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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' REPLY IN SUPPORT
OF 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. Defendants are currently working to obtain a secured bond backed by letters of
6 credit as the form of security to stay execution of judgment in this case, as well as an unsecured
7 bond, in the event that Defendants are not able to obtain the secured bond in a timely manner.

8 3. In order to obtain this secured bond, Defendants must negotiate with insurance
9 carriers regarding multiple indemnity agreements that would support an acceptable form of the
10 secured bond, as well as financial institutions who will back and issue the letters of credit that
11 serve as the bond collateral.

12 4. Because of the large size of the verdict, more than one letter of credit is necessary,
13 requiring that a syndicate of financial institutions be formed to back and issue the letters of credit.

14 5. Also because of the large size of the verdict, a detailed credit facility is necessary,
15 which requires opinions, certificates, and notarization.

16 6. In Germany, the notarization process is different from and more time-consuming
17 than the process in the United States. In the area of Baden-Wuerttemberg, where SAP AG is
18 located, the notary public is employed by the local court and is similar to a judge. The process
19 itself takes a matter of days rather than hours.

20 7. The secured bond cannot be issued until the letters of credit have been issued by
21 financial institutions and are transferred to the insurance carrier(s)' possession.

22 8. The physical movement of the indemnity agreements, bond forms and letters of
23 credit papers amongst the various parties and between countries alone could take two weeks.
24 Defendants now estimate that the entire process of securing the bond will minimally take twenty-
25 one days to complete.

26 9. To obtain an unsecured bond in the amount of the judgment plus three years post-
27 judgment interest (\$1,325,033,547), Defendants must negotiate with at least five or more
28 insurance companies.

1 10. Each insurance company that underwrites the unsecured bond requires, at
2 minimum, an indemnity agreement and parental guarantee, each of which must be negotiated,
3 signed, notarized and sent to the United States. The insurance companies cannot finish
4 underwriting the bond until this is done.

5 I declare under penalty of perjury under the laws of the United States and the State of
6 California that the foregoing is true and correct. Executed this 20th day of April, 2011 in
7 Newtown Square, Pennsylvania.

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10 Marcin Plonka
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