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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA, *ex rel.*) Case No. 07CV0160-BTM (CAB)
VANESSA NAVARRO,)
20)
Plaintiffs,)
21)
v.) COMPLAINT IN INTERVENTION OF
22) THE UNITED STATES
DIVINE IMAGING, INC.; IMPAC)
23 COMPUTER SUPPLIES;)
LAKOTA ENTERPRISES, INC.; and)
24 PALM BUSINESS SUPPLIES, INC.,)
25 Defendants.)
26

27 The United States of America, having intervened in this matter, brings this civil action against
28 the defendants and alleges as follows:

INTRODUCTION

1
2 1. This is an action by the United States against Divine Imaging, Inc. (Divine), Impac
3 Computer Supplies (Impac), Lakota Enterprises, Inc. (Lakota), and Palm Business Supplies, Inc. (Palm)
4 for treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733 (“FCA”),
5 and to recover all available damages and other monetary and equitable relief under the common law and
6 equitable theories of breach of contract, payment by mistake, and unjust enrichment.

7 2. The United States’ claims against defendants are based on false claims that defendants
8 knowingly submitted or caused to be submitted to the United States in connection with sales of office
9 supply products to Federal agencies pursuant to Multiple Award Schedule (MAS) Schedule 75 Contracts
10 with the General Services Administration (GSA), an agency of the United States headquartered in
11 Washington, D.C.

12 3. Through the MAS program, GSA streamlines the process by which Federal agencies and
13 other GSA authorized purchasers can buy commercial goods and services. It does so by negotiating and
14 entering into long-term, Government-wide indefinite quantity contracts with multiple vendors selling
15 comparable products at varying prices. GSA publishes these contracts in catalogs commonly referred
16 to as “federal supply schedules” or “schedules.” There are more than 100 different schedules covering
17 various products and services. Federal agencies and other GSA authorized purchasers can purchase
18 products directly with vendors listed on the GSA schedules without having to separately contract for
19 such goods and services. Such purchases can be made through “GSA Advantage!,” GSA’s internet-
20 based procurement portal, through the vendors’ own websites, or by other means including phone and
21 facsimile orders.

22 4. In exchange for an opportunity to gain access to the broad Government marketplace and
23 the ease of administration that comes from selling to hundreds of Government end users under one
24 central contract, participating vendors agree to abide by all contract terms and conditions when selling
25 to Federal agency purchasers under the MAS contract. A material requirement of all GSA MAS
26 Schedule 75 Contracts, including defendants’ contracts, is compliance with the Trade Agreements Act
27 (“TAA”), 19 U.S.C. § 2501 *et seq.*, and its related regulations. The TAA requires that all products sold
28 to the United States Government be manufactured in one of a list of designated countries deemed to

1 trade fairly with the United States.

2 5. Each of the defendants entered into a MAS contract with GSA for the sale of office
3 supply products. At the time of contract award and on occasions thereafter, each defendant agreed that
4 it would sell to the United States Government only end products that originated in designated countries,
5 and that it would not sell end products that originated in non-designated countries such as China, India,
6 and Malaysia. But in fact, over the course of their GSA MAS Schedule 75 Contracts, each of the
7 defendants knowingly offered for sale to Federal agency customers through the federal supply schedule
8 office supply products that originated in non-designated countries, and sold and submitted invoices for
9 payment to Federal agencies for thousands of individual office products that originated in China and
10 other non-designated countries. Each of these invoices for TAA non-compliant items were false claims
11 to which defendants were not entitled to be paid. As a result of these actions by defendants, the United
12 States paid false claims for millions of dollars of non-compliant products that it would not have paid had
13 it known that the products originated in non-designated countries.

14 **JURISDICTION AND VENUE**

15 6. This civil action was filed on January 25, 2007, by Relator, Vanessa Navarro, in the name
16 of the United States for herself and for the United States Government pursuant to the *qui tam* provisions
17 of the False Claims Act, 31 U.S.C. §§ 3729-3733. Pursuant to the False Claims Act, 31 U.S.C.
18 § 3730(b)(2) and (4), on or about July 23, 2010, the United States notified the Court that it was
19 intervening in the civil action against Divine, Impac, Lakota, and Palm, and electing not to intervene
20 against other defendants.

