Claude F. Scott, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
450 Golden Gate Avenue, Rm. 10-0101
San Francisco, CA 94102-3478
(415) 436-6660
(415) 436-6683 (Fax)
Attorneys for Plaintiff the United States of America

Also filed on behalf of 10 Plaintiff States (see signature block)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, et al., Plaintiffs, v. ORACLE CORPORATION Defendant.	CASE NO. C 04-0807 VRW Filed May 26, 2004 Hearing Date: June 2, 2004 **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM DISCUSSING RDB DATABASE DURING TRIAL** **PUBLIC VERSION**

NOTICE OF MOTION

On June 2, 2004, Plaintiffs will move for an Order, pursuant to Fed. R. Civ. P. 37(c)(1), precluding Defendant from introducing evidence or making argument regarding Rdb Database.

RELIEF SOUGHT

Plaintiffs seek the Court's entry of an Order precluding any of Defendant's evidence or testimony, pursuant to Fed. R. Civ. P. 37(c)(1), relating to Oracle's possible discussion of Oracle's Rdb Database software, Oracle's purchase of Rdb Database, or Oracle's actions in relation to Rdb Database.

ISSUES TO BE DECIDED

Whether Defendant's failure to produce documents in response to a narrowly tailored discovery request precludes Defendant from using evidence of the subject matter "at trial, at a hearing, or on a motion" under Fed. R. Civ. P. 37(c)(1)'s "self-executing" provision. This issue is especially relevant when Defendant refused to conduct a search for responsive documents and Defendant's inaction prejudiced Plaintiffs' ability to seek discovery, interviews, or depositions regarding a portion of Defendant's defenses.

STATEMENT OF FACTS

The United States brought this action to challenge Oracle Corporation's ("Oracle") June 2003 proposed acquisition of PeopleSoft, Inc. ("PeopleSoft"). See Compl., ¶ 1. Oracle, PeopleSoft, and SAP AG ("SAP") are the three competitors that supply integrated suites of high function Human Resource Management ("HRM") and high function Financial Management Services ("FMS") software. If the acquisition goes forward, customers' choices for vendors of that software would narrow from three to two. Therefore, Plaintiffs allege in their complaint that the proposed merger "may substantially lessen competition" in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The United States filed its Complaint on February 26, 2004, and discovery opened on March 15, 2004. See Case Management Order of 3/15/04. In its March 12, 2004 Order regarding Plaintiffs production of investigative files, the Court warned that "[i]n view of the accelerated trial schedule, swift and cooperative discovery is imperative. The failure of either party to conduct discovery in that manner invites sanctions under FRCP 37." See Order of 3/12/04 [Docket #23].

Plaintiffs' Complaint, notes that Oracle "cannot demonstrate merger-specific and cognizable efficiencies that would be sufficient to offset the merger's anticompetitive effects." Pls.'s Compl., ¶ 36. In its Answer, Oracle alleged that "substantial efficiencies will result from the combination and integration of Oracle and PeopleSoft." Def.'s Answer, at 24. Oracle further alleged that it would "continue support and enhancement of customers' existing applications." Id. By way of analogy, Oracle has asserted that it would continue support for PeopleSoft's products

following the merger in much the same way it supported the Rdb Database products after Oracle acquired Rdb Database software from Digital Equipment in 1994. [REDACTED][1]

In an effort to prepare for litigation and investigate Oracle's alleged efficiencies, Plaintiffs requested that Oracle produce documents relevant to Oracle's Rdb Database acquisition and its alleged efficiencies. See Ex A: Pls.' Third Request for Production of Documents (4/19/04). Plaintiffs' discovery request read in relevant part:

> 3. All documents that describe, discuss, report on, or analyze any possible or actual efficiencies that you achieved, or failed to achieve, from any acquisition made by your company since [ ] 1994, including Oracle's acquisition of Rdb Database product and service.
>
> 4. All documents from 1994 to the date of this request relating to any statements, opinions, views or concerns of any Rdb Database product customers regarding: (a) Oracle's pricing, marketing, sale or development, or lack thereof, of any Rdb Database products or services, including upgrades and maintenance; (b) the quality of any Rdb Database products or services; or (c) the prices or quality of any product or substitute for, or upgrade to, the acquired products and services.

Id. In response, Oracle served generic boilerplate objections to Specifications 3 and 4 which each stated in relevant part that "Oracle objects to this Request to the extent it seeks information that is *not relevant to a* claim or *defense* of any party . . . ." See Ex. B: Def.'s Response to Pls.' Third Request for Production of Documents at 6 (4/24/04) (emphasis added). Plaintiffs continued seeking the documents during a series of telephone conferences and in letters. See Ex. C: Letter from Steven Kramer to Karen E. Silverman at 2 (4/29/04); Ex. D: Letter from Steven Kramer to Karen E. Silverman (5/05/04). Plaintiffs also agreed to narrow the Specifications to documents relating to only Rdb Database instead of requesting documents relating to the efficiencies of any previous Oracle merger. See Ex. C at 2. Initially, Plaintiffs received no

---

[1][REDACTED]

response to their continued requests for production following receipt of Oracle's objections. Finally, on May 6, 2004, Oracle notified Plaintiffs that it "will not undertake such a search" for responsive documents because any responsive documents would be "of limited or no relevance in any case." See Ex. E: Letter from David M. Friedman to Steven Kramer (5/06/04). Despite its insistence that documents related to Oracle's acquisition of Rdb Database are irrelevant to any claim or defense in the present matter, [REDACTED],[2] and it is likely that Oracle plans to discuss Rdb Database as part of its efficiencies defense, or elsewhere in its case.

ARGUMENT

Defendant should be precluded from offering any evidence, testimony, or argument regarding Rdb Database because it failed entirely to respond to Plaintiffs' legitimate discovery requests designed to elicit relevant information regarding its assertions with respect to Rdb Database. Oracle not only refused to produce any documents responsive to Plaintiffs' requests for Rdb Database related documents, but also declined even to conduct a search to determine whether any such documents even exist. Defendant's refusal to produce relevant documents regarding the Rdb Database acquisition has prejudiced Plaintiffs' ability to investigate and counter Defendant's alleged efficiencies defense. Allowing Defendant to offer any evidence, testimony, or argument "at trial, at a hearing, or on any motion" relating to the Rdb Database would thus be highly prejudicial to Plaintiffs, and would allow Defendant to skirt the applicable discovery rules. Fed. R. Civ. P. 37(c)(1).

