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 04-00807 VRW **JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER**

In accordance with Civil Local Rule ("L.R.") 16-9, the parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order. Except as otherwise stated herein, the parties are in agreement as to the provisions of this Order. The parties request that the Court adopt the non-disputed provisions of this Order as the Case Management Order in this case and, as to disputed provisions (indicated herein in italics), request that the Court determine which of the conflicting provisions suggested by each side should be included in the final Order. Unless otherwise indicated, all time frames referenced herein refer to calendar days.

DESCRIPTION OF THE CASE

1. This action arises from an unsolicited bid by Defendant Oracle Corporation ("Oracle") to acquire PeopleSoft, Inc. ("PeopleSoft") (hereinafter referred to as the "Proposed Acquisition"). Oracle and PeopleSoft each is a party to the Proposed Acquisition. Both Oracle and PeopleSoft sell enterprise software applications to enterprises, institutions, organizations and government units throughout the United States, including integrated Human Resource Management ("HRM") and Financial Management Service ("FMS") software. Since June 2003, the United States and each of the seven Plaintiff States (collectively, "Plaintiffs") have been investigating the Proposed Acquisition (hereinafter, collectively "Plaintiffs' Investigation").

2. The principal legal issue is whether or not the Proposed Acquisition would likely substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiffs maintain that the Proposed Acquisition would likely substantially lessen competition in the sale of high function HRM and FMS software, and result in higher prices, less functionality and decreased support. Oracle maintains that the Proposed Acquisition would likely not substantially lessen competition in the sale of high function HRM and FMS software and will, instead, result in improved products at reduced costs to customers.

ALTERNATIVE DISPUTE RESOLUTION

3. The parties request that this case be exempted from participating in any Alternative Dispute Resolution ("ADR") process because they believe that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources consumed by its use.

INITIAL DISCLOSURES

4. In lieu of initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1):

a. Plaintiffs' initial disclosures:

1. Under the terms and conditions set forth below, Plaintiffs shall produce to Defendant all correspondence, documents, data, email, statements, declarations, affidavits, oral examination transcripts, depositions or any other materials, whether in hard-copy or electronic form, exchanged between Plaintiffs and any non-party in the course of Plaintiffs' Investigation of the Proposed Acquisition (collectively, Plaintiffs' "Investigation Materials"). Plaintiffs shall produce these Investigation Materials regardless of whether those materials were received informally or through compulsory process, such as a subpoena or Civil Investigative Demand. To the extent not covered by the above, Plaintiffs also shall, under the terms and conditions set forth below, produce all correspondence, documents, data, email, statements, declarations, affidavits, oral examination transcripts, depositions or any other materials exchanged between Plaintiffs and PeopleSoft, a party to the Proposed Acquisition, or its counsel. Plaintiffs are not required to produce documents or other written materials originally received from Defendant back to the Defendant. This Paragraph shall not be construed as requiring the

production of Plaintiffs' attorney work product, confidential attorney-client communications, or materials subject to the deliberative process or any other governmental privilege.

2. Except as otherwise provided by the Protective Order and consistent with the terms of Paragraph 9 below, the disclosures set forth in Paragraph 4.a.1 shall commence forthwith upon entry of the Protective Order by the Court, shall be made on a rolling basis, and shall be completed within 10 business days of the entry of the Protective Order.

Plaintiffs propose the following language:

3. By no later than March 22, 2004, Plaintiffs' side shall serve upon Defendant a list of those organizations (e.g., corporations and government entities) that Plaintiffs believe are likely to have discoverable information that Plaintiffs may use to support their claims or defenses.

