IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

In re Yahoo! Shareholders Litigation	Cons. C.A. No. 3561-CC

PLAINTIFFS' OPENING BRIEF IN SUPPORT OF THEIR MOTION TO SET TRIAL DATE

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PRELIMINARY STATEMENT

Much has taken place since March 2008, when Plaintiffs requested a trial date on their claim to invalidate the Yahoo Inc. Change in Control Employee Severance Plans (the "Severance Plans"). Microsoft Corporation ("Microsoft") withdrew its merger proposal, after having criticized Yahoo's Board for "adopt[ing] new plans at the company that have made any change of control more costly." (Ex. A at 1) An annual meeting is set for August 1, 2008, and a proxy contest by Carl Icahn is underway. Icahn suggests that Yahoo's Board "rescind the 'severance plan' that is the largest impediment to a Microsoft deal" (Ex. B at 2), and "offer to sell itself to Microsoft for $34.375 per share" (Ex. C), a price that is less than the sum of Microsoft's last offer of $33 per share plus the $2.4 billion potential cost of the Severance Plans. Yahoo defended its Severance Plans in a press release, but never said that Icahn's proposed price was inadequate. (Ex. D) A news report the following day quoted "[s]ources close to Microsoft [who] said the severance plan was a 'big issue' when deciding what price they could pay for Yahoo!" (Ex. E at 2)

A prompt trial on the validity of the Severance Plans is now essential and appropriate, not least because ***Yahoo's Board disabled itself from rescinding the Severance Plans during the pendency of a proxy fight, even if doing so is essential to realizing a favorable deal, and because Icahn's slate is barred from rescinding the Severance Plans if it prevails in its proxy contest.*** The Severance Plans are, in this respect, conceptually similar to an unredeemable dead hand poison pill, an entrenchment device invalid under Delaware law.

Further, a prompt trial is essential because the Severance Plans create contingent rights that impose huge economic burdens on an acquiror and coerce the vote in a proxy

contest in a manner that has no independent business justification. The Board's pretext of employee retention is laid bare by the fact that the Severance Plans do not constrain the ability of the sitting Board to fire and reorganize Yahoo's workforce as they see fit, without fear of triggering the benefits provided by the Plans. Yahoo's employees gain nothing if the Board enters into any of the potential alternative transactions hidden under the cloak of the business strategy privilege. Yet if Icahn's slate prevails, Yahoo shareholders will be funding huge cash severance and equity acceleration over the following two years for every employee who is either terminated or who resigns with "good reason" as that phrase is loosely defined in the Severance Plans. This discriminatory application of the Severance Plans coerces the stockholder vote.

Moreover, the costs, burdens, and perverse incentives of the Severance Plans are most acute in the context of an acquisition, for which an orderly integration is critical. As explained in the accompanying expert declaration of John C. Fox, a Silicon Valley-based employment law attorney well known to this Court,[1] the benefits of the Severance Plans are exorbitant and, due to the breadth and vagueness of the "good reason" definition, any Yahoo employee can assert a credible claim for severance benefits in the two-year aftermath of an acquisition, and is incented to do so, even if the employee is resigning for personal reasons or otherwise inclined to stay. An acquiror may determine that to forestall mass resignations it must buy out the workforce's severance benefits in full.

Stockholders who do not want to trigger the exorbitant costs of the Severance Plans are coerced into voting for the incumbent directors, and acquiescing to business

[1] In the *Disney* litigation, this Court found Fox's expert reports to be of "significant value to the Court" and "very thorough, well reasoned and informed by Fox's extensive practical experience as an employment law litigator and advisor." *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 744 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006)..

strategies that keep Yahoo independent. Stockholders are being asked to cast ballots under the cloud of the disparate impact of the Severance Plans on the Icahn slate and on Icahn's professed desire to re-ignite merger discussions with Microsoft. This type of immediate, irreparable harm justifies a prompt hearing on the merits. As the Court stated when denying plaintiffs' original motion to expedite:

> If you learn something in the discovery that suggests that it is more than just speculation what this harm is, more than just speculation about when this might occur, that it is having the effect you are claiming it is having on potential interests of acquirors, than you may come back to ask me to schedule it on an expedited basis then.

(Mar. 24, 2008 Tr. at 37-38) That time has come.

This litigation is the only vehicle for adjudicating the validity of the Severance Plans. Icahn held no Yahoo shares when the Severance Plans were adopted and thus cannot readily sue over their coercive effect. Microsoft has its own business reasons for not seeking to invalidate benefits for potential future employees.

Plaintiffs have developed a case for invalidation of the Severance Plans that can be brought to trial next month. We deposed the Yahoo human resources executives responsible for putting together the Severance Plans. We deposed the respective compensation consultants of Yahoo and the Compensation Committee. The Chairman of the Compensation Committee will be deposed this Friday. Another outside director has been noticed for deposition, and a limited number of additional depositions can be noticed as needed in short order. Microsoft has been served with subpoenas and, we are told, will shortly provide a date for its deposition.

Based on the discovery already obtained, it is apparent that Board and Compensation Committee approval of the Severance Plans was not grounded in any

informed analysis of the unprecedented scope of the Severance Plans, their huge cost and destructive impact on employee incentives, or their defensive and coercive aspects on a potential acquiror or proxy contestant. Instead, management withheld advice and information from its compensation consultant showing the unreasonableness of the Severance Plans and sold the Plans to the Board based on an inapt comparison with retention incentives proposed by Microsoft, which sought to retain employees after a change of control, and not to trigger an employee walkout upon a change of control.

A July trial on the validity of the Severance Plans is imperative for Yahoo shareholders. The cost of the Severance Plans, the destructive incentives they create for employees, their inadequate disclosure to the Board and the stockholders, their inability to be rescinded, and their affect on a proxy contest or potential acquisition implicate a variety of legal doctrines that militate in favor of a prompt, real-time final adjudication. Invalidation of the Severance Plans prior to a stockholder vote upon a finding of breach of fiduciary duty is the most appropriate remedy. A future damage remedy against Jerry Yang and his fellow directors for the lost sale opportunity flowing from adoption of the Severance Plans is an inadequate substitute.

STATEMENT OF FACTS[2]

A. The Severance Plans Are a Defensive Measure Adopted Without Regard for the Concerns Expressed By Yahoo's Compensation Consultant

On January 31, 2008, Microsoft proposed a merger with Yahoo, articulating the importance of an optimal integration and plans to offer significant retention packages to Yahoo employees. (Compl. ¶¶ 37, 39) Yahoo management and their takeover defense counsel began developing the Severance Plans the following day. Also on February 1,

[2] This Statement of Facts is intended to summarize certain basic facts and factual allegations, and not to catalogue a full evidentiary record or discovery record for purposes of a final hearing on the merits.

Yahoo's co-founder and Chief Executive Officer, Jerry Yang, excused Yahoo's senior human resources executives and the Compensation Committee's independent advisors before convening a closed session of the Compensation Committee to obtain approval to commence work on the Severance Plans. The Compensation Committee's compensation consultant, F.W. Cook & Co., was not told about the Severance Plans until several days later, after Yang and senior management had shaped the key terms. (*Id.* ¶¶ 51-54)

The initial version of the severance plan prepared by Yahoo's human resources executives and sent to Yang on February 3 was of limited scope. In the event of an employee's termination after a change of control (a "double trigger"): (i) stock options granted in August 2007 to about 700 executives would fully vest; (ii) a pool of newly granted restricted stock units would vest; and (iii) cash severance would be paid in amounts consistent with the severance paid as part of a just-announced 7% reduction in force. (Compl. ¶ 56)

Yang and Yahoo's takeover defense advisers insisted on a far more aggressive plan. Over the next few days, the plan expanded to provide fully accelerated vesting of ***all*** equity-based compensation granted to ***all*** employees. (*Id.* ¶ 57) Cash severance amounts also dramatically increased. (Ex. F)

Instead of paying severance benefits only to employees actually terminated following a change of control, the revised plans also provided that each Yahoo employee would receive full severance benefits upon a voluntary resignation "for good reason" after a change in control, with "good reason" expansively defined to include any "substantial adverse alteration in the Eligible Employee's duties or responsibilities" at

any time during the two years following a change in control. (Ex. G § 1.13[3]; *see* Compl. ¶ 63)

Yahoo management consulted with Compensia as its compensation consultant. Compensia's President, Tim Sparks, advised Yahoo management at the outset that he was "generally opposed to duties and responsibilities provisions" as a trigger to a "good reason" resignation, and that in his experience "those provisions have troubling administrative elements to them" that pose difficulties for an acquiror. (Sparks 66; *see also id.* at 70, 71) (Ex. H) Sparks further advised Yahoo management that fully accelerating all unvested equity for senior executives compensated them "very aggressively." (Sparks 298-300) There is no record of Sparks' advice being conveyed to the Board.

The Severance Plans were approved in concept by the Board on February 8, and formally approved by the Compensation Committee on February 12 (*id.* ¶¶ 70, 72), the day after Yahoo's Board publicly announced their determination that Microsoft's merger proposal undervalued Yahoo.

B. <u>The Severance Plans Are Like an Unredeemable Dead-Hand Poison Pill</u>

The Severance Plans are not subject to alteration by the Board or its replacement:

> ***The Plan may not be terminated during the Potential Change in Control Period or during the Change in Control Protection Period***. The Plan may be amended by the Board at any time; provided, however, that ***during the Potential Change in Control Period and the Change in Control Protection Period, the Plan may not be amended if such amendment would in any manner be adverse to the interests of any Eligible Employee*** . . . .

[3] Yahoo adopted two separate but almost identical severance plans, one for Level I and Level II employees and another for Level III, IV and V employees. For purposes of convenience we cite only to the publicly disclosed plan for Level I and Level II employees.

(Ex. G § 5) (emphasis added). "Potential Change in Control Period" is defined as beginning upon a "Potential Change in Control," which is itself defined as including a public announcement to take "action which, if consummated, would constitute a Change in Control." (Ex. G §§ 1.18, 1.19) Since "Change in Control" is defined to include electing a majority of new directors, which Icahn intends to do, the Severance Plans may not be rescinded or narrowed by the Board during the current proxy contest. In other words, the current Board disabled itself from acting during a critical time when shareholders should be able to rely on their directors to act in their interests.

The current Board also disabled a potential future board elected by Icahn from rescinding or narrowing the Severance Plans. The "Change in Control Protection Period" commences upon the election of a new Board majority and ends "on the second anniversary of such date." (Ex. G § 1.5) Unless the Severance Plans are invalidated, Icahn must solicit votes without the ability to run on a platform of rescinding the Severance Plans and negotiating freely with Microsoft and others unencumbered by the costs and perverse incentives they create.

Only the Court can invalidate the severance plans. The incumbent directors can rescind or narrow the Severance Plans only in their capacity as defendants in this action.

C. The Board's Ignorance of the Unprecedented Breadth and Cost of the Severance Plans Favors a Hearing

A brief review of the Plans and the process through which they were approved by the Board highlights why shareholders need a ruling on their validity in a timely manner. No benchmark data or opinions about market terms for change of control employee severance plans were provided to the Board. (Compl. ¶ 71) This failure is particularly egregious because the Severance Plans are unprecedented in cost and scope.

As discussed in the Fox Declaration, the Severance Plans are highly unusual and broad in two different respects. First, it is exceedingly rare to grant every employee the right to resign and obtain severance benefits based on a change in that employee's "duties or responsibilities" following a change of control (a "'duties or responsibilities' trigger"). Fox has worked with hundreds of severance plans and agreements, but he is aware of only three prior instances in which a plan gave every employee a "duties or responsibilities" trigger. Second, the sheer magnitude of the cash severance benefits are "eye popping" by Silicon Valley standards, while the full acceleration of all unvested equity is also unusual. (Fox Decl. ¶¶ 4, 5, 11)

The munificence of the Severance Plans is perhaps best conveyed by review of a chart that Yahoo management received from Compensia but did not provide to the Board. (Ex. F) The chart compares the benefits of the Severance Plans to those of three companies identified by Yahoo senior management that had adopted generous broad-based severance plans in the face of a potential hostile takeover (BEA Systems, PeopleSoft and Seibel Systems). The number of months of cash severance payable by Yahoo is significantly higher than all three other companies, especially for middle management. PeopleSoft and Seibel Systems provided for full vesting acceleration of all stock awards, as does Yahoo. BEA Systems, a Compensia client, provided for only 50% accelerated vesting.

Missing from the chart is any information about what triggers an entitlement to the severance benefits. Yahoo gives all employees a broad "duties or responsibilities" trigger, based on whether there has been a "substantial adverse alteration" in the employee's duties or responsibilities in the two years following a change of control. (Ex.

G § 1.13) None of the other three companies grant employees such broad power and such a long time period to pull their own severance trigger:

- The BEA Systems plan has no "duties or responsibilities" trigger. (Ex. I 4)
- The Siebel Systems plans have no "duties or responsibilities" trigger for employees below the Vice President level. (*See* Ex. J at 4)
- PeopleSoft's amended stock option plan has a trigger based on a "material reduction in [the employee's] authority or duties" within one year following a change of control. (Ex. K at 1-2, 3)[4]

Yahoo's Severance Plans are, uniquely, at the extreme in (a) the amount of equity acceleration, (b) the amount of cash compensation, and (c) the existence, breadth and duration of the "duties or responsibilities" trigger. This combination of extreme features maximizes the cost of terminating employees, maximizes the number of employees who can claim severance benefits, and maximizes the total cost and burden to an acquiror. Yet this comparative information was not provided to the Board.

D. The Board Did Not Analyze How the Capacious and Vague "Duties or Responsibilities" Trigger Incents Yahoos to Assert Severance Claims, Imposing Massive Burdens on an Acquiror

Fox explains that the phrase "substantial adverse alteration" in an employee's duties or responsibilities is not a legal term of art with a settled meaning under either California law or federal employment or benefits law.[5] (Fox Decl. ¶ 13) To the contrary, the contractual language is broad and vague and potentially embraces a multitude of fact scenarios. Fox notes that there is significant debate among courts as to

[4] Fox explains that an "adverse alteration" in duties or responsibilities is broader than a "reduction" in duties or responsibilities, since new duties can be deemed adverse. (Fox Decl. ¶ 15) The fact that the protection period of the Yahoo Severance Plans extends for two years, rather than one year, means there is more time for severance-triggering alterations in job duties to occur.

[5] The Severance Plans provide that they shall be construed and enforced according to the laws of the State of Delaware to the extent not preempted by federal law or other applicable local law. (Ex. G § 6.9) Fox does not opine as to whether "substantial adverse alteration" has any special meaning under Delaware law. A LEXIS search turns up no Delaware cases or statutes that use the phrase.

the scope of "adverse" within the meaning of federal and state discrimination law, and that there are hundreds of Equal Pay Act case decisions evaluating whether two jobs or sets of job duties are sufficiently similar for purposes of comparing compensation. (Fox Decl. ¶ 16)

Fox opines that various consequences follow from the breadth and vagueness of the "substantial adverse alteration" trigger. Employees can make credible demands for severance benefits, even if they are planning to resign for personal reasons or otherwise not inclined to leave. Human resources and legal personnel face an administrative nightmare in giving the required individualized consideration to each claim. An active plaintiffs employment bar in Northern California would be keenly interested in challenging denials of severance benefits, and it can be expected that class action litigation will be filed and certified over whether various types of job changes constitute a "substantial adverse alteration" in job duties or responsibilities. This prospect, Fox explains, cannot be cheaply or easily avoided. (Fox Decl. ¶¶ 16-21) Fox's Declaration amplifies on the previously filed Affirmation of James Reda, which spoke of the "possibility of a massive number of constructive terminations," and how the Severance Plans create a financial incentive and leverage for employees to threaten to exercise their severance rights, which creates a "ripple effect and collateral damage" throughout the workforce. (Reda Aff. ¶¶ 15-17)

Yet nobody involved in developing or approving the Severance Plans analyzed for the Board the impact of giving every employee the incentive to claim a constructive termination based on changed duties or responsibilities. There was no analysis of the effect on an acquiror's ability to achieve a smooth integration, or of how many

employees could be expected to claim severance rights for a constructive termination. (Compl. ¶ 68) Management advised the Board that a termination of just 15% of the workforce was the most likely scenario, a figure based on nothing more than Microsoft's public statements about maintaining much of Yahoo's workforce and a guess about the extent of administrative overlap. Yahoo's management disregarded the effect of the easily pulled "substantial adverse alteration" trigger. (*Id.*)

Better information on this subject was reasonably available. Compensia's Sparks had expressly advised management against including a "duties or responsibilities" trigger, because of the problems they impose on an acquiror. (Sparks 66, 70, 71) From personal experience, he knew that some acquirors confronted with these issues decide to take the path of least resistance, interpret the "duties or responsibilities" trigger broadly, and pay the claims. (Sparks 67-69)

Jonathan Dillon, Yahoo's Senior Director of Integration & Corporate Development, immediately understood upon learning of the adoption of the Severance Plans that they would "make things increasingly more expensive for msft." (Compl. ¶ 66 & Ex. D) He explained that it is "tough [for an acquiror] to take a hard line on" a duties or responsibilities trigger, and that Microsoft will "need to effectively buy us out with more retention" in order to keep employees from claiming an entitlement to severance. (*Id.* ¶ 67 & Ex. D) If an acquiror attempts to deal preemptively with the perverse incentives created by the Severance Plans, and pay the benefits without first forcing an employee to resign, the cost of doing so is approximately $2.4 billion, assuming a $35 per share acquisition price. (Compl. Ex. E)

In the absence of any real benchmarking, or any analysis of the incentives and costs associated with a broad "duties or responsibilities" trigger and expensive severance benefits, management sold the Severance Plans to the Board as reasonable in light of the $1.5 billion that Microsoft intended to spend on employee retention. The comparison is fatuous. Microsoft's goal was to incentivize key employees to stay with the company after a merger. Only a small portion of the $1.5 billion would be paid to terminated employees. Yahoo's plan compensates terminated employees and incentivizes others to quit. (Compl. ¶ 71)

E. Yahoo's Misleading Disclosure of the Severance Plans

Yahoo's definitive proxy statement, filed on June 9, 2008 (the "Proxy") (Ex. L), states on page 38 that the Severance Plans were "designed, in light of the uncertainty caused by the Microsoft proposal, to help retain the Company's employees, maintain a stable work environment and provide certain economic benefits to the employees in the event their employment is actually or constructively terminated in connection with a change in control of the Company." In reality, the Severance Plans were designed to throw sand in the gears of Microsoft's desire for an orderly integration and to defend against a potential proxy contest. Additionally, as Fox explains, the Severance Plans cover much more than an actual or "constructive" termination. (Fox Decl. ¶ 14)

The Proxy nowhere mentions that severance benefits may be claimed by an employee based on a "substantial adverse alteration" of the employee's duties or responsibilities following a change of control, or that the terms of the Severance Plans may not be amended during the pendency of a proxy contest or for two years following a victorious proxy contest. (*See* Ex. L)

The Proxy states on page 39 that "Compensia advised the Company and F.W. Cook & Co. advised the Compensation Committee with respect to the terms of the plans." The Proxy misleadingly omits that Yahoo management disregarded and withheld from the Board critical advice and information provided by Compensia. The Proxy also omits that neither Compensia nor F.W. Cook & Co. attended any relevant meeting of the Board or Compensation Committee or rendered any opinion for the benefit of Yahoo's directors. (Compl. ¶¶ 53, 70, 72)

ARGUMENT

I. AN OPPORTUNITY TO SEEK INVALIDATION OF THE SEVERANCE PLANS IN ADVANCE OF THE SHAREHOLDER MEETING IS IMPERATIVE

The Court should decide Plaintiffs' challenges to the Severance Plans before the next director election takes place, and before further harm becomes irreparable.[6] The Microsoft merger proposal gave rise to the "omnipresent spectre" of director self-interest that has animated Delaware law for over two decades. The *Unocal* standard, as interpreted by *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361 (Del 1995), imposes on a corporation's board the burden of showing (1) that it "had reasonable grounds for believing that a danger to corporate policy and effectiveness existed;" and (2) "that [its] defensive response was reasonable in relation to the threat posed." *Unitrin*, 651 A.2d at 1373. There is little doubt the Severance Plans are a defensive measure. *See, e.g.*, *Crandon Capital Partners v. Shelk*, 181 P.3d 773, 785-86 (Or. App. 2008) (holding that timing of adoption of golden parachute program and expansiveness of terms demonstrate

[6] Given the advanced state of discovery on the Severance Plan issues, this is not an application for expedited treatment. Nevertheless, the standard for expedited treatment is satisfied because "plaintiff has articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury." *Giammargo v. Snapple Beverage Corp.*, 1994 Del. Ch. LEXIS 199, at *6 (Nov. 15, 1994).

that board was operating in defensive mode for purposes of applying *Unocal* heightened scrutiny). Plaintiffs have assembled, and continue to assemble, strong evidence showing that the Severance Plans are disproportionate to any cognizable threat, and that the Board and Compensation Committee were not adequately informed of the burdens imposed by the Severance Plans on an acquiror or proxy contestant.[7]

Absent a prompt day in court, Icahn's proxy contest will be encumbered by the fact that election of his slate would be the first trigger of the double-trigger Severance Plans, creating the opportunity for employees to pull the second "good reason" resignation trigger. Stockholders are forced to weigh that outcome in deciding whether to elect nominees intent on taking a new approach in dealing with Microsoft. The terms and structure of the Severance Plans, and the current posture of the control contest, implicate concerns that have prompted this Court to hear claims for prompt equitable relief:

1. ***Shareholder vote coercion*** - the Severance Plans unfairly discriminate against shareholder-nominated slates of directors;

2. ***Lost opportunity to sell shares*** - the Severance Plans have an improper deterrent effect on a potential acquisition by Microsoft;

3. ***Impairment of the Board's (and any replacement board's) statutory authority*** –the Severance Plans are immune to rescission or repair by the current or any future board during the pendency of a control contest, even if doing so is a prerequisite to pursuing a beneficial transaction, thus undermining the authority of Yahoo directors to direct the corporation's affairs, pursuant to Section 141(a) of the DGCL;

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[7] *See In re Dairy Mart Convenience Stores, Inc.*, 1999 Del. Ch. LEXIS 94, at *50-51 (May 24, 1999) ("I have severe reservations about concluding that the board's action fell within a range of reasonableness. It is unclear whether the directors understood the effects of their actions."); *Mentor Graphics Corp. v. Quickturn Design Sys., Inc.*, 728 A.2d 25, 51 (Del. Ch. 1998) (invalidating delayed redemption poison pill where its operative terms "cannot be reconciled with the directors' stated justification for adopting it," and therefore "the board has not carried its burden of demonstrating that the DRP is reasonable in relation to the perceived threat"), *aff'd on other grounds*, *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281 (Del. 1998). *See also Mills Acquisition Co. v. MacMillan, Inc.*, 559 A.2d 1261 (Del. 1989) (granting injunction where key information not disclosed to the Board)

4. ***Misleading proxy disclosures*** – the Yahoo Board fails to disclose key terms of the Severance Plans and falsely and misleadingly discloses their purpose and the process of their adoption.

