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22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 24 OAKLAND DIVISION

24 ORACLE USA, INC., *et al.*,

25 Plaintiffs,

26 v.

27 SAP AG, *et al.*,

28 Defendants.

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No. 07-CV-01658 PJH (EDL)

**TRIAL STIPULATION AND
 [PROPOSED] ORDER NO. 1
 REGARDING LIABILITY, DISMISSAL
 OF CLAIMS, PRESERVATION OF
 DEFENSES, AND OBJECTIONS TO
 EVIDENCE AT TRIAL**

1 Pursuant to Local Rule 7-12, Plaintiffs Oracle USA, Inc., Oracle International
2 Corporation and Siebel Systems, Inc. (“Plaintiffs” or “Oracle”) and Defendants TomorrowNow,
3 Inc. (“TN”), SAP AG and SAP America, Inc. (“SAP”; and, together with TN, “Defendants”;
4 and, all together with Oracle, the “Parties”), jointly submit this Trial Stipulation and [Proposed]
5 Order regarding liability, dismissal of certain claims, the preservation of certain defenses,
6 objections to evidence at trial, and the length of the Parties’ evidentiary presentations and
7 arguments.

8 The Parties agree that the terms of this stipulation shall not be binding or effective
9 unless and until the Court accepts the stipulated terms in their entirety. The Parties reserve the
10 right to withdraw agreement to any or all terms if the Court chooses not to accept any term.

11 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,
12 through their respective counsel of record, as follows:

13 **TRIAL STIPULATION AND PROPOSED ORDER**

14 1. TN stipulates to all liability on all claims (preserving no defenses,
15 including any raised on summary judgment, but retaining all defenses to damages as described in
16 paragraph 5 below). TN therefore stipulates to all liability on Oracle’s claims for copyright
17 infringement, violations of the Federal Computer Fraud and Abuse Act and California’s
18 Computer Data Access and Fraud Act, breach of contract, intentional interference, negligent
19 interference, unfair competition, trespass to chattels, unjust enrichment/restitution and an
20 accounting. SAP will not contend that Oracle has failed to prove indirect liability as to SAP due
21 to a failure of proof against TN.

22 2. SAP stipulates to vicarious liability on the copyright claims against TN in
23 their entirety (preserving no defenses, including any raised on summary judgment, but retaining
24 all defenses as to damages as described in paragraph 5 below) and agrees to guarantee payment
25 of any judgment awarded against TN or SAP.

26 3. Oracle dismisses with prejudice all claims against SAP except for indirect
27 copyright infringement and except as to any right to appeal any rulings made by the trial court
28 (e.g., saved development costs as a basis for unjust enrichment), which Oracle preserves for all

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1 purposes. Oracle therefore retains claims against SAP for contributory copyright infringement,
2 to which SAP retains all pleaded defenses, including as described in paragraph 5 below, at the
3 trial scheduled for November 1, 2010.

4 4. The Parties envision that the jury will be instructed, and the jury verdict
5 form will reflect, that the Parties have stipulated to liability for certain claims against TN and
6 SAP as set forth in paragraphs 1 and 2 above (which the parties may refer to at any time during
7 trial). Subject only to the trial time limits set forth in paragraph 8 below, the Parties may present
8 evidence at trial related to the stipulated claims as background or context for the stipulated
9 claims, and/or as relevant to damages or other claims and defenses not stipulated to or dismissed
10 by the Parties. The Parties will not object to evidence related to the stipulated claims pursuant to
11 Federal Rules of Evidence 401-403 (including that the evidence is irrelevant, cumulative, unduly
12 time consuming or prejudicial) on grounds that the evidence relates to the stipulated claims.
13 Oracle may not argue to the Court, jury or public that SAP is in fact liable on claims that Oracle
14 agrees to dismiss under paragraph 3, or not pursue under paragraph 7, and SAP may not argue to
15 the Court, jury or public that either (i) TN in fact is not liable on claims stipulated under
16 paragraph 1, or (ii) SAP in fact is not liable on the basis of vicarious liability as stipulated under
17 paragraph 2.

18 5. SAP and TN retain all defenses to the alleged causation, fact or amount of
19 or entitlement to disgorgement, actual or punitive damages or any other legal or equitable
20 remedy. For example, on some claim as to which TN had elected not to contest liability, it may
21 still argue that a particular remedy is not available.

22 6. The Parties preserve their rights to appeal any judgment against them
23 except as to issues or claims to which they have stipulated.

24 7. Punitive damages remain in the case as to TN. Oracle agrees not to seek
25 punitive damages against SAP in this case, provided, however, that Oracle may enforce SAP's
26 guarantee to pay any award of punitive damages against TN.

27 8. The length of trial is shortened to 36 hours per side for presentation of
28 testimony and argument to the jury.

1 9. Defendants agree to entry of an injunction enjoining TN from:
2 (1) infringing Oracle’s copyrights in Oracle’s PeopleSoft-branded enterprise application
3 software, J.D. Edwards-branded enterprise application software, Siebel-branded enterprise
4 application software, and Oracle’s Relational Database Management System software, and
5 related support products; (2) accessing any password-protected Oracle website in any way not
6 compliant with the Terms of Use for that website or with the customer license associated with
7 the log-in credential being used; (3) using any automated downloading program (including Titan,
8 spiders, bots, crawlers and scrapers) on any Oracle website; and (4) interfering with Oracle’s
9 customers by offering support for their Oracle products using software or downloads obtained
10 from a different customer generally directed at the stipulated conduct.

11 10. The Parties reach this stipulation for purposes of this action only, and this
12 stipulation has no force or effect in any other proceeding or jurisdiction.

13 **IT IS SO STIPULATED.**

14 DATED: September 9, 2010

BINGHAM McCUTCHEN LLP

15 By: /s/ Geoffrey M. Howard

16 Geoffrey M. Howard
17 Attorneys for Plaintiffs
18 Oracle USA, Inc., Oracle International
 Corporation and Siebel Systems, Inc.

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

21 DATED: September 9, 2010

JONES DAY

22 By: /s/ Jason McDonell

23 Jason McDonell
24 Attorneys for Defendants
 SAP AG, SAP America, Inc., and
 TomorrowNow, Inc.

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 Dated: _____, 2010

27 _____
28 Phyllis J. Hamilton
 United States District Judge