

1 Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
2 Elaine Wallace (SBN 197882)
JONES DAY
3 555 California Street, 26th Floor
San Francisco, CA 94104
4 Telephone: (415) 626-3939
Facsimile: (415) 875-5700
5 ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
8 JONES DAY
1755 Embarcadero Road
9 Palo Alto, CA 94303
Telephone: (650) 739-3939
10 Facsimile: (650) 739-3900
tglanier@jonesday.com
11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
13 JONES DAY
717 Texas, Suite 3300
14 Houston, TX 77002
Telephone: (832) 239-3939
15 Facsimile: (832) 239-3600
swcowan@jonesday.com
16 jlfuchs@jonesday.com

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

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

23 ORACLE CORPORATION, *et al.*,
24 Plaintiffs,
25 v.
26 SAP AG, *et al.*,
27 Defendants.

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

**REDACTED DECLARATION OF
SCOTT W. COWAN
IN SUPPORT OF DEFENDANTS'
ESTIMATED DOCUMENT REVIEW
AND PRODUCTION COSTS**

1 Based on my personal knowledge, information and belief, I, Scott W. Cowan, declare:

2 **Introduction**

3 1. My name is Scott W. Cowan. I am an attorney and partner with the law firm of Jones
4 Day. I have been practicing law for fifteen years and am admitted to practice before the
5 United States Court of Appeals for the Fifth Circuit and all state and federal courts in
6 Texas. I have been admitted *pro hac vice* in this case and am routinely admitted to
7 practice *pro hac vice* in other jurisdictions outside of my home state, Texas. Jones Day
8 represents Defendants in this case and I have been actively involved in the defense of
9 this case since shortly after it was filed in March 2007. Part of my responsibilities for
10 the defense of this case includes managing several Jones Day associates involved in the
11 document review and production process. I am personally involved in reviewing and
12 approving all of the contract attorney and e-discovery vendor invoices related to
13 Defendants' document review and production in this case. Moreover, I, and others at
14 my direction, have gathered additional information to further calculate the other
15 associated fees, costs and expenses related to Defendants' document review and
16 production in this case in order to arrive at the estimates contained in this declaration.
17 Given that I have necessarily relied on information from several sources in order to
18 arrive at the estimates contained herein, not all of the foregoing information is based on
19 my personal knowledge. Nonetheless, after reviewing the information that has been
20 provided at my request, I have formed a good faith belief that the foregoing estimated
21 costs are true and accurate. Nothing in this declaration is intended to waive, or should
22 be construed as a waiver of, the attorney-client or attorney work product privileges.

23 **Estimated Overall Cost of Production per Custodian**

24 2. Defendants' estimated total cost of document production per custodian in this case can
25 be divided into three categories: (1) technology vendor loading/processing costs; (2)
26 first level electronic review costs; and (3) second level review costs, including
27 electronic and hard copy review as well as privilege review and logging.

28

- 1 3. The estimated average technology vendor cost is \$18,921 per custodian. This figure
2 does not include the actual collection costs, including domestic and international travel,
3 use of the e-discovery review tool Attenex, or any vendor charges for consulting time.
- 4 4. The estimated average first level electronic review cost is \$41,076 per custodian. This
5 figure does not include the cost for the German language document review or the costs
6 associated with training the contract attorneys for the document review in this case.
- 7 5. The estimated average second level review cost is \$36,024 per custodian. This figure
8 does not include training time, the cost for the German language document review,
9 certain senior associate supervision time, partner time or legal assistant time.
- 10 6. Combining the figures in paragraphs 3 through 5 above, the overall estimated cost of
11 Defendants' document review and production is \$96,021 per custodian.¹

12 **Estimated Technology Vendor Costs**

- 13 7. The technology vendor used by Defendants to facilitate the document review and
14 production process is Forensic Consulting Solutions, Inc. ("FCS"), which is based in
15 Phoenix, Arizona. FCS works closely with Jones Day to collect data from custodians
16 and process and load that data into the review tool used by the first and second level
17 electronic review teams. The software that FCS and Jones Day are using for document
18 review and production in this case is the Attenex® Patterns® software, which is
19 designed for the review, processing and management of electronically stored
20

21 ¹ This total figure is \$6,479 less than the previous estimate of \$102,500 per
22 custodian that was provided to Oracle's counsel via e-mail on June 19, 2008 (a copy of which
23 was shown to the Court during the July 1, 2008 Discovery Conference). However, the total figure
24 of \$96,021 contained in this declaration is still very close (*i.e.*, just \$3,979 below) the
25 approximate \$100,000 per custodian general cost estimate that Defendants' have consistently
26 asserted. This revised total figure of \$96,021 reflects: (a) further scrutiny and refinement of the
27 previous technology vendor cost and legal fee estimates; (b) deletion of certain other fees, costs
28 and expenses (*e.g.*, German language review, contract lawyer training costs, and costs related to
certain aspects of the partner-level supervision of, and legal assistant involvement in, Defendants'
document review and production that cannot be more accurately calculated at this time); and (c)
inclusion of historical costs for additional custodians that were not contained in Defendants'
earlier estimates.

