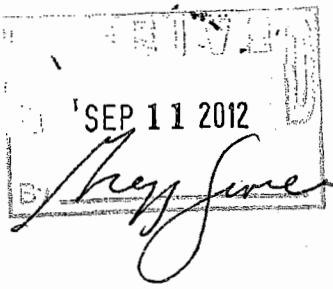
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[UNDER SEAL}	:	CIVIL ACTION NO. 10-CV-1134
Plaintiff	:	FILED UNDER SEAL
v.	:	
[UNDER SEAL]	:	
Defendants	:	



AMENDED COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT

DO NOT FILE WITH PACER

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA *ex rel.* MICHAEL EPP,	:	
	:	Civil Action No. 10-CV-1134
Plaintiff and Relator,	:	
	:	Judge McLaughlin
v.	:	
	:	**FILED UNDER SEAL**
SUPREME FOODSERVICE AG, SUPREME GROUP B.V., SUPREME FOODSERVICE GMBH & CO.KG, JAMAL AHLI FOODS CO. LLC, STEPHEN ORENSTEIN, [redacted]	:	
	:	**DO NOT PUT ON PACER**
Defendants.	:	

AMENDED COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT

I. INTRODUCTION

1. Relator Michael Epp, by his counsel, Morgan Verkamp LLC and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, brings this action on his own behalf and on behalf of the United States of America to recover damages and penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, against Defendants Supreme Food Service AG, Supreme Group B.V., Supreme Foodservice GmbH & Co.KG, Jamal Ahli Foods Co. LLC d/b/a JAFCO, Stephen Orenstein [redacted]. The violations arise out of false claims for payment and other unlawful conduct in connection with a contract between Supreme Foodservice AG and the United States in which Supreme promised to distribute food and other items to United States military locations in Afghanistan. Mr. Epp also brings personal claims for retaliation in violation of the False Claims Act, 31 U.S.C. § 3730(h), and for breach of contract.

II. JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1331.

3. Venue is proper in this District under 28 U.S.C. § 1391, as defendants do business in the Eastern District of Pennsylvania.

4. The facts and circumstances of the False Claims Act violations alleged in this complaint have not been publicly disclosed in a criminal, civil or administrative hearing, nor in any congressional, administrative, or government accounting office report, hearing, audit investigation, or in the news media.

5. Mr. Epp is an original source of the information upon which this complaint is based, as that term is used in the False Claims Act.

6. Relator disclosed the allegations of this complaint to the United States prior to its filing.

III. PARTIES

7. The real party in interest to the claims set forth herein is the United States of America.

8. Relator Michael Epp is a German citizen. He has a Master's Degree in logistics and supply chain management, and has worked in that field since attaining his degree in 1982. Among other positions, he worked as Vice President, Purchasing & Supply Chain, North America for The Dannon Company, Inc. from 1999 to 2002, with responsibility for $400 million in purchasing and $50 million in logistics.

9. Relator was employed by Supreme Foodservice AG ("Supreme") as

Director, Commercial Division and Supply Chain, beginning in April 2004. Mr. Epp has also been employed by Supreme Foodservice GmbH & Co.KG. His workplace was in Dubai, United Arab Emirates. He was hired by Supreme's principal owner, Stephen Orenstein, as Director, Commercial Division, to lead a joint venture between Supreme and Sodexho to develop the African market, with Sodexho providing catering services and Supreme providing logistical support.

10. By early to mid-2005, it was apparent that the Sodexho joint venture was not going to work. On Mr. Epp's recommendation, it was halted and Mr. Epp was made Manager of Supreme's Transportation Division in Dubai.

11. In June 2005, Supreme was chosen by the Department of Defense to serve as Prime Vendor for U.S. forces in Afghanistan. Although he had no involvement in the bid process, Mr. Epp was assigned to develop and manage the supply chain for the Prime Vendor contract.

12. Mr. Epp had no experience or training in government contracting prior to June 2005. He understood his responsibility to be to develop a supply chain which delivered required goods at the lowest cost possible while maximizing Supreme's profit. Supreme's business model, imparted to Relator by Orenstein, was to bid low on the assumption that additional revenue sources could be identified after a contract was obtained from the Government.

13. In early 2007, Mr. Epp advised Orenstein that Supreme would have to refund money to the Defense Department because it had overcharged for transportation fees. He was summarily terminated on March 6, 2007, but was told he would be

kept on the payroll for six months as required by German law. Defendant Orenstein subsequently learned that Mr. Epp was exploring the possibility of bringing a *qui tam* case. His compensation was stopped and Supreme sought to have his work permit rescinded, which would have resulted in his expulsion from the country. Supreme then agreed to substantial severance payments for Mr. Epp, but in late 2010, reneged on its contractual obligation, in violation of the anti-retaliation provision of the False Claims Act.

14. Supreme Foodservice AG is a Swiss corporation with its principal place of business at Ziegelbruckstrasse, CH-8866 Ziegelbrucke, Switzerland. It is owned by Supreme Group BV, now headquartered in the Netherlands, which also owns Supreme Foodservice AG (based in Switzerland), and Supreme Foodservice GmbH & Co.KG and Supreme Consulting GmbH (both based in Germany). It also established and controls JAFCO, a UAE corporation that it used to engage in the fraudulent activities herein. During the conduct alleged in this Amended Complaint, Mr. Epp has been alternately employed by Supreme and Supreme Foodservice GMBH & Co.KG, which Defendants acted in concert, together with Defendants Orenstien and Supreme Group B.V. The fraudulent actions alleged in this Amended Complaint were orchestrated at his direction and control by the Supreme Defendants and JAFCO, and resulted in injury to the public fisc.

15. Supreme maintains an office in or near Reston, Virginia, and launched a division called "Supreme U.S.A." in 2009.

16. Supreme was founded in 1957 by Alfred Orenstein, identified by the

company as "a former U.S. Army food service soldier." Supreme is controlled by defendant Stephen Orenstein, who is its majority shareholder and who exercises day-to-day control over the operations of Supreme. Orenstein, an American citizen, is deeply involved in the day-to-day operations of Supreme Foodservice and was Relator's principal contact during his employment with the company. The only other shareholder known to Mr. Epp is Michael Jacque Gans, an attorney licensed to practice in New York who lives in Switzerland.

17. [redacted]

IV. FACTS

A. BACKGROUND

18. On or about September 3, 2004, The Defense Supply Center Philadelphia ("DSCP") issued an SF 1449 Solicitation/Contract/Order for Commercial Items seeking Defense Department acquisition for "full-line food and non-food distribution for authorized customers in the Middle East Zones" as defined in the document.

19. The Solicitation, No. SPM300-04-R-0323, sought to contract with distributors who would act as Prime Vendors ("PV's") responsible for supplying adequate

quantities of food to U.S. military facilities in war zones.

20. The solicitation identified five zones for which the government intended to make awards. Zone 1 encompassed Kuwait, Iraq, and Jordan; Zone 2, the United Arab Emirates (UAE) and Oman; Zone 3, Afghanistan; Zone 4, Bahrain, Qatar, and Saudi Arabia; and Zone 5, Djibouti.

21. On or about June 3, 2005, Supreme Foodservice AG was selected by DSCP as Prime Vendor for Zone 3, Afghanistan. The resulting Contract No. SPM300-05-D-3130 states an award amount of $217,863,938 for an initial 18-month ordering period, but including three option periods after the 18-month "Base Year" was worth up to as much as $1 billion.

22. This was the first Prime Vendor contract issued by the United States for delivery into Afghanistan. From 2001 through most of 2005, the Army serviced the Afghan theater, as it had traditionally done in prior conflicts.

23. This was also the first Prime Vendor contract sought or obtained by Supreme. Supreme had never contracted with the Defense Department prior to this selection process, but had a similar contract for International Security Assistance Force ("ISAF") coalition partners, to include Great Britain, Germany, and Italy, delivering foodservice items to their forces deployed in Afghanistan.

24. To assist Supreme in its attempt to obtain the Prime Vendor contract, Supreme hired Joseph Alvarez, who was until 2004 a Major in the United States Army and Chief of Subsistence Foodservice for DSCP in Europe. On information and belief, Alvarez now lives in Zurich and remains employed by Supreme.

25. Mr. Alvarez was titled "Director, U.S. Department of Defense Division" of Supreme Foodservice AG.

26. Supreme further sought to maximize its chance of being selected as the Afghanistan Prime Vendor by contracting with the Iraq Prime Vendor, Public Warehousing Company K.S.C. ("PWC") and Professional Contract Administrators, Inc. ("PCA") for consulting services. In exchange for these consulting services, Supreme promised to pay the PWC/PCA team 3.5% of Supreme's net revenues under the Prime Vendor contract, denominated a "Monthly Service Fee" in these parties' October 25, 2004 Services Agreement.

27. The Services Agreement required PWC to impart to Supreme PWC's accumulated knowledge regarding performance under a Prime Vendor contract.

28. In order to enhance Supreme's attractiveness as a Prime Vendor, the bid which Supreme submitted was based on low distribution fees. Relator believes that had the stated distribution fees been Supreme's only profit under the Prime Vendor contract, Supreme would have lost money on the contract.

29. A contract amendment dated September 14, 2005 confirmed that Supreme would commence operations under the contract on December 5, 2005, with first deliveries made on December 11, 2005. The amendment of September 14, 2005 changed the number of the contract to SPM300-06-D-3130, and an amendment dated October 1, 2006 changed the number of the contract to SPM300-07-D-3130.

30. The prime vendor contract provided that pricing for each product delivered would be based on the formula, "Unit Price = Delivered Price + Fixed

Distribution Price." The "Unit Price" was defined as the total price (in U.S. currency) that was charged to Defense Supply Center Philadelphia ("DSCP") per unit for a product delivered to the Government.

31. The contract defines price terms. The "Delivered Price" is the manufacturer's or supplier's "actual invoice price" to deliver a product to the prime vendor's distribution point, whether in the continental United States ("CONUS") or outside the continental United States ("OCONUS").

32. The "Fixed Distribution Price" is a firm fixed price which represented all parts of the price of an item other than the unit price, and accounted for Supreme's overhead, profit, packaging costs, etc. It was to remain constant for each particular item for the base period and subject to agreed adjustments in the option years.

33. Supreme's "Fixed Distribution Price" did not vary with the price of an item. Thus, whether the price of dried eggs or candied yams went up or down, the amount which Supreme was paid for its role in sourcing and delivering them did not.

