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March 20, 2008

VIA HAND-DELIVERY

Ms. Theresa Chang  
Harris County District Clerk  
201 Caroline St.  
Houston, Texas 77002

Re: ~~Cause No. 2008-17510~~ *Waste Management, Inc. and USA Waste-Management Resources, L.L.C. v. SAP AG and SAP America, Inc.*; In the \_\_\_\_ Judicial District Court of Harris County, Texas


Dear Ms. Chang:

Enclosed please find the following:

1. Civil Case Information Sheet;
2. Plaintiffs' Original Petition;
3. Plaintiffs' First Requests for Production to Defendant SAP America, Inc.;
4. Plaintiffs' First Requests for Production to Defendant SAP AG;
5. Plaintiffs' Rule 194 Request for Disclosures to Defendants SAP AG and SAP America, Inc.; and
6. Firm check in the amount of \$218.00 to cover filing/citation fees

Please place your file-stamp mark on the copy and return it to the awaiting courier.

Very truly yours,

  
Jim Wetwiska

JRW/brr  
Enclosures

Cause No. **2008-17510**

WASTE MANAGEMENT, INC.  
AND USA WASTE-MANAGEMENT  
RESOURCES, L.L.C.

Plaintiff,

v.

SAP AG AND  
SAP AMERICA, INC.

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

164 JUDICIAL DISTRICT

CIVIL CASE INFORMATION SHEET

This form must be completed and filed with every original petition, and a copy attached to every original petition served. The information should be the best available at the time of filing, understanding that such information may change before trial. This form does not constitute a discovery request response, or supplementation, and is not admissible at trial.

Service must be obtained promptly. Notice is hereby given that, per Harris County Local Rule 3.6, any case in which no answer has been filed or default judgment signed FOUR (4) MONTHS from filing will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of action:  Commercial  Personal Injury  Death  Other

Check all claims pled:

- |   |   |  |  |
|---|---|--|--|
| <input type="checkbox"/> Account Due          | <input type="checkbox"/> Defamation           | <input checked="" type="checkbox"/> Fraud      | <input type="checkbox"/> Product liability     |
| <input type="checkbox"/> Admiralty            | <input type="checkbox"/> Disbarment           | <input type="checkbox"/> Garnishment           | <input type="checkbox"/> Post judgment         |
| <input type="checkbox"/> Assault              | <input type="checkbox"/> Discrimination       | <input type="checkbox"/> Injunction/TRO        | <input type="checkbox"/> Railroad              |
| <input type="checkbox"/> Asbestos             | <input type="checkbox"/> Dram shop            | <input type="checkbox"/> Insurance bad faith   | <input type="checkbox"/> Real estate           |
| <input type="checkbox"/> Auto                 | <input type="checkbox"/> DTPA                 | <input type="checkbox"/> Malicious prosecution | <input type="checkbox"/> Securities fraud      |
| <input type="checkbox"/> Bill of review       | <input type="checkbox"/> Employment discharge | <input type="checkbox"/> Malpractice/Legal     | <input type="checkbox"/> Sequestration         |
| <input type="checkbox"/> Business dissolution | <input type="checkbox"/> Environmental tort   | <input type="checkbox"/> Malpractice/Medical   | <input type="checkbox"/> Silicone implant      |
| <input type="checkbox"/> Conspiracy           | <input type="checkbox"/> Expunction           | <input type="checkbox"/> Malpractice/Other     | <input type="checkbox"/> Tax                   |
| <input type="checkbox"/> Contract             | <input type="checkbox"/> False imprisonment   | <input type="checkbox"/> Name Change           | <input type="checkbox"/> Tortious interference |
| <input type="checkbox"/> Deed restriction     | <input type="checkbox"/> Foreclosure          | <input type="checkbox"/> Note                  | <input type="checkbox"/> Trespass              |
| <input type="checkbox"/> Declaratory judgment | <input type="checkbox"/> Forfeiture           | <input type="checkbox"/> Premises liability    | <input type="checkbox"/> Workers compensation  |
| <input type="checkbox"/> Other                |   |  |  |

Has this dispute previously been in the Harris County courts?  No  Yes, in the following court: \_\_\_\_\_

Monetary damages sought:  less than \$50,000  \$50,001 - \$100,000  greater than \$100,000

Estimated time needed for discovery:  0-3 months  4-6 months  7-12 months  >1 year

Estimated time needed for trial:  1-2 days  3-5 days  6-10 days  >10 days

Are you going to request Level 3 status? Yes  
If yes, please state your estimate for total hours of deposition per side: 80 and the number of interrogatories needed for each party to serve on any other party: 25

Name of party filing this cover sheet: Waste Management, Inc.; USA Waste-Management Resources, L.L.C.

Signature of attorney or pro se filing cover sheet: [Signature]  
Name printed: Jim Wetwiska  
Phone No.: (713) 220-5899 Bar No.: 00785223

FOR COURT USE ONLY:

Track assigned:  Track 1  Track 2  Track 3

Court Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

2008-17510

NO. 2008-\_\_\_\_\_

WASTE MANAGEMENT, INC.  
AND USA WASTE-MANAGEMENT  
RESOURCES, L.L.C.

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

SAP AG AND  
SAP AMERICA, INC.

104 JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

Plaintiffs Waste Management, Inc. and USA Waste-Management Resources, L.L.C. (collectively referred to herein as "Waste Management") file their Original Petition complaining of SAP AG and SAP America, Inc. (collectively referred to herein as "SAP"), and, in support, submit the following:

**I.**

**Discovery Plan Level**

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Waste Management requests that discovery be conducted pursuant to a level 3 discovery control plan.

**II.**

**Parties**

2. Plaintiff Waste Management, Inc. ("Waste Management") is a Delaware corporation with its principal place of business in Houston, Texas.
3. Plaintiff USA Waste-Management Resources, L.L.C. ("Waste Management") is a New York limited liability company with its principal place of business in Houston, Texas. Its sole member is Waste Management, Inc., whose citizenship is stated above.
4. Defendant SAP AG is a German corporation with its principal place of business at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany. SAP AG does not have a registered agent

for service of process in the State of Texas. Pursuant to Texas Rule of Civil Procedure 108a, service upon Defendant SAP AG is proper through the means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, *opened for signature* Nov. 15, 1965, 20 U.S.T. 361, UNTS 163 (“Hague Convention”). In accordance with Articles 3 and 5 of the Hague Convention, Defendant SAP AG can be served by forwarding a properly formatted request, summons and complaint to the Central Authority of the State of Baden-Wurttemberg of the Federal Republic of Germany, whose address is Justizministerium Baden-Württemberg, Schillerplatz 4, 70173 Stuttgart. Pursuant to Article 5(a) of the Hague Convention, Defendant SAP AG can be served by the Central Authority for the State of Baden-Wurttemberg in the method prescribed by the internal laws of the Federal Republic of Germany for the service of documents in domestic actions upon persons who are within its territory.

