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Chairman Jason E Chaffetz
2236 Rayburn House Office Building
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Dear Chairman Chaffetz and Ranking Member Cummings:

Mr. Berke's May 10, 2016 letter to you on behalf of Oregon Attorney General Ellen Rosenblum demonstrates Oregon's continuing unwillingness to take any responsibility for its own massive failures in the expenditure of \$300 million in federal taxpayer money. The letter, which purports to describe all of the ways that Oracle misled the State and failed to produce a working healthcare exchange, actually demonstrates the State's nearly complete myopia about the causes of that purported technology "failure." And perhaps most troubling of all is that the State's decision to ditch a working exchange and blame Oracle for its purported failure, was the cynical brainchild of the former governor's re-election campaign staff.

Former Governor Kitzhaber had staked his reputation and his reelection bid on promoting State-based health and welfare programs. When Cover Oregon started becoming a political liability, he quickly pivoted to a blame-Oracle message, and committed to it irrevocably. He allowed his campaign staff to hijack State decision-making about the exchange, and they set to work building the case for abandoning Oracle's work product and transitioning to the federal exchange. When it turned out that the system Oracle built actually did work, the Governor had left himself no route for retreat. Acknowledging that he had been wrong about the technology would have been worse for him politically than the initial appearance of failure had been. So former Governor Kitzhaber doubled down, and instructed his Attorney General to file suit.

Attorney General Rosenblum now tries to justify that litigation in her letter to this Committee. But Attorney General Rosenblum's version of events ignores vast swaths of documents and testimony that show Oregon's control of and wholesale mismanagement of the project, and turns a blind eye to what the State's own independent, non-conflicted experts told it about what happened.

Those non-conflicted experts made crystal clear that the project was plagued by vicious in-fighting among employees of the Oregon Health Authority, the State's then-CIO, and personnel from Cover Oregon, that the Oregon and Cover Oregon personnel charged with running the project lacked experience and the skills necessary to manage a project of this complexity and scale, and that they



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failed to engage in any coherent planning for or management of the project. Indeed, one of those experts prepared a draft report of his findings that was so blistering that then-Governor Kitzhaber tried to suppress it.

In short, the State's entire explanation for its failure to act responsibly with hundreds of millions of dollars in federal funding rests on the assumption that Oracle had an obligation to save the State from itself. That is the only way to account for a story that begins, in the Executive Summary of Attorney General Rosenblum's letter, with the claim that Oracle made promises to the State of Oregon that it had an off-the-shelf health insurance exchange, and that those promises started a year before the Affordable Care Act was even enacted. It is the only way to explain the State's insistence that Oracle was the "de facto" systems integrator on the project, despite a mountain of evidence that the State and Cover Oregon assumed that responsibility themselves, and expressly excluded that work from Oracle's contracts. It is also the only explanation for the State's insistence that it had no idea the technology would not be ready for the October 1, 2013 launch date, despite volumes of warnings for months not only from Oracle, but also from the State's own Quality Assurance vendor and the Oregon Legislative Fiscal Office ("LFO").

And, in spite of that multitude of challenges, Oracle actually did produce a working health insurance exchange for the State of Oregon. Every single Oregonian who enrolled in either private insurance or Medicaid during the first year of enrollment did so using Oracle technology. The decision not to launch a public website was the State's, not Oracle's, and a decision that former Governor Kitzhaber engineered for personal political reasons.

The following is a more complete chronology and accurate description of what really happened in Oregon.

The Modernization Project and the Creation of the Oregon Health Authority

In 2009, Oregon began a project to modernize its health and human services information technology system, including its technology for online Medicaid eligibility determinations and enrollments (the "Modernization" project). On January 16, 2009, the State issued a Request for Information ("RFI") as part of its market research about available software options for the project. On January 18, 2009, Oracle submitted a response to the State's Modernization RFI. Over the course of the next several weeks, Oracle and the State engaged in discussions about Oracle's software products. Though the Attorney General's letter suggests otherwise, these discussions had nothing to do with development of a health insurance exchange. The Affordable Care Act ("ACA") had not even been enacted at that point.



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In 2009, while the DHS Modernization Project was in its early stages, the Oregon Legislature created the Oregon Health Authority (“OHA”) to which it transferred some of the programs long resident under the DHS umbrella, including the state’s health-related programs. The transition was expected to take two years to complete, from 2009 to 2011. As a result of that redistribution of work, the Modernization Project included elements of programming that spanned both agencies, necessitating substantial coordination between those two organizations and development of a shared administrative services system for the two entities.

Oregon Obtained Federal Grant Money to Build Its Own Health Insurance Exchange

On March 23, 2010, President Obama signed the ACA into law. Like all states, Oregon had the choice of using the yet-to-be developed federal health insurance exchange (healthcare.gov), or building its own exchange. Oregon chose not only to build its own exchange, but to combine its development with the Modernization project, and to integrate the two projects.

On December 10, 2010, Oregon applied for an “Early Innovator” grant under the ACA, which would provide Oregon with federal funds to build its own health insurance exchange (“HIX”). As part of its grant application, Oregon explained it intended to use commercial off-the-shelf (“COTS”) software products to build its HIX, rather than build a custom system. *See* Exhibit A (Oregon Early Innovator Grant Application). The U.S. Department of Health and Human Services awarded Oregon a federal grant of \$48 million dollars on February 11, 2011. Rather than publish a formal RFP seeking a vendor to assist with the HIX, the State instead simply began discussing the HIX with the two software vendors it was already considering for Modernization: Oracle and Curam Software (now owned by IBM).

Oracle Did Not Promise Oregon A “HIX-In-A-Box.”

Attorney General Rosenblum opens the “Discussion” section on page 3 of her letter with the heading “Oracle tells Oregon it can deliver a HIX ‘out of the box.’” The Attorney General’s argument seems to be that when Oracle responded to the State’s requests for information about Oracle software products in the State’s Vendor Questionnaire, Oracle answered 95% of the State’s 450 questions with a “4” rating (on a scale of 0-4), which meant to the State that Oracle’s software could deliver certain functionality “out of the box.”

