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

23 ORACLE USA, INC., et al.,
 24 Plaintiffs,
 25 v.
 26 SAP AG, et al.,
 27 Defendants.

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

**DEFENDANTS' ADMINISTRATIVE
 MOTION TO PERMIT DEFENDANTS
 TO FILE UNDER SEAL MATERIALS
 OFFERED BY DEFENDANTS IN
 SUPPORT OF THE PARTIES' JOINT
 STATEMENT REGARDING EXHIBIT
 OBJECTIONS**

1 **I. INTRODUCTION**

2 Pursuant to Local Rules 7-11(a) and 79-5(c), Defendants SAP AG, SAP America, Inc.,
3 and TomorrowNow, Inc. (“Defendants,” and together with Oracle International Corporation
4 (“OIC”), the “Parties”) request that the Court order the Clerk of the Court to file under seal (1)
5 Exhibit 20 to the Declaration of Tharan Gregory Lanier ISO Joint Statement Regarding Exhibit
6 Objections (“Lanier Decl.”), (2) Exhibit 23 to the Lanier Decl., and (3) Exhibit 27 to the Lanier
7 Decl., all of which were lodged on June 6, 2012 in support of the Parties’ Joint Statement
8 Regarding Exhibit Objections (ECF No. 1182).

9 Defendants seek a narrowly tailored order authorizing the sealing of Exhibits 20 and 27 to
10 the Lanier Decl. on the ground that good cause exists to protect the confidentiality of Defendants’
11 information contained in these exhibits. At Oracle’s request, Defendants also seek permission to
12 file under seal Exhibit 23 to the Lanier Decl. In accordance with Civil Local Rule 79-5(a), the
13 sealing order that Defendants seek in connection with Exhibits 20 and 27 to the Lanier Decl. is
14 supported by proof¹ that particularized injury to Defendants will result if the sensitive information
15 contained therein is publicly released. Defendants’ administrative motion is also accompanied by
16 a stipulation and proposed order.

17 **II. LEGAL STANDARD**

18 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial
19 court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other
20 confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). Although
21 “courts have recognized a ‘general right to inspect and copy public records and documents,
22 including judicial records and documents,” the Ninth Circuit has made clear that “access to
23 judicial records is not absolute.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178
24 (9th Cir. 2006) (internal citation omitted). Thus, the Ninth Circuit has “carved out an exception
25 to the presumption of access to judicial records for a sealed discovery document [attached] to a

26 ¹ Because the Civil Local Rules require court approval based on a declaration supporting
27 sealing even when the parties agree as to the confidential status of the document, Defendants
28 submit the Declaration of Michael Junge in support of this administrative motion to seal Exhibits
20 and 27 to the Lanier Decl. Pursuant to Civil Local Rule 79-5(d), Oracle separately will file a
declaration establishing that Exhibit 23 to the Lanier Decl. is sealable.

1 non-dispositive motion.” *Navarro v. Eskanos & Adler*, No. C-06 02231 WHA (EDL), 2007 U.S.
2 Dist. LEXIS 24864, at *6 (N.D. Cal. Mar. 22, 2007) (citing *Kamakana*, 447 F.3d at 1179). In
3 such cases, a “particularized showing of good cause” justifies protection under Rule 26(c). *Id.* at
4 *7. To make such a showing, the party seeking protection from disclosure under the rule must
5 demonstrate that harm or prejudice would result from disclosure of the trade secret or other
6 information contained in each document the party seeks to have sealed. *Phillips v. Gen. Motors*
7 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2006).

8 **III. ARGUMENT**

9 Through the Declaration of Michael Junge in Support of Defendants’ Administrative
10 Motion to File under Seal (“Junge Decl.”) accompanying this administrative motion, Defendants
11 show that good cause exists to permit filing Exhibits 20 and 27 to the Lanier Decl. under seal. As
12 a threshold matter, Mr. Junge, who is familiar with the information contained in Exhibits 20 and
13 27 to the Lanier Decl., provides testimony that he considers the information confidential and non-
14 public. *See* Junge Decl. ¶¶ 1-3. The Junge Decl. also establishes good cause to protect and seal
15 Exhibits 20 and 27 because revelation of their contents would likely cause Defendants to suffer
16 competitive injury.

17 In particular, Exhibit 20 to the Lanier Decl. is an excerpt of the October 21, 2009
18 Deposition of Dan Restmeyer (“Restmeyer Depo.”) at 104:1-105:25 and 107:1-25. *Id.* ¶ 2. These
19 excerpts of the Restmeyer Depo. contain non-public information of third-party, Amgen, Inc. that
20 Amgen, Inc. has designated “CONFIDENTIAL” pursuant to the Stipulated Protective Order in
21 this case. *Id.* Public release of this information would put Defendants at risk of violating the
22 terms of the Stipulated Protective order and could likely cause competitive and business injury to
23 Defendants. *Id.* Defendants have protected the information in the aforementioned excerpts of the
24 Restmeyer Depo. from public disclosure, in accordance with Defendants’ obligations under the
25 Stipulated Protective Order in this case. *Id.* ¶ 3.

26 Additionally, Exhibit 27 to the Lanier Decl. is Defendants’ Trial Exhibit A-6624, which
27 contains excerpts of SAP AG’s trial balances, which are standard, regularly maintained reports of
28 the company’s accounting data, including lists of the balances in the company’s general ledger

1 accounts. *Id.* ¶ 1. SAP AG’s trial balances contain highly-sensitive, non-public financial data of
2 SAP AG, including data at a much greater level of detail than is available to the public. *Id.*
3 Public disclosure of this information could result in competitive and business injury to SAP AG.
4 *Id.* For example, a competitor could use this detailed information to attempt to glean specific cost
5 or revenue experience of SAP AG, otherwise not required to be disclosed to the public, to use
6 competitively against SAP AG. *Id.* To prevent this sensitive information from being improperly
7 disclosed, Defendants have protected the information in Exhibit 27 to the Lanier Decl. from
8 public disclosure by designating it “Highly Confidential – Attorneys’ Eyes Only” pursuant to the
9 Stipulated Protective Order in this case. *Id.* ¶ 3.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Defendants respectfully request that this Court order Exhibits
12 20, 23, and 27 to be filed under seal.

13 Dated: August 2, 2012

JONES DAY

14 By: /s/ Tharan Gregory Lanier
15 Tharan Gregory Lanier

16 Counsel for Defendants
17 SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

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