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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.

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 FOR  
 PARTIAL SUMMARY JUDGMENT**

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,  
3 “Defendants,”) filed an Administrative Motion (D.I. 643) and accompanying Stipulation (D.I.  
4 644), Declaration (D.I. 645), and Proposed Order (D.I. 643-1) to seal (a) portions of Exhibits A,  
5 B and F to the Declaration of Tharan Gregory Lanier in Support of Defendants’ Motion for  
6 Partial Summary Judgment (“Lanier Declaration”), (b) Exhibits D, E, and H to the Lanier  
7 declaration, (c) portions of the Declaration of Elaine Wallace in Support of Defendants’ Motion  
8 for Partial Summary Judgment (“Wallace Declaration”), (d) Exhibit 1 to the Wallace Declaration  
9 and (e) portions of Defendants’ Motion for Partial Summary Judgment (“Defendants’ Motion”).  
10 Defendants lodged copies of these materials with the Court on March 3, 2010.

11 Under Local Rules 7-11 and 79-5, and this Court’s Standing Order For Cases Involving  
12 Sealed or Confidential Documents, Plaintiffs Oracle USA, Inc. (now known as “Oracle America,  
13 Inc.”) and Oracle International Corporation (collectively, “Oracle”) file this Response, and the  
14 accompanying Declaration of Jennifer Gloss in Support of Defendants’ Administrative Motion to  
15 Seal (“Gloss Declaration”) which establishes that compelling reasons exist in support of a  
16 narrowly tailored order authorizing the sealing of the materials described below.<sup>1</sup>

17 **II. LEGAL STANDARD**

18 As a general matter, “courts have recognized a ‘general right to inspect and copy public  
19 records and documents, including judicial records and documents.’” *Kamakana v. City &*  
20 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citation omitted). However,  
21 \_\_\_\_\_

22 <sup>1</sup> In deference to the presumption in favor of public access to court records, Plaintiffs no longer  
23 contend that the following documents need be filed under seal: (1) Exhibits D, E, F, and H to the  
24 Lanier Declaration; (2) paragraphs 354 and 402-405 of Exhibit A to the Lanier Declaration; (3)  
25 paragraphs 4 and 8 of the Lanier Declaration; (4) Exhibit 1 to the Wallace Declaration; (5)  
26 paragraphs 2-5 of the Wallace Declaration and (6) pages 2:15-16, 4:8-13, 4:19, 4:21-28, 5:1-5,  
27 and 9:15-17 of Defendants’ Motion. Plaintiffs have submitted a revised Proposed Order with the  
28 instant Response to reflect these changes. In addition, Plaintiffs will work with Defendants to  
file these documents publicly. However, Plaintiffs do not waive any of their confidentiality  
designations, right to file under seal, or other protections with respect to these documents or  
other information related or similar to, or referred to by, these documents.

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

### 16 **III. ARGUMENT**

#### 17 **A. Compelling Reasons Support Filing Portions of Exhibits A and B to the** 18 **Lanier Declaration and Portions of Defendants’ Motion Referencing** 19 **Exhibits A and B Under Seal**

20 Compelling reasons and good cause support filing under seal portions of Exhibit A at ¶¶  
21 20, 150-152, 284-285, 287-288, and 449-450 and portions of Exhibit B at pp. 4, 43 and 44 to the  
22 Lanier Declaration and references to these portions of Exhibits A and B in Defendants’ Motion.  
23 First, the information Plaintiffs seek to file under seal contains non-public, commercially  
24 sensitive and confidential information, the disclosure of which would create a risk of significant  
25 competitive injury and particularized harm and prejudice to Oracle. *See* Gloss Declaration, ¶¶ 6-  
26 7. Exhibit A is a non-public February 23, 2010 analysis by Plaintiffs’ damages expert, Paul K.  
27 Meyer. *Id.*, ¶ 6. Exhibit B is a non-public November 16, 2009 analysis by Plaintiffs’ expert Paul  
28 C. Pinto. *Id.*, ¶ 7.

First, due to the high-profile nature of this lawsuit, any and all information filed publicly  
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Case No. 07-CV-01658 PJH (EDL)

1 is likely to appear in television, print and internet news stories. *Id.*, ¶¶ 6-7. As such, disclosure  
2 of this information poses a risk unfairly prejudicing the jury pool. *Id.* This risk is especially  
3 present because Defendants have filed excerpts from these reports without filing the  
4 accompanying supporting sections, which would explain the basis for the conclusions presented.  
5 *Id.* The Meyer Report also contains proprietary and non-public details regarding certain subsets  
6 of Oracle research and development expenses, the disclosure of which might mislead investors,  
7 competitors, partners, and other interested parties about Oracle’s investments. Disclosure might  
8 also give them unfair, and possibly inaccurate, views into Oracle’s product roadmap. *Id.*, ¶ 6.  
9 Disclosure of this information would grant Oracle competitors, partners, and other interested  
10 parties insight into the cost and personnel required for market entry. *Id.*, ¶¶ 6-7. Plaintiffs have  
11 protected Exhibits A and B from public disclosure through the Stipulated Protective Order  
12 (“Protective Order”) by designating the document “Highly Confidential Information —  
13 Attorneys’ Eyes Only.” *Id.*, ¶ 4. Similarly, disclosure of Defendants’ Motion at 10:16 and  
14 11:10, which reference Mr. Pinto’s and Mr. Meyer’s analysis and findings should also be  
15 protected from public disclosure. *Id.*, ¶ 8.

16 Second, the public interest in protecting these limited portions of Exhibits A and B, and  
17 the portions of Defendants’ Motion that refer to them is outweighed by significant competitive  
18 injury and particularized harm to Oracle that would result from disclosure. *Id.*, ¶¶ 6-8.  
19 Typically, public disclosure of court files is favored because “the resolution of a dispute on the  
20 merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the  
21 ‘public’s understanding of the judicial process and of significant public events.’” *See*  
22 *Kamakana*, 447 F.3d at 1179 (internal citation omitted). However, the information for which  
23 Plaintiffs’ seek protection relates solely to the amount of Plaintiffs’ saved development cost  
24 damages, and not whether such damages are available, and therefore, are not necessary to resolve  
25 Defendants’ Motion. There is no reason to permit disclosure of information that would harm  
26 Oracle when there is no significant public interest in disclosure. Indeed, as this is information  
27 that would otherwise remain confidential, Defendants’ public disclosure of documents and  
28 information to the competitive detriment of Oracle would be improper. *See* Gloss Declaration at