5. Defendant SAP America, Inc. (“SAP America”) is a Delaware corporation authorized to do business in the State of Texas with its principal place of business in Newtown Square, Pennsylvania. Service of process may be had on SAP’s registered agent, CT Corporation System, located at 350 N. St. Paul St., Dallas, Texas 75201.

6. Waste Management, Inc. and SAP America are both Delaware corporations.

### III.

#### Jurisdiction & Venue

7. This Court has jurisdiction over the controversy because the damages exceed the jurisdictional limits of the Court.

8. Venue is proper in Harris County, Texas because, as set forth below, all or a substantial part of the events or omissions giving rise to Waste Management’s claims occurred in Harris County, Texas. Moreover, pursuant to Section 15.035 of the Texas Civil Practice & Remedies Code, venue is proper in Harris County because USA Waste-Management Resources, L.L.C.

entered into a Software License Agreement - which includes a Maintenance Schedule, a Professional Services Schedule, and a Statement of Work - with SAP America, all of which required the Defendants to perform work at Waste Management's office in Houston.

#### IV.

##### **Preliminary Statement**

9. This action arises from the fraud committed by German software developer and integrator SAP AG, the world's largest business software company, against Waste Management. In order to gain acceptance in the United States waste and recycling software market, and to obtain large monetary benefits from current and future license and implementation fees, SAP fraudulently induced Waste Management to license an "United States applicable" Waste and Recycling Software solution. This Software was represented to be "a waste industry standard solution with no customization required." SAP further represented that the Software was an "integrated end-to-end solution." Unknown to Waste Management, this "United States" version of the Waste and Recycling Software was undeveloped, untested, and defective. Although SAP knew of the software's defects and its inability to function in United States market conditions, it nevertheless represented that the software was a mature, "out-of-the-box" solution with the functionality and scalability necessary to meet Waste Management's specific business requirements and transaction volumes.

10. SAP's fraud began in late 2004 or early 2005 when it targeted Waste Management as ripe for its Waste and Recycling product. SAP learned that Waste Management was exploring potential alternatives for the legacy software used to run the operations/revenue management side of its business. SAP knew that it had competition from other companies in landing Waste Management as a client, and it was keenly aware that Waste Management's preferred solution was a proven, "out-of-the-box" product that could be rapidly installed. With this knowledge in

hand, SAP began an elaborate fraud to convince Waste Management that its Waste and Recycling Software delivered these, and other, important requirements that other vendors were not able to provide.

11. During the sales campaign, SAP knew, but failed to disclose, that its Waste and Recycling Software was not ready for release in the United States. Despite this knowledge, SAP forged ahead in trying to license its product by representing that it incorporated best practices from the waste industry and that the Waste and Recycling Software would work for Waste Management.

12. SAP's key selling point was that the Waste and Recycling Software was a mature, tested, proven, out-of-the-box solution that was designed specifically for the waste and recycling business. SAP represented it had specific and intimate knowledge of Waste Management's business processes, and that its Waste and Recycling Software had been developed specifically for Waste Management and the United States waste management industry, with no customization required. Additionally, SAP represented that its Software was a "proven solution" and that SAP had "the implementation experience to deliver productive functionality in less than one year." These representations were false as the software modules used by SAP in its "United States" version of the Waste and Recycling software had never been used together before and had never been tested in an actual productive business environment.

13. To further its deception, SAP personnel also helped develop a "business case" for Waste Management that detailed how SAP's software purportedly would enable Waste Management to obtain hundreds of millions of dollars in increased efficiencies and revenue assurance. SAP never told Waste Management that this business case depended on an undeveloped product.

14. As part of its fraud, SAP presented Waste Management with a series of pre-contract product demonstrations consisting of what SAP represented was the actual Waste and Recycling Software. Yet Waste Management has discovered -- and, in internal documents, SAP has admitted -- that the pre-contract demonstrations were in fact nothing more than fake, mock-up simulations that did not use the software ultimately licensed to Waste Management. SAP's senior executives, including its president, Bill McDermott, participated in these fake product demonstrations, which were rigged and manipulated to depict false functionality and thereby deceive Waste Management into believing that the SAP software had functionality that it did not have. These fake product demonstrations occurred at numerous locations and on many occasions during an eight month time period in 2005.

15. To further induce Waste Management to enter into a licensing agreement, SAP represented that it had well-trained personnel with the requisite expertise, experience, and knowledge of the software to implement it rapidly on a company-wide basis. Waste Management has discovered -- and, in internal documents, SAP has admitted -- that these representations were also false, as the SAP implementation team had never before worked with the software SAP licensed to Waste Management.

16. Contrary to SAP's pre-contract representations that the software it was licensing to Waste Management could provide an "out-of-the-box," "integrated end-to-end solution" that "increases the effectiveness and competitiveness of waste companies," the software, as SAP knew, was nothing more than beta software -- *i.e.*, software still in development and utterly incapable of running the operations of an American waste and recycling company.

17. SAP's fake product demonstrations, its false representations concerning the functional and volume capabilities of its "United States" ready Waste and Recycling Software, and its

work on a “business case” that was premised on software it knew was defective induced Waste Management into licensing SAP’s software and incurring more than \$100 million in project expenses. SAP’s attempted installation of the Waste and Recycling Software at Waste Management was a complete failure. The installed software failed to contain basic functionality that had been represented to Waste Management and was unable to run Waste Management’s most basic revenue management operation. Instead of making Waste Management aware of these known software problems, SAP attempted to re-program the Waste and Recycling Software by making major modifications to the core software code during the implementation process. In the end, these changes to the core code only served to cause additional failures in the Software.

18. By this action, Waste Management seeks to recover compensatory and punitive damages that SAP inflicted by fraudulently inducing it to license defective software unable to meet its functional and volume requirements.

## V.

### Factual Background

#### A. Waste Management’s Business Objective in Replacing its Revenue Management System

19. Waste Management is the leading provider of integrated waste services in North America. Through its subsidiaries, Waste Management provides collection, transfer, recycling, disposal and waste-to-energy services to over 22 million commercial and residential customers throughout the country.

20. In early 2005, to reduce its operating costs and gain a competitive advantage in the waste and recycling industry, Waste Management began examining potential options to replace its existing revenue management software system, which handles such customer-related



functions as billing, collections, pricing, and new customer set-up; this is known as the Order to Cash process. Through an information systems upgrade, Waste Management intended to, among other things: (a) reduce operating costs by streamlining business processes; (b) capture additional revenue through better controls and more automated processes; (c) enhance customer satisfaction through faster and more accurate billing and invoicing; and (d) provide management with more extensive and timely information about its transactions, business and customers. Waste Management treated its systems replacement project -- which it named the "Customer First," or "C1" project -- as the crucial component of its strategic plan aimed at retaining and expanding its market share and growing its business by "leapfrogging" its competitors through cutting-edge information technology.

