

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 jlfuchs@jonesday.com

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

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

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)

**STIPULATION TO PERMIT
DEFENDANTS TO FILE UNDER
SEAL PLAINTIFFS' DOCUMENTS
SUPPORTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING
PLAINTIFFS' HYPOTHETICAL
LICENSE DAMAGES CLAIM**

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 Plaintiffs, the
4 “Parties”) jointly submit this Stipulation to Permit Defendants to File Under Seal Plaintiffs’
5 Documents Supporting Defendants’ Motion for Partial Summary Judgment Regarding Plaintiffs’
6 Hypothetical License Damages Claim (“Motion for Partial Summary Judgment”).

7 WHEREAS, Defendants filed their Motion for Partial Summary Judgment, along with the
8 Declaration of Tharan Gregory Lanier in Support of Defendants’ Motion for Partial Summary
9 Judgment (“Lanier Declaration”) and supporting exhibits, on August 26, 2009;

10 WHEREAS, at Plaintiffs’ request, Defendants have filed an Administrative Motion to
11 Permit Defendants to File Under Seal Plaintiffs’ Documents Supporting Defendants’ Motion for
12 Partial Summary Judgment;

13 WHEREAS the requested relief is necessary and narrowly tailored to protect the alleged
14 confidentiality of the materials put at issue by the Motion for Partial Summary Judgment until
15 such time as the Court makes a final ruling as to confidentiality of the relevant subject matter.
16 Specifically, the following documents and portions of documents contain information designated
17 by Plaintiffs as “Highly Confidential - Attorneys’ Eyes Only”:

- 18 • The following portions of Exhibit A to the Lanier Declaration: 19:23-20:25, 25:19-
19 27:15, 46:6-47:15, 158:13-159:15;
- 20 • The following portions of Exhibit B to the Lanier Declaration: 117:9-120:18;
- 21 • The following portions of Exhibit H to the Lanier Declaration: portions of page 47,
22 line 20; page 48, lines 9 and 12; and page 49, line 27; and
- 23 • The following portions of the Motion for Partial Summary Judgment: portions of 1:19-
24 20, 1:24, 2:16, 3:13-14, 4:18-19, 5:26-27, 11:22, 12:12, 13:19, and 20:10.

25 Additionally, the following documents and portions of documents contain information designated
26 by Plaintiffs as “Confidential Information”:

- 27 • The following portions of Exhibit A to the Lanier Declaration: 10:1-11:17, 159:16-
28 160:2;

- 1 • The following portions of Exhibit C to the Lanier Declaration: 73:25-84:6, 114:16-24;
- 2 and
- 3 • The following portions of the Motion for Partial Summary Judgment: portions of 2:13-
- 4 17, 3:11, 4:10-12, 4:15-17, 4:20-24, 5:28, 6:1-8, 11:14, 11:18-19, 11:21-22, 11:24-27,
- 5 12:12-13, 13:15-16, 13:18-19, 14:4-6, and 16:18-19.

6 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
7 respective counsel of record, that Defendants be permitted to move for permission to file under
8 seal (1) portions of Exhibits A, B, C and H to the Lanier Declaration and (2) portions of the
9 Motion for Partial Summary Judgment, as described above. The Parties further agree that
10 Defendants reserve their rights to challenge the confidentiality of the information filed under seal
11 pursuant to this Stipulation. While the Parties agree that portions of the Motion for Partial
12 Summary Judgment may be publicly filed, the Parties also agree that the filing shall not be
13 construed as a waiver of any confidentiality designation or other protection with respect to
14 documents, transcripts or other information referred to in, or that serve as the basis for, the
15 allegations or arguments made in it.

16 **IT IS SO STIPULATED.**

17 DATED: August 26, 2009

JONES DAY

18

19

By: /s/ Tharan Gregory Lanier
Tharan Gregory Lanier

20

21

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

22

23

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

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: August 26, 2009

BINGHAM McCUTCHEN LLP

By: /s/ Geoffrey M. Howard
Geoffrey M. Howard

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