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

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

25 **Plaintiffs,**

26 v.

27 SAP AG, *et al.*,

28 **Defendants.**

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 TOMORROWNOW, INC.

No. 07-CV-01658 PJH (EDL)

TRIAL STIPULATION AND [PROPOSED]  
 ORDER NO. 2 REGARDING CERTAIN  
 FACTS

07-CV-01658 PJH (EDL)

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

6 WHEREAS, the Parties seek to narrow the issues in dispute for trial;

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

9 **I. DEFINITIONS**

10 1. “Copy,” used as a noun, means a reproduction of, a derivative work of, a  
11 distribution of, or a public display of at least a portion of any Oracle Enterprise Software, Oracle  
12 Database Software, Oracle Install Software or Oracle Updates and Support Materials that  
13 embody one or more Stipulated Registered Works. “Copy,” used as a verb, means to reproduce,  
14 to create a derivative work from, to distribute, or to publicly display at least a portion of any  
15 Oracle Enterprise Software, Oracle Database Software, Oracle Install Software or Oracle  
16 Updates and Support Materials that embody one or more Stipulated Registered Works.

17 2. “Object(s)” are building blocks of the large, enterprise software products at issue in  
18 this case. Objects relevant to this case include COBOL files, SQR files, SQC files, PeopleCode  
19 objects, DAT files, DMS files, batch files, configuration files, .c and .h files and others.  
20 Combinations or portions of these Objects are contained within some other files, such as  
21 Electronic Software Updates (known as “ESUs”), code changes and paper fixes.

22 3. “Oracle Database Software” means Oracle’s Relational Database Management  
23 System software.

24 4. “Oracle Enterprise Software” means Oracle’s J.D. Edwards Software, Oracle’s  
25 PeopleSoft Software and/or Oracle’s Siebel Software, or portions thereof.

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

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1 Software.

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

4 7. “Oracle’s PeopleSoft Software” means Oracle’s PeopleSoft-branded enterprise  
5 application software.

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

8 9. “Oracle Updates and Support Materials” means some or all of the program updates,  
9 software updates, bug fixes, patches, custom solutions, and instructional materials created or  
10 owned by Oracle, or derived from, copied from, or based on any such materials, including any  
11 such materials generated or distributed by TN, for PeopleSoft-branded, J.D. Edwards-branded,  
12 and Siebel-branded products.

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

16 **II. FACTS**

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

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

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

23 12. Oracle USA, together with predecessors-in-interest, or SSI authored each of the  
24 Stipulated Registered Works.

25 13. OIC or SSI owns all of the Stipulated Registered Works.

26 14. OIC holds exclusive copyright rights in all of the Stipulated Registered Works.

27 15. TN committed direct copyright infringement with respect to each of the Stipulated  
28 Registered Works.

1           16. SAP America, Inc. is vicariously liable for TN’s direct infringement of each of the  
2 Stipulated Registered Works.

3           17. SAP AG is vicariously liable for TN’s direct infringement of each of the Stipulated  
4 Registered Works.

5           **C. Copyrightable Subject Matter**

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

9           19. Software companies typically create many new versions of their software, and  
10 voluminous updates to it that they separately create. The versions of Oracle Enterprise Software  
11 and Oracle Database Software, Copied by TN, may not match exactly the versions of the Oracle  
12 Enterprise Software and Oracle Database Software in the Stipulated Registered Works.  
13 Nonetheless, the Copies on TN’s computers sufficiently match the Stipulated Registered Works  
14 to constitute Copies of the Stipulated Registered Works.

15           20. Copies made by TN embody particular expressions, protected by the copyright law,  
16 that are expressions of ideas found in one or more of the Stipulated Registered Works. Certain  
17 of the Stipulated Registered Works contain Objects and Schema.

18           21. Some Objects, including COBOL, SQR, SQC, DAT, .c, and .h files, are protected  
19 by United States copyright law.

20           **III. ADMISSIBILITY OF EVIDENCE**

21           22. The Parties agree that Attachment A shall be admitted into evidence at trial.

22           **IV. APPLICABILITY**

23           23. The Parties reach this stipulation for purposes of this action only, and this  
24 stipulation has no force or effect in any other proceeding or jurisdiction.

