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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RIVER SUPPLY, INC., a Pennsylvania Corporation;

Plaintiff,

vs.

ORACLE AMERICA, INC., a Delaware corporation; NETSUITE, INC., a Delaware Corporation; SPS COMMERCE, INC., a Delaware corporation; VEND LIMITED, a New Zealand corporation; and LIGHTSPEED COMMERCE INC., a Canadian Corporation; and Does 1 through 100,

Defendants.

CASE NO: 3:23-cv-02981-LB

SECOND AMENDED COMPLAINT FOR: FRAUD IN THE INDUCEMENT, PROMISSORY FRAUD, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT, BREACH OF WARRANTY, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, THEFT UNDER PENAL CODE § 496, UNFAIR BUSINESS PRACTICES UNDER CAL. BUS. & PROF. CODE § 17200, AND DECLARATORY RELIEF

Plaintiff River Supply, Inc. (“RSI” or “Plaintiff”), hereby complains against Defendants Oracle America, Inc. (“OAI”) and NetSuite, Inc. (“NetSuite”) (collectively “Oracle”), SPS Commerce, Inc. (“SPS”), Vend Limited (“Vend”), and Lightspeed Commerce Inc., formerly known as Lightspeed POS Inc., (“Lightspeed”), and Does 1-100, inclusive (collectively “Defendants”), as follows:

INTRODUCTION

1. This case is about a widespread fraudulent scheme and unfair business practice whereby Defendants OAI and its subsidiary NetSuite each year defraud countless American

1 companies, including Plaintiff, by representing falsely that they have developed an existing
2 Software as a Service (“SaaS”) subscription solution tailored for a specific industry, which with
3 minor modifications they can customize for the customer so as to provide all of the functionality
4 required by the customer at a fixed price. Oracle targets small and medium size businesses such
5 as Plaintiff with their NetSuite SuiteSuccess Cloud product (the “ERP Solution” or the “ERP
6 Product”), knowing that they cannot provide all the functionality at the price promised. But
7 they do so anyway, offering steep discounts upfront to close the deal and beat the competition,
8 all the while planning to inflate the original contract price through expensive change orders, as
9 they work behind the scenes to create the solution that they claimed already existed. Oracle
10 lures their customers into signing complex and confusing agreements, with terms thrust on the
11 customer at the last moment without adequate time to review, and with key parts of the
12 agreements hidden in hyperlinks. All the while Oracle presses the prospective customer to sign
13 immediately or risk losing the deep discounts, further hurrying the customer into the sale.
14 OAI’s agreement is one-sided in Oracle’s favor and often requires payment up front for
15 professional services fees but contains clauses that seek to limit or shield Oracle from liability in
16 the event that it cannot deliver the solution that it claimed already existed. Later when the
17 customer has spent hundreds of thousands or even millions of dollars, and still has no working
18 Enterprise Resource Planning (“ERP”) software, Oracle deploys “escalation teams”, skilled at
19 obfuscation and shifting the blame to the customer, all the while claiming that the customer is
20 adding scope, which will require additional change orders, even though the functionality had
21 been promised during the initial sales meetings. Despite its fraudulent statements and breaches
22 of contract, Oracle walks away from the contract, pocketing the customer’s money without
23 implementing a workable ERP solution. Such was the case here.

24 2. RSI is not alone in being damaged by Oracle’s unlawful conduct. Indeed, since
25 filing the litigation RSI has been contacted by multiple NetSuite customers that are victims of
26 the same fraudulent scheme that Oracle has perpetrated against RSI. RSI suspects that this is
27 just the tip of the iceberg. The facts described by these other Oracle customers match RSI’s
28 experience. The scheme goes like this. Oracle Sales makes all kinds of promises in pre-

1 contract discussions about an existing solution in order to induce the company into entering in
2 the contract with Oracle. Once the customer signs the contract, the highly attentive sales team
3 that made all the promises concerning the existing functionality of the Oracle solution exits the
4 stage and is replaced by an implementation team that does not even understand what Oracle has
5 sold, as the solution simply does not exist. Oracle next tries to inflate the price through change
6 orders, saying that such change orders are necessary to provide the functionality that Oracle
7 promised during the pre-sale calls. Even if the customer purchases the additional functionality,
8 Oracle still fails to deliver, and the solution never works or goes live as promised.

9 3. It is no wonder that other Oracle customers have been subjected to and damaged
10 by the same fraudulent and unlawful scheme that has injured RSI here. In fact, we know from
11 the lawsuit of a former Oracle employee and whistleblower, Mr. Tayo Daramola, that Oracle
12 has institutionalized the practice of promising prospective Oracle customers a solution that does
13 not actually exist, with the intent to make enormous profits. Attached as Exhibit 1 is a true and
14 correct copy of the First Amended Complaint (the “FAC”) filed by Mr. Daramola, which is
15 incorporated herein in its entirety. In his lawsuit Mr. Daramola tells a tale of what is actually
16 happening behind the scenes at Oracle. Mr. Daramola describes a wide-ranging scheme that is
17 directed and orchestrated by Oracle’s senior management. According to the Daramola
18 Complaint, Oracle customers are sold a series of NetSuite modules, which are not described in
19 the contract as to what specifically they do. But Oracle represents that taken together these
20 modules provide the promised functionality. However, in reality no such integrated solution
21 containing all of the claimed functionality actually exists. Nonetheless, Oracle falsely
22 represents that it has an existing solution. Mr. Daramola explains that the prospective Oracle
23 customer is offered deep discounts to convince the customer that it is getting an exceptional deal
24 on the series of modules of the alleged one integrated product. Once the customer is induced
25 into entering into the contract by Oracle’s fraud, the customer is presented with a series of
26 confusing contracts embedded in hyperlinks, rather than just spelled out in one contract. Once
27 the contract is signed it does not take long for the Oracle customer to realize that the promised
28 integrated product does not actually exist. At that point Oracle management deploys so called

1 “escalation teams” that work with the angry Oracle customer to “close the gap” by selling
2 additional non-existent modules. One prominent member of the escalation team described in
3 the Daramola FAC and named as a defendant in that lawsuit is Oracle’s Mr. Doug Riseberg,
4 who was also part of RSI’s escalation team. Mr. Daramola describes Mr. Riseberg’s role at
5 Oracle: “Defendant Riseberg and the services team would explain to the customer that the
6 specific al la carte modules the customer bought did not accomplish the integrated system the
7 customer ‘now’ wanted, shifting the blame to the customer for ‘changing their order’, when in
8 fact, NetSuite was simply unable to deliver the integrated product it had sold in the first place.”
9 Exh. 1, ¶124. Mr. Riseberg used the same fraudulent playbook on RSI’s implementation and
10 was a central part of the unlawful scheme that unfolded.

11 4. After 20 months of delays, performance failures and other excuses, RSI issued a
12 notice of material breach and opportunity to cure to Oracle on November 14, 2022. RSI even
13 agreed to extend the cure period briefly to give Oracle additional time to effectuate the cure.
14 Instead, of curing its many breaches, Oracle and Mr. Riseberg deployed an escalation team
15 against RSI, which sought to blame RSI for Oracle’s failures and to extract an expensive change
16 order, to get the functionality that Oracle had promised as far back as February of 2021. At the
17 time of this change order request, RSI had already paid Oracle and its business partners Vend,
18 Lightspeed and SPS (the “Oracle Business Partners” or the “Business Partners”) almost
19 \$170,000 in implementation and subscription fees, for a solution that never worked and never
20 went live. In addition to these damages, RSI was furthered damaged in the amount of at least
21 \$700,000 when it was forced to devote significant man hours and other internal and external
22 resources to the failed project. RSI also suffered additional damages in the form of lost revenue
23 from the lack of a website and otherwise, losses due to the failure to make the planned process
24 improvements on sales, eCommerce and production and other damages in the amount of several
25 millions of dollars.

26 5. RSI seeks to rescind the agreements that it was fraudulently induced to enter into,
27 and seeks restitution and damages, including punitive damages, to compensate it for the harm
28 caused by Oracle’s predatory, unlawful, and fraudulent business practices, and to punish Oracle

1 for its fraud in the inducement and other unlawful conduct.

2 6. RSI brings this action seeking restitution of monies paid under the various
3 contracts to Oracle and its Business Partners, as well as other damages suffered by RSI due to
4 Defendants' illegal conduct, including but not limited to the loss in online sales due to not
5 having a working website, the cost of disruptions and unrealized efficiencies in bidding and
6 quoting new jobs, managing inventory, as well as loss of resources, sales, revenue and profits
7 due to the failed implementation; loss of process improvements; additional labor costs caused
8 by the failed implementation; and additional costs and damages in an amount to be proven at
9 trial. RSI also seeks an injunction against Defendants under California Business & Professions
10 Code Section 17200, which is necessary to prevent Defendants from defrauding and cheating
11 other customers and to protect the American public. RSI also seeks treble damages and
12 attorneys' fees under California Penal Code Section 496. Finally, RSI seeks a declaration that
13 the Oracle agreements should be completely rescinded due to Oracle's fraud in the inducement.
14 RSI also seeks punitive damages to punish Oracle for its illegal conduct.

15 **JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 based on
17 diversity of citizenship between the parties and supplemental jurisdiction over RSI's state law
18 claims pursuant to 28 U.S. Code § 1367. Plaintiff RSI is incorporated and headquartered in
19 Pennsylvania. On information and belief, Defendants Oracle America, Inc. and NetSuite, Inc.
20 are incorporated in Delaware and headquartered in Redwood Shores in San Mateo County,
21 California. OAI and NetSuite are also doing significant business in the District and thus are
22 subject to jurisdiction here. On information and belief, Defendant SPS is a Delaware
23 corporation with its principal place of business in Minnesota. On information and belief,
24 Defendant Vend is a New Zealand corporation with its principal place of business in the
25 Auckland, New Zealand and has an office in the District. On information and belief, Defendant
26 Lightspeed is a Canadian corporation with a principal place of business in Quebec, Canada. On
27 information and belief all of the Oracle Partners are doing business in the District and are
28 subject to personal jurisdiction here. The amount in controversy alleged herein exceeds \$75,000.

1 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Oracle and
2 NetSuite are headquartered here and Oracle’s Business Partners have minimum contacts here,
3 and on information and belief, a substantial part of the events or omissions giving rise to the
4 claims occurred in this District. In addition, the Subscription Services Agreement (“SSA”)
5 contained in a hidden hyperlink on one of the Estimate Forms contains a venue clause providing
6 for venue in the District.

7 **THE PARTIES**

8 9. Plaintiff RSI is a corporation organized and existing under the laws of the State of
9 Pennsylvania. RSI’s principal place of business is in Brogue, Pennsylvania. Founded in 2013,
10 RSI is an architectural construction material supplier. RSI Hardware is a dba of RSI, and RSI
11 runs a retail hardware store also in Brogue, Pennsylvania. KGB Equities, LLC (“KGB”), is a
12 sister company to RSI and provides carrier services.

13 10. RSI is informed and believes, and thereon alleges, that, at all times mentioned
14 herein, Defendant Oracle America, Inc. was a corporation organized and existing under the laws
15 of the State of Delaware. On information and belief OAI’s headquarters is in Redwood Shores,
16 San Mateo County, California. Defendant OAI, and certain of its related companies, are makers
17 of database and enterprise software products, including Enterprise Resource Planning (“ERP”)
18 software.

19 11. Plaintiff is informed and believes, and thereon alleges, that, at all times mentioned
20 herein Defendant NetSuite, Inc. (“NetSuite”) was a corporation organized and existing under
21 the laws of the State of Delaware. NetSuite was founded in 1998 with its headquarters
22 originally in Austin, Texas. On information and belief, NetSuite has moved its headquarters to
23 Redwood Shores in San Mateo County, California. On information and belief, Oracle
24 Corporation acquired NetSuite in November 2016, and OAI operates NetSuite and sells its
25 subscription services under the Oracle NetSuite brand.

26 12. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
27 herein, Defendant SPS Commerce Inc. is a corporation organized and existing under the laws of
28 the State of Delaware and is headquartered in Minneapolis, Minnesota. On information and

1 belief, SPS claims to help retail trading partners work better together by empowering data
2 collaboration in the retail supply chain.

3 13. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendant Vend Limited is a corporation organized and existing under the laws of New
5 Zealand with its principal place of business in the Auckland, New Zealand and has an office in
6 the District. On information and belief, Vend provides cloud-based point of sale and retail
7 management system solutions for the retail industry. On information and belief, Vend was
8 acquired by Lightspeed POS Inc., which on information and belief, is a provider of cloud-based,
9 omnichannel commerce platforms.

10 14. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
11 herein, Defendant Lightspeed Commerce Inc. formerly known as Lightspeed POS Inc., is a
12 corporation organized and existing under the laws of Quebec, Canada. On information and
13 belief, Lightspeed markets its services by claiming that it provides a “retail POS system that
14 streamlines operations”, “seamless integrations and an open API” and “synchronized inventory
15 management tools [that] let retailers instantly sell across channels and manage it all from a
16 single POS system.”

17 15. Plaintiff does not know the true names and capacities, whether individual,
18 corporate, or otherwise, of the Defendants named herein as Does 1-100, inclusive. Plaintiff
19 therefore sues these Defendants by fictitious names. Plaintiff will amend this Complaint to
20 reflect the Doe Defendants’ true names and capacities when they have been ascertained by
21 inserting their true names and capacities in place of the fictitious names in accordance with the
22 Federal Rules of Civil Procedure and any applicable state law. Plaintiff is informed and
23 believes, and thereon alleges, that whatever and wherever in this Complaint any of the
24 Defendants are the subject of any charging allegations by Plaintiff, that Doe 1 through Doe 100
25 are also responsible in some manner for the events and happenings alleged herein, and it shall
26 be deemed that such Doe Defendants, and each of them, are likewise the subject of RSI’s
27 charging allegations herein.

28 16. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants, whether sued by their true names, or as a Doe, were the principal,
2 agent, servant, joint-venture, partner, parent, subsidiary, trustee, employee or director of each
3 other Defendant, and acted within the course and scope of that relationship and/or were the legal
4 alter ego of each other Defendant, having so dominated and controlled them to the point where
5 their identities were no longer separate and it would be unfair and inequitable to treat them
6 separately.

7 17. At all relevant times, each Defendant was and is the agent of each of the
8 remaining Defendants and, in doing the acts alleged herein, was acting within the course and
9 scope of such agency. Each Defendant ratified and/or authorized the wrongful acts of each of
10 the Defendants.

11 GENERAL ALLEGATIONS

12 NetSuite's SaaS Solution

13 18. Defendant NetSuite is an American cloud-based enterprise software company that
14 provides products and services tailored for small and medium businesses. These products and
15 services include accounting and financial management, customer relationship management
16 ("CRM"), inventory and human capital management, payroll, procurement, project management
17 and e-commerce software. Defendants OAI and NetSuite market their NetSuite products as a
18 Software as a Service ("SaaS") solution, which is cloud based.

19 19. Defendant OAI and NetSuite target small and mid-size businesses such as RSI
20 with their "SuiteSuccess" subscription cloud line of ERP and related products. On their
21 website, Oracle touts their SuiteSuccess offering as "a total solution designed to manage all
22 aspects of a business in a single system" and claims that its SaaS product gets companies "up
23 and running quickly" and with "KPIs, workflows, reports and value-driven dashboards" meeting
24 the "day-to-day and strategic needs of all key roles within your company — from Day 1."
25 According to Oracle, "[w]ith SuiteSuccess, businesses realize faster time-to-value, increased
26 efficiency and flexibility and accelerated success."

27 20. Defendants Vend and Lightspeed are NetSuite integration partners. On its
28 website Vend claims that "Vend integrates with world-leading ERPs including NetSuite, to

1 securely support complex tasks like in-store inventory management, supply chain and
2 reporting.” Vend also claims on its website that “Vend has all of the workflows you need to run
3 your business. We integrate with leading ERP systems and retail management apps, and we
4 offer complex multi-outlet inventory workflows, including stock ordering, fulfillment, returns
5 and exchanges.” On information and belief, Vend was acquired by Lightspeed during the
6 relevant time period. Lightspeed claims that it provides a “retail POS system that streamlines
7 operations”, “seamless integrations and an open API” and “synchronized inventory management
8 tools [that] let retailers instantly sell across channels and manage it all from a single POS
9 system.” Vend and Lightspeed agreed under OIA’s installation plan to install and integrate a
10 functioning point of sale and inventory tracking system within RSI’s existing NetSuite
11 environment to facilitate transactions and track inventory as it was and currently is advertised
12 on the parties’ websites.

13 21. Defendant SPS is a NetSuite integration partner that focuses on EDI. EDI stands
14 for Electronic Data Interchange and allows companies to send information digitally from one
15 business system to another, using a standardized format. SPS claims on its website that “EDI
16 replaces order processes, transactions and communications that were done with paper or fax in
17 the past” and is “an important component for automation in business processes.” On its
18 website, SPS claims that a “dedicated team of experts will ensure your Fulfillment EDI for
19 NetSuite implementation is fast and easy. And because SPS is a proud member of the “Built for
20 NetSuite” developer program, you can be confident that your solution will meet all of Oracle
21 NetSuite’s standards for quality, security and privacy.”

22 22. RSI is an architectural construction material supplier and works closely with KGB
23 and RSI Hardware in the business of supplying construction materials, hardware, machinery and
24 tools, as well as providing carrier services. For years RSI had been handling its various
25 financial and accounting functions using Quickbooks® Desktop Enterprise software. For its
26 part, KGB was using Sage 100 for its accounting and inventory management needs, while RSI
27 Hardware was using ECI Spruce to manage its sales, inventory and purchasing needs.

28 **RSI Decides to Seek One Integrated ERP Solution**

1 23. Although RSI and its related companies liked some of the features of the software
2 they were using, RSI decided to search for a more robust solution, which had all the features the
3 companies were currently using with Quickbooks Desktop Enterprise, Sage 100 and ECI Spruce
4 plus more in an all-in-one solution. Specifically, RSI sought a cloud solution that could keep
5 track of all aspects of the three businesses, including at the retail Point of Sale (“POS”) and
6 website, inventory management, accounting & financials, EDI, eCommerce, Warehouse
7 Management System (“WMS”), and Customer Relationship Management (“CRM”) software.
8 RSI identified Defendants’ NetSuite product as a potential software solution and wanted to learn
9 more about NetSuite’s product offerings. As a result, in the Fall of 2020, Mr. Tarry Bratton of
10 RSI contacted Oracle about setting up a meeting to learn more about Oracle’s ERP cloud
11 solution.

12 24. On October 2, 2020, Mr. Troy Landsberg on behalf of Defendants emailed Mr.
13 Bratton to set up a call to learn more about what RSI was looking for in a new ERP product. In
14 his meeting invite, Mr. Landsberg described the call to discuss RSI’s “business processes,
15 challenges, and potential ERP initiative” and a “[h]igh level overview of [the] NetSuite
16 platform”. In an email exchange that day, Mr. Bratton sent Mr. Landsberg a document entitled
17 “Flow of Software”, which detailed RSI’s requirements. Exh. 2. Mr. Landsberg indicated that
18 NetSuite could “handle the bulk of these requirements right out of the box” but that modules for
19 POS, eCommerce, and Projects might need to be added to the package and separately licensed.

20 25. In the follow-up call on October 5, 2020 attended by Mr. Tarry Bratton from RSI
21 and Mr. Landsberg from Oracle, RSI explained its business model and how the three companies
22 (RSI, RSI Hardware and KGB) worked together and what they were looking for in a cloud
23 solution. Mr. Bratton described the details of the existing software that the companies were
24 using and explained that RSI desired all the functionality of the current software plus additional
25 features so the companies could manage all of the businesses in one integrated ERP solution.
26 Mr. Bratton explained that many of the key features that RSI was looking for was contained on
27 the Flow of Software document, but that a more robust Point of Sale (“POS”) solution was
28 probably the key functionality that RSI sought to obtain. Mr. Bratton also explained that RSI

1 sought to launch a website that would allow its customers to review its catalog and make
2 purchases online, and that they wanted to get online and go live with the solution quickly to
3 capitalize on the website. Mr. Bratton explained that due to RSI's rural location and the Covid
4 pandemic the store was not getting much foot traffic and RSI sought to increase its sales
5 through a website and online offerings of its catalog of items for sale. Mr. Bratton explained
6 that as a hardware store RSI had a huge catalog with tens of thousands of separate SKUs, so it
7 was important that any solution contain automatic updating capabilities for purchase orders or
8 when RSI's suppliers Orgill or House of Hasson updated their catalogs or other information,
9 images or data. These specific requirements were also mentioned in the Flow of Software
10 document detailing RSI's requirements that RSI had provided Mr. Landsberg previously on
11 October 2, 2020. After listening to Mr. Bratton's explanation of how the RSI business worked
12 and RSI's requirements for the software, Mr. Landsberg represented to RSI that Oracle could
13 provide the required functionality and had the solution to combine all companies financially and
14 help make process improvements to River Supply's then current system processes, without
15 losing any functionality. During the meeting Mr. Landsberg assured Mr. Bratton that Oracle's
16 ERP Product had all the features of RSI's then current software (i.e Quickbooks Desktop
17 Enterprise, Sage 100 and ECI Spruce) plus more and would be a great fit for RSI. During this
18 meeting Mr. Landsberg also represented that Oracle had experience with retail companies such
19 as RSI Hardware with large catalogs of items for sale and had successfully implemented similar
20 SaaS solutions for those NetSuite customers.

21 26. On October 5, 2020 shortly after the Zoom call that day, Mr. Landsberg provided
22 an initial cost estimate via email. Mr. Landsberg explained that he thought that the solution
23 would be focused around NetSuite's Manufacturing SKU with Advanced Financial
24 Management and Advanced Inventory Management, CRM, Demand Planning, Warehouse
25 Management Services ("WMS") and Point of Sale. Mr. Landsberg estimated a one-time
26 implementation fee between \$40,000 to \$80,000 and a yearly recurring cloud subscription cost
27 of \$50,000 to \$85,000 for a total cost of ownership in Year One of between \$80,000 to
28 \$165,000. The next day on October 6, 2020, Mr. Tarry Bratton followed up with Mr.

1 Landsberg on the cost estimate, stating that this was too broad of a price range and asking for a
2 more specific number. Mr. Landsberg responded later that day that he believed he could get the
3 list price of implementation, training and support at \$102,000 and could get that discounted to
4 \$76,000. On the subscription services side, he believed that he could get a list price of \$80,000
5 with a discount to approximately \$55,000. Mr. Bratton responded via email on October 6th
6 saying that those prices were much higher than what had initially been quoted and that he would
7 need to “test drive” the solution before paying such a high price. Mr. Bratton also made it clear
8 that he either wanted the opportunity to see the software in action through a demonstration or
9 even use the software and “play around” with it before it was purchased. Otherwise, Mr.
10 Bratton informed Mr. Landsberg that he wanted Landsberg to work up a deal that RSI could get
11 out of if they did not like the way the solution worked., or if it never worked. On October 7
12 Mr. Landsberg followed up with an email saying that he wanted to get on a call to further scope
13 the solution with a goal of putting together a demo showing what RSI would be getting if it
14 selected NetSuite for its ERP needs so that Oracle could “make sure we’re presenting what you
15 are getting” in the solution. Mr. Bratton did not respond.

16 27. On October 8th Mr. Landsberg sent an email to Mr. Bratton attempting to entice
17 RSI into continuing the conversation and mentioned that he had spoken to his leadership team
18 and they were willing to provide some “pretty aggressive pricing” if RSI was willing to commit
19 to the evaluation.

20 **Oracle’s Pre-Contractual Representations Concerning the SuiteSuccess Product**

21 28. What followed from October 5, 2020 through the date of contract execution of
22 February 26, 2021 was a series of phone calls, online Zoom meetings and one day of in-person
23 meetings, as well as additional email exchanges, where Oracle described the capabilities of their
24 SuiteSuccess ERP Product and how it could be used to grow and scale RSI’s and RSI’s related
25 companies’ businesses. During these meetings RSI provided Oracle with detailed specifications
26 of the attributes and functionality that it required from the NetSuite software solution, which
27 Oracle promised that its software could deliver. RSI employees attending these meetings
28 included variously Tarry and Tim Bratton, Joe Nolan, Jeff Pilkington, Dan Jamison and Chad

1 Rohrbach. The Oracle team consisted primarily of Troy Landsberg, Dan D’Amato, and Ben
2 Gibson, with Mr. Landsberg leading most of the discussions, but other Oracle employees
3 attended the calls and meetings from time to time.

4 29. After the initial call between Mr. Bratton and Mr. Landsberg and a flurry of
5 related emails, the parties did not exchange emails for several weeks. But Oracle had RSI in its
6 sights and wanted to get the RSI business. Mr. Landsberg followed up with Mr. Bratton in
7 November acknowledging that it was Oracle’s quarter-end, and that he could probably get even
8 deeper discounts than what had previously been discussed. RSI did not take the bait and
9 discussions fizzled out. Mr. Landsberg followed up with Mr. Tarry Bratton on December 18,
10 2020, with an email entitled “Where Do We Grow From Here?” Mr. Landsberg identified
11 himself as the “dedicated Corporate Territory Manager” for RSI at NetSuite. He suggested that
12 they set up another Zoom call for January and told Mr. Bratton that “[i]f growth and improving
13 operational efficiencies” are a part of RSI’s plans for 2021, “I’d love to connect and talk to you
14 about an opportunity to run your business on a modern, cloud-based solution like NetSuite to
15 help companies like yourselves improve business processes, particularly in areas of *Financial*
16 *Management & Reporting, Inventory, Customer/Vendor & Sales Data (CRM), Purchasing,*
17 *Logistics, Marketing, etc.* on one software platform, to eliminate the tedious & timely manual
18 entry of data between multiple systems that lack integrations, and propel you to make more
19 informed business decisions with real-time, unrivalled data.” Mr. Bratton did not respond and
20 on January 5, 2021, Mr. Landsberg followed up again claiming that he had “taken Journey’s
21 approach, and I won’t stop believin’ that there’s an opportunity for NetSuite to help RSI
22 Hardware increase customer value over the competition” and that he would love to talk to Mr.
23 Bratton before he found himself locked into another software solution.

24 30. Mr. Bratton agreed to a follow-up meeting with the Oracle team. On January 12,
25 2021 RSI and Oracle set up a Zoom call to do a deep dive into RSI’s requirements for the
26 software. A larger RSI team attended the meeting this time including Mr. Tarry Bratton, Mr.
27 Tim Bratton, Mr. Joe Nolan, Mr. Keith Bell and Mr. Chad Rohrbach. Oracle representatives
28 included Mr. Landsberg, Mr. D’Amato and Mr. Gibson. Oracle described the meeting in its

1 invite as one for “requirements gathering” so that Oracle could collect information concerning
2 RSI’s required functionality and eventually demo Oracle’s solution incorporating all of RSI’s
3 required functionality. During the Zoom call, Mr. Bratton and the RSI team explained in detail
4 RSI’s requirements and the functionality that they currently had with their existing software,
5 which included Quickbooks Desktop Enterprise, Sage 100, and ECI Spruce. In response, Mr.
6 Landsberg told the RSI team that the NetSuite solution had all of the functionality of RSI’s
7 existing software but was even more feature rich, and that they would not lose any of the
8 functionality that they currently enjoyed by going with NetSuite. Oracle represented that
9 NetSuite was a one stop software solution that would house the financial, eCommerce, WMS,
10 POS, and EDI solutions that River Supply currently performed with multiple software vendors,
11 all in one integrated solution, and would also include an integrated website. Mr. Landsberg
12 promised that through NetSuite WMS, the inventory would be able to be tracked through
13 multiple companies, including with locators to a specific point at RSI’s facilities, including both
14 of its warehouses. The RSI team also communicated to Oracle that they were interested in an
15 eCommerce solution, as the company wanted to set up a website that would allow its retail and
16 other customers to make purchases online, and that getting online quickly was important to
17 RSI’s business strategy, especially due to decreased foot traffic at the store due to the Covid
18 pandemic. Mr. Landsberg confirmed that Oracle had a robust eCommerce solution, which
19 included the design and publication of websites, and followed up after the meetings with some
20 examples. Mr. Landsberg also represented that the software was able to grow with the company
21 to incorporate additional locations and that the solution would be able to handle the flow of the
22 data from RSI Hardware’s wholesalers Orgill and House Hasson to the NetSuite Software and
23 into RSI’s inventory and automatically update such information, if it was changed by RSI’s
24 suppliers. Mr. Landsberg also represented that NetSuite had the ability to automatically update
25 images, purchase orders, inventory items and other information from RSI’s suppliers including
26 Orgill and House Hasson. Mr. Landsberg also represented that NetSuite’s solution has all the
27 functionality of ECI Spruce and automates more functions than RSI’s existing ECI Spruce
28 software resulting in less manual inputting of data and greater efficiencies and lower labor costs.

1 Finally, Mr. Landsberg represented that there would be no hidden costs of the solution and the
2 cost breakdown that he would supply would be the cost that the system would be for RSI each
3 year, and was a fixed bid. Mr. Landsberg assured RSI that Oracle had an existing solution that
4 it had designed for other customers in the retail business that would also work for RSI. Mr.
5 Landsberg promised that NetSuite had most of the functionality right out of the box in its basic
6 solution, but that there would be a few modules that RSI would need to add such as Payroll and
7 WMS. Mr. Landsberg also represented that any customizations would be easy to perform given
8 NetSuite's extensive experience with similar customers. Mr. Landsberg also told the RSI team
9 that given its proven track record with tens of thousands of other customers, it was able to
10 ensure that its customers could go live faster and that implementation costs to the customer were
11 less than Oracle's other competitors. Mr. Landsberg and his colleagues again confirmed that
12 their solution had the desired Quickbooks Desktop Enterprise, Sage 100 and ECI Spruce
13 features already built in and was fully capable of meeting RSI's needs, with only minor
14 customizations.

15 31. After the online meeting Mr. Landsberg sent an email containing a document
16 entitled Joint Execution Plan ("JEP"). The purpose of the JEP was to document meetings that
17 had already occurred and to set forth a plan for future meetings so that Oracle could finalize its
18 proposal. The document listed a post go live date of June 21, 2021, again confirming Oracle's
19 representation that it could quickly get RSI to go live and that it only needed a few months to do
20 so. Also included in a follow-up email from Mr. Landsberg that day were links to pre-recorded
21 videos discussing the NetSuite solution, as well as a brochure detailing Oracle's alleged
22 extensive experience with eCommerce and website creation. The demos included such topics as
23 item and vendor management and purchase orders, all topics that were discussed at the meeting.
24 The brochure purported to provide examples of retail customers using NetSuite, along with
25 Oracle retail customers that had a large number of online items to sell online.

26 32. Although Mr. Landsberg initially represented that all the solution could be
27 provided by Oracle, shortly after the January 12th requirements gathering meeting, he switched
28 gears and introduced the idea of bringing in third-party trusted Oracle Partners to take on certain

1 parts of the project. For example, in an email dated January 19, 2021, Mr. Landsberg
2 recommended bringing on its implementation partner, AppFiciency to handle some of the job
3 costing tasks. Also on January 19, 2021, Oracle met with RSI ostensibly to prepare for the
4 upcoming demo of ERP and Payroll scheduled for February 1st. The parties also discussed
5 AppFiciency's job costing and related technology and Appficiency provided an overview of its
6 solution. RSI's team included Mr. Tarry and Tim Bratton, Mr. Nolan, Mr. Rohrbach and Mr.
7 Bell. Oracle was represented by Mr. Landsberg, Mr. D'Amato, and Mr. Gibson.
8 Representative from AppFiciency also attended the meeting. Mr. Bratton and the RSI team
9 again explained in detail the ECI Spruce functionality that RSI was currently using, and the
10 importance of the POS portion of the solution to RSI. RSI also emphasized again that the
11 NetSuite solution needed to be able to automatically update purchase orders, images and other
12 information from RSI's suppliers Orgill and House Hasson. In a follow-up email after the call,
13 Mr. Landsberg indicated that Oracle might need to bring in a third-party to perform the POS
14 part of the project, as NetSuite could not natively handle multiple units of measure, among other
15 features required by RSI. Mr. Landsberg explained that NetSuite worked very closely with
16 certain third-party vendors, and these vendors were Oracle business partners and were "tightly"
17 integrated into the NetSuite solution and had worked together on many successful projects and
18 had gone through a vetting process. At no time did Mr. Landsberg express any doubt that
19 Oracle working with any third-party vendors could deliver the required functionality. Instead,
20 just the opposite. After the call Mr. Landsberg followed up with an email attaching some
21 preliminary pricing that was discussed in the earlier meeting and also adding in pricing for the
22 eCommerce and Payroll modules. In closing, Mr. Landsberg mentioned Oracle partners'
23 Netscore, Vend, or Lightspeed as potential third-party POS vendors for RSI's consideration, and
24 provided links to their respective websites. At no time during this meeting or any of the follow-
25 up meetings did Mr. Landsberg disclose that RSI would need to manage or negotiate directly
26 with the third parties partners that Oracle was bringing to the table. Instead, Mr. Landsberg and
27 Mr. D'Amato led the RSI team to believe that Oracle would manage the project and any third-
28 party partners they recommended bringing in, and this project management would be part of the

1 implementation services Oracle provided.

2 33. The next day on January 21, 2021, Mr. Tarry Bratton followed up with Mr.
3 Landsberg. In his email, Mr. Bratton attached a previous email string that he had sent to Mr.
4 Landsberg on October 2, 2020. Mr. Bratton observed that since the beginning RSI had made it
5 clear that RSI sought a “complete system” system that could be used by the company for years.
6 Mr. Bratton again forwarded the “Flow of Software” document showing the components of
7 what was needed. Attached hereto as Exhibit 2 is a true and correct copy of RSI’s Flow of
8 Software document shared by Mr. Bratton with Mr. Landsberg on October 2, 2020 and again on
9 January 21, 2021. Mr. Bratton noted that although Mr. Landsberg had firmed up the pricing
10 earlier, his latest proposal was the highest price quoted yet. Mr. Bratton expressed concerns
11 about the conversation on January 19th and how the discussion process with NetSuite was
12 playing out. Mr. Bratton again emphasized that RSI was seeking “a complete system that we
13 can be confident that we have software solution that will not just help us this year but, in the
14 future, as well. We need a partner in this software company not just another sales job.” He
15 concluded by saying “[i]f you can not do something on the flow chart, please let us know what
16 that is” and that RSI wanted to see all of this running on a demo before he wasted any more
17 time. Mr. Landsberg responded explaining some of the increase in price but concluding “[a]t
18 the end of the day NetSuite has a complete solution for River Supply Inc and we want to prove
19 it to you, and partner with you.” Landberg’s representation that Oracle had a “complete
20 solution” for RSI after receiving the Flow of Software document not once but twice was
21 material to RSI. On information and belief, Mr. Landsberg and Oracle knew that even with
22 bringing in Oracle partners, Oracle did not in fact have a complete solution that would meet all
23 of RSI’s requirements as such a solution did not exist. On information and belief, Mr.
24 Landsberg and Mr. D’Amato recklessly and without doing their due diligence recommended
25 third party partners that they did not know for certain had the technology capable of meeting
26 RSI’s requirements. On information and belief, they did so hoping to make the sale and
27 increase their own commissions and Oracle’s profit.

28 34. Mr. Landsberg followed up via email with the RSI team on January 25th, asking

1 for a call and stating that there has “a bit of a shift in thought/strategy” for approaching the
2 project and he wanted to share these new thoughts with RSI. During that call with Mr. Bratton,
3 Mr. Landsberg explained that rather than providing one demo, the Oracle team intended to
4 provide several demos so that they could provide in depth details concerning each portion of the
5 project and demonstrate all of the capabilities of the solution. Mr. Landsberg’s representation
6 that Oracle could successfully demonstrate all of the functionality required was material to RSI,
7 and RSI was relying on Oracle to show that it had the existing solution that it had promised. On
8 information and belief, Mr. Landsberg decided to break up the demos into pieces not in order to
9 better demonstrate the solution, but because Oracle did not have an existing solution that would
10 meet all of RSI’s requirements, as Mr. Landsberg had represented, and Mr. Landsberg was
11 intentionally and deviously trying to disguise that fact. On information and belief, Oracle
12 routinely provides demos to its prospective customers representing that such technology
13 currently exists and can be rolled out quickly when it cannot. This is done in order to deceive
14 the customer about the solution that Oracle is actually able to provide, so that Oracle can close
15 the sale. In actuality no such solution that would work for that particular customer actually
16 existed. In fact, Mr. Daramola the former Oracle employee and whistleblower, explained in
17 detail in his lawsuit how Oracle purported to demo a product to several universities for an
18 online bookstore first created for a university in Oregon, when the solution was not scalable to
19 meet the needs of the other universities and did not exist as represented. Exh. 1, ¶¶97-106. Yet
20 Oracle marketed it and attempted to sell it as an existing solution to other universities, which
21 was absolutely false. *Id.* On information and belief, Oracle did the exact same thing with RSI.

22 35. On February 1, 2021 NetSuite set up the first in depth demo of the NetSuite
23 solution, which focused on ERP and Payroll. Attending from the RSI side were Tarry and Tim
24 Bratton, Mr. Rohrback, Mr. Nolan and Mr. Bell. On information and belief, attending from
25 Oracle/NetSuite was Mr. Landsberg, Mr. D’Amato, Mr. Gibson, and Mr. John Barbera. At the
26 meeting Oracle provided a demo and alignment session on the ERP and payroll portions of the
27 solution and claimed to have made great progress in firming up the entire solution. After the
28 demo, RSI continued to discuss its current system including “must have” functionality that it

1 needed to have included with NetSuite if it was going to make the switch to the new software,
2 including the POS portion. Among other things, RSI discussed its existing ECI Spruce
3 software, and that software's ability to automatically update purchase orders and images from
4 its suppliers, as well as its ability to track inventory to specific locations in both the store and
5 the warehouses. RSI also discussed its needs that the POS software handle multiple units of
6 measure, customer deposits, and a "drop ship" feature, among other requirements.

7 36. The next day on February 2nd Mr. Landsberg followed up with Mr. Bratton in an
8 email seeking to schedule the next demo for the following week, which would focus on
9 NetSuite Warehouse Management System ("WMS"), NetSuite e-Commerce, Appficiency's
10 Material Job Costing Module, and Point of Sale. In his email, Mr. Landsberg discussed
11 bringing a third party on board to handle a piece of the project involving "Point of Sale"
12 ("POS"). Specifically, Mr. Landsberg stated that "based off of our discussion yesterday, we, as
13 a team are going to recommend that we look to a Partner for Point of Sale simply because
14 NetSuite's Point of Sale (SuiteCommerce In-Store) cannot natively handle multiple units of
15 measure" and certain of RSI's other requirements. Mr. Landsberg conceded that the Oracle
16 Product, could not do things like have a customer make a deposit and pay the balance later and
17 that Oracle was not confident on NetSuite having the drop ship feature discussed at the previous
18 day's meeting. He concluded by saying that the Oracle team would "look to a Built for
19 NetSuite partner that can handle these things and tightly integrate with NetSuite". At no point
20 did Mr. Landsberg express any uncertainty about the feasibility of providing the promised
21 solution. Instead, this portion of the conversation was framed as bringing in a close Oracle
22 partner with a proven track record with Oracle to handle this portion of the project, which
23 Oracle would manage. Oracle's representation that any partner that it brought in for the POS
24 portion and would be "tightly integrated" into NetSuite and that "it could handle these things"
25 (i.e. the POS functionality that was not native to NetSuite but that RSI required) was material,
26 and RSI would not have entered into the contract with NetSuite if it did not believe Oracle's
27 representations about the ability of the POS partner's technology to "integrate tightly" into
28 NetSuite and to "handle these things" (i.e. the needed functionality).

1 37. Oracle followed up and on either February 2nd or 3rd the parties engaged in a
2 discussion of the eCommerce portion of the solution for RSI and RSI Hardware. Attending this
3 meeting from RSI was Mr. Tarry Bratton, Mr. Dan Jamison and Mr. Keith Bell. Attending from
4 Oracle was Mr. Landsberg, Mr. D'Amato and Mr. Krajci, who Oracle represented was an
5 Oracle consultant deeply knowledgeable about NetSuite's eCommerce solution. During this
6 meeting RSI described in detail what it was looking for in an eCommerce solution, including
7 the importance of getting online quickly with a website that would allow customers to see
8 images of RSI's inventory, and to make purchases online. A website allowing for such online
9 purchases was a key part of RSI's business plan and a big driver of wanting to get the solution
10 live as soon as possible and within the 5 months of contract execution promised by Oracle. At
11 the meeting the RSI team again explained that getting online quickly with its extensive catalog
12 of items for sale was important so as to boost RSI's sales, which had suffered during the Covid
13 pandemic from lack of foot traffic at the hardware store. RSI also explained again to Oracle's
14 Mr. Landsberg and Mr. D'Amato and to Mr. Krajci for the first time, the process that it used to
15 work with its suppliers Orgill and House Hasson and how it was important that RSI maintained
16 the functionality of the automatic updating of images, purchase orders, and other information
17 currently enjoyed with its existing software.

18 38. On February 10th Mr. Landsberg sent an email proposing a POS demo for the
19 following Tuesday and stating that after the POS demo they could do one final demo, which
20 would "tie up the solution, just so that you can know the flow and make sure you're comfortable
21 with everything tied together." At no time did Mr. Landsberg say that the product being
22 demoed would not provide all of the functionality of Quickbooks Desktop Enterprise, Sage 100
23 or ECI Spruce. Instead, just the opposite. Throughout the pre-contract negotiation process and
24 all of the meetings Mr. Landsberg and Mr. D'Amato led RSI to believe that all of the
25 functionality required by RSI (including all the functionality that RSI currently had with
26 Quickbooks, Sage and Spruce) existed either natively within NetSuite, with the purchase of an
27 additional module from Oracle such as Payroll and eCommerce, or through a partner that Oracle
28 would manage and that was tightly integrated into NetSuite such as Vend, and that all of this

1 could be demonstrated to RSI in an online presentation. The online demonstrations where the
2 functionality that RSI had requested and that Oracle promised existed were material to RSI, and
3 had RSI known that such functionality did not actually exist it would never have entered into
4 the Oracle Contract.

5 39. Oracle set the next Zoom call for February 11, 2021. The purpose of this meeting
6 was to explain the e-Commerce, WMS, and the Material Job Costing/Projects pieces of the
7 solution, and to demo those parts of the software, and to discuss RSI's requirements related to
8 these areas. Attendees from RSI included Mr. Bratton, Mr. Rohrbach, Mr. Nolan, Mr. Jamison
9 and Mr. Bell. Oracle was represented by Messrs. Landsberg, D'Amato, Gibson, Azoulay,
10 Krajci, and Barbera. During the meeting Mr. Landsberg reaffirmed that the NetSuite solution
11 had the same capabilities as ECI Spruce to automatically revise purchase orders to include
12 updated information such as price, quantity, product descriptions, and back-order status, and
13 other key information. Mr. Landsberg also represented to the RSI team that NetSuite's solution
14 had the same functionality of ECI Spruce and was able to tally scan inventory items in multiple
15 bins and bin scan. Mr. Landsberg also represented that Oracle's WMS had the capability to
16 track inventory in the store and in multiple places in the warehouses, and also to exchange data
17 with the point of sale when new inventory was delivered so that the store always knew what
18 items were in stock and could be sold. In addition, Landsberg promised that given Oracle's
19 experience with similar retailers such as RSI, Oracle had the experience to deliver a "go live"
20 date for Phase I by September 2021, which also included publishing a website where RSI
21 customers could purchase its products online.

22 40. Up to this point Oracle had still not demonstrated the entire solution (and in fact
23 never did), and Mr. Bratton once again requested in an email of February 10th that Oracle show
24 the entire solution that it would be delivering for RSI. According to Mr. Bratton, "[a]s we
25 discussed last night. I need to see this running as one. As of now we only are seeing pieces to
26 the puzzle and adding things as we work through our needs. I get that this needs to be done this
27 way. So, I'm looking forward to moving forward with seeing the complete package working as
28 one." Mr. Landsberg responded that the entire solution would be demonstrated at the upcoming

1 February 17th in person meeting at RSI's offices and would include Vend providing a separate
2 demo for the POS portion. Mr. Landsberg stated in his email: "Tomorrow we're going to wrap
3 up e-Commerce, WMS, and the Material Job Costing/Projects piece. We'll tentatively look to
4 schedule our POS demo on Tuesday. After the POS demo, we can look to do one final demo
5 once we tie up the solution, just so that you can know the flow and make sure you're
6 comfortable with everything tied together." The online demonstrations where the functionality
7 that RSI had requested and that Oracle and Vend had promised existed were material to RSI,
8 and had RSI known that such functionality did not actually exist it would never have entered
9 into the Oracle or Vend Contracts. Oracle through Mr. Landsberg and Mr. D'Amato led RSI to
10 believe that Vend was tightly integrated into NetSuite and that Oracle was presenting "our POS
11 demo" and that "we can do one final demo" so as "to tie up the solution". Mr. Landsberg's
12 representations led RSI to believe that Oracle had thoroughly vetted and scoped the POS
13 solution with Vend, and that Oracle was confident that the two companies had existing
14 technology to provide the solution sought by RSI. On information and belief, the fact that
15 Landsberg and D'Amato decided to break down the demos into multiple parts was an attempt to
16 obfuscate the fact that it did not have a complete and integrated solution as Oracle had promised
17 RSI.

18 41. On February 15th Mr. Landsberg sent the RSI team an email utilizing RSI's initial
19 flow chart and for the first time clearly set forth what Oracle was proposing to be standard
20 NetSuite functionality, an additional NetSuite module, or a third-party partner solution. The
21 document was color coded with items highlighted in green being a NetSuite standard item (i.e.
22 native to the software), those highlighted in yellow being a NetSuite additional module, and
23 those highlighted in purple being a partner solution. Attached hereto as Exhibit 3 is a true and
24 correct copy of this document. Only three items constituted an additional module: SuitePeople
25 Payroll, NetSuite eCommerce, and a Warehouse Management Module, all of which RSI
26 ultimately purchased. The partner solutions consisted only of POS, EDI to Vendors, and
27 Material Job Costing and Project Task Management. For the partner solutions, Oracle selected
28

1 Vend for POS, SPS Commerce for EDI, and Appficiency for Material Job Costing. The vast
2 majority of the items in the document were highlighted in green as a standard NetSuite item.

3 42. Oracle scheduled the onsite demos for February 17, 2021 and described the
4 Oracle portion of the meeting as the “final walk through”. Oracle proposed two demos for that
5 day. The POS portion provided by Vend and Oracle, and the complete solution provided by
6 Oracle. In addition, Oracle presented a lengthy PowerPoint slide presentation the following day
7 on February 18, 2021. Mr. Nolan, Mr. Tim and Mr. Tarry Bratton, Mr. Rohrbach and Mr.
8 Jamison attended the presentations on behalf of RSI, and from Oracle Mr. Troy Landsberg, and
9 Mr. D’Amato attended in person on February 17th, and Mr. Gibson, Mr. Azoulay, Mr. Krajci,
10 Mr. Tuzzo and Mr. Barbera of Oracle attended the meeting via Zoom. The parties discussed
11 RSI’s required functionality and the Flow of Software, and Oracle confirmed that all of the
12 Spruce, Quickbooks and Sage functionality was included in the Oracle Solution. During the
13 demos, all of the portions of the solution sought by RSI appeared to be successfully
14 demonstrated. Mr. Landsberg reiterated his previous assurances that the solution would be a
15 complete solution for RSI, which would replace its current software (ECI Spruce, Quickbooks
16 Enterprise, Sage 100) with no loss in functionality, but instead would reduce the amount of
17 manual data entry leading to greater efficiencies and less costs and would do all of it in one
18 integrated solution that would combine the three companies. On information and belief,
19 although all of RSI’s requirements appeared to be demonstrated during the demos, in reality
20 Oracle and Vend did not have the existing solution at that time that it could roll out to RSI, to
21 provide RSI with the same functionality as ECI Spruce. In addition, on information and belief,
22 Oracle and Vend did not have existing technology that could automatically update the purchase
23 orders and the images of the items for sale from RSI’s distributors Orgill and House Hasson.
24 Oracle failed to disclose to RSI that its automatic updates of images could only use static copies
25 of images and not URLs, so that the NetSuite solution would require RSI to manually update the
26 image whenever the distributors made a change to their catalog. Such information about how
27 NetSuite worked was material, and Mr. Landsberg should have told RSI that NetSuite’s solution
28 would require extensive manual updating and the automatic updating capabilities of the

1 software were extremely limited, and would not work as RSI's then current solution. Had RSI
2 known that Oracle could not deliver the automatic updating features it would never have entered
3 into the Oracle or the Vend Contracts.

4 43. The PowerPoint presentation supplied by Mr. Landsberg and Mr. Barbera on
5 February 18, 2021, broke the implementation down into 2 phases. Phase 1 would have two
6 parts and the first part would focus on the delivery of SuiteSuccess for Wholesale Distribution,
7 which would include a warehouse management system (Store only), Project Management,
8 Advanced Financials and Payroll. Mr. Landsberg explained that this would be the ERP portion
9 of the implementation. The second part of this first phase would be SuiteSuccess for
10 eCommerce, which would include a website, a business-to-business portion, a connector for
11 vendors provided by SPS, and support for NetSuite partners which included Solupay (credit
12 card processing), Vend (POS) and Appficiency (job costing). Oracle promised that both facets
13 of this Phase I would "go live" within 5 months after contract execution. A second phase would
14 then follow after the "go live" date, which would include warehouse set up, rebates, and other
15 functionality. During this meeting Mr. Bratton repeatedly emphasized that cost was very
16 important to RSI and that RSI wanted one price, which would be "all in" and that there would
17 be no hidden costs. During the meeting Mr. D'Amato made it clear that all of the features and
18 functionality that RSI sought in the solution would be included in the proposed pricing and there
19 would be no other hidden costs, and that the price was fixed. On information and belief, at the
20 time that Mr. Landsberg and Mr. D'Amato made these representations they knew them to be
21 false.

22 44. In a follow-up email Mr. Landsberg sent a copy of the presentation given by
23 Oracle at the February 18th meeting. The document was entitled "NetSuite & River Supply Inc.,
24 Solution Recommendation". Page 4 of the document identified certain recommended Oracle
25 partners including Vend, SPS, Solupay, and Appficiency. The document also contained a
26 drawing showing data flowing from RSI's suppliers Orgill and House Hasson to SPS and then
27 on to the "single unified data source" of Oracle NetSuite, which clearly indicated that Oracle
28 knew the importance of getting the data and images from RSI's suppliers into the integrated

1 NetSuite system. In addition, Page 19 of the document set forth a schedule for Phase I, which
2 was consistent with the promises Mr. Landsberg made during the meetings of a “go live” date
3 within 5 months of contract execution. Page 45 discussed the SuiteCommerce implementation
4 scope and represented that the website would go live within approximately 5 weeks once work
5 began on the site. All of this was included in Phase I of the implementation, which was to be
6 completed by September 1, 2021.

7 45. During the February 17th and 18th meetings, Mr. Landsberg represented that the
8 Oracle professional services team would act as the Project Manager and would coordinate the
9 work of the third party trusted Oracle partners to ensure that the work was done in a timely
10 fashion and that the project remained on track. Mr. Landsberg also represented that the
11 recommended Oracle Partners, including Vend, were well known by Oracle and had multiple
12 successful outcomes on similar projects, for implementations for retail customers like RSI with
13 large catalogs of items for sale from their suppliers. On information and belief, at the time Mr.
14 Landsberg made these representations he knew that they were false, and there was no proven
15 track record on complex implementations similar to RSI in the retail industry with these
16 recommended Oracle Partners. On information and belief, neither Oracle or Vend had
17 experience with automatic updating of product images form a large product catalog such as the
18 ones used by Orgill and House Hasson. Instead, they were trying to engineer this technology
19 and planned to use RSI as their Guinea pig. In fact, in an email from Orgill towards the end of
20 the failed implementation, Orgill represented that it had over 40,000 images in its catalog and
21 wanted to know what Oracle’s track record was connecting those large quantities of images
22 from a supplier to a retailer through its solution. Orgill also noted that other ERP software on
23 the market had such functionality (i.e. ECI Spruce) as those solutions were successfully working
24 with Orgill to provide automatic updating of images. Mr. Landsberg made the representations
25 about the automatic updating of images and purchase orders knowing they were false and with
26 reckless disregard for the truth in order to induce RSI to enter into the Oracle Contract, because
27 he knew that RSI was hesitant to have NetSuite bring in so many third-party partners, and he
28 wanted RSI to believe that Oracle had successfully managed similar projects with these exact

1 same Oracle Partners, and that Oracle could do so again on the RSI retail project and deliver all
2 the functionality that RSI required.

3 46. On February 19th Mr. Landsberg sent Mr. Bratton a new email which included
4 new pricing. Mr. Landsberg explained that “3 weeks ago when we presented pricing the list
5 price was \$90K for Software (Presented in Right-hand Column) and is now \$121K. This is
6 because we have added Warehouse Management, Project Management, and Advanced
7 Financials (Project Billing) as modules since then after the Alignment meetings.” Referring to
8 RSI’s flow chart and the various meetings between the parties, Mr. Landsberg then represented
9 in his email that “[t]he software costs now consist of all of the things that you outlined as
10 **needed** and the timing works out well with our end of quarter being next week so we have been
11 able to pull some strings on additional discounts to get the cost discounted all the way down to
12 \$60K! We are pleased with this because we actually went DOWN \$12K from our initial pricing
13 we shared but increased the software by about \$30K.” Mr. Landsberg explained that he was
14 able to offer a more aggressive discount as February 28th was Oracle’s end of quarter, and that
15 by including Advanced Customer Support (“ACS”) Oracle was able to “discount ~\$30K off of
16 the implementation because our Professional Services team is willing to cover that ACS
17 expense to ensure long-term customer success.” He concluded that “[w]e understand the
18 Implementation/Training and Support costs are probably big and scary but you will be left with
19 a much more reasonable expense for just the software moving forward.”

20 47. During an online meeting on February 24th, Mr. Landsberg of Oracle reiterated
21 Oracle’s promise that RSI would be able to “go live” with Phase I of the solution within 5
22 months after execution of the contract. Mr. Landsberg again affirmed to Mr. Bratton and his
23 team that the final pricing that Oracle would propose for the solution, would be “all in” and that
24 there would be no additional or hidden charges. During the meeting Mr. Landsberg was
25 adamant that NetSuite could provide all of the functionality requested by RSI for the final price
26 proposed. The “go live” date, the fixed price promise, Oracle’s representations that it had
27 worked successfully with the Oracle Partners on similar retail projects, along with Oracle’s
28 representations that it could deliver all of the features and functionality that RSI required were

1 material inducements for RSI to enter into the contract, and RSI would not have contracted with
2 Defendants had it known that Oracle and the Oracle Partners did not have a comprehensive and
3 existing solution with those features and functionality, at a fixed price, which could go live
4 within 5 months of contract execution. On information and belief, at the time that Mr.
5 Landsberg made those representations he knew that they were not true and made the
6 representations solely to induce RSI to enter into the contracts, so that he could notch a sale and
7 obtain a commission.

