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SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

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

**DECLARATION OF STEPHEN K.
CLARKE IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' PROPOSED
JUDGMENT**

Courtroom: 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

1 I, Stephen K. Clarke, declare as follows:

2 1. I am over 18 years old and competent to state the facts set forth in this declaration.
3 I have personal knowledge of the matters discussed herein and if called upon to be a witness I
4 could and would competently testify thereto.

5 2. I am a Certified Public Accountant (Accredited in Business Valuation) in the State
6 of Arizona; a Certified Fraud Examiner; and a Chartered Accountant in England & Wales. I have
7 been engaged as a testifying economic damages expert in dozens of intellectual property disputes
8 over the last 22 years. Such disputes have related to copyrights, patents, trade secrets, trade dress
9 and unfair competition. I have provided testimony as an economic expert in many venues
10 including Federal and State Courts, arbitration panels, and bankruptcy hearings in the United
11 States, and the Crown Courts in Great Britain. My degree is in Management Sciences from the
12 University of Manchester in England. I taught economics at Arizona State University for several
13 years. In December 2007, I was retained by Defendants to address Plaintiffs' alleged damages.

14 3. I have prepared interest calculations under three different sets of assumptions that
15 are attached as Exhibits A, B and C hereto. By submitting this declaration and these calculations,
16 I am not endorsing the jury's verdict, Plaintiffs' request for prejudgment interest, the
17 characterizations of the verdict by Plaintiffs or by Mr. Meyer, Mr. Meyer's "Allocation of Jury
18 Verdict" or his interest calculations in his declaration in support of Plaintiffs' request for interest
19 (ECF 1009).

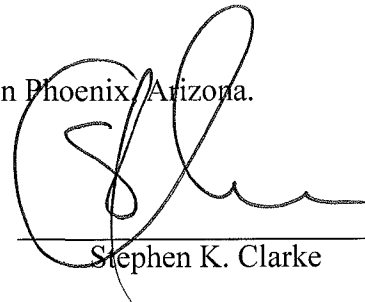
20 4. I have attached as **Exhibit A** an interest calculation that assumes, without agreeing
21 to the propriety of doing so, that the \$1.3 billion jury verdict is allocated as suggested by Mr.
22 Meyer in his declaration. This allocation assumes that SAP would have paid Oracle
23 \$1,177,820,730 on January 19, 2005 for the PeopleSoft license, \$78,521,382 on September 29,
24 2006 for the Siebel license, and \$43,657,888 from January 19, 2005 through October 31, 2008 for
25 the use of the Oracle database. I have calculated interest by applying the 1 year treasury constant
26 maturity yield for the most recent week ending December 17, 2010 of 0.30% to the amounts for
27 all periods. This approach results in interest totaling \$22,701,278 for the period from January 19,
28 2005 through December 23, 2010.

1 5. I have attached as **Exhibit B** an interest calculation that assumes, without agreeing
2 to the propriety of doing so, that the \$1.3 billion jury verdict is treated as a lump sum payable on
3 September 29, 2006. I have calculated interest by applying the 1 year treasury constant maturity
4 yield for the most recent week ending December 17, 2010 of 0.30% to the amounts for all
5 periods. This approach results in interest totaling \$16,591,309 for the period from September 29,
6 2006 through December 23, 2010.

7 6. I have attached as **Exhibit C** an interest calculation that assumes, without agreeing
8 to the propriety of doing so, that the \$1.3 billion jury verdict is treated as a lump sum payable on
9 September 29, 2006. For each period, I have calculated interest by applying the 1 year treasury
10 constant maturity yield for the week ending prior to the period start date, consistent with Mr.
11 Meyer's Exhibit B to his declaration. This approach results in interest totaling \$154,371,415 for
12 the period from September 29, 2006 through December 23, 2010.

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.

15 Executed this 22nd day of December, 2010 in Phoenix, Arizona.

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Stephen K. Clarke

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