

EXHIBIT 1

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17 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DEFENDANTS' INITIAL EXPERT
DISCLOSURES**

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to the June 11, 2009 Pretrial Scheduling Order ("Pretrial Order"), Defendants
3 SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively, "Defendants") make the
4 following initial expert witness designations. Defendants will provide expert reports for the
5 following experts as ordered by the court in the Pretrial Order, as amended. Further, Defendants
6 provide these designations based on their current knowledge and the information currently
7 available to them. Defendants have not completed their investigation and discovery of all facts
8 relating to this case, and have not completed their preparation for trial.

9 Subject to and without waiving the foregoing, Defendants disclose the following person(s)
10 who Defendants may call at trial to present expert testimony and other evidence under Federal
11 Rule of Evidence 702, 703, or 705:

- 12 1. Name: Stephen K. Clarke
13 Address: LECG, LLC.
14 5130 N. Central Ave.
15 Phoenix, AZ 85012

16 General Subject of Testimony: Mr. Clarke will testify as a rebuttal witness to Mr.
17 Meyer, and to the extent that Mr. Meyer relies upon Mr. Pinto or his testimony, as a
18 rebuttal witness to Mr. Pinto, including, but not limited to, evaluating and critiquing
19 the opinions, analysis and conclusions drawn by Mr. Meyer regarding Plaintiffs'
20 alleged damages and the methodology used to arrive at those conclusions.

21 Rate for Deposition/Trial Testimony: \$ 450 /hour

22 Mr. Clarke's CV is attached as Exhibit A, which lists his prior testimony, including
23 any testimony relevant to the topics on which he will testify in this matter, and his
24 publications within the last ten years.

- 25 2. Name: Michael Gary Funck
26 Address: Intrepid Technology, Inc.
27 2155 Park Blvd.
28 Palo Alto, CA 94306

1 General Subject of Testimony: Mr. Funck will testify as a rebuttal witness to Mr.
2 Mandia, Dr. Levy, Mr. Meyer and Mr. Pinto, including, but not limited to, opinions
3 regarding TomorrowNow's business model and evaluating and critiquing the opinions,
4 analysis and calculations regarding the alleged types and scope of Defendants'
5 claimed infringement and alleged misuse of Oracle's alleged intellectual property and
6 Defendants' access to Oracle's support websites.

7 Rate for Deposition/Trial Testimony: \$400/hour

8 Mr. Funck's CV is attached as Exhibit B. A list of his prior testimony, including, but
9 not limited to, any testimony relevant to the topics on which he will testify in this
10 matter, is attached as Exhibit C. Exhibit D includes a list of all his publications for the
11 last ten years.

- 12 3. Name: David Garmus
13 Address: David Consulting Group
14 1770 E. Lancaster Avenue, Suite 15
15 Paoli, PA 19301

16 General Subject of Testimony: Mr. Garmus will testify as a rebuttal witness to Mr.
17 Pinto, and, to the extent they support or rely on Mr. Pinto, as a rebuttal witness to Mr.
18 Meyer and Mr. Lichtman, including, but not limited to, calculating, evaluating and
19 critiquing the utilization by Mr. Pinto of analytical models such as function point
20 analysis for estimating software development costs.

21 Rate for Deposition/Trial Testimony: \$ 150/hour

22 Mr. Garmus's CV is attached as Exhibit E, which lists his prior testimony, including,
23 but not limited to, any testimony relevant to the topics on which he will testify in this
24 matter, and his publications within the last ten years.

- 25 4. Name: Stephen Gray
26 Address: Gray & Yorg, LLC
27 1435 Highland Dr.
28 Solana Beach, CA 92075

1 General Subject of Testimony: Mr. Gray will testify as a rebuttal witness to Mr.
2 Mandia, Dr. Levy, Mr. Meyer, and Mr. Pinto, including, but not limited to, opinions
3 regarding TomorrowNow's business model and evaluating and critiquing the opinions,
4 analysis and calculations regarding the alleged types and scope of Defendants'
5 claimed infringement and alleged misuse of Oracle's alleged intellectual property and
6 Defendants' access to Oracle's support websites.

7 Rate for Deposition/Trial Testimony: \$370/hour

8 Mr. Gray's CV is attached as Exhibit F. A list of his prior testimony, including, but
9 limited to, any testimony relevant to the topics on which he will testify in this matter,
10 is attached as Exhibit G. He has no publications within the last ten years.

- 11 5. Name: Ralph Oman
12 Address: George Washington University Law School
13 2000 H Street, NW
14 Washington, DC 20052

15 General Subject of Testimony: Mr. Oman will testify about copyright issues and the
16 limitations on intellectual property protection for software, will rebut the subject
17 matter of Mr. Lichtman's report and testimony, and, to the extent that Mr. Mandia,
18 Mr. Pinto, and Mr. Meyer either support or rely on Mr. Lichtman's report or
19 testimony, Mr. Oman will rebut the subject matter of their respective reports and
20 testimony.

21 Rate for Deposition/Trial Testimony: \$350/hour

22 Mr. Oman's CV is attached as Exhibit H. A list of his prior testimony, including, but
23 limited to, any testimony relevant to the topics on which he will testify in this matter,
24 is attached as Exhibit I. Exhibit J includes a list of all his publications for the last ten
25 years.

