

1 Robert A. Mittelstaedt (SBN 060359)  
Jason McDonell (SBN 115084)  
2 Elaine Wallace (SBN 197882)  
JONES DAY  
3 555 California Street, 26th Floor  
San Francisco, CA 94104  
4 Telephone: (415) 626-3939  
Facsimile: (415) 875-5700  
5 ramittelstaedt@jonesday.com  
jmcdonell@jonesday.com  
6 ewallace@jonesday.com

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

12 Scott W. Cowan (Admitted *Pro Hac Vice*)  
Joshua L. Fuchs (Admitted *Pro Hac Vice*)  
13 JONES DAY  
717 Texas, Suite 3300  
14 Houston, TX 77002  
Telephone: (832) 239-3939  
15 Facsimile: (832) 239-3600  
swcowan@jonesday.com  
16 jl fuchs@jonesday.com

17 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 OAKLAND DIVISION

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

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

**DECLARATION OF STEPHEN K.  
CLARKE IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' PROPOSED  
JUDGMENT**

Courtroom: 3, 3rd Floor  
Judge: Hon. Phyllis J. Hamilton

1 I, Stephen K. Clarke, declare as follows:

2 1. I am over 18 years old and competent to state the facts set forth in this declaration.  
3 I have personal knowledge of the matters discussed herein and if called upon to be a witness I  
4 could and would competently testify thereto.

5 2. I am a Certified Public Accountant (Accredited in Business Valuation) in the State  
6 of Arizona; a Certified Fraud Examiner; and a Chartered Accountant in England & Wales. I have  
7 been engaged as a testifying economic damages expert in dozens of intellectual property disputes  
8 over the last 22 years. Such disputes have related to copyrights, patents, trade secrets, trade dress  
9 and unfair competition. I have provided testimony as an economic expert in many venues  
10 including Federal and State Courts, arbitration panels, and bankruptcy hearings in the United  
11 States, and the Crown Courts in Great Britain. My degree is in Management Sciences from the  
12 University of Manchester in England. I taught economics at Arizona State University for several  
13 years. In December 2007, I was retained by Defendants to address Plaintiffs' alleged damages.

14 3. I have prepared interest calculations under three different sets of assumptions that  
15 are attached as Exhibits A, B and C hereto. By submitting this declaration and these calculations,  
16 I am not endorsing the jury's verdict, Plaintiffs' request for prejudgment interest, the  
17 characterizations of the verdict by Plaintiffs or by Mr. Meyer, Mr. Meyer's "Allocation of Jury  
18 Verdict" or his interest calculations in his declaration in support of Plaintiffs' request for interest  
19 (ECF 1009).

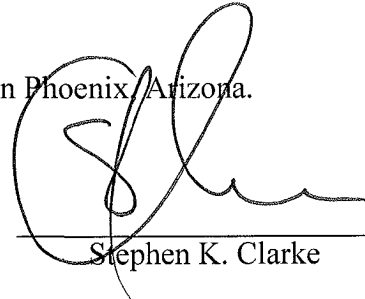
20 4. I have attached as **Exhibit A** an interest calculation that assumes, without agreeing  
21 to the propriety of doing so, that the \$1.3 billion jury verdict is allocated as suggested by Mr.  
22 Meyer in his declaration. This allocation assumes that SAP would have paid Oracle  
23 \$1,177,820,730 on January 19, 2005 for the PeopleSoft license, \$78,521,382 on September 29,  
24 2006 for the Siebel license, and \$43,657,888 from January 19, 2005 through October 31, 2008 for  
25 the use of the Oracle database. I have calculated interest by applying the 1 year treasury constant  
26 maturity yield for the most recent week ending December 17, 2010 of 0.30% to the amounts for  
27 all periods. This approach results in interest totaling \$22,701,278 for the period from January 19,  
28 2005 through December 23, 2010.

1 5. I have attached as **Exhibit B** an interest calculation that assumes, without agreeing  
2 to the propriety of doing so, that the \$1.3 billion jury verdict is treated as a lump sum payable on  
3 September 29, 2006. I have calculated interest by applying the 1 year treasury constant maturity  
4 yield for the most recent week ending December 17, 2010 of 0.30% to the amounts for all  
5 periods. This approach results in interest totaling \$16,591,309 for the period from September 29,  
6 2006 through December 23, 2010.

