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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, et al.,

14 Plaintiffs,

15 v.

16 ORACLE CORPORATION

17 Defendant.

18 CASE NO. C 04-0807 VRW

19 Filed May 26, 2004

20 Hearing Date: June 2, 2004

21 **PLAINTIFFS' MOTION IN LIMINE
22 TO PRECLUDE DEFENDANT FROM
23 DISCUSSING RDB DATABASE DURING
24 TRIAL**

25 **PUBLIC VERSION**

26 **NOTICE OF MOTION**

27 On June 2, 2004, Plaintiffs will move for an Order, pursuant to Fed. R. Civ. P. 37(c)(1),
28 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.

1 **ISSUES TO BE DECIDED**

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

8 **STATEMENT OF FACTS**

9 The United States brought this action to challenge Oracle Corporation's ("Oracle") June
10 2003 proposed acquisition of PeopleSoft, Inc. ("PeopleSoft"). See Compl., ¶ 1. Oracle,
11 PeopleSoft, and SAP AG ("SAP") are the three competitors that supply integrated suites of high
12 function Human Resource Management ("HRM") and high function Financial Management
13 Services ("FMS") software. If the acquisition goes forward, customers' choices for vendors of
14 that software would narrow from three to two. Therefore, Plaintiffs allege in their complaint that
15 the proposed merger "may substantially lessen competition" in violation of Section 7 of the
16 Clayton Act, 15 U.S.C. § 18.

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

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

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

3
4 In an effort to prepare for litigation and investigate Oracle's alleged efficiencies, Plaintiffs
5 requested that Oracle produce documents relevant to Oracle's Rdb Database acquisition and its
6 alleged efficiencies. See Ex A: Pls.' Third Request for Production of Documents (4/19/04).
7 Plaintiffs' discovery request read in relevant part:

8 3. All documents that describe, discuss, report on, or analyze any possible or actual
9 efficiencies that you achieved, or failed to achieve, from any acquisition made by
10 your company since [] 1994, including Oracle's acquisition of Rdb Database
11 product and service.

12 4. All documents from 1994 to the date of this request relating to any statements,
13 opinions, views or concerns of any Rdb Database product customers regarding: (a)
14 Oracle's pricing, marketing, sale or development, or lack thereof, of any Rdb
15 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.

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

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26 ¹[REDACTED]
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1 response to their continued requests for production following receipt of Oracle's objections.
2 Finally, on May 6, 2004, Oracle notified Plaintiffs that it "will not undertake such a search" for
3 responsive documents because any responsive documents would be "of limited or no relevance in
4 any case." See Ex. E: Letter from David M. Friedman to Steven Kramer (5/06/04). Despite its
5 insistence that documents related to Oracle's acquisition of Rdb Database are irrelevant to any
6 claim or defense in the present matter, [REDACTED],² and it is likely that Oracle plans to
7 discuss Rdb Database as part of its efficiencies defense, or elsewhere in its case.

8 9 ARGUMENT

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

21 Fed. R. Civ. P. 37(c)(1) establishes a self-executing sanction for discovery violations. See
22 Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1028 (9th Cir. 2003) (strictly following Rule
23 37 to exclude document when it was produced after discovery cut-off date; and after deposition
24 for which document was to be used; and no "substantial justification" given for failure to
25 produce); Fed. R. Civ. P. 37(c)(1) advisory committee notes (1993) ("The revision provides a

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27 ²[REDACTED]
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1 self-executing sanction for failure to make a disclosure required by Rule 26(a). . . .”). The Federal
2 Rules of Civil Procedure’s discovery rules are intended to bring clarity to the issues, allow the
3 parties to ascertain relevant facts and information, and, ultimately, aid the court to reach its
4 decision. Cf. Hickman v. Taylor, 329 U.S. 495, 500 (1947). Rule 37(c)(1) “gives teeth” to these
5 discovery rules “by forbidding the use at trial of any information required to be disclosed by Rule
6 26(a) that is not properly disclosed.” Yeti by Molly Ltd. v. Deckers Outdoor Corp., 259 F.3d 110,
7 1106 (9th Cir. 2001); see Fed. R. Civ. P. 37(c)(1) advisory committee’s note (1993) (“This
8 automatic sanction provides a strong inducement for disclosure of material that the disclosing
9 party would expect to use as evidence . . .”).