21 7. Pursuant to the Order of the Court dated August 5, 2010, the United States now files its
22 separate complaint in intervention against Divine, Impac, Lakota, and Palm under the False Claims Act
23 and common law.

24 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
25 §§ 1331 and 1345 and 31 U.S.C. §§ 3729-3730, and 3732(a).

26 9. Venue is proper in this district under 28 U.S.C. § 1391 and 31 U.S.C. § 3732(a). Each
27 of the defendants have transacted business with Federal customers within this district or have otherwise
28 purposefully availed themselves of the privilege of conducting activities in this district by contracting

1 with the General Services Administration (GSA) to offer office supply products for sale to Federal
2 customers in this district through "GSA Advantage!."

3 **PARTIES**

4 10. Plaintiff is the United States of America.

5 11. Relator Vanessa Navarro is an individual and a resident of the State of Colorado.

6 12. Defendant Divine Imaging Inc., dba Divine Imaging Commodities ("Divine"), located
7 in Beverly Hills, California, is a corporation organized under the laws of the State of California and is
8 engaged in the business of selling office products and equipment to the Federal Government and other
9 customers.

10 13. Defendant Impac Computer Supplies ("Impac"), located in Jersey City, New Jersey, is
11 a corporation organized under the laws of the State of New Jersey and is engaged in the business of
12 selling office products and equipment to the Federal Government and other customers.

13 14. Defendant Lakota Enterprises, Inc. ("Lakota"), located in Rapid City, South Dakota, is
14 a corporation organized under the laws of the State of South Dakota and is engaged in the business of
15 selling office products and equipment to the Federal Government and other customers.

16 15. Defendant Palm Business Supply ("Palm"), at the time this action was filed, was a
17 California corporation located in San Diego, California, and engaged in the business of selling office
18 products and equipment to the Federal Government and other customers. Palm recently dissolved under
19 the laws of the State of California and relocated to Camas, Washington, where it is currently engaged
20 in the business of selling office products and equipment to the Federal Government and other customers
21 under the name Palm Business Supply.

22 **STATUTORY BACKGROUND**

23 16. For false claims prior to May 20, 2009, the false claims provision of the FCA, at 31
24 U.S.C. § 3729(a)(1), provides in pertinent part that a person is liable to the United States Government
25 for each instance in which the person "knowingly presents, or causes to be presented, to an officer or
26 employee of the United States Government . . . a false or fraudulent claim for payment or approval."

27 17. For violations occurring on or after May 20, 2009, the FCA, as amended by the Fraud
28 Enforcement and Recovery Act of 2009 ("FERA"), provides in pertinent part that any person who

1 “knowingly presents, or causes to be presented . . . a false or fraudulent claim for payment or approval;
2 [or] knowingly makes, uses, or causes to be made or used, a false record or statement material to a false
3 or fraudulent claim” shall be liable to the United States Government. *See* 31 U.S.C.
4 § 3729(a)(1)(A) and (B).

5 18. The FCA defines the terms “knowing” and “knowingly” to mean that a person with
6 respect to information (a) “has actual knowledge of the information”; (b) “acts in deliberate ignorance
7 of the truth or falsity of the information”; or (c) “acts in reckless disregard of the truth or falsity of the
8 information.” 31 U.S.C. § 3729(b); 31 U.S.C. §3729(b)(1)(A) (2009). The FCA further provides that
9 “no proof of specific intent to defraud” is required. 31 U.S.C. § 3729(b); 31 U.S.C. §3729(b)(1)(B)
10 (2009).

11 **FACTS**

12 19. The MAS contracts at issue are Schedule 75 (Office Products) contracts through which
13 vendors can sell office supply products to numerous Federal Government agencies. Such office
14 products include, but are not limited to items such as: pens, pencils, markers, xerographic paper, printer
15 paper, fax paper, binders, tape, envelopes, shredders, helical-scan, longitudinally oriented video tapes,
16 video cassettes, reel to reel audio tapes, blank endless loop audio cartridge tapes, magnetic tape audio
17 recording cassette, computer tape, reel, cartridge, cassette, diskettes, disk packs, disk cartridges,
18 anti-glare/anti-radiation screens (“VDT”), ergonomic products (wrist and foot rests), cleaning equipment
19 and supplies (head cleaners, disk drive cleaners, monitor cleaners, toner wipes, minivacuums, etc.)
20 optical disks, CD ROMS, physical storage, security, protective and related Automatic Data Processing
21 (“ADP”) supplies, and toner cartridges.

