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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