

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 209009)  
 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 DORIAN DALEY (SBN 129049)  
 JENNIFER GLOSS (SBN 154227)  
 10 500 Oracle Parkway  
 M/S 5op7  
 11 Redwood City, CA 94070  
 Telephone: (650) 506-4846  
 12 Facsimile: (650) 506-7114  
 dorian.daley@oracle.com  
 13 jennifer.gloss@oracle.com

14 Attorneys for Plaintiffs  
 Oracle USA, Inc., Oracle International  
 15 Corporation, and Oracle EMEA Limited

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

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

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JONES DAY  
 ROBERT A. MITTELSTAEDT (SBN 060359)  
 JASON McDONELL (SBN 115084)  
 ELAINE WALLACE (SBN 197882)  
 555 California Street, 26<sup>th</sup> Floor  
 San Francisco, CA 94104  
 Telephone: (415) 626-3939  
 Facsimile: (415) 875-5700  
 ramittelstaedt@jonesday.com  
 jmcdonell@jonesday.com  
 ewallace@jonesday.com

JONES DAY  
 THARAN GREGORY LANIER (SBN 138784)  
 JANE L. FROYD (SBN 220776)  
 1755 Embarcadero Road  
 Palo Alto, CA 94303  
 Telephone: (650) 739-3939  
 Facsimile: (650) 739-3900  
 tglanier@jonesday.com  
 jfroyd@jonesday.com

JONES DAY  
 SCOTT W. COWAN (Admitted *Pro Hac Vice*)  
 JOSHUA L. FUCHS (Admitted *Pro Hac Vice*)  
 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.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

No. 07-CV-1658 PJH (EDL)

**[PROPOSED] STIPULATED  
 REVISED CASE MANAGEMENT  
 AND PRETRIAL ORDER**

1 Based on the Parties' showing of good cause, and pursuant to the direction the  
 2 Court provided the Parties during the May 27, 2009 Case Management Conference, the Court  
 3 hereby grants the Parties' joint motion to modify the case management schedule and modifies the  
 4 May 5, 2008 Case Management and Pretrial Order as follows:

- 5 1. Defendants are granted leave to file on August 26, 2009, an additional summary  
 6 judgment motion regarding Plaintiffs' royalty damages theory. The Parties shall meet  
 7 and confer as soon as possible to schedule on a priority basis what, if any, discovery may  
 8 be needed by Plaintiffs before filing of that motion.
- 9 2. The case management and pre-trial schedule is now as follows:

10	DESCRIPTION	DEADLINE/DATE
11	Defendants to File Summary Judgment Motion Regarding Plaintiffs' Royalty Damages Theory	08/26/09
12	Plaintiffs to File Opposition to Defendants' Summary Judgment Motion Regarding Plaintiffs' Royalty Damages Theory	09/23/09
13	Last Day to Identify Custodians (w/ 6 in reserve)	10/02/09
14	Deadline to Designate Expert Witnesses	10/02/09
15	Defendants to File Reply in Support of Summary Judgment Motion Regarding Plaintiffs' Royalty Damages Theory	10/07/09
16	Hearing on Defendants' Summary Judgment Motion Regarding Plaintiffs' Royalty Damages Theory	10/28/09
17	Last Day to Identify Final 6 Custodians	11/02/09
18	Last Day to Serve Discovery Requests	11/02/09
19	Deadline to Serve Expert Reports	11/16/09
20	Updated Settlement Conference Statements Due	11/23/09
21	Settlement Conference	11/30/09
22	Deadline to Supplement and/or Correct All Disclosures and Discovery Responses	12/04/09
23	Fact Discovery Cut-off	12/04/09
24	Last Day to File Motion to Compel	12/11/09
25	Deadline to Designate Rebuttal Expert Witnesses	01/22/10
26	Deadline to Serve Rebuttal Expert Reports	02/26/10
27	Parties to File Dispositive Motions	03/03/10
28	Parties to File Oppositions to Dispositive Motions	03/31/10
	Parties to File Replies Re Dispositive Motions	04/14/10
	Expert Discovery Cut-off	04/23/10

1	Hearing on the Parties' Dispositive Motions	05/05/10
2	Last Day to Meet and Confer re Joint Pretrial Statement	07/22/10
3	Deadline to File Joint Pretrial Statement	08/05/10
4	Deadline to File Proposed Joint Voir Dire Questions and Joint Jury Instructions	08/05/10
5	Deadline to File Trial Briefs	08/05/10
6	Deadline to File Motions in Limine (all in one document)	08/05/10
7	Deadline to File Deposition Excerpts	08/05/10
8	Deadline to File Witness List	08/05/10
9	Deadline to File Exhibit List	08/05/10
10	Deadline to Exchange and Submit Exhibits (2 sets to Court)	08/05/10
11	Deadline to File Any Request re: Treatment of Conf. or Sealed Docs.	08/05/10
12	Deadline to File Proposed Verdict Form	08/05/10
	Deadline to File Opposition to Motions in Limine	08/19/10
	Pretrial Conference	09/30/10
	Trial Commences (estimated 6 weeks)	11/01/10

13 3. Each side is allowed a total of 450 deposition hours for fact witness depositions.

