IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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JORDAN R. WEINRIB,

Plaintiff,

--against—

LAWRENCE J. ELLISON, JEFFREY S. BERG, H. RAYMOND BINGHAM, MICHAEL J. BOSKIN, SAFRA A. CATZ, HECTOR GARCIA-MOLINA, JEFFREY O. HENLEY, DONALD L. LUCAS, CHARLES E. PHILLIPS, JR., NAOMI L. SELIGMAN, and KEVIN J. FITZGERALD,

C.A. No.

Defendants.

--and--

ORACLE CORPORATION,

Nominal Defendant.

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VERIFIED SHAREHOLDER'S DERIVATIVE COMPLAINT

Plaintiff Jordan R. Weinrib ("Plaintiff") alleges upon information and belief, except as to those matters which concern Plaintiff and his own acts, which are alleged upon personal knowledge, as follows:

NATURE OF THE ACTION

1. This is a shareholder's derivative action brought for the benefit and protection of nominal defendant Oracle Corp. ("Oracle" or "the Company"), which has suffered substantial harm due to the acts of the defendant officers and directors named herein (the "Individual Defendants").

2. The wrongdoing at issue stems from material misrepresentations in the course of carrying out a Government supply contract for software and services. The scheme was uncovered when Oracle's Senior Director of Contract Services filed a *qui tam* whistleblower complaint on May 29, 2007 (the "*Qui Tam* Action"). The *Qui Tam* Complaint alleged, *inter alia*, that Oracle violated the Price Reduction Clause ("PRC") in a key procurement contract (the "Contract") covering approximately $775 million in goods and services by failing to disclose to the U. S. Government (the "Government") higher discounts Oracle provided to its commercial customers and by failing to extend those discounts to its federal agency customers pursuant to its legal obligations. The United States intervened in the *Qui Tam* Action on April 2, 2010 and filed a Complaint in Intervention on July 29, 2010. The United States filed a First Amended Complaint in Intervention on November 16, 2010 (the "US Complaint"). The US Complaint was thereafter upheld against a motion to dismiss.

3. The US Complaint alleged, *inter alia* that: "From at least May 29, 2001 through December 31, 2006, Defendants used a small group of high level managers to systematically provide discounts to commercial customers that they should have, but did not, disclose to the Government. Defendants' purported purpose for operating this group was to monitor their commercial sales practices in order to comply with the requirements of the Contract. In practice, however, this group circumvented and violated the Contract requirements by manipulating commercial sales so that those sales appeared to fall outside the Contract's reporting requirements."

4. Despite substantial evidence of wrongdoing, Oracle's Board of Directors (the "Board") did not admit that these acts had occurred, enact remedial measures, and negotiate a resolution that involved a small payment. Rather, the Oracle Directors permitted the Company

to stonewall the Government by extensively litigating the *qui tam* action, thus driving up the taxpayers' expense in the Government's pursuit of the claims, and stiffening the Government's resolve to exact a large payment which would be borne by the Company.

5. While Oracle was able to avoid answering for the wrongdoing which the Individual Defendants permitted it to commit, for more than four years after the *Qui Tam* Action was filed, it finally was forced to settle in late 2011, and to pay over $200 million, including interest, and *qui tam* plaintiff bounty payments. The settlement represented the largest settlement of its kind on record, topping the previous record settlement of $128 million by a substantial margin.

6. The misconduct at issue is one of the most serious forms of corporate misconduct, as it represents a betrayal of a public trust. Federal Government funds are a limited resource expended to benefit the Country in areas such as social issues, national defense, homeland security, and natural disaster relief. The U.S. Government is the largest consumer of prime contracts. Over the last several years, spending on federal contracts was the fastest-growing part of the discretionary budget. Indeed, federal contract expenditures now consume almost 40 cents of every dollar of discretionary spending. Given the strain under which the federal Government now operates, it is inexcusable for Government contractors to scheme to increase Governmental and taxpayer expense.

7. Moreover, the acts in question were no mere technical or book-keeping error. The US and *Qui Tam* Complaints alleged that Oracle provided false, incomplete, and inaccurate information to the Government during its negotiation of the Contract; failed to disclose deep discounts given to the most favored commercial customers; and submitted false certifications. The US Complaint also alleged that Oracle actively took steps to ensure that its commercial sales

to its commercial customers did not trigger the Price Reduction Clause by various manipulations such as increasing the order size to exceed the contract's maximum order threshold, arranging for the sale through a reseller rather than directly from Oracle, or changing the terms of the software license sold to the commercial customer so that it differed from the terms of the licenses on the Contract.

8. On September 27, 2010, Plaintiff Weinrib made a pre-suit demand (the "Demand") on the Board to investigate and initiate appropriate action, but was stonewalled by the Board. Following the making of the Demand, the Board asserted it was actively investigating Plaintiff's demand with outside counsel. At the same time, the Board was seeking to obtain the dismissal of a number of consolidated derivative actions pending in California federal court, *In re Oracle Corp. Derivative Litigation,* Civ No. C-10-3392-RS (N.D. Cal.) (the "Federal Derivative Actions").

9. On November 9, 2011 the Federal Derivative Actions were dismissed for the failure to make pre-suit demand, with leave to amend. Given the facts and circumstances, plaintiffs in the Federal Derivative Actions had no hope to successfully amend to allege facts sufficient to cause the Court to reverse its Order, and allows the Federal Derivative plaintiffs to continue litigation of those Actions. Nonetheless, the Board members surreptitiously (and without ever informing Plaintiff Weinrib that it had abandoned investigation of his Demand) are attempting to absolve themselves from any liability by seeking to negotiate a "settlement" with the Federal Derivative plaintiffs who (unlike plaintiff Weinrib) have no ability ever to hold them liable for their acts. The Board, acting in extreme bad faith, knows that it can likely obtain a release for its acts from these powerless litigants. It has sought to hide its actions from Weinrib, and to mislead him. Indeed, Weinrib only discovered the Board's duplicitous misconduct by a

review of the federal docket to ascertain whether the Federal Derivative Actions had been finally dismissed. Plaintiff Weinrib discovered instead that the Board had covertly abandoned the investigation of his Demand without informing him, and had entered into settlement mediation with dismissed parties in the Federal Derivative Actions! The practical effect of this scheme is that the Individual Defendants get to negotiate with a toothless adversary of their own choosing.

10. By reason of the foregoing, this action must be asserted now to protect Oracle and its shareholders. The pre-suit demand requirement contained in Chancery Rule 23.1 has been satisfied. Here, the Oracle Board of Directors has failed to conduct the good faith investigation that it represented its was doing and thus, *ex ante*, has not acted independently concerning the demand and has not otherwise acted in good faith. The scheme to "settle" with the dismissed plaintiffs in the Federal Derivative Actions is nothing more than an attempt to derail any inquiry into the wrongful acts detailed by Weinrib in his demand, and to protect the Individual Defendants' own interests at the expense of the best interests of the Company.

