

EXHIBIT 37

1 BINGHAM McCUTCHEN LLP
 2 DONN P. PICKETT (SBN 72257)
 3 GEOFFREY M. HOWARD (SBN 157468)
 4 HOLLY A. HOUSE (SBN 136045)
 5 ZACHARY J. ALINDER (SBN 209009)
 6 BREE HANN (SBN 215695)
 7 Three Embarcadero Center
 8 San Francisco, CA 94111-4067
 9 Telephone: (415) 393-2000
 10 Facsimile: (415) 393-2286
 11 donn.pickett@bingham.com
 12 geoff.howard@bingham.com
 13 holly.house@bingham.com
 14 zachary.alinder@bingham.com
 15 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)
 10 JENNIFER GLOSS (SBN 154227)
 11 500 Oracle Parkway, M/S 5op7
 12 Redwood City, CA 94070
 13 Telephone: (650) 506-4846
 14 Facsimile: (650) 506-7114
 15 dorian.daley@oracle.com
 16 jennifer.gloss@oracle.com

17 Attorneys for Plaintiffs
 18 Oracle USA, Inc., Oracle International
 19 Corp., Oracle EMEA Ltd., and Siebel
 20 Systems, Inc.

JONES DAY
 ROBERT A. MITTELSTAEDT (SBN 060359)
 JASON McDONELL (SBN 115084)
 ELAINE WALLACE (SBN 197882)
 555 California Street, 26th Floor
 San Francisco, CA 94104
 Telephone: (415) 626-3939
 Facsimile: (415) 875-5700
 ramittelstaedt@jonesday.com
 jmcdonell@jonesday.com
 ewallace@jonesday.com

JONES DAY
 THARAN GREGORY LANIER (SBN 138784)
 JANE L. FROYD (SBN 220776)
 1755 Embarcadero Road
 Palo Alto, CA 94303
 Telephone: (650) 739-3939
 Facsimile: (650) 739-3900
 tglanier@jonesday.com
 jfroyd@jonesday.com

JONES DAY
 SCOTT W. COWAN (Admitted *Pro Hac Vice*)
 JOSHUA L. FUCHS (Admitted *Pro Hac Vice*)
 717 Texas, Suite 3300
 Houston, TX 77002
 Telephone: (832) 239-3939
 Facsimile: (832) 239-3600
 swcowan@jonesday.com
 jlfuchs@jonesday.com

Attorneys for Defendants
 SAP AG, SAP America, Inc., and
 TomorrowNow, Inc.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND 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 RE ADMISSIBILITY
 OF TN DATABASES**

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation, Oracle EMEA Ltd., and
 2 Siebel Systems, Inc. ("Oracle") and Defendants SAP AG, SAP America, Inc., and
 3 TomorrowNow, Inc. ("TomorrowNow," and together with SAP AG and SAP America, Inc.,
 4 "Defendants," and all together with Oracle, the "Parties") jointly submit this stipulation
 5 regarding the admissibility of certain evidence in the above-referenced case (the "Action").

6 The Parties hereby stipulate and agree as follows:

7 1. In response to a number of Interrogatories served by Oracle, Defendants have
 8 relied on several databases used by TomorrowNow employees pursuant to Federal Rule of Civil
 9 Procedure 33(d) ("Rule 33(d)"), including databases known as SAS, BakTrak, dotProject and
 10 Pathfinder.

11 2. Defendants have produced to Oracle the following Bates-labeled productions
 12 containing certain records from SAS on or about the dates indicated ("SAS Productions"): TN-
 13 OR00004202 – September 21, 2007; TN-OR00005145 – October 5, 2007; TN-OR00009556 –
 14 November 9, 2007; TN-OR00009569 – December 4, 2007; TN-OR00169313 – December 27,
 15 2007; TN-OR00871901 – February 14, 2008; TN-OR00871902 – February 14, 2008; TN-
 16 OR01823633 – June 11, 2008; TN-OR03727374 – January 20, 2009; TN-OR03775478 –
 17 February 13, 2009; TN-OR04446717 – March 4, 2009; TN-OR03727374 – March 6, 2009; TN-
 18 OR03775478 – March 6, 2009; and TN-OR04446719 – March 6, 2009.

