

# 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

TEXT REMOVED - NOT RELEVANT TO MOTION

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 <sup>nd</sup> 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