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20 Attorneys for Plaintiffs Oracle USA, Inc., *et al.*

21 UNITED STATES DISTRICT COURT  
 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)

**DECLARATION OF JENNIFER  
 GLOSS IN SUPPORT OF RESPONSE  
 IN SUPPORT OF DEFENDANTS'  
 ADMINISTRATIVE MOTION TO  
 PERMIT DEFENDANTS TO FILE  
 UNDER SEAL PLAINTIFFS'  
 DOCUMENTS IN SUPPORT OF  
 DEFENDANTS' DAUBERT MOTIONS  
 AND OPPOSITIONS TO PLAINTIFFS'  
 MOTIONS IN LIMINE**

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

1 I, Jennifer Gloss, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am Senior  
3 Corporate Counsel at Oracle America, Inc., successor to Oracle USA, Inc. (“Oracle”). I have  
4 personal knowledge of the facts stated within this Declaration and could testify competently to  
5 them if required.

6 2. I have reviewed Defendants’ Notice of Motion and Motion to Exclude Expert  
7 Testimony of Paul K. Meyer (“Motion”) and Exhibits 3 and 6 to the Declaration of Elaine  
8 Wallace in Support of Defendants’ Motion to Exclude Expert Testimony of Paul K. Meyer  
9 (“Exhibit 3” and “Exhibit 6”). Exhibits 3 and 6 contain testimony and confidential documents  
10 regarding internal Oracle decision-making business processes and valuation decisions,  
11 competitive business analyses, and the methods of valuation of assets in the context of  
12 acquisitions. Portions of Defendants’ Motion at 10:9-12 also reference the confidential  
13 information contained in Exhibit 6. Disclosure of such information would grant Oracle’s  
14 competitors, partners, customers, and other interested parties an insight into Oracle’s internal  
15 strategy and operations that would provide them with an unfair competitive advantage with  
16 respect to current and future operations and negotiations. Accordingly, the disclosure of this  
17 testimony would create a risk of significant competitive injury and particularized harm and  
18 prejudice to Oracle.

19 3. I have reviewed Exhibit 5 to the Declaration of Elaine Wallace in Support of  
20 Defendants’ Motion to Exclude Expert Testimony of Paul K. Meyer (“Exhibit 5”). Exhibit 5,  
21 portions of the Report of Defendants’ expert Stephen Clarke, discusses the terms of agreements  
22 between Oracle (or its predecessors, J.D. Edwards or PeopleSoft) and its partners and other non-  
23 parties in this action. Many of these agreements contain Confidentiality or Nondisclosure  
24 provisions that extend to the terms of the agreements. These discussions, in this portion of  
25 Clarke’s report, directly quote from terms of these confidential agreements with non-parties.  
26 The disclosure of this information would, therefore, result in the disclosure of third-party  
27 confidential information. In addition, the disclosure of this information would grant Oracle’s  
28 competitors, potential competitors, and customers, non-public and commercially sensitive

1 information about Oracle’s licensing practices, which customers and partners could use to their  
2 advantage in future negotiations with Oracle and which competitors could use in competing with  
3 Oracle. Such disclosure would create a risk of significant competitive injury and particularized  
4 harm and prejudice to Oracle and because of this, Oracle has also filed an Administrative Motion  
5 to Seal (Dkt. No. 784) these same portions of Exhibit 5 filed in support of Oracle’s Motion to  
6 Exclude Testimony of Defendants’ Expert Stephen Clarke.

7 4. I have reviewed Exhibits 1 and 20 to the Declaration of Elaine Wallace in Support  
8 of Defendants’ Motion to Exclude Expert Testimony of Paul K. Meyer (“Exhibit 1” and “Exhibit  
9 20”). Portions of Exhibit 1 at paragraphs 232 and 342 and portions of Exhibit 20 contain  
10 proprietary and non-public details regarding certain research and development expenses incurred  
11 by Oracle, the disclosure of which would grant Oracle’s competitors, partners, and other  
12 interested parties insight into strategic decisions made regarding product development, as well as  
13 insight into the cost and personnel required for market entry. Such disclosure would create a risk  
14 of significant competitive injury and particularized harm and prejudice to Oracle.

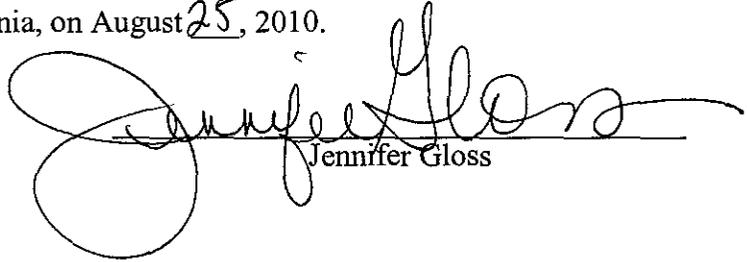
15 5. I have reviewed Exhibits 13, 21, 22 and 23 to the Declaration of Tharan Gregory  
16 Lanier in Support of Defendants’ Oppositions to Plaintiffs’ Motions *in Limine* (“Exhibit 13,”  
17 “Exhibit 21,” “Exhibit 22” and “Exhibit 23”). Portions of Exhibit 13, portions of Exhibit 21 at  
18 ORCL00131370 and ORCL00131373, portions of Exhibit 22 at ORCL00126452, and portions  
19 of Exhibit 23 at ORCL00160328-29 and ORCL00160331-32 contain information and exemplary  
20 excerpts from a compilation maintained at Oracle called an At Risk Report. The At Risk Report  
21 contains highly sensitive internal Oracle pricing and customer negotiation history and strategy  
22 for over a hundred specific customers. The public disclosure of this information would grant  
23 Oracle’s actual and potential competitors and customers access to nonpublic and commercially  
24 sensitive information about Oracle’s support pricing, business vulnerabilities, and practices.  
25 Such information could unfairly be used by Oracle’s competitors to compete with Oracle for its  
26 customers or by Oracle’s customers to extract unfair leverage in licensing and support  
27 negotiations. Such disclosure would therefore create a risk of significant competitive injury and  
28 particularized harm and prejudice to Oracle. These portions of Exhibits 13, 21, 22 and 23 also

1 contain information which many of the non-interested third-party customers reflected in the  
2 Report might consider confidential, and in an effort to respect their information, Oracle has filed  
3 these portions seal.

4 6. Oracle has protected the information described in Paragraphs 2-5 above from  
5 public disclosure through the Stipulated Protective Order (“Protective Order”) by designating  
6 this information as “Confidential” or “Highly Confidential Information — Attorneys’ Eyes  
7 Only.”

8 7. Oracle has narrowly tailored its request by seeking to seal only the most sensitive  
9 portions of the documents described in Paragraphs 2-5 above.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed  
11 in Redwood Shores, California, on August 25, 2010.

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14 Jennifer Gloss  
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