THE PARTIES

11. Plaintiff is a long-time shareholder of Oracle, who held shares at the time of the wrongful scheme asserted herein, and has continued to hold such shares.

12. Nominal defendant Oracle is a Delaware corporation with corporate headquarters in Redwood City, California.

13. Defendant LAWRENCE J. ELLISON ("Ellison") has served as Chief Executive Officer ("CEO") and a Director since he founded Oracle in June 1977. He served as Chairman of the Board from May 1995 to January 2004 and was a member of the Executive Committee from December 1985 to July 2008, when the Committee was eliminated.

14. Defendant JEFFREY S. BERG ("Berg") has served as a Director since February 1997, as a member of the Compensation Committee and Nomination & Governance Committee ("Governance Committee") since October 2001 and as Chairman of the Compensation Committee since June 2006.

15. Defendant H. RAYMOND BINGHAM ("Bingham") has served as a Director and as a member of the Finance and Audit Committee (the "F&A Committee") since 2002, as a member and Chairman of the Committee on Independence Issues (the "Independence Committee") since July 2003, and as a member and Chairman of the Governance Committee since August 2005.

16. Defendant MICHAEL J. BOSKIN ("Boskin") has served as a Director since April 1994, as a member of the F&A Committee since July 1994 and Vice Chair of the F&A Committee since August 2005 and as a member of the Governance Committee since July 1994.

17. Defendant SAFRA A. CATZ ("Catz") has served as President since January 2004 and has served as a Director since October 2001. She was Chief Financial Officer ("CFO") from November 2005 until September 2008 and Interim Chief Financial Officer from April 2005 until July 2005. She served as Executive Vice President from November 1999 to January 2004 and Senior Vice President from April 1999 to October 1999.

18. Defendant HECTOR GARCIA-MOLINA ("Garcia-Molina") has served as a Director since October 2001 and as a member of the Compensation Committee and the Independence Committee since August 2005.

19. Defendant JEFFREY O. HENLEY ("Henley") has served as the Chairman of the Board of Directors since January 2004 and as a Director since June 1995. He served as Executive

Vice President and Chief Financial Officer from March 1991 to July 2004. He was a member of the Executive Committee from July 1995 to July 2008.

20. Defendant DONALD L. LUCAS ("Lucas") has served as a Director since March 1980. He was Chairman of the Board from October 1980 to May 1990. He served as a member of the F&A Committee since December 1982, as Chairman of the F&A Committee since 1987, and as a member of the Independence Committee since October 1999. He was a member and Chairman of the Executive Committee from December 1985 to July 2008.

21. Defendant CHARLES E. PHILLIPS, JR. ("Phillips") served as President and served as a Director since January 2004. He served as Executive Vice President, Strategy, Partnerships, and Business Development, from May 2003 to January 2004. On September 7, 2010, Defendant Oracle announced Phillips' resignation as President and as Member of the Board of Directors.

22. Defendant NAOMI O. SELIGMAN ("Seligman") has served as Director since November 2005 and as a member of the Compensation Committee since June 2006.

23. Defendant KEVIN J. FITZGERALD ("Fitzgerald") was, at the relevant time, Oracle's Senior Vice President--Public Sector. Fitzgerald is presently Senior Vice President--Oracle Government, Education & Healthcare.

STATEMENT OF FACTS

A. The GSA Multiple Award Schedule Program

24. Executive agencies of the United States may procure products and services only through full and open competition, unless they meet certain exceptions. 41 U.S.C. § 253(a)(1).

25. The competitive bidding process, and the negotiation of contractual terms, is a

lengthy and costly process. In order to expedite the procurement process for executive agencies and contractors wishing to sell products to executive agencies, the GSA, through the Federal Acquisition Service, solicits, negotiates, awards, and administers MAS contracts to procure products and services for federal agencies. 41 U.S.C. § 251, *et seq.;* 40 U.S.C. § 501(b).

26. Under the MAS program, GSA negotiates prices and contract terms that will apply to subsequent orders placed for all of the items that are covered by the MAS contract. The list of products or services that are available for purchase under a particular MAS contract is referred to as the contract "schedule." The pre-negotiation of the terms of sale for a large number of products and services under the MAS program saves a significant amount of administrative time for Government agencies ordering off of MAS contract schedules and for contractors wishing to sell products to the Government.

27. The MAS program allows the Government to obtain commercial supplies and services at prices associated with volume buying. 41 U.S.C. § 259(b)(3). Additionally, agencies placing orders under MAS contracts are considered to meet the requirements of full and open competition. 48 C.F.R. § 8.404(a). Contractors also benefit from the MAS program, because they do not have to compete in sealed bidding or negotiated acquisitions, and their products are more widely available to federal agencies, thus making it easier for the agencies to place orders.

28. The Administrator of GSA establishes the procedures that govern the MAS program, including the requirements that contractors must follow in order to participate in the program. 40 U.S.C. §§ 121(c), 501(b)(2). These rules and regulations are set forth in the Federal Acquisition Regulations (FAR) and the General Services Administration Acquisition Manual (GSAM).

29. GSA initiates the MAS process by publishing a contract solicitation. Interested

contractors then submit responses to the solicitation to GSA. Any contractor that enters into an MAS contract with the United States Government must abide by 1) the obligations that are outlined in the Government's solicitation; 2) the FAR and GSAM clauses that are incorporated into the contract; 3) any additional requirements negotiated between the parties; and 4) any other general federal contracting requirements set forth in the applicable regulations.

30. The MAS contract solicitation requires prospective contractors to provide GSA with extensive information about their commercial sales and practices, including price and discount information. GSA contracting officers use this information to negotiate MAS contract prices. Pursuant to 48 C.F.R. § 538.270(a), GSA contracting officers are required to "seek to obtain the offeror's best price (the best price given to the most favored customer)." In negotiating the terms of an MAS contract, the contracting officer must determine whether the price offered to GSA is reasonable by "compar[ing] the terms and conditions of the [offeror's response to the] MAS solicitation with the terms and conditions of agreements with the offeror's commercial customers." 48 C.F.R. § 538.270(c). GSA contracting officers therefore rely heavily on the accuracy and truthfulness of the information provided by the offeror regarding its commercial sales in negotiating the terms of an MAS contract. *Id.*

31. The MAS contract provides that if GSA discovers that the prices in a contract or modification were inflated due to the contractor's failure to provide current, accurate, and complete information, or to update that information, the Government is entitled to a reduction in the price of each order issued pursuant to the MAS contract. 48 C.F.R. § 552.215-72 states as follows:

Price Adjustment – Failure to Provide Accurate Information

(a) The Government, at its election, may reduce the price of this contract or

> contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:
>
> (1) Provide information required by this solicitation/contract or otherwise requested by the Government; or
>
> (2) Submit information that was current, accurate, and complete; or
>
> (3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.
>
> (b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

