UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO JUDICIAL DISTRICT

UNITED STATES OF AMERICA, et al., Plaintiffs, v. ORACLE CORPORATION, Defendant.	CASE NO. C 04-0807 VRW **PROTECTIVE ORDER**

In the interest of ensuring an efficient and prompt resolution of this action and of protecting confidential information from improper disclosure, the undersigned hereby stipulate, subject to approval and entry by the Court, to the following Protective Order issued pursuant to Fed. R. Civ. P. 26(c):

A. DEFINITIONS

1. As used herein:

a. "This action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

b. "Party" means a plaintiff or a defendant in this action.

c. "Protected third party" means a non-party that produced or produces any investigation material or litigation material to a party.

d. "Investigation material" means any information, documents, testimony, declarations, oral examination transcripts, depositions, presentations, or other materials produced to a party in connection with plaintiff Department of Justice's or plaintiff States' investigations of Oracle Corp.'s proposed acquisition of PeopleSoft, Inc. (hereinafter, the "Proposed Acquisition") or otherwise relating to the Proposed Acquisition, regardless of whether those

materials are produced voluntarily or in response to a Civil Investigative Demand, subpoena, or other formal or informal discovery process.

e. "Litigation material" means information, documents, testimony, declarations, oral examination transcripts, depositions, presentations, or any other materials produced to a party in connection with this action, regardless of whether those materials are produced voluntarily or in response to a Civil Investigative Demand, subpoena, or other formal or informal discovery process.

f. "Confidential information" means any party's or protected third party's trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(7).

g. "Protected information" means information designated as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" under Paragraphs 2 and 3, below.

h. "Produce" means directly or indirectly show, divulge, reveal, disclose, describe, transmit, publish or otherwise communicate, in whole or in part.

i. "Document" is defined as the term is used in Fed. R. Civ. P. 34(a).

B. DESIGNATION OF PROTECTED INFORMATION

2. A party or protected third party may designate as "BUSINESS SENSITIVE" any investigation materials or litigation materials it produced or produces, either voluntarily or pursuant to discovery in this action, to any party in connection with this action, to the extent such information constitutes confidential information as defined in this Order. Such designations shall constitute a representation to the Court that such party or protected person (and counsel, if any) in good faith believes that the information so designated constitutes confidential information.

3. A party or protected third party may designate as "HIGHLY CONFIDENTIAL" any investigation materials or litigation materials it produced or produces, either voluntarily or pursuant to discovery in this action, to any party in connection with this action, if the party or protected third party believes in good faith that the material contains confidential information, that such material is highly sensitive, and that disclosure to persons other than those listed in

Paragraph 9 is likely to cause substantial competitive harm.

4. Investigation materials or litigation materials that a party or protected third person seeks to designate as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" in accordance with this Order shall be designated as such by placing on or affixing to the document or transcript containing confidential information (in such a manner as will not interfere with the document's legibility), the designation "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" as appropriate, or any other appropriate notice, together with an indication of the portion or portions of the document considered to be confidential information. With respect to electronic documents, the party or protected third party at the time such information is produced shall specify in writing the information that is "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL." Investigation material previously produced to a party shall be designated as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" by forwarding a letter to all parties identifying the confidential information (by ranges of document identification numbers or page and line numbers where applicable, or other appropriate means) to be so designated. If the entire document is not confidential, the party or protected third party shall specify the portions of the document that contains confidential information.

5. Within **five business days** of notice of entry of this Order, any party who previously produced investigation materials to another party shall designate any such materials as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL," to the extent such information constitutes protected information as defined in this Order.

6. Within **three business days** of notice of entry of this Order, any party who previously received investigation materials or litigation materials from any protected third party will provide a written notice and a copy of this Order to that protected third party, with a copy of the notice to all other parties. A protected third party may, within **ten business days** of receiving notice of this Order from a party, designate any such materials as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL," to the extent such information constitutes protected information as defined in this Order. In the meantime, the parties shall treat all material as "HIGHLY CONFIDENTIAL" pursuant to this Order. Any third party that concludes that this Order does

not adequately protect its confidential information must within ten business days of receiving notice of this Order from a party seek additional protection from the Court for its confidential information. All material will be treated as "HIGHLY CONFIDENTIAL" pursuant to this Order pending the resolution of any third party's request for additional confidential protection.

7. Any investigation material delivered to one or more of the plaintiffs prior to the filing of the Complaint in this action by any party or protected third party may be presumptively designated, in whole or in part, "HIGHLY CONFIDENTIAL" by the party or protected third party producing such documents or other information by communicating such designation to the receiving party. Such designations shall be communicated to all parties, who shall then treat all such documents or other information produced by that party or protected third party as "HIGHLY CONFIDENTIAL."