There are at least two profound errors in the State’s reasoning:

- The premise of this analysis is that the State’s 450 questions necessarily defined all of the functionality that would be required of the HIX. But the list was neither definitive nor comprehensive. The federal requirements had not been released. Nor had Oregon developed



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a complete list of its own requirements at that point, and Oregon was not yet certain that its list of 450 items would ultimately even be included in its entirety in the final project requirements. Answering “out of the box” with respect to 95% of a set of incomplete and uncertain requirements is a far cry from a promise that Oracle’s software products represented a HIX-in-a-Box.

- The State did not define “out of the box” in its vendor questionnaire as it now wishes it had. It ultimately defined that rating very specifically to mean that the functionality could be achieved without requiring any changes to the software product’s “base code.” Oracle pointed out the problems with that definition to the State, including that it provided no information about the degree of effort required to configure or customize the software to meet the desired functionality. Oracle even suggested a different 0-4 rating system that would provide the State with additional detail about the amount of customization and configuration that would be required, and offered to revise its responses if the State wanted more information about the effort required to build a HIX. The State ignored the offer. *See* Exhibit B (Response to State’s Request for Clarification). Because Oracle does not ship base code with its applications, changes to base code would not be required. By the State’s peculiar definition of “out of the box,” Oracle’s responses were accurate.

Even more fundamentally, however, the State’s argument that Oracle promised an out-of-the-box HIX strains credulity past the breaking point. The ACA was only one year old, and no one—including Oracle—had ever built an ACA-compliant HIX. The State had not yet even defined its own business requirements for a HIX, and federal requirements were still on the drawing board. The allegation that Oracle ever promised that its products could be “snapped together” to build a HIX (a phrase that multiple State witnesses have actually employed) is absurd. If the State really believed it was buying a HIX-in-a-Box, then it should explain why it ultimately sought—and obtained—more than \$300 million in federal grant money to build it.¹ The allegation is absurd on its face.

¹ The State’s allegation that it honestly believed Oracle could provide a HIX-in-a-Box is equally implausible given the terms of the State’s Early Innovator grant. This grant required the State to regularly report on the progress it was making on its HIX, so other states could benefit from Oregon’s innovations. *See* Exhibit C (Cooperative Agreements to Support Innovative Exchange Information Technology Systems Grant Announcement). Surely, if Oregon had discovered that Oracle could provide a HIX-in-a-Box, it would have reported this to the federal government for the benefit of other states and the federal government.



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Oregon Chose Oracle's Software for Its HIX and Modernization Projects

On May 9, 2011, Curam withdrew from the discussions with Oregon. With Curam out of the picture and its funding assured, the State chose Oracle. The State never considered the possibility of foregoing the federal grant funds, or of using healthcare.gov. Nor is it plausible that the State chose Oracle because Oracle misled it about its software's capabilities. With \$48 million burning a hole in its pocket, the State selected Oracle because it wanted to spend the Early Innovator Grant funding, and serve as an example to the rest of the country.

Oregon Hired Carolyn Lawson as OHA's Chief Information Officer, And Created Cover Oregon

Although only two years had passed since Oregon had created OHA to oversee the State's health related programs, it apparently also determined that OHA would not operate Oregon's HIX. Instead, on June 30, 2011, former Oregon Governor John Kitzhaber ("Kitzhaber") signed Oregon Senate Bill 99, creating the Oregon Health Insurance Exchange Corporation (later renamed "Cover Oregon"). Among Cover Oregon's purposes was to administer a health insurance exchange "in the public interest for the benefit of the people and businesses that obtain health insurance coverage for themselves, their families and their employees through the exchange" and "in accordance with federal law to make qualified health plans available to individuals and groups throughout this state." Or. Rev. Stat. §§ 741.001(2)(b) & 741.002(1)(a).

In or around July 2011, the State hired Carolyn Lawson to serve as the Chief Information Officer ("CIO") for OHA. Lawson previously had worked as the Director of eServices for the State of California and as CIO for the California Public Utilities Commission. Aaron Karjala, who at the time was serving as the Deputy CIO for OHA and had worked for the State since 2002, also applied for the OHA CIO job, but was passed over in favor of Ms. Lawson. Rather, around that same time, Mr. Karjala was selected as the CIO for Cover Oregon. It was no secret that Mr. Karjala was unhappy that Lawson had been named as OHA's CIO. And it was no surprise that his animosity for her negatively affected the two organizations' capacity for collaboration. The resulting dysfunction continued to plague the work on the Modernization and HIX projects for the duration of time these two served in their CIO roles.

Oregon Decided To Act As Its Own Systems Integrator and Contracted With Oracle for Consulting Work on Its HIX

There was never a time in which the State of Oregon contracted with Oracle to serve as the systems integrator on either Modernization or HIX. On June 30, 2011, the State, by and through DHS and OHA, entered into a License and Services Agreement with Oracle reseller Mythics, Inc. ("MLSA").



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In July and August, 2011, the State purchased approximately \$11.6 million in software licenses, consulting, and hosting services. In August 2011, the State drafted an RFP for a systems integrator, and reached out to vendors who perform that kind of work. Oracle was not one of the contractors that Ms. Lawson contacted. Through her discussions with these systems integration firms, Lawson learned that none of them was interested in working on the project for the budget that Oregon had available for the work. Lawson therefore concluded that her only viable option was for the State to act as its own Systems Integrator, and Oregon never issued the RFP it had drafted.