**B. SAP's R/3 Software and the Waste and Recycling Solution**

21. The defective software is SAP's Waste and Recycling Solution built on its R/3 platform. In general, SAP's software consists of separate modules linked together to manage a company's core business processes. SAP designs and combines the modules, as appropriate, for use as fully integrated software solutions for specific industries, such as the waste industry. While the modules encompass separate applications, they are supposed to link together and "talk" to each other to process information and transmit data on a real-time basis (*i.e.*, as generated) so that data entered into one module will concurrently update related modules. For example, within its Waste and Recycling, SAP used the SD (Sales and Distribution) module for sales and the FI-CA module for account receivables. These two modules were supposed to talk to each other, as well as to the other modules, in order for the software to function. SAP designs and develops the modules and determines which ones should be used together for a particular industry-specific solution.

22. SAP represented to Waste Management that its Waste and Recycling Solution was designed and developed specifically for Waste Management. SAP purportedly utilized its knowledge of Waste Management's business, gained in part through its employment of a former Waste Management controller, to develop the software.

23. Prior to 2005, SAP licensed the Waste and Recycling Software to a limited number of small European waste companies. During its pre-contract communications with Waste Management, SAP represented that these installations were successful. Although the European waste market, characterized by extensive governmental pricing controls, bears little relation to the open market pricing system in the United States, SAP assured Waste Management that the Software was designed specifically to operate and process transactions in the considerably more complex competitive environment in the United States. SAP also represented that it had instituted modifications, based on experiences from prior implementations, that eliminated earlier problems.

**C. Waste Management's Due Diligence in Licensing the Software**

24. Once Waste Management decided to proceed with the Custom First Project, it conducted extensive due diligence to ensure that its selected software would enable it to achieve the strategic objectives described above. As part of that due diligence, Waste Management formed a selection team, with members from its business units, information technology group, and upper management, to evaluate various software options. The selection team focused on, among other things, functionality, scalability, and likely return on investment. The selection team also developed in-depth criteria for evaluating the software proposals of various software vendors, including SAP.

25. The Waste Management selection team prepared and provided to potential vendors "test scripts" that identified examples of the functionality required to meet its business requirements.

To guide the selection process, the team assigned scores to the various product demonstrations provided by SAP and other vendors. Waste Management's key selection criteria included "out-of-the-box" functionality -- *i.e.*, software that could run Waste Management's business processes without the need for customization and that could be rapidly implemented throughout the company. Based on its prior experience, Waste Management believed that developing a new software posed unacceptable risk, uncertainty, and expense, and instead decided to look for an "off-the-shelf" solution that was already fully developed and fully tested. This objective was repeatedly and unequivocally expressed to SAP.

26. From March 2005 through September 2005, SAP and Waste Management had extensive interactions regarding Waste Management's functional and volume requirements and the ability of SAP to meet those requirements. For example, in March of 2005, SAP sent a team of employees to Waste Management's Houston, Texas headquarters to evaluate and analyze Waste Management's business processes, functional requirements, transaction volumes and existing software. The SAP team included a former Waste Management controller, Dean Elger, who had knowledge of the waste industry in North America in general and of Waste Management's business processes and its functional and volume requirements in particular. During SAP's sales campaign, Elger played a key role in convincing Waste Management that SAP software would meet its functional and volume requirements. SAP executives and engineers conducted an extensive, in-depth analysis of Waste Management's business and its enterprise software requirements, especially its functional and volume needs. Waste Management told SAP that it was seeking a fully developed and tested product that would meet Waste Management's needs without the need for customization. In response, SAP presented Waste Management with the

“SAP Value Proposition for Waste Management,” which outlined the benefits that SAP’s Waste and Recycling Software purportedly could provide to the company.

27. In April of 2005, based upon the SAP’s analysis, SAP presented Waste Management with its “Implementation Estimate SAP Waste and Recycling” for providing a Revenue Management Software. During this presentation, SAP represented that its Waste and Recycling Software could meet all of Waste Management’s functional requirements and that SAP could implement the Software over the entire Waste Management enterprise within 18 months. SAP further represented that implementation of its Software would allow Waste Management to realize its critical business objectives, including: achieving operational efficiencies minimizing “revenue leakage”; driving pricing compliance and accountability; improving customer satisfaction; and increasing sales revenue, account penetration, and labor efficiency.

28. As part of its attempt to induce Waste Management to license the Waste and Recycling Software, SAP took an active role in developing a Waste Management “Business Case,” which purportedly outlined the return on investment that Waste Management would secure after implementing the Software. Based on SAP’s specific representations concerning the purported capabilities of its Software, the Business Case generated net annual benefits to Waste Management of between \$106 million and \$220 million per year. Waste Management relied upon these Business Case estimates in agreeing to license the SAP software. Central to these Business Case estimates was SAP’s representation that it would implement the Software at Waste Management on a company-wide basis within 18 months, or by December 31, 2007.

29. Throughout the summer and fall of 2005, SAP conducted numerous other presentations and demonstrations for Waste Management. On June 17, 2005, SAP AG and SAP America hosted a meeting with Waste Management at SAP’s World Headquarters in Walldorf, Germany.

SAP AG attendees included, among others, Paul Jurkiewicz, SAP AG's Product Manager for the Waste and Recycling Solution; Shai Agassi, an Executive Board Member; and Klaus Heimann, a Senior Vice-President. SAP America attendees included, among others, Dean Elger, the former Waste Management employee hired by SAP America as an Industry Advisor for SAP. At that meeting, SAP AG executives and engineers represented that the software was a mature solution and conducted a demonstration consisting of what they represented was the actual SAP Waste and Recycling Software. SAP repeatedly stated that the capabilities and functionality of the software were exactly as appeared in the demonstration. Moreover, in response to questions by Waste Management attendees, the SAP representatives repeatedly and expressly represented that the software could satisfy all of Waste Management's functional requirements and process all of its transaction volumes. Waste Management even provided a SAP engineer with remote access to the existing Waste Management computer system to ensure SAP was familiar with and understood the complexity of Waste Management's open market pricing and the volume of its daily transactions. After reviewing the existing Waste Management system, SAP further confirmed the Software was able to handle Waste Management's functional and volume needs better and more efficiently than Waste Management's existing software.

30. Waste Management has now discovered -- and, in internal documents, SAP has admitted -- that the "software" SAP purportedly demonstrated at the June 17, 2005 Walldorf meeting was in fact not the actual Waste and Recycling Software at all. Instead, it was a "mock-up" version of that Software intended to deceive Waste Management. As a result of SAP's deception, Waste Management assigned high scores to the SAP Software, believing -- mistakenly -- that it had the functionality and scalability to run Waste Management's core business processes.

