

# EXHIBIT 23

ANDREW NELSON February 26, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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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. )  
\_\_\_\_\_ )

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
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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TEXT REMOVED - NOT RELEVANT TO MOTION

10:22:42 3 Q. What was included within the rubric of  
10:22:45 4 maintenance support services in the way that you  
10:22:47 5 initially launched it at TomorrowNow?

10:22:53 6 A. Are you referring to some of the  
10:22:54 7 components of the service offering?

10:22:56 8 Q. Right.

10:23:03 9 A. Well, it involved speeding up the time in  
10:23:05 10 which initial response would occur. And I am not  
10:23:10 11 sure at the time whether it was an hour or two hours  
10:23:14 12 or 30 minutes. But, you know, customary for  
10:23:17 13 PeopleSoft was a 24-hour response time, as I best  
10:23:22 14 recall. And we wanted to be a lot more responsive,  
10:23:25 15 really drive service excellence, and that was a  
10:23:28 16 component of it.

10:23:30 17 We wanted to fix issues on older releases.  
10:23:38 18 And at the time the software company -- from my  
10:23:45 19 discussions with Seth Ravin, a business plan had  
10:23:47 20 been presented to PeopleSoft detailing how this --  
10:23:52 21 the idea of doing this extended support, and they  
10:23:57 22 weren't interested in the business.

10:23:59 23 And so when Seth came and presented it to  
10:24:01 24 me the idea was that there was still a business  
10:24:10 25 need, and that it would be valuable to customers who

10:24:13 1 needed more time on their older releases.

10:24:15 2 And so another big component of this was  
10:24:18 3 not just -- in the early days the big component was  
10:24:20 4 to extend the life of these old releases that were  
10:24:23 5 retired by the software vendor. So that was another  
10:24:28 6 big component of it.

10:24:30 7 Another component that I recall is to give  
10:24:34 8 a named support engineer for a client account, as  
10:24:42 9 opposed to giving them, you know, an annual service  
10:24:48 10 that did not include a named engineer, so that we  
10:24:51 11 could develop a sort of a support relationship with  
10:25:00 12 the customer, again being more personalized, so that  
10:25:01 13 they would call someone who more often than not  
10:25:02 14 would be their direct contact for resolving the  
10:25:04 15 issue, instead of just calling a generic 1-800  
10:25:12 16 number.

10:25:18 17 We had the concept as another component of  
10:25:21 18 our service offering that we were going to fix  
10:25:24 19 serious issues. And that means sort of different  
10:25:26 20 things to different people. But if the screen was  
10:25:33 21 not the right color -- I know you said you like your  
10:25:36 22 blue shirts. Well, if the color blue wasn't  
10:25:40 23 necessarily to your liking, that we didn't consider  
10:25:43 24 to be a serious issue. But if you couldn't process  
10:25:46 25 your payroll on a payroll system or you couldn't do

10:25:49 1 your year-end close, that's a serious issue. So  
10:25:52 2 this concept of fixing serious issues was another  
10:25:56 3 component that we focused on.

10:25:58 4 These are to the best of my recollection.  
10:26:00 5 There may be others. But that's the type of things  
10:26:03 6 that we did in supporting these releases, retired  
10:26:08 7 releases, in the very early days of our launch.

10:26:12 8 Q. One of the things you mentioned was fixing  
10:26:17 9 issues on older releases. Did that include in this  
10:26:20 10 early stage providing regularly scheduled tax and  
10:26:28 11 regulatory updates?

10:26:31 12 A. Yes.

10:26:37 13 Q. Had you been involved at all in the  
10:26:38 14 provision of support services in the way that you  
10:26:41 15 just described it while you were at PeopleSoft?

10:26:44 16 A. When you say while at PeopleSoft, do you  
10:26:47 17 mean while employed directly by PeopleSoft?

10:26:51 18 Q. Correct.

10:26:51 19 A. No, not that I can recall.