Fed. R. Civ. P. 37(c)(1) establishes a self-executing sanction for discovery violations. See Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1028 (9th Cir. 2003) (strictly following Rule 37 to exclude document when it was produced after discovery cut-off date; and after deposition for which document was to be used; and no "substantial justification" given for failure to produce); Fed. R. Civ. P. 37(c)(1) advisory committee notes (1993) ("The revision provides a

---

[2][REDACTED]

self-executing sanction for failure to make a disclosure required by Rule 26(a). . . ."). The Federal Rules of Civil Procedure's discovery rules are intended to bring clarity to the issues, allow the parties to ascertain relevant facts and information, and, ultimately, aid the court to reach its decision. Cf. Hickman v. Taylor, 329 U.S. 495, 500 (1947). Rule 37(c)(1) "gives teeth" to these discovery rules "by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed." Yeti by Molly Ltd. v. Deckers Outdoor Corp., 259 F.3d 110, 1106 (9th Cir. 2001); see Fed. R. Civ. P. 37(c)(1) advisory committee's note (1993) ("This automatic sanction provides a strong inducement for disclosure of material that the disclosing party would expect to use as evidence . . . .").

Rule 37(c)(1) does not require the movant to show "willfulness, fault, or bad faith" unless moving to dismiss the action as the Rule 37 sanction. Id. at 1106. Once the movant demonstrates that Rule 26(a), 26(e)(1), or 26(e)(2) has been violated, the sanction is automatic unless the respondent demonstrates a "substantial justification" for its failure, or shows that the failure was harmless. Id. 1106-07. Failure is harmless only where no prejudice results or prejudice may be cured by production sufficiently in advance of trial. See Pfingston v. Ronan Eng'r Co., 284 F.3d 999, 1005 (9th Cir. 2002) (finding no prejudice when unproduced information was used in defendant's summary judgment motion and summary judgment would have been granted even without the unproduced evidence; recommending that evidence could have been excluded only for summary judgment motion since the information was then disclosed to plaintiff and available for later use); Southern Union Co. v. Southwest Gas Corp., 180 F. Supp. 2d 1021, 1060-61 (D. Ariz. 2002) (finding error harmless when production could take place eight months prior to trial; movant had sufficient time to re-depose respondent's experts; and respondent was ordered to pay movant's associated costs).

Here, the requirements for invoking the automatic sanction contained in Rule 37(c)(1) are plainly met. Oracle failed to produce documents, pursuant to Rule 26(a)(5), sought in Plaintiffs' third document request. Moreover, Oracle refused to conduct a search to establish whether responsive documents existed. See Ex. E. Plaintiffs have diligently sought discovery of these

documents, in light of Oracle's persistent citations to its Rdb Database acquisition as a way to bolster its highly speculative efficiency claims. Plaintiff pursued production of the responsive information during the meet-and-confer process, discussing the issue on several occasions with Oracle and following up with letters requesting production. See Ex. C & D. Plaintiffs' good faith efforts to negotiate with Oracle to resolve this discovery dispute were met with complete immobility on Oracle's part.

Oracle's refusal to respond to Plaintiffs' legitimate discovery regarding Oracle's Rdb Database acquisition prejudices Plaintiffs' case. Without it, Plaintiffs are unable to assess fully Oracle's reliance on the Rdb Database acquisition in connection with its efficiencies claims, nor can Plaintiffs provide documentation to their experts for review, or prepare a complete response to Oracle's defenses. Moreover, Rule 26's requirements would be subverted if Oracle were allowed to present evidence, testimony, or argument at trial about the very topic on which it has flatly refused to provide Plaintiffs with discovery.

Oracle is unable to demonstrate a "substantial justification" for its refusal to produce documents. Oracle objected to the specification, claiming that the documents were irrelevant to a claim or defense in the instant matter, and because the request was "over broad, unduly burdensome, and/or oppressive." See Ex. B at 7. In subsequent discussions between Plaintiffs and Oracle, despite Plaintiffs' willingness to narrow the scope of their request substantially to address Oracle's burden claims, Oracle continued to object to the request, claiming that the documents "are of limited or no relevance . . ." See Ex. E at 1. First, if Oracle truly believes that the information regarding its Rdb Database acquisition is irrelevant to the present matter, it should have no objection to being precluded, pursuant to Rule 37(c)(1), from using such evidence or introducing any testimony or argument relating to he Rdb Database acquisition at trial.[3] As

---

[3]Presumably, Oracle would similarly concede that any evidence regarding Rdb Database is irrelevant to its defenses such that any evidence and testimony on the subject would be inadmissible under Fed. R. Evid. 401 and 402 if offered by Oracle as part of its defense.

Oracle would not face harm from the preclusion of information it considers "irrelevant," there should be no detriment to its defenses.

Second, Oracle should be deemed to have waived its objection that Specifications 3 and 4 are over broad or unduly burdensome because it flatly refuses to conduct a search for documents responsive to Plaintiffs' narrowly tailored discovery requests. See Ex. E at 1. In response to Oracle's claims of burden and over-breadth, Plaintiff agreed to limit the specifications' scope to encompass only documents related to Rdb Database "provided that Oracle will not be drawing on efficiency claims from any other acquisition to bolster its efficiencies claims in this case." See Ex. C at 2. Oracle nevertheless continued to refuse to conduct any search for responsive documents, and aside from offering boilerplate objections has failed to substantiate its objections that Plaintiffs' discovery request is burdensome and over-broad. Oracle's objections to Specification 3 and 4 cannot be sustained in the face of its total refusal to inspect its files. Failing even to attempt to comply with a discovery request is not a substantial justification sufficient to avoid Rule 37(c)(1)'s automatic sanction. L. Tarango Trucking v. County of Contra Costa, 202 F.R.D. 614, 622-23 (N.D. Cal. 2001) (finding no substantial justification when defendant "failed to determine whether the documents existed").

When there is sufficient time prior to trial, courts may order production and extend discovery to permit the movant additional time to cure the failures. Compare Yeti by Molly Ltd., 259 F.3d at 1107 (precluding expert testimony when expert identified only one month before start of trial, allowing no time for plaintiffs to prepare and depose expert); with Southern Union Co., 180 F. Supp. 2d at 1060-61 (denying exclusion when motion filed eight months prior to trial); but see L. Tarango Trucking, 202 F.R.D. at 622-23 (re-opening trial for new testimony to be heard at defendant's expense for Rule 37(c)(1) violation). No opportunity exists to cure Oracle's discovery violations in the present situation because the matter is extremely complex, the discovery period was expedited without sufficient flexibility to extend its deadline, and trial is due to start in just over one week. There is not sufficient time for Oracle to produce the documents, and then allow Plaintiffs to review the documents, re-depose Oracle's designated 30(b)(6)

efficiencies witness, re-depose Oracle's relevant employees regarding Rdb Database, and allow Plaintiffs' experts to yet again supplement their reports in light of Oracle's delayed production. The proper sanction, therefore, is is to preclude Oracle from offering evidence or testimony regarding Rdb Database.

