

EXHIBIT A

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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 OAKLAND DIVISION

24 **ORACLE USA, INC., et al.,**

25 **Plaintiffs,**

26 **v.**

27 **SAP AG, et al.,**

28 **Defendants.**

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No. 07-CV-01658 PJH (EDL)

PRE-TRIAL STIPULATION AND
[PROPOSED] ORDER NO. 1 REGARDING
CERTAIN FACTS, AUTHENTICATION
OF DOCUMENTS, AND FEDERAL RULE
OF EVIDENCE 1006 SUMMARIES

1 Plaintiffs Oracle USA, Inc. (“Oracle USA”), Oracle International Corporation
2 (“OIC”), Oracle EMEA Limited, and Siebel Systems, Inc. (“SSI”; and, together with Oracle
3 USA, OIC and Oracle EMEA Ltd., “Oracle”) and Defendants SAP AG, SAP America, Inc., and
4 TomorrowNow, Inc (“SAP TN”; and, together with SAP AG and SAP America, Inc.,
5 “Defendants”; and, all together with Oracle, the “Parties”), jointly enter this Stipulation and
6 Order (the “Stipulation”).

7 WHEREAS, the Parties have spent three years conducting voluminous discovery,
8 producing more than 10 TB of data and taking nearly 1,000 record hours of deposition thus far;

9 WHEREAS, on May 5, 2010, the Court instructed the Parties to meet and confer
10 so as to streamline this matter for trial;

11 **NOW, THEREFORE, THE PARTIES HEREBY STIPULATE**, through their
12 respective counsel of record, as follows:

13 **I. DEFINITIONS**

14 1. “Copy,” used as a noun, means a reproduction of, a derivative work of, or a public
15 display of any Oracle Enterprise Software, Oracle Database Software, Oracle Install Software or
16 Oracle Updates and Support Materials that embody a substantial portion of one or more
17 Stipulated Registered Works. “Copy,” used as a verb, means to reproduce, to create a derivative
18 work from, or to publicly display any Oracle Enterprise Software, Oracle Database Software,
19 Oracle Install Software or Oracle Updates and Support Materials that embody a substantial
20 portion of one or more Stipulated Registered Works.

21 2. “Oracle Database Software” means Oracle’s Relational Database Management
22 System software.

23 3. “Oracle Enterprise Software” means Oracle’s J.D. Edwards Software, Oracle’s
24 PeopleSoft Software, and Oracle’s Siebel Software.

25 4. “Oracle Install Software” means install media in the form of a CD or DVD, an
26 electronic image of a CD or DVD, a binary executable, or a compressed file that, when run or
27 executed, creates one or more instances of Oracle Enterprise Software or Oracle Database
28 Software.

1 5. “Oracle’s J.D. Edwards Software” means Oracle’s J.D. Edwards-branded enterprise
2 application software.

3 6. “Oracle’s PeopleSoft Software” means Oracle’s PeopleSoft-branded enterprise
4 application software.

5 7. “Oracle’s Siebel Software” means Oracle’s Siebel-branded enterprise application
6 software.

7 8. “Oracle Updates and Support Materials” means without limitation all program
8 updates, software updates, bug fixes, patches, custom solutions, and instructional materials
9 created or owned by Oracle, or derived from, copied from, or based on any such materials,
10 including by SAP AG, SAP America or SAP TN, across the entire family of PeopleSoft-branded,
11 J.D. Edwards-branded, and Siebel-branded products.

12 9. “Stipulated Registered Works” means Oracle’s copyright registrations for Oracle
13 Software, Oracle Database and Oracle Updates and Support Materials as listed in Attachment A.

14 **II. FACTS**

15 **A. Interpretation under the Case Management and Pretrial Order**

16 10. Sections I and II.B-II.C of this Stipulation shall be considered “relevant and
17 undisputed facts to which the parties will stipulate for incorporation into the trial record without
18 the necessity of supporting testimony or exhibits.” *See* Case Management and Pretrial Order,
19 Dkt. 84, at 3(a)(iii).

20 11. The Parties agree that Oracle is not prohibited from entering evidence at trial
21 relating to any stipulated facts set forth below.

22 12. The Parties agree that Oracle is permitted to characterize any stipulated facts that
23 refer or relate to Copying as concessions or admissions.

