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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

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

21 Plaintiffs,

22 v.

23 SAP AG, *et al.*,

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

**PLAINTIFFS' ADMINISTRATIVE
 MOTION TO FILE OPPOSITION TO
 MOTION TO DISMISS, AND
 DECLARATIONS AND EXHIBITS IN
 SUPPORT THEREOF, UNDER
 SEAL; DECLARATION IN
 SUPPORT OF ADMINISTRATIVE
 MOTION**

1 **I. INTRODUCTION**

2 Plaintiffs Oracle USA, Inc., Oracle International Corporation, Oracle Systems
3 Corporation, Oracle EMEA Limited, and J.D. Edwards Europe Limited (“Oracle” or
4 “Plaintiffs”), together with Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
5 (“Defendants”), respectfully request an Order sealing (1) portions of the Oracle’s Opposition to
6 Defendants’ FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Oracle’s Opposition”), (2)
7 portions of the Declaration of Kevin Mandia in support of Oracle’s Opposition to Defendants’
8 FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Mandia Declaration”), and (3) Exhibits D
9 through T to the Declaration of Chad Russell in support of Oracle’s Opposition to Defendants’
10 FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss (“Russell Declaration”), which were lodged with
11 the Court on October 29, 2008. This request is made pursuant to Civil Local Rules 7-11 and 79-
12 5 and the Protective Order signed by Judge Martin Jenkins on June 6, 2007. This request is
13 supported by the Parties’ Stipulation Regarding Plaintiffs’ Administrative Motion to Seal, filed
14 concurrently with this motion.

15 **II. ARGUMENT**

16 Oracle requests that the documents listed in detail in the attached Declaration of Zachary
17 J. Alinder (“Alinder Declaration”) be filed under seal. Good cause exists for filing the
18 referenced documents under seal, because they were designated by Defendants as either “Highly
19 Confidential Information - Attorneys’ Eyes Only,” or “Confidential Information,” pursuant to the
20 parties’ Protective Order. Pursuant to Civil Local Rule 79-5(d) and Paragraph 14 of the
21 Protective Order, Oracle is obligated to lodge these documents with the Court with a request to
22 file it under seal.

23 Oracle’s request is narrowly tailored, as required by Local Rule 79-5(a), and seeks to
24 protect only those documents that contain Defendants’ allegedly confidential information, until
25 such time as Defendants may submit a declaration in accordance with Civil Local Rule 75-9(d)
26 and the Court makes a final ruling as to the confidentiality of the relevant subject matter.
27 Therefore, good cause supports this request and the documents referenced herein should
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1 appropriately be filed under seal.

2 **III. CONCLUSION**

3 For the foregoing reasons, Oracle respectfully requests that the Court order the filing of
4 the documents listed in detail in the attached Alinder Declaration under seal. A Proposed Order
5 is submitted with this motion.

6 DATED: October 29, 2008

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BINGHAM MCCUTCHEN LLP

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By: _____ /s/ Zachary J. Alinder

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Zachary J. Alinder

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Attorneys for Plaintiffs
Oracle Corporation, Oracle USA, Inc., and
Oracle International Corporation

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1 **DECLARATION OF ZACHARY J. ALINDER IN SUPPORT OF**
2 **PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL**

3 I, Zachary J. Alinder, declare:

4 1. I am a member of the State Bar of California and am counsel at Bingham
5 McCutchen LLP, counsel of record for Plaintiffs Oracle USA, Inc., Oracle International
6 Corporation, Oracle Systems Corporation, Oracle EMEA Limited, and J.D. Edwards Europe
7 Limited ("Oracle" or "Plaintiffs") in this action. Except for matters stated below on information
8 and belief, I have personal knowledge of the matters stated in this declaration by virtue of my
9 representation of Oracle in this action. If called and sworn as a witness, I could and would
10 competently testify to such matters.

11 2. Pursuant to Civil Local Rule 79-5 and the stipulated Protective Order entered on
12 June 6, 2007 in this case (Docket No. 32), I make this Declaration in support of Oracle's
13 Administrative Motion to File its Opposition to Defendants' Motion to Dismiss, and
14 Declarations and Exhibits in support thereof, under seal.

15 3. The requested relief is necessary and narrowly tailored to protect the alleged
16 confidentiality of the materials put at issue by the Opposition to the Motion to Dismiss until such
17 time as the Court makes a final ruling as to confidentiality of the relevant subject matter.
18 Specifically, Oracle's Opposition, the Mandia Declaration, and Exhibits D-T to the Russell
19 Declaration contain information designated by Defendants as "Highly Confidential Information -
20 Attorneys' Eyes Only," as well as information designated by Defendants as "Confidential
21 Information," pursuant to the Protective Order entered on June 6, 2007 in this action.