The amount of the reduction is the amount by which the Government orders were inflated as a result of the inaccurate or undisclosed information. *Id.;* GSAM 552.238-75(c)

32. The regulations governing MAS contracts include a mechanism that is known as the "Price Reductions clause" (PRC). GSAM 552.238-75 states as follows:

> Price Reductions
>
> (a) Before award of a contract, the Contracting Officer and the Offeror will agree
>
> upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.
>
> (b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

33. As set forth above, the regulations require the contracting officer and the offeror to

agree upon 1) the customer or category of customers which will be known as the "Basis of Award" ("BOA") customer, and 2) a fixed relationship between the prices that the offeror gives to the BOA customer and those that it gives to the Government. If, during the period that the contract is in effect, the Contractor offers the BOA customer prices, discounts, or other terms that are better than those previously offered to the BOA customer, the prices that are offered to the Government must be adjusted accordingly. Any such change offered by the Contractor to the BOA customer must be reported to the Government no later than 15 days after its effective date, and the resulting change in prices on products sold to the Government is effective retroactive to the date on which the change in price was offered to the BOA customer. GSAM 552.238-75(f)

34. In addition to the requirement that the Contractor inform the Government of any changes in prices offered to the BOA customer, the PRC also requires the Contractor to report any changes in the commercial pricing practices or policies that were disclosed to GSA during pricing negotiations:

> (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor--
>
> (i) Revises the commercial catalog, pricelist, schedule or other document upon which the award was predicated to reduce prices;
>
> (ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated;
>
> * * * * * *
>
> (2) The Contractor shall offer the price reduction to the Government with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).
>
> GSAM 552.238-75(c).

35. Orders under MAS contracts are submitted by executive agencies directly to

contractors such as Oracle. 48 C.F.R. § 8.406-1.

36. Oracle participated in the GSA MAS program beginning in the early 1990s. At that time, the Oracle MAS contracts were awarded for a one-year period of time and eligible for renewal annually. In early 1994, for example, Oracle was participating through MAS Contract number GS00K 94 AGS 5694.

B. Oracle's Responses To Section M.1 Of The Solicitation

37. In 1997, GSA issued Solicitation Number FCI-96-DL0001B (the Solicitation). Section M.1.A.3 of the Solicitation is titled "Fair and Reasonable Prices" and states as follows:

> In order to assist the Government in making a fair and reasonable price determination, the following information is requested of all offerors:
>
> (a) Commercial pricelist(s)
>
> (b) Commercial contract forms, including terms, conditions, and warranty information.
>
> (c) Discount and pricing policies, to include but not limited to end users, end user volume customers, original equipment manufacturers (OEM), dealers/resellers, distributors, and state and local governments.
>
> (d) A summary of business practices. This summary would consist of a discussion of the nonstandard discounting practices, including the circumstances involving these practices, and their frequency of occurrence. Included with the business practices could be a summary of the pricing/discounts granted to the offeror's five (5) largest commercial customers.

38. On August 5, 1997, Oracle provided its initial proposal to GSA in response to Section M.1 of the Solicitation. As required by the Solicitation and the regulations, these disclosures provided GSA with information regarding the pricing policies and practices that Oracle followed with its commercial customers. Oracle provided additional information to GSA regarding its commercial practices on September 30, 1997. Following its review of these disclosures, GSA requested additional information regarding Oracle's commercial practices. By

letter dated November 4, 1997, Oracle's Contract Negotiator, Patrick Burch, provided GSA Contracting Officer ("CO") Yvonne Jones with additional information regarding Oracle's commercial sales practices.

39. Oracle made numerous representations to GSA regarding its commercial pricing and discounting practices in its original disclosures.[1]

40. Oracle represented that its discounts were based on the class of customer to whom the products were sold. Oracle's September 30, 1997, and November 4, 1997, submissions both include a chart in which the first column is titled "Type of Customer," the second column is titled "Standard Discounts and Pricing Policies," and the third column is titled "Non-Standard Discounts, incl[uding] deg[ree] of freq[uency]." This chart includes the following entries:

Type of Customer	**Standard Discounts and Pricing Policies**	**Non-Standard Discounts, incl. deg. of freq.**
State and Local Governments	20% [to] 30%	see Exhibits (1) & (4)
National and Corporate Accounts	20% to 70%	see Exhibits (1) & (3)
Commercial End Users	15% to 20%	see Exhibit (1)

Oracle defined "National and Corporate Accounts" as "major accounts" such as "AT&T Corp. & Boeing Company," and defined "Commercial End Users" as 'general business accounts' where companies are less than $250 million in size."

41. Oracle represented that it offered "Standard Discounts" to non-GSA customers and that these discounts fell within certain specified ranges. The chart set forth above indicates that it

[1] Oracle's August 5, September 30, and November 4, 1997 disclosures are referred to hereafter as the "original disclosures." that it was Oracle's standard practice to provide State and Local Governments with 20 to 30 percent discounts, National and Corporate Accounts with 20 to 70 percent discounts and Commercial End Users with 15 to 20 percent discounts.

was Oracle's standard practice to provide State and Local Governments with 20 to 30 percent discounts, National and Corporate Accounts with 20 to 70 percent discounts and Commercial End Users with 15 to 20 percent discounts.

42. Oracle represented that it only departed from its standard discounts in 5 percent of commercial transactions. Exhibit 1 of Oracle's November 4, 1997 disclosures is entitled "Oracle Corporation Summary of Business Practices" and, under the subheading "Frequency of Non-Standard Discounts," states:

> Oracle uses non-standard discounts in unique situations where an individual transaction/contract size warrants additional considerations, generally in the form of additional concessions to the end user customer. Oracle estimates that non-standard discounts are used in less than five percent (5%) of the total number of commercial transactions.

43. Oracle represented that the discounts offered to GSA were better than the discounts offered to commercial customers or state/local customers. Oracle's September 30, 1997, and November 4, 1997, disclosures both state at Exhibit 1 that the "total effective discount of 26.7% to 40% for single orders" offered to GSA is "significantly above those single order discounts offered to commercial or state/local customers." Similarly, Exhibit 1 of the September 30, 1997 disclosures and Exhibit 2 of the November 4, 1997, disclosures both represent that "[b]ased on materially different terms and conditions and firm commitments, Oracle offers additional non-standard discounts to its commercial customers. The importance of the GSA IT Schedule to Oracle results in the *offering of single order initial discounts that are superior to those generally extended to commercial customers* and are fair and reasonable to the Federal Government customer based on net order size." (Emphasis added).

