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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MONTCLAIR STATE UNIVERSITY

Plaintiff,

vs.

ORACLE USA, INC.

Defendant.

ECF Case

Case No. 3:11-cv-02867-FLW-LHG

**ANSWER, DEFENSES, AND
COUNTERCLAIMS**

Document Filed Electronically

Defendant Oracle USA, Inc., now known as Oracle America, Inc. (“Oracle” or “Defendant”), by and through its attorneys Sheppard, Mullin, Richter & Hampton LLP, hereby answers those portions of the Complaint relating to Plaintiff Montclair State University’s (“MSU” or “Plaintiff”) breach of contract and declaratory judgment claims as follows:¹

RESPONSE TO “INTRODUCTION”

1. The allegations contained in the first sentence of Paragraph 1 are legal conclusions to which no response is required. To the extent that the first sentence of Paragraph 1

¹ On May 27, 2011, Defendant filed a motion to dismiss Plaintiff’s gross professional negligence and legal fraud claims. Such Motion was filed pursuant to Federal Rule of Procedure 12(b)(6) and was submitted in lieu of an answer to Plaintiff’s negligence and fraud claims. Accordingly, this Answer only responds to Plaintiff’s breach of contract and declaratory judgment claims.

of the Complaint contains factual allegations, Defendant denies each and every allegation.

Defendant denies having knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 1 of the Complaint.

2. Defendant denies each and every allegation contained in Paragraph 2 of the Complaint.

RESPONSE TO “THE PARTIES, JURISDICTION, AND VENUE”

3. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Defendant denies each and every allegation contained in Paragraph 4 of the Complaint, and Defendant avers that: (a) on February 15, 2010, Oracle USA, Inc. merged with and into Sun Microsystems, Inc; (b) Sun Microsystems, Inc., the surviving corporation, was then renamed “Oracle America, Inc.”; (c) Oracle America, Inc. is the correct party to this action; and (d) Oracle America, Inc. is a Delaware Corporation.

5. Paragraph 5 of the Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 5 of the Complaint contains factual allegations, Defendant denies each and every allegation.

6. Paragraph 6 of the Complaint contains legal conclusions to which no response is required. To the extent that Paragraph 6 of the Complaint contains factual allegations, Defendant denies each and every allegation.

RESPONSE TO “BACKGROUND”

7. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint, except Defendant admits that it received an RFP from Plaintiff.

8. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 8 of the Complaint, except that Defendant admits that it responded to Plaintiff's RFP. The second sentence of Paragraph 8 contains legal conclusions to which no response is required. To the extent that the second sentence of Paragraph 8 of the Complaint contains factual allegations, Defendant denies each and every allegation and Defendant respectfully refers the Court to the to the RFP for its contents, terms and legal effect, if any.

9. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, except Defendant admits that the University's Board of Trustees authorized the award of a contract to Oracle subject to final negotiation of a written agreement, that Oracle and MSU did not finalize a written agreement by November of 2008 and that the University's Evaluation Committee selected Oracle for the BTI project.

10. Defendant denies each and every allegation contained in Paragraph 10 of the Complaint, except Defendant admits that Oracle and MSU entered into an Ordering Document, a License and Services Agreement ("LSA") and an amendment to the LSA, both dated February 27, 2009.

11. Defendant denies each and every allegation contained in Paragraph 11 of the Complaint, except admits that the parties entered into agreements which obligated MSU to pay for the amounts called for in the agreements. Defendant respectfully refers the Court to the agreements for their contents, terms and legal effect, if any.

12. The allegations in Paragraph 12 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 12 of the Complaint contains factual

allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its content, meaning, and legal effect, if any.

13. Defendant denies each and every allegation contained in Paragraph 13 of the Complaint, and Defendant respectfully refers the Court to the Fixed Price Exhibit and Attachments for their content, meaning, and legal effect, if any.

14. Defendant denies each and every allegation contained in Paragraph 14 of the Complaint, and Defendant respectfully refers the Court to the Fixed Price Exhibit for its content, meaning, and legal effect, if any.

