

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 DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 10 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 11 Telephone: (650) 506-4846  
 Facsimile: (650) 506-7114  
 12 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com  
 13

14 Attorneys for Plaintiffs  
 Oracle USA, Inc., Oracle International  
 Corporation, and Oracle EMEA Limited  
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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN FRANCISCO DIVISION

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

20 Plaintiffs,

21 v.

22 SAP AG, *et al.*,

23 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**STIPULATION TO PERMIT  
 PLAINTIFFS TO FILE DRAFT  
 STIPULATION UNDER SEAL**

1 Pursuant to Local Rules 7-11(a) and 79-5(b)-(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. (collectively, “Defendants,” and with  
4 Oracle, the “Parties”) jointly submit this stipulation to permit Oracle to file Exhibit A to the  
5 Parties’ February 9, 2009 Joint Discovery Conference Statement (“Statement”) under seal.

6 The requested relief is necessary and narrowly tailored to protect the alleged  
7 confidentiality of the materials put at issue by the Parties’ Statement, until such time as the Court  
8 rules on the confidentiality of the relevant subject matter.

9 Specifically, Exhibit A to the Statement contains information designated by Defendants  
10 as “Confidential Information” and “Highly Confidential Information – Attorneys’ Eyes Only,”  
11 pursuant to the Protective Order entered in this action on June 6, 2007. Moreover, Defendants  
12 contend that Exhibit A to the Statement reflects a “snapshot” of the Parties’ inchoate  
13 compromise discussions under Fed. R. Evid. 408 regarding PeopleSoft HRMS environments and  
14 updates/fixes and should be protected accordingly.

15 Accordingly, the Parties, through their respective counsel of record, stipulate that Oracle  
16 be permitted to file Exhibit A to the Statement under seal. The Parties further agree that Oracle  
17 reserves its rights to challenge the confidentiality of the information filed under seal pursuant to  
18 this Stipulation and understand that this Stipulation is not intended to relieve Defendants’  
19 burden, under Local Rule 79-5(d), of supporting the confidentiality of the documents at issue.  
20 The Parties agree that neither the act of filing nor the filed documents shall be construed as a  
21 waiver of confidentiality designation or other protection (under Fed. R. Evid. 408 or otherwise)  
22 with respect to documents, transcripts, or other information referred to in, or that serve as the  
23 basis for, the allegations or arguments made therein.

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1 IT IS SO STIPULATED.  
2 DATED: February 9, 2009

BINGHAM McCUTCHEN LLP

3 By:  /s/ Bree Hann

4 Bree Hann  
5 Attorneys for Plaintiffs  
6 Oracle USA, Inc., Oracle International  
7 Corporation, and Oracle EMEA Limited

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

10 DATED: February 9, 2009

JONES DAY

11 By:  /s/ Jason McDonell

12 Jason McDonell  
13 Attorneys for Defendants  
14 SAP AG, SAP America, Inc., and  
15 TomorrowNow, Inc.