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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.

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

**STIPULATION TO MODIFY MAY 5,
2008 CASE MANAGEMENT ORDER**

1
2 Pursuant to Federal Rule of Civil Procedure 16(b)(4), Section E of this Court’s
3 May 5, 2008 Case Management and Pretrial Order (“May 5 Case Management Order”), and
4 Civil Local Rule 7-11, Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle
5 EMEA Ltd. (“Oracle” or “Plaintiffs”) and Defendants SAP AG, SAP America, Inc., (together,
6 “SAP”) and TomorrowNow, Inc. (with SAP AG and SAP America, Inc., “Defendants,” and
7 together with Oracle, the “Parties”) jointly submit this stipulation in support of their joint motion
8 to modify the Court’s May 5, 2008 Case Management and Pretrial Order (“May 5 Case
9 Management Order”).

10 The Parties believe good cause exists to modify the May 5 Case Management
11 Order, as stipulated to below. As noted in the Parties’ Joint Administrative Motion to Modify
12 May 5, 2008 Case Management Order (the “Motion”), each of the requested modifications is the
13 result of substantial negotiation and compromise between the Parties and is conditioned upon all
14 of the requested modifications being accepted by the Court. In other words, the Parties
15 respectfully request that the Court either accept or reject all of the Parties’ modifications in full.
16 If the Court rejects the Parties’ motion in whole or in part, the Parties have agreed to reserve
17 their rights to seek a status conference with the Court and/or file any other motion or seek any
18 other relief relating to the case schedule, related case management efficiencies, and/or proposed
19 pleading amendments that they may deem necessary and appropriate, with a more detailed
20 explanation of the basis for any such request for relief than is provided in the Motion.

21 **NOW, THEREFORE, IT IS HEREBY STIPULATED** by the Parties, through their respective
22 counsel of record and in light of the good causes shown in the Motion, that the Court modify its
23 May 5 Case Management Order as follows:

- 24 1. That the Parties now be permitted to file a total of two rounds of summary judgment
25 motions before the close of fact discovery.
26 2. That the case management schedule will now reflect these dates:

27

DESCRIPTION	DEADLINE/DATE
Deadline to File Initial Round of Summary Judgment Motions	08/31/09

28

1	Last Day to Identify Custodians (w/ 6 in reserve)	10/02/09
2	Deadline to Designate Expert Witnesses	10/02/09
3	Last Day for Hearing on Initial Round of Summary Judgment Motions	10/30/09
4	Last Day to Identify Final 6 Custodians	11/02/09
5	Last Day to Serve Discovery Requests	11/02/09
6	Deadline to Serve Expert Reports	11/16/09
7	Updated Settlement Conference Statements Due	11/23/09
8	Settlement Conference	11/30/09
9	Deadline to Supplement and/or Correct All Disclosures and Discovery Responses	12/04/09
10	Fact Discovery Cut-off	12/04/09
11	Last Day to File Motion to Compel	12/11/09
12	Deadline to Designate Rebuttal Expert Witnesses	01/22/10
13	Deadline to Serve Rebuttal Expert Reports	02/26/10
14	Deadline to File Second Round of Summary Judgment Motions and any other Pre-Trial Dispositive Motions	03/01/10
15	Expert Discovery Cut-off	04/23/10
16	Last Day for Hearing on Second Round of Summary Judgment Motions and any other Pre-Trial Dispositive Motions	04/30/10
17	Last Day to Meet and Confer re Joint Pretrial Statement	04/30/10
18	Deadline to File Joint Pretrial Statement	05/07/10
19	Deadline to File Proposed Joint Voir Dire Questions and Joint Jury Instructions	05/07/10
20	Deadline to File Trial Briefs	05/07/10
21	Deadline to File Motions in Limine (all in one document)	05/07/10
22	Deadline to File Deposition Excerpts	05/07/10
23	Deadline to File Witness List	05/07/10
24	Deadline to File Exhibit List	05/07/10
25	Deadline to Exchange and Submit Exhibits (2 sets to Court)	05/07/10
26	Deadline to File Any Request re: Treatment of Conf. or Sealed Docs.	05/07/10
27	Deadline to File Proposed Verdict Form	05/07/10
28	Deadline to File Opposition to Motions in Limine	05/21/10
	Pretrial Conference	06/03/10
	Trial Commences	06/21/10

3. That each side be allowed an additional 100 deposition hours, for a total of 450 hours.

4. That, no later than July 15, 2009, Oracle be permitted to move to amend the complaint to add Siebel-related claims (for which it is in the process of obtaining registrations) and any other claims or allegations agreed to by the Parties by that time. Defendants agree

1 not to oppose those portions of a motion filed on or before July 15, 2009 that seek to add
2 Siebel-related claims or any other claims or allegations agreed to by the Parties prior to
3 July 15, 2009. The Parties reserve their respective rights, defenses, and positions with
4 respect to any other amendment.