Further confirmation that Oregon did not hire Oracle to serve as systems integrator is found in the contracts that defined the work Oracle agreed to provide. As originally written, the contracts between Mythics and the State always made clear that Mythics (through Oracle consultants) would “assist” the State in performing the consulting tasks described. In October, the State amended those contracts to make doubly clear that the consulting work would be performed “*at your [Oregon’s] direction.*”²

On November 30, 2011, Oracle and the State entered into an Oracle License and Services Agreement (the “State OLSA”) directly, taking Mythics out of the line of contracts. On that same date, the State and Oracle signed several Ordering Documents totaling nearly \$50 million dollars in Oracle Consulting Services (“OCS”) on a time and materials basis. Neither the State OLSA, the first OCS ordering documents, nor any other contract between the State and Oracle obligates Oracle to deliver a fully functional HIX. Instead, Oracle agreed to provide personnel to augment the State’s own staffing (the State was in a hiring freeze at the time), and otherwise generally describe certain software architectural work. None of the contracts contain a deadline for any specific deliverable by October 1, 2013. They also do not obligate Oracle to perform systems integrator tasks, nor act as the systems integrator. The contracts plainly state, however, that Oracle worked at the State’s direction.

Originally, both the HIX and Modernization projects were under the supervision of OHA, although separate teams of individuals worked on each of the projects. There was also a separate group of people working on “Shared Services,” which was responsible for foundational and other services that supported both HIX and Modernization. The managers of the projects, all ultimately reporting up to Lawson, agreed that while development on HIX and Modernization would take place separately, there

² Attorney General Rosenblum argues Oracle talked Oregon out of hiring an independent systems integrator, and identifies a single email of an Oracle employee who apparently mused internally about a limited systems integration function that was far narrower than the full menu of duties a true systems integrator would perform. Whatever the meaning of that email (and the evidence shows it is not as the Attorney General portrays it), the decision to act as its own systems integrator was entirely the State’s and Cover Oregon’s to make. The allegation that Oracle somehow forced that decision is just another example of the State’s unwillingness to take responsibility for its own conduct.



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eventually would be a “merge and rebase” of the code. This merge and rebase, however, never took place.

OHA Mismanaged the HIX Project, and Little Progress Is Made In 2012

In April, 2012, two State employees who had been providing day-to-day management of the HIX and Modernization projects left the projects. Despite their departures, OHA was still subject to a hiring freeze, and could not hire replacements. Indeed, an August 24, 2012 HIX-IT Status Report confirms that at that time, the “project [was] currently 49 percent staffed with 53 of 107 FTE positions filled.” *See* Exhibit D (August 2012 HIX-IT Project Monthly Status Report). At deposition, the manager responsible for this report testified that the State’s solution was to simply bring on more contractors. Accordingly, even with no competent managers to oversee them, the State continued to use federal grant money to hire more contractors and expand its existing contracts, including its contracts with Oracle.³

Not only did the State have too few managers working on the HIX, those who did lacked the skills, experience, and expertise needed for the project to succeed. The State’s Legislative Fiscal Office expressed particularly deep concerns about qualifications of Mr. Karjala to lead the HIX project. In July 2012, the LFO characterized the State’s and Cover Oregon’s work then in progress this way: “Both the HIX corporation and IT staff are ‘out of control’ charging down a road that may, or may not take them to where they’d like to be.” The LFO described the approach then in place as “incredibly stupid and dangerous,” observed that they needed experienced leadership, and concluded Mr. Karjala did not fit that bill. *See* Exhibit F. In October, the LFO complained that “we are not seeing the basic things that we are used to seeing in a well-run complex IT project.” *See* Exhibit G. Just months before the October 1, 2013 launch date, the LFO was openly discussing whether Mr. Karjala should be replaced altogether because his lack of experience. *See* Exhibit H. When told that Mr. Karjala was resisting appointment of an experienced program manager to serve as his Deputy CIO, the LFO wrote “At this point in this project, we shouldn’t even have to be discussing Aaron’s lack of experience on large implementations, or poor track record on MMIS and OR-Kids, or whether he feels threatened . . .” *Id.*

³ A former Oregon state legislator was recently quoted in the media as saying, “The reason Cover Oregon failed was that we hired expert contractors to build it, and then put inexperienced bureaucrats and hastily promoted state IT people in charge of them. It was like hiring a high school basketball coach to call the plays for an NBA game. They were out of their league, and there were no systems in place to manage the team properly.” *See* Exhibit E. This analogy could not be more apt, particularly in light of the State’s hiring freeze.



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Due To Bureaucratic Infighting, Cover Oregon Took Over IT Work on the HIX from OHA, Further Complicating the HIX Project

As the ultimate business owner of the HIX, Cover Oregon (known at “HIX Corp” during this time) was responsible for setting up its business, and developing a set of business requirements that would provide the structure for developing the IT systems to serve that business. In late January or early February 2012, Cover Oregon announced it was undertaking an intensive 60-day effort to articulate the project’s requirements. Not only did that effort fail, but the business requirements for the HIX were *never* fully defined, which ultimately was a central reason the project did not succeed as planned.

At the same time that it was failing to produce business requirements, Cover Oregon was all too eager to take control of the HIX IT development from OHA. In July 2012, Cover Oregon contracted with Deloitte Consulting to assist it in developing the user interface (“UI”) for the HIX. While Deloitte was tasked with helping Cover Oregon to deliver the UI, Oracle continued to work with OHA to develop the back-end technology for the HIX. The State hired a separate contractor (Speridian Technologies) and its subcontractor (Cognasante LLC) to assist it in building interfaces to external systems, including the State Medicaid system, the CMS Hub, and third party insurance companies. And, as systems integrator, the State was ultimately responsible for ensuring that by October 1, 2013, all of these entities and their sub-parts of the project would come together to produce a functional health insurance exchange under the ACA.

Although OHA thought Cover Oregon and Deloitte simply were designing wireframes for the look and feel of the customer facing website, OHA later learned that Deloitte and Cover Oregon were actually developing a complete web interface with logic of its own. Additionally during the 2012 time frame, with no day-to-day oversight since the departure of the HIX management in April 2012, Cover Oregon began to steer the HIX development in a separate direction from Modernization. The animosity between Mr. Karjala and Ms. Lawson exacerbated the situation. By the end of 2012, it was apparent that Cover Oregon did not want to merge and rebase the code. OHA ultimately agreed that Cover Oregon could separate the HIX development from Modernization, and complete the HIX development on its own.

