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 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.

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

**[PROPOSED] ORDER GRANTING  
 DEFENDANTS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT  
 REGARDING PLAINTIFFS'  
 HYPOTHETICAL LICENSE  
 DAMAGES CLAIM**

Date: October 28, 2009; Time: 9:00 a.m.  
 Courtroom: 3, 17th Floor  
 Judge: Hon. Phyllis J. Hamilton

1 Having considered Defendants' Motion for Partial Summary Judgment Regarding  
2 Plaintiffs' Hypothetical License Damages Claim ("Motion for Partial Summary Judgment"),  
3 supporting declaration of Tharan Gregory Lanier, and exhibits attached thereto, which were  
4 lodged with the Court on August 26, 2009:

5 IT IS HEREBY ORDERED THAT: Defendants' motion is GRANTED. Summary  
6 judgment is proper when the pleadings, discovery and affidavits show that there is "no genuine  
7 issue as to any material fact and that the moving party is entitled to judgment as a matter of law."  
8 Fed. R. Civ. P. 56(c). The undisputed facts in this case show that Plaintiffs and Defendants  
9 would not have agreed to a hypothetical license but for the alleged infringement. The Court  
10 therefore grants partial summary judgment that Plaintiffs are not entitled to pursue actual  
11 damages in the form of a hypothetical license.

12 **IT IS SO ORDERED.**

13  
14 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Hon. Phyllis J. Hamilton  
United States District Court Judge