14 4. Each side is allowed a total of 15 expert witnesses. The Parties shall meet and confer  
15 regarding the time needed for expert depositions.

16 5. Plaintiffs are permitted to move to amend the complaint by July 15, 2009 to add Siebel-  
17 related claims and any other claims or allegations agreed to by the Parties prior to July  
18 15, 2009. All Siebel-related claims shall be asserted at this time. The Parties reserve  
19 their respective rights, defenses, and positions with respect to any other amendment.

20 6. Should Plaintiffs intend to seek any other amendment to the complaint, then Plaintiffs  
21 shall make the appropriate motion(s) no later than August 26, 2009. The Parties shall  
22 meet and confer prior to the filing of any motion under this paragraph.

23 Additionally, the following discovery limitations shall apply:

- 24 1. For purposes of the following limitations, the phrase "relating to Siebel" used in the  
25 context of any new discovery right or obligation created by this Order relating to any  
26 discovery sought from Defendants shall: (a) mean documents and testimony of  
27 similar scope to those already provided by Defendants in this case relating to  
28 PeopleSoft and JD Edwards products and support; and (b) include discovery relating

1 to Defendants' decision for Defendant TomorrowNow, Inc. ("TomorrowNow") to  
2 provide Siebel support, the provision of third-party maintenance and related support  
3 services to Siebel customers, and the Siebel portion of Defendants' Safe Passage  
4 program to the extent that it involves entities who were customers of both  
5 TomorrowNow and SAP (*i.e.*, Defendants SAP AG and SAP America, Inc.). For  
6 purposes of the following limitations, the phrase "relating to Siebel" used in the  
7 context of any new discovery right or obligation created by this Order relating to  
8 discovery sought from Plaintiffs shall: (a) mean documents and testimony of similar  
9 scope to those already provided by Plaintiffs in this case relating to PeopleSoft and  
10 JD Edwards products and support; and (b) include discovery relating to Siebel  
11 software licensing, maintenance, and related support services to Siebel customers for  
12 the time frames relevant to this case, whether before and after Plaintiffs' acquisition  
13 of Siebel. Notwithstanding this Order, the Parties retain all rights and objections  
14 regarding the proper scope of discovery from any party relating to Siebel in this case.  
15 Nothing in this Order limits or prevents the Parties from continuing to meet and  
16 confer on such disputes about the proper scope of Siebel discovery, or from  
17 submitting such disputes to Judge Laporte if necessary for a ruling.

- 18 2. Each side is permitted to designate an additional 20 custodians, for a total of 140  
19 custodians per side. Up to 7 of Plaintiffs' additional 20 custodians may be SAP  
20 custodians. The Parties will meet and confer regarding the desired custodians and  
21 may seek further relief from Judge Laporte if an agreement cannot be reached.
- 22 3. In addition to the current expanded timeline agreement between the Parties,  
23 Defendants shall produce additional responsive custodian documents (including those  
24 relating to Siebel) from March 22, 2007 through October 31, 2008 for Werner Brandt,  
25 Gerhard Oswald, and Thomas Bamberger, subject to Defendants' objections to any  
26 outstanding document requests.
- 27 4. Defendants shall provide the following individual depositions with associated time  
28 limits that shall be counted against the total deposition hours available to Plaintiffs:

- 1 a. Up to four additional actual clock hours each for Shelley Nelson and James  
2 Mackey relating to Siebel and/or Defendants' post-litigation conduct through  
3 October 31, 2008, without regard to whether questions on these topics also  
4 incidentally relate to issues previously covered with these witnesses. With  
5 respect to Shelley Nelson, this additional time may also be used to address any  
6 other questions or documents relevant to the claims and defenses in this case  
7 that have not been previously asked or used in her prior depositions, with the  
8 exception of Plaintiffs' Deposition Exhibit 135.
- 9 b. Up to seven additional actual clock hours each for Werner Brandt, Gerhard  
10 Oswald, and Martin Breuer relating to Siebel and/or Defendants' post-  
11 litigation conduct through October 31, 2008. The seven hours assumes that all  
12 seven hours would be conducted in German and thus, per Judge Laporte's  
13 prior ruling, would count against Plaintiffs' total allotment as 3.5 hours each.
- 14 5. Other than as provided in 4(a) and (b) immediately above, no depositions of  
15 individuals from either side will be re-opened without consent of the relevant party or  
16 a ruling from Judge Laporte after a showing of good cause.
- 17 6. By June 30, 2009:
- 18 a. Plaintiffs and TomorrowNow will provide dates for supplemental depositions  
19 of the Parties' corporate designees on topics relating to Siebel, subject to any  
20 and all objections the Parties may have to the deposition notices.
- 21 b. SAP will provide a date for a SAP Rule 30(b)(6) deposition relating to Siebel,  
22 for up to 7 hours of record time, subject to any and all objections SAP may  
23 have to the deposition notice.
- 24 c. SAP will provide dates for supplemental depositions of its corporate designees  
25 on topics relating to Siebel other than those addressed during the deposition  
26 permitted by paragraph 6(b) above, for up to four hours of record time  
27 combined, subject to any and all objections SAP may have to the deposition  
28 notices.

