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

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

No. 07-CV-1568 PJH (EDL)

**[PROPOSED] REVISED CASE
MANAGEMENT AND PRETRIAL
ORDER**

1 Based on the Parties' showing of good cause, the Court hereby grants the Parties'
 2 joint motion to modify the case management schedule and modifies the May 5, 2008 Case
 3 Management and Pretrial Order as follows:

- 4 1. The Parties may file a total of two rounds of summary judgment motions before the close
 5 of fact discovery.
- 6 2. The case management schedule is now as follows:

7	DESCRIPTION	DEADLINE/DATE
8	Deadline to File Initial Round of Summary Judgment Motions	08/31/09
9	Last Day to Identify Custodians (w/ 6 in reserve)	10/02/09
10	Deadline to Designate Expert Witnesses	10/02/09
11	Last Day for Hearing on Initial Round of Summary Judgment Motions	10/30/09
12	Last Day to Identify Final 6 Custodians	11/02/09
13	Last Day to Serve Discovery Requests	11/02/09
14	Deadline to Serve Expert Reports	11/16/09
15	Updated Settlement Conference Statements Due	11/23/09
16	Settlement Conference	11/30/09
17	Deadline to Supplement and/or Correct All Disclosures and Discovery Responses	12/04/09
18	Fact Discovery Cut-off	12/04/09
19	Last Day to File Motion to Compel	12/11/09
20	Deadline to Designate Rebuttal Expert Witnesses	01/22/10
21	Deadline to Serve Rebuttal Expert Reports	02/26/10
22	Deadline to File Second Round of Summary Judgment Motions and any other Pre-Trial Dispositive Motions	03/01/10
23	Expert Discovery Cut-off	04/23/10
24	Last Day for Hearing on Second Round of Summary Judgment Motions and any other Pre-Trial Dispositive Motions	04/30/10
25	Last Day to Meet and Confer re Joint Pretrial Statement	04/30/10
26	Deadline to File Joint Pretrial Statement	05/07/10
27	Deadline to File Proposed Joint Voir Dire Questions and Joint Jury Instructions	05/07/10
28	Deadline to File Trial Briefs	05/07/10
	Deadline to File Motions in Limine (all in one document)	05/07/10
	Deadline to File Deposition Excerpts	05/07/10
	Deadline to File Witness List	05/07/10
	Deadline to File Exhibit List	05/07/10

1	Deadline to Exchange and Submit Exhibits (2 sets to Court)	05/07/10
2	Deadline to File Any Request re: Treatment of Conf. or Sealed Docs.	05/07/10
3	Deadline to File Proposed Verdict Form	05/07/10
4	Deadline to File Opposition to Motions in Limine	05/21/10
5	Pretrial Conference	06/03/10
6	Trial Commences	06/21/10

3. Each party is allowed a total of 450 deposition hours.

4. Plaintiffs are permitted to move to amend the complaint by July 15, 2009 to add Siebel-related claims and any other claims or allegations agreed to by the Parties prior to July 15, 2009. All Siebel-related claims shall be asserted at this time. The Parties reserve their respective rights, defenses, and positions with respect to any other amendment.

Additionally, the following discovery limitations shall apply:

1. For purposes of the following limitations, the phrase “relating to Siebel” used in the context of any new discovery right or obligation created by this Order relating to any discovery sought from Defendants shall: (a) mean documents and testimony of similar scope to those already provided by Defendants in this case relating to PeopleSoft and JD Edwards products and support; and (b) include discovery relating to Defendants’ decision for Defendant TomorrowNow, Inc. (“TomorrowNow”) to provide Siebel support, the provision of third-party maintenance and related support services to Siebel customers, and the Siebel portion of Defendants’ Safe Passage program to the extent that it involves entities who were customers of both TomorrowNow and SAP (*i.e.*, Defendants SAP AG and SAP America, Inc.). For purposes of the following limitations, the phrase “relating to Siebel” used in the context of any new discovery right or obligation created by this Order relating to discovery sought from Plaintiffs shall: (a) mean documents and testimony of similar scope to those already provided by Plaintiffs in this case relating to PeopleSoft and JD Edwards products and support; and (b) include discovery relating to Siebel software licensing, maintenance, and related support services to Siebel customers for the time frames relevant to this case, whether before and after Plaintiffs’ acquisition

1 of Siebel. Notwithstanding this Order, the Parties retain all rights and objections
2 regarding the proper scope of discovery from any party relating to Siebel in this case.
3 Nothing in this Order limits or prevents the Parties from continuing to meet and
4 confer on such disputes about the proper scope of Siebel discovery, or from
5 submitting such disputes to Judge Laporte if necessary for a ruling.

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

1 prior ruling, would count against Plaintiffs' total allotment as 3.5 hours each.

