

EXHIBIT A

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MARK P. RESSLER (*pro hac vice application to be submitted*)
R. TALI EPSTEIN (*pro hac vice application to be submitted*)
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800
mressler@kasowitz.com
tepstein@kasowitz.com

PATRICK K. FAULKNER (SBN 070801)
County Counsel
SHEILA SHAH LICHTBLAU (SBN 167999)
Deputy County Counsel
3501 Civic Center Drive, Room 275
San Rafael, California 94903
Telephone: (415) 499-6117
Facsimile: (415) 499-3796
pfaulkner@co.marin.ca.us
slichtblau@co.marin.ca.us

Attorneys for Plaintiff
COUNTY OF MARIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

COUNTY OF MARIN,

Plaintiff,

v.

DELOITTE CONSULTING LLP,
SAP AMERICA, INC.,
SAP PUBLIC SERVICES, INC. and
ERNEST W. CULVER,

Defendants.

Case No. CIV 1000574

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

Plaintiff the County of Marin (the "County"), for its complaint against Deloitte Consulting LLP ("Deloitte"), SAP America, Inc. and SAP Public Services, Inc. (together, "SAP" or the "SAP Defendants") and Ernest W. Culver ("Culver"), alleges as follows:

PRELIMINARY STATEMENT

1. This action arises from defendants' illegal and continuing scheme to defraud the

COUNTY OF MARIN'S COMPLAINT AGAINST DELOITTE CONSULTING LLP,
SAP AMERICA, INC., SAP PUBLIC SERVICES, INC. AND ERNEST CULVER

FILED

DEC 16 2010

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 County and other governmental entities while reaping tens of millions of dollars in ill-gotten gains
2 in connection with the implementation of an enterprise resource planning ("ERP") software known
3 as SAP for Public Sector, licensed by German software developer SAP AG. As part of this
4 scheme, Deloitte, with the knowledge and assistance of the SAP Defendants, targeted the County
5 by misrepresenting its skills and experience in SAP for Public Sector software to obtain a highly
6 lucrative public sector implementation contract for itself, and licensing, maintenance and support
7 contracts for SAP Public Services, Inc.

8 2. As a further part of the scheme, Deloitte falsely represented to the County -- which
9 had no ERP or SAP for Public Sector experience -- that Deloitte had the requisite skills and
10 experience in SAP for Public Sector software to deliver a successful implementation for the
11 County. Deloitte and the SAP Defendants also falsely represented that Deloitte, by virtue of its
12 "alliance" with the SAP Defendants, was uniquely qualified to properly implement SAP for Public
13 Sector software. These representations were false because, at the time they were made, Deloitte
14 and the SAP Defendants knew, or were reckless in not knowing, that Deloitte in fact lacked the
15 ability and/or the intention to provide the County with appropriately skilled consultants.

16 3. Based on these false representations, in 2005, the County entered into an
17 implementation contract with Deloitte, and a licensing agreement with SAP Public Services, Inc.,
18 to implement SAP for Public Sector software to replace the County's financial management,
19 human resources and payroll systems (the "Project").

20 4. As a further part of the scheme, to conceal implementation problems that resulted
21 from Deloitte's lack of skills, Deloitte and the SAP Defendants engaged in unlawful conduct to
22 ensure that the County proceeded to go live with the SAP system on the scheduled go-live dates, in
23 order to secure payment of their fees. Such misconduct included deliberate under-testing of the
24 SAP system by Deloitte to obtain artificially positive results and thereby conceal system defects;
25 attempts by Deloitte and the SAP Defendants to silence an employee who raised issues with
26 Deloitte's deficient implementation work; and efforts by Deloitte and the SAP Defendants to
27 corruptly influence defendant Culver, a County official who was also the County's Project
28 Director, to cover up Deloitte's deficient implementation work, obtain payment for work that was

1 not properly performed (or not performed at all) and cause the County to enter into additional
2 contracts with Deloitte and SAP Public Services, Inc.

3 5. As part of its corrupt dealings with Culver, Deloitte unlawfully influenced Culver to
4 approve Deloitte's deficient work and thereby ensure payment of Deloitte's fees. Senior Deloitte
5 officials influenced Culver with promises of employment at Deloitte and lavish dinners. Through
6 such conduct, Deloitte intended to, and did, influence Culver to approve Deloitte's deficient work
7 and cause the County to enter into new contracts with Deloitte and SAP Public Services, Inc., to
8 ensure they would continue to receive fees from the County. The SAP Defendants knowingly
9 participated in Deloitte's bribery of Culver by engaging him in job offer discussions at the same
10 time SAP Public Services, Inc. was asking him to pay Project invoices and that Deloitte was
11 asking him to approve its deficient Project work. Indeed, no sooner had Culver approved
12 Deloitte's deficient work and caused the County to execute the new contracts and pay substantial
13 fees to Deloitte and the SAP Public Services, Inc., then SAP Public Services, Inc. hired Culver for
14 a lucrative sales position targeting public sector entities. Such misconduct, among other things,
15 deprived the public of Culver's honest services, in violation of the Racketeer Influenced and
16 Corrupt Organizations Act ("RICO"), and further violated a California anti-corruption statute
17 (California Government Code Section 1090).

18 6. Four years after the initial go-live of the SAP system that Deloitte defectively
19 designed and implemented -- and after incurring more than \$30 million in damages (including
20 paying Deloitte more than \$11 million in consulting fees, and the SAP Defendants more than \$4
21 million) -- the County concluded that the SAP system needed to be replaced because it could not
22 perform the County's basic financial, payroll and human resources functions. Accordingly, the
23 County seeks to recover the damages that defendants inflicted on the County, to be trebled under
24 the RICO statute, as well as punitive damages for defendants' egregious conduct.

25 7. The fraudulent scheme that Deloitte and the SAP Defendants perpetrated on the
26 County is consistent with a pattern and practice of similar misconduct that they have perpetrated
27 on other public entities, including those in Los Angeles, San Antonio, Colorado and Miami-Dade
28 in connection with the implementation of SAP for Public Sector software.

THE PARTIES

1
2 8. Plaintiff County is a political subdivision of the State of California.

3 9. Defendant Deloitte is a limited liability partnership organized under the laws of the
4 State of Delaware and has its principal place of business in New York, New York. Deloitte is the
5 consulting services arm and subsidiary of Deloitte & Touche USA LLP, the U.S. member of
6 Deloitte Touche Tohmatsu, one of the world's largest accountancy and professional services firms.

7 10. Defendant SAP America, Inc. is a corporation organized under the laws of the State
8 of Delaware and has its principal place of business in Newtown Square, Pennsylvania. SAP
9 America, Inc. is a wholly-owned subsidiary of SAP AG, a German software corporation that
10 develops and provides enterprise software applications and is the world's largest business software
11 company.

12 11. Defendant SAP Public Services, Inc. is a corporation organized under the laws of
13 the State of Delaware and has its principal place of business in Washington, District of Columbia.
14 SAP Public Services, Inc. is a wholly-owned subsidiary of SAP America, Inc.

15 12. Defendant Culver is a resident of and domiciled in Marin County, California and is
16 currently employed as a Client Services Executive with SAP Public Services, Inc. At all times
17 relevant to this litigation and until July 6, 2007, Culver served as the Assistant Auditor-Controller
18 for the County. At all times relevant to this litigation and until March 1, 2007, Culver served as
19 the County's Project Director.

20 **JURISDICTION AND VENUE**

21 13. Pursuant to Section 410.10 of the California Code of Civil Procedure, this Court has
22 personal jurisdiction over Deloitte, a limited liability partnership that does business in the State of
23 California; SAP America, Inc., a corporation that does business in the State of California; SAP
24 Public Services, Inc., a corporation that does business in the State of California; and Ernest W.
25 Culver, a resident domiciled in the State of California.

26 14. Venue is proper in this Court because the defendants' liability arises from
27 misconduct that took place in Marin County, California, and because Culver is a resident of and
28 domiciled in Marin County.

STATEMENT OF FACTS

I. **The Racketeering Enterprise**

A. **The Scheme**

15. This action arises from a pervasive, unlawful and continuing fraudulent scheme that has targeted and severely harmed the County, as well as other public sector entities in Los Angeles, California; San Antonio, Texas; Colorado; and Miami-Dade County, Florida.

16. As part of the scheme perpetrated on the County, Deloitte, with the knowledge, support and assistance of the SAP Defendants, intentionally misrepresented its skills and abilities to induce the County to enter into a multi-million dollar contract to implement SAP for Public Sector software.

17. Recognizing that the County is a public sector entity with little or no prior knowledge of SAP software or experience with complex ERP implementations, Deloitte, with the endorsement of the SAP Defendants, secured the County's reliance with pre-contract representations of Deloitte's "exceptional" and "unmatched" ability to lead, manage and deliver a successful SAP for Public Sector implementation.

18. As part of the scheme, Deloitte -- with the knowledge and approval of the SAP Defendants -- touts itself to prospective public sector customers as a "premier SAP Partner" (as it did to the County). The SAP Defendants, in turn, vouch for Deloitte's "depth of qualified resources" (as it did to the County); market Deloitte to prospective customers as the "go-to team" with "excellent capabilities" and a "significant edge in industry, functional, and geographic market knowledge, experience, and competency" (as it did to the County); and endorse Deloitte as a "Global SAP Partner" (as it did to the County), routinely bestowing upon Deloitte numerous awards and accolades, including the "SAP Services Partner Award of Excellence." Deloitte further represents that (a) its public sector practitioners are "specialists;" (b) "its SAP practice is deeply experienced;" and (c) its consultants possess a "thorough understanding" of government programs and operations.

19. In their marketing materials, the SAP Defendants further lure prospective Deloitte customers (as it did to the County) by assuring them that a decision to hire Deloitte and license the

1 SAP software offers them the opportunity of “[I]everaging the full range of SAP software
2 capabilities – and Deloitte’s depth and breadth of skills and services.”

3 20. As an inducement to contract, the Deloitte and the SAP Defendants market their
4 “alliance” and “collaboration” as a “benefit to our customers.” Yet far from collaborating to
5 benefit the County, the Deloitte and the SAP Defendants used their “alliance” to defraud the
6 County out of millions of dollars in fees.

7 21. Once Deloitte and the SAP Defendants fraudulently induced the County into hiring
8 them, and Deloitte commenced work on the implementation project, Deloitte and the SAP
9 Defendants continued the scheme by attempting to conceal from the County that Deloitte, in truth
10 and in fact, did not have the ability or intention to deliver the skilled resources -- critical to
11 properly implementing the SAP for Public Sector software -- that Deloitte and the SAP Defendants
12 represented Deloitte had.

13 22. During this part of the scheme, Deloitte and the SAP Defendants, in concert with
14 each other and others, intentionally concealed problems on and risks to the Project so that they
15 remained hidden from the County until after the SAP system, defectively designed and
16 implemented by Deloitte, went live, by which time Deloitte had already received substantial
17 payment for its defective implementation work, and SAP had received licensing fees for the SAP
18 for Public Sector software.

19 23. To carry out this part of the scheme and ensure that the County went live on the
20 scheduled go-live dates, Deloitte and the SAP Defendants jointly undertook to silence an SAP
21 employee who had raised concerns about defects with Deloitte’s implementation work.

22 24. As a further part of the scheme, Deloitte also engaged in a practice of “under-
23 testing” to ensure that system defects did not come to light prior to the go-live. As part of this
24 practice, used by Deloitte to defraud the County and other public sector entities, Deloitte
25 deliberately failed to test “negative scenarios” and the kind and quantity of transactions necessary
26 to confirm that the system, as designed and configured by Deloitte, could meet complex public
27 sector requirements. Instead, Deloitte conducted truncated, simplistic and incomplete tests that
28 were intended to produce positive results to create the false impression, prior to the go-lives, that

1 the SAP system was in fact ready for production. As a result, the County agreed to proceed on the
 2 go-live dates, Deloitte secured payment of its fees and the flaws and defects in the SAP system
 3 only became fully known after they were running in a live production environment.

