

1 BINGHAM MCCUTCHEN LLP  
 2 DONN P. PICKETT (SBN 72257)  
 3 GEOFFREY M. HOWARD (SBN 157468)  
 4 ZACHARY J. ALINDER (SBN 209009)  
 5 BREE HANN (SBN 215695)  
 6 Three Embarcadero Center  
 7 San Francisco, CA 94111-4067  
 8 Telephone: 415.393.2000  
 9 Facsimile: 415.393.2286  
 10 donn.pickett@bingham.com  
 11 geoff.howard@bingham.com  
 12 holly.house@bingham.com  
 13 zachary.alinder@bingham.com  
 14 bree.hann@bingham.com

8 BOIES, SCHILLER & FLEXNER LLP  
 9 DAVID BOIES (Admitted Pro Hac Vice)  
 10 333 Main Street  
 11 Armonk, NY 10504  
 12 Telephone: (914) 749-8200  
 13 Facsimile: (914) 749-8300  
 14 dboies@bsfllp.com

12 STEVEN C. HOLTZMAN (SBN 144177)  
 13 FRED NORTON (SBN 224725)  
 14 1999 Harrison St., Suite 900  
 15 Oakland, CA 94612  
 16 Telephone: (510) 874-1000  
 17 Facsimile: (510) 874-1460  
 18 sholtzman@bsfllp.com  
 19 fnorton@bsfllp.com

16 DORIAN DALEY (SBN 129049)  
 17 JENNIFER GLOSS (SBN 154227)  
 18 500 Oracle Parkway, M/S 5op7  
 19 Redwood City, CA 94070  
 20 Telephone: 650.506.4846  
 21 Facsimile: 650.506.7144  
 22 dorian.daley@oracle.com  
 23 jennifer.gloss@oracle.com

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

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

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

25 Plaintiffs,

26 v.

26 SAP AG, *et al.*,

27 Defendants.

Robert A. Mittelstaedt (SBN 060359)  
 Jason McDonell (SBN 115084)  
 Elaine Wallace (SBN 197882)  
 JONES DAY  
 555 California Street, 26th Floor  
 San Francisco, CA 94104  
 Telephone: (415) 626-3939  
 Facsimile: (415) 875-5700  
 ramittelstaedt@jonesday.com  
 jmcdonell@jonesday.com  
 ewallace@jonesday.com

Tharan Gregory Lanier (SBN 138784)  
 Jane L. Froyd (SBN 220776)  
 JONES DAY  
 1755 Embarcadero Road  
 Palo Alto, CA 94303  
 Telephone: (650) 739-3939  
 Facsimile: (650) 739-3900  
 tglanier@jonesday.com  
 jfroyd@jonesday.com

Scott W. Cowan (Admitted Pro Hac Vice)  
 Joshua L. Fuchs (Admitted Pro Hac Vice)  
 JONES DAY  
 717 Texas, Suite 3300  
 Houston, TX 77002  
 Telephone: (832) 239-3939  
 Facsimile: (832) 239-3600  
 swcowan@jonesday.com  
 jlfuchs@jonesday.com  
 Attorneys for Defendants  
 SAP AG, SAP AMERICA, INC., and  
 TOMORROWNOW, INC.

No. 07-CV-01658 PJH (EDL)

**STIPULATION AND [PROPOSED] ORDER  
 REGARDING DEADLINE TO ACCEPT OR  
 REJECT REMITTITUR**

Date: N/A

Time: N/A

Place: 3rd Floor, Courtroom 3

Judge: Hon. Phyllis J. Hamilton

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation and Siebel Systems,  
2 Inc. (“Oracle”) and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.  
3 (“Defendants” and together with Oracle the “Parties”) submit this Stipulation and [Proposed]  
4 Order regarding the deadline for Oracle to accept or reject the remittitur.

5 WHEREAS, on September 1, 2011, this Court granted “a new trial as to actual  
6 damages, conditioned on Oracle’s rejection of a remittitur to \$272 million” and ordered that  
7 “Oracle shall submit a statement accepting or rejecting the remittitur no later than September 30,  
8 2011 (or the parties shall submit a stipulated request for additional time, if necessary).” ECF No.  
9 1081 at 20:13-19;

10 WHEREAS, on September 16, 2011, this Court extended the deadline to accept or  
11 reject the remittitur “until after this court has fully considered Oracle’s request for an order  
12 certifying a request for interlocutory review, and has determined what if any question(s) may be  
13 certified; and for an additional 30 days beyond the date the Ninth Circuit either approves or  
14 denies any such application.” ECF No. 1088 at 2:2-5;

15 WHEREAS, if the Court denies Oracle’s request for certification, the Ninth  
16 Circuit will not approve or deny such application and the 30-day deadline will not run; and

17 WHEREAS the Parties desire to ensure that Oracle’s deadline to accept or reject  
18 the remittitur will not expire while an interlocutory appeal is pending.

19 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND REQUEST  
20 THE COURT TO ORDER that Oracle shall submit a statement accepting or rejecting the  
21 remittitur no later than:

22 (1) 30 days after issuance of an order by this Court denying Oracle’s pending  
23 motion for certification (ECF No. 1089);

24 (2) if this Court grants Oracle’s pending motion for certification, 30 days after  
25 issuance of an order by the Ninth Circuit denying application for leave to appeal;

26 (3) if this Court grants Oracle’s pending motion for certification, the Ninth Circuit  
27 grants leave to appeal, and the Ninth Circuit affirms the Court’s Order Granting Defendants’  
28 Motion for JMOL, and Motion for New Trial; Order Denying Plaintiffs’ Motion for New Trial;

