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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 CHAD RUSSELL IN
 SUPPORT OF PLAINTIFFS' OPPOSITION
 TO DEFENDANTS' MOTION TO
 PARTIALLY EXCLUDE TESTIMONY OF
 KEVIN MANDIA AND DR. DANIEL LEVY**

Date: September 30, 2010
 Time: 2:30 pm
 Place: Courtroom 3, 3rd Floor
 Judge: Hon. Phyllis J. Hamilton

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

DECLARATION OF CHAD RUSSELL IN SUPPORT OF ORACLE'S OPPOSITION TO DEFS.' MOTION
 TO PARTIALLY EXCLUDE TESTIMONY OF MANDIA AND LEVY

Exhibit Index

Exhibit	Description
A	Deposition Exhibit 1549, Level Set – “Cross-Use” Environments – Meeting Minutes
B	Deposition of Kevin Mandia, May 20-21, 2010
C	Appendices to the Supplemental Expert Report of Kevin Mandia, dated February 12, 2010
D	<i>SAP Responds to Oracle Complaint</i> , July 3, 2007
E	Deposition of Mark Kreutz, October 29-30, 2007
F	Deposition of Shelley Nelson, October 30, 2007
G	<i>How many bytes for...</i> , http://searchstorage.techtarget.com
H	SAP TN’s First Amended and Supplemental Response to Oracle USA’s Second Set of Interrogatories, Nos. 12, 13 and 14
I	Deposition of Gary Funck, June 1-2, 2010
J	Deposition of Norm Ackermann, December 1, 2009
K	Deposition of Edward Screven, November 30, 2009
L	Deposition of Greg Story, December 1, 2009
M	Expert Report of Stephen Gray, dated March 26, 2010
N	Deposition of Stephen Gray, June 8-9, 2010
O	Deposition Exhibit 403, Conference Call Transcript – <i>SAP to Host Teleconference Regarding its Response to Oracle Lawsuit</i> , July 3, 2007
P	SAP TN’s Eighth Amended and Supplemental Response to Oracle Corporation’s First Set of Interrogatories, No. 13
Q	Deposition of John Ritchie, December 2, 2009
R	Partial Summary Judgment Hearing, May 5, 2010
S	Motion to Dismiss Hearing, May 5, 2010
T	<i>SAP PartnerEdge, IVN and Certified Powered By SAP NetWeaver</i> , www.nextlabs.com
U	Federal Judicial Center, <i>Reference Manual on Scientific Evidence</i> , Second Edition, 2000
V	Deposition of Dr. Daniel Levy, April 30, 2010

1 I, Chad Russell, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California and
3 before this Court, and am an associate at Bingham McCutchen LLP, counsel of record for
4 plaintiffs Oracle USA, Inc. (predecessor to Oracle America, Inc.), Oracle International
5 Corporation and Siebel Systems, Inc. (collectively “Oracle” or “Plaintiffs”) in this action. I have
6 personal knowledge of the facts stated below by virtue of my representation of Oracle in this
7 action and if called as a witness could competently testify as to them.

8 2. To the extent possible without losing context, Oracle has attached only the
9 relevant pages and information for all exhibits to this Declaration, including deposition
10 transcripts. Unless otherwise noted below for a particular document, all highlighting in these
11 exhibits has been provided by Oracle to further assist in identifying the information relevant to
12 Oracle’s Opposition to Defendants’ Motion to Partially Exclude Testimony of Kevin Mandia and
13 Dr. Daniel Levy.

14 3. Attached as Exhibit A is a true and correct copy of an email produced by
15 Defendants and entitled “Level Set – ‘Cross-Use’ Environments – Meeting Minutes.” This
16 document was marked by Oracle as Plaintiffs’ Deposition Exhibit 1549 in its originally-produced
17 scanned “TIFF” form. Defendants have since produced a color version, which included the
18 blacked-out box on the first page, and which Oracle substitutes here.

19 4. Attached as Exhibit B is a true and correct copy of portions of the transcript of
20 the deposition of Kevin Mandia on May 20-21, 2010.

21 5. Attached as Exhibit C is a true and correct copy of portions of the Appendices
22 to the Supplemental Expert Report of Kevin Mandia, dated February 12, 2010, which were
23 submitted by Mr. Mandia in this case.

24 6. Attached as Exhibit D is a true and correct copy of a document entitled “SAP
25 Responds to Oracle Complaint,” dated July 3, 2007, and printed from SAP’s website at
26 <http://www.sap.com/global/templates/press.epx?pressid=7971&query=tomorrownow>.