15. The allegations in Paragraph 15 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 15 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Timeline and High Level Project Plan contained in the Fixed Price Exhibit for its content, meaning, and legal effect, if any.

16. The allegations in Paragraph 16 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 16 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Services Ordering Document and the Fixed Price Exhibit for their content, meaning, and legal effect, if any.

17. Defendant denies each and every allegation contained in Paragraph 17 of the Complaint.

18. The allegations in Paragraph 18 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 18 of the Complaint contains factual allegations, Defendant denies each and every allegation. .

19. The allegations in Paragraph 18 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 18 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its content, meaning, and legal effect, if any.

20. Defendant denies each and every allegation contained in Paragraph 20 of the Complaint

21. Defendant denies each and every allegation contained in Paragraph 21 of the Complaint.

22. The allegations in Paragraph 22 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 22 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the contract for its content, meaning, and legal effect, if any.

23. Defendant denies each and every allegation contained in Paragraph 23 of the Complaint.

24. Defendant denies each and every allegation contained in Paragraph 24 of the Complaint, except admits that FMS did not go live on July 1, 2010.

25. Defendant denies each and every allegation contained in Paragraph 25 of the Complaint.

26. Defendant denies each and every allegation contained in Paragraph 26 of the Complaint.

27. Defendant denies each and every allegation contained in Paragraph 27 of the Complaint

28. The allegations in Paragraph 28 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 28 of the Complaint contains factual allegations, Defendant denies each and every allegation.

29. Defendant denies each and every allegations contained in Paragraph 29 of the Complaint and respectfully refers the Court to the Fixed Price Exhibit and Exhibit K thereto for their content, meaning and legal effect, if any.

30. Defendant denies each and every allegation contained in Paragraph 30 of the Complaint.

31. Defendant denies each and every allegation contained in Paragraph 31 of the Complaint.

32. Defendant denies each and every allegation contained in Paragraph 32 of the Complaint and respectfully refers the Court to the Fixed Price Exhibit for its content, meaning and legal effect, if any.

33. The allegations in Paragraph 33 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 33 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its content, meaning and legal effect, if any.

34. Defendant denies each and every allegation contained in Paragraph 34 of the Complaint and respectfully refers the Court to the PMI Code of Ethics and Professional Conduct for its content, meaning and legal effect, if any.

35. Defendant admits that the first major application set to go live was the FMS system and that FMS was scheduled to go live on July 1, 2010. Defendant denies each and every other allegation contained in Paragraph 35 of the Complaint.

36. The allegations in Paragraph 36 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 36 of the Complaint contains factual allegations, Defendant denies each and every allegation.

37. The allegations in Paragraph 37 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 37 of the Complaint contains factual allegations, Defendant denies each and every allegation.

38. The allegations in Paragraph 38 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 38 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

39. The allegations in Paragraph 39 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 39 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

40. The allegations in Paragraph 40 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 40 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

41. The allegations in Paragraph 41 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 41 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

42. The allegations in Paragraph 42 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 42 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

43. Defendant denies each and every allegation contained in Paragraph 43 of the Complaint.

44. Defendant denies each and every allegation contained in Paragraph 44 of the Complaint.

45. The allegations in Paragraph 45 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 45 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Institute of Electrical and Electronics Engineers (“IEEE”) Standard 829 for its content, meaning and legal effect, if any.

46. Defendant denies each and every allegation contained in Paragraph 46 of the Complaint, except denies having knowledge or information sufficient to admit or deny allegations contained in the fourth and fifth sentences of Paragraph 46 of the Complaint and admits that MSU provided a written communication to Oracle on June 18, 2010.

47. Defendant denies each and every allegation contained in Paragraph 47 of the Complaint, except Defendant admits that MSU made the decision to delay the go live of the FMS applications.

48. Defendant denies each and every allegation contained in Paragraph 48 of the Complaint.

49. Defendant denies each and every allegation contained in Paragraph 49 of the Complaint, except Defendant admits that between July and September of 2010, there were numerous communications and several meetings between Oracle and MSU, that Oracle made a presentation to MSU on September 27, 2010, suggesting a mechanism for moving forward with the project.