CONCLUSION

Rule 37(c)(1) mandates that Oracle be precluded from proffering "at a trial, at a hearing, or on a motion any witness or testimony not so disclosed" regarding Oracle's acquisition and operation of Rdb Database. To allow otherwise would permit Oracle to circumvent Rule 26(a). Oracle's actions have prejudiced Plaintiffs' trial preparation and no less restrictive alternative other than a Rule 37(c)(1) preclusion is available. For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order barring Oracle from introducing any evidence, testimony, or argument at trial relating to its Rdb Database acquisition.

Respectfully Submitted,

Dated: May 26, 2004

/s/

Claude F. Scott, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 Golden Gate Avenue, Rm. 10-0101
San Francisco, CA 94102-3478
(415) 436-6660
(415) 436-6683 (Fax)

Counsel for Plaintiff
United States of America

Dated: May 26, 2004

/s/

Mark Tobey, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 320-0975 (Fax)

Mark J. Bennett, Esq.
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1600
(808) 586-1239 (Fax)

Timothy E. Moran, Esq.
Assistant Attorney General
Consumer Protection and Antitrust Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2516
(617) 727-5765 (Fax)

Kristen M. Olsen, Esq.
Assistant Attorney General
Office of the Attorney General of Minnesota
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 296-2921
(651) 282-5437 (Fax)

Jay L. Himes, Esq.
Chief, Antitrust Bureau
Office of the Attorney General of New York
120 Broadway, 26th Floor
New York, NY 10271
(212) 416-8282
(212) 416-6015 (Fax)

Todd A. Sattler, Esq.
Assistant Attorney General
Consumer Protection and Antitrust Division
600 E. Boulevard Ave., Dept. 125
Bismark, ND 58505-0040
(701) 328-2811
(701) 328-3535 (Fax)

Steven M. Rutstein, Esq.
Assistant Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5169
(860) 808-5033 (Fax)

Paul F. Novak, Esq.
Assistant Attorney General In Charge
Special Litigation Division
Michigan Department of Attorney General
P.O. Box 30212
Lansing, MI 48909
(517) 335-4809
(517) 373-9860 (Fax)

Mitchell L. Gentile, Esq.
Assistant Attorney General
Antitrust Section
Office of the Attorney General
150 E. Gay St., 20th Floor
Columbus, OH 43215
(614) 466-4328
(614) 995-0266 (Fax)

Ellen S. Cooper, Esq.
Assistant Attorney General
Chief, Antitrust Division
State of Maryland
200 St. Paul Place, 19th Floor
Baltimore, MD 21202
(410) 576-6470
(410) 576-7830 (Fax)

Counsel for Plaintiff States

EXHIBIT A

Claude F. Scott, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
450 Golden Gate Avenue, Rm. 10-0101
San Francisco, CA 94102-3478
Tel. (415) 436-6660
Fax (415) 436-6683

Attorneys for Plaintiff the United States of America

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, *et al.* Plaintiffs, v. ORACLE CORP. Defendant.	Case No: C-04-00807 (VRW) **PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS FROM DEFENDANT ORACLE CORP.**

Pursuant to Fed. R. Civ. P. 34 and paragraph 8.b of the Joint Case Management Order, Plaintiff the United States of America (hereinafter "Plaintiff") hereby serves this Third Request for Production of Documents directed to Defendant Oracle Corp. ("Oracle"). The United States requests that Oracle produce the specified documents within 15 days for inspection and copying by counsel for the United States at the offices of the U.S. Department of Justice, Antitrust Division, Patrick Henry Building, 601 D Street, NW, Suite 1200, Washington, DC 20530.

I. DOCUMENT REQUESTS

1. All documents from November 21, 2003 to the date of this request relating to any possible or actual efficiencies or synergies that might result from the Proposed Transaction, including any possible or actual efficiencies or synergies reflected in the spreadsheet ORCL-EDOC-00189939 -00199154. This request includes all documents relating to:

(a) any calculations of any possible or actual efficiencies or synergies;

(b) any methodology used to calculate any possible or actual efficiencies or synergies;

(c) any underlying data or other information used to calculate any possible or actual efficiencies or synergies; and

(d) any assumptions used in calculating any possible or actual efficiencies or synergies, including any assumption relating to the methodology used to compute, the data underlying or basis for the level of output assumed in the calculation of any possible or actual efficiencies or synergies.

2. All documents from November 21, 2003 to the date of this request relating to any possible or actual costs and expenses of any kind that have been or may be incurred to achieve any possible or actual efficiencies or synergies that might result from the Proposed Transaction. This request includes all documents relating to:

(a) any calculations of the possible or actual cost of achieving any possible or actual efficiencies or synergies;

(b) any methodology used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies;

(c) any underlying data and information used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies; and

(d) any assumptions used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies.

3. All documents that describe, discuss, report on, or analyze any possible or actual efficiencies or synergies that you achieved, or failed to achieve, from any acquisition made by your company since the 1994, including Oracle's acquisition of the Rdb database product and service.

4. All documents from 1994 to the date of this request relating to any statements, opinions, views or concerns of any Rdb database product customers regarding: (a) Oracle's pricing, marketing, sale or development, or lack thereof, of any Rdb database products or

services, including upgrades and maintenance; (b) the quality of any Rdb database products or services; or (c) the prices or quality of any product or service, including upgrades and maintenance, offered by Oracle as a replacement or substitute for, or upgrade to, the acquired products and services.

5. All documents and communications, including but not limited to letters, e-mails, reports, memoranda, analyses, records of payment, contracts, and compensation or consulting agreements from January 1, 2003, until the date of this request relating to the following companies or individuals: (a) Meta Group, Inc.; (b) Dale Kutnick; and (c) Ken Harris.

