

# BINGHAM

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***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:

This letter follows up on the Parties' teleconference with the Court yesterday.

First, the Court requested the Parties to advise of what, if any, further reductions to the Parties' deposition designation objections they may have in light of the matters discussed yesterday.

In the interest of further narrowing the scope of trial, Oracle has re-reviewed its deposition designations. Oracle hereby withdraws, and the Court need not rule on Defendants' objections to, the following four deposition designations objected to by Defendants that are noted along with Oracle's previous responses at Dkt. 947:

04-21-09 depo of Bob Geib at 330:14-331:15 (Dkt. 947, Ex. A at 2-3);  
 02-26-09 depo of Andrew Nelson at 100:9-100:12 (Dkt. 947, Ex. A at 5);<sup>1</sup>  
 07-22-09 depo of Spencer Phillips at 45:24-46:1, 46:25-47:4 (Dkt. 947, Ex. A at 7-8);  
 07-21-10 depo of Seth Ravin at 282:17-283:11 (Dkt. 947, Ex. A at 8).

And, Defendants voluntarily withdraw their objections to the following deposition designations made by Oracle:

02-26-09 depo of Andrew Nelson at 108:9 - 109:2 (Dkt. 947, Ex. A at pp. 5-7)

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<sup>1</sup> Oracle also previously withdrew this designation in its Responses to Defendants' Objections to Oracle's Deposition Designations.

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The withdrawals noted above result in the removal from the Court's consideration all of Defendants' objections to Oracle's deposition designations for Bob Geib's 04-21-09 Andrew Nelson's 2-26-09 and Spencer Phillip's 7-22-09 depositions.

Defendants have re-reviewed their deposition designations to which Oracle has objected, which, with Defendants' responses, are contained in Dkt. 949 and the materials lodged in conjunction therewith. Defendants have determined that all of the testimony at issue relates to issues which remain in dispute. Oracle reserves all rights. Thus, all of Oracle's objections to Defendants' deposition designations are ripe for a ruling by the Court.

Second, as we discussed yesterday, and although the Parties have been working diligently to resolve these issues, and have made continued and significant progress on these and others, the Parties anticipate needing the Court's assistance after voir dire on Monday to resolve various issues relating to evidence, witnesses, and other procedural housekeeping matters, including:

1. Admissibility of exhibits and demonstratives expected to be used in opening statements.
2. Admissibility of exhibits expected to be used with Oracle's first witnesses.
3. Whether non-expert, non-corporate representative individuals may be present for opening statements.
4. Whether Defendants can present a witness during Oracle's case in chief who Oracle does not intend to call .
5. Method by which time will be kept during trial.
6. Logistics regarding use of witness binders during trial.
7. Method by which the official record sets of exhibits for the Court will be created and maintained.
8. Review of the jury notebook.
9. Whether translation time for English-fluent witnesses testifying in German counts against either Party.
10. Process for submitting objections and related responses for exhibits, demonstratives and additional deposition testimony.
11. Prequalification of exhibits by the Parties.

The Parties will be prepared on Monday to address the foregoing matters, and any other matters the Court wishes to address, in whatever order the Court wishes to address them.

Respectfully,

/s/ Geoffrey M. Howard

/s/ Tharan Gregory Lanier