| 1 | Robert A. Mittelstaedt (SBN 060359) | BINGHAM McCUTCHEN LLP |
|----|--|---|
| 2 | Jason McDonell (SBN 115084) Elaine Wallace (SBN 197882) | DONN P. PICKETT (SBN 72257) GEOFFREY M. HOWARD (SBN 157468) |
| 3 | JONES DAY 555 California Street, 26 th Floor | HOLLY A. HOUSE (SBN 136045) ZACHARY J. ALINDER (SBN 209009) |
| 4 | San Francisco, CA 94104 Telephone: (415) 626-3939 | BREE HANN (SBN 215695) Three Embarcadero Center |
| 5 | Facsimile: (415) 875-5700 ramittelstaedt@jonesday.com | San Francisco, CA 94111-4067 Telephone: (415) 393-2000 |
| 6 | jmcdonell@jonesday.com ewallace@jonesday.com | Facsimile: (415) 393-2286 donn.pickett@bingham.com |
| 7 | Tharan Gregory Lanier (SBN 138784) | geoff.howard@bingham.com holly.house@bingham.com |
| 8 | Jane L. Froyd (SBN 220776) JONES DAY | zachary.alinder@bingham.com bree.hann@bingham.com |
| | 1755 Embarcadero Road | bree.name omgnam.com |
| 9 | Palo Alto, CA 94303 Telephone: (650) 739-3939 | DORIAN DALEY (SBN 129049) JENNIFER GLOSS (SBN 154227) |
| 10 | Facsimile: (650) 739-3900 tglanier@jonesday.com | 500 Oracle Parkway |
| 11 | jfroyd@jonesday.com | M/S 5op7 Redwood City, CA 94070 |
| 12 | Scott W. Cowan (Admitted <i>Pro Hac Vice</i>) | Telephone: (650) 506-4846 |
| | Joshua L. Fuchs (Admitted <i>Pro Hac Vice</i>) | Facsimile: (650) 506-7114 |
| 13 | JONES DAY | dorian.daley@oracle.com |
| 14 | 717 Texas, Suite 3300 Houston, TX 77002 | jennifer.gloss@oracle.com |
| 15 | Telephone: (832) 239-3939 Facsimile: (832) 239-3600 | Attorneys for Plaintiffs Oracle USA, Inc., Oracle International |
| 16 | swcowan@jonesday.com jlfuchs@jonesday.com | Corporation, and Oracle EMEA Limited |
| | <i>y</i> | |
| 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., | Case No. 07-CV-1658 PJH (EDL) |
| 23 | Plaintiffs, | STIPULATION [AND PROPOSED |
| 24 | v. | ORDER] REGARDING EXPERT DISCOVERY |
| 25 | SAP AG, et al., | |
| 26 | Defendants. | |
| 27 | | |
| 28 | | |
| | | STIDI II ATION DE EVDEDT DISCOVE |

| 1 |
|----|
| 2 |
| 3 |
| 4 |
| 5 |
| 6 |
| 7 |
| 8 |
| 9 |
| 10 |
| 11 |
| 12 |
| 13 |
| 14 |
| 15 |
| 16 |
| 17 |
| 18 |
| 19 |
| 20 |
| 21 |
| 22 |
| 23 |
| 24 |
| 25 |
| 26 |

27

28

STIPULATION REGARDING EXPERT DISCOVERY

Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (together with Plaintiffs, "the Parties") jointly enter into this Stipulation regarding expert discovery.

IT IS HEREBY STIPULATED by the Parties, through their respective counsel of record, that the following agreement shall govern expert discovery:

For the purposes of this agreement, "experts" means only those individuals identified and disclosed pursuant to the protective order as well as their staff and others working under the experts direction and control.

- a. No communications between counsel and experts after October 1, 2006 will be the subject of discovery or inquiry in deposition or at trial, except as described in paragraphs d and e below.
- No communications between experts and clients or among experts after October 1,
 2006 will be the subject of discovery or inquiry in deposition or at trial, except as described in paragraphs d and e below.
- c. No notes, drafts or other types of preliminary work by or for experts, including draft expert reports, prepared after October 1, 2006 will be the subject of discovery or inquiry in deposition or at trial, except as described in paragraphs d and e below.
- d. Paragraphs a, b and c will not apply to any communications or documents on which experts intend to rely or that form the basis for any part of that expert's opinion; such communications or documents shall be subject to discovery or inquiry in deposition or at trial.
- e. Notwithstanding the foregoing, all documents provided to experts (including, without limitation, publications and documents produced in discovery), other than those generated for the purpose of the litigation and/or for the purpose of communicating with the expert, that were considered by the expert in formulating his or her opinion (whether or not they support the opinion) are discoverable and may be the subject of questioning at deposition and trial.
- f. While this stipulation does not affect the potential discoverability of any expert communications or related documents generated in conjunction with any other litigation, expert

| 1 | communications and related documents generated in conjunction with this litigation, which the | | |
|----|--|--|--|
| 2 | parties have agreed are not discoverable pursuant to paragraphs a, b, or c above, shall not later be | | |
| 3 | discoverable in any future litigation that may arise between the parties. | | |
| 4 | | | |
| 5 | Dated: February 11, 2009 | JONES DAY | |
| 6 | | | |
| 7 | | By: /s/ Jason McDonell | |
| 8 | | Jason McDonell | |
| 9 | | Counsel for Defendants SAP AG, SAP AMERICA, INC., and TOMORROWNOW, INC. | |
| 10 | | | |
| 11 | | | |
| 12 | In accordance with General Order No. 45, Rule X, the above signatory attests that | | |
| 13 | concurrence in the filing of this document has been obtained from the signatory below. | | |
| 14 | DATED: February 11, 2009 | BINGHAM McCUTCHEN LLP | |
| 15 | | | |
| 16 | | By: /s/ Zachary J. Alinder | |
| 17 | | Zachary J. Alinder | |
| 18 | | Attorneys for Plaintiffs ORACLE USA, INC., ORACLE | |
| 19 | | INTERNATIONAL CORPORATION, and ORACLE EMEA LIMITED | |
| 20 | | | |
| 21 | | | |
| 22 | SO ORDERED. | | |
| 23 | | | |
| 24 | Dated:, 2009 | By: | |
| 25 | | The Honorable Elizabeth D. Laporte United States District Magistrate Judge | |
| 26 | | child states states magistate stage | |
| 27 | | | |
| 28 | | | |
| | | | |