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21 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 22 OAKLAND DIVISION

23 ORACLE USA, INC., *et al.*,

24 Plaintiffs,

25 v.

26 SAP AG, *et al.*,

27 Defendants.

No. 07-CV-01658 PJH (EDL)

**[PROPOSED] ORDER GRANTING  
 PLAINTIFFS' MOTION NO. 2: TO  
 EXCLUDE TESTIMONY OF  
 DEFENDANTS' EXPERT BRIAN  
 SOMMER**

Date: September 30, 2010  
 Time: 9:00 a.m.  
 Place: 3rd Floor, Courtroom 3  
 Judge: Hon. Phyllis J. Hamilton

28 A/73468953.1

Case No. 07-CV-01658 PJH (EDL)

1 The Court having before it the Motion of Plaintiffs Oracle USA, Inc. (predecessor to  
2 Oracle America, Inc.), Oracle International Corporation, Oracle EMEA Limited and Siebel  
3 Systems, Inc. (collectively “Oracle” or “Plaintiffs”) to Exclude Testimony of Defendants’ Expert  
4 Brian S. Sommer, and having considered the papers and argument of the parties, IT IS HEREBY  
5 ORDERED THAT Plaintiffs’ Motion to Exclude Testimony of Defendants’ Expert Brian S.  
6 Sommer is GRANTED as follows:

7 1. Mr. Sommer may not present, reference, or rely on the opinions and conclusions  
8 contained in section V (containing the summary of opinions) of his March 26, 2010 report  
9 (“Report”), and section VI of his Report (on the overview of the ERP industry, the nature of an  
10 ERP software and support sale, ERP license purchasing, how ERP software is bought, support  
11 purchasing, and decision factors affecting both ERP license and support selections).

12 2. Mr. Sommer may not present, reference, or rely on the opinions and conclusions  
13 concerning SAP’s goals or financial or customer conversion projections or stated expectations  
14 for its Safe Passage switching program, either contained in his Report or attested to at deposition,  
15 including any opinion or conclusion that SAP’s goals were unreasonable.

16 3. Neither Mr. Sommer nor any witness relying on Mr. Sommer (e.g., Defendants’  
17 damages expert, Stephen Clarke) may present, reference or rely on Mr. Sommer’s precluded  
18 opinions or conclusions.

19  
20 DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Phyllis J. Hamilton  
United States District Court Judge