4 25. After the defective and malfunctioning SAP system went live and the County was
 5 unable to use the system to operate its core processes, Deloitte and the SAP Defendants offered to
 6 provide costly "post-production support" to address the problems plaguing the SAP system --
 7 problems stemming directly from Deloitte's failure in the first instance to provide the County with
 8 skilled consultants with the requisite SAP and public sector experience.

9 26. The scheme pursued by Deloitte and the SAP Defendants further involved the
 10 bribery of and other corrupt dealings with Culver, who was the County's Project Director.
 11 Specifically, Deloitte and the SAP Defendants concealed problems with the County's
 12 implementation by unlawfully influencing Culver, inducing him with promises of employment in
 13 the private sector and other consideration in exchange for his approval of Deloitte's deficient work
 14 and ensuring the payment of Deloitte's and SAP Public Service, Inc.'s fees. In addition to
 15 obtaining approval of Deloitte's deficient work and payment of unjustified invoices, Deloitte also
 16 had Culver cause the County to enter into additional contracts with Deloitte and SAP Public
 17 Services, Inc., enabling them to obtain even more fees.

18 B. The Enterprise Members

19 27. The illegal scheme, further described below, was devised and executed by an
 20 association-in-fact (the "Enterprise") comprising, among others:

21 a. Deloitte

22 28. Deloitte is the consulting arm of Deloitte & Touche USA LLP, the U.S. member of
 23 Deloitte Touche Tohmatsu, which is considered to be the largest consulting provider in the world.
 24 For its 2010 fiscal year, Deloitte Touche Tohmatsu announced aggregate member firm revenues of
 25 \$26.6 billion, with revenue from its consulting divisions reported at \$7.5 billion, amounting to a
 26 15% increase in consulting revenues compared to the prior year. A 33% growth in technology
 27 integration revenues and a 38% growth in public sector revenues were also reported.

28

1 b. The SAP Defendants

2 29. The SAP Defendants are subsidiaries of SAP AG ("SAP"), a German software
3 corporation and the world's largest provider of ERP software applications. In the first quarter of
4 2010, SAP reported a 97% increase in profit after tax and achieved a €387 million gain, almost
5 double the €196 million that the software giant posted in the first quarter of the previous year.

6 30. Nearly half of SAP's revenues derive from recurring maintenance and support fees
7 recouped from customers who pay perpetual licensing fees to use the SAP software. It is reported
8 that annual software maintenance and support fees, which are typically 20% or more of the initial
9 software licensing fee, generate "twice as much revenue as software sales—and all of the profits."
10 In 2009, SAP Public Services, Inc., the SAP America, Inc. subsidiary devoted primarily to
11 developing software for public entities, earned more than €269 in revenues.

12 c. Other Enterprise Members

13 31. The Enterprise also includes other members, known and unknown, who participate
14 in and facilitate the scheme. With respect to the County, Deloitte engaged in corrupt dealings with
15 Culver, the County's Project Director. Specifically, Deloitte bribed Culver with promises of
16 employment and other forms of consideration, in exchange for Culver's assistance in concealing
17 Deloitte's deficient work from County officials and causing the County to enter into contracts with
18 Deloitte and SAP Public Services, Inc. Culver agreed to participate in the scheme, using his
19 position to make, and influence the County to make, decisions that were not in the County's
20 interest, that wrongfully benefitted Deloitte and the SAP Defendants and that caused the County to
21 suffer great harm.

22 C. The Enterprise's Targets

23 32. The targets of the Enterprise are federal, state and municipal entities, typically with
24 little or no prior knowledge of SAP -- like the County -- which rely on Deloitte to provide the
25 requisite skilled resources to deliver fully functioning SAP for Public Sector systems able to
26 operate basic and core business processes for public sector entities.

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1 a. The County

2 33. The County is one of nine northern California Bay Area counties located across the
3 Golden Gate Bridge from San Francisco. The legislative and executive body of the County
4 consists of an elected Board of Supervisors ("BOS"), which appoints the County Administrator
5 who is responsible for implementing BOS decisions, preparing the County budget, providing
6 Supervisors with the information they need to make decisions, and coordinating the administration
7 of County government.

8 34. Serving a population of approximately 250,000 residents, the County provides its
9 constituents with regional services (such as libraries and parks), municipal services (such as police
10 and fire protection) and state-established health care, welfare and other benefits. The County is the
11 one of the largest employers in the region, with approximately 2,500 employees on its payroll, and
12 also provides retirement benefits to pensioners.

13 35. The financial management, payroll and human resources ("HR") systems are the
14 administrative backbone of the County and provide the essential infrastructure for carrying out the
15 County's government business.

16 b. Other Public Sector Victims

17 36. In addition to the County, other victims of the Enterprise (as described more fully
18 below) have included the Los Angeles Unified School District ("LAUSD"), the City of San
19 Antonio ("San Antonio"), the Colorado Department of Transportation ("C-DOT") and the Miami-
20 Dade County Public Schools ("M-DCPS").

21 II. Racketeering Scheme And Unlawful Conduct
22 Perpetrated On The County By Defendants

23 A. Deloitte And The SAP Defendants Employ A Deceptive
24 Sales Strategy To Fraudulently Induce The County's Software
25 License And Implementation Contracts

26 37. In 2004, the County concluded that replacement of its then-existing largely manual,
27 fragmented and aging financial management, payroll and HR systems with a single ERP software
28 system would improve its internal efficiency and ability to serve its constituents. The project to
implement the ERP system at the County was referred to as MERIT ("Marin Enterprise Resource

1 Integrated Technology”).

2 38. Given the complex operational processes and functional requirements unique to
3 public sector entities, and because the County had no prior experience implementing an ERP
4 system, the County knew that it had to rely entirely on a software consulting firm to provide the
5 necessary resources, skills and experience to lead, manage and deliver a successful ERP
6 implementation.

7 39. In April 2004, the County issued a Request for Proposal (“RFP”) seeking responses
8 only from those software integrators with “proven experience” in successfully installing and
9 implementing ERP systems in public sector environments similar in size and scope to the County.

10 40. Recognizing that the success of the Project depended on the capabilities of the
11 consultants assigned and their experience implementing the chosen ERP software, the integrator
12 selection process was structured so that the various consulting firm candidates would team up with
13 an ERP vendor of their choosing to pitch for the Project.

14 41. On or about June 7, 2004, Deloitte and SAP Public Services, Inc. jointly submitted
15 a response to the RFP, proposing that the County select the SAP for Public Sector software and
16 hire Deloitte to implement the new ERP system.

17 42. Deloitte knew that the County’s primary criterion for retaining a systems integrator
18 was requisite public sector software implementation skills. Determined to obtain an
19 implementation and licensing agreement, respectively, Deloitte and the SAP Public Services, Inc.
20 falsely represented in the RFP response that Deloitte had the ability and intention to provide the
21 County with consultants who had “in-depth understanding of government programs” and “deep
22 experience with SAP implementations for state and local government.”

23 43. Throughout the months-long integrator/software selection process, at meetings and
24 software demonstrations attended by the County, Deloitte and SAP Public Services, Inc. that took
25 place in or about September 13-16, 2004 and November 12, 2004 (the “September and November
26 Meetings”), Deloitte, with the support and approval of the SAP Defendants, repeatedly
27 misrepresented its skills and experience, falsely assuring the County that, as stated in the RFP
28 response, Deloitte had “assembled a highly skilled and experienced public sector-knowledgeable

1 project team" to work on the Project.

2 44. At the September and November Meetings, which took place, respectively, at the
3 Embassy Suites Hotel, 101 McInnis Parkway in San Rafael, California and at the Marin Center, 10
4 Avenue of the Flags in San Rafael, in response to the County's concerns regarding the experience
5 level of its consultants, Deloitte director Mark Seidenfeld ("Seidenfeld") repeatedly and falsely
6 represented that Deloitte (a) had the required resources, with "deep public sector expertise,"
7 necessary "to lead the County" through a successful implementation; (b) had assembled a "veteran
8 team" of skilled SAP for Public Sector consultants for the Project; (c) would obtain specialists
9 from outside Deloitte, if necessary; and (d) was providing the County with its "A team."
10 Seidenfeld made these oral representations to County officials, including Mark Reisenfeld,
11 Mathew Hymel, the current County Administrator ("Hymel"), Heather Burton ("Burton"), Laura
12 Armor ("Armor") and Katie Gaier ("Gaier"). At the November Meeting, Seidenfeld further
13 assured Armor that Deloitte manager Michelle Shuttleworth ("Shuttleworth") was part of the team
14 that Deloitte had assembled for the Project.

15 45. As described below, the foregoing representations by Seidenfeld were false, and
16 were part of the "bait-and-switch" sales strategy employed by Deloitte to induce the County to
17 enter into Project contracts.

18 46. Deloitte's oral misrepresentations to the County were not limited to those made by
19 Deloitte director Seidenfeld. Deloitte managers Steve Brooks ("Brooks") and Shuttleworth, who
20 were introduced by Seidenfeld at the September and November Meetings and were presented as a
21 Deloitte senior manager and manager, respectively, with apparent authority to speak on Deloitte's
22 behalf, also falsely assured County officials, including Reisenfeld, Hymel, Burton, Armor and
23 Gaier, that (a) Deloitte had staffed the Project team with experienced SAP for Public Sector
24 consultants, and (b) each of them would be dedicated as full-time leaders of the Deloitte Project
25 team, from the beginning of the Project through the implementation. These statements, which
26 Brooks and Shuttleworth made at the September and November Meetings, were false.

27 47. The oral misrepresentations by the above Deloitte officials at the September and
28 November Meetings were coupled with written misrepresentations, contained in the RFP response

1 submitted by Deloitte and SAP Public Services, Inc., that Deloitte had assembled an "outstanding,"
2 "seasoned team with deep SAP, public sector and functional experience," "exceptional government
3 skills" and "proven methods," for successfully implementing the SAP for Public Sector software at
4 the County.

5 48. In the written RFP response, Deloitte and SAP Public Services, Inc. also falsely
6 represented that Deloitte was committed to dedicating its "best resources" to the Project, and
7 described Deloitte as "unmatched in terms of our bench strength to draw additional resources
8 where required."

9 49. Concerning Deloitte's purported skills, experience and expertise in SAP software,
10 its qualifications to act as the systems integrator and its commitment to the County, the false and
11 misleading statements of past and existing fact contained in the RFP response submitted by
12 Deloitte and SAP Public Services, Inc. to the County on or about June 7, 2004, included, among
13 others, the following:

- 14 (a) "... we are uniquely qualified in our understanding of County issues and
15 challenges ..."
- 16 (b) "... deep experience with SAP implementations for state and local
17 government."
- 18 (c) "[W]e have assembled a highly skilled and experienced public sector-
19 knowledgeable project team to work with you."
- 20 (d) "[W]e provide experienced consultants who have both breadth across
21 SAP modules and depth within SAP modules combined with
22 implementation experience in public sector organizations."
- 23 (e) "[A] seasoned team with deep SAP, public sector and functional
24 experience."
- 25 (f) "The breadth of our capability and our understanding of the County is
26 unmatched."
- 27 (g) "Commitment to dedicate our best resources and bring tailored
28 implementation strategies to meet your long-term needs."

- 1 (h) "Deep bench strength."
- 2 (i) "An experienced team that has worked together before."
- 3 (j) "Every one of [our North American] installations is a solid client
- 4 reference."
- 5 (k) "Among Deloitte Consulting's greatest strengths is the integration of all
- 6 aspects of ERP implementations."
- 7 (l) "To meet the needs of public sector clients, we are able to draw upon the
- 8 experience of a full range of public sector specialists in every area."
- 9 (m) "Deloitte Consulting is absolutely committed to the success of this
- 10 project."
- 11 (n) Deloitte and SAP Public Services, Inc. "have a winning solution, a proven
- 12 implementation approach, and the strong project team needed to meet your
- 13 requirements and objectives."