50. Defendant denies each and every allegation contained in Paragraph 50 of the Complaint and refers to the Services Ordering Document for its content, meaning and legal effect, if any.

51. The allegations in Paragraph 51 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 51 of the Complaint contains factual allegations, Defendant denies each and every allegation, except admits that Oracle sent an email to MSU on September 28, 2010 and respectfully refers the Court to the September 28, 2010 email for its content, meaning and legal effect, if any.

52. Defendant denies each and every allegation contained in Paragraph 52 of the Complaint, except Defendant admits that it submitted invoices dated October 29, 2010 and November 16, 2010 to MSU, and respectfully refers the Court to the invoices for their content, meaning and legal effect, if any.

53. The allegations in Paragraph 53 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 53 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Fixed Price Exhibit for its contents, meaning, and legal effect, if any.

54. Defendant denies each and every allegation contained in Paragraph 54 of the Complaint.

55. Defendant denies each and every allegation contained in Paragraph 55 of the Complaint.

56. Defendant denies each and every allegation contained in Paragraph 56 of the Complaint, except admits that it received a letter from MSU on October 11, 2010, and respectfully refers the Court to the October 11, 2010 letter for its contents, meaning and legal effect, if any.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint and refers to the Services Ordering Document for a true and correct statement of its contents

58. Defendant denies each and every allegation contained in Paragraph 58 of the Complaint, except admits that Oracle met with MSU on October 25, 2010. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentence of Paragraph 58.

59. The allegations in Paragraph 59 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 59 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Services Ordering Document for its contents, meaning and legal effect, if any.

60. Defendant denies each and every allegation contained in Paragraph 60 of the Complaint, except admits that Oracle furnished deliverables for which it demanded payment.

61. Defendant denies each and every allegation contained in Paragraph 61 of the Complaint, except admits that MSU locked Oracle out of the premises on November 1, 2010 and Oracle continued to cooperate with MSU's requests through the time MSU filed this Complaint.

62. Defendant denies each and every allegation contained in Paragraph 62 of the Complaint, except admits that it received a letter from MSU on November 11, 2010 and

respectfully refers the Court to the November 11, 2010 letter for its content, meaning and legal effect, if any.

63. The allegations in Paragraph 63 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 63 of the Complaint contains factual allegations, Defendant denies each and every allegation and respectfully refers the Court to the Services Ordering Document and the Fixed Price Exhibit for their content, meaning and legal effect, if any.

64. The allegations in Paragraph 64 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 64 of the Complaint contains factual allegations, Defendant denies each and every allegation, except admits that, per the Agreement, Oracle would not permit unauthorized persons to view deliverables until MSU paid and respectfully refers the Court to the Services Ordering Document and the Oracle License and Services Agreement for their content, meaning and legal effect, if any. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first, second and last sentence of Paragraph 64 of the Complaint.

65. Defendant denies each and every allegation contained in Paragraph 65 of the Complaint. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 65 of the Complaint.

66. The allegations in Paragraph 66 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 66 of the Complaint contains factual allegations, Defendant denies each and every allegation except: (1) admits that it filed a Notice of Claim demanding not less than \$5.26M. and respectfully refers the Court to the Notice of Claim for its content, meaning and legal effect, if any; (2) admits that MSU failed to object to

deliverables within the timeframe prescribed by the Fixed Price Exhibit and respectfully refers the Court to the Fixed Price Exhibit for its content, meaning and legal effect, if any; and (3) admits that MSU accepted all deliverables subject to the Notice of Claim.

67. Defendant denies each and every allegation contained in Paragraph 67 of the Complaint.

RESPONSE TO “COUNT I”

68. Defendant incorporates by reference each response to the allegations in Paragraphs 1 through 67 as though fully set forth herein.

69. The allegations in Paragraph 69 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 69 of the Complaint contains factual allegations, Defendant denies each and every allegation.

