PLAINTIFFS' STATEMENT REGARDING DISPUTED ISSUES

In preparation for the Case Management Conference, attorneys for the Plaintiff United States and the Plaintiff States, along with attorneys for Defendant Oracle, have endeavored to draft and submit a Joint Case Management Statement and Proposed Order ("CMS"). In fact, the parties narrowed their areas of difference to five, and have been discussing a Joint CMS which included alternative language proposed by Plaintiffs and Defendants for those five areas. Earlier today, Counsel for Defendant advised that, in addition to submitting a CMS with this alternative language, they intended to submit a letter to Chambers further supporting their language and position on those topics. Accordingly, Plaintiff United States and Plaintiff States submit this Appendix, setting forth Plaintiffs' explanations and support for the language Plaintiffs are asking to be included in the five disputed areas.

As an initial matter, it should be noted that the investigation that preceded this litigation provided Defendant with ample opportunity to learn about Plaintiffs' positions. Although the early investigative process was focused on informing Plaintiffs about the parties to the proposed transaction and educating Plaintiffs about the relevant market, the later stages of the investigation were when the bulk of the requested documents were actually produced to and reviewed by Plaintiffs. During the investigation, Plaintiffs made their concerns known to Defendant. Defendant utilized the opportunity to interview and collect affidavits from customers, collect documents, and prepare presentations to attempt to dissuade Plaintiffs from bringing suit. This inclusive investigative process undercuts any contention by Defendant that it has already fallen "behind" Plaintiffs as the litigation of this matter begins.

1. Unilateral Witness List Disclosure (CMS Section 4(a)(3))

As part of the initial disclosures between the parties, Defendant in paragraph 4.a seeks to impose on Plaintiffs the unilateral obligation to disclose its list of trial witnesses a full three months before trial, claiming that such a list is necessary to "permit timely third party discovery by Defendant." This request is unreasonable and unsupported by the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 26(a)(3), the disclosure of a party's witness list is to occur at least 30 days before trial. The obvious reason for this is to allow a party to identify and refine its trial witnesses during the discovery period. Requiring a party to unilaterally identify its trial

witnesses at the start of discovery and three months before trial unfairly forces that party to take an important stance based on information that is at best incomplete. Furthermore, such information is unlikely to be very useful, as a party's ultimate decision on who to call at trial will likely change over the succeeding weeks before trial.

Moreover, contrary to their claim, Defendant's ability to engage in third-party discovery is not at all dependant upon Plaintiffs' providing a premature witness list. Under the draft Case Management Order, Defendants will obtain immediate access - in mid-March - to the third party documents produced to Plaintiffs during Plaintiffs' investigation. This production will provide more than a sufficient basis for Defendant to identify relevant third-party witnesses and at least two and half months to pursue whatever third-party discovery it needs to take before the June 4th discovery cut-off date. Defendant is also guaranteed the opportunity under the draft Case Management Order to depose any witness listed on either Plaintiffs' preliminary or final witness lists, which are to be exchanged on May 10th - a full six weeks before trial - and June 1st.

Beyond agreeing to an early exchange of third-party materials, in an attempt to resolve this dispute, Plaintiffs have offered to agree to a mutual exchange of a list of organizations that each party believe are likely to have discoverable information that party may use to support their claims or defenses, which closely follows the type of initial exchange called for by Fed. R. Civ. P. 26(a)(1)(A). Defendant has refused to agree to such a mutual exchange.

2. Executive Approval ("Discount") Forms (CMS Section 4(b)(4))

During Plaintiffs' Investigation of Defendant's unsolicited bid to acquire PeopleSoft, Plaintiffs learned that Defendant's business practice was to discount the price of its applications software when competing for sales with PeopleSoft and SAP. Plaintiffs further learned that a U.S. Executive Approval Form (i.e. a "Discount" Form) was generated when a price discount was being sought. Early in the investigation, pursuant to Defendant's repeated requests, Plaintiffs agreed to defer production of most of these forms, but retained "the right to require a complete production in a timely manner should the Division determine that the search of additional files or production of additional information would be useful to our investigation." After reviewing the Discount Forms that were provided, Plaintiffs confirmed that these

documents were among the most important evidence in the investigation. When Plaintiffs sought additional Discount Forms later in the investigation, Defendant refused to provide them. Plaintiffs repeatedly attempted to work out a compromise with Defendant that would provide for production of the bulk of the relevant Discount Forms while minimizing the cost of production, but ultimately were rebuffed.

These forms are unquestionably relevant to the matter now before the Court. They provide first-hand accounts from Defendant's salespeople and executives of how competition affects pricing. They reveal that the Defendant can and does engage in price discrimination and that the identity of Defendant's competitor(s) in a deal often effects the level of discount offered to the customer. The Discount Forms are among the most direct evidence that the presence of PeopleSoft in the marketplace directly affects the prices and features of Defendant's software. There is no reasonable basis for Defendant to continue to refuse production of these forms, particularly in light of the aggressive schedule proposed in the CMS.