1           7. By July 15, 2009, the Parties will provide the following relating to Siebel:

- 2           a. For Plaintiffs, all relevant organization charts or equivalents, acquisition  
3           documents, copyright application/registration documents, customer contracts,  
4           customer contract files, customer-specific financial and other records, and  
5           copies of software at issue (with license keys). For TomorrowNow, all  
6           relevant organization charts or equivalents, customer contracts, customer  
7           contract files, customer-specific financial and other records, and, to the extent  
8           they exist in a centralized location outside of what is normally included in this  
9           case as part of an individual custodian's production, documents reflecting  
10          development and implementation of the support model for Siebel customers.  
11          For SAP, all relevant organization charts or equivalents, board-level  
12          documents, including versions of board meeting minutes and any related  
13          board presentation materials previously produced with information relating to  
14          Siebel redacted, and SAP's customer contracts, files, and financial and other  
15          records for any Siebel customer that was recruited through Safe Passage and  
16          was also both a SAP and TomorrowNow customer. All Parties retain all  
17          rights and objections to all document requests and the Parties shall retain all  
18          rights and objections regarding the proper scope of discovery from any party  
19          relating to Safe Passage. To the extent any dispute arises regarding that  
20          scope, then it will be subject to further meet and confer and, if necessary,  
21          presented to Judge Laporte for a ruling.
- 22          b. For Plaintiffs, all licenses (including exclusive and nonexclusive licenses),  
23          assignment agreements, or other agreements relevant to rights to use and/or  
24          ownership of the software and/or copyrighted material at issue. Plaintiffs  
25          retain the right to raise the same objections previously raised to these requests.
- 26          c. For Plaintiffs, as to any copyrighted works claimed to be derivative works,  
27          identification and copies of the underlying work(s) and a list of Plaintiffs'  
28          products embodying, including, or constituting any copyrighted works at

1 issue. Plaintiffs retain the right to raise the same objections previously raised  
2 to these requests.

3 d. For Plaintiffs, Siebel financial information (including chart of accounts and  
4 other such information produced as to PeopleSoft and JD Edwards products).  
5 For Defendants and relating to Siebel, financial information (including chart  
6 of accounts and other such information produced as to PeopleSoft and JD  
7 Edwards products). All Parties retain the right to raise the same objections  
8 previously raised to these requests.

9 e. Defendants have given or will give Plaintiffs access to all servers, CDs,  
10 DVDs, and other portable media (besides backup tapes) relating to Siebel that  
11 after a reasonable search Defendants are aware of at TomorrowNow, and will  
12 not separately produce all environments or environment components relating  
13 to Siebel on those servers or any other media. If Plaintiffs locate any  
14 environment components in the Data Warehouse and mark them for  
15 production, then Defendants will produce the files they mark, subject to a  
16 privilege review. Defendants will also produce all TomorrowNow fixes  
17 provided to Siebel customers, assuming such fixes can be located and are kept  
18 in a central location. If such fixes are kept on a server in the Data Warehouse,  
19 then Plaintiffs can mark them for production as part of the Data Warehouse  
20 review.

21 f. Each side may identify 20 interrogatory responses that it would like updated  
22 in scope consistent with the additional Siebel discovery permitted or required  
23 elsewhere in this Order. The Parties retain all objections to any and all such  
24 interrogatories.

25 8. Defendants have provided declarations stating that neither SAP, TomorrowNow, nor  
26 any SAP subsidiary provided any third-party maintenance and related support  
27 services for eBusiness Suite, Retek, or Hyperion (the “HRE Products”). Plaintiffs  
28 have reviewed these declarations and agree they will not propound further discovery

1 in this case relating to the HRE Products. Defendants agree not to object to providing  
2 documents or testimony relating to the JD Edwards, PeopleSoft, or Siebel products on  
3 the grounds that any such documents or testimony relating directly to those three  
4 products also contain information relating to the HRE Products. Plaintiffs agree that  
5 they will not seek to amend their complaint in this case to include new claims  
6 attempting to add the HRE Products, but will reserve their rights to file a separate  
7 lawsuit relating to the HRE Products at another time, should they obtain any  
8 information supporting such claims. Defendants agree not to assert that any such  
9 subsequent claims regarding the HRE Products are improper by using an argument  
10 that relies on the fact that those claims were not asserted in this lawsuit.

11  
12 DATED: June 4, 2009

JONES DAY

13 By: \_\_\_\_\_ /s/

14 Tharan Gregory Lanier  
15 Attorneys for Defendants  
16 SAP AG, SAP America, Inc.,  
and TomorrowNow, Inc.

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

19  
20 DATED: June 4, 2009

BINGHAM McCUTCHEN LLP

21 By: \_\_\_\_\_ /s/

22 Geoffrey M. Howard  
23 Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corporation, and Oracle EMEA, Ltd.

24 **IT IS SO ORDERED.**

25  
26 Date: 06/11, 2009

27 Hon. Phyllis  
28 United States

  
Judge Phyllis J. Hamilton