31. In July 2005, SAP made another presentation to Waste Management, this time at Waste Management's corporate headquarters in Houston, Texas. At that meeting, SAP conducted another purported demonstration of its Software, again representing that the software it was demonstrating was in fact the Waste and Recycling Software under evaluation by Waste Management. Again, based on the demonstration and SAP's representations concerning functionality and scalability, Waste Management gave high scores to the SAP Software. Waste Management has learned, however -- and, in internal documents, SAP has admitted -- that once again, the software that SAP demonstrated during the July 2005 Houston meeting was in fact not the SAP Waste and Recycling Software, but was instead merely a fabricated "mock-up" of the actual software.

32. In August 2005, SAP conducted yet another demonstration for Waste Management, this time at the SAP development lab in Palo Alto, California. This demonstration was critical to Waste Management's decision to license the SAP Software, as Waste Management's Chief Executive Officer, Chief Financial Officer and various members of its Board of Directors were present. SAP represented, and the Waste Management attendees believed, that the "software" SAP was demonstrating was the actual Waste and Recycling Software. Yet, once again, Waste Management has discovered -- and, in internal documents, SAP has admitted -- that as with the prior demonstrations, SAP was demonstrating fake software at the Palo Alto meeting. Because SAP knew that its actual Waste and Recycling Software lacked the functionality needed to run Waste Management's business, it demonstrated a dummed-up version of software, with false functionality, that made it to appear as if the software could meet Waste Management's functional requirements.

33. SAP repeatedly assured Waste Management that the Waste and Recycling Software was a fully-developed, fully-functional, and mature software that had been successfully implemented, tested, and proven in the waste industry. SAP further represented that its Software had “out-of-the-box” functionality to meet all of Waste Management’s business requirements without the need for any customization or core code modifications. Moreover, SAP represented that its Software had the scalability to meet Waste Management’s volume requirements.

34. In deciding to license the SAP Software, Waste Management relied on the demonstrations and presentations by SAP, as described above, in which SAP represented that the Software: (a) had “Complete Functionality”; (b) was “Automated” and “Easy”; (c) was “Integrated” and “Accurate”, with a high degree of functional fit for which no customization or core modifications were required; (d) could, as a fully-tested “out-of-the-box” solution, be implemented rapidly on a company-wide basis, (e) could fully deliver the Business Case estimates; and (f) posed far less risk and uncertainty than other vendors’ software products, which were not out-of-the-box solutions and therefore required extensive and costly development and customization.

**D. Software License Agreement**

35. On October 3, 2005, Waste Management, in justifiable reliance on SAP’s representations concerning the Software, entered into a Software License Agreement with SAP America. Appendix 1 to the Software License Agreement (“SLA”) granted Waste Management a license for a suite of SAP software, including the Waste and Recycling Software that SAP represented would “materially conform to the functional specifications contained in the Documentation.” The SLA also contained a Maintenance Schedule, whereby SAP agreed to provide maintenance services for the licensed SAP software, and a Professional Services

Schedule, whereby SAP agreed to provide professional consulting services for implementing the Software throughout Waste Management. SAP also provided "Safe Passage" services through its wholly owned subsidiary Tomorrow Now. Under a Preliminary Project Plan in the Professional Services Schedule, SAP agreed to complete the implementation at a Waste Management pilot site, in the New Mexico market, within eight months of project commencement, and then at Waste Management's Houston site two months later, or some time in the third quarter of 2006.

36. Both Waste Management and SAP recognized the execution of these contracts as a significant event, as senior SAP executives traveled to Waste Management's Houston, Texas headquarters for a signing ceremony on October 3, 2005. To memorialize the occasion, on December 15, 2005, SAP issued a press release announcing that it had entered into an agreement with Waste Management "to transform Waste Management's customer and revenue management needs by transitioning its software solution environment to mySAP™ Business Suite." SAP's press release further announced that "Waste Management joins a growing list of companies that are leveraging the SAP Safe Passage program – a tailored package of solutions, technology and incentives – to migrate to SAP, the world's leading and most experienced business software solutions provider. Waste Management becomes SAP's flagship U.S.-based waste and recycling customer, joining more than 50 waste and recycling customers throughout the world. The SAP Safe Passage program will enable Waste Management to focus on streamlining its customer care and billing functions to increase revenue, improve customer satisfaction and enhance its competitiveness."

37. Although SAP was to begin work immediately so that a Detailed Project Plan could be agreed to and delivered in the first month following execution of the agreements, SAP



inexplicably delayed deployment of its implementation team. It was not until April of 2006, more than six months after signing, that a Change Order was finally circulated detailing the Project Schedule, Timeline, and Deliverables.

**E. Failure of SAP's Waste and Recycling Solution**

38. Throughout its extensive interactions with Waste Management during the SAP sales campaign, and in the October 3, 2005 SLA, including Appendix 1 and the Original Statement of Work, SAP repeatedly and emphatically represented that "No functional gap enhancements have been identified or are expected . . . ." As a result of these representations, Waste Management believed that the SAP Software it ultimately agreed to license had the capabilities to meet its functional requirements without any modifications. In fact, however, Waste Management was deceived, as SAP's representations concerning "out-of-the-box" software were false.

39. Almost immediately following execution of the agreements, the SAP implementation team discovered significant "gaps" between the software's actual functionality and Waste Management's business requirements. Waste Management has discovered that these gaps were actually known to the product development team in Germany even before the SLA was signed. Instead of admitting what it knew at the time -- that the Software lacked basic functionality necessary to run Waste Management's business -- SAP undertook an elaborate scheme to perpetuate the original fraud and to recover additional money from Waste Management.

40. Specifically, SAP executives on the implementation team immediately blamed the functional gaps on Waste Management. SAP then submitted change orders requiring that Waste Management pay for fixing the functional gaps. SAP never made Waste Management aware of the defects in the Waste and Recycling Software that caused the functional gaps in the first

place. Instead, it knowingly and intentionally lied to Waste Management about the problems. Waste Management justifiably relied on SAP's misrepresentations in agreeing to change orders and paying SAP additional fees to have SAP attempt to provide the very functionality that SAP had represented, during its sales campaign, was contained in its purportedly "out-of-the-box" solution. Through its deceptive change order scheme, SAP improperly recovered its internal costs incurred in software development work that was supposed to have been its responsibility.

41. Instead of making Waste Management aware of the defects in the Software, SAP violated its own internal rules and procedures by "downporting" code from developmental software and by modifying and re-writing tens of thousands of lines of core code in the Software. The downporting and core code modifications were not only express violations of the Software License Agreement, but were completely contrary to SAP's own software implementation methodology. In addition to severely degrading system performance, the downporting and core code modifications have radically altered the Waste and Recycling Software licensed by Waste Management, to the point where that Software is incompatible for routine future upgrades.