A. The Severance Plans Inequitably Discriminate Against Shareholder-Nominated Slates of Directors, Coercing the Shareholder Vote

"The shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests." *Blasius Industries v. Atlas Corp.*, 564 A.2d 651, 659 (Del. Ch. 1988). A vote that punishes shareholders for replacing the incumbent board is a coerced vote, and it is critical that shareholders be given the opportunity to present coercion claims before that vote takes place. As Vice Chancellor Strine observed in *Chesapeake Corp. v. Shore*, 771 A.2d 293, 323 (Del. Ch. 2000), this Court should "infuse its *Unocal* analyses with the spirit animating *Blasius* and ***not hesitate to use its remedial powers where an inequitable distortion of corporate democracy has occurred***." *Id.* at 323 (emphasis added). In *Chesapeake*, the Court held a trial amidst a proxy contest and invalidated various improper defensive measures.

The Severance Plans coerce the upcoming vote by making the election of a new Board majority a first trigger for severance rights. The Board imposed this burden on proxy contestants, while maintaining for itself a free hand to fire, move, restructure and reorganize Yahoo's workforce as they see fit. It is telling that the Board only grants rights that trigger massive payouts to employees in the event the Board is not in control of the Company. The distinction makes no sense from the perspective of an employee. The improper purpose and effect of burdening an insurgent slate and not the management slate is to defeat a proxy contest. The imposition of potentially massive severance obligations in a manner that discriminates between slates of nominees raises serious questions about stockholder coercion that should be decided before the vote takes place.

B. The Potential Sale of the Company May Turn on the Validity of the Challenged Severance Plans

The cost of the Severance Plans may represent the difference between whether a mutually agreeable sale price with Microsoft is struck. Reportedly, the cost of the Severance Plans was a "big issue" to Microsoft for purposes of determining how much to offer to pay for Yahoo. (Ex. E at 2) Icahn has suggested bridging a price gap that may depend on rescinding the Severance Plans. (Ex. C) Plaintiffs seek a prompt hearing so that this historic opportunity is not squandered. *See, e.g. ACE Ltd. v. Capital Re Corp*., 747 A.2d 95, 104-5 (Del. Ch. 1999) ("the Delaware law of mergers and acquisitions has given primacy to the interests of stockholders in being free to maximize value from their ownership of stock without improper compulsion from executory contracts entered into by boards"). Invalidating the Severance Plans before a stockholder vote may allow for a negotiated sale of the Company. Delay in adjudicating the validity of the Severance Plans may mean the loss of an opportunity to sell Yahoo to Microsoft, leaving the shareholders with the inadequate alternative of a claim for monetary damages.[8]

C. The Board Improperly Abdicated Its Statutory Authority And Disabled The Authority of a Replacement Board

Icahn has called for the Board to rescind the Severance Plans, and the Board has refuses to do so, but they each ignore that the Board ***disabled itself from rescinding the Severance Plans, even if doing so is necessary to achieve a sale transaction the Board supports***. Defensive measures that disable Board conduct in a meaningful way and are not subject to any "fiduciary out" are invalid. *See, e.g., Paramount Communications Inc.*

[8] Establishing and collecting damages likely would depend on which directors are exculpated from monetary liability based on whether they breached their duty of loyalty – a burden that need not be satisfied for purposes of obtaining injunctive relief. *Arnold v. Society for Sav. Bancorp, Inc.*, 678 A.2d 533, 535 n.2 (Del. 1996) ("Under 8 *Del. C.* §192(b)(7), directors are not exempt from equitable relief…").

v. QVC Network Inc., 637 A.2d 34, 51 (Del. 1994) ("To the extent that a contract, or a provision thereof, purports to require a board to act or not act in such a fashion as to limit the exercise of fiduciary duties, it is invalid and unenforceable.").

The Severance Plans are analogous to (but materially worse than) "no-talk" provisions that "prevent a board from meeting its duty to make an informed judgment with respect to even considering whether to negotiate with a third party." *Phelps Dodge Corp. v. Cyprus Amax Minerals Co.*, 1999 WL 1054255, at *1 (Del. Ch. Sept. 27, 1999); *see also Ace Ltd. v. Capital Re Corp.*, 747 A.2d 95, 98-99 (Del. Ch. 1999) (describing such provisions as "pernicious" because they involve "an abdication by the board" of its fiduciary duties and such restrictions "comes close to self-disablement by the board."). Here, the Yahoo Board has disabled itself from pursuing a deal contingent on removing the Severance Plans, irrespective from the merits of the proposal.

The Board has also impaired the ability of any replacement board from rescinding the Severance Plans and negotiating the sale of the company to a buyer unwilling to accept the burdens of the Severance Plans. The *Quickturn* Court ruled, following a trial held during the pendency of a proxy fight, that the problem with a six-month delayed redemption poison pill is that it "restricts the board's power in an area of fundamental importance to the shareholders-negotiating a possible sale of the corporation," contrary to the mandate of Section 141(a) of the DGCL. *Quickturn*, 721 A.2d at 1291-92. The Severance Plans have a more prolonged effect, as they continue for two full years following any change in control, not just six months. They also inhibit a replacement Board (but not the incumbent directors) from taking any significant actions that may impact large numbers of employees, a powerful inhibition given the fast-changing nature

of Yahoo's business and the fact that Yahoo was in the middle of a strategic restructuring even before Microsoft emerged. (Compl. ¶¶ 33-36). While a dead hand or slow hand poison pill limits board action in the limited aspect of selling the company, the Severance Plans directly undermine a new board's ability to manage the business and affairs of the corporation, in violation of Section 141(a) of the DGCL.

The Court should schedule a prompt hearing to give Plantiffs the chance to prove that the Severance Plans deserve the same fate as no-talk provisions and dead hand poison pills.

D. Proxy Claims Are Best Determined Before a Stockholder Vote

This Court has made clear its strong preference for resolving disclosure claims before the irreparable harm of a tainted vote takes place:

> Delaware courts have stated a preference for having this type of proxy-related disclosure claim brought as one for a preliminary injunction before the shareholder vote, as opposed to many months after. "***An injunctive remedy specifically vindicates the stockholder right at issue-the right to receive fair disclosure of the material facts necessary to cast a fully informed vote-in a manner that later monetary damages cannot and is therefore the preferred remedy, where practicable***." This preference stems from the inherent difficulties in fashioning an appropriate remedy for disclosure violations significantly after the fact.

Globis Partners, L.P. v. Plumtree Software, Inc., 2007 WL 4292024, at *11 (Del. Ch. Nov. 30, 2007) (emphasis added). *See also ODS Technologies, L.P. v. Marshall*, 832 A.2d 1254, 1262 (Del. Ch. 2003) ("The threat of an uninformed stockholder vote constitutes irreparable harm.").

The Proxy Statement is misleading in not disclosing the critical "substantial adverse alteration" trigger for a "good reason" resignation, and in stating that certain compensation consulting firms provided advice, without any indication that Compensia's advice about not including a "duties or responsibilities" trigger was ignored, and the

limited nature of each firm's role. The time for resolving these disclosure claims is now, before a stockholder vote.

II. INVALIDATION OF THE SEVERANCE PLANS IS A PROPER REMEDY

As noted above, a contract is "invalid and unenforceable" if it "purports to require a board to act or not act in such a fashion as to limit the exercise of fiduciary duties." *Paramount*, 637 A.2d at 51. Invalidation of the Severance Plans is not only a necessary remedy, it conforms with how other courts have addressed improper defensive measures in the guise of compensation programs. In *Buckhorn, Inc. v. Ropak Corp.*, 656 F. Supp. 209 (S.D. Oh. 1987), *aff'd*, 815 F.2d 76, 1987 U.S. App. LEXIS 2506 (6th Cir. 1987), the District Court recognized the irreparable injury associated with the authorization of accelerated vesting of existing stock options and new stock options upon a change of control, and the Sixth Circuit ruled that "the interests of the shareholders and the public interest will be advanced by maintaining the injunctions." 1987 U.S. App. LEXIS 2506, at *3. *See also Black & Decker Corp. v. Am. Standard Inc.*, 682 F. Supp. 772, 786 (D. Del. 1988) (enjoining compensation plans that provided for accelerated payments upon change of control); *NCR Corp. v. AT&T Co.*, 761 F. Supp. 475, 502-03 (S.D. Ohio 1991) (declaring after trial that as ESOP created in response to a tender offer was "invalid and unenforceable" and enjoining the voting of the preferred shares purchased by the ESOP).

Invalidation is especially appropriate here, given that management withheld benchmark data and the critical advice of Compensia not to include a "duties or responsibilities" trigger, misconduct that now stands in the way of a Microsoft acquisition and a fair proxy fight. *See Mills Acquisition Co.*, 559 A.2d at 1279 ("[J]udicial reluctance to assess the merits of a business decision ends in the face of illicit

manipulation of a board's deliberative processes by self-interested corporate fiduciaries.").

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiffs respectfully request the setting of a prompt trial date in advance of the August 1, 2008 shareholder meeting on plaintiffs' claim to invalidate the Severance Claims and obtain corrective disclosures relating thereto.

/s/ Joel Friedlander

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Co-Lead Counsel for Plaintiffs

Dated: June 9, 2008

Exhibit

A

Board of Directors
Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089

Dear Members of the Board:

It has now been more than two months since we made our proposal to acquire Yahoo! at a 62% premium to its closing price on January 31, 2008, the day prior to our announcement. Our goal in making such a generous offer was to create the basis for a speedy and ultimately friendly transaction. Despite this, the pace of the last two months has been anything but speedy.

While there has been some limited interaction between management of our two companies, there has been no meaningful negotiation to conclude an agreement. We understand that you have been meeting to consider and assess your alternatives, including alternative transactions with others in the industry, but we've seen no indication that you have authorized Yahoo! management to negotiate with Microsoft. This is despite the fact that our proposal is the only alternative put forward that offers your shareholders full and fair value for their shares, gives every shareholder a vote on the future of the company, and enhances choice for content creators, advertisers, and consumers.

During these two months of inactivity, the Internet has continued to march on, while the public equity markets and overall economic conditions have weakened considerably, both in general and for other Internet-focused companies in particular. At the same time, public indicators suggest that Yahoo!'s search and page view shares have declined. Finally, you have adopted new plans at the company that have made any change of control more costly.

By any fair measure, the large premium we offered in January is even more significant today. We believe that the majority of your shareholders share this assessment, even after reviewing your public disclosures relating to your future prospects.

Given these developments, we believe now is the time for our respective companies to authorize teams to sit down and negotiate a definitive agreement on a combination of our companies that will deliver superior value to our respective shareholders, creating a more efficient and competitive company that will provide greater value and service to our customers. If we have not concluded an agreement within the next three weeks, we will be compelled to take our case directly to your shareholders, including the initiation of a proxy contest to elect an alternative slate of directors for the Yahoo! board. The substantial premium reflected in our initial proposal anticipated a friendly transaction with you. If we are forced to take an offer directly to your shareholders, that action will have an undesirable impact on the value of your company from our perspective which will be reflected in the terms of our proposal.

It is unfortunate that by choosing not to enter into substantive negotiations with us, you have failed to give due consideration to a transaction that has tremendous benefits for Yahoo!'s shareholders and employees. We think it is critically important not to let this window of opportunity pass.

Sincerely yours,

Steven A. Ballmer
Chief Executive Officer
Microsoft Corporation

Exhibit

B

Carl C. Icahn
ICAHN CAPITAL LP
767 Fifth Avenue, 47th Floor
New York, NY 10153

June 4, 2008

Roy Bostock
Chairman
Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089

Dear Mr. Bostock:

I have long been cynical about the effectiveness of many of the boards and CEOs in this country and as a result the inability of our companies to compete. I have constantly complained about how far CEOs and boards will go in order to retain their jobs, yet even I am amazed at the length Jerry Yang and the Yahoo board have gone to in order to entrench their positions and keep shareholders from deciding if they wished to sell to Microsoft.

According to details in a complaint that I became aware of yesterday (details Yahoo fought to keep under seal), Jerry Yang and a majority of the board went to inordinate lengths to sabotage a Microsoft bid. The complaint states: "Viewing employee retention as Microsoft's Achilles heel, Yang engineered an ingenious defense creating huge incentives for a massive employee walkout in the aftermath of a change in control. The plan gives each of Yahoo's 14,000 full-time employees the right to quit his or her job and pocket generous termination benefits at any time during the two years following a takeover, by claiming a "substantive adverse alteration" in job duties or responsibilities." The damage to Microsoft "is compounded by the fact that Yahoo's thousands of engineers, known as "Technical Yahoos!," have detailed job responsibilities and qualifications."

Most importantly, Microsoft might never be able to trust a CEO and board who, while claiming to be negotiating in good faith, went behind their back and adopted a "plan" which not only sabotages any Microsoft acquisition but went so far as to completely disable its own ability to rescind the "plan" as long as Microsoft's offer remains pending. Until now I naively believed that self-destructive doomsday machines were fictional devices found only in James Bond movies. I never believed that anyone would actually create and activate one in real life. I guess I never knew about Yang and the Yahoo Board. In my opinion, it will be extremely difficult for Microsoft or other companies to trust, work with and negotiate with a company that would go to these lengths.

It is insulting to shareholders that Yahoo for the last month has told us that they are quite willing to negotiate a sale of the company to Microsoft and cannot understand why Microsoft has walked away. However, the board conveniently neglected to inform shareholders about the magnitude of the plan it installed which made it practically impossible for Microsoft to stay at the bargaining table. Could this have been the problem?

Even more deceitful are Yahoo's actions toward its own employees, for whom you claimed to have set up the "plan". Management neglected to mention to these same employees that Microsoft in its proposals had earmarked $1.5 billion of retention incentives (representing over $100,000 per employee) meant to allay any employee concerns.

Ironically, according to the complaint, this is not the first time that Yahoo has denied shareholders the opportunity of selling to Microsoft at a large premium. According to the complaint, in January 2007 Microsoft offered to purchase Yahoo at $40 per share but the company rejected that proposal. On January 31, 2008, Steve Ballmer emailed a letter to Jerry Yang and Roy Bostock making a new proposal of $31 per share. The letter recounts Microsoft's prior efforts to acquire Yahoo and noted that Microsoft had given Yahoo time to implement business strategies designed to turn the company around. These strategies obviously didn't work. The letter went on to state: "Our proposal represents a 62% premium above the closing price of Yahoo! common stock of $19.18 on January 31, 2008." Yahoo not only turned down this proposal but sabotaged it. An article in CNET News cited in the complaint sums it up by stating, "Yahoo may indeed agree to Microsoft's [offer], but it will be over Jerry Yang's dead body".

I and many of your shareholders believe that the only way to salvage Yahoo in the long if not short run is to merge with Microsoft. However, because of HSR considerations, to complete a merger of this magnitude will take a period of time. Even if by some stretch of the imagination the Yahoo board finally determines to do the rational thing and sell the company, I fear that, in light of Yang and the board's recent actions in response to Microsoft's overtures, it may be too late to convince Microsoft to trust Yang and the current board to run the company during that period while Microsoft sits on the sidelines with $45 billion at risk. Therefore, the best chance to bring Microsoft and Yahoo together is to replace Yang and the current Yahoo board with a board that will negotiate in good faith with Microsoft and in whom Microsoft will have trust to operate the company during the long period between signing and closing.

You stated in a press release yesterday that, "Yahoo's board of directors including Jerry Yang has been crystal clear that it would consider any proposal by Microsoft that was in the best interests of its shareholders." However this is not crystal clear to me. You have allegedly turned down a $40 offer. You have turned down and sabotaged a $33 offer. Instead, you appear willing to negotiate an "alternative" deal that in my opinion will be worth less than $33 but will entrench the board and Jerry Yang. I understand how these actions are in the best interests of

management and a board whose members each receive $40,000 per month for several days work, but it is hard for me to understand how these actions are in the "best interests of the shareholders."

However, despite your actions to date, there is still some possibility that you can resuscitate a Microsoft offer for the company. The board can rescind the "severance plan" that is the largest impediment to a Microsoft deal. You currently can do this because Microsoft withdrew their bid 30 days ago. It is time for you to stop misleading your shareholders with respect to Microsoft. It has been reported today that when asked to talk about the Microsoft bid, Sue Decker indicated that Microsoft made an offer which Yahoo's board didn't feel was at an attractive enough price. However, one doesn't have to be a rocket scientist to realize there is a simple method to possibly achieve a higher price. Simply rescind the poison pill "severance plan", which would free up approximately $2.4 billion and possibly even more which could be added to the bid. It is also time to admit to your shareholders that the severance plan was not done for your employees (who you conveniently neglected to inform that Microsoft had earmarked $1.5 billion in retention incentives for), but rather was done simply as an entrenchment device and to impede a Microsoft bid. If you are not completely disingenuous in your protestations concerning doing "the right thing" for shareholders, you should rescind the severance plan expeditiously and determine if Microsoft is still willing to purchase our company and thereby create a true competitor for Google. I can only hope that you will finally do what is in the "best interests of the shareholders."

Sincerely yours,

CARL C. ICAHN

Exhibit

C

Carl C. Icahn
ICAHN CAPITAL LP
767 Fifth Avenue, 47th Floor
New York, NY 10153

June 6, 2008

Roy Bostock
Chairman
Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089

Dear Roy:

While you may take issue with the content of my letter, I take issue with your oversight of Yahoo! Again, I stand by my characterization of your "poison pill" severance plan and I find it humorous to see you attempt to defend it.

Roy, it is you who "misrepresents and misstates the details" of the plan. Much like the rhetoric in many well known political campaigns, you keep repeating misstatements in the hopes that by repeating misstatements enough times it will convince your shareholders that these misstatements are valid. For example, you repeated, "the plan was fully disclosed at the time of its adoption and should be no surprise to anyone at this point." This is simply not true. The egregious magnitude of the dollar amount cost of the plan was never fully disclosed, nor was the email from your compensation advisor calling the plan "nuts." While you keep repeating that the severance plan was in the "best interests of shareholders", you neglect to mention that the financial cost of the plan could be immense. The documents obtained during discovery and released in the shareholder complaint show that Yahoo! estimates the maximum change in control severance expenses to be a staggering $2.4 billion if Microsoft bids $35 per share for Yahoo! You neglected to mention that the true cost to an acquirer may be even higher as the perverse change in control severance incentives may diminish the work effort of Yahoo! employees. In case you do not understand the plan, in addition to the $2.4 billion of severance expenses, I believe the plan will negatively impact employee behavior and degrade the ability of an acquirer to successfully integrate the acquisition. In the event of a change of control, the employee may decide not to work as hard in the hopes of cashing in on a robust severance package that awards up to two years salary and benefits, $15,000 of outplacement expenses, and accelerated vesting of stock options and restricted stock units. To make matters worse, it is not just the acquirer firing the employee that can trigger the severance package but the employee who may decide on his or her own to resign for "good reason" at any point within two years of a change in control. It is quite obvious to me that this plan impacts the price an acquirer would pay. Is it any wonder than an acquirer, once fully comprehending this plan, might not wish to negotiate any further? I again call upon you to honor your fiduciary duty to your shareholders and rescind this "poison pill" severance plan.

You asked, "what exactly would happen to our Company if you and your nominees were to take control of Yahoo!" I will give you my perspective on that.

o First, I would work to have the board replace your "poison pill" severance plan with an acceptable alternative.

o Second, I intend to ask our new board to hire a talented and experienced CEO (attempting to replicate Google's success with Eric Schmidt) to replace Jerry Yang and return Jerry to his role as "Chief Yahoo". Indeed, it was much speculated that Jerry would serve in the CEO role temporarily until a permanent CEO was hired after the board asked Terry Semel to resign.

o Third, I intend to ask our new board to inform Microsoft that unless any alternative transaction can insure a $33 or higher stock price (of which I am skeptical) all talks of alternative transactions are over.

o Fourth, I will ask our new board to offer publicly to sell Yahoo! to Microsoft in a friendly and cooperative transaction.

o Fifth, to the extent Microsoft does not want to make a proposal, I will ask our new board do a deal on search with Google, but only if it contains termination provisions that would in no way impede a subsequent acquisition by Microsoft.