In preparation for the split, Cover Oregon entered into its own set of contracts with Oracle. As part of its desire to break away from OHA, Cover Oregon also purchased millions of dollars in software licenses, hosting services and consulting services. It also purchased servers to host a new set of environments on which to develop, test, and ultimately operate the HIX. Due to Cover Oregon’s ongoing indecision and delay, it did not sign new contracts with Oracle until March 2013. The decision to split the projects and begin standing up new environments, just a few short months before the October 1, 2013 federally mandated go-live date, was another significant reason the project did not succeed: it added substantial and wholly unnecessary complexity to an already complex project, and



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created additional delay. Once again, the State's LFO weighed in, this time with the view that "we may have added even more risk to the project as a result of this move." *Id.*

Cover Oregon Grossly Mismanaged the HIX Project

The contracts between Oracle and Cover Oregon mirrored Oracle's contracts with OHA. Like the contracts with OHA, they did not obligate Oracle to deliver a fully functional HIX, let alone a HIX by October 1, 2013. Furthermore, the first consulting contract that Cover Oregon signed under the OLSA *specifically excluded systems integration* from Oracle's responsibilities. Cover Oregon assumed the systems integrator role, like OHA before it. Again, the parties agreed that Oracle's consulting work would be charged on a time and materials basis.

In order for Oracle to have enough time to complete development, and leave sufficient time for testing, it was essential that Cover Oregon provide Oracle with a complete set of functional requirements (in the form of "use cases") by March 1, 2013. Functional requirements are based on business requirements, and provide the overall structure and scope of the development work. Both sides agreed on this important deadline. Unfortunately, however, the use cases that HIX IT (the team of people within Cover Oregon responsible for use cases) delivered to Oracle on March 1 were incomplete, and of poor quality. One major reason the use cases were so bad was that they were based on Cover Oregon's business requirements, which also were incomplete and poorly written. Although Oracle continued to develop as it was contractually obligated to do, its development work was based wholly upon the incomplete and poorly written requirements provided by Cover Oregon. Additionally, Cover Oregon kept changing its mind about what it wanted the HIX to do, and how it wanted the HIX to operate. Accordingly, not only was Oracle working off of an incomplete and poorly written set of requirements, but they also were constantly in a state of change.

Cover Oregon Received Multiple and Repeated Warnings the HIX Would Not Be Ready To Go Live On October 1, 2013

Throughout 2013, Oracle warned Cover Oregon many times that the October 1, 2013 go-live date was in jeopardy. As early as February 2013, it was apparent to all parties that Cover Oregon was not going to be able to go live in October with all of the functionality Cover Oregon had envisioned. Accordingly, Cover Oregon began hosting a weekly "scope management" meeting, at which Oracle gave a weekly PowerPoint presentation entitled the "HIX Delivery Metrics" that gave a detailed overview of the status of development and the project overall. Beginning on April 16, 2013, Oracle gave the overall project a "Red" rating, signaling there were significant problems and the project was not on track. *See* Exhibit I. After that date, Oracle never rated the project anything but "Red" and presented the "Red" rating to Cover Oregon every week.



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In addition to the weekly HIX Delivery Metrics, Cover Oregon and Oracle also held a host of daily and weekly meetings, at which they discussed project status. Oracle also shared with Cover Oregon its weekly Development Dashboard, an extremely detailed, multi-page excel spreadsheet that outlined precisely the current state of development. Oracle also posted the Development Dashboard on the wall where Cover Oregon could see it on a daily basis. Oracle also regularly reported to Cover Oregon on remaining “Level of Effort” (“LOE”) and “Capacity,” meaning estimates of how many days of work it would take to complete a particular task, and how much work Oracle could perform during that time frame. The LOE reporting also confirmed for Cover Oregon that the HIX would not be ready by October 1.

The Attorney General’s claim now that Cover Oregon did not have visibility into the status of development is false. The only support for the notion that Oracle kept the State in the dark is the allegation that Oracle did not allow Cover Oregon access to the development environment. There was a good reason for that, and it had nothing to do with hiding project status. There was no reason to grant Cover Oregon access; Cover Oregon never asked for it, and no one at Cover Oregon was providing developing work.

Oracle was not the only one keeping Cover Oregon up to date on the high-risk nature of the project; Oregon’s own Quality Assurance (“QA”) vendor, Maximus, was also doing so. Maximus issued monthly reports throughout most of the project to OHA and Cover Oregon, and warned about trouble with development of the insurance exchange from the start. For example, in March 2012, Maximus wrote:

Detailed and maintainable functional and technical requirements are critical to the success of the project. As of February 2012, gaps in requirements are unknown. There have been multiple attempts to clarify requirements, but as yet none have been adequate. In an attempt to address some of the past failed efforts, a new requirements process (called the ‘60-day’ Requirements Process) was introduced on 02/08/12 and will be ‘owned’ by HIX Corporation rather than HIX-IT. Clearly articulating ownership of this process is a step in the right direction. However, the involvement of other stakeholders, including OHA and DHS, are [sic] not yet clear. Nor is there a way as yet to determine if the 60 day time frame is realistic.

A year later, the March 2013 Maximus report still flagged the lack of solid requirements as a risk:

With the project deadline less than 1 year away and the lack of a stable and experienced organization, development and delivery teams within OHA as well as the requirements delay within [Cover Oregon], the probability of missing the target date is currently an issue.



