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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.

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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;

1 Order Partially Vacating Judgment (ECF No. 1081), 30 days after issuance of the Ninth Circuit's
2 mandate; provided that the Parties hereby stipulate that the Ninth Circuit's issuance of its
3 mandate shall be stayed pending any petition for certiorari and, if the Supreme Court grants
4 certiorari, until the Supreme Court's final disposition.

5
6 DATED: October 31, 2011

BINGHAM McCUTCHEN LLP

7 By: _____ /s/ Geoffrey M. Howard
8 Geoffrey M. Howard

9 Attorneys for Plaintiffs Oracle USA, Inc., et al.

10 In accordance with General Order No. 45, Rule X, the above signatory attests that
11 concurrence in the filing of this document has been obtained from the signatory below.

12
13 DATED: October 31, 2011

JONES DAY

14 By: _____ /s/ Tharan Gregory Lanier
15 Tharan Gregory Lanier

16 Counsel for Defendants
17 SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19
20
21
22
23 DATED: November 8, 2011

Hon. Phyllis J. Hamilton
United States District Court

