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 Oracle EMEA Limited, and Siebel Systems, Inc.

14 UNITED STATES DISTRICT COURT
 15
 16 NORTHERN DISTRICT OF CALIFORNIA
 17
 18 SAN FRANCISCO DIVISION

19 ORACLE USA, INC., *et al.*,
 20 Plaintiffs,
 21 v.
 22 SAP AG, *et al.*,
 Defendants.
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 24
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CASE NO. 07-CV-01658 PJH (EDL)
**DECLARATION OF JENNIFER
 GLOSS IN SUPPORT OF
 ADMINISTRATIVE MOTION TO
 SEAL DOCUMENTS SUPPORTING
 DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 REGARDING PLAINTIFFS'
 HYPOTHETICAL LICENSE
 DAMAGES CLAIM**

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 A, B, C, and
6 H of the Declaration of Tharan Gregory Lanier (the "Lanier Declaration") filed in support of
7 Defendants' Motion for Partial Summary Judgment Regarding Plaintiffs' Hypothetical License
8 Damages Claim ("Defendants' Motion"). Each of these Exhibits contains non-public,
9 commercially sensitive and confidential information the disclosure of which would create a risk
10 of significant competitive injury and particularized harm and prejudice to Oracle. Further, these
11 same types of confidential information are the subject of previous declarations filed by Plaintiffs
12 in support of prior motions to seal and orders signed by the Court, which further attest to the risk
13 of significant competitive injury and particularized harm and prejudice to Oracle. *See, e.g.*,
14 Declaration of Jennifer Gloss in Support of Plaintiffs' Response to Defendants' Administrative
15 Motion to File Plaintiffs' Documents Under Seal (Docket No. 356); Declaration of Jennifer
16 Gloss in Support of Plaintiffs' Administrative Motion to File Under Seal Documents Supporting
17 Plaintiffs' Oppositions to Defendants' Motion for Sanctions and Motion to Compel (Docket No.
18 377).

19 3. Oracle has narrowly tailored its request by only requesting redaction or sealing of
20 the specific testimonial passages, documents and information that contain the most commercially
21 sensitive and confidential information. For example, Oracle has agreed that the material on
22 pages 10:1-11:17, 21:13-25:18 and 160:3-161:5 of the deposition of Safra Catz, Oracle's Co-
23 President, the materials on pages 58:11-6 and 95:3-96:21 of the deposition of Charles Phillips,
24 Oracle's Co-President, and the material on pages 58:6-10 of the deposition of Larry Ellison,
25 Oracle's co-founder and Chief Executive Officer, can all be filed publicly. The passages and
26 exhibits for which Oracle does request filing under seal are detailed as follows, and contain
27 the specified types of confidential and commercially sensitive information justifying their
28 protection under the sealing rules of this Court, including Rule 26(c), Local Rule 79-5, and the

1 Court's Standing Order Involving Sealed or Confidential Documents:

- 2 a. Ex. A – Pages 19:23-20:25, 25:19-27:15, 46:7-47:13, 158:13-160:2 of the
3 deposition of Safra Catz, Oracle's Co-President, taken March 27, 2009
4 contain non-public, commercially sensitive and confidential financial
5 figures and estimates with regard to harm Oracle has suffered. The
6 testimony also contains non-public, commercially sensitive and
7 confidential information, including but not limited to (1) internal Oracle
8 decision-making business processes and valuation decisions, (2)
9 competitive business analyses, (3) internal evaluations and analysis of
10 current and future intellectual property rights including their value, and
11 (4) the methods of valuation of assets in the context of acquisitions.
12 Disclosure of such information would grant Oracle's competitors,
13 partners, customers, and other interested parties an insight into Oracle's
14 internal strategy and operations that would provide them with an unfair
15 competitive advantage with respect to current and future operations and
16 negotiations. Its potential impact is magnified because the testimony is
17 from one of Oracle's most senior executives. Finally, the testimony
18 discusses various incomplete hypothetical scenarios, the disclosure of
19 which may cause Oracle competitive harm by misleading Oracle's
20 customers, partners, and other interested parties with respect to Oracle's
21 current or future business strategy. Moreover, because this case has
22 received public attention, the commercially-sensitive, but ambiguous,
23 testimony cited by Defendants here could impact public perception of the
24 parties and, potentially affect stock values. Accordingly, the disclosure of
25 this testimony would create a risk of significant competitive injury and
26 particularized harm and prejudice to Oracle.
- 27 b. Ex. B – Pages 117:9-120:18 of the deposition of Charles Phillips,
28 Oracle's co-President, taken April 17, 2009, contain non-public,

1 commercially sensitive and confidential financial figures and estimates
2 with regard to harm Oracle has suffered. The testimony also contains
3 non-public, commercially sensitive and confidential information,
4 including but not limited to (1) internal Oracle decision-making business
5 processes and valuation decisions, (2) internal evaluations and analysis of
6 current and future intellectual property rights including their value, (3) the
7 methods of valuation of assets in the context of acquisitions, and (4)
8 competitive and proprietary business analysis, strategy and operations that
9 Oracle employs to gain a competitive advantage. Disclosure of such
10 information would grant Oracle's competitors, partners, customers, and
11 other interested parties an insight into Oracle's internal strategy and
12 operations that would provide them with an unfair competitive advantage
13 with respect to current and future operations and negotiations. Its
14 potential impact is magnified because the testimony is from one of
15 Oracle's most senior executives. Finally, the testimony discusses various
16 incomplete hypothetical scenarios, the disclosure of which may cause
17 Oracle competitive harm by misleading Oracle's customers, partners, and
18 other interested parties with respect to Oracle's current or future business
19 strategy. Moreover, because this case has received public attention, the
20 commercially-sensitive, but ambiguous, testimony cited by Defendants
21 here could impact public perception of the parties, and potentially affect
22 stock values. Accordingly, the disclosure of such confidential
23 information would create a risk of significant competitive injury and
24 particularized harm and prejudice to Oracle.

