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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)

**PLAINTIFFS' RESPONSE IN
 SUPPORT OF DEFENDANTS'
 ADMINISTRATIVE MOTION TO
 PERMIT DEFENDANTS TO FILE
 UNDER SEAL PLAINTIFFS'
 DOCUMENTS SUPPORTING
 DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

1 I. INTRODUCTION AND RELIEF REQUESTED

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,
3 “Defendants,”) filed an Administrative Motion (Docket No. 434) and accompanying Stipulation
4 (Docket No. 436), Declaration (Docket No. 435), and Proposed Order (Docket No. 442) to seal
5 (a) portions of Defendants’ Motion for Partial Summary Judgment Regarding Plaintiffs’
6 Hypothetical License Damages Claim (“Defendants’ Motion”), and (b) portions of Exhibits A,
7 B, C, and H of the Declaration of Tharan Gregory Lanier in Support of Defendants’ Motion for
8 Partial Summary Judgment (“Lanier Declaration”). Under Local Rules 7-11 and 79-5, and this
9 Court’s Standing Order For Cases Involving Sealed or Confidential Documents, Plaintiffs Oracle
10 USA, Inc., Oracle International Corporation, and Oracle EMEA Limited (collectively, “Oracle”)
11 file this Response, and the accompanying Declaration of Jennifer Gloss in Support of
12 Defendants’ Administrative Motion to Seal (“Gloss Decl.”), which establishes that good cause
13 exists in support of a narrowly tailored order authorizing the sealing of portions of Defendants’
14 Motion and Exhibits A, B, C, and H of the Lanier Declaration. Oracle is taking the additional
15 step of filing this Response even though not expressly called for by the Court’s Standing Order
16 Involving Sealed or Confidential Documents because the legal basis for sealing this material was
17 not set forth in the original filing by Defendants.

18 The materials at issue include highly sensitive commercial information, which reveal
19 confidential business strategy, analysis and decision-making from Oracle’s most senior
20 executives, including Oracle’s co-founder and Chief Executive Officer, Larry Ellison. These
21 materials also include financial estimates which may cause harm to Oracle by improperly
22 influencing the marketplace. The Court has previously allowed similar and, indeed, some of the
23 same information to be filed under seal. *See, e.g.*, Docket No. 411 (August 12, 2009 Order
24 Granting Defendants’ Administrative Motion to File Under Seal Documents Supporting
25 Defendants’ Motion for Sanctions and Motion to Compel); Docket No. 412 (August 12, 2009
26 Order Granting Plaintiffs’ Administrative Motion to File Under Seal Documents Supporting
27 Plaintiffs’ Oppositions to Defendants’ Motions for Sanctions and to Compel. Because good
28 cause exists, Oracle requests that the Court grant the motion to seal portions of Exhibits A, B, C,

1 and H to the Lanier Declaration and the corresponding portions of Defendants' Motion.

2 **II. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit
4 sealing of court documents. As opposed to sealing information at trial or in case-dispositive
5 motions, which requires the most "compelling" of reasons, a showing of good cause will suffice
6 for sealing records attached to non-dispositive motions.¹ *Navarro v. Eskanos & Adler*, Case No.
7 C-06 02231 WHA(EDL), 2007 U.S. Dist. LEXIS 24864 at *7 (March 22, 2007) (citing in part,
8 *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)); Court's Standing Order for Cases
9 Involving Sealed or Confidential Documents ¶ 5 (citing in part, *Foltz v. State Farm Mu.*
10 *Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003). To make such a showing of good cause, the
11 party seeking protection from disclosure must demonstrate that it has taken steps to keep the
12 information confidential, and that public disclosure of such information would create a risk of
13 significant competitive injury and particularized harm or prejudice. *See Navarro*, 2007 U.S.
14 Dist. LEXIS 24864 at *5, *8; *see also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211
15 (9th Cir. 2006); *In re Adobe Sys., Inc. Sec. Litig.*, 141 F.R.D. 155, 158 (N.D. Cal. 1992).

16 **III. ARGUMENT**

17 Sensitive commercial information warrants protection if disclosure would create a risk of
18 competitive harm. *See, e.g., In re Adobe Sys.*, 141 F.R.D. at 158 (stating that "[g]ood cause [for
19 granting a protective order] may be that the protected information includes . . . financial
20 information and business strategy . . . information which, if revealed to a competitor, would put a
21 company at a competitive disadvantage."); *Valley Broad. Co. v. United States Dist. Court*, 798
22 F.2d 1289, 1293 (9th Cir. 1986) (recognizing that a district court may refuse to permit its files to
23 serve as "a source of business information that might harm a litigant's competitive standing"
24 (quotations omitted)). This Court has also protected such information in this case. *See* Docket
25 No. 411; Docket No. 412.

26 _____
27 ¹ Indeed, Oracle believes the Gloss Decl. establishes that the materials at issue are so sensitive
28 that compelling reasons support filing them under seal.

1 The materials at issue here are some of the most commercially-sensitive possible, as they
2 reveal internal business strategy, analysis, and decision-making of Oracle's most senior
3 executives. This testimony would reveal highly confidential and commercially sensitive current
4 and future business operations, acquisitions, and competitive strategies. Gloss Decl. ¶ 3.
5 Further, this confidential information reveals Oracle's approaches to hypothetical business
6 scenarios, and good cause exists to seal these materials because disclosure of these decision-
7 making processes would provide competitors, partners, customers and other interested parties
8 with an unfair insight into Oracle's operations that could be used to Oracle's detriment in future
9 interactions. *Id*; *Adobe Sys., Inc.*, 141 F.R.D. at 158. Moreover, disclosure of these
10 commercially-sensitive decision-making processes might mislead Oracle's customers, partners,
11 competitors, or other interested parties with respect to Oracle's future business strategies. Gloss
12 Decl. ¶ 3.

13 Good cause also exists to seal Oracle's financial estimates of certain types of damage. A
14 premature disclosure of this information may cause Oracle particularized harm and prejudice as
15 the information could improperly mislead the market and influence Oracle's stock price. *Id*.
16 Oracle has previously sought the sealing of both the same and similar information as is the
17 subject of this Response, and the Court has previously granted those motions to seal this highly
18 confidential information. *See*, Docket No. 411, 412.

19 Finally, Oracle has taken steps to ensure that the information contained in Exhibits A, B,
20 C, and H of the Lanier Declaration remain confidential in this litigation, pursuant to the
21 Protective Order entered on June 6, 2007. Gloss Decl., ¶ 5. This Protective Order was designed
22 by the Parties, who are competitors in the software industry, to protect designated documents,
23 testimony, and information from improper disclosure, both to the public and more broadly than
24 necessary to employees of the Parties themselves. Oracle also has narrowly tailored this request
25 as required by Local Rule 79-5(a), by only requesting redaction or sealing of the specific, limited
26 passages of the relevant testimony and documents that contain the most commercially sensitive
27 and confidential information.

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