42. SAP represented that the pilot phase in New Mexico, which is Waste Management's smallest market area, would be completed by December 15, 2006. It is not even close to being completed today. The New Mexico pilot go-live date was pushed back numerous times because of continuing problems with the Waste and Recycling Software. After numerous assurances by SAP that the software would work, Waste Management finally agreed to "go live" in New Mexico starting in January 2007.

43. After the New Mexico pilot went "live," however, significant problems were encountered with the SAP Waste and Recycling Software. SAP eventually had to bring in its

“SWAT team” of developers and engineers from SAP AG, and elsewhere, to try to diagnose the cause of the failures and devise solutions. The result of this exercise was a “Solutions Review” completed by SAP in the summer of 2007. SAP’s own Solutions Review validated that the Waste and Recycling Software was not an “out-of-the-box” solution, that gaps existed in the software, and that it was not an enterprise solution for Waste Management. SAP also advised that to have the Software implemented on a company-wide basis, Waste Management needed to: (i) agree to start over with SAP and allow SAP to develop a new Waste and Recycling software, utilizing an updated version of SAP’s Enterprise Application Platform; (ii) retest the new software in the New Mexico and Houston market areas; and (iii) if successful, begin a phased-in roll-out to the other market areas. SAP’s 2007 proposal is precisely the kind of risky, expensive, and time-consuming software development project that Waste Management rejected from other companies two years earlier based on SAP’s representations that its Software was a fully-functional, mature, proven, “off-the-shelf” and “out-of-the-box” solution. Indeed, the development project that SAP purposed would drastically lengthen the implementation timetable from the original December, 2007 end-date to an end-date some time in 2010 without any assurance of success.

44. Because of SAP’s fraud and the significant problems with the Waste and Recycling Software, which SAP has been unable to resolve, Waste Management has incurred, and continues to incur, significant costs associated with internal and contract resources to support the project. Based on SAP’s fraud, Waste Management has invested \$100 million in a Waste and Recycling Software project for a solution that does not work.

45. SAP’s only solution has been to demand that Waste Management once again act as SAP’s guinea pig by agreeing to convert what was supposed to be an 18-month out-of-the-box

implementation into an even more expensive, longer and highly risky software development project. This would require Waste Management to commit even more resources to assist SAP in developing a Waste Management and Recycling Solution that is based on Waste Management's business processes. The Waste and Recycling Software is not an "out-of-the-box" solution and does not contain the functionality represented by SAP.

## VI.

### Causes of Action

#### A. Fraudulent Inducement by SAP America

46. SAP America fraudulently induced Waste Management into entering various contractual agreements by making numerous misrepresentations of material fact and failing to disclose material facts when it had a duty to do so.

47. As described above, SAP America's misrepresentations to Waste Management include, but are not limited to, the following:

- i. The Pilot Program could be completed within 10 months;
- ii. The SAP software had "out of the box" functionality, requiring minimal customization and no gap enhancements to meet all of Waste Management's needs;
- iii. The SAP software had the scalability to handle the complexity and volume of information and transactions that a company as large as Waste Management would need;
- iv. The SAP software was a fully-developed, fully-functional, and mature software that had been successfully implemented, tested, and proven in the waste industry;

- v. The SAP software would enable Waste Management to realize the company-wide benefits of its Business Case;
- vi. The SAP software could be fully implemented within 18 months;
- vii. The software was specifically designed for Waste Management and would meet Waste Management's continued business needs;
- viii. The product demonstrations utilized the Waste and Recycling Solution actually licensed by Waste Management;
- ix. SAP would not have to write new code; and
- x. SAP would provide trained professionals with experience installing the Waste and Recycling Software.

48. SAP America made these misrepresentations either knowing that they were false or without knowledge of their truth and as positive assertions.

49. SAP America knew that if it truthfully conveyed what it knew about the software, Waste Management would not have selected SAP for this project or would have done so on completely different terms and conditions. SAP America intended that Waste Management rely upon its misrepresentations.

50. Waste Management justifiably relied upon these material misrepresentations in entering into the agreements and embarking on this expensive project with SAP. These material representations were subsumed into and became part of the agreement between Waste Management and SAP America.

51. SAP America's fraudulent inducement has caused damage to Waste Management, including the money Waste Management wasted on the SAP project, the loss of the benefits

Waste Management would have received if SAP's representations had been true, lost opportunities, and other damages.

52. SAP America should also be held responsible for all exemplary and punitive damages necessary to deter it from committing fraud and inflicting damage on other companies in the future.

**B. Fraud by SAP AG**

53. SAP AG fraudulently induced Waste Management into entering various contractual agreements by making numerous misrepresentations of material fact and failing to disclose material facts when it had a duty to do so.

54. As described above, SAP AG's misrepresentations to Waste Management include, but are not limited to, the following:

- i. The SAP software had "out of the box" functionality, requiring minimal customization and no gap enhancements to meet all of Waste Management's needs;
- ii. The SAP software had the scalability to handle the complexity and volume of information and transactions that a company as large as Waste Management would need;
- iii. The SAP software was a fully-developed, fully-functional, and mature software that had been successfully implemented, tested, and proven in the waste industry;
- iv. The SAP software would enable Waste Management to realize the company-wide benefits of its Business Case;
- v. The SAP software could be fully implemented in 18 months;

- vi. The software was specifically designed for Waste Management and would meet Waste Management's critical business needs;
- vii. The product demonstrations utilized the actual Waste and Recycling Software being licensed; and
- vii. SAP would not have to write new code for the product.

55. Waste Management relied upon these material misrepresentations in entering into these agreements and embarking on this expensive project with SAP.

56. SAP AG knew that if it truthfully conveyed what it knew about the software, Waste Management would not have selected SAP for this project or would have done so on completely different terms and conditions. SAP AG intended Waste Management to rely upon its misrepresentations.

57. SAP AG's fraudulent inducement has caused damage to Waste Management, including the money Waste Management wasted on the SAP project, the loss of the benefits Waste Management would have received if the representation made by SAP AG had been true, opportunities, and other damages.

58. SAP AG should also be held responsible for all exemplary and punitive damages necessary to deter it from committing fraud and damage on other companies in the future.