44. In its original disclosures in response to Section M.1 of the Solicitation, therefore,

Oracle expressly represented that:

> 1) discounts were based on distinctions between classes of customers;
>
> 2) Oracle offered "standard discounts" that fell within specified ranges to its non-GSA customers, and the "standard discount" for commercial end users was 15 to 20 percent off of list prices;
>
> 3) "non-standard discounts are used in less than five percent (5%) of the total number of commercial transactions" and that "Oracle uses non-standard discounts [only] in unique situations where an individual transaction/contract size warrants additional considerations;"
>
> 4) the "total effective discount of 26.7% to 40% for single orders" offered to the Government was "significantly above those single order discounts offered to commercial or state/local customers," and that Oracle had offered the Government "single order initial discounts that are . . . fair and reasonable to the Federal Government customer based on net order size"; and

45. Oracle sent its Best and Final Offer (BAFO) to the GSA CO on December 1, 1998.

46. The BAFO certified that "Oracle Corporation acknowledges that all data submitted in response to Solicitation Number FCI-96-DL0001B is accurate, complete, and current."

47. Oracle's BAFO proposed "Oracle's U.S. commercial end-user customers" as the BOA customer for the Contract. Thus, Oracle proposed to align the Government with the category of customers designated "Commercial End Users," for the purposes of monitoring Oracle's compliance with the Contract's Price Reductions clause. Oracle proposed to "monitor and administer all requirements of the Price Reduction Clause of the contract," but specified that the PRC, "will not apply to Oracle's commercial end-user customers under firm-fixed price definite quantity contracts for software licenses with specified delivery in excess of $200,000 per order."

48. Under this proposal, any sale at or under the amount of $200,000 net price made

to "commercial end-user customers" that was discounted at a greater percentage than had been disclosed to the Government was required to be reported to the Government, and would have the effect of automatically increasing the discount provided to the Government. In addition, Oracle would be obligated to refund to the Government the difference between 1) the amounts the Government had paid, and 2) the increased discount to which the Government was entitled in light of the increased discount provided to the BOA customer.

49. Oracle was awarded GSA MAS contract number GS-35F-0108J on December 15, 1998, effective December 1, 1998, through November 30, 2003. The Contract was subsequently temporarily extended through October 2006 to allow time for an audit and negotiation of a follow-on contract. Oracle's last report to GSA of sales made under the Contract covered the period ending December 31, 2006.

C. Oracle's 2001 E-Business Modifications

50. In May 2001 Oracle informed GSA that it wished to modify the Contract to include upgraded versions of many of the software licenses on the MAS schedule which Oracle was now marketing as part of its "E-Business" suite of products. In a letter dated May 2, 2001 Oracle provided the GSA CO with disclosures regarding the pricing of its E-Business products.

51. In its May 2, 2001, letter, Oracle makes several statements regarding its commercial discounting practices for its E-Business products. Attachment 2 to this letter is titled "Oracle Commercial Business Practices" and, consistent with statements that Oracle had made in its original disclosures, states that E-Business discounts are determined by the dollar value of the Order:

Discounting Policy

Order Size (list price of Software License and first year Software Maintenance) determines the discount offered. The larger the order, the larger the discount.

This representation is confirmed in Attachment 4 to the May 2, 2001 letter, which is entitled "Comparison of Commercial and Federal Discounts" and includes the following chart:

Comparison Of Standard Discounts

List Transaction Size	Commercial Discount	GSA Offer
$0-$5,000	0%	25%
$5,001-$10,000	5%	25%
$10,001-$25,000	10%	25%
$25,001-$50,000	15%	25%
$50,001-$100,000	20%	25%
$100,001-$250,000	25%	30%
$250,001-$375,000	30%	35%
$375,001-$1,000,000	30%	40%

52. In a letter to GSA dated July 27, 2001, submitted with several of Oracle's requests for modification, Kevin J. Fitzgerald, Oracle's Senior Vice President Public Sector, disclosed further changes in the commercial discounts that were set forth in Oracle's May 2, 2001 E-business modification. The letter states expressly that it is an "Update to CPC Table Information" and includes the following chart, which is intended to revise the May 2, 2001 chart to reflect Oracle pricing that went into effect on June 15, 2001:

Transaction Band List License +	Old Commercial Discount	New Commercial Discount	GSA Offer

$0-$5,000	0%	0%	25%
$5,001-$10,000	5%	0%	25%
$10,001-$25,000	10%	0%	25%
$25,001-$50,000	15%	5%	25%
$50,001-$100,000	20%	10%	25%
$100,001-$250,000	25%	15%	30%
$250,001-$1,000,000	30%	20%	35%
$1,000,001+	call for pricing	25%	40%

53. The representations in Oracle's May 2, 2001 and July 27, 2001 disclosures were false because Oracle engaged in numerous E-Business transactions with non-GSA customers in which Oracle granted discounts that were inconsistent with the "Commercial Discounts" that are represented on the charts presented to GSA. These charts were particularly misleading in that they suggested that GSA would be receiving better discounts than commercial customers for each of the price tiers set forth in the charts, when, in fact, Oracle repeatedly granted discounts to commercial customers that were greater than those represented on these charts and greater than the discounts that were offered to GSA.

54. For E-Business products on the MAS schedule, Oracle charged the Government a standard amount of 22 percent of the license fee for maintenance. Accordingly, to the extent that Oracle failed to grant discounts to the Government for E-Business product license fees that were consistent with its commercial discounts for these products, Oracle also overcharged the Government for maintenance on E-Business licenses.

D. Oracle's False Statements In Requests For Modification

55. In a series of requests for modification of the Contract beginning in July 2001,

Oracle expressly represented to the Government that its commercial discounting and pricing policies were the same as had been described in Oracle's original disclosures, except to the extent that Oracle had identified changes in its practices in previous requests for modification:

a. On July 27, 2001, Oracle certified over the signature of Kevin J. Fitzgerald, Senior Vice President, Public Sector, that "[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO0023, effective June 29, 2001.)

b. On July 27, 2001, Oracle certified over the signature of Kevin J. Fitzgerald, Senior Vice President, Public Sector, that "[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO0024, effective August 2, 2001.)

c. On July 27, 2001, Oracle certified over the signature of Kevin J. Fitzgerald, Senior Vice President, Public Sector, that "[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO0025, effective August 2, 2001.)

d. On July 27, 2001, Oracle certified, over the signature of Kevin J. Fitzgerald, Senior Vice President, Public Sector, that "[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PA0027, effective August 2, 2001.)

e. On September 25, 2001, Oracle certified over the signature of Terrence P. Ford, Vice President, OSI Operations, that "[e]xcept as previously discussed, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO0029, effective September 1, 2001.)

f. On October 10, 2001, Terrence P. Ford, Vice President, OSI Operations certified on Oracle's behalf that "Except as previously discussed, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PA0030, effective October 18, 2001.)

g. On May 22, 2002, Oracle certified, over the signature of Kevin J.

Fitzgerald, Senior Vice President, Public Sector, that "[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO0034.)

h. On August 5, 2002, Oracle certified, over the signature of Kevin J. Fitzgerald, Senior Vice President, Public Sector, that"[e]xcept as previously discussed and identified in previous modification submissions, there have been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation." (Modification PO003 9, effective August 5, 2002.)