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

5 6. By June 30, 2009:

6 a. Plaintiffs and TomorrowNow will provide dates for supplemental depositions
7 of the Parties' corporate designees on topics relating to Siebel, subject to any
8 and all objections the Parties may have to the deposition notices.

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

12 c. SAP will provide dates for supplemental depositions of its corporate designees
13 on topics relating to Siebel other than those addressed during the deposition
14 permitted by paragraph 6(b) above, for up to four hours of record time
15 combined, subject to any and all objections SAP may have to the deposition
16 notices.

17 7. By July 15, 2009, the Parties will provide the following relating to Siebel:

18 a. For Plaintiffs, all relevant organization charts or equivalents, acquisition
19 documents, copyright application/registration documents, customer contracts,
20 customer contract files, customer-specific financial and other records, and
21 copies of software at issue (with license keys). For TomorrowNow, all
22 relevant organization charts or equivalents, customer contracts, customer
23 contract files, customer-specific financial and other records, and, to the extent
24 they exist in a centralized location outside of what is normally included in this
25 case as part of an individual custodian's production, documents reflecting
26 development and implementation of the support model for Siebel customers.
27 For SAP, all relevant organization charts or equivalents, board-level
28 documents, including versions of board meeting minutes and any related

1 board presentation materials previously produced with information relating to
2 Siebel redacted, and SAP's customer contracts, files, and financial and other
3 records for any Siebel customer that was recruited through Safe Passage and
4 was also both a SAP and TomorrowNow customer. All Parties retain all
5 rights and objections to all document requests and the Parties shall retain all
6 rights and objections regarding the proper scope of discovery from any party
7 relating to Safe Passage. To the extent any dispute arises regarding that
8 scope, then it will be subject to further meet and confer and, if necessary,
9 presented to Judge Laporte for a ruling.

- 10 b. For Plaintiffs, all licenses (including exclusive and nonexclusive licenses),
11 assignment agreements, or other agreements relevant to rights to use and/or
12 ownership of the software and/or copyrighted material at issue. Plaintiffs
13 retain the right to raise the same objections previously raised to these requests.
- 14 c. For Plaintiffs, as to any copyrighted works claimed to be derivative works,
15 identification and copies of the underlying work(s) and a list of Plaintiffs'
16 products embodying, including, or constituting any copyrighted works at
17 issue. Plaintiffs retain the right to raise the same objections previously raised
18 to these requests.
- 19 d. For Plaintiffs, Siebel financial information (including chart of accounts and
20 other such information produced as to PeopleSoft and JD Edwards products).
21 For Defendants and relating to Siebel, financial information (including chart
22 of accounts and other such information produced as to PeopleSoft and JD
23 Edwards products). All Parties retain the right to raise the same objections
24 previously raised to these requests.
- 25 e. Defendants have given or will give Plaintiffs access to all servers, CDs,
26 DVDs, and other portable media (besides backup tapes) relating to Siebel that
27 after a reasonable search Defendants are aware of at TomorrowNow, and will
28 not separately produce all environments or environment components relating

1 to Siebel on those servers or any other media. If Plaintiffs locate any
2 environment components in the Data Warehouse and mark them for
3 production, then Defendants will produce the files they mark, subject to a
4 privilege review. Defendants will also produce all TomorrowNow fixes
5 provided to Siebel customers, assuming such fixes can be located and are kept
6 in a central location. If such fixes are kept on a server in the Data Warehouse,
7 then Plaintiffs can mark them for production as part of the Data Warehouse
8 review.

9 f. Each side may identify 20 interrogatory responses that it would like updated
10 in scope consistent with the additional Siebel discovery permitted or required
11 elsewhere in this Order. The Parties retain all objections to any and all such
12 interrogatories.

13 8. Defendants have provided declarations stating that neither SAP, TomorrowNow, nor
14 any SAP subsidiary provided any third-party maintenance and related support
15 services for eBusiness Suite, Retek, or Hyperion (the “HRE Products”). Plaintiffs
16 have reviewed these declarations and agree they will not propound further discovery
17 in this case relating to the HRE Products. Defendants agree not to object to providing
18 documents or testimony relating to the JD Edwards, PeopleSoft, or Siebel products on
19 the grounds that any such documents or testimony relating directly to those three
20 products also contain information relating to the HRE Products. Plaintiffs agree that
21 they will not seek to amend their complaint in this case to include new claims
22 attempting to add the HRE Products, but will reserve their rights to file a separate
23 lawsuit relating to the HRE Products at another time, should they obtain any
24 information supporting such claims. Defendants agree not to assert that any such
25 subsequent claims regarding the HRE Products are improper by using an argument
26 that relies on the fact that those claims were not asserted in this lawsuit.

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IT IS SO ORDERED.

Date: _____, 2009

Hon. Phyllis J. Hamilton
United States District Judge