

1 Robert A. Mittelstaedt (SBN 060359)  
Jason McDonell (SBN 115084)  
2 Elaine Wallace (SBN 197882)  
JONES DAY  
3 555 California Street, 26<sup>th</sup> 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 USA, INC., et al.,  
23 Plaintiffs,  
24 v.  
25 SAP AG, et al.,  
26 Defendants.

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

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
REGARDING PLAINTIFFS'  
HYPOTHETICAL LICENSE  
DAMAGES CLAIM**

Date: October 28, 2009; Time: 9:00 a.m.  
Courtroom: 3, 17th Floor  
Judge: Hon. Phyllis J. Hamilton

1 Having considered Defendants' Motion for Partial Summary Judgment Regarding  
2 Plaintiffs' Hypothetical License Damages Claim ("Motion for Partial Summary Judgment"),  
3 supporting declaration of Tharan Gregory Lanier, and exhibits attached thereto, which were  
4 lodged with the Court on August 26, 2009:

5 IT IS HEREBY ORDERED THAT: Defendants' motion is GRANTED. Summary  
6 judgment is proper when the pleadings, discovery and affidavits show that there is "no genuine  
7 issue as to any material fact and that the moving party is entitled to judgment as a matter of law."  
8 Fed. R. Civ. P. 56(c). The undisputed facts in this case show that Plaintiffs and Defendants  
9 would not have agreed to a hypothetical license but for the alleged infringement. The Court  
10 therefore grants partial summary judgment that Plaintiffs are not entitled to pursue actual  
11 damages in the form of a hypothetical license.

12 **IT IS SO ORDERED.**

13  
14 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Hon. Phyllis J. Hamilton  
United States District Court Judge