Now let me ask you a couple of questions, Roy:

o Why don't you, now that you have the opportunity, remove the "poison pill" severance plan that I find to be ridiculous and thereby remove a major obstacle to a Microsoft acquisition?

o In my opinion, Microsoft does not believe you will ever sell the entire company on a friendly basis. So why don't you stop dancing around the subject and publicly offer to sell the company to Microsoft for $34.375 per share and promise to cooperate completely?

o Why are you still giving hope to Microsoft that there is a possible "alternative deal"? As long as there is the possibility of an "alternative deal", isn't it obvious that Microsoft will not make a bid for the whole company?

Exhibit

D

YAHOO! INVESTOR RELATIONS

Yahoo! Inc. Statement on Carl Icahn's Letter of June 6, 2008

SUNNYVALE, Calif., Jun 06, 2008 (BUSINESS WIRE) -- Yahoo! Inc. (Nasdaq:YHOO), a leading global Internet company, today issued the following response to Carl Icahn in response to his letter dated June 6, 2008:

> Leaving aside Mr. Icahn's inaccurate interpretation of our retention plan, we again note that he has no credible plan to operate Yahoo!. We believe that Mr. Icahn's suggestion that we cancel our retention plan would have a destabilizing impact on Yahoo! and would clearly not be in the best interests of our shareholders. Furthermore, his suggestion that we put out a price publicly to see if Microsoft will alter its stated position is ill-advised. As we have stated numerous times publicly and privately, we are open to any transaction including a sale to Microsoft if it is in the best interests of shareholders.

About Yahoo! Inc.

Yahoo! Inc. is a leading global Internet brand and one of the most trafficked Internet destinations worldwide. Yahoo! is focused on powering its communities of users, advertisers, publishers, and developers by creating indispensable experiences built on trust. Yahoo! is headquartered in Sunnyvale, California.

Important Additional Information

Yahoo! will be filing a definitive proxy statement and accompanying WHITE proxy card with the Securities and Exchange Commission ("SEC") in connection with the solicitation of proxies for its 2008 annual meeting of stockholders. Stockholders are strongly advised to read Yahoo!'s 2008 definitive proxy statement when it becomes available because it will contain important information. Stockholders will be able to obtain copies of Yahoo!'s 2008 definitive proxy statement and other documents filed by Yahoo! with the SEC in connection with its 2008 annual meeting of stockholders at the SEC's website at www.sec.gov or at the Investor Relations section of Yahoo!'s website at yhoo.client.shareholder.com. Yahoo!, its directors, and certain of its officers may be deemed participants in the solicitation of proxies from stockholders in connection with Yahoo!'s 2008 annual meeting of stockholders. Information concerning Yahoo!'s directors and officers is available in its preliminary proxy statement filed with the SEC on June 3, 2008.

SOURCE: Yahoo! Inc.

Yahoo! Inc.
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bhw@yahoo-inc.com
Marta Nichols, 408-349-3527 (Investor)
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Exhibit

E

POISON P-ENEMIES

ICAHN, BOSTOCK SWAP HISSY MISSIVES ON YAHOO!

By ZACHERY KOUWE

June 7, 2008 -- Billionaire Carl Icahn lobbed his latest bitter salvo at Yahoo! Chairman Roy Bostock yesterday in his ongoing efforts to bludgeon the Internet icon into selling itself to Microsoft.

In a letter yesterday, Icahn claimed that Bostock continues to "misrepresent" the facts of an employee severance plan that the activist investor said could add a whopping $2.4 billion to the cost of any acquisition.

"Much like the rhetoric in many well-known political campaigns, you keep repeating misstatements in the hopes that by repeating these misstatements enough times it will convince your shareholders that these misstatements are valid," Icahn wrote.

Bostock fired back with another letter of his own, claiming the billionaire simply wants to replace the board in order sell out to Microsoft and make a quick buck.

"Leaving aside Mr. Icahn's inaccurate interpretation of our retention plan, we again note that he has no credible plan to operate Yahoo!," Bostock said.

Most investors believe Icahn clearly wants Yahoo!, in which he owns about 59 million shares, sold to Microsoft as soon as possible.

He even suggested a price yesterday of $34.375 per share, or $343/8, which puzzled many investors because of its precision and led some to believe the 72-year-old investor may not be used to decimalized stock quotes.

Icahn demanded in the letter yesterday that Yahoo! rescind the employee severance plan immediately so it can bring Microsoft back to the table.

But, according to provisions of the severance plan, the board cannot rescind or change it as long as Icahn is seeking to replace directors.

"The Board disabled itself and a future board from rescinding these severance plans, even if that is a condition of an acquisition," said Joel Friedlander, an attorney with Bouchard Margules & Friedlander who represents several large pension funds suing Yahoo! over the failed deal with Microsoft.

"The only way to rescind these plans is by court order in the Delaware action, and our clients are determined to make that happen."

Sources close to Microsoft said the severance plan was a "big issue" when deciding what price they could pay for Yahoo!

The plan, instituted after Microsoft went public with a $31 per share offer in February, would allow Yahoo! employees to collect large severance packages even if they decide to leave voluntarily after a change of control in the company.

Microsoft believed the plan would add about $1.5 billion, or $1 a share, in additional costs depending on how many employees took advantage of it, sources close to the company said.

Icahn, who doesn't use e-mail and has praised former Yahoo! boss Terry Semel, contends a combination is the only way the two companies can compete with Google, the leader in Internet search traffic.

He is seeking to replace the entire Yahoo! board at its annual meeting on Aug. 1 with his hand-picked directors including former Viacom boss Frank Biondi Jr. and Dallas Mavericks owner Mark Cuban.

Yahoo! shares rose 8 cents to $26.44 yesterday.

zachery.kouwe@nypost.com

Exhibit

F

Broad Based Benefits Comparison to Other Recent Transactions

	Payout			
	Proposed Yahoo US Severance (base salary only)	BEA Plan (base & target bonus or commissions)	PeopleSoft Plan (base salary only)	Seibel Plan (base & target bonus or commissions)
IC	4 months	3 Months	Paid based on length of service (8-18 weeks)	3 Months
Sr IC/Mgr/Sr Mgr	6 months	3 Months		3 Months
Dir/Sr Dir	12 months	6 Months		6 Months
VP	12 months	12 Months	12 Months	12 Months
SVP	18 months	12 Months	12 Months plus	18 Months
EVP	24 months	n/a	n/a	n/a
Additional Benefits	Full vesting acceleration of stock awards Continuation of health benefits equal to severance period Outplacement services with amount varying by level	50% vesting acceleration of stock awards Continuation of health benefits equal to the length of severance	Full vesting acceleration of stock awards Continuation of health benefits based on length of service (2 - 5 months)	Full vesting acceleration of stock awards Continuation of health benefits equal to the length of severance Legal fees to enforce agreement

Exhibit

G

YAHOO INC.
CHANGE IN CONTROL EMPLOYEE SEVERANCE PLAN
FOR
LEVEL I AND LEVEL II EMPLOYEES

The Company hereby adopts the Yahoo! Inc. Change in Control Employee Severance Plan for Level I and Level II Employees for the benefit of certain employees of the Company and its subsidiaries, on the terms and conditions hereinafter stated. The Plan, as set forth herein, is intended to help retain qualified employees, maintain a stable work environment and provide economic security to eligible employees in the event of certain terminations of employment. The Plan, as a "severance pay arrangement" within the meaning of Section 3(2)(B)(i) of ERISA, is intended to be excepted from the definitions of "employee pension benefit plan" and "pension plan" set forth under section 3(2) of ERISA, and is intended to meet the descriptive requirements of a plan constituting a "severance pay plan" within the meaning of regulations published by the Secretary of Labor at Title 29, Code of Federal Regulations §2510.3-2(b).

SECTION 1. DEFINITIONS. As hereinafter used:

1.1 "Affiliate" means, with respect to any individual or entity, any other individual or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such individual or entity.

1.2 "Board" means the Board of Directors of the Company.

1.3 "Cause" shall mean that the Eligible Employee has: (a) willfully and continually failed to substantially perform, or been willfully grossly negligent in the discharge of, his or her duties to the Company or any of its subsidiaries (in any case, other than by reason of a disability, physical or mental illness or analogous condition), which failure or negligence continues for a period of 10 business days after a written demand for performance is delivered to the Eligible Employee by the Board, which specifically identifies the manner in which the Board believes that the Eligible Employee has not substantially performed, or been grossly negligent in the discharge of, his or her duties; (b) been convicted of or pled nolo contendere to a felony; or (c) materially and willfully breached any agreement with the Company, any of its subsidiaries or any Affiliate of the Company or any of its subsidiaries. No act or failure to act on the part of the Eligible Employee shall be deemed "willful" unless done, or omitted to be done, by the Eligible Employee not in good faith or without reasonable belief that the Eligible Employee's act or failure to act was in the best interests of the Company.

1.4 A "Change in Control" shall be deemed to mean the first of the following events to occur after the Effective Date:

(a) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, but excluding (i) the Company or any of its subsidiaries, (ii) any employee benefit plans of the Company or (iii) a corporation owned, directly or indirectly, by the

stockholders of the Company in substantially the same proportions as their ownership of stock of the Company (individually a "Person" and collectively, "Persons"), is or becomes, directly or indirectly, the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act) of securities of the Company representing 40% or more of the combined voting power of the Company's then outstanding securities (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates); or

(b) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the Effective Date, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the Effective Date or whose appointment, election or nomination for election was previously so approved or recommended; or

(c) the consummation of a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation or entity regardless of which entity is the survivor, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company, such surviving entity or any parent thereof outstanding immediately after such merger or consolidation;

(d) the shareholders of the Company approve a plan of complete liquidation or winding-up of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets;

(e) the occurrence of any transaction or series of transaction deemed by the Board or the Plan Administrator to constitute a change in control of the Company under this Section 1.4.

1.5 "Change in Control Protection Period" shall mean the period commencing on the date a Change in Control occurs and ending on the second anniversary of such date.

1.6 "Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

1.7 "Company" means Yahoo! Inc., its subsidiaries or any successors thereto.

1.8 "Disability" means a physical or mental condition entitling the Eligible Employee to benefits under the applicable long-term disability plan of the Company or any its subsidiaries, or if no such plan exists, a "permanent and total disability" (within the meaning of Section 22(e)(3) of the Code) or as determined by the Company in accordance with applicable laws.

1.9 "Effective Date" shall mean February 12, 2008.

1.10 "Eligible Employee" means any Level I Employee or Level II Employee, who is employed on the date of a Change in Control, other than: (i) an employee who has entered into a separation agreement with the Company prior to a Change in Control; (ii) interns, casual or temporary employees; and (iii) employees on a fixed-term employment agreement.

1.11 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.12 "Exchange Act" means the Securities Exchange Act of 1934, as amended.

1.13 "Good Reason" means (a) a substantial adverse alteration in the Eligible Employee's duties or responsibilities from those in effect immediately prior to the Change in Control (including in the case of a Level I Employee who reports directly to the chief executive officer of the Company immediately prior to a Change in Control, if, after such Change in Control, such Level I Employee no longer reports directly to the chief executive officer of a public company); (b) a reduction in the Eligible Employee's annual base salary as of immediately prior to the Change in Control (or as the same may be increased from time to time); (c) a material reduction in the Eligible Employee's annual target bonus opportunity as of immediately prior to the Change in Control; or (d) the relocation of the Eligible Employee 's principal place of employment to a location more than 35 miles from the Eligible Employee 's principal place of employment immediately prior to the Change in Control, except for required travel on the Company's business to an extent substantially consistent with the Eligible Employee's business travel obligations as of immediately prior to the Change in Control. The Eligible Employee's continued employment shall not constitute consent to, or a waiver of rights with respect to, any act or failure to act constituting Good Reason hereunder, provided that the Eligible Employee provides the Company with a written notice of resignation within ninety (90) days following the occurrence of the event constituting Good Reason and the Company shall have failed to remedy such act or omission within thirty (30) days following its receipt of such notice.

1.14 "Level I Employee" means any full-time employee of the Company or its subsidiaries with the job level immediately prior to a change in control of: E4, E5 or EX..

1.15 "Level II Employee" means any full-time employee of the Company or its subsidiaries with the job level immediately prior to a change in control of E3.

1.16 "Plan" means the Yahoo! Inc. Change in Control Employee Severance Plan for Level I and Level II Employees, as set forth herein, and as it may be amended from time to time.

1.17 "Plan Administrator" means the Compensation Committee of the Board or such other person or persons appointed from time to time by the Compensation Committee of the Board to administer the Plan.

1.18 "Potential Change in Control" shall be deemed to have occurred if the event set forth in any one of the following paragraphs shall have occurred:

(a) the Company enters into an agreement, the consummation of which would result in the occurrence of a Change in Control;

(b) the Company or any Person publicly announces an intention to take or to consider taking actions which, if consummated, would constitute a Change in Control;

(c) any Person becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 15% or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding securities (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates); or

(d) the Board adopts a resolution to the effect that, for purposes of this Plan, a Potential Change in Control has occurred.

1.19 "Potential Change in Control Period" means the period beginning upon the occurrence of a Potential Change in Control and ending upon the earliest to occur of the: (i) consummation of the Change in Control or (ii) one-month anniversary of the abandonment of the transaction or series of transactions that constitute a Potential Change in Control (as determined by the Plan Administrator in its sole discretion).

1.20 "Severance" means (a) the involuntary termination of an Eligible Employee's employment by the Company or any subsidiary thereof, other than for Cause, death or Disability or (b) a termination of an Eligible Employee's employment by the Eligible Employee for Good Reason, in each case, following a Change in Control and during the Change in Control Protection Period, other than a termination of an Eligible Employee's employment by the Company as part of a global integration after a Change in Control when such Eligible Employee is rehired by the Company as part of such integration.

1.21 "Severance Date" means the date on which an Eligible Employee incurs a Severance.

SECTION 2. CHANGE IN CONTROL SEVERANCE BENEFITS

2.1 Generally. Subject to Sections 2.7, 2.8, 4 and 6.2 hereof, each Eligible Employee shall be entitled to the greater of either the: (a) severance payments and benefits pursuant to the applicable provisions of Section 2 of this Plan if such Eligible Employee incurs a Severance during the Change in Control Protection Period or (b) severance benefits under any negotiated severance agreement between such Eligible Employee and the Company (if applicable). With respect to an Eligible Employee who is entitled to benefits under the Workers Adjustment Retraining Notification Act of 1988, or any similar state or local statute or ordinance (collectively the "WARN Act"), such benefits under this Plan shall be reduced dollar-for-dollar by any benefits received pursuant to the WARN Act.

2.2 Payment of Accrued Obligations. Subject to Sections 2.8, 4 and 6.2 hereof, the Company shall pay to each Eligible Employee who incurs a Severance during the Change in Control Protection Period a lump sum payment in cash, paid in accordance with applicable law, as soon as practicable but no later than 10 days after the Severance Date, equal to the sum of (a) the Eligible Employee's accrued annual base salary and any accrued vacation pay through the Severance Date, and (b) the Eligible Employee's annual bonus earned for the fiscal year immediately preceding the fiscal year in which the Severance Date occurs if such bonus has not been paid as of the Severance Date.

2.3 Level I Employees. Each Level I Employee who incurs a Severance during the Change in Control Protection Period shall be entitled to (i) continuation of his or her annual base salary, as in effect immediately prior to the Severance Date (or, if higher, as in effect on the date on which the Change in Control occurs), for twenty-four (24) months following the Severance and (ii) payment of up to $15,000 (payable in equivalent local currency with respect to Eligible Employees outside the United States) for outplacement services utilized by the Eligible Employee within twenty-four (24) months following the Severance Date, such reimbursement to be paid not later than the end of the calendar year following the year in which the expense is incurred.

2.4 Level II Employees. Each Level II Employee who incurs a Severance during the Change in Control Protection Period shall be entitled to (i) continuation of his or her annual base salary, as in effect immediately prior to the Severance Date (or, if higher, as in effect on the date on which the Change in Control occurs), for eighteen (18) months following the Severance, and (ii) payment of up to $15,000 (payable in equivalent local currency with respect to Eligible Employees outside the United States) for outplacement services utilized by the Eligible Employee within twenty-four (24) months following the Severance Date, such reimbursement to be paid not later than the end of the calendar year following the year in which the expense is incurred.

2.5 Acceleration of Vesting. In addition to the benefits provided pursuant to Sections 2.3, 2.4 and 2.6 hereof (as applicable), each Level I and Level II Employee who incurs a Severance during the Change in Control Protection Period shall be entitled to full vesting of all stock options, restricted stock units and any other equity-

based awards granted or assumed by the Company outstanding as of the Severance Date (whether or not such award was outstanding as of the Effective Date); provided, however, that this Section 2.5 shall not apply with respect to a grant or award of stock options, restricted stock units or any other equity-based compensation made after the Effective Date if the agreement granting or awarding the applicable stock options, restricted stock units or any other equity-based compensation provides that the grant shall not be subject to the provisions of this Section 2.5.

2.6 Benefit Continuation. In the case of each Eligible Employee who incurs a Severance during the Change in Control Protection Period, commencing on the date immediately following such Eligible Employee's Severance Date and continuing for the period set forth below (the "Welfare Benefit Continuation Period"), the Company shall provide to each such Eligible Employee (and anyone entitled to claim under or through such Eligible Employee) all Company-paid benefits under any group health plan or dental plan of the Company (as in effect immediately prior to such Eligible Employee's Severance Date) for which Eligible Employees of the Company are eligible, to the same extent as if such Eligible Employee had continued to be an Eligible Employee of the Company during the Welfare Benefit Continuation Period. To the extent that such Eligible Employee's participation in Company benefit plans is not practicable, the Company shall arrange to provide, at the Company's sole expense, such Eligible Employee (and anyone entitled to claim under or through such Eligible Employee) with equivalent health and dental benefits under an alternative arrangement during the Welfare Benefit Continuation Period. The coverage period for purposes of the group health continuation requirements of Section 4980B of the Code shall commence at the Severance Date, and shall run concurrently with the Welfare Benefit Continuation Period. The Welfare Benefit Continuation Period shall be for a number of months equal to the number of months (including fractions thereof) during which the Eligible Employee receives base salary continuation payments pursuant to this Section 2.

2.7 Release; Restrictive Covenants; Benefit Commencement Date. No Eligible Employee who incurs a Severance during the Change in Control Protection Period shall be eligible to receive any payments or other benefits under the Plan (other than payments under Section 2.2 hereof) unless, within forty-five (45) days following such Employee's Severance Date, he or she first executes a Release (substantially in the form of Exhibit A hereto, or in such other form as is required to comply with applicable law) in favor of the Company and others set forth on said Exhibit A, or in such other form as is required to comply with applicable law, relating to all claims or liabilities of any kind relating to his or her employment with the Company or a subsidiary thereof and the termination of the Employee's employment, and such Release becomes effective and has not been revoked by the employee by the fifty-fifth (55th) day following the date of termination. Provided that the Eligible Employee executes the Release in accordance with the requirements of this Section 2.7, any payments or other benefits under the Plan shall commence (the "Benefit Commencement Date") on or before the sixtieth (60th) business day following the Severance Date; all payments or benefits accrued during the period between the Severance Date and Benefit Commencement Date shall be provided in full on the Benefit Commencement Date. If the Eligible Employee does not execute and return such Release such that it does not become effective within the aforesaid period,

the Eligible Employee shall cease to be entitled to any payments or benefits under this Plan. In addition, payment and other benefits under this Plan shall cease as of the date that the Eligible Employee breaches any of the provisions of such Eligible Employee's Confidentiality, Proprietary Information and Assignment of Inventions Agreement, or other similar agreement.

2.8 409A. Notwithstanding any provision to the contrary in this Plan, no payment or distribution under this Plan which constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of the Eligible Employee's termination of employment with the Company will be made to the Eligible Employee unless the Eligible Employee's termination of employment constitutes a "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code). In addition, no such payment or distribution will be made to the Eligible Employee prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of the Eligible Employee's "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code) or (ii) the date of the Eligible Employee's death, if the Eligible Employee is deemed at the time of such separation from service to be a "key employee" within the meaning of that term under Section 416(i) of the Code and to the extent such delayed commencement is otherwise required in order to avoid a prohibited distribution under Section 409A(a)(2) of the Code. All payments and benefits which had been delayed pursuant to the immediately preceding sentence shall be paid to the Eligible Employee in a lump sum upon expiration of such six-month period (or if earlier upon the Eligible Employee's death). It is intended that this Plan shall comply with the provisions of Section 409A of the Code and the Treasury Regulations relating thereto so as not to subject the Eligible Employee to the payment of additional taxes and interest under Section 409A of the Code. In furtherance of this intent, this Plan shall be interpreted, operated, and administered in a manner consistent with these intentions.

SECTION 3. PLAN ADMINISTRATION.

3.1 The Plan Administrator shall administer the Plan and may interpret the Plan, prescribe, amend and rescind rules and regulations under the Plan and make all other determinations necessary or advisable for the administration of the Plan, subject to all of the provisions of the Plan.

3.2 The Plan Administrator may delegate any of its duties hereunder to such person or persons from time to time as it may designate.

3.3 The Plan Administrator is empowered, on behalf of the Plan, to engage accountants, legal counsel and such other personnel as it deems necessary or advisable to assist it in the performance of its duties under the Plan. The functions of any such persons engaged by the Plan Administrator shall be limited to the specified services and duties for which they are engaged, and such persons shall have no other duties, obligations or responsibilities under the Plan. Such persons shall exercise no discretionary authority or discretionary control respecting the management of the Plan. All reasonable expenses thereof shall be borne by the Company.