70. The allegations in Paragraph 70 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 70 of the Complaint contains factual allegations, Defendant denies each and every allegation.

71. The allegations in Paragraph 71 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 71 of the Complaint contains factual allegations, Defendant denies each and every allegation.

72. The allegations in Paragraph 72 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 72 of the Complaint contains factual allegations, Defendant denies each and every allegation.

73. Defendant denies each and every allegation contained in Paragraph 73.

RESPONSE TO “COUNT II”

74. Defendant incorporates by reference each response to the allegations in Paragraphs 1 through 73 as though fully set forth herein

75. The allegations in Paragraph 75 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 75 of the Complaint contains factual allegations, Defendant denies each and every allegation.

76. The allegations in Paragraph 76 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 76 of the Complaint contains factual allegations, Defendant denies each and every allegation.

77. Defendant denies each and every allegation contained in Paragraph 77 of the Complaint.

78. The allegations in Paragraph 78 of the Complaint contain legal conclusions to which no response is required. To the extent that Paragraph 78 of the Complaint contains factual allegations, Defendant denies each and every allegation.

RESPONSE TO “COUNT III”

Paragraphs 79 - 83 are addressed in Defendant’s Motion to Dismiss.

RESPONSE TO “COUNT IV”

Paragraphs 84 – 88 are addressed in Defendant’s Motion to Dismiss.

AFFIRMATIVE DEFENSES

As separate and distinct defenses to the Complaint, and to each of the plaintiff's alleged claims for relief, Defendant, without conceding that defendant bears the burden of proof as to any of these defenses and without admitting any of the allegations of the Complaint, alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims for relief are barred by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims for relief are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims for relief are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims for relief are barred, in whole or in part, by its failure to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's alleged claims for relief are barred in whole or in part due to its prior material breaches.

SEVENTH AFFIRMATIVE DEFENSE

At all relevant times, Defendant fully complied with and satisfied its obligations and duties pursuant to its contract with Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to adhere to its own procurement policies and procedures regarding alleged unsatisfactory vendor performance.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to satisfy the conditions precedent for termination of the Contract.

TENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert additional affirmative defenses.

COUNTERCLAIMS

As and for its Counterclaims against Counterclaim Defendant Montclair State University (“MSU”), Defendant and Counterclaim Plaintiff, Oracle America, Inc. (“Oracle”), by and through its attorneys Sheppard, Mullin, Richter & Hampton LLP, hereby alleges as follows:

INTRODUCTION

1. Counterclaim Defendant MSU owes Oracle over \$5 million for intellectual property and services MSU has already received and yet refuses to pay for, in spite of its clear contractual obligation to do so. Instead of paying Oracle for the work it performed, MSU embarked on a misguided ruse which, unfortunately, is costing the taxpayers of New Jersey millions of dollars and threatens to waste millions more.

2. This dispute arises from MSU’s “Bell Tower Initiative,” a multi-year, multi-million dollar project to implement an enterprise resource planning (“ERP”) system to replace the University’s legacy computer system. After an RFP process, MSU selected Oracle to perform the implementation. When issues arose during the course of the project, it became clear that MSU’s leadership did not adequately understand the technology and the steps necessary to complete the project. Instead of cooperating with Oracle and resolving issues through discussions and collaboration, MSU’s project leadership, motivated by their own agenda and fearful of being blamed for delays, escalated manageable differences into major disputes. At critical points in the project, MSU’s leadership refused to work with Oracle and rebuffed multiple attempts to resolve the issues and complete the project.

3. MSU’s inability to manage the project created a vacuum for outside consultants to exercise perverse influence over its direction. Indeed, at the point when MSU decided to terminate the contract with Oracle and refused to pay amounts owed, a lawyer from Illinois was,

in large part, running the project for MSU, and continued to profit from promoting a dispute with Oracle at taxpayer expense.

