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 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 SAN FRANCISCO DIVISION

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

23 Plaintiffs,

24 v.

25 SAP AG, *et al.*,

26 Defendants.

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

**STIPULATION AND [PROPOSED]  
 ORDER REGARDING PARTIAL  
 WITHDRAWAL OF PLAINTIFFS'  
 ADMINISTRATIVE MOTION TO  
 FILE UNDER SEAL**

1 Plaintiffs Oracle USA, Inc. Oracle International Corporation, Oracle Systems Corporation,  
2 Oracle EMEA Limited, and J.D. Edwards Europe Limited (“Plaintiffs”) and Defendants SAP AG,  
3 SAP America, Inc., and TomorrowNow, Inc. (“Defendants,” and together with Oracle, the  
4 “Parties”) jointly submit this Stipulation to partially withdraw Plaintiffs’ Motion to File  
5 Opposition to Motion to Dismiss, and Declarations and Exhibits in Support Thereof, Under Seal.

6 WHEREAS, Plaintiffs filed their Third Amended Complaint on October 8, 2008;

7 WHEREAS, Defendants filed their Motion to Dismiss on October 15, 2008;

8 WHEREAS, Plaintiffs filed their Opposition to the Motion to Dismiss, as well as  
9 Declarations and Exhibits in Support Thereof, on October 29, 2008.

10 WHEREAS, on the same day, October 29, 2008, Plaintiffs filed, at Defendants’ request,  
11 an Administrative Motion to File Opposition to Motion to Dismiss, and Declarations and Exhibits  
12 in Support Thereof, Under Seal (the “Plaintiffs’ Motion to Seal”). Through the Plaintiffs’ Motion  
13 to Seal, the Parties sought an Order permitting Plaintiffs to file under seal (1) portions of Oracle’s  
14 Opposition to Defendants’ FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Plaintiffs’  
15 Opposition”), (2) portions of the Declaration of Kevin Mandia in Support of Oracle’s Opposition  
16 to Defendants’ FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Mandia Declaration”), and (3)  
17 Exhibits D through T to the Declaration of Chad Russell in Support of Oracle’s Opposition to  
18 Defendants’ FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Russell Declaration”);

19 WHEREAS, in deference to the presumption in favor of public access to court records,  
20 Defendants do not at this time contend that any portion of Oracle’s Opposition, the Mandia  
21 Declaration itself, or Exhibits D, E, G, and I to the Russell Declaration, referenced above, need to  
22 be filed under seal;

23 WHEREAS, Defendants continue to contend that Exhibits F, H, and J through T to the  
24 Russell Declaration need to be filed under seal as set forth in the accompanying Declaration of  
25 Tharan Gregory Lanier in Support of Plaintiffs’ Motion to Seal.

26 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their  
27 respective counsel of record, that Plaintiffs hereby withdraw Plaintiffs’ Motion to Seal as to  
28 Plaintiffs’ Opposition, the Mandia Declaration, and Exhibits D, E, G, and I to the Russell

1 Declaration, but not as to Exhibits F, H, and J through T to the Russell Declaration, filed in this  
2 matter on October 29, 2008. It is further stipulated that Plaintiffs' Opposition, the Mandia  
3 Declaration, and Exhibits D, E, G, and I to the Russell Declaration, but not Exhibits F, H, and J  
4 through T to the Russell Declaration, may be filed publicly, and that the filing shall not be  
5 construed as a waiver of any confidentiality designation, right to file under seal, or other  
6 protection with respect to documents or other information related or similar to, or referred to by,  
7 the filed documents.

8 **IT IS SO STIPULATED.**

9 DATED: November 5, 2008

JONES DAY

11 By: /s/ Tharan Gregory Lanier  
12 Tharan Gregory Lanier

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

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

17 DATED: November 5, 2008

BINGHAM McCUTCHEN LLP

19 By: /s/ Geoffrey M. Howard  
20 Geoffrey M. Howard

21 Attorneys for Plaintiffs  
22 ORACLE USA, INC., ORACLE  
INTERNATIONAL CORPORATION,  
23 ORACLE SYSTEMS CORPORATION,  
ORACLE EMEA LIMITED, and J.D.  
24 EDWARDS EUROPE LIMITED

25 SVI-63133