

EXHIBIT 23

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)

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.

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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

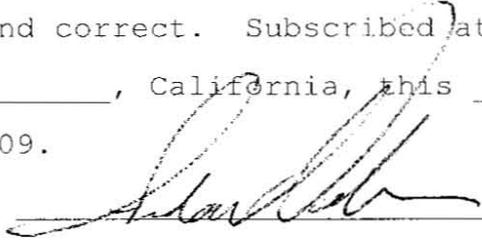
11:16:59 4 MR. HOWARD: Q. All right. Now, we
11:17:03 5 briefly touched on a different business model that
11:17:09 6 TomorrowNow had adopted which related to the
11:17:11 7 provision of support for currently supported
11:17:14 8 releases; right?
11:17:18 9 A. Releases that were currently supported by
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