Defendant proposes the following language:

3. To permit timely third party discovery by Defendant, Plaintiffs' side shall also serve upon Defendant by no later than March 22, 2004, a list of those organizations (e.g., corporations and government entities) that Plaintiffs believe are like to provide witnesses who would testify at trial on Plaintiffs' behalf, live or by deposition.

b. Defendant's initial disclosures:

1. Under the terms and conditions set forth below, Defendant shall produce to Plaintiffs two sets of copies of all correspondence, documents, data, email, statements, declarations, affidavits, oral examination transcripts, depositions or any other materials, whether in hard-copy or electronic form, exchanged between Defendant and any non-party or party to the Proposed Acquisition in the course of responding to Plaintiffs' Investigation of or otherwise relating to the Proposed Acquisition, including materials sent or received by Oracle in connection with any litigation arising from the Proposed Acquisition (collectively Defendant's "Proposed Acquisition Materials"). Defendant shall produce these Proposed Acquisition Materials regardless of whether those materials were received informally or through compulsory process. Defendant is not required to produce documents or other written materials

originally received from Plaintiffs back to the Plaintiffs. This Paragraph shall not be construed as requiring the production of Defendant's attorney work product, or confidential attorney-client communications.

2. Except as otherwise provided by the Protective Order and consistent with the terms of Paragraph 9 below, the disclosures set forth in Paragraph 4.b.1 shall commence forthwith upon entry of the Protective Order by the Court, shall be made on a rolling basis, and shall be completed within 10 business days of the entry of the Protective Order.

Plaintiffs propose the following language:

3. By no later than March 22, 2004, Defendant shall serve upon Plaintiffs a list of those organizations (e.g., corporations and government entities) that Defendant believes are likely to have discoverable information that Defendant may use to support its claims or defenses.

4. Under the terms and conditions set forth in Paragraph 4.b.1 & 2 above, Defendant also shall produce to Plaintiffs two sets of copies of all discount request forms, Executive Approval Forms, or other approval documents dated January 1, 2002 through the present relating to the sale of E Business Suite, Financial Management, or Human Resources software applications.

Defendant proposes the following language:

Insofar as Paragraph 9 is resolved as Defendant proposes, Defendant does not object to the provisions of the prosed Paragraphs 4.b.1 and 4.b.2; Defendant otherwise reserves further discussion of these proposed subparagraphs. Defendant opposes the inclusion of proposed subparagraph 4.b.3 & 4 in the Case Management Order.

DISCOVERY AND PRE-TRIAL DISCLOSURES

The parties agree to the following plan and schedule for discovery and pre-trial disclosures:

5. Discovery Period. The period for fact discovery shall begin upon the entry of this Order and shall be completed by June 4, 2004 except as otherwise provided in this Order. All

written discovery shall be served in a time frame that will permit timely responses to be served in accordance with Paragraph 8.

6. Privilege Issues and Future Discovery Disputes.

Within 2 business days of the date this Order is entered by the Court, Plaintiff United States shall submit to Defendant in electronic form a list of the documents produced by Defendant during Plaintiff's Investigation as to which a claim of privilege is in dispute, including an indication of the basis of the challenge. Within 5 business days thereafter, Oracle shall respond to each of Plaintiff's challenges and provide in electronic form a revised version of the list provided by Plaintiff with an indication as whether each challenged document is being produced or withheld. All documents as to which the privilege claim is being withdrawn shall be produced to Plaintiff along with the responsive list. To the extent that the Defendant's response does not satisfy Plaintiff's challenges, Plaintiff may seek additional relief from the Court, including a request for the appointment of a Magistrate. Should the resolution of these issues impact any Plaintiff's ability to complete deposition discovery, the Court will entertain a motion to extend the deadlines contained in this Order.

All other discovery disputes arising in the course of this action will be submitted pursuant to this Court's standing order.

7. Depositions.

a. Absent good cause shown, depositions taken upon entry of this Order by the Court shall be limited to no more than 25 per side (excluding experts), plus those depositions of the parties' designated witnesses as set forth in Paragraph 10 of this Order. For the purpose of this Order, a deposition of a party or non-party taken pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure shall count as one deposition. Depositions taken for the sole purpose of establishing the authenticity and admissibility of documents shall not count against the 25 deposition limit.

b. Depositions of any party or party to the Proposed Acquisition shall be no more than one day in length, with the exception that each side may designate a total of five such

depositions to run up to two days in length. Absent stipulation or good cause shown, no Oracle witness previously deposed in the course of Plaintiffs' Investigation shall be deposed again for more than one additional day.

c. Depositions of non-party witnesses shall be no more than one day in length. Depositions of expert witnesses shall be no more than two days in length. The parties and affected non-parties may stipulate to additional time for individual depositions. Absent agreement of the parties, the length of depositions provided for in this Scheduling Order may be modified by order of this Court only for good cause shown.

