

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 jlfuchs@jonesday.com  
Attorneys for Defendants  
17 SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.  
18

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)

**DEFENDANTS' MOTION FOR  
APPROVAL OF SECURITY  
PURSUANT TO RULE 62 OF THE  
FEDERAL RULES OF CIVIL  
PROCEDURE**

Date: June 29, 2011  
Time: 9:00 a.m.  
Courtroom: 3, 3rd Floor  
Judge: Hon. Phyllis J. Hamilton

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE THAT on June 29, 2011, at 9:00 a.m., or as soon thereafter as  
 3 this matter may be heard by the above-titled Court, located at 1301 Clay Street, Oakland,  
 4 California, in Courtroom 3 before the Honorable Phyllis J. Hamilton, Defendants SAP AG, SAP  
 5 America, Inc. (together, "SAP") and TomorrowNow, Inc. (with SAP, "Defendants") will bring  
 6 this motion for approval of security pursuant to Rule 62 of the Federal Rules of Civil Procedure,  
 7 against Plaintiff Oracle International Corporation ("Oracle"). This motion is based on the  
 8 Memorandum of Points and Authorities herein, the Declaration of Jane L. Froyd in Support of  
 9 Defendants' Motion for Approval of Security Pursuant to Rule 62 of the Federal Rules of Civil  
 10 Procedure ("Froyd Declaration" or "Froyd Decl."), and exhibits attached thereto.

11 **RELIEF REQUESTED**

12 Defendants submit this motion pursuant to Rule 62(d) of the Federal Rules of Civil  
 13 Procedure ("Rule 62(d)") for entry of an order approving the supersedeas bond in the amount of  
 14 \$1,325,033,547.00, attached as Exhibit 1 to the Froyd Declaration, as appropriate security to stay  
 15 execution of the final judgment entered on February 3, 2011 (ECF No. 1036), pending  
 16 disposition of post-judgment motions and, if necessary, appeal.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

19 On April 29, 2011, the Court entered an order granting Defendants' Motion for Stay of  
 20 Execution of Judgment Through Appeal and Approval of Proposed Security Pursuant to FRCP  
 21 62, ruling that "[e]xecution of final judgment is stayed pending disposition of post-judgment  
 22 motions and, if necessary, appeal" and ordering Defendants "to obtain and move the Court for  
 23 approval of a supersedeas bond in the amount of \$1,325,033,547.00 within 21 days after this  
 24 order is entered." ECF No. 1069 ("Order"). In compliance with the Court's Order, Rule 62(d),  
 25 and Local Rule 65.1, Defendants secured the requisite bond (a copy of which is attached as  
 26 Exhibit 1 to the Froyd Declaration) and now move the Court for entry of an order approving this  
 27 bond. Because the bond obtained by Defendants complies with Rule 62(d), Local Rule 65.1, and  
 28 this Court's Order, the Court should grant Defendants' motion.

1 Defendants provided the bond form to Oracle in advance of this filing and asked whether  
2 Oracle would stipulate to it, such that Defendants could present the Court with a stipulated  
3 motion. Oracle declined to stipulate to the bond form and instead asked Defendants to make  
4 several non-substantive changes. When Defendants declined to make these changes, Oracle  
5 informed Defendants that Oracle would offer a competing bond form to the Court. Oracle did  
6 not, however, provide any reason why Defendants' bond form does not provide adequate  
7 security to enforce the judgment or how Oracle's proposed changes make Oracle any more  
8 secure in its judgment.

9 Accordingly, because (1) the bond Defendants submit to the Court provides ample  
10 security to enforce the judgment, (2) none of the changes Oracle requests are necessary or make  
11 Oracle more secure in its judgment, (3) Oracle is not a party to the bond (a financial instrument  
12 between Defendants and the surety companies underwriting the bond) and is not in a position to  
13 demand changes that do not otherwise affect whether the bond provides adequate security, and  
14 (4) changing the bond form is a complicated process, requiring the approval of all 10 surety  
15 companies, the Court should decline to entertain Oracle's suggested revisions and grant  
16 Defendants' motion approving the bond submitted by Defendants.

