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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,   **DECLARATION OF JENNIFER GLOSS IN SUPPORT
                                           OF PLAINTIFFS' ADMINISTRATIVE MOTION TO**
25   v.   **PERMIT PLAINTIFFS TO FILE UNDER SEAL
                                           INFORMATION SUPPORTING PLAINTIFFS'**
26 SAP AG, *et al.*,   ***DAUBERT* MOTIONS, OPPOSITIONS TO
                                           DEFENDANTS' MOTIONS *IN LIMINE* AND 17 U.S.C.**
27   Defendants.   **§ 410(C) MOTION**
                                           FILED PURSUANT TO DKT. NO. 915
28
                                           Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF JENNIFER GLOSS IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL

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 Plaintiffs' *Daubert* Motion to Exclude Testimony of Defendants'

7 Expert Stephen Clarke and Exhibit A to the Declaration of Holly A. House in Support of

8 Plaintiffs' Motion to Exclude Testimony of Defendants' Expert Stephen Clarke ("Exhibit A").

9 Exhibit A contains portions of the Report of Defendants' Expert Stephen Clarke. Exhibit A

10 contains non-public, commercially sensitive, private and confidential Oracle and third-party

11 information, the disclosure of which would create a risk of significant competitive injury and

12 particularized harm and prejudice to Oracle. Specifically:

13   a. Portions of Exhibit A, at page 56, contain proprietary and non-public

14   details regarding certain research and development expenses incurred by

15   Oracle, the disclosure of which would grant Oracle's competitors,

16   partners, and other interested parties insight into strategic decisions made

17   regarding product development, as well as insight into the cost and

18   personnel required for market entry.

19   b. Portions of Exhibit A, at pages 94-115 and 118-121, discuss the terms of

20   agreements between Oracle (or its predecessors, J.D. Edwards or

21   PeopleSoft) and its partners and other non-parties in this action. Many of

22   these agreements contain Confidentiality or Nondisclosure provisions that

23   extend to the terms of the agreements. These discussions, in this portion

24   of Clarke's report, directly quote from terms of these confidential

25   agreements with non-parties. The disclosure of this information would,

26   therefore, result in the disclosure of third-party confidential information.

27   In addition, the disclosure of this information would grant Oracle's

28   competitors, potential competitors, and customers, non-public and

DECLARATION OF JENNIFER GLOSS IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL

1	commercially sensitive information about Oracle's licensing practices,
2	which customers and partners could use to their advantage in future
3	negotiations with Oracle and which competitors could use in competing
4	with Oracle. Such disclosure would create a risk of significant
5	competitive injury and particularized harm and prejudice to Oracle.
6	c. Portions of Exhibit A, at pages 122, 138, 158, 170-171, 177, 180, 182-
7	184, 187, 191 and 197, contain information and exemplary excerpts from
8	a compilation maintained at Oracle called an At Risk Report. The Report
9	contains highly sensitive internal Oracle pricing and customer negotiation
10	history and strategy for over a hundred specific customers. These
11	portions of Exhibit A contain information which many of the non-
12	interested third-party customers reflected in the Report might consider
13	confidential, and in an effort to respect their information, Oracle has filed
14	these portions seal.
15	d. Portions of Exhibit, A at pages 273, 280 and 281, reflect Mr. Clarke's
16	analysis of Oracle's profit margins using non-public Oracle financial
17	information. Mr. Clarke's analysis is based on incomplete, hypothetical
18	scenarios. To the extent his analysis is incomplete, inaccurate or
19	misleading, the disclosure of his analysis and the results of his analysis
20	may cause harm to Oracle's shareholders by providing misleading
21	financial data to the market. In addition, the disclosure of his analysis, to
22	the extent it is incomplete, inaccurate or misleading, may cause Oracle
23	competitive harm by disclosing inaccurate and misleading data to
24	Oracle's customers, partners, and analysts, with respect to Oracle's
25	current or future business strategy and profitability. Accordingly, the
26	disclosure of this information would create a risk of significant
27	competitive injury and particularized harm and prejudice to Oracle and its
28	shareholders.

1   3.   I have reviewed Plaintiffs' *Daubert* Motion to Exclude Testimony of Defendants'

2   Expert Stephen Clarke and the Declaration of Daniel S. Levy, Ph.D. in Support of thereof ("Levy

3   Declaration"). Portions of the Levy Declaration, at paragraphs 8-17, 24-25, Figures 1, 2, 4, 5,

4   and 6, and Appendix 2, contain Oracle's confidential financial information. These portions

5   discuss the same analysis of Defendants' Expert Stephen Clarke as described in Paragraph 2.d

6   above: Mr. Clarke's analysis of Oracle's confidential financial information using nonpublic

7   Oracle financial information. As stated, Mr. Clarke's analysis is based on incomplete,

8   hypothetical scenarios, and the disclosure of his analysis and the results of his analysis may

9   cause Oracle competitive harm by misleading Oracle's customers, partners, and other interested

10   parties such as analysts and shareholders, with respect to Oracle's current or future business

11   strategy and profitability. Accordingly, the disclosure of this information would create a risk of

12   significant competitive injury and particularized harm and prejudice to Oracle.

