

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

22 ORACLE CORPORATION, et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

Case No. 07-CV-1658 PJH

**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF CLAWED BACK
DOCUMENTS**

Date: N/A
Time: N/A
Courtroom: E, 15th Floor
Judge: Hon. Elizabeth D. Laporte

1 Plaintiffs Oracle Corporation, Oracle USA, Inc. and Oracle International Corporation
2 (together, "Oracle") have filed a Motion to Compel Production of Clawed Back Documents. The
3 issues raised by Plaintiffs' motion are

4 1. Whether Contested Documents¹ Nos. 2, 3 and 4 contain privileged attorney-client
5 communications thereby entitling Defendants to withhold the privileged portions of those
6 documents on that basis.

7 2. Whether Defendants have implicitly or selectively waived the attorney-client
8 privilege relating to Defendants' in-house counsel's creation and interpretation of the Rules of
9 Engagement thereby requiring production of those portions of Contested Documents 4, 5 and 6
10 that Defendants are withholding on the basis of the attorney-client privilege.

11 The Court has carefully reviewed each of the contested documents *in camera* and
12 considered all of the parties' papers and related declarations in support or opposition thereof. The
13 Court ORDERS as follows:

14 1. Contested Documents Nos. 2, 3 and 4 contain privileged attorney-client
15 communications thereby entitling Defendants to withhold the privileged portions of those
16 documents on that basis.

17 2. Defendants have not implicitly or selectively waived the attorney-client privilege
18 relating to Defendants' in-house counsel's creation and interpretation of the Rules of
19 Engagement, and thus have properly withheld the privileged portions of Contested Documents 4,
20 5 and 6.

21 3. In the future, no party may access, review or analyze any clawed back document
22 for any purpose in this case unless and until this Court, through the appropriate motion process,
23 finds that the clawed back document is not privileged. Any clawed back document still in any
24 party's possession (other than one copy contained on the original production CDs/DVDs, which

25 _____
26 ¹ As Plaintiffs' noted in their opening brief, the parties no longer have a dispute
27 concerning the production of one of the documents which originally served as the basis for the
28 motion. *See* Plaintiffs' Motion at n. 3. This Court respectfully declines Plaintiffs' invitation to
provide an advisory opinion on that particular document. As such, there are only five documents
at issue in this motion at present. However, for the sake of simplicity, this order refers to the
documents as they were originally labeled in Plaintiffs' motion.

1 shall be held and used for disaster recovery purposes only) shall be immediately returned to the
2 producing party or destroyed.

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4 IT IS SO ORDERED.

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6 Dated: _____

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ELIZABETH D. LAPORTE
United States Magistrate Judge

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