22 20. As described below, Divine, Impac, Lakota and Palm each entered into a MAS Schedule
23 75 Contract with GSA that allowed each of these defendants to offer and sell office products to Federal
24 agencies and other authorized GSA purchasers directly through GSA’s web portal, GSAAdvantage!,
25 through their own websites, and through other means.

26 21. All GSA MAS Schedule 75 Contracts, including defendants’ contracts, expressly
27 incorporate and are subject to the requirements of the Trade Agreements Act (“TAA”), 19 U.S.C.
28 § 2501 *et seq.*, and its related regulations. The TAA requires that all products sold to the United States

1 Government be manufactured in one of a list of designated countries deemed to trade fairly with the
2 United States. *See* FAR 52.225-5 (“Trade Agreements Clause” or “TAA Clause”); *see also* FAR
3 25.003. The Trade Agreements Clause incorporated into each of defendants’ MAS contracts specifies
4 the “designated countr[ies]” whose “end products” may be offered for sale under MAS Schedule 75
5 Contracts.

6 22. GSA does not permit products from non-designated countries to be offered for sale on
7 the GSAAdvantage! website. GSA requires vendors to specifically list all products for sale and their
8 countries of origin before the products can be approved for sale on the GSAAdvantage! website. These
9 requirements are made available to all vendors who seek to do business with the GSA, including the
10 defendants named herein.

11 23. At the time of contract award and on occasions thereafter, each defendant agreed that,
12 pursuant to its respective GSA MAS Schedule 75 Contract, it would sell to the United States
13 Government only end products that originated in designated countries, and that it would not sell end
14 products that originated in non-designated countries such as China, India, and Malaysia.

15 24. Compliance with the TAA is material to payment under MAS Schedule 75 Contracts.

16 **DIVINE**

17 25. Divine entered into a MAS Schedule 75 contract with GSA, contract number GS-02F-
18 0190N, on or about January 24, 2004 (“Divine’s MAS Contract”).

19 26. Divine’s MAS Contract expressly incorporates and is subject to the requirements of the
20 TAA. Throughout the life of Divine’s MAS Contract with GSA, Divine was required to comply with
21 the TAA.

22 27. At the time of contract award and on occasions thereafter, Divine agreed that, under its
23 MAS Contract, it would only sell to the United States Government end products that originated in
24 designated countries, and that it would not sell end products that originated in non-designated countries
25 such as China, India, and Malaysia.

26 28. Pursuant to Divine’s MAS Contract, beginning in or around January 2004 and continuing
27 until the present day, Divine offered for sale a number of office products to United States agencies via
28 GSAAdvantage! website, Divine’s own website, and by other means.

1 29. Divine represented on the GSA Advantage! website and Divine's own website that the
2 items offered for sale by Divine to United States agencies under Divine's MAS Contract were TAA-
3 compliant products. These representations were false.

4 30. In fact, between April 2007 and June 2009, a significant number of the items offered on
5 the GSA Advantage! website and on Divine's own website for sale by Divine to United States agencies
6 originated in China and other non-designated countries, and were not TAA-compliant products.

7 31. Between April 2007 and June 2009, a significant number of the products falsely
8 identified by Divine on the GSA Advantage! website and on Divine's own website as TAA-compliant
9 products were purchased by Federal customers, and Divine submitted claims for payment for these
10 products to the United States. Specific examples of such transactions are set forth in greater detail in
11 Exhibit A.

12 32. Between April 2007 and June 2009, Divine entered into more than 9,000 individual sales
13 transactions with Federal agencies whereby more than 15,000 items that were manufactured in non-
14 designated countries were sold to Federal agencies via the GSA Advantage! website, Divine's own
15 website, and by other means, all in violation of the TAA and the TAA Clause in Divine's MAS
16 Contract. During this time period, Divine made sales of at least \$2 million of TAA non-compliant office
17 products to Federal agencies under Divine's MAS Contract.

