

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 jlffuchs@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 USA, INC., *et al.*,
23 Plaintiffs,
24 v.
25 SAP AG, *et al.*,
26 Defendants.

BINGHAM McCUTCHEN LLP
DONN P. PICKETT (SBN 72257)
GEOFFREY M. HOWARD (SBN 157468)
HOLLY A. HOUSE (SBN 136045)
ZACHARY J. ALINDER (SBN 209009)
BREE HANN (SBN 215695)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286
donn.pickett@bingham.com
geoff.howard@bingham.com
holly.house@bingham.com
zachary.alinder@bingham.com
bree.hann@bingham.com

DORIAN DALEY (SBN 129049)
JENNIFER GLOSS (SBN 154227)
500 Oracle Parkway
M/S 5op7
Redwood City, CA 94070
Telephone: (650) 506-4846
Facsimile: (650) 506-7114
dorian.daley@oracle.com
jennifer.gloss@oracle.com

Attorneys for Plaintiffs
Oracle USA, Inc., Oracle International
Corporation, and Oracle EMEA Limited

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

**STIPULATION TO PERMIT
DEFENDANTS TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF DEFENDANTS'
MOTION FOR SANCTIONS AND
MOTION TO COMPEL**

1 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc. Oracle
2 International Corporation, and Oracle EMEA Limited (“Plaintiffs”) and Defendants SAP AG,
3 SAP America, Inc., and TomorrowNow, Inc. (“Defendants,” and together with Oracle, the
4 “Parties”) jointly submit this Stipulation to permit Defendants to file under seal documents
5 supporting Defendants’ Motion for Sanctions Pursuant to Fed. R. Civ. P. 37(c) and 16 (f)
6 (“Motion for Sanctions”) and Defendants’ Motion to Compel Production of Financial Information
7 of Plaintiffs (“Motion to Compel”).

8 WHEREAS, the requested relief is necessary and narrowly tailored to protect the alleged
9 confidentiality of the materials put at issue by the Defendants’ Motion for Sanctions and Motion
10 to Compel until such time as the Court makes a final ruling as to confidentiality of the relevant
11 subject matter. Specifically, the following materials constitute documents that contain
12 information designated by Plaintiffs as “Confidential Information” or “Highly Confidential
13 Information - Attorneys’ Eyes Only” pursuant to the Protective Order entered on June 6, 2007 in
14 this action:

- 15 1. Portions of Defendants’ Motion for Sanctions containing quotes or other material from
16 documents identified herein that have been designated as are designated by Plaintiffs
17 as “Confidential Information” or “Highly Confidential Information - Attorneys’ Eyes
18 Only”;
- 19 2. Exhibits D, J, K, L, P and Q to the Declaration of Elaine Wallace in Support of
20 Defendants’ Motion for Sanctions Pursuant to Fed. R. Civ. P. 37(c) and 16 (f) with;
- 21 3. Paragraph 27 and a portion of paragraph 22 of the Declaration of Stephen K. Clarke in
22 Support of Defendants’ Motion for Sanctions Pursuant to Fed. R. Civ. P. 37(c) and 16
23 (f);
- 24 4. Portions of Defendants’ Motion to Compel containing quotes or other material from
25 documents identified herein that have been designated as are designated by Plaintiffs
26 as “Confidential Information” or “Highly Confidential Information - Attorneys’ Eyes
27 Only”;

28

1 5. Exhibits 6, 7, 8, 9, 10, 11, and 19 and portions of Exhibits 2 and 18 to the Declaration
2 of Jason McDonell in Support of Defendants' Motion to Compel Production of
3 Financial Information of Plaintiffs.

4 //

5 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
6 respective counsel of record, that Defendant be permitted to file under seal their documents
7 supporting Defendants' Motion for Sanctions and Motion to Compel. The Parties further agree
8 that Plaintiffs reserve their rights to challenge the confidentiality of the information filed under
9 seal pursuant to this Stipulation.

10
11 **IT IS SO STIPULATED.**

12
13 DATED: July 14, 2009

JONES DAY

14
15 By: /s/ Jason McDonell
16 Jason McDonell

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

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

21 DATED: July 14, 2009

BINGHAM McCUTCHEN LLP

22
23 By: /s/ Zachary Alinder
24 Zachary Alinder

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

28 SFI-614646v1