1 information.² The review component of Attenex is called the “Document Mapper” and
2 the processing component of Attenex is called the “Workbench.”

3 8. The cost for Attenex Workbench fees starts at [REDACTED] per megabyte and decreases to [REDACTED]
4 per megabyte as the volume of megabytes increases.³ Attenex Workbench is the
5 processing tool used for file management that allows Defendants to prepare the files for
6 review in Attenex Document Mapper. This cost per megabyte includes, but is not
7 limited to, readying the data to be loaded into Attenex Workbench, de-duplicating the
8 data, and implementing the agreed date restrictions. The cost for loading the data into
9 Attenex Document Mapper starts at [REDACTED] per megabyte and decreases to [REDACTED] per
10 megabyte as the volume of megabytes increases.⁴

11 9. Defendants have produced documents for 43 custodians to date and are currently in the
12 process of reviewing documents for 9 additional custodians, with even more custodians’
13 documents scheduled for sequential review and production. The 9 custodians currently
14 underway are at differing stages in the review process. The estimated technology
15 vendor costs per custodian contained in this declaration are calculated based on the total
16 of 52 custodians that have been reviewed and produced, or are in process of being
17 reviewed and produced, by Defendants in this case.

18 10. The total number of megabytes loaded into Attenex Workbench for these 52 custodians
19 is 492,822 MB. The average number of megabytes loaded into Attenex Workbench for
20 these 52 custodians is 9,477 MB/custodian. Once the appropriate date restrictions, etc.,
21 have been applied during the “Workbench” phase of the data loading process, the total
22 number of megabytes that have been further loaded into Attenex Document Mapper for
23 these 52 custodians is 232,914 MB. Thus, the average number of megabytes loaded

24 ² See http://www.attenex.com/products_services/attenex_patterns_suite.aspx

25 ³ The pricing structure for Workbench has four tiers which are Tier 1 (1-102,400
26 MB) [REDACTED], Tier 2 (102,401-204,800 MB) [REDACTED], Tier 3 (204,801-358,400 MB) [REDACTED], and Tier 4
27 (358,401 MB and above) [REDACTED].

28 ⁴ The pricing structure for Document Mapper has two tiers which are Tier 1 (1-122,880
MB) [REDACTED] and Tier 2 (122,881 MB and above) [REDACTED].

1 into Attenex Document Mapper for the 52 custodians is 4,479 MB/custodian. The total
2 number of documents in Attenex Document Mapper for the 52 custodians is 2,558,574,
3 which equates to an average of 49,203 documents per custodian that are loaded into,
4 and reviewed in, Attenex Document Mapper. The total number of documents produced
5 to date for the fully reviewed 43 custodians is 691,357, which equates to an average of
6 16,078 documents per custodian. The total number of gigabytes of tiffed documents
7 that Defendants have produced to date is 52.51 GB. FCS' charge for tiffing the data is
8 [REDACTED] per gigabyte.

9 11. Based on the foregoing detail description of the costs, the total⁵ estimated technology
10 vendor cost for Defendants document review and production is \$18,921 per custodian.⁶

11 12. During the preparation of this declaration, I asked the appropriate representatives from
12 FCS to review paragraphs 7 through 11 above. They have complied with that request
13 and have indicated to me that the statements and related estimates contained in those
14 paragraphs are true and accurate.

15 **Estimated First Level Electronic Review Costs**

16 13. Defendants currently have 45 contract attorneys conducting the first level electronic
17 review. The company providing and invoicing for their services is Providus. Providus
18 bills the lead contract attorney at [REDACTED] per hour. They bill two English language
19 reviewing contract attorneys at [REDACTED] per hour. And, the remaining 37 English language
20 reviewing contract attorneys are billed at [REDACTED] per hour. The weighted average cost for
21 the English language reviewing contract attorneys is [REDACTED] per hour. In addition, there are
22 five German language reviewing contract attorneys, who are billed at [REDACTED] per hour.

23 ⁵ This estimated total cost does not include actual collection costs, including travel
24 domestically or internationally and the attorney time during the collection process, use of
25 Attenex, or consulting time. In addition, there is a [REDACTED] per user per month charge to access the
26 review platform. Currently, Defendants have engaged a total of 91 authorized Attenex users, for
a total of [REDACTED] in charges each month. This monthly recurring charge is not included in the
estimated total technology vendor costs or overall cost of production per custodian.

27 ⁶ This figure is the combination of the average Workbench charge per custodian of
28 [REDACTED], plus the average Document Mapper charge per custodian of [REDACTED], plus the average tiffing
cost per custodian of [REDACTED].

