

1 BINGHAM McCUTCHEEN LLP
 DONN P. PICKETT (SBN 72257)
 2 GEOFFREY M. HOWARD (SBN 157468)
 HOLLY A. HOUSE (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, and Siebel Systems, Inc.
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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.
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CASE NO. 07-CV-01658 PJH (EDL)

**DECLARATION OF DORIAN
 DALEY IN SUPPORT OF
 PLAINTIFFS' RESPONSE TO
 DEFENDANTS' ADMINISTRATIVE
 MOTION TO PERMIT
 DEFENDANTS TO FILE UNDER
 SEAL PLAINTIFFS' INFORMATION
 DISCLOSED IN DEFENDANTS'
 ANSWER AND AFFIRMATIVE
 DEFENSES TO FOURTH AMENDED
 COMPLAINT**

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

DECLARATION OF DORIAN DALEY IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' ADMINISTRATIVE
 MOTION

1 I, Dorian Daley, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am
3 Senior Vice President, General Counsel, and Secretary of Oracle Corporation (“Oracle”). I have
4 personal knowledge of the facts stated within this Declaration and could testify competently to
5 them if required.

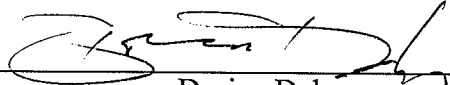
6 2. I have reviewed the material contained in paragraph 13 of Defendants’
7 Answer and Affirmative Defenses to Fourth Amended Complaint (“Defendants’ Answer”). The
8 part of paragraph 13 that Oracle requests be filed under seal relates to a meeting in November
9 2007 that included me, Michael Junge (the General Counsel of SAP AG) and outside counsel.
10 SAP’s counsel requested the meeting for the stated purpose of discussing my desire as litigation
11 counsel to have access to material designated as “Highly Confidential -- Attorneys Eyes Only”
12 pursuant to the Protective Order entered in this case. At that meeting, Mr. Junge and his counsel
13 initiated a settlement discussion. The proposal SAP made was unacceptable to Oracle for many
14 reasons, including because I felt strongly it could have the unintended consequence of violating
15 antitrust laws. The meeting ended with no settlement and no agreement to continue the
16 discussions.

17 3. The participants did agree on one thing, however, which was that the
18 discussions in that meeting were confidential settlement discussions governed by, and pursuant
19 to, Federal Rule of Evidence 408. *See* Docket No. 439 (August 26, 2009 Stipulation to Permit
20 Defendants to File Under Seal Plaintiffs’ Information Disclosed in Defendants’ Answer and
21 Affirmative Defenses to Fourth Amended Complaint stating that “the parties agree that the
22 materials put at issue by the Answer are governed by Fed. R. Evid. 408.”) As a confidential
23 settlement communication, Oracle believes this material should be maintained by the parties in
24 confidence, which Oracle has done. In addition, because the description itself is inaccurate,
25 incomplete, and lacks context, the disclosure may cause Oracle competitive harm by leading
26 customers or partners to believe, incorrectly, that Oracle did not act reasonably in enforcing its
27 intellectual property rights.

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1 4. For the reasons above, the material in paragraph 13 contains non-public,
2 commercially sensitive and confidential information the disclosure of which would violate the
3 policies behind Rule 408 and would pose the risk of significant competitive injury and
4 particularized harm and prejudice to Oracle.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed
6 in Redwood Shores, California, on August 31, 2009.

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