8 48. In a February 24, 2021 meeting with Mr. Landsberg and Mr. Richard Gardener of
9 Oracle and Mr. Nolan of RSI, Oracle represented that its NetSuite solution had all the qualities
10 of RSI's existing Salesforce CRM software, and could replace it with no loss in functionality,
11 and would be an even better solution as it would integrate with all the other modules of NetSuite
12 that RSI was buying. These representations turned out to be false and NetSuite did not natively
13 contain the functionality that Mr. Landsberg and Mr. Gardener had promised. Although Mr.
14 Gardener tried during implementation to do some "work around" that would provide the
15 promised CRM functionality the work around failed, and Mr. Gardener eventually left NetSuite.
16 Other NetSuite implementation members attempted to deliver the functionality but they too
17 failed, and this part of the promised solution never actually worked either.

18 49. Also on February 24, 2021, in a follow-up email to Mr. Bratton, Mr. Landsberg
19 changed the pricing structure once again and claimed that if RSI didn't move fast and accept the
20 offer that the aggressive discounting would go away. Mr. Landsberg explained that Oracle was
21 giving its best price and that Implementation/Training/Support would be \$92,600.00, the
22 Software would cost \$42,588.00 for a total price in year one of \$130,088. Mr. Landsberg
23 claimed that this was a savings for year one of \$143,794, or a total discount of 65%. The annual
24 renewal cost of the software after the first year would be \$42.5K which would include a 1%
25 renewal cap. Mr. Landsberg attached to his email a spreadsheet showing that the
26 implementation costs were a "fixed bid", which included all of Oracle's implementation work
27 for ERP, WMS, ACS, Payroll and the eCommerce modules. No other implementation costs
28 were listed for years 2-5. Likewise on the spreadsheet, Mr. Landsberg provided implementation

1 costs for the Oracle partners, which totaled \$8,175. No other implementation costs were listed
2 for years 2-5. Mr. Landsberg provided the pricing for Oracle and its Oracle Partners on a
3 spreadsheet in a way so as to lead RSI to believe that Oracle was putting in pricing for the entire
4 project, including for the Oracle Partners. Mr. Landsberg concluded by claiming that “I’ve been
5 here for 3 years and have never been in a deal with this discount level” and that “if pricing is a
6 concern this is the best opportunity I have seen”. Mr. Landsberg stated that RSI was “welcome
7 to pay money up-front” but he would “need to know by tomorrow morning what [RSI would]
8 like to put down.” He concluded that “[n]ot to be a used car salesman but I know for sheer fact
9 that we are going to lose a significant portion of these discounts on Monday because of expiring
10 promos we have. If this new pricing works for you guys and if you think it’s the right solution
11 like we do, I need the thumbs up so I can sprint at this approval process and have docs signed by
12 Friday.”

13 50. On February 25th Mr. Landsberg sent the RSI team an email containing a zip file
14 of what he represented were the contract documents. According to Mr. Landsberg’s email,
15 “[a]ttached is a Zip File with copies of the contract documents that were sent to @Chad via
16 Docusign. He will execute everything electronically.” The SSA and the PS Terms were not
17 included as PDFs in the zip file. In a follow-up email to Mr. Landsberg, Mr. Rohrbach asked
18 “will the NetSuite Partner costs (Appficiency, Vend POS, etc.) and corresponding SOW be
19 provided in another document?” Mr. Rohrbach’s question evidences RSI’s belief that Oracle
20 was putting together one integrated package for the entire solution, which included proposals
21 from the Oracle Partners, which Oracle had provided pricing for and had brought into meetings
22 and demonstrations. Indeed, as Mr. Bratton noted in a February 11, 2022 email a year into the
23 project: “Also your add ons, your boy Troy sold us. Is the responsibility of your salesmen
24 selling something that’s does not work. Troy sold the items, gave us the prices. The add ons
25 companies did not give us prices directly your boy Troy did. Your company before adding
26 something should know how it works. You or Ben do not even know how this will work all
27 together. You have to many hands in the cookie jar trying to figure out how it all works together
28 and not one person on your team gets it 100% how all things are to work together.”

The DocuSign Agreements

1
2 51. In reliance on Oracle's representations concerning the fixed price nature of the
3 professional services contracts, the promised "go live" date, and Oracle's representations that
4 the NetSuite solution could do everything RSI asked for, and was a one stop software solution
5 that would house the financial, eCommerce, WMS, POS, and EDI solutions that RSI currently
6 performed with multiple software vendors (i.e. , all of the features of Quickbooks Desktop
7 Enterprise, Sage 100 and ECI Spruce) all in one integrated solution with all the current features
8 of RSI's then current software included, and that Oracle and the recommended partners had
9 created similar solutions for complex retail customers like RSI, RSI executed the DocuSign
10 agreements.

11 52. Oracle submitted several contract documents to RSI via DocuSign for signature.
12 RSI is a very small company and does not have a legal department. Nor did it retain outside
13 counsel to review the DocuSign agreements. Mr. Chad Rohrbach of RSI executed the
14 agreements on February 26, 2021 via the DocuSign links shared by Oracle. The SSA was not
15 presented as an executable PDF. Nor were the PS Terms.

16 53. The documents delivered via DocuSign included two Estimate Forms and two
17 Fixed Price Statements of Work. The first Estimate Form number 809145 and dated January
18 17, 2021 ("NetSuite SuiteSuccess Manufacturing Solution") described the main cloud product
19 as a 12-month subscription for the "NetSuite SuiteSuccess Manufacturing Std. Cloud Service".
20 The subscription services in addition to Manufacturing, which were included, included a 12-
21 month subscription for NetSuite Project Management, Financial Management, WMS,
22 SuiteCommerce Webstore, SuitePeople Payroll, and 12 months of support, among other things.
23 Also included was an implementation fee for professional services. Attached hereto as Exhibit
24 4A is a true and correct copy of Estimate Form number 809145 ("Estimate Form 1"). The
25 second document included with the DocuSign submission was Estimate Form number 822038
26 dated February 18, 2021 ("NetSuite ACS Optimize"), which was for advanced customer
27 support. Attached hereto as Exhibit 5 is a true and correct copy of Estimate Form number
28 822038 ("Estimate Form 2"). Estimate Form 1 and Estimate Form 2 are referred to collectively

1 herein as the “2021 Estimate Forms”. The fourth and fifth documents submitted for signature
2 via DocuSign were two Fixed Price Statements of Work (“Fixed Price SOW” or “SOW”) for
3 professional consulting services, which governed the implementation portion of the contract and
4 were for a fixed fee. Attached hereto as Exhibit 6A is a true and correct copy of the first SOW
5 for SuiteSuccess Manufacturing Standard and Warehouse Manufacturing System (“SOW 1”).
6 Attached hereto as Exhibit 7A is a true and correct copy of the second SOW for SuiteSuccess
7 Payroll (“SOW 2”). SOW 1 and SOW 2 are referred to collectively as the “2021 SOWS”. With
8 the exception of a financing agreement with Oracle Credit Corporation (“OCC”) that we discuss
9 below, no other agreements were sent to RSI via DocuSign for signature on February 26, 2021.
10 Mr. Rohrbach signed the 2021 SOWs and the 2021 Estimate Forms via the DocuSign links
11 believing that these were the only four governing agreements.

12 54. In addition to the four contracts attached as Exhibits 4 through 7, RSI also signed
13 a financing agreement with OCC, which provided for 10 payments of \$11,306.04 for Oracle
14 Consulting and Cloud Services commencing April 2021 and ending February 1, 2022 and 6
15 payments for \$ 3,966.67 for Advanced Customer Support (“ACS”) commencing September
16 2021 and ending February 1, 2022. The payments on the ACS were to commence in
17 September, as that was the “go live” deadline promised by Oracle and relied upon by RSI, and
18 that would be when the ACS support would first be needed.

19 **OAI’s Hidden Agreements and RSI’s Lack of Consent**

20 55. However, unbeknownst to RSI, on page 5 of Estimate Form 1 under a heading
21 entitled A.1 Agreement, OAI included a disguised hyperlink to a June 1, 2020 Subscription
22 Services Agreement (“SSA”)¹. Attached hereto as Exhibit 4B is a true and correct copy of the
23 SSA from Oracle’s website, which SSA was never received from Oracle by RSI. The link was
24 not set off in bold or a different color or presented in any way that would draw attention to it or
25 that would indicate it was a hyperlink. Only by hovering a cursor over the URL could a reader
26 see that it was a clickable hyperlink. On information and belief, even had one clicked on the

27 _____
28 ¹In September 2022 when RSI first learned through counsel of the existence of the SSA, that particular version could
no longer be accessed through the link and had to be found in an archived version located at a different location on
Oracle’s website.

1 hyperlink, it would not have taken the reader to the Subscription Services Agreement. Instead,
2 on information and belief, the reader would have been taken to a confusing page on Oracle's
3 website entitled "Oracle NetSuite Cloud Services Contracts". Attached as Exhibit 8 is a true
4 and correct PDF copy of that web page from the Wayback Machine downloaded on March 22,
5 2023, showing this page on Oracle's website as of March 7, 2021. On information and belief,
6 the reader would then be presented with 4 different options, including a section for Cloud
7 Service Contracts, Cloud Services Subscriptions, Cloud Services Contract Terms, and Cloud
8 Delivery Policies. On information and belief, assuming that the reader clicked on Cloud
9 Service Contracts, it would be taken to a new page with a confusing menu of 13 additional
10 agreements, addendums, and additional terms. Attached hereto as Exhibit 9 is a true and correct
11 copy of that webpage from the Wayback Machine downloaded on March 22, 2023, showing this
12 webpage on Oracle's website as it existed as of May 21, 2021. Only by clicking the link for
13 Subscription Services Agreement would the reader be able to finally access the SSA document.
14 On information and belief, Oracle intentionally tries to disguise the SSA and make it hard to
15 find so that Oracle prospective customers do not find the SSA and request edits, but instead
16 proceed with the Oracle purchase, without making the SSA part of the negotiation. On
17 information and belief, playing "hide the ball" with the SSA is an integral part of Oracle's
18 scheme to defraud its Oracle customers.

19 56. When RSI executed the 2021 Estimate Forms and the 2021 SOWs it was unaware
20 of and had never reviewed the SSA, which contains several one-sided provisions favoring OAI.
21 On information and belief, RSI believes that Oracle intentionally presents the SSA and PS
22 Terms this way to its prospective customers in the hopes that the customer will not read these
23 documents and not realize that they are part of the contract. In fact, the Oracle customers that
24 were also victimized by Oracle's scheme and that have contacted RSI since the filing of RSI's
25 lawsuit were similarly unaware of the SSA and the PS Terms and were fooled by the hyperlink,
26 just as was RSI.

27 57. With regard to the SOW 1 and SOW 2 for professional services, OAI also drafted
28 the documents in such a way as to be confusing and non-transparent, so that there was no

1 meeting of the minds as to what exactly constituted the PS Terms. Oracle never at any time
 2 provided RSI with a copy of the PS Terms for execution with the DocuSign link. Instead, both
 3 2021 SOWs merely referenced the PS Terms vaguely in the first paragraph as follows:

4 “This Statement of Work (“SOW”) describes the professional services (the “Professional
 5 Services”) to be performed by Oracle America, Inc. (“Oracle”) for Customer (collectively
 6 “Parties”) pursuant to the applicable agreement governing Oracle’s performance of
 7 Professional Services (the “PS Terms”) listed below (in order of preference, as
 8 applicable):

- 9 (i) the Professional Services Addendum to the Subscription Services Agreement
 entered by and between the Parties,
- 10 (ii) the separate Professional Services Agreement entered by and between the Parties;
 or
- 11 (iii) if neither (i) nor (ii) are applicable, the Professional Services Agreement found at
www.netsuite.com/termservice (or such other URL specified by Oracle).

12 Once executed by the Parties, this SOW shall be incorporated by reference into the PS
 13 Terms. In the event of any inconsistency or conflict between the terms and conditions of
 14 this SOW and the PS Terms, the terms and conditions of this SOW shall govern with
 15 respect to the subject matter of this SOW only. Capitalized terms used in this SOW shall
 16 have the meaning defined under the PS Terms. This SOW may not be modified or
 amended except in a writing signed by a duly authorized representative of each party. As
 used in this SOW, “You” or “Your” shall refer to the Customer as defined in the
 Agreement.”

17 To this day RSI is not certain which one of the agreements applies. Attached hereto as Exhibits
 18 6B and 6C are true and correct copies of the PS Terms that may apply. The Estimate Forms, the
 19 SOWs, the SSA and the relevant PS Terms, and the OCC Financing Agreement are collectively
 20 referred to as the “Oracle Contract”. RSI continues to dispute that the SSA or the PS Terms are
 21 binding, and in any event they are void and unenforceable for Oracle’s fraud in the inducement
 and negligent misrepresentations.

22 **Oracle’s Material Breaches, Performance Failures and Fraud**

23 58. Oracle breached the SOWs for professional services by failing, *inter alia*, to
 24 implement a workable ERP solution and failing to perform the services in a professional manner
 25 consistent with industry standards, and as was represented by Oracle. From the beginning
 26 Oracle’s professional services team appeared anything but professional. Instead, they were
 27 unprepared and over their heads and did not to have a thorough understanding of their own
 28 technology. Oracle also failed to field a stable team to manage the project, and the team was

1 plagued by high turnover among the Oracle professional staff. For example, in June of 2021, a
2 key member of the Oracle team, Mr. Richard Gardener announced he was leaving NetSuite. It
3 was about that time that RSI learned that the customization prepared by Mr. Gardener for the
4 CRM technology to replace Salesforce would not work. This revolving door of Oracle
5 employees and consultants also included a large number of personnel located outside of the
6 U.S., many of whom were not able to communicate effectively in English. These language
7 barriers among Oracle staff only exacerbated the communication problems and the chaos.
8 Oracle professional staff missed meetings, and often Oracle failed to field the relevant key team
9 members needed for specific meetings. Instead, work would need to be put on hold until the
10 following weeks' meeting. In addition to the missed meetings, Oracle employees also
11 frequently dropped the ball on tasks that had been assigned to them. For example, on multiple
12 occasions although RSI employees had uploaded or transferred data to Oracle, Oracle failed to
13 review or import it. Important emails about the projects from RSI personnel to Oracle would go
14 without response for days. Throughout the project Oracle abdicated its responsibility to manage
15 the third-party Oracle Partners, which Oracle had claimed pre-contract had extensive experience
16 working successfully with Oracle on similar projects involving large retail clients. In short,
17 project management and oversight appeared non-existent. Although Mr. Landsberg had
18 represented that Oracle had a "complete solution" for RSI it most certainly did not.

19 59. Unfortunately, things only seemed to get worse with the passage of time. As the
20 delays continued to mount, RSI became concerned about the slippage of the "go live" date and
21 began sounding the alarm. Oracle professional personnel proved incapable of getting the
22 project back on track, and one "go live" date after another was blown by. In fact, almost twelve
23 months into the project, the solution still was not live. Despite these failures, Oracle mounted
24 an aggressive campaign to get RSI to renew the subscription. After such a significant
25 investment of time and money RSI was loathe to abandon the project. Instead, RSI told Oracle
26 that it would only consider renewing if Oracle could promise that it could deliver a successful
27 ERP solution and provide some type of financial concession due to Oracle's many failures. For
28 several weeks in February of 2022, Mr. Bratton engaged in commercial discussions with Oracle

1 concerning the renewal. From February 1st to February 24th Mr. Bratton, Mr. Buhl the account
2 manager, and later Mr. Buhl's supervisor Mr. Mac Piviroto, and his supervisor Mr. Chris
3 Warfel, engaged in a business discussion concerning the pricing terms of any renewal, including
4 any discounting. As part of these business discussions, Mr. Bratton also requested that Oracle
5 refund the \$23,800 for ACS, which RSI had never used as the solution never went live.
6 Ultimately, Oracle agreed to provide a one-time discount of \$22,851.79 to RSI if it renewed,
7 which Oracle offered to account for unanticipated delays on implementing the SuiteCommerce
8 and Payroll portions of the solution. Oracle also affirmed once again that it could deliver a
9 functioning product, apparently trying to convince RSI to renew for a second year. However,
10 for the first time on February 24, 2022 and without any notice beforehand, Oracle demanded out
11 of the blue that RSI sign a settlement agreement in order to get the discount, which included a
12 very broad release of all past, present, or future claims. Prior to this time there had been no
13 understanding that the parties were engaging in confidential settlement discussions, so as to
14 protect any such communications with the settlement privilege. Instead, it was simply a
15 commercial discussion between the Oracle business and Mr. Bratton. RSI declined to sign such
16 a release, thereby preserving its claims. While the parties were discussing the renewal, Oracle
17 turned off RSI's access to the sand box and threatened not to renew the discounted agreement at
18 all if RSI did not capitulate and sign the settlement agreement. By these actions and other,
19 Oracle violated the covenant of good faith and fair dealing inherent in the Oracle Contract.

20 60. Oracle also never approached the project in an organized and coherent manner,
21 which is expected for a project manager. As a result, NetSuite blew past one "go live" date
22 after another, including, August 2021, June 1, 2022, October 1, 2022, November 1, 2022 and
23 January 1, 2023. RSI pointed out Oracle's failures in both oral and written communications
24 throughout calendar year 2021 and 2022. Unfortunately, Oracle failed to correct the problems
25 and never delivered a working solution.

26 61. Ultimately given the many problems with the project, on November 14, 2022 via
27 letter, RSI provided Oracle with a notice of breach and 30-days to cure. Attached hereto as
28 Exhibit 10 is a true and correct copy of the letter. Upon the expiration of the 30-day period on

1 December 14, 2022, RSI extended the cure period provided that Oracle could make firm
2 commitments on a first quarter “go live” date. Instead, of making such a commitment and
3 effectuating a cure, Oracle came back yet again with a request for an expensive change order.
4 By mid-January, 2023, it was abundantly clear that Oracle could not cure its breaches, and RSI
5 terminated the contract on January 18, 2023. Attached hereto as Exhibit 11 is a true and correct
6 copy of the letter terminating the Oracle Contract.

7 **Oracle Failed to Adequately Manage the Project**

8 62. In addition to the incompetence of the Oracle professional services team
9 themselves in providing their own services, Oracle completely failed to manage the work of the
10 Oracle Partners. Although Oracle represented that its SuiteSuccess product only needed minor
11 tweaks by its knowledgeable team and trusted Oracle Partners to customize the solution for RSI
12 and that it could do so quickly, the reality was much different. For example, in his email dated
13 February 15, 2021, Mr. Landsberg included a “flow chart” prepared by RSI and annotated by
14 Oracle to show the functionality that RSI required in the final product and identifying what was
15 an Oracle existing product, an Oracle add-on product, or functionality provided by third-party
16 Oracle partners. Exhibit 3. The parties used the document during their many meetings in
17 January and February as a launching point for the discussions, and discussed the detailed
18 functionality required by RSI under each of the various categories. The vast majority of the
19 attachment was highlighted in green and yellow, which showed that this functionality was to be
20 provided by Oracle, as either an included feature in the base offering or an add on. Only a tiny
21 proportion of the document was highlighted in purple, indicating that the functionality would be
22 provided by a third-party Oracle partner. This third-party functionality included POS, bank
23 payment processing, inventory management, and EDI, among other things. Although Oracle
24 had represented pre-contract that it had worked with these Oracle Partners for other Oracle retail
25 customers similar to RSI, on information and belief it soon became abundantly clear during
26 contract performance that Oracle had not only exaggerated these claims but most likely
27 downright lied.

28 **Point of Sale (“POS’) Functionality**

1 63. Although Oracle had first claimed that it could deliver the total solution through
2 its own technology, by January of 2021 it had changed its tune and began to introduce the idea
3 of bringing in certain third-party Oracle Partners to handle specific pieces of the solution. Mr.
4 Bratton had made it crystal clear from the outset that the POS piece was critical to the project,
5 as RSI Hardware was a hardware retailer with in-store sales. During pre-contract discussions,
6 Mr. Landsberg eventually conceded that the Oracle POS solution, Suite Commerce, was not as
7 robust as required to service RSI's retail needs and provided RSI with other options. Ultimately
8 Mr. Landsberg recommended Vend to provide the POS functionality. On February 17, 2021
9 Oracle arranged for Vend to provide an online demo of its product. During that demo, the
10 product appeared to have all of the functionality that had been promised by Oracle and that RSI
11 required. Vend representatives at the demo also orally confirmed that the solution would meet
12 RSI's requirements and that Vend working with Oracle had successfully delivered the POS
13 functionality to other retail customers with large catalogs of items for sale and thousands of
14 individual SKUs. In reliance on the representations that Vend's solution met RSI's
15 requirements and Oracle's recommendation of Vend, and after learning from Mr. Landsberg
16 and the Vend representatives that the two companies had successfully worked together on
17 similar complex retail and other projects in the past, RSI agreed to select Vend to handle the
18 POS portion of the project.

19 64. As the project progressed it became clear to RSI that Oracle and Vend's
20 representations concerning the capabilities of Vend's product were not true, and Oracle's
21 recommendation of Vend as the POS partner was not working, as Vend's solution was not
22 sophisticated enough to handle the demands of RSI's system. As a result, Oracle's Mr.
23 Worsham in an April 15, 2022 email suggested RSI consider another company, Lightspeed, and
24 Oracle disclosed that its internal team was analyzing the issue and would have a final
25 recommendation soon. In a follow-up email dated May 3, 2022, RSI's Chief Financial Officer
26 Mr. Fred Hansen wrote Oracle's Mr. Worsham about the POS vendor. Mr. Hansen explained
27 he wanted to be transparent and wanted to reiterate that RSI is "in need of a system that will
28 encompass all needs for the retail hardware store. We will need a system that will have a POS,

1 able to transfer inventory, cycle count, receiving, and other normal functions that our sales
2 associates perform. If that is outside of NetSuite, then it would have to be able to communicate
3 with NetSuite, and back to the POS Software.” Mr. Hansen also observed, “*Suite Commerce,*
4 *Shopify, Vend, and the likes seem more suited for smaller flower shops, bicycle shops, and*
5 *mom/pop shops. With an inventory list of over 20k items, we need more of a complete system*
6 *that will encompass all store functions rather than just a cash register platform.”* Mr. Worsham
7 again reiterated that Oracle was looking into the matter and would get back with a
8 recommendation.

9 65. Eventually Lightspeed acquired Vend, and RSI hoped that this would solve the
10 problems so that the POS system could get up and running. Unfortunately, it did not. Although
11 RSI paid Vend \$1,815.60 in year one of the implementation, the POS portion of the solution
12 never worked. Yet despite this failure, Vend came back in 2022 and demanded that an
13 additional subscription payment of \$4,500.00 be made. By the Fall of 2022 it had become
14 abundantly clear that Vend/Lightspeed did not have an existing platform with the functionality
15 that had been promised by NetSuite and Vend/Lightspeed and required by RSI. Although
16 Vend/Lightspeed claimed that it was working hard on the solution, Vend/Lightspeed disclosed
17 that the POS system would not be functional until sometime later in 2023, if ever. Specifically,
18 the Vend/Lightspeed solution recommended by Oracle did not meet key needs of RSI including
19 such things as automatic use of images from NetSuite, employee and other discount
20 functionality, purchase orders, tax exemptions, units of measure, among other shortcomings.
21 When RSI began considering In8Sync to replace Vend/Lightspeed in December of 2022,
22 NetSuite represented that such a change would further negatively impact a first quarter 2023
23 “go live” date, and seemed to infer that Vend/Lightspeed could do the job. This, despite the fact
24 that RSI had recently learned that the Vend/Lightspeed solution would not work with RSI’s
25 payment processing vendor.

26 **Payment Processing Solutions**

27 66. Over the course of the project Oracle recommended several different payment
28 processing companies to RSI claiming that they all worked and integrated neatly into the

1 NetSuite software. This too turned out to be false. The first payment processing company that
2 Oracle recommended was Solupay, which Oracle claimed in pre-contract discussions worked
3 seamlessly with NetSuite. Later after contract execution Oracle changed course and urged RSI
4 to replace Solupay with Worldpay. In an email dated August 22, 2022, Mr. Peter Desimini of
5 Oracle stated unequivocally that he has “reconfirmed Worldpay will work on NetSuite via their
6 certified plugin”. After Oracle’s assurances, RSI invested more time and money in attending
7 meetings with Worldpay only to learn that it would not work with the proposed NetSuite
8 solution when a Worldpay representative contacted RSI via email on August 25, 2022. That
9 email explained that “Worldpay has determined that you [RSI] would need to be on two
10 separate platforms – one for Retail with Vend/Lightspeed, and the other 2 Ecomm accounts on
11 another platform” and that Worldpay’s tech team had determined that WorldPay would not be a
12 “good merchant experience” for RSI.

13 67. On Oracle’s recommendation RSI next selected Windcave for payment
14 processing, only to learn later that Windcave would not work with In8Sys, which was being
15 considered by RSI to take over the Vend/Lightspeed POS piece of the project, when
16 Vend/Lightspeed failed to deliver. RSI spent an additional \$808.70 on equipment for Windcave
17 that did not work with any other POS vendor, which ended up being another waste of RSI’s
18 time and money.

19 **EDI and Connectors**

20 68. Problems with the project continued to mount with Oracle selected partners
21 through the summer and fall of 2022. One massive problem area involved EDI, which is an
22 abbreviation for Electronic Data Exchange. Oracle recommended SPS Commerce, Inc. (“SPS”)
23 to handle the EDI portion of the NetSuite solution. Using EDI, companies send information
24 digitally from one business system to another, using a standardized format. Some of the types
25 of business systems to which EDI can connect include eCommerce solutions, ERP, WMS,
26 CMS, accounting software and more. Using EDI within the NetSuite solution, Oracle and Mr.
27 Landsberg had promised RSI that it would be able to exchange digital information and
28 transactions with other businesses for greater accuracy and speed of communication, including

1 with its suppliers Orgill and House Hasson.

2 69. On or around May of 2022, on Oracle's recommendation, RSI executed a contract
3 with SPS to install and integrate a functioning electronic data interchange and assortment
4 system ("EDI System") within the NetSuite environment to facilitate transmission of digital
5 information in a standardized format between RSI and its vendors. The EDI System is
6 prominently advertised on SPS's website, and Oracle represented that SPS could integrate the
7 EDI System in RSI's environment.² RSI intended to use the EDI System to digitally exchange
8 and synchronize detailed product and inventory information, purchase orders, invoices,
9 advanced ship notices and pictures of all products for the POS and eCommerce platform. The
10 use of the Services was clearly scoped and communicated by RSI, and the installation was
11 managed and planned by Oracle who proposed SPS to provide this functionality as part of the
12 initial Oracle Agreement. On July 1, 2022, SPS provided a total timeline of 16-weeks to install
13 the EDI System. More than one month after the expected deadline, SPS was not even close to
14 producing a working product, stalling out RSI's inventory tracking, inventory replenishment
15 and product flow with its vendors and customers. On December 1, 2022, RSI gave Oracle and
16 SPS one last chance to perform, and they failed.

17 70. Oracle selected SPS to handle the EDI component of the NetSuite
18 implementation, and in pre-contract discussions Mr. Landsberg represented to RSI that Oracle
19 had worked successfully with SPS on complex retail clients similar to RSI. As a connector, the
20 job of SPS was to work closely with RSI's wholesalers and distributors such as House Hasson
21 and Orgill to keep track of product orders, inventory, shipments, etc. As the project manager on
22 the implementation, Oracle was in charge of coordinating and managing the activities of SPS to
23 successfully connect distributors such as House Hasson and Orgill to the solution.
24 Unfortunately, rather than managing the work with SPS so as to keep the project on track,
25 Oracle abdicated its project management duties. In fact, RSI was shocked to learn that as late as
26 July of 2022, Oracle and SPS had failed to connect with House Hasson and Orgill to move

27
28 ² <https://www.spscommerce.com/edi-guide/>; <https://www.spscommerce.com/products/assortment/>.

1 forward on the EDI portion of the project.

2 71. For example, on July 7, 2022, Robert Willette from SPS reached out to Orgill for
3 the first time via email claiming that his “team is working with River Supply to design the
4 solution to collect item data to be stored in NetSuite. River Supply would like to use the
5 attributes/fields that you are currently sending to them as their starting point for the design.
6 Tarry at River Supply has referred us to you. Could you send to me any template(s), list(s) or
7 file spec(s) that show what you are using to send item data to River Supply?” This was the first
8 contact between the companies on the issue, even though Oracle had known for months that the
9 EDI portion of the solution would need to be coordinated, and was critical to the go live date
10 and a functioning solution. Further setbacks occurred when SPS delayed pushing ahead with
11 the project over a \$500 payment dispute with RSI over Orgill, even though RSI had specifically
12 instructed Oracle, SPS and Orgill to move forward and not allow the minor dispute over
13 payment to slow anyone down.

14 72. Oracle and SPS also failed to deliver the assortment planning portion of the
15 solution. Assortment planning is the process of choosing which “assortment” of products to sell
16 during a certain time period, and how to allot those products between different locations and/or
17 sales channels to maximize profits. Traditionally RSI had worked with Orgill and House
18 Hasson on assortment planning. With NetSuite, the aim was to automate these processes and
19 use the solution to analyze data and provide the most effective assortment planning program.
20 But first the data had to be imported into the NetSuite system from Orgill and House Hasson.
21 SPS was the third-party Oracle partner tasked by Oracle with this responsibility.

22 73. SPS dropped the ball when it came to the assortment planning portion of the
23 solution as well, and Oracle only exacerbated these failures by its incompetent project
24 management. RSI observed that both Oracle and SPS did not do their due diligence to ascertain
25 how RSI’s stored data communicated with RSI’s vendors. In addition, although Orgill had
26 provided instructions as early as May of 2022 for how to access the Orgill data, Oracle and SPS
27 delayed for months the data importation. And when SPS finally claimed that it had gotten
28 Orgill’s data into NetSuite, RSI discovered that the data gathering operation had been woefully

1 inadequate and only included 2 items and very little information on the relevant spreadsheet
2 submitted by SPS to Oracle. RSI used its own credentials to log into Orgill's FTP hosting site,
3 where Orgill's data is stored. Within one hour, RSI was able to gather all the necessary
4 information to import 105,000 items into NetSuite. In fact, it was Daniel Jamison and Jeffery
5 Pilkington of RSI who suggested to SPS and Oracle that the data could be easily downloaded
6 via Excel from the FTP server. RSI as the customer should not have been the party who was
7 required to come up with the solution. Yet that was exactly what happened. Oracle failed to
8 oversee SPS to ensure that SPS completed this simple task, on time and with accuracy. This
9 performance failure by Oracle and SPS is just one of many examples.

10 74. Oracle continued to mismanage the implementation of the solution, and SPS
11 continued to be the bottle neck for the assortment planning portion of the solution throughout
12 October and November, 2022, by failing to complete the design, including the mapping for the
13 inbound and outbound portions of the tool connecting RSI data hosted by Orgill through SPS
14 and into NetSuite. Mr. Landsberg of Oracle had represented to Mr. Tarry Bratton in pre-
15 contract discussions on at least October 5, 2020, January 12, 2021, January 19, 2021 and
16 February 17th and 18, 2021 that the product would seamlessly integrate with NetSuite just as it
17 was working with RSI's then current solution, ECI Spruce. Mr. Landsberg had represented that
18 the data transfer would be automatic and update pricing, pictures, and product descriptions to be
19 used for the ERP, POS, and eCommerce platform automatically. But Oracle and SPS
20 completely bungled this part of the project and failed to deliver. Instead, SPS attempted to
21 upcharge RSI for additional work to make the solution function. SPS also was responsible for
22 the delays with House Hasson and admitted as late as November 2022 that SPS had not yet
23 begun work with that company to connect and import the relevant data into NetSuite. All the
24 while Oracle sat on its hands and failed to manage the project and get SPS back on track.
25 Instead, as discussed below, Oracle sought to charge RSI for an expensive change order to
26 provide the automatic updating functionality for RSI's distributors that it promised was included
27 pre-contract.

28 **The Renewal Shakedown**

1 75. By January of 2022 with the time for renewal rapidly approaching, the Oracle
2 ERP Product was still not live. However, this did not prevent RSI's Account Manager for
3 Oracle, Mr. Ben Buhl, from pressing RSI to renew. In late December and again in January, Mr.
4 Buhl contacted RSI about renewing NetSuite. Mr. Buhl offered a 10% discount, if RSI renewed
5 immediately, but he stated that he did not know if the discounts would be available if RSI did
6 not renew by the end of January. Mr. Bratton responded that he needed more time to discuss
7 the issue of the renewal internally, but he hoped that Oracle would offer larger discounts given
8 all of the problems that had occurred with the implementation. From February 1st to February
9 24th Mr. Bratton, Mr. Buhl and later Mr. Buhl's supervisor Mr. Mac Piviroto, and his
10 supervisor Mr. Chris Warfel, engaged in a business discussion concerning the pricing terms of
11 any renewal, including any discounting. As part of these business discussions, Mr. Bratton also
12 requested that Oracle refund the \$23,800 for ACS, which RSI had never used as the solution
13 never went live. On information and belief, part of Oracle's scheme is to sell its customers the
14 ACS knowing that it will never be used because the project will not go live within the
15 timeframe promised by Oracle. On information and belief, the sale by Oracle of ACS is hugely
16 profitable and is a major part of Oracle's NetSuite scam. A February 10, 2022 email from Mr.
17 Bratton to Oracle's Mr. Buhl is instructive: "This ACS stuff is an issue. We complained right
18 after we signed that you are charging us money for and extra that was not included. We asked
19 100 times what extra cost we will have before we signed and I have in writing nothing. We did
20 not want extra costs or hidden cost. So what happen is they got Chad, that does not have a clue
21 on what he was signing. The support was to be free for a year. I'm not happy with your tactics."
22 However, rather than simply refunding the ACS payment and discounting the renewal to
23 account for the issues that RSI suffered, and the fact that it could not use the ACS because the
24 project never went live, Oracle instead switched gears and on February 24, 2022, Oracle's Chris
25 Warfel inserted into the conversation without warning that any discounted renewal would be
26 contingent on RSI signing a settlement agreement with a release of all claims past, present and
27 future. In a March 1, 2022 email Mr. Warfel noted that " the renewal estimate and settlement
28 are a package", again conditioning the discounted renewal on the execution of the settlement

1 agreement. Later when RSI refused to sign the settlement agreement, Oracle turned off RSI's
2 access to the sandbox and took other steps to block RSI and the Oracle Partners access to
3 NetSuite, which further damaged RSI.

4 **Oracle Still Could Not Deliver the POS Solution it Promised in 2021**

5 76. During the renewal discussions Mr. Bratton repeatedly brought up the issue of
6 RSI's need for a working POS system and Oracle and Vend's failure to provide the required
7 POS functionality as represented. Mr. Bratton made it clear that it was Oracle's responsibility
8 to figure out a solution that would include such functionality as Oracle had promised that it and
9 its Oracle Partners could deliver a working solution, including a POS module, in the pre-
10 contract discussions. Instead of stepping up to the plate and delivering the solution, Oracle
11 began talking about needing to "scope" the POS project so that it could deliver new pricing (i.e.
12 a change order). This was quite surprising to RSI as RSI believed that Oracle had thoroughly
13 "scoped" the project during the detailed pre-contract discussions in January and February of
14 2021, on which Oracle based its proposal.

15 **Oracle Fails to Cure its Breaches**

16 77. By the last quarter of 2022, with the slippage of yet another "go live" date rapidly
17 approaching, it was no secret that RSI was dissatisfied with the lack of progress made by Oracle
18 and the fact that the solution was nowhere close to where it needed to be in order to be useable.
19 As a result, on November 14, 2022, RSI sent Oracle a breach letter and a 30-day cure notice.
20 Exhibit 10. The 30-day cure period expired on December 14, 2022 without Oracle curing its
21 breaches. RSI agreed to extend the cure period, provided that Oracle could meet the go live
22 date of January 1, 2023. Instead, the Oracle team went on Christmas holiday, and the January
23 1st "go live" data passed as well.

24 **Oracle Begins Claiming That Promised Features Are Out of Scope and Demanding** 25 **Expensive Change Orders**

26 78. Oracle sought change orders throughout the project for functionality that it had
27 promised RSI was included in the fixed price bid during pre-contract discussions. For example,
28 in April of 2022, Oracle also sought to inflate the contract price through proposing change

1 orders for a customization relating to tally scanning and bin processing, which was functionality
2 that had been promised in the original Oracle Contract. In addition, after Vend failed to deliver
3 on the POS solution that Oracle had promised, in March of 2022 Oracle declared that RSI
4 would need to agree to a change order for Oracle to perform the work, which would need to be
5 scoped. This surprised RSI as RSI had believed that Oracle scoped the POS project in January
6 and February 2021, prior to contract execution in order to prepare its proposal and to promote
7 Vend as the chosen Oracle Partner for POS.

8 79. Although Mr. Landsberg promised RSI in pre-contract discussions that NetSuite
9 had the same ability to show and automatically update inventory as RSI's then current solution
10 ECI Spruce, the reality was much different. In November and December of 2022 Oracle
11 attempted to use its misrepresentation about the automatic updating functionality as a vehicle
12 for attempting to extract an expensive change order in order to further inflate its profits.

13 Although SPS could pull catalog images of items for sale from Orgill and House Hasson, the
14 images were in URL format. The NetSuite Solution could not process these URLs. Instead,
15 Oracle requested that RSI's suppliers, including Orgill, turn every URL into a static image so
16 that RSI could upload those images into the NetSuite system. Orgill told RSI and Oracle that
17 this would never work as Orgill had over 70,000 separate images in its catalog, including
18 multiple images for some items. And Orgill explained that approximately 7,000 of those
19 images changed each year. Using Oracle's system there would be no way to tell if an item from
20 Orgill's catalog changed and the image could not be automatically updated. Everything would
21 need to be manually updated and the manual updating would take an exorbitant amount of time
22 and money. In fact, Mr. Grant Morrow, Program Director at Orgill expressed disbelief about
23 Oracle's clunky and inefficient system and wondered in a December 1, 2022 email "has
24 NetSuite integrated to a distributor before" and "what capabilities does NetSuite have in taking
25 a catalog feed from a distributor (like we are providing) to use on a retailer website?". Oracle
26 never answered these questions, but instead switched gears and claimed that its basic
27 SuiteSuccess eCommerce product did not have the functionality to manipulate such images, and
28 that to do so RSI would need a license to the more expensive SuiteCommerce Advanced

1 Software, with additional customizations that would add further to the price of the contract.
2 Oracle proposed a change order to provide this functionality. This once again displayed the
3 dishonesty of Oracle's fixed price promises about the implementation and the functionality that
4 it could deliver. Time and time again during the lead up to contract execution RSI had
5 emphasized the importance of the automatic updating technology and had been assured that it
6 was included and would work just like it did in ECI Spruce. This was false and one of the last
7 straws to break the camel's back. Moreover, by this point in the project, RSI was skeptical that
8 Oracle had the technology to successfully implement this functionality at all, and it was
9 concerned that it would only be throwing more good money after bad, if it agreed to the Change
10 Order.

11 80. So rather than buckling down and doing the work necessary to implement the
12 solution, in December 2022, Oracle began backing away from its fixed price implementation
13 contract once again, and suddenly began claiming that work, which was in scope, was somehow
14 now out of scope and would require an expensive change order. RSI is informed and believes
15 that this is a tactic that Oracle has deployed on other customers as well. For example, although
16 Oracle had claimed that the contracts were for a fixed price, on December 19, 2022, it submitted
17 a change order to upgrade NetSuite SuiteCommerce Standard ("SA") webstore to a
18 SuiteCommerce Advanced ("SCA") instance at a price of \$24,900.00. Oracle contended that
19 RSI needed to purchase the advanced product to get the image updating functionality that it
20 desired. Functionality that Mr. Landsberg represented in meetings in January and February
21 2021 as being included in the solution sold to RSI by Oracle.

22 81. Although RSI allocated hundreds of hours of staff time to the project and paid
23 Oracle every penny under the contracts, including for a subscription that never went live, RSI
24 received nothing of value in exchange. Twenty-four months after contract execution, and after
25 payments to Oracle totaling \$139,567.32, Oracle still had not produced a working solution.

26 82. Indeed, the fixed price contract that Oracle promised involving itself and its
27 Oracle Partners was not fixed price. Moreover, for several of the Oracle recommended partners
28 such as Appficiency, RSI paid fees in both 2021 and 2022 for services that were never provided

1 because the system did not go live. And for other third-party Oracle partners such as SPS,
2 Vend, Lightspeed, In8Sync, Appficiency, Windcave and Worldpay, the actual fees charged
3 were well in excess of what Oracle quoted prior to contract execution. On information and
4 belief, at the time that Oracle's Mr. Landsberg and Mr. D'Amato represented that the price for
5 Oracle's professional services and the third-party partners would be fixed, Mr. Landsberg, Mr.
6 D'Amato and Oracle knew that the statements were false. Mr. Landsberg intentionally made the
7 representations in an attempt to mislead RSI and induce RSI to enter into the contracts, so that
8 Mr. Landsberg and Mr. D'Amato could make a sale and thereby gain a big commission, before
9 Oracle's quarter-end of February 28, 2021. On information and belief, at the time they made
10 these representations, Mr. Landsberg and Mr. D'Amato knew that Oracle's playbook included
11 using change orders and escalation teams to inflate the contract price, and that the price would
12 not actually be fixed. In addition, on information and belief, at the time Mr. Landsberg
13 provided the pricing for the Oracle Partners as being fixed, he had no authority to make such a
14 representation. But he did so any way to close the sale. In addition, on information and belief,
15 when Mr. Landsberg quoted the fixed prices via email for the Oracle Partners on February 24,
16 2021, he knew that Oracle had no control over the prices of the Oracle Partners, but he provided
17 the pricing in a way that was intended to mislead RSI into believing that Oracle had assembled a
18 complete package at a fixed price, and that this included fixed prices for the Oracle Partners.

19 **Oracle Has an Unfair Business Practice of Bidding the Project Low with the Intention of**
20 **Inflating the Contract Price Through Change Orders**

21 83. RSI is informed and believes that Oracle has an unfair business practice of
22 promising customers an ERP solution that does not exist, bidding the project low and then
23 trying to inflate the contract price through change orders during contract performance. On
24 information and belief this scheme has been practiced on many Oracle/NetSuite customers,
25 including RSI. Since filing this litigation, RSI has been contacted by multiple dissatisfied
26 Oracle customers that have claimed they were deceived by the same unfair and fraudulent
27 business practices as Oracle deployed against RSI. Several have inquired as to whether there is
28

1 a class action for them to join. Like the facts asserted in other court cases filed against Oracle
2 arising out of failed Oracle ERP implementations, these are yet other examples of Oracle
3 misrepresenting the capabilities of its products and/or the qualifications of the assigned team to
4 induce unsuspecting customers like RSI to enter into ERP agreements with Oracle. Oracle also
5 stands accused by other customers of low balling its offer to get the contract, and then jacking
6 up the price of the contract with change orders after execution. And RSI knows from the
7 lawsuit of a whistle blower and former Oracle employee, Mr. Daramola, that Oracle deploys
8 these unfair business practices across product lines and is engaged in a massive and systematic
9 fraud against their ERP customers.

10 84. In *Daramola v. Oracle America, Inc.*, Mr. Daramola was an Oracle Canada
11 employee who lived and worked in Montreal, Canada and served as an Oracle project manager
12 for Oracle's Campus Bookstore customers, including customers located in the United States. In
13 his Complaint, Daramola detailed an alleged Oracle unfair business practice of intentionally
14 misrepresenting to Oracle's University customers that the company had a fully developed,
15 integrated system for an online campus bookstore that could be customized and would be ready
16 to "go live" quickly. Mr. Daramola described a practice where Oracle sales teams included
17 various modules in Estimate Forms, which they represented were then currently existing, and
18 promised that by purchasing the combination of the various modules recommended, the
19 customer would be getting a solution that met all its requirements. According to the Complaint
20 NetSuite sales personnel "sold the customer a menu of 'al a carte' subscription modules" and
21 "[e]ach subscription module was listed by a part number, implying an existent subscription
22 product". Exhibit 1, ¶¶104, 105. "The menu of modules being sold the customer, however,
23 contained no description of what each module piece being acquired actually did, nor was there
24 any description telling the customer, or even the sale person, how that module would work with
25 other modules to accomplish the functionality of the product demonstrated to the customer."
26 Exh. 1, ¶106. However, in reality according to the Paragraph 115 of Daramola Complaint, no
27 such integrated system existed. Instead, Oracle extracted subscription payments from university
28 customers, all the while stalling the "go live" date while continuing to pocket the money as it

1 frantically tried to develop the solution. According to the Complaint, “[t]he customer would
2 increasingly realize that they could not Go Live on anything, nor customize their ‘software
3 solution’, because there was no ‘solution’ that could go live, nor be customized.” Exh. 1, ¶117.
4 Mr. Daramola also alleged that the Oracle sales team putting together the proposals often had no
5 clue how the technology worked or whether the combination of the modules would actually
6 work. However, the sales teams were putting forth proposals as if the technology was then
7 currently existing. The facts pleaded in the 2022 amended complaint further highlight an
8 alleged pattern and practice under which Oracle promised to customize a non-existent but
9 purportedly integrated cloud system for university clients, then used escalation teams to hold off
10 customers who were making subscription payments for the product and receiving nothing in
11 return. According to the complaint, project managers like Daramola, and “escalation teams”
12 were directed to further mislead customers about the lack of development for the system the
13 customer had supposedly acquired, by for example, blaming delivery delays on the customers’
14 “unforeseen customization requests,” extracting change orders for such “customizations,” then
15 requiring customers to pay more while buying Oracle more time to deliver a functioning ERP
16 product. *See* Exhibit 1. Exactly the playbook Oracle deployed against RSI in this case.

17 85. One of the Defendants in the Daramola Complaint, Mr. Doug Riseberg, was an
18 Oracle employee who was also assigned to the RSI escalation team. In his Complaint, Mr.
19 Daramola details Mr. Riseberg’s role at Oracle as working as a “consulting practice manager”
20 who was “responsible for ‘helping customers get live on the software platform,’ on a product
21 that his team could not deliver.” Exh.1, ¶118. Mr. Riseberg’s job was then to come in and help
22 the customer “close the gap” by selling more SaaS modules and more professional services and
23 making Mr. Riseberg and Oracle richer. Exh. 1, ¶123, 126. “Defendant Riseberg and the
24 services team would explain to the customer that the specific a la carte modules the customer
25 bought did not accomplish the integrated system the customer ‘now’ wanted, shifting blame to
26 the customer for ‘changing their order,’ when in fact, NetSuite was simply unable to deliver the
27 integrated product it sold in the first place.” Exh. 1, ¶124. Mr. Riseberg used this exact same
28 playbook against RSI when he claimed that RSI would need to upgrade to Suite Commerce

1 Advanced and promoted a customization relating to the automatic updating of images, which
2 had been functionality promised to RSI by Oracle during pre-contract discussions.

3 86. Other Oracle customers have complained of the same fraudulent tactics. For
4 example, in 2019, Barrett Business Services Incorporated (“BBSI”) brought a lawsuit against
5 Oracle in San Francisco Superior Court, where BBSI claimed that Oracle over-promised and
6 under-delivered, just like RSI alleges here. According to BBSI, only after it signed a \$15
7 million licensing deal with Oracle and a \$429,268 Statement of Work with Oracle’s integration
8 partner, did BBSI discover that the Oracle HCM Cloud was riddled with design, functionality,
9 interface, integration and performance gaps and that its out-of-the box capabilities would not
10 meet BBSI’s needs. Bridging some of the gaps would take over two years and customization
11 work costing \$33 million rather than the \$5.9 million originally quoted.

12 87. Likewise, in *Janco v. Oracle America, Inc.*, Plaintiff alleged that nearly two years
13 after entering into the NetSuite ERP contract, Oracle had still not delivered a working product.
14 In fact, Janco alleged that an Oracle employee admitted that the system would probably never
15 work. Notwithstanding its massive failures, Oracle still attempted to extract an additional
16 \$40,000 to \$50,000 for further “customizations” out of Janco. And these were customizations
17 that Oracle was required to perform as part of its baseline agreements with Janco.

18 88. *Elkay v. Oracle/NetSuite* is also instructive. Elkay alleged that Oracle/NetSuite
19 promised that they could implement a working ERP system to replace Elkay’s legacy system
20 within 10 months at a cost of \$2.027 million. Elkay claimed that rather than implement the ERP
21 system within the cost and timeframe promised, Oracle began recommending additional
22 customizations and functionality to the tune of almost an additional \$1 million. At the time of
23 filing the complaint, Elkay alleged that it had paid Oracle \$1.282 million, and still owed Oracle
24 an additional \$1.645 million for a product that “does not perform to industry standards, does not
25 address Elkay’s core business processes, and does not meet the specific pre and post agreement
26 representations of NetSuite and Oracle regarding performance and functionality.”

27 89. As RSI’s Complaint and these other cases make abundantly clear, Oracle and
28 NetSuite are involved in a massive fraudulent scheme across ERP product lines to lie to

1 prospective customers about the capabilities of their software and their professional services
2 teams, to low ball bids for ERP projects in order to win the contract, and after contract award to
3 deploy “escalation teams” to concoct excuses to obtain further fees through change order
4 customizations and to further delay delivery of the ERP solution, all the while continuing to be
5 paid under the terms of their one-sided contracts. Because the scheme is so ubiquitous and
6 widespread, it likely emanates from and has the approval of, the highest echelons of Oracle’s
7 management in California, Texas and elsewhere.

8 90. With their unfair and fraudulent business practices, breaches of contract, and
9 other torts, Defendants and each of them, have intentionally, and without justification, caused
10 damage to RSI as described herein.

11 91. RSI seeks restitution and disgorgement of the monies improperly paid to Oracle
12 and its Oracle Partners relating to the NetSuite SuiteSuccess solution and its related
13 Agreements, which Agreements RSI was induced to enter into by Oracle’s material
14 misrepresentations, fraud, and extortionary tactics. In addition to restitution, RSI seeks to
15 recover its other damages, including attorneys’ fees, in an amount to be proven at trial, but
16 totaling in the millions of dollars. RSI also seeks treble damages and attorneys’ fees for its
17 claim under the California Penal Code. Finally, RSI seeks an injunction to stop Oracle from the
18 unlawful conduct described herein and to protect and prevent other Oracle customers from
19 being similarly defrauded by Oracle. Oracle’s actions were willful and unlawful and subject
20 Oracle to exemplary damages as well.

21
22 **FIRST CAUSE OF ACTION**
23 **(Fraud in the Inducement and Promissory Fraud)**
24 **(Against Oracle)**

25 92. RSI realleges and incorporates herein by reference paragraphs 1-91, inclusive, as
26 though set forth in full in this First Cause of Action.

27 93. The misrepresentations made by Oracle include at least the following statements:

- 28 • On October 2, 2020 Mr. Tarry Bratton sent a document to Mr. Landsberg
summarizing RSI’s requirements for the proposed solution (the “Flow of

1 Software”). SAC ¶24. In an email that day, Mr. Landsberg represented that the
2 basic NetSuite solution could “handle the bulk of these requirements right out of
3 the box” but that RSI would need to “separately license things like POS,
4 eCommerce, and possibly Projects depending on how intricate your needs are
5 there.” *Id.* Mr. Landsberg’s statement that the basic NetSuite solution could
6 “handle the bulk of these requirements right out of the box” was false. In
7 reviewing RSI’s detailed summary of what it required from the solution, Mr.
8 Landsberg’s representation that NetSuite could handle the “bulk” of the
9 requirements “right out of the box” was material and it was reasonable for RSI to
10 rely on the representations given Oracle’s superior knowledge of its software.
11 Even setting aside POS, eCommerce and Projects, the NetSuite solution did not
12 meet RSI’s requirements and certainly did not do so “right out of the box”. In
13 fact, after 23 months the solution did not work at all and had never gone live.

- 14 • In an October 6, 2020 and a January 21, 2021 email and in various meetings Mr.
15 Tarry Bratton told Mr. Landsberg that it was important to RSI to see the solution
16 all working together with the required functionality in a demonstration. SAC
17 ¶¶26, 33. Mr. Bratton told Mr. Landsberg via email on October 6, 2020 that if
18 Oracle could not successfully demo the product with the required functionality
19 that he wanted a deal that he could get out of if the product ultimately did not
20 work. SAC ¶ 26. On October 7, 2020 Mr. Landsberg responded to Mr. Bratton
21 that he wanted more follow-up with RSI so that Oracle could “make sure we’re
22 presenting what you are getting” in the solution. *Id.* Ultimately on January 25,
23 2021, Mr. Landsberg announced that rather than one lengthy demo, Oracle would
24 break the presentations down into separate demos focusing on specific areas of
25 functionality such as Website, ERP, Payroll, Warehouse Management, etc. SAC
26 ¶34. On information and belief, Mr. Landsberg did this to attempt to disguise the
27 fact that the functionality that he had represented as existing did not actually exist
28 in one integrated solution. Mr. Landsberg demonstrated different portions of the

1 solution in meetings on February 1, 2021 (attended by Joe Nolan, Tarry Bratton,
2 Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben
3 Gibson, Dan D'Amato, and John Barbera of Oracle) SAC ¶35; February 11, 2021
4 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell
5 and Dan Jamison of RSI and from Oracle, Troy Landsberg, Dan D'Amato,
6 Stephane Azolay, John Barbera, Rob Krajci, and representatives from
7 Appficiency) SAC ¶39; and February 17, 2021 (from RSI, Joe Nolan, Tim and
8 Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy Landberg
9 and Dan D'Amato in person and Ben Gibson, Stephane Azolay, Rob Krajci, Leo
10 Tuzzo, John Barbera via Zoom. Representatives of Vend also participated in the
11 Vend demo) SAC ¶42. Mr. Landsberg also represented in a February 10, 2021
12 email that he would tie up the entire solution in a final demo the following week.
13 SAC ¶¶40, 41. Although the demos appeared to show that all of RSI's required
14 functionality currently existed, on information and belief in reality the solution
15 did not exist as represented. SAC ¶42. RSI relied on the demos and Mr.
16 Landsberg's and Mr. D'Amato's representations that Oracle and its chosen Oracle
17 Partners had a complete solution. SAC ¶40. Oracle's representations were
18 material and RSI would not have entered into the contract had it known that the
19 solution did not actually exist, and that Oracle and its Oracle Partners could not
20 deliver the functionality that they had represented existed. *Id.* RSI's reliance on
21 the demos was reasonable. RSI was damaged by Oracle's misrepresentations
22 concerning the demos.

- 23 • In an October 6, 2020 email Mr. Tarry Bratton told Mr. Landsberg and reiterated
24 these points orally on later Zoom calls with Mr. Landsberg and Mr. D'Amato
25 including on calls on January 12, 2021, February 11, 2021 and in person on
26 February 18, 2021, that it was important to RSI to have a firm price that would
27 not increase as the cost of the solution was a very important factor for the
28 company. SAC ¶¶26, 30, 33, 43, 45, 46, 47, 49, The representations by Mr.