3.4 Following the occurrence of a Change in Control, the Company may not remove from office the individual or individuals who served as Plan Administrator immediately prior to the Change in Control; provided, however, if any such individual ceases to be affiliated with the Company, the Company may appoint another individual or individuals as Plan Administrator so long as the substitute Plan Administrator consists solely of an individual or individuals who (a) were officers of the Company immediately prior to the Change in Control, (b) were directors of the Company immediately prior to the Change in Control and are not affiliated with the acquiring entity in the Change in Control or (c) were selected or approved by an officer or director described in clause (a) or (b).

SECTION 4. LIMITATION ON BENEFITS. If any payment or benefit received or to be received by an Eligible Employee (including any payment or benefit received pursuant to the Plan or otherwise) would be (in whole or part) subject to the excise tax imposed by Section 4999 of the Code, or any successor provision thereto, or any similar tax imposed by state or local law, or any interest or penalties with respect to such excise tax (such tax or taxes, together with any such interest and penalties, are hereafter collectively referred to as the "Excise Tax"), then, the salary continuation payments provided under Section 2.3 or 2.4, as applicable, shall first be reduced (and thereafter, if necessary, the accelerated vesting provided in Section 2.5 shall be reduced) to the extent necessary to make such payments and benefits not subject to such Excise Tax, but only if such reduction results in a higher after-tax payment to the Eligible Employee after taking into account the Excise Tax and any additional taxes the Eligible Employee would pay if such payments and benefits were not reduced.

SECTION 5. PLAN MODIFICATION OR TERMINATION. The Plan may not be terminated during the Potential Change in Control Period or during the Change in Control Protection Period. The Plan may be amended by the Board at any time; provided, however, that during the Potential Change in Control Period and the Change in Control Protection Period, the Plan may not be amended if such amendment would in any manner be adverse to the interests of any Eligible Employee, except that, notwithstanding the foregoing, the Plan Administrator may amend the Plan at any time and in any manner necessary to comply with applicable law, including, but not limited to Section 409A of the Code. For the avoidance of doubt, (a) any action taken by the Company or the Plan Administrator during the Change in Control Protection Period to cause an Eligible Employee to no longer be designated as a Level I Employee or Level II Employee, or to decrease the payments or benefits for which an Eligible Employee is eligible, and (b) any amendment to Section 3.4 or this Section 5 during the Change in Control Protection Period shall be treated as an amendment to the Plan which is adverse to the interests of any Eligible Employee.

SECTION 6. GENERAL PROVISIONS.

6.1 Except as otherwise provided herein or by law, no right or interest of any Eligible Employee under the Plan shall be assignable or transferable, in whole or in part, either directly or by operation of law or otherwise, including without limitation by execution, levy, garnishment, attachment, pledge or in any manner; no attempted

assignment or transfer thereof shall be effective; and no right or interest of any Eligible Employee under the Plan shall be liable for, or subject to, any obligation or liability of such Eligible Employee. When a payment is due under this Plan to a severed employee who is unable to care for his or her affairs, payment may be made directly to his or her legal guardian or personal representative.

6.2 If the Company or any subsidiary thereof is obligated by law or by contract to pay severance pay, a termination indemnity, notice pay, or the like, or if the Company or any subsidiary thereof is obligated by law or by contract to provide advance notice of separation ("Notice Period"), then any severance pay hereunder shall be reduced by the amount of any such severance pay, termination indemnity, notice pay or the like, as applicable, and by the amount of any compensation received during any Notice Period.

6.3 Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Eligible Employee, or any person whomsoever, the right to be retained in the service of the Company or any subsidiary thereof, and all Eligible Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

6.4 If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

6.5 This Plan shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Eligible Employee, present and future, and any successor to the Company. If a severed employee shall die, all accrued but unpaid amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Plan to the executor, personal representative or administrators of the severed employee's estate.

6.6 The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

6.7 The Plan shall not be required to be funded unless such funding is authorized by the Board. Regardless of whether the Plan is funded, no Eligible Employee shall have any right to, or interest in, any assets of any Company which may be applied by the Company to the payment of benefits or other rights under this Plan.

6.8 Any notice or other communication required or permitted pursuant to the terms hereof shall have been duly given when delivered or mailed by United States Mail, first class, postage prepaid (or such local equivalent thereof), addressed to the intended recipient at his, her or its last known address.

6.9 This Plan shall be construed and enforced according to the laws of the State of Delaware to the extent not preempted by federal law or other applicable local law, which shall otherwise control.

6.10 All benefits hereunder shall be reduced by applicable withholding and shall be subject to applicable tax reporting, as determined by the Plan Administrator, or as required by applicable law.

SECTION 7. CLAIMS, INQUIRIES, APPEALS.

7.1 Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing, as follows:

Plan Administrator
c/o Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Attention: Head of Human Resources

7.2 Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must notify the applicant, in writing, of the denial of the application, and of the applicant's right to review the denial. The written notice of denial will be set forth in a manner designed to be understood by the employee, and will include specific reasons for the denial, specific references to the Plan provision upon which the denial is based, a description of any information or material that the Plan Administrator needs to complete the review and an explanation of the Plan's review procedure.

This written notice will be given to the employee within ninety (90) days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional ninety (90) days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial ninety (90)-day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render his or her decision on the application. If written notice of denial of the application for benefits is not furnished within the specified time, the application shall be deemed to be denied. The applicant will then be permitted to appeal the denial in accordance with the Review Procedure described below.

7.3 Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied (or deemed denied), in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within 60 days after the application is denied (or deemed denied). The Plan Administrator will give the applicant (or his or her representative) an opportunity to review pertinent documents in preparing a request for a review and submit written comments, documents, records and other information relating to the claim. A request for a review shall be in writing and shall be addressed to:

Plan Administrator
c/o Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Attention: Head of Human Resources

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The Plan Administrator may require the applicant to submit additional facts, documents or other material as he or she may find necessary or appropriate in making his or her review.

7.4 Decision on Review. The Plan Administrator will act on each request for review within sixty (60) days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional sixty (60) days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial sixty (60)-day period. The Plan Administrator will give prompt, written notice of his or her decision to the applicant. In the event that the Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will outline, in a manner calculated to be understood by the applicant, the specific Plan provisions upon which the decision is based. If written notice of the Plan Administrator's decision is not given to the applicant within the time prescribed in this Section 7.4 the application will be deemed denied on review.

7.5 Rules and Procedures. The Plan Administrator may establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out his or her responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial (or deemed denial) of benefits to do so at the applicant's own expense.

7.6 Exhaustion of Remedies. No legal action for benefits under the Plan may be brought until the claimant (a) has submitted a written application for benefits in accordance with the procedures described by Section 7.1 above, (b) has been notified by the Plan Administrator that the application is denied (or the application is deemed denied due to the Plan Administrator's failure to act on it within the established time period), (c) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 7.3 above and (d) has been notified in writing that the Plan Administrator has denied the appeal (or the appeal is deemed to be denied due to the Plan Administrator's failure to take any action on the claim within the time prescribed by Section 7.4 above).

EXHIBIT A

FORM OF RELEASE

(To be signed on or after the Separation Date)

In return for payment of severance benefits pursuant to the Yahoo! Inc. Change in Control Severance Plan for Level I and Level II Employees (the "Plan"), as amended, I hereby generally and completely release the Yahoo, Inc. (the Company") and its directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively "Released Party") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including wages, salary, bonuses, commissions, vacation pay, expense reimbursements (to the extent permitted by applicable law), severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including without limitation claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including without limitation claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("ADEA"), the federal Worker Adjustment and Retraining Notification Act (as amended) and similar laws in other jurisdictions, the Employee Retirement Income Security Act of 1974 (as amended), the Family and Medical Leave Act of 1993, and California Fair Employment and Housing Act (as amended), the California Family Rights Act (as amended), California Labor Code section 1400 *et. seq.* and any similar laws in other jurisdictions; provided, however, that this Release does not waive, release or otherwise discharge any claim or cause of action arising after the date I sign this Agreement.

This Agreement includes a release of claims of discrimination or retaliation on the basis of workers' compensation status, but does not include workers' compensation claims. Excluded from this Agreement are any claims which by law cannot be waived in a private agreement between employer and employee, including but not limited to claims under California Labor Code section 2802 and the right to file a charge with or participate in an investigation conducted by the Equal Employment Opportunity Commission ("EEOC") or any state or local fair employment practices agency. I waive, however, any right to any monetary recovery or other relief should the EEOC or any other agency pursue a claim on my behalf.

I acknowledge and represent that I have not suffered any age or other discrimination, harassment, retaliation, or wrongful treatment by any Released Party. I also

acknowledge and represent that I have not been denied any rights including, but not limited to, rights to a leave or reinstatement from a leave under the Family and Medical Leave Act of 1993, the California Family Rights Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, or any similar law of any jurisdiction.

I agree that I am voluntarily executing this Release. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA and that the consideration given for this Release is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my waiver and release specified in this paragraph does not apply to any rights or claims that may arise after the date I sign this Release; (b) I have been advised to consult with an attorney prior to signing this Release; (c) I have received a disclosure from the Company that includes a description of the class, unit or group of individuals covered by this employment termination program, the eligibility factors for such program, and any time limits applicable to such program and a list of job titles and ages of all employees selected for this group termination and ages of those individuals in the same job classification or organizational unit who were not selected for termination ("Disclosures"); (d) I have at least forty-five (45) days from the date that I receive the Disclosures to consider this Release (although I may choose to sign it any time on or after my Separation Date); (e) I have seven (7) calendar days after I sign this Release to revoke it ("Revocation Period"); and (f) this Release will not be effective until I have signed it and returned it to the Company's Human Resources Department and the Revocation Period has expired (the **"Effective Date"**).

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. In giving this release, which includes claims which may be unknown to me at present, I acknowledge that I have read and understand Section 1542 of the California Civil Code, which states: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any unknown or unsuspected claims I may have against the Company.

_____

[name]

_____

Date

EXHIBIT H

THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

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IN RE:	)	
YAHOO! SHAREHOLDERS LITIGATION	)	CONS. C.A.
	)	No. 3561-cc
	)	

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HIGHLY CONFIDENTIAL

30(b)6 DEPOSITION OF COMPENSIA

VIDEOTAPED DEPOSITION OF TIMOTHY SPARKS

WEDNESDAY, MAY 21, 2008

BY: KATHERINE E. LAUSTER, CSR NO. 1894, CRR

Highly confidential 30(b)6 deposition of COMPENSIA, deposition of TIMOTHY SPARKS, taken on behalf of PLAINTIFFS, at 525 University Avenue, Suite 1100, Palo Alto, California, commencing at 9:04, Wednesday, May 21, 2008, before Katherine E. Lauster, Certified Shorthand Reporter No. 1894, pursuant to Notice.

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ALSO PRESENT:

BRIAN MONROE, VIDEOGRAPHER
TATYANA SHMYGOL

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WEDNESDAY, MAY 21, 2008

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Q. They asked what your experience was with a change-of-duties-and-responsibilities trigger?

A. I'm sorry.

Q. Did they ask you in particular what your experiences were with a duties-and-responsibilities trigger?

A. I don't recall them asking me. I recall providing that input.

Q. Well, what did you say on the subject, sir?

A. I told them, at the earliest conversation, that, as a purely administrative matter, I was generally opposed to duties and responsibilities provisions.

Q. Did you ever have any follow-up conversation on that subject, sir?

A. I may have. I don't have specific recollection.

Q. Did you tell them what your experience was in that regard, sir?

A. Yes.

Q. What did you say?

A. I said in my experience, those provisions have troubling administrative elements to them.

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Q. What is your experience in that regard, sir?

A. I've advised committees that have had to interpret those provisions.

Q. Who?

A. Electronic Arts, for one.

Q. Any others, sir?

A. Not that I can specifically recall.

Q. Well, when did you -- when did you advise Electronic Arts about administration of a duties-and-responsibilities trigger?

A. In the past two years.

Q. Okay. How many employees were covered by that provision?

A. I don't recall.

Q. Approximately?

A. I don't recall. They do many acquisitions, and these issues percolate to the committee.

Q. Oh, I see. So you're -- you're advising them in their role as acquirer; correct?

A. Having to live with these provisions.

Q. Okay. In over the course of numerous acquisitions, or any one acquisition in particular?

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A. A combination.

Q. And it posed difficulties for Electronic Arts to deal with those provisions?

A. Not just Electronic Arts, but other companies as well.

Q. Now, how do you know that, sir?

A. I've practiced for over 20 years in this area.

Q. Well, how do -- how do companies tend to deal with those -- these troubling administrative provisions, as you put them?

MR. JACOBS: Objection. Form.

THE WITNESS: Some of them are very aggressive about defending the integrity of the provision. Others take the path of least resistance. It varies.

BY MR. FRIEDLANDER:

Q. What is the "path of least resistance," sir?

A. It is to interpret the trigger broadly.

Q. And therefore do what?

A. Pay the severance.

Q. Okay. Now, you can probably preemptively pay the severance too, correct, so that an employee

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is not incentivized to leave; correct?

A. I imagine so.

Q. Like for instance, when an acquirer comes along, they can -- they can -- they can tell employees: You don't have to leave to get these benefits. We'll give these benefits to you, and therefore that -- to keep that employee from walking out the door; right?

A. I imagine that's possible.

Q. You have heard about the conversion -- it's basically converting it from a double trigger to some sort of single trigger; correct? That can be done; correct?

A. I imagine so.

Q. And that's the only way -- if you don't do that, then you're just left with dealing with the claim after the employee has already left the company --

MR. JACOBS: Objection --

BY MR. FRIEDLANDER:

Q. -- right, sir?

MR. JACOBS: Objection to the form of the question.

THE WITNESS: Most of those provisions

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require -- include a notice-and-cure provision so they don't have to wait until the employee leaves.

BY MR. FRIEDLANDER:

Q. Who -- to whom did you tell that you were generally opposed to a duties-and-responsibilities trigger? Who did you have that conversation with?

A. It would have been --

MR. DELL ANGELO: Misstates testimony.

THE REPORTER: Was that an objection?

MR. DELL ANGELO: Yes. Misstates the testimony.

THE WITNESS: In my preliminary conversation with Carl and David Yardly.

MR. JACOBS: David Windley?

THE WITNESS: David Windley.

BY MR. FRIEDLANDER:

Q. Was that over the weekend of February 2nd and 3rd, sir?

A. No.

Q. When was it?

A. I believe it was the 4th and/or the 5th.

Q. All right. Monday the 4th or Tuesday the 5th?

A. Correct.

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Q. Is that when -- is that when you learned that there was -- that someone else had recommended a good-reason trigger that included duties and responsibilities?

MR. DELL ANGELO: Objection. Asked and answered.

THE WITNESS: Yeah, I don't recall when they first learned of the good-reason?

BY MR. FRIEDLANDER:

Q. Did there come a point when you learned someone else had recommended a good-reason trigger with a duties and responsibilities claim to it?

A. I don't recall when I learned or the basis of the recommendation.

Q. Tell me everything you -- you do recall about the conversation you had with Mr. Statkiewicz and Mr. Windley about the duties and responsibilities trigger.

A. I basically shared with them what I've shared with you, that I am generally opposed to having broad-based duties-and-responsibilities provisions included in a good-reason definition with a double trigger. That's -- that was the input I provided.

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Q. And that was just -- that was on one occasion?

A. I can't say if it was only one.

Q. Do you -- do you recall anything they said, sir, either Mr. Windley or Mr. Statkiewicz --

A. No.

Q. -- on that subject?

A. No.

Q. And that was after you'd already given some advice about what -- what kind of trigger should be in place, and for how much, and what they should -- and what -- you know, what kinds of forms of compensation should have those triggers; correct?

MR. DELL ANGELO: Object to the form.

MR. WALTZER: Objection --

THE WITNESS: Yeah, I don't recall the sequencing. I had a conversation with Carl and Mindy on Saturday, the 2nd, that was a very preliminary, high level discussion of various approaches that could be taken.

So if that -- by that you -- by different vehicles and whatnot, you mean that conversation, then yes it did fall after that conversation.

BY MR. FRIEDLANDER:

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Q. Were you ever -- now, are you aware that various individuals at Compensia were sort of scurrying around to try to -- to get data to support -- to support the company for -- for purposes of getting some sense of what other companies do about different elements of change-of-control and severance provisions?

MR. DELL ANGELO: Object to the form.

MR. WALTZER: Scur- -- scurrying?

THE WITNESS: I wasn't aware that they were developing data to support what the company was doing. I was aware that they were developing market data.

BY MR. FRIEDLANDER:

Q. Okay. And did you -- are you aware of any effort by Compensia to provide market data about giving a duties and responsibilities trigger for every employee of the company?

A. I'm not aware of that.

Q. Did you ever have any conversation with anybody on that subject?

A. I may have.

Q. But you don't recall?

A. Not specifically.

A. (No audible response.)
Q. And you added the -- you added the sentence, "We generally view three or four times base salary."
A. And I added the word "substantial" and I bold to it. I bolded that "substantial."
Q. I was going to ask you that. Did you also put that bold and in italics? Right?
A. Yes.
Q. And so as far as the unvested equity, and the amount of unvested equity, and then, for retention purposes, the way -- the way it would be dealt with as part of the severance program, this is then -- these people have substantial equity values, and you've dealt with these executives very aggressively.
A. Both through the retention grants that were made in '07, and with the change-in-control provisions.
Q. Right. So it's one thing, the -- one way to think about it is, as of '07 these senior executives have a lot of equity, a lot of unvested equity; correct?
MR. WALTZER: Objection. Form.

MR. DELL ANGELO: Objection.
THE WITNESS: They have unvested -- a lot of unvested equity at the current stock price.
BY MR. FRIEDLANDER:
Q. Okay. What was the current stock price in August 2007?
A. I don't know.
Q. Do you have a general idea?
A. Well, we -- in the fall it was low twenties.
Q. Okay. So -- and is it now -- that equity value has now dramatically gone up, given the current stock price as a result of the Microsoft proposal; correct?
A. That's correct.
Q. Then overlaying on that, the change in control severance plan and its full acceleration of all of that equity upon change in control with a double trigger, these people are dealt with very aggressively; correct?
MR. JACOBS: Objection. Form.
BY MR. FRIEDLANDER:
Q. That's your view?
A. The -- it's my view that the retention

grants that were made in 2007 combined with the protection was aggressive.
Q. It was very aggressive?
A. Right.
MR. JACOBS: Objection. Form.
BY MR. FRIEDLANDER:
Q. Have you ever seen the minutes of the compensation committee meeting of February 12th?
A. I think you've asked me that before. The answer is no.
Q. Including in any preparation for your deposition?
A. That's correct.
Q. Were you ever asked to offer an opinion, formally or informally, about whether the retention plan, as written, with the -- with all its provisions, and including acceleration and definition of "good reason," all the triggers, whether that would have an effect -- or any effect on -- on Microsoft, on a potential acquirer -- let me ask -- it's sort of a yes or no question. Were you ever asked to comment on that?
MR. JACOBS: Objection to form.
THE WITNESS: No.

MR. FRIEDLANDER: I have no more questions. Thank you, Mr. Sparks.
THE WITNESS: You're quite welcome.
MR. WALTZER: I don't have anything.
MR. DELL ANGELO: No questions. Thank you.
MR. FRIEDLANDER: Okay.
THE VIDEOGRAPHER: This concludes the deposition of Tim Sparks. The total number of DVDs we used today was four. The original DVDs will be retained by Behmke Reporting and Video Services at 160 Spear Street, Suite 300, San Francisco, California. We are going off the record. At 4:00 p.m.
(Discussion off the record.)
THE REPORTER: Before I close my record, who wants a copy of the deposition?
(Discussion off the record.)
MR. DELL ANGELO: One copy for defendants.
MR. MIDDLETON: We only need one copy between us.
THE REPORTER: And would both sides like it expedited for tomorrow's delivery?
MR. FRIEDLANDER: That would be fine.

Exhibit

I

EX-10.1 2 dex101.htm BEA SYSTEMS, INC. CHANGE IN CONTROL SEVERANCE PLAN

Exhibit 10.1

BEA SYSTEMS, INC. CHANGE IN CONTROL SEVERANCE PLAN

Introduction

The Board of Directors of BEA Systems, Inc. (the "Company") recognizes that the possibility of a Change in Control of the Company, and the uncertainty it creates, may result in the loss or distraction of employees of the Company to the detriment of the Company and its stockholders.

The Board considers the avoidance of such loss and distraction to be essential to protecting and enhancing the best interests of the Company and its stockholders. The Board also believes that when a Change in Control is perceived as imminent, or is occurring, the Board should be able to receive and rely on disinterested service from employees regarding the best interests of the Company and its stockholders without concern that employees might be distracted or concerned by the personal uncertainties and risks created by the perception of an imminent or occurring Change in Control.

In addition, the Board believes that it is consistent with the Company's employment practices and policies and in the best interests of the Company and its stockholders to treat fairly its employees whose employment terminates in connection with or following a Change in Control.

Accordingly, the Board has determined that appropriate steps should be taken to assure the Company of the continued employment and attention and dedication to duty of its employees and to seek to ensure the availability of their continued service, notwithstanding the possibility or occurrence of a Change in Control.

Therefore, in order to fulfill the above purposes, the following plan has been developed and is hereby adopted.

1. Establishment of Plan. As of the Effective Date, the Company hereby establishes the BEA Systems, Inc. Change in Control Severance Plan, as set forth in this document.

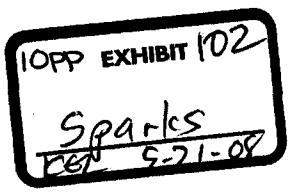
2. Definitions. As used herein the following words and phrases shall have the following respective meanings:

(a) Affiliate. Any company controlled by, controlling or under common control with the Company.

(b) Base Salary. The annual base rate of compensation payable to a Participant by the Company, before deductions or voluntary deferrals authorized by the Participant or required by law to be withheld from the Participant by the Company.

