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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' CROSS MOTION
 FOR PARTIAL SUMMARY
 JUDGMENT AND OPPOSITION TO
 ORACLE'S MOTION FOR PARTIAL
 SUMMARY JUDGMENT**

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,
3 “Defendants”) filed an Administrative Motion to Permit Defendants to File Under Seal
4 Plaintiffs’ Documents Supporting Defendants’ Cross Motion For Partial Summary Judgment and
5 Opposition to Plaintiffs’ Motion For Partial Summary Judgment (“Administrative Motion”) (D.I.
6 673) and an accompanying Stipulation (D.I. 674), Declaration (D.I. 675), and Proposed Order
7 (D.I. 673-1), on March 31, 2010. Defendants filed corrected versions of the Stipulation (D.I.
8 686), Declaration (D.I. 687), and Proposed Order (D.I. 685) on April 6, 2010. Defendants’
9 filings moved to seal (a) portions of Exhibits 14, 19 and 20 to the Declaration of Tharan Gregory
10 Lanier in Support of Defendants’ Cross Motion and Opposition (“Lanier Declaration”) and (b)
11 portions of Defendants’ Cross Motion and Opposition to Plaintiffs’ Motion for Partial Summary
12 Judgment (“Defendants’ Cross Motion and Opposition”). Defendants lodged copies of these
13 materials with the Court on March 31, 2010.

14 Under Civil Local Rules 7-11 and 79-5, and this Court’s Standing Order For Cases
15 Involving Sealed or Confidential Documents, Plaintiffs Oracle USA, Inc. (now known as
16 “Oracle America, Inc.”), Oracle International Corporation, Oracle EMEA Limited, and Siebel
17 Systems, Inc. (collectively, “Oracle”) file this Response, and the accompanying Declaration of
18 Jennifer Gloss (“Gloss Declaration” or “Gloss Decl.”), which establishes that compelling reasons
19 exist to support a narrowly tailored order authorizing the sealing of the materials described
20 below.¹

21
22 _____
23 ¹ In deference to the presumption in favor of public access to court records, and after having the
24 opportunity to review Defendants’ use of Oracle material in Defendants’ Cross Motion and
25 Opposition brief, Plaintiffs do not contend that Defendants’ Opposition Brief at i:22-23, 11:4-5,
26 15:4,16:11, 16:27-28, and 17:11-13 should be filed under seal. Plaintiffs have submitted a
27 revised Proposed Order with the instant Response to reflect these changes. As Defendants have
28 agreed, Plaintiffs do not waive 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 **II. LEGAL STANDARD**

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

20 **III. ARGUMENT**

21 **A. Compelling Reasons Support Filing Portions of Exhibit 14 to the**
22 **Lanier Declaration Under Seal**

23 Compelling reasons support filing under seal portions of Exhibit 14 at 41:11-24 to the
24 Lanier Declaration. Exhibit 14 to the Lanier Declaration contains confidential testimony from
25 the deposition of Richard Allison, Oracle’s Senior Vice-President of Global Practices and Risk
26 Management. Gloss Decl., ¶ 5. Pages 41:11-24 discusses highly sensitive internal Oracle
27 information pertaining to customer negotiations and licensing strategy. *Id.*, ¶ 5. Disclosure of
28 this information would grant Oracle’s competitors, potential competitors, and customers non-

1 public and commercially sensitive information about Oracle’s licensing practices, which would
2 harm Oracle’s ability to compete. *Id.*, ¶ 5. Any public interest in disclosing this testimony is
3 outweighed by the significant competitive injury and particularized harm to Oracle that would
4 result from disclosure of these limited portions of Exhibit 14. *Id.*, ¶ 5.

5 **B. Compelling Reasons Support Filing Portions of Exhibits 19 and 20 to**
6 **the Lanier Declaration Under Seal**

7 Compelling reasons also support filing under seal portions of Exhibit 19 to the Lanier
8 Declaration at 11:24-12:1 and portions of Exhibit 20 to the Lanier Declaration at 42:7-43:3 and
9 46:13-47:22. Exhibits 19 and 20 to the Lanier Declaration contain confidential testimony from
10 two depositions of Dr. Uwe Koehler, Senior Director of Oracle’s Global Information Security
11 Organization (“GIS”). Gloss Decl., ¶ 6.

12 Pages 11:24-12:1 of Dr. Koehler’s December 4, 2008 deposition testimony (attached as
13 part of Exhibit 19 to the Lanier Declaration) and pages 42:7-43:3 and 46:13-47:22 of Dr.
14 Koehler’s December 5, 2008 deposition testimony (attached as part of Exhibit 20 to the Lanier
15 Declaration) contain testimony regarding internal security concerns and mechanisms at Oracle,
16 including logs and methods of investigation employed by GIS, and are treated as highly-sensitive
17 information by Oracle. Gloss Decl., ¶ 7. The disclosure of this information would grant
18 competitors, hackers, thieves and other would-be saboteurs insight into Oracle’s internal security
19 operations, providing them with information which could be used to target Oracle’s systems and
20 IP and avoid detection. *Id.* Such disclosure would create a risk of significant competitive injury
21 and particularized harm and prejudice to Oracle. *Id.* Further, Oracle has also submitted these
22 portions of Exhibit 20 under seal in support of its Motion for Partial Summary Judgment, filed
23 March 3, 2010. *See* Administrative Motion to Seal (D.I. 658); Declaration of Jennifer Gloss in
24 Support of Administrative Motion to Seal (D.I. 659).

25 **C. Compelling Reasons Support Filing Portions of Defendants’ Cross**
26 **Motion and Opposition Under Seal**

27 Compelling reasons support filing under seal portions of Defendants’ Cross Motion and
28 Opposition at 16:12-14 and 17:2-4. These passages contain quotes or other descriptions from the

