- 1 BINGHAM McCUTCHEN LLP DONN P. PICKETT (SBN 72257)
- 2 GEOFFREY M. HOWARD (SBN 157468) HOLLY A. HOUSE (SBN 136045)
- 3 ZACHARY J. ALINDER (SBN 209009) BREE HANN (SBN 215695)
- 4 Three Embarcadero Center San Francisco, CA 94111-4067
- 5 Telephone: (415) 393-2000 Facsimile: (415) 393-2286
- 6 donn.pickett@bingham.com geoff.howard@bingham.com
- 7 holly.house@bingham.com zachary.alinder@bingham.com
- 8 bree.hann@bingham.com
- 9 BOIES, SCHILLER & FLEXNER LLP DAVID BOIES (Admitted *Pro Hac Vice*)
  10 333 Main Street
- Armonk, NY 10504 11 Telephone: (914) 749
- I1Telephone: (914) 749-8200<br/>dboies@bsfllp.com
- 12 STEVEN C. HOLTZMAN (SBN 144177) 1999 Harrison St., Suite 900
- **13** Oakland, CA 94612 Telephone: (510) 874-1000
- 14 sholtzman@bsfllp.com
- 15 DORIAN DALEY (SBN 129049) JENNIFER GLOSS (SBN 154227)
   16 500 Oracle Parkway, M/S 5cp7
- 500 Oracle Parkway, M/S 50p7 Redwood City, CA 94070
- 17 Telephone: 650.506.4846
- **18** Facsimile: 650.506.7114 dorian.daley@oracle.com
- jennifer.gloss@oracle.com
- Attorneys for Plaintiffs
- 20 Attorneys for Plaintiffs Oracle USA, Inc., *et al.*

## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION ORACLE USA, INC., et al., Plaintiffs, v. Plaintiffs, v.

- **26** SAP AG, *et al.*,
- 27 \_\_\_\_\_ Defendants.
- 28

21

22

23

24

25

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

INFORMATION SUPPORTING PLAINTIFFS' MOTIONS IN LIMINE

## 1 I. INTRODUCTION

2	Pursuant to Local Rules 7-11(a) and 79-5(c), Plaintiffs Oracle USA, Inc., Oracle			
3	International Corporation, Oracle EMEA Limited and Siebel Systems, Inc. ("Plaintiffs" or			
4	Oracle) hereby move that the Court order the Clerk of the Court to file under seal (1) Exhibit X			
5	to the Declaration of Thomas S. Hixson In Support of Plaintiffs' Motions in Limine ("Hixson			
6	Declaration"), and (2) related portions of Plaintiffs' Motions in Limine at 14:27-15:1 and 15:3-4.			
7	Exhibit X to the Hixson Declaration contains information properly designated			
8	pursuant to the Stipulated Protective Order entered in this action as "Highly Confidential			
9	Information — Attorneys' Eyes Only" by Oracle. Good cause exists to support filing Exhibit X			
10	and the related portions of Plaintiffs' Motions in Limine under seal, as established in the attached			
11	Declaration of Jennifer Gloss in Support of Plaintiffs' Administrative Motion to Permit Plaintiffs			
12	to File Under Seal Information Supporting Plaintiffs' Motions in Limine ("Gloss Declaration"),			
13	because Oracle has narrowly tailored its request to seal both information non-interested third-			
14	party customers might consider confidential, and non-public, commercially sensitive, and private			
15	Oracle confidential information, the disclosure of which would create a risk of significant			
16	competitive injury and particularized harm and prejudice to Oracle.			
17	Unredacted versions of Exhibit X to the Hixson Declaration and the related			
18	portions of Plaintiffs' Motions in Limine will be lodged with the Court on August 6, 2010			
19	pursuant to General Order No. 62. Accordingly, the Court should grant this Motion.			
20	II. GOOD CAUSE EXISTS TO SUPPORT FILING THE REQUESTED INFORMATION UNDER SEAL			
21	Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to			
22	permit sealing of court documents for, inter alia, the protection of "a trade secret or other			
23	confidential commercial information." Fed. R. Civ. P. 26(c). In particular, when the request			
24	for sealing concerns discovery documents attached to a nondispositive motion, a showing of			
25	good cause to seal the documents is sufficient to justify protection under Rule 26(c). <i>Navarro v</i> .			
26	Eskanos & Adler, Case No. C-06 02231 WHA(EDL), 2007 U.S. Dist. LEXIS 24864, at *7			
27	(March 22, 2007) (citing <i>Kamakana v. Honolulu</i> , 447 F.3d 1172, 1179 (9th Cir. 2006)). To make			
28	1 Case No. 07-CV-01658 PJH (EDL)			

such a showing, the party seeking protection from disclosure under the rule must demonstrate
 that public disclosure of such information would create a risk of significant competitive injury
 and particularized harm or prejudice. See *Phillips v. General Motors Corp.* 307 F. 3d 1206, 1211
 (9th Cir. 2006) (setting forth the standard of good cause on a motion to seal).

- 5 Oracle has established good cause to permit filing Exhibit X to the Hixson 6 Declaration and the related portions of Plaintiffs' Motions in Limine under seal through the Gloss 7 Declaration, as required under Local Rule 79-5(d). The Gloss Declaration establishes both that 8 Oracle has considered and treated the information contained in Exhibit X to the Hixson 9 Declaration as confidential and proprietary, and that public disclosure of such information would 10 reveal both uninterested third party information that might be considered by them to be 11 confidential, and Oracle confidential information that would result in particularized harm or 12 prejudice to Oracle. See Phillips, 307 F.3d at 1211. In addition, Oracle has taken steps to ensure 13 that the information contained in Exhibit X to the Hixson Declaration remain confidential in this 14 litigation, pursuant to the Protective Order entered on June 6, 2007. This Protective Order was 15 designed by the Parties, who are direct competitors in the software industry, to protect designated 16 documents from improper disclosure, both to the public and more broadly than necessary to 17 employees of the Parties themselves.
- **18** III. CONCLUSION

- -

For the foregoing reasons, Oracle respectfully requests that the Court file under
seal (1) Exhibit X to the Hixson Declaration, and (2) related portions of Plaintiffs' Motions *in Limine* at 14:27-15:1 and 15:3-4.

22	DATED: August 5, 2010	BINGHAM McCUTCHEN LLP	
23			
24		By:	/s/ Geoffrey Howard Geoffrey M. Howard
25			Attorneys for Plaintiffs Oracle USA, Inc.,
26			International Corporation, Oracle EMEA Limited, and Siebel Systems, Inc.
27			
28		2	Case No. 07-CV-01658 PJH (EDL)