25 c. Ex. C – Pages 73:25-84:6, 114:16-24 of the deposition of Larry Ellison,
26 Oracle's co-founder and Chief Executive Officer, taken May 5, 2009,
27 contains non-public, commercially sensitive and confidential financial
28 figures and estimates with regard to harm Oracle has suffered. The

1 testimony also contains non-public, commercially sensitive and
2 confidential information, including but not limited to (1) internal Oracle
3 decision-making business processes and valuation decisions, (2)
4 competitive business strategy, (3) internal evaluations and analysis of
5 current and future intellectual property rights including their value, and
6 (4) the methods of valuation of assets in the context of acquisitions.
7 Disclosure of such information would grant Oracle's competitors,
8 partners, customers, and other interested parties an insight into Oracle's
9 internal strategy and operations that would provide them with an unfair
10 competitive advantage with respect to current and future operations and
11 negotiations. Its potential impact is magnified because the testimony is
12 from one of Oracle's most senior executives. Finally, the testimony
13 discusses various incomplete hypothetical scenarios, the disclosure of
14 which may cause Oracle competitive harm by misleading Oracle's
15 customers, partners, and other interested parties with respect to Oracle's
16 current or future business strategy. Moreover, because this case has
17 received public attention, the commercially-sensitive, but ambiguous,
18 testimony cited by Defendants here could impact public perception of the
19 parties and, potentially affect stock values. Accordingly, the disclosure of
20 this testimony would create a risk of significant competitive injury and
21 particularized harm and prejudice to Oracle.

22 d. Ex. H – Portions of page 47, line 20, page 48, lines 9 and 12, and page 49,
23 line 27 of Plaintiff's May 22, 2009 Supplemental and Amended Initial
24 Disclosures. Oracle has narrowly tailored its request by only requesting
25 redaction or sealing of the specific financial estimates included in these
26 Disclosures. Those specific financial estimates are non-public,
27 commercially sensitive and confidential. Disclosure of such information
28 might mislead the market and improperly impact Oracle's stock value.

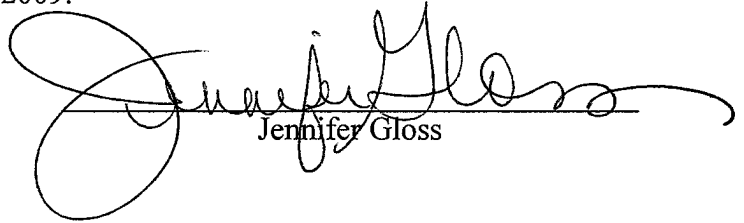
1 Disclosure of such information would also grant Oracle's competitors,
2 partners, customers, and other interested parties an insight into Oracle's
3 operations that would provide them with an unfair advantage with respect
4 to current and future operations and negotiations. Accordingly, disclosure
5 of such confidential information would create a risk of significant
6 competitive injury and particularized harm and prejudice to Oracle.

7 4. Further, portions of Defendants' Motion contain quotes or other descriptions from
8 documents identified in Paragraph 3 above. Oracle has narrowly tailored its request by only
9 requesting redaction or sealing of the specific passages that contain non-public, commercially
10 sensitive confidential information the disclosure of which would create a significant risk of
11 competitive injury and particularized harm and prejudice to Oracle, as described in detail above
12 in Paragraph 3. These passages are portions of page 1, lines 19-20, 24, page 2, lines 13-17, page
13 3, lines 11, 13-14, page 4, lines 10-12, 15-24, page 5, lines 26-27, page 6, lines 1-8, page 11,
14 lines 14, 18-19, 21-22, 24-27, page 12, lines 12-13, page 13, lines 15-16, 18-19, page 14, lines 4-
15 6, page 16, lines 18-19, and page 20, line 10. The passages include direct quotation of the
16 confidential deposition testimony and financial estimates described above in Paragraph 3.
17 Consistent with Paragraph 3 above, the disclosure of such confidential information would create
18 a risk of significant competitive injury and particularized harm and prejudice to Oracle.

19 5. Plaintiffs have protected information in Exhibits A, B, C, and H of the Lanier
20 Declaration from improper public disclosure through the Stipulated Protective Order that is
21 designed to prevent the Parties' private commercial information from being improperly
22 disclosed. Under the terms of that Order, Plaintiffs designated certain documents, deposition
23 testimony and discovery responses containing non-public, commercially-sensitive information as
24 either "Confidential" or "Highly Confidential - Attorneys' Eyes Only" prior to producing such
25 documents in the course of discovery. As attested to above, Exhibits A, B, C, and H of the
26 Lanier Declaration contain certain information taken from documents and testimony that was
27 designated either "Confidential" or "Highly Confidential - Attorneys' Eyes Only." Absent the
28 requested sealing, these Exhibits would provide valuable insight into Oracle's confidential

1 internal competitive strategies and business processes and would create a risk of significant
2 competitive injury and particularized harm and prejudice to Oracle.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed
4 in San Francisco, California, on August 31, 2009.

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6 Jennifer Gloss
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