14 50. As described below, the consultant team that Deloitte assembled and assigned to the
15 Project was in truth and in fact anything but "seasoned," and lacked fundamental SAP, public
16 sector and ERP implementation skills. Indeed, the Deloitte Project team was so inexperienced that
17 many of the Deloitte consultants, including Sheetal Patel ("Patel"), attended the same SAP "boot
18 camp" training programs that County Project team members attended. Nor did Deloitte have a
19 "full range of public sector specialists in every area," as was represented to the County. At no time
20 during the Project was Deloitte able, or willing, to provide the County with consultants who had
21 knowledge of SAP's Grants, Fixed Assets or Accounts Payable modules, because Deloitte never
22 had this capability in the first place, and had no intention, because it had no financial incentive, to
23 secure these specialists from sources outside of Deloitte.

24 51. The representations by Deloitte and SAP Public Services, Inc. in their joint RFP
25 response concerning Deloitte's purported skills and experience were false, and were made to
26 induce the County to enter into contracts with Deloitte and SAP Public Services, Inc., even though
27 Deloitte and the SAP Defendants knew, or were reckless in not knowing, that the
28 misrepresentations concerning Deloitte's "bench strength" and ability to provide SAP for Public

1 Sector specialists for the Project were false.

2 52. The SAP Defendants, through SAP account executive Peggy Phelps ("Phelps"),
3 among others, collaborated with Deloitte director Seidenfeld and Deloitte manager Brooks to
4 deceive the County into believing that Deloitte's "partner" status with the SAP Defendants would
5 ensure that Deloitte had the requisite SAP for Public Sector experience, when Phelps knew, or was
6 reckless in not knowing, that Deloitte lacked such capabilities.

7 53. As a result of this fraudulent sales campaign, on or about March 29, 2005 the
8 County entered into the Implementation Services Agreement (the "ISA") with Deloitte and the
9 Software License Agreement (the "SLA") with SAP Public Services, Inc. In deciding to retain
10 Deloitte as the systems integrator and license the SAP for Public Sector software, the County relied
11 on the misrepresentations in the jointly submitted RFP response, those made at the September and
12 November meetings and the "clear partnership" between Deloitte and the SAP Defendants.

13 54. In or about May 2005, Deloitte dispatched its consultants to commence work on-
14 site at the County's offices. The Project timeline set by Deloitte and incorporated in the ISA
15 provided for a phased approach under which: (a) the new SAP system running the County's
16 financials would be implemented by July 3, 2006 ("Release I"), and (b) the County's payroll and
17 HR processes would be operating on the new SAP system by January 3, 2007 ("Release II").

18 **B. Defendants' Campaign Of Misrepresentation And Concealment**
19 **During The Project**

20 55. Soon after its work on the Project commenced, Deloitte began to field complaints
21 from the County that Deloitte had not provided sufficiently skilled consultants to the Project. The
22 County demanded that Deloitte immediately replace its assigned Project manager, Sam Parikh
23 ("Parikh"), and assign skilled consultants.

24 56. Deloitte agreed to replace Parikh with Brooks (who was presented to the County
25 during the sales cycle as Deloitte's proposed Project manager) and assured the County that it had
26 and would assign appropriately skilled consultants to the Project.

27 57. Notwithstanding Deloitte's representations, as the Project continued, Deloitte failed
28 to provide consultants with the skills necessary to ensure a successful implementation. Instead,
Deloitte aggravated the problems on the Project caused by its inexperienced consultants by

1 constantly shuffling its personnel on to and off of the Project.

2 58. Contrary to Deloitte's written pre-contract misrepresentations and the oral
3 misrepresentations identified above, the consultants Deloitte assigned to the Project were not part
4 of the purportedly experienced consultant team that Deloitte and its authorized representatives had
5 touted to the County during Deloitte's sales campaign. An important consideration in the
6 County's decision to hire Deloitte was Seidenfeld's pre-contract representation that Deloitte would
7 assign Deloitte manager Shuttleworth to the Project. Yet Shuttleworth only worked for a single
8 day on the Project, and half of the team members specifically identified by Deloitte in the written
9 materials it presented to County personnel at the pre-contract meetings described above never
10 showed up to work on the Project.

11 59. Instead of assigning skilled consultants with SAP and public sector experience,
12 Deloitte staffed the Project with dozens of neophyte consultants, many of whom lacked even a
13 basic understanding of SAP.

14 60. Through this "bait-and-switch" sales technique, Deloitte induced the County into
15 hiring Deloitte in the belief that, based on Deloitte's specific representations, Deloitte had the
16 ability and intention to assign competent SAP for Public Sector-experienced personnel to the
17 Project. In fact, at the time it made these pre-contract representations, Deloitte knew that it had
18 nowhere near a sufficient number of consultants with the requisite skills and experience to deliver
19 a successful implementation, and Deloitte knew that it had no intention (because, among other
20 things, it had no capability or financial incentive) to source and assign such consultants to the
21 Project. The SAP Defendants knew, or were reckless in not knowing, that Deloitte's pre-contract
22 representations were false.

23 61. As the months progressed, the Project fell further behind schedule and the Deloitte
24 consultants struggled to complete the design of the financial system in order to meet the scheduled
25 Release I go-live date.

26 62. Although the County did not know it at the time, the functional specifications and
27 design documents prepared by the Deloitte consultants were incomplete, deficient and poorly
28 designed. The configuration decisions of Deloitte's consultants were likewise deficient and

1 flawed. Deloitte's design, programming and configuration failures were attributable directly to its
2 consultants' lack of SAP and public sector skills, their unfamiliarity with the SAP for Public
3 Sector product and functionality and their ignorance of, and failure to employ, SAP for Public
4 Sector best practices.

5 63. Deloitte knew that the inexperienced consultant team it assigned to the Project was
6 incapable of delivering a successful implementation, yet continued to reassure the County that
7 Project risks were being managed and that the Release I go-live should proceed as scheduled.
8 The SAP Defendants knew, or were reckless in not knowing, that the Deloitte Project team was
9 incapable of correctly implementing the SAP for Public Sector software for the County. Yet, at no
10 point during the Project did either Deloitte or the SAP Defendants take any action to remedy, or
11 alert the County to, Deloitte's deficient work on the Project, even though both knew that the
12 inexperienced Deloitte team posed a grave risk to the Project and would result in serious harm to
13 the County.

14 64. Instead, Deloitte and the SAP Defendants unlawfully conspired and agreed to
15 intentionally conceal these deficiencies and, through fraudulent misrepresentations, convince the
16 County that the Project could and should proceed on schedule in order to ensure that Deloitte
17 collect its contract fees and that SAP Public Services, Inc. secure the prospect of perpetual
18 licensing; support and maintenance fees.

19 65. In or around January 2006, County Project manager Natalee Hillman ("Hillman")
20 raised concerns about the Deloitte Project team's capabilities with SAP consultant Hans Christian
21 Metz ("Metz"). Metz was not staffed on the Project, but was familiar to Hillman because he had
22 conducted a basic SAP for Public Sector training course for County Project team members.
23 Incredibly, that training course was also attended by several purportedly SAP-experienced Deloitte
24 Project team members, including Patel, Deloitte's *de facto* lead financial consultant.

25 66. From January through March 2006, Hillman and Metz held regular discussions via
26 e-mail concerning the Project's status. Hillman would seek Metz's opinion about questionable
27 design decisions that Deloitte and the SAP Defendants were making concerning the Project, and
28 Metz would investigate the decisions within SAP and report his findings back to Hillman.

1 67. On at least one occasion, Hillman's and Metz's inquiries uncovered that Brooks
2 and SAP consultant Tamara Hillary ("Hillary") had not only made incorrect decisions concerning
3 the design of the SAP system without advising the County, but had also subsequently
4 misrepresented and concealed facts concerning the flawed design decisions to hide these mistakes
5 from the County.

6 68. When Brooks and Hillary learned that Metz had facilitated Hillman's discovery of
7 incorrect design decisions made by Deloitte and the SAP Defendants, Brooks and Hillary arranged
8 for Metz to be reprimanded by his superiors, in order to silence Metz's criticism of Deloitte and to
9 prevent the County from discovering additional problems with the implementation.

10 69. On March 10, 2006, Paul Blaney, the SAP America, Inc. engagement manager
11 assigned to the Project, warned Metz not to interfere with the Project.

12 70. In late March 2006, approximately four months before the Release I go-live, the
13 County requested that SAP assign Metz to review Deloitte's work on the County's funds
14 management module ("FM") to ensure that the Project was proceeding on schedule, as represented
15 by Deloitte. Metz conducted the one-day review on or about March 31, 2006.

16 71. During his review, Metz discovered that Deloitte had failed to activate a critical
17 switch, known as the Period Based Encumbrance Tracking ("PBET") switch, in the SAP for
18 Public Sector software, without which the system would be unable to perform a year-end close of
19 the County's financial statements.

20 72. After discovering Deloitte's blunder, Metz asked Patel why the crucial switch had
21 not been activated. Metz was specifically concerned about Patel's failure to activate the switch
22 because, during the SAP for Public Sector training course, Metz had specifically instructed Patel
23 about the importance of activating this switch. Patel responded by claiming that the County had
24 requested the switch be deactivated because deactivation made testing of the SAP system quicker
25 and easier. Patel's statement was false, as no County Project team member had ever made such a
26 request.

27 73. Rather, Patel deactivated the switch to enable less rigorous testing of the SAP
28 system and mask severe deficiencies with Deloitte's design of the financial module so that the

1 County could be deceived into agreeing to proceed with the Release I go-live as scheduled.

2 74. Although Metz's review was intended to be limited to Deloitte's design of the FM
3 module, in the short time he was on-site, Metz also uncovered gross deficiencies in Deloitte's set-
4 up of the Fixed Assets module. Metz documented the problems he found with Deloitte's work in
5 an 11-page report (the "Solution Review") which he submitted to his superiors at SAP on or about
6 April 3, 2006.

7 75. On or about April 17, 2006, after the SAP Defendants made several rounds of edits,
8 the Solution Review was released to the County.

9 76. On or about May 12, 2006, Brooks, at the County's request, responded to the
10 problems highlighted by the Solution Review. In his response, which was sent by e-mail to
11 Culver and copied to Deloitte director Seidenfeld, Brooks intentionally misrepresented and
12 minimized the depth and extent of the problems identified by Metz.

13 77. Deloitte further failed to remedy the gross deficiencies in its set-up of the Fixed
14 Assets module, which ultimately resulted in serious problems with the County's financial
15 management processes after the Release I go-live.

16 78. Instead of following Metz's recommendations and encouraging his continued
17 participation in the Project, in or around May 2006, Brooks arranged a conference call with Metz
18 and Phelps, during which Brooks and Phelps warned Metz to cease all communication with the
19 County concerning the Project.

20 79. During the call, Metz tried to explain to Brooks and Phelps that there were serious
21 deficiencies in Deloitte's work that required correction before the County could go live with
22 Release I. Metz warned that Deloitte and the SAP Defendants should advise the County to stop,
23 or at the very least delay, the Project timetable to allow for remediation work and further testing of
24 the system. Brooks and Phelps intentionally withheld Metz's admonition from the County.

25 80. From that point on, as his e-mail correspondence reflects, Brooks kept careful
26 watch over Metz in an effort to make sure that he did not raise issues with Deloitte's performance
27 on the Project and interfere with the scheduled Release I go-live date.

28 81. Despite having been made aware of serious defects with Deloitte's design of the

1 SAP system, Deloitte and the SAP Defendants failed to alert County officials to the severe
2 problems that would ensue upon the Release I go-live.

3 82. Instead, Brooks and Seidenfeld recommended to Hymel that the County proceed
4 with the go-live as originally scheduled, and falsely assured Hymel that the SAP system was able
5 to operate the County's financial processes. Relying on Deloitte's representations, Hymel
6 authorized the Release I go-live.

7 83. On July 3, 2006, the County's core financial operations went live on SAP. Almost
8 immediately, the new SAP system began experiencing significant cash reconciliation and financial
9 posting issues, and was unable to accurately account for and track the County's flow of funds.