8. All transcripts of depositions taken in this action after the filing of the Complaint shall be treated as if designated "HIGHLY CONFIDENTIAL" for a period of five business days after a full and complete copy of the transcript has been available to the deponent or deponent's counsel. Any deponent or counsel for that deponent or counsel for a party may designate during the deposition or during the five-day period after the transcript is available from the court reporter any portion of the transcript as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" by denominating by page and line, and by designating any exhibits, that are to be considered "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL." Such designation shall be communicated to all parties.

C. DISCLOSURE OF "BUSINESS SENSITIVE" INFORMATION

9. Except as otherwise authorized by this Order, information designated as "BUSINESS SENSITIVE" shall be used only in connection with this action, shall not be disclosed to any person other than the individuals set forth below, and may be disclosed only as necessary in connection with this action to the individuals set forth below:

a. The Court and all persons assisting the Court in this action, including court reporters and stenographic or clerical personnel;

b. Plaintiffs' attorneys and employees, and anyone retained to assist the plaintiffs in the preparation or trial of this action, including contract paralegals, secretaries, other administrative personnel and any persons employed or retained as data base managers and their employees;

c. Up to two of Defendant's inside counsel, who shall be designated by name as of the entry of this Order, and their necessary secretarial, clerical, administrative, or support staff provided that these attorneys and their staff are not involved in and do not provide legal services to business personnel involved in competitive decision making for the party (i.e. , development , marketing or pricing decisions) as to the subjects of the information designated as "BUSINESS SENSITIVE" and provided that these attorneys and their staff have not been and are not currently involved in providing legal services relating to Oracle's unsolicited bid to acquire PeopleSoft, Inc. other than participating in this litigation;

d. Defendant's outside counsel of record and the employees of such outside counsel including paralegals, secretaries, and other administrative personnel and any persons employed or retained as data base managers and their employees, provided that counsel and its employees are not employed or affiliated in any other way with any defendant, did not previously participate in the representation of SSA/Baan in connection with the United States' investigation of Oracle's unsolicited offer to acquire PeopleSoft, Inc., and do not represent SSA/Baan on an ongoing basis;

e. Employees of third-party contractors of the parties involved solely in providing copying services or litigation support services such as organizing, filing, coding, converting, storing, or retrieving material connected with this action, provided that such persons are not employed or affiliated in any other way with any defendant;

f. Experts or consultants retained by a party solely to assist in the conduct of this action, including employees of the firm with which the expert or consultant is associated to the extent necessary for purposes of this action only, provided that such experts and staff are not employed or affiliated in any other way with any defendant and provided that such expert or consultant has executed **Appendix A** hereto;

g. Authors, addressees, and recipients of particular information designated as confidential solely to the extent of disclosing such information of which they are an author, addressee, or recipient;

h. Persons who have had, or whom any counsel for any party in good faith believes to have had, prior access to confidential information, or who have been participants in a communication that is the subject of the confidential information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they have or may have had access or that is the subject of the communication in which they have or may have participated, except that, unless and until counsel confirms that any such persons have had access or were participants, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation.

i. Subject to the provisions of Paragraph 11, other persons not included in the above subparagraphs who are examined by deposition in this action.

D. DISCLOSURE OF "HIGHLY CONFIDENTIAL" INFORMATION

10. Except as otherwise authorized by this Order, information designated as "HIGHLY CONFIDENTIAL" shall be used only in connection with this action, shall not be disclosed to any person other than the individuals set forth below, and may be disclosed only as necessary in connection with this action to the individuals set forth below:

a. The Court and all persons assisting the Court in this action, including court reporters and stenographic or clerical personnel;

b. Plaintiffs' attorneys and employees, and anyone retained to assist the plaintiffs in the preparation or trial of this action, including contract paralegals, secretaries, other administrative personnel and any persons employed or retained as data base managers and their employees;

c. Outside counsel of record for defendants and the employees of such outside counsel including paralegals, secretaries, and other administrative personnel and any persons employed or retained as data base managers and their employees, provided that counsel

and its employees are not employed or affiliated in any other way with any defendant, did not previously participate in the representation of SSA/Baan in connection with the United States' investigation of Oracle's unsolicited offer to acquire PeopleSoft, Inc., and do not represent SAA/Baan on and ongoing basis;

d. Employees of third-party contractors of the parties involved solely in providing copying services or litigation support services such as organizing, filing, coding, converting, storing, or retrieving material connected with this action, provided that such persons are not employed or affiliated in any other way with any defendant;

