

EXHIBIT 25

IN THE UNITED STATES DISTRICT COURT
FOR THE 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 : CA NO. 07-CV-01658 (MJJ)
:
V. :
:
SAP AG, A GERMAN, :
CORPORATION, SAP AMERICA, :
INC., A DELAWARE CORPORATION, :
TOMORROWNOW, INC., A TEXAS :
CORPORATION, AND DOES 1-50, :
INCLUSIVE, :
:
Defendants :

"HIGHLY CONFIDENTIAL"
VIDEOTAPED AND ORAL DEPOSITION OF
TOMORROWNOW BY AND THROUGH SHELLEY NELSON
VOLUME 3
APRIL 18, 2008

VIDEOTAPED AND ORAL DEPOSITION of SHELLEY NELSON,
produced as a witness at the instance of Counsel for the
Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on the 18th day of
April, 2008, from 8:27 a.m. to 5:00 p.m., before JANE E.
DEMARS, Certified Shorthand Reporter in and for the
State of Texas, reported by machine shorthand, at the
Law Offices of Graves, Dougherty, Hearon & Moody, 401
Congress Avenue, Austin, Travis County, Texas, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

TEXT REMOVED - NOT RELEVANT TO MOTION

20 Q Now, once you began your employment at
21 TomorrowNow, did you have a role in the development of
22 what are called critical support updates?

23 A The timing is a bit different. Not when I
24 initially began. Those didn't exist.

25 Q What, what do you understand by the term

09:12 1 "critical support updates"?

2 A The term "critical support" is more of a
3 marketing term, actually, and, and not one that we ended
4 up using. So in the scope of TomorrowNow, I believe
5 that the development team would consider critical
6 support as those regulatory changes in development that
7 are designed and scoped on our own versus retrofitted,
8 and, and developed from scratch.

9 Q And at what point were critical support
10 updates first created by TomorrowNow?

11 MR. LANIER: Object to form.

12 THE WITNESS: I don't know when the term
13 was initially established. I'm not exactly sure. Do
14 you -- I guess to rephrase that question, are you
09:13 15 wanting to know when we first developed updates from
16 scratch or when we first started calling them critical
17 support?

18 Q (BY MR. HOWARD) When did TomorrowNow first
19 create the type of update that became known as critical
20 support updates?

21 A At the end of 2003, so the fall of 2003.

22 Q Were you involved in that process?

23 A Yes.

24 Q What was your involvement?

25 A I, I had to do all the work on my own,

09:14 1 generally. It was for one client, and I had to do all
2 of it, so ...

3 Q What client was that?

4 A Municipality of Anchorage.

5 Q What product?

6 A It was for payroll and for accounts payable.

7 Q So you did the first critical support update
8 at TomorrowNow?

9 A Well, we didn't call it that, but yes.

10 Q What was it called at that time?

11 A Oh, I think it was called a client fix. It --
12 I don't know that we had a particular term for it. It,
13 it was not necessarily a, a, a business model that we
14 had built up in advance. This customer came to us and
09:15 15 said we can't pay maintenance anymore, our budget
16 doesn't allow us, can you help us, can you do this for
17 us. So, you know, I don't know that we had a, a term to
18 call it at that point in time.

19 Q What specific releases, in that first critical
20 support update, were you creating updates for?

21 A If, if my memory serves me correctly,
22 Municipality of Anchorage was on 7.5, HR 7.5 E and G,
23 education and government, which was a, a new release for
24 me, and the financials, 7.52, education and government.

25 Q When did the -- Did there come a time when

09:16 1 critical support updates were being created for more
2 than one customer?

3 MR. LANIER: Object to form.

4 THE WITNESS: There came a time when we
5 got more than one critical support customer, yes.

6 Q (BY MR. HOWARD) When was that?

7 A I, I believe it was in early 2004, maybe
8 February, that we got another client similar to
9 Municipality of Anchorage. I, I don't know the exact
10 start dates, but it was, it, there was an extended
11 period of time where it was just maybe a customer here
12 or there who, who needed our help. It wasn't, it wasn't
13 a main service offering.

14 Q When, in time, would you say that critical
09:17 15 support updates did become a main service offering at
16 TomorrowNow?

