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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.

CASE NO. 07-CV-01658 PJH (EDL)

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

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 Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF JENNIFER GLOSS IN SUPPORT OF PLAINTIFF'S RESPONSE IN SUPPORT OF DEFENDANTS'  
 ADMINISTRATIVE MOTION TO FILE UNDER SEAL ORACLE'S INFORMATION IN SUPPORT OF DEFENDANTS' TRIAL BRIEF

1 I, Jennifer Gloss, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am  
3 Managing Counsel at Oracle America, Inc., successor to Oracle USA, Inc. (“Oracle”). I have  
4 personal knowledge of the facts stated within this Declaration and could testify competently to  
5 them if required.

6 2. I have reviewed Defendants’ Trial Brief (Dkt. 1139). Defendants’ Trial Brief,  
7 lodged with the Court under seal, at pages 19 and 20, contains excerpts and information from  
8 Defendants’ proposed trial exhibit A-0059. Exhibit A-0059 is a 228-page print-out of a January  
9 25, 2008 Oracle document that has been commonly referred to as an “At-Risk report” and that  
10 was Bates-marked as ORCL00079745 for production in this lawsuit. This Exhibit A-0059 has  
11 previously been ordered filed under seal.

12 3. By way of background, Oracle compiled and maintained At-Risk reports from  
13 May 2005 to January 2008. These reports contained information about customers who told  
14 Oracle they were considering dropping Oracle support in favor of support from a third party,  
15 such as TomorrowNow. The reports were in the form of a spreadsheet that was updated and  
16 modified over time and was distributed internally at Oracle.

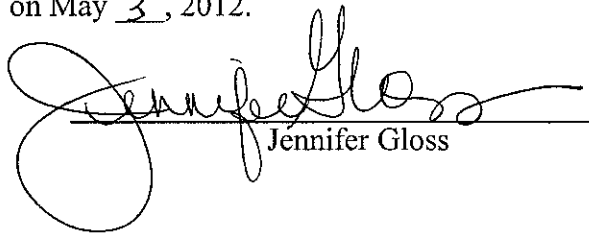
17 4. The excerpts and information from Exhibit A-0059 in Defendants’ Trial Brief  
18 contain information that is non-public, commercially sensitive, private and confidential to Oracle  
19 and non-parties. The public disclosure of this information could result in improper use of the  
20 material for scandalous or libelous purposes or infringement upon trade secrets, and would create  
21 a significant risk of competitive injury and particularized harm and prejudice to Oracle.  
22 Specifically, the excerpts and information from the At-Risk report contain information about  
23 Oracle’s response to customers that Oracle considered to be “at risk,” meaning the customer had  
24 indicated it was considering dropping Oracle support in favor of support by a third party. A  
25 competitor, potential customer, or customer of Oracle could use this information to tailor its  
26 competitive negotiation and/or sales strategies which would result in harm to Oracle.

27 5. The excerpts from Defendants’ proposed trial exhibit A-0059 also contain details  
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1 regarding the computer systems purportedly central to the operations of certain non-parties. The  
2 disclosure of this information to the competitors of such non-parties could result in the disclosure  
3 of and improper use of trade secrets for competitive purposes, and create a risk of significant  
4 competitive injury and particularized harm and prejudice to non-parties Oracle has protected the  
5 information described above from public disclosure through the Stipulated Protective Order  
6 (“Protective Order”) by designating this information as “Highly Confidential Information —  
7 Attorneys’ Eyes Only.”

8 6. Although Defendants’ Trial Brief contains other information designated “Highly  
9 Confidential – Attorneys’ Eyes Only” by Oracle, Oracle has limited its request to the most  
10 commercially sensitive and confidential Oracle and non-party information. Thus, Oracle’s  
11 request to seal is narrowly tailored.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed  
13 in Redwood City, California, on May 3, 2012.

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