24 **B. Oracle’s Copyright Registrations**

25 13. Oracle USA, together with predecessors-in-interest, or SSI authored each of the
26 Stipulated Registered Works.

27 14. OIC or SSI owns all of the Stipulated Registered Works.

28 15. OIC holds exclusive copyright rights in all of the Stipulated Registered Works,

C. Copyrightable Subject Matter

16. Each Stipulated Registered Work includes one or more computer programs or other literary works that are original works of authorship fixed in a tangible medium of expression under the meaning of the copyright law, and is protected under United States copyright law.

17. Software companies typically create many new versions of their software, and voluminous updates to it that they separately create. It is impractical and unnecessary to register all of them with the Copyright Office because each later software versions typically contains virtually all of the code contained in earlier versions. The versions Copied by SAP TN of Oracle Enterprise Software and Oracle Database Software may not match exactly the versions of the Oracle Enterprise Software and Oracle Database Software in the Stipulated Registered Works. Nonetheless, the existence of those Copies on SAP TN computers is sufficient to prove Plaintiffs' copyright infringement claims in order to prove infringement.

18. All Stipulated Registered Works that are derivative works incorporate all or almost all protected expression contained within the preceding versions of the same work. A reproduction or public display of a preceding version, or a derivative work based on the preceding version, is also a reproduction or public display of or a derivative work that contains a substantial amount of the protected expression found within the derivative version. Therefore, a reproduction of the preceding version, a public display of the preceding version, or a derivative work based on the preceding version is a Copy that infringes the copyright registration for the derivative work.

19. For example, a reproduction that SAP TN made of the Oracle Software named PeopleSoft HRMS 7.02 contains a substantial portion of the code, schema and other protected expression found in the Stipulated Registered Work named PeopleSoft HRMS 7.5. The reproduction of PeopleSoft HRMS 7.02 is thus a Copy of PeopleSoft HRMS 7.5, and is covered by the copyright registration that Plaintiffs have asserted for PeopleSoft HRMS 7.5.

20. All derivative works for which the preceding works are Stipulated Registered Works incorporate all or almost all protected expression contained within the preceding versions of the same work. A reproduction or public display of a derivative version, or a derivative work

1 based on the derivative version, is also a reproduction or public display of or a derivative work
2 that contains all or almost all of the protected expression found within the preceding version.
3 Therefore, a reproduction of the derivative version, a public display of the derivative version, or ,
4 or a derivative work based on the derivative version is a Copy that infringes the copyright
5 registration for the preceding work.

6 21. For example, a reproduction that SAP TN made of the Oracle Software named
7 PeopleSoft HRMS 7.02, contains a substantial portion of the code, schema and other protected
8 expression found in the Stipulated Registered Work named PeopleSoft HRMS 7.0. The
9 reproduction of PeopleSoft HRMS 7.02 is thus a Copy of PeopleSoft HRMS 7.0, and is covered
10 by the copyright registration that Plaintiffs have asserted for PeopleSoft HRMS 7.0.

11 22. As illustrated in the examples above, for the majority of versions of Oracle
12 Software and Oracle Database copied by SAP TN, a reproduction of, public display of, or or a
13 derivative work that embodies any given version of Oracle Software or Oracle Database is both a
14 Copy of a preceding Stipulated Registered Work and a Copy of a derivative Stipulated
15 Registered Work.

16 23. All Copies made by SAP TN embody particular expressions, protected by the
17 copyright law, that are expressions of ideas found in one or more of the Stipulated Registered
18 Works. Certain of the Stipulated Registered Works contain objects and schema.

19 24. An “object” is an individual computer program that is a building block of the large,
20 enterprise software products at issue in this case. Objects are often described by referencing the
21 programming language used to create them, or by file extension appended to the name of the file.
22 Objects include COBOL files, SQR files, SQC files, PeopleCode objects, fields, records, pages,
23 menus, components, messages, panels, stored statements, panel groups, rule packages, DAT
24 files, DMS files, project files, batch files, configuration files, .c and .h files. Some files contain
25 collections of objects or portions of them, such as Electronic Software Updates (known as
26 “ESUs”), code changes and paper fixes. These objects are protected by United States copyright
27 law. A Copy of any of them constitutes, reproduction, distribution, public display or creation of
28 a derivative work that embodies a substantial amount of protected expression contained within

1 one or more of the Stipulated Registered Works.