34. As the Prime Vendor contract was originally conceived, DoD's Defense Transportation System ("DTS") was to be used to transport product to overseas distribution points. Transportation costs were not figured into the Delivered Price. However, it quickly became apparent that the Prime Vendors would be responsible for substantial ground, air, and sea transport, something for which the Prime Vendor Contract did not set prices.

35. Within weeks of learning that Supreme had been awarded the Prime Vendor Contract for Afghanistan, Defendant Orenstein began working to maximize his

company's profits thereunder. This complaint identifies a variety of schemes which were used to accomplish that goal.

B. SUPREME SYSTEMATICALLY FAILED TO GIVE THE UNITED STATES THE BENEFIT OF DISCOUNTS IT NEGOTIATED WITH SUPPLIERS

36. Rebates and discounts are routinely negotiated in the highly-competitive food service industry. The Department of Defense requires that it be afforded the benefit of all such rebates or discounts.

37. Solicitation SPM300-04-R-0323 provided, at ¶ 24 under the heading "REBATES/DISCOUNTS," that:

> Rebates and discounts are to be returned to DSCP when they are directly attributable to sales resulting from orders exclusively submitted by DSCP or its customers . . . The discount/allowance shall be reflected via a reduced STORES [ordering system] price, resulting in a lower invoice price to the customer.

38. By accepting the terms of the Solicitation, Supreme promised that the United States would receive the benefit of all rebates and/or discounts resulting from product purchases.

39. The Solicitation also required Prime Vendors to have a plan in place for returning all rebates, discounts, and allowances to the Government.

40. Supreme regularly negotiated discounts with its suppliers in the continental United States ("CONUS") without informing the United States of its actions and without discounting its invoices to DSCP.

41. Supreme and its vendors called these negotiated cash discounts "Prompt Payment Terms." In fact, however, Supreme rarely paid "promptly." Suppliers were paid a weighted average of 48 days after shipment of the products, with actual payment

periods ranging from 20 to 120 days and (not including Supreme front company JAFCO) an average "prompt pay" period of 46 days.

42. Based on his lengthy experience in the food service industry, Mr. Epp knew that prompt payment terms were usually a small amount (generally two or three percent) contingent on payment in a short time (usually seven to ten days).

[redacted]

44. In June 2005, Relator, Supreme owner Stephen Orenstein, and Joseph Alvarez attended a post-award meeting in Atlantic City, New Jersey. They met a number of would-be suppliers for the obviously-lucrative Afghanistan Prime Vendor contract.

[redacted]

[redacted] In an e-mail dated July 7, 2005, Alvarez told Orenstein and Relator that the pricing "goal [is] at least 5% prompt payment to PWC if we are allowed to ship items commercially to Kabul" (emphasis in original), and the "goal using DTS should be 8% prompt payment."

52. Although Supreme's Director of U.S. Defense Department Operations Alvarez was present at this meeting and participated in subsequent discussions regarding discount issues, this discount scheme was not disclosed to the United States.

53. A "prompt pay" discount of 8% for payment within two months is not commercially reasonable.

54. The [redacted] "discount" was actually an illegal kickback to Supreme in exchange for its business on the Afghanistan Prime Vendor contract.

55. On or about August 3, 2005, Relator sent a letter to all CONUS suppliers advising them that to do business with Supreme as Prime Vendor,

> 120 days payment terms *combined with a cash discount* are mandatory; please indicate in writing if you can't comply with this requirement as this will unfortunately exclude your company of becoming a vendor under our contract.

Emphasis supplied.

56. The resulting cash discounts ranged from four to nine percent of the total invoice price, with an average discount from CONUS vendors of six percent.

[redacted]

58. By negotiating discounts and then billing the United States at full price, Supreme substantially increased its revenues over what its contract allowed.

59. Supreme realized approximately $6 million in unlawful profits in 2006 by pocketing the discounts or rebates it negotiated with its CONUS vendors.

60. Supreme also realized approximately $2 million in unlawful discount/ rebate profits for the last two months of 2005.

61. When Relator was fired by Supreme in 2007, this practice was ongoing.

[redacted]

[redacted]

71. Orenstein pressured Relator and others involved in purchasing products for the Prime Vendor contract to favor those vendors who agreed to the largest cash discounts.

72. By knowingly failing to disclose and keeping discounts in violation of contract terms and standard commercial practices, Supreme knowingly violated the terms of its Prime Vendor contract and the False Claims Act.

73. Supreme's claims seeking reimbursement for amounts in excess of manufacturer's prices for product violated the False Claims Act.

C. SUPREME USED A CORPORATION OWNED BY SUPREME INSIDERS AS A MIDDLEMAN, RESULTING IN A SUBSTANTIAL UNLAWFUL MARKUP ON LOCAL MARKET READY ITEMS

74. Items that could not be purchased in the United States, such as fresh fruits and vegetables, were to be purchased from approved local suppliers. The term used to refer to these items is "Local Market Ready" ("LMR").

75. Supreme contracted with the United States to provide LMR items to include such things as fresh produce (called Fresh Fruits and Vegetables, known as "FF&V"), soft drinks, dairy products, and baked goods.

76. Supreme sourced most LMR items in the UAE, where Mr. Epp was located.

77. In attempting to reason through the logistics of a supply chain for LMR,

Mr. Epp concluded that it was necessary to involve some form of consolidator in the UAE. He prepared a PowerPoint presentation in July 2005 which discussed the possibility of using a distinct entity, whether owned by Supreme or not, for purposes of consolidating LMR items for shipment to Afghanistan.

78. Joseph Alvarez cautioned that Supreme could not own this entity, saying that "Supreme can't buy from Supreme."

79. In August 2005, notwithstanding Alvarez's advice, Supreme's shareholders established Jamal Ahli Foods Co. LLC ("JAFCO"), at Sharja, UAE to provide LMR items.

80. Supreme's Orenstein concealed the ownership of JAFCO by putting it in the name of Supreme Dubai's sponsor, Dr. Jamal Ahli, and the wife of Supreme Dubai's Director. They held 51% and 49% of the JAFCO's shares respectively. JAFCO was completely controlled by Supreme, and its General Manager reported to Relator.

81. In September 2005, by means of an SF30 Amendment of Solicitation/Modification of Contract submitted to DSCP, Supreme advised the Department of Defense that it intended to use JAFCO as an "additional place of performance for Local Market Ready support."

82. JAFCO turned out not to be the staging contractor Mr. Epp had envisioned. Rather, Orenstein directed that it be used as a *de facto* vendor to dramatically mark up LMR items. Even though JAFCO was an *alter ego* of Supreme, JAFCO purchased LMR product and then "sold" it, at an increased price, to Supreme. Supreme billed the United States as though it had purchased the product at the price it

paid JAFCO.

83. JAFCO's management reported to Mr. Epp, and all operations of JAFCO were controlled by Supreme.

84. An August 31, 2005 Excel spreadsheet generated by Supreme personnel demonstrates how Supreme profited through the use of JAFCO:

Description	Invoice Price Supplier	Charge from JAFCO to SFS	% Margin Product
B R, ICE CREAM, FZN, PRALINES N CREAM, 3 GAL CO	$38.12	$43.83	15%
B R, ICE CREAM, STRAWBERRY, FZN, W/STRAWBERRY PIECES & SWIRL, 3 GAL CO	$38.12	$43.83	15%
B R, ICE CREAM, VANILLA, FZN, 3 GAL CO	$38.12	$43.83	15%
TOPPING CARAMEL SAUCE, 24/1 kg	$71.88	$93.44	30%
TOPPING CHOCOLATE FUDGE, 24/1 kg	$65.34	$84.95	30%
TOPPING STRAWBERRY SAUCE, 24/1 kg	$71.88	$93.44	30%
BEER, NON-ALCOHOLIC, GERMAN 24/330 ML CN	$8.30	$18.68	125%
ICE CUBS, FZN, 5 LB BAG	$0.11	$0.16	50%
BEV, CARB, 7UP, 24/300 ML CN/CS	$4.36	$5.66	30%
BEV, CARB, COCA COLA, 24/330 ML CN/CS	$4.40	$5.72	30%
BEV, CARB, DIET COKE, 24/330 ML CN/CS	$4.40	$5.72	30%
BEV, CARB, DIET PEPSI, 24/300 ML CN/CS	$4.36	$5.66	30%
BEV, CARB, FANTA ORANGE, 24/330 ML CN/CS	$4.40	$5.72	30%
BEV, CARB, FANTA STRAWBERRY, 24/330 ML CN/CS	$4.40	$5.72	30%
BEV, CARB, MIRANDA, 24/300 ML CN/CS	$4.36	$5.66	30%
BEV, CARB, MOUNTAIN DEW, 24/300 ML CN/CS	$4.36	$5.66	30%
BEV, CARB, PEPSI COLA, 24/300 ML CN/CS	$4.36	$5.66	30%
BEV, CARB, SPRITE, 24/330 ML CN/CS	$4.35	$5.66	30%
DRINK, ENERGY, RED BULL 24/250 ML CN/CS	$23.58	$29.48	25%
JUICE, APPLE 24/200ML CO/CS	$3.21	$4.98	55%
JUICE, COCKTAIL 24/200 ML CO/CS	$3.21	$4.98	55%
JUICE, ORANGE 24/200 ML CO/CS	$3.21	$4.98	55%
JUICE, PINEAPPLE, 24/200ML CO/CS	$3.21	$4.98	55%
MILK WHITE, UHT, LOW FAT, 24/200 ML CO/CS	$3.27	$5.06	55%
MILK, CHOCOLATE, UHT, 24/200 ML CO/CS	$3.59	$5.57	55%
MILK, FLAVORED, BANANA, UHT, 24/200 ML EA CS	$3.59	$5.57	55%
MILK, STRAWBERRY, UHT, 24/200 ML CO/CS	$3.59	$5.57	55%
SNACK, POTATO CHIPS, CATSUP 48/1.4 OZ PG/CS	$15.44	$19.30	25%
SNACK, POTATO CHIPS, CHEESE, 48/1.4 OZ PG/CS	$15.44	$19.30	25%
SNACK, POTATO CHIPS, CHILI, 48/1.4 OZ PG/CS	$15.44	$19.30	25%
SNACK, POTATO CHIPS, ORIGINAL, 48/1.4 OZ PG/CS	$15.44	$19.30	25%
SNACK, POTATO CHIPS, SALT & VINEGAR 48/1.4 OZ PG/CS	$15.44	$19.30	25%
SNACK, DORITOS, NACHO CHEESE, 48/ 1,58 OZ PG/CS	$17.40	$23.49	35%
ICE CREAM BAR, MARS, 24 EA / 62.5 ML	$10.89	$13.61	25%
ICE CREAM BAR, SNICKERS, 24 EA / 56 ML	$10.89	$13.61	25%

ICE CREAM BAR, TWIX, 24 EA / 60.5 ML	$10.89	$13.61	25%
ICE CREAM, COOKIES AND CREAM, FRZ, 150 ML CUP, 12/CASE	$9.07	$11.33	25%
ICE CREAM, DOUBLE CHOC, FRZ, 150 ML CUP, 12/CASE	$9.07	$11.33	25%
CHOCOLATE SHAVING, 6 x 500 g	$90.00	$121.50	35%
ICE CREAM CONES, FRESH, 672/11,5 GR AVG	$74.00	$99.90	35%

85. These examples relate to items which were shipped by sea. FF&V airlifted into Afghanistan was marked up an average of 32%.