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Cover Oregon Also Received Constant Warnings from the State’s Legislative Fiscal Office, And Knew It Was “Constantly Operating in a Red Project Environment”

The State’s Legislative Fiscal Office also provided oversight on the HIX project. A particularly outspoken member of that office, Bob Cummings, issued warning after warning to the State and Cover Oregon that the project was at high risk. In April, 2011, he wrote that “many key foundational documents are indeed missing, and it is very difficult to make an IT project successful when key elements are missing. DHS/OHA are skipping many steps, and attempting to do many things in parallel.” *See* Exhibit J. Four months later, he wrote that “this project, its problems, its scope, its goals, its costs, its risks, its timing, its milestones, its deliverable, and its schedule is not clearly understood by anyone that I am aware of.” *See* Exhibit K. Mr. Cummings described the State’s project structure as “loosy goosy,” *see* Exhibit L, and complained in March 2012 that the project was having “major problems” due to poor requirements definition and use cases. *See* Exhibit M. In May, 2012, he complained about “the fact that after 9-10 months of work, the new HIX business is not as yet defined, its business model does not exist, its requirements are still a long way from being finalized and there is a major push by impatient team members and managers to move forward and begin to ‘play with the legos and Lincoln logs’ and try to build the new system before its even been defined.” *See* Exhibit N. In April 2013, Mr. Cummings estimated the project was at least two months behind schedule, and characterized even that estimate as “highly optimistic.” *See* Exhibit O. In August, he cautioned Cover Oregon not to mislead the public about the likely readiness of the system, *see* Exhibit P, and expressed shock to a member of the Oregon Legislature that same month that Cover Oregon had made the decision to go live on October 1, 2013, even though it was highly unlikely the IT system would be completed by then. “The fact that their software completion percentage has remained at 82% for the past 6 weeks causes me to believe that the software may well not be complete or fully tested. The feds are still making requirements changes and CO is trying to do testing and user acceptance testing before the system is even completed.” *See* Exhibit Q.

Indeed, at deposition, Cover Oregon’s Project Manager, who worked on the HIX project from January 2012 through Oregon’s transition to the federal exchange in April 2014, testified that “the entire project was considered red from the time I joined until the time I left.” She further testified that “red” status “is probably what you would see on every report across the board,” including in the reports by Maximus during her time on the project. She also explained, “we were constantly operating in a red project environment in that we were constantly up against a deadline that was very challenging for the capacity and volume of work,” and that “everyone on the project was aware of the context in which we were operating,” including Ms. Lawson, Mr. Karjala, and Rocky King (Cover Oregon’s Executive Director), and everyone in management on both the State and Cover Oregon side.



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If Cover Oregon believed the project was on target to go live by October 1, 2013, it was thanks entirely to its unwillingness to listen to the experts, or its having become inured to the very consistent message that Oracle and others had been delivering for months.

Cover Oregon Did Not Go Live On October 1, 2013 with a Fully Functional HIX

Despite the repeated and consistent warnings from the LFO, Maximus, and Oracle, Cover Oregon did not make the changes necessary to provide for a successful launch on October 1, 2013. It never developed a complete set of business or functional requirements, and missed every deadline for the requirements it did deliver. Cover Oregon also failed to appropriately manage the project's scope (even though it paid lip service to doing so), and refused to prioritize its constant change requests; instead, everything was urgent and had to be included for the October 1 go-live.

Another major contributor to the missed October go-live date was the utter lack of skilled technical resources at Cover Oregon and OHA. Instead of technology experts, State bureaucrats ran the project. Cover Oregon's Project Manager had the following things to say in an email she wrote to Cover Oregon's Executive Director in May 2014:

Since project inception, the HIX project has been devoid of skilled technical resources particularly in the areas of architecture, integration and code management disciplines. . . . I understand the current emphasis is to hire a systems integrator. That does not resolve the core issue. The State needs in house technology experts that can own and oversee the work of the integrator and ensure that a competent architecture practice is in place and to inform code management discipline and approach in collaboration with the integrator. . . Obviously these decisions are not mine to make, but we have struggled painfully for 2 years, have hired make shift contractors with their own agenda or with a subset of the appropriate skills and ultimately have been solely dependent upon Oracle for their technology expertise in decision making for the core platform. I hope as we move forward we will be able to make appropriate staffing choices to support the investment in technology that the State, and Cover Oregon have made.

See Exhibit R.

The State's Allegation That Oracle Made a False and Misleading Presentation to the Cover Oregon Board Is False

Another of the Attorney General's misrepresentations that warrants correction is the assertion that the June, 2013 demonstration to the Cover Oregon board was misleading, and created a false impression for the Cover Oregon board members and staff that development was on pace for the



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HIX to launch on October 1. In truth, it was Cover Oregon staff—not Oracle—who made the June 2013 presentation to the Cover Oregon Board. Oracle’s only role in the meeting was to create and present a pre-recorded demonstration of certain elements of the current HIX system. Oracle made no representations whatsoever about system readiness for October 1 at the Board meeting. To the extent statements along those lines were made, they were made by Cover Oregon’s CEO and CIO—not Oracle.

Cover Oregon’s Project Manager and CIO admitted in deposition they worked closely with the Oracle technical manager who recorded the demonstration, and were fully aware of the content the demonstration would contain. The demonstration was an accurate depiction of the state of development at that time: it demonstrated a single user going through an imperfect-looking system. It did not include the Deloitte UI, and did not reflect any interfaces with the State Medicaid system, the CMS hub, or third party insurance carriers. The reason the demo was recorded was to allow developers to continue using the development environment for their work. To show a live demonstration would have halted that development work during the period of the demonstration.

In her letter to the Committee, the Attorney General criticizes the June 2014 Oracle videos of the system—produced when Oracle rolled off the project—as not reflecting “performance on a completed, functional production-ready environment as would be used by the public if the website had been launched.” She also complains that those June 2014 videos do not reflect 10,000 concurrent users of the system, one non-functional requirement of the system. These same characteristics were plainly observable with respect to the June, 2013 recorded presentation to the Cover Oregon board. The Cover Oregon board could not possibly have believed the June 2013 recording of a single use case reflected a nearly complete system.