22 4. Pursuant to Civil Local Rule 7-11, a stipulation is included with this
23 Administrative Motion.

24 5. The following documents, or portions of documents, contain information
25 designated Highly Confidential and/or Confidential by Defendants:

26 a. Oracle's Opposition

27 Page 7, lines 9-10, 12, 18, 21-28

28 Page 8, lines 1-4, 6-9, 12-13

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b. Mandia Declaration

Page 2, lines 26-28

Page 3, lines 2-3

Page 3, lines 10-13

c. Exhibits D–T to the Russell Declaration

(1) (Ex. D) Deposition of Mark Kreutz, taken on October 30, 2007 at 103:11-24.

(2) (Ex. E) Deposition of Shelley Nelson, taken on December 6, 2007 at 85:8-86:5.

(3) (Ex. F) Deposition of Bill Thomas, taken on October 29, 2007 at 57:9-21; 24:25-25:3; 59:12-16.

(4) (Ex. G) Deposition of John Baugh, taken on February 6-7, 2007 at 95:1-12; 120:22-121:4.

(5) (Ex. H) Deposition of Roderic Russell, taken on June 25, 2008 at 22:4-23:8; 25:15-26:10; 39:13-24; 64:16-65:11; 96:16-97:24.

(6) (Ex. I) Deposition of Catherine Hyde, taken on April 1, 2008 at 20:14-21:10.

(7) (Ex. J) Deposition of Henning Kagermann, taken on September 26, 2008 at 274:25-275:8; 278:7-279:2; 301:15-303:12; 353:5-21; 354:16-19; 356:2-357:3; 358:24-360:6; 361:15-364:11; 209:6-211:15.

(8) (Ex. K) Email and attachment entitled “Business Case,” Bates-labeled SAP-OR0091829 thru 1838, and previously marked by Plaintiffs as deposition Exhibit 427. This exhibit includes three pages attached at the end, and included in the deposition copy, created by Plaintiffs to reflect hard-to-read text in pages SAP-OR00091836, 837, and 838.

(9) (Ex. L) Email and attachment entitled “Business Case TomorrowNow,” Bates-labeled SAP-OR00157405-7424, and previously marked by Plaintiffs as deposition Exhibit 431.

1 (10) (Ex. M) Deposition of Thomas Ziemen, taken on October 1, 2008 at
2 499:3-10.

3 (11) (Ex. N) "TomorrowNow Global Leadership Meeting," Bates-labeled
4 SAP-OR00007470 thru 7537, and previously marked by Plaintiffs as
5 deposition Exhibit 473.

6 (12) (Ex. O) Document that includes an attachment entitled "Apollo
7 Competitive Program Update," beginning at the page Bates-labeled
8 SAP-OR00139919. The entire exhibit is Bates-labeled SAP-
9 OR00139918 thru 9969, and was previously marked by Plaintiffs as
10 deposition Exhibit 418. It includes one page translated from German
11 to English, as noted in the translator's certificate at the third page of
12 the exhibit.

13 (13) (Ex. P) Deposition of Leo Apotheker, taken on October 2, 2008 at
14 310:8-20.

15 (14) (Ex. Q) "Oracle Competitive Update", Bates-labeled SAP-
16 OR00018638 thru 8666, and previously marked by Plaintiffs as
17 deposition Exhibit 421.

18 (15) (Ex. R) Deposition of Arlen Shenkman, taken on June 4, 2008 at
19 45:24-46:12.

20 (16) (Ex. S) "RE: Peoplesoft 1-2-3", Bates-labeled SAP-OR00091723 thru
21 91728, and previously marked by Plaintiffs as deposition Exhibit 210.

22 (17) (Ex. T) Copy of two printouts from the "SAS" database, produced by
23 Defendants in this matter. The first page shows a view from the
24 "OneWorld" portion of the database called "Engagements by Region,"
25 and the engagement list for EMEA has been expanded by clicking on
26 it. The second page shows the same for the "World" portion of the
27 database.

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1 I declare under penalty of perjury that the foregoing is true and correct. Executed in San
2 Francisco, California, on October 29, 2008.

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5 By: /s/ Zachary J. Alinder
 Zachary J. Alinder
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