

1 BINGHAM McCUTCHEN LLP
DONN P. PICKETT (SBN 72257)
2 GEOFFREY M. HOWARD (SBN 157468)
HOLLY A. HOUSE (SBN 136045)
3 ZACHARY J. ALINDER (SBN 209009)
BREE HANN (SBN 215695)
4 Three Embarcadero Center
San Francisco, CA 94111-4067
5 Telephone: (415) 393-2000
Facsimile: (415) 393-2286
6 donn.pickett@bingham.com
geoff.howard@bingham.com
7 holly.house@bingham.com
zachary.alinder@bingham.com
8 bree.hann@bingham.com

9 BOIES, SCHILLER & FLEXNER LLP
DAVID BOIES (Admitted *Pro Hac Vice*)
10 333 Main Street
Armonk, NY 10504
11 Telephone: (914) 749-8200
Facsimile: (914) 749-8300
12 dboies@bsflp.com
STEVEN C. HOLTZMAN (SBN 144177)
13 1999 Harrison St., Suite 900
Oakland, CA 94612
14 Telephone: (510) 874-1000
Facsimile: (510) 874-1460
15 sholtzman@bsflp.com

16 DORIAN DALEY (SBN 129049)
JENNIFER GLOSS (SBN 154227)
17 500 Oracle Parkway, M/S 5op7
Redwood City, CA 94070
18 Telephone: (650) 506-4846
Facsimile: (650) 506-7114
19 dorian.daley@oracle.com
jennifer.gloss@oracle.com
20

21 Attorneys for Plaintiffs
Oracle USA, Inc. *et al.*

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

24 ORACLE USA, INC., et al.,

25 Plaintiffs,

26 v.

27 SAP AG, et al.,

28 Defendants.

Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
Elaine Wallace (SBN 197882)
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
ewallace@jonesday.com

Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com
jfroyd@jonesday.com

Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3939
Facsimile: (832) 239-3600
swcowan@jonesday.com
jlfuchs@jonesday.com

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

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

**ADDITIONAL TRIAL STIPULATION
AND [PROPOSED] ORDER
REGARDING CLAIMS FOR
DAMAGES AND ATTORNEYS FEES**

1 Pursuant to Local Rule 7-12, Plaintiffs Oracle USA, Inc., Oracle International Corporation
2 and Siebel Systems, Inc. (“Plaintiffs” or “Oracle”) and Defendants SAP AG and SAP America
3 Inc. (“SAP”) and TomorrowNow, Inc. (“TN” and, together with SAP, “Defendants”; and, all
4 together with Oracle, the “Parties”), jointly submit this Additional Trial Stipulation and [Proposed]
5 Order regarding damages and attorneys fees. The Parties agree that the terms of this Stipulation
6 shall not be binding or effective unless and until the Court accepts the stipulated terms in their
7 entirety. The Parties reserve the right to withdraw agreement to any or all terms if the Court
8 chooses not to accept any term.

9 **NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE,**
10 through their respective counsel of record, as follows:

11 **ADDITIONAL STIPULATION AND PROPOSED ORDER**

12 1. TN stipulates to entry of judgment on Oracle’s claims for violations of the Federal
13 Computer Fraud and Abuse Act and California’s Computer Data Access and Fraud Act, breach of
14 contract, intentional interference, negligent interference, unfair competition, trespass to chattels,
15 unjust enrichment/restitution and an accounting. Oracle waives the right to seek monetary
16 damages or monetary relief, including punitive damages, based on the foregoing claims, but
17 specifically preserves its right to seek further injunctive relief based on the foregoing claims.

18 2. SAP agrees to pay Oracle \$120,000,000 USD, as its past and future reasonable
19 attorneys fees and costs (including investigative costs) associated with Oracle’s investigation and
20 prosecution of its claims in this case, no later than close of business Pacific Time, November 9,
21 2010, pursuant to wire transfer instructions that Oracle will provide within 24 hours of execution
22 of this stipulation.

23 3. Nothing in this stipulation changes any previous stipulation or order of the Court
24 except as set forth in this stipulation. No party will argue for any change to any previous
25 stipulation or order of the Court except as set forth in this stipulation. Trial Stipulation and Order
26 No. 1 shall be amended by deleting the language in paragraph 7 of that Stipulation and replacing
27 it with the following: “The jury is to consider only those damages available under the Copyright
28 Act.” Oracle will not seek punitive damages against SAP or TN in this case.