10 84. As a result of these cash reconciliation and posting issues -- and Deloitte's failure
11 to properly design the County's chart of accounts -- the County lacked even the most basic
12 financial reporting capabilities. In fact, the County could not rely on the new SAP system to
13 produce a simple balance sheet, much less required federal and state year-end financial reports.

14 85. Unable to use the SAP system to perform its month-end or year-end closings, the
15 County was forced to perform such essential financial operations manually. It was not until
16 November 2008 -- nearly a year and a half after the County's fiscal year ended -- that the financial
17 statements for the fiscal year ended June 30, 2007 were in a condition for the County's external
18 auditors to begin their audit. Those audited financial statements were not issued until April 21,
19 2009.

20 86. The inability of the SAP system to produce financial statements also jeopardized
21 the County's relationships with its vendors, auditors, bond rating agencies, banks, and others in
22 the financial markets, and placed the County at risk in connection with borrowing rates and debt
23 issuances.

24 87. Other critical pieces of required functionality missing from the SAP system after
25 the go-live included 1099 tax reporting functionality (which Deloitte simply failed to configure)
26 and grant management (notwithstanding the County's repeated requests, Deloitte failed to assign
27 any consultants to the Project with the appropriate experience to implement the SAP Grant
28 Management module).

1 88. In addition to these core deficiencies, other problems with the SAP system
2 following the Release I go-live included: (a) an improperly designed general ledger account
3 structure, which impaired the County's ability to manage its cash; (b) missing "positive pay"
4 functionality, which impaired the County's ability to guard against fraudulent check cashing; (c)
5 an incorrect configuration of the Fixed Assets module, which led to incorrect posting of
6 depreciation entries and impaired the County's ability to perform fixed asset accounting; (d) an
7 incorrect configuration of the Controlling module, which impaired the County's ability to provide
8 critical operational data to County management; (e) missing required treasury functionality,
9 including the Treasurer's Constant application, which prevented the County from performing cash
10 to fund reconciliations; (f) incomplete configuration of the Accounts Payable module; (g) missing
11 functionality needed to generate billing documents from work orders; (h) missing functionality
12 necessary to generate W2 and quarterly taxes; and (i) double posting of inventory. Many of the
13 Release I financial components of the SAP system had to be re-designed and re-implemented after
14 Deloitte's departure from the Project.

15 89. Despite the severity of the problems with the Release I go-live, Deloitte, through
16 Seidenfeld and Brooks, insisted on moving forward in accordance with the original Project
17 timetable, maintaining the January 2007 Release II go-live date, instead of focusing efforts on
18 repairing the County's badly damaged financial management system.

19 90. Seidenfeld and Brooks knew that proceeding with the scheduled Release II go-live
20 posed grave risks to the County, but, in conscious disregard of those risks, continued the scheme,
21 aided by the SAP Defendants, to conceal Project risks from the County to ensure that the County
22 proceed with the implementation and that Deloitte receive the remainder of its fees under the ISA.

23 91. To that end, Deloitte defrauded the County of its right to receive honest services
24 from the County's lead officer on the Project, Culver. Bribing Culver with promises of
25 employment and expensive dinners, Deloitte was able to wrongfully use Culver to complete its
26 scheme of concealing Project risks from County officials long enough for Deloitte to get paid and
27 reap millions of dollars from the failed Project.

28

1 **C. Deloitte Recruits Culver**

2 92. As the Project proceeded into the fall of 2006, Deloitte faced increased scrutiny
3 from County team members, who raised questions concerning the apparent failures of Release I.
4 As a result, doubts began to surface among County employees whether the Release II go-live
5 should proceed as scheduled.

6 93. When Deloitte and the SAP Defendants came to realize that it would be difficult, if
7 not impossible, for them to convince the County to proceed with Release II, Deloitte broadened
8 the scope of the Enterprise by recruiting Culver, through bribery.

9 94. In or around October 2006, Hymel initiated internal discussions concerning the
10 transfer of control of the Project from the Office of Auditor-Controller, where Culver worked as
11 the Assistant Auditor-Controller, to the Department of Information Services Technology ("IST"),
12 headed by IST Director David Hill ("Hill"). The official date of the transfer was set for March 1,
13 2007.

14 95. Culver was angered by Hymel's intention to transfer control of the Project, and
15 chronicled his anger -- as well as his corrupt dealings with Deloitte -- in contemporaneous writings
16 he kept during the Project. In his writings, Culver referred to the transfer as a "power grab" that
17 put him "over the edge." Days later, Culver wrote that he went "out for a drink and got a lot of
18 info about Deloitte" from Deloitte manager Kirsten Mecklenburg ("Mecklenburg") because he
19 "might as well start working on an exit strategy."

20 96. Seizing on Culver's disappointment with the eventual transfer of Project
21 stewardship from his office, Deloitte engaged Culver in the Enterprise, using bribery to influence
22 him to conceal Project risks from the County and promote Deloitte's interests, to the County's
23 detriment.

24 97. On or about November 3, 2006, Mecklenburg sent Culver an e-mail invitation to
25 dinner at Masa's, a premier San Francisco restaurant. At the time Mecklenburg invited Culver to
26 dinner, she was aware of Culver's mounting disaffection with the County and his interest in
27 working for a private-sector software consulting firm, such as Deloitte.

28 98. Culver accepted the dinner invitation and, on or about November 9, 2006,

1 Mecklenburg and Culver, joined by Brooks, dined at Masa's. Culver described the dinner as
2 follows: "...finally the day ended great with a dinner at Masa with Steve and Kirsten. After a
3 really hard day, it was a great finish. 5 hours, \$200 each!"

4 99. In or about December 2006, Phelps asked Culver to act as a reference for SAP by
5 speaking to officials in Jefferson County, Alabama. Culver and Brooks had a lengthy call with the
6 Alabama officials. At precisely the same time that Culver was serving as an SAP reference,
7 touting SAP in order to assist Brooks, Phelps and SAP in SAP's Jefferson County bid, Culver was
8 simultaneously describing the Project as "a shopping cart careening down the hill."

9 100. As reported in the media, SAP ultimately landed Jefferson County's Public Sector
10 project, but the \$12 million implementation was a failure. Jefferson County is now considering
11 pulling the SAP system, cutting its losses and releasing itself from what analysts have
12 characterized as a "staggering" \$2.5 million in annual SAP maintenance fees. During the
13 remainder of the Project, at the SAP Defendants' request, Culver continued to serve as a reference
14 for other potential SAP Public Sector customers.

15 101. One month after the \$600 dinner at Masa's, on or about December 7, 2006, Culver
16 spent over an hour speaking with Deloitte director and partner Nick Chiominto ("Chiominto")
17 about the possibility of working for Deloitte. Chiominto was the Quality Assurance partner
18 assigned by Deloitte to the Project, *i.e.*, the very Deloitte partner responsible for alerting the
19 County to potential and actual Project risks, and, where necessary, mitigating and managing those
20 risks. Culver recorded the meeting with Chiominto as follows:

21 . . . then I spent 1 ½ hours with Nick Chimento [sic] from Deloitte. We discussed
22 the project status and I asked him about working for Deloitte. He thought I would
23 be an excellent fit and he spent some time telling me about the various options. We
24 left it when I said I would spend some time over the next few weeks thinking about
25 what I am interested in . . .

26 102. Several weeks later, on Friday, December 22, 2006, following up on Chiominto's
27 discussion with Culver described above, Mecklenburg advised Culver of an available position at
28 Deloitte. Culver summarized the discussion as follows:

1 Then I talked to Kirsten about my conversation with Nick. She also said the SRM
2 [Strategic Relationship Manager] position was right for me, and not only that, the
3 SRM position in San Francisco is available, and not only that, Nick supports me and
4 thinks that would be a great position for me! Wow, that really made my day and I
5 spent the evening researching SRM rather than resting my brain. It's exciting.

6 103. When Culver returned to work after that weekend, Mecklenburg obtained Culver's
7 "sign-off" approval for various work that Deloitte had failed to properly perform. Such work
8 included tasks that Brooks and Mecklenburg falsely claimed Deloitte had properly performed.

9 104. In fact, on or about December 21, 26 and 28, 2006, Mecklenburg and/or Brooks
10 succeeded in getting Culver to "sign off" on nearly one-third of the Project Deliverable Approval
11 Forms (the "Deliverables"), each representing discrete work product that Deloitte was supposed to
12 have completed at various phases during the course of the Project.

13 105. Much of the work described in these Deliverables had been purportedly completed
14 by Deloitte for more than one year. Yet Brooks and Mecklenburg presented these Deliverables to
15 Culver as the Project was drawing to end because they knew that Culver would approve them,
16 irrespective of whether the Deliverables had in fact been properly performed, in exchange for past
17 and future material benefits offered by Deloitte to Culver. As described by Culver, he
18 participated in Deloitte's efforts to "get [the Deliverables] all ticked and tied" in order to "wrap up
19 the project."

20 106. Indeed, Culver signed no fewer than 15 Deliverables during this three-day period.
21 With the signature of each Deliverable, Culver represented to the County and the public that the
22 work described in each document had been satisfactorily completed by Deloitte. However, at the
23 time he signed these documents, Culver knew that the representations he was making were false
24 and that the work described in the Deliverables had been sub-standard, delinquent, deficient and/or
25 incomplete, and, in some cases, had been previously rejected by other County employees.

26 107. Such Deliverables included:

- 27 (a) DED07 (Change Readiness Assessment) – purported completed
28 in August 2005;

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- (b) DED09 (Strategic Change Plan) – purportedly completed in December 2005;
- (c) DED12 (Business Blueprint) – purportedly completed in October 2006;
- (d) DED13 (Functional Specifications) – purportedly completed in October 2006;
- (e) DED19 (Development Objects);
- (f) DED22 (Integration Test and Cutover Plan) – purportedly completed in June 2006;
- (g) DED24 (Completed System Testing) – purportedly completed in July 2006;
- (h) DED26 (Executed Cutover) – purportedly completed in July 2006;
- (i) DED28 (Converted Beginning Balances) – purportedly completed in September 2006;
- (j) DED33 (Project Scope) – purportedly completed in January 2006;
- (k) DED35 (Project Team Training Plan and Initial Training) – purportedly completed in March 2006;
- (l) DED36 (Stakeholder Analysis) – purported completed in June 2006;
- (m) DED38 (Functional Specifications) – purportedly completed in July 2006;
- (n) DED41 (Role-to-Position Mapping) – purportedly completed in October 2006 and;
- (o) DED43 (Development Objects) – purportedly completed in January 2007.

108. In addition to the sham “sign-off” documents, Culver also made oral misrepresentations to County officials concerning the status of the Project, to induce the County to proceed with the Release II go-live. For example, on or about December 29, 2006, despite describing his day on the Project as “hell,” Culver told Hymel “that generally things were going

1 well.”

2 109. In reliance on Culver’s written and oral misrepresentations concerning the status of
3 the implementation, as well as similar representations made by Brooks and Seidenfeld to Hymel
4 and other County officials, the County proceeded with the Release II go-live as scheduled.

5 110. Within hours after the Release II go-live, the SAP system began to fail. Payroll
6 discrepancies were especially crippling, as the County’s payroll error rate increased five-fold on
7 the SAP system, compared to the County’s legacy systems. Payroll problems became so severe
8 that the County was unable to rely on the SAP system for its payroll functions and had to perform
9 much of the work manually.

10 111. Major defects and problems with the Release II components of the SAP system
11 included, among others: (a) incorrect calculation of County employee pay, including both
12 underpayments and overpayments; (b) incorrect calculation of retirement benefits, including
13 underpayments, overpayments and, in some cases, failure to make any payments; (c) inability to
14 generate crucial payroll and human resources reporting; and (d) deficiencies with time sheet
15 reporting functionality, which enabled employees to record time worked in excess of the standard
16 working day.