2 25. A “schema” is a set of database structures such as tables and fields, together with
3 the relationships between those database structures. Schema are contained within Oracle
4 Software, such as for Oracle’s PeopleSoft-branded software, and in Oracle Database. These
5 schema are protected by United States copyright law. A Copy of any of them constitutes a
6 reproduction, distribution, public display or creation of a derivative work that embodies a
7 substantial amount of protected expression contained within one or more of the Stipulated
8 Registered Works

9 26. SAP TN reproduced, publicly displayed, distributed and modified many of the
10 objects and schema included in Oracle Enterprise Software and Oracle Database Software as part
11 of providing service to its customers. That Copying constituted infringement of the Stipulated
12 Registered Works.

13 **III. CONSENT TO CONFORM TO PROOF AT TRIAL**

14 27. Oracle may conform the list of copyright registrations in suit to proof at trial.

15 **IV. ADMISSIBILITY OF EVIDENCE**

16 28. The Parties agree that Attachment A shall be admitted into evidence at trial.

17 **V. AUTHENTICATION**

18 29. All documents produced by the parties in discovery in the above-named action are
19 deemed authenticated for purposes of this litigation only pursuant to Federal Rule of Evidence
20 901.

21 **VI. FEDERAL RULE OF EVIDENCE 1006 SUMMARIES**

22 30. In light of the volume of evidence at issue in this litigation, neither party will object
23 to a chart or summary of voluminous evidence introduced pursuant to Federal Rule of Evidence
24 1006 (“FRE 1006 Summary”) on the grounds that an attorney prepared the FRE 1006 Summary.

25 31. The Parties also agree that a sponsoring witness will be identified for each FRE
26 1006 Summary by the Party seeking to introduce that summary. The sponsoring witness will be
27 made available for questioning at trial regarding the contents of the FRE 1006 Summary, the
28 process for generation of the FRE 1006 Summary, and the underlying evidence.

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DATED: July [redacted], 2010

BINGHAM McCUTCHEN LLP

By: _____

Geoff Howard
Attorneys for Plaintiffs
Oracle USA, Inc., Oracle International
Corporation, Oracle EMEA Limited, and
Siebel Systems, 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.

DATED: July [redacted], 2010

JONES DAY

By: _____

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

IT IS SO ORDERED.

Dated: July ____, 2010

Phyllis J. Hamilton
United States District Judge

ATTACHMENT A

Title of Work	Date of Registration	Registration Number
PeopleSoft 8 Customer Relationship Management	September 27, 2001	TX-5-456-777
PeopleSoft 8.8 Customer Relationship Management	June 11, 2004	TX 6-015-317
PeopleSoft 8.8 Enterprise Performance Management	June 11, 2004	TX-5-993-616
PeopleSoft Financials, Distribution & Manufacturing 7.5	December 15, 1998	TX 4-792-574
PeopleSoft 8 Financials and Supply Chain Management: Service Pack 2	September 27, 2001	TX-5-456-780
PeopleSoft 8.4 Financials and Supply Chain Management	August 5, 2002	TX-5-586-247
PeopleSoft HRMS 7.0	December 15 1998	TX 4-792-577
PeopleSoft HRMS 7.5	December 15, 1998	TX 4-792-575
PeopleSoft 8 HRMS SP1	March 26, 2001	TX 5-501-312
PeopleSoft 8.3 HRMS	February 1, 2002	TX 5-469-032
PeopleSoft 8.8 HRMS	June 11, 2004	TX 6-093-947
PeopleSoft 8 Student Administration Solutions	November 30, 2001	TX 5-431-289
PeopleTools 7.5	November 20, 1998	TX 4-792-578
PeopleTools 8.10	September 5, 2000	TX 5-266-221
PeopleTools 8.4	August 5, 2002	TX 5-586-248