5 **IT IS FURTHER STIPULATED** by the Parties, through their respective counsel of record
6 and in light of the good causes shown in the Parties’ Motion, that if the modifications proposed
7 above are accepted and ordered by the Court, then the Court also consider either: (a) entering an
8 order that accepts the Parties’ agreement on the following discovery limitations that shall apply
9 going forward; or (b) directing the Parties to submit the following agreed stipulations to Judge
10 Laporte for her consideration. The Parties note that there are pending discovery disputes relating
11 to the scope of the Parties’ existing productions, which are not waived by this Stipulation. The
12 Parties are not limited by this Stipulation from pursuing additional relief related to past or future
13 discovery:

- 14 1. For purposes of the following stipulations, the phrase “relating to Siebel” used in the
15 context of any stipulated discovery right or obligation relating to any discovery
16 sought from Defendants shall: (a) mean documents and testimony of similar scope to
17 those already provided by Defendants in this case relating to PeopleSoft and JD
18 Edwards products and support; and (b) include discovery relating to Defendants’
19 decision for TomorrowNow to provide Siebel support, the provision of third-party
20 maintenance and related support services to Siebel customers, and the Siebel portion
21 of Defendants’ Safe Passage program to the extent that it involves entities who were
22 customers of both TomorrowNow and SAP. For purposes of the following
23 stipulations, the phrase “relating to Siebel” used in the context of any stipulated
24 discovery right or obligation relating to any discovery sought from Oracle shall: (a)
25 mean documents and testimony of similar scope to those already provided by
26 Plaintiffs in this case relating to PeopleSoft and JD Edwards products and support;
27 and (b) include discovery relating to Siebel software licensing, maintenance, and
28 related support services to Siebel customers for the time frames relevant to this case,

1 whether before and after Oracle's acquisition of Siebel. Notwithstanding any of the
2 agreements above, the Parties reserve all rights and objections regarding the proper
3 scope of discovery from any party relating to Siebel in this case. Nothing in this
4 Stipulation limits or prevents the Parties from continuing to meet and confer on such
5 disputes about the proper scope of Siebel discovery, or from submitting such disputes
6 to Judge Laporte if necessary for a ruling.

- 7 2. Each side is permitted to designate an additional 20 custodians, for a total of 140
8 custodians per side. Up to 7 of Oracle's additional 20 custodians may be SAP
9 custodians. The Parties will meet and confer regarding the desired custodians and
10 reserve the right to seek further relief from Judge Laporte if an agreement cannot be
11 reached.
- 12 3. In addition to the current expanded timeline agreement between the Parties,
13 Defendants agree to produce additional responsive custodian documents (including
14 those relating to Siebel) from March 22, 2007 through October 31, 2008 for Werner
15 Brandt, Gerhard Oswald, and Thomas Bamberger, subject to Defendants' objections
16 to any outstanding document requests.
- 17 4. Defendants agree to the following additional individual depositions with the
18 following time limits that shall be counted against the total deposition hours available
19 to Plaintiffs:
 - 20 a. Up to four additional actual clock hours each for Shelley Nelson and James
21 Mackey relating to Siebel and/or Defendants' post-litigation conduct through
22 October 31, 2008, without regard to whether questions on these topics also
23 incidentally relate to issues previously covered with these witnesses. With
24 respect to Shelley Nelson, this additional time may also be used to address any
25 other questions or documents relevant to the claims and defenses in this case
26 that have not been previously asked or used in her prior depositions, with the
27 exception of Exhibit 135.
 - 28 b. Up to seven additional actual clock hours each for Werner Brandt, Gerhard

1 Oswald, and Martin Breuer relating to Siebel and/or Defendants' post-
2 litigation conduct through October 31, 2008. The seven hours assumes that all
3 seven hours would be conducted in German and thus, per Judge Laporte's
4 prior ruling, would count against Plaintiffs' total allotment as 3.5 hours each.

5 5. Other than as provided in paragraph 4(a) and (b) immediately above, no depositions
6 of individuals from either side will be re-opened without consent of the relevant party
7 or a ruling from Judge Laporte after a showing of good cause.

8 6. All Siebel-related claims shall be asserted in an amended complaint in this action
9 filed no later than July 15, 2009.

10 7. By June 30, 2009:

11 a. Oracle and TomorrowNow will provide dates for supplemental depositions of
12 the Parties' corporate designees on topics relating to Siebel, subject to any and
13 all objections the Parties may have to the deposition notices.

14 b. SAP will provide a date for a SAP Rule 30(b)(6) deposition relating to Siebel,
15 for up to 7 hours of record time, subject to any and all objections SAP may
16 have to the deposition notice.

