

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Southern Division**

UNITED STATES OF AMERICA,)
ex rel. **KENNETH MARCUS,**)
12617 Tribunal Lane)
Potomac, Maryland)
Montgomery County,)

Plaintiffs,)

v.)

TUMBLEWEED COMMUNICATIONS)
CORPORATION,)
700 Saginaw Drive)
Redwood City, California,)

Defendant)

**FILED IN CAMERA
AND UNDER SEAL**

CASE NO.

COMPLAINT AND DEMAND FOR JURY TRIAL

Preliminary Statement

This Complaint is based upon a scheme conducted by the Defendant, the TUMBLEWEED COMMUNICATIONS CORPORATION, to defraud the United States of more than two and one half million dollars (\$2,500,000) in multiple and separate procurements of computer equipment, including software and software licenses, purchased by various government agencies. As part of this scheme to defraud, the Defendant submitted false, incomplete, and otherwise misleading information about its discounts and pricing practices to the General Services Administration ("GSA") for the purpose of inflating the prices that the GSA set for the Defendant's products on the GSA's Multiple Award Schedule. The Defendant then sold its products to government agencies from this schedule at these inflated prices. It also used these

inflated prices as the basis for negotiations for off-schedule sales of the same products to military departments, resulting in still further losses to the government.

Plaintiff, Kenneth Marcus, through his undersigned counsel, acting on behalf of and in the name of the United States of America, brings this civil action under the *qui tam* provisions of the False Claims Act; and hereby alleges the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3732(a).

2. Some of the alleged acts arose in Montgomery County in the State of Maryland, and the Defendant transacted business in this District; venue is therefore proper in this District under 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a).

The Relator

3. Plaintiff, Kenneth Marcus ("Mr. Marcus"), is a citizen of the United States and a resident of Potomac, Maryland; he is bringing this suit in the name of, and on behalf of, the United States of America.

4. None of the allegations set forth in this Complaint is based upon a public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation; or in the news media.

5. Mr. Marcus has direct and independent knowledge, within the meaning of 31 U.S.C. § 3730(e)(4)(B), derived through his employment with the Defendant Tumbleweed

Communications Corporation, as a federal account executive, of the information on which the allegations set forth in this Complaint are based; and he has voluntarily provided such information to the government prior to filing this Complaint.

The Defendant

6. Defendant Tumbleweed Communications Corporation ("Tumbleweed") is a publicly traded corporation that markets hardware and software products that provide security and authentication methods for computer and network communications, thereby assisting organizations to safely conduct business over the Internet. The company maintains its headquarters in Redwood City, California, and has offices in Tysons Corner, Virginia, and New York, New York.

7. During the period relevant to this Complaint, the corporate officers and employees of Tumbleweed included:

(a) Dennis Brotzel, a vice president of sales, who had responsibilities for the discounting of prices on commercial contracts. His office was located in Redwood City, California.

(b) Barney Cassidy, the company's General Counsel. His office was located in Redwood City, California.

(c) Tim Conley, the company's Chief Financial Officer. His responsibilities included the approval of major discounted deals, and his office was in Redwood City, California.

(d) James Cumella, whose responsibilities included commercial contracts. His office was located in New York, New York.

(e) James Flatley, a vice president of sales, who had responsibilities for the discounting of

prices on commercial contracts. His office was in Redwood City, California.

(f) Jon Futrell, a federal account executive. His office was located in Tysons Corner, Virginia.

(g) Kathy Gallagher, a federal account executive whose responsibilities included sales to Department of Defense departments and agencies.

(h) Kenneth Marcus, a federal account executive, who had responsibilities for sales to government departments and agencies. His office was located in Tysons Corner, Virginia, and he worked primarily out of his home in Potomac, Maryland.

(i) Gary Poe, the Vice President of Sales Operations. His office was located in Redwood City, California.

(j) Anne Smith, initially Assistant Vice President and then promoted to Vice President of Federal Sales. She left the company in or about July or August 2007. Her office was located in Tysons Corner, Virginia, and she worked primarily out of her home in Arlington, Virginia. Ms. Smith's responsibilities included approval for government discounting beyond that appearing on the GSA Schedule.

8. During the relevant period for this complaint, Defendant Tumbleweed maintained offices at the homes of certain of its offices and employees, such as Kenneth Marcus in Potomac, Maryland, and Ann Smith in Arlington, Virginia. Defendant Tumbleweed reimbursed such officers and employees for expenses incurred in operating these home offices, specifically telephone charges and facsimile costs.

