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16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND 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' ADMINISTRATIVE  
 MOTION TO PERMIT PLAINTIFFS  
 TO FILE UNDER SEAL  
 INFORMATION SUPPORTING  
 PLAINTIFFS' MOTION FOR  
 SUMMARY JUDGMENT**

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

1 **I. INTRODUCTION**

2 Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc. (now  
3 known as “Oracle America, Inc.”) and Oracle International Corporation (“Plaintiffs” or  
4 “Oracle”) hereby move the Court for an order directing the Clerk of the Court to file under seal  
5 the following documents related to Oracle’s Motion for Partial Summary Judgment:

6 (1) Exhibit D to the Declaration of Thomas O’Neill filed in Support of Oracle’s  
7 Motion for Partial Summary Judgment (“O’Neill Declaration”);

8 (2) portions of the Declaration of Norm Ackermann filed in Support of Oracle’s  
9 Motion for Partial Summary Judgment (“Ackermann Declaration”);

10 (3) Appendices B-K of the Ackermann Declaration;

11 (4) portions of the Declaration of Mark Fallon filed in Support of Oracle’s Motion  
12 for Partial Summary Judgment (“Fallon Declaration”);

13 (5) portions of Exhibits 17, 18, 115, 116 and 117 to the Declaration of Zachary J.  
14 Alinder filed in Support of Oracle’s Motion for Partial Summary Judgment (“Alinder  
15 Declaration”); and

16 (6) portions of Oracle’s Motion for Partial Summary Judgment at page 12, lines  
17 11-19, 22-23 and page 24, lines 4-5.

18 Each of these documents contains information properly designated pursuant to the  
19 Stipulated Protective Order entered in this action as confidential or highly confidential by Oracle.  
20 Compelling reasons exist to support filing the requested documents under seal, as established in  
21 the attached Declaration of Jennifer Gloss in Support of Plaintiffs’ Administrative Motion to  
22 Permit Plaintiffs to File Under Seal Information Supporting Oracle’s Motion for Partial  
23 Summary Judgment (“Gloss Declaration”), because Oracle has narrowly tailored its request to  
24 seal only the specific passages that contain non-public, commercially sensitive, private and  
25 confidential information, the disclosure of which would create a risk of significant competitive  
26 injury and particularized harm and prejudice to Oracle. Unredacted versions of these documents  
27 were lodged with the Court on March 3, 2010. Accordingly, the Court should grant this Motion  
28 to file the requested documents under seal.

1 **II. COMPELLING REASONS EXIST TO SEAL ORACLE’S CONFIDENTIAL**  
 2 **INFORMATION**

3 As a general matter, “courts have recognized a ‘general right to inspect and copy  
 4 public records and documents, including judicial records and documents.’” *Kamakana v. City &*  
 5 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). However,  
 6 the Ninth Circuit has recognized that “access to judicial records is not absolute.” *Id.* A party  
 7 seeking to seal a document or information filed in connection with a dispositive motion may  
 8 overcome the presumption of public access by meeting the “compelling reasons” standard  
 9 articulated by the Ninth Circuit. *Id.*; *Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1122,  
 10 1135 (9th Cir. 2003); *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, 614 F.  
 11 Supp. 2d 1006, 1035-36 (N.D. Cal. 2009) (Hamilton. J.) (granting in part motion to file under  
 12 seal where requesting party had shown a “compelling need” to file under seal), amended on other  
 13 grounds, No. C 06-1066 PJH, 2009 WL 1764749 (N.D. Cal. June 22,2009). Specifically, the  
 14 requesting party must “articulate[] compelling reasons supported by specific factual  
 15 findings . . . that outweigh the general history of access and the public policies favoring  
 16 disclosure.” *Kamakana*, 447 F.3d at 1178-79 (internal citations omitted). Compelling reasons  
 17 sufficient to outweigh the public’s interest in disclosure and to justify sealing court records exist  
 18 when such “‘court files might have become a vehicle for improper purposes,’ such as the use of  
 19 records to gratify private spite, promote public scandal, circulate libelous statements, or release  
 20 trade secrets.” *Id.* at 1179.

21 **A. The Request For Sealing Relates To Commercially Sensitive**  
 22 **Documents Like Software Code, Internal Security Measures,**  
 23 **Proprietary Financial Data And Private Customer Information**

24 The presumption in favor of public access is overcome when information as  
 25 sensitive and confidential as the information contained in the documents addressed by this  
 26 Motion and the supporting Gloss Declaration is filed in support of dispositive motions.  
 27 Furthermore, the Gloss Declaration establishes that compelling reasons exist to seal these  
 28 documents because they contain confidential and commercially sensitive information about  
 Oracle’s proprietary software code and internal security measures, and calculations based on

1 proprietary financial information which could be unfairly used to Oracle's disadvantage. They  
2 also include a customer contract subject to confidentiality agreements. Thus, this information  
3 qualifies for protection under the sealing rules and practice of this Court, including Rule 26(c),  
4 Local Rule 79-5, and this Court's Standing Order on Confidential and Sealed Documents.

5 **B. Oracle Protects These Documents And Data As Its Confidential And**  
6 **Proprietary And The Request Is Narrowly Tailored**

7 The Gloss Declaration also establishes both that Oracle has considered and treated  
8 the information contained in the subject documents as confidential and proprietary, and that  
9 public disclosure of such information would result in a particularized harm or prejudice to  
10 Oracle. In addition, Oracle has taken steps to ensure that the information contained in these  
11 documents remain confidential in this litigation, pursuant to the Protective Order entered on June  
12 6, 2007. This Protective Order was designed by the Parties, who are direct competitors in the  
13 software industry, to protect designated documents from improper disclosure, both to the public  
14 and more broadly than necessary to employees of the Parties themselves.

15 Finally, Oracle has narrowly tailored this request, as required by Local Rule 79-  
16 5(a), by only requesting redaction or sealing of the specific passages, documents and information  
17 that contain the most commercially sensitive and confidential information. According, the Court  
18 should grant this motion to file the requested documents under seal.

19 **III. CONCLUSION**

20 For the foregoing reasons, Oracle respectfully requests that the Court file under  
21 seal: (1) Exhibit D to the Declaration of Thomas O'Neill; (2) portions of the Declaration of  
22 Norm Ackermann; (3) Appendices B-K to the Ackermann Declaration; (4) portions of the  
23 Declaration of Mark Fallon; (5) portions of Exhibits 17, 18, 115, 116 and 17 to the Alinder  
24 Declaration; (7) and portions of Oracle's Motion for Partial Summary Judgment at page 12, lines  
25 11-19, 22-23 and page 24, lines 4-5.

1 DATED: March 3, 2010

BINGHAM McCUTCHEN LLP

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By: 

Zachary J. Alinder  
Attorneys for Plaintiffs

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Oracle USA, Inc.,

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Oracle International Corporation, Oracle EMEA  
Limited, and Siebel Systems, Inc.

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