56. Oracle's requests for modification repeatedly assert that "there have been no changes" in the information regarding its "commercial discount/pricing policies and practices . . . originally provided in response to Section M.1 of the solicitation," except to the extent that the Government has been notified of such changes. Thus Oracle's requests for modification reaffirmed its original statements to the effect that:

1) Oracle's discounts were based on distinctions between classes of customers;

2) Oracle offered "standard discounts" that fell within specified ranges to its non-GSA customers, and the "standard discount" for commercial end users was 15 to 20 percent off of list prices; and

3) "non-standard discounts are used in less than five percent (5%) of the total number of commercial transactions" and that "Oracle uses non-standard discounts [only] in unique situations where an individual transaction/contract size warrants additional considerations."

57. Similarly, Oracle's requests for modification expressly reaffirmed the representations in Oracle's May 2, 2001 E-business disclosures to the effect that: 1) the discount percentage for single license orders was based on the dollar value of the order, and 2) Oracle's standard discounts to commercial customers for each transaction tier were consistent with the charts accompanying those disclosures.

58. In connection with modifications PO0023, PO0024, PO0025 and PA0027, Oracle

submitted a letter dated July 27, 2001, over the signature of Michelle Howell, GSA Contract Manager, affirming that "all provided information is current, accurate and complete."

59. Similarly, a letter dated August 5, 2002, from Kevin J. Fitzgerald, Oracle Senior Vice President Public Sector, to GSA CO Regina Moore, includes the following language: Oracle certifies the following for SINs 132-33 and 132-34:

*****

> c. All data submitted is accurate, complete and current as of the modification's effective date.

60. A letter dated June 22, 2005, from Patricia Neiss, Oracle Director of North America Operations to GSA CO Regina Moore regarding a proposed modification, states that "[a]ll other discounts, terms and conditions remain the same."

61. Oracle's certifications that the data it had submitted to GSA was "accurate, complete and current" and its representation that "all other discounts . . . remain the same" were false, because, as discussed in Section E below, Oracle's actual commercial sales and discounting practices for the items on the GSA schedule were not consistent with its representations to GSA regarding those practices.

62. In describing the terms of requested modification No. FX-03, dated October 31, 2003, Oracle certified, over the signature of Kevin J. Fitzgerald, that:

> For purposes of paragraph (a) of clause 552.238-75, Price Reductions, the price/discount relationship established between the negotiated prices, without consideration of the IFF, and those of the designated customer or class of customer, will remain unchanged.

This certification was false because Oracle had not accurately disclosed to the Government the prices it was offering to "the designated customer or class of customer" i.e. Commercial End Users, and therefore the actual "price/discount relationship" between GSA prices and

Commercial End User prices was not the same as the price/discount relationship that had been disclosed to GSA.

E. Oracle's True Undisclosed Commercial Sales Practices

63. Despite Oracle's express certifications to the contrary, the information that Oracle provided GSA regarding its commercial sales practices was not accurate, complete, or current, and its actual commercial discounting and pricing policies were not consistent with Oracle's disclosures to the Government.

1. Oracle's Repeated Certifications That Its Commercial Practices Were Consistent With Its Original Disclosures Were False

64. Internal Oracle documents and data demonstrate that when Oracle requested modifications of the Contract it withheld significant information from GSA that was material to GSA's willingness to maintain the pricing structure in the Contract.

a. Oracle's Discounts Were Not Based On Customer Classifications

65. In its original disclosures to the Government, Oracle expressly represented that its discounts varied depending on whether the customer was classified as 1) National and Corporate Accounts ("major accounts"); 2) State and Local Government; or 3) Commercial End Users ("'general business accounts' where the companies are less than $250 million in size").

66. Oracle never amended this representation and repeatedly certified to GSA, including from July 2001 forward, that its commercial practices remained consistent with its original disclosures. These certifications were false.

67. Oracle's internal guidelines for monitoring compliance with the PRC demonstrate that Oracle's actual discounting practices were not based on the customer classifications presented to GSA and reaffirmed during subsequent modifications. As discussed above, during the

negotiations for the Contract, Oracle informed GSA that its standard discounts to Commercial End Users were 15 to 20 percent, and proposed to align the Government with these purchasers for purposes of the PRC. An internal Oracle document titled "GSA Schedule Discount Restrictions & Guidelines" dated April 23, 2003 states, however, that the GSA Discount Restrictions employed by Oracle because of the PRC apply to "Commercial End Users" (General Business Accounts) *and* may apply to National and Corporate Accounts (Major and Vertical Accounts). If, as Oracle told GSA, it made a distinction in its non-GSA sales between discounts given to "Commercial End Users" and those given to "National and Corporate Accounts," there would be no need to apply these restrictions to those deals that fell into the "National and Corporate Accounts" category.

68. Similarly, Oracle's "GSA Schedule Discount Restrictions & Guidelines" dated May 4, 2006, notes with regard to both "State and Local Government" and "National and Corporate Accounts" that "For Purposes of Managing the GSA we apply the discount restrictions to these categories of customer." This document also defines Commercial End Users as companies with annual revenues under $1 billion, not companies "less than $250 million in size." *See* ¶ 34. Oracle's internal documents demonstrate that its discounting policies were not based on the customer classifications it presented to GSA, despite its express representation that this was the case during contract negotiations. Thus, Oracle's repeated statements from at least July 2001 forward that its actual discounting policies were consistent with its earlier disclosures were false.

b. Oracle Did Not Offer Standard Discounts In The Ranges Disclosed To GSA

69. Oracle's original disclosures expressly represented that its standard policy was to provide certain classes of customers with discounts within specified ranges. Oracle never

amended this representation and repeatedly certified to GSA that its commercial practices remained consistent with its original disclosures. *See* ¶ 49. These disclosures, which were material to GSA's agreement to modify the Contract, were false.

70. For example, Oracle's original disclosures state expressly that Oracle's standard practice was to provide its Commercial End User customers with discounts between 15 and 20 percent. On May 2, 2001 and July 27, 2001 Oracle submitted additional information indicating standard discounts of up to 30 percent. However, an April 30, 2004 document titled "FY 2004 Approval and Options Matrix" specifically contemplates discounts to Commercial End Users ranging from 40 to 70 percent and greater with approvals. Earlier internal handbooks contained similar language. The existence of this formalized policy for discounts of 40 percent and above contradicts Oracle's assertion that 30 percent was the highest "standard discount" for commercial end users.

71. In addition, as discussed *infra*, the Government's preliminary analysis of data provided by Oracle to its outside consulting firm, KPMG, for the period June 1, 2000, through May 31, 2004 ("the KPMG data") shows that throughout that time period Oracle routinely provided discounts to all classes of customer that were outside the ranges set forth in its disclosures.

c. Oracle Used "Non-Standard" Discounts More Frequently Than It Disclosed To GSA

72. In requests for modification made after May 29, 2001, Oracle never amended the express assertion in its November 4, 1997 disclosures that "non-standard discounts are used in less than 5 percent of the total number of commercial transactions." Once again, however,

Oracle's own documents show that Oracle provided non-standard discounts in significantly more than 5 percent of transactions. Thus, Oracle's certifications from at least July 2001 forward were false.