27 7. Attached as Exhibit E is a true and correct copy of portions of the transcript of
28 the deposition of Mark Kreutz on October 29-30, 2007.

1 8. Attached as Exhibit F is a true and correct copy of portions of the transcript of
2 the deposition of Shelley Nelson on October 30, 2007.

3 9. Attached as Exhibit G is a true and correct copy of a document entitled "How
4 many bytes for..." printed from
5 http://searchstorage.techtarget.com/sDefinition/0,sid5_gci944596,00.html.

6 10. Attached as Exhibit H is a true and correct copy of portions of Defendant
7 TomorrowNow, Inc.'s First Amended and Supplemental Response to Oracle USA's Second Set
8 of Interrogatories, Responses Nos. 12, 13 and 14.

9 11. Attached as Exhibit I is a true and correct copy of portions of the transcript of
10 the deposition of Defendants' expert Gary Funck on June 1-2, 2010.

11 12. Attached as Exhibit J is a true and correct copy of portions of the transcript of
12 the deposition of Oracle employee Norm Ackermann on December 1, 2009.

13 13. Attached as Exhibit K is a true and correct copy of portions of the transcript of
14 the deposition of Oracle employee Edward Screven on November 30, 2009.

15 14. Attached as Exhibit L is a true and correct copy of portions of the transcript of
16 the deposition of Oracle employee Greg Story on December 1, 2009.

17 15. Oracle produced the working notes of former Mandiant employee Cory
18 Altheide with Bates number ORCLX-MAN-000207 on November 16, 2009, together with
19 Mandia's original expert report.

20 16. The chart below shows the date on which Defendants deposed the Oracle
21 employee indicated:

Deponent	Date
Norm Ackermann	December 4, 2009
Uwe Koehler	December 4 & 5, 2008
Buffy Ransom	September 26, 2008 & April 30, 2009
Jason Rice	December 4, 2009
Edward Screven	November 30, 2009
Greg Story	December 1, 2009
Dan Vardell	November 25, 2009

1 17. Attached as Exhibit M is a true and correct copy of portions of the Expert
2 Report of Defendants' expert Stephen Gray, dated March 26, 2010, as corrected on June 3, 2010,
3 which was submitted by Mr. Gray in this action.

4 18. Attached as Exhibit N is a true and correct copy of portions of the transcript of
5 the deposition of Mr. Gray on June 8-9, 2010.

6 19. Attached as Exhibit O is a true and correct copy of portions of Plaintiffs'
7 Deposition Exhibit 403, a document entitled "Conference Call Transcript – SAP to Host
8 Teleconference Regarding its Response to Oracle Lawsuit," dated July 3, 2007.

9 20. Attached as Exhibit P is a true and correct copy of portions of Defendant
10 TomorrowNow, Inc.'s Eighth Amended and Supplemental Response to Plaintiff Oracle
11 Corporation's First Set of Interrogatories, Response No. 13.

12 21. Attached as Exhibit Q is a true and correct copy of portions of the transcript of
13 the deposition of former SAP TN employee John Ritchie on December 2, 2009.

14 22. Based on my electronic search and review of the Supplemental Expert Report
15 of Kevin Mandia, including the Appendices, neither the word "infringement" nor similar words
16 such as "infringe," "infringed" or "infringing" appear in Mandia's Supplemental Expert Report or
17 Appendices. *See* ¶ 4 & Ex. B; Decl. of Scott Cowan in Supp. of Defs.' Mot. ("Cowan Decl."),
18 Dkt. 782, Ex. A (Mandia Report).

19 23. Attached as Exhibit R is a true and correct copy of portions of the transcript of
20 the May 5, 2010 Partial Summary Judgment Hearing before the Court.

21 24. Attached as Exhibit S is a true and correct copy of portions of the transcript of
22 the May 5, 2010 Motion to Dismiss Hearing before the Court.

23 25. Attached as Exhibit T is a true and correct copy of a document entitled "SAP
24 PartnerEdge, IVN and Certified Powered By SAP NetWeaver," printed from
25 <http://www.nextlabs.com/html/?q=sap>.

26 26. Attached as Exhibit U is a true and correct copy of portions of the Federal
27 Judicial Center Reference Manual on Scientific Evidence, Second Edition, 2000, printed from
28 [http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/\\$file/sciman00.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/$file/sciman00.pdf).