10 Rule 37(c)(1) does not require the movant to show “willfulness, fault, or bad faith” unless
11 moving to dismiss the action as the Rule 37 sanction. Id. at 1106. Once the movant demonstrates
12 that Rule 26(a), 26(e)(1), or 26(e)(2) has been violated, the sanction is automatic unless the
13 respondent demonstrates a “substantial justification” for its failure, or shows that the failure was
14 harmless. Id. 1106-07. Failure is harmless only where no prejudice results or prejudice may be
15 cured by production sufficiently in advance of trial. See Pfingston v. Ronan Eng’r Co., 284 F.3d
16 999, 1005 (9th Cir. 2002) (finding no prejudice when unproduced information was used in
17 defendant’s summary judgment motion and summary judgment would have been granted even
18 without the unproduced evidence; recommending that evidence could have been excluded only for
19 summary judgment motion since the information was then disclosed to plaintiff and available for
20 later use); Southern Union Co. v. Southwest Gas Corp., 180 F. Supp. 2d 1021, 1060-61 (D. Ariz.
21 2002) (finding error harmless when production could take place eight months prior to trial;
22 movant had sufficient time to re-depose respondent’s experts; and respondent was ordered to pay
23 movant’s associated costs).

24 Here, the requirements for invoking the automatic sanction contained in Rule 37(c)(1) are
25 plainly met. Oracle failed to produce documents, pursuant to Rule 26(a)(5), sought in Plaintiffs’
26 third document request. Moreover, Oracle refused to conduct a search to establish whether
27 responsive documents existed. See Ex. E. Plaintiffs have diligently sought discovery of these
28

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

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

14 Oracle is unable to demonstrate a "substantial justification" for its refusal to produce
15 documents. Oracle objected to the specification, claiming that the documents were irrelevant to a
16 claim or defense in the instant matter, and because the request was "over broad, unduly
17 burdensome, and/or oppressive." See Ex. B at 7. In subsequent discussions between Plaintiffs
18 and Oracle, despite Plaintiffs' willingness to narrow the scope of their request substantially to
19 address Oracle's burden claims, Oracle continued to object to the request, claiming that the
20 documents "are of limited or no relevance . . ." See Ex. E at 1. First, if Oracle truly believes that
21 the information regarding its Rdb Database acquisition is irrelevant to the present matter, it should
22 have no objection to being precluded, pursuant to Rule 37(c)(1), from using such evidence or
23 introducing any testimony or argument relating to the Rdb Database acquisition at trial.³ As
24

25
26 ³Presumably, Oracle would similarly concede that any evidence regarding Rdb Database
27 is irrelevant to its defenses such that any evidence and testimony on the subject would be
28 inadmissible under Fed. R. Evid. 401 and 402 if offered by Oracle as part of its defense.

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

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

17 When there is sufficient time prior to trial, courts may order production and extend
18 discovery to permit the movant additional time to cure the failures. Compare Yeti by Molly Ltd.,
19 259 F.3d at 1107 (precluding expert testimony when expert identified only one month before start
20 of trial, allowing no time for plaintiffs to prepare and depose expert); with Southern Union Co.,
21 180 F. Supp. 2d at 1060-61 (denying exclusion when motion filed eight months prior to trial); but
22 see L. Tarango Trucking, 202 F.R.D. at 622-23 (re-opening trial for new testimony to be heard at
23 defendant’s expense for Rule 37(c)(1) violation). No opportunity exists to cure Oracle’s
24 discovery violations in the present situation because the matter is extremely complex, the
25 discovery period was expedited without sufficient flexibility to extend its deadline, and trial is due
26 to start in just over one week. There is not sufficient time for Oracle to produce the documents,
27 and then allow Plaintiffs to review the documents, re-depose Oracle’s designated 30(b)(6)

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

5 CONCLUSION

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

13
14 Respectfully Submitted,

15
16 Dated: May 26, 2004

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1 Dated: May 26, 2004

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EXHIBIT A

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8 SAN FRANCISCO DIVISION

9
10 UNITED STATES OF AMERICA, *et al.*

11 Plaintiffs,

12 v.