7 6. I have attached as **Exhibit C** an interest calculation that assumes, without agreeing  
8 to the propriety of doing so, that the \$1.3 billion jury verdict is treated as a lump sum payable on  
9 September 29, 2006. For each period, I have calculated interest by applying the 1 year treasury  
10 constant maturity yield for the week ending prior to the period start date, consistent with Mr.  
11 Meyer's Exhibit B to his declaration. This approach results in interest totaling \$154,371,415 for  
12 the period from September 29, 2006 through December 23, 2010.

13 I declare under penalty of perjury under the laws of the United States and the State of  
14 California that the foregoing is true and correct.

15 Executed this 22<sup>nd</sup> day of December, 2010 in Phoenix, Arizona.

16  
17  
18   
Stephen K. Clarke

19 SFI-657676v1  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

**Allocation of Verdict:**

License	Oracle Damages Claim	% of Total	Allocated Verdict
PeopleSoft	\$1,500,000,000	90.60%	\$1,177,820,730
Database	\$55,600,000	3.36%	\$43,657,888
Siebel	\$100,000,000	6.04%	\$78,521,382
Total	\$1,655,600,000	100.00%	\$1,300,000,000

**PeopleSoft License (1/19/2005)****TOTAL**

Period Start Date	1/19/2005	1/19/2006	1/19/2007	1/19/2008	1/19/2009	1/19/2010	
Period End Date	1/18/2006	1/18/2007	1/18/2008	1/18/2009	1/18/2010	12/23/2010	
BOP Amount	\$ 1,177,820,730	\$ 1,181,354,192	\$ 1,184,898,255	\$ 1,188,452,950	\$ 1,192,018,309	\$ 1,195,594,364	
Interest							
Interest Rate <sup>[1]</sup>	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%
Partial Year Adj.	1.00	1.00	1.00	1.00	1.00	0.93	
Adj. Interest Rate	0.30%	0.30%	0.30%	0.30%	0.30%	0.28%	
Interest	\$ 3,533,462	\$ 3,544,063	\$ 3,554,695	\$ 3,565,359	\$ 3,576,055	\$ 3,347,664	\$ 21,121,298
EOP Amount	\$ 1,181,354,192	\$ 1,184,898,255	\$ 1,188,452,950	\$ 1,192,018,309	\$ 1,195,594,364	\$ 1,198,942,028	

**Database License (1/19/2005)**

Period Start Date	1/19/2005	1/19/2006	1/19/2007	1/19/2008	1/19/2009	1/19/2010	
Period End Date	1/18/2006	1/18/2007	1/18/2008	1/18/2009	1/18/2010	12/23/2010	
BOP Amount	\$ -	\$ 15,889,298	\$ 29,748,584	\$ 39,996,806	\$ 43,980,279	\$ 44,112,220	
Interest on BOP:							
Interest Rate <sup>[1]</sup>	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%
Partial Year Adj.	1.00	1.00	1.00	1.00	1.00	0.93	
Adj. Interest Rate	0.30%	0.30%	0.30%	0.30%	0.30%	0.28%	
Interest on BOP	\$ -	\$ 47,668	\$ 89,246	\$ 119,990	\$ 131,941	\$ 123,514	\$ 512,359
Period License Fees <sup>[3]</sup>	\$ 15,865,500	\$ 13,790,932	\$ 10,143,760	\$ 3,857,696	\$ -	\$ -	
Interest on Period Fees:							
Interest Rate <sup>[1]</sup>	0.30%	0.30%	0.30%	0.30%			
Partial Year Adj. <sup>[2]</sup>	0.50	0.50	0.50	0.50			
Adj. Interest Rate	0.15%	0.15%	0.15%	0.15%			
Interest on Period Fees	\$ 23,798	\$ 20,686	\$ 15,216	\$ 5,787	\$ -	\$ -	\$ 65,487
EOP Amount	\$ 15,889,298	\$ 29,748,584	\$ 39,996,806	\$ 43,980,279	\$ 44,112,220	\$ 44,235,734	

