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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 PERMIT DEFENDANTS
 TO FILE UNDER SEAL
 DOCUMENTS SUPPORTING
 DEFENDANTS' REPLY IN SUPPORT
 OF MOTION FOR SANCTIONS AND
 REPLY IN SUPPORT OF MOTION
 TO COMPEL**

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1 Pending before this Court is SAP AG, SAP America, Inc., and TomorrowNow,
2 Inc.'s (collectively, "Defendants") Administrative Motion to Permit Defendants to File Under
3 Seal Documents Supporting Defendants' Reply in Support of Motion for Sanctions and Reply in
4 Support of Motion to Compel ("Motion to Seal"). Through their Motion to Seal, Defendants
5 together with Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA
6 Limited (collectively, "Oracle," and with Defendants, the "Parties"), request an Order sealing (1)
7 Portions of Defendants' Reply in Support of Motion for Sanctions Pursuant to Fed. R. Civ. P.
8 37(c) and 16(f) ("Motion for Sanctions Reply"); (2) Portions of the Reply Declaration of Stephen
9 K. Clarke in Support of Defendants' Motion for Sanctions Reply; (3) Portions of Defendants'
10 Reply in Support of Motion to Compel Production of Financial Information ("Motion to Compel
11 Reply"); (4) Portions of the Declaration of Stephen K. Clarke in Support of Defendants' Motion
12 to Compel Reply; and (5) Exhibit 8 to the Declaration of Jason McDonell in Support of
13 Defendants' Motion to Compel Reply ("McDonell 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 for Cases Involving Sealed or
23 Confidential Documents, Rule 26(c) and Civil Local Rule 79-5, Oracle has filed the Declaration
24 of Zachary Alinder (the "Alinder Declaration") in support of Defendants' Motion to Seal on
25 August 11, 2009. Through the Alinder Declaration, Oracle provides evidence of good cause
26 sufficient for this Court to permit filing the requested exhibits under seal. The Alinder
27 Declaration establishes both that Oracle has considered and treated the information contained in
28 the subject documents as confidential, commercially sensitive and proprietary, and that public

1 disclosure of such information would create a risk of significant competitive injury and
 2 particularized harm and prejudice to Oracle. *See Phillips v. General Motors Corp.* 307 F. 3d
 3 1206, 1211 (9th Cir. 2006). The Alinder Declaration also establishes that the request for sealing
 4 has been narrowly tailored.

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

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

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

- 11 1. Defendants' Sanctions Reply Brief: Portions of page 12, containing
 12 materials designated by Oracle as "Confidential Information" or "Highly
 13 Confidential Information - Attorneys' Eyes Only."
- 14 2. Declaration of Stephen K. Clarke in Support of Defendants' Motion for
 15 Sanctions Reply: Portions of pages 2 (including ¶8), 3 and 7, containing
 16 materials designated by Oracle as "Confidential Information" or "Highly
 17 Confidential Information - Attorneys' Eyes Only."
- 18 3. Defendants' Motion to Compel Reply: Portions of pages 3-5, 7, 9, 12, and
 19 14-15 of Defendants' Motion to Compel Reply, containing materials
 20 designated by Oracle as "Confidential Information" or "Highly Confidential
 21 Information - Attorneys' Eyes Only."
- 22 4. Declaration of Stephen K. Clarke in Support of Defendants' Motion to
 23 Compel Reply: Portions of pages 3 and 5-7, containing materials designated
 24 by Oracle as "Confidential Information" or "Highly Confidential Information
 25 - Attorneys' Eyes Only."
- 26 5. Ex. 8 to the McDonnell Declaration: Exhibit 8 contains portions of Oracle's
 27 Supplemental Responses and Objections to Defendants' Second and Third
 28 Targeted Search Requests, containing materials designated by Oracle as

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“Confidential Information” or “Highly Confidential Information - Attorneys’
Eyes Only.”

IT IS SO ORDERED

DATED: August 12, 2009

