

1 BINGHAM MCCUTCHEN LLP
DONN P. PICKETT (SBN 72257)
2 GEOFFREY M. HOWARD (SBN 157468)
ZACHARY J. ALINDER (SBN 209009)
3 BREE HANN (SBN 215695)
Three Embarcadero Center
4 San Francisco, CA 94111-4067
Telephone: 415.393.2000
5 Facsimile: 415.393.2286
donn.pickett@bingham.com
6 geoff.howard@bingham.com
holly.house@bingham.com
7 zachary.alinder@bingham.com
bree.hann@bingham.com

8 BOIES, SCHILLER & FLEXNER LLP
9 DAVID BOIES (Admitted Pro Hac Vice)
333 Main Street
10 Armonk, NY 10504
Telephone: (914) 749-8200
11 Facsimile: (914) 749-8300
dboies@bsflfp.com

12 STEVEN C. HOLTZMAN (SBN 144177)
13 FRED NORTON (SBN 224725)
1999 Harrison St., Suite 900
14 Oakland, CA 94612
Telephone: (510) 874-1000
15 Facsimile: (510) 874-1460
sholtzman@bsflfp.com
fnorton@bsflfp.com

16 DORIAN DALEY (SBN 129049)
17 JENNIFER GLOSS (SBN 154227)
500 Oracle Parkway, M/S 5op7
18 Redwood City, CA 94070
Telephone: 650.506.4846
19 Facsimile: 650.506.7144
dorian.daley@oracle.com
jennifer.gloss@oracle.com

20 Attorneys for Plaintiffs Oracle USA, Inc., *et*
21 *al.*

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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

25 Plaintiffs,

26 v.

27 SAP AG, *et al.*,

28 Defendants.

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

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

Scott W. Cowan (Admitted Pro Hac Vice)
Joshua L. Fuchs (Admitted Pro Hac Vice)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600
swcowan@jonesday.com
jlfuchs@jonesday.com
Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

No. 07-CV-01658 PJH (EDL)

**STIPULATION AND [PROPOSED] ORDER
REGARDING DEADLINE TO ACCEPT OR
REJECT REMITTITUR**

Date: N/A

Time: N/A

Place: 3rd Floor, Courtroom 3

Judge: Hon. Phyllis J. Hamilton

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation and Siebel Systems,
2 Inc. (“Oracle”) and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
3 (“Defendants” and together with Oracle the “Parties”) submit this Stipulation and [Proposed]
4 Order regarding the deadline for Oracle to accept or reject the remittitur.

5 WHEREAS, on September 1, 2011, this Court granted “a new trial as to actual
6 damages, conditioned on Oracle’s rejection of a remittitur to \$272 million” and ordered that
7 “Oracle shall submit a statement accepting or rejecting the remittitur no later than September 30,
8 2011 (or the parties shall submit a stipulated request for additional time, if necessary).” ECF No.
9 1081 at 20:13-19;

10 WHEREAS, on September 16, 2011, this Court extended the deadline to accept or
11 reject the remittitur “until after this court has fully considered Oracle’s request for an order
12 certifying a request for interlocutory review, and has determined what if any question(s) may be
13 certified; and for an additional 30 days beyond the date the Ninth Circuit either approves or
14 denies any such application.” ECF No. 1088 at 2:2-5;

15 WHEREAS, if the Court denies Oracle’s request for certification, the Ninth
16 Circuit will not approve or deny such application and the 30-day deadline will not run; and

17 WHEREAS the Parties desire to ensure that Oracle’s deadline to accept or reject
18 the remittitur will not expire while an interlocutory appeal is pending.

19 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND REQUEST
20 THE COURT TO ORDER that Oracle shall submit a statement accepting or rejecting the
21 remittitur no later than:

22 (1) 30 days after issuance of an order by this Court denying Oracle’s pending
23 motion for certification (ECF No. 1089);

24 (2) if this Court grants Oracle’s pending motion for certification, 30 days after
25 issuance of an order by the Ninth Circuit denying application for leave to appeal;

26 (3) if this Court grants Oracle’s pending motion for certification, the Ninth Circuit
27 grants leave to appeal, and the Ninth Circuit affirms the Court’s Order Granting Defendants’
28 Motion for JMOL, and Motion for New Trial; Order Denying Plaintiffs’ Motion for New Trial;

