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

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

9 WHEREAS, the requested relief is necessary and narrowly tailored to protect the alleged
10 confidentiality of the materials put at issue by the Defendants’ Motion for Sanctions Reply and
11 Motion to Compel Reply until such time as the Court makes a final ruling as to confidentiality of
12 the relevant subject matter. Whereas, with limited exceptions, requested relief similar to that here
13 was previously ordered by this Court (D.I. 367) or is pending (D.I. 378). Specifically, the
14 following materials constitute documents that contain information designated by Plaintiffs as
15 “Confidential Information” or “Highly Confidential Information - Attorneys’ Eyes Only”
16 pursuant to the Protective Order entered on June 6, 2007 in this action:

- 17 1. Portions of Defendants’ Motion for Sanctions Reply containing quotes or other
18 material from documents identified herein that have been designated by Plaintiffs as
19 “Confidential Information” or “Highly Confidential Information - Attorneys’ Eyes
20 Only”;
- 21 2. A portion of the Reply Declaration of Stephen K. Clarke in Support of Defendants’
22 Motion for Sanctions Pursuant to Fed. R. Civ. P. 37(c) and 16(f);
- 23 3. Portions of Defendants’ Motion to Compel Reply containing quotes or other material
24 from documents identified herein that have been designated by Plaintiffs as
25 “Confidential Information” or “Highly Confidential Information - Attorneys’ Eyes
26 Only”;
- 27 4. Exhibit 8 to the Reply Declaration of Jason McDonell in Support of Defendants’
28 Motion to Compel Production of Financial Information of Plaintiffs.

1 5. Portions of the Reply Declaration of Stephen K. Clarke in Support of Defendants'
2 Motion to Compel Production of Financial Information from Plaintiffs.

3
4 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
5 respective counsel of record, that Defendant be permitted to file under seal their documents
6 supporting Defendants' Motion for Sanctions Reply and Motion to Compel Reply. The Parties
7 further agree that Plaintiffs reserve their rights to challenge the confidentiality of the information
8 filed under seal pursuant to this Stipulation.

9
10 DATED: August 4, 2009

JONES DAY

11
12 By: /s/ Jason McDonell
13 Jason McDonell

14 Attorneys for Defendants
15 SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

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

18 DATED: August 4, 2009

BINGHAM McCUTCHEN LLP

19
20 By: /s/ Zachary Alinder
21 Zachary Alinder

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

25 SFI-616115v2