1 Landsberg and Mr. D'Amato that the contract was a "fixed bid" or "fixed price"
2 contract was material in determining whether RSI would contract with Oracle.
3 Oracle's Mr. Landsberg on October 5, 2020, and later Mr. Landsberg and Mr.
4 D'Amato in meetings on at least January 12, 2021, February 11, 2021 and
5 February 17th and 18th of 2021, promised Mr. Bratton that the price once finalized
6 would be fixed and that there would be no cost increases and no implementation
7 costs except for the first year of the contract. *Id.* These representation were also
8 made in a spreadsheet emailed to Mr. Bratton by Mr. Landsberg on February 24,
9 2021, where the implementation prices were denoted as a "fixed bid". SAC ¶49.
10 In addition, in an email of February 19th after the completion of the various
11 demos, Mr. Landsberg sent a follow-up email stating that "the software costs now
12 consist of everything you outlined as needed". SAC ¶46. These statements were
13 false. SAC ¶81. On multiple occasions during contract performance, Oracle
14 sought change orders (SAC ¶¶76, 78, 79, 80, 83,) for functionality that it had
15 represented to RSI was included in the price, such as the automatic updating of
16 purchase orders and images from RSI's suppliers, and warehouse management
17 related items such as bin location selection and tally scanning, as well as others.
18 SAC ¶¶24-26, 30, 32, 33, 35, 37-43, 45-47, 49, 65, 74. In addition, in the first
19 quarter of 2022 when RSI again informed Oracle that Vend had failed to deliver a
20 working POS solution, Oracle represented that it would need to scope what RSI
21 required for this functionality to provide a price for a change order for Oracle to
22 do the work. SAC ¶¶76, 78. In the February 24, 2021 spreadsheet showing the
23 fixed price contract, Mr. Landsberg had represented that implementation costs for
24 the POS portion was in year one only, and that there would be no such costs in
25 year two or thereafter. SAC ¶78. RSI was also surprised that Oracle would need
26 to scope a project that it had represented that it had scoped in January and
27 February of 2021 before it made its fixed price offer, which included Vend as the
28 Oracle Partner for POS. *Id.* In April of 2022 Oracle also sought to inflate the

1 contract price through proposing change orders for a customization relating to
2 tally scanning and bin processing, which was functionality that had been promised
3 in the original Oracle Contract. SAC ¶¶78. Finally, Oracle sought to inflate the
4 contract price by sending RSI a proposed change order in December of 2022 for
5 the automatic image update functionality that it had represented was included in
6 the price of the original Oracle Contract. SAC ¶¶ 79, 80.

- 7 • In a January 21st email Mr. Bratton again requested to see the solution all working
8 together. SAC ¶¶33. Mr. Landsberg proposed a comprehensive demo of the
9 solution for the following week. In his email, Mr. Landsberg represented that
10 “[a]t the end of the day, NetSuite has a complete solution for River Supply Inc.
11 and we want to prove it, and partner with you”. *Id.* Four days later on January
12 25th, Mr. Landsberg disclosed that rather than one demo, Oracle was changing its
13 strategy and proposing a series of demos to demonstrate the existing functionality
14 of the product. SAC ¶¶34. On information and belief, the reason that Mr.
15 Landsberg proposed a series of demos is that Oracle and its Oracle Partners did
16 not actually have the solution that it represented was then currently existing in one
17 integrated solution. *Id.* The series of demos ran from February 1, 2021 and
18 culminated on February 17, 2021 with the final demo from Oracle and an
19 additional demo from Vend purporting to show the POS functionality of the
20 solution, among other things. SAC ¶¶35-36, 38, 39-40, 42-43. Oracle
21 represented that the demos showed existing technology of Oracle and its Oracle
22 Partners. *Id.* In reality Mr. Landsberg’s representations were false, and on
23 information and belief, the demos did not actually demonstrate an existing
24 technology that could be scaled and rolled out by September 1, 2021 at the price
25 that Oracle and Vend had represented. SAC ¶¶40. Oracle’s representations were
26 material to RSI and RSI relied on Oracle’s representations and would not have
27 entered into the agreements had it known that the technology did not actually
28 exist as Oracle had represented. *Id.* RSI’s reliance was reasonable as it was

1 Oracle as the owner of the software that was in the position to accurately
2 represent the existing functionality of its software and the software of that of its
3 recommended Oracle Partners such as Vend and SPS. RSI was damaged by
4 Oracle's misrepresentations.

- 5 • On January 21, 2021 Mr. Tarry Bratton once again sent Mr. Landsberg the "Flow
6 of Software" document outlining RSI's "must have" requirements, which had
7 previously been presented to Mr. Landsberg as early as October 2, 2020. SAC
8 ¶33. Only two of the items on the list were not "must have" items (customers can
9 view and pay invoices online), which were denoted as functionality that would be
10 "nice" to have. Exh. 2. Mr. Landsberg responded to Mr. Bratton's email on
11 February 15, 2021. SAC ¶41. Using the Flow of Software document provided by
12 Mr. Bratton, Landsberg annotated the document with different colors showing
13 what functionality was included as NetSuite standard functionality (green), what
14 would require the purchase of an additional module from Oracle (yellow), and
15 what functionality was to be provided by an Oracle Partner (pink). Exhibit 3.
16 The vast majority of the "must have" items shown by Mr. Landsberg's color
17 coded annotations were provided by NetSuite either out of the box, or with the
18 additional modules that RSI purchased from NetSuite. Mr. Landsberg's
19 representations concerning what existing functionality was included in the
20 NetSuite solution right out of the box and through the add-on modules was false,
21 and Oracle was never able to deliver the functionality and the solution never went
22 live. SAC ¶¶48, 50, 58-82. Oracle's representations concerning what existing
23 functionality was included in its solution was material, and RSI would never had
24 entered into the Oracle Contract had it known that the functionality did not
25 actually exist. RSI's reliance was reasonable, as Oracle was in the best position to
26 know what functionality was included in its software. RSI was damaged by
27 Oracle's misrepresentations. Similar representations were made by Mr.
28 Landsberg at other meetings including October 5, 2020 (attended by Mr. Tarry

1 Bratton) SAC ¶¶25, 26; January 12, 2021 (attended by from RSI Joe Nolan, Tarry
2 Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy
3 Landsberg, Dan D’Amato, and Ben Gibson) SAC ¶¶30, 31; January 19, 2021
4 (attended by from RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach,
5 Keith Bell, and from Oracle Troy Landsberg, Dan D’Amato, and Ben Gibson and
6 representatives from AppFiciency) SAC ¶32; February 1, 2021 (attended by Joe
7 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy
8 Landsberg, Ben Gibson, Dan D’Amato, and John Barbera of Oracle) SAC ¶35-
9 36; February 11, 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad
10 Rohrbach, Keith Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg,
11 Dan D’Amato, Stephane Azolay, John Barbera, Rob Krajci, and representatives
12 from Appficiency) SAC ¶39, ; February 17, 2021 (attending from RSI, Joe Nolan,
13 Tim and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy
14 Landberg and Dan D’Amato in person and Ben Gibson, Stephane Azolay, Rob
15 Krajci, Leo Tuzzo, John Barbera via Zoom SAC ¶¶42, 45; February 18, 2021
16 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
17 Jamison and from Oracle, Troy Landsberg, Dan D’Amato, Ben Gibson, Stephane
18 Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via Zoom) SAC ¶¶43-44, 45.

- 19 • Oracle’s Mr. Landsberg represented on October 5, 2020 to Mr. Bratton and on
20 January 12th via a Zoom call to Tarry Bratton, Tim Bratton, Joe Nolan, Chad
21 Rohrbach, and Keith Bell that NetSuite’s solution has the ability to combine the
22 accounting, POS, inventory and RSI’s other systems in one solution with
23 increased automation and less manual inputting of data than the Quickbooks
24 Enterprise Desktop, Sage 100 and ECI Spruce software that RSI was currently
25 using, and that the NetSuite solution had all of the functionality that existed in
26 RSI’s then current software, and was even more feature rich. SAC ¶¶26-28, 30-
27 31. Mr. Landsberg also represented on October 5, 2020, and on January 12, 2021,
28 January 19, 2021, February 11, 2021, February 17, 2021 and February 18, 2021

1 that NetSuite had the ability to automatically update images, purchase orders,
2 inventory items and other information from RSI's suppliers including Orgill and
3 House Hasson. *Id.*, SAC ¶¶30, 32, 35, 39-40, 42-45. These representations turned
4 out to be false. The representations were material as the entire reason that RSI
5 wanted to replace its existing system was to have all of its existing functionality in
6 one integrated system with increased automation and less manual inputting of
7 data than RSI's then current software. SAC ¶¶26-28, 30-31. RSI's reliance on
8 Oracle's representations was reasonable as Oracle is in the business of selling
9 ERP software and must compare and contrast its solution to that of its
10 competitors. RSI reasonably relied on Oracle's greater knowledge of its product
11 and its representation about how NetSuite stacked up against its competitors.
12 Oracle's representations turned out to be false. During implementation RSI
13 learned that it would take more manual steps to perform the same tasks with
14 NetSuite than with RSI's existing software, causing inefficiencies and higher
15 labor costs for RSI with more manual inputting of data. SAC ¶¶62, 75, 78, 79,
16 84. RSI also learned that key functionality included within ECI Spruce (i.e.
17 automatic updating of images, purchase orders, and other data, bin management,
18 and tally scan functionality) could not be performed the same way by the Oracle
19 software. *Id.* By omitting to tell RSI that Oracle's software did not include such
20 functionality and by representing that it did, Oracle committed fraud in the
21 inducement. Similar representations were made by Mr. Landsberg at other
22 meetings including October 5, 2020 (attended by Mr. Tarry Bratton) SAC ¶¶25,
23 26; January 12, 2021 (attended by from RSI Joe Nolan, Tarry Bratton, Tim
24 Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan
25 D'Amato, and Ben Gibson) SAC ¶¶30, 31; January 19, 2021 (attended by from
26 RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from
27 Oracle Troy Landsberg, Dan D'Amato, and Ben Gibson and representatives from
28 AppFiciency) SAC ¶32; February 1, 2021 (attended by Joe Nolan, Tarry Bratton,

1 Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben
2 Gibson, Dan D’Amato, and John Barbera of Oracle) SAC ¶¶35-36; February 11,
3 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith
4 Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg, Dan D’Amato,
5 Stephane Azolay, John Barbera, Rob Krajci, and representatives from
6 Appficiency) SAC ¶39, ; February 17, 2021 (attending from RSI, Joe Nolan, Tim
7 and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy
8 Landberg and Dan D’Amato in person and Ben Gibson, Stephane Azolay, Rob
9 Krajci, Leo Tuzzo, John Barbera via Zoom SAC ¶¶42, 45; February 18,
10 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and
11 Dan Jamison and from Oracle, Troy Landsberg, Dan D’Amato, Ben Gibson,
12 Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via Zoom) SAC
13 ¶¶43-44, 45.

- 14 • Oracle’s Mr. Landsberg in a January 12th Zoom call also attended by Messrs.
15 D’Amato, and Gibson of Oracle, represented to Mr. Tarry Bratton, Mr. Tim
16 Bratton, Mr. Joe Nolan, Mr. Keith Bell and Mr. Chad Rohrbach that NetSuite’s
17 solution has all the functionality of Sage 100 and automates more functions than
18 RSI’s existing Sage 100 software resulting in less manual inputting of data and
19 greater efficiencies and lower labor costs. SAC ¶¶30-31. Oracle also represented
20 that there would be no degradation of service by switching from Sage 100 to
21 NetSuite. SAC ¶¶25-26, 30-31. This representation was material as the entire
22 reason that RSI wanted to replace its existing system that was already bought and
23 paid for was to have all of its existing functionality in one integrated system with
24 increased automation and less manual inputting of data than RSI’s then current
25 software. *Id.* RSI’s reliance on Oracle’s representations was reasonable as Oracle
26 is in the business of selling ERP software and must compare and contrast its
27 solution to that of its competitors. RSI reasonably relied on Oracle’s greater
28 knowledge of its product and its representation about how NetSuite stacked up

1 against its competitors. Oracle's representations turned out to be false. During
2 implementation RSI learned that it would take more manual steps to perform the
3 same tasks with NetSuite than with Sage 100, causing inefficiencies and higher
4 labor costs for RSI with more manual inputting of data. SAC ¶¶65, 69, 72, 73,
5 74, 76, 78-80. RSI also learned that key functionality included natively with Sage
6 100 could not be performed the same way by the Oracle software. The same
7 representations were made by Mr. Landsberg and reaffirmed by other Oracle
8 attendees on Zoom calls on January 19, 2021 (attended by from RSI Joe Nolan,
9 Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy
10 Landsberg, Dan D'Amato, and Ben Gibson and representatives from
11 AppFiciency) SAC ¶32; February 1, 2021 (attended by Joe Nolan, Tarry Bratton,
12 Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben
13 Gibson, Dan D'Amato, and John Barbera of Oracle) SAC ¶¶35-36; February 11,
14 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith
15 Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg, Dan D'Amato,
16 Stephane Azolay, John Barbera, Rob Krajci, and representatives from
17 Appficiency) SAC ¶39; February 17, 2021 (attending from RSI, Joe Nolan, Tim
18 and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy
19 Landberg and Dan D'Amato in person and Ben Gibson, Stephane Azolay, Rob
20 Krajci, Leo Tuzzo, John Barbera via Zoom) SAC ¶¶42, 45; February 18,
21 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and
22 Dan Jamison and from Oracle, Troy Landsberg, Dan D'Amato, Ben Gibson,
23 Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via Zoom) SAC
24 ¶¶43-45.

- 25 • Oracle's Mr. Landsberg in a January 12th Zoom call also attended by Messrs.
26 D'Amato, and Gibson of Oracle, represented to Mr. Tarry Bratton, Mr. Tim
27 Bratton, Mr. Joe Nolan, Mr. Keith Bell and Mr. Chad Rohrbach that NetSuite's
28 solution has all the functionality of Quickbooks Desktop Enterprise and automates

1 more functions than RSI's existing Quickbooks Desktop Enterprise software
2 resulting in less manual inputting of data and greater efficiencies and lower labor
3 costs. SAC ¶¶30-31. Oracle also represented that there would be no degradation
4 of service by switching from Quickbooks Desktop Enterprise to NetSuite. SAC
5 ¶¶25-26, 30-31. This representation was material as the entire reason that RSI
6 wanted to replace its existing system was to have all of its existing functionality in
7 one integrated system with increased automation and less manual inputting of
8 data than RSI's then current software. RSI's reliance on Oracle's representations
9 was reasonable as Oracle is in the business of selling ERP software and must
10 compare and contrast its solution to that of its competitors. RSI reasonably relied
11 on Oracle's greater knowledge of its product and its representation about how
12 NetSuite stacked up against its competitors. Oracle's representations turned out
13 to be false. During implementation RSI learned that it would take more manual
14 steps to perform the same tasks with NetSuite than with Quickbooks Desktop
15 Enterprise, causing inefficiencies and higher labor costs for RSI with more
16 manual inputting of data. SAC ¶¶65, 69, 72, 73, 74, 76, 78-80. RSI also learned
17 that key functionality included natively with Quickbooks Enterprise could not be
18 performed the same way by the Oracle software. The same representations were
19 made by Mr. Landsberg and reaffirmed by other Oracle attendees on Zoom calls
20 on January 19, 2021 (attended by from RSI Joe Nolan, Tarry Bratton, Tim
21 Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan
22 D'Amato, and Ben Gibson and representatives from AppFiciency) SAC ¶32;
23 February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad
24 Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson, Dan D'Amato,
25 and John Barbera of Oracle) SAC ¶¶35-36; February 11, 2021 (attended by Joe
26 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
27 of RSI and from Oracle, Troy Landsberg, Dan D'Amato, Stephane Azolay, John
28 Barbera, Rob Krajci, and representatives from Appficiency) SAC ¶39; February

1 17, 2021 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach
2 and Dan Jamison and from Oracle, Troy Landberg and Dan D'Amato in person
3 and Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via
4 Zoom) SAC ¶¶42, 45; February 18, 2021(attending from RSI, Joe Nolan, Tim and
5 Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy
6 Landsberg, Dan D'Amato, Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo,
7 and John Barbera via Zoom) SAC ¶¶43-45.

- 8 • Oracle's Mr. Landsberg in a January 12th Zoom call also attended by Messrs.
9 D'Amato, and Gibson of Oracle, represented to Mr. Tarry Bratton, Mr. Tim
10 Bratton, Mr. Joe Nolan, Mr. Keith Bell and Mr. Chad Rohrbach that NetSuite's
11 solution has all the functionality of ECI Spruce and automates more functions
12 than RSI's existing ECI Spruce software resulting in less manual inputting of data
13 and greater efficiencies and lower labor costs. SAC ¶¶30-31. Oracle also
14 represented that there would be no degradation of service by switching from ECI
15 Spruce to NetSuite. SAC ¶¶25-26, 30-31. This representation was material as the
16 entire reason that RSI wanted to replace its existing system that was already
17 bought and paid for was to have all of its existing functionality in one integrated
18 system with increased automation and less manual inputting of data than RSI's
19 then current software. RSI's reliance on Oracle's representations was reasonable
20 as Oracle is in the business of selling ERP software and must compare and
21 contrast its solution to that of its competitors. RSI reasonably relied on Oracle's
22 greater knowledge of its product and its representation about how NetSuite
23 stacked up against its competitors. Oracle's representations turned out to be false.
24 During implementation RSI learned that it would take more manual steps to
25 perform the same tasks with NetSuite than with ECI Spruce, causing
26 inefficiencies and higher labor costs for RSI with more manual inputting of data.
27 SAC ¶¶65, 69, 72, 73, 74, 76, 78-80. RSI also learned that key functionality
28 included natively with ECI Spruce could not be performed the same way by the

1 Oracle software. *Id.* The same representations were made by Mr. Landsberg and
2 reaffirmed by other Oracle attendees on Zoom calls on January 19, 2021 (attended
3 by from RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell,
4 and from Oracle Troy Landsberg, Dan D’Amato, and Ben Gibson and
5 representatives from AppFiciency) SAC ¶¶32; February 1, 2021 (attended by Joe
6 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy
7 Landsberg, Ben Gibson, Dan D’Amato, and John Barbera of Oracle) SAC ¶¶35-
8 36; February 11, 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad
9 Rohrbach, Keith Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg,
10 Dan D’Amato, Stephane Azolay, John Barbera, Rob Krajci, and representatives
11 from Appficiency) SAC ¶39; February 17, 2021 (attending from RSI, Joe Nolan,
12 Tim and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy
13 Landberg and Dan D’Amato in person and Ben Gibson, Stephane Azolay, Rob
14 Krajci, Leo Tuzzo, John Barbera via Zoom) SAC ¶¶42, 45; February 18,
15 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and
16 Dan Jamison and from Oracle, Troy Landsberg, Dan D’Amato, Ben Gibson,
17 Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via Zoom) SAC
18 ¶¶43-45.

- 19 • Oracle scheduled a Zoom meeting for February 11, 2021, where Oracle
20 demonstrated certain features of the NetSuite solution involving eCommerce,
21 WMS, and material job costing, among other functionalities. SAC ¶¶39-40. The
22 meeting was attended by Oracle’s Landsberg, D’Amato, Gibson, Azoulay, Krajci,
23 and Barbera. *Id.* During that meeting Mr. Landsberg and others represented to
24 Mr. Tarry Bratton, Mr. Tim Bratton, Mr. Keith Bell, Mr. Rohrbach, Mr. Jamison,
25 and Mr. Nolan that the NetSuite solution has the same capabilities as ECI Spruce
26 to automatically revise purchase orders to include updated information such as
27 price, quantity, product descriptions, and back-order status, and other key
28 information. In fact, on Mr. Landsberg’s “Flow of Software” annotated document

1 (Exhibit 3), “build purchase orders with variable settings” was listed as NetSuite
2 provided functionality, and Landsberg confirmed it was included in Oracle’s
3 proposal in his email of February 19, 2021, affirming that “the software costs now
4 consist of everything you outlined as needed”. SAC ¶¶46. The annotated Flow of
5 Software Chart was discussed during the February 17th meeting and demo and Mr.
6 Landsberg and Mr. D’Amato reaffirmed that the NetSuite solution included the
7 automatic updating capabilities that RSI enjoyed with its Spruce software. SAC
8 ¶¶42. Mr. Landsberg and Mr. D’Amato’s statements were false. During
9 implementation RSI learned for the first time that NetSuite could not provide the
10 automatic updating functionality as that functionality did not exist in the NetSuite
11 solution as represented by Mr. Landsberg and Mr. D’Amato. SAC ¶¶65, 69, 72,
12 73, 74, 76, 78-80. Mr. Landsberg and Mr. D’Amato’s representation was material
13 as the entire reason that RSI wanted to replace its existing system, which RSI had
14 already significantly invested in, was to have all of its existing functionality,
15 including the automatic updating of purchase orders, in one integrated system
16 with increased automation and less manual inputting of data than RSI’s then
17 current software. RSI would never have invested in a new system at a higher
18 price if it knew it was actually going to lose functionality and would be required
19 to do more manual inputting of data. RSI’s reliance on Oracle’s representations
20 was reasonable as Oracle is in the business of selling ERP software and must
21 compare and contrast its solution to that of its competitors. RSI reasonably relied
22 on Oracle’s greater knowledge of its product and its representation about how
23 NetSuite stacked up against its competitors. Oracle’s representations turned out
24 to be false and RSI was damaged. The same representations were made by Mr.
25 Landsberg and reaffirmed by other Oracle attendees on Zoom calls on January 19,
26 2021 (attended by from RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad
27 Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan D’Amato, and Ben
28 Gibson and representatives from AppFiciency) SAC ¶¶32; February 1, 2021

1 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell
2 of RSI and Troy Landsberg, Ben Gibson, Dan D’Amato, and John Barbera of
3 Oracle) SAC ¶¶35-36; February 11, 2021 (attended by Joe Nolan, Tarry Bratton,
4 Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison of RSI and from
5 Oracle, Troy Landsberg, Dan D’Amato, Stephane Azolay, John Barbera, Rob
6 Krajci, and representatives from Appficiency) SAC ¶39; February 17, 2021
7 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
8 Jamison and from Oracle, Troy Landberg and Dan D’Amato in person and Ben
9 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom) SAC
10 ¶¶42, 45; February 18, 2021 (attending from RSI, Joe Nolan, Tim and Tarry
11 Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan
12 D’Amato, Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John
13 Barbera via Zoom) SAC ¶¶43-45.

- 14 • On October 2, 2020, Mr. Bratton first provided Oracle with the Flow of Software
15 document containing the functionality that RSI required. (Exh. 2). SAC ¶¶24-25.
16 The document was used as a touchstone during meetings to discuss specific
17 functionality in great detail. Oracle’s Mr. Landsberg on a call on October 5, 2020
18 with Mr. Bratton and a Zoom call on January 12th attended by Tarry and Tim
19 Bratton, Joe Nolan, Keith Bell and Chad Rohrbach represented that NetSuite’s
20 solution has the same capabilities as ECI Spruce in that NetSuite could
21 automatically update images of inventory items provided from RSI’s suppliers
22 such as Orgill and House Hasson when they updated their catalog or website.
23 SAC §¶30-31. In fact, on the “Flow of Software” document provided by Mr.
24 Bratton on October 2, 2020 and again on January 20, 2021 and the later color
25 coded and annotated document provided by Mr. Landsberg on February 15, 2021
26 (Exhibit 3), “item updates and price changes automatically from dealers” was
27 listed as NetSuite provided functionality, and Landsberg confirmed it was
28 included. SAC ¶¶24-25, 33, 41-42. The Flow of Software Chart and this

1 functionality was also discussed in detail during at least the January 19, 2021,
2 February 11, 2021, and February 17th and 18th meetings and reaffirmed by Mr.
3 Landsberg and Mr. D'Amato and others on those dates as including the required
4 functionality in the NetSuite solution. SAC ¶¶32, 39, 41, 42-46, 62. During
5 implementation RSI learned for the first time that NetSuite could not provide the
6 automatic image update functionality that it had represented NetSuite included,
7 and that the functionality did not exist within NetSuite in the same form as used
8 by other ERP providers such as ECI Spruce to connect retailers to wholesalers
9 such as Orgill and House Hasson. SAC ¶¶65, 69, 72, 73, 74, 76, 78-80. Instead
10 of web pages that would automatically update with any changes, NetSuite instead
11 used static images that would not automatically update with any changes. SAC
12 ¶¶65, 69, 70, 74, 75, 79. Ensuring accuracy would require constant monitoring
13 and a very significant investment of additional resources or the images would
14 become obsolete. SAC ¶79. The representation that the images would
15 automatically update was material given the huge number of individual inventory
16 items RSI hardware purchased from its wholesalers and offered to its customers.
17 For example, for the hardware store alone there were over 25,000 individual
18 SKUs. Orgill had 70,000 images in its catalog and many of those had multiple
19 sizes of images associated with them. SAC ¶79. RSI's reliance was reasonable in
20 that Oracle was the entity knowledgeable about its software and RSI had no
21 reason to doubt that the functionality existed, as it enjoyed that functionality with
22 ECI Spruce. *Id.* In fact, Orgill employee Grant Morrow was shocked that
23 NetSuite could not handle the url of the images and wanted to know what
24 experience NetSuite had integrating to a distributor for a retailer or handling a
25 catalog feed. SAC ¶79. The same representations about NetSuite's ability to
26 update images automatically were made by Mr. Landsberg and reaffirmed by
27 other Oracle attendees on Zoom calls on at least October 5, 2020 (attended by Mr.
28 Tarry Bratton); January 12, 2021 (attended by from RSI Joe Nolan, Tarry Bratton,

1 Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan
2 D'Amato, and Ben Gibson); January 19, 2021 (attended by from RSI Joe Nolan,
3 Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy
4 Landsberg, Dan D'Amato, and Ben Gibson and representatives from
5 AppFiciency); February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim
6 Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson,
7 Dan D'Amato, and John Barbera of Oracle); February 11, 2021 (attended by Joe
8 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
9 of RSI and from Oracle, Troy Landsberg, Dan D'Amato, Stephane Azolay, John
10 Barbera, Rob Krajci, and representatives from Appficiency); February 17, 2021
11 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
12 Jamison and from Oracle, Troy Landberg and Dan D'Amato in person and Ben
13 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom;
14 February 18, 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad
15 Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan D'Amato,
16 Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via
17 Zoom). Later almost two years into the implementation in November of 2022,
18 Oracle admitted that the automatic updating of images capability did not exist
19 within NetSuite and tendered an expensive change order to RSI for a
20 customization to create the functionality that Oracle claimed existed in January
21 and February of 2021, and had represented would be included in the NetSuite
22 Solution. SAC ¶79, 83.

- 23 • Oracle's Mr. Landsberg represented on a Zoom call on January 12th to Mr. Tarry
24 and Tim Bratton, Joe Nolan, Keith Bell and Chad Rohrbach that the NetSuite
25 solution has capabilities built in allowing RSI's warehouse to connect with the
26 point of sale and transfer the data between the POS and the warehouse when new
27 inventory stock is delivered, so that RSI always knows what inventory is on hand
28 to be sold. The representation was material as it was important to RSI to know at

1 all times what items were in stock at any one time, and RSI would not have
2 entered into the Oracle Contract had it known that Oracle and its Oracle Partners
3 could not provide the promised functionality. During implementation, RSI
4 learned that the NetSuite solution did not contain the functionality that had been
5 represented as being currently existing. The same representations were made by
6 Mr. Landsberg and reaffirmed by other Oracle attendees on Zoom calls on at least
7 January 19, 2021 (attended by from RSI Joe Nolan, Tarry Bratton, Tim Bratton,
8 Chad Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan D'Amato, and
9 Ben Gibson and representatives from AppFiciency); February 1, 2021 (attended
10 by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell of RSI and
11 Troy Landsberg, Ben Gibson, Dan D'Amato, and John Barbera of Oracle);
12 February 11, 2021 (attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad
13 Rohrbach, Keith Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg,
14 Dan D'Amato, Stephane Azolay, John Barbera, Rob Krajci, and representatives
15 from Appficiency); February 17, 2021 (attending from RSI, Joe Nolan, Tim and
16 Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle, Troy Landberg
17 and Dan D'Amato in person and Ben Gibson, Stephane Azolay, Rob Krajci, Leo
18 Tuzzo, John Barbera via Zoom; February 18, 2021(attending from RSI, Joe
19 Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle,
20 Troy Landsberg, Dan D'Amato, Ben Gibson, Stephane Azolay, Rob Krajci, Leo
21 Tuzzo, and John Barbera via Zoom). .

- 22 • Oracle's Mr. Landsberg represented on a Zoom call on January 12th to Mr. Tarry
23 Bratton, Joe Nolan, and Chad Rohrbach that the NetSuite solution has capabilities
24 built in allowing the tracking of inventory at multiple points in the store and the
25 warehouses. The representation was material as it was important to RSI to know
26 at all times what items were in stock at any one time in the store, or that could be
27 quickly accessed in the warehouse. Had RSI known that the technology did not
28 actually exist, it would not have entered into the Oracle Contracts. RSI's reliance

1 was reasonable as Oracle as the owner of the NetSuite software was in the best
2 position to know what functionality was included in its software. During
3 implementation RSI learned for the first time that NetSuite could not provide the
4 functionality that it had represented, and that the functionality did not exist. The
5 same representations were made by Mr. Landsberg and reaffirmed by other
6 Oracle attendees on Zoom calls on at least January 19, 2021 (attended by from
7 RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from
8 Oracle Troy Landsberg, Dan D’Amato, and Ben Gibson and representatives from
9 AppFiciency); February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim
10 Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson,
11 Dan D’Amato, and John Barbera of Oracle); February 11, 2021 (attended by Joe
12 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
13 of RSI and from Oracle, Troy Landsberg, Dan D’Amato, Stephane Azolay, John
14 Barbera, Rob Krajci, and representatives from Appficiency); February 17, 2021
15 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
16 Jamison and from Oracle, Troy Landberg and Dan D’Amato in person and Ben
17 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom;
18 February 18, 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad
19 Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan D’Amato,
20 Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via
21 Zoom).

- 22 • When Mr. Bratton contacted Oracle in October 2020, he made it clear that RSI
23 was seeking one integrated ERP solution that could combine all aspects of his
24 three businesses. During his call with Mr. Landsberg on October 5, 2020, Mr.
25 Bratton also made clear that a key part of the required solution would involve the
26 Point of Sale (“POS”) technology. That is because RSI has a retail hardware
27 store, with a catalog of over 25,000 SKUs, which would need to be kept track of
28 and automatically updated as items changed. Mr. Bratton also explained that RSI

1 was interested in building a website so that RSI could sell directly to consumers,
2 which was extremely important due to RSI's rural location and the change in
3 shopping habits of consumers caused by the Covid pandemic. In a January 21,
4 2021 email Mr. Landsberg represented that "at the end of the day, NetSuite has a
5 complete solution for River Supply, Inc. and we want to prove it and partner with
6 you". On February 2, 2021 Mr. Landsberg conceded to Mr. Bratton that the
7 NetSuite solution could not handle certain of RSI's requirements relating to the
8 POS, but that Oracle worked closely with certain POS partners that could deliver
9 the required functionality. Mr. Landsberg had represented previously in a
10 meeting on January 19, 2021 and in an email later that day that Oracle worked
11 very closely with certain third-party POS partners that integrated tightly into
12 NetSuite. In his January 20, 2021 email Mr. Landsberg promoted Netscore, Vend
13 and Lightspeed for the POS portion of the solution. By mid-February Mr.
14 Landsberg had narrowed his recommendation to Vend. In his annotated Flow of
15 Software document (Exhibit 3) provided on February 15, 2021, Mr. Landsberg
16 singled out Vend as the preferred provider and explained that Vend connected
17 with NetSuite through the technology of another third-party Oracle partner
18 In8Sync, and could provide the required POS functionality. Mr. Landsberg's
19 promise that Vend could provide this POS functionality was reiterated by Mr.
20 Landsberg and Mr. D'Amato during the onsite February 17th demos. In reality,
21 what Oracle and Vend represented as existing POS technology that would meet
22 RSI's requirements did not actually exist. These representations were material
23 and RSI would never have entered into the Oracle Contract if it knew that Oracle
24 and Vend did not have the existing POS technology that would meet RSI's
25 requirements. RSI's reliance was reasonable as Oracle and its Oracle Partners,
26 including Vend, as the owners of the software were in the best position to know
27 what functionality was included in their software.
28

- 1 • Throughout pre-contract discussions, Mr. Landsberg represented that NetSuite
2 had a robust Warehouse Management Module (“WMS”), which could be
3 purchased by RSI. RSI did purchase the module and it was included on the
4 Estimate Form. (Exh. 4). Oracle’s provision of WMS functionality was also
5 affirmed in Mr. Landsberg’s color coded Flow of Software document. (Exh. 3).
6 Oracle’s Mr. Landsberg represented on a Zoom call on February 11, 2021 to Mr.
7 Bratton that NetSuite’s solution had the same functionality of ECI Spruce and was
8 able to tally scan inventory items in multiple bins and organize inventory using
9 bins. SAC ¶39. Mr. Landsberg also represented that Oracle’s Solution allowed
10 the tracking of inventory to multiple positions within the store and warehouses
11 and that data concerning the inventory and items in stock could be shared with the
12 point of sale. *Id.*, SAC ¶30. These representations were reiterated during the
13 February 17th demo attended by the Brattons, Mr. Nolan, Mr. Jamison and Mr.
14 Rohrbach from RSI and Messrs. Landsberg, D’Amato, Gibson, Azolay, Krajci,
15 Tuzzo, and Barbera of Oracle. The representation was false when made as
16 NetSuite did not include this functionality within its solution and the functionality
17 did not exist. The representation was material as it was important to RSI to know
18 at all times what items were in stock and in what bin they were located and to
19 have tally scan enabled to better manage its inventory, and this functionality was a
20 key part of what RSI believed it was purchasing with NetSuite. During
21 implementation RSI learned for the first time that NetSuite could not provide the
22 functionality that it had represented existed, and that the functionality did not
23 actually exist. Instead, to obtain the functionality, Oracle proposed a change
24 order and a customization. SAC ¶78. During implementation in an April 2022,
25 Oracle’s Mr. Mukkera indicated that Oracle could provide the required
26 functionality as a customization under a change order at an additional charge. *Id.*
- 27 • Mr. Landsberg represented during a Zoom call of February 11th, the in-person
28 demo meeting on February 17th, the PowerPoint presentation meeting on February

1 18, 2021 (and in the PowerPoint presentation itself) and a second Zoom meeting
2 on February 24th that given Oracle’s experience with similar retailers such as RSI,
3 Oracle had the experience to deliver a “go live” date of Phase I by September
4 2021, which also included publishing a website where RSI customers could
5 purchase its products. SAC ¶¶39, 42-45. 47. This representation concerning the
6 “go live” date and the website publication date was material to RSI for a number
7 of reasons, which all were communicated to Oracle prior to contract execution.
8 SAC ¶25. First, RSI’s hardware store is in a rural location. Being online would
9 allow customers to purchase things from the website and also research what types
10 of items RSI had for sale, thereby increasing sales. *Id.* In addition, the Covid
11 pandemic virtually eliminated in person shopping, and having its customers being
12 able to purchase the products online was a key part of RSI’s strategy to weather
13 the pandemic and its aftermath. *Id.* Two, RSI wanted a few months to
14 experiment and to get familiar with the solution before the start of the new
15 accounting year on January 1, 2022, and so that there could be a clean transition
16 of financial data at year-end in 2021. SAC ¶26. Three, RSI’s financial projections
17 were based on a live website where products could be purchased by RSI’s
18 customers beginning in the fall of 2021, and for the upcoming holiday season.
19 Four, due to Oracle’s representations that all implementation costs were fixed and
20 would occur in year one, RSI did not budget for additional implementation costs
21 starting in year two as it believed and relied on Mr. Landsberg and Mr.
22 D’Amato’s representations that it was a fixed bid contract. In addition, the
23 representations were material in that RSI had not budgeted any continuing
24 implementation costs for the second year of the project, in reliance on Oracle’s
25 fixed price bid, and the website was a key part of RSI’s business plan. RSI’s
26 reliance was reasonable in that Oracle represented that it had extensive experience
27 successfully delivering the solution to retailers with large inventories such as RSI,
28 by itself as well as with the Oracle Partners that it had recommended including

1 Vend and SPS. SAC ¶¶30, 32, 33, 36, 38, 39, 40, 41-45. During implementation
2 not only was the September “go live” date missed but Oracle blew past 4 other go
3 live dates (June 1, 2022, October 1, 2022, November 1, 2022 and January 1,
4 2023) and the project was still not live when the contract was terminated by RSI
5 in January of 2023, almost 24 months after the contract was signed.

- 6 • Mr. Landsberg and Mr. D’Amato represented during the demos on February 17th
7 and in the previous emails and conversations detailed above in the previous
8 bulletpoint, that Oracle had worked with Vend to successfully deliver POS
9 systems for complex retail customers with large inventories like RSI and had done
10 so on multiple other projects. SAC ¶¶40-45, 63, 76. The representation was
11 material as RSI was concerned about entering into the contract with Oracle when
12 it was using so many third-party Oracle Partners, and RSI wanted to ensure that
13 the proposed team had a track record of success together for similar retail
14 customers like RSI. During implementation it became clear that Oracle and Vend
15 did not have a close working relationship and completely failed to coordinate with
16 each other to deliver the promised solution. SAC ¶¶63, 64. In fact, at times each
17 appeared unfamiliar with the working of the other party’s software solution and
18 how to integrate the product in the NetSuite system to provide the promised
19 functionality. On information and belief, both Oracle and Vend knew that the
20 POS functionality they promised did not currently exist, but they were planning to
21 use the RSI and other retail contracts to engineer the solution so that they could
22 begin targeting other retail companies with large inventories and over 25K
23 individual SKUs. Landsberg’s recommendation of Vend and Oracle’s promise
24 that Vend could provide all of the required POS functionality, and integrated
25 tightly into and could “tie right into the NetSuite backend” (October 2, 2020
26 Landsberg email) so as to deliver a “complete solution” (Landsberg January 21st
27 email) with all the required parts were material. SAC ¶¶41, 42-45. The POS
28 solution and the website were key drivers of the NetSuite solution and had Oracle

1 and Vend disclosed that the technology did not exist RSI would never have
2 entered into the Oracle Contracts. RSI's reliance was reasonable, in that Oracle
3 and Vend both represented in at least the February 17th demo that they had both
4 worked together on similar retail projects and had successfully delivered the
5 solution with all of RSI's required parts. RSI was damaged by Oracle and Vends
6 misrepresentations.

- 7 • Mr. Landsberg and Mr. D'Amato represented during the February 17th and 18th
8 meetings that Oracle working with SPS had successfully delivered EDI systems
9 for complex retail customers like RSI and had done so on multiple other projects.
10 SAC ¶¶41, 42-45 Mr. Landsberg also represented that SPS could provide all of
11 the EDS functionality that RSI currently enjoyed with ECI Spruce, and that SPS
12 would be able to connect directly with RSI's suppliers such as Orgill and House
13 Hasson and connect them directly into NetSuite to deliver all of the functionality
14 that had been promised. The representation was material as RSI was concerned
15 about entering into the contract with Oracle when it was using so many third-
16 party Oracle Partners, and RSI wanted to ensure that the proposed team had a
17 track record of success together, and that Oracle understood SPS's technology and
18 what it could deliver. Landsberg's recommendation of SPS and Oracle's promise
19 that its recommended partners, such as SPS could provide all of the required EDI
20 functionality, and integrated tightly into and could "tie right into the NetSuite
21 backend" (October 2, 2020 Landsberg email) so as to deliver a "complete
22 solution" (Landsberg January 21st email) with all the required parts were material.
23 Landsberg and D'Amato sat through detailed meetings on January 12, 2021,
24 January 19, 2021, February 1, 2021, February 11, 2021 and February 17th and
25 18th, 2021 where all of the required functionality was discussed. During
26 implementation it became clear that Oracle and SPS completely failed to
27 coordinate with each other to deliver the promised solution and appeared
28 unfamiliar with the other party's software solution and how to integrate the

1 product into the NetSuite system to provide the promised functionality. SAC
2 ¶¶68-74. The same representations were made by Mr. Landsberg and reaffirmed
3 by other Oracle attendees on Zoom calls on at least January 19, 2021 (attended by
4 from RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and
5 from Oracle Troy Landsberg, Dan D’Amato, and Ben Gibson and representatives
6 from AppFiciency); February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim
7 Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson,
8 Dan D’Amato, and John Barbera of Oracle); February 11, 2021 (attended by Joe
9 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
10 of RSI and from Oracle, Troy Landsberg, Dan D’Amato, Stephane Azolay, John
11 Barbera, Rob Krajci, and representatives from Appficiency); February 17, 2021
12 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
13 Jamison and from Oracle, Troy Landberg and Dan D’Amato in person and Ben
14 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom;
15 February 18, 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad
16 Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan D’Amato,
17 Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via
18 Zoom).

- 19 • Mr. Landsberg represented during the meeting on February 18th that Oracle
20 working with Solupay had successfully delivered payment systems for complex
21 retail customers like RSI and had done so on multiple other projects, and assured
22 RSI that this solution would work for RSI’s project. SAC ¶¶42-45, 47, 49, 66-67.
23 The Solupay recommendation was included in Oracle’s PowerPoint presentation
24 that day. This representation was material as an integrated payment solution was
25 a critical part of what RSI sought to purchase with the NetSuite solution.
26 Although RSI understood that the payment solution was not native to NetSuite,
27 RSI reasonably relied on Oracle’s representation that it had worked with Solupay
28 on complex retail customers similar to RSI to successfully deliver the product,

1 and that Solupay would work on RSI's project. Later during implementation
2 Oracle switched gears and for some reason decided to recommend Worldpay
3 instead of Solupay for the payment system portion of the solution, and assured
4 RSI that Worldpay would work. SAC ¶¶66-67. During implementation
5 Worldpay informed RSI that its solution would not work for RSI's NetSuite
6 SuiteSuccess implementation, which caused RSI to lose time and squander money
7 to attempt locate a payment processing company that would work with NetSuite.
8 Oracle's representations about Solupay and Worldpay working with RSI's
9 NetSuite solution turned out to be false. On information and belief, the
10 implementation team's proposal that Worldpay provide the required functionality
11 instead of Solupay, is further evidence that Mr. Landsberg was not carefully
12 thinking through the solution and researching what would work but was just
13 blindly proposing third parties without any track record of working with those
14 parties on successful projects. RSI was damaged by Oracle's misrepresentations
15 and had to spend time and squander resources on a payment solution that was
16 never suitable for RSI's project in the first place. Solupay was mentioned in
17 Oracle's February 18, 2021 PowerPoint and in the meeting that day attended by
18 from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan Jamison
19 and from Oracle, Troy Landsberg, Dan D'Amato, Ben Gibson, Stephane Azolay,
20 Rob Krajci, Leo Tuzzo, and John Barbera via Zoom.

- 21 • In a February 19, 2021 email Mr. Landsberg sent revised pricing and represented
22 that "[t]he software costs now consist of all of the things that you outlined as
23 needed." SAC ¶46. This statement was false and did not include in the software
24 costs of the automatic update features for purchase orders, images, and related
25 content that had been promised during pre-contract discussions on January 12th,
26 February 1, February 3, February 11, and February 17th and 18th. Instead, in
27 November of 2022, Oracle sought a change order to implement and deliver this
28 functionality. SAC ¶¶78, 79, 80. In addition, Oracle had represented in pre-

1 contract discussions that working with Vend it had scoped the POS portion of the
2 solution and that the POS portion of the implementation would be fixed and such
3 costs would only be incurred in the first year of the contract. This turned out to be
4 false. Instead, Oracle proposed a new scoping of the POS system in 2022 that
5 would require a change order and a higher price. *Id.* Oracle also promised that its
6 solution would allow bin tracking and tally scanning just like ECI Spruce. That
7 turned out to be false and in April of 2022 Oracle sought an expensive change
8 order with the customization to provide the functionality it had promised pre-
9 contract was included in the package. *Id.* These representations were material to
10 RSI and RSI would not have entered into the contract had it known that by paying
11 the higher price for the NetSuite solution it would actually be losing key
12 functionality that it enjoyed with its existing software, and would need to
13 manually enter more data rather than having it automated. SAC ¶¶63-65, 74, 75,
14 77, 81, RSI's reliance on Oracle and Vend's representations were reasonable as
15 they were in the best position to know of the functionality that existed in their
16 software. RSI was damaged by Oracle and Vend's misrepresentations. The same
17 representations were made by Mr. Landsberg and reaffirmed by other Oracle
18 attendees on Zoom calls on at least January 19, 2021 (attended by from RSI Joe
19 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle
20 Troy Landsberg, Dan D'Amato, and Ben Gibson and representatives from
21 AppFiciency); February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim
22 Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson,
23 Dan D'Amato, and John Barbera of Oracle); February 11, 2021 (attended by Joe
24 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
25 of RSI and from Oracle, Troy Landsberg, Dan D'Amato, Stephane Azolay, John
26 Barbera, Rob Krajci, and representatives from Appficiency); February 17, 2021
27 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
28 Jamison and from Oracle, Troy Landberg and Dan D'Amato in person and Ben

1 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom;
2 February 18, 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad
3 Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan D’Amato,
4 Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via
5 Zoom).

- 6 • In a February 19, 2021 email, Mr. Landsberg represented that “[w]e understand
7 the Implementation/Training and Support costs are probably big and scary but
8 you will be left with a much more reasonable expense for just the software
9 moving forward.” SAC ¶¶46, 47. This statement was false. Oracle had
10 represented in pre-contract discussions that working with Vend it had scoped the
11 POS portion of the solution and that the POS portion of the implementation would
12 be fixed and such costs would only be incurred in the first year of the contract.
13 SAC ¶50. This turned out to be false. Instead, Oracle proposed a new scoping of
14 the POS system in 2022 that would require a change order and a higher price,
15 showing that Oracle had never adequately scoped it in the first place. SAC ¶¶75,
16 77, 79, 81. Oracle also promised that its solution would allow bin tracking and
17 tally scanning just like ECI Spruce. SAC ¶¶78-80. That turned out to be false
18 and in April of 2022 Oracle sought an expensive change order with the
19 customization to provide the functionality it had promised pre-contract. *Id.* In
20 November of 2022, Oracle proposed a change order and attempted to charge RSI
21 for eCommerce Advanced to obtain the automatic updating functionality for
22 purchase orders, images, and related content that had been promised in at least the
23 October 5th, January 12th, February 1, February 3, February 11, and February 18th
24 meetings. *Id.* These representations were material to RSI and RSI would not have
25 entered into the contract had it known that by paying the higher price for the
26 NetSuite solution it would actually be losing key functionality that it enjoyed with
27 its existing software, and that rather than less manual inputting of data, it would
28 need to do more manual work with its attendant higher costs and delays, as less

1 functionality would be automated. RSI's reliance on Oracle representations were
2 reasonable as Oracle was in the best position to know of the functionality that
3 existed in its software. RSI was damaged by Oracle's misrepresentations. The
4 same representations were made by Mr. Landsberg and reaffirmed by other
5 Oracle attendees on Zoom calls on at least including October 5, 2020 (attended by
6 Mr. Tarry Bratton); January 12, 2021 (attended by from RSI Joe Nolan, Tarry
7 Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from Oracle Troy
8 Landsberg, Dan D'Amato, and Ben Gibson); January 19, 2021 (attended by from
9 RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell, and from
10 Oracle Troy Landsberg, Dan D'Amato, and Ben Gibson and representatives from
11 AppFiciency); February 1, 2021 (attended by Joe Nolan, Tarry Bratton, Tim
12 Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben Gibson,
13 Dan D'Amato, and John Barbera of Oracle); February 11, 2021 (attended by Joe
14 Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach, Keith Bell and Dan Jamison
15 of RSI and from Oracle, Troy Landsberg, Dan D'Amato, Stephane Azolay, John
16 Barbera, Rob Krajci, and representatives from Appficiency); February 17, 2021
17 (attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan
18 Jamison and from Oracle, Troy Landberg and Dan D'Amato in person and Ben
19 Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, John Barbera via Zoom;
20 February 18, 2021(attending from RSI, Joe Nolan, Tim and Tarry Bratton, Chad
21 Rohrbach and Dan Jamison and from Oracle, Troy Landsberg, Dan D'Amato,
22 Ben Gibson, Stephane Azolay, Rob Krajci, Leo Tuzzo, and John Barbera via
23 Zoom).

- 24 • Mr. Landsberg represented in a January 21, 2021 email to Mr. Bratton proposing
25 a comprehensive demo of the solution for the following week that "at the end of
26 the day, NetSuite has a complete solution for River Supply Inc. and we want to
27 prove it, and partner with you". SAC ¶33. Mr. Landsberg further represented in a
28 February 19, 2021 email that "the software costs now consist of everything you

1 outlined as needed”. SAC ¶46. In a February 24, 2021 email Mr. Landsberg
2 included a spreadsheet with the final pricing for Oracle and for the Oracle
3 Partners, which it stated was a “fixed bid” and represented that there would be no
4 other implementation costs after the first year. SAC ¶¶47, 49. These statements
5 were false. Oracle and the Oracle Partners did not have a complete solution for
6 RSI and had no idea how to make everything work together. Mr. Bratton said it
7 best in his email to Oracle of February 11, 2022 during contract performance
8 when he noted that the “add ons” (i.e. the Oracle Partners) that Mr. Landsberg
9 sold RSI did not work and that it was Mr. Landsberg’s responsibility and Oracle’s
10 responsibility to make sure that the solution worked before selling it: “Also your
11 add ons, your boy Troy sold us. Is the responsibility of your salesmen selling
12 something that’s does not work. Troy sold the items, gave us the prices. The add
13 ons companies did not give us prices directly your boy Troy did. Your company
14 before adding something should know how it works. You or Ben do not even
15 know how this will work all together. You have to many hands in the cookie jar
16 trying to figure out how it all works together and not one person on your team
17 gets it 100% how all things are to work together.” SAC ¶50.

- 18 • During a February 24, 2021 meeting between Mr. Landsberg and Mr. Richard
19 Gardener of Oracle and Mr. Nolan of RSI, Oracle represented that its NetSuite
20 solution had all the functionality of RSI’s existing Salesforce CRM software, and
21 could replace it with no loss in functionality, and would be an even better solution
22 as it would integrate with all the other modules of NetSuite that RSI was buying.
23 SAC ¶48. These representations turned out to be false and NetSuite did not
24 natively contain the functionality that Mr. Landsberg and Mr. Gardener had
25 promised. *Id.* Although Mr. Gardener tried during implementation to do some
26 “work around” that would provide the promised CRM functionality the work
27 around failed, and Mr. Gardener eventually left NetSuite. Other NetSuite
28 implementation members attempted to deliver the functionality but they too

1 failed, and this part of the promised solution never actually worked. *Id.* The
2 representations were material and RSI would never had purchased the
3 functionality had Oracle not represented that it could replace Salesforce with no
4 loss in functionality. RSI's reliance on Mr. Landsberg and Mr. Gardener's
5 representations were reasonable as they were in the best position to know what
6 CRM functionality NetSuite could provide. RSI was damaged by Oracle's
7 misrepresentations.

8 94. The representations and promises made by Oracle as alleged herein were false and
9 were known to be false or made with reckless disregard when made to RSI, as no such ERP
10 solution existed with all the attributes represented by Oracle and these Defendants knew that
11 they could not successfully customize such a system for RSI that met all of RSI's requirements
12 at the fixed price quoted, and by the "go live" date promised. Oracle through their authorized
13 agents, represented to RSI that they possessed the capability to design, implement and deliver a
14 fully integrated ERP software solution with the specific capability and functionality to meet
15 RSI's express requirements, which would go live within 5 months after contract execution and
16 at a fixed price. The representations and promises that were made by Oracle were false and were
17 material. In reality, no such ERP solution existed with the attributes represented by Oracle, and
18 Oracle knew they could not design one for the fixed price that they quoted, within the time
19 limits promised for the solution to go live. Instead, Oracle knew when they made the promises
20 that they could not deliver and that they would eventually blame RSI for Oracle's failures and
21 attempt to extract expensive change orders to increase the contract price and Oracle's profit.

22 95. RSI reasonably relied on the representations and promises made by Oracle all to
23 RSI's detriment and injury. RSI's reliance on Oracle's misrepresentations were justifiable in
24 that Plaintiff had no reason to doubt the truthfulness of their representations concerning the
25 attributes of their ERP solution because Oracle had repeatedly touted their experience with
26 similar solutions for customers similarly situated to RSI. In addition, Oracle as a company in
27 the ERP software solution space is presumed to know the products of its competitors, and when
28 it represents that its product has the same functionality and even better functionality than ECI

1 Spruce, Sage 100 or Quickbooks Enterprise Online, then it is reasonable for prospective
2 customers such as RSI to rely on Oracle's superior knowledge of their software. Based on
3 Oracle's superior knowledge of their software and their ability to customize, configure, and
4 implement the software for RSI's specific needs and uses, RSI, which had no actual knowledge
5 of the software's capabilities, justifiably relied upon Oracle's representations by entering into the
6 agreements and by continuing the relationship with Oracle. When Oracle represented that the
7 Oracle Partners had existing functionality that integrates "tightly" into NetSuite and provided
8 pricing and assurances of fixed prices, RSI was justified in relying on such representations as
9 Oracle knows what other software integrates with its product and is in a unique position to
10 know what works. When Oracle represents that it and the Oracle Partners can provide a total
11 solution that will meet RSI's requirements, RSI is justified in relying on those statements.
12 When Oracle represents that it has worked on successful projects for retailers similar to RSI
13 with the Oracle Partners, RSI is justified in relying on such statements of Oracle and the Oracle
14 Partners present or past experience working with one another. RSI justifiably and reasonably
15 relied on Oracle's representations and promises to the detriment and injury of RSI. This
16 reliance was reasonable in light of Oracle's professed knowledge of Oracle's capabilities and
17 RSI's requirements. Moreover, Oracle acted knowingly and with intent to deceive RSI as
18 shown through the structure of its agreements and those agreements were obtained only due to
19 Oracle's fraud in the inducement.

20 96. RSI would not have entered into the Oracle Contract and the Oracle Partner
21 Contracts had it known that the software solution could not perform as Oracle represented,
22 could not be done at a fixed price, would not go live by September 1, 2021, and that it would be
23 less robust and less powerful than the ECI Spruce, Sage 100, and Quickbooks Desktop
24 Enterprise that RSI and its sister companies were using at the time of contracting with Oracle.

25 97. As a result of Oracle's fraud in the inducement and promissory fraud, RSI is
26 entitled to an award of damages, including but not limited to the cost of disruptions and
27 unrealized efficiencies in bidding and quoting new jobs, managing inventory, as well as loss of
28 resources, sales, revenue and profits due to the failed implementation and lack of a working

1 website to sell RSI products; loss of process improvements; additional labor costs caused by the
2 failed implementation; and additional costs and damages in an amount to be proven at trial.

3 98. As a result of Oracle's fraud in the inducement and promissory fraud, RSI is
4 entitled to rescind the Estimate Forms and the SOWs and related agreements and get its money
5 back as well as be awarded other damages.

6 99. Additionally, RSI is entitled to punitive damages as a result of Oracle's fraudulent
7 conduct, because at the time Oracle entered into the Agreements, they had no intention of
8 delivering the promised solution at the fixed price point and within the timeline represented
9 with all of the attributes promised, and they acted with oppression, fraud and malice when
10 seeking to trick RSI into entering into the Agreements.

