have been
14:23:40 25 one year after that. So if you take our \$1, which

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14:23:44 1 is half of -- since we are selling at half, our \$1
14:23:48 2 would be half of \$2. And then \$2 over those nine
14:23:53 3 remaining years from the original strategy would be
14:23:56 4 nine times two, equaling 18. So the assumption of
14:24:13 5 that 18 included that 10-year -- that 10-year model.
14:24:30 6 Q. Let me ask you a follow-up to that.
14:24:32 7 And I will mark as Exhibit 1019 an e-mail
14:24:38 8 chain between you and Lon Fiala on April 25th, 2006.
14:24:44 9 (Deposition Exhibit 1019
14:24:44 10 was marked for identification.)
14:26:13 11 MR. HOWARD: Q. Mr. Nelson, have you had
14:26:15 12 a chance to review Exhibit 1019?
14:26:17 13 A. I am almost done reading.
14:26:40 14 Okay.
14:26:41 15 Q. This e-mail is fairly shortly after the
14:26:44 16 one that we just saw that was Exhibit 1018, about a
14:26:48 17 month later; right?
14:26:53 18 A. It appears to be within 30 days.
14:26:55 19 Q. And this is an exchange between you and
14:26:57 20 Mr. Fiala entitled "Working financial impact notes"?
14:27:10 21 A. Yes. It appears to be a response, with
14:27:12 22 R-E. But, yes, I see "Working financial impact
14:27:15 23 notes" in the subject.
14:27:16 24 Q. And you ask him -- this is a note that you
14:27:19 25 appear to have written and sent it to him for

14:27:21 1 comment?

14:27:29 2 A. The area down below, starting with "What
14:27:35 3 do you think about this modification"?

14:27:38 4 Q. Correct.

14:27:41 5 A. Yes.

14:27:42 6 Q. Do you recall what the purpose of this
14:27:43 7 financial impact note was?

14:27:56 8 A. No.

14:28:06 9 Q. It appears to be a proposed quote that
14:28:08 10 would be attributed to you. Is that how you read
14:28:10 11 it?

14:28:15 12 A. That sounds reasonable.

14:28:23 13 Q. Do you recall that, looking at the first
14:28:25 14 main paragraph there, that new TomorrowNow business
14:28:32 15 unrelated to SAP Safe Passage support totaled nearly
14:28:37 16 \$10 million in 2005?

14:28:40 17 A. I see -- I see where that's in here.

14:28:45 18 Q. And is that consistent with your
14:28:47 19 recollection?

14:28:47 20 A. I don't really recall the detailed
14:28:50 21 numbers, other than, if we were writing it, there
14:28:53 22 was probably a basis for it.

14:28:56 23 Q. And do you recall expecting it to grow at
14:28:58 24 that time at a rate of 100 percent annually for the
14:29:02 25 next several years?

14:29:03 1 A. I think we probably hoped that, yes.

14:29:06 2 Q. Then you say that, "In replacing Oracle

14:29:15 3 maintenance with 50 percent savings, this component

14:29:17 4 of TomorrowNow's business" annual revenue adds up to

14:29:21 5 \$200 million.

14:29:28 6 Excuse me. Let me ask that question

14:29:35 7 again.

14:29:36 8 You say, "In replacing Oracle maintenance

14:29:36 9 with 50 percent savings, this component of

14:29:37 10 TomorrowNow's business translates to nearly

14:29:38 11 \$20 million in lost Oracle revenues in 2005."

14:29:42 12 A. I see that.

14:29:42 13 Q. All right. And then you said that over 10

14:29:44 14 years time, projecting out, this lost annual revenue

14:29:47 15 adds up to \$200 million?

14:29:50 16 A. Yes.

14:29:51 17 Q. That was your view at the time, your

14:29:53 18 expectation?

14:30:00 19 A. I think I was just noting that over 10

14:30:03 20 years time \$20 million times 10 is 200.

14:30:09 21 Q. Right. And then you said, "Assuming

14:30:09 22 consistent growth over the next 10 years, this

14:30:10 23 single component of TomorrowNow's business would

14:30:11 24 take away approximately \$1.1 billion from Oracle."

14:30:17 25 A. I see that.

14:30:18 1 Q. And that was an accurate reflection of
14:30:22 2 your projection at the time?

14:30:24 3 A. I don't know that this was a projection.
14:30:26 4 I think it was a recognition that, if we continued
14:30:29 5 at 100 percent growth and added 20 million each
14:30:32 6 year, 20 times 10 is 200 million. The next year, 20
14:30:39 7 times nine would be another 180,000,000. The next
14:30:43 8 year, 20 times eight would be 160,000,000, and so on
14:30:47 9 and so forth.

14:30:48 10 So that if you were to mathematically add
14:30:51 11 that up, my hope is that we would come up with a
14:30:54 12 number that's pretty close to this 1.1 billion. So
14:30:58 13 I think that that's the note there, as opposed to a
14:31:02 14 formal projection.

14:31:03 15 Q. And that was -- is it fair to say that
14:31:04 16 that was a goal of the company, to have that
14:31:08 17 100 percent annual growth for the next several
14:31:11 18 years?

14:31:14 19 A. It was definitely not a formal goal to
14:31:18 20 have 100 percent growth for 10 years, to have
14:31:20 21 1.2 billion -- no, this was not a formal goal.

14:31:27 22 Q. It says that "he revealed that new
14:31:29 23 TomorrowNow business unrelated to SAP Safe Passage
14:31:29 24 support totaled nearly \$10 million in 2005, and is
14:31:33 25 expected to grow at a rate of 100 percent annually

14:31:37 1 for the next several years."

