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 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.*,  
 23 Plaintiffs,  
 24 v.  
 25 SAP AG, *et al.*,  
 26 Defendants.

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

**STIPULATION TO PERMIT  
 DEFENDANTS TO FILE UNDER  
 SEAL PLAINTIFFS' DOCUMENTS  
 SUPPORTING DEFENDANTS'  
 MOTION FOR PARTIAL SUMMARY  
 JUDGMENT REGARDING  
 PLAINTIFFS' HYPOTHETICAL  
 LICENSE DAMAGES CLAIM**

1 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc., Oracle  
2 International Corporation and Oracle EMEA Limited (“Plaintiffs”) and Defendants SAP AG,  
3 SAP America, Inc. and TomorrowNow, Inc. (“Defendants,” and together with Plaintiffs, the  
4 “Parties”) jointly submit this Stipulation to Permit Defendants to File Under Seal Plaintiffs’  
5 Documents Supporting Defendants’ Motion for Partial Summary Judgment Regarding Plaintiffs’  
6 Hypothetical License Damages Claim (“Motion for Partial Summary Judgment”).

7 WHEREAS, Defendants filed their Motion for Partial Summary Judgment, along with the  
8 Declaration of Tharan Gregory Lanier in Support of Defendants’ Motion for Partial Summary  
9 Judgment (“Lanier Declaration”) and supporting exhibits, on August 26, 2009;

10 WHEREAS, at Plaintiffs’ request, Defendants have filed an Administrative Motion to  
11 Permit Defendants to File Under Seal Plaintiffs’ Documents Supporting Defendants’ Motion for  
12 Partial Summary Judgment;

13 WHEREAS the requested relief is necessary and narrowly tailored to protect the alleged  
14 confidentiality of the materials put at issue by the Motion for Partial Summary Judgment until  
15 such time as the Court makes a final ruling as to confidentiality of the relevant subject matter.  
16 Specifically, the following documents and portions of documents contain information designated  
17 by Plaintiffs as “Highly Confidential - Attorneys’ Eyes Only”:

- 18 • The following portions of Exhibit A to the Lanier Declaration: 19:23-20:25, 25:19-  
19 27:15, 46:6-47:15, 158:13-159:15;
- 20 • The following portions of Exhibit B to the Lanier Declaration: 117:9-120:18;
- 21 • The following portions of Exhibit H to the Lanier Declaration: portions of page 47,  
22 line 20; page 48, lines 9 and 12; and page 49, line 27; and
- 23 • The following portions of the Motion for Partial Summary Judgment: portions of 1:19-  
24 20, 1:24, 2:16, 3:13-14, 4:18-19, 5:26-27, 11:22, 12:12, 13:19, and 20:10.

25 Additionally, the following documents and portions of documents contain information designated  
26 by Plaintiffs as “Confidential Information”:

- 27 • The following portions of Exhibit A to the Lanier Declaration: 10:1-11:17, 159:16-  
28 160:2;

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- The following portions of Exhibit C to the Lanier Declaration: 73:25-84:6, 114:16-24; and
- The following portions of the Motion for Partial Summary Judgment: portions of 2:13-17, 3:11, 4:10-12, 4:15-17, 4:20-24, 5:28, 6:1-8, 11:14, 11:18-19, 11:21-22, 11:24-27, 12:12-13, 13:15-16, 13:18-19, 14:4-6, and 16:18-19.

NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their respective counsel of record, that Defendants be permitted to move for permission to file under seal (1) portions of Exhibits A, B, C and H to the Lanier Declaration and (2) portions of the Motion for Partial Summary Judgment, as described above. The Parties further agree that Defendants reserve their rights to challenge the confidentiality of the information filed under seal pursuant to this Stipulation. While the Parties agree that portions of the Motion for Partial Summary Judgment may be publicly filed, the Parties also agree that the filing shall not be construed as a waiver of any confidentiality designation or other protection with respect to documents, transcripts or other information referred to in, or that serve as the basis for, the allegations or arguments made in it.

**IT IS SO STIPULATED.**

DATED: August 26, 2009

JONES DAY

By: /s/ Tharan Gregory Lanier  
Tharan Gregory Lanier

Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.

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

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DATED: August 26, 2009

BINGHAM McCUTCHEN LLP

By: /s/ Geoffrey M. Howard  
Geoffrey M. Howard

Attorneys for Plaintiffs  
ORACLE USA, INC., ORACLE  
INTERNATIONAL CORPORATION, and  
ORACLE EMEA LIMITED