17 MR. LANIER: Object to form.

18 THE WITNESS: I, I believe in, in June of
19 2004 we began to, or the, the sales team began to
20 identify it as a service offering versus just having
21 clients come to us and say can you do this for us. It,
22 I'm not certain when our client count for that offering
23 became greater than the extended support offering. I,
24 I'm not sure when that date or milestone was hit.

25 Q (BY MR. HOWARD) Would you expect that it was

09:18

1 maybe sometime in 2005 that you had more clients
2 receiving critical support updates, as opposed to
3 retrofit updates?

4 A I actually would, by about mid 2005, expect
5 that that, that we would have had those as, as our main
6 customers, yeah.

7 Q So let's take that time period, then, for
8 purposes of discussion, in 2005. What was the process
9 of creating a critical support update?

10 A In mid 2005?

11 Q Yes.

09:19

12 A At a high level, I know the team went through
13 regular research and development to identify new
14 regulatory changes that would impact the software. They
15 would open up fixes when they identified those changes,
16 and individually develop and test those particular
17 fixes. They would, then, at a certain point in time,
18 bundle those fixes together, and, and do what, and kind
19 of bundle them together and do a bundle test, and then
20 document, package and deliver.

TEXT REMOVED - NOT RELEVANT TO MOTION

17:01

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CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
252	15	His was a very small	typo
256	15+16	customer should be employee	mis spoke
277	11	quips around "what about me"	
279	3	delete for	
319	17	7.02, 7.51, 8.31, 8.81	
320	6	sequel should be SQL	
325	8, 17	"	
327	1	"	
328	19	"	
330	7, 10, 12, 11	Advanced should be Advance	
342	2	7.75 should be 7.5	
342	10	delete line. Add "of only Eas tables and no application tables"	classification
355	18, 21	FG-75ZANC	ENG -> E+G
392	13	delivered	
448	19	Ziemann	
496	19	Newman	

I, SHELLEY NELSON, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

Shelley Nelson
SHELLEY NELSON

17:01

THE STATE OF TEXAS)
COUNTY OF TRAVIS)

BEFORE ME, Shelley Nelson, on this day personally appeared, known to me (proved to me on the oath of _____ or through Texas Drivers License (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 16th day of May, 2008.

Mandy Wheeler
Notary Public, In and For
The State of Texas



17:01

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SAN FRANCISCO DIVISION

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DELAWARE CORPORATION, ORACLE :
USA, INC., A COLORADO :
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Plaintiffs :CA NO. 07-CV-01658 (MJJ)

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SAP AG, A GERMAN, :
CORPORATION, SAP AMERICA, :
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TOMORROWNOW, INC., A TEXAS :
CORPORATION, AND DOES 1-50, :
INCLUSIVE, :

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12

Defendants :

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REPORTER'S CERTIFICATION
VIDEOTAPED AND ORAL DEPOSITION OF
SHELLEY NELSON

14

17:01

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I, JANE E. DEMARS, Certified Shorthand Reporter in
and for the State of Texas, do hereby certify that,
pursuant to the agreement of counsel, came on before me,
on _____, the following
named person, SHELLEY NELSON, who was duly sworn to
testify to the truth and nothing but the truth touching
and concerning the matters in controversy in this cause;
that he was thereupon carefully examined upon his oath
and his examination reduced to typewriting under my
supervision; and this deposition is a true record of the
testimony given by said witness.

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1 I further certify that I am neither attorney nor
2 counsel for, related to, nor employed by any of the
3 parties to the action in which this testimony was taken;
4 and, further, that I am not a relative or employee of
5 any attorney or counsel employed by the parties hereto
6 or financially interested in the action.

7 I further certify that the deposition transcript
8 was submitted on _____ to the witness or
9 to the attorney for the witness for examination,
10 signature and return to me by _____;


11 The original deposition was/was not returned to the
12 deposition officer on _____;

13 If returned, the attached Changes and Signature
14 page contains any changes and the reasons therefor;

15 If returned, the original deposition was delivered
16 to _____, Custodial Attorney;

17 That \$ _____ is the deposition officer's
18 charges to the Plaintiffs for preparing the original
19 deposition transcript and any copies of exhibits;

20 WITNESS MY HAND AND SEAL OF OFFICE, this 6
21 day of June, 2008.

22
23 
24 _____
Jane E. Demars, Texas CSR No. 2789
Expiration Date: 12-31-09
25 DepoTexas, Austin

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