**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA, *ex rel.* **PAUL FRASCELLA,** **Plaintiff,** **v.** **ORACLE CORP.,** *et al*. **Defendants.**	**CASE NO. 1:07cv529 (LMB/TRJ)**

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR
RECONSIDERATION AND CLARIFICATION OF MARCH 1, 2011 DISCOVERY
ORDER (DOCKET # 101) OR FOR A RULE 16(B) CONFERENCE**

Pursuant to Federal Rule of Civil Procedure 54(b) and Local Civil Rule 7, Defendants

Oracle Corp. and Oracle America, Inc. (collectively "Oracle"), by and through undersigned

counsel, respectfully submit this brief in support of their request for reconsideration and

clarification of that portion of the Court's March 1, 2011 Order directing that Defendants

produce "all electronically stored information — from every available database — that is

encompassed by any reasonable interpretation of pages 3-4 of relator's reply brief (no. 97.)." In

the alternative, Oracle requests that the Court convene a Rule 16(B) conference to establish

specific production guidelines and a schedule for compliance with the Order.

INTRODUCTION AND BACKGROUND

Oracle takes seriously the Court's Order granting the Relator's Motion to Compel

(Docket # 90) ("MTC") and directing that Oracle promptly produce electronically stored

information responsive to the Relator's Document Request No. 16 — the subject of the MTC.

Indeed, as set forth in its Opposition to Relator's Motion for Sanctions, Oracle has been working

continuously to meet the Relator's requests, and has produced much of the additional

information Defendants understand to be encompassed by the Court's March 1, 2011 Order:

- On Thursday, March 3, Oracle provided Relator and the Government a CD

  containing reports run by Oracle for Calendar Years 2000-2006, which pull data

  identifying customer support renewals entered into Oracle's OKS system.

- On Friday, March 4, Oracle provided Relator and the Government a copy of the

  "QP Discount Report" for Calendar Years 2001-2006 that was identified during

  the parties' February 28 meet and confer, along with copies of the Oracle Order

  Management Technical Reference Manual, and the Oracle Pricing Technical

  Reference Manual, which define all standard fields in Oracle's Order

  Management and Pricing systems.

- On Saturday, March 5, Oracle produced a copy of the Setup/Reference Manual

  containing Global Flexfield and Value Set Definitions related to sales to

  commercial and/or government customers.

- On Monday, March 7, Oracle produced a copy of the technical reference manuals

  that define all standard fields in Oracle's OKS system.

In addition to these productions, Oracle, by counsel, also reached out to the Government

yesterday to address the requests for relief asserted by the Government in its Response to the

Relator's Motion for Sanctions (Docket #117) and discussed several potential compromises.

Oracle agreed in principle upon a site visit to be conducted in March during which Plaintiffs will

have the opportunity to work with Oracle technical personnel who will run queries in Oracle's

GSI database to search for specific categories of data they have requested. Defendants expect

that the site visit will address most of the issues addressed both in the Court's Order and in the

Government's Motion for Sanctions. In addition, Oracle offered to make available its Controller, Corey West, to address the Government's questions concerning what information may or may not be available to reconcile Oracle's sales data to its financial statements, and to produce any such data identified by Mr. West that can be reasonably collected.

Unfortunately, certain unresolved requests for relief asserted in the Government's sanctions motion are simply unreasonable, and demonstrate the Government's unwillingness to expend the effort to review data already in its possession. Even worse, the Government appears to be asking the Court to reverse the burden of proof on the element of damages in this case. In a Proposed Order submitted to the Court today, the Government requests the following relief:

> Oracle is required to identify all commercial software license transactions from December 1, 1998 through December 31, 2006 that involved a price hold, migration, or other price adjustment that Defendants contend should not be considered when analyzing whether 1) the government received fair and reasonable prices under GSA MAS Contract GS-35F- 0108J (Contract); or 2) defendants violated the Contract's price reduction clause. For each transaction identified, Oracle must produce sufficient documentation to completely define how the pricing was developed, including a) ordering documents; b) invoices; c) approval authorizations; d) contracts; e) master contracts; f) any documentation of price holds or migration calculations; and g) any attachments to any of these documents. The aforementioned documents must be organized by transaction, with all documents relating to a particular transaction produced together and labeled such that they can be immediately cross-referenced with the list of transactions. Oracle must produce the list of transactions by March 18, 2011, and must produce the underlying documentation by April 1, 2011.