e. Experts or consultants retained by a party solely to assist in the conduct of this action, including employees of the firm with which the expert or consultant is associated to the extent necessary for purposes of this action only, provided that such experts and staff are not employed or affiliated in any other way with any defendant and provided that such expert or consultant has executed **Appendix A** hereto;

f. Authors, addressees, and recipients of particular information designated as confidential solely to the extent of disclosing such information of which they are an author, addressee, or recipient;

g. Persons who have had, or whom any counsel for any party in good faith believes to have had, prior access to information designated "HIGHLY CONFIDENTIAL," or who have been participants in a communication that is the subject of the information designated "HIGHLY CONFIDENTIAL" and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they have or may have had access or that is the subject of the communication in which they have or may have participated, except that, unless and until counsel confirms that any such persons have had access or were participants, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation.

h. Subject to the provisions of Paragraph 11, other persons not included in the above subparagraphs who are examined by deposition in this action.

11. Subject to the exceptions stated in this Paragraph, before disclosure of protected

information is made to any person or persons not authorized to receive the information under the provisions of Paragraph 9 or 10 of this Order, the party wishing to make such a disclosure shall give at least **five business days'** advance notice in writing, via facsimile, to the party or protected third party who provided the protected information, stating the names, addresses, and employers of the person(s) to whom the disclosure will be made. The notice shall identify with particularity the documents or specific parts of the information to be disclosed, including the production number of the documents and provide a description of the basis for the disclosure. If, within the five-business-day period, an objection is made regarding a disclosure, disclosure of the protected information shall not be made pending a ruling by the Court. The Court will permit access upon such terms as it deems proper, unless the party or protected third party objecting to the proposed disclosure shows good cause why the proposed disclosure should not be permitted. The notice provisions of this Paragraph shall not apply with respect to any deposition, pretrial, or trial testimony of any employee of any party or protected third party designating particular information as protected information; any author, addressee, or recipient of particular information designated protected information; or any persons who have had, or whom any counsel for any party in good faith believes to have had, prior access to information designated as protected information, or who have been participants in a communication that is the subject of the protected information at issue in the deposition or testimony of such witness.

12. Each individual described in Paragraph 8, 9 and 10 above, to whom protected information is disclosed, shall not disclose that information to any other individual, except as provided in this Order, or use it for any purpose other than in connection with this action. Before any protected information may be disclosed to any person described in Paragraph 9, 10 or 11 above, he or she shall have first read this Order or shall have otherwise been instructed in his or her obligations under the Order by counsel for a party. Additionally, before any protected information may be disclosed to any expert or consultant described in Subparagraph 9(f) or 10(e), he or she shall have executed the agreement included as Appendix A hereto. Counsel for the party making the disclosure shall maintain the original of such executed agreement for a period of at least one year following the final resolution of this action.

13. Notwithstanding the provisions of this Protective Order, nothing in this Order shall:

a. Limit a party's or protected third party's use or disclosure of its own protected information;

b. Prevent disclosure of protected information with the consent of counsel for the designating party or protected third party;

c. Prevent plaintiffs, subject to taking appropriate steps to preserve the confidentiality of such information, from disclosing protected information: (i) to duly-authorized representatives of the Executive Branch of the United States Government; (ii) in the course of legal proceedings to which the United States or any plaintiff State is a party; (iii) for the purpose of securing compliance with any Final Judgment in this action; or (iv) for law enforcement purposes or as otherwise required by law. Unless otherwise prohibited by law or regulation, the plaintiffs will endeavor to promptly inform the party or protected third party who designated the information as protected information if disclosure pursuant to this Paragraph is made.

E. USE OF PROTECTED INFORMATION IN LITIGATION

14. All protected information contained or discussed in any pleading, motion, exhibit, or other paper filed with the Court shall be filed under seal. Where possible, only portions of filings with the court containing protected information shall be filed under seal. Information filed under seal shall be placed in a sealed envelope/box with the endorsements required by the applicable rules of the Court and/or filed in accordance with the electronic filing rules of the Court. The Clerk shall keep such papers under seal until further order of this Court; provided however, that such papers shall be furnished to the Court and to persons and entities who may receive protected information pursuant to the Protective Order. Upon or within **five business days** after the filing of any paper containing protected information, the filing party shall file on the public record a copy of the paper with the protected information deleted.