- 26 6. Name: Donald J. Reifer
27 Address: Reifer Consultants, Inc.
28 14820 N. Dragons Breath Lane

1 Prescott, AZ 86305.

2 General Subject of Testimony: Mr. Reifer will testify as a rebuttal witness to Mr.
3 Pinto, and, to the extent that Mr. Meyer and Mr. Lichtman support or rely on Mr.
4 Pinto's report or testimony, as a rebuttal witness to Mr. Meyer and Mr. Lichtman,
5 including, but not limited to, evaluating and critiquing the opinions, analysis and
6 conclusions drawn by Mr. Pinto regarding estimation of costs associated with software
7 product development (including, but not limited to, on-line models for making such
8 estimates) and the opinions, analysis and methodology used to arrive at those
9 conclusions.

10 Rate for Deposition/Trial Testimony: \$ 500 /hour

11 Mr. Reifer's CV is attached as Exhibit K. A list of his prior testimony, including, but
12 limited to, any testimony relevant to the topics on which he will testify in this matter,
13 and his publications within the last ten years is attached as Exhibit L.

14 7. Name: Reed Simpson

15 Address: Computer/Legal Consultants, Inc.

16 5267 West Highland Drive, Suite 100

17 Coeur d'Alene, ID 83814

18 General Subject of Testimony: Mr. Simpson will testify as a rebuttal witness to Mr.
19 Mandia, Dr. Levy, Mr. Meyer and Mr. Pinto, including, but not limited to, opinions
20 regarding TomorrowNow's business model and evaluating and critiquing the opinions,
21 analysis and calculations regarding the alleged types and scope of Defendants'
22 claimed infringement and alleged misuse of Oracle's alleged intellectual property and
23 Defendants' access to Oracle's support websites.

24 Rate for Deposition/Trial Testimony: \$400/hour

25 Mr. Simpson's CV is attached as Exhibit M, which lists his prior testimony, including,
26 but not limited to, any testimony relevant to the topics on which he will testify in this
27 matter. He has no publications within the last ten years.

28 8. Name: Brian S. Sommer

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Address: TechVentive, Inc.
857 Ravinia Ct.
Bitavia, IL 60510

General Subject of Testimony: Mr. Sommer will testify as a rebuttal witness to Mr. Meyer, Mr. Pinto, and Mr. Mandia, evaluating and critiquing the opinions, analysis and conclusions drawn by Mr. Meyer, Mr. Pinto, and Mr. Mandia regarding the enterprise software and IT professional services industries.

Rate for Deposition/Trial Testimony: \$250 /hour

Mr. Sommer's CV is attached as Exhibit N. A list of his publications within the last ten years is attached as Exhibit O. He has not testified in any matters in the last four years.

9. Name: Bruce Spencer, PhD

Address: Spencer Statistics, Inc.
1404 Asbury Avenue
Evanston, IL 60201-4109

General Subject of Testimony: Dr. Spencer will testify as a rebuttal witness to Dr. Levy and Mr. Mandia, including, but not limited to, evaluating and critiquing the opinions and statistical and sampling analyses and methods employed by Dr. Levy in Dr. Levy's attempt to extrapolate occurrences from a sample to a larger population as well as the data and opinions provided to Dr. Levy by Mr. Mandia for Dr. Levy's analysis.

Rate for Deposition/Trial Testimony: \$650/hour

Dr. Spencer's CV is attached as Exhibit P, which includes a list of all publications for the last ten years. A list of his prior testimony, including, but not limited to, any testimony relevant to the topics on which he will testify in this matter, is attached as Exhibit Q.

10. Name: Walter Henry Alfons Vandaele, PhD

Address: LECG, LLC

1 1725 Eye Street, N.W., Suite 800

2 Washington, DC 20006

3 General Subject of Testimony: Dr. Vandaele will testify as a rebuttal witness to Dr.
4 Levy and Mr. Mandia, including, but not limited to, evaluating and critiquing the
5 opinions and statistical and sampling analyses and methods employed by Dr. Levy in
6 Dr. Levy's attempt to extrapolate occurrences from a sample to a larger population as
7 well as the data and opinions provided to Dr. Levy by Mr. Mandia for Dr. Levy's
8 analysis.

9 Rate for Deposition/Trial Testimony: \$685/hour

10 Dr. Vandaele's CV is attached as Exhibit R, which contains a list of his publications
11 (there were no publications within the last ten years) and a list of his prior testimony,
12 including but not limited to, any testimony relevant to the topics on which he will
13 testify in this matter.

14
15 Dated: January 22, 2010

Jones Day

16
17 By: 

18 Jason McDonnell

19 Counsel for Defendants
20 SAP AG, SAP AMERICA, INC., and
21 TOMORROWNOW, INC.

1 **PROOF OF SERVICE**

2 I, Christine Lok, declare:

3 I am a citizen of the United States and employed in San Francisco County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is 555 California Street, 26th Floor, San Francisco, California 94104. On January 22,
6 2010, I served a copy of the within document(s):

7 **DEFENDANTS' INITIAL EXPERT DISCLOSURES**

- 8
- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at San Francisco, California addressed as
13 set forth below.
- 14 by placing the document(s) listed above in a sealed _____ envelope and
15 affixing a pre-paid air bill, and causing the envelope to be delivered to a
16 agent for delivery.
- 17 by personally delivering the document(s) listed above to the person(s) at the
18 address(es) set forth below.
- 19 by transmitting via e-mail or electronic transmission the document(s) listed above
20 to the person(s) at the e-mail address(es) set forth below.

21 Geoffrey M. Howard
22 Zachary J. Alinder
23 Bree Hann
24 Holly A. House
25 BINGHAM McCUTCHEN LLP
26 Three Embarcadero Center
27 San Francisco, CA 94111-4067
28 geoff.howard@bingham.com
Zachary.alinder@bingham.com
Bree.hann@bingham.com
Holly.house@bingham.com

29 I am readily familiar with the firm's practice of collection and processing correspondence
30 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same

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day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 22, 2010, at San Francisco, California.



Christine Lok