Government Proposed Order submitted March 10, 2011. These requests seek material cumulative of prior productions and call for efforts well beyond what is appropriate under the Federal Rules.

First, the overwhelming majority of transactions involving price holds and migrations relevant to this matter were previously identified for the Government. As explained more fully

in the KPMG Report, for the period of December 1, 1998 - April 30, 2004, KPMG followed a specific protocol to identify the relevant transactions that should be considered in a price reduction clause analysis of Contract No. GS-35F-0108J ("PRC review").[1] *See* Exhibit G to Oracle's Opposition to Motion for Sanctions ("KPMG Report"), at ORACLE-02090 - 02094. As part of its protocol, KPMG excluded categories of transactions that are not relevant to a PRC review, including, but not limited to, transactions for products that were not on the GSA Product List, orders for educational or non-license products, and sales that were over the contractually agreed threshold for PRC compliance purposes of $200,000. *Id*. at 02094. In addition to these steps, KPMG also identified transactions that should be excluded from the relevant universe because they involve migrations or price holds. *Id*. at 02095. Appendix E of the KPMG Report, which was previously produced to both the government (in 2008) and relator, identifies relevant transactions that should be excluded from a PRC review because they are price holds or migrations. *Id*. Oracle agrees to compile and produce the job packets for these transactions. Furthermore, Oracle agrees to review the transactional data for the period of May 1, 2004 - December 31, 2006, identify transactions involving price holds and migrations and produce the underlying job packets for those transactions, following the protocol outlined in the KPMG report. Oracle also invites the government to review Appendix E of the KPMG Report and select transactions involving any other noted exclusion criteria for which it requests the underlying documentation be produced. Oracle agrees to a rolling production of these materials with the first production starting on March 11, 2011.

Second, the Government's request, as written above, *fails to apply any exclusion criteria to filter out non-relevant transactions*. Rather than identify which orders the Government claims

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[1] Given the period of time specified in the request, December 1, 1998 - December 31, 2006, Oracle understands this request to be focused on a PRC analysis.

are relevant to a PRC review, counsel for the United States asks this Court to order Oracle to undergo the impossible task of producing the underlying job packets for *all* transactions that may involve migrations or price holds, including orders that *are not relevant* to a PRC review. Such an order by this Court would require Oracle first to identify which orders involved migrations, price holds, or other price adjustments. Using the QP Report produced to the plaintiffs, Oracle identified 51,005 orders that potentially involve some price adjustment for the period December 2001 - December 2006.[2] Oracle estimates that it takes one employee, with experience searching the contract imaging system, 20 minutes to locate and compile a single job packet containing all the documentation the Government requests above. Even if Oracle pulled 5 employees from their current responsibilities to focus solely on compiling job packets for these 51,005 transactions, it would take them 142 days to complete the task, working *every* minute of *every* day. And for the period of December 1998-November 2001, for which no QP Reports are available, Oracle would have manually to review every single transaction just to find those that involved a price hold, migration, or other price adjustment. Oracle estimates there are roughly 345,000 transactions in this period alone. Since any transaction over $200,000 is irrelevant to the PRC analysis, this would be an extraordinarily wasteful and burdensome exercise.