(c) Board. The Board of Directors of the Company.

(d) Bonus Amount. The Participant's annual commission targets for all Participants who are in a sales position and annual target bonus for all other Participants for the fiscal year in which the Change in Control occurs or, if higher, the fiscal year in which the Date of Termination occurs, provided, that if annual commission targets or annual target bonuses have not



been established for the Participant and Participants generally for the fiscal year in which the Change in Control occurs, the Bonus Amount shall be the Participant's annual commission targets or annual target bonus, as applicable, for the year immediately preceding the year in which the Change in Control occurs.

(e) Cause. A termination for "Cause" shall have occurred where a Participant's employment is terminated because of the Participant's (i) conviction of a felony (other than a traffic-related felony) or (ii) gross negligence or willful misconduct having a material adverse impact on the Company.

(f) Change in Control. A "Change in Control" means the first to occur of any of the following:

(i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then-outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); *provided, however*, that, for purposes of this Section 1(f), the following acquisitions shall not constitute a Change in Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its Affiliates or (iv) any acquisition by any corporation pursuant to a transaction that complies with Sections 1(d)(3)(A), 1(d)(3)(B) and 1(d)(3)(C);

(ii) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its subsidiaries (each, a "Business Combination"), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to

vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such corporation, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(g) Code. The Internal Revenue Code of 1986, as amended from time to time.

(h) Committee. Subject to Section 13, the Compensation Committee of the Board.

(i) Company. BEA Systems, Inc. and any successor thereto or, if applicable, the ultimate parent of any such successor.

(j) Compensatory Award. As defined in Section 4(c).

(k) Date of Termination. The date of receipt of a notice of termination from the Company or the Participant as applicable or any later date specified in the notice of termination, which date shall not be more than 30 days after the giving of such notice. The Company and the Participant shall take all steps necessary (including with regard to any post-termination services by the Participant) to ensure that any termination under this Plan constitutes a "separation from service" within the meaning of Section 409A of the Code, and notwithstanding anything contained herein to the contrary, the date on which such separation from service takes place shall be the "Date of Termination."

(l) Disability. A termination for "Disability" shall have occurred if a Participant's employment is terminated because of a disability entitling him or her to long-term disability benefits under the applicable long-term disability plan of the Company.

(m) Effective Date. November 7, 2007.

(n) Employee. Any regular, full-time employee or part-time employee (who is regularly scheduled to work at least twenty (20) hours per week) of the Company or any of its Affiliates. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week and individuals who are classified by the Company as independent contractors are not Employees.

(o) Good Reason. With respect to any Participant, the occurrence of any of the following events after a Change in Control, without the Participant's prior written consent: (i) the Company's requiring the Participant to be based at any location other than the location at which the Participant was based immediately prior to the Change in Control or within 35 miles of such location, (ii) a reduction of more than 10 percent in the Participant's annual base salary or target bonus or other incentive compensation opportunities; provided that if none of the Company, a surviving entity nor its parent following a Change in Control is a publicly-held company, the failure to provide stock-based benefits shall not be deemed Good Reason if benefits of comparable value using recognized valuation methodology are substituted, (iii) a failure to provide the Participant with aggregate pension and welfare benefits which are substantially comparable in value to those provided to similarly situated employees of the Company, a surviving entity or its parent, or (iv) failure of the Company to require any successor to the Company to comply with the Plan. Notwithstanding the foregoing, in order to invoke a termination for Good Reason, a Participant must provide written notice to the Company of the existence of one or more of the conditions described in clauses (i), (ii), (iii) or (iv) within 90 days after having knowledge of such condition or conditions, and the Company shall have 30 days following receipt of such written notice (the "Cure Period") during which it may remedy the condition. In the event that the Company fails to remedy any condition constituting Good Reason during the Cure Period, the Participant must terminate employment, if at all, within 90 days following the Cure Period in order to terminate employment for Good Reason.

(p) Individual Contributor. An Employee that is not a Manager, Senior Manager, Director, Senior Director, Vice President or Senior Vice President.

(q) Monthly Pay. The quotient obtained by dividing (i) the sum of (A) the Participant's Required Base Salary and (B) the Participant's Bonus Amount by (ii) 12.

(r) Net After-Tax Receipt. As defined in Section 5.

(s) Non-U.S. Participant. As defined in Section 4(b).

(t) Participant. An Employee who meets the eligibility requirements of Section 3.

(u) Payment. As defined in Section 5.

(v) Plan. The BEA Systems, Inc. Change in Control Severance Plan.

(w) Present Value. As defined in Section 5.

(x) Qualified Termination. Any termination of a Participant's employment, on or during the one-year period following a Change in Control, by the Company other than for Cause, death or Disability or by the Participant for Good Reason. Notwithstanding the foregoing, if a Change in Control occurs and if the Participant's employment with the Company is terminated prior to the date on which the Change in Control occurs, and if it is reasonably demonstrated by the Participant that such termination of employment (i) was at the request of a third party that has taken steps reasonably calculated to effect a Change in Control or (ii) otherwise arose in connection with or anticipation of a Change in Control, then a "Qualifying Termination" shall be deemed to have occurred on the Change in Control.

(y) Reduced Amount. As defined in Section 5.

(z) Required Base Salary. With respect to any Participant, the higher of (i) the Participant's Base Salary as in effect immediately prior to the Change in Control and (ii) the Participant's highest Base Salary in effect at any time thereafter.

(aa) Separation Payment. As defined in Section 5.

(bb) Separation Period. The period beginning on a Participant's Date of Termination and continuing for (i) three months, in the case of an Individual Contributor, Manager or Senior Manager; (ii) six months in the case of a Director or Senior Director; and (iii) 12 months in the case of a Vice President or Senior Vice President.

3. Eligibility. Each Employee who (a) is not party to a Change in Control Employment Agreement as of immediately prior to a Change in Control (b) is, at the effective time of the Change in Control, on a leave of absence as to which reemployment rights are guaranteed by applicable law and (c) has been an Employee for at least one month prior to the Date of Termination.

4. Separation Benefits.

(a) Separation Benefits. In the event that a Participant suffers a Qualified Termination, the Company shall pay such Participant, within 15 days following the Date of Termination, a lump sum in cash equal to the sum of (i) the Participant's Base Salary and any accrued vacation pay through the Date of Termination to the extent not theretofore paid, (ii) the Participant's unpaid annual bonus for the fiscal year immediately preceding the year in which the Date of Termination occurs to the extent such bonus has been determined but not theretofore paid, and (iii) the Monthly Pay times the number of months in the Separation Period.

(b) COBRA Premiums. In addition, in the event a Participant suffers a Qualified Termination, the Company shall pay the cost of the Participant's premiums for health continuation coverage under Section 4980B of the Code for the Separation Period; provided, that, with respect to any Participant who was, immediately prior to such Qualified Termination, employed outside of the United States (a "Non-US Participant"), the Company shall, during the Separation Period, continue to provide or cause to be provided to such Non-US Participant medical and life insurance benefits that are substantially comparable to those enjoyed by such Non-US Participant immediately prior to the Qualified Termination, subject to the requirements of applicable law.

(c) Equity Awards. In addition, in the event a Participant suffers a Qualified Termination, notwithstanding any provision in an award agreement to the contrary, effective as of the Date of Termination, fifty percent of the unvested portion of each grant of stock options, restricted stock, restricted stock units and other equity-based award that is outstanding and unvested as of the Date of Termination (each, a "Compensatory Award") shall immediately vest and, if applicable, become exercisable, *provided*, that this Section 4(c) shall not apply to any Compensatory Award outstanding as of the Date of Termination under the Company's 1997 Employee Stock Purchase Plan (or any successor thereto). The applicable award agreements for the Compensatory Awards are hereby amended to the extent necessary to implement this Section 4(c).

(d) Other Benefits Payable. Nothing in this Plan shall prevent or limit a Participant's continuing or future participation in any benefit, bonus, incentive or other plan, program, arrangement or policy provided by the Company or any of its Affiliates for which a Participant and/or Participant's dependents may qualify. Amounts that are vested benefits or that a Participant and/or a Participant's dependents are otherwise entitled to receive under any plan, program, arrangement, or policy of the Company or any of its Affiliates shall be payable in accordance with such plan, program, arrangement or policy. The payment provided pursuant to clause (iii) of Section 4(a) above shall be provided in addition to, and not in lieu of, all other accrued or vested or earned but deferred compensation, retention bonuses, rights, options or other benefits which may be owed to a Participant upon or following termination, including but not limited to accrued vacation, amounts or benefits payable under any bonus or other compensation plans, stock option plan, stock ownership plan, stock purchase plan, life insurance plan, health plan, disability plan or similar or successor plan. Payments pursuant to clause (iii) of Section 4(a) above shall be reduced by (A) any amounts paid to the Participant under the Worker Adjustment and Retraining Act and the regulations promulgated thereunder, as amended, or any similar state or local statute ("WARN") or, with respect to any Non-US Participant, any applicable law or regulation and (B) any amounts paid to the Participant for services performed during any period following the Participant receiving a WARN notice or, with respect to any Non-US Participant any required notice regarding the Participant's termination of employment, and during the period covered by such notice. Notwithstanding the foregoing, if the Participant receives payments and benefits pursuant to Section 4(a) of this Plan, the Participant shall not be entitled to any severance pay or benefits under any severance plan, program, policy, agreement or other arrangement of the Company and its Affiliates, except as required by applicable law or as otherwise specifically provided therein in a specific reference to this Plan; provided, that any Non-US Participant may elect to receive severance pay and/or benefits under such other arrangement in lieu of receiving the payments and benefits provided by this Plan.

5. Certain Reduction of Payments by the Company.

(a) For purposes of this Section 5: (i) a "Payment" shall mean any payment or distribution in the nature of compensation to or for the benefit of a Participant, whether paid or payable pursuant to this Plan or otherwise;
(ii) "Separation Payment" shall mean a Payment paid or payable pursuant to this Plan (disregarding this Section);
(iii) "Net After-Tax Receipt" shall mean the Present Value of a Payment net of all taxes imposed on the Participant with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1

of the Code and under state and local laws which applied to the Participant's taxable income for the immediately preceding taxable year, or such other rate(s) as the Participant shall certify, in the Participant's sole discretion, as likely to apply to the Participant in the relevant tax year(s); (iv) "Present Value" shall mean such value determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code; and (v) "Reduced Amount" shall mean the amount of Separation Payments that (A) has a Present Value that is less than the Present Value of all Separation Payments and (B) results in aggregate Net After-Tax Receipts for all Payments that are greater than the Net After-Tax Receipts for all Payments that would result if the aggregate Present Value of Separation Payments were any other amount that is less than the Present Value of all Separation Payments.

(b) Anything in the Plan or any other agreement between a Participant and the Company to the contrary notwithstanding, in the event that Ernst & Young LLP, or such other nationally-recognized accounting firm selected in the discretion of the Committee as in effect immediately prior to the Change in Control (the "Accounting Firm") shall determine that receipt of all Payments would subject the Participant to tax under Section 4999 of the Code (the "Excise Tax"), the Accounting Firm shall determine whether some amount of Separation Payments meets the definition of "Reduced Amount." If the Accounting Firm determines that there is a Reduced Amount, then the aggregate Separation Payments shall be reduced to such Reduced Amount.

(c) If the Accounting Firm determines that aggregate Separation Payments should be reduced to the Reduced Amount, the Company shall promptly give the Participant notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section shall be binding upon the Company and the Participant and shall be made within 60 days following a termination of employment of the Participant. For purposes of reducing the aggregate Separation Payments to the Reduced Amount, only amounts payable under this Plan (and no other Payments) shall be reduced. The reduction of the aggregate Separation Payments to the Reduced Amount, if applicable, shall be made by reducing the Separation Payments under the following sections in the following order: (i) Section 4(a)(iii), and (ii) Section 4(c). As promptly as practicable following the Accounting Firm's determination, the Company shall pay to or distribute for the benefit of the Participant such Separation Payments as are then due to the Participant under this Plan and shall promptly pay to or distribute for the benefit of the Participant in the future such Separation Payments as become due to the Participant under this Plan.

(d) As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of a Participant pursuant to this Plan which should not have been so paid or distributed ("Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of a Participant pursuant to this Plan could have been so paid or distributed ("Underpayment"), in each case, consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue

Service against either the Company or the Participant which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of a Participant shall be repaid to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no such amount shall be payable by a Participant to the Company if and to the extent such payment would not either reduce the amount on which the Participant is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Participant together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code ("Interest").

(e) All fees and expenses of the Accounting Firm in implementing the provisions of this Section 5 shall be borne by the Company.

6. Full Settlement. The Company's obligation to make the payments provided for in this Plan and otherwise to perform its obligations hereunder shall be absolute and unconditional and shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against a Participant or others. In no event shall a Participant be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to such Participant under any of the provisions of this Plan and no amounts received from other employment shall serve to mitigate the payments hereunder. The Company agrees to reimburse the Employee, to the full extent permitted by law, for all legal fees and expenses that the Participant may reasonably incur as a result of any contest by the Company, the Participant or others of the validity or enforceability of, or liability under, any provision of this Plan or any guarantee of performance thereof (including as a result of any contest by the Participant about the amount of any payment pursuant to this Plan) (each, a "Contest"), plus, in each case, Interest; provided, that the Company shall not be obligated to reimburse a Participant for legal fees and expenses unless the Participant prevails on at least one material claim (regardless of by whom brought); provided, further, that the Participant shall have submitted an invoice for such fees and expenses not later than 30 days after the final resolution of such Contest and the Company shall make such payment within 30 days of the date on which the invoice is so submitted, and the Participant's right to have the Company pay such legal fees and expenses may not be liquidated or exchanged for any other benefit.

7. Controlling Law. This Plan shall be construed and enforced according to the internal laws of the State of California to the extent not preempted by Federal law or the law of any other applicable non-United States jurisdiction, which shall otherwise control.

8. Amendments; Termination. The Company reserves the right to amend, modify, suspend or terminate the Plan at any time by action of a majority of the Board; provided that no such amendment, modification, suspension or termination that has the effect of reducing or diminishing the right of any Employee, shall be effective without the written consent of the Employee, for a period of two years following the date on which the action of a majority of the Board is taken. Notwithstanding the foregoing, if a Change in Control has not occurred by April 1, 2009, absent any action by the Board to the contrary, the Plan shall expire.

9. Assignment. The Company shall require any corporation, entity, individual or other person who is the successor (whether direct or indirect by purchase, merger, consolidation, reorganization or otherwise) to all or substantially all the business and/or assets of the Company to expressly assume and agree to perform, by a written agreement in form and in substance satisfactory to the Company, all of the obligations of the Company under this Plan. As used in this Plan, the term "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Plan by operation of law, written agreement or otherwise. It is a condition of this Plan, and all rights of each person eligible to receive benefits under this Plan shall be subject hereto, that no right or interest of any such person in this Plan shall be assignable or transferable in whole or in part, except by operation of law, including, but not by way of limitation, lawful execution, levy, garnishment, attachment, pledge, bankruptcy, alimony, child support or qualified domestic relations order.

10. Withholding. The Company may withhold from any amount payable or benefit provided under this Plan such Federal, state, local, foreign and other taxes as are required to be withheld pursuant to any applicable law or regulation.

11. Gender and Plurals. Wherever used in this Plan document, words in the masculine gender shall include masculine or feminine gender, and, unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.

12. Plan Controls. In the event of any inconsistency between this Plan document and any other communication regarding this Plan, this Plan document controls.

13. Post-Change in Control Committee. This Plan shall be administered by the Committee, provided that in the event of an impending Change in Control, the Committee may appoint a person (or persons) independent of the third party effectuating the Change in Control to be the Committee effective upon the occurrence of a Change in Control (the "Independent Committee") and the Independent Committee shall not be removed or modified following a Change in Control. Except as otherwise provided in this Plan, the decision of the Committee upon all matters within the scope of its authority shall be conclusive and binding on all parties, provided that in the event that no Independent Committee is appointed, any determination by the Committee of whether "Cause" or "Good Reason" exists shall be subject to *de novo* review.

14. Benefits Claims and Appeals. The Plan is not intended to be subject to ERISA. If and only if, however, the Plan is determined to be subject to ERISA, the intention of the Company is that it shall be construed as a "welfare plan," as defined in Section 3(1) of ERISA, and this Section 14 shall apply. The Committee shall establish a claims and appeals procedure applicable to Participants under the Plan. Unless otherwise required by applicable law, such procedures will provide that a Participant has not less than sixty (60) days following receipt of any adverse benefit determination within which to appeal the determination in writing with the Committee, and that the Committee must respond in writing within sixty (60) days of receiving the appeal, specifically identifying those Plan provisions on which the benefit denial was based and indicating what, if any, information the Participant must supply in order to perfect a claim for benefits. Notwithstanding the foregoing, the claims and appeals procedure established by the Committee

will be provided for the use and benefit of Participants who may choose to avail themselves of such procedures, but compliance with the provisions of these claims and appeals procedures by the Participant will not be mandatory for any Participant claiming benefits after a Change in Control. It will not be necessary for any Participant to exhaust these procedures and remedies after a Change in Control prior to bringing any legal claim or action, or asserting any other demand, for payments or other benefits to which such Participant claims entitlement.

15. Grantor Trust. The Committee may establish a trust with a bank trustee, for the purpose of paying benefits under this Plan. If so established, the trust shall be a grantor trust subject to the claims of the Company's creditors and shall, immediately prior to a Change in Control, be funded in cash or common stock of the Company or such other assets as the Committee deems appropriate with an amount equal to 100 percent of the aggregate benefits payable under this Plan assuming that all Participants in the Plan incurred a termination of employment entitling them to Separation Benefits immediately following the Change in Control, or such lesser amount as the Committee shall determine prior to the Change in Control; provided, however, that the trust shall not be funded if the funding thereof would result in taxable income to the Participant by reason of Section 409A(b) of the Code; and provided, further, in no event shall any trust assets at any time be located or transferred outside of the United States, within the meaning of Section 409A(b) of the Code. Notwithstanding the establishment of any such trust, a Participant's rights hereunder will be solely those of a general unsecured creditor.

16. Indemnification. To the extent permitted by law, the Company shall indemnify the Committee from all claims for liability, loss, or damage (including the payment of expenses in connection with defense against such claims) arising from any act or failure to act in connection with the Plan.

17. Section 409A Savings Clause. Notwithstanding anything herein to the contrary, within the time period permitted by the applicable Treasury Regulations or other Internal Revenue Service or Treasury Department authority, if any compensation or benefits provided by this Plan may result in accelerated taxation or tax penalties under Section 409A of the Code, the Company shall modify the Plan in the least restrictive manner necessary in order to exclude such compensation from the definition of "deferred compensation" within the meaning of Section 409A of the Code or in order to comply with the provisions of Section 409A of the Code, other applicable provision(s) of the Code and/or any rules, regulations or other regulatory guidance issued under such statutory provisions and without any diminution in the value of the payments to any Participant.

18. Employment Status. This Plan does not constitute a contract of employment or impose on the Participant or the Company any obligation to retain the Participant as an Employee, to change the status of the Participant's employment, or to change the Company's policies or those of its Affiliates' regarding termination of employment.

19. Foreign Laws. The Committee shall administer the Plan with respect to all Non-US Participants in a manner designed to comply with applicable law while preserving the benefits provided under the Plan and avoiding duplication of benefits.

As Adopted by the Board of Directors
of BEA Systems, Inc. at a Meeting Held
On November 7, 2007

Exhibit

J

Exhibit 10.3

SIEBEL SYSTEMS, INC.

VICE PRESIDENT LEVEL EMPLOYEE RETENTION BENEFIT PLAN

EFFECTIVE AS OF MAY 20, 2005

Section 1. INTRODUCTION.

The Siebel Systems, Inc. Vice President Level Employee Retention Benefit Plan (the **"Plan"**) was established effective May 20, 2005. The purpose of the Plan is to provide severance benefits to certain Eligible Employees of the Company (as defined below) whose employment with the Company is terminated under specified circumstances in connection with a Change of Control (as defined below). Except for contracts and agreements described in Section 3(b)(1) and plans described in Section 3(b)(2), the Plan shall supersede any change of control-based severance benefit plan, policy, agreement or practice previously maintained by the Company. This Plan document also constitutes the Summary Plan Description for the Plan.

Section 2. DEFINITIONS.

For purposes of the Plan, the following terms are defined as follows:

(a) "Board" means the Board of Directors of the Company.

(b) "Change of Control" means the occurrence in a single transaction or in a series of related transactions of any one or more of the following events:

(1) a merger, consolidation or reorganization in which Siebel Systems, Inc. does not survive as an independent public company or in which Siebel Systems, Inc.'s stockholders immediately prior to such transaction hold less than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the surviving corporation immediately following the transaction;

(2) the sale, transfer or other disposition of all or substantially all of Siebel Systems, Inc.'s assets or securities;

(3) a reverse merger in which Siebel Systems, Inc. is the surviving corporation but the shares of Siebel Systems, Inc.'s common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise;

(4) any transaction or series of related transactions pursuant to which any person or any group of persons comprising a "group" within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended (other than Siebel Systems, Inc. or a person that, prior to such transaction or series of related transactions, directly or indirectly controls, is controlled by or is under common control with, Siebel Systems, Inc.) becomes directly or indirectly the beneficial owner (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing (or convertible into or

exercisable for securities possessing) more than fifty percent (50%) of the total combined voting power of Siebel Systems, Inc.'s securities outstanding immediately after the consummation of such transaction or series of related transactions, whether such transaction involves a direct issuance from Siebel Systems, Inc. or the acquisition of outstanding securities held by one or more of Siebel Systems, Inc.'s stockholders;

(5) a change in the composition of the Board occurring within a two-year period, as a result of which less than a majority of the directors are Incumbent Directors. "Incumbent Directors" shall mean directors who are either (i) directors of Siebel Systems, Inc. as of the date the Plan was adopted, or (ii) elected to the Board, or nominated for election to the Board by the Nominating and Corporate Governance Committee of the Board or the full Board, and endorsed by the directors of Siebel Systems, Inc. (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to Siebel Systems, Inc.); or

(6) any other event, series of events or circumstance that the Board deems to be a Change of Control.