17 112. Even after the disastrous Release II go-live, Deloitte continued to obtain Culver’s
18 approval of Project Deliverables to secure what amounted to an insurance policy for Deloitte to
19 attempt to insulate itself from liability once the County became aware of Deloitte’s fraudulent
20 scheme. Deloitte knew that each Deliverable it was able to influence Culver to sign would
21 strengthen Deloitte’s position that responsibility for any problems with the SAP system rested
22 with the County, since all of Deloitte’s deliverables were “approved” before its work on the
23 Project ended. For his part, Culver was eager to sign the Deliverables for Deloitte in exchange for
24 the lucrative private-sector job with Deloitte that was being dangled before him by Brooks,
25 Mecklenburg and Chiominto, among other Deloitte executives.

26 113. Culver’s conduct was further motivated by a specific intent to injure the County,
27 based on what Culver perceived as an affront by Hymel to strip control of the Project from Culver.
28 Culver’s motivation to promote Deloitte’s interests over those of the County was summed up in

1 his writings as follows: the County "can take this system and let it fall apart. . . . It's time to move
2 on and focus on what I want."

3 114. In addition to approving all of the Deliverables that Deloitte presented to him,
4 Culver also readily approved new contracts for prospective Project work ("Change Orders") and
5 Project invoices for the purpose of ensuring that Deloitte and the SAP Defendants' fraudulent
6 scheme continued to generate still more fees.

7 115. On or about January 4, 2007, one day after the catastrophic Release II go-live and
8 at the same time that many of the deficiencies with the SAP system were beginning to surface,
9 Brooks and Mecklenburg once again invited Culver, via e-mail, to a lavish dinner in San Francisco
10 at the premier San Francisco restaurant Gary Danko.

11 116. Culver accepted the invitation and on or about January 12, 2007, Brooks and
12 Mecklenburg again treated Culver to a lavish dinner. Brooks flew in from Los Angeles for this
13 dinner, which lasted four hours, and returned to Los Angeles shortly after it concluded. Culver
14 noted the dinner in his writings:

15 Steve and Kirsten and I will go to dinner tonight, and Steve will fly up just for that.
16 . . . Dinner was at Gary Denko [sic], a high class restaurant in San Francisco. We
17 ate for 4 hours. Poor [S]teve got to bed at 1am and had to get up at 4am for a flight
18 back to Los Angeles.

19 117. Following that dinner, on or about January 15, 2007, Deloitte director H.T. Vaught
20 ("Vaught") obtained Culver's signature on a Change Order, requiring the performance of
21 additional work by Deloitte and the payment of additional fees by the County.

22 118. Several weeks later, on or about January 24, 2007, Culver and Chiominto spoke by
23 phone about Culver's interest in working for Deloitte. That same day, Culver authorized the
24 payment of various Deloitte invoices.

25 119. On or about January 25, 2007, Culver was invited to and attended another dinner
26 in San Francisco hosted by Brooks and Mecklenburg, followed by drinks at a bar.

27 120. The next day, Mecklenburg obtained four more sign-offs from Culver, approving
28 on behalf of the County additional defective and/or incomplete work product by Deloitte: DED29

1 (Production Support Issue Log) – purportedly completed in July 2006; DED37 (Business
2 Blueprint) – purportedly completed May 2006; DED45 (Integration Test, Payroll Parallel Test and
3 Cutover Plan) – purportedly completed November 2006; and DED51 (Production Support Issue
4 Log) – purportedly completed in January 2007. Again, Culver knew that the work referenced in
5 these Deliverables had not been properly performed, but approved them in exchange for the bribes
6 given and/or promised by Deloitte.

7 121. That evening, after Deloitte had obtained Culver's signature on the additional
8 Deliverables, Chiominto called Culver by telephone and requested Culver's resume, promising to
9 put Culver in touch with the appropriate people in Deloitte's San Francisco office. Culver
10 described the phone call as follows:

11 I went home about that time and Nick Chiomento [sic] called. He wants a resume
12 from me, and then he'll have me talk to the appropriate people at the head of the
13 Bay Area SRM practice. Pretty exciting.

14 122. On or about January 29, 2007, Culver approved contracts on behalf of the County
15 to retain SAP FM and inventory consultants.

16 123. On or about February 13, 2007, Chiominto advised Culver via e-mail that he had
17 arranged an interview for Culver with an important Deloitte official. Culver recounted hearing the
18 news from Chiominto:

19 I received an email from Nick saying that I could come in for an interview with
20 Deloitte SRM, which made me very happy. I didn't know rightaway [sic] with
21 whom, but I found out a couple of days later it is with Carlo Grifone, the top
22 northern California guy, and head of the client services for State of California.

23 124. Two days after Culver received news of his interview, on or about February 15,
24 2007, Vaught obtained Culver's signature on another Change Order.

25 125. On or about February 21, 2007, Vaught prepared Culver for his interview with
26 Grifone.

27 126. On or about February 26, 2007, Grifone interviewed Culver for a position at
28 Deloitte. The following day, Culver had a conversation with Brooks concerning Deloitte's

1 managerial salary structure.

2 127. On or about March 1, 2007, responsibility for the Project was officially transferred
3 from Culver to Hill and the County's IST department.

4 128. On or about March 16, 2007, Deloitte manager Mark Anderson invited Culver via
5 e-mail to lunch, at a location of Culver's choice, with Anderson and Vaught. Culver attended the
6 lunch with Anderson and Vaught on or about March 20, 2007.

7 129. Thereafter, on or about April 9, 2007, Vaught asked Culver, via e-mail, to review
8 outstanding Deloitte invoices, so that Culver could assist Deloitte in procuring payment from the
9 County. Culver agreed to assist in this effort even though -- as Deloitte was aware -- he was no
10 longer the Project Director. In his writings, Culver described Vaught's conduct on the Project,
11 during the month of April, as "going nuts, trying to get paid."

12 130. In or around April 2007, Culver deceived Hymel, County Auditor-Controller
13 Richard Arrow and new Project Director Hill into seeking BOS approval to enlarge the Project
14 budget to account for nearly \$3 million in additional consulting fees for Deloitte and SAP Public
15 Services, Inc., for services that Culver knew had been improperly performed, would be improperly
16 performed or not performed at all. Although Hymel "didn't want to provide the funding necessary
17 to keep Deloitte" on the Project, Hymel "finally relented" after being induced to do so by Culver's
18 intentional misrepresentations concerning Deloitte's and the SAP Defendants' past performance
19 on the Project.

20 131. At the same time Culver was urging the County to obtain BOS approval of \$3
21 million in additional fees for Deloitte and SAP Public Services, Inc., Culver was vividly
22 describing in his writings crippling problems that plagued the Project as a result of Deloitte's
23 deficient work:

24 Plenty of problems have surfaced, especially since I brought Gopi [external
25 consultant Chandra Gopisetty] on board. He has found all of the bad payroll
26 schema design that Deloitte did, and he highlights all the problems that need to
27 be fixed. There is a big problem where payroll wage types are not properly
28 mapped to FI and the GL accounts.

1 132. On or about April 17, 2007, as a direct result of Culver's efforts, Hill and Arrow
2 submitted a letter to the BOS, requesting that the BOS approve nearly \$3 million in additional
3 consulting fees to Deloitte and SAP Public Services, Inc.

4 133. On or about May 1, 2007, the BOS approved a contractual amendment to the ISA
5 increasing the budget for consulting fees to Deloitte.

6 134. Beginning in or around April 2007, the SAP Defendants engaged Culver in
7 discussions concerning future employment for Culver at SAP. At the same time that these
8 discussions were taking place, Deloitte was seeking Culver's approval of its deficient work and
9 Deloitte and the SAP Defendants were seeking Culver's assistance in getting their invoices paid
10 and obligating the County to pay them still more fees.

11 135. On or about April 19, 2007, Anderson invited Culver, via e-mail, to a meeting at
12 which Culver was expected to review and sign-off on Deloitte's Project Deliverables, long after
13 Culver was removed from his position as Project Director.

14 136. On or about April 20, 2007, to ensure that Deloitte obtained more sham approvals
15 of its deficient work from Culver, Anderson invited Culver, via e-mail, to a "nice dinner," paid for
16 by Deloitte and authorized by Vaught, during an SAP-related conference in Atlanta, Georgia.
17 Culver accepted the dinner. Anderson also offered to invite County Project team member and
18 employee Cathy Boffi to this dinner, but Culver rejected the offer, responding "I don't think we
19 can talk openly if Cathy is invited." Anderson replied "I agree" and promised to call Culver upon
20 arriving in Atlanta. The dinner took place on or about April 24, 2007.

21 137. Several days later, on or about April 26, 2007, Anderson obtained Culver's
22 approval on behalf of the County for additional defective Deliverables, purportedly completed by
23 Deloitte, including:

- 24 (a) DED01 (Project Plan) – purportedly completed in June 2005;
25 (b) DED40 (Configured System) – purportedly completed in January
26 2007; and
27 (c) DED50 (Tuned System) – purportedly completed in February 2007.

28 138. On or about May 1, 2007, Anderson invited Culver, via-email, to a dinner, with

1 Anderson and Vaught, at a restaurant of Culver's choice.

2 139. On or about May 4, 2007, Anderson again invited Culver, via e-mail, to a meeting
3 in which Culver was expected to review and sign-off on Deloitte's Project Deliverables.

4 140. On or about May 8, 2007, Anderson obtained Culver's approval on behalf of the
5 County for additional Deliverables, purportedly completed by Deloitte, including:

6 (a) DED23 (Production Support Plan) – purportedly completed in January
7 2007;

8 (b) DED46 (Production Support Plan) – purportedly completed in January
9 2007; and

10 (c) DED49 (Executed Cutover) – purportedly completed in February 2007.

11 141. That same evening, Anderson and Vaught took Culver out to dinner at the Buckeye
12 Roadhouse, an upscale restaurant near Sausalito chosen by Culver.

13 142. On or about May 15, 2007, Anderson attempted to convince Deloitte consultant
14 John Cannella ("Cannella") to procure sign-offs from County team member and employee Kevin
15 Yeager ("Yeager") on various testing of the SAP system that had failed. Deloitte was determined
16 to obtain these sign-offs because the County was demanding completion of this testing as a
17 prerequisite to paying Deloitte its fees. Anderson instructed Cannella via e-mail to pressure
18 Yeager if he was uncooperative.

19 143. On or about June 5, 2007, Anderson again asked Cannella via e-mail to perform the
20 same dishonest task, explicitly suggesting that Cannella "leverage [his] relationship with Kevin
21 [Yeager] to facilitate sign-off." Brooks and Vaught were copied on Anderson's email.

22 144. On or about June 19, 2007, because Cannella had been unsuccessful, Anderson
23 took it upon himself to obtain Yeager's approval of the failed SAP system tests. When Yeager
24 refused to sign-off on the tests until they were actually completed, Anderson forwarded Yeager's
25 response to Vaught with the following message: "Not the answer we were looking for. Any
26 thoughts?" Vaught instructed Anderson to obtain Culver's approval. Anderson later responded
27 that Culver had "agreed to meet for the sign-offs and for lunch afterwards."

28 145. On or about June 20, 2007, Anderson obtained Culver's approval on behalf of the

1 County for additional defective Deliverables purportedly completed by Deloitte, including DED30
2 (Lessons Learned Assessment).

3 146. On or about June 22, 2007, Anderson invited Culver to another meeting, during
4 which Culver was expected to sign the last remaining Deliverable(s) followed by lunch with
5 Anderson and Vaught.

6 147. On or about June 25, 2007, Anderson informed Vaught that "Ernest [Culver]
7 accepted my invitation to sign the final deliverables. He is also available for lunch afterward."
8 Vaught responded that he would try to fly in from Utah to attend the lunch

9 148. On or about June 28, 2007, Culver signed the Project's last remaining
10 Deliverable(s) and then went to the lunch that Anderson had invited him to attend. Included in
11 this batch of sign-off documents was DEB47 (Completed System Testing), which encompassed
12 the deficient Deloitte testing that Yeager had refused to approve.

13 149. Overall, Culver approved more than one-half of Deloitte's Deliverables, and
14 numerous Project invoices, either during an approximately two-month period before he lost
15 authority over the Project, or after he was removed from his position as County Project Director.