Third, although applying the filters outlined in the KPMG Report is the appropriate and most efficient process to identify the relevant transactions in this case, in a telephone conference on March 9, 2011, Oracle offered to produce a separate subset of job packets responsive to the Government's above request based on statistical sampling. The Government rejected this proposal and maintained its unreasonable stance that documentation for all transactions

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[2] As noted in Oracle's Opposition to Relator's Motion for Sanctions, Oracle makes no representations as to the accuracy of the QP Report. As several declarants noted, in order accurately to determine which transactions are price holds, migrations or other price adjustments, these individuals conduct a manual review. Defs. Opp. to Relator's Mot. For Sanctions at 7-8.

involving price holds, migrations and price adjustments should be identified and produced. This unwillingness to compromise is underscored by their rejection of repeated offers by Oracle before unsealing of the complaint, to travel to Kansas City to sit down with Government auditors to assist their understanding of the data.

Fourth, the Government's request is an inappropriate attempt to reverse the burden of proof for damages in this case. During the February 14, 2011 meet and confer between the parties, the Government referenced settlement discussions between the United States and Oracle. Specifically, the Government alluded to how Defendants explained that the Government's damages analysis for settlement was unreliable due to the reliance on transactions that were migrations and price holds. Oracle can only assume, based on the references to these settlement discussions, that the Government's intended purpose behind its current requests is to limit any similar potential arguments Oracle may assert in this case. As a practical matter, an order worded as the Government requests would require Oracle to identify the entire universe of migrations, price holds or other price adjustments that should be excluded from any damages analysis in this case – on pain of being precluded from raising such arguments downstream. Such a request inappropriately shifts the burden from the Government to prove the existence of damages to requiring Oracle to prove the lack of damages in this case.

Separately, though it has made diligent progress in responding to the Court's March 1, 2011 Order, Oracle respectfully requests reconsideration of certain components of that Order, which impose on Oracle discovery obligations tied to arguments and specific requests for data that the Relator raised only in his MTC Reply Brief (Docket #99), and to which Oracle was not previously afforded an opportunity to object or respond. None of the specific requests for data listed on pages 3-4 of the Relator's Reply Brief were mentioned in the Memorandum in Support

of Relator's MTC (Docket #91), which instead asserts only an omnibus production of Oracle's "complete databases for its commercial sales." Docket # 91 at 3. Accordingly, Oracle has not had the opportunity to brief or argue its opposition to any "motion to compel" with respect to any of these specific requests for data.

Several of the categories of information detailed on pages 3-4 of Relator's Reply and requested on February 28 during the parties' meet and confer are ambiguous and confusing. Other aspects of the Order, including the directions that Oracle produce data encompassed by "any reasonable interpretation" of the Relator's Reply Brief requests, and that Oracle produce information "from every available database," simply require the Court's clarification.

In addition, at least one of the Relator's Reply Brief demands — for "data that would identify the salesperson on the deal and sales commission paid," Docket # 97 at 4, is an attempt to circumvent a negotiated discovery compromise the Relator already accepted. During a meet and confer on February 2, 2011 to address, among other things, Oracle's objections to the Relator's formal requests for employee-specific personal compensation information, Relator's counsel agreed that such information need not be produced and that he would accept instead non-employee-specific compensation policies and procedures sufficient to show the economic motivations of the sales force. Oracle raised this compromise in its opposition brief, and Relator did not contest it in its Response. The Court's March 1, 2011 Order currently operates to override the parties' discovery compromise on this issue.

To avoid further motions practice on these issues and to address the ambiguity embedded in the Relator's demands, Oracle asks that the Court approve the approach Oracle has adopted to comply with the Court's Order as set forth in detail below. In the alternative, Oracle requests a

Rule 16(B) conference to clarify exactly what data the Court expects Oracle to produce and in what timeframe.