Plaintiffs propose the following language:

d. The depositions of employees and former employees of Oracle taken by the Plaintiffs and defended by Oracle's counsel during Plaintiffs' Investigation may be used for all purposes for which party depositions may be used under Fed. R. Civ. P. 32.

Defendant proposes the following language:

d. Defendant will not object on hearsay grounds to the admissibility of depositions of employees and former employees of Oracle taken by the Plaintiffs and defended by Oracle's counsel during Plaintiffs' investigation of the transaction underlying this action.

8. Written Discovery.

Plaintiffs propose the following language:

a. Interrogatories shall be limited to 15 for Plaintiffs' side and 25 for Defendant, including sub-parts.

Defendant proposes the following language:

a. Absent good cause shown, Plaintiffs' side shall be limited to 15 interrogatories, including sub-parts. Defendant shall be limited to 15 interrogatories, including sub-parts, plus one additional initial set of interrogatories patterned after those Plaintiffs propounded as part of a Request for Additional Information under the Hard-Scott-Rodino Antitrust Improvements Act.

b. There will not be a limit on the number of requests for the production of documents or requests for admissions that may be served by the parties. Objections to any written discovery shall be served within 10 days of service of the written discovery request, and complete responses and/or responsive productions (subject to any objections that have not been ruled upon) shall be served within 20 days of service.

c. Non-parties shall serve any objections to subpoenas issued pursuant to Fed. R. Civ. P. 45 at least 5 days before the return date. To minimize burdens on non-parties, the party that serves a document subpoena on a non-party pursuant to Rule 45 shall copy any documents produced to that party by the non-party and produce them to the other side within 2 business days of their receipt.

9. Confidential Information.

a. Discovery and production of confidential information shall be governed by the attached Protective Order, a copy of which shall be included with any discovery requests, notices or subpoenas directed to non-parties. Pursuant to the terms of the Protective Order, for an interim period all materials provided to Oracle by Plaintiffs or by Oracle to Plaintiffs as part of the Paragraph 4 initial disclosures shall be presumptively treated as confidential materials that can only be reviewed by the persons identified in subparagraph b below. Within 3 business days of the date that the Protective Order is approved by the Court, notice of and access to the Protective Order shall be provided by the Plaintiffs to all non-parties that produced documents during Plaintiffs' Investigation and by Oracle to all non-parties that have produced documents to Oracle during the Plaintiffs' Investigation or otherwise relating to the Proposed Acquisition. The non-parties shall have 10 business days from the date of receiving notice of the Protective Order in which to review the Protective Order, designate previously-produced materials as confidential under the Protective Order, and to seek additional relief from the Court if they determine that the Protective Order does not adequately protect their confidential materials. No non-party materials shall be disseminated to anyone beyond those persons identified in subparagraph b below until the passage of this 10-day period. If a non-party seeks additional relief from the Court, materials

for which additional protection has been sought will not be produced to anyone other than those persons identified in subparagraph b below until the Court has ruled.

Plaintiffs propose the following language:

b. During the interim period described in subparagraph a, materials exchanged pursuant to Paragraph 4 may only be reviewed by attorneys for Latham & Watkins (outside counsel for Oracle) and counsel for the United States and the Plaintiff States. Plaintiffs' proposed version of the Protective Order is attached hereto as Exhibit A.

Defendant proposes the following language:

b. During the interim period described in subparagraph a, materials exchanged pursuant to Paragraph 4 may only be reviewed by counsel of record for the parties. Defendant's proposed version of the Protective Order is attached hereto as Exhibit B.