18 33. Upon information and belief, between April 2007 and June 2009, Divine knew within
19 the meaning of the FCA that it was selling the above-described non-compliant items to Federal agencies
20 pursuant to its GSA MAS Schedule 75 contract.

21 34. Had Divine provided accurate information about the countries of origin of these non-
22 compliant items, such items would not have been eligible to be offered to Federal agencies on the GSA
23 Schedule and the purchases of such items by Federal agencies under Divine's MAS Contract would not
24 have occurred.

25 **IMPAC**

26 35. Impac entered into a MAS 75 contract with GSA, contract number GS-02F-0051N, on
27 February 19, 2003 ("Impac's MAS Contract").

28 //

1 36. Impac's MAS Contract expressly incorporates and is subject to the requirements of the
2 TAA. Throughout the life of Impac's MAS Contract with GSA, Impac was required to comply with the
3 TAA.

4 37. At the time of contract award and on occasions thereafter, Impac agreed that, under the
5 contract, it would only sell to the United States Government end products that originated in designated
6 countries, and that it would not sell end products that originated in non-designated countries such as
7 China, India, and Malaysia.

8 38. Pursuant to its contract, beginning in or around February 2003 and continuing until the
9 present day, Impac offered for sale a number of office products to United States agencies via
10 GSAAAdvantage! website and by other means.

11 39. Impac represented on the GSAAAdvantage! website that the items offered for sale by
12 Impac to United States agencies under Impac's MAS Contract were TAA-compliant products. These
13 representations were false.

14 40. In fact, between April 2004 and December 2007, a significant number of the items
15 offered on the GSAAAdvantage! website for sale by Impac to United States agencies originated in China
16 and other non-designated countries, and were not TAA-compliant products.

17 41. Between April 2004 and December 2007, a significant number of the products falsely
18 identified by Impac on the GSAAAdvantage! website as TAA-compliant were purchased by Federal
19 customers, and Impac submitted claims for payment for these products to the United States. Specific
20 examples of such transactions are set forth in greater detail in Exhibit B.

21 42. Between April 2004 and December 2007, Impac entered into more than 3,400 individual
22 sales transactions with Federal agencies whereby more than 4,000 items that were manufactured in non-
23 designated countries were sold to Federal agencies via the GSAAAdvantage! website and by other means.
24 During this time period, Impac made sales of at least \$631,000 in TAA non-compliant office products
25 to Federal agencies pursuant to Impac's MAS Contract.

26 43. Upon information and belief, between April 2004 and December 2007, Impac knew
27 within the meaning of the FCA that it was selling the above-described non-compliant items to Federal
28 agencies pursuant to its GSA MAS Schedule 75 contract.

1 44. Had Impac provided accurate information about the countries of origin of these non-
2 compliant items, such items would not have been eligible to be offered to Federal agencies on the GSA
3 Schedule and the purchases of such items by Federal agencies under Impac's MAS Contract would not
4 have occurred.

5 **LAKOTA**

6 45. Lakota entered into a MAS 75 contract with GSA, contract number GS-02F-0138R on
7 May 19, 2005 ("Lakota's MAS Contract").

8 46. Lakota's MAS Contract expressly incorporates and is subject to the requirements of the
9 TAA. Throughout the life of Lakota's MAS Contract with GSA, Lakota was required to comply with
10 the TAA.

11 47. At the time of contract award and on occasions thereafter, Lakota agreed that, under its
12 MAS Contract, it would only sell to the United States Government end products that originated in
13 designated countries, and that it would not sell end products that originated in non-designated countries
14 such as China, India, and Malaysia.

15 48. Pursuant to Lakota's MAS Contract, beginning in or around May 2005 and continuing
16 until the present day, Lakota offered for sale a number of office products to United States agencies via
17 GSAAAdvantage! website and by other means.

18 49. Lakota represented on the GSAAAdvantage! website that the items offered for sale by
19 Lakota to United States agencies under Lakota's MAS Contract were TAA-compliant products. These
20 representations were false.

21 50. In fact, between July 2005 and May 2009, a significant number of the items offered on
22 the GSAAAdvantage! website for sale by Lakota to United States agencies originated in China and other
23 non-designated countries, and were not TAA-compliant products.