73. Consistent with the information set forth in the "FY 2004 Approval and Options Matrix" of discounts to commercial end users well in excess of Oracle's purported 30 percent ceiling, the KPMG data reveals that Oracle routinely sold software licenses to "General Business Account" customers, i.e. Commercial End Users, at discounts greater than 30 percent. Indeed, the KPMG data shows that the vast majority of E-Business software license sales were provided at discounts greater than the range that was disclosed to GSA. These discounts flatly contradict Oracle's express representation that "non-standard discounts are used in less than five percent (5%) of the total number of commercial transactions."

74. Moreover, Oracle did not use non-standard discounts only in "unique situations." In fact, Oracle routinely offered "Price Holds" to its commercial customers as part of an initial order. Under a price hold, a customer could purchase additional products at a reduced price or discount percentage on future orders for a specified period of time. This effectively allowed a customer to "lock-in" a price or discount for future orders regardless of order size. Oracle manipulated its price holds such that Oracle's Commercial End User customers received discounts that were 1) larger than the discounts Oracle had disclosed to GSA and 2) larger than the discounts that Government customers received under the Contract. Oracle did not reveal to GSA the ways it used price holds in sales to its Commercial End User customers. Moreover, as discussed *infra*, Oracle had a practice of manipulating transactions in an attempt to evade the disclosure requirements of the PRC. The effect of this manipulation was to convert a substantial

number of standard transactions into non-standard transactions. Nevertheless, Oracle never corrected its prior disclosure that only 5 percent of its transactions were non-standard. Instead, it repeatedly certified that there had been no changes in its discounting policies.

d. Single License Discounts Were Not Based On Dollar Value.

75. In its original disclosures to GSA and its May 2, 2001 and July 27, 2001 E-business modification submissions, Oracle expressly represented that its single license order discounts for commercial customers were based on certain dollar value tiers. Oracle's requests for modification submitted after May 29, 2001, affirmed the continuing validity of this policy.

76. Based on the KPMG data provided by Oracle, the Government performed a preliminary analysis of Oracle's sales of software licenses on the GSA schedule to non-GSA customers from June 1, 2000 to May 31, 2004. The first two columns of the chart below show the tiered discounting structure that Oracle disclosed to GSA in its May 2, 2001 E-business modification submissions. The last four columns show the percentage of actual transactions within that tier that exceeded the disclosed discounts:

Sales of Schedule E-Business Products to All Non-GSA Customers Where the Order Discount Exceeds the Disclosed Discounts, June 1, 2000 – May 31, 2004					
Disclosed Tier	Disclosed Commercial Discount	Percentage of Transactions Within Tier That Exceeded The Disclosed Discount			
		6/1/00 to 5/31/01	6/1/01 to 5/31/02	6/1/02 to 5/31/03	6/1/03 to 5/31/04
$0-$5,000	0%	41.1%	42.3%	51.6%	60.2%
$5,001-$10,000	5%	61.6%	61.2%	74.3%	80.8%
$10,001-$25,000	10%	59.9%	72.9%	80.9%	86.2%

$25,001-$50,000	15%	66.2%	78.0%	86.3%	88.9%
$50,001-$100,000	20%	70.4%	77.3%	87.0%	91.9%
$100,001-$250,000	25%	78.5%	80.1%	88.5%	91.9%
$250,001-$375,000	30%	82.0%	84.7%	89.7%	93.5%
$375,001-$1,000,000	30%	89.1%	94.1%	96.3%	97.5%
Total	**N/A**	**56.5%**	**67.0%**	**76.8%**	**81.7%**

77. This chart shows that in the year prior to Oracle's E-Business modification and in the three years following that modification, the majority of Oracle's sales of E-Business licenses on the GSA schedule to customers other than GSA included discounts that exceeded the discounts that Oracle had disclosed to GSA.

78. The disparity between Oracle's disclosures and its actual practices is even greater if the first two columns of this chart are based on the purportedly reduced commercial discounts that were disclosed to GSA by Oracle on July 27, 2001:

Sales of Schedule E-Business Products to All Non-GSA Customers Where the Order Discount Exceeds the Disclosed Discounts, June 1, 2001 – May 31, 2004				
Disclosed Tier	Disclosed Commercial Discount	Percentage of Transactions Within Tier That Exceeded The Disclosed Discount		
		6/1/01 to 5/31/02	6/1/02 to 5/31/03	6/1/03 to 5/31/04
$0-$5,000	0%	42.3%	51.6%	60.2%
$5,001-$10,000	0%	65.8%	77.5%	82.8%
$10,001-$25,000	0%	78.0%	87.3%	90.5%

$25,001-$50,000	5%	82.7%	90.5%	93.3%
$50,001-$100,000	10%	86.0%	92.8%	95.3%
$100,001-$250,000	15%	89.9%	94.7%	97.3%
$250,001- $375,000	20%	92.7%	95.5%	97.4%
$375,001- $1,000,000	20%	97.5%	98.4%	99.1%
$1,000,001+	25%	99.4%	97.5%	97.7%
Grand Total	N/A	75.5%	81.6%	85.3%

79. When Oracle repeatedly certified after May 29, 2001 that its original disclosures and requests for modification accurately described its current commercial practices, these certifications were false, and Oracle knew, as that term is defined in the FCA, that its statements were false. Moreover, each of these false statements was material to the Government's decision to maintain the Contract's price structure, and each of these representations was made for the purpose of inducing the Government to pay the resulting claims. Moreover, the natural and foreseeable result of Oracle's false statements regarding its commercial sales practices was that the United States would overpay for Oracle products under the Contract.

80. On January 24, 2005, Oracle disclosed the following commercial discount schedule to GSA. This chart largely restated the discount schedule disclosed on July 27, 2001, *see* ¶ 46, with slightly different price tiers:

Transaction Band List License + List Support	**Standard Discount**	**GSA Discount**
$1-$25,000	0%	25%
$25,001-$50,000	5%	25%
$50,001-$100,000	10%	25%

$100,001-$250,000	15%	35%
$250,001-$375,000	20%	35%
$375,001-$1,000,000	20%	40%

81. This January 24, 2005 disclosure, like Oracle's previous disclosures regarding its "standard discounts," was false at the time it was made.

e. Oracle Failed To Accurately Report Its Commercial Discounting During Performance Of The Contract And Manipulated Transactions To Avoid Its PRC Obligations

82. The Price Reductions clause states that "[a] price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor . . . [r]evises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices" or "[g]rants more favorable discounts . . . than those contained in the commercial catalog, pricelist, schedule or other documents upon which the contract award was predicated," and requires the Contractor to offer the same price reductions to the Government. GSAM 552.238-75(c).