10. Trial Witness Lists. The parties shall exchange preliminary lists, not to exceed 25 per side, of the witnesses they intend to call live at trial, the order they will be called, a brief description of the subjects to which they will testify and the estimated time of direct examination by May 10, 2004. By June 1, 2004, the parties may amend such lists with respect to the order of their witnesses, the estimated time of direct examination, and to add or subtract no more than 5 witnesses. Such amended, final lists shall be submitted to the Court. In no event may the total number of witnesses on the final list of witnesses to be called live exceed 25. Notwithstanding the limitation on the number of depositions that a party may take and the deadline for fact discovery set forth above, the parties shall have the right to subpoena documents from or relating to any witness on the opposing party's preliminary or final witness lists, and to depose any such witness if not previously subpoenaed or deposed since the filing date of this action.

Defendant proposes the following language:

In the event the Court declines to enter Defendant's proposed Paragraph 4.a.3, Defendant proposes April 15, 2004 as the date for Plaintiffs' disclosure of trial witnesses, and April 29, 2004, for Defendant's disclosure of trial witnesses.

11. Expert Witnesses.

a. The parties shall designate the experts that they will call in their respective case in chief and case in defense no later than April 8, 2004. Rebuttal experts shall be designated by Plaintiffs no later than April 19, 2004. The parties shall exchange reports conforming to the requirements of Fed. R. Civ. P. 26(a)(2). The parties agree that drafts of expert reports and correspondence with counsel need not be exchanged.

b. Plaintiffs' initial report(s) will be served on the Defendant no later than April 29, 2004.

c. Defendant's report(s) will be served on Plaintiffs no later than May 13, 2004.

d. Plaintiffs' rebuttal report(s) shall be served on Defendant no later than May 27, 2004. Plaintiffs' rebuttal report shall address Plaintiffs' responses to Defendants' claims, including claims related to the efficiencies or synergies that would arise from the proposed merger and Defendant's claim that it has remedied any competitive harm.

e. Depositions of the parties' experts shall be conducted after the exchange of the above-referenced reports. Depositions of each party's experts shall be completed by June 11, 2004.

f. If required by Fed. R. Civ. P. 26(e)(1), each party shall serve supplemental expert reports up to 72 hours prior to the beginning of the submitting expert's deposition, but in no event later than June 11, 2004 unless otherwise agreed to by the parties. Supplemental expert reports shall be limited to information disclosed to the submitting side within 3 days before or any time after the date of the expert's initial report.

12. Nationwide Service of Trial Subpoenas. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties are permitted, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process,

however, does not make a witness that is otherwise "unavailable" for purposes of Fed. R. Civ. P. 32 and Fed. R. Evid. 804, available under those rules.

13. Deposition Designations. The parties shall exchange (page and line number) designations of deposition testimony to be offered at trial no later than June 7, 2004. Each party must provide counter designations of deposition testimony no later than June 11, 2004. Objections to any deposition designations or counter designations shall be exchanged no later than June 14, 2004.

14. Exhibit Lists. No later than May 21, 2004, the parties shall exchange lists of exhibits that each party anticipates introducing at trial during its case in chief, as well as a marked set of these exhibits. Such lists will be compiled in an agreed-upon electronic format capable of being sorted by exhibit number, chronological order, and Bates-stamp alphabetical and numerical order. The parties will also endeavor to agree upon reasonable limits on the number of trial exhibits that may be designated by each side. All documents contained on a party's exhibit list must have been previously produced during Plaintiffs' Investigation or during discovery in this case. The parties will exchange objections to the exhibits to be offered by the other party no later than June 2, 2004. Documents produced after May 21, 2004 that a party wishes to add to its exhibit list must be added within 3 business days of their receipt. Objections to such documents must be made within 3 business days after the date upon which they are added to the opposing party's exhibit list. Documents identified on or added to any party's exhibit list that are not timely objected to pursuant to this Paragraph shall be presumed to be authentic and admissible. Exhibit lists need not include exhibits used solely for purposes of cross-examination or rebuttal.