11 **SECOND CAUSE OF ACTION**
12 **(Fraud in the Inducement and Promissory Fraud)**
13 **(Against Oracle)**

14 100. RSI realleges and incorporates herein by reference paragraphs 1-99, inclusive, as
15 though set forth in this Second Cause of Action.

16 101. RSI made it clear to Oracle during multiple pre-contract execution meetings that
17 the POS part of the ERP Product was critical and needed to include the desired functionality.
18 Although Oracle at first represented it could provide the required functionality, they later
19 changed course and recommended that Vend/Lightspeed be brought in by Oracle to deliver this
20 portion of the ERP Product. During these discussions Mr. Landsberg represented to RSI that
21 Vend/Lightspeed integrated tightly into Oracle's ERP Product and that Oracle and
22 Vend/Lightspeed had worked on numerous successful implementations for retail customers
23 such as RSI. RSI reiterated the importance of this part of the solution during the onsite demo
24 with Vend, and the demo seemed to confirm that Vend/Lightspeed could provide the required
25 functionality. Oracle's misrepresentations with regard to the POS portion of the project include
26 the following:

- 27
 - In an October 6, 2020 email Mr. Tarry Bratton told Mr. Landsberg and reiterated

28 these points orally on later Zoom calls with Mr. Landsberg and Mr. D'Amato

1 including on calls on January 12, 2021, February 11, 2021 and in person on
2 February 18, 2021, that it was important to RSI to have a firm price that would
3 not increase as the cost of the solution was a very important factor for the
4 company. SAC ¶¶25-26, 30, 39-40, 43, 46, 47. The representations by Mr.
5 Landsberg and Mr. D’Amato that the contract was a “fixed bid” or “fixed price”
6 contract was material in determining whether RSI would contract with Oracle.
7 Oracle’s Mr. Landsberg on October 5, 2020, and later Mr. Landsberg and Mr.
8 D’Amato in meetings on at least January 12, 2021, February 11, 2021 and
9 February 18, 2021 promised Mr. Bratton that the price once finalized would be
10 fixed and that there would be no cost increases and no implementation costs
11 except for the first year of the contract. *Id.* This representation was also made in
12 a spreadsheet emailed to Mr. Bratton by Mr. Landsberg on February 24, 2021,
13 where the implementation prices were denoted as a “fixed bid”. SAC ¶49. In
14 addition, in an email of February 19th after the completion of the various demos,
15 Mr. Landsberg sent a follow-up email stating that “the software costs now consist
16 of everything you outlined as needed”. SAC ¶¶46, 47. These statements were
17 false. On multiple occasions during contract performance, Oracle sought change
18 orders for functionality that it had represented to RSI was included in the price,
19 such as the automatic updating of purchase orders and images from RSI’s
20 suppliers, and warehouse related items such as bin location selection and tally
21 scanning, as well as others. SAC ¶¶75, 78, 79, 80. In addition, in the first quarter
22 of 2022 when RSI again informed Oracle that Vend had failed to deliver a
23 working POS solution, Oracle represented that it would need to scope what RSI
24 required for this functionality to provide a price for a change order for Oracle to
25 do the work. *Id.* In the February 24, 2021 spreadsheet showing the fixed price
26 contract, Mr. Landsberg had represented that implementation costs for the POS
27 portion was in year one only, and that there would be no such costs in year two or
28 thereafter. SAC ¶¶46, 47. RSI was also surprised that Oracle would need to

1 scope a project that it had represented that it had scoped in January and February
2 of 2021 before it made its fixed price offer, which included Vend as the Oracle
3 Partner for POS. SAC ¶¶75, 78, 79, 80. In April of 2022 Oracle also sought to
4 inflate the contract price through proposing change orders for a customization
5 relating to tally scanning and bin processing, which was functionality that had
6 been promised in the original Oracle Contract. SAC ¶¶75, 78, 79, 80. Finally,
7 Oracle sought to inflate the contract price by sending RSI a proposed change
8 order in November of 2022 for the automatic image update functionality that it
9 had represented was included in the price of the original Oracle Contract. *Id.* RSI
10 met with Oracle and Oracle made these representations on at least January 12,
11 2021 (attended by from RSI Joe Nolan, Tarry Bratton, Tim Bratton, Chad
12 Rohrbach, Keith Bell, and from Oracle Troy Landsberg, Dan D’Amato, and Ben
13 Gibson); February 11, 2021 (meeting attended by Joe Nolan, Tarry Bratton, Tim
14 Bratton, Chad Rohrbach, Keith Bell and Dan Jamison of RSI and from Oracle,
15 Troy Landsberg, Dan D’Amato, Stephane Azolay, John Barbera, Rob Krajci, and
16 representatives from Appficiency); February 18, 2021 (attending from RSI, Joe
17 Nolan, Tim and Tarry Bratton, Chad Rohrbach and Dan Jamison and from Oracle,
18 Troy Landsberg, Dan D’Amato, Ben Gibson, Stephane Azolay, Rob Krajci, Leo
19 Tuzzo, and John Barbera via Zoom).

- 20 • In a January 21st email Mr. Bratton again requested to see the solution all working
21 together. SAC ¶33. Mr. Landsberg proposed a comprehensive demo of the
22 solution for the following week. SAC ¶¶33, 34. In his email, Mr. Landsberg
23 represented that “at the end of the day, NetSuite has a complete solution for River
24 Supply Inc. and we want to prove it, and partner with you”. *Id.* Four days later
25 on January 25th, Mr. Landsberg disclosed that rather than one demo, Oracle was
26 changing its strategy and proposing a series of demos to demonstrate the existing
27 functionality of the product. SAC ¶34. And the POS demo did not go forward as
28 Mr. Landsberg promised before the end of January. On information and belief,

1 the reason that Mr. Landsberg proposed a series of demos is that Oracle and its
2 Oracle Partners did not actually have the solution that it represented was then
3 currently existing in one integrated solution, and wanted to present the demos
4 piecemeal, which would make it easier to hide these gaping holes in functionality.
5 SAC ¶¶34. On information and belief Mr. Landsberg was also scrambling to find a
6 POS vendor that worked with NetSuite and that could meet all of RSI's
7 requirements. The series of demos ran from February 1, 2021 and culminated on
8 February 17, 2021 with the final demo from Oracle and an additional demo from
9 Vend purporting to show the POS functionality of the solution, among other
10 things. SAC ¶¶35-36, 38, 39, 42-45, 46. Oracle represented that the demos
11 showed existing technology of Oracle and its Oracle Partners. SAC ¶¶38, 41. In
12 reality Mr. Landsberg's representations were false, and on information and belief,
13 the demos did not actually demonstrate an existing technology that could be rolled
14 out by September 1, 2021 at the price that Oracle had represented. SAC ¶¶40, 47.
15 Oracle's representations were material to RSI and RSI relied on Oracle's
16 representations and would not have entered into the agreements had it known that
17 the technology did not actually exist as Oracle had represented. SAC ¶¶47, 50.
18 RSI's reliance was reasonable as it was Oracle as the owner of the software that
19 was in the position to accurately represent the existing functionality of its
20 software and the software of that of its recommended Oracle Partners such as
21 Vend and SPS. SAC ¶¶47, 50. RSI was damaged by Oracle's misrepresentations.
22 SAC ¶50. The February 1, 2021 demo was attended by Joe Nolan, Tarry Bratton,
23 Tim Bratton, Chad Rohrbach, Keith Bell of RSI and Troy Landsberg, Ben
24 Gibson, Dan D'Amato, and John Barbera of Oracle); The February 11, 2021
25 demo was attended by Joe Nolan, Tarry Bratton, Tim Bratton, Chad Rohrbach,
26 Keith Bell and Dan Jamison of RSI and from Oracle, Troy Landsberg, Dan
27 D'Amato, Stephane Azolay, John Barbera, Rob Krajci, and representatives from
28 Appficiency). The February 17, 2021 demo was attended by Joe Nolan, Tim and

1 Tarry Bratton, Chad Rohrbach and Dan Jamison from RSI and from Oracle, Troy
2 Landberg and Dan D’Amato in person and Ben Gibson, Stephane Azolay, Rob
3 Krajci, Leo Tuzzo, John Barbera via Zoom.

- 4 • Oracle’s Mr. Landsberg represented on a Zoom call on at least January 12th and
5 February 11, 2021 to Mr. Tarry and Tim Bratton, Joe Nolan, Keith Bell and Chad
6 Rohrbach (and Dan Jamison at the February 11th meeting) that the NetSuite
7 solution has capabilities built in allowing RSI’s warehouse to connect with the
8 point of sale and transfer the data when new inventory stock is delivered or
9 inventory is sold, so that RSI always knows what inventory is on hand. SAC
10 ¶¶30, 32, 33, 35, 38, 39, 40-41. The representation was material as it was
11 important to RSI to know at all times what items were in stock at any one time,
12 and RSI would not have entered into the Oracle Contracts had it known that
13 Oracle and its Oracle Partners could not provide the promised functionality.
14 During implementation, RSI learned that the NetSuite solution did not contain the
15 functionality that had been represented as being currently existing.
- 16 • When Mr. Bratton contacted Oracle in October 2020, he made it clear that RSI
17 was seeking one integrated ERP solution that could combine all aspects of his
18 three businesses. SAC ¶¶24, 25, 26. During his call with Mr. Landsberg on
19 October 5, 2020, Mr. Bratton also made clear that a key part of the required
20 solution would involve the Point of Sale (“POS”) technology. *Id.* That is because
21 RSI has a retail hardware store, with a catalog of over 25,000 SKUs, which would
22 need to be kept track of and automatically updated as items changed. *Id.* Mr.
23 Bratton also explained that RSI was interested in building a website so that RSI
24 could sell directly to consumers, which was extremely important due to RSI’s
25 rural location and the change in shopping habits of consumers caused by the
26 Covid pandemic. *Id.* In a January 21, 2021 email Mr. Landsberg represented that
27 “at the end of the day, NetSuite has a complete solution for River Supply, Inc. and
28 we want to prove it and partner with you”. SAC ¶33. On February 2, 2021 Mr.

1 Landsberg conceded to Mr. Bratton that the NetSuite solution could not handle
2 certain of RSI's requirements relating to the POS, but that Oracle worked closely
3 with certain POS partners that could deliver the required functionality. SAC ¶36.
4 Mr. Landsberg had represented previously in a meeting on January 19, 2021 and
5 in an email later that day that Oracle worked very closely with certain third-party
6 POS partners that integrated tightly into NetSuite. In his January 20, 2021 email
7 Mr. Landsberg promoted Netscore, Vend and Lightspeed for the POS portion of
8 the solution. By mid-February Mr. Landsberg had narrowed his recommendation
9 to Vend. SAC ¶38. In his annotated Flow of Software document (Exhibit 3)
10 provided on February 15, 2021, Mr. Landsberg singled out Vend as the preferred
11 provider and explained that Vend connected with NetSuite through the technology
12 of another third-party Oracle partner In8Sync, and could provide the required
13 POS functionality. SAC ¶41. Mr. Landsberg's promise that Vend could provide
14 this POS functionality was reiterated by Mr. Landsberg and Mr. D'Amato during
15 the onsite February 17th demos. SAC ¶¶42-45. In reality, what Oracle and Vend
16 represented as existing POS technology that would meet RSI's requirements did
17 not actually exist. SAC ¶¶63-67, 74, 75, 77, 79-81. These representations were
18 material and RSI would never have entered into the Oracle Contracts if it knew
19 that Oracle and Vend did not have the existing POS technology that would meet
20 RSI's requirements. RSI's reliance was reasonable as Oracle and its Oracle
21 Partners, including Vend, as the owners of the software were in the best position
22 to know what functionality was included in their software.

- 23 • Mr. Landsberg represented during at least a telephone call with Mr. Bratton on
24 October 5, 2020 and on Zoom calls of February 11th, the in-person demo meeting
25 on February 17th, the PowerPoint presentation meeting on February 18, 2021 (and
26 in the PowerPoint presentation itself) and a second Zoom meeting on February
27 24th that given Oracle's experience with similar retailers such as RSI, Oracle had
28 the experience to deliver a "go live" date of Phase I by September 2021, which

1 also included publishing a website where RSI customers could purchase its
2 products. SAC ¶¶23-36, 38, 39, 42-45, 47. This representation concerning the
3 “go live” date and the website publication date was material to RSI for a number
4 of reasons, which all were communicated to Oracle prior to contract execution.
5 First, RSI’s hardware store is in a rural location. Being online would allow
6 customers to purchase things from the website and also research what types of
7 items RSI had for sale, thereby increasing sales. In addition, the Covid pandemic
8 virtually eliminated in person shopping, and having the ability for its customers to
9 purchase the products online was a key part of RSI’s strategy to weather the
10 pandemic and its aftermath. Two, RSI wanted a few months to experiment and to
11 get familiar with the solution before the start of the new accounting year on
12 January 1, 2022, and so that there could be a clean transition of financial at year-
13 end in 2021. Three, RSI’s financial projections were based on a live website
14 where products could be purchased by RSI’s customers beginning in the fall of
15 2021, and for the upcoming holiday season. Four, due to Oracle’s representations
16 that all implementation costs were fixed and would occur in year one, RSI did not
17 budget for additional implementation costs starting in year two as it believed and
18 relied on Mr. Landsberg and Mr. D’Amato’s representations that it was a fixed
19 bid contract. In addition, the representations were material in that RSI had not
20 budgeted any continuing implementation costs for the second year of the project,
21 in reliance on Oracle’s fixed price bid, and the website was a key part of RSI’s
22 business plan. RSI’s reliance was reasonable in that Oracle represented that it had
23 extensive experience successfully delivering the solution to retailers with large
24 inventories such as RSI, by itself as well as with the Oracle Partners that it had
25 recommended including Vend and SPS. During implementation not only was the
26 September “go live” date missed but Oracle blew past 4 other go live dates (June
27 1, 2022, October 1, 2022, November 1, 2022 and January 1, 2023) and the project
28

1 was still not live when the contract was terminated by RSI in January of 2023,
2 almost 24 months after the contract was signed.

- 3 • Mr. Landsberg and Mr. D'Amato represented during the demos on February 17th
4 and in previous emails and conversations detailed above, that Oracle had worked
5 with Vend to successfully deliver POS systems for complex retail customers with
6 large catalogs and inventories like RSI and had done so on multiple other projects.
7 SAC ¶¶32, 41-47. The representation was material as RSI was concerned about
8 entering into the contract with Oracle when it was using so many third-party
9 Oracle Partners, and RSI wanted to ensure that the proposed team had a track
10 record of success together for similar retail customers to RSI. During
11 implementation it became clear that Oracle and Vend did not have a close
12 working relationship and completely failed to coordinate with each other to
13 deliver the promised solution. In fact, at times each appeared unfamiliar with the
14 working of the other party's software solution and how to integrate the product in
15 the NetSuite system to provide the promised functionality. On information and
16 belief, both Oracle and Vend knew that the POS functionality they promised did
17 not currently exist, but they were planning to use the RSI and other retail
18 contracts to engineer the solution so that they could begin targeting other retail
19 companies with large inventories and over 25K individual SKUs. SAC ¶42.
20 Landsberg's recommendation of Vend and Oracle's promise that Vend could
21 provide all of the required POS functionality, and integrated tightly into and could
22 "tie right into the NetSuite backend" (October 2, 2020 Landsberg email) so as to
23 deliver a "complete solution" (Landsberg January 21st email) with all the required
24 parts were material. The POS solution and the website were key drivers of the
25 NetSuite solution and had Oracle and Vend disclosed that the technology did not
26 exist RSI would never have entered into the Oracle Contracts. SAC ¶¶24-25, 36-
27 37. RSI's reliance was reasonable, in that Oracle and Vend both represented in at
28 least the February 17th demo that they had both worked together on similar retail

1 projects and had successfully delivered the solution with all of RSI's required
2 parts. SAC ¶¶42, 45. RSI was damaged by Oracle and Vends misrepresentations.

- 3 • Mr. Landsberg and Mr. D'Amato represented at least during the February 17th
4 and 18th meetings that Oracle working with SPS had successfully delivered EDI
5 systems for complex retail customers like RSI and had done so on multiple other
6 projects. SAC ¶¶38, 39, 40, 41-47. Mr. Landsberg also represented that SPS
7 could provide all of the EDI functionality that RSI currently enjoyed with ECI
8 Spruce, and that SPS would be able to connect directly with RSI's suppliers such
9 as Orgill and House Hasson and connect them directly into NetSuite to deliver all
10 of the functionality that had been promised. *Id.* The representation was material
11 as RSI was concerned about entering into the contract with Oracle when it was
12 using so many third-party Oracle Partners, and RSI wanted to ensure that the
13 proposed team had a track record of success together, and that Oracle understood
14 SPS's technology and what it could deliver. Landsberg's recommendation of SPS
15 and Oracle's promise that its recommended partners, such as SPS could provide
16 all of the required EDI functionality, and integrated tightly into and could "tie
17 right into the NetSuite backend" (October 2, 2020 Landsberg email) so as to
18 deliver a "complete solution" (Landsberg January 21st email) with all the required
19 parts were material. Landsberg and D'Amato sat through detailed meetings on
20 January 12, 2021, January 19, 2021, February 1, 2021, February 11, 2021 and
21 February 17th and 18th, 2021 where all of the required functionality was discussed.
22 In all of these meetings Oracle represented that it had either by itself or through
23 its Oracle Partners, an existing EDI solution that would work with NetSuite
24 system and provide all of the functionality required by RSI. During
25 implementation it became clear that Oracle and SPS completely failed to
26 coordinate with each other to deliver the promised solution and appeared
27 unfamiliar with the other party's software solution and how to integrate the
28 product into the NetSuite system to provide the promised functionality.

- 1 • In a February 19, 2021 email Mr. Landsberg sent revised pricing and represented
2 that “[t]he software costs now consist of all of the things that you outlined as
3 needed.” SAC ¶¶41, 46. This statement was false and did not include in the
4 software costs of the automatic update features for purchase orders, images, and
5 related content that had been promised during pre-contract discussions on at least
6 January 12th, February 1, February 3, February 11, and February 17th and 18th.
7 Instead, in November of 2022, Oracle sought a change order to implement and
8 deliver this functionality. SAC ¶¶76, 78, 79-81. In addition, Oracle had
9 represented in pre-contract discussions that working with Vend it had scoped the
10 POS portion of the solution and that the POS portion of the implementation would
11 be fixed and such costs would only be incurred in the first year of the contract.
12 This turned out to be false. SAC ¶78. Instead, Oracle proposed a new scoping of
13 the POS system in 2022 that would require a change order and a higher price. *Id.*
14 Oracle also promised that its solution would allow bin tracking and tally scanning
15 just like ECI Spruce. That turned out to be false and in April of 2022 Oracle
16 sought an expensive change order with the customization to provide the
17 functionality it had promised pre-contract. These representations were material to
18 RSI and RSI would not have entered into the contract had it known that by paying
19 the higher price for the NetSuite solution it would actually be losing key
20 functionality that it enjoyed with its existing software. RSI’s reliance on Oracle
21 and Vend’s representations were reasonable as they were in the best position to
22 know of the functionality that existed in their software. RSI was damaged by
23 Oracle and Vend’s misrepresentations. The same representations were made by
24 Mr. Landsberg and reaffirmed by other Oracle attendees on Zoom calls on at least
25 January 19, 2021 (attended by Tarry and Tim Bratton, Joe Nolan, Chad Rohrbach
26 and Keith Bell of RSI and Messrs Landsberg, D’Amato, and Gibson of Oracle);
27 February 1, 2021 attended by Tarry Bratton, Joe Nolan, Chad Rohrbach and Dan
28 Jamison of RSI and Messrs Landsberg, D’Amato, Gibson, and Barbera of Oracle;

1 February 11, 2021 (attended by Mr. Tarry Bratton, Joe Nolan, Chad Rohrbach,
2 Keith Bell and Dan Jamison of RSI and Messrs. Gibson, Landsberg, Azoulay,
3 Barbera, Krajci, Tuzzo and D'Amato of Oracle); February 17 and 18, 2021
4 (attended by the Brattons, Joe Nolan, Chad Rohrbach, and Dan Jamison of RSI
5 and Messrs Gibson, Landsberg, Azoulay, Krajci, Tuzzo, Barbera, and D'Amato of
6 Oracle).

- 7 • In a February 19, 2021 email, Mr. Landsberg represented that “[w]e understand
8 the Implementation/Training and Support costs are probably big and scary but
9 you will be left with a much more reasonable expense for just the software
10 moving forward.” SAC ¶¶46, 47, 49. This statement was false. Oracle had
11 represented in pre-contract discussions that working with Vend it had scoped the
12 POS portion of the solution and that the POS portion of the implementation would
13 be fixed and such costs would only be incurred in the first year of the contract.
14 *Id.* This turned out to be false. Instead, Oracle proposed a new scoping of the
15 POS system in 2022 that would require a change order and a higher price. Oracle
16 also promised that its solution would allow bin tracking and tally scanning just
17 like ECI Spruce. That turned out to be false and in April of 2022 Oracle sought
18 an expensive change order with the customization to provide the functionality it
19 had promised pre-contract. In November of 2022, Oracle proposed a change
20 order and attempted to charge RSI for eCommerce Advanced to obtain the
21 automatic updating functionality for purchase orders, images, and related content
22 that had been promised in the January 12th, February 1, February 3, February 11,
23 and February 18th meetings. These representations were material to RSI and RSI
24 would not have entered into the contract had it known that by paying the higher
25 price for the NetSuite solution it would actually be losing key functionality that it
26 enjoyed with its existing software. RSI’s reliance on Oracle representations were
27 reasonable as it was in the best position to know of the functionality that existed
28 in its software. RSI was damaged by Oracle’s misrepresentations. The same

1 representations were made by Mr. Landsberg and reaffirmed by other Oracle
2 attendees on Zoom calls on at least January 19, 2021 (attended by Tarry and Tim
3 Bratton, Joe Nolan, Chad Rohrbach and Keith Bell of RSI and Messrs Landsberg,
4 D'Amato, and Gibson of Oracle); February 1, 2021 attended by Tarry Bratton,
5 Joe Nolan, Chad Rohrbach and Dan Jamison of RSI and Messrs Landsberg,
6 D'Amato, Gibson, and Barbera of Oracle; February 11, 2021 (attended by Mr.
7 Tarry Bratton, Joe Nolan, Chad Rohrbach, Keith Bell and Dan Jamison of RSI
8 and Messrs. Gibson, Landsberg, Azoulay, Barbera, Krajci, Tuzzo and D'Amato of
9 Oracle); February 17 and 18, 2021 (attended by the Brattons, Joe Nolan, Chad
10 Rohrbach, and Dan Jamison of RSI and Messrs Gibson, Landsberg, Azoulay,
11 Krajci, Tuzzo, Barbera, and D'Amato of Oracle).

- 12 • Mr. Landsberg represented in a January 21, 2021 email to Mr. Bratton proposing
13 a comprehensive demo of the solution for the following week that “at the end of
14 the day, NetSuite has a complete solution for River Supply Inc. and we want to
15 prove it, and partner with you”. SAC ¶33. Mr. Landsberg further represented in a
16 February 19, 2021 email that “the software costs now consist of everything you
17 outlined as needed”. SAC ¶46. In a February 24, 2021 email Mr. Landsberg
18 included a spreadsheet with the final pricing for Oracle and for the Oracle
19 Partners, which it stated was a “fixed bid” and represented that there would be no
20 other implementation costs after the first year. SAC ¶¶47, 49. These statements
21 were false. Oracle and the Oracle Partners did not have a complete solution for
22 RSI and had no idea how to make everything work together. Mr. Bratton said it
23 best in his email to Oracle of February 11, 2022 during contract performance
24 when he noted that the “add ons” (i.e. the Oracle Partners) that Mr. Landsberg
25 sold RSI did not work and that it was Mr. Landsberg’s responsibility and Oracle’s
26 responsibility to make sure that the solution worked: “Also your add ons, your
27 boy Troy sold us. Is the responsibility of your salesmen selling something that’s
28 does not work. Troy sold the items, gave us the prices. The add ons companies did

1 not give us prices directly your boy Troy did. Your company before adding
2 something should know how it works. You or Ben do not even know how this
3 will work all together. You have to many hands in the cookie jar trying to figure
4 out how it all works together and not one person on your team gets it 100% how
5 all things are to work together.”

6 102. RSI reasonably relied on Oracle’s representations concerning the capabilities of
7 Vend and Lightspeed’s and SPS’s existing products, including at the Vend and Oracle demos.
8 RSI’s reliance on Oracle’s misrepresentations were justifiable in that Plaintiff had no reason to
9 doubt the truthfulness of their representations concerning the attributes of the POS software
10 because Oracle and Vend/Lightspeed had touted their experience with similar solutions for
11 customers similarly situated to RSI. Based on Oracle’s superior knowledge of
12 Vend/Lightspeed’s software and the representations concerning their ability working with
13 Vend/Lightspeed to customize, configure, and implement the software for RSI’s specific needs
14 and uses, RSI, which had no actual knowledge of the software’s capabilities, justifiably relied
15 upon the representations by entering into the agreement with Vend/Lightspeed recommended by
16 Oracle.

17 103. RSI would not have entered into the agreements with Oracle and with
18 Vend/Lightspeed had it known that the software could not perform as Oracle and
19 Vend/Lightspeed represented.

20 104. As a result of Oracle’s misrepresentations, RSI has been damaged including but
21 not limited to the cost of disruptions and unrealized efficiencies in bidding and quoting new
22 jobs, managing inventory, as well as loss of resources, sales, revenue and profits due to the
23 failed implementation and failure to deliver a working website; loss of process improvements;
24 additional labor costs caused by the failed implementation; and additional costs and damages in
25 an amount to be proven at trial.

26 105. As a result of Oracle’s fraud in the inducement and promissory fraud, RSI is
27 entitled to rescind its agreements with Oracle, and to get its money back as well as other
28 damages.

1 106. Additionally, RSI is entitled to punitive damages as a result of Oracle's
2 misrepresentations and other fraudulent conduct, as they acted with oppression, fraud and
3 malice seeking to trick RSI into entering into the Oracle and Vend/Lightspeed contracts.

4 **THIRD CAUSE OF ACTION**
5 **(Negligent Misrepresentation)**
6 **(Against Oracle)**

7 107. RSI realleges and incorporates herein by reference paragraphs 1-106, inclusive, as
8 though set forth in full in this Third Cause of Action.

9 108. Oracle, through their authorized agents, represented to RSI that they possessed the
10 capability to design, implement and deliver a fully integrated ERP software solution with the
11 specific capability and functionality to meet RSI's express requirements, and to do so within 5
12 months of contract execution. The representations and promises that were made by Oracle were
13 false and were material and are set forth in detail in the bullet points of paragraphs 93 and 101
14 above. In reality, no such ERP solution existed with the attributes represented by Oracle, and
15 Oracle knew or should have known that they did not have the technology and could not develop
16 it at the price and within the time promised.

17 109. At the time Oracle made these representations to RSI, they knew, or in the
18 exercise of reasonable care, should have known, that they did not possess those capabilities,
19 making their representations false. Oracle made the representations for the express purpose of
20 inducing RSI to enter into the agreements. Defendants knew when they made the promises that
21 they would attempt to extract expensive change orders to increase the contract price and
22 Oracle's profit.

23 110. Based on Oracle's superior knowledge of their software and their ability to
24 customize, configure, and implement the software for RSI's specific needs and uses, RSI, which
25 had no actual knowledge of the software's capabilities, justifiably relied upon Oracle's
26 representations by entering into the agreements, including the Oracle Partner Agreements, and
27 in continuing the relationship with Oracle. RSI justifiably and reasonably relied on Oracle's
28 representations and promises to the detriment and injury of RSI. This reliance was reasonable

1 in light of Oracle's professed knowledge of Oracle's capabilities and RSI's requirements.
2 Moreover, Oracle acted knowingly and with intent to deceive RSI as shown through the
3 structure of its agreements and those agreements were obtained only due to Oracle's fraud in the
4 inducement.

5 111. RSI would not have entered into the agreements with Oracle had it known that the
6 representations and promises were not true.

7 112. As a consequence of the false representations and promises of Oracle, RSI has
8 been damaged including but not limited to the cost of disruptions and unrealized efficiencies in
9 bidding and quoting new jobs, managing inventory, as well as loss of resources, sales, revenue
10 and profits due to the failed implementation and inability to sell products on the website; loss of
11 process improvements; additional labor costs caused by the failed implementation; and
12 additional costs and damages in an amount to be proven at trial.

13 113. As a result of Oracle's negligent misrepresentation, RSI is entitled to rescind the
14 agreements, and get its money back as well as other damages.

15 114. Additionally, RSI is entitled to punitive damages as a result of Oracle's conduct,
16 because at the time Defendants entered into the Estimate Forms and the SOWs they had no
17 intention of delivering the promised solution at the fixed price point represented with all of the
18 attributes and within the timeframe promised, and they acted with oppression, fraud and malice
19 in representing otherwise.

20 **FOURTH CAUSE OF ACTION**
21 **(Negligent Misrepresentation)**
22 **(Vend and Lightspeed)**

23 115. RSI realleges and incorporates herein by reference Paragraphs 1-114 inclusive, as
24 though set forth in full in this Fourth Cause of Action.

25 116. RSI made it clear to Oracle during multiple pre-contract execution meetings that
26 the POS part of the ERP Product was critical and needed to include the desired functionality.
27 Although Oracle at first represented it could provide the required functionality, they later
28 changed course and recommended that Vend (later purchased by Lightspeed) be brought in by

1 Oracle to deliver this portion of the ERP Product. During these discussions Mr. Landsberg
2 represented to RSI that Vend integrated tightly into Oracle's ERP Product, tied into the ERP
3 Product on the backend through an In8Sync connector and worked with Oracle's technology
4 solution and could meet RSI's requirements for the POS, that Vend had been thoroughly vetted
5 by Oracle and put through a quality assurance process, and that Oracle and Vend had worked on
6 numerous successful implementations for retail customers such as RSI. RSI emphasized the
7 critical nature of the POS portion of the solution and reiterated that importance throughout the
8 meetings with Oracle and during the onsite demo with Vend. During the February 17th Vend
9 meeting and demo RSI again reiterated its requirements that the software include all the
10 functionality for POS currently enjoyed by RSI using Quickbooks Desktop Enterprise, Sage
11 100, and ECI Spruce. RSI also requested confirmation that Vend had a track record of working
12 with Oracle to deliver the POS solution to retail companies like RSI with a large catalog of
13 items for sale, including tens of thousands of separate SKUs. Vend confirmed that it could
14 deliver all of the POS functionality that RSI required and could deliver that functionality as an
15 integration into Oracle's NetSuite solution, which would be connected through the In8Sync
16 connector. Also, during the demo and a subsequent meeting that day, as well as a follow-up
17 meeting on February 18th, Mr. Landsberg and Mr. D'Amato affirmed Vend's representations
18 and also led RSI to believe that Vend could deliver the promised functionality. On information
19 and belief, Vend had not successfully delivered a POS solution to a retailer such as RSI with
20 such a large online catalog of items to sell, including tens of thousands of SKUs, integrating
21 successfully with NetSuite's solution. On information and belief, Vend had not worked with
22 suppliers such as House of Hasson and Orgill and did not have the technology to handle tens of
23 thousands of individual items for sale. Instead, the Vend POS technology seemed more suited
24 for small "mom and pop" retail businesses like flower shops, bike shops etc. with a small and
25 easily manageable inventory of items for sale. On information and belief, the representations
26 and promises made by Vend concerning the capabilities of the Vend POS software and its
27 ability to meet RSI's requirements were known to be false when made or were made with
28 reckless disregard. The representations that were made by Vend were false and they were

1 material. In reality no such POS software existed with the capabilities needed by RSI and as
2 represented by Vend to RSI. In addition, on information and belief, Vend had not successfully
3 integrated its POS solution with NetSuite for a retail client such as RSI with a large catalog of
4 individual items for sale and tens of thousands of separate SKUs, which connected to a supplier
5 with tens of thousands of items in its online catalog.

6 117. On information and belief, at the time Vend made these representations to RSI, it
7 knew, or in the exercise of reasonable care, should have known, that it did not possess those
8 capabilities, making their representations false. On information and belief, Vend made the
9 representations for the express purpose of inducing RSI to enter into the Oracle Agreement, and
10 an agreement with Vend.

11 118. Based on Vend's superior knowledge of its software and its ability to customize,
12 configure, and implement the software for RSI's specific needs and uses, RSI, which had no
13 actual knowledge of the software's capabilities, justifiably relied upon Vend's representations
14 about the functionality provided by its software by entering into the agreements with Oracle
15 Contract and the Vend contract. RSI justifiably and reasonably relied on Vend's representations
16 and promises to the detriment and injury of RSI. This reliance was reasonable in light of
17 Vend's professed knowledge of Vend's capabilities and RSI's requirements, and Oracle and
18 Vend's representations that Vend's software could be tightly integrated into the ERP Product
19 and connected successfully through the In8Sync connector on the backend, that the solution
20 would work, and that Vend and Oracle had successfully delivered the required POS
21 functionality to companies in the retail space with large catalogs similar to RSI with tens of
22 thousands of SKUs.

23 119. RSI would not have entered into the agreements with Vend had it known that the
24 representations and promises were not true. With regard to the Vend contract, to this day RSI
25 does not have a copy of the contract from when it contracted with Vend in 2021. Although RSI
26 has requested a copy of the relevant agreement several times, Vend has declined to provide it,
27 instead promoting a completely separate and later agreement. Once RSI is able to obtain the
28 applicable agreement through discovery, RSI may move to amend this pleading to assert

1 additional claims against Vend.

2 120. As a consequence of the false representations and promises of Vend, RSI has been
3 damaged including but not limited to the cost of disruptions and unrealized efficiencies in
4 bidding and quoting new jobs, managing inventory, as well as loss of resources, sales, revenue
5 and profits due to the failed implementation and inability to sell products on its website; loss of
6 process improvements; additional labor costs caused by the failed implementation; and
7 additional costs and damages in an amount to be proven at trial.

8 121. As a result of Vend's (and its successor Lightspeed's) negligent
9 misrepresentation, RSI is entitled to rescind the agreements, and get its money back as well as
10 other damages.

11 122. Additionally, RSI is entitled to punitive damages as a result of Vend's conduct,
12 because at the time Oracle entered into the Estimate Forms and the SOWs and Vend contracted
13 with RSI, Vend had no intention of delivering the promised solution at the fixed price point
14 represented with all of the attributes and functionality promised, within the timeframe promised,
15 and it acted with oppression, fraud and malice in representing otherwise.

16
17 **FIFTH CAUSE OF ACTION**
18 **(Breach of Contract)**
19 **(Against OAI)**

20 123. RSI realleges and incorporates herein by reference Paragraphs 1 - 122 inclusive,
21 as though set forth in full in this Fifth Cause of Action.

22 124. RSI and OAI executed the Estimate Forms and the Professional Services SOWs.
23 The Estimate Forms purported to detail the modules of the ERP solution that RSI was
24 purchasing, which RSI now believes were modules that did not actually exist. Paragraph 2 of
25 the SOW further details the professional services that Defendants were obligated to provide to
26 RSI in relation to setting up and configuring the NetSuite Solution. These professional services
27 included project management; general configuration and set-up; provision of process area walk
28 throughs; data migration into the SuiteSuccess system; set up and configure the Record to
Report, Design to Build, Procure to Pay, Order to Cash/Return to Credit, Marketing Return on

1 Investment, Lead to Quote, Project to Cash, and the Warehouse Operations Call to Resolution
2 process areas. User Acceptance Testing (“UAT testing”) and vendor coordination consulting,
3 among other services, were also included.

4 125. RSI performed all, or significantly all of the things required of it, or was excused
5 from performing due to OAI’s breaches and other misconduct.

6 126. OAI failed to perform the services that it was obligated to perform pursuant to the
7 Estimate Forms and the SOWs and failed to provide a working ERP Product as promised, with
8 the required features, at the agreed upon price and within the time frame promised, thereby
9 breaching the contract. The breaches were material and went to the heart of what was promised.
10 OAI failed to adequately manage the project and had no plan to bring the project to a successful
11 conclusion. OAI also failed to provide the professional services in a professional manner
12 consistent with industry standards. Instead, Oracle’s revolving door of employees skipped
13 meetings, ignored emails, failed to import data, ignored important questions from RSI, and
14 generally dropped the ball in relation to their performance of the professional services, in breach
15 of the agreements. All of these failures meant that it was impossible for RSI to go live, or to use
16 the subscription or the ACS services that it had bought and paid for.

17 127. As a result of OAI’s breaches, RSI has been damaged and harmed in an amount to
18 be proven at trial.

19 128. OAI’s breach of contract was a substantial factor in bringing about RSI’s harm.

20 **SIXTH CAUSE OF ACTION**
21 **(Breach of Warranty)**
22 **(Against OAI)**

23 129. RSI realleges and incorporates herein by reference Paragraphs 1-128, inclusive, as
24 though set forth in full in this Sixth Cause of Action.

25 130. The SSA expressly provides a Services Warranty. Paragraph 9.1 of the SSA
26 provides that “Oracle will perform (i) the Cloud Service using commercially reasonable care
27 and skill in all material respects as described in the Oracle NetSuite Written Materials, and (ii)
28 any Professional Services and Support Services in a professional manner consistent with

1 industry standards (the warranties described by the foregoing clauses (i) and (ii), collectively,
2 the “Services Warranty”). If the Services provided to Customer were not performed as
3 warranted, Customer must promptly provide Oracle with a written notice that describes the
4 deficiency in the Services (including, as applicable, the service request number notifying Oracle
5 of the deficiency in the Services). For Professional Services, Customer must notify Oracle of
6 any warranty deficiencies within 60 days from performance of the deficient Professional
7 Services.” Paragraph 9.3 provides that the Oracle customer may terminate the SSA and end the
8 services in the event that Oracle breaches the warranties and fails to correct the deficient
9 services.

10 131. Oracle’s express statement in the SSA to perform the “Professional Services and
11 Support Services in a professional manner consistent with industry standards” constitutes an
12 affirmation and a promise. The statements were part of the basis of the bargain expressly stated
13 within the SSA.

14 132. Oracle did not perform services in a professional manner consistent with industry
15 standards, with respect to installation and implementation of the ERP Product and management
16 of the installation and implementation of the ERP Product, in violation and breach of the
17 express warranty of Paragraph 9.1 of the SSA. *See e.g.*, Paragraphs 58-82 which are
18 incorporated herein by reference, as though set forth in full in this Sixth Cause of Action. For
19 example: Oracle failed to field a stable team to manage the implementation of the ERP Product;
20 the Oracle team assigned to RSI had unreasonable turnover, requiring constant retraining
21 inconsistent with industry standards for implementing software; Oracle employees frequently
22 missed scheduled meetings during the implementation; Oracle frequently assigned team
23 members to the implementation that did not have the expertise to implement the ERP Product;
24 Oracle frequently failed to complete assigned tasks during the implementation; Oracle
25 frequently failed to review and import product and image data provided by RSI during the
26 implementation; Oracle did not respond in a reasonable and professional time to emails; Oracle
27 failed to implement the ERP Product in an organized and coherent manner; and Oracle
28 frequently and consistently missed implementation deadlines and milestones in an

1 unprofessional manner. In addition, Oracle was in charge of managing the Oracle Partners, but
2 did not manage or properly communicate with the Oracle Partners to implement the ERP
3 Product, which was inconsistent with industry standards for the implementation of software
4 with a partner. Instead of completing the implementation after mismanaging it, Oracle stopped
5 work and increased the price of the implementation to circumvent any responsibility and extract
6 more revenue from RSI in an unprofessional manner outside of the norm of any industry
7 practice.

8 133. RSI gave written notice via email and oral notice during the various meetings and
9 phone calls with Oracle within 60 days of the performance of the deficient services, and Oracle
10 failed to correct the problems and deficiencies.

11 134. Oracle has breached the warranties by failing to perform the services in a
12 professional manner consistent with industry standards.

13 135. Oracle has also breached the warranties by failing to correct the services, all the
14 while keeping the monies paid by RSI, without delivering a working ERP solution.

15 136. RSI has been damaged by OAI's breach of warranty in an amount to be proven at
16 trial.

17 **(SEVENTH CAUSE OF ACTION)**
18 **(Breach of Warranty)**
19 **(Against SPS)**

20 137. RSI realleges and incorporates herein by reference Paragraphs 1 – 136 inclusive,
21 as though set forth in full in this Seventh Cause of Action

22 138. The agreement entered into between RSI and SPS contains a warranty that states:
23 “SPS represents and warrants that SPS will perform all Services in a workmanlike and
24 reasonably diligent manner, consistent with professional standards of performance generally
25 accepted within the industry.” SPS breached this warranty by failing to provide the Services in
26 a workmanlike and reasonably diligent manner, consistent with such professional standards of
27 performance.

28 139. RSI has been damaged on account of the breach of warranty by SPS in an amount
to be proven at trial.

EIGHTH CAUSE OF ACTION**(Breach of the Implied Covenant of Good Faith & Fair Dealing)**
(Against OAI)

140. RSI realleges and incorporates herein by reference Paragraphs 1-139, inclusive, as though set forth in full in this Eighth Cause of Action.

141. RSI and OAI entered into the 2021 Estimate Forms and the 2021 SOWs, and the subsequent renewal. There is and was implied in these agreements a covenant of good faith and fair dealing by which OAI assumed a duty to fully perform its contractual obligations and impliedly covenanted that it would, in good faith and in the exercise of fair dealing, deal with Plaintiff fairly and honestly and do nothing to impair, interfere with, hinder or potentially injure the rights of Plaintiff to receive the benefits of the aforementioned contract.

142. OAI has breached the implied covenant of good faith and fair dealing owed to Plaintiff by their actions herein above alleged with the intent to deprive Plaintiff of its rights under the various agreements. Oracle has acted in bad faith because by committing fraud in the inducement in order to lure RSI into the Oracle Contract and by misrepresenting the capabilities of the software of Oracle and its Oracle Partners, Oracle never planned for RSI to enjoy the benefits of the fixed price contract with all of the functionality promised. Instead, on information and belief, Oracle's Mr. Landsberg and Mr. D'Amato intentionally misrepresented the functionality that existed in its solution in order to close the sale, and gain commissions or some other type of compensation. In addition, OAI violated the covenant because it always intended to jack up the contract price through expensive change orders, while it worked to create the solution that it falsely claimed before contract execution actually existed. Oracle's actions were not prompted by an honest mistake, or bad judgment, or even negligence, and were not a simple breach of contract. Instead, they were caused by conscious and deliberate acts whereby Oracle sought to increase its profits at RSI's expense, by demanding change orders for functionality that it had promised in pre-contract discussions that it could provide but that did not actually exist, and then blaming RSI by claiming that RSI was seeking to expand the scope of the project when it was not. Oracle made promises and other representations to Plaintiff both before and after contract execution about the capabilities of their ERP Product, which they knew

1 were false. Oracle also made representations that Vend’s POS solution would work with
2 NetSuite through the In8Sync connector when it either knew that it did not or acted recklessly
3 and failed to do the due diligence to insure that Vend’s solution could handle an extensive retail
4 catalog the size of RSI’s catalog with tens of thousands of SKUs, which connected to a supplier
5 with 40,000 plus images of items in its catalog. Oracle made those representations without any
6 intent to perform or to provide the integrated solution that they had promised with all the
7 features that they had promised. Oracle represented to Plaintiff that the third-party providers
8 such as SPS, Vend, Lightspeed, In8Sync, AppFiciency, Worldpay and others were long
9 standing and skilled Oracle business partners who had been properly vetted by Oracle for
10 quality assurance purposes and had extensive experience working with Oracle in the retail
11 industry on successful NetSuite SuiteSuccess solutions for retail customers with large catalogs
12 of items for sale with tens of thousands of SKUs like Plaintiff. Oracle’s Mr. Landsberg and Mr.
13 D’Amato also represented that the technologies provided by these third-party Oracle Partners
14 would work with their ERP Product, when they had no actual knowledge or basis for believing
15 so. Oracle also breached the implied covenant by preparing the fixed price bid and cost
16 estimate that it delivered to RSI on February 24, 2021, which represented that the costs of the
17 third-party partners, including the implementation costs were also fixed and there would be no
18 additional implementation costs starting year 2. OAI breached the implied covenant when it
19 represented that it would manage the Oracle Partners to deliver the solution, but in actuality
20 abandoned the field and left RSI to scramble to try to put all of the disparate pieces together,
21 which deprived RSI of the benefit of the promised contract and one integrated solution. OAI
22 could have jumped into the fray and provided the competent project management that it
23 represented that it would provide, but OAI did not do so. OAI also breached the implied
24 covenant during the renewal process when Oracle’s management suddenly injected into the
25 commercial renewal discussions a demand that RSI sign a settlement agreement with a release
26 of all claim’s past, present, and **future**. Oracle also breached the implied covenant when it
27 threatened RSI that it would not exercise its discretion to provide RSI with certain credits and to
28 renew the Oracle Contract in February of 2022 unless RSI capitulated to its demands to sign a

1 settlement agreement and a release of all claims past, present, and **future**. And Oracle also shut
2 off RSI's access to the sandbox while it made these overreaching demands, which injured RSI
3 and deprived RSI from any benefit from the Oracle Contract, as it was prevented from testing
4 and working on the project and implementation during the time when sandbox access was
5 suspended. RSI was under duress at the time of the renewal due to Oracle's hard ball tactics.
6 All of these actions were taken in bad faith and the above and other representations were false,
7 and go well beyond a simple breach of contract. On information, and belief at the time Mr.
8 Landsberg, Mr. D'Amato and other Oracle employees made the representations they knew them
9 to be false. On information and belief, at the time Oracle was trying to strong arm RSI into
10 signing a settlement agreement releasing future claims, it knew that such an agreement might be
11 void under California law, but it did so anyway, so it could continue to deny RSI the benefit of
12 its bargain without repercussions.

13 143. Plaintiff has performed all of its obligations under the Agreements, including
14 working and collaborating with Oracle in good faith, making its employees available, attending
15 meetings, and paying all payments owed under the Oracle Contract. In addition, all conditions
16 for OAI's performance occurred. By their actions and misrepresentations described above
17 Oracle prevented RSI from gaining the benefits of the contract that it had bought and paid for.

18 144. As a direct and proximate result of OAI's breach of the implied covenant of good
19 faith and fair dealing, Plaintiff has been damaged in an amount to be determined at trial.

20
21 **NINTH CAUSE OF ACTION**
22 **(Penal Code Section 496)**
23 **(Against Oracle)**

24 145. RSI realleges and incorporates herein by reference paragraph 1 – 144, inclusive,
25 as though set forth in full in this Ninth Cause of Action.

26 146. Penal Code § 496(a) makes receiving or buying property “that has been obtained
27 in any manner constituting theft” a criminal offense punishable by imprisonment. Penal Code §
28 496(c) provides that any person “who has been injured by a violation of [§ 496(a)]...may bring
an action for three times the amount of the actual damages, if any, sustained by the plaintiff,

1 costs of suit, and reasonable attorney’s fees.”

2 147. Section 496(a) extends to property “that has been obtained in any manner
3 constituting theft.”

4 148. Penal Code § 484 describes acts constituting theft. The first sentence of § 484 (a)
5 states in relevant part: “Every person... who shall knowingly and designedly, by any false or
6 fraudulent representation or pretense, defraud any other person of money... and thereby
7 fraudulently gets or obtains possession of money... is guilty of theft.”

8 149. Section 484 thus defines theft to include theft by false pretenses. Penal Code §
9 532 also defines criminal fraud in terms nearly identical to § 484(a) and provides that these acts
10 are punishable “in the same manner and to the same extent” as larceny.

11 150. As a result of the false and fraudulent representations by Oracle and its agents and
12 representatives set out above, Oracle purposely, knowingly, and designedly and with criminal
13 intent, by false or fraudulent representation or pretense, defrauded RSI of the money and funds
14 it paid to Oracle and thereby fraudulently got or obtained possession of money from RSI. RSI
15 has asked that Oracle refund all of the monies that it paid to Oracle, including amounts paid to
16 the Oracle Partners, but Oracle has refused to refund the monies and continues to wrongfully
17 withhold them.

18 151. RSI has been injured by a violation of Penal Code § 496(a) and is therefore
19 entitled pursuant to Penal Code § 496(c) to three times the amount of its actual damages,
20 together with its costs of suit and reasonable attorney’s fees.

21 **TENTH CAUSE OF ACTION**

22 **(Negligence Against Oracle)**

23
24 152. Oracle had a duty of care to RSI when it was assembling and recommending the
25 third-party Oracle Partners to RSI, and promising RSI that the Oracle Partners integrated tightly
26 into NetSuite through the back-end and that the Oracle Partners working with Oracle could
27 deliver the solution promised by September 1, 2021, with all of RSI’s required functionality,
28 which would be no less than what was included in its then current software supplied by ECI

1 Spruce, Sage 100 and Quickbooks Desktop Enterprise, and could be implemented during the
2 first year of the Oracle Agreement at a fixed price. Oracle had a duty of care to properly vet the
3 Oracle Partners and to ensure that the technology that they could deliver would work with
4 NetSuite and satisfy RSI's requirements.

5 153. Oracle breached its duty of care when it recommended to RSI the Oracle Partners
6 without a proper vetting of the partners and their ability to deliver the promised solution.
7 During implementation Oracle switched out certain partners in favor of others such as Solupay,
8 demonstrating that Solupay had not been properly vetted. In addition, Oracle recommended
9 Vend for the POS portion of the ERP Product, even though Vend (and its successor Lightspeed)
10 admitted during implementation that they did not have the promised functionality yet developed
11 and might never be able to deliver the functionality. Oracle represented that it had worked
12 extensively with SPS on EDI technology, but during implementation Oracle seemed unfamiliar
13 with what SPS could deliver and failed to adequately manage the project and ensure that SPS
14 was working as needed with RSI's distributors to deliver the ERP Product.

15 154. Oracle's breach of duty was a substantial factor in bringing about the harm to
16 RSI, and but for Oracle's actions the harm of the failure of Oracle and the Oracle Partners to
17 deliver the required functionality would not have occurred. The harm suffered by RSI was a
18 foreseeable result of Oracle's breach of duty.

19 155. RSI was damaged as a result of Oracle's breach of duty in an amount to be proven
20 at trial.

21 **ELEVENTH CAUSE OF ACTION**
22 **(Violation of Business & Professions Code § 17200 et. seq.)**
23 **(Against OAI, NetSuite, Vend, Lightspeed, and SPS)**

24 156. RSI realleges and incorporates herein by reference paragraphs 1- 155, inclusive,
25 as though set forth in full in this Tenth Cause of Action.

26 157. Defendants have committed, and on information and belief continue to commit,
27 certain business acts and practices that actually harmed RSI, and those in the general public
28 similarly situated to RSI, and there is no adequate remedy at law. Those actionable and unfair
business acts and practices are already alleged with factual particularity above, and those

1 allegations are incorporated by reference as though set forth fully herein. The hereinabove
2 allegations of business acts and practices become actionable under California's Unfair
3 Competition Law in conjunction with the following additional allegations.

4 158. Such business acts and practices are "unlawful" in that they are forbidden by law.
5 RSI has alleged that Oracle has committed fraud in the inducement and negligent
6 misrepresentation based on its pre-contractual misrepresentations, which are set forth in detail
7 above and incorporated here by reference. RSI has also alleged that Oracle has violated Penal
8 Code Section 496 as Oracle knowingly and designedly, by false or fraudulent representation or
9 pretense, defrauded RSI of money and thereby fraudulently obtained and continues to maintain
10 possession of the money even though RSI has demanded its return. RSI has alleged that Vend
11 negligently misrepresented the capabilities of its POS solution during the February 17, 2021
12 demo. Such acts are therefore unlawful. There is no adequate remedy at law, and an injunction
13 should issue to prevent Oracle and the Oracle Partners from participating in such unlawful
14 conduct in the future. Money damages are not sufficient to compensate RSI for the harm caused
15 by Oracle and the Oracle Partner's unlawful conduct, and the public must be protected from
16 future acts, through injunctive relief.

17 159. Such business acts and practices are "unfair" in that they offend an established
18 public policy and/or are immoral, unethical, oppressive and/or substantially injurious to RSI and
19 other of Defendants' customers, competitors, and the public in general. Oracle competes
20 unfairly by lying to the public and to prospective customers about having a fully functioning
21 SaaS solution, when they know that they do not. When OAI and NetSuite make a proposal to
22 provide a fixed price contract to provide professional services and use steep discounts to obtain
23 the contract award, all the time never intending to provide the solution at the price and within
24 the timeframe promised, Oracle customers including RSI, prospective customers of Oracle,
25 Oracle's competitors and the general public are harmed, and there is no adequate remedy at law.
26 When Oracle never intends to honor its fixed price promise but instead intends to inflate the
27 contract price through change orders claiming falsely that the Oracle customer, including RSI is
28 seeking new functionality (when it is not), Oracle customers including RSI, prospective

1 customers of Oracle, Oracle’s competitors and the general public are harmed, and there is no
2 adequate remedy. When Oracle claims that it has extensive experience working with Oracle
3 Partners like SPS, Vend, and Lightspeed, and others for customers similar to RSI and in the
4 same industry, and they do not, Oracle’s customers (including RSI) are harmed, but competition
5 and the general public are harmed as well, and there is no adequate remedy at law. When SPS,
6 Vend, Lightspeed, and other companies claim that they are Oracle Partners with extensive
7 expertise in delivering certain functionality with the NetSuite solution for customers similarly
8 situated to RSI and in the same industry, and those representations were false, RSI is harmed,
9 but competition, other prospective Oracle customers and the general public are harmed as well,
10 and there is no adequate remedy at law.

11 160. Such business acts and practices are “fraudulent” in that they did mislead RSI and
12 are likely to mislead members of the general public that are Defendants’ customers or potential
13 customers. At all relevant times, RSI relied on Defendants’ misrepresentations, misleading
14 statements, functionality demonstrations and other conduct, such as their assertions that they
15 could deliver a working ERP Product with certain features for the fixed price quoted, within a
16 certain period of time, and those in the general public similarly situated will likely also rely on
17 the same fraudulent and material misrepresentations in the future, and there is no adequate
18 remedy at law. RSI also relied on the representations of Vend (and Lightspeed as its successor)
19 that it had a POS solution that worked with NetSuite through an In8Sync connector to deliver
20 the functionality promised. RSI also relied on the representations of SPS that it had an EDI
21 solution that would work with NetSuite and provide the same functionality that RSI enjoyed
22 with ECI Spruce. These representations turned out to be false. There is no adequate remedy at
23 law and an injunction should issue to prevent similar conduct by Oracle and the Oracle Partners
24 in the future, and to protect prospective Oracle customers, competitors of Oracle and the public
25 in general. Courts in this district have granted injunctive relief in similar contexts finding that
26 there is no adequate remedy at law. *See e.g., Linton v. Axxess Fin. Servs., Inc.*, No. 23-CV-
27 01832-CRB, 2023 WL 4297568, at *3 (N.D. Cal. June 30, 2023) (“while monetary damages
28 would compensate Linton for past loans acquired from Axxess under the allegedly unlawful

1 interest rates, they would not guarantee that Linton (or other borrowers) can avoid these interest
 2 rates in the future. Because retrospective monetary damages will not prevent the future harm
 3 only remediable by an injunction ordering Axxcess to stop issuing loans with unfair interest rates,
 4 the Court declines to extend Sonner's inadequate-remedy-at-law requirement to Linton's
 5 injunctive relief claim. Therefore, the Court has equitable jurisdiction over Linton's claim for
 6 injunctive relief.”); *Zeiger v. WellPet LLC*, No. 3:17-CV-04056-WHO, 2021 WL 756109, at
 7 *21 (N.D. Cal. Feb. 26, 2021) (“Assuming that *Sonner* applies to injunctive relief, Zeiger has
 8 shown that monetary damages for past harm are an inadequate remedy for...future
 9 harm....Damages would compensate Zeiger for his past purchases. An injunction would ensure
 10 that he (and other consumers) can rely on WellPet's representations in the future.”); *Andino v.*
 11 *Apple, Inc.*, No. 2:20-CV-01628-JAM-AC, 2021 WL 1549667, at *5 (E.D. Cal. Apr. 20, 2021)
 12 (“*Sonner* does not warrant dismissal of [the plaintiff's] request for injunctive relief. Money
 13 damages are an inadequate remedy for future harm, as they will not prevent Defendant from
 14 continuing the allegedly deceptive practice.”).

