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September 14, 2010

***Via Electronic Delivery***

The Honorable Phyllis J. Hamilton  
 United States District Court  
 3rd Floor, Courtroom 3  
 1301 Clay Street  
 Oakland, CA 94612-5212

**Re: Oracle USA, Inc., et al. v. SAP AG, et al., Case No. 07-CV-1685**

Your Honor:

At the September 7, 2010, Settlement Conference, Judge Spero assisted the parties with five separate, detailed stipulations. The parties reached agreement on two: the one the Court approved (Trial Stipulation and Order No. 1 Regarding Liability, Dismissal of Claims, Preservation of Defenses, and Objections to Evidence At Trial entered on September 13, 2010 (DI 866)), and a second that dealt with certain proposed discovery motions before Judge Laporte. The second stipulation was not filed; instead the parties filed a joint report with Judge Laporte on September 9, 2010 (DI 826). The parties continue to negotiate, with Judge Spero's assistance, the remaining three stipulations (and other streamlining issues that are the subject of ongoing meeting and conferring). Each of these stipulations would assist in streamlining the presentation of evidence at trial. The parties have requested a further conference with Judge Spero on September 16 regarding these stipulations.

In light of the Court's orders, stipulations and other agreements reached to date, the Parties agree that the following motions are moot:

1. Plaintiffs' Motion *in Limine* No. 4 is moot because the Parties have agreed to refrain from presenting evidence of settlement discussions between the Parties other than as reflected by the stipulations the Parties have reached.
2. Defendants' Motion *in Limine* No. 3 is moot because on August 17, 2010, this Court granted "Defendants' motion for summary judgment as to damages incurred by nonparties" (DI 762 at 25:6-7) "as plaintiffs have effectively conceded that they do not seek lost profits from non-parties." (*Id.* at 18:2-3).
3. Plaintiffs' Motion Pursuant to 17 U.S.C. § 410(c) (*i.e.*, DI 785) is moot because TN has "stipulate[d] to all liability on Oracle's claims for copyright infringement" and "SAP has "stipulate[d] to vicarious liability on the copyright claims against TN." (DI 866).

Pursuant to the second stipulation reached with the assistance of Judge Spero, Defendants hereby withdraw and agree not to refile the following portions of the Motion to Exclude Expert Testimony of Paul C. Pinto, filed on August 19, 2010, (Dkt. No. 774) that relate to computer code allegedly not provided: 2:11-12; 14:7-17:22 and 17:27.

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In addition, the Parties have agreed to withdraw the following *Daubert* motions (but not the testimony) and to refrain from reasserting to the Court the objections raised in the following motions at trial. However, the Parties reserve all rights of cross-examination and argument to the jury on the issues presented in the following motions. And, in light of this agreement, the Parties have agreed to refrain from submitting the reply briefing related to these motions that would have otherwise been filed on September 16, 2010.

1. Plaintiffs' Motion No. 5 to Exclude Testimony of Defendants' Expert Stephen Gray (DI 771).
2. Plaintiffs' Motion No. 6 to Exclude Testimony of Defendants' Expert Bruce Spencer (DI 773).
3. Defendants' Motion to Partially Exclude Testimony of Kevin Mandia and Daniel Levy (DI 780).

The Parties agree that the withdrawal of Plaintiffs' Motion No. 6 to Exclude Testimony of Defendants' Expert Bruce Spencer (DI 773) moots only those portions of Defendants' objections stated at: 1:10-13, 1:20-23, 3:20-25, 4:15-16 and 5:6-7, in Defendants' Objections to the Declarations of Daniel Levy Filed In Support of Plaintiffs' Motions to Exclude (DI 838) relating to the Declaration of Daniel S. Levy In Support Of Oracle's Motion No. 6: To Exclude Testimony of Defendants' Expert Bruce Spencer (DI 779).

Consistent with the Court's expectations, the Parties also anticipate that their other pretrial filings (such as witness lists, exhibit lists, and jury instructions) require revision in light of the Court's orders, the Parties' stipulations and the Parties' ongoing negotiations that are being supervised by Judge Spero. The Parties are in the process of narrowing their respective witness lists and have agreed to exchange and file with the Court revised witness lists on Sept. 23, 2010. The Parties also continue to meet and confer on the jury instructions and verdict forms and anticipate filing a revised version of the Joint Jury Instructions and verdict forms on Sept. 23, 2010 as well.

Finally, the Parties continue to meet and confer on narrowing their respective exhibit lists and expect to update the Court on their progress with that effort at the Sept. 30 pretrial conference.

Sincerely yours,

/s/ Geoffrey M. Howard

/s/ Tharan Gregory Lanier

cc: Jason McDonell, Esq.  
Scott Cowan, Esq.