14:31:39 2 A. Right. As opposed to 10 years, is what I
14:31:41 3 am saying. We had no goal to do that for a 10-year
14:31:44 4 period.

14:31:45 5 Q. Difference between several years and 10
14:31:47 6 years?

14:31:47 7 A. Yes, sir. That we expected -- we felt
14:31:49 8 that we would continue to get 100 percent growth,
14:31:52 9 but not over a 10-year period. And the expectation
14:31:58 10 is different from a formal goal. So those were the
14:32:01 11 two clarifying comments.

14:32:04 12 Q. Okay. And then down below that paragraph
14:32:06 13 you say -- and I think this is similar to what you
14:32:11 14 said a minute ago, but "Every \$1 of 2005 closed
14:32:15 15 TomorrowNow business typically represents," and then
14:32:17 16 number one is "\$2 taken from Oracle's annual
14:32:21 17 maintenance."

14:32:22 18 A. Yes.

14:32:22 19 Q. And number two is "\$20 taken from any
14:32:26 20 10-year maintenance-based justification for the
14:32:30 21 PeopleSoft/JDE takeover"?

14:32:32 22 A. Yes. That's what I was alluding to here.

14:32:35 23 Q. In your discussion of Exhibit 1018?

14:32:39 24 A. Yes.

14:32:39 25 Q. And number three is "Every \$1 of 2005

14:32:43 1 closed TomorrowNow business typically represents \$10
14:32:48 2 increase to SAP's strategic license revenue
14:32:49 3 pipeline." That's the same thing you said in
14:32:56 4 Exhibit 1018.

14:32:57 5 A. That -- yes.

14:32:58 6 Q. And then further down, you say that if you
14:33:02 7 hold those results steady over a 10-year period,
14:33:05 8 "2005 TomorrowNow standalone business would cost
14:33:12 9 Oracle up to \$200 million in maintenance revenue."
14:33:15 10 That's the mathematical formula that you described
14:33:19 11 earlier; right?

14:33:20 12 A. It appears to be.

14:33:21 13 Q. And that -- and "TomorrowNow would capture
14:33:24 14 15 percent of the PeopleSoft/JDE customer base and
14:33:28 15 takeaway over \$1.1 billion in maintenance revenues
14:33:33 16 between now and 2014."

14:33:42 17 A. I am sorry. I didn't know you were asking
14:33:44 18 a question. I thought you were stating it.

14:33:47 19 Q. I am confirming that that's what you said.

14:33:49 20 A. That's what I am reading here. Holding
14:33:51 21 those results steady, TomorrowNow would capture it,
14:33:57 22 yes.

14:33:58 23 Q. And third, "Holding those results steady
14:33:58 24 over a 10-year period SAP strategic pipeline would
14:33:59 25 increase by \$1 billion."

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14:34:03 1 A. I am reading it.

14:34:04 2 Q. That's accurate?

14:34:05 3 MR. FUCHS: Objection. Form.

14:34:09 4 MR. HOWARD: Q. That's what you said here

14:34:10 5 in this note.

14:34:14 6 A. Yes, that is what I said.

14:34:19 7 Q. And so, holding the results steady over a

14:34:22 8 10-year period, is it fair to say that there could

14:34:27 9 be a \$2.1 billion swing in revenue lost by Oracle

14:34:34 10 and pipeline gained by SAP?

14:34:40 11 MR. FUCHS: Objection. Form.

14:34:49 12 THE WITNESS: Can you repeat the question?

14:34:51 13 MR. HOWARD: Q. Yeah. So if you look at

14:34:52 14 two and three at the bottom together, is it fair to

14:34:55 15 say that if you hold those results steady over a

14:34:59 16 10-year period there would be a \$2.1 billion swing

14:35:08 17 consisting of revenue gained -- taken away by

14:35:16 18 TomorrowNow and SAP pipeline increased?

14:35:20 19 MR. FUCHS: Objection. Form.

14:35:22 20 THE WITNESS: No, I think you are mixing

14:35:30 21 apples and oranges. One is a pipeline and one is a

14:35:31 22 revenue number, making the assumption that you hold

14:35:32 23 them steady. They are two different numbers. I

14:35:33 24 don't know how -- I wouldn't say that I was adding

14:35:35 25 those numbers together.

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14:35:36 1 MR. HOWARD: Q. Right. But I am looking
14:35:37 2 at -- I am looking at sort of the overall financial
14:35:41 3 impact if you hold those results steady over a
14:35:46 4 10-year period. One impact is \$1.1 billion in
14:35:51 5 maintenance revenues taken away from Oracle between
14:35:57 6 2006 and 2014?

14:36:00 7 MR. FUCHS: Objection. Form.

14:36:04 8 MR. HOWARD: Q. That's point two?

14:36:11 9 A. Is that the end of your question?

14:36:13 10 Okay. I am sorry.

14:36:16 11 I believe that if you hold those percents
14:36:17 12 steady over a 10-year period that number two, as I
14:36:23 13 read it, would add up to that number.

14:36:27 14 Q. To \$1.1 billion in maintenance revenues
14:36:31 15 lost by Oracle between 2006 and 2014.

14:36:41 16 A. Yes.

14:36:43 17 Q. And a second impact would be an increase
14:36:45 18 of SAP's strategic pipeline by one billion dollars.

14:36:51 19 A. As best as I can read this, yes.

14:37:10 20 Q. Was Mr. Fiala an executive at TomorrowNow?

14:37:14 21 A. Yes. He was our vice president for
14:37:17 22 marketing, amongst other roles he had.

14:37:34 23 MR. HOWARD: Let me mark as Exhibit 1020
14:37:36 24 an e-mail chain, at the top from Steve Mann dated
14:37:39 25 June 21, 2006, with a copy to Andrew Nelson.