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21 ORACLE CORPORATION, a Delaware
corporation, ORACLE USA, INC., a Colorado
22 corporation, and ORACLE INTERNATIONAL
CORPORATION, a California corporation,
23

Plaintiffs,

24 v.

25 SAP AG, a German corporation, SAP
AMERICA, INC., a Delaware corporation,
26 TOMORROWNOW, INC., a Texas corporation,
and DOES 1-50, inclusive,
27

Defendants.
28

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 07-CV-1658 (MJJ)

**STIPULATION AND [PROPOSED]
ORDER RE: DESIGNATION OF
THE HONORABLE CHARLES A.
LEGG (RET.) AS SPECIAL
DISCOVERY MASTER IN
ACCORDANCE WITH F.R.C.P.
RULE 53**

Case No. 07-CV-1658 (MJJ)

STIPULATION AND [PROPOSED] ORDER RE: DESIGNATION OF THE HON. CHARLES A. LEGGE
(RET.) AS SPECIAL DISCOVERY MASTER IN ACCORDANCE WITH F.R.C.P. RULE 53

1 Plaintiffs Oracle Corporation, Oracle USA, Inc. and Oracle International
2 Corporation and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively
3 the “Parties”) jointly submit this Stipulation and [Proposed] Order Re: Designation of the
4 Honorable Charles A. Legge (Ret.) as Special Discovery Master in Accordance with F.R.C.P.
5 Rule 53.

6 WHEREAS, in the Court’s Pretrial Order, dated September 25, 2007, the Court
7 directed the Parties to select a mutually agreeable Special Discovery Master in the above-
8 captioned action;

9 WHEREAS, the Parties mutually selected the Honorable Charles A. Legge (Ret.)
10 to serve as the Special Discovery Master in this action;

11 WHEREAS, on or about October 30, 2007, the Court stated its approval of the
12 Honorable Charles A. Legge (Ret.) as the Special Discovery Master; and,

13 WHEREAS, the Honorable Charles A. Legge (Ret.) is available and consents to
14 serve as Special Discovery Master in this action.

15 **NOW, THEREFORE, IT IS HEREBY STIPULATED** by the Parties, through
16 their respective counsel of record, that the Honorable Charles A. Legge (Ret.) may be appointed
17 to serve as the Special Discovery Master in the above-captioned case in accordance with Federal
18 Rule of Civil Procedure Rule 53.

19 **BASED UPON THE FOREGOING STIPULATION, THE COURT**
20 **HEREBY ORDERS AS FOLLOWS:**

21 1. The Honorable Charles A. Legge (Ret.) is hereby appointed to serve as the
22 Special Discovery Master in the above-captioned case in accordance with Federal Rules of Civil
23 Procedure Rule 53.

24 2. The Special Discovery Master shall proceed with all reasonable diligence
25 in considering and deciding matters brought before him.

26 3. The Special Discovery Master shall:

27 (a) Hear all discovery disputes involving the Parties, either informally
28 or by formal motion, with such briefing as the Special Discovery

1 Master deems appropriate in his sole discretion, and report and
2 make recommendations to the Court with respect to the resolution
3 of such disputes; and,

4 (b) Hear from the Parties and report and make recommendations to the
5 Court with respect to any disputes regarding the protective order
6 entered in this action that are incidental to discovery.

7 4. Ex parte communications with the Special Discovery Master shall not be
8 permitted, other than ministerial communications with the administrative staff for the Special
9 Discovery Master.

10 5. The Special Discovery Master shall make timely reports and
11 recommendations, as appropriate, to the District Court Judge, in accordance with Rule of Civil
12 Procedure 53(f). A report and recommendation of the Special Discovery Master regarding a
13 discovery or protective order dispute shall become a final order of this Court unless a Party files
14 timely objections in accordance with Rule of Civil Procedure 53(g). The Court shall decide de
15 novo all objections to findings of fact made or recommended by the Special Discovery Master.

16 6. The Special Discovery Master shall preserve all documents, pleadings and
17 other written materials submitted by the Parties, and all tentative and final orders, findings and
18 reports and recommendations issued in connection with his work in the above-captioned matter.
19 The Special Discovery Master shall not be required to preserve any documents in connection
20 with the above-captioned matter after receiving written notice from a Party, and receiving written
21 confirmation from the other Party, of the final settlement, or entry of an order, judgment, or
22 decree finally disposing of this Action, including the exhaustion of all permissible appeals.
23 Further, within thirty (30) days after receiving such notice and confirmation, the Special
24 Discovery Master shall destroy all documents related to the above-captioned matter to the extent
25 those documents include any information designated as “Confidential Information” or “Highly
26 Confidential Information - Attorneys’ Eyes Only” by either Party and certify that fact to counsel
27 for both Parties.

28 7. The Special Discovery Master shall be compensated on an hourly basis at

1 his standard hourly rate to be paid one half by plaintiffs and one half by defendants.

2 DATED: January 3, 2008

3 BINGHAM McCUTCHEN LLP

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5 By: Christopher B. Hockett / 274
6 Christopher B. Hockett
7 Attorneys for Plaintiffs
8 Oracle Corporation, Oracle International
9 Corporation, and Oracle USA, Inc.

10 DATED: January 2, 2008

11 JONES DAY

12 By: [Signature]
13 Tharan Gregory Lanier
14 Attorneys for Defendants
15 SAP AG, SAP America, Inc.,
16 and TomorrowNow, Inc.

17 **IT IS SO ORDERED.**

18 Dated: _____

19 _____
20 Honorable Martin J. Jenkins
21 United States District Court Judge

22 SVI-53779v1