6. All documents from January 1, 1999 until January 1, 2002, mentioning, describing or otherwise referring to Oracle's efforts to sell, or the sale of, enterprise software, including but not limited to "Account Plan and Prospect Profiles," discount request forms, or other documents related to negotiation of contract terms or prices, or analyzing competing vendors for the following companies or organizations:

AOL Time Warner	Arrow Electronics	BEA Systems
Bed Bath & Beyond, Inc.	Belk, Inc.	Big Lots, Inc.
BNP Paribas	Berlitz International, Inc.	Boeing Company
Brinks Company	Briggs & Stratton	Brinks Company
Casey's General Stores, Inc.	Catholic Healthcare West	Cendant Corporation
Centex Corporation	Charming Shoppes, Inc.	CIGNA Corporation
Clear Channel Comm., Inc.	Cooper Tire & Rubber Company	CH2M Hill Companies, Ltd.
Cotsco Wholesale Corporation	Cox Communications, Inc.	Denver Public Schools
Diebold, Inc.	Dollar General Corporation	Emerson Electric Corp.
Eastman Kodak Company	Fairchild Semiconductor Corp.	Fleetwood Enterprises, Inc.
Flying J. Inc.	Follett Corporation	Foot Locker, Inc.
Ford Motor Company	Fort Worth Transit Authority	France Telecom
Freddie Mac	Gannett Co., Inc.	Gap, Inc.
General Dynamics Corporation	General Electric Company	General Motors
General Chemical Corp.	Georgia-Pacific Corporation	Goody's Family Clothing

Greyhound Lines, Inc.	H. Lee Moffitt Cancer Center	Harman Management Corp.
Handleman Corp.	John Hancock	Johnson & Johnson
Keane, Inc.	Kerr-McGee Corp.	Longs Drug Stores Corporation
Lennar Corporation	Liberty Mutual	McGraw-Hill Companies, Inc.
McKesson Corp.	Manpower, Inc	McDonald's Corporatio
Manulife Financial Corporation	MasterCard	May Department Stores Co.
Mayo Clinic	McCain Foods Limited	MGM Mirage
MedStar Health	The Neiman Marcus Group, Inc.	Nextel, INC.
Nestle S.A.	Newmont Mining Corporation	Novell, Inc.
Nike, Inc.	Office Depot, Inc.	Omnicom Group, Inc.
Owens Illinois	Owens Corning	Pansonic
Pepsi Co.	Pentair, Inc.	Pulte Homes, Inc.
Quebecor, Inc.	Rent-A-Center, Inc	Safeway
Sara Lee Corporation	Sears Roebuck & Co.	Service Corp. International
Siemens AG	Sinoche	Sports Authority, Inc.
Stein Mart, Inc.	Sun Healthcare Group, Inc.	Target Corporation
Tecumseh Products Company	TIAA-CREF	Triad Hospitals, Inc.
Trinity Mirror plc	TXU Corporation	Silgan Holdings, Inc.
Smithfield Foods, Inc.	Solutia, Inc.	United Parcel Service of America
Universal Health Services, Inc.	USF Corporation	United States Dept. of Defense
Charles Schwab & Co., Inc.	Valero Energy Corporation	Verizon Communications
Walgreen Co.	Waste Management, Inc.	WestPoint Stevens, Inc.
Weyerhauser Company	Worker Benefit Plans/Lutheran Church	Apartment Investment Management Co.
Esselte Corporation	Six Flags, Inc.	AmeriKing
Sunoco Products Co [or any subsidiary]	CDI Corporation	Perkin Elmer
GMAC		

7. All communications from November 21, 2003 to the date of this request related to the Proposed Acquisition between Oracle and Diebold, Inc. or Fairchild Semiconductor Corp., including but not limited to communications from or directed to Oracle sales personnel.

8. All communications from January 1, 2003 to the date of this request relating to the Proposed Acquisition between Oracle and any customer in the possession, custody or control of Linda Strawser.

II. DEFINITIONS

1. The terms "you," "your company" or "Oracle" mean Oracle Corporation, its predecessors, successors, divisions, subsidiaries, affiliates, partnerships and joint ventures and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," affiliate" and "joint venture" refer to any person in which there is or has been partial (20 percent or more) or total ownership or control between your company and any other person at any time from January 1, 2002, to the present.

2. The term "acquisition" means any acquisition by Oracle of at least fifty percent (50%) of the voting stock or assets of another company by merger or any other means, or the acquisition of any product or service of another company, including Oracle's acquisition of Digital Equipment Corporation's Rdb database product and service.

3. The term "documents" means all written, recorded, or graphic material, whether prepared by your company or by any other person, that is in your company's possession, custody, or control, including but not limited to: papers, memoranda, reports, letters, facsimiles, telegrams, voicemails, electronic mail, other electronic correspondence, and other communications recorded in any form or medium; notes, minutes, recordings, and transcripts of meetings, conferences, and teleconferences; maps, diagrams, graphs, charts, and other drawings; plans and specifications; publications; photocopies, microfilm, and other copies or reproductions; tapes, disks, Personal Digital Assistants, and other electronic storage media; computer printouts; tallies, tabulations, and summaries of sales or bids. The term "document" includes all drafts of a document, including all copies that differ in any way from the original

(including any notations, underlining, or other markings). The term "document" also includes all data stored in electronic form or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret that data. Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, and other similar documents of a purely transactional nature.

4. The term "including" means including but not limited to.

5. The term "Proposed Acquisition" means any possible or actual proposal to combine Oracle and PeopleSoft, including but not limited to Oracle's proposals to acquire PeopleSoft announced on June 6, 2003, June 18, 2003, and February 4, 2004.

6. The term "relating to" means, in whole or in part, discussing, describing, pertaining to, referring or alluding to, reflecting, containing, analyzing, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, or concerning.

7. The term "communication" means any disclosure, transfer, or exchange of information or opinion, formal or informal, however made.

8. The terms "any" and "all" include "each" and "every."

9. The terms "and" and "or" have both conjunctive and disjunctive meanings.

10. Any terms, whether singular or plural, has both singular and plural meanings.

11. Any references to corporations include all divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives thereof.

III. INSTRUCTIONS

1. The information and documents requested by this schedule are information and documents, in the possession, control, or custody of your company, that were applicable, effective, prepared, written, sent, dated, or received within the date range specified by the requests herein.

2. In responding to this document request, Oracle need not produce for a second time a document that was previously produced by Oracle to the Department of Justice during its

investigation of the Proposed Acquisition or in response to a previous discovery request in this action.

3. Pursuant to Paragraph 8.b of the Case Management Order, objections to these requests, if any, shall be served within 5 days of the service of this document request and responsive documents shall be produced within 15 days of the service of this document request.

4. In producing documents, please segregate documents into groups that are responsive to each request. Otherwise, documents should be produced in the manner in which they are found in your files. Documents found attached or joined to other documents by staple, clip, binder, binding, file folder, computer file, or directory should be produced to the United States in the manner in which they were originally found. The company may submit photocopies (with color photographs where necessary to interpret the document) in lieu of original documents, provided that such copies are true, correct, and complete copies of the original documents. The Department of Justice is also willing to accept electronic productions. However, you must contact the attorneys for the government in this matter to determine, with the assistance of the appropriate government technical officials, whether the proposed data formats and choices of media will be compatible with government equipment and resources.

5. Number each box and mark each box with corporate identification and the name(s) of the person(s) whose files are contained in that box. Mark each document page produced with corporate identification and consecutive document control numbers.