10:26:53 20 Now, just to make sure I am real clear,  
10:26:57 21 the upgrade process involves moving things, like I  
10:27:00 22 said, kind of from point A to point B.

10:27:04 23 A tax update, whether it's a major  
10:27:07 24 enterprise release or an individual fix, a tax  
10:27:10 25 update falls sort of on the simple side of that, but

10:27:13 1 still falls in there. So I would have applied tax  
10:27:16 2 updates most likely during that time frame. But in  
10:27:19 3 the way that I think you were asking the question,  
10:27:21 4 you were not including that. But if you were, then  
10:27:25 5 I did that work while employed.

10:27:26 6 Q. Right. Well, using that example, had you  
10:27:30 7 been involved in the development of new tax updates  
10:27:34 8 to send out to customers on releases of PeopleSoft  
10:27:35 9 software while you were employed by PeopleSoft?

10:27:39 10 A. Not that I can recall precisely, other  
10:27:42 11 than any generic testing that may have included  
10:27:44 12 those objects.

10:27:53 13 Q. Who was the first employee of TomorrowNow  
10:27:54 14 that did have experience in the development and  
10:27:56 15 delivery of tax and regulatory updates?

10:28:07 16 A. When you say the development and delivery,  
10:28:10 17 we -- I am not sure. I am not sure that I know.

10:28:18 18 Q. Well, let's limit it to development, if  
10:28:21 19 the two of them in the question is making it hard.

10:28:24 20 Who was the first employee at TomorrowNow  
10:28:26 21 who had experience in the development of tax and  
10:28:31 22 regulatory updates for PeopleSoft software?

10:28:34 23 A. Can you help me understand what you mean  
10:28:35 24 specifically by development?

10:28:38 25 Q. Well, what does development mean to you,

10:28:40 1 if I asked you what does it mean to develop a tax  
10:28:45 2 and regulatory update to deliver to a customer?

10:28:47 3 A. It could mean many different things. If  
10:28:50 4 it involved applying it, as opposed to really being  
10:28:54 5 the one that says, "How do I create something that  
10:28:58 6 never existed before?" that's kind of what I would  
10:29:01 7 assume would be the development.

10:29:02 8 Q. And I think that's what I intended with my  
10:29:04 9 question as well, so it sounds like we are on the  
10:29:06 10 same page.

10:29:07 11 A. Okay.

10:29:07 12 Q. So, a customer or set of customers needs a  
10:29:10 13 tax and regulatory update, because there has been  
10:29:14 14 changes, right, in the regulations that they need to  
10:29:17 15 adjust their software for. And somebody has got to  
10:29:21 16 come up with the code that is going to do that for  
10:29:24 17 them; right?

10:29:25 18 A. Sure.

10:29:27 19 Q. And so, am I right that you had not, up to  
10:29:30 20 this point in time, when TomorrowNow decided to  
10:29:32 21 offer this service, personally been involved in  
10:29:36 22 developing those kinds of tax and regulatory  
10:29:40 23 updates?

10:29:41 24 A. I had not been involved in development in  
10:29:44 25 the sense of creating something out of nothing while

10:29:47 1 I was employed at PeopleSoft as an employee.

10:29:51 2 Q. And had you done it at any point up to  
10:29:53 3 this time when TomorrowNow decided to offer this  
10:29:56 4 service, whether at PeopleSoft or not?

10:30:00 5 A. Indirectly, yes.

10:30:01 6 Q. What do you mean by that?

10:30:05 7 A. Well, in -- sometime in late 1999, while I  
10:30:07 8 was on one of my TomorrowNow consulting engagements,  
10:30:13 9 Seth Ravin made contact with me.

10:30:16 10 And at the time I am not sure what his  
10:30:18 11 role was at PeopleSoft. I think he was running a  
10:30:21 12 telesales team and doing other things. I am not  
10:30:24 13 sure of the full extent.