Table A-1: Infringed PeopleSoft Application Registrations

Title of Work	Date of Registration	Registration Number
Database of Documentary Customer Support Materials for PeopleSoft Software	July 1, 2009	TXu1-607-454
PeopleTools Third Party Daylight Saving Time Required Modifications	April 26, 2007	TX 6-541-019
PeopleTools Third Party Daylight Saving Time Required Modifications (Revised)	April 26, 2007	TX 6-541-018
PeopleSoft 8.01 & 8.31 Payroll Tax Update 05-F Year-End Processing: Canada	May 2, 2008	TX 6-838-549
PeopleSoft Payroll 1200457000 - User Documentation	May 2, 2008	TX 6-838-537
PeopleSoft Application Update Installation Instructions (UPD595817)	May 2, 2008	TX 6-838-544

Table A-2: Infringed Oracle Updates and Support Materials Registrations for Oracle's PeopleSoft-branded Products

Title of Work	Date of Registration	Registration Number
Initial release of JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-033
Initial release of JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-050
Initial release of JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-038
Initial release of JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-028
Initial release of JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-041

Title of Work	Date of Registration	Registration Number
Initial release of JD Edwards World A7.3	April 26, 2007	TX 6-541-029
Initial release of JD Edwards World A8.1	April 26, 2007	TX 6-541-047

Table A-3: Infringed J.D. Edwards Application Registrations

Title of Work	Date of Registration	Registration Number
Cumulative Update 8 for JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-048
Cumulative Update 1 for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-034
Cumulative Update 2 for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-032
Cumulative Update 1 for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-042
Cumulative Update 16 for JD Edwards World A7.3	April 26, 2007	TX 6-541-031
Cumulative Update 6 for JD Edwards World A8.1	May 1, 2007	TX 6-545-421

Table A-4: Infringed J.D. Edwards Cumulative Update Registrations

Title of Work	Date of Registration	Registration Number
Database of Documentary Customer Support Materials for J.D. Edwards Software	July 1, 2009	TXu1-607-455
Changes to Daylight Savings Time for 2007 (DST)	April 26, 2007	TX 6-541-025
ESU for JD Edwards EnterpriseOne Xe	May 3, 2007	TX 6-541-051
ESU for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-046
ESU for JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-036
ESU for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-037
ESU for JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-035
ESU for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-027
ESU for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-045
Code Change for JD Edwards World A7.3	April 26, 2007	TX 6-541-043
Code Change for JD Edwards World A8.1	April 26, 2007	TX 6-541-044
E1: 07/77: Quantum for Payroll Tax v.280	April 26, 2007	TX 6-541-022
E1: 1099: Year 2006 1099 ESUs	April 26, 2007	TX 6-541-024
EAP WTHD06: 1099 IRS changes for the year 2006	April 26, 2007	TX 6-541-023
JD Edwards World -- 1099 Changes for Tax Year 2006	April 26, 2007	TX 6-541-026
ECRM89: Common Errors on Mobile Sales	April 26, 2007	TX 6-541-020
GM--Grants issues resolved by FMS ESA 8.9 Bundle #10-653723 (Oct 06)	April 26, 2007	TX 6-541-021

Table A-5: Infringed Oracle Updates and Support Materials Registrations for Oracle's J.D. Edwards-branded Products¹

¹ The Cumulative Updates, separately listed in Table A-3, are also Oracle Update and Support Materials for Oracle's J.D. Edwards-branded products.

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Title of Work	Date of Registration	Registration Number
Siebel 6.3 Initial Release and Documentation	June 29, 2009	TX 6-941-989
Siebel 7.0.5 Initial Release and Documentation	June 29, 2009	TX 6-941-988
Siebel 7.5.2 Initial Release and Documentation	June 29, 2009	TX 6-941-990
Siebel 7.7.1 Initial Release and Documentation	June 29, 2009	TX 6-941-993
Siebel 7.8 Initial Release and Documentation	June 29, 2009	TX 6-941-995

Table A-6: Infringed Siebel Application Registrations

Title of Work	Date of Registration	Registration Number
Database of Documentary Customer Support Materials for Siebel Software	July 1, 2009	TXu1-607-453

Table A-7: Infringed Oracle Updates and Support Materials Registrations for Oracle's Siebel-branded Products

Title of Work	Date of Registration	Registration Number
Oracle 8i Enterprise Edition, release 2 (8.1.6)	February 2, 2001	TX 5-222-106
Oracle9i Database Enterprise : Edition Release 2	June 13, 2003	TX 5-673-282
Oracle Database 10g: Release 2	June 29, 2009	TX 6-942-003

Table A-8: Infringed Oracle Database Registrations