15 161. Because such business acts and practices are unlawful, unfair, and fraudulent, and
 16 there is no adequate remedy at law, they violate California’s Unfair Competition Law (“UCL “),
 17 Business & Professions Code §§ 17200, et seq., and are actionable by RSI for injunctive relief
 18 and restitution in an amount to be proven at trial.

19 **TWELFTH CAUSE OF ACTION**
 20 **(Declaratory Relief)**
 21 **(Against Oracle)**

22 162. RSI realleges and incorporates herein by reference paragraphs 1- 161, inclusive,
 23 as though set forth in full in this Twelfth Cause of Action.

24 163. An actual controversy has arisen between Plaintiff and Defendants as to their
 25 respective rights and duties under the 2021 Estimate Forms, 2021 SOWs, SSA and PS Terms,
 26 and any extensions of those agreements, including the 2021 renewal.

27 164. Resolution of the parties’ respective rights and duties under these agreements, and
 28 an identification of which of the agreements, or provisions of the agreements, are binding, if

1 any, by declaration of the Court is necessary, and there exists no adequate remedy at law.

2 165. RSI also seeks a declaration that due to Oracle's negligent misrepresentations and
3 its fraud, including its fraud in the inducement and promissory fraud, that any and all of the
4 contracts including the 2021 Estimate Forms, the Subscription Services Agreement, the 2021
5 SOWs, the Professional Services Agreement and PS Terms, and any extensions thereof,
6 including the 2021 renewal, and the OCC financing agreement are rescinded, and that such
7 agreements are null and void and that RSI is entitled to the restitution of all monies paid under
8 those agreements or any extension of those agreements, as well as other damages.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for damages and other relief against Defendants, and each
12 of them, as follows:

- 13 A. A declaratory judgment rescinding all Agreements due to Oracle's fraud in the
14 inducement and negligent misrepresentations and returning RSI and Defendants
15 to the position that they were in pre-contract, and restoring all payments made by
16 Plaintiff to Defendants, including all payments made by Plaintiff to any third-
17 party bank or financing institution due to the assignment of the OCC financing
18 contract from OCC to such bank or financing institution.
- 19 B. A preliminary and permanent injunction against Defendants, their servants,
20 employees, attorneys and all other persons in active concert or participation with
21 Defendants prohibiting Defendants from practicing on other customers such
22 unfair and unlawful practices.
- 23 C. A preliminary and permanent injunction against Defendants, their servants,
24 employees, attorneys and other persons in active concert or participation with
25 Defendants such as third-party assignees of OCC, directing Defendants to
26 reimburse or make restitution to Plaintiff of all monies paid to Defendants under
27 the various agreements.
- 28 D. For general and other damages, including but not limited to the cost of disruptions
and unrealized efficiencies in bidding and quoting new jobs, managing inventory,

1 as well as loss of resources, sales, revenue and profits due to the failed
2 implementation; loss of process improvements; failure to launch a working
3 website, additional labor costs caused by the failed implementation; and
4 additional costs and damages in an amount to be proven at trial.

5 E. For treble damages pursuant to Penal Code § 496 for Oracle's theft of RSI's
6 money.

7 F. For a Declaration of the rights and obligations of the parties to the Oracle
8 Contracts, to the extent the Oracle Contracts are not rescinded or terminated;

9 G. For punitive damages;

10 H. For restitution;

11 I. For attorneys' fees and costs;

12 J. For pre-trial interest; and

13 K. For such other and further relief, as may be appropriate.

14 **JURY DEMAND**

15 RSI requests a jury trial on all issues so triable.

16
17 DATED: December 4, 2023

TACTICAL LAW GROUP LLP

18
19
20 By: /s/ Pamela K. Fulmer

21 Pamela K. Fulmer
22 Attorneys for Plaintiff
23 RIVER SUPPLY, INC.
24
25
26
27
28

Exhibit 1

Mary Schultz (CSB No. 231962)
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Attorney for Plaintiff Tayo Daramola

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TAYO DARAMOLA,

Plaintiff,

v.

ORACLE AMERICA, INC., a Delaware Corporation, on its own behalf and through its wholly owned subsidiaries NetSuite Inc., and Oracle Canada,

Defendant.

and
Pat Merell, Mita Patnaik, James Bork, Dionis Gauvin, Douglas Harris, Doug Riseberg, and John/Jane Does,

Defendants

Case No. 3:19-cv-07910 -JD

**SECOND AMENDED COMPLAINT
FOR:**

- (1) Violation of Whistleblower Protections under the Sarbanes-Oxley Act (18U.S.C. § 1514A *et seq.*);
- (2) Violation of Whistleblower Protections Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. § 78U-6 *Et Seq.*);
- (3) Violation of RICO (18 U.S.C. sec 1962)
- (4) Retaliation under California Labor Code § 1102.5;
- (5) Wrongful Termination in Violation of Public Policy

DEMAND FOR JURY TRIAL

(UNLIMITED CIVIL)

Plaintiff TAYO DARAMOLA, requesting trial by jury of all issues joined herein, alleges as follows:

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I. INTRODUCTION.

1. This complaint centers on Plaintiff Tayo Daramola, and his employer, Defendant Oracle NetSuite. Defendant Oracle America, through its NetSuite entity, contacted college and university bookstores across the country, and, via a remote presentation, demonstrated an allegedly integrated, industry specific, “Campus Store Solution” Software as a Service (SaaS) to which the customer could allegedly subscribe. Following the presentation of that integrated system, Oracle gave the customer an estimate and order form containing a menu of “a la carte” subscription modules that would ostensibly work together to achieve the functionality the customer had been shown. These modules, combined, would cost the customer several millions of dollars. Unbeknown to the customer, but known to Oracle, was that the customer’s menu of modules was not able to accomplish the functionality expected by that customer *then*, and it wouldn’t be able to do that in the near future –at least, not without the customer paying hundreds of thousands of dollars more to help Oracle actually develop the functionality it represented as then existing to that customer *for* that customer. In fact, only one store in the country had achieved “Go Live” functionality on Oracle’s system at the time of the sales referenced in this complaint, and that single system was not able to scale to the stores Oracle now solicited. Post sale, this lack of actual functionality, therefore initiated the process of Oracle’s engaging its second phase, which was to assess the “gap” between the customer’s anger regarding what they thought they bought, verses what they received. Oracle would then sell additional “modules” for additional money to its “escalating” customers to “fill the gap.” It did this through people who had no understanding of what the modules already

1 sold to the customer were, nor what modules would now be needed, if that functionality
2 even existed.

3 2. Mr. Daramola was assigned at this gap escalation stage. He was included in
4 anxious internal communication about yet another unachievable Go-Live date, and a
5 customer refusing to sign more “change orders.” He realized from those threads that Oracle
6 had sold a functionality that did not exist. The individuals involved were now trying to
7 stealthily “pro rata” divide the cost of the necessary development among all of the
8 customers who had bought the represented functionality. Mr. Daramola was placed on a
9 conference call with his customer, following this communication chain verifying that the
10 product sold still had to be developed, and listened as his supervisor deceived and diverted
11 the customer. He refused to participate. Mr. Daramola sought immediate legal assistance
12 to internally report what he believed was a fraud on the customer. He was as quickly
13 removed from his role as a project manager, thereafter isolated to veritable nothingness for
14 his work, and then institutionally muzzled through Oracle’s deceptively named “business
15 ethics hotline.” He was ultimately constructively discharged from Oracle as a direct result
16 of these deceptive actions. Since his refusal and reporting, Mr. Daramola has been unable
17 to obtain employment in the United States software industry, nor has he received any work
18 from the United States industry as he had enjoyed previously.

19 3. Defendant Oracle America’s conduct towards Mr. Daramola violated the
20 Sarbanes-Oxley Act, 18 U.S.C. sec 1514A, by unlawful retaliation against legally
21 protected conduct under that Act, the Dodd-Frank Wall Street Reform and Consumer
22 Protection Act, 15 U.S.C. sec 78u-6, by constructive discharge of Mr. Daramola following
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1 SEC reporting, the state of California’s Labor Code, section 1102.5, by retaliation against
2 Mr. Daramola for his refusing to participate in the unlawful activity he reported, and
3 constructive discharge in violation of the public policy of the state of California, through
4 his professional isolation and constructive discharge. The conduct engaged in by the named
5 individual defendants was a racketeering scheme effected through the enterprise of Oracle
6 NetSuite, which brought each individual Defendant continuing benefits, but substantially
7 damaged Mr. Daramola.
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9 **II. JURISDICTION AND VENUE.**

10 4. Plaintiff Tayo Daramola is, and at all times mentioned herein was, a resident
11 of Montreal, Quebec, Canada.

12 5. Mr. Daramola was employed with Defendant Oracle America, Inc. from
13 November 30, 2016 until his constructive discharge on September 29, 2017, effective
14 October 13, 2017, through employment with its wholly owned subsidiaries NetSuite, Inc,
15 and Oracle Canada (hereafter collectively referred to as “Oracle,” “Oracle/NetSuite,”
16 “Defendant(s)” or “the Company”).
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18 6. Mr. Daramola was hired by Oracle to perform work in the United States,
19 exclusively with United States customers, supervised by United States personnel, and
20 subject to Oracle policies, procedures, and business practices.
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22 7. Oracle America Inc. is a corporation licensed and authorized to do business
23 in, employing individuals in, and existing under the laws of, the State of California, with
24 its principal place of business in San Mateo County at 500 Oracle Parkway, Redwood
25 Shores, CA 94065. This Court has jurisdiction over Oracle under 28 U.S.C. § 1391.
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1 8. Oracle transacts business within the County of San Mateo, State of
2 California, and venue is proper in this Court. 28 U.S.C. § 1391.

3 9. The material acts causing the violations of law and the injuries claimed of
4 herein occurred domestically within the United States, by Oracle and the individually
5 named Defendants, with and against Oracle's United States-based customers.
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7 10. At all relevant times herein, Defendant Pat Merell was a resident of the state
8 of California, and was employed in an executive position with Oracle.

9 11. At all relevant times herein, Defendant Douglas Harris was a resident of the
10 state of California.

11 12. At all relevant times herein, Defendant Mita Patnaik resided in the state of
12 New Jersey (ECF 55-2), but continued to own rental property in and received rents from
13 California real properties. Ms. Patnaik reported to California based Pat Merell.
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15 13. At all relevant times herein, Defendant James Bork resided in the state of
16 Minnesota (ECF 50-1).

17 14. At all relevant times herein, Defendant Douglas Riseberg resided in the state
18 of Massachusetts (Doc. 55-1).

19 15. At all relevant times herein, Defendant Dionis Gauvin resided in
20 Washington, D.C. (55-3).

21 16. This district court has federal question original jurisdiction over this action,
22 per 28 U.S.C.A. § 1331. This Court also has diversity jurisdiction over this claim involving
23 citizens of different states and a foreign subject, per 28 U.S.C.A. § 1332.
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1 17. This Court has RICO jurisdiction over all individually named Defendants
2 under 18 U.S.C. § 1965(b).

3 18. For Plaintiffs' RICO claim, this Court has personal jurisdiction over
4 California resident Oracle and California resident Defendants Pat Merell and Douglas
5 Harris, and both of the latter individual Defendants are alleged to be participants in the
6 RICO conspiracy. 18 U.S.C. § 1965(b) therefore provides for personal jurisdiction over
7 each individual Defendant.
8

9 19. There is no other court that will have jurisdiction over all the alleged co-
10 conspirators, as the other named individual defendants claim to reside in states other than
11 California, and in states that are different from each other.

12 20. Given the array of residences maintained by all individual defendants, no
13 court other than a California court would have general "residence" personal jurisdiction
14 over all of the individual defendants, while retaining general residence jurisdiction over
15 Defendants Oracle, Merell, and Harris.
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17 21. This Court therefore has RICO jurisdiction over all individual Defendants
18 under 18 U.S.C. § 1965(b), and should apply such here, because, as detailed herein, the
19 exercise of this jurisdiction comports with fair play and substantial justice; exercising
20 jurisdiction is reasonable.
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22 22. As explained *infra*, both general and specific jurisdiction exist over each
23 defendant in any event; moreover, each individually named Defendant consented to the
24 personal jurisdiction of this court regarding the acts complained of herein.
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1 **This Court has general and specific personal jurisdiction over all named**
2 **defendants.**

3 23. California resident Oracle America, Inc. and California residents
4 Defendants Pat Merell and Douglas Harris resided in California during all relevant times
5 complained of, and this court has general jurisdiction over each.

6 24. Each of Defendants Bork, Patnaik, Riseberg and Gauvin were not domiciled
7 in California at the time of the acts pled herein, but this Court has jurisdiction over each of
8 the foregoing individual Defendants through California's long-arm statute, Cal. Code Civ.
9 Proc. § 410.10, which is coextensive with the limits of the Constitution's due process
10 clause, and which permits its jurisdiction over each of the foregoing Defendants here.

11 25. This Court has general jurisdiction over each non-resident individual
12 defendant Bork, Patnaik, Riseberg and Gauvin because each individual non-resident
13 individual defendant consented to the above court's exercise of personal jurisdiction over
14 them for the type of acts they committed as detailed herein, by both Proprietary Information
15 Agreement contract, and by a Terms of Use agreement which subjected them to the
16 jurisdiction of this court each time they accessed Oracle's web resources in the course of
17 their employment, which occurred in each and every instance alleged in this complaint.

18 26. This Court has general jurisdiction over each non-resident individual
19 defendant Bork, Patnaik, Riseberg and Gauvin because, even if not domiciled in California,
20 each named individual Defendants' contacts with California were so systematic and
21 continuous that each Defendant can accurately be called "at home" in the forum state
22 during the relevant times herein for purposes of general jurisdiction.

1 27. The acts supporting “at home” general jurisdiction are defined below for
2 each individual defendant under the section related to specific jurisdiction, because those
3 same acts supporting specific jurisdiction are of such a degree and volume so as to support
4 general jurisdiction.

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6 28. Each nonresident defendant deliberately engaged in such a level of daily,
7 systematic and continuous activities within the state of California, each Defendant created
8 continuing obligations between him or herself and California residents, including Oracle
9 Inc., and California customers, each Defendant manifestly availed himself or herself of the
10 privilege of conducting business in and through California thereby, each Defendant
11 employee’s activities were shielded by the benefits and protections of California laws, and
12 the exercise of personal jurisdiction over each Defendant is consistent with due process.

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14 29. It is not unreasonable to require each of the non-resident individual
15 defendants to submit to the burdens of litigation in California.

16 30. Each non-resident individual defendant also caused an act in the state to be
17 done from which an action arose in tort, including the wrongful discharge of Tayo
18 Daramola and the unlawful business practices which caused such. *See* Cal. Civ. Proc. Code
19 § 410.10.

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21 Specific Jurisdiction.

22 31. This Court also has specific personal jurisdiction over each non-resident
23 individual defendant, based upon the above and as applied to the facts detailed hereunder,
24 in that:

1 32. Each individual Defendant entered California virtually every time he or she
2 logged onto his or her Oracle laptop, and each act identified in this complaint took place
3 through each individual Defendant's laptop connection with Oracle's data center and
4 secure web resources, which are housed in California.

5
6 The specifics as to each Defendant are as follows:

7 33. **Defendant James Bork** was an Oracle Senior Sales Director and Vice
8 President of Sales and individually consummated a contractual employment
9 agreement/transaction with California resident Defendant Oracle, where he invoked the
10 benefit of its protections and laws by availing himself of California's invention agreement
11 assignment exceptions "under the provisions of section 2870 of the California Labor
12 Code."

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14 34. Defendant Bork received salary from California resident Oracle.

15 35. Defendant Bork received commissions from California resident Oracle as a
16 result of that contract.

17 36. Defendant Bork effected his daily work by entering into Oracle's secure
18 server and web resources housed in, maintained in, and accessed by each employee in Santa
19 Clara, California through processes of electronic authentication.

20 37. Defendant Bork sold a California SaaS product to customers across the
21 country by selling subscription which required those customers to access their California
22 SaaS product in California, because the product was delivered from, developed within,
23 modified within, and provided to that customer from Oracle's California data center.

1 38. Defendant Bork sold these California subscription products to customers
2 University Book Store in Washington, University of Texas at Austin, in Texas, Brigham
3 Young University in Utah, California State University at Fullerton in California, and the
4 University of Southern California in Los Angeles California, and each of these customers
5 was then required to access their product within and by entry into California resident
6 Oracle's server via web access.
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8 39. In many instances, Defendant Bork's sales committed that customer,
9 regardless of residence, to personal jurisdiction in California, and to the jurisdiction of the
10 very above federal court in San Francisco, for and resulting from each customer's access
11 to their product. This occurred both by sale contract with that customer, but also by a Terms
12 of Use agreement that each customer committed to each time they accessed their product
13 on Oracle's California server.
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15 40. Because Defendant Oracle and Defendant Bork understood and agreed that
16 Defendant Bork's sales transactions were taking place in and emanating from the state of
17 California on California resident Oracle's behalf, Oracle itself required that Defendant
18 Bork commit to an explicit Proprietary Information Agreement, whereby Mr. Bork agreed
19 that "any legal action or proceeding involving Oracle" which was "in any way connected
20 with this agreement," meaning Defendant Bork's receipt of or access to Oracle's
21 confidential, proprietary or trade secret information, "may be instituted in federal court in
22 San Francisco or San Jose, California or state court in San Mateo County or Santa Clara
23 County, California," and that where such occurred, as it has here, then Defendant Bork
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1 “agree(d) to submit to the jurisdiction of, and agree that venue is proper in, the aforesaid
2 federal courts (San Francisco) in any such legal action or proceeding.”

3 41. Defendant Bork also committed to the jurisdiction of this Court through a
4 “Terms of Use” agreement, agreeing that he would submit himself to personal jurisdiction
5 in the above federal court in San Francisco for and resulting from each time he accessed
6 Oracle NetSuite’s web resources for any purpose, which Defendant Bork did daily in the
7 course of his sales work,.

8 42. Defendant Bork committed to the jurisdiction of this Court each time he
9 accessed Oracle web resources from the laptop provided to him by Oracle and configured
10 by Oracle to access Oracle’s internal web resources.

11 43. Defendant Bork committed to the jurisdiction of this Court each time he
12 accessed his email system, Oracle’s internal virtual private network (VPN) containing
13 employee information, internal policies and controls, shared folders, and Oracle
14 proprietary information deemed valuable to California resident Oracle, including customer
15 folders and contracts and customer communications, for the express purpose of his work.

16 44. Each of the transactions engaged in by Defendant Bork, as detailed herein
17 in this scheme, occurred within California resident Oracle’s California server by explicit
18 design of Oracle, through its web resources and VPN, and through and by use of Defendant
19 Bork’s “access to confidential, proprietary or trade secret information access,” and
20 Defendant Bork committed to the jurisdiction of this Court for each and every action
21 detailed herein in which he engaged, and for each act referenced in this complaint and in
22 this scheme.
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1 45. Defendant Bork made, authorized, and financially benefitted from, sales of
2 Oracle SaaS on behalf of California resident Oracle to customers University Book Store in
3 Washington in the years 2015-2016, the University of Texas at Austin in Texas, likely
4 during that same time frame, Brigham Young University in Utah, California State
5 University at Fullerton in California, and the University of Southern California in Los
6 Angeles California, all equally within that same time frame.

8 46. Defendant Bork also physically appeared in California for Defendant
9 Oracle for purposes of carrying out the employment.

10 47. **Defendant Mita Patnaik** was an Oracle Vice President of Customer
11 Success, and individually consummated a contractual employment agreement/transaction
12 with California resident Defendant Oracle, where she invoked the benefit of California
13 protections and laws by availing herself of California's invention agreement assignment
14 exceptions "under the provisions of section 2870 of the California Labor Code."
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16 48. Defendant Patnaik received salary from California resident Oracle thereby,
17 and received commissions from the entirety of California resident Oracle's revenue, which
18 was compiled in and reported in California in part from her supplemental service contracts
19 and "escalation stage" change orders which she sold customers.
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21 49. Defendant Patnaik performed her daily work under the same Terms of Use
22 and Proprietary Information Agreement required of Defendant Bork, and did so as
23 generally defined above at paragraphs 37-44 above.
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1 50. Defendant Patnaik thereby committed to the jurisdiction of this Court each
2 time she performed her sales and oversight work for Oracle from the laptop provided to
3 her by Oracle and configured by Oracle to access Oracle's internal web resources.

4 51. Defendant Patnaik committed to the jurisdiction of this Court each time she
5 accessed her email system, Oracle's internal virtual private network (VPN) containing
6 employee information, internal policies and controls, shared folders, and Oracle
7 proprietary information deemed valuable to California resident Oracle, including customer
8 folders and contracts and customer communications, for the express purpose of her work.

9 52. Each time Defendant Patnaik sold California resident Oracle's professional
10 services to customers across the country, she sold services to those customers which
11 required them to access California resident Oracle's data accessed within, developed
12 within, modified within, and delivered from Oracle's California data center.

13 53. Defendant Patnaik sold California professional services through "change
14 orders" to customers University Book Store in Washington, University of Texas at Austin,
15 in Texas, Brigham Young University in Utah, California State University at Fullerton in
16 California, and the University of Southern California in Los Angeles California, and each
17 of these customers was then required to access their product within and by entry into
18 California resident Oracle's server via web access.

19 54. In many instances, Defendant Patnaik's sales committed that customer,
20 regardless of residence, to personal jurisdiction in California, and to the jurisdiction of the
21 very above federal court in San Francisco, for and resulting from each customer's access
22 to their product. This occurred both by sale contract with that customer, but also by a Terms
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1 of Use agreement that each customer committed to each time they accessed their product
2 on Oracle's California server.

3 55. Defendant Patnaik derived economic benefit from her sales to customers
4 University Book Store in Washington, University of Texas at Austin, in Texas, Brigham
5 Young University in Utah, California State University at Fullerton in California, and the
6 University of Southern California in Los Angeles California, in the year 2017.

7 56. Defendant Patnaik made, authorized and financially benefitted from her
8 sales of Oracle SaaS on behalf of California resident Oracle to customers University Book
9 Store in Washington, University of Texas at Austin, in Texas, Brigham Young University
10 in Utah, California State University at Fullerton in California, and the University of
11 Southern California in Los Angeles California.

12 57. Defendant Patnaik reported directly to California defendant Pat Merell.

13 58. Defendant Patnaik physically worked from Oracle's California brick and
14 mortar office in San Mateo during the week of July 20, 2017, while she was communicating
15 with Oracle's California executive staff specifically about the funding and change orders
16 needed at that time due to the escalation of the University of Washington Bookstore
17 scheme, and the University of Texas scheme. During that week, she interacted in person
18 with Defendants Merell, Riseberg, and Plaintiff Daramola, working from an office in San
19 Mateo, as Mr. Daramola was being required to falsify "Go Live" dates to the Texas and
20 Washington customers.

21 59. Defendant Patnaik also resided in California and ran California business
22 interests in California for the years immediately prior to her hire by Defendant Oracle
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1 NetSuite in April 2016, and she continued to run business, including owning and renting
2 real property in California and deriving rental income from those California real properties
3 in California through late 2018, thereby availing herself of the benefits of the law and rents
4 in the state of California throughout the Complaint’s relevant time period.
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6 60. Defendant Patnaik also previously used the courts in the state of California
7 as a Plaintiff party for her own employment discrimination claims, from which she derived
8 a settlement, and thereby had a history of availing herself of and benefitting from this
9 state’s laws thereby.

10 61. **Defendant Douglas Riseberg** was an Oracle Consulting Practice Manager,
11 and individually consummated a contractual employment agreement/transaction with
12 California resident Defendant Oracle, where he invoked the benefit of its protections and
13 laws by availing himself of California’s invention agreement assignment exceptions “under
14 the provisions of section 2870 of the California Labor Code.”
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16 62. Defendant Riseberg received salary from California resident Oracle
17 thereby, and received commissions from California resident Oracle as a result of that
18 contract.
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20 63. Defendant Riseberg performed his daily work under the same Terms of Use
21 and Proprietary Information Agreement required of Defendant Bork, and did so as
22 generally defined above at paragraphs 37-44 above.

23 64. Defendant Riseberg thereby committed to the jurisdiction of this Court each
24 time he performed his oversight and “gap assessment” work and communications with
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1 customers for Oracle from the laptop provided to him by Oracle and configured by Oracle
2 to allow him to access Oracle's internal web resources.

3 65. Defendant Riseberg committed to the jurisdiction of this Court each time he
4 accessed his email system, Oracle's internal virtual private network (VPN) containing
5 employee information, internal policies and controls, shared folders, and Oracle
6 proprietary information deemed valuable to California resident Oracle, including customer
7 folders and contracts and customer communications, for the express purpose of his work.
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9 66. Defendant Riseberg promoted California professional services through
10 "change orders" to customers University Book Store in Washington, University of Texas
11 at Austin, in Texas, Brigham Young University in Utah, California State University at
12 Fullerton in California, and the University of Southern California in Los Angeles
13 California, and each of these customers was then required to access their product within
14 and by entry into California resident Oracle's server via web access.
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16 67. In many instances, Defendant Riseberg's promotions resulted in sales
17 committing that customer, regardless of residence, to personal jurisdiction in California,
18 and to the jurisdiction of the very above federal court in San Francisco, for and resulting
19 from each customer's access to their product. This occurred both by sale contract with that
20 customer, but also by a Terms of Use agreement that each customer committed to each
21 time they accessed their product on Oracle's California server.
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23 68. Defendant Riseberg received bonuses from California resident Oracle based
24 upon the number of hours of work he performed on any given customer's implementation
25 services.
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1 69. Defendant Riseberg transferred his worked hours on a project to Oracle in
2 California, by entry into California resident Oracle's server via web access, for Oracle's
3 use of those hours to now satisfy its own contractual hourly obligation to its customers; in
4 other words, Defendant Riseberg's hours were submitted into the database in California,
5 and used by Oracle in California as its own work, thereby satisfying Oracle's contractual
6 professional service obligation to its customers University Book Store in Washington,
7 University of Texas at Austin, in Texas, Brigham Young University in Utah, California
8 State University at Fullerton in California, and the University of Southern California in Los
9 Angeles California.
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11 70. Defendant Riseberg thereby directly reduced Oracle's California obligation
12 to that customer.
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14 71. Defendant Riseberg was also credited in California, at Defendant Oracle,
15 for those hours and derived bonuses from Defendant Oracle from such.
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17 72. Defendant Riseberg made, authorized, and financially benefitted from his
18 customer management of and sales of Oracle SaaS to customers University Book Store in
19 Washington, University of Texas at Austin, in Texas, Brigham Young University in Utah,
20 California State University at Fullerton in California, and the University of Southern
21 California in Los Angeles California.
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23 73. Defendant Riseberg reported to Defendant Patnaik, who reported directly
24 to California defendant Pat Merell.
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26 74. **Defendant Dionis Gauvin** was a General Legal Counsel for Oracle and
27 individually consummated a contractual employment agreement/transaction with
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1 California resident Defendant Oracle, where she invoked the benefit of its protections and
2 laws by availing herself of California’s invention agreement assignment exceptions “under
3 the provisions of section 2870 of the California Labor Code.”
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5 75. Defendant Gauvin received salary from California resident Oracle thereby
6 as a result of that contract.

7 76. Defendant Gauvin performed her daily work under the same Terms of Use
8 and Proprietary Information Agreement required of Defendant Bork, and did so as
9 generally defined above at paragraphs 37-44 above.

10 77. Defendant Gauvin’s role as an internal legal counsel was to intercept,
11 collect, minimize, and suppress external reporting of internal whistleblower reporting and
12 to report the whistleblower and claims to executives at Oracle.
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14 78. Defendant Gauvin’s role was to engage whistleblowers such as Plaintiff
15 Daramola through a “hotline” for the reporting of deceptive business acts, via the use of
16 Oracle’s web resources, and by phone calls. Defendant Gauvin may or may not record
17 those calls, at her discretion.
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19 79. Defendant Gauvin used Oracle web resources and communication to obtain
20 all documents which whistleblower Daramola had compiled to show the fraud via
21 electronic transmission to her at Oracle.com, placed the information and documents under
22 attorney client protection for California Defendant Oracle, packaged the interview notes
23 and documents for Oracle’s use in California, and transmitted her information and
24 documents within and through Oracle’s web resource links through an upward chain that
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1 ended with Oracle's General Counsel in California, and thereon to Oracle's Chief
2 Executive Suite of Officers in California.

3 80. Defendant Gauvin thus performed her work for Oracle's General Counsel
4 in California, for delivery to Oracle executives in California.

5 81. Defendant Gauvin's role was additionally to suppress external reporting to
6 protect California resident Oracle, by "mitigating the risk" of internal whistleblower
7 activity, including, as here, that reporting of Plaintiff Daramola.

8 82. Defendant Gauvin thus received and suppressed the information she
9 received and collected regarding the deceptive business practices and fraud as to the
10 specific sales made as alleged in this complaint to customers University Book Store in
11 Washington, University of Texas at Austin, in Texas, Brigham Young University in Utah,
12 California State University at Fullerton in California, and the University of Southern
13 California in Los Angeles California.

14 83. Defendant Gauvin financially benefitted from her risk reduction in the
15 context of Plaintiff's reporting of deceptive business practices in Oracle's sales of SaaS
16 and professional services on behalf of California resident Oracle to customers University
17 Book Store in Washington, University of Texas at Austin, in Texas, Brigham Young
18 University in Utah, California State University at Fullerton in California, and the
19 University of Southern California in Los Angeles California.

20 84. Defendant Gauvin also physically appeared in California for Defendant
21 Oracle for purposes of carrying out her employment.
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1 All non-resident Defendants purposefully directed his or her activities toward
2 California.

3 85. Based upon and because of the above actions, their contractual agreements,
4 and the actions of each Defendant detailed below, each non-resident Defendant Bork,
5 Patnaik, Riseberg and Gauvin continuously, systematically, and purposefully directed his
6 or her activities toward California; consummated transactions with the California forum;
7 consummated transactions with a California resident; and performed acts by which each
8 purposefully availed himself or herself of the privilege of conducting activities in
9 the forum, thereby invoking the benefits and protections of its laws.

10 86. Based upon and because of the actions detailed above, the contractual
11 agreements, and the acts detailed below, each Defendant Bork, Patnaik, Riseberg and (1)
12 committed an intentional act by sales of SaaS and professional services (Defendant Bork),
13 additional sales of professional services (Defendant Patnaik and Riseberg), and the
14 collection of evidence from whistleblowers to notify Oracle executives of the identity of
15 such whistleblowers, and suppress reporting to agencies (Gauvin and Harris); (2) such acts
16 were expressly aimed at California, California resident Oracle, and each California
17 customer, including Cal State Fullerton and the University of Southern California; and (3)
18 such acts caused harm that each Defendant knew was likely to be suffered in the forum
19 state by California resident Oracle, and by each California customer, including Cal State
20 Fullerton and USC.

1 87. There is an affiliation between the California forum and the underlying
2 RICO controversy, including, principally, the activities and occurrences detailed above that
3 took place in and through California.

4 88. Each defendant's individual participation as described are those acts from
5 which Plaintiffs' claims arise, on a per-defendant basis.

6 89. The exercise of specific jurisdiction over each individually named
7 Defendant comports with fair play and substantial justice, and it is reasonable.

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9 **III. INTRADISTRICT ASSIGNMENT.**

10 90. This action arises in San Mateo County as a substantial part of the events
11 or omissions giving rise to the claims occurred in, and originated from, San Mateo County,
12 and all parties contractually consented to and committed to venue in the above court
13 through their "Terms of Use" of use of Oracle web resources and through their Proprietary
14 Information Agreements with Oracle.

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16 **IV. OPERATIVE FACTS**

17 **A. The "Campus Store Solution" revenue scheme.**

18 91. Defendant Oracle, in its NetSuite form, is a service provider. NetSuite
19 provides on-demand business applications to small and mid-sized companies which are
20 accessed via the Internet, rather than requiring on-site installation.

21 92. Defendant Oracle, acting primarily as NetSuite, sells "Software as a
22 Service" (SaaS) to customers throughout the United States.

23 93. SaaS means that Oracle hosts software applications for customers across the
24 world, and makes those applications available to its customers, wherever they are, via the
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1 internet.

2 94. SaaS is a method of software delivery to a customer from an Oracle host
3 data center, with the subscription sold allowing the customer to access Oracle's host server
4 and data from any device, from any location, with an internet connection and a web
5 browser.
6

7 95. Oracle NetSuite maintains the data center/servers which host Defendant's
8 SaaS applications, databases, and the code that makes up its applications.

9 96. Oracle NetSuite's primary data center/server is located in Santa Clara,
10 California.

11 97. Defendant Oracle NetSuite's individually named defendants were engaged
12 in a financial scheme which would come to be known and marketed as "Campus Store
13 Solution," with the origins of this scheme beginning in and around 2015-2016, when
14 NetSuite developed a single existing integrated software product for a college campus
15 bookstore in Oregon, known as "The Duck Store."
16

17 98. The program worked well enough for The Duck Store that when Oracle
18 bought NetSuite, it decided that, using this single system deployment in Oregon, it would
19 now approach other university and college bookstores across the country and sell The Duck
20 Store's system as what it rebranded to be a "Campus Store Solution" SaaS.
21

22 99. NetSuite targeted certain universities it believed could be flagship stores as
23 an allegedly new "microvertical" industry-specific line of subscription software for campus
24 bookstores.
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1 100. Among others, NetSuite targeted the University of Washington in Seattle,
2 Washington’s University Book Store (UBS), Brigham Young University in Utah (BYU),
3 the University of Texas in Austin, Texas (Co-Op), California State University at Fullerton
4 in California, and the University of Southern California in Los Angeles, California, in a
5 generally successive order selling subscriptions to what was now alleged to be an integrated
6 and deliverable system for those customers.
7

8 101. Prior to the sale, Defendant Bork’s sales team used a “presales” person to
9 demonstrate online by a remote web presentation the functionality of the “Campus Store
10 Solution.” The product being shown the prospective customer was the integrated system
11 that had been developed for “The Duck Store.”
12

13 102. The customer would ask for that system, via Oracle NetSuite sales
14 personnel, including Defendant Vice President of Sales James Bork.

15 103. The customer was not told that the product they had been shown was not
16 scalable for their store. In other words, there was no existing integrated and deliverable
17 product available to the customer by subscription as had been demonstrated. There was
18 only a system developed for a store in Oregon.
19

20 104. Notwithstanding their knowledge of this fact, NetSuite sales personnel,
21 headed by Defendant Vice President of Sales James Bork, now sold the customer a menu
22 of “a la carte” subscription modules which the customer was led to believe would effectuate
23 the functionality of the system demonstrated.

24 105. Each subscription module was listed by a part number, implying an existent
25 subscription product, and each module had a name and a price assigned to that subscription.
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1 The modules were represented as parts of an “edition,” such as the “Mid-Market Edition,”
2 signifying to the customer a developed integrated and accessible software product for use
3 in a certain defined market of stores.
4

5 106. The menu of modules being sold the customer, however, contained no
6 description of what each module piece being acquired actually did, nor was there any
7 description telling the customer, or even the sale person, how that module would work with
8 other modules to accomplish the functionality of the product demonstrated to the customer.

9 107. The price for each module could be in the hundreds of thousands of dollars,
10 signifying substantially valuable and sophisticated products that would work together to
11 produce the result demonstrated to the customer.
12

13 108. NetSuite executives in San Mateo at the level of Defendant Pat Merell,
14 James McGeever, and David Rodman would represent “discounts” to the customer on their
15 menu of items which totaled millions of dollars of discounts to convince the customer they
16 were getting an exceptional deal on these valuable integrated product components.
17

18 109. When the customer bought the menu of modules, Defendant James Bork,
19 both personally and through his sales team, would deliver the customer a consolidated
20 contract consisting of some 82 pages of interior contracts and addendums, with the first
21 pages being the modules to which the customer subscribed, and the included documents
22 being multiple internal contracts including subscription agreements and professional
23 services agreements and addendums, all of which was intended to represent to the customer
24 their acquired system and its implementation services.
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1 110. Oracle NetSuite in California realized revenue from these sales of the
2 modules at the inception and on an ongoing subscription basis.

3 111. Defendants Pat Merell and Mita Patnaik realized bonuses based upon
4 Oracle's overall revenue, which would include the sales of these modules and services.
5

6 112. Defendant Bork received a commission based on the value of each
7 subscription module he or his team sold in each estimate, credited to Mr. Bork at the time
8 of sale.

9 113. Defendant Bork also qualified for additional commissions calculated from
10 follow up "escalation" sales of additional a la carte subscription modules.
11

12 114. The menu of modules purchased included twelve months of training on how
13 to use their new integrated system to accomplish what the demonstration showed them
14 their system would do.

15 115. Now, having signed onto a multimillion dollar term subscription agreement
16 full of modules on a sheet of paper, the customer found no "Duck Store" subscription
17 system to access, because there wasn't one.

18 116. The customer would now invariably "escalate," in NetSuite parlance,
19 meaning the customer would get increasingly angry that what they received was nothing
20 like what they were shown.
21

22 117. The customer would increasingly realize that they could not Go Live on
23 anything, nor customize their "software solution," because there was no "solution" that
24 could go live, nor be customized.

25 118. Under the guise of the "professional services contract," another NetSuite
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1 team, to which Defendant Riseberg belonged, and worked with as an Oracle NetSuite
2 consulting practice manager, was now responsible for “helping customers get live on the
3 software platform,” on a product that his team could not deliver.

4
5 119. Mr. Riseberg’s role was thereby more accurately described as the role of
6 assessing the percentage degree of the customer’s fury over what they had been led to
7 believe they would get, versus what they ended up being able to access, as a “percentage
8 gap.”

9
10 120. Now, with the percentage degree of the customer’s anger assessed as a
11 “percentage gap,” Defendant Mita Patnaik, the Vice President of Customer Success,
12 became involved.

13
14 121. Defendant Patnaik had no understanding of what the subscription modules
15 on the customer’s contract were, or what they did, or how they worked, and did not believe
16 it was her job to find out.

17
18 122. Defendant Patnaik did not contact Defendant Bork or his sales team to
19 determine what they had sold the customer, or what they had represented to the customer
20 that these modules would actually do for the customer.

21
22 123. Instead, Defendant Patnaik and Defendant Riseberg, in concert, would work
23 to sell the angry customer more SaaS modules and more professional services to “close the
24 gap.”

25
26 124. Defendant Riseberg and the services team would explain to the customer
27 that the specific a la carte modules the customer bought did not accomplish the integrated
28 system the customer “now” wanted, shifting blame to the customer for “changing their

1 order,” when in fact, NetSuite was simply unable to deliver the integrated product it sold
2 in the first place.

3 125. Defendants Patnaik and Bork would promote and sign change orders with
4 the customer, selling additional modules of service hours and subscriptions to the customer,
5 implying that the customer was responsible for the inability of their system to Go Live,
6 because the customer had now changed their original order.
7

8 126. This scheme was a fraudulent revenue generating practice, because the
9 customer was shown an integrated product, made clear to NetSuite Sales that the customer
10 wanted that product shown them, and was then sold a series of a la carte products that
11 NetSuite represented would effect that very result, but which could not do so, leading to
12 more and more revenue for Oracle, and more and more commissions and bonuses to the
13 participants, from change orders.
14

15 127. Defendant Oracle NetSuite delayed and deferred “Go Live” dates through
16 the use of “SWAT” technical teams who would contact the customers remotely to try and
17 soothe the customer by and including attempting remote technical “workarounds” to get
18 the angry customer functioning in some limited capacity.
19

20 128. The customer was also sold “sandbox” environments on Oracle’s host
21 server where that customer could try and “experiment” to allow for such work-arounds to
22 be transferred to and effectuated in the customer’s actual product site.

23 129. Defendant Patnaik signed hundreds of such change orders daily, selling
24 customers additional services and products, to customers who had found themselves unable
25 to Go Live on the original product.
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1 130. Defendant Patnaik did not know what the change order products or services
2 she was selling would do. Assigned to “customer satisfaction” in an escalation situation,
3 Defendant Patnaik did not know what the Campus Store Solution products were, nor how
4 they functioned; she did not know what the customer had been sold, nor what she was
5 selling them now.
6

7 131. The purpose of the change orders was to generate additional revenue for
8 Defendants Oracle which would fund Oracle’s now developing the “solution” the customer
9 was led to believe they had already bought.

10 132. As angry customers ultimately began refusing more change orders,
11 Defendant Patnaik would take that customer’s refusal to Defendant Pat Merell and Oracle
12 NetSuite’s “Executive Steering Committee” in San Mateo, designed to handle the funding
13 of these predictable escalations.
14

15 133. The Executive Steering Committee included Defendant Merell, Oracle
16 executive David Rodman, Defendant Vice President Patnaik, and others who could report
17 on the current failure at hand, so that the Executive Steering Committee could determine
18 who would fund the development that was needed to get the customer Live.
19

20 134. One mode of funding used by Defendant Merell was that of spreading the
21 cost of the development of the functionality already sold out among other customers who
22 had bought what they believed to be the same functionality, but couldn’t access that
23 functionality either. This was done by committing all of these customers to change orders
24 whereby Oracle NetSuite would covertly pro rata apportion the hours NetSuite needed to
25 develop the functionality among those customers.
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1 135. By this scheme, Oracle targeted a niche market of campus bookstores
2 consisting of what it believed to be some 4,352 degree granting universities, touting a
3 “revolution in campus bookstores with evolving business models.” *PEX 45*.¹
4

5 136. All participants in this Campus Store Solution scheme knew that the system
6 being demonstrated to the customer could not be delivered to that customer, that the
7 modules and services sold would not achieve that functionality for the customer, that the
8 product could not be delivered as demonstrated, but with the intent to gain, not just the
9 original sales revenue, but the continued additional revenue that would become necessary
10 thereafter and could be implemented through “change orders,” whereby Oracle could then
11 try and develop the functionality of the product already sold.
12

13 **B. The customer escalations into which Mr. Daramola was to be inserted.**

14 137. In 2015, Oracle, and Defendants Pat Merell, Mita Patnaik, and James Bork
15 selected UBS as a target sale specifically because UBS’s Chief Executive Officer Louise
16 Little was associated with the Independent College Bookstore Association (ICBA)—an
17 organization which had been in existence since 1927. CEO Little would become the ICBA
18 Board President between 2017 and 2019.
19

20 138. ICBA prioritizes national networking within the bookstore industry and
21 promotes “vendor partner” programs. Selling software to CEO Little at UBS would
22 integrate Oracle NetSuite into the ICBA network, cementing priority of its product. *See*
23

24
25 ¹ PEX references are to documents provided to Oracle for notice purposes, but are not
26 attached to this Complaint.
27

1 *PEX 45.*

2 139. By October 19, 2015, Defendant James Bork presented CEO Little a menu
3 of subscription modules ostensible to allow UBS to acquire the product demonstrated to
4 UBS as the integrated Campus Store Solution. *PEX 2.*

5 140. The estimate contract included a SaaS product of “NetSuite’s online
6 business application suite and modules,” listed via a number of modules with a product
7 number and price for each. *PEX 22.*

8 141. The estimate contract involved a subscription term of sixty-three months,
9 effective as of the date the contact was signed, allegedly allowing UBS subscription access
10 to that integrated SaaS. *PEX 2, 00021, 22, 26, 28-43.*

11 142. The estimate contract included a professional services implementation, sold
12 for a period of twelve months, as of the date of signing.

13 143. Oracle NetSuite and Defendant Bork knew that they had no ability to deliver
14 an integrated Campus Store Solution package to UBS, or effect the subscription sold as a
15 part thereof, or implement the product as sold.

16 144. On April 30, 2016, UBS CEO Little electronically signed what had now
17 become the above referenced 82-page document containing multiple contracts, signed by
18 Defendant James Bork and transmitted through his sales person Brenee Staples, in San
19 Mateo California. UBS would pay \$2,049,958.06 for its system. *PEX 2.*

20 145. In and around the same time, Defendant Bork would be signing similar sales
21 documents with the University of Texas at Austin’s “Co-Op” bookstore, Brigham Young
22 University in Utah, California State University at Fullerton, and the University of Southern
23

1 California, all touting the system and the fact that Louise Little and UBS had bought the
2 system.

3 146. The dates of these sales and the contracts are currently unknown, as
4 NetSuite has refused to produce them under formal discovery.
5

6 147. As was foreseeable, and indeed predictable, by February 2017, multiple
7 Campus Bookstore Solution customers were in escalation status because they hadn't
8 received what they had been shown.

9 148. UBS's contract was sold in April 2016, and as of February 2017, the
10 integration and functionality it thought it had acquired was still not available to it. It could
11 not Go Live.
12

13 149. As only one example, part of the Campus Bookstore Solution's "specialized
14 features" allegedly included what was called an "Integration to Verba," and that integration
15 was to include the functionality to "support a store buyback of books at the end of the
16 year," a function allowing stores to determine the quantity, quality and pricing to maximize
17 revenues, a rental feature, and other features for reminders and associate charges. *See PEX*
18 45. Nearly a year after UBS bought the Solution, this feature was not available.
19

20 150. Through that time, Go Live dates were continually being deferred.

21 151. Through that time, Defendant Oracle, Bork and Patnaik, and potentially
22 others to be determined, were extracting change orders from UBS to enable someone at
23 Oracle NetSuite the time necessary to develop the system that would function sufficiently
24 for UBS to Go Live in some way UBS had envisioned.
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1 152. By February 2017, UBS's Louise Little sent a letter to Oracle's James
2 McGeever, Oracle's Executive Vice President of the NetSuite Global Business Unit,
3 regarding Oracle's systemic product failures. *PEX 22*.

4 153. On March 9, 2017, Oracle NetSuite's Scott Williams, Oracle's "Practice
5 Director, Professional Services," obtained UBS CEO Little's signature on another change
6 order contract.

7 154. The change order committed UBS to agreeing that UBS had initiated a
8 change to an existing implementation, integration or training service item, and, as a result,
9 "further customizations requested during the development process and the proposed
10 implementation solution" would require UBS to pay more money and wait longer for their
11 expected Go Live, that is, UBS would now await the foregoing changes that UBS
12 purportedly "would like to be implemented on their site *before* launch." (emphasis added).

13 155. Oracle's change order commits UBS to agreeing that they are to blame. It
14 states, variously, that, e.g., "a) This (change order) outlines the additional changes that
15 (UBS) would like to be implemented on their site before launch. b) It is accepted an
16 understood that once this CO is signed, the PM (project manager) will incorporate these
17 tasks into the project, and there will most likely be an impact to overall project schedule,
18 due to the above change in scope.....d) If any further changes are required, then *this will*
19 *change the quote and potentially the project schedule, as already highlighted in point (b)*
20 *above."* *PEX 27, "Project Assumptions"* (emphasis added).

21 156. The change order shows UBS being charged another \$77,066 for additional
22 professional services under an "ERP implementation service-fixed bid." *PEX 27*.

1 157. This change order was signed by Oracle NetSuite’s “gap assessing”
2 professional services team then director, Scott Williams.

3 158. All name Defendants NetSuite, Merell, Patnaik, and Bork knew that the
4 delay was not caused by the customer’s changes or desire for customization, but because
5 there had never been an integrated software subscription product as demonstrated pre-sale
6 available to that customer, and there still wasn’t.

7 159. By April 2017, Defendants Jim Bork and salesperson subordinate Brenee
8 Staples met with UBS CEO Little, and now the new Board President of ICBA, regarding
9 yet another UBS deferred Go Live date, which had been now delayed until May 15, 2017.
10 *PEX 22.*

11 160. By April 2017, UBS was now refusing to pay its annual invoice, because
12 according to CEO Little, “their system is failing and they need to Go Live with
13 ERP/POS/SCA and the Campus Store Bundle.” *PEX 22 (February 15, 2017).*

14 161. By May 1, 2017, Oracle’s Executive Vice President Jim McGeever was
15 publicly touting NetSuite’s “SuiteSuccess” functionality, which he claimed allowed
16 NetSuite customers a baseline implementation of their subscription products within 100
17 days.² *PEX 32, 33.*

18 162. By May 4, 2017, the only campus bookstore that had ever achieved Go Live
19 status was, still, The Duck Store. *PEX 33a.*

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23
24 ² <https://diginomica.com/NetSuites-secret-weapon-the-stairway-to-suitesuccess>; and see, e.g.,
25 [https://www.NetSuiteblogs.com/jim-mcgeevers-mark-hurd-promise-more-more-more-in-](https://www.NetSuiteblogs.com/jim-mcgeevers-mark-hurd-promise-more-more-more-in-suiteworld-2017-keynote-next-starts-now)
26 [suiteworld-2017-keynote-next-starts-now.](https://www.NetSuiteblogs.com/jim-mcgeevers-mark-hurd-promise-more-more-more-in-suiteworld-2017-keynote-next-starts-now)

1 163. By June 9, 2017, with an increasing number of Campus Store Solution
2 customers in varying percentage degrees of anger, with UBS outright refusing to sign more
3 change orders, and other customers now threatening cancellation of contracts with NetSuite
4 and demanding that their money be returned to them, Defendants Merell, Patnaik, Bork,
5 and Riseberg, along with others were now discussing a call that Oracle professional
6 services' Ryan Murphy had with UBS CEO Little to "verbally" address her February 2017
7 letter. *PEX 22*.

9 164. While this was ongoing, and by June 23, 2017, knowing of Net Suite's
10 inability to implement the "solution" sold, Defendant Patnaik extracted another change
11 order from the University of Texas requiring the Texas Co-Op to pay another \$400,000 for
12 an implementation program. *PEX 41*.

13 165. From July 17, 2017 through July 19, 2017, NetSuite's professional services
14 director Scott Williams, along with various project implementation personnel, including
15 Karen Johnson, were confirming their understanding that the contract language being used
16 by its sales personnel needed to be changed to "accurately describe what is included," to
17 avoid these continuing escalations. *PEX 57c*.

18 166. On July 19 and 20, 2017, a critical event arose with UBS.

19 167. Having strung UBS along for well over a year without allowing it to Go
20 Live, Defendants Merell, Patnaik, Bork, and Riseberg, along with Karen Johnson and other
21 project implementation personnel, were needing to obtain another three-week delay before
22 UBS could Go Live, which they all knew would "likely trigger a significant escalation."
23 *PEX 46 (at 000578), 47 (000586)*.

1 168. On July 20, 2017, at 10:28 a.m., via an email chain entitled “Campus
2 Stores,” Defendant Patnaik directed the group, including Defendants Bork and Riseberg,
3 to maintain the fraudulent scheme, directing them to “push back on the customer,” while
4 “building out the new functionality that got identified at this late a stage.” *Id.* (46 at
5 000577, 47 at 585).

7 169. On July 20, 2017, at 2:58 pm, Oracle’s Kate Davis, on the same email chain,
8 reported having talked with UBS’s Little and UBS’s Chief Information Officer, Erin
9 Olinick, who continued to insist on some promised Go Live date. *PEX 46, 47.*

10 170. Ms. Davis’s 2:58 p.m. transmission now attached for the group a letter
11 authored by UBS’s Olinick, where UBS detailed the ramifications of NetSuite’s systemic
12 failures. In NetSuite parlance, this was an “escalation document.” *Id.*

14 171. The letter details an utter lack of functionality and disarray with the
15 NetSuite SaaS product, and reveals that UBS had by now been subjected to three successive
16 Go Live dates.

17 172. The letter details NetSuite’s continuing failure to deploy the promised
18 “special features” for which UBS had purchased the system, and describes the lack of
19 functionality of the purported special features, the failure of Oracle to have developed those
20 features, and the programs in disarray.

22 173. The letter confirms what NetSuite already knew, but that the customer was
23 now realizing hundreds of thousands of dollars later--the Campus Store Solution had
24 plainly been built for a “one-school” or “one-store term,” (indeed, The Duck Store), but
25 not a multi-school organization. The customer was now realizing and correctly telling
26

1 NetSuite that this one-school system was not “mass market” transferrable to customers like
2 UBS as represented. *Id.*

3 174. The letter detailed NetSuite’s professional service teams continuing to
4 execute “manual work-arounds,” while “fundamentally ignoring the basic functional
5 requirements of the UBS business.” *Id.*

6 175. UBS described being repeatedly subjected by NetSuite project managers
7 and personnel to new proposals of “manual workarounds” and work “that must be
8 completed outside NetSuite or in between the two systems” that would “cripple us in terms
9 of efficiency.” *Id.*

10 176. The letter gave examples, confirming that, e.g., “The Ingram integration has
11 not been developed,” and that there was “NO trade buyback functionality at all”
12 (capitalization in original). *Id.*

13 177. The letter confirmed, e.g., that the “vendor parent-child relationship is in
14 complete disarray,” that “due to incorrect and missing instructions, 80+ registers have been
15 provisioned after replication with malfunctioning configurations,” and that “[T]here is NO
16 ONE PERSON on the NetSuite side holding together all of the pieces in this project.” *Id.*

17 178. The letter described UBS being repeatedly given work to do by NetSuite
18 personnel, with “constantly changing/shifting the field requirements” that resulted in
19 “countless hours wasted on updating already imported items...and multiple revisions to
20 mater templates...” UBS reported that “major inconsistencies were in the product (which
21 resulted) in a major increase in work for us, your customer.” *Id.*

22 179. The letter described NetSuite consultants and project managers

1 contradicting each other, being misinformed, not knowing the customer's basic
2 requirements, creating confusion, and repeatedly requiring work-arounds for lack of
3 functionality. *Id.*

4
5 180. The letter reported how the same concerns had been repeatedly aired "to
6 every functional consultant on our project...to no avail." *Id.*

7 181. The letter confirmed the lack of functionality of the subscription-based
8 accounting service, as the system was not workable. UBS was experiencing "no
9 demonstrated ability in NetSuite to perform our day-to-day processes for the two pillars of
10 any retail organization—receiving merchandise and paying our bills." *Id.*

11 182. The letter thus explicitly put into writing what the named Defendants
12 already knew—there was no pre-integrated product available to customers like UBS, and
13 there never had been.

