

1 BINGHAM McCUTCHEN LLP
 DONN P. PICKETT (SBN 72257)
 2 GEOFFREY M. HOWARD (SBN 157468)
 HOLLY A. HOWARD (SBN 136045)
 3 ZACHARY J. ALINDER (SBN 209009)
 BREE HANN (SBN 215695)
 4 Three Embarcadero Center
 San Francisco, CA 94111-4067
 5 Telephone: (415) 393-2000
 Facsimile: (415) 393-2286
 6 donn.pickett@bingham.com
 geoff.howard@bingham.com
 7 holly.house@bingham.com
 zachary.alinder@bingham.com
 8 bree.hann@bingham.com

9 DORIAN DALEY (SBN 129049)
 JENNIFER GLOSS (SBN 154227)
 10 500 Oracle Parkway, M/S 5op7
 Redwood City, CA 94070
 11 Telephone: (650) 506-4846
 Facsimile: (650) 506-7114
 12 dorian.daley@oracle.com
 jennifer.gloss@oracle.com
 13

14 Attorneys for Plaintiffs
 Oracle USA, Inc., Oracle International Corporation, and
 Oracle EMEA Limited
 15

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

19 ORACLE USA, INC., *et al.*,
 20 Plaintiffs,
 21 v.
 22 SAP AG, *et al.*,
 23 Defendants.

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

**[PROPOSED] ORDER GRANTING
 DEFENDANTS' ADMINISTRATIVE
 MOTION TO FILE UNDER SEAL
 DOCUMENTS SUPPORTING
 DEFENDANTS' MOTION FOR
 SANCTIONS AND MOTION TO
 COMPEL**

Date: August 18, 2009
 Time: TBD
 Place: Courtroom E, 15th Floor
 Judge: Hon. Elizabeth D. Laporte

1 Pending before this Court is SAP AG, SAP America, Inc., and TomorrowNow,
2 Inc.'s (collectively, "Defendants") Administrative Motion to File Under Seal Documents
3 Supporting Defendants' Motion for Sanctions and Motion to Compel (the "Motion to Seal").
4 Through their Motion to Seal, Defendants together with Plaintiffs Oracle USA, Inc., Oracle
5 International Corporation, and Oracle EMEA Limited (collectively, "Oracle," and with
6 Defendants, the "Parties"), request an Order sealing (1) portions of Defendants' Motion for
7 Sanctions and portions of the Declaration of Stephen K. Clarke in Support of Defendants'
8 Motion for Sanctions; (2) the documents and testimony identified as Exhibits D, J, K, L, P and Q
9 of the Declaration of Elaine Wallace (the "Wallace Declaration") in support of Defendants'
10 Motion for Sanctions; (3) portions of Defendants' Motion to Compel and; (4) the documents
11 identified as Exhibits 2, 6, 7, 8, 9, 10, 11, 18 and 19 to the Declaration of Jason McDonnell in
12 Support of Defendants' Motion to Compel Production of Financial Information of Plaintiffs (the
13 "McDonnell Declaration").

14 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to
15 permit sealing of court documents for, *inter alia*, the protection of "a trade secret or other
16 confidential research, development, or commercial information." Fed. R. Civ. Proc. 26(c). In
17 particular, when the request for sealing concerns discovery documents attached to a non-
18 dispositive motion, a showing of good cause to seal the documents is sufficient to justify
19 protection under Rule 26(c). *See Navarro v. Eskanos & Adler*, Case No. C-06 02231
20 WHA(EDL), 2007 U.S. Dist. LEXIS 24864 at *7 (March 22, 2007) (citing *Kamakana v.*
21 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

22 In compliance with this Court's Standing Order on Confidential and Sealed
23 Documents, Rule 26(c) and Civil Local Rule 79-5, Oracle has filed the Declaration of Jennifer
24 Gloss (the "Gloss Declaration") in support of Defendants' Motion to Seal on July 21, 2009.
25 Through the Gloss Declaration, Oracle provides evidence of good cause sufficient for this Court
26 to permit filing the requested exhibits under seal. The Gloss Declaration establishes both that
27 Oracle has considered and treated the information contained in the subject documents as
28 confidential, commercially sensitive and proprietary, and that public disclosure of such

1 information would create a risk of significant competitive injury and particularized harm and
2 prejudice to Oracle. *See Phillips v. General Motors Corp.* 307 F. 3d 1206, 1211 (9th Cir. 2006).
3 The Gloss Declaration also establishes that the request for sealing has been narrowly tailored,
4 including removal of the request for sealing of Exhibit D and certain identified deposition
5 transcript pages.