13 ORACLE CORP.

14 Defendant.
15

Case No: C-04-00807 (VRW)

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

16
17 Pursuant to Fed. R. Civ. P. 34 and paragraph 8.b of the Joint Case Management Order,
18 Plaintiff the United States of America (hereinafter "Plaintiff") hereby serves this Third Request
19 for Production of Documents directed to Defendant Oracle Corp. ("Oracle"). The United States
20 requests that Oracle produce the specified documents within 15 days for inspection and copying
21 by counsel for the United States at the offices of the U.S. Department of Justice, Antitrust
22 Division, Patrick Henry Building, 601 D Street, NW, Suite 1200, Washington, DC 20530.

23 **I. DOCUMENT REQUESTS**

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

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

- 1 (b) any methodology used to calculate any possible or actual efficiencies or
2 synergies;
- 3 (c) any underlying data or other information used to calculate any possible or
4 actual efficiencies or synergies; and
- 5 (d) any assumptions used in calculating any possible or actual efficiencies or
6 synergies, including any assumption relating to the methodology used to
7 compute, the data underlying or basis for the level of output assumed in
8 the calculation of any possible or actual efficiencies or synergies.

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

12 This request includes all documents relating to:

- 13 (a) any calculations of the possible or actual cost of achieving any possible or
14 actual efficiencies or synergies;
- 15 (b) any methodology used to calculate any possible or actual costs of
16 achieving any possible or actual efficiencies or synergies;
- 17 (c) any underlying data and information used to calculate any possible or
18 actual costs of achieving any possible or actual efficiencies or synergies;
19 and
- 20 (d) any assumptions used to calculate any possible or actual costs of
21 achieving any possible or actual efficiencies or synergies.

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

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

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

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

9 6. All documents from January 1, 1999 until January 1, 2002, mentioning, describing or
10 otherwise referring to Oracle's efforts to sell, or the sale of, enterprise software, including but
11 not limited to "Account Plan and Prospect Profiles," discount request forms, or other documents
12 related to negotiation of contract terms or prices, or analyzing competing vendors for the
13 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

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

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

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

8 II. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

21 III. INSTRUCTIONS

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

26 2. In responding to this document request, Oracle need not produce for a second time a
27 document that was previously produced by Oracle to the Department of Justice during its
28

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

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

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

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

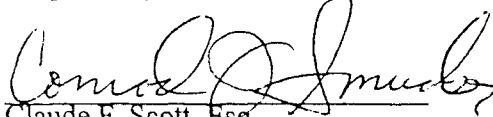
20 6. If compiled by your company, provide a master list showing: (a) the name of each
21 person from whom responsive documents are submitted; and (b) the corresponding consecutive
22 document control number(s) used to identify that person's documents.

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

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

3
4 Dated: April 19, 2004

Respectfully submitted,

5
6 

7 Claude F. Scott, Esq.
8 Conrad J. Smucker, Esq.
9 Pam Cole, Esq. (CA Bar No. 208286)
10 U.S. DEPARTMENT OF JUSTICE
11 ANTITRUST DIVISION
12 450 Golden Gate Avenue, Rm. 10-0101
13 San Francisco, CA 94102-3478
14 Tel. (415) 436-6660
15 Fax (415) 436-6683

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*Attorneys for Plaintiff the United States of
America*

1 Claude F. Scott, Esq.
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5 *Attorneys for Plaintiff the United States of America*

6

7

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

8

9

10 UNITED STATES OF AMERICA, *et al.*

11

Plaintiffs,

12

v.