**C. Negligent Misrepresentation by SAP AG**

59. SAP AG negligently represented the quality, functionality, and maturity of the Waste and Recycling software.

60. As described above, SAP AG's misrepresentations to Waste Management include, but are not limited to, the following:

- i. The SAP software had “out of the box” functionality, requiring minimal customization and no gap enhancements to meet all of Waste Management’s needs;
- ii. The SAP software had the scalability to handle the complexity and volume of information and transactions that a company as large as Waste Management would need;
- iii. The SAP software was a fully-developed, fully-functional, and mature software that had been successfully implemented, tested, and proven in the waste industry;
- iv. The SAP software would enable Waste Management to realize the company-wide benefits of its Business Case;
- v. The SAP software could be fully implemented within 18 months;
- vi. The software was specifically designed for Waste Management and would meet Waste Management’s critical business needs;
- vii. The product demonstrations utilized the actual Waste and Recycling Software being licensed; and
- vii. SAP would not have to write new code for the product.

61. SAP AG made these misrepresentations to Waste Management in the course of SAP AG’s business in a transaction in which SAP AG had an interest.

62. SAP AG supplied false information for the guidance of Waste Management and did not exercise reasonable care or competence in obtaining or communicating the information.

63. Waste Management justifiably relied on SAP AG’s misrepresentations and suffered injury as a result.



64. SAP AG's negligent misrepresentations caused damage to Waste Management, including the money Waste Management wasted on the SAP project, the loss of the benefits Waste Management would have received if the representations made by SAP AG had been true, lost opportunities, and other damages.

65. Because SAP AG was grossly negligent in making misrepresentations to Waste Management, it should also be held responsible for all exemplary and punitive damages necessary to deter it from committing similar acts and inflicting damage on other companies in the future.

**D. Breach of Contract**

66. Waste Management brings these claims for breach of contract against SAP America in the alternative to the claims previously stated.

67. SAP America has breached the SLA, Appendix 1, 2, 3 and 4 to the SLA Maintenance Schedule, the Professional Services Schedule, the Change Orders, and the Statements of Work for this project. It has failed to deliver fully-functional Waste and Recycling software; it has failed in its implementation and integration of the SAP Waste and Recycling software; the Waste and Recycling software does not have the functionality, quality, and performance that Waste Management contracted for; and the delays caused by SAP's failures have and continue to cause damage to Waste Management. Moreover, SAP has submitted invoices that were not supported by Change Orders as required by the contract.

68. SAP America has also breached the express warranty provisions relating to the Waste and Recycling Software Solution. SAP's software failed to materially conform to the functional specifications, and SAP's services have not been performed consistently with general accepted industry standards or in conformity with the specifications in the applicable Statements of Work. Each of the failures have and continue to cause damage to Waste Management.

69. Waste Management is entitled to all damages it has and will incur as a result of SAP's breach of its obligations under the agreements with Waste Management, including reimbursement of all amounts paid to SAP for software and services and necessary of all other costs Waste Management has incurred and will incur relating to the SAP Waste & Recycling software project.

70. Waste Management is entitled to all attorneys' fees it incurs in connection with this litigation, including all costs and expenses, pursuant to Section 38.001 of the Texas Civil Practice & Remedies Code.

## **VII.**

### **Jury Demand**

71. Waste Management requests a jury trial.

## **VIII.**

### **Prayer**

Plaintiffs Waste Management, Inc. and USA Waste-Management Resources, L.L.C. request that the Court enter a judgment in accordance with this Petition and awarding them actual damages, exemplary damages, attorneys' fees, costs incurred in prosecuting this lawsuit, and prejudgment and post-judgment interest, as provided by law and equity. Plaintiffs request all other relief, in law or equity, to which they may be justly entitled.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By

  
Jim Wetwiska, Attorney-in-Charge

State Bar No. 00785223

Michael Wilson

State Bar No. 21704800

1111 Louisiana, 44<sup>th</sup> Floor

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Telephone: 713/220-5899

Facsimile: 713/236-0822

Attorney for Plaintiffs

Waste Management, Inc. and

USA Waste-Management Resources, L.L.C

**OF COUNSEL:**

Mark Ressler

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1633 Broadway

New York, New York 10019

Telephone: 212/506-1700

Facsimile: 212/506-1800

2008-17510

NO. 2008-\_\_\_\_\_

WASTE MANAGEMENT, INC.  
AND USA WASTE-MANAGEMENT  
RESOURCES, L.L.C.

V.

SAPAG AND  
SAP AMERICA, INC.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

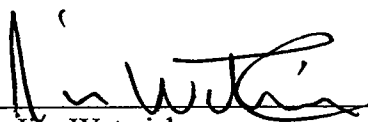
164 JUDICIAL DISTRICT

FILED  
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**PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION TO  
DEFENDANT SAP AMERICA, INC.**

Pursuant to Rules 192, 193, and 196 of the Texas Rules of Civil Procedure, Plaintiffs Waste Management, Inc. and USA Waste-Management Resources, L.L.C. (collectively referred to herein as "Waste Management") serve their First Requests for Production to Defendant SAP America, Inc.

AKIN GUMP STRAUSS HAUER & FELD LLP

By   
Jim Wetwiska  
State Bar No. 00785223  
Mike Wilson  
State Bar No. 21704800

1111 Louisiana, 44<sup>th</sup> Floor  
Houston, Texas 77002-5200  
Telephone: 713.220.5800  
Telecopier: 713.236.0822

Counsel for Plaintiffs  
Waste Management, Inc. and  
USA Waste-Management Resources, L.L.C.

## DEFINITIONS AND INSTRUCTIONS

1. Defendants shall file a written response to the requests for production within thirty (30) days after service of the requests. The requested documents shall be produced for inspection and copying at the offices of AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P. on a date and time as shall be mutually agreed.
2. Defendants shall supplement all responses to the requests for production as required by Rule 193.5.
3. If any document responsive to any request is withheld by reason of any assertion of privilege, Defendants shall submit a schedule at the time of production stating, for each document withheld, the following information:
  - a. The type of document (*e.g.*, letter, memorandum, account statement, tax form);
  - b. The date the document was prepared, and the date of any meeting or conversation reflected by or mentioned in the document;
  - c. The name of each author, co-author, or preparer of the document, and the name of each recipient or addressee, including each recipient of a copy of the document;
  - d. Whether the document reflects or refers to a meeting or conversation, and if so, the name of each person who was present at or was a party to the meeting or conversation;
  - e. The subject matter of the information contained in the document;
  - f. The nature of the privilege asserted; and
  - g. A brief explanation of the basis of the privilege.
4. "Documents" as used herein has the full extent of the term "documents or tangible things" as set forth in Rule 192.3(b) and includes, but is not limited to the original and each non-identical copy (whether different from the original by virtue of notes made or otherwise) and, if the original is not in existence or subject to your control, each non-identical copy, regardless of origin or location, if any handwritten, typewritten, printed, recorded, transcribed, filmed, microfilmed, or otherwise prepared matter, including without limitation, drafts, however produced or reproduced, and further including without limitation any papers, books, correspondence, letters, accounts, drawings, graphs, charts, photographs, phone-records, plans, blueprints, telexes, telegrams, electronic or videotaped or mechanical recordings, magnetic impulses, and any other data compilation from which information can be obtained or translated into reasonably usable form.