10:30:26 14 He called and asked me to come and be a --  
10:30:32 15 what was the role? Y2K sort of project manager.  
10:30:37 16 Because it was during the time of Y2K, where  
10:30:46 17 TomorrowNow was having to deal with all of this  
10:30:47 18 stuff.

10:30:48 19 In the course of doing many things during  
10:30:49 20 that time I got experience working with tax updates.

10:30:59 21 Q. Were you working for PeopleSoft in this  
10:31:01 22 Y2K work?

10:31:02 23 A. Well, he had called TomorrowNow, and he  
10:31:06 24 was employed at PeopleSoft at the time. But after  
10:31:12 25 we agreed to do the work, I think, because



10:31:15 1 PeopleSoft didn't want to have hundreds of  
10:31:18 2 relationships with individual contractors,  
10:31:22 3 PeopleSoft went through some third party and asked  
10:31:24 4 me at the time if I could just go through that third  
10:31:28 5 party as an individual.

10:31:30 6 So while he had made contact with me as  
10:31:32 7 TomorrowNow, the mechanism was such that I think I  
10:31:35 8 as an individual worked for this third party. I  
10:31:38 9 don't remember the -- their name.

10:31:41 10 Q. So, you, Andrew Nelson, not in your  
10:31:44 11 capacity as the owner of TomorrowNow, worked as a  
10:31:48 12 consultant for PeopleSoft through a third party  
10:31:53 13 relating to Y2K issues.

10:31:55 14 A. Initially, yes.

10:31:57 15 Q. Right. And how did that work expose you  
10:32:00 16 to the development of tax and regulatory updates?

10:32:04 17 A. Well, one of the challenges of the Y2K  
10:32:08 18 period was that before the software company was  
10:32:11 19 aware of all the Y2K concerns they had set release  
10:32:17 20 retirement dates for several of their products to  
10:32:20 21 retire merely weeks prior to Y2K, requiring these  
10:32:24 22 major upgrades, major surgery on the system, right  
10:32:28 23 before an event when most people were trying to lock  
10:32:32 24 down and freeze their systems.

10:32:34 25 And sort of, my guess, as evolution of the

10:32:39 1 fact that we dealt with client escalations back when  
10:32:43 2 I was employed, he knew that I could do that type  
10:32:46 3 of -- handle that type of complex things, with lots  
10:32:49 4 of balls going.

10:32:50 5 And a program was created to extend the  
10:32:54 6 life of these releases past Y2K. And to my  
10:32:59 7 recollection, that was the first  
10:33:02 8 PeopleSoft-specific, you know, from corporate  
10:33:07 9 extended support system that he had done, and he  
10:33:12 10 asked me to do that.

10:33:13 11 There were retrofits that were done by  
10:33:17 12 PSG, you know, to extend software in other cases.  
10:33:21 13 But that was the first time I was directly asked to  
10:33:24 14 lead the Y2K team and do that.

10:33:32 15 Q. When you refer to the first extended  
10:33:37 16 support system, are you referring to -- what do you  
10:33:42 17 mean by that?

10:33:47 18 A. Can you clarify when --

10:33:49 19 Q. You used the term that that was the first  
10:33:52 20 PeopleSoft-specific extended support system. What  
10:33:56 21 is --

10:33:57 22 A. That I had -- was directly involved in.

10:34:04 23 Q. That you were involved in. But by the  
10:34:05 24 term "extended support" -- because that was a term  
10:34:08 25 that was used at TomorrowNow, as well; right?

10:34:11 1 Extended support.

10:34:13 2 A. Mm-hmm.

10:34:13 3 Q. You have to answer audibly for the  
10:34:15 4 transcript.

10:34:15 5 A. Yes.

10:34:16 6 Q. By extended support do I understand you to  
10:34:21 7 mean the development of these types of, for example,  
10:34:25 8 tax and regulatory updates for releases that are  
10:34:29 9 past their maintenance end date?

