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RICHARD W. PHEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

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12 SECURITIES AND EXCHANGE COMMISSION,
13 Plaintiff,
14 v.
15 ORACLE CORPORATION,
16 Defendant.

Case No. CV 12 4310
COMPLAINT

CRB

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18 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

19 SUMMARY OF THE ACTION

20 1. This matter involves violations of the books and records and internal controls
21 provisions of the Foreign Corrupt Practices Act ("FCPA") by Oracle Corporation ("Oracle" or "the
22 Company"), a Redwood Shores, California-based software company. From 2005 to 2007, certain
23 employees of Oracle's Indian subsidiary Oracle India Private Limited ("Oracle India") secretly
24 "parked" a portion of the proceeds from certain sales to the Indian government and put the money to
25 unauthorized use, creating the potential for bribery or embezzlement. These Oracle India employees
26 structured more than a dozen transactions so that a total of around \$2.2 million was held by the
27 Company's distributors and kept off Oracle India's corporate books. The Oracle India employees
28

1 would then direct its distributor to disburse payments out of the unauthorized side funds to purported
2 local “vendors.” Several of the “vendors” were merely storefronts that did not provide any services.

3 2. Oracle failed to accurately record these side funds on the Company’s books and
4 records, and failed to implement or maintain a system of effective internal accounting controls to
5 prevent improper side funds in violation of the FCPA, which requires public companies to keep
6 books and records that accurately reflect their operations.

7 3. The Commission seeks an order permanently enjoining Oracle from violations of the
8 books and records and internal controls provisions of the FCPA, and requiring Oracle to pay a civil
9 monetary penalty.

10 **JURISDICTION AND VENUE**

11 4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the
12 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and 78aa]. Defendant has,
13 directly or indirectly, made use of the means and instrumentalities of interstate commerce and of the
14 mails in connection with the acts, transactions, practices and courses of business alleged in this
15 Complaint.

16 5. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C.
17 § 78aa] because Defendant maintains its headquarters and transacts business within the Northern
18 District of California.

19 6. Intradistrict assignment to the San Francisco Division is proper pursuant to Civil
20 L.R. 3-2(c) because Oracle’s headquarters is located in the County of San Mateo.

21 **DEFENDANT**

22 7. Oracle Corporation is a Delaware corporation with headquarters in Redwood Shores,
23 California. Oracle is an enterprise software company and a provider of computer hardware products
24 and services. Shares of Oracle stock are registered with the Commission pursuant to Section 12(b) of
25 the Exchange Act and the company files reports pursuant to Section 13 of the Exchange Act. The
26 company’s shares are listed on the NASDAQ National Market under the symbol “ORCL.” Oracle
27 operates in India through its wholly-owned subsidiary Oracle India Private Limited.

FACTUAL ALLEGATIONS

1
2 **A. Oracle India Employees Created A Side Fund At Its Distributors And Did Not Properly**
3 **Account For It**

4 8. From 2005 to 2007, Oracle India sold products and services to Indian government end
5 users through local distributors and then directed excess funds from the sales to be “parked” outside
6 Oracle’s books and records.

7 9. At the time, Oracle India’s typical business model involved selling Oracle software
8 licenses and services through local distributors who had written agreements with Oracle India. In the
9 transactions at issue, Oracle India was heavily involved in identifying and working with the end user
10 customers in selling products and services to them and negotiating the final price. The purchase
11 order, however, was placed by the customer with Oracle India’s distributor. The distributor bought
12 the licenses and services directly from Oracle, and then resold them to the customer at the higher
13 price that had been negotiated by Oracle India. The difference between what the government end user
14 paid the distributor and what the distributor paid Oracle typically is referred to as “margin,” which the
15 distributor generally retains as payment for its services.

16 10. On approximately 14 occasions related to 8 different government contracts between
17 2005 and 2007, certain Oracle India employees created extra margins between the end user and
18 distributor price and directed the distributors to hold the extra margin in side funds. Oracle India’s
19 employees made these margins large enough to ensure a side fund existed to pay third parties. At the
20 direction of the Oracle India employees, the distributor then made payments out of the side funds to
21 third parties, purportedly for marketing and development expenses. Some of the recipients of these
22 payments were not on Oracle’s approved local vendor list; indeed, some of the third parties did not
23 exist and were merely storefronts.

24 11. Because the Oracle India employees concealed the existence of the side fund, Oracle
25 did not properly account for these side funds. These funds constituted prepaid marketing expenses
26 incurred by Oracle India and should have been recorded as an asset and rolled up to Oracle’s
27 corporate books and records. These marketing expenses should then have been reflected in the
28 income statement once they were used. Instead, the parked funds were not reflected on Oracle India’s

1 books and were not properly recorded as prepaid marketing expenses. This incorrect accounting in
2 turn affected Oracle's books and records.

3 12. Between 2005 and 2007, government customers paid Oracle India's distributors at
4 least \$6.7 million on these sales, with Oracle receiving approximately \$4.5 million in revenue,
5 resulting in about \$2.2 million in funds improperly "parked" with the Company's distributors.

