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16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

18   OAKLAND DIVISION

19 ORACLE USA, INC., *et al.*,	CASE NO. 07-CV-01658 PJH (EDL)
20 Plaintiffs,	**DECLARATION OF JENNIFER GLOSS IN SUPPORT OF**
v.	**ADMINISTRATIVE MOTION TO**
21 SAP AG, *et al.*,	**SEAL PLAINITFFS' DOCUMENTS SUPPORTING ORACLE'S MOTION**
22 Defendants.	**FOR PARTIAL SUMMARY JUDGMENT**
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                                 Case No. 07-CV-01658 PJH (EDL)

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 America, Inc., successor to Oracle USA, Inc. ("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 following documents and testimony filed in support of

7   Oracle's Motion for Partial Summary Judgment ("Oracle's Motion"): (1) Exhibit D to the

8   Declaration of Thomas O'Neill filed in Support of Oracle's Motion for Partial Summary

9   Judgment ("O'Neill Declaration"), (2) the Declaration of Norm Ackermann filed in Support of

10 Oracle's Motion for Partial Summary Judgment ("Ackermann Declaration"), (3) Appendices B-

11 K of the Ackermann Declaration, (4) the Declaration of Mark Fallon filed in Support of Oracle's

12 Motion for Partial Summary Judgment ("Fallon Declaration"), (5) the deposition testimony of

13 Uwe Koehler attached as Exhibits 17 and 18 to the Declaration of Zachary J. Alinder filed in

14 Support of Oracle's Motion for Partial Summary Judgment ("Alinder Declaration"), (6) portions

15 of the Expert Report of Paul Meyer attached as Exhibits 115-117 to the Alinder Declaration and

16 (7) Oracle's Motion for Partial Summary Judgment as described below. Each of these

17 documents contains non-public, commercially sensitive, private and confidential information, the

18 disclosure of which would create a risk of significant competitive injury and particularized harm

19 and prejudice to Oracle.

20   3.   Oracle has narrowly tailored its request by only requesting redaction or sealing of

21 the specific testimonial passages, documents, and information that contain the most

22 commercially sensitive, private and confidential information, as identified below.

23   4.   Oracle has continued to protect and treat the information in the specific portions

24 of the documents identified in paragraph 2 above as confidential information.

25 ***Exhibit D to the O'Neill Declaration***

26   5.   Exhibit D to the O'Neill Declaration is a Software License and Services

27 Agreement between Oracle and Washington Gas Light Company that contains non-disclosure

28 provisions at §§ 14.3 & 14.4. It is my understanding that certain customers whose license

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

1 agreements contain such provisions might interpret them to mean that the license agreement and

2 its terms should be kept confidential and protected from public disclosure. In an effort to comply

3 with this potential interpretation by non-interested third-party customers whose information is at

4 issue, Oracle has filed Exhibit D under seal.

5 ***Fallon Declaration, Ackermann Declaration, and Appendices B-K to the Ackermann***
Declaration

6 **6.** The Fallon Declaration, Ackermann Declaration, and Appendices B-K to the

7 Ackermann Declaration contain excerpts of and information regarding Oracle's source code.

8 Specifically the Fallon Declaration at paragraph 8 and the Ackermann Declaration at paragraph

9 10 identify specific fields and tables in Oracle's database schema. Paragraphs 23 and 24 of the

10 Ackermann Declaration identify specific lines of Oracle's code. The Ackermann Declaration at

11 paragraph 21 and Appendices C-K contain excerpts of, and Appendix B provides details

12 regarding, Oracle's software code for HRMS 7.0, 7.5 and 8.0 SP1. Oracle employs

13 extraordinary measures to protect the confidentiality of its software code, including by restricting

14 the redistribution, copying, or other disclosure of the code by customers and others with access

15 to the code. Oracle's code is extremely sensitive, valuable and proprietary information, and is at

16 the core of the products and services Oracle provides to its customers. Public disclosure of this

17 information would cause competitive harm by giving competitors as well as would-be infringers

18 unrestricted access to Oracle's source code.

19 *Koehler Testimony*

20 7. Dr. Uwe Kohler is Senior Director of Oracle's Global Information Security

21 Organization ("GIS"). This group is responsible for the detection, investigation and prevention

22 of threats to Oracle systems and theft of its intellectual property. Pages 36:21-37:12 of Uwe

23 Koehler's December 4, 2008 deposition testimony, attached as Exhibit 17 to the Alinder

24 Declaration, contain testimony regarding methods of investigation employed by GIS. The

25 methods employed and the information scrutinized by GIS in the protection of Oracle systems

26 and IP is treated as highly-sensitive information by Oracle. The disclosure of this information

27 would grant competitors, hackers, thieves and other would-be saboteurs insight into Oracle's

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1   internal security operations, providing them with information which could be used to target

2   Oracle's systems and IP and avoid detection. Such disclosure would create a risk of significant

3   competitive injury and particularized harm and prejudice to Oracle.

4   8.   Pages 42:7-43:3, 44:6-47:22, and 64:24-67:22 of Uwe Koehler's December 5,

5   2008 deposition testimony, attached as Exhibit 18 to the Alinder Declaration, contains testimony

6   regarding security mechanisms, logs and methods of investigation employed by GIS. The logs

7   contain IP addresses and information tracked by GIS which Oracle treats as confidential,

8   proprietary information. The disclosure of this information would grant competitors, hackers,

9   thieves and other would-be saboteurs insight into Oracle's internal security operations, providing

10   them with information, which could be used to target Oracle's systems and IP and avoid

11   detection. Such disclosure would create a risk of significant competitive injury and

12   particularized harm and prejudice to Oracle.

13   ***Expert Report of Paul K. Meyer***

14   9.   Exhibits 116 and 117 and portions of Exhibit 115 to the Alinder Declaration are

15   excerpts from the Expert Report of Paul K. Meyer, Plaintiffs' expert on damages. These exhibits

16   contain customer specific financial information and calculations which reference and rely on

17   proprietary financial information from Oracle, including revenue, pricing, and cost information.

18   Disclosure of the financial measures creates a risk of significant competitive injury and

19   particularized harm and prejudice as other customers can unfairly use them to gain an advantage

20   in future negotiations, and third parties could use them to unfairly compete with and undercut
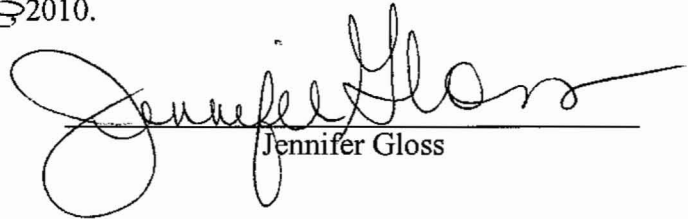
21   Oracle pricing.

22   ***Portions of Oracle's Motion for Partial Summary Judgment***

23   10.   Portions of Plaintiffs' Motion, page 12 lines 11-19, 22-23 and page 24 lines 4-5,

24   contain quotes or other descriptions from documents identified in Paragraphs 5 and 8 above. The

25   passages include direct quotation of the confidential deposition testimony, portions of the

26   confidential license agreement, and technical documents/data described above in Paragraphs 5

27   and 8. Consistent with Paragraphs 5 and 8 above, the disclosure of such confidential information

28   would create a risk of significant

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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 Redwood Shores, California, on March 2010.

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6   Jennifer Gloss

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