Once a Change of Control has occurred, no future events will constitute a Change of Control for purposes of the Plan.

(c) **"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(d) **"Code"** means the Internal Revenue Code of 1986, as amended.

(e) **"Company"** means Siebel Systems, Inc., an affiliate of Siebel Systems, Inc. or, following a Change of Control, the surviving entity resulting from such transaction or the parent company of such surviving entity.

(f) **"Covered Termination"** means an Involuntary Termination without Cause or a Voluntary Resignation for Good Reason, either of which occurs within three (3) months prior to or twelve (12) months following the effective date of a Change of Control.

(g) **"Eligible Employee"** means a Vice President of the Company who has been designated by the Plan Administrator as an Eligible Employee and who is a full-time or a part-time regular hire employee of the Company. The determination of whether an employee is an Eligible Employee shall be made by the Plan Administrator, in its sole discretion, and such determination shall be binding and conclusive on all persons. For purposes of this Plan, part-time employees are those regular hire employees who are regularly scheduled to work more than twenty (20) hours per week but less than a full-time work schedule. The following are not Eligible Employees under the Plan: (i) employees regularly scheduled to work twenty (20) hours per week or less, (ii) employees who are temporary employees, (iii) employees who, at the effective time of the Change of Control, are on a leave of absence that is not protected by applicable law, and (iv) individuals classified by the Company as independent contractors.

(h) **"Involuntary Termination without Cause"** means an involuntary termination by the Company of an Eligible Employee's employment relationship with the

Company for any reason other than for engaging in a felony, criminal conduct, embezzlement or other fraud against the Company.

(i) "On-Target Earnings" means the sum of an Eligible Employee's annual base salary and maximum target cash bonuses and/or commissions.

(j) "Plan Administrator" means the person or entity specified as such in Section 14(d).

(k) "Senior Executive" means (i) a non-administrative employee of the Company who reports directly to the Company's Chief Executive Officer or Board and is designated as such by the Plan Administrator, and (ii) any other employee of the Company designated as such by the Plan Administrator.

(l) "Stock Awards" means stock options, stock bonus awards, restricted stock purchase awards, restricted stock unit awards, or any other equity-based compensation granted under the Company's 1996 Equity Incentive Plan or 1998 Equity Incentive Plan.

(m) "Vice President" means an employee of the Company who is at the level of vice president or above (excluding Senior Executives) and is designated as such by the Plan Administrator.

(n) "Voluntary Resignation for Good Reason" means the voluntary resignation from employment by an Eligible Employee following the occurrence, on or after a Change of Control, of one or more of the following (without cure within thirty (30) days following written notice by the Eligible Employee to the Company):

(1) a reduction of at least ten percent (10%) in either the Eligible Employee's annual base salary or On-Target Earnings;

(2) the failure to provide the Eligible Employee with benefits that, in the aggregate, are substantially comparable in value to those to which similarly-situated employees of the surviving entity following the Change of Control are entitled; or

(3) a change in an Eligible Employee's principal work location to a location more than fifty (50) miles from such Eligible Employee's principal work location immediately prior to such Change of Control, without such Eligible Employee's written consent.

Section 3. ELIGIBILITY FOR BENEFITS.

(a) Eligibility. Subject to the exceptions set forth in Section 3(b), the Company shall provide the severance benefits described in Section 4 to Eligible Employees whose employment is terminated pursuant to a Covered Termination, provided that the following conditions are satisfied:

(1) The Eligible Employee remains with the Company until his or her date of termination as scheduled by the Company, or the date of his or her Covered Termination, whichever is earlier.

(2) The Eligible Employee executes a release (in substantially the form attached hereto as Exhibit A, B or C, as applicable, for Eligible Employees based in the U.S. and such other form(s) for non-U.S. Eligible Employees as the Plan Administrator determines in its discretion is appropriate under applicable local laws, rules and regulations), and such release must become effective in accordance with its terms. Unless a Change of Control has occurred, the Plan Administrator, in its discretion, may modify the form of the required release to comply with applicable law and shall determine the form of the required release, which may be incorporated into a termination agreement or other agreement with the Eligible Employee.

(b) Exceptions to Benefit Entitlement. An employee, including an employee who otherwise is an Eligible Employee, will not receive benefits under the Plan (or will receive reduced benefits under the Plan) in the following circumstances, as determined by the Plan Administrator in its sole discretion:

(1) The employee has executed an individually negotiated employment contract or agreement with the Company relating to severance benefits that is in effect on his or her termination date and which provides severance benefits that the Plan Administrator in its sole discretion determines to be of greater value than the severance benefits provided for in the Plan, in which case such employee's severance benefit, if any, shall be governed by the terms of such individually negotiated employment contract or agreement.

(2) The employee participates in another retention benefit plan maintained by the Company (*i.e.*, Siebel Systems, Inc. Senior Executive Retention Benefit Plan, Siebel Systems, Inc. Director Level Retention Benefit Plan, or Siebel Systems, Inc. Employee Retention Benefit Plan).

(3) The employee's employment terminates or is terminated for any reason other than a Covered Termination.

(4) The employee voluntarily terminates employment with the Company in order to accept employment with another entity that is wholly or partly owned (directly or indirectly) by the Company.

(5) The employee is offered an identical or substantially equivalent or comparable position with the Company pursuant to the Change of Control. For purposes of the foregoing, a "substantially equivalent or comparable position" is one that offers the employee substantially the same level of responsibility and compensation; provided, however, that an employee shall not be considered to be offered a "substantially equivalent or comparable position" if a voluntary resignation by the employee would constitute Voluntary Resignation for Good Reason.

(6) The employee is rehired by the Company prior to the date benefits under the Plan are scheduled to commence.

Section 4. AMOUNT OF BENEFITS.

(a) Cash Severance Benefits. The Company shall make cash severance payments to Eligible Employees equivalent to the Eligible Employee's On-Target Earnings, as in

effect on the date of a Covered Termination or, if higher, as in effect immediately prior to the Change of Control, for a period of twelve (12) months.

(b) Health Continuation Coverage. Provided that the Eligible Employee is eligible for, and has made an election at the time of the Covered Termination pursuant to COBRA or other applicable law of coverage under, a health, dental, or vision plan sponsored by the Company, each such Eligible Employee shall be entitled to payment by the Company of all of the applicable premiums (inclusive of premiums for the employee's dependents for such health, dental, or vision plan coverage as in effect immediately prior to the date of the Covered Termination) for such health, dental, or vision plan coverage for a period of twelve (12) months following the date of the Covered Termination, with such coverage counted as coverage pursuant to COBRA or other applicable law.

(c) Acceleration of Stock Awards. Immediately upon a Covered Termination, the vesting and exercisability of unvested Stock Awards, whether based on the passage of time or the achievement of performance metrics, held by an Eligible Employee shall be accelerated in full and all holding periods applicable to Stock Awards, whether based on the passage of time or the achievement of performance metrics, held by an Eligible Employee shall be removed.

(d) Increase in Benefits. The Plan Administrator may increase the foregoing benefits to select Eligible Employees at its discretion, but no such increase for any Eligible Employee shall in any way obligate the Company to provide a similar increase for any other Eligible Employee, even if similarly situated.

Section 5. LIMITATIONS ON BENEFITS.

(a) Certain Reductions. The Plan Administrator, in its sole discretion, shall have the authority to reduce an Eligible Employee's severance benefits, in whole or in part, by any other severance benefits, pay in lieu of notice, or other similar benefits payable to the Eligible Employee by the Company in connection with the Eligible Employee's termination of employment pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act (the **"WARN Act"**), (ii) a written employment or severance agreement with the Company, or (iii) any policy or practice of the Company providing for the Eligible Employee to remain on the payroll for a limited period of time after being given notice of the termination of the Eligible Employee's employment. The benefits provided under this Plan are intended to satisfy, in whole or in part, any and all statutory obligations that may arise out of an Eligible Employee's termination of employment, and the Plan Administrator shall so construe and implement the terms of the Plan. The Plan Administrator's decision to apply such reductions to the severance benefits of one Eligible Employee and the amount of such reductions shall in no way obligate the Plan Administrator to apply the same reductions in the same amounts to the severance benefits of any other Eligible Employee, even if similarly situated. In the Plan Administrator's sole discretion, such reductions may be applied on a retroactive basis, with severance benefits previously paid being re-characterized as payments pursuant to the Company's statutory obligation. Notwithstanding the foregoing, upon a Change of Control, the Plan Administrator shall not have the authority to reduce an Eligible Employee's severance benefits, in whole or in part, based upon any payment

to the Eligible Employee for any period of time when services to the Company are provided (including, without limitation, payment following notice pursuant to the WARN Act or any similar foreign, federal or state law).

(b) Parachute Payments. Except as otherwise provided in an agreement between an Eligible Employee and the Company, if any payment or benefit the Eligible Employee would receive in connection with a Change of Control from the Company or otherwise (**"Payment"**) would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the **"Excise Tax"**), then such Payment shall be equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Eligible Employee's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless the Eligible Employee elects in writing a different order (provided, however, that such election shall be subject to Company approval if made on or after the date on which the event that triggers the Payment occurs): (1) reduction of cash payments; (2) cancellation of accelerated vesting of Stock Awards; and (3) reduction of employee benefits. If acceleration of vesting of compensation from an Eligible Employee's Stock Awards is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant unless the Eligible Employee elects in writing a different order for cancellation.

The independent registered public accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the independent registered public accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint a nationally recognized independent registered public accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder.

The independent registered public accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and the Eligible Employee within fifteen (15) calendar days after the date on which the Eligible Employee's right to a Payment is triggered (if requested at that time by the Company or the Eligible Employee) or such other time as requested by the Company or the Eligible Employee. If the independent registered public accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and the Eligible Employee with an opinion reasonably acceptable to the Eligible Employee that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the independent

registered public accounting firm made hereunder shall be final, binding and conclusive upon the Company and the Eligible Employee.

Section 6. TIME OF PAYMENT AND FORM OF BENEFITS.

(a) The Plan Administrator reserves the right to determine whether cash severance benefits under the Plan, if any, shall be paid in a single lump sum or in substantially equal installments, and to choose the timing of such payments; *provided however*, that lump sum cash severance benefits shall be paid within one (1) month following a Covered Termination, and installment cash severance payments shall commence no later than the beginning of the second month following a Covered Termination and shall be paid in full no later than the end of the twelfth month following a Covered Termination. In no event shall payment of any Plan benefit be made prior to the Eligible Employee's termination date or prior to the effective date of the release described in Section 3(a)(2) above.

(b) In the event that the Plan Administrator determines that any cash severance payment provided under Section 4(a) or health continuation coverage provided under Section 4(b) fails to satisfy the distribution requirement of Section 409A(a)(2)(A) of the Code as a result of Section 409A(a)(2)(B)(i) of the Code, the payment of such benefit shall be accelerated to the minimum extent necessary so that the benefit is not subject to the provisions of Section 409A(a)(1) of the Code. (The payment schedule as revised after the application of the preceding sentence shall be referred to as the **"Revised Payment Schedule."**) However, in the event the payment of benefits pursuant to the Revised Payment Schedule would be subject to Section 409A(a)(1) of the Code, the payment of such benefits shall not be paid pursuant to the original payment schedule or the Revised Payment Schedule and instead the payment of such benefits shall be delayed to the minimum extent necessary so that such benefits are not subject to the provisions of Section 409A(a)(1) of the Code. The Plan Administrator may attach conditions to or adjust the amounts paid pursuant to this Section 6(b) to preserve, as closely as possible, the economic consequences that would have applied in the absence of this Section 6(b); *provided, however*, that no such condition or adjustment shall result in the payments being subject to Section 409A(a)(1) of the Code.

(c) All such payments under the Plan will be subject to applicable withholding for federal, state and local taxes. If an Eligible Employee is indebted to the Company at his or her termination date, the Company reserves the right to offset any severance payments under the Plan by the amount of such indebtedness.

Section 7. PAYMENT OF ATTORNEYS' FEES.

(a) The Company agrees to pay all costs and reasonable expenses, including reasonable attorneys' fees, incurred by an Eligible Employee with respect to an action (i) brought by or on behalf of the Eligible Employee to obtain any payment owed to the Eligible Employee pursuant to this Plan, or (ii) instituted by or in the name of the Company to interpret any of the terms of the Plan as they relate to the Company's obligations under the Plan.

(b) Notwithstanding the foregoing, the Company shall not have an obligation to pay costs, expenses or attorneys' fees incurred by an Eligible Employee if (i) in an action

initiated by or on behalf of the Eligible Employee, the arbitrator determines that each of the material assertions made by the Eligible Employee as a basis for such action was not made in good faith or was frivolous, (ii) in an action brought by or in the name of the Company, the arbitrator determines that each of the Eligible Employee's material defenses to such action was not made in good faith or was frivolous, or (iii) the arbitrator determines that the Eligible Employee is not otherwise entitled to be paid such costs, fees and expenses.

(c) It is the Company's intention that if the Company contests an Eligible Employee's right to benefits under the Plan, the question of the Eligible Employee's right to such benefit shall be for the arbitrator to decide pursuant to Section 12, and no action of the Company (including the Board, the Plan Administrator, any committee or subgroup thereof, or independent legal counsel) shall create a presumption that the Eligible Employee is not entitled to such benefits.

Section 8. RIGHT TO INTERPRET PLAN; AMENDMENT AND TERMINATION.

(a) Exclusive Discretion. The Plan Administrator shall have the exclusive discretion and authority to establish rules, forms, and procedures for the administration of the Plan, to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, but not limited to, the eligibility to participate in the Plan and amount of benefits paid under the Plan. The rules, interpretations, computations and other actions of the Plan Administrator shall be binding and conclusive on all persons.

(b) Amendment or Termination. The Company reserves the right to amend or terminate this Plan, including any Exhibits hereto, or the benefits provided hereunder, at any time; *provided, however,* that no such amendment or termination shall affect the right to any unpaid benefit of any Eligible Employee whose termination date has occurred prior to amendment or termination of the Plan, and no such amendment or termination shall occur after the occurrence of a Change of Control, or following or in connection with the approval by the Board of a Change of Control (unless such Change of Control is reasonably expected not to occur). Any action amending or terminating the Plan shall be in writing and executed by the Chairman of the Board, Chief Executive Officer or Chief Financial Officer of the Company.

Section 9. NO IMPLIED EMPLOYMENT CONTRACT.

The Plan shall not be deemed (i) to give any employee or other person any right to be retained in the employ of the Company or (ii) to interfere with the right of the Company to discharge any employee or other person at any time, with or without cause, which right is hereby reserved.

Section 10. LEGAL CONSTRUCTION.

This Plan is intended to be governed by and shall be construed in accordance with the Employee Retirement Income Security Act of 1974 (**"ERISA"**) and, to the extent not preempted by ERISA, the laws of the State of California.

Section 11. CLAIMS, INQUIRIES AND APPEALS.

(a) Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is set forth in Section 14(d).

(b) Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application, and of the applicant's right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

(1) the specific reason or reasons for the denial;

(2) references to the specific Plan provisions upon which the denial is based;

(3) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and

(4) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to arbitration pursuant to Section 12 following a denial on review of the claim.

This notice of denial will be given to the applicant within ninety (90) days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional ninety (90) days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial ninety (90) day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within sixty (60) days after the application is denied. A request for a review shall be in writing and shall be addressed to the Plan Administrator, as set forth in Section 14(d).

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) shall have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and

other information relating to his or her claim. The applicant (or his or her representative) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Decision on Review. The Plan Administrator will act on each request for review within sixty (60) days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional sixty (60) days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial sixty (60) day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will set forth, in a manner calculated to be understood by the applicant, the following:

(1) the specific reason or reasons for the denial;

(2) references to the specific Plan provisions upon which the denial is based;

(3) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and

(4) a statement of the applicant's right to arbitration under Section 12.

(e) Rules and Procedures. The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant's own expense.

(f) Exhaustion of Remedies. No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 11(a) above, (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 11(c) above, and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to a Participant's claim or appeal within the relevant time limits specified in this Section 11, the Participant may proceed directly to arbitration pursuant to Section 12.

Section 12. ARBITRATION

(a) Any applicant's claim remaining unresolved after exhaustion of the procedures in Section 11 (and to the extent permitted by law, any dispute concerning any breach or claimed breach of duty regarding the Plan) shall be settled solely by binding arbitration at the Company's principal place of business at the time of the arbitration, in accordance with the JAMS Arbitration Rules and Procedures. The arbitrator, in reviewing the decision of the Plan Administrator pursuant to Section 11, shall apply the standard of a reviewing court under ERISA, namely that such decision shall be affirmed unless the arbitrator finds it to be arbitrary and capricious. Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Subject to Section 7, each party to any dispute regarding the Plan shall pay the fees and costs of presenting his, her or its case in arbitration. All other costs of arbitration, including the costs of any transcript of the proceedings, administrative feeds, and the arbitrator's fees shall be borne by the Company.

(b) Except as otherwise specifically provided in this Plan, the provisions of this Section 12 shall be absolutely exclusive for any and all purposes and fully applicable to each and every dispute regarding the Plan, including any claim which, if pursued through any state or federal court or administrative proceeding, would arise at law, in equity or pursuant to statutory, regulatory or common law rules, regardless of whether such claim would arise in contract, tort or under any other legal or equitable theory or basis. The arbitrator shall have jurisdiction and authority to award only Plan benefits and prejudgment interest; and apart from such benefits and interest, the arbitrator shall not have any authority or jurisdiction to make any award of any kind including, without limitation, compensatory damages, punitive damages, foreseeable or unforeseeable economic damages, damages for pain and suffering or emotional distress, adverse tax consequences or any other kind or form of damages. The remedy, if any, awarded by such arbitrator shall be the sole and exclusive remedy for each and every claim which is subject to arbitration pursuant to this Section 12. Any limitations on the relief that can be awarded by the arbitrator are in no way intended (i) to create rights or claims that can be asserted outside arbitration or (ii) in any other way to reduce the exclusivity of arbitration as the sole dispute resolution mechanism with respect to this Plan.

(c) The Plan and the Company will be the necessary parties to any action or proceeding involving the Plan. No person employed by the Company, no Eligible Employee or any other person having or claiming to have an interest in the Plan will be entitled to any notice or process, unless such person is a named party to the action or proceeding. In any arbitration proceeding, all relevant statutes of limitation apply. Any final judgment or decision that may be entered in any such action or proceeding will be binding and conclusive on all persons having or claiming to have any interest in the Plan.

Section 13. BASIS OF PAYMENTS TO AND FROM THE PLAN.

The Plan shall be unfunded, and all cash payments under the Plan shall be paid only from the general assets of the Company.

Section 14. Other Plan Information.

(a) Employer and Plan Identification Numbers. The Employer Identification Number assigned to the Company (which is the *"Plan Sponsor"* as that term is used in ERISA) by the Internal Revenue Service is 94-3187233. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 512.

(b) Ending Date for Plan's Fiscal Year. The date of the end of the fiscal year for the purpose of maintaining the Plan's records is December 31.

(c) Agent for the Service of Legal Process. The agent for the service of legal process with respect to the Plan is:

Siebel Systems, Inc.
Attn: Senior Vice President and General Counsel
2207 Bridgepointe Parkway
San Mateo, CA 94404

(d) Plan Sponsor and Administrator. Unless otherwise designated by the Company prior to a Change of Control, the **"Plan Sponsor"** and the **"Plan Administrator"** of the Plan is:

Siebel Systems, Inc.
2207 Bridgepointe Parkway
San Mateo, CA 94404

The Plan Sponsor's and Plan Administrator's telephone number is (650) 477-5000. The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

Section 15. Statement of ERISA Rights.

Participants in this Plan (which is a welfare benefit plan sponsored by Siebel Systems, Inc.) are entitled to certain rights and protections under ERISA. If you are an Eligible Employee, you are considered a participant in the Plan and, under ERISA, you are entitled to:

(a) Receive Information About Your Plan and Benefits

(1) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(2) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Plan Administrator may make a reasonable charge for the copies; and

(3) Receive a summary of the Plan's annual financial report, if applicable. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

(b) Prudent Actions by Plan Fiduciaries. In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

(c) Enforce Your Rights. If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may sue or exercise such other rights as are described in this Plan.

If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

(d) Assistance with Your Questions. If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

13.

Section 16. EXECUTION.

To record the adoption of the Plan as set forth herein, effective as of May 20, 2005, Siebel Systems, Inc. has caused its duly authorized officer to execute the same this ___day of May, 2005.

SIEBEL SYSTEMS, INC.

By: _____

Title: _____

EXHIBIT A — GENERAL RELEASE OF ALL CLAIMS
FOR EMPLOYEES UNDER AGE 40 INDIVIDUAL AND GROUP TERMINATION

I understand and agree completely to the terms set forth in the Siebel Systems, Inc. Employee Retention Benefit Plan (the **"Plan"**). In consideration for the benefits outlined in Section 4 of the Plan (the **"Severance Benefits"**), to which I am not otherwise entitled, I hereby completely and forever release Siebel Systems, Inc., and any affiliated parents, subsidiaries, and successor corporations, and its former, current and future shareholders, directors, officers, trustees, employer-sponsored employee benefit and welfare plans, and all the representatives and agents (collectively referred to as **"Siebel"**) from any and all claims, actions, obligations, causes of action, and liabilities of any and every kind, nature and character, known or unknown, which I may now have, or which I ever had, against Siebel arising from or in any way connected with my employment relationship with Siebel, or the termination thereof, including but not limited to all "wrongful discharge" claims, all claims relating to any contracts of employment, express or implied, claims under any compensation plan or policy, claims for fraud or misrepresentation, any breach or violation of the covenant of good faith and fair dealing or any federal, state or municipal statute or ordinance such as any claims under the Civil Rights Act of 1964, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the California Labor Code, the Age Discrimination in Employment Act, the Employee Income Security Act of 1974 (**"ERISA"**) and any of the laws and regulations relating to employment discrimination and any and all claims for attorneys' fees and costs (collectively referred to as **"Claims"**).