GSA and MAS Contracts

9. The General Services Administration ("GSA") is an agency of the United States and is responsible for the procurement of services and supplies for agencies and departments of the United States pursuant to the Federal Property and Administrative Services Act of 1949. It has offices in Arlington, Virginia.

10. At all times pertinent to this Complaint, the GSA awarded Multiple Award Schedule ("MAS") contracts to commercial vendors of goods and services. Under such a contract, a vendor agrees to sell its goods to a government agency on an "as needed" basis and according to a pre-negotiated price schedule determined by the contract. The GSA awards such contracts to more than one vendor at a time for the same categories of goods and services.

11. A vendor seeking a MAS contract must submit information concerning its commercial sales practices to the GSA. As explained by the GSA on its website, captioned "Getting on Schedule":

GSA awards contracts to responsible companies offering commercial items, at fair and reasonable prices, that fall within the generic descriptions in the GSA Schedule solicitations. Contracting Officers determine whether prices are fair and reasonable by comparing the prices/discounts that a company offers the government with the prices/discounts that the company offers to commercial customers. This negotiation objective is commonly known as "most favored customer" pricing. In order to make this comparison, GSA requires offerors to furnish commercial pricelists and disclose information regarding their pricing/discounting practices.

12. Paragraph 3 of Section 515.408 of the General Services Administration Manual ("GSAM") requires that the following question be answered (the "Policy Description") by a vendor seeking a MAS contract:

Based on your written discounting policies (standard commercial sales practices

in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES ___
NO ___

13. The GSA further requires that such vendor must identify all written or standard discounts, and must explain (the "Discounting Explanation") whether any deviations from these written or standard discounts "ever result in better discounts (lower prices) or concessions than indicated." GSAM § 515.408.

14. The GSA further requires that such vendor must disclose any changes in its price lists, discounts, and discounting policies that occur after the offer is submitted but before the close of negotiations (the "Discounting Disclosure"). GSAM Figure 515.4-2 "Instructions for Commercial Sales Practices Format." GSAM § 515.408.

15. The GSA further requires that the records provided by such vendor that formed the basis for both the pre-award pricing and any later modification to that pricing must be accurate, current, and complete (the "Pricing Records"). GSAM §§ 515.4-2, 515.209-70(d).

16. The GSA has a pricing limit (the "GSA Limit"), in that, if an agency wishes to purchase more than a certain dollar amount of a product, then the agency is required to "go off" the GSA pricing schedule (the "GSA Schedule" or "Schedule") and negotiate a price on its own. The purpose of this requirement is to insure that the government gets the benefit of additional discounts for large volume, bulk purchases. Agencies may rely upon the GSA pricing schedule when negotiating prices for their large volume, bulk purchases.

Tumbleweed's Products

17. Among the products that Tumbleweed sells to commercial customers are electronic tools designed to authenticate outside computers seeking to connect or communicate with a company's own computers through a network. These tools augment a security method known as "public key encryption" incorporated into a security system called "Public Key Infrastructure" or "PKI." As explained on the Tumbleweed website:

Organizations rely on the Tumbleweed Validation Authority™ (VA) Suite, the leading identity validation solution, to protect the integrity of their PKI. Digital certificate validation enables organizations to maximize their return on investment by ensuring their PKI safeguards all their secure applications.

18. Substantially, Tumbleweed's Validation Authority ("VA") functions as follows. An outside computer trying to communicate with a customer's computer (or computer system) may send a certificate, in digital form, to the receiving computer. This certificate is an electronic means by which the receiving computer verifies that the sender is who it says it is, and is not an imposter raising a risk of espionage, fraud, or other cyber threat. However, digital certificates themselves may be forged, outdated, or otherwise suspect. The VA functions as a means of verifying that the certificate itself is authentic and effective.

19. Among the products within or associated with Tumbleweed's VA Suite, and their descriptions and product ("SKU") numbers, are the following (the "VA products"):

Product	SKU Number
VA USER LICENSE: allows individuals to access the standard validation authority on personal computers, such as desktops and laptops	EVA-LA-U-010001-XX-X

[Continued . . .]