24 51. Between July 2005 and May 2009, a significant number of the products falsely identified
25 by Lakota on the GSAAAdvantage! website as TAA-compliant were purchased by Federal customers,
26 and Lakota submitted claims for payment for these products to the United States. Specific examples
27 of such transactions are set forth in greater detail in Exhibit C.

28 //

1 52. Between July 2005 and May 2009, Lakota entered into more than 700 individual sales
2 transactions with Federal agencies whereby more than 900 items that were manufactured in non-
3 designated countries were sold to Federal agencies via the GSAAAdvantage! website and by other means.
4 During this time period, Lakota made sales of at least \$230,000 in TAA non-compliant office products
5 to Federal agencies pursuant to Lakota's MAS Contract.

6 53. Upon information and belief, between July 2005 and May 2009, Lakota knew within the
7 meaning of the FCA that it was selling the above-described non-compliant items to Federal agencies
8 pursuant to its GSA MAS Schedule 75 contract.

9 54. Had Lakota provided accurate information about the countries of origin of these non-
10 compliant items, such items would not have been eligible to be offered to Federal agencies on the GSA
11 Schedule and the purchases of such items by Federal agencies under Lakota's MAS Contract would not
12 have occurred.

13 PALM

14 55. Palm entered into a MAS 75 contract with GSA, contract number GS-02F-0230R on
15 September 25, 2005 ("Palm's MAS Contract").

16 56. Palm's MAS Contract expressly incorporates and is subject to the requirements of the
17 TAA. Throughout the life of Palm's MAS Contract with GSA, Palm was required to comply with the
18 TAA.

19 57. At the time of contract award and on occasions thereafter, Palm agreed that, under the
20 contract, it would only sell to the United States Government end products that originated in designated
21 countries, and that it would not sell end products that originated in non-designated countries such as
22 China, India, and Malaysia.

23 58. Pursuant to its contract, beginning in or around September 2005 and continuing until the
24 present day, Palm offered for sale a number of office products to United States agencies via
25 GSAAAdvantage! website, Palm's own website, and by other means.

26 59. Palm represented on the GSAAAdvantage! website and Palm's own website that the items
27 offered for sale by Palm to United States agencies under Palm's MAS Contract were TAA-compliant
28 products. These representations were false.

1 60. In fact, between January 2006 and December 2009, a significant number of the items
2 offered on the GSA Advantage! website and on Palm's own website for sale by Palm to United States
3 agencies originated in China and other non-designated countries, and were not TAA-compliant products.

4 61. Between January 2006 and December 2009, a significant number of the products falsely
5 identified by Palm on the GSA Advantage! website and on Palm's own website as TAA-compliant were
6 purchased by Federal customers, and Palm submitted claims for payment for these products to the
7 United States. Specific examples of such transactions are set forth in greater detail in Exhibit D.

8 62. Between January 2006 and December 2009, Palm entered into more than 1,500
9 individual sales transactions with Federal agencies whereby more than 2,200 items that were
10 manufactured in non-designated countries were sold to Federal agencies via the GSA Advantage!
11 website, Palm's own website, and by other means. During this time period, Palm made sales of at least
12 \$370,000 in TAA non-compliant office products to Federal agencies pursuant to Palm's MAS Contract.

13 63. Upon information and belief, between January 2006 and December 2009, Palm knew
14 within the meaning of the FCA that it was selling the above-described non-compliant items to Federal
15 agencies pursuant to its GSA MAS Schedule 75 contract.

16 64. Had Palm provided accurate information about the countries of origin of these non-
17 compliant items, such items would not have been eligible to be offered to Federal agencies on the GSA
18 Schedule and the purchases of such items by Federal agencies under Palm's MAS Contract would not
19 have occurred.

20 65. The United States has been damaged because of the above described acts of Divine,
21 Impac, Lakota and Palm.

22 FIRST CAUSE OF ACTION AGAINST DIVINE
23 (False Claims Act, 31 U.S.C. § 3729 (1986) and 31 U.S.C. § 3729(a)(1)(A) (2009))

24 66. The United States realleges paragraphs 1-34 and 65, and they are incorporated herein by
25 reference as if they were set forth in full.

