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15

16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

18   SAN FRANCISCO DIVISION

19 ORACLE USA, INC., *et al.*,   CASE NO. 07-CV-01658 PJH (EDL)

20   Plaintiffs,   **DECLARATION OF JENNIFER
         v.   GLOSS IN SUPPORT OF
21   PLAINTIFFS' RESPONSE TO
    SAP AG, *et al.*,   DEFENDANTS' ADMINISTRATIVE
22   MOTION TO FILE PLAINTIFFS'
              Defendants.   DOCUMENTS UNDER SEAL**
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                                                Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF JENNIFER GLOSS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE PLAINTIFFS' DOCUMENTS UNDER SEAL
A/73110491.1/2021039-0000324170

1   I, Jennifer Gloss, declare as follows:

2   1.   I am an attorney licensed to practice law in the State of California and am Senior

3   Corporate Counsel at Oracle USA, Inc. ("Oracle"). I have personal knowledge of the facts stated

4   within this Declaration and could testify competently to them if required.

5   2.   I have reviewed the documents and testimony identified as Exhibits C-1 and K-1

6   of the Declaration of Joshua L. Fuchs in support of Defendants' Opposition to Plaintiffs' Motion

7   to Amend (the "Fuchs Declaration"). Each of these exhibits contains non-public, commercially

8   sensitive and confidential information the disclosure of which would create a risk of significant

9   competitive injury and particularized harm and prejudice to Oracle.

10   3.   Oracle has narrowly tailored its request by only requesting redaction or sealing of

11   the specific passages, documents and information that contain the most commercially sensitive

12   and confidential information. More specifically, these exhibits contain the following types of

13   confidential and commercially sensitive information justifying their protection under the sealing

14   rules of this Court, including Rule 26(c), Local Rule 79-5, and this Court's Standing Order on

15   Confidential and Sealed Documents:

16   a.   Ex. C-1 – Pages 98-103 of the deposition of Brad Nolan taken June 12,

17   2009, contain non-public, sensitive and confidential testimony regarding

18   Oracle's internal inquiries and confidential customer contacts and

19   information. The disclosure of such confidential information would create

20   a risk of significant competitive injury and particularized harm and

21   prejudice to Oracle.

22   b.   Ex. K-1 – Exhibit 511A to the deposition of Edward Abbo, former Senior

23   Vice President of Oracle's Application Development, taken June 29,

24   2009, Bates stamped ORCL00033752-56. Exhibit 511A is an email

25   exchange dated December 13, 2006 between Mr. Abbo and a handful of

26   Oracle employees comprising confidential customer information,

27   confidential, commercially sensitive and internal customer negotiations,

28   pricing and internal analyses and procedures regarding such confidential

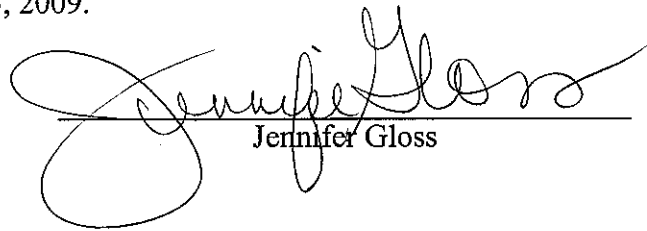2   Case No. 07-CV-01658 PJH (EDL)

1   negotiations. It also contains specific private and confidential customer

2   financial information; non-public, commercially sensitive and

3   confidential information regarding Oracle's pricing strategies; and, non-

4   public, commercially sensitive and confidential information regarding

5   competitive strategy. The disclosure of such confidential information

6   would create a risk of significant competitive injury and particularized

7   harm and prejudice to Oracle.

8   4.   Further, portions of pages 6 and 18 of Defendants' Opposition to Plaintiffs'

9   Motion to Amend ("Opposition") and paragraphs 18 and 41 of the Fusch Declaration contain

10   quotes or other descriptions from documents identified herein that have been designated by

11   Plaintiffs as "Confidential Information" or "Highly Confidential Information - Attorneys' Eyes

12   Only."   Oracle has narrowly tailored its request by only requesting redaction or sealing of the

13   specific passages that contain non-public, commercially sensitive, confidential information the

14   disclosure of which would create a significant risk of competitive injury and result in

15   particularized harm and prejudice to Oracle. Those passages include direct quotation of the

16   confidential deposition testimony described above in Paragraph 3 as well as internal

17   commercially sensitive customer financial information.   Consistent with Paragraph 3 above, the

18   disclosure of such confidential information would result in particularized harm and prejudice to

19   Oracle.

20   5.   Plaintiffs have protected information in Exhibits C-1 and K-1 from improper

21   public disclosure through the Stipulated Protective Order that is designed to prevent the Parties'

22   private commercial information and customer information from being improperly disclosed.

23   Under the terms of that Order, Plaintiffs designated certain documents, deposition transcripts and

24   discovery responses containing private commercial information as either "Confidential" or

25   "Highly Confidential - Attorneys' Eyes Only" prior to producing such documents in the course

26   of discovery. As attested to above, Exhibits C-1 and K-1 contain certain information taken from

27   documents and testimony that was designated either "Confidential" or "Highly Confidential -

28   Attorneys' Eyes Only". Absent the requested sealing, these exhibits would provide valuable

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1 insight into Oracle's competitive strategies, financial systems, pricing structures, and internal

2 corporate structure, giving current and prospective customers and competitors specific leverage

3 to use against Oracle. In addition, the request for sealing is made to protect confidential

4 customer information from disclosure.

5   I declare under penalty of perjury that the foregoing is true and correct. Executed

6 in Redwood Shores, California, on August 5, 2009.

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8   Jennifer Gloss

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