I understand that Section 1542 of the *California Civil Code* provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR [EMPLOYEE] DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR [SIEBEL]. I further understand that Section 1542 gives me the right not to release existing claims of which I am not now aware, unless I voluntarily choose to waive this right. I further understand that if any law that is analogous to Section 1542 of the California Civil Code exists in any other state, I voluntarily choose to waive those rights. Having been so apprised, I nevertheless hereby voluntarily elect to waive my rights for any Claims against Siebel that now exist in my favor, whether known or unknown. Notwithstanding any of the foregoing, I hereby reserve any rights I may have to unemployment or worker's compensation insurance, and under Siebel's 401k Plan.

I agree that I will not, on behalf of myself or in cooperation or participation with any other person, firm, entity, corporation, institute, or government agency, file, refile, or in any manner voluntarily participate in or prosecute any claim, grievance, complaint or action of any sort (**"Other Actions"**), before any local, state or federal court, arbitrator, or administrative agency, board or tribunal concerning any matter that was or could have been raised in connection with any Claims released in the first paragraph above, unless otherwise compelled by a court or government agency. I further agree to promptly dismiss or withdraw with prejudice any charges, claims or complaints regarding any matter released in the first paragraph above. I further agree to cooperate with and provide aid to Siebel as needed in its participation in litigation, if any, or as otherwise required by law. I further agree that if I breach the terms of this General Release Of All Claims (**"General Release"**), including, but not limited to, directly or indirectly, bringing,

joining or assisting in any legal action against Siebel related to Other Actions or any of the Claims released hereunder, I agree to pay Siebel's reasonable attorneys' fees and costs incurred in enforcing the terms of this General Release if it is lawful under applicable law for Siebel to require such payments.

I understand that Siebel has given me seven (7) days in which to consider this General Release.

This General Release, together with the Plan, constitutes the entire understanding of the parties on the subjects covered. I acknowledge that I have read and fully understand these documents; that I was given the opportunity to consult with legal counsel of my own choosing and to have the terms of these documents fully explained to me; that I am not executing this General Release in reliance on any promises, representations or inducements other than those contained these documents; and that I am executing this General Release voluntarily, free of any duress or coercion. I understand that if any provision of this General Release is held invalid or unenforceable by any court of final jurisdiction, all other provisions will be construed to remain fully valid, enforceable, and binding on me. I further understand that if the release of Claims described above is held invalid or unenforceable by any court of final jurisdiction, Siebel has the right in its sole discretion to request repayment of the consideration described above, unless Siebel is prohibited from doing so under applicable law.

Signed: _____

Name: _____

Date: _____

EXHIBIT B — GENERAL RELEASE OF ALL CLAIMS
FOR EMPLOYEES AGE 40 OR OLDER INDIVIDUAL TERMINATION

I understand and agree completely to the terms set forth in the Siebel Systems, Inc. Employee Retention Benefit Plan (the **"Plan"**). In consideration for the benefits outlined in Section 4 of the Plan (the **"Severance Benefits"**), to which I am not otherwise entitled, I hereby completely and forever release Siebel Systems, Inc., and any affiliated parents, subsidiaries, and successor corporations, and its former, current and future shareholders, directors, officers, trustees, employer-sponsored employee benefit and welfare plans, and all the representatives and agents (collectively referred to as **"Siebel"**) from any and all claims, actions, obligations, causes of action, and liabilities of any and every kind, nature and character, known or unknown, which I may now have, or which I ever had, against Siebel arising from or in any way connected with my employment relationship with Siebel, or the termination thereof, including but not limited to all "wrongful discharge" claims, all claims relating to any contracts of employment, express or implied, claims under any compensation plan or policy, claims for fraud or misrepresentation, any breach or violation of the covenant of good faith and fair dealing or any federal, state or municipal statute or ordinance such as any claims under the Civil Rights Act of 1964, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the California Labor Code, the Age Discrimination in Employment Act, the Employee Income Security Act of 1974 (**"ERISA"**) and any of the laws and regulations relating to employment discrimination and any and all claims for attorneys' fees and costs (collectively referred to as **"Claims"**).

I understand that Section 1542 of the *California Civil Code* provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR [EMPLOYEE] DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR [SIEBEL]. I further understand that Section 1542 gives me the right not to release existing claims of which I am not now aware, unless I voluntarily choose to waive this right. I further understand that if any law that is analogous to Section 1542 of the California Civil Code exists in any other state, I voluntarily choose to waive those rights. Having been so apprised, I nevertheless hereby voluntarily elect to waive my rights for any Claims against Siebel that now exist in my favor, whether known or unknown. Notwithstanding any of the foregoing, I hereby reserve any rights I may have to unemployment or worker's compensation insurance, and under Siebel's 401k Plan.

I agree that I will not, on behalf of myself or in cooperation or participation with any other person, firm, entity, corporation, institute, or government agency, file, refile, or in any manner voluntarily participate in or prosecute any claim, grievance, complaint or action of any sort (**"Other Actions"**), before any local, state or federal court, arbitrator, or administrative agency, board or tribunal concerning any matter that was or could have been raised in connection with any Claims released in the first paragraph above, unless otherwise compelled by a court or government agency. I further agree to promptly dismiss or withdraw with prejudice any charges, claims or complaints regarding any matter released in the first paragraph above. I further agree to cooperate with and provide aid to Siebel as needed in its participation in litigation, if any, or as otherwise required by law. I further agree that if I breach the terms of this General Release Of All Claims (**"General Release"**), including, but not limited to, directly or indirectly, bringing, joining or assisting in any legal action against Siebel related to Other Actions or any of the

Claims released hereunder, I agree to pay Siebel's reasonable attorneys' fees and costs incurred in enforcing the terms of this General Release if it is lawful under applicable law for Siebel to require such payments.

I understand that Siebel has given me twenty-one (21) days in which to consider this General Release. I also understand for a period of seven (7) days after I sign this General Release, I may revoke this General Release and that the General Release will not become effective until seven days after I sign it and only then if I do not revoke it. In order to revoke this General Release, I must deliver to the Plan Administrator, no later than seven (7) days after I execute this General Release, a letter stating that I am revoking it. I understand and agree that until I execute and deliver this General Release and the seven day revocation period has elapsed Siebel is entitled to withhold any consideration set forth in the first paragraph of this General Release.

For Employees Age 40 or Older Individual Termination

This General Release, together with the Plan, constitutes the entire understanding of the parties on the subjects covered. I acknowledge that I have read and fully understand these documents; that I was given the opportunity to consult with legal counsel of my own choosing and to have the terms of these documents fully explained to me; that I am not executing this General Release in reliance on any promises, representations or inducements other than those contained these documents; and that I am executing this General Release voluntarily, free of any duress or coercion. I understand that if any provision of this General Release is held invalid or unenforceable by any court of final jurisdiction, all other provisions will be construed to remain fully valid, enforceable, and binding on me. I further understand that if the release of Claims described above is held invalid or unenforceable by any court of final jurisdiction, Siebel has the right in its sole discretion to request repayment of the consideration described above, unless Siebel is prohibited from doing so under applicable law.

Signed: _____

Name: _____

Date: _____

EXHIBIT C — GENERAL RELEASE OF ALL CLAIMS
FOR EMPLOYEES AGE 40 OR OLDER GROUP TERMINATION

I understand and agree completely to the terms set forth in the Siebel Systems, Inc. Employee Retention Benefit Plan (the **"Plan"**). In consideration for the benefits outlined in Section 4 of the Plan (the **"Severance Benefits"**), to which I am not otherwise entitled, I hereby completely and forever release Siebel Systems, Inc., and any affiliated parents, subsidiaries, and successor corporations, and its former, current and future shareholders, directors, officers, trustees, employer-sponsored employee benefit and welfare plans, and all the representatives and agents (collectively referred to as **"Siebel"**) from any and all claims, actions, obligations, causes of action, and liabilities of any and every kind, nature and character, known or unknown, which I may now have, or which I ever had, against Siebel arising from or in any way connected with my employment relationship with Siebel, or the termination thereof, including but not limited to all "wrongful discharge" claims, all claims relating to any contracts of employment, express or implied, claims under any compensation plan or policy, claims for fraud or misrepresentation, any breach or violation of the covenant of good faith and fair dealing or any federal, state or municipal statute or ordinance such as any claims under the Civil Rights Act of 1964, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the California Labor Code, the Age Discrimination in Employment Act, the Employee Income Security Act of 1974 (**"ERISA"**) and any of the laws and regulations relating to employment discrimination and any and all claims for attorneys' fees and costs (collectively referred to as **"Claims"**).

I understand that Section 1542 of the *California Civil Code* provides as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR [EMPLOYEE] DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR [SIEBEL]. I further understand that Section 1542 gives me the right not to release existing claims of which I am not now aware, unless I voluntarily choose to waive this right. I further understand that if any law that is analogous to Section 1542 of the California Civil Code exists in any other state, I voluntarily choose to waive those rights. Having been so apprised, I nevertheless hereby voluntarily elect to waive my rights for any Claims against Siebel that now exist in my favor, whether known or unknown. Notwithstanding any of the foregoing, I hereby reserve any rights I may have to unemployment or worker's compensation insurance, and under Siebel's 401k Plan.

I agree that I will not, on behalf of myself or in cooperation or participation with any other person, firm, entity, corporation, institute, or government agency, file, refile, or in any manner voluntarily participate in or prosecute any claim, grievance, complaint or action of any sort (**"Other Actions"**), before any local, state or federal court, arbitrator, or administrative agency, board or tribunal concerning any matter that was or could have been raised in connection with any Claims released in the first paragraph above, unless otherwise compelled by a court or government agency. I further agree to promptly dismiss or withdraw with prejudice any charges, claims or complaints regarding any matter released in the first paragraph above. I further agree to cooperate with and provide aid to Siebel as needed in its participation in litigation, if any, or as otherwise required by law. I further agree that if I breach the terms of this General Release Of All Claims (**"General Release"**), including, but not limited to, directly or indirectly, bringing, joining or assisting in any legal action against Siebel related to Other Actions or any of the

Claims released hereunder, I agree to pay Siebel's reasonable attorneys' fees and costs incurred in enforcing the terms of this General Release if it is lawful under applicable law for Siebel to require such payments.

I understand that Siebel has given me forty-five (45) days in which to consider this General Release. I also understand for a period of seven (7) days after I sign this General Release, I may revoke this General Release and that the General Release will not become effective until seven days after I sign it and only then if I do not revoke it. In order to revoke this General Release, I must deliver to the Plan Administrator, no later than seven (7) days after I execute this General Release, a letter stating that I am revoking it. I understand and agree that until I execute and deliver this General Release and the seven day revocation period has elapsed Siebel is entitled to withhold any consideration set forth in the first paragraph of this General Release.

For Employees Age 40 or Older Group Termination

This General Release, together with the Plan, constitutes the entire understanding of the parties on the subjects covered. I acknowledge that I have read and fully understand these documents; that I was given the opportunity to consult with legal counsel of my own choosing and to have the terms of these documents fully explained to me; that I am not executing this General Release in reliance on any promises, representations or inducements other than those contained these documents; and that I am executing this General Release voluntarily, free of any duress or coercion. I understand that if any provision of this General Release is held invalid or unenforceable by any court of final jurisdiction, all other provisions will be construed to remain fully valid, enforceable, and binding on me. I further understand that if the release of Claims described above is held invalid or unenforceable by any court of final jurisdiction, Siebel has the right in its sole discretion to request repayment of the consideration described above, unless Siebel is prohibited from doing so under applicable law.

Signed: _____

Name: _____

Date: _____

Exhibit

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EXHIBIT 10.13

FORM OF AMENDED STOCK OPTION AGREEMENT
EFFECTIVE OCTOBER 1, 2004
AMENDED AND RESTATED 1989 STOCK PLAN
AND FOR USE WITH OTHER PEOPLESOFT STOCK OPTION PLANS (WITH CONFORMING CHANGES)

PLEASE READ AND ELECTRONICALLY SIGN THIS PEOPLESOFT, INC. NONSTATUTORY OPTION AGREEMENT (THE "OPTION AGREEMENT"), ACCEPTING THE TERMS AND CONDITIONS OF THE PLAN AND THIS OPTION AGREEMENT.

PEOPLESOFT, INC.
NONSTATUTORY STOCK OPTION AGREEMENT

Subject to the terms, definitions and provisions of the Amended and Restated 1989 Stock Plan ("the Plan"), even if conflicting herewith, PEOPLESOFT, INC. (the "Company"), hereby grants

to (the "Optionee"), the following option (the "Option") to purchase shares of PeopleSoft's common stock:

<TABLE>
<CAPTION>

GRANT ID	GRANT DATE	SHARES GRANTED	EXERCISE PRICE
<S>	<C>	<C>	<C>
_____	____, 2004	_____	$_____

</TABLE>

Subject to Optionee maintaining Continuous Status as an Employee as of such dates, the Option shall vest and become exercisable as follows:

VESTING DATE	SHARES VESTED/EXERCISABLE
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Notwithstanding the foregoing vesting schedule, if there is a "Change of Control" (as such term is defined below) and, within one (1) year following such Change of Control, Optionee's Continuous Status as an employee of the Company, an affiliate of the Company, or a successor to either the Company or an affiliate thereof (collectively, the "Employer") is terminated by reason of his

or her Involuntary

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Termination or Constructive Discharge, the Option shall vest and become exercisable in full. For purposes of this Agreement, the following definitions shall apply:

"Change of Control" means:

(a) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing forty-five percent (45%) or more of the total voting power represented by the Company's then outstanding voting securities; or

(b) A change in the composition of the Board occurring within a two-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" shall mean directors who either (A) are directors of the Company as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(c) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty-five percent (55%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(d) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or

(e) any other event that the Board determines to be a Change of Control.

"Involuntary Termination" means termination of Optionee's employment by the Employer, other than by reason of death, permanent disability or for Cause, on or after a Change of Control.

"Cause" means (i) a material act of dishonesty by Optionee in connection with Optionee's employment with the Employer; (ii) Optionee's conviction of, or plea of nolo contendere to, a felony; (iii) Optionee's gross misconduct in connection with the performance of his or her duties; (iv) Optionee's death or permanent disability preventing him or her from performing the usual and necessary functions of his or her position; (v) Optionee's material breach of his or her obligations as an employee of the Employer; or (vi) Optionee's failure to materially comply with the Employer's policies. With respect to clauses (iii), (v) and (vi), such actions shall not constitute Cause if they are cured by Optionee within thirty (30) days following delivery to Optionee of a written explanation specifying the basis for the Employer's belief that it has Cause, provided that the Employer deems such action capable of being cured.

"Constructive Discharge" means the Optionee's termination of employment with the Employer following (i) the occurrence on or after a Change of Control of one or more of the following events ("Constructive Discharge Events"): (a) a

material reduction in the Optionee's base salary or target bonus potential under the Employee Incentive Compensation Plan and/or other applicable variable compensation plans, provided that any bonus guarantees made for any period shall not establish the "target bonus potential," and provided further that "target bonus potential" shall not include any annual

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discretionary bonuses that maybe awarded by the Company from time to time; (b) the failure to provide the Optionee with benefits and perquisites that, in the aggregate, are substantially comparable in value to those to which similarly-situated employees of the acquiror are entitled; or (c) a change in Optionee's principal work location to a location more than 50 miles from his principal work location immediately preceding the Change of Control, provided that the Optionee's commute is at least 10 miles longer as a result of the relocation compared to the Optionee's commute to the current location, [In the case of an Optionee serving as President, Co-President, Executive Vice President, Senior Vice President or Group Vice President: or (d) a material reduction in Optionee's authority or duties (other than a material reduction in authority or duties occurring solely by virtue of a Change of Control, as for example, when an Optionee retains the position in the Company but the Company is a wholly-owned, privately-held subsidiary or division of a larger company, or other than a reduction for Cause); provided, however, that any person serving as President prior to a Change of Control shall be deemed to have experienced a Constructive Discharge after a Change of Control (other than a Change of Control which occurred solely and exclusively as a result of an event described in clause (b) of the definition of "Change of Control"), notwithstanding his or her continued employment by the Company or the acquirer after the Change of Control or the lack of a change in job description or duties and responsibilities of such person following the Change of Control, and (ii) the Constructive Discharge Event continues for more than thirty (30) days after delivery of written notice by the Optionee to the Employer specifying the circumstances of the alleged Constructive Discharge, which notice must be delivered to the Employer within five (5) business days following the Constructive Discharge Event, and (iii) Optionee resigns from all positions with the Employer within ten (10) days following the expiration of Employer's 30 day cure period, where such Constructive Discharge Event is still ongoing.

Notwithstanding anything in this Agreement to the contrary, if, within six months prior to the date on which a Change of Control occurs, Optionee's employment with the Employer is terminated by the Employer other than by reason of the Optionee's death, permanent disability or circumstances that would constitute Cause, or the terms and conditions of Optionee's employment are adversely changed in a manner that would constitute grounds for termination of employment by the Optionee by reason of a Constructive Discharge, and it is reasonably demonstrated that such termination of employment or adverse change (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change of Control or (ii) otherwise arose in connection with or in anticipation of the Change of Control, then for all purposes of this Agreement, such termination of employment shall be deemed to have occurred immediately after the Change of Control and shall be considered either termination of Optionee's employment without Cause by the Employer or termination of Optionee's employment by the Optionee by reason of a Constructive Discharge, as the case may be.

In the event of termination of Optionee's Continuous Status as an Employee, Optionee may exercise this Option only to the extent that Optionee was vested at the date of termination. If termination resulted from the death of the Optionee, the Optionee's estate or person who acquired the right to exercise the Option by bequest or inheritance will be entitled to exercise the Option as if

the termination had occurred one (1) year from the date of death. To the extent that Optionee was not vested at the date of termination the Option shall terminate. In addition, the Option shall terminate, even as to vested shares, if the Optionee does not exercise the Option within ninety (90) days from termination or within twelve (12) months in the event of the Optionee's death or Disability. In no event may this Option be exercised after the Term/Expiration Date.

To exercise the Option, Optionee must contact Optionee's broker and have them contact the PeopleSoft Stock Administration Department. Payment of the Exercise Price may be made by: (i) cash or check; (ii) a "cashless exercise" (irrevocable instructions to a broker to deliver promptly to the Company the amount of the sale or loan proceeds required to pay the Exercise Price); or (iii) if Optionee is located in the United States, surrender of other shares of Common Stock of the Company having a Fair

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Market Value, which on the date of surrender is equal to the aggregate Exercise Price of the Shares on which the Option is being exercised, and, if such shares were acquired from PeopleSoft, have been held by the Optionee for more than six (6) months. This Option may not be exercised for a fraction of a share.

The Option is a nonstatutory stock option and is not intended to qualify for any special tax benefits to the Optionee. Optionee understands that Optionee may suffer adverse tax consequences as result of Optionee's exercise of the Option or disposition of the Shares acquired under the Option. OPTIONEE SHOULD READ THE PLAN AND PROSPECTUS AND CONSULT A TAX ADVISER BEFORE EXERCISING THE OPTION OR DISPOSING OF THE SHARES.

Optionee acknowledges and agrees that the ultimate liability for any and all income tax, social insurance, payroll tax, payment on account or other tax-related withholding ("Tax-Related Items") due by the Optionee is and remains Optionee's responsibility and liability and that the Company and/or Optionee's employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option grant, including the grant, vesting or exercise of the Option and the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit to structure the terms of the grant or any aspect of the Option to reduce or eliminate Optionee's liability for Tax-Related Items.

Prior to exercise of the Option, Optionee shall pay or make adequate arrangements satisfactory to Company and/or Optionee's employer to satisfy all withholding and payment on account obligations of Company and/or Optionee's employer. In this regard, Optionee authorizes Company and/or Optionee's employer to withhold all applicable Tax-Related Items legally payable by Optionee from Optionee's wages or other cash compensation paid to Optionee by Company and/or Optionee's employer or from proceeds of sale of Shares. Alternatively, or in addition, if permissible under local law, Company may (i) sell or arrange for the sale of Shares that Optionee is due to acquire to meet the minimum withholding obligation for Tax-Related Items, and/or (ii) withhold in Shares, provided that the Company only withholds the amount necessary to satisfy the minimum withholding amount. Any estimated withholding which is not required in satisfaction of any Tax-Related Items will be repaid to Optionee by Company or Optionee's employer. Finally, Optionee shall pay to Company or Optionee's employer any amount of any Tax-Related Items that Company or Optionee's employer may be required to withhold as a result of Optionee's participation in the Plan or Optionee's purchase of Shares that cannot be satisfied by the means previously described. Company may refuse to honor the exercise and refuse to deliver Shares if Optionee fails to comply with Optionees obligations in

connection with the Tax-Related Items as described in this paragraph.

