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20 UNITED STATES DISTRICT COURT
 21 NORTHERN DISTRICT OF CALIFORNIA
 22 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,
 24 Plaintiffs,
 25 v.
 26 SAP AG, *et al.*,
 27 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 TO
 COMPEL**

1 I. INTRODUCTION

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,
3 “Defendants,”) filed an Administrative Motion (Docket No. 563) and accompanying Stipulation
4 (Docket No. 565), Declaration (Docket No. 564), and Proposed Order (Docket No. 563) to seal
5 (a) portions of Defendants’ Motion to Compel (“Defendants’ Motion”), and (b) Exhibits A, C, F,
6 G, H, K and Appendix 5 of the Declaration of Scott W. Cowan in support thereof (“the Cowan
7 Declaration”). Under Local Rules 7-11 and 79-5, and this Court’s Standing Order For Cases
8 Involving Sealed or Confidential Documents, Plaintiffs Oracle USA, Inc., Oracle International
9 Corporation, Oracle EMEA Limited, and Siebel Systems, Inc. (collectively, “Oracle”) file this
10 Response, and the accompanying Declaration of Jennifer Gloss in Support of Defendants’
11 Administrative Motion to Seal (“Gloss Declaration” or “Gloss Decl.”), which establishes that
12 good cause exists in support of a narrowly tailored order authorizing the sealing of portions of
13 Defendants’ Motion, portions of Exhibit C of the Cowan Declaration, and Exhibits A, F, G, H
14 and K of the Cowan Declaration.

15 II. LEGAL STANDARD

16 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit
17 sealing of court documents. As opposed to sealing information at trial or in case-dispositive
18 motions, which requires the most “compelling” of reasons, a showing of good cause will suffice
19 for sealing records attached to non-dispositive motions. *Navarro v. Eskanos & Adler*, Case No.
20 C-06 02231 WHA(EDL), 2007 U.S. Dist. LEXIS 24864 at *7 (March 22, 2007) (citing in part,
21 *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)); Court’s Standing Order for Cases
22 Involving Sealed or Confidential Documents ¶ 5 (citing in part, *Foltz v. State Farm Mu.*
23 *Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003). To make such a showing of good cause, the
24 party seeking protection from disclosure must demonstrate that it has taken steps to keep the
25 information confidential, and that public disclosure of such information would create a risk of
26 significant competitive injury and particularized harm or prejudice. *See Navarro*, 2007 U.S.
27 Dist. LEXIS 24864 at *5, *8; *see also Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211
28 (9th Cir. 2006); *In re Adobe Sys., Inc. Sec. Litig.*, 141 F.R.D. 155, 158 (N.D. Cal. 1992).

1 **III. ARGUMENT**

2 Through the declaration of Jennifer Gloss that accompanies this Response, Oracle
 3 establishes good cause to permit the filing under seal of portions of Exhibit C to the Cowan
 4 Declaration, Exhibits A, F, G, H and K of the Cowan Declaration, and the portions of
 5 Defendants' motion referencing these documents. *See* Gloss Decl., ¶¶3-4. The Gloss
 6 Declaration establishes both that Oracle has considered and treated the information contained in
 7 the subject documents as confidential, commercially sensitive and proprietary, and that public
 8 disclosure of such information would create a risk of significant competitive injury and
 9 particularized harm and prejudice to Oracle. *See id.*, ¶¶3-5. Further, Oracle has continued to
 10 protect the information contained in these Exhibits from improper public disclosure since the
 11 initiation of this litigation through a Stipulated Protective Order (Docket No. 32) to prevent its
 12 private confidential information from being improperly disclosed. *See id.* Under the terms of
 13 the Protective Order, Oracle has designated each of these Exhibits as either "Confidential" and
 14 "Highly Confidential" prior to producing such documents and testimony in the course of
 15 discovery. The Gloss Declaration also establishes that the request for sealing has been narrowly
 16 tailored. *See id.* Accordingly, good cause exists to grant an order sealing these documents.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Oracle respectfully requests that the Court file under seal, the
 19 specific portions of Exhibits A, C, F, G, H, and K of the Cowan Declaration, and the
 20 corresponding portions of Defendants' Motion as set forth in the Gloss Declaration.

21 DATED: December 18, 2009

BINGHAM McCUTCHEN LLP

22
 23 By: /s/ Zachary J. Alinder
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