25           24. Nothing in this Stipulation is intended to, or does, alter or change in any way Trial  
26 Stipulation and Order No.1 Regarding Liability, Dismissal of Claims, Preservation of Defenses,  
27 and Objections to Evidence at Trial (D.I. 866).

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1 DATED: September 28, 2010

BINGHAM McCUTCHEN LLP

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By:  /s/ Geoffrey M. Howard

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Geoffrey M. Howard  
Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corporation, and Siebel Systems, Inc.

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

8

DATED: September 28, 2010

JONES DAY

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By:  /s/ Scott W. Cowan

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

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**IT IS SO ORDERED.**

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Dated: September \_\_\_\_, 2010

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Phyllis J. Hamilton  
United States District Judge

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**ATTACHMENT A**

<b>Title of Work</b>	<b>Date of Registration</b>	<b>Registration Number</b>
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
PeopleSoft 8.1 Customer Relationship Management	March 20, 2002	TX 5-493-450
PeopleSoft 8 EPM SP3	March 30, 2001	TX 5-345-698
PeopleSoft 8.3 Enterprise Performance Management	March 11, 2002	TX 5-485-839
PeopleSoft 7.0 financials, distribution & manufacturing 7.0	December 15, 1998	TX 4-792-576
PeopleSoft Financials and Supply Chain Management (FIN/SCM) 8.0	November 20, 2000	TX 5-291-439
PeopleSoft 8 FIN/SCM SP1	March 26, 2001	TX 5-501-313
PeopleSoft HRMS 8.0	November 20, 2000	TX 5-291-440
PeopleTools 8.0	September 5, 2000	TX 5-266-222
PeopleSoft Pension Administration 7	June 21, 1999	TX 3-772-290
PeopleSoft Payroll 7	June 22, 1999	TX 4-501-140
PeopleSoft Payroll Interface 7	June 22, 1999	TX 4-501-138
PeopleSoft Time and Labor 7.0	June 28, 1999	TX 4-994-866
PeopleSoft Benefits Administration 7.0	June 15, 1999	TX 4-258-824
PeopleSoft Human Resources 7	June 28, 1999	TX 4-994-865
PeopleSoft Payroll Interface 7 Higher Education	June 28, 1999	TX 5-013-124
PeopleSoft Time and Labor 7	June 28, 1999	TX 5-013-128
PeopleSoft Benefits Administration 7.50	June 14, 1999	TX 5-072-090
PeopleSoft Payroll Interface 7.50	June 21, 1999	TX 3-772-292
PeopleSoft Pension Administration 7.50	June 21, 1999	TX 3-772-291
PeopleSoft Human Resources 7.50	June 28, 1999	TX 5-013-123
PeopleSoft Payroll 7.50	June 28, 1999	TX 5-013-125
PeopleSoft Time and Labor 7.50	June 28, 1999	TX 4-994-867

**Table A-1: PeopleSoft Application Registrations**

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

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

	<b>Title of Work</b>	<b>Date of Registration</b>	<b>Registration Number</b>
10	Initial release of JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-033
11	Initial release of JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-050
12	Initial release of JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-038
13	Initial release of JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-028
14	Initial release of JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-041
15	Initial release of JD Edwards World A7.3	April 26, 2007	TX 6-541-029
16	Initial release of JD Edwards World A8.1	April 26, 2007	TX 6-541-047
17	Current development environment for JD Edwards EnterpriseOne Xe	April 26, 2007	TXu1-345-109
18	Current development environment for JD Edwards EnterpriseOne 8.0	April 26, 2007	TXu1-345-111
19	Current development environment for JD Edwards EnterpriseOne 8.9	April 26, 2007	TXu1-345-112
20	Current development environment for JD Edwards EnterpriseOne 8.10	April 26, 2007	TXu1-345-113
21	Current development environment for JD Edwards EnterpriseOne 8.11	April 26, 2007	TXu1-345-114
22	Current development environment for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TXu1-345-115
23	Current development environment for JD Edwards EnterpriseOne 8.12	April 26, 2007	TXu1-346-350
24	Current development environment for JD Edwards World A7.3	April 26, 2007	TXu1-345-110
25	Current development environment for JD Edwards World A8.1	May 1, 2007	TX 6-545-422
26	Initial release of JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-049
27	Initial release of JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-040
28	Initial release of JD Edwards World A9.1	April 26, 2007	TX 6-541-030
	Accounts Payable program	March 7, 1995	TXu 619-320
	Accounts Receivable program	March 7, 1995	TXu 619-312
	Capacity Requirements Planning program	March 7, 1995	TXu 619-307
	Configuration Management program	March 7, 1995	TXu 619-305