6 **B. Absent Proper Controls, Oracle India Employees Used Side Funds To Pay Unauthorized**
7 **Third Parties**

8 13. Oracle India's parked funds created a risk that they potentially could be used for illicit
9 means, such as bribery or embezzlement. Such risk can be highlighted by the following example of
10 the largest government contract that involved parked funds used for unauthorized third party
11 payments.

12 14. In May 2006, Oracle India secured a \$3.9 million deal with India's Ministry of
13 Information Technology and Communications. Oracle's distributor accepted payment from the end
14 user for the full \$3.9 million. Under the direction of Oracle India's then Sales Director, the
15 distributor sent approximately \$2.1 million to Oracle, which Oracle booked as revenue on the
16 transaction.

17 15. Oracle India employees then directed the distributor to keep approximately \$151,000
18 as payment for the distributor's services. The Oracle India employees further instructed the
19 distributor to "park" the remaining approximately \$1.7 million to be used for disbursement towards
20 "marketing development purposes." Several Oracle India employees were aware of the parked funds
21 arrangement, which violated Oracle's internal corporate policies.

22 16. Two months later, an Oracle India employee provided Oracle India's distributor with
23 eight invoices for payments to third party vendors, in amounts ranging from approximately \$110,000
24 to \$396,000. These invoices were later found to be fake. None of these third parties, which were just
25 storefronts and provided no services on the deal, were on Oracle's approved vendor list. As directed
26 by the Oracle India employees, the distributor sent out the third party payments, which created the
27 potential that they could be used for bribery or embezzlement.

1 17. Oracle lacked the proper controls to prevent its employees at Oracle India from
2 creating and misusing the parked funds. For example, Oracle knew distributor discounts created a
3 margin of cash from which distributors received payments for their services. Before 2009, however,
4 the Company failed to audit and compare the distributor's margin against the end user price to ensure
5 excess margins were not being built into the pricing structure.

6 18. In addition, although Oracle maintained corporate policies requiring approvals for
7 payment of marketing expenses, Oracle failed to seek transparency in or audit third party payments
8 made by distributors on Oracle India's behalf. This control would have enabled Oracle to check that
9 payments were made to appropriate recipients.

10 **C. Oracle Later Implemented Remedial Measures To Improve FCPA Compliance**

11 19. By November 2007, Oracle India's Senior Channel Sales Manager had resigned and
12 left Oracle India. As a result of an internal investigation that the Oracle Asia division escalated after
13 a local tax inquiry to Oracle India's distributor, Oracle terminated four other Oracle India employees
14 based on their knowledge that Oracle India parked funds at its distributors.

15 20. In addition, Oracle took other remedial measures to address the risk and controls
16 related to parked funds, including: conducting additional due diligence in its partner transactions in
17 India so that Oracle had greater transparency into end user pricing in government contracts;
18 terminating its relationship with the distributor involved in the transactions at issue; directing its
19 distributors not to allow the creation of side funds; requiring additional representations and warranties
20 from distributors to include the fact that no side funds exist; and enhancing training for its partners
21 and employees to address anti-corruption policies.

22 **FIRST CLAIM FOR RELIEF**

23 Violations of Section 13(b)(2)(A) of the Exchange Act (Books and Records)
24 [15 U.S.C. § 78m(b)(2)(A)]

25 21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

26 22. As described above, Oracle failed to make and keep books, records and accounts
27 which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its
28 assets.

1 23. By reason of the foregoing, Defendant violated, and unless restrained and enjoined
2 will continue to violate, the books-and-records provision of the FCPA, codified as Section
3 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

4 **SECOND CLAIM FOR RELIEF**

5 Violations of Section 13(b)(2)(B) of the Exchange Act (Internal Controls)
6 [15 U.S.C. § 78m(b)(2)(B)]

7 24. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

8 25. With respect to the side funds and payments described above, Oracle failed to devise
9 and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
10 (i) transactions were executed in accordance with management's general or specific authorization;
11 and (ii) transactions were recorded as necessary to permit the preparation of financial statements in
12 conformity with generally accepted accounting principles or any other criteria applicable to such
13 statements, and to maintain accountability for its assets.

14 26. By reason of the foregoing, Defendant violated, and unless restrained and enjoined
15 will continue to violate, the internal-controls provision of the FCPA, codified as Section 13(b)(2)(B)
16 of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Commission respectfully requests that this Court:

19 **I.**

20 Issue an order permanently restraining and enjoining Defendant and its agents, servants,
21 employees, attorneys, and all persons in active concert or participation with them who receive actual
22 notice of the order by personal service or otherwise from violating, directly or indirectly, Sections
23 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

24 **II.**

25 Issue an order directing Oracle to pay a civil monetary penalty pursuant to Section 21(d)(3) of
26 the Exchange Act [15 U.S.C. § 78u(d)(3)].
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III.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

IV.

Grant such other relief as this Court may deem just and appropriate.

Respectfully submitted,



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Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

Dated: August 16, 2012

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