Cover Oregon could not have been misled by the demo because—in addition to being fully aware of its contents ahead of time—Cover Oregon also was fully aware of the status of development of the HIX. To the extent the Cover Oregon Board somehow formed an impression from the demonstration that the HIX would be ready by October 1, it was due to comments by Cover Oregon (not Oracle), and/or because the Board did not understand the complexity of the system or the magnitude of the work required for a fully functional HIX.⁴

⁴ Even though the technical manager who made the demonstration did so at the express request of Cover Oregon, and with Cover Oregon’s complete knowledge of its content and context, the AG nevertheless sued him in his personal capacity for \$45 million in penalties. No legitimate basis exists for prosecuting such a claim. Obviously, this individual (who happens to be under 40 years old and raising two young children) could never pay such an exorbitant amount. Instead, the ulterior motive plainly is to exert litigation and/or settlement pressure against Oracle, at the great personal expense



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Former Governor Kitzhaber Blamed Oracle for Cover Oregon’s Failure, But Third Party Assessments Point the Finger at the State

Cover Oregon’s missed go-live date was a political embarrassment for former Governor Kitzhaber (who was up for re-election in November 2014). He immediately looked for places to lay the blame, and Oracle was at the top of the list. In terms of theories for why Cover Oregon failed, there were three possibilities. First, it could have been a policy failure. Second, it could have been a management failure. Third, it could have been a technology failure. Since the first two possibilities did not serve the Governor’s political agenda, he chose option number three.

During a January 9, 2014 press conference, while behind the scenes the State was still asking Oracle to continue working on the HIX, Governor Kitzhaber announced that he hired First Data to conduct an “independent assessment” of the Cover Oregon project, asserting First Data’s report would determine, in part, whether Oregon would sue Oracle. When First Data issued its report, however, it was far more critical of the State and Cover Oregon than it was of Oracle.

First and foremost, First Data highlighted the State’s decision to serve itself in the role of systems integrator as a departure from industry best practices, which “created a lack of accountability on the project [and] contributed to a lack of scope control, a delay in requirements definition, and unrealistic delivery expectations.” *See* Exhibit S. First Data also noted the tense relationship between OHA and Cover Oregon, and cited that as a cause of problems with the HIX and Modernization projects. *See id.* First Data further reported that there were “different, and sometimes competing, priorities” between Cover Oregon and OHA, and that interactions between the teams were characterized as “lobbing rocks over the fence in a defensive, accusatory and inaccurate way.” *See id.* The consequence of this bureaucratic infighting, according to First Data, was that the two “disparate entities did not always function as a cohesive unit” and so “the project seemed to lack a consistent, cohesive enterprise approach to managing the project” and to “lack ... authoritative direction.” *See id.* First Data concluded, “[T]he lack of a single point of authority slowed the decision making process and contributed to inconsistent communication.” *See id.*

of one of its employees, whose only fault was that he performed his job well and did what his client asked him to do. The AG also has sued four other individuals (all current and former Oracle employees) in their personal capacities for similar or greater amounts, based on equally specious allegations. Of all the misconduct in which the State and AG have engaged since October 1, 2013 – including the missive the AG sent to your attention on May 10, 2016—the prosecution of claims for hundreds of millions of dollars against these individual defendants is perhaps the most reprehensible.



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First Data was not the only third party who laid blame with the State and Cover Oregon for the HIX project's failure. In April 2014, Kitzhaber asked Clyde Hamstreet, a well-known Oregon "turn-around artist" to serve as the interim director of Cover Oregon after he fired both King and Bruce Goldberg, Cover Oregon's Interim Executive Director. Kitzhaber also asked Hamstreet to prepare a written report highlighting what had gone wrong. Yet after seeing a draft of the report, Kitzhaber reversed course and asked Hamstreet instead to deliver his "final" report orally. The Oregonian reported in October 2014, after Hamstreet had left Cover Oregon, that "documents and interviews show that officials asked [Hamstreet] not to deliver the written report he was contractually bound to produce, apparently thinking it would then remain a secret."

Hamstreet's draft report makes immediately clear why the State was so eager to bury it. Hamstreet writes:

Rarely if ever in my experience as a turnaround professional have I encountered so dysfunctional a leadership and management situation. Several executives and managers held positions they did not have the experience or ability to handle and were consequently failing. There was little accountability among management. High level objectives were not aligned and executives were frequently at odds with one another, at times displaying unprofessional conduct such as territorial behavior, open hostility, and use of strong profanities in verbal communications.

See Exhibit T. The slide deck paints Cover Oregon and the State in no better light. The slides highlight examples of the "Dysfunctional Management" of the HIX and Modernization projects, including:

- Lack of experience or ability;
- Little accountability;
- Disagreement over high-level objectives;
- Unprofessional conduct;
- Poor cooperation between Cover Oregon and OHA;
- Unclear lines of authority;
- Poor communication;
- Inadequate or missing policies and procedures in important areas; and



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- Ad hoc decision-making with little support or documentation.

See id. Hamstreet’s findings confirm the observations of First Data, as well as the warnings Maximus gave during the life of the projects, and Oracle’s own observations. Together, they tell a story of an OHA and Cover Oregon that were unprepared to take on the responsibility of managing a large scale IT project, failed to follow proper program management principles, changed course constantly, were susceptible to petty infighting, and behaved unprofessionally. All of these third parties agree that the responsibility for the failure of the HIX and Modernization projects lay with the State.⁵

Kitzhaber’s Re-Election Campaign Took Over, And Oregon Abandoned a Working HIX for Political Reasons

Although the HIX website did not publicly launch in October 2013, the Oracle-built technology was nevertheless used to sign up hundreds of thousands of Oregonians for health insurance and Medicaid during that first ACA enrollment period. Oregon used a hybrid process to enroll people in qualified health plan (QHP) and Medicaid. In a majority of cases, State personnel worked with consumers to complete paper and on-line applications and then used the core components of the technology, to which Oracle had devoted massive resources in order for it to be functional by the enrollment period, to process those applications. With Oracle’s support, Cover Oregon was able to launch critical elements of the HIX technology solution in late 2013 and succeeded in enrolling more than 430,000 Oregonians in QHPs and Medicaid using this process.

