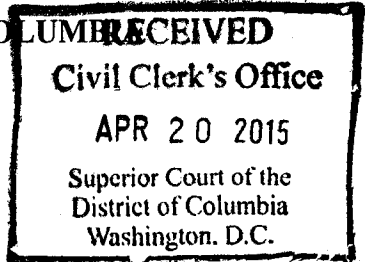


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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division



DISTRICT OF COLUMBIA, *ex rel.*
[UNDER SEAL],

Qui Tam Plaintiff,

v.

[UNDER SEAL],

Defendants.

2013 CAB SLD 0004624
Judge Judith Bartnoff

JURY TRIAL DEMANDED

DISTRICT OF COLUMBIA'S COMPLAINT IN INTERVENTION
FOR TREBLE DAMAGES UNDER THE DISTRICT'S FALSE
CLAIMS ACT AND FOR OTHER RELIEF

[FILED UNDER SEAL]

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, *ex rel.*
JEFFREY MILLS,

Plaintiffs,

v.

COMPASS GROUP NORTH AMERICA,
COMPASS GROUP USA, INC.,
CHARTWELLS, and THOMPSON
HOSPITALITY SERVICES, LLC,

Defendants.

2013 CAB SLD 0004624
Judge Judith Bartnoff

JURY TRIAL DEMANDED

FILED UNDER SEAL

DISTRICT OF COLUMBIA'S COMPLAINT IN INTERVENTION
FOR TREBLE DAMAGES UNDER THE DISTRICT'S FALSE
CLAIMS ACT AND FOR OTHER RELIEF

Plaintiff, the District of Columbia ("District"), brings this action to recover treble damages and civil penalties under the False Claims Act, D.C. Code § 2-381.02 *et seq.*, and to recover damages and other monetary relief under the common law.

Introduction

1. Relator, Jeffrey Mills, originally filed this action on behalf of the District, pursuant to the *qui tam* provisions of the District's False Claims Act, D.C. Code § 2-381.03(b)(1). The District files this Complaint in Intervention pursuant to D.C. Code § 2-381.03(b)(4)(A) and (B).

2. This case arises out of Defendants' fraudulent conduct in making false representations to the District of Columbia Public Schools ("DCPS") to induce DCPS to enter into a food services contract in 2008. Defendants falsely represented to DCPS that the contract would reduce the costs to the District of subsidizing DCPS' school meals program. When Defendants made these representations, they knew, or should have

known, that the contract would not provide DCPS with the promised savings.

Defendants' misrepresentations induced DCPS to enter into a food services contract that resulted in DCPS overpaying for goods and services.

3. Although Defendants promised to purchase food and supplies under the 2008 contract at the "lowest price possible consistent with maintaining quality standards," Defendants always intended to use, and did use, a self-dealing purchasing arrangement that had the foreseeable effect of inflating the price paid by DCPS.

4. Defendants concealed this self-dealing purchasing arrangement from DCPS during the negotiation and performance of the 2008 contract and never made any effort to ensure that DCPS paid the best price, that is, the lowest price, under the contract. As a result, Defendants submitted invoices to DCPS that misled DCPS into paying far more than DCPS should have paid under the terms of the contract.

5. In order to obtain modifications to the 2008 contract, as well as to extend the contract for further option years, Defendants reiterated and confirmed the misrepresentations they had made to DCPS and again failed to inform DCPS that they were not fulfilling and could not fulfill their contractual obligations.

6. As a result of Defendants' false statements and fraudulent conduct, Defendants knowingly submitted and caused to be submitted false invoices for payment to DCPS and DCPS paid these invoices.

7. The 2008 contract began with Chartwells/Thompson Hospitality (hereinafter, "Chartwells"), a joint venture, agreeing to manage all of DCPS' food service operations for school year 2008-2009. The 2008 contract was renewed for three additional school years and, in 2012, DCPS executed a second contract with Chartwells

to manage all food service operations for school year 2012-2013. The 2012 contract has been renewed for two additional years.

8. Prior to contracting with Chartwells, DCPS managed all of its food service operations itself. Because its in-house food service operation was experiencing multi-million dollar cost overruns, DCPS decided to contract with a food service management company to provide nutritious meals to its students and to minimize losses paid for by local District funds.

9. DCPS' overall losses, however, did not decrease after it entered into the 2008 contract with Chartwells but, rather, significantly increased. Indeed, over the life of the 2008 contract, Chartwells billed the District, and the District paid, an additional \$26 million above and beyond the cost projections set forth in the contract.