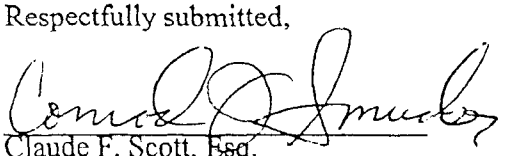
6. If compiled by your company, provide a master list showing: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that person's documents.

7. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof in the form of a log that includes for each withheld document: the document control number(s); all author(s), addressee(s), and recipients of the original and any copies (with an indication as to which individuals are attorneys); the date; a description of the subject matter of the communication; the steps taken to ensure the confidentiality of the privileged communication (including affirmation

that no unauthorized persons have received the communication); and the document request number(s) to which the document is responsive.

Dated: April 19, 2004

Respectfully submitted,



Claude F. Scott, Esq.
Conrad J. Smucker, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 Golden Gate Avenue, Rm. 10-0101
San Francisco, CA 94102-3478
Tel. (415) 436-6660
Fax (415) 436-6683

Attorneys for Plaintiff the United States of America

Claude F. Scott, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
450 Golden Gate Avenue, Rm. 10-0101
San Francisco, CA 94102-3478
Tel. (415) 436-6660
Fax (415) 436-6683

Attorneys for Plaintiff the United States of America

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, *et al.* Plaintiffs, v. ORACLE CORP. Defendant.	Case No: C-04-00807 (VRW) **PROOF OF SERVICE**

PROOF OF SERVICE
United States of America, et al. v. Oracle Corporation
U.S.D.C., Northern District, San Francisco Division, Case No. C 04-0807 VRW

I am employed in Washington, D.C. I am over the age of 18 years and not a party to this action. My business address is 601 D St., NW, Suite 1200, Washington, DC 20530.

On **April 19, 2004**, I served a true copy of the document(s) described as:

- **PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT ORACLE CORP.**

to the parties listed below and in the following manner described preceding each list of recipients:

The following parties were served **electronically** by simultaneously filing the attached document(s) with the United States District Court, Northern District of California, Case No. 04-CV-00807 VRW:

- Stephen D. Alexander alexast@ffhsj.com
- Jason T. Anderson janderson@carrferrell.com
- Alan Michael Barr abarr@oag.state.md.us
- Rodney I. Kimura Rodney.i.Kimura@hawaii.gov
- Theresa K. Hankes hankes.theresa@dorsey.com
- Jay Himes jay.himes@oag.state.ny.us
- Joshua Holian joshua.holian@lw.com
- Gary Honick ghonick@oag.state.md.us
- Chad S. Hummel chummel@manatt.com
- Hway-Ling Hsu hhsu@be-law.com
- Zachary Samuel McGee zsmcgee@dpw.com
- Timothy E. Moran timothy.moran@ago.state.ma.us
- Andrew Thomas Mortl amortl@glynnfinley.com
- Kristen Marie Olsen kristen.olsen@state.mn.us
- Todd A. Sattler tsattler@state.nd.us
- Karen Silverman karen.silverman@lw.com
- John Robert Tennis jtennis@oag.state.md.us
- Mark Bernard Tobey mark.tobey@oag.state.tx.us
- Daniel Wall dan.wall@lw.com

I declare that I am a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury that the foregoing is true and correct.

Executed on **April 19, 2004**, at Washington, D.C.

/S/
Conrad J. Smucker

EXHIBIT B

LATHAM & WATKINS LLP
J. Thomas Rosch (Bar No. 37668)
Gregory P. Lindstrom (Bar No. 82334)
Daniel M. Wall (Bar No. 102580)
505 Montgomery Street, Suite 1900
San Francisco, California 94111-2562
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

ORACLE CORPORATION
Dorian Daley (Bar No. 129049)
Jeffrey S. Ross (Bar No. 138172)
500 Oracle Parkway, 7th Floor
Redwood Shores, California 94065
Telephone: (650) 506-5200
Facsimile: (650) 506-7114

Attorneys for Defendant
Oracle Corporation

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 Filed: **DEFENDANT'S RESPONSE TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

REQUESTING PARTY: PLAINTIFF, UNITED STATES OF AMERICA

RESPONDING PARTY: DEFENDANT, ORACLE CORPORATION

SET NO.: THREE

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and the Court's March 15, 2004 Case Management Order, Defendant Oracle Corporation ("Oracle") hereby responds to Plaintiff's Third Set of Requests for Production of Documents ("Third RFPs") as follows:

PRELIMINARY STATEMENT

Oracle continues to object to the overall manner in which Plaintiff is conducting written discovery in this matter. Plaintiff's "Third RFPs" are the latest in a series of broad, burdensome requests for documents. Most of the specific requests are completely duplicative of previous requests. For instance, the Third RFPs seek communications with certain customers regarding the Proposed Acquisition. Oracle was already obligated to produce these communications as part of its initial disclosures and has done so. *See* Case Management Order ¶ 4.b.1 (March 15, 2004). Also, and only by way of example, the Third RFPs seek certain discount approval forms. Oracle has already produced 188 boxes (and an electronic database) of these forms as part of its initial disclosures. *See id.* ¶ 4.b.4. Oracle also produced these and similar documents in response to the Second RFPs. There is simply no legitimate reason for Plaintiff to propound successive requests seeking documents it already has. Plaintiff should be required to now actually review the documents that Oracle has produced, rather than blindly requiring Oracle to produce documents repeatedly.

To the extent these requests are not entirely duplicative of earlier ones, Oracle objects to the unnecessary, seriatim approach that Plaintiff has taken. These requests could (and should) have been propounded earlier, if at all, along with Plaintiff's earlier overlapping requests. Numerous Oracle employees and executives have already had their files searched by counsel four separate times to satisfy Plaintiff's previous litigation and investigative demands. Combined, over one million pages have been produced from their files. Oracle does not contest its general obligation to provide discovery, however, the serial and generally duplicative nature of these requests has become unduly burdensome to the point of abuse.

Oracle submits that given the voluminous production of documents already produced to Plaintiff, there is no valid basis for further broad document requests to Oracle. Consistent with that, Oracle will produce documents responsive to the appropriately particularized requests

identified below. Oracle will seek to meet and confer with Plaintiff to narrow and clarify these specific requests accordingly. Should that effort fail, Oracle will move for a protective order.

GENERAL OBJECTIONS

1. Oracle generally objects to each request to the extent it seeks information protected from disclosure by the attorney-client or work-product privileges. Oracle further objects to each request to the extent that it seeks information prepared in anticipation of litigation or for trial of this or any matter. Oracle will provide information which it believes is non-privileged and is otherwise properly discoverable. By providing such information, Oracle does not waive any privileges. To the extent that a request may be construed as seeking such privileged or protected information or documents, Oracle hereby claims such privilege and invokes such protection. The fact that Oracle does not specifically object to an individual request on the ground that it seeks such privileged or protected information or documents shall not be deemed a waiver of the protection afforded by the attorney-client privilege, the attorney work product doctrine or other applicable privilege or protection.