Regardless of any action the Company or Optionee's employer takes with respect to any or all Tax-Related Items, Optionee acknowledges and agrees that the vesting of shares pursuant to the Option hereof is earned only by continuing employment at the will of the Company, except as otherwise provided herein with respect to a Change of Control. Optionee further acknowledges and agrees that nothing in this Agreement, nor in the Company's Stock Option Plan shall confer upon Optionee any right with respect to continuation of employment by the Company, nor shall interfere in any way with Optionee's right or the Company's right to terminate Optionee's employment at anytime, with or without cause.

This Option may not be transferred in any manner otherwise than by will or by laws of descent or distribution and may be exercised during the lifetime of the Optionee only by the Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assignees of the Option.

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OPTIONEE HEREBY EXPLICITLY AND UNAMBIGUOUSLY CONSENTS TO THE COLLECTION, USE AND TRANSFER, IN ELECTRONIC OR OTHER FORM, OF OPTIONEE'S PERSONAL DATA AS DESCRIBED IN THIS DOCUMENT BY AND AMONG, AS APPLICABLE, OPTIONEE'S EMPLOYER AND COMPANY AND ITS SUBSIDIARIES FOR THE EXCLUSIVE PURPOSE OF IMPLEMENTING, ADMINISTERING AND MANAGING OPTIONEE'S PARTICIPATION IN THE PLAN. OPTIONEE UNDERSTANDS THAT COMPANY AND OPTIONEE'S EMPLOYER HOLD CERTAIN PERSONAL INFORMATION ABOUT OPTIONEE, INCLUDING, BUT NOT LIMITED TO, OPTIONEE'S NAME, HOME ADDRESS AND TELEPHONE NUMBER, DATE OF BIRTH, SOCIAL INSURANCE NUMBER OR OTHER IDENTIFICATION NUMBER, SALARY, NATIONALITY, JOB TITLE, ANY SHARES OF STOCK OR DIRECTORSHIPS HELD IN COMPANY, DETAILS OF ALL OPTIONS OR ANY OTHER ENTITLEMENT TO SHARES OF STOCK AWARDED, CANCELED, EXERCISED, VESTED, UNVESTED OR OUTSTANDING IN OPTIONEE'S FAVOR, FOR THE PURPOSE OF IMPLEMENTING, ADMINISTERING AND MANAGING THE PLAN ("DATA"). OPTIONEE UNDERSTANDS THAT DATA MAY BE TRANSFERRED TO ANY THIRD PARTIES ASSISTING IN THE IMPLEMENTATION, ADMINISTRATION AND MANAGEMENT OF THE PLAN, THAT THESE RECIPIENTS MAY BE LOCATED IN OPTIONEE'S COUNTRY, OR ELSEWHERE, AND THAT THE RECIPIENT'S COUNTRY MAY HAVE DIFFERENT DATA PRIVACY LAWS AND PROTECTIONS THAN OPTIONEE'S COUNTRY. OPTIONEE UNDERSTANDS THAT HE OR SHE MAY REQUEST A LIST WITH THE NAMES AND ADDRESSES OF ANY POTENTIAL RECIPIENTS OF THE DATA BY CONTACTING OPTIONEE'S LOCAL HUMAN RESOURCES REPRESENTATIVE. OPTIONEE AUTHORIZES THE RECIPIENTS TO RECEIVE, POSSESS, USE, RETAIN AND TRANSFER THE DATA, IN ELECTRONIC OR OTHER FORM, FOR THE PURPOSES OF IMPLEMENTING, ADMINISTERING AND MANAGING OPTIONEE'S PARTICIPATION IN THE PLAN, INCLUDING ANY REQUISITE TRANSFER OF SUCH DATA AS MAY BE REQUIRED TO A BROKER OR OTHER THIRD PARTY WITH WHOM OPTIONEE DEPOSITS ANY SHARES OF STOCK ACQUIRED UPON EXERCISE OF THE OPTION. OPTIONEE UNDERSTANDS THAT DATA WILL BE HELD ONLY AS LONG AS IS NECESSARY TO IMPLEMENT, ADMINISTER AND MANAGE OPTIONEE'S PARTICIPATION IN THE PLAN. OPTIONEE UNDERSTANDS THAT OPTIONEE MAY, AT ANY TIME, VIEW DATA, REQUEST ADDITIONAL INFORMATION ABOUT THE STORAGE AND PROCESSING OF DATA, REQUIRE ANY NECESSARY AMENDMENTS TO DATA OR REFUSE OR WITHDRAW THE CONSENTS HEREIN, IN ANY CASE WITHOUT COST, BY CONTACTING IN WRITING OPTIONEE'S LOCAL HUMAN RESOURCES REPRESENTATIVE. OPTIONEE UNDERSTANDS, HOWEVER, THAT REFUSING OR WITHDRAWING OPTIONEE'S CONSENT MAY AFFECT OPTIONEE'S ABILITY TO PARTICIPATE IN THE PLAN. FOR MORE INFORMATION ON THE CONSEQUENCES OF OPTIONEE'S REFUSAL TO CONSENT OR WITHDRAWAL OF CONSENT, OPTIONEE UNDERSTANDS THAT OPTIONEE MAY CONTACT OPTIONEE'S LOCAL HUMAN RESOURCES REPRESENTATIVE.

In accepting the grant, Optionee acknowledges that:

(1) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated

by the Company at any time, unless otherwise provided in the Plan and this Option Agreement;

(2) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;

(3) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company;

(4) Optionee's participation in the Plan shall not create a right to further employment with Optionee's employer and shall not interfere with the ability of Optionee's employer to terminate Optionee's employment relationship at any time with or without cause;

(5) Optionee is voluntarily participating in the Plan;

(6) the Option is an extraordinary item that does not constitute compensation of any kind for services of any kind rendered to the Company or Optionee's employer, and which is outside the scope of Optionee's employment contract, if any;

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(7) the Options are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments;

(8) in the event that Optionee is not an employee of the Company, the Option grant will not be interpreted to form an employment contract or relationship with the Company; and furthermore, the Option grant will not be interpreted to form an employment contract with Optionee's employer or any subsidiary or affiliate of the Company;

(9) the future value of the underlying Shares is unknown and cannot be predicted with certainty;

(10) if the underlying Shares do not increase in value, the Options will have no value;

(11) if Optionee exercises the Option and obtains Shares, the value of those Shares acquired upon exercise may increase or decrease in value, even below the Exercise Price;

(12) in consideration of the grant of Options, no claim or entitlement to compensation or damages shall arise from termination of the Options or diminution in value of the Options or Shares purchased through exercise of the Options resulting from termination of Optionee's employment by the Company or Optionee's employer (for any reason whatsoever and whether or not in breach of local labor laws) and Optionee irrevocably releases the Company and Optionee's employer from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by signing this Option Agreement, Optionee shall be deemed irrevocably to have waived Optionee's entitlement to pursue such claim; and

(13) notwithstanding any terms or conditions of the Plan to the contrary, in the event of involuntary termination of Optionee's employment (whether or not in breach of local labor laws), Optionee's right to receive Options and vest in

designated by the Company.

The provisions of this Option Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

The Plan, the Option Agreement and the Plan Documents constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by both parties.

AGREED AND EXECUTED AS FOLLOWS:

PeopleSoft, Inc.

A Delaware Corporation
By:

_____
Kevin Parker
Co-President

Employee

_____

IMPORTANT: YOU WILL NOT BE ABLE TO EXERCISE THIS OPTION UNTIL YOU HAVE SIGNED AND ACCEPTED THE TERMS OF THIS GRANT AGREEMENT.

[FOREIGN EMPLOYEE AMENDMENTS OMITTED]

</TEXT>
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Exhibit

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☑
Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement
☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
☑ Definitive Proxy Statement
☐ Definitive Additional Materials
☐ Soliciting Material Pursuant to §240.14a-12

Yahoo! Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
☑ No fee required.
☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.
☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

701 First Avenue
Sunnyvale, CA 94089

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held on August 1, 2008

We will hold the annual meeting of stockholders of Yahoo! Inc., a Delaware corporation (the "Company"), at The Fairmont San Jose, located at 170 South Market Street, San Jose, California, on August 1, 2008, at 10:00 a.m., local time, for the following purposes:

1. To elect nine (9) directors of the Company to serve until the 2009 annual meeting of stockholders or until their respective successors are elected and qualified;

2. To ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm for the Company for the fiscal year ending December 31, 2008;

3. To vote upon three proposals submitted by stockholders, in each case if properly presented at the annual meeting; and

4. To transact such other business as may properly come before the annual meeting and any adjournment or postponement thereof.

These items of business, including the Board's nominees for directors, are more fully described in the proxy statement accompanying this Notice.

The Board of Directors has fixed the close of business on June 3, 2008 as the record date for determining the stockholders entitled to notice of and to vote at the annual meeting and any adjournment or postponement thereof.

All stockholders are cordially invited to attend the annual meeting in person. However, whether or not you plan to attend the annual meeting in person, you are urged to mark, date, sign and return the enclosed **WHITE** proxy card as promptly as possible in the postage-prepaid envelope provided, or vote electronically through the Internet or by telephone, to ensure your representation and the presence of a quorum at the annual meeting. If you submit your proxy and then decide to attend the annual meeting to vote your shares in person, you may still do so. Your proxy is revocable in accordance with the procedures set forth in the proxy statement. Only stockholders of record as of the close of business on June 3, 2008 are entitled to receive notice of, to attend and to vote at the annual meeting.

Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to Be Held on August 1, 2008. The proxy statement and Yahoo!'s Annual Report to Stockholders on Form 10-K for fiscal year 2007, as amended on April 29, 2008, are available electronically at *http://yhoo.client.shareholder.com/annuals.cfm.*

Our Board of Directors intends to nominate for election as directors the nine (9) persons named in Proposal No. 1 in the proxy statement accompanying this Notice, each of whom is currently serving as a director of the Company. We believe that Yahoo!'s current Board of Directors has the independence, knowledge and commitment to navigate the Company through the rapidly changing Internet environment and to deliver value for Yahoo! and its stockholders. Please note that certain entities affiliated with Carl C. Icahn (the "Icahn Entities") have provided notice that they intend to nominate their own slate of nine (9) nominees for election as directors at the annual meeting and solicit proxies for use at the annual meeting to vote in favor of their own slate in opposition to all of the nominees named in Proposal No. 1. We do not endorse the election of any of the Icahn Entities' nominees as director. You may receive proxy solicitation materials from the Icahn Entities or other persons or entities affiliated with them, including an opposition proxy statement and proxy card. **OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE ELECTION OF ALL OF THE BOARD'S NOMINEES ON THE ENCLOSED WHITE PROXY CARD AND URGES YOU NOT TO SIGN OR RETURN ANY PROXY CARD SENT TO YOU BY THE ICAHN ENTITIES.** Even if you have previously signed a proxy card sent by the Icahn Entities, you have the right to change your vote by using the enclosed **WHITE** proxy card to vote by telephone, by Internet or by signing, dating and returning the enclosed **WHITE** proxy card in the postage-paid envelope provided. Only the latest dated proxy you submit will be counted. We urge you to disregard any proxy card sent to you by the Icahn Entities or any person other than Yahoo!.

In addition to the Icahn Entities, two individual stockholders have provided notice that they intend to nominate themselves for election as directors at the annual meeting and a third individual stockholder has provided notice that he intends to nominate nine (9) individuals (not including himself) for election as directors at the annual meeting. We do not believe that any of these stockholders have complied with the requirements of the Company's bylaws and we reserve all of our rights relating to such nominations, including the right to declare to the annual meeting that the nominations were defective and shall be disregarded.

If you have any questions or require any assistance with voting your shares, please contact:

MACKENZIE PARTNERS, INC.
105 Madison Avenue
New York, New York 10016
(212) 929-5500 (Call Collect)
or
Call Toll-Free (800) 322-2885

Email: yahoo@mackenziepartners.com

By Order of the Board of Directors,

Michael J. Callahan
Executive Vice President, General Counsel and Secretary

Sunnyvale, California
June 9, 2008

The options are scheduled to vest in annual installments over four years, and the restricted stock units are subject to a two-year vesting requirement. Mr. Jorgensen also received grants of options and restricted stock units in connection with his hiring by the Company in June 2007.

As noted above, in November 2007, the Compensation Committee approved a new compensation arrangement for Ms. Decker in connection with her appointment as President. The arrangement included retention grants of stock options that are scheduled to vest in installments over a three-year period and restricted stock units that are scheduled to vest in installments over a two-year period. In addition, the Compensation Committee provided that the portion of the options granted in November 2007 that are vested as of the date Ms. Decker terminates employment with the Company will generally remain exercisable for one year following her termination date, and approved an amendment to the option granted to her on May 31, 2006 to provide that the portion of the option that is vested as of the date Ms. Decker terminates employment with the Company will generally remain exercisable for three years following her termination date. These post-termination exercise provisions are to help mitigate Ms. Decker's risks related to short-term stock price fluctuations in a volatile market and to allow her to benefit from strategic initiatives implemented while she was President, the full value of which may not have been realized by the Company prior to her departure.

The material terms of the options and restricted stock unit awards granted to the Named Executive Officers in 2007 are described below under "Grants of Plan-Based Awards — Fiscal 2007."

The Compensation Committee determined that a mix of both stock options and restricted stock units with time-based vesting schedules was appropriate in 2007, principally because stock options would only have value if the Company's stock price increased, while the restricted stock units would have a retention benefit regardless of stock price, and thus were important to help retain the recipient, but the overall value of the award would still be based on stock price. The particular size of the grants and mix of stock options and restricted stock units was determined by the Compensation Committee in its discretion after an overall assessment of all of the factors noted above, Mr. Yang's recommendations and, in the case of the awards to Ms. Decker, with the view toward bringing her total direct compensation opportunity (after considering her base salary and annual bonus opportunity) within the top quartile of competitive market practice for purposes of both recognition and retention, and because the structure of her compensation package is at risk for her own personal as well as the Company's performance.

Grant Practices. Beginning in August 2006, the Compensation Committee adopted procedures providing that new hire and retention equity awards may be made to employees, including executive officers, by the Compensation Committee only at regularly scheduled meetings on or around the 25th of each month except March, June, September and December. This schedule is designed so that awards are not granted during the period commencing on the first day of the last month of each quarter and ending two business days after the Company's quarterly earnings release.

The Company does not have any program, plan or practice to time the grant of equity-based awards to our executives in coordination with the release of material non-public information. All equity grants are made under the Company's stock plan, which is approved by the stockholders. The per share exercise price of stock options cannot be less than the closing sale price of the Company's common stock on the Nasdaq Stock Market on the grant date.

Compensation Committee Actions after Fiscal 2007

Change in Control Severance Plans. On February 12, 2008, the Compensation Committee approved two change in control severance plans (the "Change in Control Severance Plans") that, together, cover all full-time employees of the Company, including each of the Named Executive Officers currently employed by the Company. On January 31, 2008, the Company received an unsolicited proposal from Microsoft Corporation ("Microsoft") to acquire the Company. On February 11, 2008, the Company issued a press release indicating that its Board of Directors had unanimously concluded that the proposal was not in the best interest of the Company and our stockholders. The Change in Control Severance Plans are designed, in light of the uncertainty caused by the Microsoft proposal, to help retain the Company's employees, maintain a stable work environment and provide certain economic benefits to the employees in the event their employment is actually or constructively terminated in connection with a change in control of the Company. The material terms of the Change in Control Severance Plans

are described below in the section entitled "New 2008 Change in Control Severance Plans." Compensia advised the Company and F.W. Cook & Co. advised the Compensation Committee with respect to the terms of the plans.

Stock Ownership Program

As described above, the Company believes that, in order to align the interests of our executive officers with those of our stockholders, executive officers should have a financial stake in the Company. The Company's policy is that the Chief Executive Officer of the Company should own a minimum of 5,000 shares of Company common stock, and each of the other executive officers of the Company should own a minimum of 3,000 shares of Company common stock. Executive officers are required to retain 100% of any of their shares of restricted stock that become vested until such ownership levels have been achieved.

Policy with Respect to Section 162(m)

Section 162(m) of the Internal Revenue Code limits the tax deductibility by a corporation of compensation in excess of $1 million paid to its chief executive officer and certain of its other executive officers. However, compensation which qualifies as "performance-based" is excluded from the $1 million limit if, among other requirements, the compensation is payable only upon attainment of pre-established, objective performance goals under a plan approved by the corporation's stockholders.

The Company and the Compensation Committee review and consider the deductibility of executive compensation under Section 162(m). The Company believes that the realized gains on nonqualified stock options at the time of exercise are fully deductible under the terms of the Company's stockholder-approved stock plan. In addition, the Company and the Compensation Committee generally structure performance-based grants of restricted stock units to qualify for deductibility in accordance with 162(m). The Company's annual cash bonuses do not satisfy the requirements of Section 162(m) given the importance to the Company of preserving flexibility for the Compensation Committee to make final bonus determinations after the related fiscal year has been completed, when it is in the best position to assess Company performance and make distinctions based on individual performance and contributions. The Company intends to retain this flexibility to provide total cash compensation in line with competitive practice, the Company's compensation philosophy, and the Company's best interests. We therefore may from time to time pay compensation to our executive officers that may not be deductible.

Compensation Committee Report

The Compensation Committee has reviewed and discussed with management the disclosures contained in the Compensation Discussion and Analysis Section of this proxy statement. Based upon this review and discussion, the Compensation Committee recommended to the Board of Directors that the Compensation Discussion and Analysis Section be included in this proxy statement.

Compensation Committee of the Board of Directors

Arthur H. Kern (Chair)
Roy J. Bostock
Ronald W. Burkle

New 2008 Change in Control Severance Plans

As noted above in the section entitled "Compensation Discussion and Analysis," the Compensation Committee approved two Change in Control Severance Plans on February 12, 2008 that, together, cover all full-time employees of the Company, including each of the Named Executive Officers currently employed by the Company.

The Change in Control Severance Plans provide that if an eligible employee's employment with the Company is terminated by the Company without "cause" or by the employee for "good reason" (as these terms are defined in the applicable Change in Control Severance Plan) within two years after a change in control of the Company, the employee will generally be entitled to receive the following severance benefits:

- Continuation of the employee's annual base salary, as severance pay, over a designated number of months following the employee's severance date. The number of months will range from four months to 24 months, depending on the employee's job level.

- Reimbursement for outplacement services for 24 months following the employee's severance date, subject to a maximum reimbursement that ranges from $3,000 to $15,000, depending on the employee's job level.

- Continued medical group health and dental plan coverage for the period the employee receives severance pay.

- Accelerated vesting of all stock options, restricted stock units and any other equity-based awards previously granted or assumed by the Company and outstanding as of the severance date, unless otherwise set forth in the applicable award agreement for grants or awards made after February 12, 2008.

The number of months used to calculate the severance benefit under the Change in Control Severance Plans for each Named Executive Officer is 24 months and the outplacement benefit applicable to each Named Executive Officer is $15,000.

Payment of the foregoing severance benefits is conditioned upon the employee's execution of a release of claims in favor of the Company and compliance with the employee's confidentiality, proprietary information and assignment of inventions obligations to the Company.

A "change in control" would generally be triggered under the Change in Control Severance Plans by a person or group of persons acquiring more than 40% of the Company's voting stock, certain changes in the membership of the Board of Directors (as described in more detail below), certain mergers and other transactions where the Company's stockholders owned less than 50% of the surviving entity, a liquidation of the Company or a sale of all or substantially all of its assets, or any other transaction deemed by the Board of Directors or the Compensation Committee to constitute a change in control of the Company.

As previously noted, the Icahn Entities have provided notice that they intend to nominate their own slate of nine (9) nominees for election as directors at the annual meeting. Under the Change in Control Severance Plans, a change in control is deemed to have occurred if the members of the Board of Directors as of February 12, 2008 (and any new directors whose appointment, election or nomination to the Board of Directors was approved or recommended by a vote of at least two-thirds of the directors then in office who were either directors on February 12, 2008 or whose appointment, election or nomination for election was previously so approved or recommended) cease for any reason to constitute a majority of the Board of Directors. If five or more of the Icahn Nominees are elected to the Board of Directors at the annual meeting, a change in control will be deemed to have occurred for purposes of the Change in Control Severance Plans.

The following chart presents the Company's estimate of the amount of the severance benefits to which each of the Named Executive Officers would be entitled under the Change in Control Severance Plans if his or her employment terminated under the circumstances described above following a change in control of the Company, and assuming for purposes of this illustration that the termination of employment occurred on May 30, 2008.

Name	Cash Severance ($)	Continuation of Health Benefits ($)	Outplacement Benefits ($)	Equity Acceleration ($) (1)
Jerry Yang	2	34,314	15,000	0
Susan L. Decker	1,630,000	34,314	15,000	6,724,200
Blake Jorgensen	1,000,000	23,466	15,000	4,861,054
Michael J. Callahan	840,000	34,314	15,000	5,590,380
Michael A. Murray	750,000	34,314	15,000	3,021,886

(1) This column reports the intrinsic value of the unvested portions of each executive's awards that would accelerate in the circumstances. For options, this value is calculated by multiplying the amount (if any) by which the closing price of the Company's common stock on May 30, 2008 ($26.76) exceeds the exercise price of the option by the number of shares subject to the accelerated portion of the option. For restricted stock and restricted stock unit awards, this value is calculated by multiplying the closing price of the Company's common stock on May 30, 2008 by the number of shares or units subject to the accelerated portion of the award.

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2008 I caused a copy of the foregoing **Plaintiffs' Opening Brief In Support of Their Motion To Set Trial Date** to be served on the following counsel via LexisNexis File & Serve:

Edward P. Welch, Esquire
Skadden Arps Slate Meagher & Flom
One Rodney Square
Wilmington, DE 19801

David C. McBride, Esquire
Young Conaway Stargatt & Taylor
The Brandywine Building
1000 West Street
Wilmington, DE 19801

/s/ Joel Friedlander
Joel Friedlander (#3163)