10. In order to protect DCPS from large cost overruns, the 2008 contract contained a "best price" requirement, obligating Chartwells to purchase all food and non-food commodities (hereinafter, "food") at the lowest price possible among products of comparable quality. Despite this contractual requirement, Chartwells made little or no effort to purchase food at the lowest possible prices for DCPS. Instead, Chartwells used a related Compass Group subsidiary, Foodbuy, Inc. ("Foodbuy"), to negotiate and monitor all vendor contracts under the 2008 DCPS contract. Chartwells never disclosed to DCPS – at any time – that it would be exclusively using its corporate affiliate, Foodbuy, to arrange the purchase of products only from Foodbuy-approved vendors. The vast majority of Foodbuy's "approved" vendors are companies that manufacture highly-processed foods and charge higher prices. Their high prices were passed on to DCPS without the knowledge or approval of DCPS.

11. In addition, although Chartwells was contractually obligated to return funds to DCPS if Chartwells's costs were greater than its promised target goals, Chartwells failed to do so, and later, when DCPS learned of this breach, Chartwells refused to reimburse DCPS under the guaranteed minimized loss provisions and improperly retained at least \$4.1 million owed to DCPS.

12. Under the contract, DCPS was not required to pay Chartwells for spoiled meals or meals that did not meet the requirements of the contract. During the four years of the 2008 contract, DCPS recorded multiple incidents of spoiled food served by Chartwells; however, to date, Chartwells has not reimbursed the District for the spoiled food. Similarly, Chartwells overstocked food, resulting in both waste and additional financial cost to the District which paid for such food.

13. Chartwells's assurance that DCPS would achieve net savings, and thus, need to spend less District funds to subsidize the school nutrition programs, was critically important to DCPS in deciding to contract with Chartwells. In addition, Chartwells guaranteed to minimize DCPS' subsidies over the four option years of the contract if the contract were renewed. In each contract year, however, Chartwells had millions of dollars of cost overruns due to overspending and it passed these costs on to the District.

14. As a result of its submission of inflated bills to DCPS, Chartwells received millions of dollars from DCPS to which it was not entitled. This lawsuit seeks damages and civil penalties under the False Claims Act for the misrepresentations and fraudulent activity by Chartwells described in this complaint.

Jurisdiction, Venue, and Parties

15. This Court has jurisdiction over the subject matter of this action pursuant to D.C. Code § 11-921 and § 2-381.02(a), as the District asserts claims arising under the District's False Claims Act. This Court has personal jurisdiction over Defendants pursuant to D.C. Code §§ 13-422, 423(a)(1), (2) and (3).

16. Plaintiff in this action is the District. The District, a municipal corporation empowered to sue and be sued, is the local government for the territory ("D.C.") constituting the permanent seat of the government of the United States.

17. DCPS is an executive branch agency within the District government. Since 2007, the Chancellor of DCPS, the chief executive officer of DCPS, has reported to the Mayor's office, which has controlled DCPS' budget. The Office of Food and Nutrition Services ("OFNS"), a division of DCPS, is responsible for providing food and nutrition services to approximately 47,700 DCPS students throughout the school year and the summer semester in a manner that maximizes the benefits from District funds entrusted to DCPS.

18. The *qui tam* provisions of the District's False Claims Act provide that a private person may file an action on behalf of that private person and the District against an entity violating the False Claims Act. D.C. Code § 2-381.03(b)(1). The private person initiating such an action is called a "*qui tam* plaintiff" or a "relator."

19. On April 13, 2015, the District notified the Court of its decision to intervene in part of this action and to decline to intervene in part of this action. D.C. Code §§ 2-381.03(b)(4)(A) and (B). The District intervenes as to the allegations in Relator's Complaint concerning, regarding, and relating to the July 27, 2008 food

services contract between DCPS and Defendants Chartwells and Thompson Hospitality Services, LLC ("Thompson Hospitality"), except (i) not as to the allegations that Chartwells and Thompson Hospitality failed to remit rebates, discounts, and allowances under the 2008 contract, and (ii) not as to Relator's claims against Defendant Compass Group PLC. In addition, the District intervenes as to the allegations in Relator's Complaint concerning, regarding, and relating to unpaid rebates owed to the District under the cost-reimbursement provisions of the July 27, 2012 food services contract between DCPS and Defendant Chartwells, as well as the allegations in Relator's Complaint concerning, regarding, and relating to monies owed to the District under the United States Department of Agriculture ("USDA") donated food program, except (i) not as to any other allegations regarding the 2012 contract, and (ii) not as to Relator's claims against Defendant Compass Group PLC under the 2012 contract.

