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18 TOMORROWNOW, INC.

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

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

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

**DEFENDANTS' OPPOSITION TO  
AMENDED MOTION FOR LEAVE  
TO INTERVENE**

Date: December 8, 2011  
Time: 9:00 a.m.  
Courtroom: 3, 3rd Floor  
Judge: Hon. Phyllis J. Hamilton

1 Defendants SAP AG, SAP America, Inc. and TomorrowNow, Inc. (“Defendants”) file  
 2 this Opposition to Terry M. Myers’ Amended Motion for Leave to Intervene (“Amended Motion”)  
 3 and ask the Court to deny the Amended Motion for the same reasons that the Court denied Mr.  
 4 Myers’ original motion to intervene—namely, that the Amended Motion is “incomprehensible”  
 5 and fails to state a basis for intervention. ECF No. 1065; *see also* ECF No. 1064.

6 Mr. Myers filed his original motion to intervene on April 8, 2011, *see* ECF No. 1064,  
 7 which the Court denied on April 26, 2011, finding that “[t]he motion is incomprehensible, and no  
 8 basis for intervention is stated.” ECF No. 1065. On December 5, 2011, Defendants’ counsel  
 9 received via U.S. Mail Mr. Myers’ “Notice of Filing Amended Motion for Leave to Intervene”  
 10 (“Notice”) and “Movants [sic] Amended Motion for Leave to Intervene.” *See* Declaration of Jane  
 11 L. Froyd (“Froyd Decl.”), Exs. A & B. The Notice states that the Amended Motion was filed  
 12 with the Court on November 30, 2011, although it has not yet been posted to the ECF electronic  
 13 docket for this case. *See* Froyd Decl., Ex. A. Despite the requirement set forth in Civil Local  
 14 Rule 7-2 that a hearing be no earlier than 35 days after service of a motion, as well as the Court’s  
 15 stated unavailability for civil hearings until February 8, 2012, Mr. Myers improperly noticed the  
 16 hearing for the Amended Motion for December 8, 2011.

17 Rule 24(c) of the Federal Rules of Civil Procedure provides that “[a] motion to intervene  
 18 must . . . state the grounds for intervention and be accompanied by a pleading that sets out the  
 19 claim or defense for which invention is sought.” Fed. R. Civ. P. 24(c). However, despite  
 20 including new allegations, the Amended Motion remains “incomprehensible”—largely repeating  
 21 the allegations of the original motion to intervene—and again wholly fails to state any grounds  
 22 for intervention as required by the Federal Rules. Thus, Defendants request that the Court deny  
 23 the Amended Motion.

24 Dated: December 7, 2011

JONES DAY

25 By: /s/ Tharan Gregory Lanier  
 26 Tharan Gregory Lanier

27 Counsel for Defendants  
 28 SAP AG, SAP AMERICA, INC., and  
 TOMORROWNOW, INC.