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21   UNITED STATES DISTRICT COURT
22   NORTHERN DISTRICT OF CALIFORNIA
                    OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,   Case No. 07-CV-01658 PJH (EDL)

24   Plaintiffs,   **PLAINTIFFS' ADMINISTRATIVE
                                         MOTION TO FILE UNDER SEAL
25   v.   INFORMATION SUPPORTING
                                         PLAINTIFFS' *DAUBERT* MOTIONS,
26 SAP AG, *et al.*,   OPPOSITIONS TO DEFENDANTS'
                                         MOTIONS *IN LIMINE* AND 17 U.S.C. §
27   Defendants.   410(C) MOTION**

28

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) portions of

5 Exhibit A to the Declaration of Holly A. House in Support of Plaintiffs' Motion No. 1: To

6 Exclude Testimony of Defendants' Expert Stephen Clarke ("House Declaration"); (2) the

7 Declaration of Daniel S. Levy Ph.D. in Support of Plaintiffs' Motion No. 1: To Exclude

8 Testimony of Defendants' Expert Stephen Clarke ("Levy Declaration") and Exhibits 1-7 thereto;

9 (3) portions of Exhibit D and Exhibits N, P, Q, R and T to the Declaration of Chad Russell

10 Declaration in Support of Plaintiffs' Opposition to Defendants' Motions *in Limine* ("Russell

11 Declaration"); and, (4) Exhibits A-D and F-H to the Declaration of John A. Polito in Support of

12 Plaintiffs' Motion Pursuant to 17 U.S.C. § 410(c) ("Polito Declaration").

13 **II. DEFENDANTS' INFORMATION TO BE FILED UNDER SEAL**

14   Defendants have requested that Plaintiffs file portions of Exhibit A to the House

15 Declaration under seal at pages 51, 126 and 244-247. The requested relief sought is necessary

16 and narrowly tailored to protect the alleged confidentiality of the content of Defendants'

17 documents put at issue by Exhibit A to the House Declaration.

18   Further, Plaintiffs believe that portions of the Levy Declaration contain

19 Defendants' confidential information. In light of this, Plaintiffs are submitting the Levy

20 Declaration and all accompanying exhibits thereto under seal so that Defendants may have an

21 opportunity to review the Levy Declaration and file a declaration in support of sealing portions

22 or all of the Levy Declaration, if appropriate.

23   Pursuant to Local Rule 79-5, this request is supported by a Stipulation, Proposed

24 Order and the Declaration of Zachary J. Alinder in Support of Plaintiffs' Administrative Motion

25 to File Under Seal Information Supporting Plaintiffs' *Daubert* Motions, Oppositions to

26 Defendants' Motions *in Limine* and 17 U.S.C. § 410(c) Motion ("Alinder Declaration").

27 **III. PLAINTIFFS' INFORMATION TO BE FILED UNDER SEAL**

28   Plaintiffs request that the following information be filed under seal: (1) portions

1   of Exhibit A to the House Declaration at pages 56, 94-115, 118-122, 138, 158, 170-171, 177,

2   180, 182-184, 187, 191, 197, 273 and 280-281; (2) portions of the Levy Declaration at

3   paragraphs 8-17, 24-25, Figures 1, 2, 4, 5, and 6, and Appendix 2; (3) portions of Exhibit D and

4   Exhibits N, P, Q, R and T to the Russell Declaration; and (4) Exhibits A-D and F-H to the Polito

5   Declaration.

6   Pursuant to Local Rule 79-5, this request is supported by a Stipulation, Proposed

7   Order, the Alinder Declaration in support, and the Declaration of Jennifer Gloss in Support of

8   Plaintiffs' Administrative Motion to Permit Plaintiffs to File Under Seal Information Supporting

9   Plaintiffs' *Daubert* Motions, Oppositions to Defendants' Motions *in Limine* and 17 U.S.C. §

10 410(c) Motion ("Gloss Declaration").

11 **IV.   GOOD CAUSE EXISTS TO SUPPORT FILING THE REQUESTED
             INFORMATION UNDER SEAL**

12   Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to

13 permit sealing of court documents for, inter alia, the protection of "a trade secret or other

14 confidential . . . commercial information." Fed. R. Civ. P. 26(c). In particular, when the request

15 for sealing concerns discovery documents attached to a nondispositive motion, a showing of

16 good cause to seal the documents is sufficient to justify protection under Rule 26(c). *Navarro v.*

17 *Eskanos & Adler*, Case No. C-06 02231 WHA(EDL), 2007 U.S. Dist. LEXIS 24864 at *7

18 (March 22, 2007) (citing *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)). To

19 make such a showing, the party seeking protection from disclosure under the rule must

20 demonstrate that public disclosure of such information would create a risk of significant

21 competitive injury and particularized harm or prejudice. *See Phillips v. General Motors Corp.*

22 307 F. 3d 1206, 1211 (9th Cir. 2006) (good cause standard).

23   Oracle has established good cause to seal the requested information through the

24 Gloss Declaration, which has been filed concurrently with this Motion. The Gloss Declaration

25 further establishes that Oracle has narrowly tailored its request to seal information confidential to

26 non-interested third-parties, as well as non-public, commercially sensitive, and private Oracle

27 confidential information, the disclosure of which would create a risk of significant competitive

28

1   injury and particularized harm and prejudice to Oracle. *See* Gloss Declaration, ¶¶ 2-5 & 7. In

2   addition, Oracle has taken steps to ensure that the information identified for sealing remain

3   confidential in this litigation, pursuant to the Protective Order in this case. Gloss Declaration, ¶

4   6.

5   **V.**   **CONCLUSION**

6   For the foregoing reasons, Oracle respectfully requests that the Court file under

7   seal: (1) the identified portions of Exhibit A to the House Declaration; (2) the Levy Declaration

8   and Exhibits 1-7 thereto; (3) the identified portions of Exhibit D and Exhibits N, P, Q, R and T to

9   the Russell Declaration; and, (4) Exhibits A-D and F-H to Polito Declaration, which Plaintiffs

10   will lodge with the Court on August 20, 2010.

11

12   DATED: August 19, 2010   BINGHAM McCUTCHEN LLP

13

14   By: /s/ Zachary J. Alinder

15   Zachary J. Alinder
                                        Attorneys for Plaintiffs

16   Oracle USA, Inc.,
                  Oracle International Corporation, Oracle EMEA

17   Limited, and Siebel Systems, Inc.

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PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE INFORMATION UNDER SEAL