At the same time that Cover Oregon was using the Oracle-built technology to process QHP and OHP applications, Oracle was hard at work to enable a public launch of the website. By February 2014, at about the same time technical issues with the federal government’s Healthcare.gov system began to be resolved, Oregon’s public-facing web portal for its HIX was ready to be rolled out to the public. Oracle had helped Cover Oregon create a functional self-service web portal that would enable customers to shop for and purchase insurance online. On February 27, 2014, while he was Cover Oregon’s acting Executive Director, Goldberg told Kitzhaber that Cover Oregon believed the system could “function with a 90+ percent accuracy for 90-95 percent of the population.” Cover Oregon officials assured Oracle that it was committed to launching the HIX and, in late February 2014, provided Oracle with a revised schedule for a spring 2014 rollout.

⁵ Following the missed October 1 go-live date, several State and Cover Oregon officials were fired. Among those who lost their jobs are Ms. Lawson, Messrs. King, Karjala, and Goldberg, and Triz delaRosa, Cover Oregon’s Chief Operating Officer.



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Despite claims to the contrary, no one from Cover Oregon, OHA, or Kitzhaber's administration ever thoroughly evaluated the system they had procured before they decided to abandon it. In February 2014, Cover Oregon commissioned Deloitte to assess Cover Oregon's various "policy alternatives" for the following year, notwithstanding the fact that Deloitte was inherently conflicted as the vendor most likely to be awarded the work if the HIX ultimately transitioned to the federal exchange. Among other options, Deloitte purportedly estimated the cost of further implementation of the Oracle-built technology, and compared the cost of using Oracle to complete the work with the cost of using a new vendor. The Deloitte estimate of the Oracle implementation was provided without a single conversation with Oracle, or meaningful review of the technology. The estimate of the cost associated with using a different vendor was \$25.5 million. Just two months later, according to press reports, Deloitte's estimate ballooned to \$78 million. But Deloitte never updated its February report, or issued any other report that included its supposed \$78 million estimate, and apparently the Cover Oregon board of directors asked no questions about any of the Deloitte calculations.

The sudden increase, coupled with the likelihood that the State would hire Deloitte itself to transition the State to the federal exchange, plainly illustrated a conflict. Not only did Cover Oregon ignore that conflict, but in May 2014, media reports confirmed the State had awarded Deloitte an \$18.4 million contract to transition to the federal exchange. In the end, however, the transition cost taxpayers an additional projected \$41 million. Moreover, the State abandoned a system it took \$300 million in federal money to build and that, in fact, was operational. In February and March, 2014, Oracle performed a series of performance tests on the project that showed the system it had built met and exceeded the State's functional and non-functional requirements. But by this time, former Governor Kitzhaber had already committed to his narrative that Oracle had failed, and was unwilling to walk that narrative back.

The decision to abandon Oracle and revert to the federal exchange was not based on any assessment of the state of the technology.⁶ Rather, it was based on polling information and a political calculus suggesting that Kitzhaber's re-election chances had taken a serious hit from the fallout over Cover Oregon's failure to launch the HIX website in October 2013. Reversing that political liability, in the view of Kitzhaber and his campaign advisors, required shifting the blame to Oracle. To effectuate

⁶ Attorney General Rosenblum's recitation of purported statistics about bugs in the system should be read with deep skepticism. Over the life of the project, Cover Oregon personnel demonstrated no discipline with respect to the JIRA log it used to track issues with the system in development. It often used that system to introduce change requests—rather than actual errors--and made little or no effort to differentiate the important from the mundane, or otherwise to prioritize work.



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that objective, a small group of Kitzhaber's staff and campaign advisors determined that Cover Oregon should abandon the technology in favor of reverting to the federal exchange.

To carry out the former Governor's political agenda regarding the fate of Cover Oregon, Patricia McCaig, a longtime political advisor to Kitzhaber and an unofficial campaign consultant, assembled a team that would provide "more accountability and follow-thru [*sic*] from the campaign and some specific, intensive management of the Cover Oregon issues." On February 16, 2014, McCaig wrote to Kitzhaber that while "being mindful of not putting too much on paper," she wanted to put together an org chart—deemed the "SWAT Team" that was "a combined team of both public and private resources." Beginning that month, McCaig—along with other campaign staffers Kevin Looper and Mark Wiener; Scott Nelson and Tim Raphael, who had both recently left the Governor's Office to work for the campaign; Mike Bonetto, Kitzhaber's chief of staff; and Nkenge Harmon-Johnson and Wentz, Communications Directors for the Governor's Office and OHA, respectively—with the approval of Kitzhaber, "'orchestrated' the decision to shut down the beleaguered Cover Oregon technology project and use the federal version instead."

According to reporting from the Willamette Week, "By March 2014, emails show, McCaig was in full control of Cover Oregon. She routinely advocated keeping key detail concealed from the public." On April 3, 2014, this Committee held a hearing entitled "Examining Obamacare's Problem-Filled State Exchanges." Goldberg, Cover Oregon's Executive Director at the time, was to testify, but Greg Van Pelt—listed as "Advisor to the Governor," not a Cover Oregon official—instead testified in his place, and provided written testimony drafted by Kitzhaber's staff and campaign consultants. In contrast to Oregon, each of the other five witnesses at the hearing held a leadership position in their respective state exchange. Also in April, McCaig emailed Kitzhaber with an eight-step plan for managing the decision to abandon the Oracle-built technology—a decision that was being portrayed publicly as though it were being made by the Cover Oregon board of directors. As McCaig wrote, however, "Regardless, the Cover Oregon Board would hear and accept the federal exchange recommendation." Kitzhaber's involvement was so egregious that one Cover Oregon board member actually resigned as a result, telling the Board's chair that "the board simply is acting as a public pass through of decisions already made at the state agency level or by the governor's advisors." *See* Exhibit U.⁷

