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17 Attorneys for Defendants  
SAP AG, SAP AMERICA, INC., and  
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

22 ORACLE CORPORATION, et al.,

23 Plaintiffs,

24 v.

25 SAP AG, et al.,

26 Defendants.

Case No. 07-CV-1658 PJH

~~PROPOSED~~ ORDER ON  
DEFENDANTS' ADMINISTRATIVE  
REQUEST TO FILE EXHIBITS 3 AND  
4 TO THE DECLARATION OF  
ELAINE WALLACE UNDER SEAL

Date: TBD  
Time: TBD  
Courtroom: E, 15<sup>th</sup> Floor  
Judge: Hon. Elizabeth D. Laporte

1 Defendants' SAP AG, SAP America, and TomorrowNow, Inc. ("Defendants") have filed  
2 an Administrative Request to File Exhibits 3 and 4 to the Declaration of Elaine Wallace Under  
3 Seal. Defendants request that Exhibits 3 and 4 be filed under seal because they contain  
4 information designated by Defendants as "Confidential Information" or "Confidential  
5 Information – Attorneys' Eyes Only" under the Protective Order in this action.

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

14 In accordance with Local Rule 79-5, Defendants filed the declaration of Christopher Faye  
15 to provide evidence of good cause for this Court to permit filing under seal. That declaration  
16 establishes both that Defendants have considered and treated the information contained in the  
17 subject documents as confidential or proprietary, and that public disclosure of such information  
18 would result in a particularized harm or prejudice to the Defendants. *See Phillips v. General*  
19 *Motors Corp.*, 307 F.3d 1206, 1211 (9<sup>th</sup> Cir. 2006). Accordingly, for good cause shown, the  
20 Court ORDERS that the following documents shall be filed under seal:

- 21 1. Exhibit 3 to the Declaration of Elaine Wallace in Support of Defendants' Opposition to  
22 Plaintiffs' Motion to Compel Production of Clawed Back Documents; and
- 23 2. Exhibit 4 to the Declaration of Elaine Wallace in Support of Defendants' Opposition to  
24 Plaintiffs' Motion to Compel Production of Clawed Back Documents

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IT IS SO ORDERED.

Dated: August 15, 2008