20. The District timely asserts the causes of action alleged herein based on the filing of *qui tam* Relator Jeffrey Mills's complaint in this matter, which was filed under seal on or about July 8, 2013, insofar as the causes of action herein arise out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in Mills's complaint. On April 13, 2015, the District intervened in Relator Mills's action.

21. Relator Mills was the Executive Director of OFNS at DCPS from January 2010 to January 2013. As Executive Director, Mills oversaw all aspects of food services for the District's public schools and managed the budget allocated for school food services.

22. Compass Group PLC is a British multinational company, headquartered in the United Kingdom, which has corporate affiliates known as food service management

companies whose primary business is to supply food products, prepare and serve meals, and provide general on-site management to educational, healthcare and other public and private institutions in over 50 countries. Compass Group PLC is the parent company of Compass Group North America.

23. Defendant Compass Group North America is a division of Compass Group PLC and is headquartered in Charlotte, North Carolina.

24. Defendant Compass Group USA, Inc. ("Compass Group USA") is a Delaware corporation with a principal office at 2400 Yorkmont Road, Charlotte, North Carolina.

25. Defendant Chartwells is an operating group of Compass Group USA.

26. Defendant Thompson Hospitality is a Delaware corporation with a principal office at 505 Huntmar Park Drive, Suite 350, Herndon, Virginia.

27. On or about March 14, 2008, Defendant Compass Group USA, through its Chartwells division, and Defendant Thompson Hospitality entered into a joint venture agreement for the sole purpose of submitting a proposal to DCPS, in response to DCPS' Request for Proposal for Food Service Management Company ("RFP"), in order to obtain the contract and provide the services described in the RFP.

28. The Chartwells/Thompson Hospitality joint venture agreement provided that Chartwells would be the primary operating entity for the 2008 contract and the primary link between the joint venture parties and DCPS, providing 80% of the capital, personnel, agents, and/or management support to perform obligations under the contract, and that Thompson Hospitality would provide coordination and mentorship to local minority businesses involved in the bidding and execution of the contract as well as

provide 20% of the capital, personnel, agents, and/or management support to perform the obligations under the contract. Key decisions made by the joint venture partnership, outside the scope of the day-to-day operating team, would be made by mutual agreement between Chartwells and Thompson Hospitality.

The District's False Claims Act

29. The District's False Claims Act provides for the award of treble damages and civil penalties for, *inter alia*, knowingly presenting or causing to be presented to the District false or fraudulent claims for payment or approval ; knowingly making or using false records or statements to get false claims paid by the District; knowingly making or causing to be made false statements to conceal, avoid, or decrease an obligation to pay money to the District; and failing to repay inadvertent payments or overpayments made by the District. D.C. Code §§ 2-381.02(a)(1), (2), (7) and (9) (2011 Supp.).

30. The District's False Claims Act was amended in 2013 by the Medicaid Fraud Enforcement and Recovery Amendment Act of 2012 ("2013 Amendments"). 59 D.C. Reg. 13632-41 (2012). The 2013 Amendments became effective on March 19, 2013. 60 D.C. Reg. 9261 (2013).

31. The pre-2013 version of the District's False Claims Act provided:

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and may be liable to the District for a civil penalty of not less than \$5,000, and not more than \$10,000, for each false claim for which the person:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District . . .

* * *

(7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District . . .

* * *

(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

D.C. Code § 2-381.02(a) (2011 Supp.).

32. Section 2-381.01(3)(A) of the pre-2013 False Claims Act defined “knowing” or “knowingly” to mean that “a person, with respect to information, does any of the following: (i) Has actual knowledge of the falsity of the information; (ii) Acts in deliberate ignorance of the truth or falsity of the information; or (iii) Acts in reckless disregard of the truth or falsity of the information.” Proof of specific intent to defraud was not required to establish a “knowing” violation under the DC False Claims Act. *Id.* at (3)(B).

33. Effective March 19, 2013, the False Claims Act was amended to reflect the following pertinent provisions:

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than \$5,500, and not more than \$11,000, for each false or fraudulent claim for which the person:

(1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim . . .

* * *

(6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District . . .

* * *

(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

D.C. Code § 2-381.02(a) (2013).

34. Section 2-381.01(7)(A) of the False Claims Act, as amended in 2013, defines “knowing” or “knowingly” to mean that “a person, with respect to information, does any of the following: (i) Has actual knowledge of the information; (ii) Acts in deliberate ignorance of the truth or falsity of the information; or (iii) Acts in reckless disregard of the truth or falsity of the information.” The terms “knowing” and “knowingly” do not require proof of specific intent to defraud. *Id.* § 2-381.07(B).