	<b>Title of Work</b>	<b>Date of Registration</b>	<b>Registration Number</b>
1	EDI Interface (6) program	March 7, 1995	TXu 619-304
2	Enterprise Facility Planning program	March 7, 1995	TXu 619-311
3	Equipment Management (5) program	March 7, 1995	TXu 619-309
4	Financial Modeling, Budgeting & Allocations program	March 7, 1995	TXu 619-321
5	Financial Reporting (FASTR) program	March 7, 1995	TXu 619-318
6	General Ledger & Basic Financial program	March 7, 1995	TXu 619-310
7	Inventory Management program	March 7, 1995	TXu 619-314
8	Master Production Scheduling program	March 7, 1995	TXu 619-306
9	Product Data Management program	March 7, 1995	TXu 619-317
10	Purchase Order Processing program	March 7, 1995	TXu 619-316
11	Sales Order Processing/Sales Analysis program	March 7, 1995	TXu 619-315
12	Shop Floor Control program	March 7, 1995	TXu 619-303
13	Warehouse Management program	March 7, 1995	TXu 619-313
14	WorldCASE Development Environment program	March 7, 1995	TXu 619-308
15	WorldCASE Foundation Environment (3) program	March 7, 1995	TXu 619-319

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

	<b>Title of Work</b>	<b>Date of Registration</b>	<b>Registration Number</b>
16	Cumulative Update 8 for JD Edwards EnterpriseOne Xe	April 26, 2007	TX 6-541-048
17	Cumulative Update 1 for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-034
18	Cumulative Update 2 for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-032
19	Cumulative Update 1 for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-042
20	Cumulative Update 16 for JD Edwards World A7.3	April 26, 2007	TX 6-541-031
21	Cumulative Update 6 for JD Edwards World A8.1	May 1, 2007	TX 6-545-421
22	Cumulative Update 1 for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-039

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

	<b>Title of Work</b>	<b>Date of Registration</b>	<b>Registration Number</b>
23	Database of Documentary Customer Support Materials for J.D. Edwards Software	July 1, 2009	TXu1-607-455
24	Changes to Daylight Savings Time for 2007 (DST)	April 26, 2007	TX 6-541-025
25	ESU for JD Edwards EnterpriseOne Xe	May 3, 2007	TX 6-541-051
26	ESU for JD Edwards EnterpriseOne 8.0	April 26, 2007	TX 6-541-046
27	ESU for JD Edwards EnterpriseOne 8.9	April 26, 2007	TX 6-541-036
28	ESU for JD Edwards EnterpriseOne 8.10	April 26, 2007	TX 6-541-037
29	ESU for JD Edwards EnterpriseOne 8.11	April 26, 2007	TX 6-541-035
30	ESU for JD Edwards EnterpriseOne 8.11 SP1	April 26, 2007	TX 6-541-027
31	ESU for JD Edwards EnterpriseOne 8.12	April 26, 2007	TX 6-541-045
32	Code Change for JD Edwards World A7.3	April 26, 2007	TX 6-541-043
33	Code Change for JD Edwards World A8.1	April 26, 2007	TX 6-541-044

Title of Work	Date of Registration	Registration Number
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: Oracle Updates and Support Materials Registrations for Oracle's J.D. Edwards-branded Products<sup>1</sup>**

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
Siebel 8.0 Initial Release and Documentation	June 29, 2009	TX 6-942-000
Siebel 8.1.1 Initial Release and Documentation	June 29, 2009	TX 6-942-001

**Table A-6: 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: 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
Oracle Relational Database Management System (RDBMS): Release 8.0.4	November 21, 2001	TX 5-392-842
Oracle Relational Database Management System (RDBMS), Release 8.0.5	November 21, 2001	TX 5-392-861
Oracle9i Database Enterprise : Edition Release 1	June 13, 2003	TX 5-673-281
Oracle Database 10g: Release 1	January 16, 2009	TX 6-938-648

**Table A-8: Oracle Database Registrations**

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