

1 BINGHAM MCCUTCHEN LLP  
 DONN P. PICKETT (SBN 72257)  
 2 GEOFFREY M. HOWARD (SBN 157468)  
 HOLLY A. HOUSE (SBN 136045)  
 3 ZACHARY J. ALINDER (SBN 215695)  
 BREE HANN (SBN 215695)  
 4 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 5 Telephone: 415.393.2000  
 Facsimile: 415.393.2286  
 6 donn.pickett@bingham.com  
 geoff.howard@bingham.com  
 7 holly.house@bingham.com  
 zachary.alinder@bingham.com  
 8 bree.hann@bingham.com

9 BOIES, SCHILLER & FLEXNER LLP  
 DAVID BOIES (Admitted *Pro Hac Vice*)  
 10 333 Main Street  
 Armonk, NY 10504  
 11 Telephone: 914.749.8200  
 dboies@bsflp.com  
 12 STEVEN C. HOLTZMAN (SBN 144177)  
 1999 Harrison St., Suite 900  
 13 Oakland, CA 94612  
 Telephone: 510.874.1000  
 14 sholtzman@bsflp.com

15 DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 16 500 Oracle Parkway, M/S 5op7  
 Redwood City, CA 94070  
 17 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 18 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com

19 Attorneys for Plaintiffs  
 20 Oracle USA, Inc., *et al.*

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

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

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

No. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER GRANTING  
 PLAINTIFFS' MOTION NO. 3: TO  
 EXCLUDE TESTIMONY OF  
 DEFENDANTS' EXPERT DAVID  
 GARMUS**

Date: September 30, 2010  
 Time: 9:00 a.m.  
 Place: 3rd Floor, Courtroom 3  
 Judge: Hon. Phyllis J. Hamilton

Case No. 07-CV-01658 PJH (EDL)

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOT. NO. 3: TO EXCLUDE TESTIMONY OF  
 DEFENDANTS' EXPERT DAVID GARMUS

1 The Court having before it the Motion of Plaintiffs Oracle USA , Inc. (predecessor to  
2 Oracle America, Inc.), Oracle International Corporation, Oracle EMEA Limited and Siebel  
3 Systems, Inc. (collectively “Oracle”) to Exclude Testimony of Defendants’ Expert David  
4 Garmus, and having considered the papers and argument of the parties, IT IS HEREBY  
5 ORDERED THAT Plaintiffs’ Motion to Exclude Testimony of Defendants’ Expert David  
6 Garmus is GRANTED as follows:

7 1. Neither Garmus nor any witness relying on Garmus (*e.g.*, Defendants’  
8 damages expert, Stephen Clarke) may present or reference or rely on Garmus’ opinions and  
9 conclusions concerning TomorrowNow’s use of Oracle’s software.

10 2. Neither Garmus nor any witness relying on Garmus (*e.g.*, Defendants’  
11 damages expert, Stephen Clarke) may present or reference or rely on Garmus’ opinions and  
12 conclusions relating to the Garmus’ claimed function point count of EnterpriseOne 8.0 Accounts  
13 Payable and PeopleSoft Enterprise Global Payroll for US 8.9.

14 3. Neither Garmus nor any witness relying on Garmus (*e.g.*, Defendants’  
15 damages expert, Stephen Clarke) may present or reference or rely on Garmus’ opinions and  
16 conclusions relating to Garmus’ claims that neither the International Function Point User’s  
17 Group nor its membership agree with Pinto’s methodology.

18 4. Neither Garmus nor any witness relying on Garmus (*e.g.*, Defendants’  
19 damages expert, Stephen Clarke) may present or reference or rely on Garmus’ opinion about  
20 whether amounts that SAP would have spent to independently develop relevant software is  
21 appropriate for this case.

22  
23 **IT IS SO ORDERED.**

24 DATED: \_\_\_\_\_

\_\_\_\_\_  
25 Hon. Phyllis J. Hamilton  
26 United States District Court Judge