1 14. The current average review rate for the English language review is 73 documents per
2 hour. The contract attorneys conduct a page by page review of every document loaded
3 into Attenex Document Mapper for a custodian. The English language contract
4 attorneys review on average 1.22 documents per minute. The statistics for the average
5 review are based on a weekly status report provided to Jones Day from FCS, and data
6 from the March 9 to June 28, 2008 reports were used to calculate the average review
7 rates noted above.

8 15. The average number of documents in Attenex for the 52 custodians is 49,203
9 documents per custodian. The contract attorneys review 73 documents per hour on
10 average. The average number of documents per custodian divided by the average
11 number of documents per hour multiplied by the weighted average cost per hour for the
12 English language reviewing contract attorneys, equals the total estimated cost of the
13 contract attorney time spent on the first level electronic review, or █████ per custodian.
14 This number does not include the German language review, which is slower and more
15 expensive than the English language review. Moreover, this estimate does not include
16 the cost to train the contract attorneys or the time the contract attorneys spend
17 performing quality control checks of their work, which are not detailed here.

18 16. An additional █████ per custodian was conservatively calculated for the time the Jones
19 Day associate in charge of the first level review spends supervising the review site.
20 With this supervision cost, the total estimated cost of the first level electronic review is
21 \$41,076 per custodian.

22 **Estimated Second Level Review Costs**

23 17. Since Defendants' document review and production began, 33 Jones Day associates
24 have devoted a substantial amount of their time to the second level electronic review.
25 Currently, there are 14 Jones Day associates reviewing on a daily basis.⁷ The Jones

26 ⁷ These 14 Jones Day associates combined with the 45 contract lawyers from
27 Providus make up a total force of 59 lawyers who are working daily on Defendants' document
28 review and production in this case. And, since Defendants' document review and production first
began, a total of 78 lawyers have devoted a substantial amount of their time for Defendants'
document review and production in this case.

1 Day associate in charge of the second level review keeps a spreadsheet of all of the
2 assignments that have been reviewed for the 43 custodians that have been produced.
3 Each assignment is created by FCS based on criteria determined by Jones Day.

4 18. The second level electronic review costs were calculated based on an average number of
5 second level review assignments per custodian being 15.9 assignments, with an average
6 of 312 documents per assignment. The throughput of the second level review, which
7 involves even closer scrutiny than the first level review, is estimated to be at an average
8 rate of approximately 50 documents reviewed per hour at an average billable rate of
9 \$261 per hour. This average billable rate was calculated by adding the current billable
10 rates for the second level reviewers and dividing by the total number of second level
11 reviewers. Based on these metrics, the estimated cost of the second level electronic
12 review is \$25,895 per custodian.

13 19. An additional \$890 per custodian was conservatively calculated for the time the Jones
14 Day associate in charge of the second level review spends distributing assignments,
15 answering questions from review team, and conducting production quality control.

16 20. The hard copy review costs were calculated based on 999 hours spent on the review of
17 43 custodians produced to date at an average billable rate of \$244.50 per hour, which
18 results in an estimated total cost of the hard copy review of \$5,680 per custodian.

19 21. The privilege review and logging was calculated based on 541.6 hours spent on the final
20 privilege review of 42 custodians who have had a privilege review to date at an average
21 billable rate of \$276 per hour, which results in an estimated total cost of the privilege
22 review of \$3,559 per custodian.

23 22. The total estimated cost of the second level review, including the supervision costs,
24 hard copy review and the privilege review and logging, is \$36,024 per custodian. This
25 number does not include the German language review, which is much slower and more
26 expensive than the English review. Further, the total cost does not include all of the
27 senior associates' time or any partners' time in answering questions and helping to
28 supervise and manage the review, or any legal assistants' time in preparing the data for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

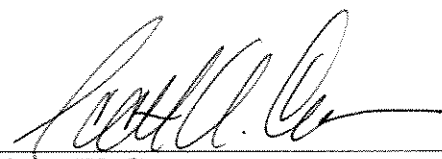
production. The total cost also does not include the cost of training the Jones Day second level review team.

Defendants' Total Estimated Document Review and Production Costs

- 23. As detailed in paragraphs 7 through 12 above, the estimated average technology vendor cost is \$18,921 per custodian. This figure does not include the actual collection cost, including domestic and international travel, use of the e-discovery review tool Attenex, or any vendor charges for consulting time.
- 24. As detailed in paragraphs 13 through 16 above, the estimated average first level electronic review cost is \$41,076 per custodian. This figure does not include the cost for the German language document review or training time.
- 25. As detailed in paragraphs 17 through 22 above, the estimated average second level electronic cost is \$36,024 per custodian. This figure does not include training time, the cost for the German language document review, certain senior associate time, partner time and legal assistant time.
- 26. Combining the three subcategories in paragraphs 23 through 25 above, Defendants' total estimated document review and production costs is \$96,021 per custodian.

///

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 7th day of July, 2008 in Houston, Texas.

3
4
5 

6 Scott W. Cowan

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28