5. Documents or communications that “relate to” or that are “in connection with” a given subject mean any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, analyzes, or is in any manner pertinent to that subject, including, without limitation, documents concerning the presentation of other documents.
6. As used herein, the term “you” and “your” shall mean the individual person for whom or behalf of whom the requests for production are being answered.
7. “SAP America” means SAP America, Inc., its parent, its affiliated companies, and its subsidiaries.
8. “Waste Management” means Waste Management, Inc. and USA Waste-Management Resources, L.L.C.
9. “SAP Software” means all software licensed by Waste Management from SAP America, including, but not limited to, the mySAP Business Suite, SAP Waste and Recycling, Exchange Infrastructure (XI), SAP Waste and Recycling Enhancement Package Downport Software, Prologa Software, Mercury LR Software, SAP Test Acceleration and Optimization, SAP Solution Manager Adaptor for SAP Quality Center by HP, and Mercury QC Software.
10. “Correspondence” means letters, memoranda, facsimiles, electronic mail, and text messages.

**FIRST REQUESTS FOR PRODUCTION TO DEFENDANTS**

**REQUEST FOR PRODUCTION NO. 1:**

Please produce the executed Software License Agreement, effective October 3, 2005, and executed by SAP America and Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 2:**

Please produce all executed attachments, appendices, amendments, statements of work, and change orders executed contemporaneously with or subsequently to the Software License Agreement, effective October 3, 2005, and executed by SAP America and Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 3:**

Please produce all drafts of the executed Software License Agreement, effective October 3, 2005, and executed by SAP America and Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:**

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Please produce all documents, notes, memoranda, and correspondence regarding SAP America's analysis of Waste Management's business processes and existing software in 2005.

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**RESPONSE:**



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Please produce all documents regarding run-time errors for the SAP Waste and Recycling software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:**

Please produce all customer complaints regarding the SAP Waste and Recycling software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:**

Please produce your License Agreement with all other companies that have licensed the SAP Waste and Recycling software.

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**REQUEST FOR PRODUCTION NO. 15:**

Please produce all correspondence between SAP America and Waste Management between January 1, 2004 and October 3, 2005 that discusses licensing of the Waste and Recycling Software or the capabilities of such.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:**

Please produce your file for software solutions for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:**

Please produce all notes, memoranda, documents, and correspondence from internal SAP America meetings discussing use of the Waste and Recycling Software at Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 18:**

Please produce all notes, memoranda, documents, and correspondence from meetings between SAP America and Waste Management between January 1, 2005 and the present.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Please produce all personnel files for SAP America's employees, contractors, and subcontractors servicing or implementing the SAP Software at Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 20:**

Please produce all billing records for time spent by SAP America's employees, contractors, and subcontractors servicing or implementing the SAP Software for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 21:**

Please produce all proposals, and the drafts of such, made by SAP America to Waste Management for the SAP Waste and Recycling Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 22:**

Please produce all correspondence between SAP America and Waste Management for proposals SAP America made to Waste Management for the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 23:**

Please produce documents demonstrating the amount of revenue Waste Management would save by using the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 24:**

Please produce all calculations supporting SAP America's representations to Waste Management regarding the amount of revenue Waste Management would save by implementing the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 25:**

Please produce all documents, notes, memoranda, and correspondence identifying any problems with the New Mexico Pilot Program.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 26:**

Please produce all documents discussing SAP America's Solution Review for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 27:**

Please produce SAP 2007 Solution Review for Waste Management, including all drafts.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 28:**

Please produce all notes, memoranda, and correspondence regarding SAP America's Solution Review for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 29:**

Please produce all documents identifying the licensing fee paid by all companies in the waste industry to SAP America for the SAP Waste and Recycling software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 30:**

Please produce all invoices sent to Waste Management since January 1, 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 31:**

Please produce copies of all checks and wire transfers made by Waste Management to SAP America since January 1, 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 32:**

Please produce all documents, notes, correspondence, and memoranda regarding Change Orders including the actual Change Orders, between SAP America and Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 33:**

Please produce all documents, notes, correspondence, and memoranda regarding Statements of Work including the actual Statement of Work, between SAP America and Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 34:**

Please produce all documents demonstrating how SAP America calculated the Fixed Fee first identified in the October 3, 2005 Statement of Work.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 35:**

Please produce SAP America's 2007 financial statement.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 36:**

Please produce all complaints received from Waste Management regarding the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 37:**

Please produce all documents, notes, correspondence, and memoranda from SAP America's employees, contractors, and subcontractors regarding errors encountered while running and/or implementing the SAP Software during the New Mexico Pilot Program.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 38:**

Please produce all Microsoft PowerPoint presentations made by SAP America to Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 39:**

Please produce a copy of your document retention policy.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 40:**

Please produce a copy of your electronic mail retention policy.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 41:**

Please produce all documents relating to SAP America's "Safe Passage Program" for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 42:**

All internal SAP documents concerning the performance of the SAP software or SAP personnel on the Waste Management Project, including quality risk assurance reports, Measured Project Management Summaries, Project Status Reports, Monthly Risk Register-Reports, and critical analyses/reviews.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 43:**

Please provide all risk assessments/analysis of the bid to Waste Management and the project status.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 44:**

All reports, including emails and other internal forms of correspondence between SAP America and SAP AG detailing the status of the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 45:**

All internal SAP documents, including drafts, concerning the Waste Management Project prepared prior to execution of SAP's contracts with Waste Management, including proposals, sales pitch documents, risk assessments, pre-contract presentations and due diligence documents

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 46:**

All internal SAP documents relating to performance reviews of all SAP personnel who participated (or are participating) on the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 47:**

All communications between SAP American and SAP AG concerning the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 48:**

All documents relating to any testing performed by SAP concerning the Waste Management Project, including benchmark testing, throughput testing, volume testing, stress testing, string testing or any other kind of testing.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 49:**

All documents concerning all modifications, enhancements, alterations, customization made to the SAP software, or its source code, on the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 50:**

All drafts of the SAP Solution Review including each subpart or each individual "white paper".

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 51:**

All notes and presentations prepared by SAP during or in preparation for all SAP presentations made to WM in Walldorf, Germany during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 52:**

All notes and presentations prepared by SAP during or in preparation for all SAP presentations made to WM in Houston, Texas during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 53:**

All notes and presentations prepared by SAP during or in preparation for the presentation to WMI at the SAP Palo Alto Lab during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 54:**

All Product Release Plans for the Waste and Recycling Software developed and marketed by SAP.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 55:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Walldorf, Germany, in June of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 56:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in July of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 57:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Palo Alto, California, in August of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 58:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in March of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 59:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in April of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**



WASTE MANAGEMENT, INC.  
AND USA WASTE-MANAGEMENT  
RESOURCES, L.L.C.

