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19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 OAKLAND 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 REPLY IN SUPPORT
 OF DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

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

7 WHEREAS, Defendants filed Defendants’ Reply, along with the Declaration of Tharan
8 Gregory Lanier in Support of Defendants’ Reply (“Lanier Reply Declaration”) and supporting
9 exhibits, on April 14, 2010;

10 WHEREAS, at Plaintiffs’ request, Defendants have filed an Administrative Motion to
11 Permit Defendants to File Under Seal Plaintiffs’ Documents Supporting Defendants’ Reply;

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

- 17 • Exhibit 5 to the Lanier Reply Declaration: portions of ¶ 433; and
- 18 • Defendants’ Reply: portions of 15:28.

19 Additionally, the following portions of documents filed and lodged with the Court contain
20 information designated by Plaintiffs as “Confidential Information”:

- 21 • Exhibit 5 to the Lanier Reply Declaration: portions of ¶ 20; and
- 22 • Defendants’ Reply: portions of 2:11.

23 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their
24 respective counsel of record, that Defendants be permitted to move for permission to file under
25 seal portions of Defendants’ Reply, as well as portions of Exhibit 5 in support thereof, as

26 _____
27 ¹ As Plaintiffs note in their own moving papers, Oracle contends that Oracle’s recent
28 acquisition of Sun Microsystems, Inc. has resulted in certain limited changes to Oracle’s
corporate structure, including that Oracle America, Inc. has assumed all of plaintiff Oracle USA,
Inc.’s rights and obligations.

1 described above. The Parties further agree that Defendants reserve their rights to challenge the
2 confidentiality of the information filed under seal pursuant to this Stipulation. While the Parties
3 agree that portions of Defendants' Reply and Exhibit 5 may be publicly filed, the Parties also
4 agree that the filing shall not be construed as a waiver of any confidentiality designation or other
5 protection with respect to documents, transcripts, or other information referred to in, or that serve
6 as the basis for, the allegations or arguments made in it.

7 **IT IS SO STIPULATED.**

8 DATED: April 14, 2010

JONES DAY

9
10 By: /s/ Tharan Gregory Lanier
11 Tharan Gregory Lanier

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

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

16 DATED: April 14, 2010

BINGHAM McCUTCHEN LLP

17
18 By: /s/ Geoffrey M. Howard
19 Geoffrey M. Howard

20 Attorneys for Plaintiffs
21 ORACLE USA, INC., ORACLE
22 INTERNATIONAL CORPORATION,
ORACLE EMEA LIMITED, and SIEBEL
SYSTEMS, INC.