17 c. SAP will provide dates for supplemental depositions of its corporate designees
18 on topics relating to Siebel other than those addressed during the deposition
19 permitted by paragraph 7(b) above, for up to four hours of record time
20 combined, subject to any and all objections SAP may have to the deposition
21 notices.

22 8. By July 15, 2009, the Parties will provide the following relating to Siebel:

23 a. For Oracle, all relevant organization charts or equivalents, acquisition
24 documents, copyright application/registration documents, customer contracts,
25 customer contract files, customer-specific financial and other records, and
26 copies of software at issue (with license keys). For TomorrowNow, all
27 relevant organization charts or equivalents, customer contracts, customer
28 contract files, customer-specific financial and other records, and, to the extent

1 they exist in a centralized location outside of what is normally included in this
2 case as part of an individual custodian's production, documents reflecting
3 development and implementation of the support model for Siebel customers.
4 For SAP, all relevant organization charts or equivalents, board-level
5 documents, including versions of board meeting minutes and any related
6 board presentation materials previously produced with information relating to
7 Siebel redacted, and SAP's customer contracts, files, and financial and other
8 records for any Siebel customer that was recruited through Safe Passage and
9 was also both a SAP and TomorrowNow customer. All Parties reserve all
10 rights and objections to all document requests and all Parties reserve all rights
11 and objections regarding the proper scope of discovery from any party relating
12 to Safe Passage in this case. To the extent any dispute arises regarding that
13 scope, then it will be subject to further meet and confer and, if necessary,
14 presented to Judge Laporte for a ruling.

- 15 b. For Oracle, all licenses (including exclusive and nonexclusive licenses),
16 assignment agreements, or other agreements relevant to rights to use and/or
17 ownership of the software and/or copyrighted material at issue. Oracle
18 reserves its right to raise the same objections previously raised to these
19 requests.
- 20 c. For Oracle, as to any copyrighted works claimed to be derivative works,
21 identification and copies of the underlying work(s) and a list of Plaintiffs'
22 products embodying, including, or constituting any copyrighted works at
23 issue. Oracle reserves its right to raise the same objections previously raised
24 to these requests.
- 25 d. For Oracle, Siebel financial information (including chart of accounts and other
26 such information produced as to PeopleSoft and JD Edwards products). For
27 Defendants and relating to Siebel, financial information (including chart of
28 accounts and other such information produced as to PeopleSoft and JD

1 Edwards products). All Parties reserve their right to raise the same objections
2 previously raised to these requests.

3 e. Defendants have given or will give Oracle access to all servers, CDs, DVDs,
4 and other portable media (besides backup tapes) relating to Siebel that after a
5 reasonable search Defendants are aware of at TomorrowNow, and will not
6 separately produce all environments or environment components relating to
7 Siebel on those servers or any other media. If Oracle locates any environment
8 components in the Data Warehouse and marks them for production, then
9 Defendants will produce the files they mark, subject to a privilege review.
10 Defendants will also produce all TomorrowNow fixes provided to Siebel
11 customers, assuming such fixes can be located and are kept in a central
12 location. If such fixes are kept on a server in the Data Warehouse, then
13 Oracle can mark them for production as part of the Data Warehouse review.

14 f. Each side may identify 20 interrogatory responses that it would like updated
15 in scope consistent with the additional Siebel discovery permitted or required
16 elsewhere in this Stipulation. The Parties reserve all objections to any and all
17 such interrogatories.

18 9. Defendants have provided declarations stating that neither SAP, TomorrowNow, nor
19 any SAP subsidiary provided any third-party maintenance and related support
20 services for eBusiness Suite, Retek, or Hyperion (the "HRE Products"). Oracle has
21 reviewed these declarations and agrees it will not propound further discovery in this
22 case relating to the HRE Products. Defendants agree not to object to providing
23 documents or testimony relating to the JD Edwards, PeopleSoft, or Siebel products on
24 the grounds that any such documents or testimony relating directly to those three
25 products also contain information relating to the HRE Products. Oracle agrees that it
26 will not seek to amend its complaint in this case to include new claims attempting to
27 add the HRE Products, but will reserve its rights to file a separate lawsuit relating to
28 the HRE Products at another time, should it obtain any information supporting such

1 claims. Defendants agree not to assert that any such subsequent claims regarding the
2 HRE Products are improper by using an argument that relies on the fact that those
3 claims were not asserted in this lawsuit.

4
5 **IT IS SO STIPULATED.**

6 DATED: May 12, 2009

7 BINGHAM McCUTCHEN LLP

8 By: _____ /s/
9 Geoffrey M. Howard
10 Attorneys for Plaintiffs
11 Oracle USA, Inc., Oracle International
Corporation, and Oracle EMEA, Ltd.

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: May 12, 2009

15 JONES DAY

16 By: _____ /s/
17 Tharan Gregory Lanier
18 Attorneys for Defendants
19 SAP AG, SAP America, Inc.,
and TomorrowNow, Inc.