26 67. Between April 2007 and June 2009, Divine knowingly presented or caused to be
27 presented to the United States false claims for payment of office supply products that Divine represented
28 to GSA and Government purchasers to be TAA-compliant products. Such claims were false because,

1 as Divine then knew, the products sold were not compliant with the TAA and had originated in non-
2 designated countries, all in violation of the False Claims Act, 31 U.S.C. § 3729(a).

3 68. As a result of Divine's knowingly presenting these false claims to the United States, the
4 United States paid the claims and has suffered damages in an amount to be determined at trial.

5
6 SECOND CAUSE OF ACTION AGAINST DIVINE
(Breach of Contract)

7 69. With the exception of allegations concerning defendants' state of mind, the United States
8 realleges paragraphs 1- 34 and 65, and they are incorporated herein by reference as if they were set forth
9 in full.

10 70. Divine breached a material term of its contract number GS-02F-0190N with GSA in that
11 Divine claimed payment for office supply products which were represented to Government purchasers
12 to be TAA-compliant products when in fact Divine delivered products that were not compliant with the
13 TAA and which had originated in non-designated countries.

14 71. As a result of Divine's breaches of contract, the United States has been damaged by
15 Divine in an amount to be determined at trial.

16
17 THIRD CAUSE OF ACTION AGAINST DIVINE
(Unjust Enrichment)

18 72. With the exception of allegations concerning defendants' state of mind, the United States
19 realleges paragraphs 1-34 and 65, and they are incorporated herein by reference as if they were set forth
20 in full.

21 73. As a result of the actions of Divine stated above, Divine has been unjustly enriched and
22 profited and received monies to which it is not entitled by contract or otherwise. In equity and good
23 conscience, Divine should not retain these monies.

24 74. Divine has been unjustly enriched in an amount to be determined at trial.

25
26 FOURTH CAUSE OF ACTION AGAINST DIVINE
(Payment by Mistake)

27 75. With the exception of allegations concerning defendants' state of mind, the United States

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1 realleges paragraphs 1-34 and 65 and they are incorporated herein by reference as if they were set forth
2 in full.

3 76. As a result of the actions of Divine stated above, the United States paid the claims
4 submitted for payment for office supply products by Divine under contract number GS-02F-0190N, in
5 the mistaken belief that the amounts claimed therein were for products originating in countries
6 designated as compliant with the TAA when in fact Divine delivered products that were not compliant
7 with the TAA and which had originated in non-designated countries, and that Divine was entitled to
8 payment when it was not. As a result, the payment of those claims was by mistake and not authorized
9 by law.

10 77. The United States has been damaged by Divine in an amount to be determined at trial.

11 FIRST CAUSE OF ACTION AGAINST IMPAC
12 (False Claims Act, 31 U.S.C. § 3729)

13 78. The United States realleges paragraphs 1-24, 35-44 and 65, and they are incorporated
14 herein by reference as if they were set forth in full.

15 79. Between April 2004 and December 2007, Impac knowingly presented or caused to be
16 presented to the United States false claims for payment of office supply products that Impac represented
17 to GSA and Government purchasers to be TAA-compliant products. Such claims were false because,
18 as Impac then knew, the products sold were not compliant with the TAA and had originated in non-
19 designated countries, all in violation of the False Claims Act, 31 U.S.C. § 3729(a).

20 80. As a result of Impac's knowingly presenting these false claims to the United States, the
21 United States paid the claims and has suffered damages in an amount to be determined at trial.

22 SECOND CAUSE OF ACTION AGAINST IMPAC
23 (Breach of Contract)

24 81. With the exception of allegations concerning defendants' state of mind, the United States
25 realleges paragraphs 1-24, 35-44 and 65, and they are incorporated herein by reference as if they were
26 set forth in full.

27 82. Impac breached a material term of its contract number GS-02F-0051N with GSA in that
28 Impac claimed payment for office supply products which were represented to Government purchasers

1 to be TAA-compliant products when in fact Impac delivered products that were not compliant with the
2 TAA and which had originated in non-designated countries.

3 83. The United States has been damaged by Impac in an amount to be determined at trial.

4
5 THIRD CAUSE OF ACTION AGAINST IMPAC
(Unjust Enrichment)

6 84. With the exception of allegations concerning defendants' state of mind, the United States
7 realleges paragraphs 1-24, 35-44 and 65, and they are incorporated herein by reference as if they were
8 set forth in full.