86. On September 5, 2005, Relator e-mailed defendant Orenstein regarding "P & L ["Profit & Loss"] US contract:"

> Airlift cost have been calculated very conservatively with 25% fill rate and an extra cost mark up of 25% for risk. I have no idea about the distribution cost in Kabul, this needs to be taken into account as well as all the overhead invested in that project. So, please don't take that as the final figure but as a good indication of gross margin. I'll not distribute/ communicate such figures to anybody as this may be completely misunderstood, think you agree.

87. On September 14, 2005, Stephen Orenstein responded to Relator's e-mail, saying "I would like to review the LMR mark-up before JAFCO makes its first shipment."

88. Supreme, under the close supervision and tutelage of owner Orenstein, used the fiction that JAFCO was an arms-length supplier to maximize Supreme's revenues.

89. Supreme also used the JAFCO fiction as a means of manipulating prices to the United States so that, rather than reflecting what was actually paid, they were at parity with the prices charged by PWC.

90. For example, in February 2006, Orenstein sent an e-mail to Relator, Alvarez, and purchasing manager Armin Schroder complaining about non-alcoholic

beer pricing.

91. Orenstein wrote: "The revised sales price is somewhat lower than the price submitted by PWC for the same product. Why can't we submit the same cost price as PWC did? . . . If a lower product cost is likely to increase revenue [due to high shipping costs] then we should go with option 1."

92. The result of defendant Orenstein's directive to "go with option 1" was that Supreme charged the United States a 125% markup on nonalcoholic beer.

93. Supreme used a variety of means to learn PWC's pricing, and Supreme's primary goal, especially with respect to LMR items, was to ensure that its pricing was consistent with PWC's. Much of Supreme's information about PWC prices came from the two companies' mutual consulting firm, PCA.

94. Orenstein and Alvarez were directly involved in the use of JAFCO to create false profits. For example, on March 14, 2006, Relator e-mailed Alvarez and Orenstein regarding pricing on several items. The e-mail states "Gents, Do you agree with the following pricing, I'd like to get that out today," and reproduced this spreadsheet in the body of the message:

SR #	Item	Purchase Price (US$)	Seven Seas quotes	Seven Seas price to customer	Supreme sales price	Mark Up
1	TRAY,MESS,COMPARTMENTED "5 COMP. PAPER PLATES"	$70	$80	$105	$103	47.14%
2	BAG,PLASTIC "55 GALL"	$38	$75	unknown	$70	84.21%
3	CAN TRASH 55 GALL	$55	$100	unknown	$95	72.73%

4	CLEANER POLISH ECOLAB 17oz	$46	$57	unknown	$69	50.00%

95. While DSCP rejected these prices, which related to disposable items outside the LMR contract for which DSCP requested pricing, the exchange typifies Supreme's approach to pricing.

96. Among Relator's duties assigned by Orenstein was to ensure that JAFCO's role as wholly-owned middleman was opaque. On March 13, 2006, Supreme partner Michael Jacques Gans, who is licensed to practice law in New York, e-mailed Relator, saying "as a matter of extreme urgency I would like to review the details of the JAFCO business model/pricing model. That will entail analyzing precisely what work JAFCO performs and what charges it makes for each element – so as to determine the defensibility of its charges."

97. In an e-mail later on the same day, Relator responded to Gans and Orenstein that several tasks relating to JAFCO's role would be undertaken, to include "defin[ing] in small detail the service JAFCO is providing and thus product/category group by product/category" and "[r]eview of service provided and related mark up applied to product."

98. Relator tasked the general manager of JAFCO to list all JAFCO activities and assign costs to them. However, there was little to itemize, because most activities were already paid through other charges (primarily those related to packing produce in corrugated-paper containers, called "triwalls").

99. Six weeks later, on April 26, 2006, Gans wrote: "Michael, perhaps the heat is off regarding JAFCO – but was all that was listed [in the prior e-mail of March

13, 2006] done? If so, I would really like to see it."

100. In fact, Supreme's owners had no interest in revising the manner in which JAFCO did business, and gave Relator no direction to do so.

101. Supreme's FF&V pricing was in some cases facially unreasonable. In May 2006, DSCP noted that Supreme's prices for FF&V were "aberrantly high," with corn priced at 525% of a competitor; Radishes, 723% higher; Avocados 311% higher; and Grapes, 81% higher.

102. In response, Supreme blamed the high prices on the decision to supply produce of exceptional quality. Supreme offered to provide inferior produce, asserting that "the savings are app. 100-400%, but we think it is very difficult now to convince the customer to take a product with much lower quality, as they are used to the current product quality already for 6 months."

103. Both Orenstein and Alvarez were fully engaged in these communications. Indeed, immediately after DSCP inquired about the aberrant pricing, Alvarez e-mailed Orenstein and Relator, saying "This is not very nice. I think it is time to raise distribution fees."

104. On the next day, Orenstein directed Relator to "get up-to-date FFV prices from PWC[.]"

105. Over the next few weeks, Supreme worked to find an alternative vendor for certain of the items regarding which DSCP complained, and ultimately offered a lower price. However, Supreme did not end its practice of using JAFCO to buy product and then adding an extreme markup.

106. Supreme never advised DSCP that one of the reasons for its high prices was the use of a captive middleman to illegally boost profits.

107. In the spring of 2006, Relator participated in a conversation with Orenstein and Alvarez in which Orenstein decided to give JAFCO a "meaning" by opening a warehouse for beverages and bottled water (called JAFCO2). The premise was that if JAFCO warehoused a stockpile of beverage items, it would be easier to justify the markups for those beverages than if JAFCO alone was involved as a middleman.

108. JAFCO2 stockpiled soft drinks from May 2006 forward, despite the fact that local bottlers of both Coca-Cola and Pepsi products were fully able to fulfill Supreme's orders anytime with fresh product, so the stockpile (and JAFCO2 itself) was wholly unnecessary.

109. Some of the product warehoused at JAFCO2 actually passed its expiration date without ever being delivered.

110. In July 2006, Relator communicated to Stephen Orenstein by e-mail regarding "the further organization of JAFCO." The e-mail highlights growing concerns regarding a "'security risk'" posed by JAFCO personnel "having full visibility of agreements and margins," and proposes:

> Sales: (only DoD): sales prices will be fixed by CPD based on purchasing price plus mark up, prices to be fed into JAFCO BW system and used for invoicing, nobody in JAFCO knows mark up nor purchasing price.

111. In December 2006, Mr. Gans reported to his partner Orenstein and Supreme's DoD representative, Joseph Alvarez, that he had obtained advice from an

American lawyer validating the JAFCO arrangement. However, Relator knows that Gans, who is a 25% owner of Supreme, did not know the full details of the JAFCO arrangement for purposes of providing a complete description thereof in seeking advice of counsel.

112. On or about January 16, 2007, Armin Schroeder, Supreme's purchasing manager, sent Relator an e-mail, "Subject: Purchasing/Selling JAFCO Total 2006." The e-mail attached a spreadsheet entitled "Mark up 2006.xls," and included this information (relating only to FF&V items shipped by air):

Michael, As requested:

JAFCO Total:

Buying:	12.424.928 USD
Selling:	19.160.914 USD
Margin:	6.735.986 USD (35%)

Fruits:

Buying:	7.359.658 USD
Selling:	11.696.535 USD
Margin:	4.336.877 USD (37%)

Vegetables:

Buying:	5.065.270 USD
Selling:	7.464.379 USD
Margin:	2.399.109 USD (32%)

113. Supreme's markups as a result of its use of JAFCO include 15% for ice cream, 30% for carbonated soft drinks, and 55% on juice, milk, and lettuce.

114. Additional examples include:

Coca Cola, 24 bottles x 330 ml
Purchase price from UAE bottler: $4.40 per case
Supreme purchase price from JAFCO: $5.72 per case
Amount billed to United States: $5.72 per case plus distribution fee

Orange juice, 24 cartons x 240ml
Purchase price from UAE packager: $3.21 per case
Supreme purchase price from JAFCO: $4.98 per case
Amount billed to United States: $4.98 per case plus distribution fee

Iceberg Lettuce, purchase price from importer: $1.25 per pound
Supreme purchase price from JAFCO: $1.94 per lb.
Amount billed to United States: $1.94 per pound plus distribution fee

115. Iceberg Lettuce was the largest-volume FF&V item Supreme sold to the United States, with 720,000 pounds shipped in 2006. Thus, is 2006 alone, Supreme realized fraudulent profit of a half-million dollars on head lettuce.

116. Coca-Cola and PepsiCo products and orange juice were loaded into shipping containers at the factory, and JAFCO provided no service other than invoicing.

117. Across Supreme's business lines, JAFCO generated revenue of €132 million (approximately $171.6 million USD) in 2006, resulting in gross profit of €24.6 million (approximately $30 million USD). However, JAFCO paid Supreme "service fees" and "lost cash discounts" which exceeded JAFCO's profits and resulted in a net loss to JAFCO of €416. That is, Supreme's owners sucked all profit out of JAFCO as their own. Most or all of that $30 million reflected fraudulent profit to Supreme based on the bogus JAFCO arrangement.

118. In connection with the DoD contract to supply food into Afghanistan, Supreme realized excess gross profits in 2006 alone of $13.5 million as a result of the use of JAFCO as a middleman for LMR. Of this amount, $7.5 million related to airlifted LMR, and $6 million resulted from LMR shipped by land or sea.