2. Oracle generally objects to each request to the extent it seeks information that is not relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.

3. Oracle generally objects to each request to the extent that it is overly broad, unduly burdensome, and/or oppressive.

4. Oracle generally objects to each request to the extent that it is vague and/or ambiguous. Where possible, however, Oracle will make reasonable assumptions as to Plaintiff's intended meaning and will respond accordingly, while preserving its objections as to vagueness, ambiguity, and uncertainty.

5. Oracle's responses herein are based only upon facts known at this time. Discovery in this matter is ongoing, and during the course of subsequent discovery, Oracle may become aware of additional information which may be responsive to the requests. Oracle reserves the right to update, amend, or supplement these responses. In addition, these responses are made without prejudice to Oracle's right to present additional evidence or contentions at trial

based upon information hereafter obtained or developed.

6. Oracle objects to the definitions and instructions set forth in Plaintiff's requests to the extent that they purport to impose requirements other than those in or in addition to the requirements of the Federal Rules of Civil Procedure and the Local Rules of this Court.

7. Oracle objects to each request to the extent it seeks information already in Plaintiff's possession, custody or control, or available to Plaintiff from public sources.

8. Oracle's responses are made without waiving, in any way: (1) the right to object on any basis permitted by law to the use of any such information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any basis permitted by law to any other discovery request or proceeding involving or relating to the subject matter of these responses.

9. Oracle objects to each request to the extent it seeks information previously produced to Plaintiff during Plaintiff's Investigation of the Proposed Acquisition ("Plaintiff's Investigation"), in the Initial Disclosures made by Oracle in this litigation, in response to Plaintiff's First Request for Production of Documents, or otherwise. Oracle is in the process of performing a reasonable search for any additional responsive documents not previously produced that are within its custody or control, and Oracle will produce additional non-privileged responsive documents to the extent they exist, are within Oracle's custody or control, and are discovered after a reasonable search.

10. Oracle objects to each request insofar as Plaintiff has made no effort to particularize its requests or articulate its need for the discovery.

11. Oracle objects to each request insofar as Plaintiff has propounded it other than for legitimate purposes of discovery.

12. Defendant incorporates by reference all of these general objections into each specific response, below

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All documents from November 21, 2003 to the date of this request relating to any

possible or actual efficiencies or synergies that might result from the Proposed Transaction, including any possible or actual efficiencies or synergies reflected in the spreadsheet EDOC-00189939 -00199154. This request includes all documents relating to:

(a) any calculations of any possible or actual efficiencies or synergies;

(b) any methodology used to calculate any possible or actual efficiencies or synergies;

(c) any underlying data or other information used to calculate any possible or actual efficiencies or synergies; and

(d) any assumptions used in calculating any possible or actual efficiencies or synergies, including any assumption relating to the methodology used to compute, the data underlying or basis for the level of output assumed in the calculation of any possible or actual efficiencies or synergies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges and to the extent it seeks premature expert discovery. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests. Oracle further objects to this Request as it is overly broad, unduly burdensome, and/or oppressive.

Subject to and without waiving these objections or the general objections stated above, and following a meet and confer to learn, among other things, what Plaintiff is seeking that has not already been produced, Oracle will conduct a reasonable search and produce non-privileged documents responsive to this Request that are within its possession, custody, and control, if any, that have not yet been produced.

REQUEST FOR PRODUCTION NO. 2:

All documents from November 21, 2003 to the date of this request relating to any Possible or actual costs and expenses of any kind that have been or may be incurred to achieve any possible or actual efficiencies or synergies that might result from the Proposed Transaction.

This request includes all documents relating to:

(a) any calculations of the possible or actual cost of achieving any possible or actual efficiencies or synergies;

(b) any methodology used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies;

(c) any underlying data and information used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies; and

(d) any assumptions used to calculate any possible or actual costs of achieving any possible or actual efficiencies or synergies.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges and to the extent it seeks premature expert discovery. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests. Oracle further objects to this Request as it is overly broad, unduly burdensome, and/or oppressive.

Subject to and without waiving these objections or the general objections stated above, and following a meet and confer to learn, among other things, what Plaintiff is seeking that has not already been produced, Oracle will conduct a reasonable search and produce non-privileged documents responsive to this Request that are within its possession, custody, and control, if any, that have not yet been produced.

REQUEST FOR PRODUCTION NO. 3:

All documents that describe, discuss, report on, or analyze any possible or actual efficiencies or synergies that you achieved, or failed to achieve, from any acquisition made by your company since the 1994, including Oracle's acquisition of the Rdb database product and service.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous

requests. Oracle objects to this Request to the extent it seeks information that is not relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence. Oracle further objects to this Request as it is overly broad, unduly burdensome, and/or oppressive.

REQUEST FOR PRODUCTION NO. 4:

All documents from 1994 to the date of this request relating to any statements, opinions, views or concerns of any Rdb database product customers regarding: (a) Oracle's pricing, marketing, sale or development, or lack thereof, of any Rdb database products or services, including upgrades and maintenance; (b) the quality of any Rdb database products or services; or (c) the prices or quality of any product or service, including upgrades and maintenance, offered by Oracle as a replacement or substitute for, or upgrade to, the acquired products and services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests. Oracle objects to this Request to the extent it seeks information that is not relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence. Oracle further objects to this Request as it is overly broad, unduly burdensome, and/or oppressive.

REQUEST FOR PRODUCTION NO. 5:

All documents and communications, including but not limited to letters, e-mails, reports, memoranda, analyses, records of payment, contracts, and compensation or consulting agreements from January 1, 2003, until the date of this request relating to the following companies or individuals: (a) Meta Group, Inc.; (b) Dale Kutnick; and (c) Ken Harris.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous

requests. Oracle further objects to this Request to the extent it seeks information that is not relevant to a claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections or the general objections stated above, and following a meet and confer to learn, among other things, what Plaintiff is seeking that has not already been produced, Oracle will conduct a reasonable search and produce non-privileged documents responsive to this Request that are within its possession, custody, and control, if any, that have not yet been produced.

