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 18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 OAKLAND DIVISION

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

Case No. 07-CV-1658 PJH (EDL)

**DEFENDANTS' REQUEST FOR
 LEAVE TO SUPPLEMENT
 DEFENDANTS' ADMINISTRATIVE
 MOTION FOR AN ORDER RE:
 COUNSELS' EXTRAJUDICIAL
 COMMUNICATIONS**

1 Defendants seek leave to supplement the Administrative Motion for An Order re:
2 Counsels' Extrajudicial Communications filed on October 22, 2010. ECF No. 939. Two hours
3 after Plaintiffs filed their Response to Defendants' Administrative Motion (ECF No. 945), Oracle
4 Corporation issued the following press statement, "attributable to Oracle CEO Larry Ellison:

5 'A few weeks ago I accused HP's new CEO, Leo Apotheker, of overseeing an
6 industrial espionage scheme centering on the repeated theft of massive amounts of
7 Oracle's software. A major portion of this theft occurred while Mr. Apotheker was
8 CEO of SAP. HP's Chairman, Ray Lane, immediately came to Mr. Apotheker's
9 defense by writing a letter stating, 'Oracle has been litigating this case for years
10 and has never offered any evidence that Mr. Apotheker was involved.' Well, that's
11 what we are planning to do during the trial that starts next Monday. Unless, Mr.
12 Lane and the rest of the HP Board of Directors decide to keep their new CEO far,
far away from HP Headquarters until that trial is over. If HP keeps Leo Apotheker
far from HP headquarters we cannot subpoena him to testify at that trial. I don't
think Ray Lane wants to risk Leo Apotheker testifying under oath as to why he
allowed the theft of Oracle property to continue for 8 months after he was made
sole CEO of SAP. I hope I'm wrong, but my guess is that HP's new Chairman,
Mr. Lane, will keep HP's new CEO, Mr. Apotheker, far, far away from the
Courthouse until this trial is over.'"

13 *See* Attachment A. This statement makes it crystal clear that Plaintiffs intend to use the
14 upcoming trial as a public stage for fights having little to do with this case. At least the lawyers
15 should be appropriately restrained. Defendants respectfully request that their motion be granted.

16 Dated: October 26, 2010

JONES DAY

17
18 By: /s/ Tharan Gregory Lanier
19 Tharan Gregory Lanier

20 Counsel for Defendants
21 SAP AG, SAP AMERICA, INC., and
22 TOMORROWNOW, INC.
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