119. The use of JAFCO as an illegal middleman was in full force and effect when Mr. Epp was terminated by Supreme, and on information and belief continued

through the life of the contract.

D. SUPREME INFLATED PRICING FOR BOTTLED WATER, IN KNOWING VIOLATION OF ITS CONTRACT WITH THE UNITED STATES

1. Water Pricing

120. As noted, the United States Army was responsible for managing the food products in Afghanistan prior to Supreme's prime vendor contract. Though managed by the Army, the area was also covered for certain products through a contract with PWC.

121. PWC contracted to supply bottled water to U.S. forces in Afghanistan before Supreme was chosen as Afghanistan Prime Vendor. However, PWC was unable to perform. In October 2004, Supreme's freshly-hired DSCP negotiator, Joseph Alvarez, negotiated with PWC for Supreme to subcontract bottled water requirements into Afghanistan.

122. Beginning in October 2004, Supreme received orders from PWC and managed the supply chain. Supreme invoiced DSCP through PWC at a rate of $6.45 per 24-bottle case of .5 liter bottles. This rate was much higher than Supreme's actual cost in purchasing and transporting the water and thus provided a substantial profit for Supreme.

123. Relator does not know how Alvarez originally justified the $6.45 price for water, but believes that Alvarez likely presented to DSCP the manufacturers' invoices at real cost and justified the additional rate through transportation costs. Alvarez knew that DSCP would have a difficult time checking the real cost of logistics.

124. PWC also collected the Distribution Fee of $4.20 per case, as listed in

their catalogue. Out of this $4.20, Supreme received $2.82, which was supposed to represent Supreme's profit and costs of operation and administration, with PWC receiving the rest, $1.38.

125. In December 2005, with the commencement of Supreme's SPV contract, water was incorporated into this contract following the same contractual requirements of delivered pricing which required Supreme to invoice the actual costs to DSCP.

126. Under the SPV contract, the distribution fee for water was raised to $4.87 per case, which, as with other products, was to account for Supreme's profit and costs of operation and administration. Because Supreme's costs did not increase, the increase from $2.82 to $4.87 resulted in an increase of pure profit.

127. Supreme incorporated the same price of $6.45 which they had used under the PWC contract into their own catalogue pricing, representing to DSCP that that was a mixed price accounting for the average actual product costs from various vendors, including the costs of transporting water to the OCONUS warehouse, in this case the Kabul water warehouse.

128. The actual purchase and cost of transporting the water to the OCONUS warehouse were much lower.

2. Water products imported from United Arab Emirates

129. Most of the water purchase contracts Supreme entered into were for water from various suppliers in the UAE. The mix of suppliers changed over time but were principally National Mineral Water Company (Tanuf brand), Emirates Pure Spring Water Company (Pure Spring brand), and Oasis Pure water (Oasis brand).

130. As a subcontractor to PWC, Supreme had handled all the transportation of water from the various suppliers to Supreme's main warehouse in Kabul. Under Supreme's own contract, the transportation was to be provided by the government through its transportation system, Surface Deployment and Distribution Command ("SDDC").

131. In December 2005, at the beginning of the PV contract, through at least August 2006, Supreme continued to handle as much transportation of water as it could. The Government repeatedly requested that Supreme use SDDC to transport the water; however Supreme used delays in shipments by SDDC as a reason it needed to continue to use its own transportation network. Regardless of whether Supreme or SDDC transported the water, Supreme charged a delivered cost of $6.45 per bottle. When SDDC transported the water, however, Supreme was contractually obligated to only charge the supplier's actual invoice price, with no transportation cost.

132. As the United States Government's pressure to comply with contractual transportation rules (use of SDDC) increased, on February 1, 2006, Armin Schroeder instructed JAFCO to order 50% of the water with SDDC shipments and 50% with Supreme shipments. Mr. Epp reiterated these instructions in March 2006, though the actual transportation split varied considerably for the first few months of the PV contract.

133. The water continued to be invoiced to the government at $6.45 per case whether it was transported by Supreme or SDDC.

134. Beginning in mid-March 2006, SDDC pushed for control of all water

transportation through their system. Even though Supreme's profit margin was smaller when they provided the transportation themselves, Supreme was not willing to surrender all transportation to SDDC because Supreme feared that DSCP would then require a lower per case rate or a lower per case Distribution Fee. There was internal discussion and conflicting instructions over the next few months regarding how much and when water delivery should be transitioned to SDDC.

135. On June 5, 2006, Armin Schroeder questioned why there had been only a few shipments with SDDC. "If this is correct we are loosing (sic) a lot of money (For each case app. 2.30 USD?)." Mr. Schroeder clearly understood that Supreme had no intention of lowering the delivered price, per its contractual requirements, when SDDC shipped the water.

136. Nevertheless, under pressure from DSCP, Relator instructed on July 22, 2006 that 100% of DoD water was to be switched to SDDC. This request was complied with, as evidenced by Supreme's Daily Status Reports. Supreme's transportation of water dropped from a rate of approximately 56% in April 2006, to 14% by August and to 0% beginning in October 2006. The rate charged to DSCP continued to be $6.45 per case.

137. On November 13, 2006, Zehier Hijazi, Supreme's Financial Controller, emailed Mr. Epp about water sales:

> "It has come to my attention that the transport costs of the water sold to DoD is now being paid by the US Govt. Will this reduction of transport costs to Jafco be reflected in the reduction of the sale price of water to DoD. Please advise if a new sale price of US water will be charged....if there is a change to the sale price a Credit note can

be calculated and produced from Jafco to DoD...."

Mr. Epp answered that there was a new mix of water supply so "there is no change in water pricing for 24x0.5 Liter."

138. From December 2005 to December 2006, Supreme sold approximately 4.5 million cases of 0.5 liter bottled water under the SPV contract. This resulted in invoice pricing to DSCP of $29,025,000 at a catalogue price of $6.45 per case.

139. Approximately 1,144,000 (25%) of these cases were transported by Supreme for an approximate delivered cost of $4.22 ($1.83 product cost + $2.35 transportation cost). Supreme should have invoiced the government $4,827,680. But Supreme invoiced the government $6.45 per case for a total purchase price of $7,378,800.

140. Approximately 2,556,000 (57%) of these cases were transported by the government thru SDDC (the remaining were transported by Venus water as discussed in paragraphs 143-144 below). The invoice price to the government should have been $1.83 per case (a mixed-price for product cost only) for a total of $4,677,480. Supreme invoiced $6.45 per case for a total of $16,486,200.

141. Supreme made an illegal profit of $14,359,840 for one year of water sales of UAE water.

142. Supreme recognized an additional $22,131,189 in Distribution Fees for these deliveries.

3. Water products imported from Pakistan

143. Supreme also imported water from Venus Distributors (Nestle Pure Life)

in Pakistan. Venus always provided the transportation and invoiced Supreme one price for the product and the transportation. Venus's charge to Supreme was $5.03 per 24-bottle case of .5 liter bottles.

144. Supreme invoiced the government the same catalogue price of $6.45 per case, representing an illegal profit to Supreme of $1.42 per case. Relator is aware of at least 120,000 cases of water from Venus that were invoiced to Supreme, and believes the number of cases might have been as high as 800,000.

4. Water products from local suppliers in Afghanistan

145. In the summer of 2006, the United States began a program designed to increase purchases from local suppliers in Afghanistan.

146. Supreme resisted this effort in the case of bottled water because the locally-supplied water cost more than the imported water and Supreme feared this would cut into their profits.

147. After months of negotiation, Supreme signed a contract with Afghanistan Beverage Industries ("ABI") to purchase both .5L bottle and 1.5L bottle cases at a higher price than imported water but still less than the price Supreme was charging.

148. There was internal discussion within Supreme of presenting an increased water rate to DSCP, but Supreme opted to not "open a can of worms" and accepted the slight deterioration of water gross profits.

149. There was also internal discussion about lowering the price of water to ensure that DSCP would not require Supreme to purchase water from the A-Z company, a potential local supplier that was well-connected with the United States

Army. Supreme knew that the A-Z water would be even more expensive than water from ABI. But this was not agreed to either.

150. Part of the loss of profits was made up by the change in the case size of the water. ABI could only package the 0.5 liter bottles of water in 12-bottle cases instead of 24 and the 1.5 liter bottles of water in 6-bottle cases instead of 12.

151. Orenstein instructed Relator to lower the case size but to keep the Distribution Fee the same for the smaller case size. Relator refused to do that for the 0.5 liter size, but did agree for the 1.5 liter size.

152. For the 0.5 liter size, Supreme simply put two 12-bottle cases together to make a 24-bottle "case," and charged the government the agreed-upon distribution fee. They could have done the same with the 1.5 liter bottles.

153. But rather, Relator, upon Orenstein's instructions, presented to DSCP the actual invoice cost of the 1.5 liter water (with a local transportation cost) and kept the distribution fee the same for the 6-bottle case as it had been for the 12-bottle case. Relator represented this as lowering the price to DSCP.

154. But in fact it resulted in a higher price to DSCP. The original price for the 12-bottle case was $8.47 + $4.87 Distribution fee, for a total of $13.33 per 12-bottle case. The new price was $2.63 for a 6-bottle case plus the same DF of $4.87 for a price of $7.50 for a 6-bottle case or $15.00 for 12 bottles.

155. Relator estimates that Supreme thereby earned from the United States extra distribution fees of approximately $1,000,000.00 per year.

156. Orenstein's doubling of the distribution fee for water by halving the case

size was not commercially reasonable, was unfair to the United States, and constituted fraud.

157. All claims submitted by Supreme for water delivered to Afghanistan after the Prime Vendor contract took effect were false claims.

158. The two major UAE water companies, Venus Water from Pakistan, and ABI Water from Afghanistan all gave Supreme prompt payment discounts of 5 to 6%. As with the other prompt payment discounts Supreme received, these were not passed on to the government but illegally kept by Supreme. The discounted prices have not been figured in the pricing noted above.

E. SUPREME ILLEGALLY PROFITED ON AIRLIFT AND ROAD TRANSPORT CHARGES BY MISREPRESENTING TO THE UNITED STATES THE COST OF SUBCONTRACTING FOR TRANSPORTATION.