14 183. The punch line of the letter was that UBS would not pay for any further
15 change orders until it received a functioning system, and UBS demanded a Go Live date
16 by August 2017. *Id.*

17
18 **C. Tayo Daramola is inserted into Campus Store Solutions and realizes this is a**
19 **likely fraud.**

20 184. By July 19, 2017, Defendant Douglas Riseberg had been brought in to take
21 over for Ryan Murphy, who had abandoned the Campus Store Solution professional
22 services implementation process.

23 185. By July 19, 2017, project manager Andrea Scully had equally abandoned
24 her role as the UBS/Texas project manager and abruptly left Oracle NetSuite.
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1 186. On July 20, 2017, at 2:31 p.m., as the Campus Stores e-mail with the
2 attendant UBS “escalation” letter detailed above circulating among the named Defendants,
3 Defendant Riseberg formally transitioned Plaintiff Daramola to the position of lead project
4 manager on both the UBS and Texas Co-Op projects.
5

6 187. On July 20, 2017, at 3:48 p.m., Defendant Riseberg forwarded Daramola
7 the pending July 20, 2017 communication between Oracle’s Karen Johnson, and
8 Defendants Patnaik and Riseberg, reporting that customers UBS and BYU were “very
9 much wanting to go live in August.”

10 188. Plaintiff Daramola immediately recognized that the functional requirements
11 documents (FRD) for a number of the customer’s special features did not yet exist. An
12 FRD is an essential blueprint for how that feature *will be developed*. Because the FRD was
13 not yet developed, then the feature plainly did not exist.
14

15 189. Daramola read Karen Johnson’s reporting to Defendants Patnaik and
16 Riseberg of how an estimate of the work needed to simply develop the FRD for all of the
17 features needed would take another 2047 hours, and perhaps more. An estimated 278
18 hours, as an example, would be required to develop the FRD for the Ingram Integration
19 alone.
20

21 190. Plaintiff Daramola noted Defendant Patnaik’s directive to “push back” on
22 the customer, and UBS’s Olinick letter. *PEX 46*.

23 191. Daramola noted a message referring to a “Release 2,” which, at that stage,
24 caused him to assume that “Release 1” existed somewhere and was surely already
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1 functional. But review of the UBS letter caused Daramola to realize that there was no
2 functional “Release 1” of anything. *PEX 46*.

3 192. On July 22, 2017, Defendant Riseberg told Daramola that he was to
4 immediately assist a “SWAT team” for UBS’s escalation, revealing to Daramola that there
5 was a systemic response ready for customer escalations.
6

7 193. Defendant Riseberg began submersing Daramola into NetSuite’s language
8 of “product gaps,” which Daramola now understood meant that UBS did not have the
9 system they had expected.

10 194. Defendant Riseberg directed Daramola that he and the SWAT team were to
11 obtain “significant change orders” from UBS, to make UBS pay for more work, and that if
12 UBS refused to sign those change orders, the newest Go Live date represented to UBS of
13 September 5, 2017 Go Live was “unlikely.” *PEX 50a* (involving Johnson and Patnaik, and,
14 on July 24th, with Johnson referencing the involvement of Defendant Merell).
15

16 195. By July 24, 2017, Plaintiff Daramola had spoken with his UBS customer
17 briefly, but he had refused to set a false Go Live date with UBS until he could determine
18 whether that date was able to be achieved by NetSuite. *PEX 49* (Olinick July 24th letter).
19

20 196. By July 24, 2017, UBS was now complaining that it was being billed by
21 Oracle NetSuite for its SWAT team, when that team was addressing Oracle NetSuite’s own
22 failures, i.e. Oracle NetSuite was billing UBS for Oracle personnel’s travel and “onsite
23 resources that were/are being sent in an attempt to address inadequacies on NetSuite’s
24 part.” *PEX 49*.

1 197. UBS's CIO Olinick told NetSuite's Kate Davis that it would not be
2 responsible for Oracle personnel and travel in the upcoming week, and UBS had "made it
3 very clear in (UBS) list of grievances that (UBS) will not pay any more until we are up and
4 running on a functioning system." *PEX 49.*

5 198. UBS's CIO Olinick demanded a "hard and fast (Go Live) date within the
6 next two days so that we can communicate to all stakeholders accordingly." CIO Olinick
7 directed Oracle that the Go Live date should be "Tuesday, September 5 (2017)." *PEX 49.*

8 199. These foregoing communications were shared among Defendant Patnaik,
9 Riseberg, and now Plaintiff Daramola.

10 200. By this week of July 2017, Defendants Patnaik, Merell, along with Oracle's
11 Karen Johnson, were conferencing with Oracle executive David Rodman in Oracle's office
12 in San Mateo, California, participating in an "Executive Steering Committee" designed for
13 the Campus Store escalations, to determine how funds could be generated or allocated to
14 correct the escalations, including this escalation with UBS.

15 201. On July 27, 2017, at 4:48 a.m., NetSuite's Karen Johnson reported that,
16 because NetSuite had been repeatedly deferring UBS's Go Live date, UBS was now
17 demanding the "full implementation of Ingram," not Oracle's "phased approach." *PEX*
18
19
20
21 *50d.*

22 202. Johnson confirmed to Defendants Patnaik and Riseberg, and Plaintiff
23 Daramola, that the "Ingram Integration" UBS needed was still not developed.

24 203. Johnson reported that in order to perform a full implementation of the
25 Ingram Integration, the integration had to first be developed. The previously estimated 278
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1 hours for the FRD was only a writing and development estimate—if NetSuite were to
2 leverage a code it had developed for *another* feature as a *starting* point for the Ingram
3 Integration, the writing and deploying of that integration would be “800 hours.” *PEX 50d*
4 (*v PEX 45a*).

5
6 204. This Ingram development work would not be able to be *started*, however,
7 without a new change order at UBS’s expense: “Before any work is started, we will need
8 to get an approved change order from UBS.” *PEX 50d*.

9 205. But UBS was already refusing to sign a change order until it had a guarantee
10 of a Go Live date. *PEX 50d*.

11 206. Defendants understood that the UBS situation was about to unravel—
12 “asking UBS to fund the total cost will most likely be a show stopper.” *Id*.

13 207. Other customers had already escalated to the point of demanding refunds,
14 and if UBS terminated its contract, the scheme would come to a halt.

15 208. Already pending in the mix was an anticipated publicity blow to NetSuite.
16 Four days later, on July 28, 2017, news reports revealed that retail company Billabong had
17 terminated its contract with Oracle/NetSuite, giving up entirely on NetSuite’s alleged sales
18 platform, and taking a \$11.7 million impairment charge in order to “cut its losses and dump
19 its new ecommerce platform provider NetSuite following technical implementation
20 issues.” *PEX 51*.

21 209. Mr. Daramola saw this public release, and noted that Billabong had been
22 sold a similar “Suite Commerce cloud-based set of ecommerce and retail point-of-sale
23 tools” in 2015 that was still not functional in 2017. Plaintiff Daramola found himself
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1 assigned to the Campus Store Solution sold in 2016, which was still not functional in July
2 2017.

3
4 210. On July 24, 2017, Daramola began realizing that he was now being directly
5 involved in an artifice to cover the UBS Ingram integration deficiency, which involved
6 apportioning the cost of the development to other Campus Store customers who were
7 experiencing the same deficiency.

8
9 211. The Ingram Integration feature had also been explicitly sold to the Texas
10 Co-Op, and the University of West Virginia, but “not specifically called out” to programs
11 NetSuite had also sold to “Cornell” or California State Fullerton (CSU). Defendants,
12 including Defendant Patnaik, determined to assign employee David Homyak to obtain
13 information from “Ingram” as to whether there were other customers in Netsuite’s sales
14 pipeline to whom Defendant Bork and his sales team had sold the Ingram Integration.

15
16 212. Once having identified those customers, Defendants Merell, Bork, and
17 Patnaik, through sales of additional services and modules, could divvy up the cost of its
18 Ingram development among those customers, using change orders, instead of “asking UBS
19 to float the entire bill.” *PEX 50d.*

20
21 213. Defendant Patnaik told the group that the primary concern was that “writing
22 and deploying a new integration” by a now-promised date of September 5, 2017 could not
23 likely be done—such an endeavor created “huge risk.” *PEX 50d.*

24
25 214. Defendant Patnaik considered the cost of the “FRD or development” as now
26 secondary. Impending potential strategic cancellations were now quite foreseeable.
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1 215. Plaintiff Daramola now understood that his role was to involve deceiving
2 the customers and projects to which he had been assigned to buy more time for his
3 superiors.

4 216. On July 27, 2017, at 5:42 p.m., Defendant Riseberg directed Plaintiff
5 Daramola to directly misrepresent to the customer.
6

7 217. Defendant Riseberg told Mr. Daramola that NetSuite's Karen Johnson
8 would "send an email to Texas asking to set up an alignment call" to "deal with the
9 solutions miss." *PEX 50b*. On that call with Texas, Plaintiff Daramola was to assist
10 Defendant Riseberg in trying to "finesse the call with Texas and get them to align with
11 what we can deliver." *Id*.

12 218. On July 28, 2017, Defendants Merell (Group Vice President), Defendant
13 Patnaik (Regional Vice President), and Defendant Riseberg held a conference call in which
14 Plaintiff Daramola participated. *PEX 52 (invitation); 52a*.

15 219. On that call, the foregoing actively discussed how to continue to conceal the
16 lack of development of the products, and how to obtain more time to develop the products
17 that were not deliverable.
18

19 220. On July 30, 2017, before the Texas Co-Op call, NetSuite's Karen Johnson
20 sent an email to Defendants Patnaik and Riseberg entitled "UBS next steps," detailing the
21 number of "critical components" required in order for UBS to Go Live on September 5,
22 2017, including the non-existent Ingram Integration. Johnson reported that even on an
23 accelerated schedule, Oracle could not render even the Ingram feature functional until
24 August 29, 2017. *PEX 53*.
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1 221. On July 31, 2017, as directed, Mr. Daramola issued notice to Defendant
2 Riseberg and others of an internal WebEx conference call prior to he and Defendant
3 Riseberg's upcoming meeting with the still stalled Texas Co-Op. This was called an
4 "Internal Alignment Meeting" to "align internally, and address solution gaps and planning,
5 and customer expectations" in advance of communicating with the Texas Co-Op customer.
6
7 *PEX 56a, and 56b.*

8 222. The participants in the August 1, 2017 alignment call were Plaintiff
9 Daramola, Defendants Riseberg, and NetSuite's Karen Johnson, among others. *PEX 56b.*

10 223. On August 1, 2017, at 11:38 am, Plaintiff Daramola messaged Defendant
11 Riseberg and Johnson, confirming that the Texas conference call was arranged with Texas,
12 so that Defendant Riseberg could introduce Plaintiff Daramola as Texas's new project
13 manager, and thereby "review (Texas) functionality needs, to discuss prioritization and to
14 discuss next steps." *PEX 57.*

15 224. On August 1, 2017, at 10:43 p.m., Karen Johnson confirmed her earlier
16 internal discussion—"New Campus Stores functionality (has not been developed)." *PEX*
17 *57c.* Some functionality that was required for the Texas customer, but was not developed,
18 included "Verba Collect and Compete" and the "Ingram Catalog load." *PEX 57c.*

19 225. On August 3, 2017, prior to the call with the Texas Co-Op, Defendant
20 Riseberg, copying Defendant Patnaik and Plaintiff Daramola, identified the myriad of
21 customers now in escalation status, including the Texas Co-Op, with the attendant "product
22 gaps." *PEX 58c.* Some customers were requesting a full refund, and others wanted to
23 "debook," with the latter meaning that the customer wanted to end payments for the
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1 subscription service they were obligated to for Oracle’s unusable software. *See PEX 58(c)*
2 *(noting ECS and Arda Wigs)*.

3 **D. Tayo Daramola refuses to participate in what he believes to be a fraud.**

4 226. On the August 3, 2017 call with Texas, Defendant Douglas Riseberg led the
5 call by repeatedly misleading the Texas Co-Op customer as to how the Texas customer
6 was impliedly responsible for the delay, and that more time was needed as a result of the
7 customer’s requests.

8 227. Defendant Riseberg also blamed delays in the customer’s “kick off” date on
9 the departure of the prior project manager, Andrea Scully.

10 228. Defendant Riseberg, as well as Plaintiff Daramola, knew that Defendant
11 Riseberg’s representations were false.

12 229. Defendant Riseberg misled the customer by digressing into the “NetSuite
13 training plan,” and assigning the Texas customer homework in the form of the customer
14 now “setting up charts of accounts,” creating “data conversion” slides, and making “power
15 point slides,” all for the purposes of concealing the known problem and delaying the Go
16 Live date.

17 230. This was the same NetSuite diversion and stalling tactic that had been
18 deployed with UBS in Seattle, and of which UBS’s Olinick had complained in his letter.

19 231. Plaintiff Daramola knew Defendant Riseberg was misrepresenting material
20 information to the customer, and he refused to participate.

21 232. When implicitly asked by Defendant Riseberg to ratify Defendant
22 Riseberg’s representations to the Texas customer as the customer’s new project manager,
23

1 and to thereby falsely reassure his customer, Daramola refused, and remained silent.

2 **E. Mr. Daramola suffers retaliation for his refusal to participate in fraud.**

3 233. The following morning, on August 4, 2017 at 10:02 a.m., Defendants
4 removed Mr. Daramola from his position as project manager over Campus Store Solution
5 projects in progress.

6 234. This removal was in retaliation for Mr. Daramola's overt refusal to deceive
7 and defraud the Texas customer.

8
9 **F. Mr. Daramola reports to Oracle's "Ethics Hotline" which is not designed to**
10 **investigate internal fraud, but is instead designed to capture and contain the**
11 **legal risk of that ongoing fraud, and deliver the whistleblower identity and**
12 **report to Oracle's Chief Executives.**

13
14 235. The night of the Texas call with Defendant Riseberg, Mr. Daramola sought
15 the assistance of, and retained, a lawyer to assist him with internally reporting to Oracle
16 what he believed was Defendants' requiring him to participate in illegal conduct.

17 236. The next morning, on August 4, 2017, Plaintiff Daramola began working
18 with his lawyer about how to phrase his internal report of fraud.

19 237. While so engaged, Plaintiff Daramola received Defendant Riseberg's
20 notice removing him from Campus Store Solution's project manager position.

21 238. Continuing thereafter, from August 4, 2017 through October 13, 2017,
22 Defendants Riseberg, Patnaik and Merell, would retaliate against Plaintiff Daramola by
23 ensuring he had no meaningful responsibility, remained isolated, while taunting him with
24 homework assignments regarding how he could get paid for the time he had already put in
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1 on the projects to which he had been assigned, and which Oracle had already used for
2 completing its own hourly contract with its customers.

3 239. On August 14, 2017, Plaintiff Daramola filed an internal ethics complaint
4 with what Oracle's "Ethics Hotline."

5 240. Now, Defendants Gauvin and Harris appeared.

6 241. Defendant Dionis Gauvin was Oracle's Senior Corporate Counsel, Global
7 Compliance and Ethics at this time.

8 242. Defendant Gauvin is a lawyer tasked by Oracle to receive internal
9 complaints from employee whistleblowers reporting unethical or unlawful business
10 practices and "mitigate" the legal risk to Oracle of that employee's reporting by protecting
11 those involved.
12

13 243. Defendant Gauvin misled Mr. Daramola into believing that she was
14 investigating his claims, while she was packaging them to be delivered upline to Oracle's
15 C-Suite executives.
16

17 244. Defendant Gauvin provided no protection to Mr. Daramola for the
18 management retaliation he was reporting, nor any reassignment to a functional role.
19

20 245. Defendant Gauvin did not interview any of the people identified by Tayo
21 Daramola as Oracle NetSuite Chief Executive Suite actors involved in the Campus Store
22 Solution fraud, nor did she investigate Daramola's claims.

23 246. Instead, Ms. Gauvin interviewed Mr. Daramola multiple times, making her
24 own notes of what Mr. Daramola allegedly conveyed, and directed Mr. Daramola to
25 produce all of the documents he believed supported the violations he believed to exist.
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1 247. Defendant Doug Harris is an investigator in California, who was assigned
2 by lawyers Gauvin and Su Kwak, to assist with the third interview of Mr. Daramola, where
3 Mr. Harris attempted to dissuade Mr. Daramola's reporting and beliefs.
4

5 248. Defendant Gauvin then packaged the incriminating documents provided,
6 and delivered them with her notes to her supervising lawyer, Su Kwak, who had listened
7 in on the third interview without announcing that she was present.

8 249. Attorneys Gauvin and Kwak then packaged Mr. Daramola's claims for
9 reporting to Attorney Kwak's legal supervisor in California, who directly reported to
10 Oracle's General Counsel in California, Dorian Daley, who would share the complaints,
11 and thereby the named whistleblower, to Oracle's Chief Executive Suite.
12

13 250. In this way, Oracle C-Suite executives were made aware that Mr. Daramola
14 believed the Campus Store Solution to be an illegal scheme, and that Oracle Legal had the
15 documents Mr. Daramola believed would show this.

16 251. Defendant Gauvin would instigate and facilitate the constructive discharge
17 of Mr. Daramola by leaving him essentially professionally stranded, then "engage HR,"
18 which would advise Mr. Daramola in writing that all of the information of the fraud that
19 he had submitted to Ms. Gauvin was proprietary, and that he was not to provide that
20 information to anyone, meaning any state or federal agencies, or he would be in breach of
21 his proprietary information contract with the Oracle NetSuite.
22

23 252. By using internal risk mitigation lawyers to intercept and package
24 complaints of business fraud for Oracle's executives, Oracle NetSuite ensured that
25 whistleblowers were internally revealed, and that internal documents showing fraud were
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1 not disseminated to federal agencies, to protect those involved and enable the unlawful
2 financial scheme to continue.

3 253. This scenario took place in particulars commencing on August 14, 2017,
4 when Plaintiff Daramola filed his complaint with Oracle.

5 254. Here, Mr. Daramola specifically reported the involvement of Oracle
6 NetSuite executives, including Defendants Pat Merell and Mita Patnaik.

7 255. Mr. Daramola reported that the activities were occurring in “C-Level
8 Escalation Management Meetings and Internal Alignment/planning Meetings.” *PEX 70*

9 256. Mr. Daramola reported that:

10 [r]egarding the NetSuite Retail ‘Campus Book Stores’ Project. I have been involved
11 in this project since on or about July 20, 2017. As you know, this project is of a
12 delicate nature and raises serious concerns as to Oracle's ability to comply with its
13 contractual obligation of delivering a finished product in a timely fashion to the
14 clients. As of the last few weeks, I have been required to be more actively involved
15 in the Project. In doing so, I am expected to provide specific information and
16 undertake (or support) in the company's name that given actions will be performed
17 by Oracle on given dates.

18 It has become my understanding that notwithstanding Oracle's will to comply with
19 its existing contracts, certain important product components, namely the new
20 “Campus Bookstore Solution Sets,” will not be developed and completed in time
21 to meet the clients needs and expectations. I am further concerned that I am
22 instructed to give information and convey an impression to clients that is not
23 reflective of the actual state of development of said products.

24 It appears to me that in doing so, Oracle and the individuals involved in the project
25 could be seen as not making statements and representations to the clients that are
26 accurate and truthful, and could be deemed by a third party as acting in violation of
27 existing laws and regulations.

28 *PEX 70.*

1 257. Mr. Daramola reported, “I am not an expert in these matters nor do I wish
2 to explore it further. The purpose of this letter is to express the great discomfort I feel in
3 being further involved with this aspect of the project and to ask that Oracle no longer
4 require me to participate in misleading the clients.” *PEX 70.*

5
6 **G. Plaintiff Daramola reports Oracle’s misconduct to the SEC, including his**
7 **belief in software “revenue recognition” violations, which implicates securities**
8 **fraud.**

9 258. On August 16, 2017, Plaintiff Daramola filed a report with the Securities
10 and Exchange Commission (SEC) reporting what he had internally reported to Oracle,
11 which he reasonably believed included “revenue recognition” violations, which he would
12 also assert to Oracle lawyer Dionis Gauvin and Douglas Harris as part of this Campus Store
13 scheme.
14

15 259. Mr. Daramola reported to the SEC that Oracle’s executive teams were
16 promoting the scheme:

17 I have also learned that senior executive leadership has been aware from the start
18 of the sales cycle up to the present time, that the products contractually promised,
19 and advertised, have yet to be developed and/or completed. I am further concerned
20 that I am instructed to give information and convey an impression to clients that is
21 not reflective of the actual state of development of said products while executive
22 leadership encourages and supports teams misleading the clients. It appears to me
23 that in doing so, Oracle and the individuals involved in the project could be seen as
24 not making statements and representations to the clients that are accurate and
25 truthful, and could be deemed by a third party as acting in violation of existing laws
26 and regulations. I am not an expert in these matters.

27 *PEX 72.*

1 260. Plaintiff Daramola reported that this scheme implicated revenue recognition
2 violations;

3 Further, as the clients have been invoiced and paid for undeveloped products - and
4 if this pattern continues - there may be revenue recognition concerns, which could
5 result in material misrepresentation and omissions about the company's revenues
6 and earnings. The purpose of this letter is to report the potential violations to your
7 agency, and to express the great discomfort I feel in being further involved with
8 any aspect of the project that requires me to participate in misleading the clients. I
9 trust you will understand my concerns.

10 *PEX 72.*

11 261. Unlawful revenue recognition practices implicate the "employment of
12 manipulative and deceptive devices," under 17 C.F.R. § 240.10b-5 and 15 U.S.C.A. § 78j.

13 262. The overstating of revenues which can result from premature revenue
14 recognition may state a claim for securities fraud, "as under GAAP, 'revenue must be
15 earned before it can be recognized.'" *See, e.g., In re Daou Sys., Inc.*, 411 F.3d 1006, 1016
16 (9th Cir. 2005).

17 263. Mr. Daramola provided the SEC his August 14 internal report, told the SEC
18 that he had complained to Oracle internally, and told the SEC that Oracle had not
19 acknowledged the conduct.

20 **H. Defendants Gauvin and Harris attempt to derail Mr. Daramola's reporting**
21 **externally to federal law enforcement entities.**

22 264. Commencing on August 15, 2017, Defendant Gauvin, and then Defendant
23 Harris, became aware and understood that Mr. Daramola's reporting was reporting of
24 perceived law and regulatory violations engaged in by Oracle executives.

25 265. From August 15, 2017 through October 13, 2017, Defendants Gauvin and
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1 Harris misled Mr. Daramola by implying to him that they would be investigating his
2 complaints, when their intention was otherwise.

3 266. As detailed above, Defendants Gauvin and Harris intended to instead use
4 their executive positions to dissuade Mr. Daramola from reporting his concerns to or
5 disclosing documents to the SEC.
6

7 267. Defendants Harris and Gauvin performed no substantive investigation into
8 Plaintiff Daramola's complaints, nor assessed the documents he provided them, nor
9 obtained documents to which Daramola directed them.

10 268. Defendants Gauvin submitted Plaintiff Daramola to four separate
11 interviews by them over a course of two months, on August 22, 2017, August 24, 2017,
12 August 25, 2017 and September 20, 2017, where she, and then Oracle's Douglas Harris on
13 September 20 2017, asked the same questions, pretended not to understand what was being
14 reported, engaged in obfuscation, and asked Mr. Daramola for the same information
15 interview after interview without reviewing any of the documents provided them. *PEX 81*.
16

17 269. On September 20, 2017, Defendant Harris attempted to obtain a recanting
18 from Mr. Daramola of his claims by telling Mr. Daramola that he was not reporting fraud,
19 and asking Mr. Daramola to confirm Mr. Harris's statement.
20

21 270. Defendants Harris and Gauvin's actions were intended to prevent Mr.
22 Daramola from asserting fraud and from communicating such assertions to the SEC or a
23 federal enforcement agency when he left Oracle, which both Defendants intended to see
24 happen by their actions.

25 271. Defendants knew that Mr. Daramola was under significant stress and
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1 emotional hardship during this period, that he had been isolated, derogated and belittled,
2 and they believed, and intended, that by doing nothing to assist him, and by repeatedly
3 telling Mr. Daramola that he did not know what he was talking about—from the level of
4 their executive positions—he would either come back into the conspiracy with new
5 compliance, or leave, and be told he could not disseminate what he had told either
6 Defendant.

8 272. Defendant Riseberg assisted Defendants Gauvin and Harris by inviting
9 Plaintiff Daramola to rejoin the conspiracy by assignment to a Campus Suite project at the
10 University of Southern California (USC).

11 273. When Plaintiff Daramola asked Defendant Riseberg if the same type of
12 issues existed with the USC project, Defendant Riseberg revoked his offer of assignment.
13

14 274. When Plaintiff Daramola later signified his separation from Oracle on
15 September 29, 2017, Defendant Riseberg retaliated, assigning a new “evaluator manager”
16 to downgrade Plaintiff Daramola’s job performance, which was then done on October 5,
17 2017.

18 275. The foregoing acts were continued retaliation, intimidation, and deterrence.

19 276. All such actions took place over internet and phone communication, using
20 Oracle NetSuite resources.
21

22 **I. Defendants constructively discharge Plaintiff Daramola.**

23 277. By September 29, 2017, Plaintiff Daramola had no meaningful work, and
24 no meaningful work status. He was isolated, ignored as to pay he believed was owed,
25 suffering damage to his reputation and career, unable to be assigned to any substantive
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1 project, and under significant stress from Defendants Riseberg's retaliation, and
2 Defendants Gauvin and Harris's misleading conduct.

3 278. Plaintiff Daramola's working conditions were by then such that no
4 reasonable employee could perform meaningful work, and constituted constructive
5 discharge.
6

7 279. Plaintiff Daramola had no option but to resign, and did so on September 29,
8 2017, giving two weeks' notice that his last day of work would be October 13, 2017. *PEX*
9 *80*.

10 280. Plaintiff Daramola was constructively discharged on October 13, 2017 for
11 having uncovered, resisted, refused, and reported what he perceived to be fraud upon
12 Oracle customers.
13

14 281. As detailed above, Plaintiff Daramola was then marked down by his new
15 Oracle supervisor, in an attempt to make Daramola less credible to any agency.

16 **J. Defendants direct Daramola not to communicate with the SEC.**

17 282. Both Defendants Gauvin and Harris were aware that it is illegal to impede
18 an individual from communicating directly with the SEC staff about a possible securities
19 law violation, including by enforcing, or threatening to enforce, a confidentiality
20 agreement.
21

22 283. Specifically, "(a) No person may take any action to impede an individual
23 from communicating directly with the Commission staff about a possible securities law
24 violation, including enforcing, or threatening to enforce, a confidentiality agreement...with
25 respect to such communications." 17 C.F.R. § 240.21F-17(a).
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284. On October 3 and 4, 2017, Defendant Gauvin thus communicated with Oracle's Human Resources department, using non-lawyers to effect that result.

285. The result of their communication was that on October 13, 2017, Oracle HR sent Mr. Daramola a document telling him that he could not use any of the Oracle confidential or proprietary information he had in his possession (which would include all documents and communications he had provided Defendants Gauvin and Harris as proof of the fraud) for any purpose, and that all information Ms. Daramola had regarding Oracle employees *was* proprietary, and fell under a nondisclosure restriction as to anyone. *PEX* 83.

286. Defendants' actions were taken with the continuing intent to prevent Plaintiff Daramola from communicating his fraud claims to the SEC or a federal enforcement agency.

287. Defendants Harris and Gauvin's actions caused Plaintiff Daramola to refrain from further document delivery to the SEC for nearly a year after his initial August 2017 SEC complaint, when, in June 2018, he reported Oracle's letter directive to him to restrict his communications to the SEC.

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K. The Campus Store scheme went on over an extended period of time, from no later than October 2015 through at least the spring of 2019, and may be continuing.

288. The Campus Store sale and change order scheme went on from no earlier than James Bork’s sales estimate to UBS in October 2015 through 2019. Oracle has not confirmed in discovery when, or if, the solution promised UBS, the Texas Co-Op, BYU, Cal State Fullerton, or USC went live in any fashion promised.

289. By October 13, 2017, when Daramola was discharged, Oracle had “pushed back” UBS’s go live date five times—three times by the July 20, 2017 letter from UBS to Oracle, and another two times by the time Mr. Daramola left.

290. From April 30, 2016 forward, Oracle received revenue from the Campus Store Solution scheme, and Defendants Merell, Bork, Patnaik, and Riseberg received bonuses from such sales and services.

291. Defendants Gauvin and Harris received salaries for mitigating the legal risk to Oracle and protecting the participants involved while this fraud continued.

FIRST CAUSE OF ACTION.

Retaliation under the Sarbanes-Oxley Act (18 U.S.C. § 1514A *et seq.*)
(Against all corporate defendants)

292. All allegations above are incorporated as if set forth herein

293. Plaintiff Tayo Daramola is an employee, and Oracle is an employer, within the meaning of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A *et seq.*

294. The electronic communications, contracts, conference calls, emails and phone calls involved in the foregoing Campus Store Solution detail effected a scheme or

1 artifice for obtaining money from Campus Store Solution customers by means of false or
2 fraudulent pretenses, representations, or promises, which were transmitted or caused to be
3 transmitted by means of wire communication in interstate commerce, per 18 U.S.C § 1343.
4

5 295. Plaintiff Daramola engaged in activity that is legally protected under the
6 Sarbanes-Oxley Act by resisting (prior to August 3, 2017), then refusing to engage in (on
7 August 3, 2017), and by then internally reporting to Defendants Gauvin and Harris, who
8 had the authority to investigate (from August 14, 2017 – September 29, 2017), the Campus
9 Store misrepresentations and conduct that Daramola reasonably believed violated or would
10 violate the law and the Act’s requirements, including by violations of 18 USC § 1343, and
11 by violation of revenue recognition rules.
12

13 296. Defendant Oracle’s conduct following Plaintiff Daramola’s protected
14 activity constitutes unlawful retaliation, and caused Plaintiff Daramola’s unlawful
15 constructive discharge, in violation of 18 U.S.C. § 1514A.
16

17 297. As a proximate result of Oracle’s conduct, Plaintiff Daramola suffered and
18 continues to suffer harm in the United States, including injury to his business interests,
19 including loss of earnings and benefits from Oracle as well as lost earnings from other
20 United States customers and other employers in the United States software industry, loss
21 of professional reputation and standing within the United States, humiliation, emotional
22 distress, and mental pain and anguish, all in an amount to be proven at trial, but exceeding
23 the minimum jurisdictional limits of this Court.
24

25 298. Plaintiff Daramola has also incurred and continues to incur attorneys’ fees
26 and legal expenses in an amount according to proof at trial.
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1 299. Plaintiff Daramola requests all statutory relief available to him under 18
2 U.S.C. § 1514A *et seq.*, including that relief described below.

3 **SECOND CAUSE OF ACTION.**

4 **Retaliation under the Dodd-Frank Wall Street Reform and Consumer**
5 **Protection Act (15 U.S.C. § 78u-6 *et seq.*)**
6 **(Against all corporate defendants)**

7 300. All allegations above are incorporated as if set forth herein.

8 301. Plaintiff Daramola is an employee, and Defendant Oracle is an employer,
9 within the meaning of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
10 *15 U.S.C. § 78u-6, et seq.*

11 302. Plaintiff Daramola made disclosures that are protected under the Sarbanes-
12 Oxley Act by resisting, refusing to engage in, and actively internally reporting retaliation
13 and illegal conduct to Oracle, with his internal reporting initiating on August 14, 2017,
14 and Plaintiff Daramola then externally reported this same conduct to the Securities
15 Exchange Commission (SEC) on August 16, 2017.

16 303. Oracle’s officers and employees, acting as its agents, demoted, harassed,
17 and discriminated against Daramola in the terms and conditions of his employment, and
18 ultimately constructively discharged Daramola following his SEC reporting.

19 304. Oracle’s conduct constitutes unlawful retaliation and discharge under 15
20 U.S.C. § 78u-6(h)(1)(A)(iii).

21 305. As a proximate result of Oracle conduct by and through its agents,
22 Plaintiff Daramola has suffered and continues to suffer harm, including but not limited
23 to, the damage identified at paragraph 297 above.
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306. Plaintiff Daramola should receive judgment for twice the damages sustained via 15 U.S.C. § 78u-6(h)(1)(C).

307. In doing the acts herein alleged, Oracle acted with oppression, fraud, malice, and in conscious disregard of Plaintiff Daramola’s rights, as identified in the detailed actions listed above, and Plaintiff Daramola is therefore entitled to punitive damages in an amount according to proof at trial.

308. Plaintiff Daramola has also incurred and continues to incur attorneys’ fees and legal expenses in an amount according to proof at trial.

309. Plaintiff Daramola requests relief as described below.

THIRD CAUSE OF ACTION.

Racketeer Influenced and Corrupt Organization

18 U.S.C. § 1962(c), (d)

(Against all individually named defendants)

310. All fact allegations above are incorporated as if set forth herein, and are incorporated into this count by reference.

311. As to a violation of 18 U.S.C. Section 1962(c), all individually named defendants are employed by the enterprise.

312. This complaint involves the existence of two distinct entities: (1) the individual named defendant “persons” engaged in the pattern of racketeering, each of which is an individual capable of holding a legal or beneficial interest in property, as defined under 18 U.S.C.A. § 1961 (3); and (2) the Oracle “enterprise,” which is the Oracle corporation, as defined under 18 U.S.C.A. § 1961 (4).

313. Each individually named defendant person was employed by or associated



1 with the Oracle enterprise engaged in, or the activities of which affected, interstate or
2 foreign commerce.

3 314. Each named individual defendant person conducted or participated in,
4 directly or indirectly, the conduct of such enterprise's affairs through a pattern of
5 racketeering activity, and thereby engaged in unlawful conduct under 18 U.S.C. § 1962(c).
6

7 315. The named individual defendant persons unlawfully used the Oracle
8 enterprise as a vehicle through which they committed unlawful activity.

9 316. The individual defendant violators of section 1962(c), individuals Merell,
10 Bork, Patnaik, Riseberg, Gauvin and Harris, committed a pattern of predicate racketeering
11 acts distinct from the enterprise whose affairs were thereby conducted.
12

13 317. The racketeering activity engaged in by the individual defendants differed
14 from the usual and daily activities of the Oracle enterprise, and from Oracle's primary
15 business activity, in that the usual daily activity of Oracle, and its primary business activity,
16 was not to defraud customers by selling them non-existent software solutions and
17 professional service implementations for non-existent software solutions, which could not
18 be implemented.

19 318. All individually named defendants shared the common purpose of promoting
20 a nonexistent SaaS and implementation services for the Campus Store Solution that did not
21 exist for that customer as shown the customer, to derive individual economic benefit in the
22 form of salaries, bonuses and commissions from the predicate acts.
23

24 319. Each individually named defendant person conspired to violate the
25 provisions of 18 U.S.C. § 1962(c), which is unlawful under 18 U.S.C. § 1962(d).
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1 320. The predicate acts engaged in by each individual Defendant which formed
2 the acts of and the pattern of racketeering activity prohibited by 18 U.S.C. § 1962 (a)
3 consisted of violations of section 1343 (relating to wire fraud), and section 1512 (b)(3)
4 (relating to tampering with a witness, victim, or an informant), as racketeering is defined
5 by 18 U.S.C.A. § 1961 (1)(B).
6

7 321. Each named racketeer committed at least two distinct but related predicate
8 acts, constituting a “pattern of racketeering activity,” with at least one of the acts alleged
9 occurring in the year 2016 after the effective date of this chapter and continuing through
10 2018;
11

12 322. The activities extended over a period of two years as a closed pattern of
13 racketeering, and the nature of the acts amounted to or pose a threat of continued criminal
14 activity, which may be ongoing, as an open pattern of racketeering.

15 323. The predicate acts of racketeering alleged are related to each other and
16 presented and present the risk of continuing (open-ended), or that continued for in excess
17 of two years between October 2015 and the spring of 2018 prior to this action being filed
18 even if the actions have stopped by this time.
19

20 324. All predicate acts were performed over wire transmissions, including by
21 phone and by internet communications.

22 325. The predicate acts of racketeering were horizontally related to each other,
23 and they were vertically related to the RICO enterprise.
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1 326. The predicate acts detailed are sufficiently related to each other because they
2 had the same or similar purposes, results, participants, victims, or methods of commission,
3 or were otherwise interrelated by distinguishing characteristics.

4
5 327. Each actual RICO violator is not named here as an individual defendant,
6 because the RICO enterprise consisted of numerous members of the “Campus Store
7 Solution” line of business, including Oracle executives who promoted and schemed to fund
8 the development of the product sold at the customers’ expense. The Defendants named here,
9 however, were the primary actors causing the damage to Plaintiff.

10 PREDICATE ACTS

11
12 328. For purposes of Rule 9(b), in each instance of wire fraud alleged, the
13 circumstances constituting the fraud are detailed below, and in each instance, the named
14 defendant acted with knowledge that the Campus Store Solution SaaS subscription product
15 could not be delivered in the manner in which the customer victim understood from a
16 presentation would be delivered. In each instance, each named defendant sought to use
17 delays, change orders and “gap” fills to extract more revenue from each victim, while
18 knowing that the “solution” represented to the customer was not deliverable.

19
20 329. In each instance of wire fraud alleged, the named defendant knowingly made
21 false representations to the customers that the SaaS “Campus Store Solution” existed for
22 that customer in the manner demonstrated, but was simply “not ready to Go Live” for that
23 customer because the customer hadn’t bought the right modules, or done their homework
24 correctly to enable NetSuite to get them Live.

1 330. In each instance, Defendants Merell, Bork, Patnaik, and Riseberg acted with
2 fraudulent intent in making such false statements, intending to trigger and in fact triggering,
3 justifiable reliance by and including UBS, Texas, BYU and California customers,
4 extracting revenue from those customers, and thereby causing damage to those customers,
5 and thereby also causing damage to Plaintiff Daramola.
6

7 331. In each instance of wire fraud alleged, the named Defendants made the
8 foregoing false statements intending that the customer rely on those statements, and pay
9 additional money to Oracle, by which Defendants would benefit either by bonuses,
10 commissions or retained salary.
11

12 332. The predicate acts of wire fraud, per 18 U.S.C § 1343, as committed by
13 **Defendant Pat Merell**, were his overseeing and requiring sales targets, hours and revenue
14 in Defendants' marketing and selling NetSuite "Campus Store Solution" SaaS subscription
15 products that did not exist as represented, "discounting" what were represented as module
16 products that would effect a pre-sales demonstration result, pricing and misrepresenting
17 professional services that could not implement the "Campus Store Solution" as
18 represented, and working with Defendant Mita Patnaik, including over the internet and in
19 executive steering committee meetings, to deliberate and present change orders to the
20 customer selling that customer more services, and thereby funding Oracle's actual
21 development of the product functionality they had already sold to and including the UBS
22 bookstore in Seattle, Washington, in April 2016, and to the University of Texas at Austin,
23 Brigham Young University, California State Fullerton and the University of Southern
24 California, on dates to be determined, but generally between 2015-2018.
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1 333. All of the foregoing communications and directives were accomplished by
2 wire transmissions across state lines by use of telephone calls, internet “uploads,” and
3 email.

4
5 334. The predicate acts of wire fraud, per 18 U.S.C § 1343, committed by
6 **Defendant James Bork** were those acts selling SaaS products that did not exist as
7 represented, and professional services that could not implement the “solution” represented
8 to the customer as represented, including to the UBS bookstore in Seattle, Washington, in
9 April 2016, and to the University of Texas at Austin, Brigham Young University,
10 California State Fullerton and the University of Southern California, on dates to be
11 determined, but including sales between 2015-2018.³
12

13
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16
17 ³ This includes Defendant Bork’s original estimate and ensuing original contract series
18 with UBS on October 15, 2015, and April 2016; Defendant Bork and Defendant
19 Patnaik’s number of ensuing change orders with UBS thereafter; Defendant
20 Bork’s original estimate and ensuing original contract series with the Texas Co-Op
21 on dates in 2015 and 2016 to be determined; Defendant Bork and Defendant Patnaik’s
22 number of ensuing change orders with the TexasCo-Op thereafter, including
23 Defendant Patnaik’s June 22, 2017 order; and Defendants Bork and Patnaik’ original
24 and ensuing change orders attendant to BYU, Cal State Fullerton, University of
25 Southern California and others to be determined during this same time frame.
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1 335. In each instance of wire fraud alleged, Defendant Bork knowingly made
2 false representations to the customers that the SaaS “Campus Store Solution” existed for
3 that customer in the manner demonstrated, and would be functional for that customer
4 through those modules. In each instance, Defendant Bork made the foregoing false
5 statements intending that the customer rely on those statements, and pay additional money
6 to Oracle, by which Defendant would benefit by bonuses, commissions or retained salary.

8 336. All of the foregoing communications and directives in violation of 18
9 U.S.C. § 1512 were accomplished by wire transmissions across state lines by use of
10 telephone calls, internet “uploads,” and email.

11 337. The predicate acts of wire fraud, per 18 U.S.C § 1343, as committed by
12 **Defendant Mita Patnaik** were those acts selling “change orders” extracting more revenue
13 from each customer to implement products that did not exist as represented, and for
14 professional services that could not implement the “solution” represented to the customer
15 as represented, including to the UBS bookstore in Seattle, Washington, after April 2017,
16 and to the University of Texas at Austin, Brigham Young University, California State
17 Fullerton and the University of Southern California, on dates to be determined, but
18 generally from April 2017 through the spring of 2018.⁴

19 338. Defendant Mita Patnaik also worked with Defendant Merell in executive
20 sessions to determine how to get the customer(s) to pay for the functionality represented
21 through change orders.
22
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26 ⁴ *And see* Nte. 3 *supra*.

1 339. In each instance of wire fraud alleged, Defendant Patnaik knowingly made
2 false representations to the customers that the SaaS “Campus Store Solution” existed for
3 that customer in the manner demonstrated, and would be functional for that customer by
4 buying the additional modules of services that the customer had failed to acquire.
5

6 340. In each instance, Defendant Patnaik made the foregoing false statements
7 intending that the customer rely on those statements, and pay additional money to Oracle,
8 by which Defendant would benefit by bonuses, commissions or retained salary.

9 341. All of the foregoing communications and directives in violation of 18
10 U.S.C. § 1512 were also accomplished by wire transmissions across state lines by use of
11 telephone calls, internet “uploads,” and email.
12

13 342. The predicate acts of wire fraud, per 18 U.S.C § 1343, as committed by
14 **Defendant Douglas Riseberg** were those acts assessing alleged “gaps” represented to be
15 the customer’s fault as to their allegedly insufficient module acquisition or allegedly
16 changing desires, and then using “pushbacks” and “change orders” in concert with
17 Defendants Patnaik and Merell for the purpose of extracting more revenue from each
18 customer to implement products that did not exist as represented, and professional services
19 that could not implement the “solution” represented to the customer as represented.
20

21 343. Defendant Riseberg’s participation included those gaps assessed for change
22 orders with the UBS bookstore in Seattle, Washington, after April 2017, and for the
23 University of Texas at Austin, Brigham Young University, California State Fullerton and
24 the University of Southern California, on dates to be determined, but generally from April
25 2017 through the spring of 2018.
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1 344. In each instance of wire fraud alleged, Defendant Riseberg knowingly made
2 false representations to the customers that the SaaS “Campus Store Solution” existed for
3 that customer in the manner demonstrated, that some deferral would effect that result and
4 allow for functionality if the customer allowed for more time and bought additional
5 modules of services that the customer had been deficient in acquiring for the alleged
6 changes the customer now intended.
7

8 345. In each instance, Defendant Riseberg made the foregoing false statements
9 intending that the customer rely on those statements, and pay additional money to Oracle,
10 by which Defendant would benefit by bonuses; commissions or retained salary.
11

12 346. All of the foregoing communications and directives in violation of 18
13 U.S.C. § 1512 were also accomplished by wire transmissions across state lines by use of
14 telephone calls, internet “uploads,” and email.

15 347. The predicate acts of wire fraud, per 18 U.S.C § 1343, and witness
16 tampering per 18 U.S.C. § 1512(b)(3), were committed by **Defendants Dionis Gauvin and**
17 **Douglas Harris** between August 14, 2017 and October 13, 2017, and consisted of
18 intercepting whistleblower complaints, misleading the complainant as to the intent of the
19 calls engaged in, requiring that Plaintiff as a whistleblower disclose all written evidence
20 supporting his fraud observations, minimizing, “gaslighting” Plaintiff by telling him,
21 backed by their status as a lawyer and as an upper level investigator, that what Plaintiff was
22 reporting was not fraud and that Mr. Daramola himself was clearly not really intending to
23 present it that way, then packaging Ms. Daramola’s whistleblower identity and content for
24 upward dissemination to Oracle’s General Counsel in California, and thereon to Oracle’s
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1 Chief Executive Suite of Officers, for the purpose of notifying executives that Mr.
2 Daramola (and any other such whistleblowing employees) was/were whistleblowing, and
3 then suppressing all evidence of external reporting or use of the information delivered.
4

5 348. Defendant Gauvin used Oracle Human Resources to issue warnings to Mr.
6 Daramola, as a whistleblower, that the very documents he had compiled to show
7 Defendants Gauvin and Harris the fraud were now confidential and could not be disclosed
8 to anyone, including federal agencies.

9 349. Defendants Gauvin and Harris used deception by claiming an investigative
10 role for the whistleblower, intending reliance, when in fact, this was knowingly false.
11

12 350. By the foregoing deception, Defendants Gauvin and Harris intended to
13 hinder, delay, and prevent Plaintiff Daramola from communicating the allegations,
14 information, and documents he submitted to a United States law enforcement officer,
15 including the SEC, in violation of 18 U.S.C. § 1512(b)(3);

16 351. All of the foregoing were intended to protect Oracle by “mitigating the risk”
17 of the individual Defendants’ activities, and to protect the individual Defendants named,
18 all of which generated additional revenue to Oracle, from which Defendants Gauvin and
19 Harris benefitted financially, and by professional reputation and position.
20

21 352. All of the foregoing communications and directives in violation of 18
22 U.S.C. § 1512 were also accomplished by wire transmissions across state lines by use of
23 telephone calls, internet “uploads,” and email.

24 353. By the foregoing, and in concert with each other, the individual Defendants
25 agreed to commit two or more of the “predicate acts” of “racketeering activity.”
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1 354. By the foregoing, and in concert with each other, each individual Defendant
2 conspired to commit the referenced overt acts in furtherance of the conspiracy and to affect
3 the objects thereof, including particularly but not limited to the acts set forth above.

4 355. By the foregoing, and in concert with each other, from 2015 through the
5 spring of 2019, and continuing thereafter to a date as of yet unknown, all individual
6 Defendants served a common purpose, which was to extract revenue from campus store
7 customers by wire communications across state lines, from which each individual
8 defendant would directly and indirectly profit, in violation of 18 U.S.C. §§ 1343 and 1512,
9 as part of the ongoing racketeering scheme under §1962(c) and (d).
10

11 DAMAGE.

12 356. Plaintiff Daramola suffered an injury to his business in the United States by
13 reason of the foregoing RICO violations. The violations alleged led directly to his injuries.

14 357. Mr. Daramola's providing a service as a software consultant or project
15 manager to companies and clients in the United States is a commercial business endeavor
16 and rendered and renders him "engaged in a business" in the United States for purposes of
17 RICO standing.
18

19 358. Mr. Daramola's injuries have a direct relationship to and are attributable to
20 the Defendants' misconduct.

21 359. There are no other more direct victims of the alleged wrongful conduct who
22 can be counted on to vindicate the law as private attorneys general; it will not be difficult
23 to ascertain the amount of the plaintiff's damages attributable to Defendants' wrongful
24 conduct; and this Court will not have to adopt complicated rules apportioning damages to
25

1 obviate the risk of multiple recoveries.

2 360. While Mr. Daramola resides in Canada, he was employed by Defendant
3 Oracle to do business in the United States, with United States customers, and his injuries
4 arise from predicate acts in the United States in violation of federal and state law.
5

6 361. Mr. Daramola's work emanated from California as a result of the same
7 Terms of Use commitments required by Oracle.

8 362. By Terms of Use, Mr. Daramola committed to the personal jurisdiction of
9 the state of California each time he accessed Oracle's website for his work.

10 363. Defendants knew that Plaintiff had a professional reputation and customer
11 base in the United States, and had repeatedly and systematically done business in the United
12 States for United States customers and entities.
13

14 364. Plaintiff's professional reputation and customer base in the United States is
15 what caused the Oracle Defendants to hire him, and to take care of their United States
16 customers and entities.

17 365. Plaintiff's role for Oracle was to manage national level domestic customers
18 in Washington, Texas and Utah, among other states, and his work over Oracle's internet
19 was transferred to Oracle in California and used by Oracle in California to satisfy Oracle's
20 obligation to its U.S. clients under its U.S. contracts.
21

22 366. All individual Defendants specifically targeted their conduct at California
23 with the aim of thwarting Mr. Daramola's rights in California with his California employer.

24 367. Defendants' RICO conduct caused Plaintiff the loss of his employment in
25 California with his California employer, and damage to his commercial business interests
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1 in the United States, and Defendants' conduct was directly intended to cause those results
2 to Mr. Daramola in the United States, and did so.

3 368. Defendants' Merell, Patnaik, Bork, and Riseberg joined to direct Mr.
4 Daramola to continue to deceive UBS and Texas, and to thereby engage in the conspiracy
5 and specific predicate acts of wire fraud as defined with the foregoing to ensure the
6 continuity of their own fraud on those customers.
7

8 369. Defendants retaliated against Mr. Daramola by removing him from his role,
9 in order to ensure the continuity of their own fraud on those customers.

10 370. In removing Mr. Daramola from his role in support of their continuity of
11 the wire fraud with these customers, the named individual Defendants damaged Mr.
12 Daramola's business and property interest by causing him to lose professional status in his
13 United States roles with U.S. customers, to lose standing in his field, to lose his ability to
14 obtain hours of work on those United States projects and log that work into the United
15 States server, to inflict professional isolation and disrespect upon him, all of which directly
16 caused his constructive discharge, and ensuing loss of future United States wages,
17 reputation, status, and desirability as an employee for a US software corporation, leading
18 to economic loss from US sources.
19

20 371. By failing to protect Mr. Daramola from retaliation or meaningfully assist
21 Mr. Daramola, in their support of continuing wire fraud with these customers, the
22 individually named Defendants all intended that Mr. Daramola resign, caused that to
23 happen through their predicate acts, and thereby damaged Mr. Daramola's United States
24 business interests as indicated, leading to economic loss from US sources.
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378. Defendant Oracle, and persons acting on its behalf, retaliated against Mr. Daramola because Mr. Daramola refused to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

379. All of the foregoing activities by the Defendant Oracle violate Cal. Lab. Code § 1102.5 (a)-(c).

380. Such violations occurred between August 4, 2017 and October 13, 2017.

381. The latter action caused Plaintiff Daramola damage, resulted in his loss of income, and injured Plaintiff Daramola in his business by injuring his business reputation and standing in the software industry in the United States and elsewhere.

382. In doing the acts herein alleged, Oracle acted with oppression, fraud, malice, and in conscious disregard of Daramola’s rights as identified in the detailed actions listed above and Daramola is therefore entitled to punitive damages in an amount according to proof at trial.

383. In doing each act, Daramola is entitled to a civil penalty not to exceed \$10,000 for each such act, per § 1102.5 (f).

384. Daramola requests relief as described below.

FIFTH CAUSE OF ACTION.

Wrongful Termination in Violation of Public Policy
(Against all corporate defendants)

385. All allegations above are incorporated as if set forth herein.

386. Daramola was constructively discharged on October 13, 2017, with his two weeks’ notice having been given on September 29, 2017.

1 387. Oracle constructively discharged/terminated Daramola because he engaged
2 in protected activity under the Sarbanes-Oxley Act, and refused to participate in
3 racketeering activity and in activity that would violate *Cal. Bus. & Prof. Code § 17200*, the
4 latter prohibiting unlawful, unfair or fraudulent business practices, including unfair,
5 deceptive, untrue or misleading advertising.
6

7 388. Daramola’s constructive discharge was in violation of the public policy of
8 the state of California.

9 389. As a proximate result of Daramola’s discharge by Oracle on October 13,
10 2017, Daramola has suffered and continues to suffer harm, including but not limited to,
11 lost earnings and other employment benefits, loss of future employment benefits, including
12 insurance and pension, loss of business and professional reputation and standing in the
13 United States software industry, loss of medical insurance, humiliation, emotional distress,
14 and mental pain and anguish, all to his damage in an amount to be proven at trial, but
15 exceeding the minimum jurisdictional limits of this Court.
16

17 390. In doing the acts herein alleged, Oracle acted with oppression, fraud, malice,
18 and in conscious disregard of Daramola’s rights as identified in the detailed actions listed
19 above and he is therefore entitled to punitive damages in an amount according to proof at
20 trial.
21

22 391. Daramola requests relief as described below.

23 **PRAYER FOR RELIEF.**

24 WHEREFORE, Plaintiff Tayo Daramola seeks relief from this Court in the
25 following respects:
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1. For special and general damages according to proof on all causes of action;
2. For punitive damages on those causes of action providing such damages;
3. For front pay in lieu of reinstatement, according to proof;
4. For double back pay on the second cause of action—(Dodd-Frank);
5. For treble damages under the third cause of action (RICO);
6. For a civil penalty not to exceed \$10,000 for each such act in violation of § 1102.5.
7. For costs of suit incurred herein;
8. For attorney fees and expert fees and costs on all causes of action whereby fees and costs are available by law, as pled;
9. For prejudgment and post-judgment interest as available by law; and,
10. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL.

Plaintiff demands a jury trial for each cause of action on which he is entitled to a jury trial.

DATED this 1st day of February, 2021.

MARY SCHULTZ LAW, P.S.

/s/MARY SCHULTZ
 Attorney for Plaintiff, CSB 231962
 2111 E. Red Barn Lane
 Spangle, WA 99031
 Tel: (509) 245-3522, Ext. 2
 E-mail: Mary@MSchultz.com



Exhibit 2

User Friendly Interface

Click Thru Reporting on all items.

- Accounting
 - AP / AR
 - Detailed Statements any time can go and pull after month ends
 - Click Thru Reporting
 - Payroll
 - P&L & Balance Sheet
 - Click Thru Reporting
 - Inventory
 - Customer Snapshots
 - Track Customer Rebate programs
 - Customer pay invoices online (would be nice)
 - Customer can view account online (would be nice)
- Point of sale
 - Locations of inventory
 - Branches
 - EDI to vendors
 - Ecommerce
- Products/ Items
 - Data entered in System
 - Mass upload
 - Item Updates and prices changes automatically from dealers.
- Purchasing & Receiving
 - Mobile inventory (tablet)
 - Purchase Orders z
 - Build Purchase Orders with variable settings
 - Seasonal codes
 - Biweekly
 - Min & Max
 - Values automatically
 - Receive Inventory
- Project Management
 - Track Projects separately
 - Track Submittals/approvals
 - Forecast Scheduling
 - Budgets
 - Reporting
- Estimating/Sales/CRM
 - Quotes
 - By Jobs or projects
 - Sales Orders
 - Customer Database
 - Follow Ups
 - Reporting
 - Invoicing
 - From quotes

- Ecommerce
 - Links to our point of sale
 - Keeps track of on hand items
 - Branches
 - Mobile friendly
 - Clients can check their prices
 - Clients can place orders and ask for Quotes
 - Clients can see delivery status
 - Clients can see their account balance
 - Orders placed online sales team is notified about online sales.
 - Once sale made online inventory adjusted
 - Once sales are made online prints off pick ticket.
- Manufacturing/Delivery
 - Bar Code Scanning Inventory
 - Receive Shipments
 - Starts at the Purchasing
 - Track Product/Project thru fabrication processes
 - Delivery Tickets/Packing Slips

Exhibit 3

User Friendly Interface

Click Thru Reporting on all items.