9 85. As a result of the actions of Impac stated above, Impac has been unjustly enriched and
10 profited and received monies to which it is not entitled by contract or otherwise. In equity and good
11 conscience, Impac should not retain these monies.

12 86. Impac has been unjustly enriched in an amount to be determined at trial.

13
14 FOURTH CAUSE OF ACTION AGAINST IMPAC
(Payment by Mistake)

15 87. With the exception of allegations concerning defendants' state of mind, the United States
16 realleges paragraphs 1-24, 35- 44 and 65, and they are incorporated herein by reference as if they were
17 set forth in full.

18 88. As a result of the actions of Impac stated above, the United States paid the claims
19 submitted for payment for office supply products by Impac under contract number GS-02F-0051N, in
20 the mistaken belief that the amounts claimed therein were for products originating in countries
21 designated as compliant with the TAA when in fact Impac delivered products that were not compliant
22 with the TAA and which had originated in non-designated countries, and that Impac was entitled to
23 payment when it was not. As a result, the payment of those claims was by mistake and not authorized
24 by law.

25 89. The United States has been damaged by Impac in an amount to be determined at trial

26 //

27 //

28

1 FIRST CAUSE OF ACTION AGAINST LAKOTA
2 (False Claims Act, 31 U.S.C. § 3729)

3 90. The United States realleges paragraphs 1-24, 45-54 and 65 and they are incorporated
4 herein by reference as if they were set forth in full.

5 91. Between July 2005 and May 2009, Lakota knowingly presented or caused to be presented
6 to the United States false claims for payment of office supply products that Lakota represented to GSA
7 and government purchasers to be TAA-compliant products. Such claims were false because, as Lakota
8 then knew, the products sold were not compliant with the TAA and had originated in non-designated
9 countries, all in violation of the False Claims Act, 31 U.S.C. § 3729(a).

10 92. As a result of Lakota's knowing presentation of these false claims to the United States,
11 the United States paid the claims and has suffered damages in an amount to be determined at trial.

12 SECOND CAUSE OF ACTION AGAINST LAKOTA
13 (Breach of Contract)

14 93. With the exception of allegations concerning defendants' state of mind, the United States
15 realleges paragraphs 1-24, 45-54 and 65 and they are incorporated herein by reference as if they were
16 set forth in full.

17 94. Lakota breached a material term of its contract number GS-02F-0138R with GSA in that
18 Lakota claimed payment for office supply products which were represented to Government purchasers
19 to be TAA-compliant products when in fact Lakota delivered products that were not compliant with the
20 TAA and which had originated in non-designated countries.

21 95. The United States has been damaged by Lakota in an amount to be determined at trial.

22 THIRD CAUSE OF ACTION AGAINST LAKOTA
23 (Unjust Enrichment)

24 96. With the exception of allegations concerning defendants' state of mind, the United States
25 realleges paragraphs 1-24, 45-54 and 65 and they are incorporated herein by reference as if they were
26 set forth in full.

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28 //

1 97. As a result of the actions of Lakota stated above, Lakota has been unjustly enriched and
2 profited and received monies to which it is not entitled by contract or otherwise. In equity and good
3 conscience, Lakota should not retain these monies.

4 98. Lakota has been unjustly enriched in an amount to be determined at trial.

5
6 FOURTH CAUSE OF ACTION AGAINST LAKOTA
(Payment by Mistake)

7 99. With the exception of allegations concerning defendants' state of mind, the United States
8 realleges paragraphs 1-24, 45-54 and 65 and they are incorporated herein by reference as if they were
9 set forth in full.

10 100. As a result of the actions of Lakota stated above, the United States paid the claims
11 submitted for payment for office supply products by Lakota under contract number GS-02F-0138R, in
12 the mistaken belief that the amounts claimed therein were for products originating in countries designated
13 as compliant with the TAA when in fact Lakota delivered products that were not compliant with the TAA
14 and which had originated in non-designated countries, and that Lakota was entitled to payment when it
15 was not. As a result, the payment of those claims was by mistake and not authorized by law.

16 101. The United States has been damaged by Lakota in an amount to be determined at trial.