35. Under the 2013 Amendments, “material” is defined as “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property,” D.C. Code § 2-381.01(8) (2013), and “obligation” means “an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee- based or similar relationship, from statute or regulation, or from the retention of any overpayment.” D.C. Code § 2-381.01(9) (2013).

I. CHARTWELLS’S CONTRACT WITH DCPS

A. Chartwells’s Relationship with Foodbuy

36. Foodbuy is a wholly-owned subsidiary of Compass Group USA, and Chartwells is a division of Compass Group USA. Chartwells and Foodbuy are both

owned by Compass Group USA Investments, Inc. (together, with its subsidiaries, “Compass Group”), which is the ultimate parent company of Compass Group inside the United States. Foodbuy and Chartwells operate directly or indirectly under Compass Group USA Investments, Inc.

37. Foodbuy handles all of the purchasing-related activities for Chartwells (and all other Compass Group divisions) as well as non-Compass Group third-party customers that enter into financial contracts with Foodbuy for their purchasing needs.

38. Foodbuy asserts that these third-party paying customers, which include restaurant chains and hotel groups, contract with Foodbuy in order to participate in Foodbuy’s purchasing deals with manufacturers such as Tyson Chicken or Kraft, as well as deals with Foodbuy’s selected distributors. However, the food-purchasing goals of restaurant chains and hotel groups are generally different than the food-purchasing goals of schools seeking to provide nutritious meals for school children.

39. In order to negotiate these “attractive” purchasing deals, Foodbuy consolidates the purchasing volumes from Compass Group divisions, such as Chartwells, with the volumes from its third-party paying customers and utilizes this consolidated leverage to negotiate deals with manufacturers and distributors.

40. Foodbuy is not a vendor and does not sell any products to Compass Group divisions or its third party customers. Foodbuy, however, negotiates all aspects of the contracts with selected manufacturers and distributors. Moreover, Foodbuy’s “attractive” deals are not necessarily driven by pursuit of the best products at the lowest prices, as required by the 2008 DCPS contract. Large manufacturers typically give large rebates for processed food that is inappropriate for school menus. Foodbuy’s paying customers

generally prefer larger rebates over the higher quality and more nutritious food required and desired by DCPS. In order to do business with companies like Foodbuy, manufacturers like Tyson's Chicken and Kraft must pay rebates and offer other discounts. This arrangement excludes local vendors who do not pay rebates. However, these large manufacturers sell food at higher prices, which, under the 2008 contract, were passed on to DCPS.

41. For example, DCPS researched the cost of milk and discovered that Chartwells was charging DCPS an additional \$.02 – \$.05 for each 8-ounce carton of milk over the prices quoted to DCPS by the same dairies. Indeed, Cloverland Dairy, Foodbuy's preferred vendor, quoted a price of \$.20 for each 8-ounce carton of milk to DCPS, which was \$.02 - \$.05 less per carton than Chartwells was charging DCPS. DCPS served approximately 2.5 million 8-ounce cartons of milk each year under the 2008 contract. If DCPS had purchased milk directly from Cloverland Dairy, and not contracted with Chartwells, it would have saved approximately \$50,000 each year of the 2008 contract on purchases of milk.

42. Chartwells never informed DCPS, either during the negotiation or performance of the 2008 contract, that Chartwells would be using a related subsidiary to negotiate and administer all contracts for food under the 2008 contract. Chartwells never informed DCPS of the terms of its relationship with Foodbuy, even though Chartwells was required to disclose any "interest, direct or indirect" that "conflict[ed] in any manner or degree with the performance of its services" under the contract. *See* 2008 Contract at H.3.2.

B. The Privatization of School Meals by DCPS

43. In 2008, DCPS decided to outsource its food services operation after it determined that privatization would result in significant cost savings. In addition, during school year 2007-2008, DCPS implemented a limited food pilot program at several schools that was extremely successful, and DCPS determined that the “most effective and efficient way to quickly replicate the program at all schools sites in time for the [2008-2009] school year was to seek expert food management services.” *Id.* at C.1.1.

44. The goals of privatization were to: (1) improve the quality and nutrition of school meals; (2) increase student participation in DCPS’ meal program;-, and (3) reduce the operational overruns that resulted in costs to the District that exceeded the reimbursement provided by the federal government. Such overruns are paid for with District funds.