**Siebel License (9/29/2006)**

Period Start Date		9/29/2006	9/29/2007	9/29/2008	9/29/2009	9/29/2010	
Period End Date		9/28/2007	9/28/2008	9/28/2009	9/28/2010	12/23/2010	
BOP Amount		\$ 78,521,382	\$ 78,756,946	\$ 78,993,217	\$ 79,230,197	\$ 79,467,888	
Interest							
Interest Rate <sup>[1]</sup>		0.30%	0.30%	0.30%	0.30%	0.30%	0.30%
Partial Year Adj.		1.00	1.00	1.00	1.00	0.23	
Adj. Interest Rate		0.30%	0.30%	0.30%	0.30%	0.07%	
Interest		\$ 235,564	\$ 236,271	\$ 236,980	\$ 237,691	\$ 55,628	\$ 1,002,134
EOP Amount		\$ 78,756,946	\$ 78,993,217	\$ 79,230,197	\$ 79,467,888	\$ 79,523,516	

**TOTAL INTEREST \$ 22,701,278****Notes:**

[1] U.S. Treasury securities 1-year constant maturity yield for the week ended December 17, 2010 (<http://www.federalreserve.gov/releases/h15/data.htm>).

[2] Interest on database license fees for the period is calculated using the mid-year convention.

[3] Calculated as annual amount from Meyer Schedule 44.SU x (\$43,657,888 ÷ \$55,624,097).

# **EXHIBIT B**

Allocation of Verdict: \$1,300,000,000

Assumed Award Date (9/29/2006)						TOTAL
Period Start Date	9/29/2006	9/29/2007	9/29/2008	9/29/2009	9/29/2010	
Period End Date	9/28/2007	9/28/2008	9/28/2009	9/28/2010	12/23/2010	
BOP Amount	\$ 1,300,000,000	\$ 1,303,900,000	\$ 1,307,811,700	\$ 1,311,735,135	\$ 1,315,670,340	
Interest						
Interest Rate <sup>[1]</sup>	0.30%	0.30%	0.30%	0.30%	0.30%	
Partial Year Adj.	1.00	1.00	1.00	1.00	0.23	
Adj. Interest Rate	0.30%	0.30%	0.30%	0.30%	0.07%	
Interest	\$ 3,900,000	\$ 3,911,700	\$ 3,923,435	\$ 3,935,205	\$ 920,969	\$ 16,591,309
EOP Amount	\$ 1,303,900,000	\$ 1,307,811,700	\$ 1,311,735,135	\$ 1,315,670,340	\$ 1,316,591,309	
						<b>TOTAL INTEREST \$ 16,591,309</b>

**Notes:**

[1] U.S. Treasury securities 1-year constant maturity yield for the week ended December 17, 2010 (<http://www.federalreserve.gov/releases/h15/data.htm>).

# **EXHIBIT C**



Allocation of Verdict: \$1,300,000,000

Assumed Award Date (9/29/2006)						TOTAL
Period Start Date	9/29/2006	9/29/2007	9/29/2008	9/29/2009	9/29/2010	
Period End Date	9/28/2007	9/28/2008	9/28/2009	9/28/2010	12/23/2010	
BOP Amount	\$ 1,300,000,000	\$ 1,364,610,000	\$ 1,419,876,705	\$ 1,447,564,301	\$ 1,453,499,315	
Interest						
Interest Rate <sup>[1]</sup>	4.97%	4.05%	1.95%	0.41%	0.25%	
Partial Year Adj.	1.00	1.00	1.00	1.00	0.23	
Adj. Interest Rate	4.97%	4.05%	1.95%	0.41%	0.06%	
Interest	\$ 64,610,000	\$ 55,266,705	\$ 27,687,596	\$ 5,935,014	\$ 872,100	\$ 154,371,415
EOP Amount	\$ 1,364,610,000	\$ 1,419,876,705	\$ 1,447,564,301	\$ 1,453,499,315	\$ 1,454,371,415	
						<b>TOTAL INTEREST \$ 154,371,415</b>

**Notes:**

[1] U.S. Treasury securities 1-year constant maturity yield for the week prior to the Period Start Date (<http://www.federalreserve.gov/releases/h15/data.htm>).