83. As discussed above, from May 29, 2001 forward, Oracle routinely granted discounts to all categories of customers that exceeded the discounts that were disclosed to GSA, and were inconsistent with the discounting methodology that Oracle had represented to GSA. Yet Oracle failed to inform GSA of the discrepancy between 1) the actual discounts it was providing to non-GSA customers and its description of those discounts in its disclosures; or 2) the actual discounting methodologies it was using for non-GSA customers and the discounting methodology it had disclosed to GSA, as it was expressly required to do under the PRC.

84. Oracle repeatedly certified during performance of the contract that "[t]here have

been no changes in commercial discount/pricing policies and practices from that originally provided in response to Section M.1 of the solicitation," *see* ¶ 49 *supra*, even though Oracle knew that this statement was not true because its actual practices were not consistent with its disclosures.

85. Moreover, during the performance of the Contract, Oracle consistently manipulated its sales of software licenses to Commercial End Users so that it would not have to report these sales to GSA and would not have to provide Government purchasers with proportionally higher discounts. This practice was never disclosed to GSA.

86. Under the terms of the Contract, Oracle agreed to monitor all sales of software licenses to Commercial End Users worth $200,000 or less to ensure that the negotiated relationship between discounts provided to the BOA customer and those provided to GSA stayed the same throughout the performance of the Contract. In practice, Oracle turned this requirement upside down. Instead of informing GSA whenever a Commercial End User received a discount greater than the disclosed standard discount on a sale under $200,000, and increasing the discount to the Government proportionately, Oracle established a mechanism to ensure that any proposed deal that fit these criteria was reworked so that it no longer met the criteria and GSA would not have to be informed of, or provided with, a higher discount. Oracle's manipulation of its commercial sales to avoid the contractual requirement to reduce the prices offered to the Government dramatically increased the cost to the Government of purchases that were made under the Contract.

87. The small group of Oracle managers authorized to grant non-standard discounts routinely suggested to Oracle sales personnel how to manipulate discounts for sales of software licenses to evade the assurances of equity of discounts between the BOA customer and the

Government. If a BOA customer sought to purchase a software license and requested a discount beyond that permitted by the Contract's PRC, Oracle's "America's Approvals" group (AMAPP, later known as the HQAPPS group), would suggest ways to manipulate the sale so that it could be distinguished from the sales to the Government.

88. Examples of this manipulation included the following: 1) increasing the order size to just over $200,000; 2) if there was a proposed deal for a perpetual software license that was similar to an item on the MAS schedule, Oracle would change the terms to represent that the software license was not perpetual, but limited in terms or access; 3) if a BOA customer had a prior sale that was subject to a future discount price hold, Oracle would amend and extend the discount price hold to grant the customer a greater discount than the Government purchaser would get for the same product; and 4) Oracle would sell the same license through a reseller.

89. Internal Oracle emails show that this type of manipulation of the terms of a sale by Oracle management became a commonplace method of avoiding Oracle's obligation to offer higher discounts to Government purchasers.

90. In a February 2004 internal Oracle email seeking permission to offer a discount to a customer, the response from Oracle's approval chain suggested that the sales representative, "grow this deal and make it GSA compliant... Let's just make this clean and get them over the required deal size."

91. A May 2004 Oracle email chain requested approval for a 60 percent discount for a net license fee (NLF) of $170,280. The Oracle HQAPPS responded that "This is not approved unless the current deal is raised above 200K to make this GSA compliant." The deal was subsequently raised to $200,040 "to meet GSA guidelines" and approved.

92. A September 2006 Oracle email chain which approved a transaction for $201,465

in Net License Fees at a 67 percent discount states, "Assuming the $201K NLF reflects final NLF . . . this does not violate the Price Reductions clause."

93. A September 2003 email from an Oracle salesperson requesting approval discussed, "a possible workaround" to provide a discount above the discount being provided to Government purchasers under the Contract. The response from the approval chain rejected the proposed solution while instead suggesting, "going through a reseller, restricting the licenses, using exclusivity commitment language."

94. In a July 31, 2002 email to Oracle employee Michelle Howell from Oracle employee Wendy Smith, the two discussed a deal that involved a 66.6 percent discount on a commercial transaction of less than $50,000. Ms. Smith states that:

> I feel very uncomfortable being told to ignore issues regarding GSA when we have been trained on them and have always enforced them. I would like a note from Ellen stating that we are supposed to ignore what we know and allow these deals to go through in order to cover myself if this becomes an issue between GSA and Oracle.

Ms. Smith then quotes an earlier email in which she wrote to another Oracle employee:

> I feel very uncomfortable blatantly ignoring rules that in place [sic] that I have been previously trained on, especially knowing the ramifications to Oracle when GSA finds out that *60% of the company has been ignoring the contractual terms we have in place with them.* (Emphasis added).

95. Email guidance provided by Oracle's Daniel McMurrer in October 2002, discussed the Contract's PRC liability and outlined specific methods for transforming a standard transaction into a non-standard transaction. Mr. McMurrer advised the salesperson to consider alternative methods of discounting to circumvent the Contract's PRC, such as:

- "Stick to the discounts listed above for deals less than $200k in NLF."
- "Go through resellers (you could seek higher discounts for

partners as well)."

- "Sell term licenses."
- "Make the licenses limited use (i.e. application specific)."

96. A number of other internal Oracle communications demonstrate that Oracle sales personnel and those above them in the chain of command who were responsible for approving sales were well aware of the various schemes available to them to provide deeper discounts to commercial customers while evading their obligations to GSA under the Price Reductions clause. In a July 1998 email Hilarie Koplow-McAdams, VP DMD Western Region/Verticals, discussed changes to discounts offered under a prior Oracle GSA schedule contract. The email includes discussions of "workarounds" used by the sales department such as 1) the use of Network Licenses as a licensing vehicle because Network Licenses are not on the schedule; 2) sending business through partners to provide greater discounts; 3) providing application specific licenses instead of perpetual licenses to prevent the licenses from being too broad; and 4) excluding internal journal entries in calculations of the total net fees to increase the $200,000 net price and evade the Contract's PRC. These workarounds are substantially similar to the alternatives advised by Daniel McMurrer in his October 2002 email, which demonstrates that Oracle's practice of circumventing PRC obligations to GSA was in place from at least May 29, 2001 forward.

F. Specific Transactions By Oracle In Violation Of The False Claims Act

97. As set forth above, Oracle's false statements and fraudulent conduct in the performance of the Contract from May 29, 2001 forward led to the submission of false, i.e.

inflated, claims for payment to the United States.

98. As set forth in detail above, the Government relied on the false statements made by Oracle in its requests for modification of the Contract, and Oracle knew that these statements were false at the time that it made them. Because Oracle's false statements and manipulation of the PRC were material to the United States' willingness to maintain the pricing structure under the Contract, and deprived the United States of price reductions to which it was entitled, Oracle caused the United States to pay more than it should have for Oracle's products, and any claim for payment made by Oracle subsequent to these false statements and manipulations was a false claim.

