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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 (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.