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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 MICHAEL
JUNGE 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, Michael Junge, declare as follows:

2 1. I am General Counsel of SAP AG. I have personal knowledge of the facts stated
3 in this declaration and could competently testify to them if required. Nothing in this declaration
4 is intended to waive, or should be construed as a waiver of, the attorney-client privilege or
5 attorney work product immunity.

6 2. SAP AG is a party to (i) a €1.5 billion syndicated revolving credit facility
7 agreement dated 15 December 2010 (the "RCF"), among SAP AG as "Borrower" and
8 Commerzbank Aktiengesellschaft, Deutsche Bank AG, The Royal Bank of Scotland plc, Société
9 Générale Corporate & Investment Banking as "Mandated Lead Arrangers and Bookrunners" and
10 Deutsche Bank Luxembourg S.A. as "Agent" and Others; (ii) a €2.75 billion credit facility
11 agreement dated 21 May 2010 (as amended, the "Sybase Facility"), among SAP AG as
12 "Borrower" and Barclays Capital, Deutsche Bank AG as "Mandated Lead Arrangers" and
13 Deutsche Bank Luxembourg S.A. as "Agent" and Others; and (iii) a note purchase agreement
14 made by SAP Ireland US-Financial Services Limited on 14 October 2010 (the "USPP"), among
15 SAP Ireland US-Financial Services Limited and SAP AG and certain purchasers.

16 3. If SAP AG were to obtain a supersedeas bond as judgment security in this action,
17 the bond issuer would require that SAP AG enter into an indemnity or reimbursement agreement,
18 pursuant to which SAP would agree to indemnify and/or reimburse the issuer if the issuer had to
19 make a payment in respect to the bond. Such an indemnity or reimbursement agreement would
20 constitute "Financial Indebtedness" as defined in each of the RCF, the Sybase Facility and the
21 USPP.

22 4. The potential bond issuers would also require as a condition of issuing a bond that
23 SAP AG or its affiliates post cash collateral or other *in rem* security, or agree in the future to post
24 cash collateral or other *in rem* security, to secure the obligation of SAP AG under the indemnity
25 or reimbursement agreements. The granting of an *in rem* security in respect of "Financial
26 Indebtedness" is prohibited under the RCF and the Sybase Facility.

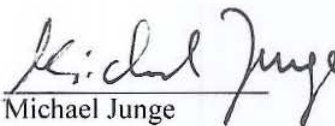
27 5. The USPP similarly limits the incurrence of "Financial Indebtedness" by certain
28 subsidiaries of SAP AG, including by SAP America, and therefore, the entry into the

1 reimbursement or indemnity agreement by certain subsidiaries of SAP AG, including SAP
2 America, would be prohibited.

3 6. While SAP AG might be able to secure the agreement of the creditors under the
4 Sybase Facility, the RCF, or the USPP allowing Defendants to enter into reimbursement
5 agreements or to grant any required *in rem* security interest to a bond issuer, this might cause
6 creditors to seek additional concessions from Defendants, such as a fee for the consent, a
7 requirement that the current unsecured creditors be provided *in rem* security, an increased interest
8 rate, or other fees.

9 7. None of the RCF, the Sybase Facility, the USPP or the Notes restricts the ability of
10 SAP or its subsidiaries to enter into the Proposed Escrow Agreement submitted with Defendants'
11 Motion to Stay Execution of Judgment Through Appeal and Approval of Proposed Security
12 Pursuant to FRCP 62.

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. Executed this 24th day of March, 2011 in
15 Walldorf, Germany.

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18 Michael Junge

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