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

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

21 ORACLE USA, INC., et al.,

22 Plaintiffs,

23 v.

24 SAP AG, et al.,

25 Defendants.

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

**DECLARATION OF MARCIN
PLONKA IN SUPPORT OF
DEFENDANTS' MOTION TO STAY
EXECUTION OF JUDGMENT
THROUGH APPEAL AND
APPROVAL OF PROPOSED
SECURITY PURSUANT TO FRCP 62**

Date: May 4, 2011
Time: 9:00 a.m.
Courtroom: 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

1 I, Marcin Plonka, declare as follows:

2 I make this declaration based on personal knowledge and, if called upon to do so, could
3 testify competently thereto.

4 1. I am the Corporate Risk Manager, Americas Region at SAP AG.

5 2. On behalf of the Defendants in the above-captioned action, I have inquired with at
6 least 15 different surety companies to determine the cost of obtaining a supersedeas bond in the
7 amount of \$1,325,033,547. I have diligently sought out the lowest-cost options for a supersedeas
8 bond of that size.

9 3. Through my inquiries, I have learned that Defendants would likely be required to
10 contract with several surety companies to obtain a supersedeas bond for the entire
11 \$1,325,033,547. Each surety company would require, or at least reserve the right to require, cash
12 collateral or other *in rem* security from SAP AG and its affiliates before issuing a bond.

13 4. After seeking price quotes from numerous bonding companies, I have learned that
14 it could cost up to \$25 million annually for Defendants to obtain a supersedeas bond in the
15 amount of \$1,325,033,547. Even a fully collateralized bond would cost Defendants millions of
16 dollars annually in fees.

17 5. It would save the Defendants millions of dollars if they could secure the judgment
18 in this case through an escrow agreement as opposed to a supersedeas bond.

19 6. Should Defendants be required to obtain a supersedeas bond, it would take some
20 time to obtain the necessary signatures from the Defendants and likely multiple surety companies
21 providing the bond, as well as to attend to other administrative issues. I estimate that the
22 administrative process of obtaining the bond could take 14 days after the Court's order is entered.

23 7. Similarly, if the Court approves the Proposed Escrow Agreement attached to
24 Defendants' Motion to Stay Execution of Judgment Through Appeal and Approval of Security
25 Pursuant to FRCP 62, it will take some time to execute the escrow agreement and arrange to fund
26 the escrow account. I estimate that the process of executing the escrow agreement and funding
27 the escrow account could take 14 days after the Court's order is entered.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 24th day of March, 2011 in Newtown Square, PA.



Marcin Plonka