6 Having considered Defendants' Motion to Seal and the documents and exhibits
7 filed in support, including the Gloss Declaration and the Stipulation of the Parties to Permit
8 Defendants to File Plaintiffs' Documents Under Seal, and GOOD CAUSE having been shown:

9 IT IS HEREBY ORDERED THAT: Defendants' Motion to Seal is GRANTED.

10 The Clerk of the Court shall file under seal the unredacted versions of the following documents
11 that have been lodged with the Court:

- 12 1. Defendants' Motion for Sanctions – Pages 10-12, 16-19 and 22-23
13 containing materials designated by Oracle as “Confidential Information” or
14 “Highly Confidential Information - Attorneys' Eyes Only.”
- 15 2. The Declaration of Stephen K. Clarke in Support of Defendants' Motion for
16 Sanctions – Paragraphs 22 and 27 containing materials designated by Oracle
17 as “Confidential Information” or “Highly Confidential Information -
18 Attorneys' Eyes Only.”
- 19 3. Defendants' Motion to Compel – Pages 3 and 6-16 containing materials
20 designated by Oracle as “Confidential Information” or “Highly Confidential
21 Information - Attorneys' Eyes Only.”
- 22 4. Ex. J to the Wallace Declaration – Pages 10-17 and 64-65 of the deposition
23 of Larry Ellison, taken May 5, 2009, containing materials designated by
24 Oracle as “Confidential Information” or “Highly Confidential Information -
25 Attorneys' Eyes Only.”
- 26 5. Ex. K to the Wallace Declaration – Pages 17-21 of the deposition of Charles
27 Phillips, taken April 17, 2009, containing materials designated by Oracle as
28 “Confidential Information” or “Highly Confidential Information - Attorneys'

- 1 Eyes Only.”
- 2 6. Ex. L to the Wallace Declaration – Pages 33-44, 47-54, 80-82, 90-97, 200-
3 201 and 254 of the deposition of Juergen Rottler, taken May 13, 2009,
4 containing materials designated by Oracle as “Confidential Information” or
5 “Highly Confidential Information - Attorneys’ Eyes Only.”
- 6 7. Ex. P to the Wallace Declaration – Plaintiff’s May 22, 2009 Supplemental
7 and Amended Initial Disclosures, containing materials designated by Oracle
8 as “Confidential Information” or “Highly Confidential Information -
9 Attorneys’ Eyes Only.”
- 10 8. Ex. Q to the Wallace Declaration – Exhibit 440 to the deposition of Juergen
11 Rottler, Bates stamped ORCL00319502-00319506, containing materials
12 designated by Oracle as “Confidential Information” or “Highly Confidential
13 Information - Attorneys’ Eyes Only.”
- 14 9. Ex. 2 to the McDonell Declaration – Portions of the letter from Jason
15 McDonnell to Holly House, dated July 13, 2009, containing materials
16 designated by Oracle as “Confidential Information” or “Highly Confidential
17 Information - Attorneys’ Eyes Only.”
- 18 10. Ex. 6 to the McDonell Declaration – Pages 63-64 and 72-73 of the deposition
19 of Ivgen Guner, taken September 4, 2008, containing materials designated by
20 Oracle as “Confidential Information” or “Highly Confidential Information -
21 Attorneys’ Eyes Only.”
- 22 11. Ex. 7 to the McDonell Declaration – Pages 179-180 of the deposition of
23 Safra Catz, taken March 27, 2009, containing materials designated by Oracle
24 as “Confidential Information” or “Highly Confidential Information -
25 Attorneys’ Eyes Only.”
- 26 12. Ex. 8 to the McDonell Declaration – Pages 69-70 and 170-179 of the
27 deposition of Corey West, taken April 9, 2009, containing materials
28 designated by Oracle as “Confidential Information” or “Highly Confidential

Information - Attorneys' Eyes Only."

13. Ex. 9 to the McDonell Declaration – Pages 47-49 of the deposition of Larry Ellison, taken May 5, 2009, containing materials designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only."

14. Ex. 10 to the McDonell Declaration – Pages 174-196 of the deposition of Juergen Rottler, taken May 13, 2009, containing materials designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only."

15. Ex. 11 to the McDonell Declaration – Exhibit 440 to the deposition of Juergen Rottler, Bates stamped ORCL00368543-00368544 and ORCL00368549, containing materials designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only."

16. Ex. 18 to the McDonell Declaration – Portions of the letter from Jason McDonnell to Zac Alinder dated June 12, 2009, containing materials designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only."

17. Ex. 19 to the McDonell Declaration – Pages 63, 65, 67, 78-79, 82-83, 94-95, 105-107, 122-126, 135, 150, 155, 159-160, 183-188, 195, 206, 208 and 222-226 of the deposition of Uyen Ngoc Anne Kishore, taken April 14, 2009, containing materials designated by Oracle as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes Only."

IT IS SO ORDERED

DATED: July 28, 2009