1. Inbound transportation

159. After the Prime Vendor contract was awarded, there was debate between Supreme and DSCP regarding whether the Distribution Fees that Supreme had proposed and DSCP had accepted were expected to cover the cost of airlifting local market ready ("LMR") products, including fresh fruit and vegetables and other perishable food products, from a consolidation center to the designated Afghani sites in the solicitation - Kabul, Kandahar, Bagram and Salerno.

160. Supreme represented that their proposal had assumed that air transportation costs were not included, since the cost of airlift was higher than the negotiated distribution fees for LMR products. Alvarez told DSCP that Supreme "did not

understand the distribution fee as including the price of airlift from an outside source into our distribution facility."

161. DSCP, according to Alvarez, responded that Supreme's price was high enough for DSCP to conclude that airlift expenses were included, but that if there was a mistake in bid, DSCP might have to re-evaluate the bids.

162. Ultimately, DSCP asked Supreme to make a separate bid for the inbound airlift charges. Relator was charged with putting together the bid. On August 2, 2005, defendant Orenstein e-mailed Mr. Epp, stating "I request you to not discuss price issues in the broader round [*i.e.*, with others inside the company]. Only you, Joe [Alvarez] and me is enough, others have no need to learn about airlifts margins and related improvements."

163. Supreme saw the airlift as a way to increase their profits beyond the agreed-upon distribution fees. They investigated several avenues to make this a reality, all the while conferring with PWC regarding the various proposals they were considering because Supreme and DSCP were discussing an early start-up of the provision of LMR product under PWC's contract.

164. In June 2005, Relator and Alvarez met with National Air Cargo ("NAC"), the incumbent Department of Defense airlift contractor, to determine what NAC was charging the government. Supreme determined that NAC was charging $2.25 per pound of gross weight.

165. NAC offered to provide airlift services to Supreme at a lower price than it was charging the United States. In fact, however, Supreme was already airlifting into

Afghanistan under its ISAF contracts, so it knew full-well what it cost to do so. Supreme's team met with NAC only to determine what NAC was able to charge the Defense Department.

166. On October 3, 2005, PWC senior manager Toby Switzer wrote to Alvarez, saying "[f]rom some of my private discussions with DSCP, I think we may be in jeopardy on the FF&V and especially the airlift business both now as well as your contract. Apparently they are really bouncing back between your proposal and probably letting NAC do it, which if NAC did it, it would really reduce the size of your contract."

167. Supreme personnel also traveled to Bahrain to investigate how the incumbent provider (BMMI, Bahrain) was packing FF&V for airlift into Afghanistan. BMMI was using triwall containers packed with wet ice to keep perishable food fresh. The wet ice resulted in high shipping costs.

168. Supreme investigated the use of dry ice. Dry ice has significantly higher cooling capacity than wet ice.

169. After determining that dry ice would maintain packed food at the needed temperature for the necessary 48-hour period, Supreme offered DSCP two shipment options, both premised on the use of wet ice. First, $2.20 per pound *gross* weight—including ice—which was marginally lower than NAC's $2.25 rate. The second price quote was for $3.74 per pound *net product* weight—*i.e.*, not including ice and packaging.

170. The gross weight proposal and the net weight proposal were both highly inflated representations to DSCP. An email sent from Sujeen to Relator on August 23,

2005, estimated that Supreme's direct cost to Kabul, for example, with the typical IL76 aircraft that Supreme used, was $.61 per pound gross weight with 100% utilization and $.81 per pound gross with 75% utilization.

171. Supreme represented to DSCP that the rationale for the net pricing proposal was that Supreme had conducted tests which demonstrated that the ratio of gross weight to net product weight, with the necessary amount of wet ice, was between 1.8:1 and 2:1. A cost of $3.74 represented a ratio of gross weight to product weight of 1.7:1, creating the appearance that Supreme was offering the Defense Department a discount.

172. The United States relied on Supreme's representations and selected the second option.

173. In fact, Supreme had never done any testing with wet ice and fabricated the 1.8:1-to-2:1 ratio while intending all the while to use dry ice if DSCP chose the *net-weight* option, knowing that the actual ratio using dry ice was between 1.12:1 and 1.2:1, without packaging material.

174. Supreme used the gross-weight pricing proposal as a means of directing the attention of contract decision-makers toward the fraudulent 1.7:1-based pricing, and intended, if the *gross-weight* proposal was accepted, to use wet ice because it could charge more for the same volume of product.

175. Supreme never informed DSCP that Supreme's costs associated with the use of dry ice were much lower than what was represented to the United States, and consistently billed the government at the $3.74-per-pound price.

176. The effect of this fraud is dramatic. A hypothetical airlift load of 50,000 pounds net product on a single IL-76 transport aircraft, at a shipping cost of $3.74 per pound, would generate shipping revenue of $187,000. Mr. Epp estimates the actual shipping cost of that hypothetical load at $40,000 to $43,000, meaning that Supreme was realizing profit of approximately $140,000 per plane load of supplies.

177. Though DSCP agreed to the $3.74 per lb net weight as being "fair and reasonable," they objected to the minimum weight requirements that were in Supreme's proposal, as well as Supreme's efforts to tie the agreed-upon rate to changing fuel costs. Relator, in an email to Mr. Alvarez in October 2005, suggested not stressing the minimum too much "if we get the 3.74 through." But Mr. Alvarez was not ready to concede even that possibility, saying, "No - we need to be careful in setting a precedent."

178. Supreme saw inbound airlift as their highest revenue/profit maker.

179. On December 19, 2005, Relator sent Orenstein and Alvarez an email regarding Supreme's progress to date, beginning with the provision of LMR product under PWC's contract. He noted that Supreme, after only five weeks of operation, had already earned a gross margin of $1.1 million on airlift sales at a "modest 3.74 USD." Relator went on to say, "If I look back, the best thing was our idea to switch to 'net' and convince the customer to buy it as an innovation."

180. In 2006, Supreme contracted to fly 1,142 flights into Afghanistan. The United States was billed and paid more than $85 million for transportation in connection with those flights. Supreme's total expense in connection therewith was $24.5 million.

The resulting $60.5 million profit was not fair or reasonable and was the result of conscious misrepresentations to DSCP by Supreme.

2. Outbound transportation, from Kabul to the Forward Operating Bases

181. Shortly after the contract was awarded to Supreme, the Army determined that delivery was going to be required to many more locations than the four sites listed in the solicitation.

182. There was again discussion between Supreme and DSCP regarding who would provide this transportation. Supreme was very desirous of supplying all of the transportation through their own supply chain, since this would represent another opportunity for additional profits for them.

183. DSCP asked Supreme to send a proposal regarding their costs for transportation from the contract designated sites to the Forward Operating Bases ("FOBs"), by air and by road. DSCP instructed Supreme to include all costs that they would like included in the proposal and to present it in detail.

184. In late 2005, Orenstein directed Relator to generate a transportation pricing proposal for these additional delivery sites for presentation to DSCP by Alvarez.

185. Relator devised cost models which took into account estimated delivery quantities and cost proposals from subcontractors for transportation by land, fixed-wing aircraft, and rotary-wing aircraft.

186. Relator was not provided any guidance regarding the requirements of the contract or of U.S. procurement law with respect to transportation expenses, nor was he tasked with determining such requirements. In developing his pricing model, his focus

was on maximizing Supreme's profits.

187. On November 3, 2005, DSCP e-mailed Joseph Alvarez regarding pricing for outbound transportation. DSCP's Maryann DiMeo wrote that Supreme was expected to provide "all costs visible in this breakout – give me a sample of what you would actually want to see billed so that I have a picture of total costs, nothing omitted . . . all transportation included and broken out."

188. In an e-mail to Alvarez on November 12, 2005, Relator outlined the costs and pricing proposals for the three methods of transportation.

189. Supreme's actual cost of truck transport to the FOBs, including an arbitrary 25% surcharge for risk, was $0.14 per pound. When Relator identified the $0.14 cost per pound (in an earlier conversation) and proposed to Orenstein that Supreme propose a rate of $0.23 to $0.25, Orenstein rejected this suggestion and said, laughing, "Michael, what do you think PWC would have offered here?" and advised $0.49.

190. Thus, Relator abided by this suggestion and proposed a road transport rate of $0.49 per pound. The rate which Supreme proposed for land delivery, therefore, was 350% of an already-burdened cost of $0.14 per pound.

191. The inflated $0.14-per-pound price was premised on Supreme making deliveries using its own trucks. In fact, all transports to FOBs were done by subcontractors at even lower, fixed rates.

192. Relator suggested proposing to DSCP a price for transport by fixed-wing aircraft at $2.60 per pound net weight. Relator determined that actual cost, based on charter rate, flight time, and gross load, was $0.75 per pound gross weight.

193. The proposal of $2.60 per pound net weight reflected a 90% markup, based on the same ratio of gross weight to net weight of 1.7:1 that had been put forth for inbound flights.

194. Since the ratio of gross weight to net was actually closer to 1.3:1, as discussed in paragraph 173, the markup was much more than the 90% to be portrayed. Relator estimated that this proposal would generate a $64,000 profit to Supreme per week for each airplane used to airlift product.

195. The suggested proposal for transportation by helicopter was $8.27 per pound of product. Relator calculated that Supreme's actual cost, based on charter rate, flight time, and gross load, was $2.60 per pound gross weight. This proposal was presented as reflecting a 76% markup, also, as in the case of fixed-wing airlifts, calculated on a ratio of 1.7:1 gross weight to net weight. The actual ratio was 1.3:1. Relator estimated this proposal, if implemented using three helicopters, would result in a profit to Supreme of $356,000 per week.

196. Following the pervasive directive of Supreme's management to drive profits higher, on November 16, 2005, Relator e-mailed Orenstein and Alvarez, summarizing the previous proposals and suggesting even higher rates:

> at the end of the day it is important what we think we can get through. If we assume more would be accepted I recommend to go with a 5% higher rate for both, fixed wing and helo: Fixed wing: 2,73 USD v. 2,60 USD per net lb, Helo: 8,68 USD vs 8,27 USD per net lb. This would generate [$21,000] more gross margin per week.

197. At this point in time, Orenstein and Alvarez were working with PWC Logistics, which is owned by Zone 1 contractor PWC, to arrange for transportation to the

FOBs, with Supreme functioning as a subcontractor to PWC.

