

1 BINGHAM MCCUTCHEN LLP
 DONN P. PICKETT (SBN 72257)
 2 GEOFFREY M. HOWARD (SBN 157468)
 BREE HANN (SBN 215695)
 3 Three Embarcadero Center
 San Francisco, CA 94111-4067
 4 Telephone: 415.393.2000
 Facsimile: 415.393.2286
 5 donn.pickett@bingham.com
 geoff.howard@bingham.com
 6 bree.hann@bingham.com

7 BOIES, SCHILLER & FLEXNER LLP
 DAVID BOIES (Admitted Pro Hac Vice)
 8 333 Main Street
 Armonk, NY 10504
 Telephone: (914) 749-8200
 9 Facsimile: (914) 749-8300
 dboies@bsflp.com
 10 STEVEN C. HOLTZMAN (SBN 144177)
 FRED NORTON (SBN 224725)
 11 1999 Harrison St., Suite 900
 Oakland, CA 94612
 Telephone: (510) 874-1000
 12 Facsimile: (510) 874-1460
 13 sholtzman@bsflp.com
 fnorton@bsflp.com

14 DORIAN DALEY (SBN 129049)
 15 JENNIFER GLOSS (SBN 154227)
 500 Oracle Parkway, M/S 5op7
 16 Redwood City, CA 94070
 Telephone: 650.506.4846
 17 Facsimile: 650.506.7144
 dorian.daley@oracle.com
 18 jennifer.gloss@oracle.com

19 Attorneys for Plaintiff Oracle International Corp.

20 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

22 ORACLE USA, INC., *et al.*,

23 Plaintiffs,

24 v.

25 SAP AG, *et al.*,

26 Defendants.

No. 07-CV-01658 PJH (EDL)

**PLAINTIFF'S RESPONSE IN SUPPORT
 OF DEFENDANTS' ADMINISTRATIVE
 MOTION TO PERMIT DEFENDANTS TO
 FILE UNDER SEAL ORACLE'S
 INFORMATION IN SUPPORT OF
 DEFENDANTS' TRIAL BRIEF**

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,
3 “Defendants”) filed an Administrative Motion to seal (Dkt. 1138) and accompanying Stipulation
4 (Dkt. 1148), Proposed Order (Dkt. 1138-1), and Declaration (Dkt. 1138-2) on April 26, 2012.
5 Defendants’ filings moved to seal portions of Defendants’ Trial Brief (Dkt. 1139). Defendants
6 lodged unredacted copies of the Trial Brief with the Court on April 27, 2012.

7 Under Civil Local Rules 7-11 and 79-5, and this Court’s Standing Order for Cases
8 Involving Sealed or Confidential Documents, Plaintiff Oracle International Corporation
9 (“Oracle”) files this Response and the accompanying Declaration of Jennifer Gloss in Support
10 (“Gloss Declaration” or “Gloss Decl.”), which establish that compelling reasons exist to support
11 a narrowly tailored order authorizing the sealing of the materials described below.

12 **II. LEGAL STANDARD**

13 As a general matter, “courts have recognized a ‘general right to inspect and copy public
14 records and documents, including judicial records and documents.’” *Kamakana v. City &*
15 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). However,
16 the Ninth Circuit has recognized that “access to judicial records is not absolute.” *Id.* A party
17 seeking to seal a document or information filed in connection with a dispositive motion may
18 overcome the presumption of public access by meeting the “compelling reasons” standard
19 articulated by the Ninth Circuit. *Id.*; *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122,
20 1135 (9th Cir. 2003); *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, 614 F.
21 Supp. 2d 1006, 1035-36 (N.D. Cal. 2009) (Hamilton. J.) (granting in part motion to file under
22 seal where requesting party had shown a “compelling need” to file under seal), amended on other
23 grounds, No. C 06-1066 PJH, 2009 WL 1764749 (N.D. Cal. June 22,2009). Specifically, the
24 requesting party must “articulate[] compelling reasons supported by specific factual
25 findings . . . that outweigh the general history of access and the public policies favoring
26 disclosure.” *Kamakana*, 447 F.3d at 1178-79 (internal citations omitted). Compelling reasons
27 sufficient to outweigh the public’s interest in disclosure and to justify sealing court records exist
28 when such “‘court files might have become a vehicle for improper purposes,’ such as the use of

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1 records to gratify private spite, promote public scandal, circulate libelous statements, or release
2 trade secrets.” *Id.* at 1179.

3 **III. ARGUMENT**

4 **A. Compelling Reasons Support Filing Portions of Defendants’ Trial Brief** 5 **Under Seal**

6 Compelling reasons support filing under seal portions of Defendants’ Trial Brief. In fact,
7 the Court has previously granted a motion to file Exhibit A-0059 in its entirety under seal. Dkt.
8 997, 1002. Defendants’ Trial Brief contains excerpts and information from Defendants’
9 proposed trial exhibit A-0059, which is a printout of Oracle’s “At-Risk report.” Gloss Decl., ¶ 2.
10 The excerpts and information from Exhibit A-0059 contain sensitive competitive information
11 about Oracle’s internal processes and strategies related to customers purportedly at risk of
12 moving to another software vendor. Gloss Decl., ¶ 3-4. Disclosure of this information could
13 result in improper use of the material for scandalous or libelous purposes or grant Oracle’s
14 competitors, potential customers, and customers non-public and commercially sensitive
15 information, which could harm Oracle’s ability to compete. *Id.*, ¶ 4. The excerpts and
16 information from Exhibit A-0059 also contain non-public, commercially sensitive, private and
17 confidential information for non-parties to this lawsuit, the disclosure of which could result in
18 infringement upon trade secrets and create a risk of significant competitive injury and
19 particularized harm and prejudice to non-parties. *Id.*, ¶ 5. Any public interest in disclosing this
20 information is outweighed by the significant competitive injury and particularized harm to
21 Oracle and non-parties that would result from disclosure of these portions of Exhibit A-0059.

22 **B. Plaintiff Has Protected the Materials from Public Disclosure**

23 Oracle has protected the portions of Exhibit A-0059 described above from public
24 disclosure through the Stipulated Protective Order in this case by designating the testimony as
25 “Highly Confidential Information – Attorneys’ Eyes Only.” *Id.*, ¶ 5.

26 **C. Plaintiff’s Request to Seal is Narrowly Tailored**

27 Oracle has narrowly tailored its request by requesting sealing only the portions of
28 Defendants’ Trial Brief that contain the most commercially sensitive and confidential

1 information. *Id.*, ¶ 6.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Oracle respectfully requests that the Court file under seal
4 portions of Defendants' Trial Brief.

5 DATED: May 3, 2012

BINGHAM McCUTCHEM LLP

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By: _____ /s/ Geoffrey M. Howard

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Geoffrey M. Howard
Attorneys for Plaintiff
Oracle International Corporation

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