3. Depositions of Defendant Employees and Executives (CMS Section 7(d))

The parties have agreed that Plaintiffs will not depose any of Defendant's employees previously deposed during Plaintiffs' Investigation for more than one additional day. Depositions of Defendant employees were attended by numerous attorneys for the Defendant, and in all cases were defended by Defendant's counsel who interposed a broad range of objections to the questions posed by Plaintiff's attorneys. Plaintiffs believe that these depositions should be available to be used for all purposes for which party depositions may be used under Fed. R. Civ. P. 32.

Although Defendants have not pointed to any deposition, nor to any testimony, nor to any example of the type of testimony that might be problematic, they are only willing to agree that they will not object on hearsay grounds to the admissibility of depositions of Defendant's employees during Plaintiffs' investigation. Plaintiffs respectfully submit that this is an unworkable proposal, in that it suggests that Plaintiffs' may not learn until the end of discovery (when deposition testimony is designated) which statements Defendant's employees made under oath are not available to be used in the manner provided under the Federal Rules.

4. Interrogatories (CMS Section 8(a))

The parties have agreed that Interrogatories shall be limited to 15 for Plaintiffs' side and 25 for the Defendant. Plaintiffs believe this is an appropriate balance in the number of interrogatories, even though it will mean that the various Plaintiffs will have to coordinate and agree on a limited number of interrogatories they will propound.

Defendant seeks significantly more however, proposing to serve on Plaintiffs an extensive and yet-to-be-determined number of interrogatories patterned after those propounded on Defendant as part of the Antitrust Division's Request for Additional Information under the Hart-Scott-Rodino Antitrust Improvements Act. Those "Second Request" interrogatories were issued on June 30, 2003 and responded to by Defendant on December 16, 2003. Second Request interrogatories are issued at the outset of an investigation, before virtually any other investigation or discovery has occurred, and serve several purposes that are quite different than the purposes of post-complaint interrogatories. These include, for example, aiding antitrust investigators (who initially are likely not as familiar with an industry as an acquiring party will be) in narrowing potential issues of competitive concern, focusing further investigation and, more broadly, ultimately allowing the antitrust agency to reach a determination of whether to close an investigation, seek settlement with merging parties, or file a Complaint seeking injunctive relief to block an acquisition.

Plaintiffs already have agreed to allow Defendant to serve 10 interrogatories more than the 15 allowed Plaintiffs. There does not seem to be any good reason for Defendant being able to serve additional interrogatories. Moreover, Fed. R. Civ. P. 33 provides that a party to a case may serve only 25 interrogatories on any other party. This case will proceed to trial in a shortened time frame, and this is another reason why Defendant should not be entitled to serve interrogatories in excess of the 25 provided for under the Federal Rules.

5. The ability of Defendant's In House Counsel to View Proprietary Information Without Notice to Parties Who Have Submitted the Information (CMS Section 9)

The Parties have agreed to a Protective Order, with the exception of one discrete, but important issue. The Protective Order will cover materials submitted to Plaintiffs by third parties

(including PeopleSoft). These third parties submitted this information with the assurance that they would have an opportunity to review a Protective Order entered in this case, and determine whether to designate as confidential business information particular documents and testimony to prevent disclosure of such competitively sensitive information to Defendant's employees, including in-house counsel. The ability to make such designations is important to some third parties, due to the hostile nature of Defendant's takeover attempt, the involvement of some of Defendant's in-house counsel in related litigation and the involvement of some in-house counsel in competitive decision making by the Defendant. As currently drafted, Defendant's proposal provides for wholesale disclosure of third-party documents and information to Defendant's in-house counsel, without an explicit representation by Defendant as to the role of these counsel in the hostile takeover attempt, related litigation or competitive decision making. Moreover, Defendant's proposal would provide no opportunity for third parties to come into court to seek additional protection from disclosure to Defendant's in-house counsel of those third-parties' most sensitive and competitively important information.

In an effort to expedite matters while third parties are reviewing the Protective Order and making appropriate designations of their documents and testimony, Plaintiffs have agreed to turn over their investigative files (subject to any claims of privilege) to designated Latham & Watkins attorneys at the earliest practicable time. To do more than this would violate the confidentiality obligations Plaintiffs have to third parties. Plaintiff States are also similarly postured. Section 15.10 (I)(5) of the Texas Antitrust Act provides that the Texas Office of Attorney General may not disclose material designated as confidential by a third-party without first giving 15-days notice to the third-party, so that the third-party may petition the Court for a Protective Order limiting the terms under which its confidential information any be disclosed. The logic of these statutory provisions, and the considerable importance to third-parties of having an opportunity to seek appropriate protection for their most confidential materials, easily outweigh any limited inconvenience to the Defendant that might arise from two in-house counsel not having access to certain materials for a limited amount of time until the Court resolves and requests further protection.

In conclusion, Plaintiffs would note that there appears to be a common theme for the areas on which the parties have not been able to reach agreement on the CMS and Protective Order. That theme is Defendant's belief that they are "behind" Plaintiffs or "disadvantaged" by the fact that Plaintiffs conducted an investigation of the proposed Oracle/PeopleSoft transaction. Oracle, was of course, a primary participant in that investigation, they know the areas in which Plaintiffs first showed interest, how those areas of interest were narrowed, what was being focused on, and except for specific and proprietary third party information, the type of data and information being obtained. With respect to contacts with software customers, Defendant has stated that it has been in contact with many of the same customers that Plaintiffs have contacted.