<div align="center">**ARGUMENT**</div>

Motions for reconsideration of discovery orders are made pursuant to Rule 54(b), and are not subject to the strict standards applied to motions for reconsideration of a final judgment under Federal Rule of Civil Procedure 60(b). *See Humanscale Corp. v. CompX Intern. Inc.*, 2010 WL 3222411 (E.D.Va., Aug. 16, 2010) (citing *Am. Canoe Ass'n. v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003). It is within this Court's discretion to reconsider and modify its interlocutory judgments at any time before final judgment when warranted. *Id.* (citing *Am. Canoe Ass'n*, 326 F.3d at 514-15). Courts in this District grant reconsideration or modification where the Court has "misunderstood a party," "made a decision outside the adversarial issues presented to the Court by the parties," or "has made an error not of reasoning but of apprehension." *See M.S. v. Fairfax County School Board*, 2006 WL 1390557 at *3-*4 (E.D.Va. May 17, 2006) (modifying order dismissing certain claims where Court misunderstood a party's position); *Nasatka v. Delta Scientific Corporation*, 1994 WL 874180 at * 1-*2 (E.D.Va. July 5, 1994) (granting reconsideration and vacating order awarding sanctions where Court misapprehended facts underlying the motion); *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va. 1983) (articulating standard).

The Court should exercise its discretion to reconsider and modify its March 1, 2011 Order granting the Relator's motion to compel as set forth below.

I.   The Court's March 1, 2011 Order Grants Relief Not Requested In the Relator's Motion to Compel Without Providing Oracle an Opportunity for Objection

The Court's March 1, 2011 Order purports to grant the Relator's Motion to Compel (Docket # 90). But the relief granted in the Order does not track that sought by the Relator in his

Motion and initial Memorandum in Support (Docket #91). The Relator's Motion is styled as one

to "Compel Production of Complete Oracle Sales Databases for Entire Period of MAS Contract

at Issue." It is on the basis of this broad and ambiguous request that Oracle opposed the

Relator's Motion and submitted its Opposition brief to the Court. *See* Docket #95 at 5-6. But

the Relator then filed a Reply brief which, rather than provide additional arguments in support of

obtaining the "complete Oracle sales databases for entire period of MAS contract at issue,"

instead made a series of never-before-issued specific requests for data. Then, a little more than

an hour before the March 1 hearing, he filed a supplemental "Notice" in which he raised even

more issues, none of which were previously raised or even related to his formal discovery

requests.

The Court's March 1, 2011 Order, which requires that Oracle now produce data in

response to the Relator's Reply brief requests, was made "outside the adversarial issues

presented to the Court by the parties," *see Above the Belt*, 99 F.R.D. at 101, in that it did not

permit Oracle an opportunity to brief and argue objections to the Relator's Reply Brief document

requests. Indeed, by ordering Oracle to comply with requests made for the first time in the

Relator's Reply Brief, the Court sidestepped the process established by Rule 34 and Local Civil

Rule 37 for permitting objections to document requests, and functionally granted a separate

motion to compel that had not been properly filed and briefed.

Though it is committed to making reasonable and prompt productions of electronic data

in response to the Relator's requests and has already produced much of the data it understands to

be responsive to the Court's Order, Oracle urges the Court to reconsider its March 1, 2011 Order and to modify its terms to grant the reasonable relief requested below.[3]

A. The Court Should Modify the March 1, 2011 Order To Exclude Relator's Request for Private, Employee-Specific Personal Information and To Enforce the Parties' Prior Discovery Compromise, or Allow for Formal Objection and Briefing On the Issue

As discussed, one of the Relator's Reply Brief requests seeks "data that would identify the salesperson on the deal and sales commission paid." *See* Docket # 97 at 4. Oracle believes that this information is irrelevant to the case. Furthermore, Oracle has consistently objected to producing private, employee-specific personal information, and stated this position in its formal discovery objections and responses, as well as in the various meet and confers. More importantly, during a meet and confer on February 2, 2011, the Relator agreed to a compromise on this issue, manifesting his agreement to accept non-employee specific information sufficient to show how sales commissions are earned, agreeing that data showing absolute dollar figures was not necessary. Accordingly, the Court should exclude this category of data from the production requirements imposed by the Court's March 1, 2011 Order and enforce the parties' prior discovery compromise.

