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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

20 ORACLE USA, INC., *et al.*,
21 Plaintiffs,
22 v.
23 SAP AG, *et al.*,
24 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)
**STIPULATION AND [PROPOSED]
ORDER REGARDING
WITHDRAWAL OF DEFENDANTS'
ADMINISTRATIVE
MOTIONS TO PERMIT
DEFENDANTS TO FILE UNDER
SEAL PLAINTIFFS' DOCUMENTS
SUPPORTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND REPLY**

1 Plaintiffs Oracle USA, Inc. Oracle International Corporation, Oracle EMEA
2 Limited, and Siebel Systems, Inc. (“Plaintiffs”) and Defendants SAP AG, SAP America, Inc.,
3 and TomorrowNow, Inc. (“Defendants,” and together with Oracle, the “Parties”) jointly submit
4 this Stipulation to withdraw (1) Defendants’ Administrative Motion to Permit Defendants to File
5 Under Seal Plaintiffs’ Documents Supporting Defendants’ Motion for Partial Summary
6 Judgment Regarding Plaintiffs’ Hypothetical License Damages Claim (Docket #434) and
7 (2) Defendants’ Administrative Motion to Permit Defendants to File Under Seal Plaintiffs’
8 Information Supporting Defendants’ Reply to Plaintiffs’ Opposition to Defendants’ Motion for
9 Partial Summary Judgment (Docket #505).

10 WHEREAS, on August 26, 2009 (corrective filing on August 27, 2009),
11 Defendants filed their Motion for Partial Summary Judgment Regarding Plaintiffs’ Hypothetical
12 License Damages Claim (“Motion for Partial Summary Judgment”) (Docket # 447);

13 WHEREAS, on August 26, 2009, Defendants filed an Administrative Motion to
14 File Plaintiffs’ Documents Supporting Defendants’ Motion for Partial Summary Judgment Under
15 Seal (“Motion to Seal Defendants’ Motion for Partial Summary Judgment”) (Docket #434).
16 Through the Motion to Seal Defendants’ Motion for Partial Summary Judgment, Defendants, at
17 Plaintiffs’ request, sought an Order permitting Defendants to file under seal portions of
18 Defendants’ Motion for Partial Summary Judgment and portions of Exhibits A, B, C and H
19 attached to the Declaration of Tharan Gregory Lanier in Support of Defendants’ Motion for
20 Partial Summary Judgment (“Lanier Declaration”) (Docket # 433);

21 WHEREAS, on September 31, 2009, Plaintiffs filed a Response in Support of
22 Defendants’ Motion to Seal Defendants’ Motion for Partial Summary Judgment (Docket #458).

23 WHEREAS, on September 23, 2009, Plaintiffs filed their Opposition to
24 Defendants’ Motion for Partial Summary Judgment Regarding Plaintiffs’ Hypothetical [Fair
25 Market Value] License Damages Claim (Docket #483).

26 WHEREAS, on October 7, 2009, Defendants filed their Reply to Plaintiffs’
27 Opposition to Defendants’ Motion for Partial Summary Judgment (Docket #504).

28 WHEREAS, on that same day, Defendants filed an Administrative Motion to

1 Permit Defendants to File Under Seal Plaintiffs' Information Supporting Defendants' Reply to
2 Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment ("Motion to Seal
3 Reply") (Docket #505). Through the Motion to Seal Reply, Defendants, at Plaintiffs' request,
4 sought an Order permitting Defendants to file under seal portions of Defendants' Reply to
5 Plaintiffs' Opposition to Motion for Partial Summary Judgment.

6 In light of subsequent decisions by the Parties to file certain other information
7 publicly, and in deference to the presumption in favor of public access to court records, Plaintiffs
8 no longer contend that Defendants' Motion for Partial Summary Judgment; Exhibits A, B, C and
9 H to the Lanier Declaration; and Defendants' Reply to Plaintiffs' Opposition to Defendants'
10 Motion for Partial Summary Judgment need to be filed under seal.

11 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through
12 their respective counsel of record, that the Parties hereby withdraw Defendants' Administrative
13 Motion to Permit Defendants to File Under Seal Plaintiffs' Documents Supporting Defendants'
14 Motion for Partial Summary Judgment Regarding Plaintiffs' Hypothetical License Damages
15 Claim (Docket # 434) and Defendants' Administrative Motion to Permit Defendants to File
16 Under Seal Plaintiffs' Information Supporting Defendants' Reply to Plaintiffs' Opposition to
17 Defendants' Motion for Partial Summary Judgment (Docket # 505).

18 IT IS FURTHER STIPULATED that Defendants' Motion for Partial Summary
19 Judgment Regarding Plaintiffs' Hypothetical License Damages Claim; Exhibits A, B, C and H to
20 the Declaration of Tharan Gregory Lanier in Support of Defendants' Motion for Partial
21 Summary Judgment; and Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion for
22 Partial Summary Judgment may be filed publicly, and that the filings shall not be construed as
23 waivers of any confidentiality designation, right to file under seal, or other protection with
24 respect to documents or other information related or similar to, or referred to by, the filed
25 documents.

26 **IT IS SO STIPULATED.**

1 DATED: October 26, 2009

BINGHAM McCUTCHEN LLP

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By: /s/ Zachary Alinder
Zachary Alinder
Attorneys for Plaintiffs
Oracle USA, Inc., Oracle International Corp.,
Oracle EMEA Ltd., and Siebel Systems, Inc.

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

10 DATED: October 26, 2009

JONES DAY

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By: /s/ Tharan Gregory Lanier
Tharan Gregory Lanier
Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

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17 **PURSUANT TO STIPULATION, IT IS**
18 **SO ORDERED:**

19 DATED: 11/2/09

By: 

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