REQUEST FOR PRODUCTION NO. 6:

All documents from January 1, 1999 until January 1, 2002, mentioning, describing or otherwise referring to Oracle's efforts to sell, or the sale of, enterprise software, including but not limited to "Account Plan and Prospect Profiles," discount request forms, or other documents related to negotiation of contract terms or prices, or analyzing competing vendors for the following companies or organizations:

AOL Time Warner	Arrow Electronics	BEA Systems
Bed Bath & Beyond, Inc.	Belk, Inc.	Big Lots, Inc.
BNP Paribas	Berlitz International, Inc.	Boeing Company
Brinks Company	Briggs & Stratton	Brinks Company
Casey's General Stores, Inc.	Catholic Healthcare West	Cendant Corporation
Centex Corporation	Charming Shoppes, Inc.	CIGNA Corporation
Clear Channel Comm., Inc.	Cooper Tire & Rubber Company	CH2M Hill Companies, Ltd.
Costco Wholesale Corporation	Cox Communications, Inc.	Denver Public Schools
Diebold, Inc.	Dollar General Corporation	Emerson Electric Corp.
Eastman Kodak Company	Fairchild Semiconductor Corp.	Fleetwood Enterprises, Inc.
Flying J. Inc.	Follett Corporation	Foot Locker, Inc.
Ford Motor Company	Fort Worth Transit Authority	France Telecom
Freddie Mac	Gannett Co., Inc.	Gap, Inc.

General Dynamics Corporation	General Electric Company	General Motors
General Chemical Corp.	Georgia-Pacific Corporation	Goody's Family Clothing
Greyhound Lines, Inc.	H. Lee Moffitt Cancer Center	Harman Management Corp.
Handleman Corp.	John Hancock	Johnson & Johnson
Keane, Inc.	Kerr-McGee Corp.	Longs Drug Stores Corporation
Lennar Corporation	Liberty Mutual	McGraw-Hill Companies, Inc.
McKesson Corp.	Manpower, Inc	McDonald's Corporation
Manulife Financial Corporation	MasterCard	May Department Stores Co.
Mayo Clinic	McCain Foods Limited	MGM Mirage
MedStar Health	The Neiman Marcus Group, Inc.	Nextel, INC.
Nestle S.A.	Newmont Mining Corporation	Novel, Inc.
Nike, Inc.	Office Depot, Inc.	Omnicom Group, Inc.
Owens Illinois	Owens Coming	Panasonic
Pepsi Co.	Pentair, Inc.	Pulte Homes, Inc.
Quebecor, Inc.	Rent-A-Center, Inc	Safeway
Sara Lee Corporation	Sears Roebuck & Co.	Service Corp. International
Siemens AG	Sinoche	Sports Authority, Inc.
Stein Mart, Inc.	Sun Healthcare Group, Inc.	Target Corporation
Tecumseh Products Company	TIAA-CREF	Triad Hospitals, Inc.
Trinity Mirror plc	TXU Corporation	Silgan Holdings, Inc.
Smithfield Foods, Inc.	Solutia, Inc.	United Parcel Service of America
Universal Health Services, Inc.	USF Corporation	United States Dept. of Defense
Charles Schwab & Co., Inc.	Valero Energy Corporation	Verizon Communications
Walgreen Co.	Waste Management, Inc.	WestPoint Stevens, Inc.
Weyerhauser Company	Worker Benefit Plans/Lutheran Church	Apartment Investment Management Co.
Esselte Corporation	Six Flags, Inc.	AmeriKing

Sunoco Products Co [or any subsidiary]	CDI Corporation	Perkin Elmer
GMAC		

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests. Oracle further objects to this Request as it is overly broad, unduly burdensome, and/or oppressive.

REQUEST FOR PRODUCTION NO. 7:

All communications from November 21, 2003 to the date of this request related to the Proposed Acquisition between Oracle and Diebold, Inc. or Fairchild Semiconductor Corp., including but not limited to communications from or directed to Oracle sales personnel.

RESPONSE FOR PRODUCTION NO. 7:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle further objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests.

REQUEST FOR PRODUCTION NO. 8:

All communications from January 1, 2003 to the date of this request relating to the Proposed Acquisition between Oracle and any customer in the possession, custody or control of Linda Strawser.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Oracle objects to this Request to the extent it seeks information protected from disclosure by the attorney-client or work product privileges. Oracle further objects to the extent this Request calls for information previously produced to Plaintiff and because it is duplicative of previous requests.

Subject to and without waiving these objections or the general objections stated above,

and following a meet and confer to learn, among other things, what Plaintiff is seeking that has not already been produced, Oracle will conduct a reasonable search and produce non-privileged documents responsive to this Request that are within its possession, custody, and control, if any, that have not yet been produced.

Dated: April 24, 2004

Respectfully submitted,

LATHAM & WATKINS LLP

By _____

Attorneys for Defendant
Oracle Corporation

EXHIBIT C

U.S. Department of Justice

Antitrust Division

601 D Street, N.W.
Suite 1200
Washington, D.C. 20004

Telephone (202) 307-0997
Telecopier (202) 616-9937

April 29, 2004

VIA E-MAIL

Ms. Karen E. Silverman
Latham & Watkins LLP
505 Montgomery Street, Suite 1900
San Francisco, CA 94111-2562

Re: United States et al. v. Oracle Corp., C-04-00807 VRW (N.D. Cal.)

Dear Karen:

Based on our telephone conversations on the afternoons of April 26, 27, and 28, 2004, this letter seeks to confirm my understanding of the status of our negotiations of Oracle's objections and anticipated production in response to Plaintiff's Third Request for Production of Documents. I have set forth my understanding for each request as indicated with the parenthetical included solely for descriptive purposes. Please provide your response indicating any disagreement or follow-up.

Requests 1 and 2 (Efficiencies)

In our telephone conversation yesterday, David Friedman told me that he has now verified that Oracle has previously produced all documents in its possession that are responsive to these requests. Specifically, in the context of Josh Soven's April 26 e-mail to you, we understand David's representation to mean that Oracle has previously produced (at ORCL-EDOC-00189939-190154) Oracle's most recent calculations of the cost savings and synergies that Oracle believes its acquisition of PeopleSoft would produce.

David added that CSFB may have more recent documents that are responsive to these requests. We have been unable to verify whether CSFB, which is acting on behalf of Oracle, has performed more recent calculations of such cost savings and synergies. We consequently request that Oracle determine whether such documents do exist at CSFB and either obtain all such documents from CSFB and produce them on to us on May 3 in response to these requests or ensure that CSFB has produced and identified in its production tomorrow the Bates numbers of the documents containing the most recent calculations of the cost savings and synergies that Oracle believes its acquisition of PeopleSoft would produce.

Request 3 (Synergies from prior acquisitions)

In response to concerns you have raised, we are offering to limit the scope of this request to Oracle's acquisition of its Rdb database product, provided that Oracle will not be drawing on efficiency claims from any other acquisition to bolster its efficiency claims in this case. You have balked at producing anything in response to this request, even if limited to the Rdb database acquisition, but you have said you are attempting to find an "efficient" way of searching for responsive documents to the request as limited. We await word from you on whether you will be searching for and producing responsive documents connected with the Rdb database acquisition.