NETSUITE STANDARD**NETSUITE ADDITIONAL MODULE****PARTNER SOLUTION**

- Accounting
 - AP / AR
 - Detailed Statements any time can go and pull after month ends
 - Click Thru Reporting
 - Payroll – SuitePeople Payroll
 - P&L & Balance Sheet
 - Click Thru Reporting
 - Inventory
 - Customer Snapshots
 - Track Customer Rebate programs
 - Customer pay invoices online (would be nice)
 - Customer can view account online (would be nice)

Point of sale – We work with a number of partners for POS:

Vend POS – Very similar to LightSpeed in terms of interface and ease-of-use) Integrated to NetSuite through **In8Sync**

- Locations of inventory
- Branches
- EDI to vendors- We work with a number of partners for EDI (**SPSCommerce**)
- Ecommerce – **NetSuite SuiteCommerce**
- Products/ Items
 - Data entered in System
 - Mass upload
 - Item Updates and prices changes automatically from dealers. – **You can update NetSuite price changes in bulk (Mass update or CSV Import)**
- Purchasing & Receiving
 - Mobile inventory (tablet) – **You can access NetSuite via a tablet. Must be connected to the wifi or mobile hotspot**
 - Purchase Orders
 - Build Purchase Orders with variable settings
 - Seasonal codes
 - Biweekly
 - Min & Max
 - Values automatically
 - Receive Inventory
- Project Management* - NetSuite has project management tools native to the solution. For fabricators & construction companies we work with Appficiency who has expertise in your industry and has products (modules built within NetSuite application for niche requirements for your industry (Material Job Costing and Project Task & Assignments). <https://appficiencyinc.com/material-job-costing/#>
<https://appficiencyinc.com/wp-content/uploads/2018/11/Appficiency-Material-Job-Costing-v2.pdf>
 - Track Projects separately
 - Track Submittals/approvals
 - Forecast Scheduling
 - Budgets
 - Reporting
- Estimating/Sales/CRM
 - Quotes

- By Jobs or projects
- Sales Orders
- Customer Database
- Follow Ups
- Reporting
- Invoicing
 - From quotes – NetSuite invoices from a Sales Order.
 - **Flow = Quote>Sales Order>Fulfilment>Invoice**

- **Ecommerce - NetSuite SuiteCommerce**

- Links to our point of sale
- Keeps track of on hand items
- Branches
- Mobile friendly
- Clients can check their prices
- Clients can place orders and ask for Quotes
- Clients can see delivery status
- Clients can see their account balance
- Orders placed online sales team is notified about online sales.
 - Once sale made online inventory adjusted
 - Once sales are made online prints off pick ticket. – **Picking ticket would be generated by a user in NetSuite when they are fulfilling the customer's order**

- **Manufacturing/Delivery**

- Bar Code Scanning Inventory – **We have a robust WMS (Warehouse Management System) Module.** This includes integrated barcoding, suggested putaway, multi-order picking, mobile receiving, mobile picking, mobile cycle counting and more.
- <https://www.netsuite.com/portal/assets/pdf/ds-netsuite-wms.pdf>
- Receive Shipments
 - Starts at the Purchasing
 - **Track Product/Project thru fabrication processes* – NetSuite has Work Orders & Assemblies to cover the manufacturing needs.** Appficiency has their Material Job Costing solution which ties the NetSuite WOA/MFG and NetSuite project record together to fully manage material costs, track mfg wip, periodic budgeting, tracking against actuals, & more.
- Delivery Tickets/Packing Slips

Exhibit 4A



Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Date
Estimate #

1/17/2021
809145

Customer Name & Address

River Supply Inc.
2555 Delta Rd
Brogue PA 17309
United States

Provisioning Email

Teb@riversupplyinc.com

Item	Qty	Description	Term Mos.	Amount
NetSuite SuiteSuccess Manufacturing Std Cloud Service	1	<p>NetSuite SuiteSuccess Manufacturing Std Cloud Service includes:</p> <ul style="list-style-type: none"> ** ERP with G/L, Accounts Payable, Purchasing, Inventory, Order Entry, A/R, Expense Reporting, Advanced Shipping with integrated shipping depending on your location, use of Fulfillment Requests and Automatic Location Assignment for up to 5000 orders annually. ** NetSuite CRM Sales Force Automation with quote and order management, Marketing Automation with campaigns; Customer Service/Support ** Productivity tools including contacts/calendar/events ** NetSuite Subsidiary Management within customer's home country for a single currency. Additional countries require separate purchase of OneWorld ** NetSuite Work Orders and Assemblies Cloud Service ** NetSuite Inventory Management Cloud Service ** NetSuite Demand Planning Cloud Service ** NetSuite Advanced Electronic Bank Payments ** Real-time Dashboards with key business metrics, report snapshots ** Customer, Vendor and Partner Center logins ** 5 Employee Self-Service Users ** NetSuite Basic Customer Support. Current URL Terms for support are located at www.netsuite.com/supportterms. ** 30,000 integrated bulk mail merges per month ** 120,000 campaign emails per year with no single blast exceeding 10,000 recipients ** Maximum of 30 general access users ** Includes 1 Learning Cloud Support Pass-single user license pursuant to the Learning Cloud Support Pass terms and conditions found at https://www.netsuite.com/portal/resource/terms-of-service.shtml <p>NetSuite Standard Service Tier:</p> <ul style="list-style-type: none"> ** Maximum of 100GB of File Cabinet Storage, which is included with Standard Service Tier. ** Maximum 100 Full Licensed Users Provisioned ** Maximum 200,000 monthly transaction lines ** Maximum of 1 SuiteCloud+ license 	12	\$41,988.00
NetSuite General Access Cloud Service User	20	General access user for NetSuite.	12	\$23,760.00
NetSuite Project Management Mid-Market Cloud Service	1	<p>Project Management Cloud Service includes:</p> <ul style="list-style-type: none"> ** Estimated Costing ** Project Time Tracking ** Project Task Management ** Utilization & Backlog Reporting 	12	\$7,188.00



Page 2 of 6

Estimate

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Date
Estimate #

1/17/2021
809145

Item	Qty	Description	Term Mos.	Amount
NetSuite Financial Management Mid-Market Cloud Service	1	Advanced Financials: ** Advanced Budgeting ** Expense Allocations ** Amortization Schedules ** Advanced Billing Schedules ** Milestone Billing (when used with Project Management) ** Statistical Accounting ** Dynamic Allocation	12	\$7,188.00
NetSuite WMS Cloud Service	1	** Use of the automatic push based printing in WMS for some standard reports/labels, and integration with some shipping workstations functionality requires the use of the WMS Printer Driver Software, which must be procured separately ** Bar Code Scanning ** Wireless RF / Mobile Handhelds ** Single and Multi-Order Picking ** Paperless System Directed Putaway and Picking ** GS1 Label & Packlist Printing ** Shipping integration with UPS/FedEx/Endicia ** Requires Advanced Inventory NetSuite WMS is provided pursuant to the NetSuite Third Party Terms of Service posted at www.netsuite.com/tos .	12	\$11,988.00
NetSuite WMS Printer Driver Cloud Service	1	** One copy of the offline NetSuite WMS Printer Driver Software NetSuite WMS Printer Driver Software is made available pursuant to the terms described in the NetSuite Third Party Terms of Service posted at www.netsuite.com/tos .	12	\$12.00
Subtotal				\$92,124.00
Discount		Discount		(\$59,871.39)
Subtotal				\$32,252.61
NetSuite Sandbox Environment Cloud Service	1	Sandbox & Premium Support Sandbox Environment for NetSuite Customers ** Replicates production environment including data and customizations ** Isolated environment – changes shielded from live production account ** One production environment replication for each month of term is included ** Administrators may provide sandbox access to all production users as needed NetSuite uptime guarantee does not apply to Sandbox Environments.	12	\$12,643.20
NetSuite Premium Support	1	Users of NetSuite Premium Support are authorized to access the services: Users of NetSuite Premium Support are authorized to access the services: 24x7 access for critical support; Extended hours for non-critical issues (S3's); improved Response Time Goals; functional questions logged via SuiteAnswers, and additional Authorized Contacts are provided (4). Current URL Terms for support are located at www.netsuite.com/supportterms	12	\$12,643.20
Subtotal				\$25,286.40
Discount		Discount		(\$25,286.40)



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Estimate

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Date
Estimate #

1/17/2021
809145

Item	Qty	Description	Term Mos.	Amount
Subtotal				\$0.00
		SuitePeople & SuiteCommerce		
NetSuite SuiteCommerce Cloud Service	1	SuiteCommerce web store for one (1) brand/domain. Key features include: CDN caching, site search, Responsive Design application framework that support core B2B and B2C experiences, Dynamic merchandising, and Faceted navigation. This website must be used with the SuiteCommerce bundle installed, and customer cannot create or modify any Services or SSPs for this website.	12	\$29,988.00
NetSuite SuitePeople US Payroll Cloud Service	30	SuitePeople US Payroll, a full-service payroll offering for US-based employees only. The module includes: ** Employee center access ** Payroll Tax Calculations (US jurisdictions only) ** Direct Deposit ** Expense Reimbursement ** Remittances ** ACA Reporting and Filing **Tax Filing ** US Compliance and Reporting US Payroll pricing is based on 'per employee per month' basis and is calculated as number of unique employees paid through Payroll each month. (*note: for billing, refer to the Subscription Services Terms and Payment frequency below)	12	\$4,320.00
Subtotal				\$34,308.00
Discount		Discount		(\$22,300.20)
Subtotal				\$12,007.80
		ERP Implementation		
Implementation Service - Fixed Bid	1	The price for the Implementation Service will be fixed as per the agreed upon Statement of Work.	12	\$75,000.00
Subtotal				\$75,000.00
Discount		Discount		(\$17,300.00)
Subtotal				\$57,700.00
		Website Implementation		
Activation - SuiteSuccess for Commerce B2B	1	Activation - SuiteSuccess for Commerce B2B is further described and provided pursuant to the Activation - SuiteSuccess for Commerce B2B Service Description ("Activation SD") found at https://www.oracle.com/corporate/contracts/cloud-services/netsuite/ . By signing this Estimate/Order Form, you agree to be bound by the Activation SD.	12	\$10,000.00
Subtotal				\$10,000.00
Discount		Discount		(\$5,000.00)
Subtotal				\$5,000.00
		Payroll Implem entation		
Implementation Service - Fixed Bid	1	The price for the Implementation Service will be fixed as per the agreed upon Statement of Work.	12	\$7,900.00
Subtotal				\$7,900.00



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Estimate

Date

1/17/2021

Estimate #

809145

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Item	Qty	Description	Term Mos.	Amount
Discount		Discount		(\$1,800.00)
Subtotal				\$6,100.00

Subtotal	\$113,060.41
Tax Total (6%)	\$2,655.62
Total	\$115,716.03



Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Date 1/17/2021
Estimate # 809145

A. Terms of Your Order

1. Agreement

The products and/or services set forth in this Estimate/Order Form, between you and the Oracle entity referenced above, are governed by the Subscription Services Agreement v060120 found at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/> (including any referenced URL Terms). This Estimate/Order Form is non-cancellable and all fees are non-refundable, unless otherwise explicitly stated in this Estimate/Order Form or in the Agreement. For clarity, the Service Start Date shall be the date this document is signed by you, unless a different date is specified as the Service Start Date.

The Oracle Data Processing Agreement covering the NetSuite services, which may be found at <https://www.oracle.com/corporate/contracts/cloud-services/> ("Data Processing Agreement"), is incorporated herein by this reference and describes how Oracle will process Personal Data (as defined therein) that Customer provides to Oracle as part of Oracle's provision of the NetSuite services to Customer under this Estimate/Order Form ("order"), unless otherwise stated in the Data Processing Agreement or this order. Customer's signature on this order constitutes Customer's agreement to the Data Processing Agreement, unless stated otherwise in the Subscription Services Agreement or License Agreement that governs this order. This Data Processing Agreement only applies to NetSuite services included in this order and does not apply to the following services that may be included in this order: Mobile Push Notifications (a feature of the NetSuite for iPhone Mobile Application), any NetSuite POS Cloud Services, OrderMotion, TribeHR, Light CMS, or any other services identified by Oracle as being excluded from the applicability of this Data Processing Agreement. The Data Processing Agreement also does not apply to any (1) demonstration accounts, trials, beta releases, release preview or other similar versions of the services or (2) any features, services or products which are provided pursuant to a separate agreement or by a party other than Oracle (as defined in the Data Processing Agreement) (e.g. where Oracle is merely a billing/collection agent) including but not limited to Celigo and PACEJET. For purposes of this order, the definition of "Services Agreement" in Section 11 is deleted and replaced in its entirety with the following definition: "Services Agreement" means (i) the applicable order for the Services you have purchased from Oracle; (ii) the applicable master agreement referenced in the applicable order; (iii) the Privacy Policy found at <https://www.oracle.com/legal/privacy/> (or other location as may be updated by Oracle), and (iv) the Data Security Addendum found at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/>.

2. Start Date

2/27/2021

3. Subscription Services Payment Terms

Net 30 – Annual Billing

4. Subscription Services Payment Frequency

Annual in Advance

5. Professional Services Payment Terms

Net 30

6. Currency

USD

7. Offer Valid Through

2/27/2021

8. Customer Reference

Oracle may refer to You as an Oracle customer of the ordered Services in sales presentations, marketing materials and activities.



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Estimate

Date

1/17/2021

Estimate #

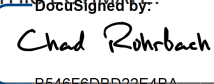
809145

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

I AGREE TO THE FEES AND TERMS OF THIS ESTIMATE:

DocuSigned by:

Chad Rohrbach


B546F6DBD22E4BA...

February 26, 2021 | 15:08 PST

Print Name

Signature

Date

Upon your execution, this document is a binding order for the products and services set forth herein.

Oracle relies on the accuracy of the billing information listed above, and is unable to issue a Credit Memo or resubmit an invoice due to incorrect billing information listed. Please ensure your company name, addresses and contacts included on this document are correct.

Oracle does not accept credit card payments for invoices of more than \$99,999.

Exhibit 4B

Subscription Services Agreement

This Subscription Services Agreement (“**Agreement**”) is between Oracle America, Inc. (“**Oracle**”), and the entity which has accepted this Agreement through a document which references this agreement “**Customer**”. Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in the Definitions section below. This Agreement sets forth the terms and conditions that govern orders placed under this Agreement.

Definitions.

“**Cloud Service**” means, collectively, the NetSuite online business application suite (and any optionally procured modules) (the “**NetSuite Service**”), the OpenAir online Professional Services Automation application suite (and any optionally procured modules) (the “**OpenAir Service**”) and/or the Bronto products and Services (the “**Bronto Service**”) as described in the applicable User Guides that is procured by Customer from Oracle in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated offline components, but excluding Third Party Applications, Support Services and Professional Services.

“**Customer Data**” means all electronic data or information submitted to and stored in the Cloud Service by Users.

“**Electronic Communications**” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Cloud Service.

“**Estimate/Order Form**” means an Oracle estimate, renewal notification or order form in the name of and executed by Customer and accepted by Oracle which specifies the Cloud Service, and any Support Services and/or Professional Services to be provided by Oracle subject to the terms of this Agreement.

“**Help Documentation**” means the online English language help center documentation describing the Cloud Service features, which may be updated from time to time. For the Bronto Service, Help Documentation includes instructional content found at <https://help.bronto.com/bmp/>, and such other URL specified by Oracle. Help Documentation does not include any material, content, or information, in any format, which is obtained or derived from third party sources outside of Oracle that You may access through, within, or in conjunction with Your use of, the Services.

“**Oracle NetSuite Written Materials**” means, collectively, the Data Processing Agreement, the applicable version of the Data Security Addendum, the Oracle Services Privacy Policy, the URL Terms, the User Guides, and any other Oracle documents that are referenced in, or incorporated into, Customer’s Estimate/Order Form for Services.

“**Professional Services**” means the general consulting, implementation and/or training services to be provided to Customer pursuant to the terms hereof, the additional terms of the applicable version of the Professional Services Addendum available at www.netsuite.com/tos or such other URL as specified by Oracle (the “Professional Services Addendum”), and an Estimate/Order Form or Statement of Work, as applicable.

“**Statement of Work**” or “**SOW**” means a separate document or Estimate/Order Form between Oracle and Customer that details the Professional Services to be delivered by Oracle.

“**SuiteApp.com**” means the Oracle online directory of applications that interoperate with the Cloud Service, located at <http://www.netsuite.com/suiteapp> or at any successor websites.

“**Support Services**” means the supplemental, technical support services to be provided to Customer for the Cloud Service pursuant to the terms hereof and the applicable version of the additional terms for Support Services available at www.netsuite.com/supportterms or such other URL as specified by Oracle. Support Services may be subject to additional fees.

“**Third Party Applications**” means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Oracle, as further described in the section below entitled “Third Party Applications” that interoperate with the Cloud Service, including but not limited to those listed on SuiteApp.com.

“**Users**” means individuals who are authorized by Customer to use the Cloud Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate/Order Form or amendment to this Agreement. Users may include but are not limited to Customer’s and Customer’s affiliates’ employees, consultants, contractors and agents.

“**User Guides**” mean the online English language user guides for the Cloud Service, accessible via login at <http://www.netsuite.com> (under “Help”) or included in the Oracle documentation identified under the “NetSuite Applications Suite” heading available at <https://docs.oracle.com/en/cloud/saas/index.html>, as updated from time to time.

“**URL Terms**” means the terms with which Customer must comply, which are located at a URL, referenced in this Agreement and are hereby incorporated by reference.

Subscription Services Agreement

1. Services. Subject to the terms and conditions of this Agreement, Customer shall have the non-exclusive, worldwide, limited right to use the Cloud Service, Support Services and Professional Services ordered by Customer (collectively, the “**Services**”) during the applicable period set forth in Customer’s applicable Estimate/Order Form or SOW solely for the internal business operations of Customer. Customer may allow its Users to use the Services for this purpose, and Customer is responsible for their compliance with this Agreement and Customer’s applicable Estimate/Order Form or SOW. The terms of this Agreement shall also apply to updates and upgrades subsequently provided by Oracle to Customer for the Cloud Service.

2. Estimates/Order Forms. The Services shall be ordered by Customer pursuant to Estimates/Order Forms. Each Estimate/Order Form shall include at a minimum a listing of the Cloud Service and any Support Services and/or Professional Services being ordered and the associated fees. Except as otherwise provided on the Estimate/Order Form, Statement of Work or this Agreement, once placed, each Estimate/Order Form and Statement of Work is non-cancellable and all sums paid are non-refundable. If Customer exceeds the quantity of Services ordered, then Customer promptly must purchase and pay fees for the excess quantity.

Any one of Customer’s majority owned subsidiaries may also order Services under this Agreement by entering into an Estimate/Order Form or SOW, signed by such subsidiary and Oracle, and agreeing to be bound by the terms of this Agreement and such Estimate/Order Form or SOW. For the purposes of such Estimate/Order Form or SOW, “Customer” as used in such Estimate/Order Form or SOW and this Agreement, shall be deemed to refer to the majority owned subsidiary executing such Estimate/Order Form or SOW.

3. Restrictions.

3.1. General Restrictions.

3.1.1 Customer may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose any performance or vulnerability testing of the Services without Oracle’s prior written approval, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing of the Services (the “**Acceptable Use Policy**”). In addition to other rights that Oracle has in this Agreement and Customer Estimate/Order Form, Oracle has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

3.1.2 Customer may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Customer Estimate/Order Form.

3.2. HIPAA. Customer agrees that: (i) Oracle is not acting on Customer’s behalf as a Business Associate or subcontractor; (ii) the Cloud Service may not be used to store, maintain, process or transmit protected health information (“PHI”) and (iii) the Cloud Service will not be used in any manner that would require Oracle or the Cloud Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented (“HIPAA”). In the preceding sentence, the terms “Business Associate,” “subcontractor,” “protected health information” or “PHI” shall have the meanings described in HIPAA.

4. Term, Fee, Payment & Taxes.

4.1. Term. This Agreement is valid for the Estimate/Order Forms (including SOWs) which this Agreement accompanies (the “Term”). The initial subscription term of the Cloud Service and/or Support Services procured by Customer shall continue for the term applicable to such Services specified in the applicable Estimate/Order Form. If Customer has not entered into an Estimate/Order Form with Oracle regarding renewal of Customer’s Cloud Service and/or Support Services prior to the expiration of the initial term or then-current renewal term of such Services, then the subscription term for such Services shall be automatically renewed for a term of one (1) year unless either party provides written notice of non-renewal to the other at least thirty (30) days before expiration of the applicable initial term or then-current renewal term.

4.2. Fees and Payment. All fees payable are due within 30 days from the invoice date unless otherwise specified in the applicable Estimate/Order Form. All fees are non-refundable, except as otherwise explicitly stated in the applicable Estimate/Order Form or this Agreement.

Subscription Services Agreement

4.3. The fees and the term of use for additional capacity of the applicable Cloud Service metric and other items procured during an existing subscription term will co-terminate with and be prorated through the end date of the subscription term for the applicable Cloud Service. Pricing for subsequent renewal Estimate/Order Forms shall be set at then current Oracle pricing, unless otherwise agreed to by the parties.

4.4. Taxes. Oracle fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Oracle's net income. If Oracle has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights.

5.1. Ownership of Customer Data. As between Oracle and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with the provision of the Services, Oracle may store and maintain Customer Data for a period of time consistent with Oracle's standard business processes for the Services. Following expiration or termination of the Agreement or a Customer account, if applicable, Oracle may deactivate the applicable Customer account(s) and delete any data therein. Customer grants Oracle the right to host, use, process, display and transmit Customer Data to provide the Services pursuant to and in accordance with this Agreement and the applicable Estimate/Order Form or SOW. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, and for obtaining all rights related to Customer Data required by Oracle to perform the Services.

5.2. Oracle Intellectual Property Rights. All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Services provided or developed by Oracle) and anything developed or delivered by or on behalf of Oracle under this Agreement (including without limitation Deliverables and Tools as such terms are defined in the Professional Services Addendum) are owned exclusively by Oracle or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Customer grants Oracle a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Services. Any rights in the Services or Oracle's intellectual property not expressly granted herein by Oracle are reserved by Oracle. Oracle, NetSuite, OpenAir and Bronto service marks, logos and product and service names are marks of Oracle (the "**Oracle Marks**"). Customer agrees not to display or use the Oracle Marks in any manner without Oracle's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("**Marks**") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

5.3. US Government Rights. The Cloud Service is a "commercial item" as that term is defined at FAR 2.101. If Customer or User is a US Federal Government ("**Government**") Executive Agency (as defined in FAR 2.101), Oracle provides the Cloud Service, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense ("**DoD**")), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Oracle to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

6. Terms of Service.

6.1. Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address and phone number, and maintain and promptly update this information if it should change.

Subscription Services Agreement

6.2 Notice. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a legal dispute with Oracle or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065, Attention: General Counsel, Legal Department.

6.3 Users: Passwords, Access and Notification. Customer shall authorize access to and assign unique passwords and user names to its Users. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Cloud Service or under Customer's account. Oracle will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Service and shall promptly notify Oracle of any unauthorized access or use of the Cloud Service and any loss or theft or unauthorized use of any User's password or name and/or Cloud Service account numbers.

6.4 Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Cloud Service. Customer is responsible for securing DSL, cable or another high speed Internet connection and up-to-date "browser" software in order to utilize the Cloud Service. Customer expressly consents to Oracle's interception and storage of Electronic Communications and/or Customer Data as needed to provide the Services hereunder, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Oracle. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Without limiting Oracle's applicable obligations under the Security or Confidentiality Sections of this Agreement, Oracle is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Oracle, including, but not limited to, the Internet and Customer's local network.

6.5 Third-Party Applications. Oracle or third party providers may offer Third Party Applications. Except as expressly set forth in the Estimate/Order Form, Oracle does not warrant any such Third Party Applications, regardless of whether or not such Third Party Applications are provided by a third party that is a member of an Oracle partner program or otherwise designated by Oracle as "Built For NetSuite," "certified," "approved" or "recommended." Any procurement by Customer of such Third Party Applications or services is solely between Customer and the applicable third party provider. Customer may not use Third Party Applications to enter and/or submit transactions to be processed and/or stored in the Cloud Service, unless Customer has procured the applicable subscription to the Cloud Service for such use and access.

Oracle is not responsible for any aspect of such Third Party Applications that Customer may procure or connect to through the Cloud Service, or any interoperation, descriptions, promises, or other information related to the foregoing. If Customer installs or enables Third Party Applications for use with the Cloud Service, Customer agrees that Oracle may enable such third party providers to access Customer Data for the interoperation of such Third Party Applications with the Cloud Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider pursuant to a separate privacy policy or other terms governing Customer's access to or use of the Third Party Applications. Oracle shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers. No procurement of such Third Party Applications is required to use the Cloud Service. If Customer was referred to Oracle by a member of one of Oracle's partner programs, Customer hereby authorizes Oracle to provide such member or its successor entity with access to Customer's business information related to the procurement and use of the Cloud Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases and billing/payment information.

6.6 Support Services. As part of the Cloud Service, Oracle will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Cloud Service. Oracle also offers optional "for fee" Support Services and Professional Services.

6.7 Service Level. During the Term, the Cloud Service will meet the service level specified in the applicable version of "Service Level Commitment" listed on the Oracle website located at www.netsuite.com/slc, or such other URL as specified by Oracle, which is hereby incorporated by reference. If the Cloud Service fails to achieve the service level, then Customer will be entitled, as its sole and exclusive remedy, to a credit for the Cloud Service in accordance with the terms set forth in the Service Level Commitment. The Cloud Service's system logs and other records shall be used for calculating any service level events.

6.9 Updates. During the Services Period, Oracle may update the Services, the Oracle NetSuite Written Materials to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Applications. Oracle updates to the Services, the Oracle NetSuite Written Materials will not materially

Subscription Services Agreement

reduce the level of performance, functionality, security or availability of the Services during the term of Customer's Estimate/Order Form or SOW.

6.9. Service Monitoring and Analyses

6.9.1 Oracle continuously monitors the Cloud Service to facilitate Oracle's operation of the Services; to help resolve Customer service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any Customer Data residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by Customer or any of Customer's Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Customer Data) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

6.9.2 Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as "**Service Analyses**"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Data, personal information or Confidential Information in a form that could serve to identify Customer or any individual. Oracle retains all intellectual property rights in Service Analyses.

6.10 Security. Oracle shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of Customer Data, as described in the applicable version of the Data Security Addendum available at www.netsuite.com/tos.

6.11 PCI-DSS Compliance. Customer is responsible for ensuring that its use of the Cloud Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("**PCI DSS**") requirements and shall not store credit card and social security data in the Cloud Service except in the designated encrypted fields for such data. During the Term, Oracle shall maintain PCI DSS compliance for those portions of the Cloud Service that are designated by Oracle as being designed to store and process credit card data. Any changes made to the Cloud Service by the Customer or at the Customer's direction may affect the Customer's compliance with PCI DSS requirements and Customer shall be solely responsible for ensuring that any such changes are compliant with PCI DSS requirements.

6.12. Data Protection

6.12.1 In performing the Services, Oracle will comply with the Oracle Services Privacy Policy, which is available at <http://www.oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The Oracle Services Privacy Policy is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Customer's Personal Data (as defined in Oracle's Data Processing Agreement) provided as part of Customer Data during the term of Customer's Estimate/Order Form.

6.12.2 Unless otherwise provided in the applicable Estimate/Order Form, Oracle's Data Processing Agreement for Cloud Services (the "Data Processing Agreement"), which is available at <http://www.oracle.com/corporate/contracts> and incorporated herein by reference, describes the parties' respective roles for the processing and control of Personal Data that Customer provides to Oracle as part of the Services. Unless otherwise provided in the applicable Estimate/Order Form, Oracle will act as a data processor, and will act on Customer instructions concerning the treatment of Customer's Personal Data residing in the services environment, as specified in this Agreement, the Data Processing Agreement and the applicable Estimate/Order Form. Customer agrees to provide any notices and obtain any consents related to Customer's use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

6.12.3 The Data Processing Agreement does not apply to any (1) demonstration accounts, trials, beta releases, release preview or other similar versions of the services or (2) any features, services or products which are provided pursuant to a separate agreement or by a party other than Oracle (e.g. where Oracle is merely a billing/collection agent) including but not limited to Celigo and Paccjet.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. Oracle reserves the right to suspend Customer's access to and/or use of the Services if any payment is due but unpaid but only after Oracle has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that Oracle shall not be liable to Customer or other third party for any suspension pursuant to this Section.

7.2. Suspension for Ongoing Harm. Oracle may suspend Customer's or Users' access to, or use of, the Services if Oracle believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any

Subscription Services Agreement

content, data, or applications in the Services; (b) Customer or Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, Oracle will provide Customer with advance notice of any such suspension. Oracle will use reasonable efforts to re-establish the Services promptly after Oracle determines that the issue causing the suspension has been resolved. During any suspension period, Oracle will make Customer Data (as it existed on the suspension date) available to Customer. Any suspension under this Section shall not excuse Customer from Customer's obligation to make payments under this Agreement.

7.3. Termination for Cause. If either Customer or Oracle breaches a material term of this Agreement or any Estimate/Order Form or SOW and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate (a) in the case of breach of any Estimate/Order Form or SOW, the Estimate/Order Form and any applicable SOW under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and all Estimates/Order Forms and SOWs that have been placed under the Agreement. If Oracle terminates any orders as specified in the preceding sentence, Customer must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such Estimates/Order Forms and SOWs plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if it is in default under this Agreement, Customer may not use those Services ordered.

8. Confidentiality.

8.1 By virtue of this Agreement, the parties may disclose to each other information that is confidential ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this Agreement and Customer's Estimate/Order Forms, Customer Data residing in the Cloud Service, and all information clearly identified as confidential at the time of disclosure.

8.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

8.3 Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will protect the confidentiality of Customer Data residing in the Cloud Service for as long as such information resides in the Cloud Service. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Oracle will protect the confidentiality of Customer Data residing in the Services in accordance with the Oracle security practices applicable to Customer's Estimate/Order Form as described in this Agreement or such Estimate/Order Form.

9. Warranties, Disclaimers and Exclusive Remedies.

9.1 Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Oracle warrants that during the Term, Oracle will perform (i) the Cloud Service using commercially reasonable care and skill in all material respects as described in the Oracle NetSuite Written Materials, and (ii) any Professional Services and Support Services in a professional manner consistent with industry standards (the warranties described by the foregoing clauses (i) and (ii), collectively, the "**Services Warranty**"). If the Services provided to Customer were not performed as warranted, Customer must promptly provide Oracle with a written notice that describes the deficiency in the Services (including, as applicable, the service request number notifying Oracle of the deficiency in the Services). For Professional Services, Customer must notify Oracle of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

9.2. ORACLE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES.

9.3. FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

Subscription Services Agreement

9.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitations of Liability.

10.1. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

10.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S ESTIMATE/ORDER FORM OR SOW, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR SOW FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

11. Indemnification.

11.1. If a third party makes a claim against either Customer or Oracle ("Recipient" which may refer to Customer or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Oracle ("Provider" which may refer to Customer or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

11.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet obligations under the relevant order, then Oracle may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

11.3 The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or the User Guides, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify Customer to the extent that an infringement claim is based on a Third Party Application or any Material from a third party portal or other external source that is accessible or made available to Customer within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

11.4 This Section 11 provides the parties' exclusive remedy for any infringement claims or damages.

12. Governing Law and Jurisdiction. This Agreement is governed by the substantive and procedural laws of the State of California and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it.

13. Export.

13.1 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer and Oracle each agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, software programs and/or

Subscription Services Agreement

materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

13.2 Customer acknowledges that the Services are designed with capabilities for Customer and Customer Users to access the Services without regard to geographic location and to transfer or otherwise move Customer Data between the Services and other locations such as User workstations. Customer is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Customer Data.

14. General Provisions.

14.1. Entire Agreement.

14.1.1 This Agreement incorporates by reference all URL Terms (as applicable), Exhibits and Estimate/Order Forms, and this Agreement, together with such referenced items, constitute the entire understanding between Customer and Oracle and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFP's and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties.

14.1.2 Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Oracle to object to such terms, provisions, or conditions. In the event of any inconsistencies between the terms of an Estimate/Order Form and the Agreement, the Estimate/Order Form shall take precedence; however, unless expressly stated otherwise in an Estimate/Order Form, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an Estimate/Order Form.

14.1.3 The Agreement shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Estimate/Order Form or Statement of Work. Notwithstanding the above, after execution of this Agreement, and during the electronic provisioning of Customer's account, Customer may be presented with the requirement to "agree" to a click through agreement pertaining to "Main Terms of Service" or "Terms of Service" for the Cloud Service before Customer's account can be successfully provisioned. Oracle hereby expressly agrees that upon execution of this Agreement such "Main Terms of Service" shall be considered null and void and shall not apply in any manner to this Agreement. Customer acknowledges that other click through agreements found at www.netsuite.com/termservice (or other similar sites) shall apply if optional services or features are subsequently ordered or activated. For clarity, such other click through agreements will only apply to such optional services or features.

14.2. Other General Provisions.

14.2.1 This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this Agreement without written consent of the other, except that Oracle may assign without consent to a related entity or the successor of all or substantially all of the assignor's business or assets to which this Agreement relates. There are no third-party beneficiaries to this Agreement.

14.2.2 This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties.

14.2.3 Oracle's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for, bound by, or responsible for any problems with the Services or Customer Data arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as Oracle's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for our resources under this Agreement.

14.2.4 If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach.

14.2.5 Force Majeure. Neither party shall be liable for loss, delay, nonperformance (including failure to meet the service level commitment but excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal

Subscription Services Agreement

acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Oracle employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly.

14.2.6 Non-Impediment. Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Oracle to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or deliverables hereunder).

14.2.7 Audit. Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may audit Customer's use of the Cloud Services to ensure Customer's use of the Cloud Services is in compliance with the terms of the applicable Estimate/Order Form and this Agreement. Any such audit shall not unreasonably interfere with Your normal business operations. Customer agrees to cooperate with Oracle's audit and to provide reasonable assistance and access to information reasonably requested by Oracle. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 8 (Confidentiality) of this Agreement. If the audit identifies non-compliance, Customer agrees to remedy (which may include, without limitation, the payment of any fees for additional Cloud Services) such non-compliance within 30 days of written notification of that non-compliance. Customer agrees that Oracle shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

14.2.8 The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive. This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties.

Exhibit 5



Page 1 of 2

Estimate

Oracle America, Inc.
 500 Oracle Parkway
 Redwood Shores, California 94065
 800 762 5524
 www.netsuite.com

Date

2/18/2021

Estimate #

822038

Customer Name & Address

River Supply Inc.
 2555 Delta Rd
 Brogue PA 17309
 United States

Item	Qty	Description	Term Mos.	Amount
NetSuite ACS Optimize	1	NetSuite ACS Optimize provides: ** 15 Advanced Customer Support Service hours per month that must be used in that month ** NetSuite ACS Optimize is further described and provided pursuant to the Advanced Customer Support Service Description - ACS Optimize ("ACS SD") found at http://www.netsuite.com/termservice . By signing this Estimate/Order Form, you agree to be bound by the ACS SD. ** Service hours may be extended at the Extended Hourly Rate of \$185 USD an hour or in other currencies as calculated using then current exchange rates	7	\$23,800.00
Subtotal				\$23,800.00

Subtotal \$23,800.00

Total \$23,800.00



Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, California 94065
800 762 5524
www.netsuite.com

Date 2/18/2021
Estimate # 822038

A. Terms of Your Order

1. Agreement

Expansion or Upsell. If this Estimate/Order Form is an expansion or upsell order, the additional quantities of Cloud Services that are ordered hereunder are subject to the terms of that initial Estimate/Order Form between Customer and Oracle for such Cloud Services. For clarity, the Service Start Date shall be the date this document is signed by you, unless a different date is specified as the Service Start Date.

2. Start Date

8/1/2021

3. Subscription Services Payment Terms

Net 30 – Annual Billing

4. Subscription Services Payment Frequency

Annual in Advance

5. Professional Services Payment Terms

Net 30

6. Currency

USD

7. Offer Valid Through

3/20/2021

I AGREE TO THE FEES AND TERMS OF THIS ESTIMATE:

Chad Rohrbach

Print Name

DocuSigned by:
Chad Rohrbach
Signature

February 26, 2021 | 15:08 PST

Date

Upon your execution, this document is a binding order for the products and services set forth herein.

Oracle relies on the accuracy of the billing information listed above, and is unable to issue a Credit Memo or resubmit an invoice due to incorrect billing information listed. Please ensure your company name, addresses and contacts included on this document are correct.

Oracle does not accept credit card payments for invoices of more than \$99,999.

Exhibit 6A



Fixed Price Statement of Work

Customer Name: River Supply Inc. (“Customer” or “You”)
Customer Address: 2555 Delta Rd Brogue PA 17309 United States

1. Agreement

This Statement of Work (“SOW”) describes the professional services (the “Professional Services”) to be performed by Oracle America, Inc. (“Oracle”) for Customer (collectively “Parties”) pursuant to the applicable agreement governing Oracle’s performance of Professional Services (the “PS Terms”) listed below (in order of preference, as applicable):

- (i) the Professional Services Addendum to the Subscription Services Agreement entered by and between the Parties,
- (ii) the separate Professional Services Agreement entered by and between the Parties; or
- (iii) if neither (i) nor (ii) are applicable, the Professional Services Agreement found at www.netsuite.com/termservice (or such other URL specified by Oracle).

Once executed by the Parties, this SOW shall be incorporated by reference into the PS Terms. In the event of any inconsistency or conflict between the terms and conditions of this SOW and the PS Terms, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Capitalized terms used in this SOW shall have the meaning defined under the PS Terms. This SOW may not be modified or amended except in a writing signed by a duly authorized representative of each party. As used in this SOW, “You” or “Your” shall refer to the Customer as defined in the Agreement.

2. Description of Services

Oracle will perform the following Professional Services to assist You with the implementation of SuiteSuccess Manufacturing Standard and Warehouse Management Systems in Your Oracle|NetSuite instance (the “NetSuite instance”):

A. Project Management:

1. Conduct one (1) kickoff webinar session, which is up to one (1) hour in duration, to review:
 - a. Project goals and objectives
 - b. Joint team roles and responsibilities
 - c. Project scope
 - d. Project management approach
 - e. Implementation methodology
 - f. Project timeline considerations
 - g. Next steps
2. Create and update the project plan as required during the performance of Professional Services.
3. Provide status reports at a mutually agreed interval, but not more than once a week.
4. Provide completed cutover checklist.
5. Conduct one (1) post go-live transition meeting, via webinar, for up to thirty (30) minutes.

B. General Configuration and Setup:

1. Conduct one (1) “Getting Started” session, via webinar, for up to one (1) hour to:
 - a. Confirm administrator access.
 - b. Provide an overview of the SuiteAnswers site.
 - c. Create Oracle|NetSuite implementation folder in the production file cabinet of the NetSuite instance.
2. Conduct up to one (1) personalization session, for up to two (2) hours for each of the process areas set out below.
3. Configure OneWorld for up to one (1) country:

- a. United States
 4. Configure up to one (1) parent and up to two (2) subsidiaries.
 5. Setup up to one (1) country sales tax nexus(es).
 6. Perform configuration based on mutually agreed design from the personalization sessions.
 7. Configure up to one (1) User Interface (“UI”) form for each NetSuite instance record type.
 8. Create up to twenty-five (25) custom fields.
 9. Configure up to one (1) printed form for each NetSuite instance printed record type.
 10. Set-up time sheets for payroll processing.
 11. Install and configure the Platform Solutions Group Bundles (“PSG Bundles”) as defined for Your country.
 12. Setup and configure up to one (1) Pre-Built Connection:
 - a. UPS
 - b. FedEx
 - c. USPS
- C. Provide process area walkthroughs for each process area in scope as follows:
1. Lead the first process area walkthrough for up to two (2) hours per process area to demonstrate process by process use cases.
 2. Provide up to two (2) hours of assistance per process area for a second process walkthrough.
 3. Provide Warehouse Management System Standard Quick Reference guide in MS Word format and a “how to” guideline for maintaining quick reference guide.
 4. Provide train-the-trainer super user training to the Administrator and one (1) of Your team members per warehouse and functional area.
- D. Data Migration:
1. Perform up to two (2) import iterations for the following list data records into the NetSuite instance:
 - a. Chart of accounts (“COA”) – up to two hundred fifty (250)
 - b. Expense category records – up to fifty (50)
 - c. Bin records – up to five hundred (500)
 - d. Employee records – up to one hundred (100)
 - e. Customer records – up to five hundred (500)
 - f. Vendor records – up to five hundred (500)
 - g. Contact records – up to one thousand (1,000)
 - h. Item records – up to ten thousand (10,000)
 2. Perform up to two (2) import iterations for the following transactional data into the NetSuite instance:
 - a. Opening account balances – up to one (1) consolidated opening balance
 - b. Historical trial balances – up to one (1) year consolidated by quarter
 - c. Inventory balance items – up to ten thousand (10,000)
 - d. Lot/serial items – up to ten thousand (10,000)
 - e. Open transactions (accounts receivable, accounts payable, sales orders, credit memos, return authorizations and purchase orders) – up to one thousand (1,000)
 3. Perform up to two (2) (one (1) sandbox and one (1) production) data update iterations for the following list data records into the NetSuite instance:
 - a. Item records (families, groups, alias and attributes) – up to one thousand (1,000)
 - b. Store location records – up to one thousand (1,000) Store location records
- E. Setup and configure the following within the Record to Report process area based on Oracle|NetSuite standard practices:
1. Departments segments – up to fifty (50)
 2. Classes segments – up to fifty (50)
 3. Locations segments – up to fifty (50)
 4. COAs – up to two hundred fifty (250) single COAs
 5. Accounting periods – based on twelve (12)-month calendar
 6. Journal entries (standard, recurring, reversing, import, automated)
 7. Budget – up to one (1) segmented by department and subsidiary
 8. Bank account reconciliation, transfers and deposits
 9. Print and issue checks

10. Fiscal close
11. Financial reports
12. Subsidiary Management – up to two (2) subsidiaries
13. Automated intercompany eliminations
14. Statistical Account – Up to two (2)
15. Allocations templates – Up to two (2)

F. Setup and configure the following within the Design to Build process area based on Oracle|NetSuite standard practices:

1. Item Master – up to ten thousand (10,000) items from the following item types: Inventory, Assemblies, Serialized, Lot Managed, Groups, Non-Inventory, Service, Other Charge, Item Groups, Discount/Markup, and Kits
2. Min/Max Inventory Levels per Location
3. Reorder Points with Seasonality Calculation
4. Safety Stock
5. Demand Planning and Supply Planning
6. Available to Promise
7. Inventory Tracking of Finished Build vs. Sub-components
8. Cycle Counting
9. Multiple Units of Measure
10. Tax Settings
11. Item Pricing (Pricing Levels, Pricing Groups, Quantity-Based).
12. Item Costing (First In First Out (“FIFO”), Last In First Out (“LIFO”), Average, and Standard).
13. Item Transactions (Item Receipts & Fulfillments, Multi-location Inventory, Inventory Transfers, Bin Management, and Landed Cost)
14. Advanced Bill of Materials
15. Work Orders (Build to Stock or Order)

G. Setup and configure the following within the Procure to Pay/Return to Debit process area based on Oracle|NetSuite standard practices:

1. Vendor Master
2. Employee Master
3. Purchase Orders
4. Purchase Order Item Receipts
5. Vendor Bills
6. Vendor Bill Payments (manual, ACH via file, Electronic payments for single currency via manual or file using standard templates)
7. Vendor Credits and Refunds
8. Demand & Supply Planning and Calculations
9. Three (3)-Way Matching
10. Vendor Return Authorizations
11. Vendor Return Item Fulfillments
12. Expense Reports
13. Vendor Center
14. Amortization Schedules – Up to two (2)

H. Setup and configure the following within the Order to Cash/Return to Credit process area based on Oracle|NetSuite standard practices:

1. Customer Master
2. Contact Master
3. Partner Master
4. Sales Orders
5. Drop Shipments / Special Orders
6. Sales Order Item Fulfillments (Pick, Pack and Ship)
7. Invoices
8. Customer Payments (Manual, Credit Card, Electronic Payments)
9. Customer Return Authorizations
10. Customer Return Item Receipts

11. Customer Credit Memos
 12. Customer Center
 13. Bill of Lading
- I. Setup and configure the following within the Marketing to Return on Investment (“ROI”) process area based on Oracle|NetSuite standard practices:
1. Lead Generation (Manual, CSV Import, Online Lead Capture)
 2. Marketing Setup (Templates, Groups, Promotions, Campaigns)
 3. Campaign Execution and Management
 4. SuitePromotions
 5. Campaign Assistant
- J. Setup and configure the following within the Lead to Quote process area based on Oracle|NetSuite standard practices:
1. Lead, Prospect and Contact Masters
 2. Sales Territories
 3. Lead Routing and Assignment
 4. Sales Rep Forecast
 5. Sales Manager Forecast
 6. Sales Quota
 7. Sales Campaigns
 8. Opportunities
 9. Estimates/Quotes
- K. Setup and configure the following within the Call to Resolution process area based on Oracle|NetSuite standard practices:
1. Case Statuses
 2. Case Priorities
 3. Case Types
 4. Case Origin (Manual, Email, Online Case Capture)
 5. Case Profile
 6. Routing and Assignment
 7. Escalations
- L. Set up and configure the following Project to Cash process areas based on Oracle|NetSuite standard practices:
1. Project Master
 2. Project Templates
 3. Work Breakdown Structures (Phases and Tasks)
 4. Dashboard Charts
- M. Set up and configure the following within the Warehouse Operations process area based on Oracle|NetSuite standard practices:
1. Warehouse Configuration:
 - a. Single Bin-less Store Location
 - b. Serial Controlled Inventory
 2. Inbound Purchase Order Warehouse Operations:
 - a. Inbound Purchase Order Receiving
 - b. Inbound Inspection Quarantine/QC Inventory Status.
 3. Outbound Sales Order Warehouse Operations:
 - a. Sales Order Release
 - b. Sales Order Picking Via RF+Paper Single Order Picking
 - c. Sales Order Single-Order Pick List Report
 - d. Sales Order Picking Via RF+Paper Multi-Order Picking
 - e. Sales Order Multi-Order Pick List Report
 4. Transfer Order Warehouse Operations:

- a. Transfer Order Release
- b. Transfer Order Picking
- c. Transfer Order Pick List Report
- d. Transfer Order Pack-list Report
- e. Transfer Order Receiving
5. Customer Return Warehouse Operations:
 - a. Customer Return Receiving
 - b. Customer Return Inbound Inspection Quarantine
6. Internal Warehouse Operations:
 - a. Inventory Cycle Counting
 - b. Inventory Inquiry
 - c. Standard Item Labelling
 - d. Inventory Report
 - e. Inventory Status Report
 - f. Configure one (1) Warehouse Manager Dashboard

N. Role Setup:

1. Provide preconfigured roles based on Oracle|NetSuite standard practices.
2. Configure up to six (6) custom full access roles.
3. Configure up to one (1) custom employee center role.

O. Provide assistance with the following:

1. Up to twenty (20) hours of third-party coordination.
2. Up to twenty (20) hours to build saved searches, workflows and pivot reports.
3. Up to twenty (20) hours of data migration guidance.
4. Up to ten (10) hours of technical service integration advisory/consulting.

P. Provide the following user enablement for the process areas in scope:

1. Complete a remote review with Your project lead for up to one (1) hour covering how to rollout end user eLearning enablement.
2. Provide Manufacturing standard eLearning tutorials and basic usability for UAT eLearning tutorial for up to thirty (30) licensed users.
3. Provide standard quick reference guides in Microsoft (“MS”) word format and a “how to” guideline for maintaining quick reference guides.
4. Provide up to six (6) remote sessions on process areas selected by You for up to two (2) hours per session and for up to twelve (12) end users per session.

Q. Provide You with up to ten (10) hours of user adoption assistance to include the following:

1. Collaborate with You to understand Your culture and end user attitude towards change.
2. Create a change management strategy and road map.
3. Provide standard user adoption templates.

R. User Acceptance Testing (“UAT”):

1. Assist with up to one (1) UAT planning session for up to one (1) hour.
2. Create a UAT plan.
3. Provide You with standard UAT test plan templates and sample test scenarios.
4. Provide up to twenty-eight (28) hours, which must be utilized by You within a period of ten (10) consecutive business days, to assist You with UAT issue resolution.

S. Post Go-Live Support:

1. Provide up to thirty-three (33) hours of post Go-Live support, which must be utilized within a period of thirty (30) consecutive business days and must be used with in the Professional Services Period. Post Go-Live support may include the following:

- a. Trouble shooting and addressing production issues.
- b. Instruction on the Oracle|NetSuite Support services process.
- c. Identification of further optimization requirements.
- d. End user assistance.

3. Your Obligations and Project Assumptions

You acknowledge that Your timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from Your officers, agents, and employees (collectively, "cooperation") are essential to the performance of any Professional Services as set forth above. Oracle will not be responsible for any deficiency in performing Professional Services if such deficiency results from Your failure to provide full cooperation.

You acknowledge that Oracle's ability to perform the Professional Services depends upon Your fulfillment of the following obligations and the following project assumptions:

3.1. Your Obligations

- 1) Obtain a subscription to the Service under separate contract prior to the commencement of Professional Services under this SOW and maintain such subscription for the duration of the Professional Services provided under this SOW.
- 2) Provide Oracle with full access to relevant functional, technical and business resources with adequate skills and knowledge to support the performance of Professional Services.
- 3) Provide, for all Oracle resources performing Professional Services at Your site, a safe and healthful workspace (e.g., a workspace that is free from recognized hazards that are causing, or likely to cause, death or serious physical harm, a workspace that has proper ventilation, sound levels acceptable for resources performing Professional Services in the workspace, and ergonomically correct work stations, etc.).
- 4) Provide any notices, and obtain any consents, required for Oracle to perform Professional Services.
- 5) Limit Oracle's access to any production environments or shared development environments to the extent necessary for Oracle to perform Professional Services.
- 6) As required by U.S. Department of Labor regulations (20 CFR 655.734), You will allow Oracle to post a Notice regarding Oracle H-1B employee(s) at the work site prior to the employee's arrival on site.
- 7) Be responsible for ensuring that common, consistent functional processes exist across Your organization; including any applicable parent and subsidiary companies (e.g. there will be one common Order to Cash process across the entire organization).
- 8) Be responsible for performing a production refresh of the sandbox at the start of the project.
- 9) Don't film or record Oracle's delivery of Professional Services, Oracle resources, or any Oracle materials.
- 10) Written communication of Your need to pause Professional Services to complete assigned tasks must be received five (5) business days in advance of any such pause, and the pause will be limited to no more than ten (10) business days.
- 11) If while performing Professional Services Oracle requires access to other vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf.
- 12) Be responsible for providing Your organization structure prior to personalization.
- 13) Be responsible for procuring any third-party fees and/or services.
- 14) Be responsible for having Your designated attendee, as agreed between You and Oracle, attend pre-requisite fundamentals training no later than ten (10) consecutive business days prior to project kick off.
- 15) Be responsible for having Your designated attendee, as agreed between You and Oracle, attend project team administrator training.
- 16) Lead the second process walkthrough, for up to two (2) hours per process area, to demonstrate process-by-process use cases.
- 17) Reviewing the setup and testing of the Professional Services described above as part of UAT.
- 18) Be responsible for exporting and manipulating data from the NetSuite instance to comply with localized taxation and reporting requirements.
- 19) Data Migration Obligations:
 - a. Provide conversion data in CSV file formats documented in the templates located in the NetSuite instance.
 - b. Perform data encryption, extraction, consolidation, cleansing and mapping to the appropriate service fields for all data import activity.

- 20) UAT Obligations:
 - a. Validate and, if necessary, modify UAT template test scenarios.
 - b. Define additional UAT test scenarios as needed.
 - c. Be responsible for and complete UAT in line with testing scenarios.
 - d. Be responsible for removing all UAT data prior to Go-Live.
- 21) Perform cutover tasks assigned to You as identified in the cutover checklist.
- 22) Enablement Obligations:
 - a. Be responsible for deployment of the eLearning tutorials to Your end users.
 - b. Be responsible for editing, printing, shipping and copying charges for all enablement materials.
- 23) User Adoption Obligations:
 - a. Be responsible for distributing all communications through print, internal email servers, intranet, and/or social media channels.
 - b. Pay for printing, shipping, and distribution costs for any hard-copy communications material.
- 24) Be responsible for procuring PrintNode print driver to support standard label printing.
- 25) Be responsible for procuring Wi-Fi/RF infrastructure, infrastructure hardware, software and related services.

You acknowledge that if Oracle's cost of providing Professional Services is increased because of Your failure to meet the obligations listed in this SOW, failure to provide cooperation, or because of any other circumstance outside of Oracle's control, then You agree to pay Oracle for such increased costs.

3.2. Project Assumptions

- 1) All Professional Services are performed remotely.
- 2) At Your request and in Oracle's discretion, Oracle may agree to conduct an onsite visit(s) to provide Professional Services during the Professional Services Period (as defined below). You agree to be responsible for any travel and out-of-pocket expenses incurred by Oracle related to providing any Professional Services onsite.
- 3) All project documentation, presentations and project communications are in English, or such other available languages the parties may agree upon in writing.
- 4) You do not require Oracle consultants to work outside their standard local country workday hours.
- 5) Oracle consulting resources are not dedicated to any single project and are engaged across many projects for various customers.
- 6) Any Professional Services not expressly included in the above Description of Services are considered out of scope.
- 7) Project timeline estimates are based on availability of Your resources and key decision makers. Lack of access or change to project stakeholders will impact project timelines and costs if decisions cannot be made in a timely fashion.
- 8) Configuration, customization or personalization will be in one (1) NetSuite instance.
- 9) The parent and child subsidiaries configuration is provided for the following country designated below:
 - a. United States
- 10) All subsidiaries have a single defined base currency.
- 11) All subsidiaries have the same fiscal year end.
- 12) All subsidiaries will be configured with the user interface in English.
- 13) Each subsidiary has its own master records, which are not shared across subsidiaries.
- 14) Printed forms will be configured using the native PDF layout functionality, without HTML, residing in the NetSuite instance.
- 15) NetSuite instance dashboards will be installed without modification.
- 16) Data imports will be performed for up to two (2) subsidiaries.
- 17) You and Oracle understand and acknowledge that go-live occurs upon cut-over to Your production environment ("Go-Live") and that post Go-Live support begins at cut-over.
- 18) Enablement Assumptions:
 - a. All enablement is done remotely.
 - b. All enablement content is designed, developed, delivered and presented in English, or other languages that may be made available by Oracle at its sole discretion.
 - c. An eLearning Tutorial is an on-demand end user training created from a pre-defined script of the configured process areas included in the SuiteSuccess edition purchased by You.
 - d. eLearning tutorials will be delivered to You via the NetSuite instance and will be available for a period of one (1) year from the date You are granted access to eLearning.