## 17 **II. ARGUMENT**

### 18 **A. Defendants' Proposed Supersedeas Bond Adequately Secures the Judgment.**

19 The bond obtained by Defendants adequately secures the judgment under all applicable  
20 rules and warrants granting of this motion. First, in compliance with Rule 62(d) and the Court's  
21 Order, Defendants post a supersedeas bond in an amount approved by this Court—  
22 \$1,325,033,547.00. *See* Fed. R. Civ. P. 62(d); Froyd Decl. ¶ 1, Ex. 1. Second, in compliance  
23 with Local Rule 65.1, the bond is signed by 10 sureties, each a "corporation authorized by the  
24 Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C.  
25 §§ 9301-9306." Civ. L.R. 65.1(b)(1); *see also Department of the Treasury's Listing of Certified*  
26 *Companies*, Financial Management Services – A Bureau of the United States Department of the  
27 Treasury, [http://www.fms.treas.gov/c570/c570\\_a-z.html](http://www.fms.treas.gov/c570/c570_a-z.html) (last viewed May 20, 2011); Froyd Decl.  
28 ¶ 1, Ex. 1. Oracle does not dispute that the amount of the bond is appropriate under Rule 62(d) or

1 that the bond is appropriately insured as required by Local Rule 65.1. Thus, the Court should  
2 approve the bond attached as Exhibit 1 of the Froyd Declaration as adequate security to stay final  
3 judgment pending disposition of post-judgment motions and, if necessary, appeal.

4 **B. Oracle Can Provide No Legal Basis to Prevent Approval of this Motion.**

5 Although Oracle declined to stipulate to Defendants' motion, Oracle has no substantive  
6 objections to the bond form and can provide no legal basis preventing approval of this motion.

7 As a courtesy and in an effort to obtain Oracle's stipulation to the bond, on Monday, May  
8 16, 2011, Defendants provided Oracle with the bond form that Defendants intended to file. *See*  
9 Froyd Decl. ¶ 2, Ex. 2. At 11:33 p.m. on Wednesday, May 18, 2011, Oracle responded with  
10 unsolicited proposed changes to the bond form. *See* Froyd Decl. ¶ 3, Ex. 3 at 2-3. *First*, Oracle  
11 requested that Defendants remove plaintiffs Oracle USA, Inc. and Siebel Systems, Inc. as  
12 beneficiaries of the bond. *See id.* at 3. But, as Defendants explained to Oracle, that the bond  
13 form lists all three plaintiffs, rather than simply Oracle International Corporation, has no bearing  
14 on whether the bond adequately secures Oracle. *See id.* at 1-2. *Second*, Oracle proposed an  
15 additional paragraph that would state that (a) each surety underwriting the bond meets the  
16 qualifications of Local Rule 65.1 and (b) the Court has the ability to order judgment and  
17 execution on the surety's obligation, in the event that the surety defaults or refuses to obey a  
18 Court order regarding payment. *See id.* at 3. As Defendants explained to Oracle, this proposed  
19 language is superfluous and unrelated to ensuring security of the judgment because—as noted  
20 above and as Oracle does not dispute—each surety underwriting the bond meets the qualifications  
21 of Local Rule 65.1 and because the Court already has the ability to order judgment and execution  
22 on the sureties' obligations. *See id.* at 1-2. *Finally*, Oracle proposed several cosmetic edits,  
23 which Defendants pointed out as such. *See id.* at 3.

24 None of Oracle's comments are substantive in nature or aimed at making Oracle more  
25 secure in the judgment. These proposed changes neither correct alleged deficiencies with the  
26 bond form under the Court's Order or applicable rules, nor are they aimed at making Oracle more  
27 secure in its judgment. Oracle is simply not in a position to demand non-substantive changes to a  
28 bond form that is between Defendants and the surety companies underwriting the bond.

1 Finally, Defendants also note that obtaining security for the amount at issue has been, and  
2 is necessarily, a complicated and time-consuming task. Defendants have worked diligently to  
3 secure this bond, which involved extensive negotiations and coordination with multiple insurance  
4 carriers. *See* ECF No. 1063 (Plonka Decl.) ¶¶ 2-10. Any changes to the language or terms of the  
5 bond form requires additional negotiation and coordination with each of the 10 surety companies  
6 underwriting the bond, all of whom would have to approve any changes to the bond form.

7 **III. CONCLUSION**

8 Because the bond form complies with all applicable requirements for security under the  
9 federal and local rules and this Court's Order—a fact that Oracle cannot not dispute—none of  
10 Oracle's unnecessary proposed revisions justify denial of Defendants' motion. The Court can and  
11 should approve the bond in its current form. Accordingly, Defendants' respectfully request that  
12 the Court enter an order approving the supersedeas bond in the amount of \$1,325,033,547.00,  
13 attached as Exhibit 1 to the Froyd Declaration, as appropriate security to stay execution of final  
14 judgment, entered on February 3, 2011 (ECF No. 1036), pending disposition of post-judgment  
15 motions and, if necessary, appeal.

16 Dated: May 20, 2011

JONES DAY

17 By: /s/ Tharan Gregory Lanier

18 Tharan Gregory Lanier

19 Counsel for Defendants  
20 SAP AG, SAP AMERICA, INC., and  
21 TOMORROWNOW, INC.