⁷ The Attorney General's letter suggests there is insufficient evidence to support the notion that former Governor Kitzhaber's campaign staff hijacked the decision-making of the Cover Oregon board of directors. The judicial decision to which the Attorney General points was one issued in proceedings in which Oracle's discovery was artificially and severely constrained. Since then, former Governor Kitzhaber's campaign staff have produced a large volume of documents that thoroughly document their takeover of the decision-making process. Because those consultants have improperly labeled those documents "confidential" or "attorneys' eyes only" under the terms of the Amended Protective



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At the same time that they were orchestrating the decision to abandon the exchange, Kitzhaber's campaign advisors were advocating for “going ‘after Oracle. They advised the Governor to take a firm public stand for Cover Oregon to sever ties with Oracle and effectively squelched Cover Oregon’s efforts to resolve State debts to Oracle of over \$60 million for uncompensated work. To amplify the spin that Oracle was at fault, they also vigorously advocated suing Oracle. In March 2014, several days after they circulated a communications plan that contemplated filing suit, the Governor announced that he had directed both the Attorney General and outside counsel to pursue “the full range of legal avenues and options” against Oracle.

Publicly available emails show that the Governor’s consultants continued to communicate about going after Oracle, telling the Governor at one point, “We need to show the taxpayers that we are going after the money. It doesn't really matter if it is \$200 million or 40, or how many people enrolled, until we make it clear that were going after the money. ... Our goal between now and November is to keep moving forward, lead the way step by step out of this. . . It is all about offense.” Eight days later, the Governor’s lead campaign staffer—again, not a government employee—drafted a letter for the Governor's signature asking the Attorney General to “immediately initiate legal action” against Oracle. The next day, the Governor returned his edits to the campaign staffer for review and, once she approved, sent the letter to the Attorney General. The campaign staffer, meanwhile, directed the Governor’s chief of staff and general counsel to coordinate with the Attorney General's office on legal action against Oracle. The same day, both the Governor's general counsel and retained outside counsel sent Oracle letters threatening legal action. When the press response to the letter to the Attorney General appeared positive the Governor’s lead campaign staffer was gleeful:

Headlines coming in are all good! ... We’ve got another first. *** First in the country to sue Oracle!

Dissenters from this orchestrated attack on Oracle were pushed out. Harmon-Johnson expressed concerns about what she saw as “blurred lines.” For that, she was ostracized:

During my tenure, I was adamant that the governor’s office and his closest advisers not blur the lines between state interest and other matters. My concern was seen as disloyalty. I was viewed as an outsider who did not understand the way that they did

Order in place in the *Rosenblum* litigation, however, Oracle cannot share those documents with the Committee. Suffice it for now to say that the Attorney General’s representations on this point are false, and apparently knowingly so.



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business. I was told that as long as things were good it did not matter whether things were right.

The heavy involvement of Kitzhaber and his campaign advisors in the decision to abandon the Oracle-built technology, as part of a broader effort to shift blame away from the Governor and toward Oracle, illustrates the political purpose of that decision. McCaig, for instance—who admitted in an early e-mail to Kitzhaber, “I ... barely know enough about the topic” of the exchange—was not concerned with providing Oregon the best option for meeting its ACA obligations; her only motivation was securing re-election of her friend and boss, the Governor. Cover Oregon and the relevant State agencies simply acquiesced, allowing politics to drive the decision to abandon a functioning HIX solution that had cost \$300 million in federal grant funds to build.

The State, Not Oracle, Is Hiding Documents That It Knows Will Show Its Story is False.

The Attorney General’s letter suggests Oracle is engaged in an effort to conceal documents from the public. The irony embedded in that “observation” is profound: it is the State of Oregon who owes the public a duty of transparency. Yet it is the State of Oregon and the Attorney General who have abused the public’s trust: they have marked thousands of documents “confidential” in the litigation, despite having no trade secrets to protect, and no right to limit access to State financial information. They have marked thousands more documents “attorney-client privileged” despite the fact that many involve no attorneys, and many more were previously communicated to people not part of the attorney-client relationship.

Curiously, the Attorney General’s expression of outrage over Oracle’s treatment of certain documents as confidential under the terms of the litigation’s protective order is limited to Oracle. The former Governor’s campaign consultants applied blanket confidentiality designations to their documents, even though none of them contain any competitively or financially sensitive information. As a result, Oracle cannot share with the Committee the voluminous evidence substantiating the fact that the Campaign Consultants engineered the abandonment of the Oracle technology for political reasons. But the Attorney General appears entirely comfortable with that state of affairs, because the Campaign Consultants’ concealment of these documents enables the Attorney General to perpetuate the public fiction, expressed in her May 10, 2016 letter to this Committee, that no evidence exists to support Oracle’s claim that the Kitzhaber reelection campaign hijacked decision-making at Cover Oregon.

The Attorney General has also withheld uncounted documents from disclosure on the extraordinary theory that her pre-litigation investigation is entitled to secrecy, even after the litigation is filed. What we do know is that the Attorney General conducted just one interview she found useful. But even as to that, she chose to provide both the Committee and the litigants only a heavily redacted copy of the interview, leaving out page after page of questions and answers. And, of course, the Attorney General



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has withheld former Governor Kitzhaber's emails from Oracle for more than a year, forcing Oracle to file suit to compel their disclosure.

But the bottom line is this: the State apparently filed its litigation against Oracle and five of its employees on the basis of an investigation that it does not want the public to see. Instead, it relies heavily on a collection of stray comments in emails written largely by Oracle employees who knew little or nothing about the long-term challenges of this particular project, but who were called in to help rescue the State from its own incompetence. And rescue they did: by the end of February, 2014, the system Oracle built had not only been used to enroll every single Oregonian who sought health insurance or Medicaid, it had been performance tested and met the State's requirements. The State, and only the State, chose to abandon that system.

Very truly yours,

Orrick, Herrington & Sutcliffe LLP

A handwritten signature in blue ink, appearing to read "K. Johnson-McKewan", written over a horizontal line.

Karen G. Johnson-McKewan

Enclosures

KJM/mmr