Alternatively, the Relator's Reply brief request for this data ought to be briefed and argued as a separate matter. Plainly, the Relator's Motion to Compel "Production of Complete Oracle Sales Databases" did not address employee compensation except for this single line in the Relator's Reply Brief, and any discovery dispute over compensation is not now ripe for adjudication.

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[3] Oracle reserves its rights to file objections to the March 1, 2011 Order but believes that the Court and the parties will be well-served by an Order modified to reflect the relief requested herein.

B. **The March 1, 2011 Order Should Be Clarified to Establish Reasonable Compliance Protocols**

The March 1, 2011 Order now directs Oracle to produce "all electronically stored information — from every available database — that is encompassed by any reasonable interpretation of pages 3-4 of relator's reply brief (no. 97.)." Though Oracle is working diligently to comply with this Order, its broad and ambiguous terms put Oracle at unreasonable risk of violating the Order based on its judgment in attempting to comply. For example, many of the Reply Brief requests seek "data that makes it easiest to identify" certain other data — *e.g.,* contracts, discounts[4], and sales data — that the Relator believes to be relevant to his claims. But these requests are vague and in many cases require Oracle to write code to query its database in order to extract information that Oracle believes respond to the Relator's requests. *See* Docket # 113-10, Exhibit A-10 (Declaration of Baki Yasar) at ¶¶ 3-5.

Accordingly, Oracle requests that the Court approve the approach Oracle has developed for responding to the Order and to clarify that these efforts are sufficient to comply with its terms. Set forth below are the requests subject to the Court's Order — the Relator's requests as articulated on pages 3-4 of his Reply brief, and the information discussed during the parties' February 28, 2011 conference — along with a description of the actions Oracle has taken in response to these requests. To the extent that it has not yet fully responded to a particular request, Oracle lists proposed further actions to comply with the Court's Order.

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[4] Oracle interprets the term "discount" as expressed in Plaintiffs' requests in accordance with that term's ordinary commercial meaning and not as a term of art that carries any particular legal significance.

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
1. Data for every commercial and government sale during the entire period of the MAS contract -- December 1, 1998 through 2006.	• Oracle interprets this request to apply to software licenses only. As such, Defendants note that on February 25, 2011, Oracle produced a data extract from its GSI database for all U.S. software license transactions for November 1998 - December 2006. • This extract includes data for every commercial and government sale during the entire period of the MAS contract -- December 1, 1998 through 2006. Questions about how the data produced on February 25, 2011 may be sorted by various fields or otherwise may be resolved at the agreed upon "Site Visit." • Additional data on sales during this period may also be found in "job packets," and Defendants and Plaintiffs were negotiating a protocol through which Oracle would provide a sample of these packets. Oracle maintains that a sampling protocol is appropriate.
2. Fields of data that make it easiest to identify commercial transactions where Oracle offered the deepest discounts to its most favored commercial customers.	• Plaintiffs do define what is meant by "most favored." • Defendants will produce documents identifying Oracle's top 20 U.S. license deals, by license revenue recognized, for each quarter during 2004, 2005 and 2006. This could serve as a proxy for Oracle's "most favored commercial customers." • Defendants also note that the data extract from its GSI database for all U.S. software license transactions for November 1998 - December 2006 includes fields that enable the plaintiff to calculate discounts made to its commercial customers. Questions about how this may be done can be resolved at the agreed upon "Site Visit." • Defendants also note that on March 4, 2011, Oracle produced a copy of the QP Discount Report for Calendar Years 2001 to 2006. These QP Reports identify discounts made to various license customers. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9).

