

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**VIRTUALAGILITY, INC.,**

**Plaintiff,**

**v.**

**SALESFORCE.COM, INC.; DELL, INC.;  
DR PEPPER SNAPPLE GROUP, INC.;  
KIMBERLY-CLARK CORP.; NBCUNIVERSAL,  
INC.; LIVINGSOCIAL, INC.; FEDEX CORP.;  
FEDEX CORPORATE SERVICES, INC.; BMC  
SOFTWARE, INC.; BANK OF AMERICA  
CORPORATION; BANK OF AMERICA,  
NATIONAL ASSOCIATION; MERRILL  
LYNCH & CO., INC.; and MERRILL LYNCH,  
PIERCE, FENNER & SMITH  
INCORPORATED,**

**Defendants.**

**CIVIL ACTION NO. 2:13-CV-011**

**DEFENDANTS' NOTICE OF  
INTERLOCUTORY APPEAL**

**JURY TRIAL DEMANDED**

**DEFENDANTS' NOTICE OF INTERLOCUTORY APPEAL**

Notice is hereby given that Salesforce.com, Inc.; Dell, Inc.; Dr Pepper Snapple Group, Inc.; Kimberly-Clark Corp.; NBCUniversal, Inc.; LivingSocial, Inc.; FedEx Corp.; FedEx Corporate Services, Inc.; BMC Software, Inc.; Bank of America Corporation; Bank of America, National Association; Merrill Lynch & Co., Inc.; and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Defendants") in the above named case hereby appeal to the United States Court of Appeals for the Federal Circuit from the Court's Order denying Defendants' Motion to Stay Proceedings Pursuant to Section 18(b) of the Leahy-Smith America Invents Act entered in this action on January 9, 2014 (Dkt. 117). Appellate jurisdiction arises from the statute permitting interlocutory appeals from orders pertaining to motions to stay pursuant to Section 18(b) of the Leahy-Smith America Invents Act ("AIA"). 35 U.S.C. § 321; AIA § 18(b)(2), Pub. L. No. 112-29, 125 Stat. 284, 331 (2011) ("A

party may take an immediate interlocutory appeal from a district court's decision under paragraph (1) [motion for stay]. The United States Court of Appeals for the Federal Circuit shall review the district court's decision to ensure consistent application of established precedent, and such review may be de novo."'). The Court has not entered final judgment under Fed. R. Civ. P. 54 and, therefore, this is not an appeal from final judgment under 28 U.S.C. §§ 1291–1292, 1295.

Dated: January 10, 2014

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MERRILL LYNCH, PIERCE, FENNER & SMITH  
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**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5, all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by US Mail on this the 10th day of January, 2014.

By: /s/ Jose C. Villarreal