

1 Robert A. Mittelstaedt (SBN 060359)  
 Jason McDonell (SBN 115084)  
 2 Elaine Wallace (SBN 197882)  
 JONES DAY  
 3 555 California Street, 26<sup>th</sup> Floor  
 San Francisco, CA 94104  
 4 Telephone: (415) 626-3939  
 Facsimile: (415) 875-5700  
 5 ramittelstaedt@jonesday.com  
 jmcdonell@jonesday.com  
 6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)  
 Jane L. Froyd (SBN 220776)  
 8 JONES DAY  
 1755 Embarcadero Road  
 9 Palo Alto, CA 94303  
 Telephone: (650) 739-3939  
 10 Facsimile: (650) 739-3900  
 tglanier@jonesday.com  
 11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)  
 Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
 13 JONES DAY  
 717 Texas, Suite 3300  
 14 Houston, TX 77002  
 Telephone: (832) 239-3939  
 15 Facsimile: (832) 239-3600  
 swcowan@jonesday.com  
 16 jlfuchs@jonesday.com

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

BINGHAM McCUTCHEN LLP  
 DONN P. PICKETT (SBN 72257)  
 GEOFFREY M. HOWARD (SBN 157468)  
 HOLLY A. HOUSE (SBN 136045)  
 ZACHARY J. ALINDER (SBN 209009)  
 BREE HANN (SBN 215695)  
 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 Telephone: (415) 393-2000  
 Facsimile: (415) 393-2286  
 donn.pickett@bingham.com  
 geoff.howard@bingham.com  
 holly.house@bingham.com  
 zachary.alinder@bingham.com  
 bree.hann@bingham.com

DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 500 Oracle Parkway  
 M/S 5op7  
 Redwood City, CA 94070  
 Telephone: (650) 506-4846  
 Facsimile: (650) 506-7114  
 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com

Attorneys for Plaintiffs  
 Oracle USA, Inc., Oracle International  
 Corporation, and Oracle EMEA Limited

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

**STIPULATION TO PERMIT  
 DEFENDANTS TO FILE UNDER  
 SEAL PLAINTIFFS' DOCUMENTS  
 SUPPORTING DEFENDANTS'  
 MOTION TO COMPEL**

1 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc., Oracle  
2 International Corporation, and Oracle EMEA Limited (collectively, "Oracle"), and Defendants  
3 SAP AG, SAP America, Inc., and TomorrowNow, Inc. ("Defendants," and together with Oracle,  
4 the "Parties") jointly submit this Stipulation to permit Defendants to file under seal Plaintiffs'  
5 documents supporting Defendants' Motion to Compel Discovery Concerning Third Party Support  
6 Provided by Oracle's Partners ("Motion to Compel") under seal.

7 WHEREAS, Defendants filed their Motion to Compel on January 16, 2009;

8 WHEREAS, the requested relief is necessary and narrowly tailored to protect the alleged  
9 confidentiality of the materials put at issue by the Motion to Compel until such time as the Court  
10 makes a final ruling as to confidentiality of the relevant subject matter. Specifically, Exhibits 18  
11 and 19 to the Declaration of Jason McDonell ("McDonell Declaration") in support of Defendants'  
12 Motion to Compel, and portions of the Motion to Compel and McDonell Declaration that  
13 reference Exhibits 18 and 19, contain information designated by Plaintiffs as "Confidential  
14 Information" and "Highly Confidential Information - Attorneys' Eyes Only" pursuant to the  
15 Protective Order entered on June 6, 2007 in this action;

16 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their  
17 respective counsel of record, that Defendant be permitted to file under seal Exhibits 18 and 19 to  
18 the McDonell Declaration in support of Defendants' Motion to Compel, and portions of the  
19 Motion to Compel and McDonell Declaration that reference Exhibits 18 and 19. The Parties  
20 further agree that Defendants reserve their rights to challenge the confidentiality of the  
21 information filed under seal pursuant to this Stipulation. While the Parties agree that the redacted  
22 Motion to Compel may be filed publicly, the Parties also agree that the filing shall not be  
23 construed as a waiver of any confidentiality designation or other protection with respect to  
24 documents, transcripts or other information referred to in, or that serve as the basis for, the  
25 allegations or arguments made in it.

26 **IT IS SO STIPULATED.**

1 DATED: January 16, 2009

JONES DAY

2

3

By: /s/ Jason McDonell

Jason McDonell

4

5

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

6

7

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

8

9

DATED: January 16, 2009

BINGHAM McCUTCHEN LLP

10

11

By: /s/ Zachary J. Alinder

Zachary J. Alinder

12

13

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

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28