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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.*,  
 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’ OPPOSITIONS TO  
 ORACLE’S MOTIONS *IN LIMINE***

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. 1158) and accompanying Stipulation  
4 (Dkt. 1158-3), Proposed Order (Dkt. 1158-1), and Declaration (Dkt. 1158-2) on May 10, 2012.  
5 Defendants’ filings moved to seal Exhibit 8 to the Declaration of Tharan Gregory Lanier in  
6 Support of Defendants’ Oppositions to Oracle’s Motions *in Limine* (“Exhibit 8 to the Lanier  
7 Declaration”) (Dkt. 1157-8). Defendants lodged unredacted copies of Exhibit 8 to the Lanier  
8 Declaration with the Court on May 11, 2012.

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

14 **II. LEGAL STANDARD**

15 As a general matter, “courts have recognized a ‘general right to inspect and copy public  
16 records and documents, including judicial records and documents.’” *Kamakana v. City &*  
17 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). However,  
18 the Ninth Circuit has recognized that “access to judicial records is not absolute.” *Id.* A party  
19 seeking to seal a document or information filed in connection with a dispositive motion may  
20 overcome the presumption of public access by meeting the “compelling reasons” standard  
21 articulated by the Ninth Circuit. *Id.*; *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122,  
22 1135 (9th Cir. 2003); *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, 614 F.  
23 Supp. 2d 1006, 1035-36 (N.D. Cal. 2009) (Hamilton. J.) (granting in part motion to file under  
24 seal where requesting party had shown a “compelling need” to file under seal), amended on other  
25 grounds, C 06-1066 PJH, 2009 WL 1764749 (N.D. Cal. June 22, 2009). Specifically, the  
26 requesting party must “articulate[] compelling reasons supported by specific factual  
27 findings . . . that outweigh the general history of access and the public policies favoring  
28 disclosure.” *Kamakana*, 447 F.3d at 1178-79 (internal citations omitted). Compelling reasons

1 sufficient to outweigh the public’s interest in disclosure and to justify sealing court records exist  
2 when such “‘court files might have become a vehicle for improper purposes,’ such as the use of  
3 records to gratify private spite, promote public scandal, circulate libelous statements, or release  
4 trade secrets.” *Id.* at 1179.

5 **III. ARGUMENT**

6 **A. Compelling Reasons Support Filing Exhibit 8 to the Lanier**  
7 **Declaration**

8 Compelling reasons support filing under seal Exhibit 8 to the Lanier Declaration. The  
9 exhibit is Schedule 30.1.SU from the Report of Oracle’s damages expert, Paul Meyer. Schedule  
10 30.1.SU contains numerous excerpts and information from various versions of Oracle’s “At-Risk  
11 reports,” as well as other Oracle documents designated “Confidential Information” or “Highly  
12 Confidential – Attorneys’ Eyes Only.” Gloss Decl., ¶ 2. On two separate occasions, this Court  
13 has sealed similar information from Oracle’s At-Risk reports. *See* Dkt. 997, 1002, 1152, 1160.

14 The excerpts and information in Exhibit 8 to the Lanier Declaration contain sensitive  
15 competitive information about Oracle’s internal processes and strategies related to customers  
16 purportedly at risk of moving to another software vendor. Gloss Decl., ¶ 4. Disclosure of this  
17 information could result in improper use of the material for scandalous or libelous purposes or  
18 grant Oracle’s competitors, potential customers, and customers non-public and commercially  
19 sensitive information, which could harm Oracle’s ability to compete. *Id.*, ¶ 5. The excerpts and  
20 information in Exhibit 8 to the Lanier Declaration also contain non-public, commercially  
21 sensitive, private and confidential information for non-parties to this lawsuit, the disclosure of  
22 which could result in infringement upon trade secrets and create a risk of significant competitive  
23 injury and particularized harm and prejudice to non-parties. *Id.*, ¶ 6. Any public interest in  
24 disclosing this information is outweighed by the significant competitive injury and particularized  
25 harm to Oracle and non-parties that would result from disclosure of Exhibit 8 to the Lanier  
26 Declaration.

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

28 Oracle has protected Exhibit 8 to the Lanier Declaration from public disclosure by