16 150. Shortly after his interview with Deloitte executive Grifone, the SAP Defendants
17 engaged Culver in discussions concerning employment for Culver at SAP. In or about July 6,
18 2007, soon after Culver had approved his last Deliverable for Deloitte, Culver left the County's
19 employ and went to work for the SAP Defendants. Culver is presently a Client Services Executive
20 with SAP Public Services, Inc.

21 151. The SAP Defendants' discussions of employment with Culver occurred at or near
22 the time that Culver was approving Project Deliverables and invoices and obligating the County to
23 pay additional fees to Deloitte and SAP Public Services, Inc., all in furtherance of the scheme to
24 defraud the County of fees and Culver's honest services by Deloitte and the SAP Defendants.

25 152. Deloitte and the SAP Defendants knew that Culver's misconduct in deceiving the
26 County, and promoting the interests of Deloitte and the SAP Defendants to the detriment of the
27 County, constituted a fraud, breach of fiduciary duty and breach of duty of loyalty upon the
28 County. Yet Deloitte and the SAP Defendants encouraged and assisted Culver in engaging in

1 such misconduct in order to obtain his improper approval of Project Deliverables, invoices and
 2 Change Orders so that they could (a) ensure a continued stream of revenue from the County, and
 3 (b) conceal deficiencies and defects with the SAP system.

4 153. Deloitte and the SAP Defendants were further aware that the intended result of
 5 Culver's fraudulent conduct and breaches -- which included deceiving the County into proceeding
 6 with the Release II go-live by misrepresenting the status of the Project and concealing Project
 7 defects and risks -- would cause grave injury to the County.

8 **D. Injury To The County**

9 154. The defendants' misconduct has inflicted enormous damage on the County. As a
 10 result of defendants' unlawful activities, the County paid Deloitte and SAP Public Services, Inc.
 11 more than \$15 million in fees for a defective SAP system that is unable to operate its required
 12 business processes. The County has further sustained the following damages, presently estimated
 13 at \$15 million:

- 14 (a) costs associated with the post-implementation remediation efforts
 15 (consisting of all internal expenditures related to the failed
 16 implementation, including the allocation of personnel to participate in the
 17 remediation effort, attendant salaries attendant salaries, benefits and
 18 overtime expenses; payments made to third-party vendors and
 19 independent consultant to attempt to correct the problems with the SAP
 20 system implemented by Deloitte; and costs incurred in connection with
 21 the evaluation of the defective SAP system);
- 22 (b) damages incurred in connection with the County's inability to produce
 23 accurate financial statements from the SAP system and otherwise comply
 24 with state and federal requirements and other contractual obligations;
- 25 (c) costs incurred for software training which Deloitte failed to provide; and
 26 (d) various other internal capital and operating expenses related to the
 27 defective SAP system.

28 155. The County further estimates that it will cost at least \$6 million to replace the SAP

1 system with a functioning ERP system that can meet the County's functional requirements.

2 **III. Deloitte's And The SAP Defendants' Racketeering Against The County**
 3 **Is Consistent With A Larger Pattern And Practice Of Racketeering Activity**

4 156. The racketeering scheme that Deloitte and the SAP Defendants perpetrated on the
 5 County is consistent with a pattern and practice of misconduct by Deloitte and the SAP Defendants
 6 on SAP for Public Sector implementation projects involving other governmental entities between
 7 2001 and 2008 (the "Public Sector Projects"). The targets of this scheme have included LAUSD,
 8 San Antonio, C-DOT and M-DCPS. On each of these Public Sector Projects, Deloitte was the
 9 project integrator implementing SAP for Public Sector software. In the aggregate, the public
 10 sector victims of this scheme paid more than \$100 million in consulting fees to Deloitte, and tens
 11 of millions in licensing and other fees to the SAP Defendants.

12 **A. The LAUSD Implementation**

13 157. In 2004, after a lengthy selection process, LAUSD, one of the nation's largest
 14 school systems, selected SAP for Public Sector software as part of a project to upgrade its payroll
 15 system, and awarded Deloitte a \$55 million contract to design and implement it.

16 158. As reported in the *Contra Costa Times* on February 15, 2007, LAUSD school board
 17 member David Tokofsky stated that Deloitte was awarded the contract based on
 18 misrepresentations concerning its skills. As reported in the *Los Angeles Times* on November 27,
 19 2008, Tokofsky "rued the day the district signed the contract with Deloitte" because Deloitte's pre-
 20 contract representations were false: "[Deloitte] gave us their C players instead of their A or B
 21 players to implement this."

22 159. As reported in the *Los Angeles Times* on February 8 and February 11, 2008, after
 23 the SAP system designed and implemented by Deloitte went live in January 2007, it was plagued
 24 by massive problems. The SAP system generated "thousands of wildly inaccurate paychecks,"
 25 such that in the year following the SAP go-live, LAUSD overpaid an estimated \$53 million to
 26 36,000 teachers and other administrators, while thousands more went underpaid or were not paid at
 27 all. The *Los Angeles Times* reported on November 27, 2008 that the LAUSD SAP implementation
 28 was "a disaster from the moment it went online in January 2007."

1 160. Press accounts further reported that Deloitte engaged in under-testing,
2 inappropriately urging LAUSD to go live with the SAP system even though Deloitte knew, or
3 should have known, that it had not been properly tested. A February 8, 2008 editorial in the *Los*
4 *Angeles Times* characterized the decision to go live with the SAP system "without a full-scale test
5 run" and "even after the school board had expressed doubts" was "unconscionable" and "nothing
6 short of arrogance."

7 161. LAUSD had to pay \$37.5 million in repairs and delay costs, including \$13.5 million
8 to various consulting firms to fix the SAP system it had just paid Deloitte more than \$50 million to
9 design and implement. Deloitte avoided litigation and settled with LAUSD by paying \$8.25
10 million and forgoing \$10 million in unpaid invoices.

11 B. The San Antonio Implementation

12 162. In June 2001, San Antonio licensed SAP for Public Sector software and hired
13 Deloitte to implement it in connection with an overhaul of San Antonio's financial system.
14 Deloitte's fee for the integration was approximately \$43.6 million.

15 163. The implementation was a disaster. As reported in the *San Antonio Express-News*
16 on January 23, 2005, within the first two paydays, "about 1,000 employees had some type of
17 mistake in their checks. Workers were underpaid, overpaid and not paid at all." San Antonio was
18 not able "to close its monthly financial ledgers or post revenues and expenses to the proper
19 departments." Teddy Stewart, the president of the San Antonio Police Officers Association
20 described the new SAP system as a "nightmare."

21 164. According to a former SAP employee, one problem with the San Antonio
22 implementation resulted from Deloitte's failure, prior to the go-live, to switch on the same PBET
23 switch in the SAP for Public Sector software funds management module that Deloitte had failed to
24 activate on the County's Project. Thus, as on the County's Project, Deloitte's failure to activate
25 the PBET switch on the San Antonio implementation enabled it to run less rigorous testing
26 scenarios prior to the San Antonio go-live (and thereby conceal problems that would otherwise
27 have come to light), with the result that, post go-live, the system was unable to properly perform a
28 year-end fiscal close of San Antonio's finances.

1
2 **C. The Colorado Department Of Transportation Implementation**

3 165. From 2004 to 2007 Deloitte designed and implemented an SAP for Public Sector
4 system at C-DOT to overhaul its financial management system. Deloitte received \$30 million in
5 fees. The implementation suffered from crippling problems. As reported in a March 13, 2007
6 article in the *Rocky Mountain News*, “[n]early 200 CDOT workers stormed the Capitol” after they
7 were “shorted overtime pay” because of SAP system problems including “overpaying and
8 underpaying workers.” The *Rocky Mountain News* further reported Deloitte’s failure to properly
9 test the system.

10 **D. The Miami-Dade Implementation**

11 166. In 2007, M-DCPS awarded Deloitte a \$55 million contract to design and implement
12 SAP for Public Sector software. By January 2009, with the Deloitte-led implementation severely
13 behind schedule and at least \$7 million over budget, M-DCPS fired Deloitte, complaining that it
14 had “been pouring money into a black hole for quite a while now.”

15 **CLAIMS FOR RELIEF**

16 167. As a direct result of Deloitte’s and the SAP Defendants’ misconduct, the County
17 suffered substantial injuries in an amount no less than \$30 million.

18 168. All conditions precedent to the County’s entitlement to recover on its claims herein
19 have been performed, have occurred or have been waived.

20 **FIRST CLAIM**

21 **Violation of the Racketeer Influenced and Corrupt Organizations Act**
22 **(18 U.S.C. §§ 1962(c) and 1964(e))**
23 **(Against Deloitte and the SAP Defendants)**

24 169. The County repeats and realleges each and every allegation set forth in paragraphs
25 1 through 168, above, as though fully set forth herein.

26 170. Beginning at various times from approximately 2004 through the filing of this
27 complaint, and continuing into the future, in California and elsewhere, Deloitte and the SAP
28 Defendants were and are associated-in-fact in, and with, a continuing criminal enterprise which has
conducted its affairs through a pattern of racketeering activity, and whose conduct and activities

1 affect interstate or foreign commerce. The Enterprise was and is engaged in a scheme to defraud
 2 governmental entities while reaping tens of millions of dollars in ill-gotten gains in connection
 3 with implementations of ERP software known as SAP for Public Sector.

4 171. As a part of this scheme that was directed against the County, the Enterprise
 5 misrepresented Deloitte's skills and experience in SAP for Public Sector software to obtain highly
 6 lucrative public sector implementation and licensing contracts; fraudulently concealed
 7 implementation problems that resulted from Deloitte's lack of skills; silenced an SAP employee
 8 who raised issues with Deloitte's deficient implementation work; and deprived the County of the
 9 honest services of its officers, through the bribery of defendant Culver, in an effort to cover up
 10 Deloitte's deficient implementation work, obtain payment for work that was not properly
 11 performed (or not performed at all) and cause the County to enter into additional contracts with
 12 Deloitte and SAP Public Services, Inc.

13 172. Deloitte and the SAP Defendants knowingly and intentionally participated, directly
 14 and indirectly, in the conduct of the criminal Enterprise's affairs through a pattern of racketeering
 15 activity, and, in so doing, injured the County in its business and property. Their conduct included
 16 multiple, related and continuous acts in violation of: 18 U.S.C. §§ 2, 1341 and 1346 (mail fraud),
 17 18 U.S.C. §§ 2, 1343 and 1346 (wire fraud); Cal. Pen. Code § 67 (bribery) and 18 U.S.C. § 1952
 18 (interstate and foreign travel to aid racketeering).

19 173. The predicate acts alleged herein occurred after the effective date of 18 U.S.C. §§
 20 1961 *et seq.*, and the last such act occurred within 10 years after the commission of a prior act of
 21 racketeering activity. These racketeering activities include repeated acts of:

22 (a) Mail Fraud: Deloitte and the SAP Defendants, having devised a scheme
 23 or artifice to defraud the County out of millions of dollars and of its right to receive honest
 24 services from its employees, did, for the purpose of furthering and executing this scheme, deposit,
 25 cause to be deposited, or otherwise commit overt acts specifically designed to aid the other's
 26 purpose in depositing matters or things to be delivered by mail or such carriers, in violation of 18
 27 U.S.C. § 1341, 18 U.S.C. § 1346 and 18 U.S.C. § 2. This fraudulent scheme, and its objects, are
 28 alleged with particularity in paragraphs 1-7, 15-26, 32, 37-153 and 156-166 and has been

1 furthered by, among other acts of mail fraud, the following communications:

2 Use of U.S. Mails in Violation of 18 U.S.C. § 1341		
3 Date	Subject Matter	From/To
4 6/7/2004	Response to the County's Request For Proposal concerning the Project	Deloitte director Seidenfeld/ County Project Director Culver
5 11/6/2004	Response to the County's Request For Clarification concerning Deloitte's and the SAP Public Services, Inc.'s Project bid	Seidenfeld/ Culver

7
8 Each use by Deloitte or the SAP Defendants of the United States mails, in furtherance of the
9 fraudulent scheme, constitutes a separate and indictable mail fraud offense and is thus an act of
10 racketeering pursuant to 18 U.S.C. § 1961(1).