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
3. Data that makes it easiest to calculate the percentage discounts offered on each commercial contract.	• The extract from the GSI database for all U.S. software license transactions for November 1998 - December 2006, produced on February 28, 2011 includes fields that enable the plaintiff to calculate the difference between, for example, the list price and the sell price made to Oracle's commercial customers. • Any questions about how this may be done in order to calculate a percentage can be resolved at the agreed upon "Site Visit." • QP Reports, produced for Calendar Years 2001-2006 on March 4, 2011, track percentages, but the data from which those percentages are calculated may not be reliable. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9). • Additional data on sales and percentage discounts during this period may also be found in "job packets," and Defendants and Plaintiffs were negotiating a protocol through which Oracle would provide a sample of these packets. Oracle maintains that a sampling protocol is appropriate.
4. Data that makes it easiest to identify deeply discounted deals just over $200,000.	• The extract from the GSI database for all U.S. software license transactions for November 1998 - December 2006, produced on February 28, 2011 includes fields that enable the Plaintiff to identify deals just over $200,000 and the data to calculate discounts made to Oracle's commercial customers. Questions about how this may be done in order to identify discounted deals just over $200,000 should be resolved at the agreed upon "Site Visit." • The QP Reports produced on March 4, 2011, identify discounted deals and the dollar amount. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9). • Additional data on sales and percentage discounts during this period may also be found in "job packets," and Defendants and Plaintiffs were negotiating a protocol through which Oracle would provide a sample of these packets. Oracle maintains that a sampling

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
	protocol is appropriate.
5. Data to identify deep discounts on limited term or limited use licenses.	• The GSI data extract produced on February 25, 2011 includes a field allowing that identifies term or limited use licenses. However, we have not been able to verify that every such license is identified in that field. The QP Reports also include a field where licenses are identified as limited use or term licenses, but again this field may not have been used consistently. • Questions about how this may be done can be resolved at the agreed upon "Site Visit." The QP Reports identify discounted deals, but may not be reliable. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9).
6. Data to identify deeply discounted deals where Oracle amended price holds.	• The QP Reports produced on March 4 include a file identifying price holds, and it also identifies discounted deals. While this would allow Plaintiff to identify "deeply discounted deals" with price holds, they may not be reliable. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9). • Questions about how this may be done can be resolved at the agreed upon "Site Visit," if it is possible. • Job Packets, a sample of which were to be produced pursuant to an agreement between the parties, will contain information on deals in which Oracle amended price holds. Oracle maintains that a sampling protocol is appropriate.
7. Data to identify deals where Oracle made deeply discounted sales through resellers, systems integrators, value added resellers, or any other middlemen.	• The GSI data produced on February 25, 2011 include a field indicating whether the deal was made through a reseller and data that enables Plaintiff to calculate discounts. Questions about how this may be done can be resolved at the agreed upon "Site Visit." • The QP Reports include information on percentages, but they may not be reliable. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9). • Defendants note the job packets associated with the various deals are the best source of

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REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
	information on the discount.
8. Data that makes it easiest to identify the most deeply discounted renewal sales of maintenance, updates, and support offered to Oracle's most favored commercial customers.	• Plaintiffs have not provided a definition of "most favored." • On March 3, 2011, Oracle produced a CD containing reports run by Oracle for Calendar Years 2000-2006, which pull data identifying customer support renewals entered into Oracle's OKS system. Defendants will also produce a Vendor Specific Objective Evidence ("VSOE") Reports, which will show support value as a percentage of net license value and is used to ensure transactions comply with Oracle's revenue recognition policies in order to comply with GAAP.
9. Data that makes its easiest to classify the customer for each sale by size or category.	• Defendants do not understand what information is required by this request. The data provided can be categorized in various ways, but Defendants need greater clarity on what information Plaintiffs seek. • Instructions concerning how the data already produced might be sorted to categorize sales can be explained at the Site Visit.
10. Data that would identify the salesperson on the deal and sales commissions paid.	• Defendants note that the parties have agreed to a protocol regarding sales representatives, and that producing this information was not encompassed in that agreement. Notwithstanding this, Defendants state that it will produce a document that identifies all Oracle employees in the United States currently responsible for license sales. • Defendants will also produce Oracle policies for 2003- 2006 describing the circumstances in which an Oracle sales representatives might be compensated. Finally, the job packets will include information on the sales people associated with various deals and how they were compensated.
11. Complete data on all sales to federal government customers during the entire period of the MAS contract.	• The GSI data produced on February 25, 2011 includes information on sales to the federal government between 1998 and 2006, the entire period of the MAS contract. • The QP Reports also include information on sales to federal government customers.

