

EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND 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
BRIAN S. SOMMER

FRIDAY, JUNE 25, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-429044)

14:53:06 1 MS. HOUSE: Q. And you'd agree you can't
14:53:09 2 generalize about whether a customer would switch
14:53:11 3 from manufacturer support based on whether they
14:53:14 4 just evaluate another alternative. Right?

14:53:17 5 MR. McDONELL: Vague and ambiguous.
14:53:18 6 Object to the form of the question. Incomplete
14:53:21 7 hypothetical.

14:53:23 8 THE WITNESS: If I were doing the
14:53:24 9 customer-by-customer review, I would want to see
14:53:26 10 something else in addition to that possibly, unless
14:53:30 11 there was just some -- I mean, somebody -- if
14:53:33 12 someone did a really, really detailed evaluation, I
14:53:36 13 would think that was somebody who was probably very
14:53:38 14 serious. If all they did was some very cursory,
14:53:42 15 well, I made a phone call, I'd need to see
14:53:45 16 something else.

14:53:46 17 This was all sort of a judgment call, and
14:53:48 18 this was outside of the scope of my piece of the
14:53:50 19 report or --

14:53:50 20 MS. HOUSE: Q. And you can't say whether
14:53:52 21 any TomorrowNow customer who ever evaluated another
14:53:54 22 third-party vendor would have actually chosen that
14:53:56 23 vendor. Right?

14:53:58 24 MR. McDONELL: Object to the form of the
14:53:58 25 question.

14:54:01 1 THE WITNESS: That any customer who looked
14:54:03 2 at something -- I'm sorry, just --

14:54:10 3 MS. HOUSE: Q. You're not saying whether
14:54:12 4 any TomorrowNow customer who ever evaluated another
14:54:15 5 third-party vendor would have actually chosen that
14:54:18 6 vendor if TomorrowNow wasn't around?

14:54:20 7 MR. McDONELL: Objection. Lack of
14:54:20 8 foundation, beyond the scope of this witness's
14:54:22 9 opinion.

14:54:25 10 THE WITNESS: I can't say with certainty
14:54:26 11 what they would have done or what they would have
14:54:28 12 found out if TomorrowNow was or wasn't there.

14:54:31 13 If TomorrowNow wasn't there, they may have
14:54:33 14 done, let's say, additional due diligence with
14:54:35 15 another vendor or provider. I don't know. That's
14:54:39 16 kind of an interesting hypothetical.

14:54:43 17 MS. HOUSE: Q. And you're not intending
14:54:44 18 to opine that any TomorrowNow customer who ever
14:54:47 19 considered or mentioned self-support actually would
14:54:49 20 have chosen self-support over TomorrowNow. Right?

14:54:51 21 MR. McDONELL: Object to the form of the
14:54:52 22 question.

14:54:54 23 THE WITNESS: I'm not saying that just
14:54:55 24 because they considered it, they would have gone
14:54:57 25 with it, just as I'm not saying that just because

14:55:00 1 they considered it, they could have done -- they
14:55:02 2 could have done it, too. I -- you know, I don't
14:55:04 3 know. You'd have to do a customer-by-customer
14:55:09 4 assessment.

TEXT REMOVED - NOT RELEVANT TO MOTION

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18:19:54 3 Okay. So looking at that first sentence,
18:19:58 4 that some customers possess the ability to
18:20:00 5 self-support their ERP software, do you understand
18:20:02 6 this to be a large or a small percentage of ERP
18:20:06 7 customers?

18:20:07 8 MR. McDONELL: Vague and ambiguous, object
18:20:08 9 to the form.

18:20:12 10 THE WITNESS: I can't answer it with any
18:20:13 11 kind of specificity, because some of the -- for
18:20:17 12 example, some PeopleSoft customers may be very
18:20:19 13 large organizations for the most part, and some
18:20:22 14 JD Edwards customers, particularly those on the
18:20:24 15 older AS/400 platforms, may be much smaller -- have
18:20:29 16 much smaller IT organizations and smaller
18:20:31 17 businesses.

18:20:31 18 So the answer is somewhat
18:20:33 19 customer-specific, and it may be a little bit
18:20:36 20 product-specific there.

18:20:37 21 Again, the only way you can determine the
18:20:39 22 ability to do self-support, you'd have to look at
18:20:41 23 like the record on every single customer to make
18:20:44 24 that determination.

18:20:45 25 MS. HOUSE: Q. Okay. You note on page

18:20:47 1 43, self-supporting customers -- ah, it's the last
18:20:57 2 paragraph before ii --

18:21:00 3 Self-supporting customers can take
18:21:02 4 advantage of other resources to assist them,
18:21:04 5 if needed. These software companies can
18:21:08 6 retain the services of software product
18:21:10 7 experts on a contract or permanent hire
18:21:14 8 basis. The cost to bring these individuals
18:21:16 9 in-house may be substantially less than what
18:21:19 10 a company is paying a software vendor for an
18:21:21 11 annual maintenance arrangement.

18:21:24 12 So you don't know if these other resources
18:21:27 13 are more expensive or not. Right?

18:21:30 14 MR. McDONELL: Object to the form of the
18:21:30 15 question.

18:21:38 16 THE WITNESS: First let me just correct
18:21:39 17 something.

18:21:40 18 I think I have a misstated word here. It
18:21:43 19 says, these software -- in the second sentence,
18:21:45 20 "these software companies." I think that should be
18:21:47 21 "customers," and my apologies on not catching that.
18:21:53 22 I think that's what it's supposed to say.

18:21:56 23 MS. HOUSE: Q. Okay.

18:21:59 24 A. And your question was, would those
18:22:00 25 retained experts necessarily cost more or less than

18:22:03 1 what comes from a software company?

18:22:05 2 Q. Right. Do you know?

18:22:08 3 A. I don't know.

18:22:09 4 Q. You don't know if they would be more or
18:22:10 5 less expensive than TomorrowNow, do you?

18:22:13 6 MR. McDONELL: Object to the form of the
18:22:14 7 question.

18:22:15 8 THE WITNESS: Again, I think that's going
18:22:17 9 to be on an case-by-case basis based on what kind
18:22:20 10 of people skills, whether independent, whether they
18:22:25 11 come from a very large consulting firm, what kind
18:22:27 12 of overhead rates and everything else they have.

18:22:29 13 I think that's again customer-specific and
18:22:32 14 outside the scope of my report.

TEXT REMOVED - NOT RELEVANT TO MOTION

18:53:02 1 THE VIDEO OPERATOR: Going off the record,
18:53:03 2 the time now is 6:52. This also will be the
18:53:07 3 conclusion of Tape 5.

18:53:09 4 (Time noted, 6:52 p.m.)

18:53:09 5 --o0o--

18:53:09 6 I declare under penalty of perjury that
18:53:09 7 the foregoing is true and correct. Subscribed at

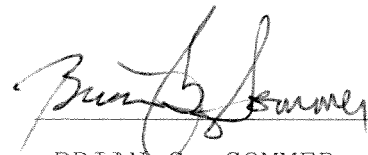
18:53:09 8 _____, California, this nd 22 day of

18:53:09 9 *July*, 2010.

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BRIAN S. SOMMER

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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: July 1st, 2010
Holly Thuman
HOLLY THUMAN, CSR