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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 USA, INC., *et al.*,
23 Plaintiffs,
24 v.
25 SAP AG, *et al.*,
26 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE MOTION TO
COMPEL AND DECLARATIONS
AND EXHIBITS IN SUPPORT
THEREOF, UNDER SEAL;
DECLARATION IN SUPPORT OF
ADMINISTRATIVE MOTION**

I. INTRODUCTION

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Oracle EMEA Limited
2 (collectively, "Oracle"), together with Defendants SAP AG, SAP America, Inc., and
3 TomorrowNow, Inc. (collectively, "Defendants," and with Oracle, the "Parties"), respectfully
4 request an Order sealing (1) portions of Defendants' Motion to Compel Discovery Concerning
5 Third Party Support Provided by Oracle's Partners ("Motion to Compel"), and (2) portions of the
6 Declaration of Jason McDonell in support of Defendants' Motion to Compel ("McDonell
7 Declaration"), and (3) Exhibits 18 and 19 to the McDonell Declaration.¹ Unredacted versions of
8 these documents were lodged with the Court on January 16, 2009. This request is made pursuant
9 to Civil Local Rules 7-11 and 79-5 and the Protective Order signed by Judge Martin Jenkins on
10 June 6, 2007. This request is supported by the Parties' Stipulation Regarding Defendants'
11 Administrative Motion to Seal, filed concurrently with this Motion.
12

II. ARGUMENT

13 Defendants request that the documents listed in detail in the attached Declaration of
14 Elaine Wallace ("Wallace Declaration") be filed under seal. Good cause exists for filing the
15 referenced documents under seal, because they contain content that was designated by Oracle as
16 either "Highly Confidential Information - Attorneys' Eyes Only," or "Confidential Information,"
17 pursuant to the Stipulated Protective Order. Pursuant to Civil Local Rule 79-5(d) and Paragraph
18 14 of the Protective Order, Defendants are obligated to lodge these documents with the Court
19 with a request to file them under seal.
20

21 Defendants' request is narrowly tailored, as required by Local Rule 79-5(a), and seeks to
22 protect only those documents that contain Oracle's allegedly confidential information, until such
23 time as Oracle may submit a declaration in accordance with Civil Local Rule 75-9(d) and the
24 Court makes a final ruling as to the confidentiality of the relevant subject matter. Therefore,
25

26 ¹ Multiple exhibits attached to the McDonell Declaration contain redactions of non-relevant
27 information. These redactions are designated with "Redacted for Relevance" and are not
28 included as redactions that Defendants are moving to seal. Defendants move to file under seal an
unredacted version of the Motion to Compel Discovery Concerning Third Party Support
Provided by Oracle's Partners and Exhibits 18 and 19 in their entirety.

1 good cause supports this request, and the documents referenced herein should appropriately be
2 filed under seal.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that the Court order the filing
5 of the documents listed in detail in the attached Wallace Declaration under seal. A Proposed
6 Order is submitted with this Motion.

7

8 DATED: January 16, 2009

JONES DAY

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By: _____ /s/ Jason McDonell

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Jason McDonell

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Attorneys for Defendants

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1 **DECLARATION OF ELAINE WALLACE IN SUPPORT OF**
2 **DEFENDANTS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL**

3 I, Elaine Wallace, declare:

4 1. I am a member of the State Bar of California and am counsel at Jones Day,
5 counsel of record for Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
6 (collectively, "Defendants,") in this action. Except for matters stated below on information and
7 belief, I have personal knowledge of the matters stated in this declaration by virtue of my
8 representation of Defendants in this action. If called and sworn as a witness, I could and would
9 competently testify to such matters.

10 2. Pursuant to Civil Local Rule 79-5 and the stipulated Protective Order entered on
11 June 6, 2007 in this case (Docket No. 32), I make this Declaration in support of Defendants'
12 Administrative Motion to File Motion to Compel and Declarations and Exhibits in Support
13 Thereof, Under Seal (the "Motion to Seal").

14 3. The requested relief is necessary and narrowly tailored to protect the alleged
15 confidentiality of the materials put at issue by Defendants' Motion to Compel Discovery
16 Concerning Third Party Support Provided by Oracle's Partners ("Motion to Compel"), until such
17 time as the Court rules on the confidentiality of the relevant subject matter. Specifically,
18 Exhibits 18 and 19 to the Declaration of Jason McDonell in support of Defendants' Motion to
19 Compel (the "McDonell Declaration"), and references to these exhibits within the Motion to
20 Compel and McDonell Declaration, contain information designated by Oracle as "Confidential
21 Information" and "Highly Confidential Information - Attorneys' Eyes Only," pursuant to the
22 Protective Order entered in this action on June 6, 2007.

23 4. Pursuant to Civil Local Rule 7-11, a stipulation is included with this
24 Administrative Motion.

25 5. The following documents, or portions of documents, contain information
26 designated Highly Confidential and/or Confidential by Oracle:

27 a. Defendants' Motion to Compel

28 Page 10, lines 16 - 18

1 Page 12, lines 5 - 6

2 b. Exhibits 18 and 19 to the McDonell Declaration

3 (1) (Ex. 18) Email from Juan C. Jones to Dave Hare, forwarding an
4 email from Rick Cummins to Juan C. Jones and Chris Madsen, on
5 January 2, 2007 and entitled "Fw: Applications support initiatives,"
6 Bates stamped ORCL00087618—00087620.

7 (2) (Ex. 19) Email from Holger Mueller to Glenn Smith, et al., titled
8 "Re: Relaunch of Support Offering for SAP Customers: aka OneStop,"
9 dated September 11, 2006, Bates stamped ORCL00025701-02.

10
11 I declare under penalty of perjury that the foregoing is true and correct. Executed in San
12 Francisco, California, on January 16, 2009.

13
14
15 By: _____ /s/ Elaine Wallace
16 Elaine Wallace