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22 UNITED STATES DISTRICT COURT  
 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)

**DECLARATION OF JENNIFER GLOSS IN SUPPORT OF  
 ADMINISTRATIVE MOTION TO PERMIT PLAINTIFFS  
 TO FILE UNDER SEAL INFORMATION SUPPORTING  
 REPLY IN SUPPORT OF PLAINTIFFS' MOTION NO. 1:  
 TO EXCLUDE TESTIMONY OF DEFENDANTS'  
 EXPERT STEPHEN CLARKE**

**FILED PURSUANT TO DKT. NO. 915**

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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 the Declaration of Daniel S. Levy, Ph.D. in Support of Plaintiffs’  
7 Reply to Defendants’ Opposition to Plaintiffs’ Motion No. 1: To Exclude Expert Testimony of  
8 Stephen K. Clarke (“Levy Declaration”) at Figures 1, 2 and A.1.

9 3. Portions of the Levy Declaration, at Figures 1, 2 and A.1, reference a portion of  
10 the analysis of Stephen Clarke, Defendants’ expert on damages, that Oracle has previously  
11 requested be filed under seal. Mr. Clarke purports to analyze Oracle’s profit margins using non-  
12 public Oracle financial information that was produced in discovery in this case. However, Mr.  
13 Clarke’s analysis is based on incomplete, hypothetical scenarios, and the disclosure of his  
14 analysis and the results of his analysis may cause Oracle competitive harm by misleading  
15 Oracle’s customers, partners, and other interested parties, such as investors and analysts, with  
16 respect to Oracle’s current or future business strategy and profitability. Furthermore, Mr. Clarke  
17 distorts the data on which he relies in a way that obscures the true values of Oracle’s costs and  
18 revenues. His transformation affects the scaling of the numbers so that someone examining the  
19 data, as it is presented, may reach the wrong conclusion about the current value of Oracle’s costs  
20 and revenues. Accordingly, the disclosure of this information would create a risk of significant  
21 competitive injury and particularized harm and prejudice to Oracle.

22 4. Oracle has continued to protect and treat the information in the specific portions  
23 of the Levy Declaration identified in paragraph 3 above as confidential information. Further,  
24 Oracle has previously requested that related information be filed under seal in both the August  
25 19, 2010 Declaration of Daniel S. Levy, Ph.D. in Support of Motion No. 1: To Exclude  
26 Testimony of Defendants’ Expert Stephen Clarke and the September 9, 2010 Declaration of  
27 Stephen K. Clarke in Support of Defendants’ Opposition to Plaintiffs’ Motion No. 1 to Exclude  
28 Expert Testimony of Stephen K. Clarke.

