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

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

23 ORACLE USA, INC., et al.,

24 Plaintiffs,

25 v.

26 SAP AG, et al.,

27 Defendants.
 28

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

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' MOTIONS IN
 LIMINE**

Date: May 24, 2012
 Time: 2:30 p.m.
 Place: 3rd Floor, Courtroom 3
 Judge: Hon. Phyllis J. Hamilton

1 Having considered the papers filed in connection with Defendants' Motions *in Limine*:
2 IT IS HEREBY ORDERED THAT:

3
4 1. Defendants' Motion *in Limine* No. 1 to exclude evidence and argument regarding
5 new lost profits and infringer's profits claims is:

6
7 GRANTED: Oracle shall not argue to the jury or attempt to present any evidence related
8 to new, untimely-disclosed lost profits or infringer's profits claims, which evidence or argument
9 attempts to expand the scope of Oracle's damages claims beyond the previously disclosed
10 maximum of \$408.7 million, including, but not limited to, the new, untimely April 20, 2012
11 report of Oracle's expert, Paul K. Meyer. Oracle also shall not present evidence or argument that
12 Defendants, as alleged willful infringers, may not deduct expenses as part of an infringer's profits
13 analysis. Finally, Oracle may not present evidence or argument that the "List of 86" customers
14 relied upon by the parties' experts to calculate infringer's profits is the work product of
15 Defendants' counsel, or is incorrect or incomplete.

16 *or,*
17 DENIED.

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19 2. Defendants' Motion *in Limine* No. 2 to exclude evidence previously offered solely
20 to support Oracle's hypothetical license theory or any other excluded theory of damages is:

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22 GRANTED: Oracle shall not argue to the jury or attempt to present any evidence related
23 to a hypothetical license measure of damages, or any other theory of damages previously
24 excluded.

25 *or,*
26 DENIED.

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1 3. Defendants’ Motion *in Limine* No. 3 to exclude evidence and argument regarding
2 TomorrowNow’s criminal conviction is:

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4 GRANTED: Oracle shall not make any references to, ask any questions about, make any
5 statements about, or proffer any evidence regarding TomorrowNow’s criminal conviction,
6 including the conviction itself, the Information, Plea Agreement, Judgment, and related hearing
7 transcripts.

8 *or,*

9 DENIED.

10

11 4. Defendants’ Motion *in Limine* No. 4 to prohibit Oracle from referring to
12 Defendants’ actions as “theft,” “stealing,” or any variation thereof is:

13

14 GRANTED: Oracle shall not make any remarks or proffer evidence or elicit testimony
15 referring to Defendants’ actions as “theft” or “stealing” or any variation thereof, or make similar
16 insinuations.

17 *or,*

18 DENIED.

19 **IT IS SO ORDERED.**

20

21

22 DATED: _____

By: _____

23

Hon. Phyllis J. Hamilton
United States District Court Judge

24

25 SVI-107501v1

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