F. OTHER PROCEDURES

15. If a party believes that another party or protected third party has designated material as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" that is not entitled to

such protection, the party seeking disclosure shall make a good faith attempt to resolve the disagreement over the classification of the material with the protected third party or party. If the parties and/or the protected third party cannot resolve the matter, the party seeking disclosure has the burden to file a motion, notify all parties and affected protected third parties of the filing of the motion, identify each document that is the subject of the motion (e.g., by Bates-number or title, author, recipient and date), and submit the matter to the Court for resolution. In the event that a motion is filed challenging a confidentiality designation, the person designating the material shall respond within **ten business days**. Failure to respond shall constitute a waiver of opposition to the motion. The party that has designated the records as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" shall bear the burden of showing that the materials in question constitute protected information.

16. This Order shall be without prejudice to the right of any party to bring before the Court the question of whether any particular information designated "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" is appropriately designated, or whether any particular information designated "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" is or is not discoverable or admissible evidence at any hearing or trial of this action. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the right of the parties or protected third parties to assert any applicable discovery or trial privilege. No party concedes by complying with this Order that any information designated by any party or protected third party as protected information is in fact confidential as that term is defined in Paragraph 1(a) of this Order. However, no information designated as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" pursuant to this Order shall be disclosed except as provided herein unless and until the Court orders the release of such information from the confidentiality provisions of this Order.

17. Any production of information without its being designated as "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL" shall not thereby be deemed a waiver of any claim of confidentiality as to such information, and the same may thereafter be designated "BUSINESS SENSITIVE" or "HIGHLY CONFIDENTIAL." Upon receiving notice from a

party or protected third party that confidential information has not been previously denominated, all such information shall be redenominated and treated appropriately. Any such subsequent designation, however, shall not apply retroactively to any previously disclosed information for which disclosure was proper when made.

18. This Order shall not apply to information in the public domain or obtained from other sources regardless of whether such information is also contained in materials designated as confidential pursuant to this Order.

19. Upon entry of this Order, the parties shall provide notice and a copy of this Order to all protected third parties who provided them documents or information in this action prior to entry of this Order.

20. The parties, in conducting discovery from non-parties, shall attach to such discovery requests a copy of this Order so as to appraise such non-parties of their rights.

G. PROCEDURES UPON TERMINATION OF LITIGATION

21. Within 90 days after receiving notice of the entry of an order, judgment or decree terminating this action and after the conclusion of any appeals, all persons having received protected information shall, at the election of the party or protected third party who produced the information, either return such material containing such information and all copies thereof to counsel for the party or protected third party that produced it, or destroy all such material and certify that fact in writing. The plaintiffs and their counsel and outside counsel for any defendant shall be entitled to retain court papers, deposition and trial transcripts and exhibits, and attorney-work product (including discovery material containing protected information), provided that plaintiffs' employees, and defendants' outside counsel, and employees of such outside counsel shall not disclose the portions of court papers, deposition transcripts, exhibits or attorney-work product containing protected information to any person except pursuant to court order, or agreement with the party or protected third party that produced the protected information. All protected information returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this Paragraph. Nothing in this provision, however, shall restrict the rights of any Plaintiff to retain and use confidential information for law enforcement

purposes, in accordance with the statutory provisions of the Hart-Scott-Rodino Act, insofar as applicable, or as otherwise authorized by law.

H. RIGHT TO SEEK MODIFICATION

22. The parties reserve the right to apply to the Court for any order modifying this Order or seeking further protections against discovery or other use of protected information. Any protected third party requiring further confidentiality protection than is provided by this Order may petition the Court for a separate order governing disclosure of its confidential material.

23. All hearings in this action, including the trial, will presumptively be open to the public, except that this Court will issue further orders as necessary to protect any protected third party's or party's protected information from improper disclosure.

SO STIPULATED.

Claude F. Scott, Esq. Antitrust Division U.S. Department of Justice 450 Golden Gate Avenue Room 10-0101, Box 36046 San Francisco, CA 94102 (415) 436-6660 (tel.) (415) 436-6683 (fax)	Mark Tobey, Esq. Assistant Attorney General Office of the Attorney General P.O. Box 12548 Austin, Texas 78711-2548	Daniel M. Wall, Esq. Latham & Watkins LLP 505 Montgomery Street 19th Floor San Francisco, CA 94111 (415) 391-0600 (tel.) (415) 395-8095 (fax)
For Plaintiff United States.	**For Plaintiff States.**	**For Defendant Oracle Corp.**

SO ORDERED.

Dated: March __, 2004

Vaughn R. Walker
UNITED STATES DISTRICT JUDGE

APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO JUDICIAL DISTRICT

United States of America, et al., Plaintiffs, v. Oracle Corporation, Defendant.	CASE NO. [INSERT] Filed: [INSERT] **AGREEMENT CONCERNING CONFIDENTIALITY**

I,_____, am employed as a _____ by _____. I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purposes of this litigation.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the Northern District of California solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 2004.

_____
(SIGNATURE)