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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)

**DECLARATION OF JOHN A.
 POLITO IN SUPPORT OF MOTION
 NO. 5: TO EXCLUDE TESTIMONY
 OF DEFENDANTS' EXPERT
 STEPHEN GRAY**

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

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

DECL. OF JOHN POLITO IN SUPPORT OF PLAINTIFFS' MOT. NO. 5: TO EXCLUDE TESTIMONY
 OF DEFENDANTS' EXPERT STEPHEN GRAY

1 I, John A. Polito, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and before
3 this Court, and an associate at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle
4 International Corporation, Oracle USA, Inc. (predecessor to Oracle America, Inc.), Oracle
5 EMEA Ltd., and Siebel Systems, Inc. (collectively, "Oracle" or "Plaintiffs"). I have personal
6 knowledge of the facts stated below by virtue of my representation of Oracle in this action if
7 called as a witness could competently testify as to them. I make this declaration in support of
8 Oracle's Motion To Exclude Testimony of Defendants' Expert Stephen Gray ("Motion to
9 Exclude").

10 2. For ease of use and reference and to the extent possible without losing context,
11 for all exhibits attached to this Declaration, including deposition transcripts, only the relevant
12 pages and information have been provided. Unless otherwise noted below for a particular
13 document, we have provided all highlighting and/or circling in these Exhibits to further assist in
14 identifying the information relevant to Oracle's Motion to Exclude.

15 3. On March 26, 2010, Defendants' produced the expert report of Stephen Gray.
16 Defendants later produced a supplemental report on June 3, 2010.

17 4. Attached as **Exhibit A** is a true and correct copy of relevant excerpts from the
18 Supplemental Expert Report of Stephen Gray, served by Defendants on June 3, 2010.

19 5. Attached as **Exhibit B** is a true and correct copy of relevant excerpts from the
20 transcript of the June 8-9, 2010 Deposition of Stephen Gray.

21 6. Attached as **Exhibit C** is a true and correct copy of relevant excerpts from the
22 Supplemental Expert Report of Kevin Mandia, served by Plaintiffs on May 12, 2010.

23 7. Attached as **Exhibit D** is a true and correct copy of relevant excerpts from the
24 transcript of the May 20, 2010 Deposition of Kevin Mandia.

25 8. Attached as **Exhibit E** is a true and correct copy of Appendix 4 from the
26 Supplemental Expert Report of Stephen Gray, served by Defendants on June 3, 2010.

27 9. Attached as **Exhibit F** is a true and correct copy of relevant excerpts form the
28 August 13, 2009 deposition of John Baugh in this action.