- 19) All outbound warehouse operations are based on standard NetSuite Sales Orders or Transfer Orders created in a ready for fulfillment status prior to a Warehouse Management System order release and picking.
- 20) Train the trainer sessions will be provided or remotely in accordance with the relevant personalization and/or walkthrough session

4. Pricing & Payment Terms

Fixed Fees: The pricing set forth in this SOW represents the fixed fees for the Professional Services set forth in this SOW. Additional discounts (if any) for these Professional Services will be reflected in Your Estimate/Order Form that references this SOW and/or these Professional Services. In the event of a conflict between the pricing set forth in this SOW and the pricing set forth in Your Estimate/Order Form governing this SOW and/or these Professional Services, then the pricing set forth in Your Estimate/Order Form shall govern and control. Any expenses (as described below) are not included in the fixed fees and are an additional cost to You. The payment obligation is non-cancellable, and sum paid non-refundable except as otherwise expressly provided in Your Estimate/Order Form.

You acknowledge that the fixed price is based solely on the information provided to Oracle and the assumptions documented in this SOW. Any requirement(s) not included herein or items not contemplated will be considered outside of the fixed price scope and will be handled through the Change Control Process defined below, and may result in additional cost. The total fees for this SOW are as follows:

Professional Services Fees	
Professional Services	\$75,000.00 USD
Total Professional Services Fees (excluding expenses described below)	\$75,000.00 USD

- a) **Payment Terms.** Unless otherwise noted in Your Estimate/Order Form, fees are due Net 30 from invoice date.
- b) **Expenses:** Reasonable travel and living expenses required in connection with delivering the Professional Services will be incurred in accordance with Oracle's internal travel and expense policy and billed monthly as incurred to You as actual charges in addition to the Professional Services fees.

5. Project Management

You and Oracle each agree to designate a project manager who shall be responsible for coordinating its activities under this SOW. You and Oracle each shall direct all inquiries concerning the Professional Services to the other party's project manager. Your project manager shall have the authority to approve Professional Services on Your behalf. Oracle's project manager shall have the sole right to exercise direct control and supervision over the work assignments of Oracle resources.

6. Additional Terms

6.1 Unused Services.

The Professional Services herein must be completed within **twelve (12) months** from the signature date of the Estimate/Order Form ("Professional Services Period"). Any portion of the Professional Services not used within the Professional Services Period will be automatically forfeited by You, with no further action required of either party, and You will not be entitled to a refund, or any credit toward additional or other Professional Services, for any unused portion of the fees paid for any unused portion of the Professional Services. You may not apply any portion of unused Professional Services or fees paid, for any Professional Services other than the Professional Services stated in this SOW. In order for Oracle to provide Professional Services to You after the Professional Services Period, You and Oracle shall mutually agree, in writing, under a separate Estimate/Order Form and SOW, to the terms and fees for such Professional Services.

6.2 Change Control Process

Any request for any change in Professional Services must be in writing; this includes requests for changes in project plans, scope, specifications, schedule, designs, requirements, service deliverables, software environment, hardware environment or any other aspect of Your order. Oracle shall not be obligated to perform tasks related to changes in time, scope, cost, or contractual obligations until You and Oracle agree in writing to the proposed change to this SOW.

7. Signatures

The Parties acknowledge that they have had previous discussions related to the performance by Oracle of professional services for You and the possible strategies which may be used by Oracle to implement the functionality described in Oracle’s User Guides and in other related documentation (available at www.netsuite.com) as well as possible “workarounds,” which may be implemented to achieve special requirements identified by You. This SOW and the Estimate/Order Form (including any Exhibits hereto) (and the PS Terms) shall constitute the entire understanding between You and Oracle and is intended as the final expression of the Parties’ agreement regarding the Professional Services to be provided by Oracle. The Parties expressly disclaim any reliance on any and all prior agreements, understandings, RFPs, verbal and/or written communications related to the Professional Services to be provided by Oracle. Any amendment or modification to this SOW shall not be valid, enforceable, or binding on the Parties unless such amendment or modification (i) is a written instrument duly executed by the authorized representatives of both Parties and (ii) references this SOW and identifies the specific Sections contained herein which are to be amended or modified. This SOW may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this SOW executed in ink by both Parties.

This SOW is valid through **February 28, 2021** and shall become binding upon execution by You and acceptance by Oracle.

CUSTOMER

DocuSigned by:
Chad Rohrbach
Authorized Signature: _____
B546F6DBD22E4BA...
Print Full Name: Chad Rohrbach
Job Title: CFO
Signature Date: February 26, 2021 | 15:08 PST

ORACLE AMERICA, INC.

DocuSigned by:
Jennifer Borghesi
Authorized Signature: _____
DEBBCB4F516043C...
Print Full Name: Jennifer Borghesi
Job Title: Sr. Manager, Business Operations
Signature Date: February 26, 2021 | 15:42 PST

This SOW may be signed electronically, in which case signatures may appear above or on the last page.

Exhibit 6B

Professional Services Addendum

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Subscription Services Agreement (the "Agreement") between Oracle America, Inc. and Customer, as defined in the Agreement.

Customer has entered into the Agreement for the provision of the Service (as defined therein). If Customer procures Professional Services from Oracle then all such services shall be provided pursuant to the terms and conditions herein. Capitalized terms used in this Addendum shall have the meaning defined under the Agreement. **The terms and conditions of this Addendum are hereby incorporated by reference into the Agreement.** In the event of conflict between this Addendum and the Agreement, the terms and conditions of this Addendum shall prevail with respect to the subject matter herein. The terms in the Statements of Work related to the actual rates to be charged and the days and description of the Professional Services to be performed thereunder shall control as to the engagement described in that Statement of Work.

1. Scope of Services.

1.1 Subject to the terms and conditions of the Agreement and this Addendum, Oracle will provide Customer with Professional Services as set forth in the applicable statements of work executed by Oracle and Customer or an Estimate/Order Forms executed by Customer and accepted by Oracle (each, a "Statement of Work" or "SOW"). All Statements of Work shall be deemed part of and subject to this Addendum. Subject to terms and conditions of the Agreement, and during the Term, Customer shall have the non-exclusive, worldwide, limited right to use any deliverables and/or training materials delivered by Oracle to Customer as part of the Professional Services ("Deliverables") solely for Customer's internal business operations in connection with its authorized use of the applicable Cloud Service.

1.2 Terms and Conditions for Training.

1.2.1 Training Deliverables. Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only. Customer is prohibited from: (a) modifying the training Deliverables, unless otherwise authorized in writing by Oracle or set forth in an applicable SOW; (b) reselling or sublicensing any training Deliverables; and (c) utilizing the training Deliverables to replicate or attempt to perform the training, unless otherwise authorized in writing by Oracle or set forth in an applicable SOW; and (d) developing or attempting to develop any of the products described in such training Deliverables. Customer may not record, stream or otherwise capture any performance or aspect of the training Professional Services. Training Deliverables are not subject to any maintenance, support or updates.

1.2.2 For Onsite Delivery. Customer is responsible for providing appropriate training facilities for the training delivery, including without limitation Internet connectivity, student access to a Demo Account to which Customer may be granted access, projector, student computers and other reasonable classroom amenities.

1.2.3 Access to Demo Account. In connection with Oracle's provision of training hereunder, Oracle may provide attending Customer employees ("Training Users") with temporary and limited access to the Service solely for such Training Users' non-commercial use and receipt of training hereunder ("Demo Account"). Such Training Users' access to the Demo Account shall be subject to the terms and conditions that appear upon the initial provisioning or use of the Demo Account ("Trial Account Agreement"). The Trial Account Agreement may also be found at www.netsuite.com/termservice. By selecting "I Agree" and/or accessing or using the Demo Account enabled for Customer by Oracle, Customer and the Training Users agree to the terms of such Trial Account Agreement in connection with Customer's use and the use by its Training Users of the Demo Account. Oracle has no obligation to provide any maintenance, support or updates with respect to Customer's use of the Demo Account.

2. Change Management Process. If Customer or Oracle requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Oracle will prepare a change order describing the proposed changes to the Statement of Work and the applicable change in fees and expenses, if any (each, a "Change Order"). Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this Addendum. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

3. Tools. Notwithstanding any other provision of this Addendum: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Oracle to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are made available on the same terms as the Deliverables; and (ii) the term "Deliverables" shall not include the Tools. Tools are Oracle Confidential Information. Customer customizations may require the use of the SuiteCloud features governed by the SuiteCloud Terms of Service at www.netsuite.com/termservice.

4. Term. This Addendum shall be effective as of the Effective Date of the Agreement and shall continue in effect during the Term of the Agreement. Each SOW shall commence on the date it is last signed, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order Form shall be non-cancellable, except as otherwise explicitly stated in such SOW or Estimate/Order Form.

5. Subcontracting. Oracle's relationship with Customer pursuant to this Addendum will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other.

Exhibit 6C

Oracle America, Inc. Professional Services Agreement

This Professional Services Agreement ("PSA") is between Oracle America, Inc. ("Oracle") and the entity which has accepted this PSA through a document which references this agreement ("Customer"). This PSA sets forth the terms and conditions that govern orders placed under this PSA. Oracle and Customer hereby agree as follows:

1. Scope of Services.

1.1. Subject to the terms and conditions of the this PSA, Oracle will provide Customer with Professional Services (as defined below) as set forth in the applicable statements of work executed by Oracle and Customer or an Estimate/Order Forms executed by Customer and accepted by Oracle (each, a "Statement of Work" or "SOW"). From time to time, the parties may enter into SOWs that specify the general consulting, implementation and/or training services to be provided to Customer hereunder (the "Professional Services"). All Statements of Work shall be deemed part of and subject to this PSA.

Subject to terms and conditions of this PSA, and during the term of this PSA, Oracle hereby provides Customer with the non-exclusive, worldwide, limited right to use any deliverables and/or training materials delivered by Oracle to Customer as part of the Professional Services ("Deliverables") solely for Customer's internal business operations including in connection with its authorized use of the applicable Cloud Service (as defined below).

1.2. In addition to any Oracle Professional Services provided to Customer pursuant to this PSA, Oracle may also provide Customer with access to its NetSuite Software-as-a-Service application (the "Cloud Service") if Customer has entered into a Subscription Services Agreement or similar agreement (such agreement is referred to herein as the "Main Terms"). The Main Terms shall govern Customer's use of the Cloud Service and any other services ordered thereunder.

2. Terms and Conditions for Training.

2.1 Training Deliverables. Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only. Customer is prohibited from: (a) modifying the training Deliverables, unless otherwise authorized in writing by Oracle or set forth in an applicable SOW; (b) reselling or sublicensing any training Deliverables; and (c) utilizing the training Deliverables to replicate or attempt to perform the training, unless otherwise authorized in writing by Oracle or set forth in an applicable SOW; and (d) developing or attempting to develop any of the products described in such training Deliverables. Customer may not record, stream or otherwise capture any performance or aspect of the training Professional Services. Training Deliverables are not subject to any maintenance, support or updates.

2.2 For Onsite Delivery. Customer is responsible for providing appropriate training facilities for the training delivery, including without limitation Internet connectivity, student access to a Demo Account to which Customer may be granted access, projector, student computers and other reasonable classroom amenities.

2.3 Access to Demo Account. In connection with Oracle's provision of training hereunder, Oracle may provide attending Customer employees ("Training Users") with temporary and limited access to certain services solely for such Training Users' non-commercial use and receipt of training hereunder ("Demo Account"). Such Training Users' access to the Demo Account shall be subject to the terms and conditions that appear upon the initial provisioning or use of the Demo Account ("Trial Account Agreement"). The Trial Account Agreement may also be found at www.netsuite.com/termservice. By selecting "I Agree" and/or accessing or using the Demo Account enabled for Customer by Oracle, Customer and the Training Users agree to the terms of such Trial Account Agreement in connection with Customer's use and the use by its Training Users of the Demo Account. Oracle has no obligation to provide any maintenance, support or updates with respect to Customer's use of the Demo Account.

3. Change Management Process. If Customer or Oracle requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Oracle will prepare a change order describing the proposed changes to the Statement of Work and the applicable change in fees and expenses, if any (each, a "Change Order"). Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

4. Proprietary Rights.

4.1 Oracle Intellectual Property Rights. All rights, title and interest in and to the Professional Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the same provided or developed by Oracle) and anything developed or delivered by or on behalf of Oracle under this PSA (including without limitation Deliverables and Tools as such terms are defined herein) are owned exclusively by Oracle or its licensors. Except as provided in this PSA, the rights granted to Customer do not convey any rights in the Professional Services, express or implied, or ownership in the Professional Services or any intellectual property rights thereto. Customer grants Oracle a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Cloud Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the

Oracle America, Inc. Professional Services Agreement

Cloud Service. Any rights in the Professional Services or Oracle's intellectual property not expressly granted herein by Oracle are reserved by Oracle. Oracle, NetSuite and OpenAir service marks, logos and product and service names are marks of Oracle (the "Oracle Marks"). Customer agrees not to display or use the Oracle Marks in any manner without Oracle's express prior written permission. The trademarks, logos and service marks of third party application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

4.2 Tools. Notwithstanding any other provision of this PSA: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Oracle to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are made available on the same terms as the Deliverables; and (ii) the term "Deliverables" shall not include the Tools. Tools are Oracle Confidential Information. Customer customizations may require the use of the SuiteCloud features governed by the SuiteCloud Terms of Service at www.netsuite.com/termssofservice.

5. Professional Services Warranty.

5.1 Oracle warrants that Professional Services will be provided in a professional manner consistent with industry standards. Customer must notify Oracle of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

5.2 ORACLE DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL PROFESSIONAL SERVICES ERRORS, OR THAT THE PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE PROFESSIONAL SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR PROFESSIONAL SERVICES PROVIDED BY THIRD PARTIES.

5.3 FOR ANY BREACH OF THE PROFESSIONAL SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT PROFESSIONAL SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT PROFESSIONAL SERVICES AND ORACLE WILL REFUND TO THE CUSTOMER THE FEES FOR THE TERMINATED PROFESSIONAL SERVICES THAT CUSTOMER PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

5.4 TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. Limitations of Liability.

6.1 IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS PSA), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION

6.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS PSA OR CUSTOMER'S ESTIMATE/ORDER FORM OR SOW, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR SOW FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

7. Indemnification.

7.1 If a third party makes a claim against either Customer or Oracle ("Recipient" which may refer to Customer or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Oracle ("Provider" which may refer to Customer or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

Oracle America, Inc. Professional Services Agreement

- 7.2** If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet obligations under the relevant order, then Oracle may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.
- 7.3** The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or user guides, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify Customer to the extent that an infringement claim is based on a third party application or any Material from a third party portal or other external source that is accessible or made available to Customer by the Professional Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).
- 7.4** This Section 7 provides the parties' exclusive remedy for any infringement claims or damages.

8. Payment Provisions.

8.1 Fees and Payments. Fees and expenses for each applicable project shall be set forth in the applicable SOW. The terms in the applicable SOW related to the actual rates to be charged and the days and description of the Professional Services to be performed thereunder shall control as to the engagement described in that SOW. All fees payable are due within 30 days from the invoice date unless otherwise specified in Customer Estimate/Order. All fees are non-refundable, except as otherwise explicitly stated in the applicable SOW or this PSA.

8.2 Taxes. Oracle fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-add, sales or withholding taxes ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on Oracle's income. If Oracle has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

9. Term and Termination.

9.1 This PSA is valid for the Estimate/Order Forms (including SOWs) which reference this PSA. Each SOW shall commence on the date it is last signed, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order Form shall be non-cancellable, except as otherwise explicitly stated in such SOW or Estimate/Order Form.

9.2 Termination. This PSA will terminate automatically when all Estimates/Order Forms and SOWs referencing this PSA are terminated or expired. In addition, in the event that Customer is a party to Main Terms and Customer's right to use the Cloud Service is terminated pursuant to such Main Terms, Oracle may terminate this PSA and any SOW hereunder. Upon termination or expiration of this PSA, Customer shall have no rights to continue use of the Professional Services, Deliverables or Tools.

10. Confidentiality.

10.1 By virtue of this PSA, the parties may disclose to each other information that is confidential ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this PSA and Customer's Estimate/Order Forms and Statements of Work and all information clearly identified as confidential at the time of disclosure.

10.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

10.3 Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this PSA, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law.

11. Governing Law and Jurisdiction. This PSA is governed by the substantive and procedural laws of the State of California and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this PSA. The Uniform Computer Information Transactions Act does not apply to this PSA or to orders placed under it.

Oracle America, Inc. Professional Services Agreement

12. Notice. Any notice required under this PSA shall be provided to the other party in writing. If Customer has a legal dispute with or if Customer wishes to provide a notice under the Indemnification Section of this PSA, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065, Attention: General Counsel, Legal Department.

13. General Provisions.**13.1 Entire Agreement.**

13.1.1 This PSA incorporates by reference all SOWs, and this PSA, together with such referenced items, constitute the entire understanding between Customer and Oracle and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFP's and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties.

13.1.2 Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this PSA be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this PSA, regardless of any failure of Oracle to object to such terms, provisions, or conditions. In the event of any inconsistencies between the terms of an SOW and this PSA, the SOW shall take precedence.

13.1.3 This PSA shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed SOW.

13.2 Other General Provisions.

13.2.1 Assignment. This PSA shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this PSA without written consent of the other, except that Oracle may assign without consent to a related entity or the successor of all or substantially all of Oracle's business or assets to which this PSA relates. There are no third-party beneficiaries to this PSA.

13.2.2 Oracle's relationship with Customer pursuant to this PSA will be that of an independent contractor. This PSA does not create any joint venture, partnership, agency, or employment relationship between the parties.

13.2.3 Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of this PSA. Oracle reserves the right to use third parties (who are under a covenant of confidentiality with Oracle), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation and custom code development processes.

13.2.4 Non-impediment. Nothing in this PSA shall be construed as precluding or limiting in any way the right of Oracle to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

13.2.5 Force Majeure. Neither party shall be liable for loss, delay, non-performance (excluding payment obligations) to the extent resulting from any force majeure event (as determined by French case law), including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Oracle employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and any to resume performance as soon as possible and any delivery date shall be extended accordingly.

13.2.6 The Section headings used in this PSA are included for reference purposes only and shall not affect the meaning or interpretation of this PSA in any way. Provisions that survive termination or expiration of this PSA are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive. If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this PSA shall otherwise remain in full force and effect. A waiver of any breach under this PSA should not constitute a waiver of any other breach or future breach.

Exhibit 7



Fixed Price Statement of Work

Customer Name: River Supply, Inc. (“Customer” or “You”)
Customer Address: 2555 Delta Road, Brogue, PA 17309 United States

1. Agreement

This Statement of Work (“SOW”) describes the professional services (the “Professional Services”) to be performed by Oracle America, Inc. (“Oracle”) for Customer (collectively “Parties”) pursuant to the applicable agreement governing Oracle’s performance of Professional Services (the “PS Terms”) listed below (in order of preference, as applicable):

- (i) the Professional Services Addendum to the Subscription Services Agreement entered by and between the Parties,
- (ii) the separate Professional Services Agreement entered by and between the Parties; or
- (iii) if neither (i) nor (ii) are applicable, the Professional Services Agreement found at www.netsuite.com/termservice (or such other URL specified by Oracle).

Once executed by the Parties, this SOW shall be incorporated by reference into the PS Terms. In the event of any inconsistency or conflict between the terms and conditions of this SOW and the PS Terms, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Capitalized terms used in this SOW shall have the meaning defined under the PS Terms. This SOW may not be modified or amended except in a writing signed by a duly authorized representative of each party. As used in this SOW, “You” or “Your” shall refer to the Customer as defined in the Agreement.

2. Description of Services

Oracle will perform the following Professional Services related to the implementation of Your SuiteSuccess SuitePeople Standard US Payroll in Your Oracle|NetSuite instance (the “NetSuite instance”):

A. Project Management:

1. Conduct one (1) kick-off webinar session, which is up to one and a half (1.5) hours in duration, to review:
 - a. Project goals and objectives.
 - b. Joint team roles and responsibilities.
 - c. Project scope.
 - d. Project management approach.
 - e. Implementation methodology.
 - f. Project timeline considerations.
 - g. Administrator access.
 - h. Next steps.
2. Create and update the project plan as required during the performance of Professional Services.
3. Provide status reports at a mutually agreed interval, but no more than once a week.
4. Provide completed cutover checklist.

B. General Configuration and Setup:

1. Conduct up to one (1) personalization session, for up to two (2) hours.
2. Perform configuration based on mutually agreed design from personalization sessions.
3. Configure up to one (1) User Interface (“UI”) form for each NetSuite instance record type.
4. Configure time entry record for timecard import capability.

C. Data Migration:

1. Perform up to two (2) import iterations for the following transactional data into the NetSuite instance:
 - a. Opening balance – Year to Date (“YTD”) Payroll information
 - b. YTD discrepancy resolution

D. Set up and configure the following within the Payroll process area based on Oracle|NetSuite standard practices:

1. Federal Employment Identification Number (“FEIN”) – one (1) within one (1) subsidiary
2. Pay Frequencies (Weekly, Bi-weekly, Semi-monthly, Monthly) – up to two (2)
3. Employees – up to fifty (50)
4. Payroll Items – up to fifty (50)
5. Direct Deposit Employees – up to fifty (50)
6. Tax Filings – up to two (2) States
7. Local Jurisdictions – up to forty (40)
8. Custom Payroll Fields – up to four (4)
9. Custom Reports – up to three (3)
10. Paycheck Allocation

E. Role Setup:

1. Provide preconfigured roles based on Oracle|NetSuite standard practices:
 - a. Payroll Manager
 - b. Payroll Processor

F. Provide assistance with the timecard import and issue resolution.

G. Provide the following user enablement for the process areas in scope:

1. Complete a remote review with Your project lead for one (1) hour covering how to rollout end user eLearning enablement.
2. Provide standard eLearning tutorials for up to fifty (50) licensed users.
3. Provide standard quick reference guides in MS Word format and a “how to” guideline for maintaining quick reference guides.
4. Provide up to one (1) remote coaching and support session for up to two (2) hours on timecard capability.

H. User Acceptance Testing (“UAT”):

1. Assist with up to one (1) UAT planning session for up to one (1) hour.
2. Assist with up to three (3) validation sessions; which is for up to one (1) hour in duration per session.
3. Create a UAT plan.
4. Provide You with standard UAT test plan templates and sample test scenarios.
5. Provide up to seven (7) hours, which must be utilized by You within a period of five (5) consecutive business days, to assist You with UAT issue resolution.

I. Post Go-Live Support:

1. Provide up to two (2) hours of post Go-Live support, which must be utilized within a period of thirty (30) consecutive business days and must be used within the Professional Services Period. Post Go-Live support may include the following:
 - a. Trouble shooting and addressing production issues.
 - b. Instruction on the NetSuite Support Services process.
 - c. Identification of further optimization requirements.
 - d. End user assistance.

3. Your Obligations and Project Assumptions

You acknowledge that Your timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from Your officers, agents, and employees (collectively, “cooperation”) are essential to the performance of any Professional Services as set forth above. Oracle will not be responsible for any deficiency in performing Professional Services if such deficiency results from Your failure to provide full cooperation.

You acknowledge that Oracle’s ability to perform the Professional Services depends upon Your fulfillment of the following obligations and the following project assumptions:

3.1. Your Obligations

- 1) Obtain a subscription to the Service under separate contract prior to the commencement of Professional Services under this SOW and maintain such subscription for the duration of the Professional Services provided under this SOW.
- 2) Provide Oracle with full access to relevant functional, technical and business resources with adequate skills and knowledge to support the performance of Professional Services.
- 3) Provide, for all Oracle resources performing Professional Services at Your site, a safe and healthful workspace (e.g., a workspace that is free from recognized hazards that are causing, or likely to cause, death or serious physical harm, a workspace that has proper ventilation, sound levels acceptable for resources performing Professional Services in the workspace, and ergonomically correct work stations, etc.).
- 4) Provide any notices, and obtain any consents, required for Oracle to perform Professional Services.
- 5) Limit Oracle’s access to any production environments or shared development environments to the extent necessary for Oracle to perform Professional Services.
- 6) Be responsible for ensuring that common, consistent functional processes exist across Your organization; including any applicable parent and subsidiary companies (e.g. there will be one common Order to Cash process across the entire organization).
- 7) Be responsible for performing a production refresh of the sandbox at the start of the project.
- 8) Don’t film or record Oracle’s delivery of Professional Services, Oracle resources, or any Oracle materials.
- 9) Written communication of Your need to pause Professional Services to complete assigned tasks must be received five (5) business days in advance of any such pause, and the pause will be limited to no more than ten (10) business days.
- 10) If while performing Professional Services Oracle requires access to other vendor’s products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf.
- 11) Be responsible for providing Your organization structure prior to personalization.
- 12) Be responsible for procuring any third-party fees and/or services.
- 13) Be responsible for having Your designated attendee, as agreed between You and Oracle, attend pre-requisite fundamentals training no later than ten (10) consecutive business days prior to project kick off.
- 14) Be responsible for having Your designated attendee, as agreed between You and Oracle, attend project team administrator training.
- 15) Reviewing the setup and testing of the Professional Services described above as part of UAT.
- 16) Be responsible for exporting and manipulating data from the NetSuite instance to comply with localized taxation and reporting requirements.
- 17) Data Migration Obligations:
 - a. Provide conversion data in CSV file formats documented in the templates located in the NetSuite instance.
 - b. Perform data encryption, extraction, consolidation, cleansing and mapping to the appropriate service fields for all data import activity.
- 18) UAT Obligations:
 - a. Validate and, if necessary, modify UAT template test scenarios.
 - b. Define additional UAT test scenarios as needed.
 - c. Be responsible for and complete UAT in line with testing scenarios.
 - d. If required, be responsible for removing all UAT related data except payroll batch prior to go-live.
- 19) Perform cutover tasks assigned to You as identified in the cutover checklist.
- 20) Enablement Obligations:
 - a. Be responsible for deployment of the eLearning tutorials to Your end users.
 - b. Be responsible for editing, printing, shipping and copying charges for all enablement material.
- 21) Payroll Obligations:

- a. Notify Oracle within two (2) business days about any inaccuracies or incomplete information in project documents provided by Oracle to You.
- b. Provide tax registration(s), unemployment rates and deposit frequency prior to work commencement.
- c. Responsible for assigning roles and/or adjusting permissions of existing roles.

You acknowledge that if Oracle's cost of providing Professional Services is increased because of Your failure to meet the obligations listed in this SOW, failure to provide cooperation, or because of any other circumstance outside of Oracle's control, then You agree to pay Oracle for such increased costs.

3.2. Project Assumptions

- 1) All Professional Services are performed remotely.
- 2) At Your request and in Oracle's discretion, Oracle may agree to conduct an onsite visit(s) to provide Professional Services during the Professional Services Period (as defined below). You agree to be responsible for any travel and out-of-pocket expenses incurred by Oracle related to providing any Professional Services onsite.
- 3) All project documentation, presentations and project communications are in English, or such other available languages the parties may agree upon in writing.
- 4) You do not require Oracle consultants to work outside their standard local country workday hours.
- 5) Oracle consulting resources are not dedicated to any single project and are engaged across many projects for various customers.
- 6) Any Professional Services not expressly included in the above Description of Services are considered out of scope.
- 7) Project timeline estimates are based on availability of Your resources and key decision makers. Lack of access or change to project stakeholders will impact project timelines and costs if decisions cannot be made in a timely fashion.
- 8) Configuration, customization or personalization will be in one (1) NetSuite instance
- 9) Subsidiary will be configured with the user interface in English.
- 10) Subsidiary has its own master records, which are not shared across subsidiaries.
- 11) Printed forms will be configured using the native PDF layout functionality, without HTML, residing in the NetSuite instance.
- 12) No customization(s) of any printed forms within the NetSuite instance.
- 13) NetSuite instance dashboards will be installed without modification.
- 14) You and Oracle understand and acknowledge that go-live occurs upon cut-over to Your production environment ("Go-Live) and that post Go-Live support begins at cut-over.
- 15) Data imports will be performed for a single subsidiary.
- 16) Enablement Assumptions:
 - a. All enablement content is designed, developed, delivered and presented in English, or other languages that may be made available by Oracle at its sole discretion.
 - b. An eLearning Tutorial is an on-demand end user training created from a pre-defined script of the configured process areas included in the SuiteSuccess edition purchased by You.
 - c. eLearning tutorials will be delivered to You via the NetSuite instance and will be available for a period of up to one (1) year from the date You are granted access to eLearning.
- 17) Payroll Assumptions:
 - a. Only US Employees, USD currency, and US subsidiaries/tax jurisdictions are supported.
 - b. NetSuite ERP must be in production environment
 - c. US Payroll implementation start date needs to be approximately sixty (60) days in advance of planned payroll in production environment.
 - d. The following items are out of scope:
 - i. Garnishment and third-party payments.
 - ii. Setup of timesheets.
 - iii. Payment of expenses through payroll.
 - iv. Customization of time tracking form.
 - v. Employee time entry functionality.

4. Pricing & Payment Terms

Fixed Fees: The pricing set forth in this SOW represents the fixed fees for the Professional Services set forth in this SOW. Additional discounts (if any) for these Professional Services will be reflected in Your Estimate/Order Form that references this SOW and/or these Professional Services. In the event of a conflict between the pricing set forth in this SOW and the pricing set forth in Your Estimate/Order Form governing this SOW and/or these Professional Services, then the pricing set forth in Your Estimate/Order Form shall govern and control. Any expenses (as described below) are not included in the fixed fees and are an additional cost to You. The payment obligation is non-cancellable, and sum paid non-refundable except as otherwise expressly provided in Your Estimate/Order Form.

You acknowledge that the fixed price is based solely on the information provided to Oracle and the assumptions documented in this SOW. Any requirement(s) not included herein or items not contemplated will be considered outside of the fixed price scope and will be handled through the Change Control Process defined below and may result in additional cost. The total fees for this SOW are as follows:

Professional Services Fees	
Professional Services	\$7,900.00 USD
Total Professional Services Fees (excluding expenses described below)	\$7,900.00 USD

- a) **Payment Terms.** Unless otherwise noted in Your Estimate/Order Form, fees are due Net 30 from invoice date.
- b) **Expenses:** Reasonable travel and living expenses required in connection with delivering the Professional Services will be incurred in accordance with Oracle's internal travel and expense policy and billed monthly as incurred to You as actual charges in addition to the Professional Services fees.

5. Project Management

You and Oracle each agree to designate a project manager who shall be responsible for coordinating its activities under this SOW. You and Oracle each shall direct all inquiries concerning the Professional Services to the other party's project manager. Your project manager shall have the authority to approve Professional Services on Your behalf. Oracle's project manager shall have the sole right to exercise direct control and supervision over the work assignments of Oracle resources.

6. Additional Terms

6.1 Unused Services.

The Professional Services herein must be completed within twelve (12) months from the signature date of the Estimate/Order Form ("Professional Services Period"). Any portion of the Professional Services not used within the Professional Services Period will be automatically forfeited by You, with no further action required of either party, and You will not be entitled to a refund, or any credit toward additional or other Professional Services, for any unused portion of the fees paid for any unused portion of the Professional Services. You may not apply any portion of unused Professional Services or fees paid, for any Professional Services other than the Professional Services stated in this SOW. In order for Oracle to provide Professional Services to You after the Professional Services Period, You and Oracle shall mutually agree, in writing, under a separate Estimate/Order Form and SOW, to the terms and fees for such Professional Services.

6.2 Change Control Process

Any request for any change in Professional Services must be in writing; this includes requests for changes in project plans, scope, specifications, schedule, designs, requirements, service deliverables, software environment, hardware environment or any other aspect of Your order. Oracle shall not be obligated to perform tasks related to changes in time, scope, cost, or contractual obligations until You and Oracle agree in writing to the proposed change to this SOW.

7. Signatures

The Parties acknowledge that they have had previous discussions related to the performance by Oracle of professional services for You and the possible strategies which may be used by Oracle to implement the functionality described in Oracle’s User Guides and in other related documentation (available at www.netsuite.com) as well as possible “workarounds,” which may be implemented to achieve special requirements identified by You. This SOW and the Estimate/Order Form (including any Exhibits hereto) (and the PS Terms) shall constitute the entire understanding between You and Oracle and is intended as the final expression of the Parties’ agreement regarding the Professional Services to be provided by Oracle. The Parties expressly disclaim any reliance on any and all prior agreements, understandings, RFPs, verbal and/or written communications related to the Professional Services to be provided by Oracle. Any amendment or modification to this SOW shall not be valid, enforceable, or binding on the Parties unless such amendment or modification (i) is a written instrument duly executed by the authorized representatives of both Parties and (ii) references this SOW and identifies the specific Sections contained herein which are to be amended or modified. This SOW may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this SOW executed in ink by both Parties.

This SOW is valid through February 28, 2021 and shall become binding upon execution by You and acceptance by Oracle.

CUSTOMER

DocuSigned by:

Chad Rohrbach

Authorized Signature: _____
B546F6DBD22E4BA...

Print Full Name: Chad Rohrbach

Job Title: CFO

Signature Date: February 26, 2021 | 15:08 PST

ORACLE AMERICA, INC. DocuSigned by:

Jennifer Borghesi

Authorized Signature: _____
DEBB4B4F510043C...

Print Full Name: Jennifer Borghesi

Job Title: Sr. Manager, Business Operations

Signature Date: February 26, 2021 | 15:42 PST

This SOW may be signed electronically, in which case signatures may appear above or on the last page.

Exhibit 8

ABOUT ORACLE / ORACLE CONTRACTS /

Oracle NetSuite Cloud Services Contracts

Oracle NetSuite Cloud Services Contracts

Oracle NetSuite (NSGBU) has a consistent contract model for all programs and services globally. The standard contracts often refer to policies and other documents that may be relevant to a specific order. Links to the standard contracts, specified policies and other documentation are available here.



NetSuite Cloud Services Contracts

The terms and conditions which govern the use of NetSuite Cloud Services including the Subscriptions Service Agreement, Program Documentation and the Data Processing Agreement are found here.



NetSuite Cloud Service Descriptions

Each NetSuite Cloud Service on the applicable Cloud Price list has a Service Description associated with it. Within the individual Service Description are the service limitations, such as number of environments, storage limitations,



NetSuite Other Cloud Services Contract Terms

This section includes supplemental terms which may be applicable to your order of NetSuite, OpenAir and Bronto Cloud Services.

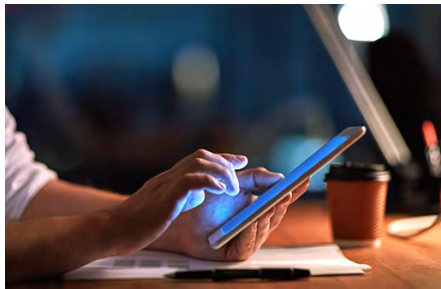
[Learn more](#)



[Learn more](#)

the list of the modules Oracle will provision for that Cloud Service.

[Learn more](#)



Cloud Delivery Policies

The Hosting & Delivery Policies describe how Oracle will deliver the Cloud Services. Additionally, describes how Oracle will operate the Data Center, including how we address security, change management and backups.

[Learn more](#)

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- How can we help?
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Country/Region

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Exhibit 9

NetSuite Cloud Services Contracts

NetSuite Cloud Services Contracts

In this section, you will find Oracle NetSuite's standard contracts for the NetSuite, OpenAir and Bronto Cloud Services including the Subscription Services Agreement, the Data Processing Agreement and any policies referred to in your contract with Oracle.

[Subscription Services Agreement](#)

[Support Terms and Response Times](#)

[Data Processing Agreement](#)

[Service Level Commitment \(SLC\)](#)

[Data Security Addendums](#)

[Trial Account Agreement](#)

[Professional Services Agreements](#)

[Main Terms of Service](#)

[Professional Services Addendums](#)

NetSuite Cloud Services Policies

The following items are referenced in the Subscription Services Agreement and are here for easy access.

[Program Documentation](#)

[Bronto Permission Marketing Policy \(PDF\)](#)



NetSuite Cloud Services Contracts – Subscription Services Agreements

Your Estimate/Order Form (the "order") for NetSuite, OpenAir and Bronto Cloud Services identifies the Subscription Services Agreement that governs the order. If your order is placed on or after July 1, 2020 and references the Subscription Services Agreement available at <https://www.netsuite.com/portal/resource/terms-of-service.shtml> or www.netsuite.com/tos, then the July 1, 2020 version of the Subscription Services Agreement applies to that order. For any "add-on order" to an original Cloud Services order, the version of the Subscription Services Agreement for Cloud Services in effect on the date of the original order will apply to the add-on order, even if the add-on order is placed after an updated version of the Subscription Services Agreement is published. An "add-on order" is an order that updates the quantity or type of previously ordered Cloud Services, such as by adding capacity, new user subscriptions, or additional SaaS service applications.

**North
America**

**Asia
Pacific**

EMEA

Archive

[United States \(PDF\)](#)

[Canada - English \(PDF\)](#)

[Canada - French \(PDF\)](#)

Data Processing Agreement

If your Estimate/Order Form ("order") for NetSuite, OpenAir or Bronto Services incorporates in the Oracle Data Processing Agreement ("DPA"), the applicable DPA can be found by going to the Oracle Cloud Contracting page found at the following URL: <https://www.oracle.com/corporate/contracts/cloud-services/contracts.html>.

Data Security Addendums

In addition, the applicable Data Security Addendum(s) below automatically applies to your order:

[NetSuite Data Security Addendum \(PDF\)](#)

[Bronto Data Security Addendum \(PDF\)](#)

[OpenAir Data Security Addendum \(PDF\)](#)

NetSuite Professional Services Agreements

The Online Professional Services Agreement governs certain professional services and training provided by Oracle to Customer.

North America

Asia Pacific

EMEA

[United States \(PDF\)](#)

[Canada - English \(PDF\)](#)

[Canada - French \(PDF\)](#)

NetSuite Professional Services Addendums

Online Professional Services Addendum. The Online Professional Services Addendum governs certain professional services and training provided by Oracle to Customer. The Online Professional Services Addendum is incorporated into the Subscription Services Agreement (released in June 2019; Updated in July 2019 and July 2020) and the Transactional Subscription Services Agreement (released in July 2020).

North America

Asia Pacific

EMEA

[United States \(PDF\)](#)

[Canada - English \(PDF\)](#)

[Canada - French \(PDF\)](#)

Bronto Online Professional Services Addendum. If your order for Bronto Services was placed before July 1, 2020, this Bronto Online Professional Services Addendum governs professional services and training provided by Oracle to Customer. The Bronto Online Professional Services Addendum is incorporated into the Bronto Subscription Services Agreement (released in October 2019) and the Transactional Bronto Subscription Services Agreement found at <http://content.bronto.com/terms/terms-and-conditions/>.

[Bronto Online Professional Services Addendum \(PDF\)](#)

Support Terms and Response Times

NetSuite Support Services. These NetSuite Support Service Terms are the terms under which Oracle provides support for certain online business applications pursuant to the level of support you have procured or are otherwise entitled to.

[Support Terms – English \(PDF\)](#)

[Support Terms – French \(Canadian\) \(PDF\)](#)



[Support Terms – Chinese \(China only\) \(PDF\)](#)[Support Terms – English \(China only\) \(PDF\)](#)[Support Terms – Japanese \(PDF\)](#)

Bronto Support Services. These Bronto Support Service Terms are the terms under which Oracle provides support for certain online business applications pursuant to the level of support you have procured or are otherwise entitled to.

[Support Terms – English \(PDF\)](#)[Support Terms – French \(Canadian\) \(PDF\)](#)[Support Terms – Chinese \(China only\) \(PDF\)](#)[Support Terms – English \(China only\) \(PDF\)](#)[Support Terms – Japanese \(PDF\)](#)

Supplemental Support Terms for Response Services. This addendum contains supplemental Support Service Terms for NetSuite Response Services that you may be eligible for based on specific requirements set forth in these supplemental terms.

[Supplemental Support Terms \(PDF\)](#)

Oracle Terms of Use for NetSuite Support Portal. This Terms of Use specifically covers the Customer's use of the NetSuite Support Portal website.

[NetSuite Support Portal TOU \(PDF\)](#)

Service Level Commitment (SLC)

Service Level Commitment (SLC) for the NetSuite and OpenAir Cloud Services. These terms represent the Service Level Commitment for certain online business applications pursuant to the terms of your agreement with Oracle.

[Service Level Commitment - April 2021 \(PDF\)](#)

NetSuite Trial Account Agreement

The Trial Account Agreement governs the temporary access to a limited trial, test, training or other demo account of the NetSuite Service that may be provided to you or a partner program member for such party's non-production use, the duration and scope of which may be further defined in an Estimate / Order Form.

North America**Asia Pacific****EMEA**[United States \(PDF\)](#)[Canada - English \(PDF\)](#)[Canada - French \(PDF\)](#)

Main Terms of Service

These Main Terms of Service, in conjunction with the Subscription Services Agreement cover the Customer's usage of the NetSuite Service and OpenAir Service.

[English \(Last Updated March 2018\) \(PDF\)](#)

[Chinese \(Last Updated April 2019\) \(PDF\)](#)

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Country/Region



Exhibit 10



TACTICAL LAW

4 Embarcadero Center, Suite 1400 | San Francisco, CA 94111
T 415.766.3509 | F 415.231.5272
www.tacticalawgroup.com

PAMELA K. FULMER
415.766.3509

EMAIL ADDRESS
pam@tacticalawgroup.com

VIA EMAIL AND FEDERAL EXPRESS

November 14, 2022

Ms. Dorian Daley, Esq.
Executive Vice President & General Counsel
Legal Department
Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

Re: Notice of Breach and 30-Day Cure Notice to Oracle|NetSuite Pursuant to Paragraphs 6.2 and 7.3 of the Subscription Services Agreement on Behalf of River Supply Inc.

Dear Ms. Daley:

This law firm represents River Supply Inc. (“RSI”), which is a SuiteSuccess customer of Oracle America, Inc. and NetSuite, Inc. (collectively “Oracle”). Please direct all future correspondence on this matter to my attention. RSI writes to provide Oracle with notice of its breaches (the “Breach Notice”) and to provide Oracle with 30-days to cure (the “Cure Period”) those breaches.

RSI has performed all of its obligations under the SSA and the Professional Services Agreements, and notably has received no notice or communications from Oracle stating otherwise. RSI has paid the professional services fees and the subscription fees and yet RSI has not been able to fully utilize the services due to Oracle’s material breaches. In the event the Oracle services are not performed in full within thirty days of the date of this notice to RSI’s satisfaction, then RSI may terminate the contracts.

Below we provide background regarding the dispute and a list of the breaches, which Oracle must cure within 30-days of the date of this Breach Notice.

The Oracle Contracts

On or about February 26, 2021, RSI executed Estimate No. 809145 (the “SuiteSuccess Estimate”)¹ and Estimate No. 822038 (the “NetSuite ACS Optimize”) for cloud related software services and support and two Fixed Price Statements of Work for professional services. Estimate No 809145 included a total discounted price for the services of \$115,716.03, including a price of \$57,700.00 for implementation services. The price of Estimate No. 822038 was \$23,800.00, reflecting Oracle’s charge for NetSuite Advanced Customer Support (ACS). Oracle touts on its website the benefits of its ACS support services claiming that the service goes “beyond standard support by providing prescriptive product optimization guidance and hands-on configuration assistance” and that “ACS prepares customers for new NetSuite release upgrades, helps to extend and adapt their implementation, provides advice on system architecture design and optimizes overall NetSuite system performance through testing and tuning.”

Two Fixed Price Statements of Work detail the professional services that Oracle was obligated to provide to implement the SuiteSuccess ERP cloud services. In general terms with regard to the SuiteSuccess Manufacturing Standard and Warehouse Management Systems, the professional project implementation services to be provided by Oracle included project management, general configuration and set up, process area walkthroughs, data migration, specific set up and configuration of the following: Record to Report, Design to Build, Procure to Pay/Return, and various process areas including Debit, Order to Cash/Return to Credit, Return on Investment (“ROI”), Lead to Quote, Call to Resolution, Project to Cash, Warehouse Operations, Role Setup and other services. The second statement of work covered professional services related to the implementation of RSI’s SuiteSuccess SuitePeople Standard US Payroll in RSI’s Oracle|NetSuite instance, and included project management, general configuration and setup, data migration, setup of the payroll process area, role setup, timecard importation, User Acceptance Testing (“UAT”) and post go live support and other services.

Although the project was supposed to go live by February 28, 2022, now almost 21 months later RSI still has no working ERP solution and one “go live” date after another has come and gone due to Oracle’s many failures. Contrary to the representations made in pre and post contract discussions with Oracle, Oracle has failed to put a competent team in place to manage the project. In addition, Oracle has made recommendations for certain third-party

¹ Estimate No. 809145 (the “Estimate”) consisted of 4 pages and was followed by a deceptively simple 2-page “Agreement”. The Agreement purported to incorporate by reference the Subscription Services Agreement v060120 (“SSA”) allegedly found at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/> (including any referenced URL Terms). Unlike other hyperlinks to be found in various agreements with which RSI is familiar, the url was not hi-lighted or set off by a different color so as to draw attention to the hyperlink. Moreover, no one from Oracle ever pointed out the hyperlink and Oracle never provided RSI with a copy of this Subscription Services Agreement, and it is not in the files of RSI. RSI believes that Oracle handles its NetSuite contracts in this manner in order to deceive its customers and to hide all of the self-serving and onerous provisions in the Subscription Services Agreement, which benefit Oracle to the detriment of Oracle’s customers. Given this lack of real notice, RSI is doubtful that the agreement as written is even enforceable, and should RSI end up in litigation with Oracle, RSI intends to challenge the enforceability of the SSA.

vendors, promising that these vendors had a track record of working seamlessly with Oracle customers and NetSuite. These representations have turned out to be false and Oracle has completely failed to deliver a functioning ERP product.

The Oracle/NetSuite Breaches

RSI writes to provide Oracle with notice of its breaches and a 30-day opportunity to cure. Oracle's breaches and misrepresentations are many and include the following which must be cured within 30-days of the date of this letter:

- RSI was promised a functioning ERP system that would be seamless with all the parts working together. In reality the solution has never worked. Oracle needs to bring all parties to the table and finalize the solution so that RSI can go live.
- Oracle has failed to coordinate the third-party vendors to ensure one seamless software solution and must take ownership of the process and deliver a working solution. Oracle has failed to effectively manage the interaction between NetSuite on the one hand and Suite Commerce, In 8 sync, WMS, Vend, SPS, Appficiency, Windcave, Shipstation , SkyVia, and Payroll, and must take control and effectively manage these relationships and deliver a system that works.
- The Oracle Cloud Services that Oracle provided under the cloud orders were not performed as warranted and/or were performed negligently. Oracle needs to correct these issues as we outline here. Oracle needs to manage Suite Commerce, In 8 sync, WMS, Vend, SPS, Appficiency, Windcave, Shipstation , SkyVia, and Payroll and other vendors to deliver a working solution. NetSuite failed to coordinate between the above entities and now must address these problems immediately and deliver a working solution. RSI has given Oracle multiple notices of these breaches in correspondence between the parties, which have still not been cured.
- The third-party software recommendations Oracle provided to RSI were unsuitable and negatively impacted, and further delayed the go-live date. Oracle must provide its third-party software recommendations, and the recommendations must be ones that will work with the entire solution, and Oracle must manage the project competently to deliver the services.
- Oracle has failed to create a solution that will integrate River Supply and its subsidiary RSI Hardware into one seamless system. This needs to be fixed and the solution integrated and finalized.
- Oracle Professional Services incorrectly implemented the Oracle Cloud Services, including errors made in incorporating RSI's subsidiaries, which were required to be reworked and are still not functioning without error. These problems need to be resolved.
- Oracle was slow to respond as needed, and team turnover, including the resignation of the project manager, delayed efforts to go-live. The delay persists to this day and must be addressed, and the project brought to completion within 30-days.
- The Oracle team appeared inexperienced and over their head and never delivered the promised product. Oracle must assign a competent team to the project who will stick with it and who understands the complete system that Oracle represented and sold to RSI.

- The delay in go-live has impacted RSI's ability to realize value from the Oracle Cloud Services it has purchased under the cloud orders. Oracle must fix these problems and deliver RSI the solution it was promised.
- The third-party software recommendations Oracle provided to RSI were unsuitable and negatively impacted, and further delayed the go-live. Oracle must provide its third-party software recommendations, and the recommendations must be ones that will work with the entire solution.
- Oracle misrepresented the features, functionality, and/or readiness of the Oracle Cloud Services, and the effort required to implement the Oracle Cloud Services. Oracle must deliver a functioning product as it has promised and do so within the 30-day cure period.
- The training videos on NetSuite's portal are inaccurate, making training difficult if not impossible. Oracle must ensure that the training videos are accurate and provide the training that Oracle represented so RSI can successfully exploit the solution in its business.
- The Advanced Customer Support Services that Oracle provided for the Oracle Cloud Services were not performed as warranted and/or were performed negligently. RSI has provided detailed notice of these failures to Oracle in various email communications, which have still not been cured.
- The Oracle Professional Services that Oracle provided under the various Statements of Work ("SOWs") were not performed as warranted and/or were performed negligently. RSI has provided detailed notice of these failures to Oracle in various email communications, which have still not been cured.
- Although Oracle represented that it was a skilled and competent implementation partner, it completely failed to deliver as represented forcing RSI to incur additional costs looking for an implementation partner to replace NetSuite.
- Oracle's incompetence in delivering the Suite Commerce component-of the solution caused further delays, which have still not been corrected to this day. Oracle must finalize these components ASAP.
- Oracle recommended third-party Point of Sale ("POS") companies Vend/Lightspeed as the third-party POS companies and they completely failed to deliver despite NetSuite's promises that they would. This must be corrected.
- Oracle must locate and engage a POS contractor that will work with its solution. If NetSuite, continues with Vend it must ensure that Vend regularly attends weekly meetings and closes out any open issues. Currently Vend does not regularly attend the meetings even though requested to do so by RSI and many issues remain open. NetSuite needs to insure that Vend participates in the weekly meetings and successfully closes out all of the open issues.
- Oracle has failed to adequately manage the project by failing to ensure that the EDI contractor communicated effectively with NetSuite. Oracle must connect the EDI contractor with NetSuite and manage the project.
- Oracle's total failure to coordinate between SPS, Vend, and Suite Commerce exacerbated problems and caused serious delays. Oracle must deploy a competent project manager who can manage the project and deliver the solution.
- Oracle failed to manage SPS to ensure adequate and timely testing of the EDI and assortment system. Oracle must fix this issue and ensure that SPS or another contractor has managed the testing successfully.

- Oracle failed to competently manage the relationship with SPS, which waited until July 1 to begin outreach to House Hassen to go over the options for EDI. Oracle must supervise this to conclusion.
- Oracle failed to competently manage the relationship between SPS Commerce and Orgill. Oracle must supervise this to conclusion.
- Oracle must finalize the Assortment Timeline and deliver on this promise.
- Oracle told RSI all throughout August that WorldPay was a simple integration and would work with the Oracle solution. This was false.
- Oracle must provide one spreadsheet not three for the mass data upload.
- Connect Vend and NetSuite so RSI can upload one image to NetSuite and that image also goes to Vend without the need for a second upload.
- NetSuite represented the software would be a complete solution with no hidden costs which simply was not true.
 - \$500 hidden testing fee on the EDI side must be reimbursed to RSI.
 - RSI paid all first-year fees for a service that it did not use as it never went live. Now these vendors are asking for payment for year two. RSI should not be responsible for year two payments when the solution is not working.
 - Oracle should reimburse RSI for Wincave related costs incurred when RSI had to purchase all new equipment after RSI learned that it could not use the credit card provider that was already on board.
 - Shipstation fees were never disclosed, and RSI was surprised by these new undisclosed costs.
 - Oracle needs to quantify and finalize estimates for SkyVia fees.
 - RSI paid Appficiency fees for the first year even though RSI was never able to use the solution since the project never went live. Now Appficiency has invoiced for \$15,500 for a new year even though the system has never worked.
 - In 8 sync bills RSI on a time and materials basis and is well over budget due to all the work arounds required by Oracle's failure to adequately manage the work. These fees must be reimbursed to RSI.
 - RSI paid Vend for a year even though the solution never went live. Now Vend wants to be paid for year two.

RSI Has Been Damaged by Oracle's Misrepresentations and Breaches of Contract

RSI has been seriously damaged by Oracle's failures and other wrongful conduct. Indeed, the delay in implementation of the software that RSI contracted for has negatively impacted its business in the form of increased costs as well as delays and the inability to adequately manage the day-to-day operations of the RSI business. In addition to the damages caused by the delay, RSI has been required to dedicate significantly more internal resources than what Oracle had represented would be required in the initial meetings. Despite these increased costs, every meeting request sent to RSI was accepted and every deadline and obligation on its part has been met. Yet, over 21 months into the project the implementation is nowhere near completion. Oracle's team has demonstrated repeatedly that it is not qualified to deliver the products that were promised to RSI, and there is ample justification to terminate the applicable agreements for cause, should Oracle fail to cure. Nonetheless, it is RSI's sincere hope that Oracle will step up to the plate, cure its breaches, and deliver the solution that it promised.

In the meantime, RSI continues to reserve all rights and remedies. Thank you.

Very truly yours,

Pamela K. Fulmer//

Pamela K. Fulmer



Exhibit 11



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VIA EMAIL ONLY

January 18, 2023

Ms. EunHae Park, Esq.
Managing Counsel
Legal Department
Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

Re: Notice of Termination to Oracle|NetSuite Pursuant to Sections 6.2 and 7.3 of the Subscription Services Agreement and Section 5.3 of the Professional Services Agreement on Behalf of River Supply Inc.

Dear Ms. Park:

This firm represents River Supply Incorporated (“RSI”). On behalf of RSI, this firm sent Oracle America, Inc. and NetSuite Inc. (collectively “Oracle”) through its General Counsel a notice of breach and opportunity to cure letter on November 14, 2022. Oracle Legal subsequently assigned the dispute to you. By my email to you dated December 16, 2022, RSI extended the cure period from December 14, 2022, to and until December 31, 2022, provided that Oracle met certain conditions. Oracle has failed to meet those conditions and has failed to cure its material breaches. As a result, pursuant to Sections 6.2, 7.3 and 9.3 of the SSA and Section 5.3 of the Professional Services Agreement and the Fixed Price Statement of Work, those agreements have been terminated as of December 31, 2022, and RSI is entitled to a refund of monies pre-paid to Oracle. Likewise, RSI has no further obligation under the SSA for any further subscription payments.

RSI is currently totaling up its damages and evaluating its claims against Oracle. I will be in touch in the near future with RSI's settlement demand. In the interim, RSI continues to reserve all rights and remedies. Thank you.

Very truly yours,

Pamela K. Fulmer

Pamela K. Fulmer