11 (b) Wire Fraud: Deloitte and the SAP Defendants, having devised a scheme
12 or artifice to defraud the County out of millions of dollars and of its right to receive honest
13 services from its officers, did, for the purpose of furthering and executing this scheme, transmit,
14 cause to be transmitted, or otherwise commit overt acts specifically designed to aid the other's
15 purpose in transmitting by means of wire communications in interstate or foreign commerce,
16 writing, signs, signals, pictures and sound, in violation of 18 U.S.C. § 1343, 18 U.S.C. § 1346 and
17 18 U.S.C. § 2. This fraudulent scheme, and its objects, are alleged with particularity in paragraphs
18 1-7, 15-26, 32, 37-153 and 156-166, and has been furthered by, among other acts of wire fraud,
19 the following uses of the wires:

20 Use of the Interstate Wires in Violation of 18 U.S.C. §§ 1341, 1346		
21 Date	Subject Matter	From/To
22 3/8/2006	Conference call concerning unauthorized design changes to the County's SAP system	SAP consultant Tamara Hillary and other SAP U.S. staff/ SAP staff in Germany
23 3/10/2006	Telephone discussion of SAP consultant Hans Metz's involvement in the Project	SAP engagement manager Paul Blaney/ Metz
24 5/12/2006	E-mail addressing Metz's criticisms of the Project	Deloitte manager Brooks/ Culver
25 10/4/2006	E-mail concerning Metz's involvement in the Project	Brooks/ SAP customer services executive John Meyer
26 11/3/2006	E-mail dinner invitation to Masa's in San	Deloitte manager

1		Francisco	Kirsten Mecklenburg/ Culver
2	1/4/2007	E-mail dinner invitation to Gary Danko in San Francisco	Mecklenburg/ Culver
3			Deloitte partner Nick Chiominto/ Culver
4	2/8/2007	E-mail advising Culver of the status of his employment application with Deloitte	Chiominto/ Culver
5	2/13/2007	E-mail advising Culver of the status of his employment application with Deloitte	Deloitte manager Mark Anderson/ Culver
6	3/16/2007	E-mail lunch invitation	Deloitte director H.T. Vaught/ Culver
7	4/9/2007	E-mail request to sign-off on Project invoices	Anderson/ Culver
8	4/19/2007	E-mail request to sign-off on Project deliverables	Anderson/ Culver
9	4/20/2007	E-mail dinner invitation	Anderson/ Culver
10	5/1/2007	E-mail dinner invitation	Anderson/ Culver
11	5/4/2007	E-mail request to sign-off on Project deliverables	Anderson/ Culver
12	5/15/2007	E-mail request to facilitate sign-off on Project deliverables	Anderson/ Deloitte consultant John Cannella
13	6/5/2007	E-mail request to facilitate sign-off on Project deliverables	Anderson/ Cannella
14	6/19/2007	E-mail request to sign-off on Project deliverables	Anderson/ County employee Kevin Yeager
15	6/19/2007	E-mail requesting instruction concerning deliverable sign-offs	Anderson/ Vaught
16	6/19/2007	E-mail instruction concerning deliverable sign-offs	Vaught/ Anderson
17	6/22/2007	E-mail invitation to lunch and to sign Project deliverables	Anderson/ Culver
18	6/25/2007	E-mail reporting Culver's agreement to lunch and sign-off on deliverables	Anderson/ Vaught

24 Each communication by Deloitte or the SAP Defendants using a United States wire, including e-
25 mail communications and interstate or foreign telephone calls, in furtherance of the fraudulent
26 scheme, constitutes a separate and indictable wire fraud offense and is thus an act of racketeering
27 pursuant to 18 U.S.C. § 1961(1).
28

1 (c) Bribery of an Executive Officer: Deloitte and the SAP Defendants
2 offered numerous bribes to defendant Culver, an executive officer as contemplated by the
3 California Penal Code, with the intent to influence him in respect to the discharge of certain acts,
4 decisions and opinions and other proceedings, in violation of laws of the State of California, Cal.
5 Pen. Code § 67, as alleged with greater particularity in the foregoing and following paragraphs,
6 including without limitation paragraphs 4-5, 26, 31, and 92-153. Each offer, promise and/or
7 attempt by Deloitte and the SAP Defendants to corruptly influence Culver, in furtherance of the
8 fraudulent scheme, constitutes a separate and indictable act of bribery under Cal. Pen. Code § 67,
9 and is thus an act of racketeering pursuant to 18 U.S.C. § 1961(1).

10 (d) Interstate and Foreign Travel in Aid of Racketeering Enterprises/Bribery
11 of an Executive Officer: Deloitte and the SAP Defendants traveled in interstate commerce with
12 the intent to commit or otherwise promote the commission of bribery, as proscribed by the laws of
13 the State of California at Cal. Penal Code § 67, and thereafter committed bribery, or otherwise by
14 overt act promoted such unlawful activity, in violation of 18 U.S.C. § 1952, as alleged with greater
15 particularity in the foregoing paragraphs, including without limitation paragraphs 92-153. Each
16 act of travel in interstate commerce with the intent to commit or promote bribery, in furtherance of
17 the fraudulent scheme, constitutes a separate and indictable offense, and is thus an act of
18 racketeering pursuant to 18 U.S.C. § 1961(1).

19 174. Deloitte and the SAP Defendants are liable for the above-described racketeering
20 activities as entities *per se* because the culpable acts were either performed by Deloitte's and the
21 SAP Defendants' officers, directors and/or managing agents or performed by Deloitte's and the
22 SAP Defendants' agents and/or employees as authorized, ratified, or with advance knowledge
23 consciously disregarded by Deloitte's and the SAP Defendants' officers, directors and/or
24 managing agents. Moreover, Deloitte and the SAP Defendants also attempted to benefit, and did
25 benefit, from the activities of their employees and agents alleged herein, and thus were not passive
26 victims of racketeering activity, but active perpetrators.

27 175. The County has been injured in its business or property as a direct and proximate
28 result of Deloitte's and the SAP Defendants' violations of 18 U.S.C. § 1962(c), including injury

1 by reason of the predicate acts constituting the pattern of racketeering activity, as alleged with
2 greater particularity in the foregoing paragraphs, including without limitation paragraphs 154-55.

3 176. As a result of Deloitte's and the SAP Defendants' violations of 18 U.S.C. §
4 1962(c), the County has suffered substantial damages, in an amount to be proved at trial. Pursuant
5 to 18 U.S.C. § 1964(c), the County is entitled to recover treble its general and special
6 compensatory damages, plus interest, costs and attorneys' fees, incurred by reason of Deloitte's
7 and the SAP Defendants' violations of 18 U.S.C. § 1962(c).

8 **SECOND CLAIM**

9 **Conspiracy to Violate of the Racketeer
10 Influenced and Corrupt Organizations Act
11 (18 U.S.C. §§ 1962(d) and 1964(c))
12 (Against Deloitte and the SAP Defendants)**

13 177. The County repeats and realleges each and every allegation set forth in paragraphs
14 1 through 176 above, as though fully set forth herein.

15 178. Beginning at various times from approximately 2004 through the filing of this
16 Complaint, and continuing into the future, in California and elsewhere, Deloitte, the SAP
17 Defendants and others acting in concert with or on behalf of the foregoing, were aware of the
18 essential nature and scope of the criminal Enterprise detailed in paragraphs 15-36, and knowingly,
19 willfully, and unlawfully, did conspire, combine, confederate and agree together to violate 18
20 U.S.C. § 1962(d) by furthering, promoting, and facilitating operation or management of that
21 criminal Enterprise, and in violation of 18 U.S.C. § 1962(c).

22 179. In furtherance of this unlawful conspiracy and its multiple objects as alleged herein,
23 Deloitte and the SAP Defendants, and various co-conspirators, committed numerous overt acts,
24 including but not limited to those set forth in paragraphs 15-26 and 37-153.

25 180. The County has been injured in its business or property as a direct and proximate
26 result of Deloitte's and the SAP Defendants' violations of 18 U.S.C. § 1962(d), including injury
27 by reason of the predicate acts constituting the pattern of racketeering activity alleged herein.

28 181. As a result of the conspiracy between and among Deloitte and the SAP Defendants
to violate 18 U.S.C. § 1962(c), the County has suffered substantial damages, in an amount to be

1 proved at trial. Pursuant to 18 U.S.C. § 1964(c), the County is entitled to recover treble its general
2 and special compensatory damages, plus interest, costs and attorneys fees, incurred by reason of
3 Deloitte's and the SAP Defendants' violations of 18 U.S.C. § 1962(d).

4 182. Deloitte and the SAP Defendants are liable for the above-described conspiracy as
5 entities *per se* because the culpable conduct was either performed by Deloitte's and the SAP
6 Defendants' officers, directors and/or managing agents or performed by Deloitte's and the SAP
7 Defendants' agents and/or employees as authorized, ratified, or with advance knowledge
8 consciously disregarded by Deloitte's and the SAP Defendants' officers, directors and/or
9 managing agents. Moreover, Deloitte and the SAP Defendants also attempted to benefit, and did
10 benefit, from the activities of their employees and agents alleged herein, and thus were not passive
11 victims of the racketeering conspiracy, but active perpetrators.

12 **THIRD CLAIM**
13 **(Fraud)**
14 **(Against Culver)**

15 183. The County repeats, realleges and incorporates the allegations contained in
16 paragraphs 1 through 182 as if fully set forth herein.

17 184. Culver's fraudulent conduct is alleged with particularity in paragraphs 92-153.

18 185. As set forth above, and in paragraphs 103-108, 117, 120, 122, 124, 130-133, 137,
19 140, 145 and 148-149, Culver intentionally made numerous misrepresentations of material facts
20 to, and concealed material facts (that he was obligated as a County officer to disclose) from,
21 County officials, to induce the County to: (a) proceed with the Release II go-live, (b) pay Deloitte
22 for work that it improperly performed (or did not perform at all), and (c) cause the County to enter
23 into additional contracts with Deloitte and the SAP Public Services, Inc.

24 186. Culver knew such misrepresentations were false at the time he made them and that
25 such concealments were committed in violation of Culver's duties as a County officer.

26 187. Given Culver's status as a County officer, the County was unaware of Culver's
27 concealments and justifiably relied on Culver's misrepresentations to provide truthful information
28 concerning Deloitte's and SAP Public Services, Inc.'s work on the Project, how and whether to
proceed at various stages in the Project, whether invoices submitted by Deloitte and SAP Public

1 Services, Inc. should be paid and whether the County should commit to paying Deloitte and SAP
2 Public Services, Inc. for services in connection with additional contracts.

3 188. Had Culver fully and truthfully advised the County of Deloitte's and SAP Public
4 Services, Inc.'s performance on the Project, the County would not have proceeded with Release II
5 go-live, paid some or all of Deloitte's and SAP Public Services, Inc.'s invoices and entered into
6 some or all Change Orders with Deloitte and SAP Public Services, Inc.

7 189. Culver acted with malice and specifically intended that the County suffer injury as
8 a result of his fraud.

9 190. As a direct and proximate result of Culver's fraud, the County sustained substantial
10 damages in an amount to be determined by the trier of fact.

11 191. In addition, because Culver's fraudulent and malicious actions were committed
12 knowingly, willfully and in conscious disregard of the rights of the County, the County is entitled
13 to recover punitive damages in an amount to be determined by the trier of fact.

14 192. Because of Culver's position as a trusted County officer and the successful
15 execution of his fraudulent misrepresentations and concealments, the County was unaware, and
16 had no reason to be aware, of Culver's misconduct as alleged herein. In and around November
17 2010, only after discovering the above-mentioned contemporaneous writings authored by Culver
18 during the Project, which were recovered from backup storage tapes during preparation for a
19 related litigation, did the County discover the detailed facts underlying Culver's fraud.