Product	SKU Number
VA SERVER VALIDATOR LICENSE: provides VA services within web-based applications	EVA-LA-S-999999-SV-X
VA DESKTOP VALIDATOR STANDARD LICENSE: provides validation services on desktop computers running Microsoft Windows, and is for use on various desktop and server applications and other devices	EVA-LA-D-999999-DV-X
VA DESKTOP VALIDATOR ENTERPRISE LICENSE: provides validation services for desktop computers running Microsoft Windows, and is for use on server applications and other devices	EVA-LA-S-999999-DC-X
VA RESPONDER SERVER LICENSE: issues authenticated responses when queried on a network by another computer	EVA-LA-S-999999-VA-X
VA REPEATER SERVER LICENSE: a responder used within a distributed computing model	EVA-LA-S-999999-RP-X

20. In addition to the above VA products, Tumbleweed sold software for both email firewalls and secure file transport, described as follows:

(a) MailGate Email Firewall: protects organizations against inbound and outbound email threats, blocking spam, phishing, and viruses; and filtering email content; and

(b) Secure Transport: managed file transport technology, allowing organizations to send and receive large files securely and efficiently over the Internet.

21. In addition to hardware and software products, Tumbleweed also sold maintenance support for its products.

22. Tumbleweed sold two levels of maintenance: its standard Gold Support, and an upgraded version called Platinum Support.

23. Tumbleweed's commercial list price for Gold Support for a particular product was twenty percent of its commercial list price for that product.

24. Tumbleweed's commercial list price for Platinum Support for a particular product was thirty percent of its commercial list price for that product.

Tumbleweed's MAS Contract

25. On or about October 3, 2001, the GSA awarded to Tumbleweed Multiple Award Schedule Contract No. GS-35F-0009M (the "2001 MAS Contract") for the sale of various software and hardware products (the "Tumbleweed-GSA products") to government agencies. At that time Tumbleweed's products were included on the GSA Schedule.

26. In early 2003, Tumbleweed purchased another company, called Valicert. Until this time, Valicert owned the intellectual property rights to the products in the VA Suite. Upon its purchase of Valicert, Tumbleweed added these products to its other products already on the GSA Schedule.

27. The 2001 MAS Contract was modified on numerous occasions over the next five years, including Contract Modification No. FX32 on August 17, 2006, and Contract Modification No. P0009 on September 19, 2006.

28. The 2001 MAS Contract was renewed for another five years by a contract awarded by the GSA on or about December 2, 2006.

29. The pricing of the VA products on the 2001 MAS Contract (the "GSA Price"), and Tumbleweed's commercial list price for each such product, was as follows:

Product	GSA Price (w/o shipping)	Commercial List Price (w/o shipping)
VA Responder Server License	\$20,400	\$24,000
VA User License	\$0.72 each - for more than 10,000 units	\$0.85 each - for more than 10,000 units
VA Server Validator License	\$2,210	\$2,600
VA Desktop Validator Enterprise License	\$467.50	\$550
VA Desktop Validator Standard License	\$6.80	\$8.00
VA Repeater Server License	\$10,200	\$12,000

30. The GSA Price for each of the Tumbleweed-GSA products, including the above VA products, was fifteen percent lower than Tumbleweed's commercial list price for the same product.

31. The GSA Limit for each of the above VA products was \$500,000.

32. The prices for products on the schedule for the 2001 MAS Contract and the renewed contract were modified on several occasions after October 2001.

33. Each time that the contract was modified, and each time that a price change occurred for a Tumbleweed product on the Schedule, the GSA relied on certain material when making or agreeing to such modification and change. Such material included all of the information submitted by Tumbleweed, as of the date of such modification or change, concerning whether or not Tumbleweed had given a discount to any commercial customer on any Tumbleweed product that was then on the Schedule, as well as the absence of information indicating that Tumbleweed

had given any such discount.

34. Each time a Government department or agency purchased a Tumbleweed product that appeared on the GSA Schedule, it did so in reliance upon Tumbleweed having submitted to the GSA all required information regarding its discounts for all previous sales for that product prior to the last modification and renewal for the 2001 MAS Contract, and prior to the last price change for any Tumbleweed product on the Schedule.

35. Each time a Government department or agency purchased a Tumbleweed product that appeared on the GSA Schedule, it did so in reliance upon GSA having negotiated a fair and reasonable, and a most favored customer, price for that product with Tumbleweed.

COUNT ONE

The Routine 20% Commercial Discount

36. The Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs one through thirty-five of this Complaint, and further alleges:

37. When negotiating the price for products on the schedule for the award of the 2001 MAS Contract (the "2001 Schedule"), Tumbleweed knowingly and falsely represented to the GSA that its discount to its most favored commercial customers was fifteen percent lower than its list prices (the "2001 Representation"). Tumbleweed made these representations in the Policy Description, the Discounting Explanation, the Discounting Disclosure, and the Pricing Records (collectively the "Required Certifications"); and knowingly and fraudulently omitted from these representations required information concerning its routine twenty percent discounts.

38. In reliance upon this representation, the GSA agreed to prices for the 2001 Schedule that were fifteen percent lower than Tumbleweed's commercial list prices.

39. In or about February 2005, Tumbleweed submitted to the GSA a document captioned "Commercial Practices Chart" (the "Commercial Practices Chart"). This chart was signed by Gary Poe, then the Defendant's Director of Sales Operation, and is dated February 1, 2005. This chart was submitted to the GSA in support of continuing Tumbleweed's fifteen percent discount for the Tumbleweed-GSA products.

40. Among the representations made by Tumbleweed to the GSA in the Commercial Practices Chart about the company's standard discounts and pricing policies were the following:

(a) the company provides a fifteen percent discount on license and maintenance fees to dealers and resellers;

(b) the company does not sell to distributors, value added resellers (VAR), systems integrators, original equipment manufacturers, educational and nonprofit institutions; and

(c) the company does not provide standard discounts to national and corporate accounts, commercial end users, or to any other type of customer.

41. In reliance upon these representations, the GSA agreed to prices for the Schedules that were fifteen percent lower than Tumbleweed's commercial list prices. This reliance applied to all prices on all Schedules that existed (a) after the submission of the Commercial Practices Chart by Tumbleweed to the GSA, that is, in or about February 2005, and (b) after each modification to the 2001 Contract that occurred after this submission date, as well as the contract renewal of December 2006.

The Fraud

42. For the period beginning October 2001 until the date of this Complaint, Tumbleweed's routine practice and policy was to provide a twenty percent discount to commercial customers.

43. Appendix A to Tumbleweed's Sales Compensation Plan for the 2004 Sales Year provided that, "For license deals with discounts greater than 20%, sales personnel must obtain approval from the SVP of Sales." This policy applied to all North American direct and inside sales personnel, except for Federal Sales Region Account Executives.

44. Appendix B to Tumbleweed's Sales Compensation Plan for the 2006 Sales Year provided that, "Sales Personnel may discount license fee List Prices by up to 20%." This policy applied to all sales personnel, and deviations from this policy required advance approval from the

Senior Vice President of Sales.

45. Appendix B to Tumbleweed's Individual Compensation Plan for the 2007 Sales Year provided that, "Sales Personnel may discount license fee List Prices by up to 20%." This policy applied to all sales personnel, and deviations from this policy required advance approval from the Executive Vice President of Sales and the Chief Financial Officer for deals greater than \$50,000, or the Senior Director of Sales Operations for deals equal to less than \$50,000.

46. On information and belief, the above described routine practice and policy to provide a twenty percent discount to commercial customers was also effective for the years 2001, 2002, 2005, and 2008.

47. At all times pertinent to this Complaint, as the Defendant then well knew, the above described representations made by Tumbleweed Communications Corporation, that its routine practice and policy was to give fifteen percent discounts to commercial customers, including the representations contained in the Commercial Practices Chart, were false and fraudulent, in that its routine practice and policy was to give twenty percent discounts to commercial customers.

48. Beginning in October 2001, the GSA was fraudulently induced to agree to fifteen percent discounts for Tumbleweed's products, from Tumbleweed's commercial list prices, on the GSA Schedule due to the company's above described false and fraudulent representations.

49. During the period October 2001 until the present, numerous federal departments and agencies purchased products from Tumbleweed using the GSA Price Schedule.

50. Among these departments and agencies that made such purchases were: the Air Force; the Army Information Systems Engineering Command (USAISEC); the Army Network Enterprise Technology Command Enterprise Systems Technology Activity (NETCOM ESTA);

the Army Program Manager, Secure Electronic Transactions-Devices (PM SET-D); the Army Product Manager, Defense Message System (PM DMS); the Defense Information Systems Agency, Electronic Document Access (DISA EDA); the Defense Information Systems Agency, Wide Area Work Flow (DISA WAWF); the Defense Information Systems Agency, Public Key Infrastructure Program Management Office (DISA (DoD PKI PMO)); the Defense Message System, Lockheed Martin (DMS LMCO); the Defense Intelligence Agency (DIA); the Defense Logistics Agency (DLA); Defense Finance and Accounting Service (DFAS); the Office of the Secretary of Defense (OSD); the National Geospatial-Intelligence Agency (NGA); the Navy/Marine Corps Intranet (NMCI); the Space and Naval Warfare Systems Center (Navy Tactical SPAWAR); the Naval Supply Systems Command (NAVSUP); the Naval Air Systems Command (NAVAIR); the Defense Manpower Data Center (DMDC); the Air Force Public Key Infrastructure Systems Program Office (Air Force PKI SPO); the United States Coast Guard (USCG); and the United States Marine Corp. (USMC).

51. Each of the departments and agencies that made such purchases were overcharged by, and each overpaid, Tumbleweed in the amount of five percent of Tumbleweed's commercial list price for the products that each purchased from Tumbleweed from the GSA Schedule.

52. Each of the departments and agencies that overpaid for purchases of Tumbleweed's products in the above described manner were fraudulently induced to overpay as a result of the fraudulently inflated prices for Tumbleweed's products as they appeared on the GSA Schedule.

53. Each of the departments and agencies that made such purchases did so through a purchase order, and Tumbleweed invoiced such department or agency and the United States Treasury by executing such purchase order.

The Claims

54. Beginning in October 2001, and continuing until the date of this Complaint, Defendant Tumbleweed Communications Corporation knowingly presented, or caused to be presented, to the United States Government for payment or approval, false or fraudulent claims, these claims being the above described purchase orders; each such instance being in violation of 31 U.S.C. § 3729(a)(1).

55. Beginning in October 2001, and continuing until the date of this Complaint, Defendant Tumbleweed Communications Corporation knowingly made or used, or caused to be made or used, false records and statements to get false or fraudulent claims paid or approved by the United States Government, these records and statements being the above described GSA Schedules and the prices listed on those Schedules, the above described Required Representations and the information contained in these representations, and the Commercial Practices Chart signed by Gary Poe and dated February 1, 2005; each such instance being in violation of 31 U.S.C. § 3729(a)(2).

56. As a result of the conduct of the Defendant, as described in this Complaint, the United States suffered actual damages.

COUNT TWO

The October 2006 Navy SPAWAR Sale

57. The Plaintiff realleges and reincorporates by reference the allegations contained in paragraphs one through thirty-five, and paragraphs thirty-seven through fifty-three of this Complaint, and further alleges:

The Prior Northrop Grumman Sales

58. On or about March 31, 2003, Tumbleweed sold four products to Northrop Grumman. Among these products was the following: twenty-two VA Responder Server Licenses (SKU No. EVA-LA-S-999999-VA-X) at the price of \$15,700 per unit, or a discount of thirty-five percent from the company's list price.

59. On or about December 31, 2003, Tumbleweed sold the same four products to Northrop Grumman. Among these products were the following:

(a) 100,000 VA User Licenses (SKU No. EVA-LA-U-010001-XX-X) at the price of \$0.50 per unit, or a discount of forty-one percent from the company's list price;

(b) one hundred VA Responder Server Licenses (SKU No. EVA-LA-S-999999-VA-X) at the price of \$12,802 per unit, or a discount of forty-seven percent from the company's list price;
and

(c) six years of Gold Support at \$151,262.33 for all products per year.

60. The yearly price for this Gold Support was seven percent of the contract price for the products sold to Northrop Grumman; and was a discount of eighty percent from the company's list price for Gold Support on these products

The Prior TKC Sale

61. On or about July 28, 2005, Tumbleweed sold three products, plus maintenance, to TKC Integration Systems ("TKC"), an Alaskan Native Corporation. In making this purchase from Tumbleweed, TKC acted as a reseller to the Army.

62. Among the products that were part of this sale were the following:

(a) six VA Responder Server Licenses (SKU No. EVA-LA-S-999999-VA-X) at the price of \$9,741 per unit, or a discount of fifty-nine percent from the company's list price;

(b) 1,295 VA Desktop Validator Enterprise Licenses (SKU No. EVA-LA-S-999999-DC-X) at the price of \$95.50 per unit, or a discount of eighty-three percent from the company's list price;

(c) 860,000 VA Desktop Validator Standard Licenses (SKU No. EVA-LA-D-999999-DV-X) at the price of \$0.955 per unit, or a discount of eighty-eight percent from the company's list price; and

(d) Gold Support at \$150,512.78 for all products per year.

63. The yearly price for this Gold Support was eleven percent of the contract price for the products sold to TKC; and was a discount of ninety percent from the company's list price for Gold Support on these products

The Prior EDS Sale

64. On or about August 2, 2005, Tumbleweed sold multiple products, plus maintenance, to EDS Information Services L.L.C. ("EDS"). In making this purchase from Tumbleweed, EDS acted as a systems integrator for a subsequent government contract, specifically the Navy Marine

Corps Contract No. N00024-00D-6000, in support of the Navy Marine Corps Intranet Program.

65. Among the products that were part of this sale were 500,000 VA Desktop Validator Standard Licenses (SKU No. EVA-LA-D-999999-DV-X) at the price of \$2.80 per unit, or a discount of sixty-five percent from the company's list price.

66. As a further part of this sale, Tumbleweed gave the following products to EDS at no charge:

- (a) an unlimited number of Server Devices Requiring nCipher cards;
- (b) an unlimited number of Server Devices without nCipher cards (SKU No. EVA-LA-S-999999-RP-X);
- (c) an unlimited number of Licenses required for domain controllers (SKU No. EVA-LA-S-999999-DC-X);
- (d) an unlimited number of Licenses required for exchange servers;
- (e) an unlimited number of Licenses required for web servers (SKU No. EVA-LA-S-999999-SV-X); and
- (f) two years of Platinum Support on all of these products, as well as on the initial EDS/NMCI Client Support License Clients.

67. As a further part of this sale, Tumbleweed gave to EDS VA User Licenses (SKU No. EVA-LA-U-010001-XX-X), for use with the VA Desktop Validator Standard Licenses (SKU No. EVA-LA-D-999999-DV-X), at no charge.

The October 2006 Sale to Navy SPAWAR

68. In or about October 2006, Tumbleweed sold four products to the Space and Naval Warfare Systems Center ("Navy SPAWAR").

69. Among the products that were part of this sale were 25,000 VA Desktop Validator Standard Licenses (SKU No. EVA-LA-D-999999-DV-X) at the price of \$3.00 per unit.

70. As described above, Tumbleweed had previously sold this product to the following companies at the following prices: (a) to TKC at the price of \$0.955 apiece; and (b) to EDS at the price of \$2.80 apiece.

71. Also among the products that were part of this sale were 377 VA Desktop Validator Enterprise Licenses (SKU No. EVA-LA-S-999999-DC-X) at the price of \$360 per unit.

72. As described above, Tumbleweed had previously given this product to EDS as part of the sale in August 2005 for no charge.

73. Also among the products that were part of this sale were 25,000 VA User Licenses (SKU No. EVA-LA-U-010000-XX-X) at the price of \$0.50 apiece.

74. As described above, Tumbleweed had previously given this product to (a) TKC as part of the sale in September 2005 for no charge; and (b) EDS as part of the sale in August 2005 for no charge.

75. Also among the products that were part of this sale was one-year Gold Support at the price of \$94,322.

76. The yearly price for this Gold Support was nine percent of the contract price for the products sold to Navy SPAWAR; and was a discount of seventy-seven percent from the company's list price for Gold Support on these products.

77. As described above, Tumbleweed had previously (a) sold Gold Maintenance to Northrop Grumman in December 2003 at seven percent of the sales price for software products, and at a discount of eighty percent from the company's list price for Gold Support; (b) sold Gold Maintenance to TKC in July 2005 at eleven percent of the sales price for software products, and at a discount of ninety percent from the company's list price for Gold Support; and (c) gave upgraded, Platinum Support to EDS in August 2005 for free.

78. Navy SPAWAR negotiated, agreed to, and purchased products at the prices in the above described sale in reliance upon the prices appearing in the GSA Schedule that was in effect at the time of this purchase, that is, for each product:

(a) Navy SPAWAR relied upon Tumbleweed having submitted to the GSA all required information regarding its discounts for previous sales for that product prior to the last modification or renewal for the 2001 MAS Contract, and prior to the last price change for any Tumbleweed product on the Schedule, including the Required Representations; and

(b) Navy SPAWAR relied upon the GSA having negotiated a fair and reasonable, and a most favored customer, price for that product with Tumbleweed.

79. Tumbleweed fraudulently induced Navy SPAWAR to pay inflated prices for the products in the above described sale in that:

(a) Tumbleweed knowingly failed to submit to the GSA all required information regarding its discounts for previous sales for that product prior to the last modification or renewal for the 2001 MAS Contract, and prior to the last price change for any Tumbleweed product on the Schedule;

(b) Tumbleweed knowingly and falsely represented in documents that it provided to the