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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

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

No. 07-CV-01658 PJH (EDL)

25 Plaintiffs,

**[PROPOSED] ORDER REGARDING  
 ORACLE'S CONDITIONAL MOTION  
 FOR NEW TRIAL**

26 v.

27 SAP AG, *et al.*,

28 Defendants.

1 In Plaintiff Oracle International Corp.'s ("Oracle") Conditional Motion for New  
2 Trial, filed on February 23, 2011, Oracle requested certain conditional relief in the event that the  
3 Court were to order a new trial pursuant to a motion by Defendants. Having considered Oracle's  
4 Motion, and the supporting Declaration of Bree Hann and the attached exhibits, IT IS HEREBY  
5 ORDERED THAT:

6 \_\_\_\_\_ Having denied Defendants' Motions for Judgment as a Matter of Law and New  
7 Trial, the Court also DENIES as moot Oracle's Motion.

8 \_\_\_\_\_ Oracle's Motion is GRANTED. In the new trial in this matter: (1) Oracle's  
9 evidence of its up-sell and cross-sell projections shall be admitted; (2) the jury shall  
10 be instructed to award both actual damages and non-duplicative infringer's profits;  
11 (3) Oracle's evidence of SAP's saved development costs shall be admitted; and  
12 (4) testimony by Defendants' expert Steven Clarke as to why SAP and  
13 TomorrowNow customers terminated their relationships with Oracle shall be  
14 excluded.

15 **IT IS SO ORDERED.**

16  
17 Dated: \_\_\_\_\_, 2011

18 \_\_\_\_\_  
19 Honorable Phyllis J. Hamilton  
20 United States District Court Judge  
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