99. The United States was damaged on each claim on which the ordering agency received a discount that was less than it would have received had Oracle made accurate, complete, and current disclosures regarding its non-GSA pricing during the performance of the Contract.

100. Oracle reported total sales under the Contract of approximately $775,000,000 for software licenses and maintenance from May 29, 2001 through the end of the Contract.

THE DEMAND REQUIREMENT HAS BEEN SATISFIED

101. Plaintiff Weinrib made a Demand on the Board to investigate and initiate appropriate action on September 27, 2010, and was stonewalled by Oracle's Board of Directors. Following the demand, the Board asserted it was actively investigating Plaintiff's Demand with outside counsel. At the same time, it was seeking to obtain the dismissal of the Federal Derivative Actions.

102. On November 9, 2011 the Federal Derivative Actions were dismissed with leave to amend. Given the facts and circumstances, plaintiffs in the Federal Derivative Actions had no hope to successfully amend, and continue the action.

103. Nonetheless, the Board of Directors surreptitiously (and without ever informing Plaintiff Weinrib that it had abandoned investigation of his demand) sought to absolve themselves from any liability by seeking to negotiate a "settlement" with plaintiffs who (unlike plaintiff Weinrib) have no ability ever to hold them liable for their acts. The Board of Directors, acting in extreme bad faith, knows that it can obtain a release for its acts from these powerless litigants. It has sought to hide its actions from Weinrib, and to mislead him. Rather, Plaintiff Weinrib discovered instead that the Board had covertly abandoned the investigation of his Demand without informing him, and had entered into settlement mediation with dismissed parties in the Federal Derivative Actions. The practical effect of this scheme is that the Individual Defendants get to "negotiate" with a powerless adversary.

104. In addition, at the same time as the Board was purportedly investigating the demand with an open mind, it directed the settlement of the Governmental action via a Settlement Agreement dated October 5, 2011. Instead of merely declining to admit the validity of the charges, the Settlement Agreement provided: "Oracle expressly denies each and every one of the contentions and claims of the United States included in the Covered Conduct, and expressly denies that Oracle engaged in or has engaged in any wrongful conduct in connection with the Covered Conduct." Thus, the Board while supposedly investigating the allegations issued a declaration in the Settlement Agreement denying the existence of any wrongdoing. As in the case of *Biondi v. Scrushy*, 820 A.2d 1148 (Del. Ch. 2003), the Board has exonerated Oracle from all of the charges pending against it prior to conducting its own examination of the facts -- and, indeed, in the teeth of the inculpatory conclusions of the Government. The express denial, uttered before the Board had concluded its factual investigation, renders the Board not

independent and not disinterested *ex post*, thereby making it impossible for it to act on Plaintiff's demand.

105. By reason of the foregoing, this action must be asserted now to protect Oracle and its shareholders, and the demand requirement of Chancery Rue 23.1 has been fulfilled, as the Board of Directors has, *ex ante*, not acted independently concerning the demand and has not acted in good faith. Indeed, the Oracle Board of Directors has failed to conduct the good faith investigation that it represented its was doing and thus, *ex ante*, has not acted independently concerning the Demand and has not otherwise acted in good faith. The scheme to "settle" with the dismissed plaintiffs in the Federal Derivative Actions is nothing more than an attempt to evade the independent investigation sought by Plaintiff in his demand, and to protect the Individual Defendants' own interests at the expense of the best interests of the Company.

FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

106. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

107. Defendants, as Oracle's directors and officers, were and are required to use their abilities to control and manage Oracle in a fair, just and equitable manner in order to ensure that the Company complied with applicable laws and contractual obligations, to refrain from abusing their positions of control, and not to favor their own interests at the expense of Oracle. Defendants violated their fiduciary duties to Oracle, including without limitation their duties of care, good faith, honesty and loyalty.

108. The wrongful conduct particularized herein was not due to an honest error in judgment, but rather to Defendants' gross mismanagement, bad faith and/or reckless disregard of the rights and interests of Oracle and its employees and without reasonable and ordinary care

which they owed to Oracle.

109. As a result of the foregoing, Defendants have participated in harming Oracle and have breached fiduciary duties owed to Oracle. Defendants knowingly aided, encouraged, cooperated and/or participated in, and substantially assisted the other defendants in the breaches of their fiduciary duties.

110. By reason of the foregoing, Oracle has sustained and will continue to sustain damages and injuries for which it has no adequate remedy at law.

111. The Oracle Board has consciously disregarded its fiduciary obligation to adopt adequate measures to:

- Ensure commercial pricing disclosures are current, accurate, and complete;
- Negotiate a Basis of Award customer that the Company can competently and consistently monitor with respect to discounts and changes in commercial pricing;
- Implement a rigorous tracking system to ensure that price reductions given to the Basis of Award customer(s) are also given to Government customers;
- Ensure that any certifications signed and submitted to the Government are 100% accurate;
- Implement internal controls and policies that require company personnel – from the sales force to the managers of the Schedule contract – to comply with the contractual requirements;
- Require mandatory training of company personnel to educate individuals on the

contractual requirements and the importance of compliance;

- Implement a reporting system that allows employees to report concerns about the company's compliance with the contract requirements and that ensures such concerns are properly addressed and resolved; and

- Adopt policies which ensure the discipline of employees found to have engaged in improper acts, and to protect whistleblowers.

112. The acts of Defendants named herein, and each of them, were done in violation of their fiduciary duties and Plaintiff on behalf of Oracle is entitled to an award of compensatory damages in the full amount suffered by the Company

SECOND CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY FOR
BAD FAITH FAILURE TO MITIGATE DAMAGES

113. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

114. At the time the US Complaint was filed, the Board knew of the allegations which were being made against Oracle, concerning the pricing under the Contract. The Board also knew then, or very shortly thereafter, that such allegations were well-grounded in fact.

115. Rather than attempt to settle all claims at that time by the institution of appropriate corporate therapeutics and the paying of what would have been a small fine, the Board insisted on digging in and litigating the matter extensively.

116. As a result, the Board forced the Government to expend additional resources litigating the Action, when the Board knew that the Company was in a significant liability

position and that additional litigation would certainly raise the ultimate price of settlement.

117. Thus, when the case finally had to settle, the Government exacted a significant payment from the Company, which in part represents the Board's intransigence in failing to mitigate the Company's damages.

118. Accordingly, the Board should be held liable for this failure to mitigate, which reflects a bad faith breach of its duty of loyalty.

WHEREFORE, Plaintiff, on behalf of Oracle, prays for judgment as follows:

1. awarding damages against all Defendants, jointly and severally in favor of the Company, in an amount to be proven at trial;

2. Awarding appropriate equitable relief;

3. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs;

4. Awarding such other relief as this Court may deem just and proper.

Dated: March 22, 2012

BIGGS & BATTAGLIA

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