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

22 Oracle International Corporation,
 23 Plaintiff,
 24 v.
 25 SAP AG, *et al.*,
 26 Defendants.

No. 07-CV-01658 PJH (EDL)

**PLAINTIFF’S ADMINISTRATIVE
 MOTION TO FILE UNDER SEAL
 DOCUMENTS IN SUPPORT OF THE
 JOINT STATEMENT REGARDING
 EXHIBIT OBJECTIONS**

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 28

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 On June 5, 2012, Plaintiff Oracle International Corporation (“Oracle”) and Defendants
3 SAP AG, SAP America, Inc., and TomorrowNow, Inc. (“Defendants”) filed their Joint Statement
4 Regarding Exhibit Objections (“Joint Statement”). Dkt. 1182. On June 6, 2012, Oracle lodged
5 with the Court the Declaration of Nargues Motamed in Support of the Joint Statement Regarding
6 Evidentiary Issues (“Motamed Declaration”) along with Oracle’s Documents in Support of the
7 Joint Statement Regarding Evidentiary Issues (“Supporting Documents”). On August 2, 2012,
8 Oracle filed the Motamed Declaration and Supporting Documents with certain documents
9 redacted. Dkt. 1206.

10 Oracle redacted or partially redacted Defendants’ Exemplar Exhibits A-0059, A-6329-1,
11 A-5995, A-5058, and Exhibit B to the Motamed Declaration. With this Administrative Motion,
12 Oracle requests that the Court order the Clerk of the Court to file these Supporting Documents
13 under seal.

14 Pursuant to Local Rules 7-11 and 79-5, and this Court’s Standing Order for Cases
15 Involving Sealed or Confidential Documents, this Administrative Motion is accompanied by a
16 Proposed Order, Stipulation, and Declaration of Jennifer Gloss in Support of Plaintiffs’
17 Administrative Motion (“Gloss Decl.”), which establish that compelling reasons exist to support
18 a narrowly tailored order authorizing the sealing of the materials described below.

19 **II. LEGAL STANDARD**

20 As a general matter, “courts have recognized a ‘general right to inspect and copy public
21 records and documents, including judicial records and documents.’” *Kamakana v. City &*
22 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). However,
23 the Ninth Circuit has recognized that “access to judicial records is not absolute.” *Id.* A party
24 seeking to seal a document or information filed in connection with a dispositive motion may
25 overcome the presumption of public access by meeting the “compelling reasons” standard
26 articulated by the Ninth Circuit. *Id.*; *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122,
27 1135 (9th Cir. 2003); *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, 614 F.
28 Supp. 2d 1006, 1035-36 (N.D. Cal. 2009) (Hamilton. J.) (granting in part motion to file under

1 seal where requesting party had shown a “compelling need” to file under seal), amended on other
2 grounds, No. C 06-1066 PJH, 2009 WL 1764749 (N.D. Cal. June 22, 2009). Specifically, the
3 requesting party must “articulate[] compelling reasons supported by specific factual
4 findings . . . that outweigh the general history of access and the public policies favoring
5 disclosure.” *Kamakana*, 447 F.3d at 1178-79 (internal citations omitted). Compelling reasons
6 sufficient to outweigh the public’s interest in disclosure and to justify sealing court records exist
7 when such “‘court files might have become a vehicle for improper purposes,’ such as the use of
8 records to gratify private spite, promote public scandal, circulate libelous statements, or release
9 trade secrets.” *Id.* at 1179.

10 **III. ARGUMENT**

11 **A. Compelling Reasons Support Filing the Redacted Supporting** 12 **Documents Under Seal**

13 In its public filing of the Supporting Documents, Oracle redacted Defendants’ Exemplar
14 Exhibits A-0059, A-6329-1, A-5995, A-5058, and Exhibit B to the Motamed Declaration. As
15 detailed for each document in the Gloss Declaration, compelling reasons support filing those
16 documents under seal. Overall, the redacted Supporting Documents contain information that is
17 non-public, commercially sensitive, private and confidential to Oracle and/or non-parties. Gloss
18 Decl. ¶ 4.

19 **Defendants’ Exemplar Exhibit A-0059** consists of excerpts from a 228-page print-out
20 of a January 25, 2008 Oracle document that has been commonly referred to as an “At-Risk
21 report.” *Id.* ¶ 6. Oracle compiled and maintained At-Risk reports from May 2005 to January
22 2008. *Id.* ¶ 8. These reports contained information about customers who told Oracle they were
23 considering dropping Oracle support in favor of support from a third party, such as
24 TomorrowNow. *Id.* The reports were in the form of a spreadsheet that was updated and
25 modified over time and was distributed internally at Oracle. *Id.* Information from Exhibit A-
26 0059 has previously been ordered filed under seal on three separate occasions in this case. Dkt.
27 997, 1002, 1152, 1160, 1163, 1170, 1191, 1195.

28 **Exhibit B to the Motamed Declaration** is an Oracle document produced in this case and

1 designated “Confidential Information” and “Highly Confidential Information – Attorneys’ Eyes
2 Only.” Gloss Decl. ¶ 16. It contains information from Oracle and third-parties that is very
3 similar to the information contained in the At-Risk reports. *Id.* 12.

4 The public disclosure of Exhibit A-0059 and Exhibit B could result in improper use of
5 the material for scandalous or libelous purposes or infringement upon trade secrets, and would
6 create a significant risk of competitive injury and particularized harm and prejudice to Oracle or
7 to non-parties who are current or former customers of Oracle. *Id.* ¶¶ 5, 10, 13. A competitor,
8 potential customer, or customer of Oracle could use this information to tailor its competitive
9 negotiation and/or sales strategies, which would result in harm to Oracle. *Id.* Many Supporting
10 Documents also contain details regarding the computer systems purportedly central to the
11 operations of certain non-parties. *Id.* ¶¶ 11, 14. The disclosure of this information to the
12 competitors of such non-parties could result in the disclosure of and improper use of trade secrets
13 for competitive purposes, and create a risk of significant competitive injury and particularized
14 harm and prejudice to non-parties. *Id.* Any public interest in disclosing this information is
15 outweighed by the significant competitive injury and particularized harm to Oracle and non-
16 parties that would result from disclosure of the redacted Supporting Documents.

17 Oracle partially redacted **Defendants’ Exemplar Exhibits A-6329-1, A-5995, and A-**
18 **5058**. The only redactions in these documents are redactions of customer employee contact
19 information such as phone numbers and email addresses. These redactions are solely for the
20 purpose of protecting non-party customer employees’ contact information. *Id.* ¶ 15.

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

22 Oracle has protected the excerpts and information described above from public disclosure
23 through the Stipulated Protective Order in this case by designating their source documents as
24 “Confidential Information” and “Highly Confidential Information – Attorneys’ Eyes Only.” *Id.*,
25 ¶ 17. Further, Oracle has requested that the court file excerpts and information from its At-Risk
26 reports under seal when excerpts or information have been used in documents filed with the
27 Court, and the Court has granted those requests. *See* Dkt. 997, 1002, 1152, 1160, 1163, 1170,
28 1191, 1195. The information in Exhibit B that Oracle now requests the Court file under seal is