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
	• Sales to federal government customers can also be identified using the GSA IFF reports submitted by Oracle, which will be produced. • Job packets contain additional information on sales. • On March 3, 2011, Defendants produced a CD containing reports run by Oracle for Calendar Years 2000-2006, which pull data identifying customer support renewals entered into Oracle's OKS system and which include support sales to the federal government.
12. Data that makes it easiest to identify the percentage discounts offered to each government customer.	• The GSI data produced on February 25, 2011 include information on sales to the federal government between 1998 and 2006, the entire period of the MAS contract, and this data can be used to identify the percentage discounts offered to each government customer. • The QP Reports also include information on discounts offered to federal government customers which can be used to calculate percentage discounts, but they may not be reliable. *See* Docket # 113-1 (Exhibits A1-A6; A8-A9). • Sales to federal government customers can also be identified using the GSA IFF reports submitted by Oracle, which will be produced. • On March 3, 2011, Defendants produced a CD containing reports run by Oracle for Calendar Years 2000-2006, which pull data identifying customer support renewals entered into Oracle's OKS system, from which percentage discounts on sales to the federal government may be calculated.
13. Data that makes it easiest to identify the date and amount of every inflated invoice Oracle submitted on those contract, including invoices for maintenance, updates, and support submitted up to the time of trial.	• Oracle objects to the term "inflated invoices." • Defendants note that the government should be in possession of invoices submitted to the government by Oracle, and searching for all invoices from a single vendor- Oracle - is vastly easier than Oracle searching for the many government customers it has.

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
14. Standard technical manual(s) for the ORACLE ERP system (M&C Tr. at 19:4). Specific reference is to Release 12.	• Defendants note that on March 4, 2011, Oracle produced a copy of the Oracle Order Management Technical Reference Manual and the Oracle Pricing Technical Reference Manual. • On March 5, 2011, Oracle produced a copy of the Setup/Reference Manual containing Global Flexfield and Value Set Definitions. • On March, 7, 2011 Oracle produced a copy of the technical reference manual containing OKS Tables and Views information on the OKS Authoring Form. • Accordingly, Defendants have produced technical reference manuals for Oracle's Order Management, Pricing, and OKS systems. The reference manuals for the Order Management system produced applied to Release 11 of the system, and was produced because it included information on the system's fields. Oracle is in the process of collecting and producing additional technical manuals. • Plaintiffs should identify for which applications (*i.e.,* Order Management, Accounts Receivable, General Ledger) they need R12 manuals and Oracle will produce them.
15. A list of all flex fields in the database related to sales to a particular commercial customer and any flex fields related to sales to government customers. (M&C Tr. At 26:1 - 27:5).	• On March 5, 2011, Oracle produced a copy of the Setup/Reference Manual containing Global Flexfield and Value Set Definitions, which includes a list of flex fields in the GSI database related to sales to commercial and government customers. • Defendants propose to discuss these flex fields at the proposed Site Visit to understand better which of these might be of interest.
16. Field descriptions for all data provided as of Feb. 28 that Mead and Government do not understand.	• On March 4, 2011, Oracle produced a copy of the Oracle Order Management Technical Reference Manual and the Oracle Pricing Technical Reference Manual. • On March 5, 2011, Oracle produced a copy of the Setup/Reference Manual containing Global