4. Most telling is MSU's striking admission in its Complaint that, instead of paying Oracle what it owes for the use of the intellectual property which Oracle has already provided, its out-of-state consultants have decided to start the project anew and pay a completely separate vendor yet again for the same work done by Oracle. By its own allegations, this has increased the cost to the taxpayers of up to \$15 million. Indeed, while Oracle was working in good faith to complete the project, the Illinois lawyer directed MSU to lock Oracle out of the premises and cease Oracle's work. Its entire complaint and scorched earth litigation strategy is a pretext designed to blame Oracle for its own leadership failures. Oracle's claims for payment, as set forth below, are clear, simple and supported by the plain words in the contract.

PARTIES

5. Oracle is a Delaware corporation with its principal place of business in Redwood City, California.

6. MSU is a university organized under the laws of the State of New Jersey with its principal place of business in New Jersey.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

8. Venue is proper under 28 U.S.C. § 1391(a).

FACTS

9. Effective February 27, 2009, Oracle and MSU entered into an Oracle License and Services Agreement (“OLSA”) and “Amendment One” thereto.

10. Effective May 30, 2009, Oracle and MSU entered into “Amendment Two” to the OLSA.

11. Effective May 31, 2009, Oracle and MSU entered into an Ordering Document with a Fixed Price Exhibit pursuant to which Oracle agreed to provide, and MSU agreed to pay for, consulting services related to the implementation of certain Oracle software products purchased by MSU under separate license agreements. (“the Services Ordering Document”). Collectively, the OLSA, as amended, and the Services Ordering Document comprise the “Contract” between Oracle and MSU.

12. According to Paragraph B.3 of the Services Ordering Document, in the event of any inconsistencies between the OLSA and the Services Ordering Document, the Services Ordering Document controls.

13. MSU negotiated a “termination for convenience” provision in the Services Ordering Document which stated that either party could “terminate [the] ordering document at any time, without cause, by providing Oracle with thirty (30) business days prior written notice.”

14. Oracle complied with, performed and satisfied its obligations under the Contract.

15. Oracle provided completed deliverables to MSU that, per the Contract, were deemed accepted. Specifically, pursuant to Item 4 of the Fixed Price Exhibit, these deliverables were deemed accepted on October 19, 2010, November 5, 2010 and November 8, 2010 respectively. Under the terms of the Contract, Oracle then sent invoices to MSU for the amounts due. MSU did not object to these invoices, but has refused to pay them.

16. In addition to the completed deliverables, Oracle has provided partial deliverables (“Partially Completed Deliverables,” i.e. work in process under the Contract). MSU accepted these Partially Completed Deliverables.

17. During the course of the project, MSU also requested that Oracle perform additional work. (“Additional Work”). Oracle performed this Additional Work and provided the benefit of such work to MSU. MSU accepted this Additional Work.

18. MSU purportedly terminated the Contract with Oracle on November 11, 2010, after sending a notice threatening to terminate unless Oracle agreed to terms and conditions not contained in the Contract.

19. However, MSU failed to satisfy the conditions precedent detailed in Paragraph B.5 of the Services Ordering Document prior to the purported termination.

20. MSU contends that it terminated the Contract with Oracle for cause pursuant to Paragraph I of the OLSA. However, MSU did not have good cause to terminate as Oracle had performed all contractual obligations. In addition, Paragraph I of the OLSA was superseded by Paragraph B.6 of the Services Ordering Document, which governs termination of the Contract.

21. Paragraph B.6 of the Services Ordering Document states that, upon termination, MSU will:

pay the fees and expenses, as well as the cost of materials for which Oracle has become obligated in connection with the contemplated services, through the effective date of termination. The fees for completed deliverables shall be as stated in the applicable exhibit. The fees for incomplete deliverables shall be invoiced on a time and materials basis, at the rates set forth in the FPE, but may not exceed the fee stated in this exhibit for the applicable deliverable.

22. As of November 11, 2010, MSU owed Oracle for the following amounts: (1) \$2,040,000.00 for invoiced deliverables that were deemed accepted pursuant to the terms of the

Fixed Price Exhibit; (2) \$2,061,000.00 for Partially Completed Deliverables; and (3) \$1,159,000.00 for Additional Work requested by MSU and performed by Oracle.

