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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

ORACLE USA, INC., *et al.*,  
  
 Plaintiffs,  
  
 v.  
  
 SAP AG, *et al.*,  
  
 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**STIPULATION TO PERMIT  
 DEFENDANTS TO FILE UNDER SEAL  
 PLAINTIFFS' DOCUMENTS IN  
 SUPPORT OF DEFENDANTS' OFFER  
 OF PROOF REGARDING THE AT-RISK  
 REPORT AND IMPACT ON DAMAGES  
 ANALYSIS**

1 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc., Oracle  
2 International Corporation, and Siebel System, Inc. ("Plaintiffs") and Defendants SAP AG, SAP  
3 America, Inc., and TomorrowNow, Inc. ("Defendants," and together with Plaintiffs, the "Parties")  
4 jointly submit this Stipulation to Permit Defendants to File Under Seal Plaintiffs' Documents in  
5 Support of Defendants' Offer of Proof Regarding the At-Risk Report and Impact on Damages  
6 Analysis.

7 WHEREAS, Defendants filed on November 19, 2010 (1) Defendants' Offer of Proof  
8 Regarding the At-Risk Report and Impact on Damages Analysis ("Defendants' Offer of Proof");  
9 (2) Declaration of Jason McDonnell ISO Defendants' Administrative Motion to Permit Defendants  
10 to File under Seal Plaintiffs' Documents in Support of Defendants' Offer of Proof; and (3) the  
11 [Proposed] Order Granting Defendants' Administrative Motion to Permit Defendants to File  
12 Under Seal Plaintiffs' Documents in Support of Defendants' Offer of Proof.

13 WHEREAS, by stipulation of the Parties, Defendants have filed an Administrative Motion  
14 to Permit Defendants to File Under Seal Plaintiffs' Documents in Support of Defendants' Offer of  
15 Proof;

16 WHEREAS the requested relief is necessary and narrowly tailored to protect the  
17 confidentiality of the material put at issue by Defendants' Offer of Proof until such time as the  
18 Court makes a final ruling as to confidentiality of the relevant subject matter. Specifically, the  
19 following documents and portions of documents contain information designated by Plaintiffs as  
20 "Highly Confidential - Attorneys' Eyes Only" or "Confidential Information" pursuant to the  
21 Stipulated Protective Order in this case:

- 22 • Portions of Defendants' Offer of Proof Regarding the At-Risk Report and Impact on  
23 Damages Analysis: portions of 3:18-27, and 4:21-5:4;
- 24 • Exhibit A to Defendants' Offer of Proof (Trial Exhibit A-0059);
- 25 • Exhibit B to Defendants' Offer of Proof (Trial Exhibit A-9338); and
- 26 • Exhibit L to Defendants' Offer of Proof (Clarke Report, at 209-235).

27 NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, through their  
28 respective counsel of record, that Defendants be permitted to move for permission to file under

1 seal (1) portions of Defendants' Offer of Proof and (2) Exhibits A (Trial Exhibit A-0059), B  
2 (Trial Exhibit A-9338), and L (portions of the Clarke Report), to Defendants' Offer of Proof.  
3 While the Parties agree that Defendants' concurrently filed Offer of Proof, as well as exhibits  
4 filed in support thereof, may be publicly filed, the Parties also agree that the filing shall not be  
5 construed as a waiver of any confidentiality designation or other protection with respect to  
6 documents, transcripts, or other information referred to in, or that serve as the basis for, the  
7 allegations or arguments made in them.

8 **IT IS SO STIPULATED.**

9 DATED: November 19, 2010

JONES DAY

11 By: /s/ Jason McDonell  
12 Jason McDonell

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

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

17 DATED: November 19, 2010

BINGHAM McCUTCHEN LLP

19 By: /s/ Geoffrey M. Howard  
20 Geoffrey M. Howard

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