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
	Flexfield and Value Set Definitions. • Defendants note that they asked plaintiff to provide a list of fields for which they want additional information at the February 21, 2011 Meet and Confer *See* M&C Tr. at 27:22 - 29:18. Plaintiffs have not identified a list of fields that they do not understand. Once Defendants receive that list, they will provide descriptions.
17. QP discount report and "pricing detail module" (M&C Tr. at 56:9 - 56:14; 59:6 - 59:7; 120:12).	• On March 4, 2011, Oracle Produced a copy of the QP Discount Report for Calendar Years 2001-2006. • Defendants do not understand what "pricing detail module" refers to, but believe the production of the QP Discount Reports satisfies this requirement.
18. List of all relevant fields from the "pricing detail module." (M&C Tr. at 55:3).	• Defendants do not understand what "pricing detail module" refers to, but believe it refers to the QP Discount Reports. The fields in the QP Discount Reports are included in the Reports. • Defendants also produced the Pricing and Order Management Technical Reference Manuals, which contain field listings.
19. Check on how to find historical different price lists at different times (M&C Tr. at 69:7).	• Defendants will produce all commercial and GSA price lists for the period between 1998 and 2006.
20. Data on support renewals from the OKS systems (M&C Tr. at 91:13).	• On March 3, 2011, Defendants produced a CD containing reports run by Oracle for Calendar Years 2000-2006, which pull data identifying customer support renewals entered into Oracle's OKS system. • Plaintiffs requested additional information on March 8. Defendants are researching Plaintiffs' requests.
21. Reports on discounts for deals less than $200,000 with no price holds or migrations, with discounts at 70%, 80%, or 90% (M&C Tr. 125:9 - 125:18);	• The QP Report provided on March 4, 2011 provides information responsive to this request. • Defendants propose that the parties address this

REQUESTS ENCOMPASSED BY THE COURT'S MARCH 1, 2011 ORDER	ORACLE'S RESPONSE AND PROPOSED ACTION
	request during Plaintiffs' Site Visit.
22. Investigate whether the OKS data has any unique contract identifiers that would tie to the government sales on the data that Murray has already produced. (M&C Tr. 138:13).	• Defendants propose that the parties address this request during Plaintiffs' Site Visit.
23. Glossary of Product ID fields (M&C Tr. at 144:17 - 144:22).	• The parties should determine whether the manuals and glossaries produced to date satisfy this item.

Oracle notes that the Court's Order directs that it produce information responsive to the Order "from every available database." In responding to the Order, Oracle understands this directive to require that it search its Global Single Instance ("GSI") database, Oracle's central source for business data.

II.   Alternatively, Oracle Requests a Rule 16(b) Conference

Should the Court object to Oracle's proposed approach and schedule for complying with the March 1, 2011 Order, Defendants request that the Court hold a Rule 16(B) conference to establish a reasonable schedule and set of procedures for Oracle to follow to meet the Court's expectations.

CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court reconsider its March 1, 2011 Order, modify the Order to exclude production of any employee-specific compensation data, and approve Oracle's reasonable protocols for complying with the remainder of the Order. In the alternative, Oracle requests that the Court hold a 16(B) conference for the purpose of discussing compliance with the March 1, 2011 Order and establishing a reasonable schedule and set of procedures for Oracle to follow to meet the Court's expectations.

Respectfully submitted,

/s/

Kristen E. Ittig (VSB #74362)
ARNOLD & PORTER LLP
1600 Tysons Boulevard, Suite 900
McLean, VA 22102-4865
Direct: 703.720.7035
Facsimile: 703.720.7399
Email: Kristen.Ittig@aporter.com

/s/

Drew Harker (admitted *pro hac vice*)
John N. Nassikas III (VSB #24077)
ARNOLD & PORTER LLP
555 12th Street, N.W.
Washington, D.C. 20004
Telephone: 202.942.5000
Facsimile: 202.942.5999
Email: John.Nassikas@aporter.com
Email: Drew.Harker@aporter.com

Counsel for Defendants Oracle Corp., Oracle America , Inc..