10:34:31 10 A. Well, just to make sure I am as clear as  
10:34:34 11 possible, the software vendor sets a release  
10:34:38 12 retirement date. And extended support, as I  
10:34:44 13 understood it, was to extend the life of that  
10:34:48 14 release, with more support beyond the date set by  
10:34:51 15 the vendor.

10:34:58 16 Q. Included in that would be the delivery of  
10:35:00 17 the necessary tax and regulatory updates in order to  
10:35:03 18 stay current with laws and regulations as they  
10:35:07 19 change?

10:35:07 20 A. Generally, yes.

10:35:08 21 Q. And you used the term "retrofit." What  
10:35:10 22 did you mean by that?

10:35:17 23 A. The process in that extended support  
10:35:21 24 through which we provided the fixes to those  
10:35:24 25 customers who were needing that extended support

10:35:27 1 through Y2K.

10:35:29 2 Q. What would -- how would you describe that  
10:35:31 3 process more specifically?

10:35:43 4 A. We would -- the -- the customer still paid  
10:35:46 5 maintenance to the software company. And so they  
10:35:53 6 would -- while they had the rights to the new  
10:35:56 7 releases and the new updates and the new fixes,  
10:35:59 8 their business needs were to stay on the older  
10:36:01 9 release. But because they still had the rights to  
10:36:05 10 those new software updates as a typical part of  
10:36:10 11 annual maintenance, they would use that and, by  
10:36:16 12 looking at that new release and the new changes in  
10:36:19 13 that new release, and the old changes, they would go  
10:36:21 14 and try to retrofit, you know, the changes that were  
10:36:25 15 regulatory in the one release into the older release  
10:36:28 16 that they -- had business value at the time to  
10:36:31 17 continue to use.

10:36:32 18 Q. And is this part of what you were doing in  
10:36:34 19 the capacity of consulting to PeopleSoft and  
10:36:41 20 providing extended support to these customers around  
10:36:45 21 Y2K?

10:36:46 22 A. That's one of many things that I did, was  
10:36:49 23 to manage that overall process and to -- you know,  
10:36:52 24 to manage the process.

TEXT REMOVED - NOT RELEVANT TO MOTION

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11:07:34 19 MR. HOWARD: Q. Now, would you agree  
11:07:37 20 that, in the course of providing extended support  
11:07:40 21 services, TomorrowNow would from time to time use an  
11:07:42 22 environment that had originated from one customer's  
11:07:49 23 software in the course of creating a deliverable for  
11:07:53 24 a different customer?  
11:07:54 25 MR. FUCHS: Objection to form.

11:07:56 1 THE WITNESS: I am again hoping you can  
11:07:58 2 clarify "extended support." There are many  
11:08:04 3 different support offerings that we had at many  
11:08:07 4 different times with different products. If you  
11:08:09 5 could break that down for me, or somehow rephrase  
11:08:14 6 that, I would appreciate it.

11:08:16 7 MR. HOWARD: Q. Well, I am thinking of  
11:08:17 8 the services that TomorrowNow provided to customers  
11:08:21 9 who were still on maintenance, but for a release  
11:08:31 10 that had been de-supported by PeopleSoft. Is that a  
11:08:39 11 description that makes sense to you?

11:08:41 12 A. When you say "still on maintenance," we  
11:08:43 13 offered annual maintenance support services. Are  
11:08:47 14 you talking about our maintenance? When you say  
11:08:50 15 still on maintenance --

11:08:52 16 Q. I am talking about PeopleSoft maintenance.

11:08:55 17 A. Still on the original vendor's maintenance  
11:08:58 18 services?

11:08:58 19 Q. Right. But TomorrowNow is supporting a  
11:09:00 20 release which is being de-supported, like 702, for  
11:09:06 21 example.

11:09:07 22 A. Like HRMS 702?

11:09:11 23 Q. Correct.

11:09:11 24 A. Okay. So HRMS 702 becomes a retired  
11:09:16 25 release by the software vendor. And I am clear on

11:09:21 1 that.

11:09:21 2 Can you repeat the question? I am now  
11:09:24 3 thinking, I think, more clear --

11:09:25 4 Q. Sure.

