

EXHIBIT A

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(OFF-THE-RECORD DISCUSSION.)

MR. PICKETT: WE HAD SOME DAUBERTS, TOO, AND WE ARE PLAINTIFFS, BUT I ACTUALLY HAD TWO SORT OF LOGISTICAL QUESTIONS IF I COULD.

THE COURT: UM-HMM.

MR. PICKETT: ONE IS HOW DOES YOUR HONOR DEAL WITH THE PROBLEM OF JURORS GOOGLING AND USING THE INTERNET? THIS IS GOING TO BE A CASE THAT'S IN THE PRESS. THERE ARE GOING TO BE REPORTS ON IT THROUGHOUT THE TRIAL. AND EVERY CONFERENCE I GO DO NOW, I HEAR ABOUT THIS PROBLEM, AND I BELIEVE IT'S A BIG PROBLEM, EVEN -- EVEN --

THE COURT: IT IS.

MR. PICKETT: -- EVEN WHEN YOU INSTRUCT THE JURORS, THEY DO IT ANYWAY.

THE COURT: IT IS. IT IS.

MR. PICKETT: SO HOW DOES YOUR HONOR DEAL WITH IT, IS MY QUESTION?

THE COURT: WELL, I HAD TO DEAL WITH IT OVER -- OVER THE SUMMER. I'VE HAD FOUR TRIALS AND EACH TIME, IT'S REALLY AN ISSUE. AND I HAVE SOME MODEL INSTRUCTIONS FROM THE ADMINISTRATIVE OFFICE OR THE FEDERAL JUDICIAL CENTER -- ONE OF THE TWO -- SENT US A PROPOSED MODEL INSTRUCTION. I USED IT IN MY LAST TRIAL, AND AS I WAS READING IT, I, FRANKLY, DIDN'T THINK IT WAS VERY GOOD.

SO YOU ALL ARE FREE TO COME UP WITH ONE, TO PREPARE

1 ONE YOURSELF, BUT IT SHOULD COVER THE WHOLE PANOPLY OF GADGETS
2 AND DEVICES, EVERYTHING JUST SO THAT THEY DON'T THINK BY
3 OMISSION THAT IT'S OKAY FOR THEM TO, YOU KNOW, TWEET ABOUT IT
4 FROM THE JURY ROOM. BUT --

5 **MR. PICKETT:** AND I -- I EVEN THINK --

6 **THE COURT:** SO IT'S NOT JUST -- IT'S NOT JUST
7 INVESTIGATION AND RESEARCH. IT'S ALSO COMMUNICATION. THEY'RE
8 NOT SUPPOSED TO TALK ABOUT IT.

9 **MR. PICKETT:** TALK ABOUT IT.

10 **THE COURT:** IT'S ALSO MEANS THEY CAN'T EMAIL ABOUT IT
11 OR TWEET ABOUT IT.

12 **MR. PICKETT:** DON'T PUT IT ON FACEBOOK. DON'T TWEET.

13 **THE COURT:** RIGHT.

14 **MR. PICKETT:** THROUGH THESE CONFERENCES I'VE BEEN TO,
15 IT'S ALSO BEEN HELPFUL TO HAVE SOME EXPLANATION OF WHY THIS IS
16 HAPPENING. BECAUSE THERE ARE JURORS NOW WHO RESENT AUTHORITY,
17 AND IF YOU TELL THEM NOT TO DO SOMETHING, THEY'LL START DOING IT
18 BECAUSE THEY THINK THEY'RE THE -- THEY WANT TO KNOW THE TRUTH
19 RATHER THAN THE ADMITTED EVIDENCE.

20 **THE COURT:** AND ACTUALLY, I FOUND IN MY LAST TRIAL --
21 I MEAN, A COUPLE OF JURORS SAID THAT THEY DIDN'T THINK THEY'D BE
22 ABLE TO RESIST THE TEMPTATION, AND WE LET THEM GO. THE OTHERS
23 SAID THAT THEY COULD, AND I BELIEVE THAT THEY DID.

24 IT MIGHT ALSO MEAN, THOUGH, THAT YOU TEND TO SKEW
25 TOWARDS AN OLDER JUROR WHO MIGHT HAVE LESS FACILITY WITH ALL OF

1 DEVICES AND, THEREFORE, HAVE A MUCH SMALLER --

2 **MR. PICKETT:** I FEAR.