23. To date, Oracle has not received payment for the \$5,260,000.00 that it is due under the Contract, despite repeated demands.

24. On February 2, 2010, Oracle sent an “Initial Notice of Claim for Breach of Contract and Unjust Enrichment Against the State of New Jersey” to the Tort and Contract Unit of the New Jersey Department of Treasury, Valerie Van Baaren (MSU’s Counsel) and Donald D. Cipullo (MSU’s Vice President of the Division of Finance and Treasurer), seeking payment for the deliverables listed in Paragraph 19 above in the amount of not less than \$5,260,00.00 plus interest, costs and fees.

AS AND FOR A FIRST COUNTERCLAIM
(Breach of Contract)

25. Defendant realleges and incorporates herein by reference Paragraphs 1 through 24 above.

26. There is a valid and binding contract between Oracle and MSU.

27. MSU breached the Contract because it failed to pay for work it requested and which Oracle performed and because it did not comply with the payment provisions of the Contract, including, but not limited to, Paragraph B.6 of the Services Ordering Document and Paragraph 4 of the Fixed Price Exhibit.

28. As a direct and proximate result of MSU’s breach of the Contract, Oracle has been damaged in an amount not less than \$5,260,000.00 plus interest.

AS AND FOR A SECOND COUNTERCLAIM
(Quantum Meruit)

29. Defendant realleges and incorporates herein by reference Paragraphs 1 through 28 above.

30. Oracle furnished goods and services for the benefit of MSU in good faith.

31. MSU accepted Oracle's performance.

32. The fair and reasonable value of the goods and services furnished by Oracle to MSU, but not yet paid for by MSU is not less than \$5,260,000.00, plus interest.

33. At all times, Oracle expected to be compensated for the goods and services provided to MSU.

34. Oracle has not been compensated and MSU consequently was enriched in an amount to be determined at trial, but no less than \$5,260,000.00 plus interest.

AS AND FOR A THIRD COUNTERCLAIM
(Unjust Enrichment)

35. Defendant realleges and incorporates herein by reference Paragraphs 1 through 34 above.

36. Oracle furnished goods and services for the benefit of MSU at the specific instance and request of MSU.

37. Oracle has therefore enriched, or conferred a benefit upon, MSU.

38. MSU knew or should have known that Oracle expected to be paid for the services and deliverables furnished.

39. By refusing to pay for services provided and accepted, MSU has been unjustly enriched in an amount to be determined at trial, but no less than \$5,260,000.00, plus interest accruing thereon, to the detriment of Oracle.

40. Under the circumstances it would be inequitable for MSU to retain the benefit conferred by Oracle.

AS AND FOR A FOURTH COUNTERCLAIM
(Account Stated)

41. Defendant realleges and incorporates herein by reference Paragraphs 1 through 40 above.

42. Prior to the institution of this action, Oracle furnished three groups of completed deliverables.

43. On October 29, 2010, Oracle invoiced MSU for goods and services delivered on October 5 and 6, 2010 by sending, by U.S. mail and electronic mail, Invoice # 6324221 to MSU, which invoice sought payment in the amount of \$622,229.00.

44. MSU did not object to Invoice #6324221.

45. On November 16, 2010, Oracle invoiced MSU for goods and services delivered on November 5 and 8, 2010 by sending, by U.S. mail and electronic mail, Invoice # 6325972 to MSU, which invoice sought payment in the amount of \$1,377,809.00.

46. MSU did not object to Invoice # 6325972.

47. An account was stated as to each group of deliverables.

48. No part of either invoice has been paid, although demand has been made and there is now due, owing and unpaid from Montclair State University to Oracle, \$2,040,038.00, plus interest.

WHEREFORE, Oracle requests judgment against Montclair State University as follows:

- A. Dismissing the Complaint with prejudice.
- B. On the First Counterclaim, an amount to be determined at trial, but in no event less than \$5,260,000.00, plus interest;