19 3. Defendants have produced to Oracle the following Bates-labeled productions
 20 containing certain records from BakTrak on or about the dates indicated ("BakTrak
 21 Productions"): TN-OR01005523 – March 12, 2008; TN-OR01818628 – May 1, 2008; and TN-
 22 OR06125330 – April 20, 2009.

23 4. Defendants have produced to Oracle the following Bates-labeled productions
 24 containing certain records from dotProject on or about the dates indicated ("dotProject
 25 Productions"): TN-OR01361344 – March 26, 2008; and TN-OR06220764 – May 8, 2009.

26 5. Defendants have produced to Oracle the following Bates-labeled productions
 27 containing certain records from Pathfinder on or about the dates indicated ("Pathfinder
 28 Productions"): TN-OR04498712 – March 25, 2009.

6. Defendants produced the SAS Productions, BakTrak Productions, dotProject Productions, and Pathfinder Productions (together, the "Native Database Productions") in native electronic form, and Defendants represent that the Native Database Productions provide Oracle with the same functionality, usability, and look and feel available to TomorrowNow employees using the original versions of such databases.

7. For any screenshot, printout, or native electronic demonstration or presentation of any record, attachment, or other view or data contained in a Native Database Production offered by any Party in motion practice, trial, or any other proceeding or filing in the Action, and for which that Party can demonstrate the manner and method in which such screenshot, printout, or native electronic demonstration or presentation was generated from a Native Database Production ("Native Database Exhibit"), the Parties agree as follows:

a. Native Database Exhibits shall be deemed authentic for the purposes of Federal Rules of Evidence ("FRE") 901;

b. Any content of a Native Database Exhibit that does not on its face contain any objective indicia that such content is either a direct statement of a third party or a verbatim recital or paraphrasing of a statement of a third party, shall not be hearsay under FRE 801 and 802; and

c. Non-hearsay content of Native Database Exhibits shall be admissible for the purpose of attempting to establish any fact requested by any Interrogatory served by Oracle for which Defendants rely on the underlying Native Database Production in their response pursuant to Rule 33(d).

8. Any future production by Defendants of information copied from any version of SAS, BakTrak, dotProject, or Pathfinder ever used or maintained by TomorrowNow shall also be considered a Native Database Production for the purposes of this Stipulation.

9. This Stipulation is in no way intended to limit the purposes for which SAS, BakTrak, dotProject, Pathfinder, the Native Database Productions, or Native Database Exhibits may be used or offered into evidence by any Party in the Action, and all Parties expressly reserve their rights with respect to the admissibility of any information from SAS, BakTrak, dotProject,

1 or Pathfinder for any purpose. Any statements in this Stipulation regarding what specific
 2 evidence is agreed to be considered non-hearsay shall not be used as a basis to imply, infer or
 3 establish that any other offered evidence is either non-hearsay, hearsay or an exception to the
 4 hearsay rules.

5 10. This Stipulation shall in no way affect any Party's right under the Stipulated
 6 Protective Order to seek to clawback under a claim of privilege all or any portion of any Native
 7 Database Exhibits that may be offered into evidence for any purpose in this case.

8 11. One of the conditions inducing Defendants into entering into this stipulation is
 9 Plaintiffs' agreement to enter into an substantially equivalent, parallel stipulation for similar
 10 types of documents and data from databases relating to Plaintiffs' day-to-day business operations
 11 that Plaintiffs have relied on under Rule 33(d) in responding to Defendants' interrogatories.
 12 Similarly, Defendants agree to enter into substantially equivalent, parallel stipulations for similar
 13 types of documents and data from other of their own databases relating to Defendants' day-to-
 14 day business operations that they rely on or will rely on under Rule 33(d). The exact terms and
 15 conditions of any such future stipulations shall be the subject of negotiation between the Parties,
 16 and if necessary, ultimate resolution by Judge Laporte.

17 **IT IS SO STIPULATED.**

18
 19 DATED: October 30, 2009

BINGHAM McCUTCHEN LLP

By: 

Geoffrey M. Howard
 Attorneys for Plaintiffs

Oracle USA, Inc., Oracle International
 Corporation, Oracle EMEA, Ltd., and Siebel
 Systems, Inc.

23 JONES DAY

24 DATED: _____, 2009

By: _____

Tharan Gregory Lanier
 Attorneys for Defendants
 SAP AG, SAP America, Inc.,
 and TomorrowNow, Inc.