

1 BINGHAM McCUTCHEM 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
10 DORIAN DALEY (SBN 129049)
11 JENNIFER GLOSS (SBN 154227)
500 Oracle Parkway
12 M/S 5op7
Redwood City, CA 94070
13 Telephone: (650) 506-4846
Facsimile: (650) 506-7114
14 dorian.daley@oracle.com
15 jennifer.gloss@oracle.com
16 Attorneys for Plaintiffs
Oracle Corporation, Oracle USA, Inc.,
17 and Oracle International Corporation

JONES DAY
ROBERT A. MITTELSTAEDT (SBN 060359)
JASON McDONELL (SBN 115084)
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com

JONES DAY
THARAN GREGORY LANIER (SBN 138784)
JANE L. FROYD (SBN 220776)
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com
jfroyd@jonesday.com

JONES DAY
SCOTT W. COWAN (Admitted *Pro Hac Vice*)
JOSHUA L. FUCHS (Admitted *Pro Hac Vice*)
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.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 ORACLE CORPORATION, a Delaware
corporation, ORACLE USA, INC., a Colorado
22 corporation, and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

23 Plaintiffs,

24 v.

25 SAP AG, a German corporation, SAP
AMERICA, INC., a Delaware corporation,
26 TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,

27 Defendants.
28

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

**STIPULATION RE ORACLE'S
PROPOSED THIRD AMENDED
COMPLAINT**

1 Plaintiffs Oracle Corporation, Oracle USA, Inc. and Oracle International
2 Corporation (“Oracle”) and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
3 (“Defendants” and together with Oracle, the “Parties”) jointly submit this Stipulation regarding
4 Oracle’s proposed Third Amended Complaint.

5 WHEREAS, Oracle filed its First Amended Complaint on June 1, 2007;

6 WHEREAS, Defendants answered the First Amended Complaint on July 2, 2007;

7 WHEREAS, Oracle filed its Second Amended Complaint on July 28, 2008;

8 WHEREAS, Defendants currently must respond to the Second Amended
9 Complaint by September 11, 2008;

10 WHEREAS, Oracle wishes to make further amendments related to the plaintiff
11 entities for each claim;

12 WHEREAS, the Parties agree that good cause exists for Defendants to consider
13 the proposed amendments by Oracle before deciding whether to respond to the Second Amended
14 Complaint or to delay that response pending a potential stipulation to allow Oracle to file its
15 proposed Third Amended Complaint; and,

16 WHEREAS, the Parties wish to avoid unnecessary motion practice relating to the
17 further amendment of the Complaint if possible.

18 **NOW, THEREFORE, IT IS HEREBY STIPULATED** by the Parties, through
19 their respective counsel of record, as follows:

20 (1) Oracle shall provide its proposed Third Amended Complaint and shall make
21 reasonable efforts to complete a supplemental production of documents related to the proposed
22 amendments on or before September 29, 2008;

23 (2) Within seven calendar days of being provided Oracle’s proposed Third
24 Amended Complaint, Defendants shall respond as to whether they will stipulate to Oracle filing
25 that Complaint;

26 (3) Should Defendants elect not to stipulate to the filing of the proposed Third
27 Amended Complaint, then (a) Oracle may move to amend the Second Amended Complaint, and
28 (b) Defendants reserve the right to respond to the Second Amended Complaint within seven

1 calendar days of the date on which the proposed Third Amended Complaint was provided to
2 them, as set forth in paragraph 1 above;

3 (4) If Defendants stipulate to Oracle filing the proposed Third Amended
4 Complaint, Oracle will file that Complaint within two calendar days of receiving the stipulation
5 signed by Defendants, and Defendants will respond to that Complaint within seven calendar days
6 of it being filed;

7 (5) Should Defendants file a motion, rather than an Answer, as their response to
8 Oracle's Second Amended Complaint or Third Amended Complaint, the Parties further agree to
9 work together to develop a mutually agreeable extended briefing schedule for any opposition and
10 reply papers; and,

11 (6) Oracle agrees that it will not seek to change the discovery scope or limits or
12 the overall schedule of this case by virtue of the requested additional amendment.

13 **IT IS SO STIPULATED.**

14 DATED: September 11, 2008

BINGHAM McCUTCHEN LLP

16 By: /s/ Geoff Howard
17 Geoff Howard
18 Attorneys for Plaintiffs
Oracle Corporation, Oracle International Corporation,
and Oracle USA, 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 11, 2008

JONES DAY

23 By: /s/ Tharan Gregory Lanier
24 Tharan Gregory Lanier
25 Attorneys for Defendants
SAP AG, SAP America, Inc., and TomorrowNow, Inc.