13   4.   I have reviewed Plaintiffs' Opposition to Defendants' Motions *in Limine* and

14   Exhibits D, N, P, Q, R and T to the Declaration of Chad Russell in Support thereof ("Russell

15   Declaration"). Exhibits D, N, P, Q, R and T to the Russell Declaration contain testimony and

16   confidential documents regarding internal Oracle decision-making business processes and

17   valuation decisions, competitive business analyses, and the methods of valuation of assets in the

18   context of acquisitions. Disclosure of such information would grant Oracle's competitors,

19   partners, customers, and other interested parties an insight into Oracle's internal strategy and

20   operations that would provide them with an unfair competitive advantage with respect to current

21   and future operations and negotiations. Accordingly, the disclosure of this testimony would

22   create a risk of significant competitive injury and particularized harm and prejudice to Oracle.

23   5.   I have reviewed Plaintiffs' Motion Pursuant to 17 U.S.C. § 410(c) and Exhibits A-

24   D and F-H to the Declaration of John A. Polito in Support thereof ("Polito Declaration").

25   Exhibits A-D and F-H to the Polito Declaration contain non-public, commercially sensitive,

26   private and confidential Oracle information, the disclosure of which would create a risk of

27   significant competitive injury and particularized harm and prejudice to Oracle. Specifically:

28   a.   Exhibit A to the Polito Declaration contains excerpts of Oracle's source

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

1   code. Although these excerpts were submitted to the U.S. Copyright

2   Office as a part of Oracle's deposit materials, it is my understanding that

3   public access to this information is limited; although a member of the

4   public may physically inspect these materials at the Copyright Office, the

5   Copyright Office may not provide a member of the public a copy of these

6   deposit materials. Oracle employs extraordinary measures to protect the

7   confidentiality of its software code, including by restricting the

8   redistribution, copying, or other disclosure of the code by customers and

9   others with access to the code. Oracle's code is extremely sensitive,

10   valuable and proprietary information, and is at the core of the products

11   and services Oracle provides to its customers. Public disclosure of this

12   information would cause competitive harm by giving competitors, as well

13   as would-be infringers, unrestricted access to Oracle's source code.

14   b. Exhibits B, C, D, G and H to the Polito Declaration contain portions of

15   Oracle's Release Notes, Programmer's Guides and Maintenance Guides.

16   These documents contain non-public, commercially sensitive and

17   confidential technical information regarding Oracle's software and

18   support materials that Oracle creates for its customers. Disclosure of such

19   information would also grant Oracle's competitors, partners, customers,

20   and other interested parties an insight into Oracle's operations that would

21   provide them with an unfair advantage with respect to current and future

22   operations and negotiations. Accordingly, disclosure of such confidential

23   information would create a risk of significant competitive injury and

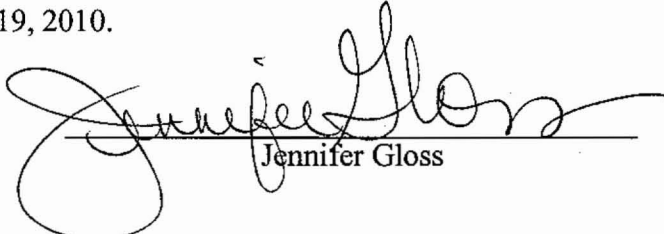24   particularized harm and prejudice to Oracle.

25   c. Exhibit F to the Polito Declaration contains excerpts of a confidential

26   internal Oracle spreadsheet, which lists the dates, descriptions and

27   resources associated with the development of over 49,000 Service Action

28   Requests from 1991 to 2000. Exhibit F provides the names and titles of

1   Oracle's current and former employees and further provides insight on

2   how Oracle develops its software. Disclosure of such information would

3   also grant Oracle's competitors, partners, customers, and other interested

4   parties an insight into Oracle's operations that would provide them with

5   an unfair advantage with respect to current and future operations and

6   negotiations. Finally, the disclosure of such a comprehensive list of

7   Oracle's talented software developers and engineers would enable

8   Oracle's competitors to quickly and easily begin contacting and trying to

9   recruit Oracle's top talent. Accordingly, disclosure of such confidential

10   information would create a risk of significant competitive injury and

11   particularized harm and prejudice to Oracle.

12   6.   Oracle has protected the information described in Paragraphs 2-5 above from

13   public disclosure through the Stipulated Protective Order ("Protective Order") by designating

14   this information as "Confidential" or "Highly Confidential Information — Attorneys' Eyes

15   Only."

16   7.   Oracle has narrowly tailored its request by seeking to seal only the most sensitive

17   portions of the documents described in Paragraphs 2-5 above.

18   I declare under penalty of perjury that the foregoing is true and correct. Executed

19   in Redwood Shores, California, on August 19, 2010.

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21   _____
      Jennifer Gloss

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DECLARATION OF JENNIFER GLOSS IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL