

Civil Action No. H-05-3836; *Party X v. Party Y*, In the United States District Court, Southern District of Texas, Houston Division **UNDER SEAL**  
**PURSUANT TO COURT ORDER & 31 U.S.C. § 3730(b)(2)**

**SECOND AMENDED COMPLAINT**

**United States District Court  
Southern District of Texas  
FILED**

AUG 11 2009

**, Clerk of Court**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**UNITED STATES OF AMERICA,  
ex rel., DAVE RICHARDSON, *et al.***

**v.**

**ANALYTICAL COMPUTER  
SERVICES, INC., *et al.***

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**CAUSE NO. H-05-3836**

**Jury Requested**

**SECOND AMENDED COMPLAINT**

Relators Dave Richardson, Dave Gillis, Barry Clauss and one other unidentified Relator, on behalf of the UNITED STATES OF AMERICA, bring this civil action under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, against Defendants Analytical Computer Services, Inc., Advanced Technological Solutions South, Inc., Communications Supply Corporation, Hewlett-Packard Company, Hill Professional Services, LLC, InterNetwork Experts, Inc., Lazo Tech Group, LLC, Micro System Enterprises, Inc., Novell, Inc., Technology Cabling Solution, Inc., Avizion Technologies Group, Inc., Woodlands Network Solutions, Inc., Ruben Bohuchot and Acclaim Professional Services, Inc.

**PARTIES**

1. The Plaintiff is the United States of America.
2. One of the Relators is Dave Richardson, an individual residing in Texas.
3. Another Relator is Dave Gillis, an individual residing in Texas.
4. Another Relator is Barry Clauss, an individual residing in Texas. At the time of the original filing, Relator Clauss was still employed at Dallas Independent School District

and was concerned about the disclosure of his identity. His fears about a retaliatory discharge were heightened by the fact that a termination could have caused a discontinuance of his health coverage he needed to address serious health matters for him and his family. Despite the fact he was not originally identified in the Original Complaint, Relator Clauss has been involved with the other Relators from the outset. Relator Clauss's involvement has included an agreement with the original two Relators that they would represent his interests in this litigation and Relator Clauss's cooperation with the Government in their investigation of the Defendants.

5. Another Relator remains undisclosed at this time, but is a Texas resident. He, too, has been involved with the others since the outset including agreements to be represented by the others, to share in any proceeds and to cooperate with the Government in their investigation.

6. Defendant Analytical Computer Services, Inc. is a Texas corporation that, on information and belief, is based in Houston, Texas. Analytical Computer Services, Inc. may be served with process through its registered agent C. Pat Ellis, 901 Kirby, Houston, Texas 77019. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

7. Defendant Advanced Technological Solutions South, Inc. is a Texas corporation that, on information and belief, is based in Dallas, Texas and/or Brooklyn, New York. Advanced Technological Solutions South, Inc. may be served with process through its registered agent Kerry E. Braxton, 400 S. Zang Blvd., Suite 600, Dallas, Texas 75208.

Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

8. Defendant Communications Supply Corporation is a Connecticut corporation, doing business in Dallas, Dallas County, Texas, and Houston, Harris County, Texas and may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

9. Defendant Hewlett-Packard Company is a Delaware corporation, doing business in Dallas, Dallas County, Texas, and Houston, Harris County, Texas and may be served with process through its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

10. Defendant Hill Professional Services, LLC is a Texas limited liability company that, on information and belief, is based in Plano, Texas. Hill Professional Services, LLC may be served with process through its registered agent Eddie C. Hill, 3612 Sailmaker Lane, Plano, Texas 75023. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

11. Defendant Internetwork Experts, Inc. is a Delaware corporation that, on information and belief, is based in Lewisville, Texas. Internetwork Experts, Inc. may be served with process through its registered agent James H. Long, 6401 Southwest Freeway, Houston, Texas 77074. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

12. Defendant Lazo Tech Group, LLC is a Texas limited liability company that, on information and belief, is based in Dallas, Texas. Lazo Tech Group, LLC may be served with process through its registered agent Tom Lazo, Sr., 611 West Mockingbird Lane,

Dallas, Texas 75247. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

13. Defendant Micro System Enterprises, Inc. is a Texas corporation that, on information and belief, is based in Houston, Texas. Micro System Enterprises, Inc. may be served with process through its registered agent Eric Yang, 9777 Harwin Dr., Suite 202, Houston, Texas 77036. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

14. Defendant Novell, Inc. is a Delaware corporation that, on information and belief, is based in Waltham, Massachusetts. Novell, Inc. may be served with process through its registered agent Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

15. Defendant Technology Cabling Solution, Inc., is a Texas corporation that, on information and belief, is based in Houston, Texas. Technology Cabling Solution, Inc., may be served with process through its registered agent William Henry Froechtenicht, 1262 Wedgewood Dr., Sugar Land, Texas 77478. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

16. Defendant Avizion Technologies Group, Inc. is a Texas corporation that, on information and belief, is based in Carrollton, Texas. Avizion Technologies Group, Inc. may be served with process through its registered agent Barbara Martin, 2100 Mistymeadow Ct., Carrollton, Texas 75006. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

17. Defendant Woodlands Network Solutions, Inc., is a Texas company that, on information and belief, is based in Houston, Texas. Woodlands Network Solutions, Inc. may

be served with process through its registered agent Carl Douglas Harvey, 73 Yewleaf Rd., The Woodlands, Texas 77381. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

18. Defendant Ruben Bohuchot is an individual residing in Addison, Texas. He can be served at his residence, 6612 Rolling Vista Drive, Addison, Texas 75001. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

19. Defendant Acclaim Professional Services, Inc. is a Texas company that, on information and belief, is based in Houston, Texas. Acclaim Professional Services, Inc. may be served with process through its registered agent Frank H. Trifilio, 1150 Northwest Freeway, Suite 320, Houston, Texas 77092. Service of the suit is stayed pursuant to 31 U.S.C. § 3730(b)(2).

### **JURISDICTION**

20. This is a claim brought under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, arising from Defendants' false and/or fraudulent claims for payment from the United States Government that were paid by and through its funding of technology programs at various Texas school districts, including, without limitation, two of the larger districts--the Dallas Independent School District ("DISD") and the Houston Independent School District ("HISD"). This Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. § 1345, 31 U.S.C. § 3730(b), and its general equitable jurisdiction.

21. While some of the facts cited herein are from public sources, many have yet

to be publicly disclosed. Moreover, Relators were the original source of the information already publicly disclosed.

### VENUE

22. Venue is proper in this district under 38 U.S.C. § 1391 and 31 U.S.C. § 3732(a).

### BACKGROUND FACTS

#### **A. The Noble E-rate Program.**

23. In 1996, Congress mandated that schools and libraries receive discounted telecommunications services through the newly codified Universal Service Fund. In turn, the Federal Communications Commission (the “FCC”) proceeded to implement that mandate, commonly known today as the E-rate program, through a private non-profit corporation known as the Universal Service Administration Company (the “USAC”). Within USAC, the Schools and Libraries Division (“SLD”) is responsible for the daily administration of the E-rate program. Between 1998 and the present time, USAC has “committed over \$15 billion and disbursed over \$10 billion, to discount the costs of eligible telecommunications projects for schools and libraries throughout the country.”

24. The E-rate program provides \$2.25 billion in discounts annually for advanced, affordable telecommunications services, internet access and internal connections to public libraries and public and private schools. E-rate discounts are provided through the federal government by assessing telecommunication carriers for the entire \$2.25 billion.

25. The goal is to assist urban and rural school districts (as well as libraries and other public service providers) in helping all students participate in and benefit from new information technologies, including distance learning, online assessment, web-based homework, enriched curriculum, increased communication between parents, students and their educators, and increased access to government services and information.

26. All non-profit elementary and secondary schools may apply for E-rate discounts. Applications may cover individual schools, entire school districts and consortia. Schools, libraries, local government agencies and health care providers may participate in consortia. Applications are made to the SLD, a part of USAC.

27. Applicants (the nomenclature for schools applying for E-rate discounts) do not receive funds directly. They receive a discounted price. Once an application is approved, the school, library or consortium accepts a bid from the telecommunications service provider of its choice. The service provider receives funds from the federal government to make up the difference between the discounted price and bid price. If no local telecommunications providers bid on the work, the local telephone company is required to provide the requested telecommunications service as the carrier of last resort.

28. Discounts range from 20 to 90 percent based on local poverty levels. Schools and libraries must pay the undiscounted portion of their telecommunications bill themselves and the service providers collect the remainder directly from the government. Discounts are determined by the percentage of students eligible for the national school lunch program and



by the school's urban/rural designation.

29. Demand for E-rate funds is high and competitive amongst those that are eligible. For the 2005 funding year alone, almost 39,000 applications were submitted by schools, libraries, or consortia for discounts. Discounts requested totaled an estimated \$3.65 billion, far more than available funds.

30. E-rate funds support discounts in three service categories: telecommunications, Internet access, and "internal connections" (i.e., the cabling and network infrastructure necessary for multiple users within schools to access the Internet).

31. From 1998 through February 15, 2005, Texas schools and libraries, alone, secured \$1,505,802,780 in discounts (i.e., funds paid by the federal government directly provided to service providers to make up for the discounts). DISD has received discounts ranging from 79% to 90%. In funding year 2003 (applied to the 2003-2004 school year), E-rate paid discounts totaling more than \$113,000,000 for DISD. Through funding year 2005, DISD received commitments totaling \$142,968,977.31. Through funding year 2005, HISD has received commitments totaling \$303,794,067.99 with more than \$90 million coming just in funding year 2004.

32. As abundantly clear, Texas school districts have spent hundreds of millions of dollars of federal funds for technology goods and services. The technology includes computers, cabling, servers, switchers, e-mail systems, software, and other goods and services related to technology. The federal funds that have been spent were both E-rate funds

(the discounted portion) and non-E-rate funds (the non-discounted portion plus technology funds not subject to the E-rate program). In both HISD and DISD, and probably other Texas school districts, the majority of the goods and services have been provided, and are still being provided, through a “Consortium” composed of the Defendants and others not now named as defendants in the “Consortium.”<sup>1</sup>

33. While sometimes, Defendants specifically referenced themselves with the moniker “Consortium,” other times the Consortium would operate through a lead entity that would respond to a Request For Proposal (“RFP”) on behalf of most, if not all, of the individual Defendants. For example, at HISD, the Consortium would vary their response by having Defendant Acclaim Professional Services, Inc. (“Acclaim”), Defendant Micro System Enterprises, Inc. (“MSE”), Defendant Analytical Computer Services, Inc. (“ACS”) or possibly other entities submit the response to the RFP on behalf of the “team.” When the term Consortium or conspiracy is used herein it is intended to include the agreed combination of the Defendants no matter which name they chose to use at that particular time.

34. USAC develops and implements procedures, under the supervision of the FCC, to administer the E-rate program in accordance with program rules enumerated at CFR Title 47, Part 54 §§ 1 *et. seq.*. Essentially, for an eligible applicant to receive funding it must choose services that it intends to use for educational purposes, and must do so though a

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<sup>1</sup>Note that this “Consortium” is different than the typical consortia often referenced in E-rate applications. The typical consortia involves school districts teaming up with each other and other public libraries to submit one application for the E-rate discounts. The Consortium subject to this lawsuit set up by Defendants consisted of private entities teaming up to provide comprehensive technological services to the school districts at the “discounted” rates.

competitive bidding process to ensure cost effectiveness.

35. E-rate program rules require applicants to follow state and local bidding requirements, as well as the E-rate program's competitive bidding requirements. Once schools have a plan in place, they file an FCC "Form 470." 47 C.F.R. § 54.504. The Form 470 must supply information with sufficient specificity for potential bidders to formulate bids for eligible E-rate program products and services. Misrepresentations to USAC on the Form 470 is a misrepresentation to the United States. 47 C.F.R. § 54.5; FCC Forms 470, 471, 474, and 486.

36. The schools, referred to in the program as the Applicants, certify to choose the most cost-effective products and services through a competitive bidding process. The E-rate program requires the schools to follow state and local procurement requirements. Price is supposed to be the primary factor considered in the selection of the service providers. One of the primary rules regarding competition simply requires a waiting period of 28 days between posting a Form 470 and entering into a contract. Specifically, the Government requires that the services be provided by the lowest bidder: "The Form 470 Applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-efficient provider of the desired services." FCC Form 470. Federal regulations also prohibit financially-interested parties from filling out the Form 470 on the school's behalf.

37. After winning vendors are chosen from the pool of bidders, the applicant requests funding from USAC for specific products on FCC Form 471.

38. Upon review of the information from the schools, USAC issues a funding commitment to provide the needed funds to make up the difference for the discounts. The funds are then distributed by USAC directly to the service providers based upon invoices submitted by the service providers and a certification submitted by the applicant that installation of the products and services has or is about to commence, or has been completed. The schools submit their “co-payment” directly to the service providers. For example, the DISD agreement for “Network Electronics” dictates:

The contracted vendor will adjust their billing process to conform to the USF and the E-rate payment plan. The contracted vendor will invoice a percentage of the service and the support provided, directly to DISD. This percentage will be provided by DISD to the vendor at such time as it becomes available. The vendor will invoice the SLD or the USF Administration Designee the remaining percentage of the contracted amount. This invoice may be produced on a monthly or quarterly period. The contracted vendor will show the full amount of the invoice and then show the appropriate percentage due from DISD and from the USF.

Section 3.5 of the Network Electronics DISD RFP 2491-03.

**B. The Ensemble That Makes Up the Consortium and Other People Involved.<sup>2</sup>**

39. Each Defendant had a role in the management and control of the Consortium. At the same time, each Defendant maintains, or, at times, appears to maintain the auspice of a separate and distinct identity. Defendants formed the Consortium to address all of the

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<sup>2</sup>For the convenience of the Court and to abbreviate this pleading, Relators will continue to reference the Defendants as the Consortium. As explained herein, however, the term Consortium refers to both the self-labeled group of Defendants but also the more general conspiracy formed by Defendants when they submitted false claims through other names or through individual lead entities on behalf of the rest of the Defendants. Rather than reasserting that the actions were taken on behalf of all of Defendants in furtherance of the conspiracy alleged herein listing each member, Relators will continue to reference the Consortium as actions taken by one or more individuals in furtherance of the conspiracy alleged herein.

school districts' technology needs. Thus, each one of the players provides one technology service or another.

40. Defendant ACS apparently does what their name indicates. According to their website, ACS provides effective solutions to data management needs by providing professional services and state of the art products "which enable you to leverage data from multiple databases and platforms in a cohesive business intelligence information resource." ACS claimed to be "the #1 Compaq Education Partner and has been for four consecutive years." ACS worked with HISD's E-rate program from the outset. ACS's president at the pertinent time was Frank Trifilio. ACS worked with Hewlett-Packard Company ("H-P"), and other Consortium Defendants to assure that H-P products and services supplied through ACS or MSE were the products purchased by HISD and DISD. ACS was sometimes used as the lead entity to respond for the Consortium to E-rate RFPs.

41. Defendant Advanced Technological Solutions South, Inc. ("ATS")<sup>3</sup> focuses on computer repairs. After taking over an IBM plant in Brooklyn, New York, it opened a similar operation in Dallas. ATS, through an agreement with another entity provides IT service to all Federal offices located in the Dallas metropolitan area. It is owned by Wesley Ratcliffe, CEO.

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<sup>3</sup>Advanced Technological Solutions, Inc., the parent of the named Defendant, was started by former IBM employees. It appears the named Defendant was opened to expand to more southern geographical areas. The named defendant, however, is no longer in good standing with the Texas Comptroller. Therefore, the parent company may be the proper party and any party defects will be cured as soon as reasonably possible.

42. Defendant Communications Supply Corporation (“CSC”) claims to be the “nation’s leading resource for experienced datacom product distribution and support.” Andy Dean was the Branch Manager for CSC for the Consortium.

43. Defendant H-P is one of the largest computer manufacturers in the world. Garrett Goeters was listed as the contact person for H-P related to the Consortium. Also actively involved on behalf of H-P was Tommy Nordstrom. H-P worked actively with ACS, MSE, and other Defendants comprising the Consortium to restrict and eliminate competition at HISD and DISD. H-P directly confirmed and agreed that with a single contract, the Consortium could act on behalf of H-P and other Consortium Defendants. In some instances at HISD and/or DISD, Defendants Acclaim, ASC, MSE and other Defendants, were at various times the contact entity for H-P and the other Consortium Defendants. MSE is a major seller, supplier and reseller of H-P products giving MSE, and the rest of the Consortium, a leg up in the competition to the detriment of others.

44. Defendant Hill Professional Services, LLC (“HPS”) is run by Eddie C. Hill, Jr. and is a historically underutilized business. It focuses on network design, management and implementation.

45. Defendant Internetwork Experts, Inc. (“Internetwork”) claims to have “established itself as a leader in designing, implementing and supporting Cisco-based networks.” Internetwork also has a federal division focusing on government business: “Now, as a Cisco Federal Partner, InterNetwork Experts is combining our experience and quality

processes with the unique requirements of the Federal sector, to provide market-leading Cisco solutions in the Federal space.” Internetwork listed Mark Hiltz, its president and CEO, as its primary contact for the Consortium. Internetwork’s parent company is an entity called I-Sector Corporation.

46. Defendant Lazo Tech Group, LLC (“Lazo”) also focuses on the information technology sector with an emphasis on electronic component manufacturing, maintenance and supply as well as logistics. Tom Lazo heads Lazo.

47. Defendant MSE focuses on education computing needs. Frankie Wong is the president of MSE.

48. Defendant Novell (“Novell”) is a world-wide prominent software company. Novell listed Darrell Probst as its contact for the Consortium.

49. Defendant Technology Cabling Solution, Inc., (“TCS”), although currently not in good standing with the Texas Comptroller, does as its name suggests—cabling. Bill Froechtenicht serves as the contact for the Consortium.

50. Defendant Avizion Technologies Group, Inc. (“Avizion”) appears to be a staff placement firm working with clients and consultants to provide people in technology-centered businesses. Jeffrey Runyan, the vice-president, is the Consortium contact. Avizion is owned (or was owned) by the Harbour Group, Inc. The Harbour Group also owns Trendec which performed substantial technology work for HISD.

51. Wade Jacobs, Cathy Minberg, Jeffrey Runyan and Leonard Sturm were all involved with technology issues at DISD and HISD. They were all interacting with the conspiracy to further its goals. Mark Hill, a one-time HISD technology employee, then later a Trendec officer, was also involved in the conspiracy.

52. Defendant Woodlands Network Solutions, Inc., ("WNS") is run by Frank Trifilio and is a network cable design and installation company. WNS listed its vice-president of operations Doug Harvey (rather than Mr. Trifilio) as the primary contact for the Consortium.

53. Defendant Acclaim often worked as the point of contact for Texas school districts and their E-rate funding. The Acclaim website states:

Acclaim Professional Services was formed to bring connectivity to Texas classrooms. We are a Texas company committed to helping Texas schools maximize their technology budgets.

Our members have worked with E-rate since the program's inception. We have successfully delivered E-rate-funded projects on time and within budget for the fourth largest school district in the nation, year after year. In addition to E-rate, the Acclaim Professional Services team has extensive experience providing bond-funded technology solutions: from hardware to systems integration.

Acclaim Professional Services brings this teamwork to a new level with the capability to deliver connectivity to schools throughout Texas.

Acclaim is run by some of the same people who are involved in the other corporate Defendants. Larry Lehman served as an officer of Acclaim, while at various times he also



served as a representative of Region IV, a cooperative purchasing, training and educational network for 54 school districts.

54. Acclaim has been described by Defendants as an information technology professional service firm which is partially owned by ACS and MSE. Acclaim has also been described as “wholly owned by [ACS], [MSE], Lakehills ISC, [WNS], and [TCS].” It is believed that Acclaim was created in November of 2002.

55. Defendant Ruben Bohuchot was the Chief Technology Officer Assistant Superintendent for DISD. He was suspended with pay in July 2005 while DISD investigated whether he took gifts and other items from Frankie Wong, the President of MSE—one of DISD’s biggest computer vendors. The investigation began after *The Dallas Morning News* reported Mr. Bohuchot had use of a yacht owned by MSE executives including Mr. Wong. Mr. Bohuchot was receiving more than \$140,000 in salary from DISD. In November of 2005, Mr. Bohuchot’s employment was terminated.<sup>4</sup>

56. Wade Jacobs (“Jacobs”), individually, and sometimes through his company Infinet Technology Group, LLC (“Infinet”) has been providing technology consulting services at HISD since the late 1990s. From late 1997 through the middle of 2004, Infinet was paid over \$5 million by HISD. The Professional Services Agreement of Infinet gave it extremely broad power with regard to technology. Specifically, Jacobs, through Infinet, was

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<sup>4</sup>DISD also demoted former associate superintendent for auxiliary services, George Sparks, and division manager of network services Alden Gaw. With regard to the newspaper accounts referenced herein, Relators were the source of that information and had frequent discussions with journalists related to DISD and HISD.

to provide services of a “Senior Project Manager” with regard to technology infrastructure implementation for major projects at HISD. Jacobs and/or Infinet had significant influence over technology purchases at HISD. Jacobs and/or his company has received millions of dollars in consulting fees from HISD. Jacobs was involved with the Harbour Group, Trendec, Mark Hill, Leonard Sturm and Avizion in furthering goals of the conspiracy of controlling the technology work at DISD and HISD. Moreover, Jacobs was actively involved with Larry Lehman and Frankie Wong regarding HISD technology purchases.

57. Cathy Minberg (“Minberg”) was the Chief Business Officer at HISD from 2000 through 2004. Minberg has often bragged about securing over \$130 million in E-rate funds while at HISD. Minberg and Jacobs were romantically involved with each other despite the fact Minberg was married to someone else at the time. Jacobs, as a consultant, and Minberg, as CBO, resigned from HISD in 2004 around the time a news story broke on an HISD E-rate investigation. Jacobs was able to use his intimate relationship with Minberg to benefit his friends who wanted technology business with HISD such as MSE, ACS, H-P and other Consortium Defendants. Minberg was involved with the Harbour Group, Trendec, Mark Hill, Leonard Sturm and Avizion in furthering goals of the conspiracy of controlling the technology work at DISD and HISD, including a reference to Minberg being a partner with the Harbour Group or one of its entities. Minberg received gifts or items of value from Defendants. As an example, Minberg received Super Bowl tickets from Defendant H-P. Defendants spread the bounty of entertainment through tickets and events

to other HISD representatives.

58. During certain relevant times, Larry Lehman was a representative for Texas Cooperative Purchasing Network (“TCPN”) of the Region IV Education Service Center. Lehman was the signatory on behalf of Region IV on several successful proposals submitted on behalf of the Defendants. Lehman was also an officer for Acclaim as well as frequently interacting with the other Defendants. Lehman was, during relevant periods of time, regularly present at the technology department of HISD. Lehman frequently was meeting and communicating with Bill Edwards, Steve Kim, Mark Hill, Laura Palmer, Cathy Mincberg and Wade Jacobs while they were acting on behalf of HISD.

59. Mark Hill was, during relevant periods of time, the Manger of Application at HISD. Hill later became a consultant for Trendec, and then later a Vice President and President of Trendec. Trendec did significant consulting work for HISD.

60. Trendec is described as a division of the Harbour Group, Inc., which is described as a business and technology consulting firm specializing in information technology management for the public sector. Trendec is described as providing “client-focused solutions through four delivery models.” Trendec provided extensive consulting work for HISD during the relevant period of time and was significantly involved with Wade Jacobs, Cathy Mincberg and Leonard Sturm. Later, Mark Hill was significantly involved in these Trendec/HISD services and businesses.

61. Harbour Group, Inc. reports Trendec as one of its divisions and/or a subsidiary. Avizion, a member of the Consortium and a Defendant, is owned by the Harbour Group. Mark Hill regularly met with principals and representatives of the Harbour Group. Avizion and Trendec are affiliated companies. Mark Hill and others associated with the Harbour Group and regularly communicated with Wade Jacobs, Cathy Minberg, Leonard Sturm and others related to technology issues at DISD and HISD.

62. Steve Kim was, during the relevant period of time, a Manager of Network Operations at HISD. Steve Kim was extensively involved in the decisions as to what technology products and services HISD purchased. Kim extensively interacted with Larry Lehman, Wade Jacobs, Mark Hill, Frankie Wong, MSE, H-P and other Defendants.

63. Bill Edwards was, during relevant periods of time, an assistant, and then, Superintendent of Technology at HISD. Edwards came to the technology positions at HISD in approximately November 2001. Cathy Minberg was instrumental in recommending that Edwards receive a special salary increase when he was hired. Bill Edwards may have also been employed at one time by H-P. Edwards abruptly resigned in March 2005. Edwards regularly met with Larry Lehman and was entertained by Lehman. Tommy Nordstrom was an H-P sales representative or H-P management/sales representative involved at HISD. Nordstrom had extensive contact for H-P at HISD involving Bill Edwards, Frankie Wong, Mark Hill and Steve Kim.

64. Sharrard Thomas was an H-P sales representative that later went to work for one of the Defendants controlled by Frankie Wong. Thomas regularly provided expensive meals and entertainment to HISD technology employees.

65. Laura Palmer was interim Assistant Superintendent and then Superintendent in HISD's office of Technology and Information Systems.

66. Tommy Nordstrom was a representative for H-P that regularly interacted with Frankie Wong and Defendants related to HISD technology.

67. Leonard Sturm was the Chief Financial Officer at HISD through approximately 2001. Sturm continued to work as a paid consultant to HISD after his tenure as CFO. Sturm interacted with Wade Jacobs, Cathy Minberg, Mark Hill and others regarding HISD technology issues.

68. These individuals within HISD and within the Consortium made it possible for the Consortium to enrich itself by manipulating the RFP process on technology purchases.

69. Each member of the Consortium provides one aspect of goods or services to handle Texas school district business. By working together and forming their Consortium, Defendants presented a comprehensive package to handle every need of the Texas school districts. In addition, Defendants used the Consortium to effectuate their fraudulent acts complained of herein.

70. While each Defendant is technically a different corporate entity or individual, many of the Defendants are intertwined. For example, TCS is run by affiliates of MSE.

Jack Yang and Alan Chan are the officers of MSE. Meanwhile, Lena Ling Yang and Mimi Chau Chan are officers of TCS. WNS lists Analytical Computer Services on its website should one of its visitors be interested in "computer services." Acclaim is reportedly owned by Defendants MSE, ACS, WNS, and TCS. The Registered Agent and a Director of Acclaim is Frank Trifilio who is also the Director of WNS. Larry Lehman sometimes acted as an officer of Acclaim while acting as a representative for TCPN/Region IV and a person that influenced and/or controlled technology discussions at HISD. Sometimes, Larry Lehman acted through an entity named Epylon. Epylon was a contract administrator for Region IV's TCPN. When Region IV terminated its relationship with Epylon, Acclaim was formed and began performing the same type of service.

71. Even the individual Mr. Bohuchot is intertwined with Defendants.<sup>5</sup> In addition to the use of the MSE yacht, his son-in-law, Bernard Lee Cabatingan, was working at Lazo. Company president Tom Lazo Sr. said his firm did not hire Mr. Cabatingan and he did not know that Mr. Cabatingan was Mr. Bohuchot's son-in-law. He said Mr. Cabatingan has worked at his warehouse and office for about 10 months on the payroll of either MSE or Acclaim. "He doesn't work for Lazo Technologies," Mr. Lazo said. "Under the consortium ... a lot of the functions are done there at Lazo Technologies. A lot of them are employees of other members of the consortium."

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<sup>5</sup>Mr. Bohuchot came to DISD in September 1999, following his boss, who became the Superintendent of DISD. His former boss was fired about a year later, but Mr. Bohuchot remained.

72. The term "Consortium" is a term frequently utilized by the Defendants in their interaction with Texas school districts; however, it is not the exclusive term as the Defendants have sometimes referenced their group utilizing a corporation -- e.g., Acclaim, ACS and/or MSE as their point of contact. The Consortium claimed:

We will provide a single point of contact for DISD so that all issues can be routed to the proper parties and resolved in a proper manner. This process will alleviate any confusion caused by having multiple vendors. This individual will have the authority to speak and act on behalf of the alliance.

DISD will also be able to issue a single Purchase Order for all products and services to a vendor designated to act on behalf of the alliance.

The Consortium's Response to the DISD RFPs at 15. The Consortium added:

Acclaim can act as a single point of contact for the entire technology solution being procured. Through our partnership with multiple manufacturers and resellers, Acclaim is capable of taking a single purchase request from entities and acquire all of the different components that would usually need multiple purchase orders to acquire. This can be done conveniently and also with assurance that every single customer is still receiving the lowest price while enjoying the convenience of a single point of purchase.

The Consortium's Response to the DISD RFP. At HISD, Region IV, Acclaim, MSE, ACS, or a combination thereof would often respond as the "lead," "prime," or "responder" for the Consortium.

73. Whatever the name utilized for the point of contact, the Consortium is an association in fact and in law formed by the Defendants for the agreed and joint purpose of

providing goods and services to at least HISD and DISD. Defendants intentionally formed and entered into this association, and expressly agreed to the relationship. Defendants evidenced their Consortium relationship in one or more express agreements.

74. For example, the Proposal to the DISD Network Electronics Request for Proposal was submitted as the "Consortium Proposal of: Analytical Computer Services, Advanced Technological Solutions, Communications Supply Corporation, Hewlett Packard/Compaq, Hill Professional Services, InterNetwork Experts, Lazo Technologies, Micro System Enterprises, Novell, Technology Cabling Solutions, Avizion, Woodlands Network Solutions." Moreover, the Transmittal letter with the Proposal states:

As allowed in Section 1.0 of the Dallas Independent School District Request for Proposal RT2493-03 for Network Servers, the undersigned companies are pleased to submit a joint proposal.

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The alliance is prepared to provide an equal or better level of service than we provide to the Houston Independent School District. The knowledge gained over 4 years of E-rate implementation will allow us to provide a superior level of service and extremely competitive pricing to DISD.

75. In addition, Defendants combined their qualifications when responding to the RFP to make such claims that they possessed "1000+ Public Sector Accounts," "1500+ School Districts," "20+ Combined Years E-rate Experience" and "\$20 Billion+ Annual Sales." The Consortium expressly included the aforementioned Defendants who acknowledged they had acted in a similar fashion at HISD for over four years with all of the



Defendants acting knowingly and intentionally in concert with one another to accomplish their joint purpose. This was an express act of each of these Defendants in furtherance of the conspiracy.

76. Defendants intentionally, and expressly represented and held themselves out as an association or alliance with the specific intent of winning Texas school district technology business, including HISD and DISD.<sup>6</sup> These Defendants expressly and repeatedly represented and touted their joint actions and combined experience.

C. **The Consortium gets its foot in the door at DISD and turns the noble E-rate program on its head.**

77. In sharp contrast to providing the best value resulting from a proper competitive process, Defendants have utilized the Consortium to improperly, unlawfully influence and control the required competitive bidding/proposal process. Defendants have intentionally used the Consortium to place and/or improperly influence direct and control the substantial Texas school district business that has come to the Consortium.

a. **Conflicts abound at DISD.**

78. David Boggs was a contractor for Sprint, but then began consulting for DISD on telecommunications issues receiving about \$180,000 per year. DISD and the Consortium wanted to pay his consulting fees with E-rate funds so he formed Internet World Communications, Inc. in August of 2002. From that point forward, DISD and E-rate would

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<sup>6</sup>DISD seems to associate the Consortium as one entity as well. In press reports, DISD spokesperson Donald Claxtone proclaims that the Consortium is "paid as a whole, and we are not aware of the percentage breakdown."

pay the Consortium who would then pay Mr. Boggs his fees through Internet World Communications, Inc. Mr. Boggs was involved in drafting the RFP's that lead to the selection of the Consortium. The responses to those RFP's were reviewed by a committee—a committee Mr. Boggs was a voting member of. Therefore, Mr. Boggs, as a consultant, had significant sway on deciding to use the Consortium who was also paying him. Mr. Boggs had a direct conflict in profiting from the sale of equipment to DISD.

79. On information and belief, Mr. Boggs also has an interest in, or receives payments from Defendant Internetwork Experts. Mr. Bohuchot explained to everyone in DISD on numerous occasions that if any equipment was needed, it was to be obtained from Mr. Boggs who would in turn obtain it from Internetwork Experts. After the Consortium became involved, Mr. Boggs continued his involvement in drafting specifications and day-to-day maintenance of the systems. It is likely Mr. Boggs received a fee for passing through this equipment to DISD.

80. In addition to Mr. Boggs, the Consortium took advantage of other relationships to infiltrate DISD. According to Mr. Bohuchot's testimony with the United States House of Representation Committee on Energy and Commerce – Subcommittee on Oversight & Investigations regarding waste and fraud in the E-rate program, IBM tried to become DISD's E-rate "strategic partner." IBM even offered DISD a "boilerplate" Request for Proposal to help shorten the time to issue the RFP for the strategic partner. DISD, however, chose to work with the TCPN, a procurement vehicle for the State of Texas. Nevertheless, IBM was

still the selected vendor for putting together the E-rate package for funding year 2002. IBM began working on the Statements of Work (SOWs) which Mr. Bohuchot claimed he questioned because of their size and scope. Mr. Bohuchot claimed he lowered the Funding Year 2002 E-rate request by \$84 million. Still, most of DISD's requests were denied and they only received \$3,239,420.28. Instead of appealing the denial of the Funding Year 2002 request, Mr. Bohuchot and DISD decided to try again in Funding Year 2003 with a new "strategic partner" and a new RFP.<sup>7</sup>

81. In approximately December 2002, DISD issued five RFPs for technology to be provided to DISD, namely (1) Network Electronics; (2) Email System; (3) Network Servers; (4) Network Cabling; and (5) Web Access-Portal. The pre-proposal conference for these RFPs was scheduled for December 27, 2002. These RFPs were issued after the DISD school board cancelled an IBM contract for providing many of the goods and services being requested by the RFPs, at the behest of Mr. Bohuchot. He, as Chief Technology Officer, had significant influence over DISD technology purchases.

82. These five RFPs were seeking goods and services worth tens of millions of dollars. Despite the substantive nature of the project, the RFPs were glaringly deficient in detail and specifications. The RFP's did not include the specifications for work, services and materials that were being purchased. Some of the specifications were not even developed until after the RFP's went out leading, for example, to five revisions of the Network Cabling

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<sup>7</sup>Not surprisingly, Mr. Bohuchot's prepared statements to the Sub-Committee failed to mention any of the shenanigans described herein.

RFP specifications including some revisions that were made after the Consortium had already won the bid.

83. As a matter of prudent competitive RFP process, great care should have been exercised in constructing the RFPs and in evaluating the responses to the RFPs. This is especially true when the RFP process seeks the purchase of tens of millions of dollars of a wide range of complex technology products. With vague and general RFP's, only an insider can appropriately respond and address DISD's real undisclosed needs.

84. These RFPs resulted in four proposals (IBM, SBC, True Technology Solutions, and the Consortium) that were due January 7, 2003. Reasonable practice would have dictated that several weeks would be needed to analyze the responses to the RFPs (including a question and answer process with all the proposers). Incredibly, Mr. Bohuchot dictated that the decision for the purchase of tens of millions of technology goods and services had to be made in twenty-four (24) hours of receipt of the four responses.

85. In hindsight, the urgent need and Mr. Bohuchot's maneuvers should have raised more red flags. Mr. Bohuchot successfully lobbied in favor of the Consortium. He made the RFP review committee (with Mr. Boggs helping him out) focus primarily on price without outlining the differences between the products being offered. It would have been impossible to have made a thorough, thoughtful, and prudent evaluation of the responses and reach a decision on the recommended proposal in twenty-four (24) hours. USAC's SLD would have allowed DISD to notify them of the winning bid as late as early February 2003.

86. On information and belief, Defendants, through one or more of their agents/representatives of the Consortium, improperly influenced Mr. Bohuchot and other members who were intimately involved in the decision-making process. On information and belief, Mr. Bohuchot, and other people (including school board trustees with influence over the decisions of DISD), were influenced with and by financial rewards. Those financial incentives included fishing trips, an interest in or use of a yacht, meals, travel, golf clubs, and, upon information and belief, payments that, directly or indirectly, were made for the benefit of those involved in asserting the interests of the Consortium.

87. As reported in *The Dallas Morning News*, Mr. Bohuchot has for years accepted the free, regular use of sport-fishing yachts owned by MSE--a top provider of computer hardware to DISD. In addition to use of the 59-foot vessel, Mr. Bohuchot was given the privilege of christening the yacht with its name – Sir Veza II.

88. Interestingly, Mr. Bohuchot attended a sportfishing tournament in Key West, Florida on Sir Veza II with Bill Froechtenicht, who was described as an MSE executive. Bill Froechtenicht also served as the contact and registered agent for Defendant TCS.

89. In the press, Mr. Bohuchot said he did not help MSE win DISD business. However, Mr. Bohuchot wrote job specifications and negotiated final terms of deals after they were awarded to MSE. Since the reports in *The Dallas Morning News* became public, E-rate funds to MSE were, at least at one time, suspended.

90. According to *The Dallas Morning News*, MSE has been listed as the recipient of more than 96 percent of the \$369 million in E-rate funding the district has applied for since 2003, though district officials say the company is the lead partner in the Consortium who split the funding.

91. The Consortium's influence peddling permeated the DISD trustees as well. All of the \$25,000 in political contributions raised by DISD trustee Ron Price last year came from three closely associated computer contractors, including MSE. In response to an inquiry from *The Dallas Morning News* about why he believed the president of MSE, Frankie Wong, gave him \$10,000 last fall, Mr. Price said: "He's a great guy. I'm a good guy." Until May of this year, Mr. Price was chairman of the trustees' business briefing panel, which considers technology and other contracts before they go to the entire school board. Donations to Mr. Price also came from Larry Lehman (\$10,000) and Frank Trifilio (\$5,000). Messrs. Lehman and Trifilio work for Defendant Acclaim. Mr. Trifilio also served as President of Defendant ACS.

92. DISD trustee Hollis Brashear has confirmed that his college-age grandson worked for MSE in a warehouse for "a period of time" during 2004 and then again in May of 2005. Mr. Brashear said the arrangement was legal because his grandson did not work for the district. "My grandson worked for a vendor, that's it," Mr. Brashear told *The Dallas Morning News*.

93. Defendants and the Consortium, meanwhile, publicly represented that there would not be any such financial influence. For example, in response to the various RFPs, the Consortium represented that:

Except for full-time bonafide employees working solely for the offeror; the offeror represents as part of its offer that it has not employed or retained any company or persons to solicit or obtain this contract; and has not paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of the contract.

DISD Representations and Certifications # 3(a). In addition, when responding to the RFP's the Consortium agreed to the following:

The offeror represents and certifies as part of its offer that neither it nor any of its employees, representatives or agents have offered or given gratuities valued at \$25.00 or more (in the form of entertainment, gifts or otherwise) directly or indirectly to any director, officer or employee of the DISD with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

DISD Representations and Certifications # 5. The representations continue:

Under Board of Trustee Policy CHE (Local) or its successor, the offeror is required to certify that no present or former members (within five years of the date of the Agreement) of the Board of Trustees, DISD employees or other related individuals listed in the General Terms and Conditions shall have or at any time will receive any pecuniary interest, compensation, service, or other direct or indirect interest from the contractor or from any such company, corporation, individual, or subcontractor receiving compensation or funds from this contract, unless all details pertaining thereof are attached as an Exhibit to the Offer and this Conflict of Interest restriction is waived by the Board of

Trustees.<sup>8</sup>

DISD Representations and Conflicts #11.<sup>9</sup>

94. Despite Mr. Bohuchot's initial comments to the press that he did not control the selection of the Consortium, he did negotiate the final contract once a deal was reached in principal. Documents later revealed that when the board met to authorize the contract to be negotiated in January 2003, Mr. Bohuchot actually vouched in writing for the deal. He certified to the board that the consortium provided the best value and met required specifications, and that "no conflicts of interest" existed with the deal.

**b. The Consortium was selected before the RFP was even issued.**

95. An example of the suspect nature of Mr. Bohuchot's conduct is that he recently had MSE, working as part of the Consortium, deliver hundreds of thousands of pieces of equipment to DISD prior to the Consortium being awarded the contract and even prior to the RFP even being released. Mr. Bohuchot attempted to bring this new deal under one or more of the existing RFP's, but was forced to issue a new RFP after he already made the deal with MSE. Obviously, Mr. Bohuchot had the transaction already set with MSE prior to the RFP. He, however, got caught making the deal before the RFP process had run its course. Eventually, the equipment had to be returned. This example shows the conflicts which

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<sup>8</sup>In addition, the Consortium certified that they "understood that the DISD has an internal conflict of interest policy for its employees, which includes as an actual or possible conflict of interest whether or not a member of the employee's immediate family works for a firm doing, or seeking to do, business with the DISD."

<sup>9</sup>Interestingly, Frank Trifilio filled out a Representation and Certification form as a sole proprietor. Yet, he was the president of ACS, the Registered Agent for Acclaim and the Director of WNS.



destroyed any legitimate shot at a valid competitive RFP/bidding process.

**c. The Consortium inflates the bills and E-rate requests skyrocket.**

96. In addition, Defendant MSE, one of the members of the Consortium, directly profited from arranging sales of H-P equipment by passing it through MSE (or a MSE-related company and other member of the Consortium) rather than purchasing at a lower price directly from H-P. MSE, on information and belief, charged DISD a pass-through cost. MSE/H-P and the Consortium worked intentionally and directly to control and manipulate the competitive process at HISD and DISD as to the products and services supplied by H-P. The control of the process was accomplished by controlling the specifications and selections process.

97. Before the Consortium, DISD had often dealt directly with vendors such as H-P and Cisco. In fact, H-P, Cisco and Novell were all educational partners with DISD and had prior experience dealing directly with DISD.

98. The Consortium went this route even though when responding to the RFP, the Consortium had to:

Guarantee that the prices quoted have been established without collusion with other eligible Proposers or suppliers and without effort to preclude the DISD from obtaining the lowest possible competitive price.

Section 4.11.5 of the DISD Network Electronics RFP RT2491-03. Moreover, the Consortium had to agree on the following:

By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement, [t]he prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

DISD Representations and Certification # 8(a)(1). In the Consortium's Proposal, the following representation was made:

As you can see from our product price quotations, all of our products are priced at a discount from list, providing DISD current discounted pricing on a timely basis. In addition, we will negotiate and pass along any "quantity" discounts that can be obtained from the manufacturers.

Consortium Proposal at p. 16.

99. Not coincidentally, DISD's request for E-rate funds skyrocketed after the Consortium got its foot in the door. For funding year 2002 (applied to the 2003-2004 school year), DISD received E-rate commitments for a mere \$2,673,096.19. The very next year, DISD received astronomical commitments of \$113,548,778.39.

**D. The Consortium restricts competition in both DISD and HISD.**

100. To procure E-rate products and services, MSE, and hence the Consortium, sometimes utilized the Texas Interlocal Purchasing System (TIPS) to restrict and limit competition.

101. TIPS is sponsored by the Region VIII Education Service Center, and is located in Mt. Pleasant, Texas. According to its website, TIPS is available for use by all public and

private schools, colleges, universities, cities, counties, and other government entities in the State of Texas. “Vendors and participating entities both benefit. If a vendor is successful competing for a TIPS contract, the vendor can avoid the time and expense of going through the competitive process for each individual participating entity. The participating entity also avoids the time and expense of going through the competitive process.”

102. TIPS does not charge any membership fees for participating governmental members. The total cost of the TIPS program is funded through a fee paid by the participating vendors that is based on actual sales. To make a purchase through TIPS, a school district views the list of “Awarded Vendors.” on the TIPS website. Then, the school district selects one of those vendors, contacts them and notifies them that the school district is a TIPS Member thus receiving the “special TIPS price.” The school district then creates a purchase order and avoids the competitive open proposal process. Not surprisingly, all but four of the corporate-entity Defendants have been TIPS “Awarded Vendors.”

103. MSE, ACS, Acclaim and other members of the Consortium utilized a former employee of a cooperative purchasing network to manipulate the purchasing process. Larry Lehman, as previously mentioned, was an employee or representative of the TCPN and was involved with TIPS. Mr. Lehman was at times a representative of MSE and/or a representative of Acclaim. Acclaim was at times represented to be partially owned by MSE. Mr. Lehman sometimes held himself out as an officer of Acclaim and at one point, in regard to technology business at HISD/DISD may have formed a company by the name of BIR. Mr. Lehman is also the individual who “donated” money to one of the DISD trustees. Mr.

Lehman has direct influence and extensive contacts with HISD employees. His involvement at HISD was so extensive he had the ability to monitor other employees' e-mails at HISD. Because Mr. Lehman was involved extensively at HISD, while at the same time operating as an agent and/or officer of Defendants, he was able to restrict competition and direct business to Defendants. As a willing and intentional participant in the conspiracy, H-P, as well as the other Defendants, were responsible for these wrongful acts. Lehman utilized Epylon as a contract administrator before Lehman and the other Defendants began utilizing Acclaim.

104. Cathy Minberg was employed at HISD in the 1990s in an executive position and became the Chief Business Officer at HISD from 2000-2004. Minberg has often bragged about being able to secure over \$130 million in E-rate funds while at HISD. In the May 25, 2004 letter from HISD Superintendent Kay Stripling regarding Minberg's resignation, it was clear that Minberg had extremely broad power over HISD technology as well as other areas at HISD, including the HISD police department. As an example, Stripling's letter refers to the fact that the "Technology Department will be transferred" to another. This was an acknowledgment that the Technology Department was previously under Minberg.

105. Basically, the formation of the Consortium to oversee all of the E-rate funding for HISD and DISD created a pattern of procurements that violated E-rate and Texas competitive bidding requirements. By allowing Defendants to run the E-rate program,

Defendants effectively eliminated competitive bidding for the products and services eligible for discounts. H-P was specifically and intentionally involved in the process. H-P was able to supply hundreds of millions of dollars of goods and services through MSE (and other Consortium members) because it acted in concert and collusion with the Consortium in controlling pricing and specifications.

106. Defendants, by and through the Consortium, at times provided the school districts with the “statements of work” for particular products and services, as well as the associated documents for the district’s subsequent E-rate program applications. Without adequate analysis or price competition for the products and services, DISD and HISD submitted the documents provided by the Consortium as the basis of its E-rate program application. On information and belief, the Consortium sometimes supplied templates for school districts to use in making their requests for proposals, both for a strategic technology partner and for the E-rate program related services. Not surprisingly, Defendants obtained all of the business borne from the internally created SOWs and RFPs. For example, specifications for computers and related goods and services were drafted in such a way that the only vendor/manufacturer that could comply with the RFP was H-P. H-P participated in the process such that MSE, and/or other Consortium Defendants, were the only resellers of H-P products and services that could obtain the HISD/DISD business. Mr. Lehman, Frankie Wong, Wade Jacobs, Cathy Minberg, and Steve Kim, among others, were variously involved in this process.

107. Cabling purchases and installation provides the perfect example of how Defendants controlled the process at HISD. In April of 2004, an HISD audit found Mincberg and others within HISD technology were not exercising even minimal control over the purchasing and installation process which was all overseen by Defendants.

108. HISD technology employees did not oversee and control the surveys of each school. As a result, HISD ended up purchasing a substantial excess of cabling from Defendants. The Statement of Work created by Defendants did not provide adequate detail. Acclaim used the insufficient Statements of Work to cost the project in a summary fashion by quoting the total amount only.

109. Further allowing Defendants to perpetrate their scheme, HISD approved payment for "completed jobs" without comparing the actual work done with the Statement of Work, which was the actual basis of payment. Hence, there was not a process in place to verify the billings were reasonably based on the quality and quantity of work actually performed. Mincberg, as the head of technology at HISD, and Jacobs/Infinet, as a highly-paid consultant should not have allowed this.

110. Moreover, Defendants installed WNS and TCS to perform the testing on the cable drops performed by the other Defendants. Acclaim, meanwhile, performed the quality assurance and inspection before the work performed by ACS and MSE could formally be "accepted" by HISD. Apparently, no one cared that the principal officers of ACS and MSE are the principal officers of Acclaim. HISD did not even bother to have any of their own

representatives there when the testing took place.

111. Finally, WNS and TCS provided the HISD Technology Department with CD files containing details of the location and specifics of the cable drops. The data was rife with errors and insufficiencies. All of these actions were controlled and orchestrated by Defendants and caused substantial damage.

112. The Consortium basically captured the E-rate program planning and procurement process at the schools by encouraging school districts to adopt the concept of a “strategic integrator,” which placed the Consortium in a conflicted advisor/vendor situation.

113. Competitive bidding for particular products and services sought by the school districts is fundamental to cost-effective procurement of goods and services. Yet, Defendants manipulated the program to fund expensive, ineligible, and inappropriate products and services. The Consortium was consistently involved in restricting and controlling competition even though the precise names utilized to accomplish this purpose would vary. After the Consortium gained a foothold, it eliminated any meaningful price competition for the goods and services requested by the school districts through the program. The Consortium was selected by the school districts in a two-step process that enabled the company to be the only service provider “at the table” when details of the goods and services were placed on the E-rate program application. In this instance, the Consortium made the most significant decisions regarding what services to request and school officials relied

heavily upon the Consortium without studying or wanting to question the goose that laid the golden eggs.

114. In fact, the Consortium sometimes was able to craft portions of the E-rate project "SOWs" without even consulting with the school district staff. As a result, the Consortium, and its "associates" inside the school districts were guiding the decision-making.

115. The result of this process was H-P equipment and related services were a virtual certainty. An example of the effect of these anti-competitive pricing and specification practices was the exclusion of Apple Computers from any meaningful chance of success at HISD. Darrell Price was an Apple Computer sales consultant trying to compete with the Consortium and H-P at HISD. Because of the manner in which the pricing and specifications were controlled by H-P and the Consortium, Mr. Price complained to HISD representatives about the conduct of Defendants and the lack of any true competition for E-rate and technology business at HISD. Mr. Price specifically complained about H-P's participation in the process. At one point, Mr. Price was able to get a meeting with the then HISD Superintendent, Abe Saavedra, and other HISD representatives to complain about the process. HISD did nothing to remedy the process.

116. H-P paid a bonus to Frankie Wong and/or his company(ies) after it received so much HISD business. This was affirmative action by H-P in furtherance of the conspiracy.

117. Undisclosed to HISD or the federal government, the HISD Director of Networking Operations, Steve Kim, was actually involved with Frankie Wong, Larry



Lehman, and H-P representative Tommy Nordstrom. Kim was frequently entertained by the Consortium, including Lehman and Wong. Kim repeatedly would show off the latest hand held phone/computer device he had received from one or more of the Defendants as a gift. It is believed Laura Palmer, Strategic and Organization Planning Supervisor, and later, Director of Technology at HISD, received the same type of gratis computer technology.

118. Moreover, the Consortium bundled millions of dollars of goods and services ineligible for the E-rate discount and federal funding in their massive proposals, in effect removing them from USAC scrutiny. The Consortium was able to bundle ineligible goods and services at excessive rates such as consulting and E-rate processing. The invoices submitted to USAC do not specify ineligible consulting services. Instead, such things as consulting services were rolled into the SOW's final price tags. Had the school districts sought the consulting services provided by the Consortium separately, the E-rate program would not have covered the cost.

119. Another way Defendants worked to control the business at HISD was utilizing Mark Hill, Laura Palmer, Tim Smith and Steve Kim. The Consortium has a substantial conflict and influence in the way that it obtains business at HISD. Mark Hill, a former HISD employee, is/was a paid consultant employed by Trendec and doing work at HISD. As an HISD representative, Mr. Hill was substantially involved in technology issues and decisions at HISD, both as an employee and a consultant. This conflict is directly opposed to HISD obtaining the best value, most competitive pricing, and best equipment/services for the federal funds being spent. Mark Hill would become a Vice President and President of

Trendec. Tim Smith also went to work as a consultant for Trendec or MSE. Smith continued to be involved with HISD technology issues after becoming a consultant. Trendec performed extensive consulting services for HISD. Further, Defendants and the Consortium expressly represented that such conflicts would not exist and/or failed to disclose the existence of such conflicts.

120. In addition, the Consortium has sometimes utilized the TCPN of the Region IV Education Service Center to restrict competition and control the business at HISD. Mr. Lehman, on behalf of MSE, ACS, Acclaim, H-P and the Consortium is actively about the business of restricting competition for the goods and services flowing to HISD and maximizing the business obtained by the Consortium. In some instances, TCPN/Region IV is the successful "bidder" with ACS and MSE as the MWBE subcontractor. In that manner, H-P products and services are supplied through ACS, MSE and the Consortium without any meaningful competition. H-P was an active participant in, and the beneficiary of, this anti-competitive process.

121. Mr. Lehman, Frank Trifilio and Mr. Wong have also given more than \$15,000 in campaign contributions to four HISD board members, according to *The Houston Chronicle*. Since 2003, their firms reportedly have received a collective \$43 million for services delivered to HISD.

122. Just as DISD engages the Consortium as its strategic partner, HISD also relies on the Consortium to act as an advisor. The Consortium plays both sides of the deal at HISD as well. Furthermore, Mark Hill, Steve Kim, Wade Jacobs, and Cathy Mincberg were

variously involved as employees or consultants at HISD with regard to technology issues and decisions while at the same time acting on behalf of Defendants.

123. MSE, H-P and the rest of the Consortium utilized Mark Hill, Tim Smith, Larry Lehman, Steve Kim, Wade Jacobs, Cathy Minberg and Laura Palmer in this process of anti-competitive conduct. Ms. Palmer was another HISD employee with responsibilities as a Chief Information Officer. Mr. Lehman had access and ability to log into other HISD employee's emails and could monitor and enforce the efforts to control the business of the Consortium. Further, a confidential HISD informant is aware that Ms. Palmer and other HISD representatives, including Steve Kim and either Mark Hill and/or Tim Smith, were involved in at least two events of shredding technology related documents in an effort to hide and continue the efforts of the Defendants.

124. Lehman, Wong, and others, on behalf of the Consortium, would lavishly entertain HISD employees that worked in the technology area. For example, at a technology conference in San Antonio, Lehman took about 20 HISD employees to dinner and drinks at Tower of the Americas. Wong had suites at major performing venues and entertained HISD employees/representatives there.

**E. Defendants knowingly making fraudulent or false claims that affect the federal till.**

125. Throughout their involvement with Texas school districts, including HISD and DISD, Defendants have known that federal funds, including federal E-rate funds, were being used to pay for the goods and services that they were providing. Obviously, they were aware

that the difference between the discounted price offered the school districts and their normal rates was being made up directly by the federal government. In the response to the RFP, the Consortium wrote “we acknowledge that funding will come from Federal ‘E-rate’ funds as well as DISD. We have expertise in all phases of the E-rate process.” In January of 2003, the Consortium bragged:

All of the companies listed above have been and continue to be responsible for implementing the HISD erate process. In addition, Analytical Computer teaming with Micro Systems Enterprises as ‘primes’ for the other companies listed has been awarded the erate contracts at HISD for Year 6, beginning in July, 2003.

126. Defendants have variously represented that they were providing the most competitive pricing, the “best value,” and were giving substantial discounts for the goods and services being provided. Defendants have known that they, through the Consortium, were competing in a competitive holding/proposal process. Yet, as described above, the Consortium did everything it could to restrict competition and inflate profits at the expense of the E-rate program.

127. All of the Defendants, including H-P, intentionally affirmed that they were acting in concert to obtain DISD and HISD technology business and federal payments. Whether utilizing the term Consortium or some other Defendants as the lead contacts, Defendants expressly and purposely allowed and affirmed one or more of the individual Defendants to act on their behalf to act as a unit when responding to RFP’s. They also took these actions with the intent to restrict competition for that business. Each of the participants

of the Consortium conspiracy are liable for the acts of the other members of the Consortium conspiracy.