198. Alvarez or Orenstein forwarded Mr. Epp's pricing to PWC Logistics. By e-mail dated November 23, 2005, Toby Switzer, General Manager of PWC Prime Vendor forwarded those prices to DSCP Contracting Officer Maryann DiMeo and others at DSCP with a representation that "***PWC worked closely with Supreme to provide justification for fair & reasonable pricing of the cost augmentations proposed below. These are straight pass through costs incurred by our subcontractor Supreme and PWC has NOT factored in any additional costs.***" Emphasis in original.

199. In fact, Switzer's representations, which were simply forwarded to him by Alvarez, were false and were known to be so by Supreme. The prices quoted by PWC were those developed by Relator, which were known by Alvarez and Orenstein *not* to be "straight pass through costs," and were certainly not intended by Supreme to be "fair and reasonable."

200. Relator was not directed to create pricing models which were "straight pass-through costs." Rather, his charge was to develop and propose pricing in line with Supreme's business model to maximize profits arising from military contracts.

201. DSCP rejected PWC's proposal by e-mail from Contracting Officer Maryann DiMeo on November 29, 2005, because the rates were too high. Ms. DiMeo noted that historically DSCP was accustomed to paying one fixed price for airlift in Afghanistan, regardless of the type–fixed wing or helicopter. She went on to say that the government would accept different rates, "however, we would expect at least one of

these prices to be lower than our historical rates, rather than both higher....Historically, we paid much lower prices than this for FOB delivery irregardless of the type of craft utilized."

202. In early December 2005, Supreme and DSCP agreed to negotiate the airlift rates themselves, rather than through PWC. On December 25, 2005, Alvarez sent Ms. DiMeo a breakdown of Supreme's fabricated costs, representing that fixed wing aircraft cost $2.43 per net pound and reiterating their proposal of $2.73 per pound to include Supreme's profit. He represented Supreme's costs for helicopter at $7.68 per net pound, reiterating their proposal for $8.68 to include Supreme's profit. He also reiterated the transportation by truck at $.49 per pound but did not include a breakdown of costs.

203. Further negotiations ensued between Supreme and DSCP, with DSCP continuing to question Supreme's proposed rates. Relator also continued to struggle to put together a response to DSCP that would appear to justify the requested rates, as noted in an email he sent to Alvarez and Orenstein on February 20, 2006, in which he stated, "I have some more work on the pricing justification....." and in an email sent to Alvarez and Orenstein on February 25, 2006, "With regards of the trucking cost, it appears difficult to justify the price of 0.49 USD per lb with cost. I tried my best to allocate as high as possible, but frankly, don't feel comfortable, probably you have some better ideas."

204. After input from Orenstein, with both he and Relator juggling figures to make it appear that Supreme would be making a lower profit rate, Relator finally

provided additional information to DSCP on March 15, 2006, proposing the same rates as originally requested but providing further breakdown of costs. He also provided for the first time a breakdown of costs for truck transportation, representing that the cost for trucks was $0.44 per net pound, with the proposal to DSCP still standing at $0.49 per pound, providing a small profit for Supreme.

205. During these negotiations, in January 2006, Ms DiMeo had emailed Alvarez, telling him that in regard to the proposal to the FOBs, you "need at least to have a certified claim type format from Supreme–i.e certifying that all of these charges are accurate, submitted in good faith and address all deliveries."

206. On April 12, 2006, Ms. DiMeo sent Orenstein and the other principals "certified claim language" from 48 CFR 33.207, noting that Supreme had requested this at the conference in Las Vegas.

207. After various intervening communications, on May 3, 2006, DSCP contract management e-mailed Relator, with copies to Orenstein, Alvarez, and others, calling Supreme's positions into question and stating that "I have also never seen a certification from Supreme attesting that all of these submitted costs are accurate and submitted in good faith."

208. Mr. Orenstein asked Relator to draft a response to DSCP's questions and forward to him and Mr. Alvarez before sending to DSCP.

209. A week later, Mr. Epp complied with this request and sent Mr. Orenstein and Mr. Alvarez his proposed answers to DSCP and suggestion for the certification that DSCP was requesting. Later that same day, Relator e-mailed DSCP claims for fixed-

wing air support for the period November 2005–April 2006 based on the fixed-wing support figure of $2.73 per pound (totaling $4,177,830.93) and $8.68 for rotary-wing transport (totaling $5,786,530.68). At the insistence of Defendants, Relator's e-mail included an express certification that "this claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; . . . and that I am duly authorized to certify this claim on behalf of Supreme."

210. Supreme included this certification on its invoice requests to DSCP several times thereafter.

211. Relator was reluctant to provide this language to DSCP. He raised his concerns with Orenstein and Alvarez and was told that the certification was a formality with no consequence.

212. Orenstein and Alvarez knew that the information Relator certified as true on behalf of Supreme was false and intended that the certification induce DSCP to rely on those false statements to its detriment.

213. Supreme's proposal to DSCP contained the risk/profit markups that Supreme had juggled internally to lower over the last few weeks–13% "risk/profit mark up" for fixed-wing air transport; 16% "risk/profit mark up" for helicopter transport; and 11% "risk/profit mark up" for ground transportation. Each of these figures is dramatically less than the huge actual profit margins detailed above.

214. DSCP rejected Supreme's pricing proposals by e-mail from DSCP contract management to Mr. Epp, with copies to Orenstein, Alvarez, and others, on or about May 11, 2006.

215. Relator emailed Orenstein and Alvarez with his suggestion to lower the profit level, noting that Dimeo had "obviously bought into the cost." To offset the lower transportation profits, Relator suggested adhering to Supreme's original triwall rates. The trade-off would result in a net gain of $1,000,000.00 for Supreme.

216. On or about May 15, 2006, Relator e-mailed DSCP contract management with a proposal reducing fixed-wing rates per pound from $2.73 to $2.65, a purported "risk/profit" reduction from 13% to 10%; helicopter rates from $8.68 to $8.45, a purported "risk/profit" reduction from 16% to 13%; and ground transport rates per pound from $0.49 to $0.48, a purported "risk/profit" reduction from 11% to 9%.

217. DSCP ultimately agreed to accept the proposed "costs" with a smaller profit mark-up.

218. Supreme never disclosed to DSCP that the costs which PWC had quoted to DSCP on its behalf were inflated.

219. In August 2006, DSCP finally agreed to the following rates:

a. Fixed wing at $2.65 per pound. This was represented by Supreme to be a 9.5% profit, but in fact constituted a markup of 235%.

b. Rotary wing at $8.35 per pound. This was represented by Supreme to be an 11.9% profit, but in fact constituted a markup of 212%.

c. Road transport at $0.48 per pound. This was represented by Supreme to be a 9.1% profit, but in fact constituted a markup of 243%.

220. Throughout this period, the United States had not paid Supreme's transportation invoices. Because of the resulting substantial backlog, DSCP agreed to pay 75% of the outstanding claims in two $12,500,000 installments for the year-to-date

services and to pay 75% of each new submitted invoice.

221. Supreme sought equitable adjustment of $33,502,365 for the amounts which DSCP withheld, resulting in an audit by the Defense Contract Audit Agency (DCAA).

a. DCAA's audit of Supreme's outbound transportation charges

222. DCAA began its audit in August 2006. On August 31, 2006, an auditor asked for all of Supreme's invoices and documents to support its price structure. After two weeks and following two more requests, Relator finally responded that Supreme was unable to provide the records because the "costs are not allocated to a cost centre mirroring exactly the activities." Relator suggested that the auditor review the documents that had been provided to DSCP during the initial negotiations regarding transportation rates. Actually Supreme was able to present cost data for airlifts, which was monitored by Relator on a daily basis. By third quarter, 2006, Supreme was also beginning to monitor costs for road transportation.

223. On October 20, 2006, the auditor recommended that the claims for payment be returned to Supreme because Supreme had only provided estimated rates unsupported by any cost documents.

224. On December 4, 2006, Alvarez asked for a face-to-face meeting with the auditor "to get a better understanding of what information needs to be shared." Meanwhile, knowing that Supreme would not be able to support the submitted invoices, whether in full or even at the reduced 75% rate, Orenstein created a team, led by Relator, to "allocate" various "indirect costs" to justify Supreme's claims. By way of

example, Supreme inflated warehouse costs and created "self-insurance premiums."

225. In January 2007, Supreme's Supply Chain Analyst, Naveed Ahmed, completed an analysis of Supreme's outbound road transport, excluding triwall. Ahmed's analysis showed that Supreme's profit margin on road transport alone was almost $22 million on invoice charges to DSCP of $25.7 million, a gap of more than $21 million.

226. Naveed's analysis also showed that significantly more truck trips had been charged to DSCP than Supreme had invoices for. Relator believed that this discrepancy was caused by Supreme's incorrect labeling of FOB and solicitation locations.

227. On January 25, 2007, Relator relayed this information to Alvarez and Orenstein, noting that Supreme had likely classified some of the road trips incorrectly. He noted that this would result in the "gap" between profit and revenue as being $14 million, as opposed to $21 million if the figures had been correct. The $14 million gap "requires the justification of a significant amount of other cost apart from a reasonable profit." Relator surmised that the cost could be represented as "Transport damages (rejections, spoilage etc); Vehicle damage (we need to show that we paid for it, which we didn't); Administration cost; Incremental cost of picking and marshaling small orders (vs solicitation). I am pretty concerned that we might have problems to really justify the gap and therefore would like to start to work with operations immediately in order to put that additional cost together."

228. On February 1, 2007, Relator e-mailed Joseph Alvarez and Orenstein that

he expected the total gap between revenue and expenses in all outbound transportation YTD December 2006 to be approximately $40 million. "As this gap is quiet (sic) likely more than we might be able to justify with other cost like overhead, picking of small orders and risk surcharge we need to develop a strategy how to deal with this before we enter into the audit process or announce any faulty billing to DSCP." This was five months after the DCAA auditor asked for Supreme's supporting accounting records.

229. On February 4, 2007, Relator e-mailed Alvarez and Orenstein to confirm the discrepancy in the number of deliveries to FOBs and that this resulted in a value to the Government of $9 million. Relator reiterated to Alvarez and Orenstein that "[t]his will reduce the gap to be justified in the upcoming audit from approx. $40m (inclusive air support) to $31m if we reimburse."

230. Orenstein e-mailed back within hours, saying "I would like to have a conference call at 10 am CET tomorrow with the three of us before anyone communicated anything else (even internally) on this matter."

231. In the course of a telephone call the next morning, Orenstein instructed Relator to put nothing else in writing and to keep quiet about the problems identified in his e-mails.