Demonstrative exhibits, other than those to be used by experts, do not need to be included on exhibit lists, but unless otherwise agreed or ordered, need to be served on all counsel of record at least 48 hours before any such exhibit may be introduced, or otherwise used, at trial. Demonstrative exhibits to be used by experts that are properly disclosed pursuant to Paragraph 11 may be slightly revised before use, provided that the slightly revised version is served on all

counsel of record at least 48 hours before any such exhibit is to be introduced, or otherwise used, at trial.

The parties will endeavor to resolve any objections regarding the authenticity or admissibility of all exhibits (including demonstratives and those used during the case in chief, cross-examination or rebuttal) in advance of their use. Any objections to exhibits that are not resolved by the parties after they have conferred will be resolved by the Court.

15. Service of Pleadings and Discovery on Other Parties.

a. The parties designate the following individual(s) to receive service of all pleadings, discovery requests and delivery of all correspondence in this matter (including a principal designate, noted with an asterisk ("*")) below:

i. For Plaintiff United States:

Conrad J. Smucker, Esq.*	conrad.smucker@usdoj.gov	(202) 514-5642
Kyle D. Andeer, Esq.	kyle.andeer@usdoj.gov	(415) 436-6712
Garrett M. Liskey	garrett.liskey@usdoj.gov	(202) 616-8383

ii. For the Plaintiff States:

Mark B. Tobey, Esq.*	mark.tobey@oag.state.tx.us	(514) 463-1262

iii. For Defendant Oracle:

Daniel M. Wall, Esq.	dan.wall@lw.com	(415) 395-8240
Karen E. Silverman, Esq.	karen.silverman@lw.com	(415) 395-8232
Joshua N. Holian, Esq.*	joshua.holian@lw.com	(415) 646-8343

b. Plaintiffs and Defendant shall serve all pleadings and discovery requests, including Rule 45 subpoenas for documents, and shall deliver all correspondence on the other parties' designate by email. The serving party will telephone the other parties' principal designate(s) at the time the materials are sent for service to alert them that the materials are being served. Any party's principal designate served by email shall promptly confirm receipt. Electronic delivery with confirming receipt shall be treated in the same manner as hand delivery for purposes of calculating discovery response times under the Federal Rules. However, email service that is delivered after 5:30 pm Pacific Time, shall be treated as if it was received the

following business day. Plaintiffs and Defendant shall serve all pleadings in accordance with the Northern District of California's rules for Electronic Case Filing.

16. Stipulations of Fact. The parties shall exchange proposed stipulations of fact no later than June 7, 2004.

17. Pre-Trial Submission. To be submitted pursuant to this Court's standing order.

18. Pre-Trial Motions.

a. The parties shall submit *Daubert* briefs, if any, by June 7, 2004. If necessary, the Court will hold a hearing on *Daubert* and the sufficiency of expert disclosure issues on June 17, 2004.

b. The parties shall serve all motions *in limine* by June 9, 2004. Memoranda supporting the motions *in limine* shall be no more than 10 pages in length. Opposition to motions *in limine* shall be filed by June 14, 2004. Oppositions to any such motions shall be no more than 10 pages in length. The Court will hold a hearing on motions *in limine* on June 17, 2004.

19. Pre-Trial Conference. The Pre-Trial Conference will be held on June 17, 2004, unless otherwise directed by the Court.

TRIAL SCHEDULE

20. The parties request a trial date of June 21, 2004, or as soon thereafter as the Court calendar permits. The parties anticipate that each side shall need approximately 10 days to submit its respective case.

21. The Defendant shall not consummate the Proposed Acquisition until 7 days following a final ruling by this Court after trial.

Dated: _____

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Renata B. Hesse (CA Bar No. 148425)
Claude F. Scott, Esq.
Pam Cole, Esq. (CA Bar No. 208286)
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Counsel for Defendant Oracle Corp.

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

DATED: March___, 2004

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Vaughn R. Walker
UNITED STATES DISTRICT JUDGE