128. For example, in the December 11, 2002 proposal of Acclaim to HISD, Acclaim asserts to be a newly formed organization consisting of vendors and individuals who have provided technology to HISD over the years. "Members of the Acclaim team comprise the complete list of vendors that have fulfilled E-rate projects for the fourth largest school district in the nation." In that proposal, Acclaim, along with MSE specifically tout their ability to provide H-P products at a significant discount from H-P's standard educational rates. Eight days later, ACS made certain HISD was aware that MSE was a "co respondent" on the RFP response. ACS also included additional discounts on the H-P products.

129. On November 12, 2003, ACS and MSE took the lead on behalf of all or some of the Consortium when responding to an RFP for Network Development and Servers, Desktop Computers, Printers and Related Peripheral Devices. Again, MSE and Acclaim represent that they have teamed up with several vendors to provide HISD the requested goods and services. ACS was the leading partner with H-P on educational programs and was again able to provide the lowest pricing of the H-P products. At other times, ACS wrote: "[ACS] and [MSE], Strategic Partners of Region IV ESC are pleased to respond."

130. As mentioned above, when the Consortium sought the business in DISD, it bragged about how it worked closely together to implement HISD's E-rate business. There were other times that when the lead or "prime" acting on behalf of the Consortium conspiracy was TCPN/Region IV. At various times, ACS and MSE, among other

Defendants, acted as MWBE subcontractors. Larry Lehman was often the individual signing on behalf of TCPN/Region IV.

131. The Relators repeatedly brought these issues to the attention of federal officials and the press over several years. As a result of the attention garnered by Relators, federal E-rate funding at both DISD and HISD was suspended which saved the federal government hundreds of millions of dollars.

### COUNT I

False Claims Act - 31 U.S.C. § 3729(a)(1) and (2) (the "FCA")

132. Paragraphs 1 through 131 of this Complaint are hereby re-alleged and incorporated as though set forth in full herein.

133. Defendants knowingly made, used, or caused to be made false records or statements to get a false or fraudulent claim paid or approved by the Government. In addition, Defendants knowingly presented to an officer or employer of the United States Government a false or fraudulent claim for payment or approval.

134. Defendants submitted invoices for payment from SLD and USAC and entered into contracts making false and fraudulent claims.

135. While the focus of this Complaint has been on E-rate funds, additional federal funds have been used to pay Defendants for their goods and services, and Relator brings this claim as it relates to all of these federal funds and not just E-rate funds.

136. The false and fraudulent claims and statements relate to:

**Kickbacks.** While the kickbacks to DISD and HISD representatives in exchange for the business alone would be actionable, Defendants also affirmatively represented no such compensation would be made.

**Failure to disclose conflicts of interest.** Although required to disclose any conflicts, Defendants failed to disclose any in the response to the RFPs.

**Bid Rigging and Tampering.** Although E-rate guidelines require vendors to follow all applicable local procurement rules, Defendants manipulated and skirted the rules as described above.

**Overcharging.** Under both the RFP and E-rate guidelines, Defendants certified and represented that they provided their products and services to give DISD and HISD the best value. As described above, that was not the case.

**Restriction of Competition.** Defendants restricted competition despite representations that they would not engage in any such conduct. By implementing their fraudulent scheme, Defendants prevented other technology providers from competing and allowing the school districts and USAC from obtaining the best value for the goods and services purchased.

137. Based on these false or fraudulent statements, claims and failures to disclose, Defendants were ineligible to receive a large portion of the millions of dollars they charged the Federal Government. Thus, Defendants violated the FCA.

138. Although Relators are not directly asserting a cause of action in this suit for recovery of any damages under the federal anti-trust and/or the Racketeer Influenced Corrupt Organizations Act (“RICO”), Defendants are guilty of mail and wire fraud violations throughout the course of Defendants’ involvement with the various school district E-rate functions. Defendants have manipulated the market stifling competition and have used intra and interstate mails and wires to further their racketeering activities. Such racketeering activities involved the use of such mails and wires in order to execute the scheme. Such

activities violate 18 U.S.C. § 1962(c). Such acts are predicate acts under RICO resulting from a scheme devised to defraud by means of false pretense, representations and/or material omissions, and the use of mails and/or interstate wire communications in furtherance of such scheme. Defendants and others forming the enterprise were directly involved in such violations, constituting the requisite illegal acts under RICO. Although Relators are not asserting any direct cause under RICO in and of itself, Defendants' violations of RICO constitute further evidence of false records or statements made by Defendants to get a false or fraudulent claim paid or approved by the Government.

139. The implied representation that Defendants were entitled to government funds for the services provided, and the failure to disclose the secret contingent commissions, constitutes a fraudulent inducement to have USAC fund the projects in the first place. FCA liability should be imposed when the contract under which the payment is made was procured by fraud. Even if this Court finds Defendants satisfactorily performed the work required for payment under the government contract, Relator respectfully requests that it find FCA liability because of the fraud surrounding the efforts to obtain the contract.

## COUNT II

### False Claims Act - 31 U.S.C. § 3729(a)(3)

140. Paragraphs 1 through 139 of this Complaint are hereby re-alleged and incorporated as though set forth in full herein.

141. Defendants conspired to defraud the Government by getting a false or fraudulent claim allowed or paid. Each individual Defendant worked with others in the



Consortium and others to violate the FCA to the detriment of the E-rate program. Moreover, Defendants conspired with current and former school district employees, trustees and consultants. Each of the Defendants are liable for the acts of any and all members of the Consortium. MSE, H-P and rest of the Consortium acted to restrict competition and assure H-P was the only provider of computer hardware and related equipment and services.

142. While the focus of this Complaint has been on E-rate funds, the conspiracy has bilked additional federal funds from the Government, and Relator brings this claim as it relates to all of these federal funds and not just E-rate funds.

143. Defendants joined together as a combination by two or more persons to accomplish an unlawful purpose by unlawful means. By and through the Consortium, Defendants had an object to be accomplished, a meeting of the minds on the object or course of action, there was one or more unlawful, overt acts, and damages to the Federal Government as the proximate result.

144. Pleading further and in the alternative, Defendants formed a joint enterprise. Amongst the Defendants, by and through the Consortium, there was (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community or pecuniary interest in that purpose among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right to control.

145. Pleading further and in the alternative, each Defendant, when acting as a member of the Consortium, was the "alter ego" of the other. The corporate fiction should

be disregarded because with relation to the Consortium, there was such unity between the parties that the separateness of each entity ceased and holding less than all entities liable would lead to injustice.

146. Pleading further and/or in the alternative, the Defendants formed a single business enterprise. With relation to the Consortium, Defendants were not operated as separate entities but instead integrated their resources to achieve a common business purpose. Thus, it would be equitable to hold each constituent corporation liable for the debts and liabilities incurred in the common enterprise.

147. Defendants' misconduct was intentional, deliberate, willful, and in egregious disobedience to the duties owed by them to the school districts and USAC totally undermining the trust reposed in them. The gravity and the timing of the actions taken by Defendants caused harm to the school districts resulting in substantial losses to them and the Federal Government.

148. As demonstrated above, each Defendant has taken a concerted action to enter into contracts, combinations or conspiracies by and through the use of the Consortium that allowed for the presentment of false and/or fraudulent claims.

### **DAMAGES**

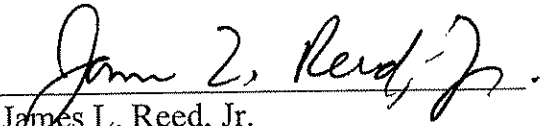
149. Relators, on behalf of the United States of America, request damages proximately caused by Defendants false and fraudulent claims along with all other statutory penalties, attorney's fees, investigative fees, prejudgment and postjudgment interest and costs recoverable under the False Claims Act. In addition, Relators request that this Court award

three times the damages sustained by the Federal Government pursuant to 31 U.S.C. § 3729(a).

**JURY DEMAND**

150. Relators request a trial by jury.

Respectfully submitted,

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