17
18 FIRST CAUSE OF ACTION AGAINST PALM
19 (False Claims Act, 31 U.S.C. § 3729 (1986) and 31 U.S.C. § 3729(a)(1)(A) (2009))

20 102. The United States realleges paragraphs 1-24 and 55-65 and they are incorporated herein
21 by reference as if they were set forth in full.

22 103. Between January 2006 and December 2009, Palm knowingly presented or caused to be
23 presented to the United States false claims for payment of office supply products that Palm represented
24 to GSA and Government purchasers to be TAA-compliant products. Such claims were false because,
25 as Palm then knew, the products sold were not compliant with the TAA and had originated in non-
26 designated countries, all in violation of the False Claims Act, 31 U.S.C. § 3729(a).

27 104. As a result of Palm's knowingly presenting these false claims to the United States, the
28 United States paid the claims and has suffered damages in an amount to be determined at trial.

1 SECOND CAUSE OF ACTION AGAINST PALM
2 (Breach of Contract)

3 105. With the exception of allegations concerning defendants' state of mind, the United States
4 realleges paragraphs 1-24 and 55-65 and they are incorporated herein by reference as if they were set
5 forth in full.

6 106. Palm breached a material term of its contract number GS-02F-0230R with GSA in that
7 Palm claimed payment for office supply products which were represented to Government purchasers
8 to be TAA-compliant products when in fact Palm delivered products that were not compliant with the
9 TAA and which had originated in non-designated countries.

10 107. The United States has been damaged by Palm in an amount to be determined at trial.

11
12 THIRD CAUSE OF ACTION AGAINST PALM
13 (Unjust Enrichment)

14 108. With the exception of allegations concerning defendants' state of mind, the United States
15 realleges paragraphs 1-24 and 55-65 and they are incorporated herein by reference as if they were set
16 forth in full.

17 109. As a result of the actions of Palm stated above, Palm has been unjustly enriched and
18 profited and received monies to which it is not entitled by contract or otherwise. In equity and good
19 conscience, Palm should not retain these monies.

20 110. Palm has been unjustly enriched in an amount to be determined at trial.

21
22 FOURTH CAUSE OF ACTION AGAINST PALM
23 (Payment by Mistake)

24 111. With the exception of allegations concerning defendants' state of mind, the United States
25 realleges paragraphs 1-24 and 55-65 and they are incorporated herein by reference as if they were set
26 forth in full.

27 112. As a result of the actions of Palm stated above, the United States paid the claims submitted
28 for payment for office supply products by Palm under contract number GS-02F-0230R, in the mistaken

1 belief that the amounts claimed therein were for products originating in countries designated as compliant
2 with the TAA when in fact Palm delivered products that were not compliant with the TAA and which
3 had originated in non-designated countries, and that Palm was entitled to payment when it was not. As
4 a result, the payment of those claims was by mistake and not authorized by law.

5 113. The United States has been damaged by Palm in an amount to be determined at trial.

6
7 PRAYER FOR RELIEF

8 WHEREFORE, the United States prays for judgment against the defendants as follows:

9 a. under the FIRST CAUSES OF ACTION against each of the defendants, damages
10 multiplied as provided by the FCA, plus such civil penalties as are allowable by law, the costs of this
11 civil action, and such additional and other relief as the Court deems just and proper;

12 b. under the SECOND CAUSES OF ACTION against each of the defendants, damages in
13 the amount of the pecuniary loss caused to the United States by defendants' breach of contract, together
14 with interest and costs of this civil action, and such additional and other relief as the Court deems just
15 and proper;

16 c. under the THIRD CAUSES OF ACTION against each of the defendants, judgment in the
17 amount by which defendant has been unjustly enriched, together with interest and costs of this civil
18 action, and such additional and other relief as the Court deems just and proper;

19 d. under the FOURTH CAUSES OF ACTION against each of the defendants, damages in
20 the amount of the pecuniary loss caused to the United States by the mistaken and unauthorized payment,

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1 together with interest and costs of this civil action, and such additional and other relief as the Court
2 deems just and proper.

3 DATED: November 24, 2010

Respectfully submitted,

4 TONY WEST
Assistant Attorney General

5 LAURA E. DUFFY
6 United States Attorney

7 s/ Joseph J. Purcell
8 JOSEPH P. PRICE, JR.
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13 Commercial Litigation Branch

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15 KAVITHA J. BABU
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