232. On information and belief, Orenstein had no intention to reimburse DSCP.

233. From November 2005 to December 2006, Supreme, in order to support the locations not included in the contract, undertook 715 fixed wing missions with AN12/26/74 aircrafts generating a revenue (at 100%) of $13.041 million, with gross profit of $9.039 million; and 801 rotary wing missions generating $14.341 million

revenue (at 100%) with $9.329 million gross profit–a profit rate of 65%.

234. From December 2005 to October 2006, Supreme contracted for 3629 road trips invoicing $25.72 million (at 100%) to the government and generating a gross profit of $21.906 million. Overall the entire outbound operation by air and road generated gross profits of $40.724 million. On top of this, Supreme earned the regular contractual Distribution Fee for each and every case transported in those missions.

235. All claims submitted based on inflated shipping charges were false.

3. Return flights from Kabul to Sharjah

236. Some of the FOBs that Supreme agreed to deliver to were on the flight path of returning aircraft from Kabul. Supreme routinely used the returning aircraft to deliver product to these FOBs. Since the government was already paying for a round trip flight from Sharjah to Kabul and back, at $3.74 per net pound, these deliveries incurred no extra cost beyond the small amount of fuel used in landing and taking off and the airport fees.

237. But Supreme invoiced the government as if the delivery had been made in the usual manner–in separate, smaller aircraft from Kabul, at an additional $2.65 per net pound. This was cost that Supreme had not incurred.

4. Other airlift opportunities

238. Supreme also billed the United States for shipping at the rate of $3.74 per pound for airlifts of dry cargo—for example, canned goods and combat rations—where the difference between gross and net weights was no more than the wooden pallet on which the product was stacked for shipment. These charges were, as always, in

addition to Supreme's hidden discounts and distribution fees.

239. In one particularly-egregious example, Supreme, at Orenstein's direction, airlifted UHT milk into Afghanistan for months after the Prime Vendor contract began, until DSCP finally complained that it was too expensive to airlift—$45 per case in transportation charges alone. UHT milk is sold in sterile boxes, has a shelf life of six to nine months, is stored at room temperature, and is routinely shipped by sea.

240. Both on their face and because DSCP was fraudulently induced into its agreement to pay Supreme's charges, Supreme's profits on shipping were unfair and unreasonable, and its claims for payment for such profits violated the False Claim Act.

F. SUPREME ILLEGALLY PROFITED ON TRIWALL CHARGES BY MISREPRESENTING THE COST TO THE UNITED STATES

241. The solicitation assumed that LMR product would be transported in triwalls. After award of the contract, Supreme and DSCP debated whether the cost of triwalls was intended to be included in the Distribution Fee.

242. Supreme's reasoning was that the cost of triwalls had been included in their original proposal submitted to DSCP. But DSCP argued that this provision had not been included in either the solicitation or contract and was not expected to be a separate cost.

243. Supreme's original proposal to the government's solicitation included the following for triwall preparation: $193.00 for each dry triwall container; $316.50 for each chilled container; and $361.00 for each frozen triwall container.

244. Apparently this proposal was submitted without actual evidence of cost, as it was left up to Mr. Liensavanh after the award of the contract to come up with

Supreme's cost.

245. On August 25, 2005, Liensavanh sent an email to Relator with his figures on Supreme's cost to prepare triwalls, including the material costs of dry ice, pallets, shrink wrap, foam underlay, cartons, and labels and the labor costs, which included a packing team, supervisors, and forklift operator. Liensavanh's estimate was $51.54 per triwall.

246. In October 2005, DSCP, along with their acceptance of Supreme's inbound freight rates, agreed to pay the same rate for triwalls that had been negotiated with PWC for their Iraq contract–$129 for dry triwalls, $211 for chilled and $153 plus the cost of dry ice for frozen.

247. Even though this would have provided a substantial profit for Supreme, this pricing was not satisfactory to them. They continued to claim that the pricing which they had included in the original proposal should be accepted. In November 2005, DSCP agreed to consider Supreme's proposal to "see if what you propose can be determined reasonable in the context of the proposal as a whole."

248. On November 21, Relator sent Orenstein an invoice showing how frozen triwalls would be priced from JAFCO, under the pricing that PWC used and that DSCP agreed to. Mr. Epp related to Alvarez that "Stephen, as usual, was not happy at all. [H]e thinks we should have charged chilled tri wall price vs frozen plus the dry ice...the total is lower than the 211 USD. He blamed us for having accepted this from PWC who advised us to charge that way."

249. Relator recounted in an email sent to Orenstein and Alvarez on December

19, 2005, referenced in ¶ 179 above, that Supreme had already made, as a subcontractor to PWC before the beginning of Supreme's PV contract, $70,000 gross margin on charges for 742 triwalls— more than $94.00 per triwall, charging the rates under PWC's contract.

250. On January 22, 2006, Alvarez invoiced DSCP for the first two weeks of Supreme's airlift billing with Supreme's pricing, including the higher prices for triwalls. Mr. Ferzetti of DSCP questioned Supreme's triwall pricing and noted that PWC's prices had been agreed to. "Anything other than this would have to be determined fair and reasonable before being approved."

251. Alvarez responded that Supreme used the triwall rates that were contained in the contract (though there were actually no rates contained in the contract, only in Supreme's initial proposal.) Ms. DiMeo of DSCP again reminded Supreme that the government had not solicited separate triwall rates, but since Supreme had factored these as a separate cost, they were letting them bill for it and were "willing to pay you the rates that Tom provided below [PWC's rates], which have been determined fair. If you have other information to submit to justify your $316.50 price we will review it . . . if we are able to justify it."

252. Internal discussions continued within Supreme regarding the triwall rates along with outbound transportation rates. In an email on April 24, 2006, Relator tells Alvarez and Orenstein that if DSCP accepts Supreme's rate proposals for outbound transportation, that he would accept the lower PWC rates for triwalls "to give them the feeling of 'success' in negotiation."

253. But then in May, when DSCP continued to push back on the transportation rates, Epp emailed Alvarez and Orenstein again, recommending that they accept a lower profit margin for their transportation rates and continue to propose the original triwall rates. He noted that the higher triwall rates would have a "positive impact" of $1.4 million dollars for Supreme, which would offset the loss in transportation and would result in a net positive impact of $1,000,000.

254. In an email on May 16, 2006, Relator presented another proposal to DSCP with the slightly reduced profit margin for transportation and the original triwall charges. In their reply, DSCP again asks Supreme to reconsider the triwall costs because "it is significantly higher than tri-wall costs from other sources. If you can significantly lower this price it will get us past a major hurdle."

255. Relator sent an email with updated claims on June 1, 2006, along with a letter proposing a lower rate for triwall pricing. Relator wrote that "Supreme accepts DSCP's argument that each service provided should be itself independently determined as fair and reasonable" and proposed a rate of $241 per chilled triwall and $302 per frozen, still higher than PWC's rate and significantly higher than Supreme's actual costs. The email certified that "this claim is made in good faith . . ."

256. The triwall claims, along with the transportation claims, were debated back and forth for several months between Supreme and DSCP and ultimately submitted to audit.

257. In December 2006, Relator objected to the triwall charges being part of the audit since Supreme had "already met [their] requirement to drastically reduce the rates"

in May. Ms DiMeo replied, "Concur. This is quite a reasonable request. I have forwarded the file for Danni to fund, and instructed Joe and Don accordingly."

258. DSCP reimbursed Supreme the 25% that had been held back pending the outcome of the audit and from November 2006 on, paid Supreme the pricing submitted by Supreme in May 2006.

259. If DSCP had known Supreme's actual costs for the triwalls and that they were claiming approximately $130.00 more per triwall than cost, they would not have been able to consider the rate fair and reasonable in any way.

G. SUPREME KNOWINGLY CHARGED THE UNITED STATES MORE THAN IT PAID FOR FOOD WHEN A SUPPLIER'S CHARGE WAS INCREASED FOR NEW SALES OF ITEMS WHICH SUPREME HAD IN STOCK

260. When Supreme received notice from a supplier that the cost of an item was increasing, it immediately changed the price charged the government for that item, no matter how much of the item Supreme had in stock and had acquired at the prior, lower price.

261. Under this circumstance, which occurred frequently, Supreme would charge the new, higher price for all product delivered to the United States, including that which had been procured at the lower price.

262. This practice was specifically directed by defendant Orenstein.

263. By knowingly charging the United States the higher price, Supreme violated its Prime Vendor contract and the False Claims Act.

H. DEFENDANTS SUPREME'S, SUPREME GROUP, B.V.'S, SUPREME FOODSERVICE GMBH & CO.KG'S AND ORENSTEIN'S RETALIATORY CONDUCT AGAINST RELATOR

264. As alleged above Mr. Epp alerted Defendants to the illegal practices identified in this complaint.

265. Defendants acknowledged the practices, but refused to stop them. Instead, Mr. Epp was terminated on March 3, 2007, less than a month after he advised defendant Orenstein that Supreme owed the United States at least $9 million. Plaintiff was told by defendant Orenstein that he, Orenstein, could not "protect" Mr. Epp from factions inside Supreme, and that Mr. Epp had acted, in some unspecified way, in a manner inconsistent with Supreme's "ethics." No further explanation was provided Mr. Epp to substantiate the accusations.

266. The accusations made by Orenstein were contrived. The true reasons for Mr. Epp's termination included (1) his refusal to perpetuate Supreme's schemes to overcharge the United States under the PV contract, and (2) the fact that Mr. Epp's first-hand knowledge represented a clear threat to Supreme's ability to continue defrauding the United States.

267. On March 28, 2007, Mr. Epp received a letter from Supreme indicating that he would receive three months' pay, until June 30, 2007. This was a violation of his contract, which mandated a minimum of six months' pay. The following day, Supreme sent a correction letter, acknowledging Mr. Epp's right to receive his salary through September 2007.

268. After his termination, Mr. Epp began to investigate the possibility of filing a

qui tam action under the False Claims Act. As part of his investigation, Mr. Epp submitted an online questionnaire to a Texas law firm. Thereafter, emails were exchanged between Mr. Epp and an attorney in that firm discussing Supreme's fraud against the United States and the process for filing a False Claims Act case. On April 16, 2007, an email from the lawyer was directed by an e-mail forwarding rule to Mr. Epp's former email address at Supreme. The email, which referenced the "Subject: RE: Government Fraud /QuiTam Packet," was thus obtained by Supreme. Soren Borup Norgaard, Supreme's Director of Corporate and Legal Affairs, replied, stating that Supreme had received the message in error, and that it was being forwarded to the correct recipient.

