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18 TOMORROWNOW, INC.

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

22 ORACLE USA, INC., et al.,  
23 Plaintiffs,  
24 v.  
25 SAP AG, et al.,  
26 Defendants.

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

**STIPULATION [AND PROPOSED  
ORDER] REGARDING EXPERT  
DISCOVERY**

**STIPULATION REGARDING EXPERT DISCOVERY**

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2 Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited  
3 and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (together with Plaintiffs,  
4 “the Parties”) jointly enter into this Stipulation regarding expert discovery.

5 **IT IS HEREBY STIPULATED** by the Parties, through their respective counsel of record,  
6 that the following agreement shall govern expert discovery:

7 For the purposes of this agreement, “experts” means only those individuals identified and  
8 disclosed pursuant to the protective order as well as their staff and others working under the  
9 experts direction and control.

10 a. No communications between counsel and experts after October 1, 2006 will be the  
11 subject of discovery or inquiry in deposition or at trial, except as described in paragraphs d and e  
12 below.

13 b. No communications between experts and clients or among experts after October 1,  
14 2006 will be the subject of discovery or inquiry in deposition or at trial, except as described in  
15 paragraphs d and e below.

16 c. No notes, drafts or other types of preliminary work by or for experts, including  
17 draft expert reports, prepared after October 1, 2006 will be the subject of discovery or inquiry in  
18 deposition or at trial, except as described in paragraphs d and e below.

19 d. Paragraphs a, b and c will not apply to any communications or documents on which  
20 experts intend to rely or that form the basis for any part of that expert’s opinion; such  
21 communications or documents shall be subject to discovery or inquiry in deposition or at trial.

22 e. Notwithstanding the foregoing, all documents provided to experts (including,  
23 without limitation, publications and documents produced in discovery), other than those  
24 generated for the purpose of the litigation and/or for the purpose of communicating with the  
25 expert, that were considered by the expert in formulating his or her opinion (whether or not they  
26 support the opinion) are discoverable and may be the subject of questioning at deposition and trial.

27 f. While this stipulation does not affect the potential discoverability of any expert  
28 communications or related documents generated in conjunction with any other litigation, expert

1 communications and related documents generated in conjunction with this litigation, which the  
2 parties have agreed are not discoverable pursuant to paragraphs a, b, or c above, shall not later be  
3 discoverable in any future litigation that may arise between the parties.

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5 Dated: February 11, 2009

JONES DAY

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By: /s/ Jason McDonell  
Jason McDonell

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

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

14 DATED: February 11, 2009

BINGHAM McCUTCHEN LLP

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By: /s/ Zachary J. Alinder  
Zachary J. Alinder

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Attorneys for Plaintiffs  
ORACLE USA, INC., ORACLE  
INTERNATIONAL CORPORATION, and  
ORACLE EMEA LIMITED

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22 **SO ORDERED.**

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24 Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_  
The Honorable Elizabeth D. Laporte  
United States District Magistrate Judge

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