20 **FOURTH CLAIM**

21 **(Aiding and Abetting Fraud)**

22 **(Against Deloitte and the SAP Defendants)**

23 193. The County repeats, realleges and incorporates the allegations contained in
24 paragraphs 1 through 192 as if fully set forth herein.

25 194. The conduct of Deloitte and the SAP Defendants in aiding and abetting Culver's
26 fraudulent conduct is alleged with particularity in paragraphs 92-153.

27 195. Deloitte and the SAP Defendants solicited, encouraged and/or substantially assisted
28 Culver's above-described fraud upon the County by, among other things, bribing him to
misrepresent to, and otherwise conceal from, the County the true status of the Project and the

1 quality of Deloitte's Project work.

2 196. Deloitte's and the SAP Defendants' solicitations, encouragement and/or substantial
3 assistance to Culver were performed despite Deloitte's and the SAP Defendants' knowledge that
4 the acts solicited, encouraged and/or substantially assisted constituted the commission of fraud
5 upon the County.

6 197. Moreover, Deloitte and the SAP Defendants specifically intended that Culver
7 would commit fraud upon the County as a result of their solicitations, encouragement and/or
8 substantial assistance and did so in conscious disregard of the known and grave harm that would
9 (and did) befall the County as a result of its reliance of Culver's fraudulent conduct.

10 198. As a direct and proximate result of the conduct of Deloitte and the SAP
11 Defendants, Culver did commit fraud against the County, and the County has incurred damages in
12 an amount to be determined by the trier of fact. The County, therefore, is entitled to hold Deloitte
13 and the SAP Defendants jointly and severally liable for all damages resulting to the County from
14 Culver's fraudulent conduct.

15 199. In taking the aforesaid actions, Deloitte and the SAP Defendants acted with malice,
16 fraud and oppression, and in conscious disregard of the County's rights. Accordingly, the County
17 is entitled to recover exemplary damages from Deloitte and the SAP Defendants in an amount to
18 be determined by the trier of fact

19 200. Deloitte and the SAP Defendants are liable for the above-described misconduct as
20 entities *per se* because the culpable acts were either performed by Deloitte's and the SAP
21 Defendants' officers, directors and/or managing agents or performed by Deloitte's and the SAP
22 Defendants' agents and/or employees as authorized, ratified, or with advance knowledge
23 consciously disregarded by Deloitte's and the SAP Defendants' officers, directors and/or
24 managing agents. Moreover, Deloitte and the SAP Defendants also attempted to benefit, and did
25 benefit, from the activities of their employees and agents alleged herein, and thus were not passive
26 victims of such misconduct, but active perpetrators.

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FIFTH CLAIM
(Breach of Fiduciary Duty/Duty of Loyalty)
(Against Culver)

201. The County repeats, realleges and incorporates the allegations contained in paragraphs 1 through 200 as if fully set forth herein.

202. Culver's breaches of fiduciary duty and duty of loyalty are alleged with particularity in paragraphs 92-153.

203. Culver, who was the Assistant Auditor-Controller at the County and Project Director, held a position of trust and confidence with the County. Culver supervised the work of others, exercised discretion and worked independently in many of his job assignments and duties. Culver also represented the County in its dealings with third parties and was an agent of the County. Culver thus owed the County a fiduciary duty and duty of loyalty that included, but was not limited to, an obligation not to take any action that would be contrary to the County's best interests or that would deprive the County of any opportunities, profit or advantage.

204. Culver breached his fiduciary duty and duty of loyalty to the County by inducing the County to pay Deloitte for work that Culver knew had not been properly performed (or not performed at all), to enter into additional contracts with Deloitte and the SAP Defendants and to proceed with Release II go-live.

205. As a direct result of Culver's wrongful conduct, the County sustained damages in an amount to be determined by the trier of fact

206. In taking the aforesaid actions, Culver acted with malice, fraud and oppression, and in conscious disregard of the County's rights. Accordingly, the County is entitled to recover exemplary damages from Culver in an amount to be determined by the trier of fact.

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SIXTH CLAIM
(Aiding and Abetting Breach of Fiduciary Duty and Duty of Loyalty)
(Against Deloitte and the SAP Defendants)

207. The County repeats, realleges and incorporates the allegations contained in paragraphs 1 through 206 as if fully set forth herein.

208. The conduct of Deloitte and the SAP Defendants in aiding and abetting Culver's breaches of fiduciary duty is alleged with particularity in paragraphs 92-153.

1 209. Deloitte and the SAP Defendants solicited, encouraged and/or substantially assisted
2 Culver's above-described breaches of fiduciary duty and duty of loyalty vis-à-vis the County by,
3 among other things, bribing him to misrepresent to, and otherwise conceal from, the County the
4 true status of the Project and the quality of Deloitte's Project work.

5 210. Deloitte's and the SAP Defendants' solicitations, encouragement and/or substantial
6 assistance to Culver were performed despite Deloitte's and the SAP Defendants' knowledge that
7 the acts solicited, encouraged and/or substantially assisted constituted the commission of
8 intentional torts upon the County.

9 211. Moreover, Deloitte and the SAP Defendants specifically intended that Culver
10 would commit such breaches as a result of their solicitations, encouragement and/or substantial
11 assistance and did so in conscious disregard of the known and grave harm that would (and did)
12 befall the County as a result of Culver's breaching conduct.

13 212. As a direct and proximate result of the conduct of Deloitte and the SAP
14 Defendants, Culver did breach his fiduciary duty and duty of loyalty to County, and the County
15 has incurred damages in an amount to be determined by the trier of fact. The County, therefore, is
16 entitled to hold Deloitte and the SAP Defendants jointly and severally liable for all damages
17 resulting to the County from Culver's breaching conduct.

18 213. In taking the aforesaid actions, Deloitte and the SAP Defendants acted with malice,
19 fraud and oppression, and in conscious disregard of the County's rights. Accordingly, the County
20 is entitled to recover exemplary damages from Deloitte and the SAP Defendants in an amount to
21 be determined by the trier of fact

22 214. Deloitte and the SAP Defendants are liable for the above-described misconduct as
23 entities *per se* because the culpable acts were either performed by Deloitte's and the SAP
24 Defendants' officers, directors and/or managing agents or performed by Deloitte's and the SAP
25 Defendants' agents and/or employees as authorized, ratified, or with advance knowledge
26 consciously disregarded by Deloitte's and the SAP Defendants' officers, directors and/or
27 managing agents. Moreover, Deloitte and the SAP Defendants also attempted to benefit, and did
28 benefit, from the activities of their employees and agents alleged herein, and thus were not passive

1 victims of such misconduct, but active perpetrators.

2 **SEVENTH CLAIM**
3 **(Common Law Civil Conspiracy)**
4 **(Against Deloitte and the SAP Defendants)**

5 215. The County repeats, realleges and incorporates the allegations contained in
6 paragraphs 1 through 214 as if fully set forth herein.

7 216. As set forth herein, Deloitte and the SAP Defendants, together with Culver and
8 others, conspired with respect to the Third and Fourth Claims, and agreed to act in concert to
9 commit unlawful acts.

10 217. Deloitte, the SAP Defendants, Culver and others shared the same conspiratorial
11 objective, which was, among other things, to fraudulently induce the County to (a) proceed with
12 the Release II go-live, (b) pay Deloitte for work that it improperly performed (or did not perform
13 at all), and (c) cause the County to enter into additional contracts with Deloitte and SAP Public
14 Services, Inc.

15 218. Deloitte and the SAP Defendants understood the objectives of the scheme, accepted
16 them, committed overt acts in furtherance of the scheme, were active participants in the scheme
17 and agreed explicitly and/or implicitly to do their part to carry out the objectives of the scheme.

18 219. As a direct, proximate result of the operation and execution of the conspiracy, the
19 County has been injured and suffered damages in an amount to be determined by the trier of fact.

20 220. At all relevant times, the conduct of Deloitte and the SAP Defendants was willful
21 and done with legal malice and knowledge that it was wrongful.

22 221. Deloitte and the SAP Defendants are thus jointly and severally liable for their
23 tortious acts as well as the tortious acts of their co-conspirators, including Culver, and liable for all
24 damages, including exemplary damages, resulting from the conspiracy.

25 **EIGHTH CLAIM**
26 **(Violation of Gov't Code § 1090)**
27 **(Against Culver)**

28 222. The County repeats, realleges and incorporates the allegations contained in
29 paragraphs 1 through 221 as if fully set forth herein.

30 223. Culver was the Assistant Auditor-Controller and the Project Manager for the

1 County.

2 224. As detailed above, from November through July 2007, Culver, in his official
3 capacity as a County officer, made and/or participated in the making of various contracts with
4 Deloitte and the SAP Defendants.

5 225. At the time Culver made and/or participated in the making of those contracts,
6 Culver was accepting significant present and/or prospective financial benefits from Deloitte and
7 the SAP Defendants, and thus had a cognizable financial interest in those contracts.

8 226. Pursuant to California Government Code § 1090, *et seq.*, the contracts are
9 irrevocably null, void, and of no effect.

10 **NINTH CLAIM**

11 (Return of Monies Received in Violation of Gov't Code § 1090)
12 (Against All Defendants)

13 227. The County repeats, realleges and incorporates the allegations contained in
14 paragraphs 1 through 226 as if fully set forth herein.

15 228. As detailed above, from November 2006 through July 2007, Culver, in his official
16 capacity and on the County's behalf, signed or otherwise influenced the making of contracts with
17 Deloitte and/or the SAP Defendants in which Culver had a financial interest.

18 229. Pursuant to Government Code Sections 1090, *et seq.*, the contracts are irrevocably
19 null, void and of no effect.

20 230. Pursuant to Government Code Sections 1090, *et seq.*, all monies paid pursuant to
21 such contracts must be disgorged by their recipients, and returned to the County as wrongfully
22 obtained public monies, irrespective of the recipients' professed innocence or benefits conferred
23 by the recipients in exchange for those monies.

24 231. Accordingly, the County is entitled to the immediate return of all monies from
25 Deloitte and/or the SAP Defendants received from the County pursuant to all contracts void by
26 virtue of Culver's violation of California Government Code Section 1090, in an amount to be
27 determined at trial.

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PRAYER

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2 WHEREFORE, the County of Marin respectfully requests that this Court enter judgment
3 against Deloitte, the SAP Defendants and Culver and provide the following relief:

- 4 (1) Awarding the County statutory treble actual, economic, consequential, and
5 compensatory damages in an amount to be determined by the trier of fact, but in
6 no event less than \$90 million;
- 7 (2) In the alternative, awarding the County actual, economic, consequential, and
8 compensatory damages in an amount to be determined by the trier of fact, but in
9 no event less than \$30 million;
- 10 (3) Rescinding all contracts fraudulently induced or made pursuant to a conflict of
11 interest by Culver;
- 12 (4) Awarding the County punitive and/or exemplary damages in an amount to be
13 determined by the trier of fact;
- 14 (5) Awarding the County reasonable attorneys' fees incurred during the prosecution
15 of this action;
- 16 (6) Awarding the County pre-judgment and post-judgment interest at the highest
17 rate(s) provided by law; and
- 18 (7) Awarding the County such other and further relief, at law and in equity, to which
19 it may be entitled.
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21 Dated: December 17, 2010

22 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

23
24 MARK P. RESSLER
25 R. TALIPSTEIN
26 1633 Broadway
27 New York, New York 10019
28 Telephone: (212) 506-1700
mressler@kasowitz.com
tepstein@kasowitz.com

OFFICE OF THE COUNTY COUNSEL, COUNTY OF MARIN

By: *Patrick K. Faulkner*

PATRICK K. FAULKNER (SBN 070801)

County Counsel

SHEILA SHAH LICHTBLAU (SBN 167999)

Deputy County Counsel

3501 Civic Center Drive, Room 275

San Rafael, California 94903

Telephone: (415) 499-6117

Facsimile: (415) 499-3796

pfaulkner@co.marin.ca.us

slichtblau@co.marin.ca.us

Attorneys for Plaintiff

COUNTY OF MARIN

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