269. The next day, Supreme Director Michael Schuster delivered a letter to Mr. Epp's residence in Dubai stating that all salary payments were suspended and demanding the return of all company property.

270. Several days after delivery of the letter, Mr. Epp was approached by Supreme principal Michael Gans. Gans inquired whether Mr. Epp remained open to settlement negotiations, and expressed concern that Supreme's willingness to carry on such negotiations could be perceived as an admission that it overcharged the United States on the PV Contract.

271. Mr. Epp filed a complaint with a German labor court challenging Supreme's termination of salary payments.

272. Supreme asked the court to suspend the proceedings to allow the parties an opportunity to pursue settlement negotiations. The ensuing months of negotiations

were unsuccessful, primarily because Supreme insisted on a global non-compete clause which would have effectively forced Mr. Epp into early retirement.

273. During the pendency of the labor matter in Frankfurt, Germany, Mr. Epp traveled to his home in Dubai. Supreme filed an abscondence report with Dubai immigration authorities claiming that he was there unlawfully, resulting in Mr. Epp's arrest and brief detention. Mr. Epp filed a complaint with the Dubai authorities contesting Supreme's report. A hearing occurred, and Supreme was ruled to have violated Dubai's immigration laws and fined 10,000 AED.

274. Further negotiations between Mr. Epp and Supreme resulted in a Termination Agreement executed on September 26, 2007. The Agreement provided for the following payments by Supreme to Mr. Epp:

- Six months' salary (€37,964.52) for the period April through September 2007.
- A prorated bonus of €36,000.
- A "special bonus for excellent work" of €75,000.

275. In addition, Supreme promised to pay Mr. Epp a further €400,000, subject only to the condition that none of Supreme's relationships with DSCP or any of its suppliers under the PV Contract "deteriorate significantly" due to "any influence, action, or activity" by Mr. Epp prior to the "cut-off date." The agreement provided that the €400,000 payment "must take place on" September 30, 2010, which coincided with the last day of performance under the PV Contract and is identified in the Termination Agreement as the "cut-off date.

276. On September 26, 2007, the parties agreed to an amendment to the

Termination Agreement imposing a condition precedent to the tender of the €75,000 special bonus:

> [T]he parties agree that the payment of the special bonus of €75,000 does not take place at the conclusion of the termination agreement but only when the following requirements are met:
>
> the working papers of Mr. Epp who has identified Supreme as his employer, and the visas of Mr. Epp, his wife Yvonne and son Yannick must either be properly invalidated or transferred to another employer. The invalidation or transfer shall be made in compliance with the applicable laws of the United Arab Emirates and the Emirate of Dubai. Furthermore, Supreme shall have no further obligations regarding Mr. Epp, his wife Yvonne and his son Yannick to the United Arab Emirates and the Emirate of Dubai.

Mr. Epp agreed to "cooperate with the utmost commitment" to have the visas invalidated within 14 days:

> The parties are mutually obliged to cooperate with the utmost commitment and to support each other to achieve the conditions referred to under section 1, so the invalidation or transfer of the documents to another employer can be achieved within 14 days. . . .
>
> Should Mr. Epp not fulfil his obligation to cooperate in accordance with section 2 above within 14 days, then the payments must pursuant to §2 paragraph 1 a) and b) be returned to Supreme.

277. Mr. Epp made reasonable efforts to surrender visas by UAE authorities. However, due to intervening holidays and administration requirements, the process was not completed until November 22, 2007.

278. Despite Mr. Epp's efforts, Supreme refused to pay the agreed €75,000 after the visas were revoked, and further demanded Mr. Epp repay all amounts previously paid under the Termination Agreement.

279. Mr. Epp filed a complaint before a German labor court seeking payment of

the special bonus. The labor court ordered Supreme to pay Mr. Epp €75,000 plus interest, which amount was paid on September 16, 2008, nearly a year after it was due under the Termination Agreement.

280. In or about early 2009, Supreme learned that the United States Department of Defense was investigating its practices under the prime vendor contract.

281. None of Supreme's relationships with DSCP or any of its suppliers under the PV Contract deteriorated significantly due to any influence, action, or activity by Mr. Epp.

282. Supreme failed to make the required €400,000 payment on September 30, 2010, and that payment remains due and owing under the contract.

283. Despite repeated inquiries by Plaintiff, Supreme has advanced no basis for its failure to make the required €400,000 payment.

284. Relator was discriminated against in retaliation for his objections to improper conduct in violation of government laws and regulations which resulted in false claims to the United States.

COUNT I

VIOLATIONS OF THE FALSE CLAIMS ACT BY DEFENDANTS SUPREME, SUPREME GROUP B.V., SUPREME FOODSERVICE GMBH & CO.KG, JAFCO AND ORENSTEIN

285. The allegations of ¶¶ 1–284 are realleged as if fully set out herein.

286. Defendant Supreme, Supreme Foodservice GmbH & Co.KG, Supreme Group B.V., and JAFCO, by and through its owners, officers, agents, and employees, knowingly submitted or caused to be submitted false or fraudulent claims for payment or

approval of officers, employees, or agents, of the United States Government in violation of 31 U.S.C. § 3729 (a)(1)(A).

287. Defendant Supreme, Supreme Foodservice GmbH & Co.KG, Supreme Group B.V. and JAFCO, by and through its owners, officers, agents, and employees, knowingly submitted or caused to be submitted materially false or fraudulent claims for payment or approval of officers, employees, or agents, of the United States Government in violation of 31 U.S.C. § 3729 (a)(1)(B).

288. Defendant Supreme, Supreme Foodservice GmbH & Co.KG, Supreme Group B.V. and JAFCO , by and through its officers, agents, and employees, knowingly conspired with others, including without limitation [redacted] and nonparties PWC and PCA, to create false documents material to the payment of claims, in violation of 31 U.S.C. § 3729(a)(1)(C).

289. Defendant Orenstein caused defendant Supreme to submit false or fraudulent claims to the United States, and conspired with, *inter alia*, [redacted] to cause submission of false claims to the United States, all in violation of 31 U.S.C. § 3729.

290. Every claim for payment submitted by Supreme to the United States was a knowingly false claim.

291. The United States Government has been damaged as a result of the Defendants' violation of the False Claims Act.

COUNT II

[redacted]

292. The allegations of ¶¶ 1–291 are realleged as if fully set out herein.

[redacted]

297. The United States Government has been damaged as a result of the Defendants' violation of the False Claims Act.

COUNT III

VIOLATIONS OF THE FALSE CLAIMS ACT'S ANTI-RETALIATION PROVISION, 31 U.S.C. 3730(h)

298. The allegations of ¶¶ 1-297 are realleged as if fully set out herein.

299. Defendants Supreme, Supreme Foodservice GmbH & Co.KG, Supreme Group B.V. and Orenstein violated the False Claims Act, 31U.S.C. § 3730(h), by: (1) terminating Mr. Epp's employment with Supreme due to his refusal to perpetuate Defendants' schemes to overcharge the United States pursuant to the PV Contract; and (2) thereafter breaching the Termination Agreement between Mr. Epp and Supreme upon learning that Mr. Epp had contacted counsel about filing an action against Defendants for violations of the False Claims Action, 31 U.S.C. § 3729 *et seq.*

300. Supreme's termination of Mr. Epp and breach of the Termination Agreement constitute acts of discrimination against Mr. Epp in the terms and conditions of his employment. Mr. Epp's refusal to perpetuate Supreme's violations of the False Claims Act, and his efforts to file an action against Supreme for such violations, constituted lawful acts in furtherance of an action under 31 U.S.C. § 3730.

301. Thus, Defendants' actions amounted to discrimination in the terms and conditions of Mr. Epp's employment because of lawful actions in furtherance of an action under 31 U.S.C. § 3730.

302. As a result of Defendants' violations of 31 U.S.C. § 3730(h), Mr. Epp has been damaged in the amount of €800,000, together with interest and diminution in value due to exchange-rate fluctuations, from October 1, 2010, and other compensatory damages.

COUNT IV

BREACH OF CONTRACT

303. The allegations of ¶¶ 1-302 are realleged as if fully set out herein.

304. Michael Epp and some or all of the defendants entered into a contract, supported by adequate consideration, pursuant to which Defendant Supreme Food-service GmbH & Co.KG owed Michael Epp a payment of €400,000 on September 30, 2010.

305. Defendants failed to make the required payment, and thereby breached its contract with Relator.

306. Relator fully performed all obligations under the contract.

307. Defendants owe Relator €400,000, together with interest from October 1, 2010.

WHEREFORE, Relator Michael Epp, on behalf of himself and the United States of America, prays:

A. That the Court enter judgment against the Defendants, jointly and severally, in amount equal to three times the amount of damages the United States Government sustained because of their actions, plus a civil penalty of $11,000.00 for each false claim;

B. That the Court enter judgment on Mr. Epp's behalf in the amount of 25% of the proceeds of this action if the United States elects to intervene, and 30% of the proceeds if it does not;

C. That the Court enter judgment on Mr. Epp's claim pursuant to 31 U.S.C. § 3730(h) in the amount of double the sum wrongfully withheld by Supreme in

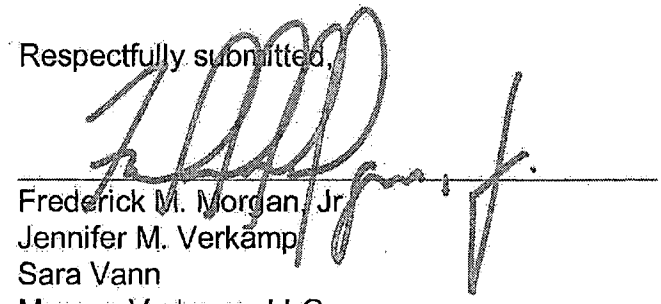
retaliation, together with compensatory damages, including damage resulting from variations in the monetary exchange rate;

D. That the Court enter judgment on Mr. Epp's claim for breach of contract in the amount of €400,000, together with interest from October 1, 2010;

E. That the attorney fees, expenses, and costs incurred on behalf of Mr. Epp be paid by defendants; and

F. That the United States and Relator receive all legal and equitable relief to which they may appear entitled.

Respectfully submitted,



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