3 **THE COURT:** -- TEMPTATION TO RESIST.

4 **MR. PICKETT:** I FEAR THERE WILL BE A LOT OF PRESS
5 ABOUT THIS CASE ON A DAILY BASIS.

6 **THE COURT:** I DON'T KNOW HOW TO DO -- I DON'T KNOW
7 WHAT TO DO EXCEPT TO GIVE INSTRUCTIONS.

8 **MR. PICKETT:** RIGHT. WE'LL WORK THAT OUT, THEN.

9 **THE COURT:** AND SO YOU CAN PREPARE ONE. I'LL TRY TO
10 FIND THAT COPY IF YOU'D LIKE TO LOOK -- IT'S NOT VERY WELL
11 WRITTEN, BUT I'LL TRY TO FIND IT AND YOU CAN USE THAT TO START
12 FROM.

13 **MR. LANIER:** THANK YOU, YOUR HONOR.

14 **MR. PICKETT:** AND THEN JUST ON -- I'M SORRY.

15 **THE COURT:** AND I DO THINK THERE'S ALSO -- IN ANOTHER
16 TRIAL, I HAD A PROPOSED INSTRUCTION BY THE PARTY -- BY ONE OF
17 THE PARTIES WHO WANTED ME TO ADVISE THE JURY THAT IF WE FOUND
18 OUT THAT THEY HAVE VIOLATED THE RULE THAT IT COULD CAUSE A
19 MISTRIAL, IT WOULD BE EXPENSIVE AND ALL OF THIS.

20 AND I WAS A LITTLE RELUCTANT TO GIVE THAT, BUT I
21 THINK THAT, ACTUALLY, IF YOU LOOK IN THE NINTH CIRCUIT MODEL
22 INSTRUCTIONS, I THINK THERE'S ACTUALLY A PROPOSED INSTRUCTION
23 THAT SAYS SOMETHING VERY SIMILAR TO THAT.

24 **MR. LANIER:** WE'LL WORK IT OUT.

25 **THE COURT:** SO I DON'T KNOW. EVERYONE'S GRAPPLING

1 WITH THE ISSUE, SO I'LL LEAVE IT UP TO YOU TO COME UP WITH A
2 GOOD INSTRUCTION. I'LL TRY TO SEE IF WE CAN FIND THE MODEL.

3 **MR. PICKETT:** SEEMS TO BE A HOT ISSUE.

4 THEN JUST LOGISTICS, THE TECHNOLOGY IN THE COURTROOM.
5 WE'LL -- WE'LL OBVIOUSLY WANT TO SHARE TECHNOLOGY, BUT IS THERE
6 A PERSON THAT DEAL WITH WITH RESPECT TO THAT, WHAT WE CAN BRING
7 TO THE COURTROOM?

8 **THE COURT:** NICHOLE WILL TELL YOU.

9 **MR. PICKETT:** SO WE'LL TELL YOU ALL ABOUT THAT.

10 **THE COURT:** YEAH, SHE'LL TELL YOU.

11 **MR. PICKETT:** LASTLY ON LOGISTICS, WE'RE OFF ON
12 VETERAN'S DAY, AS YOUR HONOR POINTED OUT. I THINK WE'RE DARK ON
13 WEDNESDAYS?

14 **THE COURT:** WEDNESDAYS IS MY LAW AND MOTION.

15 **MR. PICKETT:** AND THEN THE DAY AFTER THANKSGIVING
16 IS -- WE'RE ON.

17 **THE COURT:** THREE DAYS THE JURY'S GOING TO MISS OUT
18 OF THE FOUR WEEKS.

19 (SIMULTANEOUS COLLOQUY.)

20 **THE COURT:** VETERANS DAY, IT'S -- IT'S MONDAY,
21 TUESDAY -- VETERAN'S DAY ON A THURSDAY, SO IT'S FRIDAY. THE
22 FOLLOWING WEEK, IT'S FOUR DAYS, AND THE THANKSGIVING WEEK IS
23 JUST MONDAY AND TUESDAY.

24 **MR. PICKETT:** OKAY. THAT'S WHAT I WAS ASKING.
25 FRIDAY IS OUT.

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CERTIFICATE OF REPORTER

I, RAYNEE H. MERCADO, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658 PJH, ORACLE CORPORATION, ET AL. V. SAP AG, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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Raynee H. Mercado

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MONDAY, OCTOBER 4, 2010