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21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT OF CALIFORNIA
 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 FILE UNDER SEAL
 PLAINTIFFS' DOCUMENTS IN SUPPORT
 OF DEFENDANTS' DAUBERT MOTIONS
 AND OPPOSITIONS TO PLAINTIFFS'
 MOTIONS *IN LIMINE***

28

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc. (collectively,
3 “Defendants”) filed an Administrative Motion to Seal (Dkt. No. 796) and accompanying
4 Proposed Order (Dkt. No. 796-1), Declaration (Dkt. No. 797), and Stipulation (Dkt. No. 799) on
5 August 19, 2010. Defendants’ filings moved to seal: (1) portions of Defendants’ Motion to
6 Exclude Expert Testimony of Paul K. Meyer at 4:14-15 and 10:9-12; (2) portions of Exhibits 1, 3
7 and 20 to the Declaration of Elaine Wallace in Support of Defendants’ Motion to Exclude Expert
8 Testimony of Paul K. Meyer (“Wallace Declaration”); (3) Exhibits 5 and 6 to the Wallace
9 Declaration in full; (4) portions of Defendants’ Oppositions to Plaintiffs’ Motions *in Limine* at
10 19:16-17; and (5) portions of Exhibits 13, 21, 22, 23 and 31 to the Declaration of Tharan
11 Gregory Lanier in Support of Defendants’ Oppositions to Plaintiffs’ Motions *in Limine* (“Lanier
12 Declaration”). Defendants lodged copies of these materials with the Court on August 20, 2010.

13 Under Civil Local Rules 7-11 and 79-5, and this Court’s Standing Order For
14 Cases Involving Sealed or Confidential Documents, Plaintiffs Oracle USA, Inc., Oracle
15 International Corporation, and Siebel Systems, Inc. (collectively, “Plaintiffs” or “Oracle”) file
16 this Response, and the accompanying Declaration of Jennifer Gloss in Support of Defendants’
17 Administrative Motion to Seal (“Gloss Declaration” or “Gloss Decl.”), which establishes that
18 good cause exists to support a narrowly tailored order authorizing the sealing of (1) portions of
19 Defendants’ Motion to Exclude Expert Testimony of Paul K. Meyer at 10:9-12; (2) portions of
20 Exhibits 1, 3 and 20 to the Wallace Declaration; (3) Exhibits 5 and 6 to the Wallace Declaration
21 in full; and, (4) portions of Exhibits 13, 21, 22 and 23 to the Lanier Declaration.¹

22 _____
23
24 ¹ In deference to the presumption in favor of public access to court records and in the interest of
25 presenting the most narrowly tailored sealing request possible, Plaintiffs withdraw their request
26 that the following be filed under seal: (1) Defendants’ Motion to Exclude Expert Testimony of
27 Paul K. Meyer at 4:14-15; (2) Defendants’ Opposition to Plaintiffs’ Motions *in Limine* at 19:16-
28 17; and, (3) Exhibit 31 to the Lanier Declaration. Plaintiffs have submitted a revised Proposed
Order with this 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 **II. GOOD CAUSE EXISTS TO SUPPORT FILING THE REQUESTED**
2 **INFORMATION UNDER SEAL**

3 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to
4 permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other
5 confidential . . . commercial information.” Fed. R. Civ. P. 26(c). In particular, when the request
6 for sealing concerns discovery documents attached to a nondispositive motion, a showing of
7 good cause to seal the documents is sufficient to justify protection under Rule 26(c). *Navarro v.*
8 *Eskanos & Adler*, Case No. C-06 02231 WHA (EDL), 2007 U.S. Dist. LEXIS 24864, at *7
9 (March 22, 2007) (citing *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)). To
10 make such a showing, the party seeking protection from disclosure under the rule must
11 demonstrate that public disclosure of such information would create a risk of significant
12 competitive injury and particularized harm or prejudice. *See Phillips v. General Motors Corp.*
13 307 F. 3d 1206, 1211 (9th Cir. 2006) (good cause standard on motion to seal).

14 Oracle has established good cause to permit filing of (1) portions of Defendants’
15 Motion to Exclude Expert Testimony of Paul K. Meyer at 10:9-12; (2) portions of Exhibits 1, 3
16 and 20 to the Wallace Declaration; (3) Exhibits 5 and 6 to the Wallace Declaration in full; and,
17 (4) portions of Exhibits 13, 21, 22 and 23 to the Lanier Declaration under seal through the Gloss
18 Declaration, as required under Local Rule 79-5(d). The Gloss Declaration establishes both that
19 Oracle has considered and treated this information as confidential and proprietary, and that
20 public disclosure of such information would create a risk of significant competitive injury and
21 particularized harm and prejudice to Oracle. Gloss Decl., ¶¶ 2-5. In addition, Oracle has taken
22 steps to ensure that this information remains confidential in this litigation. Gloss Decl., ¶ 6.
23 Further, Oracle has narrowly tailored its request by only requesting sealing of the specific
24 portions of these documents that contain the most commercially sensitive, private and
25 confidential information. Gloss Decl., ¶ 7; *see also* Footnote No. 1 above.

26 **III. CONCLUSION**

27 For the foregoing reasons, Oracle respectfully requests that the Court file under
28 seal (1) portions of Defendants’ Motion to Exclude Expert Testimony of Paul K. Meyer at 10:9-

