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21 UNITED STATES DISTRICT COURT
 22 NORTHERN DISTRICT OF CALIFORNIA
 23 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. 5: TO
 EXCLUDE TESTIMONY OF
 DEFENDANTS' EXPERT STEPHEN GRAY**

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

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 Stephen Gray, and having considered the papers and argument of the parties, IT IS HEREBY
5 ORDERED THAT Plaintiffs’ Motion to Exclude Testimony of Defendants’ Expert Stephen
6 Gray is GRANTED as follows:

7 [Either:]

8 1. Mr. Gray’s Appendix 4 submitted with his expert report and all testimony that
9 refers to or is based on it are excluded pursuant to Federal Rules of Evidence 403 and 702,
10 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and its progeny, and Federal Rule of
11 Civil Procedure 26(a)(2)(C)(ii).

12 2. Mr. Gray’s testimony stating that Mr. Mandia did not take certain steps or render
13 certain opinions in his analysis (Gray Report §§ 6.4.1, 6.4.2, 7.5.1, 7.5.4.1, 7.5.4.2, 7.5.4.3,
14 7.5.4.4, 7.5.4.5, 7.5.4.6, 7.6, 7.7, 7.8, 8.1.3, 8.2, 8.2.2, 8.2.3, 8.2.4, 8.5, 8.2.6, 9.3, 9.4.1, 11.2,
15 11.4.1, 11.4.2, 11.5.1, 11.6, 12.1, 13) is excluded pursuant to Federal Rule of Evidence 702,
16 *Daubert*, and Federal Rule of Civil Procedure 26(a)(2)(C)(ii).

17 3. Mr. Gray’s testimony interpreting licenses and terms of use, or opining on the
18 propriety of conduct under their terms, is excluded pursuant to Federal Rules of Evidence 702
19 and 403, *Daubert*, and Federal Rule of Civil Procedure 37(c)(1).

20 4. Neither Mr. Gray nor any witness relying on Mr. Gray may present or reference
21 or rely on Mr. Gray’s precluded opinions or conclusions.

22 [Or:]

23 5. Mr. Gray’s testimony and exhibits are excluded in their entirety under Federal
24 Rule of Civil Procedure 37(c) because of Defendants’ failure to make meaningful disclosure, as
25 required by Federal Rule of Civil Procedure 26(a)(2)(B)(ii), of materials that Mr. Gray
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1 considered in forming his opinions. Neither Mr. Gray nor any witness relying on Mr. Gray may
2 present or reference or rely on Mr. Gray's precluded opinions or conclusions

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5 DATED: _____

Hon. Phyllis J. Hamilton
United States District Court Judge

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