Request 4 (Rdb database customer documents)

Similar to your position regarding Request 3, you have said you are attempting to find an "efficient" way of searching for responsive documents, while balking at producing anything. We await word from you on whether you will be searching for and producing responsive documents.

Request 5 (documents relating to Meta Group, Dale Kutnick, and Ken Harris)

You have stated you will produce all documents relating to communications relating to the transaction with the above entity and persons. You have declined to produce responsive documents that are internal to Oracle, stating they are privileged. I have asked that you produce responsive internal Oracle documents that are not privileged (and that have not been produced previously in the case of Meta Group) and that you include the withheld, privileged documents on the privilege log.

Request 6 (Competitive information regarding specified companies)

Until our conversation yesterday, I can say with understatement that you had left me with the impression you would refuse to produce any responsive documents, based primarily on claims that the discovery was too late and is irrelevant. I attempted to explain repeatedly over our three conversations that the companies listed were drawn largely from third-party subpoenas Oracle had issued for the equivalent information, and additionally from companies either listed on a witness list or from which Oracle had obtained statements and who might yet appear as witnesses for Oracle. As of our conversation yesterday afternoon, I understand you may be willing to produce responsive information that can be accessed in a centralized fashion, but are unwilling to canvass the sales force. I told you we would not seek a search of the Oracle sales force for responsive documents. You asked that I specify the types of documents we seek. We seek HQAPPS discount request/approval forms and other responsive documents that are kept in centralized files for the companies listed. We have also offered to reduce the number of companies listed, depending on their status as supplying possible witnesses to Oracle, and identified them to you yesterday. I also offered to move the time frame for responsive documents up to 1/1/2000 for the listed companies connected solely with Oracle's document subpoena to Lawson's because that subpoena sets the compliance period from 1/1/2000, rather than 1/1/1999.

Request 7 (communications with Diebold and Fairchild)

Based on our understanding that Oracle will not be presenting testimony either live or by deposition from an employee of either Diebold or Fairchild Semiconductor, we have agreed that Oracle need not respond to this request.

Request 8 (Linda Strawser transaction-related customer communications documents)

You have assured us that responsive documents in Ms. Strawser's files have already been produced. To the extent Ms. Strawser has recently created or received responsive documents that were not produced in prior productions, as a matter of timing, please ensure that they are produced in response to this request.

We look forward to your response to this letter and to Oracle's production of responsive documents on May 3, 2004.

Sincerely yours,

Steven Kramer

EXHIBIT D

U.S. Department of Justice

Antitrust Division

601 D Street, N.W.
Suite 1200
Washington, D.C. 20004

Telephone (202) 307-0997
Telecopier (202) 616-9937

May 5, 2004

VIA E-MAIL

Ms. Karen E. Silverman
Latham & Watkins LLP
505 Montgomery Street, Suite 1900
San Francisco, CA 94111-2562

Re: United States et al. v. Oracle Corp., C-04-00807 VRW (N.D. Cal.)

Dear Karen:

This letter follows up on my letter of April 29, 2004, regarding Oracle's objections and anticipated response to Plaintiff's Third Request for Production of Documents. As you know, we attempted to work with you to address Oracle's objections. To my knowledge, we have received neither a response to my letter nor, more important, a response to the Request, which was due yesterday (rather than May 3, as I inadvertently stated in my April 29 letter).

Please let us know the status of Oracle's response as soon as possible.

Sincerely yours,

Steve Kramer

Steven Kramer

EXHIBIT E

505 Montgomery Street, Suite 1900
San Francisco, California 94111-2562
Tel: (415) 391-0600 Fax: (415) 395-8095
www.lw.com

LATHAM&WATKINS LLP

FIRM / AFFILIATE OFFICES
Boston, Brussels, Chicago, Frankfurt, Hamburg, Hong Kong, London, Los Angeles, Milan, Moscow, New Jersey, New York, Northern Virginia, Orange County, Paris, San Diego, San Francisco, Silicon Valley, Singapore, Tokyo, Washington, D.C.

May 6, 2004

VIA E-MAIL

Steven Kramer, Esq.
Antitrust Division, Department of Justice
Patrick Henry Building
601 D Street NW, Suite 1200
Washington, D.C. 20350

Re: *United States et al. v. Oracle Corporation*, N.D. Cal. C 04-0807 VRW

Dear Steven:

I am writing in response to your letter of May 5, 2004 concerning Plaintiff's Third Request for Production of Documents ("RFP"). I will discuss each RFP in turn.

Regarding RFPs Nos. 1 and 2, responsive documents have already been produced by Oracle. Many of these of the documents have been identified in Oracle's Response to Plaintiff's Third Set of Interrogatories. In addition, these "efficiency" materials are being produced by Credit Suisse First Boston ("CSFB"). The most recent "efficiency" document was produced to you by CSFB on May 5, 2004.

Regarding RFPs Nos. 3 and 4, Oracle determined there is no centralized source for the documents requested, even as confined to the rdb database acquisition, and to locate any potentially responsive documents would require a company-wide search. As you know, the rdb database acquisition occurred in 1994—ten years ago. Many documents regarding the efficiencies of this acquisition would have been destroyed long ago (in the ordinary course), so even if Oracle were to perform that search, it likely would not yield very much. It is unduly burdensome for Oracle to conduct a company-wide search for documents under these circumstances and that are of limited or no relevance in any case. Consequently, Oracle will not undertake such a search.

Documents in response to RFP No. 5 have already been produced to you. In addition, Ken Harris has produced documents in response to the government's subpoena.

As to RFP No. 6, the burden of producing these documents is excessive. Oracle already has produced hundreds of thousands of pages containing similar information in response to the initial disclosures and DOJ's First and Second Requests for Production of Documents. These documents were dated from January 1, 2002, as the government specifically requested. Now, one month before trial, even as 'limited' in your letter, DOJ wants Oracle to re-search its files for

this information dating back until January 1, 2000. Oracle has determined that information is not readily identified, collected or reviewed, and Oracle will not undertake yet another, burdensome search for this historical information.

Regarding RFP No. 7, Oracle will not be presenting live or deposition testimony from Diebold or Fairchild Semiconductor. Therefore, as we agreed, Oracle will not be producing documents responsive to this Request.

Finally, as to RFP No. 8, communications with customers regarding the proposed Acquisition between Oracle and any customer would have been produced as part of the initial disclosures (*see.* Case Management Order ¶ 4.b.1), the First Requests for Production of Documents (RFP No. 3), and the Second Request for Production of Documents (RFP No. 8). Ms. Strawser is no longer with the Company and her responsive materials either were produced already or are duplicative of materials that were produced already.

Very truly yours,

David M. Friedman
of LATHAM & WATKINS LLP