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

24 ORACLE USA, INC., et al.,

25 Plaintiffs,

26 v.

27 SAP AG, et al.,

28 Defendants.

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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.

1 4. This stipulation will not be read to the jury and no part of it will be commented on
2 publicly until the entry of final judgment in this case or used in or as the basis for argument or
3 instructions to the jury by any party.

4 **IT IS SO STIPULATED.**

5 DATED: November 1, 2010

BINGHAM McCUTCHEN LLP

6
7 By: /s/ Geoffrey M. Howard

8 Geoffrey M. Howard
9 Attorneys for Plaintiffs
10 Oracle USA, Inc., Oracle International
 Corporation and Siebel Systems, Inc.

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

13 DATED: November 1, 2010

JONES DAY

14
15 By: /s/ Tharan Gregory Lanier

16 Tharan Gregory Lanier
17 Attorneys for Defendants
18 SAP AG, SAP America, Inc., and
 TomorrowNow, Inc.

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

20 Dated: _____, 2010

21
22 _____
23 Phyllis J. Hamilton
24 United States District Judge
25
26
27
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