Case No: C-04-00807 (VRW)

13

ORACLE CORP.

PROOF OF SERVICE

14

Defendant.

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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. Hanks	hanks.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

1 LATHAM & WATKINS LLP
J. Thomas Rosch (Bar No. 37668)
2 Gregory P. Lindstrom (Bar No. 82334)
Daniel M. Wall (Bar No. 102580)
3 505 Montgomery Street, Suite 1900
San Francisco, California 94111-2562
4 Telephone: (415) 391-0600
Facsimile: (415) 395-8095

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

9 Attorneys for Defendant
10 Oracle Corporation

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO JUDICIAL DISTRICT
14

15 UNITED STATES OF AMERICA, et al.,

16 Plaintiffs,

17
18 v.

19 ORACLE CORPORATION,

20 Defendant.
21

CASE NO. C 04-0807 VRW

Filed:

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

22
23 REQUESTING PARTY: PLAINTIFF, UNITED STATES OF AMERICA

24 RESPONDING PARTY: DEFENDANT, ORACLE CORPORATION

25 SET NO.: THREE
26
27
28

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure and the Court's March 15,
2 2004 Case Management Order, Defendant Oracle Corporation ("Oracle") hereby responds to
3 Plaintiff's Third Set of Requests for Production of Documents ("Third RFPs") as follows:

4 **PRELIMINARY STATEMENT**

5 Oracle continues to object to the overall manner in which Plaintiff is conducting written
6 discovery in this matter. Plaintiff's "Third RFPs" are the latest in a series of broad, burdensome
7 requests for documents. Most of the specific requests are completely duplicative of previous
8 requests. For instance, the Third RFPs seek communications with certain customers regarding
9 the Proposed Acquisition. Oracle was already obligated to produce these communications as
10 part of its initial disclosures and has done so. *See* Case Management Order ¶ 4.b.1 (March 15,
11 2004). Also, and only by way of example, the Third RFPs seek certain discount approval forms.
12 Oracle has already produced 188 boxes (and an electronic database) of these forms as part of its
13 initial disclosures. *See id.* ¶ 4.b.4. Oracle also produced these and similar documents in
14 response to the Second RFPs. There is simply no legitimate reason for Plaintiff to propound
15 successive requests seeking documents it already has. Plaintiff should be required to now
16 actually review the documents that Oracle has produced, rather than blindly requiring Oracle to
17 produce documents repeatedly.

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

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

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

3 **GENERAL OBJECTIONS**

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

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

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

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

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

1 based upon information hereafter obtained or developed.

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

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

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

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

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

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

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

26 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS**

27 **REQUEST FOR PRODUCTION NO. 1:**

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

1 possible or actual efficiencies or synergies that might result from the Proposed Transaction,
2 including any possible or actual efficiencies or synergies reflected in the spreadsheet EDOC-
3 00189939 -00199154. This request includes all documents relating to:

- 4 (a) any calculations of any possible or actual efficiencies or synergies;
- 5 (b) any methodology used to calculate any possible or actual efficiencies or
6 synergies;
- 7 (c) any underlying data or other information used to calculate any possible or
8 actual efficiencies or synergies; and
- 9 (d) any assumptions used in calculating any possible or actual efficiencies or
10 synergies, including any assumption relating to the methodology used to compute, the data
11 underlying or basis for the level of output assumed in the calculation of any possible or actual
12 efficiencies or synergies.

