

1 BINGHAM McCUTCHEM 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) 749-8200  
 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 5op7  
 Redwood City, CA 94070  
 17 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 18 dorian.daley@oracle.com  
 jennifer.gloss@oracle.com

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

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

24 ORACLE USA, INC., *et al.*,

25 Plaintiffs,

26 v.

27 SAP AG, *et al.*,

28 Defendants.

No. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER GRANTING  
 DEFENDANTS' ADMINISTRATIVE  
 MOTION TO FILE UNDER SEAL  
 PLAINTIFFS' DOCUMENTS IN  
 SUPPORT OF OPPOSITION TO  
 MOTION NO. 1 TO EXCLUDE EXPERT  
 TESTIMONY OF STEPHEN K.  
 CLARKE**

1 Pending before this Court is the Administrative Motion to Seal Plaintiffs'  
2 Documents in Support of Defendants' Opposition to Plaintiffs' Motion No. 1 to Exclude Expert  
3 Testimony of Stephen K. Clarke ("Defendants' Motion to Seal") (Dkt. No. 857) filed by SAP  
4 AG, SAP America, Inc., and TomorrowNow, Inc. (collectively, "Defendants"). Through  
5 Defendants' Motion to Seal and Plaintiffs' Response in Support of Defendants' Motion to Seal  
6 ("Plaintiffs' Response") (Dkt. No. 870), the Parties request an Order sealing portions of the  
7 Declaration of Stephen K. Clarke in Support of Defendants' Opposition to Plaintiffs' Motion No.  
8 1 to Exclude Expert Testimony of Stephen K. Clarke ("Clarke Declaration") at paragraph 32, and  
9 figures 1 and 4.

10 Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to  
11 permit sealing of court documents for, inter alia, the protection of "a trade secret or other  
12 confidential research, development, or commercial information." Fed. R. Civ. P. 26(c). In  
13 particular, when the request for sealing concerns discovery documents attached to a  
14 nondispositive motion, a showing of good cause to seal the documents is sufficient to justify  
15 protection under Rule 26(c). See *Navarro v. Eskanos & Adler*, Case No. C-06 02231  
16 WHA(EDL), 2007 U.S. Dist. LEXIS 24864, at \*7 (March 22, 2007) (citing *Kamakana v.*  
17 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)).

18 In compliance with this Court's Standing Order Involving Sealed or Confidential  
19 Documents, Rule 26(c) and Civil Local Rule 79-5, Plaintiffs filed the Declaration of Jennifer  
20 Gloss (the "Gloss Declaration") in support of Defendants' Motion to Seal on September 15,  
21 2010. Through the Gloss Declaration and Plaintiffs' Response, Plaintiffs provide evidence of  
22 good cause sufficient for this Court to permit filing portions of the requested document under  
23 seal. The Gloss Declaration establishes both that Oracle has considered and treated the  
24 information contained in the document as confidential, commercially sensitive and proprietary,  
25 and that public disclosure of such information would create a risk of significant competitive  
26 injury and particularized harm and prejudice to Oracle. The Gloss Declaration also establishes  
27 that the request for sealing has been narrowly tailored.

28 Having considered Defendants' Motion to Seal, Plaintiffs' Response in Support,

1 and the Gloss Declaration in Support, and GOOD CAUSE having been shown:

2 IT IS HEREBY ORDERED THAT Defendants' Motion to Seal is GRANTED.

3 The Clerk of the Court shall file under seal the unredacted versions of the Clarke Declaration at  
4 paragraph 32, and figures 1 and 4.

5 **IT IS SO ORDERED.**

6

7 Dated: \_\_\_\_\_, 2010

8

---

Honorable Phyllis J. Hamilton  
United States District Court Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28