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

SAP AG AND  
SAP AMERICA, INC.

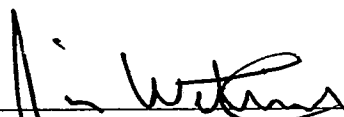
104 JUDICIAL DISTRICT

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2008 JUL 18 3:34  
CLERK OF DISTRICT COURT

**PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION TO  
DEFENDANT SAP AG**

Pursuant to Rules 192, 193, and 196 of the Texas Rules of Civil Procedure, Plaintiffs Waste Management, Inc. and USA Waste-Management Resources, L.L.C. (collectively referred to herein as "Waste Management") serve their First Requests for Production to Defendant SAP AG.

AKIN GUMP STRAUSS HAUER & FELD LLP

By  \_\_\_\_\_

Jim Wetwiska  
State Bar No. 00785223  
Mike Wilson  
State Bar No. 21704800

1111 Louisiana, 44<sup>th</sup> Floor  
Houston, Texas 77002-5200  
Telephone: 713.220.5800  
Telecopier: 713.236.0822

Counsel for Plaintiffs  
Waste Management, Inc. and  
USA Waste-Management Resources, L.L.C.

## DEFINITIONS AND INSTRUCTIONS

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  - c. The name of each author, co-author, or preparer of the document, and the name of each recipient or addressee, including each recipient of a copy of the document;
  - d. Whether the document reflects or refers to a meeting or conversation, and if so, the name of each person who was present at or was a party to the meeting or conversation;
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9. “SAP Software” means all software licensed by Waste Management from SAP America, including, but not limited to, the mySAP Business Suite, SAP Waste and Recycling, Exchange Infrastructure (XI), SAP Waste and Recycling Enhancement Package Downport Software, Prologa Software, Mercury LR Software, SAP Test Acceleration and Optimization, SAP Solution Manager Adaptor for SAP Quality Center by HP, and Mercury QC Software.
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**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Please produce all calculations supporting SAP's representations to Waste Management regarding the amount of revenue Waste Management would save by implementing the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 20:**

Please produce all documents, notes, memoranda, and correspondence identifying any problems with the New Mexico Pilot Program.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 21:**

Please produce all documents discussing SAP's Solution Review for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 22:**

Please produce SAP's 2007 Solution Review for Waste Management, including all drafts.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 23:**

Please produce all notes, memoranda, and correspondence regarding SAP's Solution Review for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 24:**

Please produce all documents identifying the licensing fee paid by all companies in the waste industry to SAP for the SAP Waste and Recycling software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 25:**

Please produce all invoices sent to Waste Management since January 1, 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 26:**

Please produce copies of all checks and wire transfers made by Waste Management to SAP since January 1, 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 27:**

Please produce all documents demonstrating how SAP calculated the Fixed Fee first identified in the October 3, 2005 Statement of Work.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 28:**

Please produce SAP's 2007 financial statement.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 29:**

Please produce all complaints received from Waste Management regarding the SAP Software.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 30:**

Please produce all documents, notes, correspondence, and memoranda from SAP's employees, contractors, and subcontractors regarding errors encountered while running and/or implementing the SAP Software during the New Mexico Pilot Program.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 31:**

Please produce all Microsoft PowerPoint presentations made by SAP to Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 32:**

Please produce a copy of your document retention policy.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 33:**

Please produce a copy of your electronic mail retention policy.

**RESPONSE:**



**REQUEST FOR PRODUCTION NO. 34:**

Please produce all documents relating to SAP's "Safe Passage Program" for Waste Management.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 35:**

All internal SAP documents concerning the performance of the SAP software or SAP personnel on the Waste Management Project, including quality risk assurance reports, Measured Project Management Summaries, Project Status Reports, Monthly Risk Register-Reports, and critical analyses/reviews.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 36:**

Please provide all risk assessments/analysis of the bid and the project status.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 37:**

All reports, including emails and other internal forms of correspondence between SAP America and SAP AG detailing the status of the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 38:**

All internal SAP documents, including drafts, concerning the Waste Management Project prepared prior to execution of SAP's contracts with Waste Management, including proposals, sales pitch documents, risk assessments, pre-contract presentations and due diligence documents

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 39:**

All internal SAP documents relating to performance reviews of all SAP personnel who participated (or are participating) on the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 40:**

All communications between SAP and SAP AG concerning the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 41:**

All documents relating to any testing performed by SAP concerning the Waste Management Project, including benchmark testing, throughput testing, volume testing, stress testing, string testing or any other kind of testing.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 42:**

All documents concerning all modifications, enhancements, alterations, customization made to the SAP software, or its source code, on the Waste Management Project.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 43:**

All drafts of the SAP Solution Review including each subpart or each individual "white paper".

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 44:**

All notes and presentations prepared by SAP during or in preparation for all SAP presentations made to WM in Walldorf, Germany during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 45:**

All notes and presentations prepared by SAP during or in preparation for all SAP presentations made to WM in Houston, Texas during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 46:**

All notes and presentations prepared by SAP during or in preparation for the presentation to WMI at the SAP Palo Alto Lab during 2005.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 47:**

All Product Release Plans for the Waste and Recycling Software developed and marketed by SAP.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 48:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Walldorf, Germany, in June of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 49:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in July of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 50:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Palo Alto, California, in August of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 51:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in March of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 52:**

All internal e-mails, memos, or other documents used to set up or that describe the SAP demonstration model shown to WM in Houston, Texas, in April of 2005, including a copy of the demonstration environment used and all screen shots. Please include all documents identifying the version of the Waste and Recycling Software used for the demonstration.

**RESPONSE:**

NO. 2008-2008-17510

WASTE MANAGEMENT, INC.  
AND USA WASTE-MANAGEMENT  
RESOURCES, L.L.C.

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IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

SAP AG AND  
SAP AMERICA, INC.

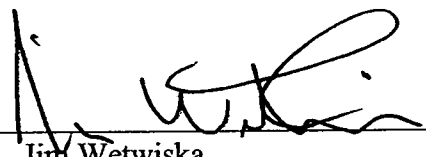
164 JUDICIAL DISTRICT

2008 MAR 20 PM 3:34  
CLERK OF DISTRICT COURT  
HARRIS COUNTY TEXAS

**PLAINTIFFS' RULE 194 REQUEST FOR DISCLOSURES TO DEFENDANTS  
SAP AG AND SAP AMERICA, INC.**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within thirty (30) days of service of this request the information or material described in Rule 194.2.

AKIN GUMP STRAUSS HAUER & FELD LLP

By 

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USA Waste-Management Resources, L.L.C.