11:09:25 5 A. -- on what you are talking about.

11:09:26 6 Q. And so for these customers in this  
11:09:29 7 universe TomorrowNow is providing this extended  
11:09:34 8 support services using this retrofit model of  
11:09:37 9 creating tax and regulatory updates; right?

11:09:42 10 MR. FUCHS: Objection to form.

11:09:46 11 THE WITNESS: When you say "this model,"  
11:09:47 12 can you -- can you help me understand the specific  
11:09:52 13 part of the model that you are referring to?

11:09:54 14 MR. HOWARD: Q. I am talking about the  
11:09:56 15 creation of tax and regulatory updates by  
11:09:59 16 retrofitting in the way that you have described that  
11:10:01 17 would be done. So, you would retrofit from a  
11:10:05 18 supported release to a de-supported release. Do you  
11:10:08 19 recall that?

11:10:09 20 A. At a very high level I do recall that. As  
11:10:12 21 I said before, there were, even in the example that  
11:10:16 22 you gave about how we even got the software, there  
11:10:18 23 are definitely differences between how it was done.  
11:10:23 24 But at a high level we did follow that, if that's  
11:10:25 25 what you mean by retrofit model.

TEXT REMOVED - NOT RELEVANT TO MOTION

11:16:59 4 MR. HOWARD: Q. All right. Now, we  
11:17:03 5 briefly touched on a different business model that  
11:17:09 6 TomorrowNow had adopted which related to the  
11:17:11 7 provision of support for currently supported  
11:17:14 8 releases; right?  
11:17:18 9 A. Releases that were currently supported by  
11:17:21 10 the vendor, by the software vendor.  
11:17:24 11 Q. Right.  
11:17:26 12 A. I recall we briefly touched on that.  
11:17:28 13 Q. And that's -- is that what was generally  
11:17:30 14 referred to within TomorrowNow as the critical  
11:17:33 15 support model?  
11:17:34 16 MR. FUCHS: Objection to form.  
11:17:38 17 THE WITNESS: That was one -- that would  
11:17:43 18 have been included as a component of that, but as a  
11:17:47 19 component only.  
11:17:50 20 MR. HOWARD: Q. And as part of the  
11:17:52 21 critical support offering, TomorrowNow would provide  
11:17:56 22 tax and regulatory updates for its customers on  
11:18:01 23 PeopleSoft HR software?  
11:18:09 24 A. Would have been customary, yes, that and  
11:18:14 25 other products.

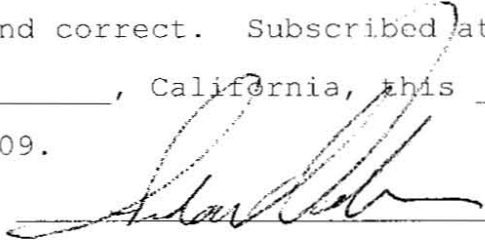


11:18:15 1 Q. And, for example, from the beginning of  
11:18:17 2 that model sometime in 2004, there were regularly  
11:18:23 3 scheduled tax and regulatory updates that  
11:18:27 4 TomorrowNow delivered to its customers in the  
11:18:29 5 critical support model; right?

11:18:32 6 A. Most likely, yes.

TEXT REMOVED - NOT RELEVANT TO MOTION

TEXT REMOVED - NOT RELEVANT TO MOTION

17:41:13 17 I declare under penalty of perjury the  
17:41:13 18 foregoing is true and correct. Subscribed at  
17:41:13 19 \_\_\_\_\_, California, this \_\_\_\_ day  
17:41:13 20 of \_\_\_\_\_, 2009.  
17:41:13 21   
17:41:13 22 Andrew Nelson  
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CERTIFICATE OF REPORTER

I, SARAH LUCIA BRANN, 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 in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the 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: March 2, 2009

Sarah Lucia Brann

SARAH LUCIA BRANN, CSR No. 3887