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

23 ORACLE USA, INC., *et al.*,
 24 Plaintiffs,
 25 v.
 26 SAP AG, *et al.*,
 27 Defendants.

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

**ORACLE'S UPDATED JURY
 VERDICT FORM**

1 Pursuant to the Court’s direction at the September 30, 2010 Pretrial Conference, the
2 Court’s Final Pretrial Order (Dkt. No. 914), the October 28, 2010 Status Conference Proceedings
3 (Dkt. No. 952), and the Court’s guidance at the November 1, 2010 and November 19, 2010
4 proceedings, Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Siebel Systems,
5 Inc. (collectively, “Oracle”) submit the following updated special verdict form attached as
6 Exhibit A. The Parties have resolved all disputes relating to the special verdict form except for a
7 competing paragraph regarding infringers’ profits. The remaining dispute relates to language in
8 Jury Instruction No. 6 regarding whether the fair market value license presented by Oracle
9 includes infringers’ profits. This issue is explained in Oracle’s separate statement in the preface
10 to the jointly filed jury instructions. In short, however, Oracle has proposed a clarification to that
11 instruction, and believes a corresponding clarification is required to the verdict form.

12 Oracle’s proposed new paragraph in the verdict form is taken directly from the first
13 paragraph of the Ninth Circuit model jury instruction 17.24. The alternative language proposed
14 by Defendants would preclude the jury from awarding infringers’ profits even if the jury does
15 not accept the fair market value license as presented by Oracle. Consistent with the discussion at
16 the charging conference (Tr. 1956-1959), Oracle believes its proposed language is necessary
17 because Defendants’ calculation of the fair market value based on a running royalty, by
18 definition, does not include all of Defendants’ infringers’ profits. Counsel for Defendants
19 explained this distinction during the argument with Your Honor at the charging conference:

20 **MR. LANIER:** ...THE ISSUE IS, DOES THE FAIR MARKET VALUE
21 LICENSE, AS PRESENTED BY PLAINTIFFS, SUBSTITUTE FOR THE
22 OTHER TWO MEASURES OF DAMAGES THAT ARE POSSIBLE, IT DOES
23 AS PRESENTED BY THEM. THE JURY, WE THINK, SHOULD BE
ALLOWED TO BE GIVEN THE CHOICE AND THERE IS EVIDENCE IN
THE RECORD OF BOTH SIDE'S POSITIONS ON THAT ALTERNATIVE
APPROACH.

24 ...

25 **THE COURT:** I AGREE WITH DEFENDANTS. I THINK THAT THE
26 HYPOTHETICAL LICENSE DOES INCLUDE THE INFRINGER'S PROFITS
27 REGARDLESS OF WHAT NUMBER THE JURY COMES BACK WITH. SO
28 THAT SETTLES THAT PART OF IT.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORACLE USA, INC., ORACLE
INTERNATIONAL CORP., and SIEBEL
SYSTEMS, INC.

Plaintiffs,

v.

TOMORROWNOW, INC., SAP AMERICA,
INC., AND SAP AG

Defendants.

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

SPECIAL VERDICT FORM

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

Actual Damages for Copyright Infringement

1. What is the dollar amount that Oracle is entitled to from Defendants to compensate Oracle for its actual damages under its copyright infringement claim, in the form of EITHER a fair market value license for the copyright infringement OR lost profits?

FAIR MARKET VALUE LICENSE: \$ _____,

OR,

LOST PROFITS: \$ _____.

In addition to actual damages, Oracle is entitled to any profits of Defendants attributable to the infringement. You may not include in an award of profits any amount that you took into account in determining actual damages.

Infringers' Profits for Copyright Infringement

2. What is the dollar amount that Oracle is entitled to from Defendants as infringers' profits under Oracle's copyright infringement claim?

\$ _____.

Have the presiding juror sign and date this form.

Signed: _____ Dated: _____

Presiding Juror