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

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

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

24 REQUEST FOR PRODUCTION NO. 2:

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

28 This request includes all documents relating to:

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

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

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

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

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

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

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

20 REQUEST FOR PRODUCTION NO. 3:

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

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

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

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

5 REQUEST FOR PRODUCTION NO. 4:

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

12 RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

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

20 REQUEST FOR PRODUCTION NO. 5:

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

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

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

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

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

9 REQUEST FOR PRODUCTION NO. 6:

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

15 AOL Time Warner	Arrow Electronics	BEA Systems
16 Bed Bath & Beyond, Inc.	Belk, Inc.	Big Lots, Inc.
17 BNP Paribas	Berlitz International, Inc.	Boeing Company
18 Brinks Company	Briggs & Stratton	Brinks Company
19 Casey's General Stores, Inc.	Catholic Healthcare West	Cendant Corporation
20 Centex Corporation	Charming Shoppes, Inc.	CIGNA Corporation
21 Clear Channel Comm., Inc.	Cooper Tire & Rubber Company	CH2M Hill Companies, Ltd.
22 Costco Wholesale Corporation	Cox Communications, Inc.	Denver Public Schools
23 Diebold, Inc.	Dollar General Corporation	Emerson Electric Corp.
24 Eastman Kodak Company	Fairchild Semiconductor Corp.	Fleetwood Enterprises, Inc.
25 Flying J. Inc.	Follett Corporation	Foot Locker, Inc.
26 Ford Motor Company	Fort Worth Transit Authority	France Telecom
27 Freddie Mac	Gannett Co., Inc.	Gap, Inc.
28		

1	General Dynamics Corporation	General Electric Company	General Motors
2	General Chemical Corp.	Georgia-Pacific Corporation	Goody's Family Clothing
3	Greyhound Lines, Inc.	H. Lee Moffitt Cancer Center	Harman Management Corp.
4	Handleman Corp.	John Hancock	Johnson & Johnson
5	Keane, Inc.	Kerr-McGee Corp.	Longs Drug Stores Corporation
6	Lennar Corporation	Liberty Mutual	McGraw-Hill Companies, Inc.
7	McKesson Corp.	Manpower, Inc	McDonald's Corporation
8	Manulife Financial Corporation	MasterCard	May Department Stores Co.
9	Mayo Clinic	McCain Foods Limited	MGM Mirage
10	MedStar Health	The Neiman Marcus Group, Inc.	Nextel, INC.
11	Nestle S.A.	Newmont Mining Corporation	Novel, Inc.
12	Nike, Inc.	Office Depot, Inc.	Omnicom Group, Inc.
13	Owens Illinois	Owens Corning	Panasonic
14	Pepsi Co.	Pentair, Inc.	Pulte Homes, Inc.
15	Quebecor, Inc.	Rent-A-Center, Inc	Safeway
16	Sara Lee Corporation	Sears Roebuck & Co.	Service Corp. International
17	Siemens AG	Sinoche	Sports Authority, Inc.
18	Stein Mart, Inc.	Sun Healthcare Group, Inc.	Target Corporation
19	Tecumseh Products Company	TIAA-CREF	Triad Hospitals, Inc.
20	Trinity Mirror plc	TXU Corporation	Silgan Holdings, Inc.
21	Smithfield Foods, Inc.	Solutia, Inc.	United Parcel Service of America
22	Universal Health Services, Inc.	USF Corporation	United States Dept. of Defense
23	Charles Schwab & Co., Inc.	Valero Energy Corporation	Verizon Communications
24	Walgreen Co.	Waste Management, Inc.	WestPoint Stevens, Inc.
25	Weyerhaeuser Company	Worker Benefit Plans/Lutheran Church	Apartment Investment Management Co.
26	Esselte Corporation	Six Flags, Inc.	AmeriKing
27			
28			

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

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

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

10 REQUEST FOR PRODUCTION NO. 7:

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

14 RESPONSE FOR PRODUCTION NO. 7:

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

19 REQUEST FOR PRODUCTION NO. 8:

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

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

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

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

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

5

6 Dated: April 24, 2004

Respectfully submitted,

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LATHAM & WATKINS LLP

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By 

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Attorneys for Defendant
Oracle Corporation

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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
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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,

Steven Kramer

EXHIBIT E

505 Montgomery Street, Suite 1900
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LATHAM & WATKINS LLP

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

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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,

A handwritten signature in black ink, appearing to read "D. M. Friedman", with a long horizontal flourish extending to the right.

David M. Friedman
of LATHAM & WATKINS LLP