45. Food service management companies are for-profit enterprises. In theory, a food service management company offers a school district the following: (1) it has the organization, operating and financial systems, marketing and merchandising programs, and skilled, experienced personnel to provide better service than the school district; (2) it is able to use its superior buying power to negotiate prices for food and other products that the school district cannot obtain on its own; (3) its costs are typically lower than the costs of the school district; and (4) it can offer investments to upgrade facilities and purchase equipment for the school district.

46. Federal regulations allow DCPS to contract with food service management companies to manage its food service operations and purchase food products on behalf of

the school district. *See* 7 C.F.R. § 210.16. The requests for proposal must specify and incorporate federal procurement requirements for contracting with food service management companies.

47. In 2008, DCPS issued Solicitation No. GAGA-2008-R-0064, soliciting proposals from food service management companies to provide nutritious meals, increase participation in the DCPS school meal program, and reduce the cost overruns then being incurred by DCPS' in-house operation. Chartwells and Sodexo Operations, LLC, another food service management company, submitted proposals.

48. On June 12, 2008, pursuant to the District's then-privatization law, a Determination and Findings ("D&F") providing certain information regarding DCPS' actions was certified by then-DCPS Chancellor, Michelle Rhee. The D&F included projections on costs of District subsidies of school meal programs. These projections were provided to DCPS by Chartwells.

49. Based on representations made by Chartwells in its Best and Final Offer ("BAFO"), dated April 18, 2008, and its amended BAFO, dated May 28, 2008, both incorporated by reference into the 2008 contract, the Determination and Findings estimated the fair and reasonable price for the contract to be \$28,023,275 for school year 2008-2009, with a net subsidy by DCPS of either \$6,699,974 or \$7,199,000 above federal reimbursements and cash payments. The range between \$6.7 million and \$7.2 million for DCPS' projected subsidy depended on what level of reimbursement DCPS could obtain from USDA.

50. This price was deemed fair and reasonable based on the two responses received during the requests for proposals process. The D&F also concluded that the

price was fair and reasonable by comparison with DCPS' projected expenditures on school meals in the prior school year. The D&F stated that in school year 2007-2008, DCPS was expected to spend in excess of \$26.4 million for food and nutrition services with a subsidy from District funds in excess of \$14.6 million.

51. Estimates provided by Chartwells were used to support the D&F justifying awarding the contract to Chartwells. Although years prior to school year 2007-2008 had required a subsidy of only \$6-7 million, Chartwells projected that, if DCPS did not privatize food services by fiscal year 2013, local public subsidies would be in excess of \$17 million per year despite the fact that some schools were projected to close, resulting in the consolidation of food services.

52. Chartwells submitted projections to DCPS showing that it could achieve savings by (1) increasing participation of students in the school meal program; (2) increasing the number of meals served; and (3) increasing federal reimbursement.

53. Chartwells also guaranteed to refund its management and administration fees plus \$1 million if costs exceeded a certain threshold for DCPS. Chartwells made similar guarantees to minimize DCPS' subsidies for the four option years if the contract was extended.

54. Chartwells also promised that if costs exceeded projections, Chartwells, not DCPS, would absorb the excess cost up to a floor for net income for Chartwells. District procurement law provided that any amount spent over the allocated contract budget would be absorbed by Chartwells, not DCPS.

55. In its BAFO, Chartwells guaranteed to minimize loss of District public school funds for DCPS and stated that Chartwells would bear much of the risk of loss.

56. The Chartwells guarantee that DCPS would achieve net savings and the District would subsidize less of DCPS' school meals program was critically important to DCPS in deciding to award the 2008 contract to Chartwells.

57. Based on Chartwells's representations in its BAFO and Chartwells's contractual guarantee to minimize any DCPS loss, DCPS projected in its D&F that the 2008 contract would provide savings in its overall budget of at least 5% in school year 2008-2009. Additionally, relying on the representations and contractual guarantee of Chartwells, DCPS projected savings of between 49% to 76% in the overall budget over the course of the contract's four option years.

58. Based on Chartwells's representations and guarantees, the DCPS Chancellor certified that awarding the 2008 contract to Chartwells was in the best interests of the District.

59. On June 27, 2008, the District and Chartwells executed the 2008 contract.

60. DCPS did not anticipate Chartwells's significant cost overruns under the 2008 contract. Indeed, contrary to expectations based on Chartwells's representations, DCPS ended up paying a substantial subsidy for each year of the contract. The amount of local public funds paid by DCPS was double what Chartwells had projected. The subsidy for school year 2008-2009 was \$14.4 million; the subsidy for school year 2009-2010 was \$13 million; the subsidy for school year 2010-2011 was \$10 million; and the subsidy for school year 2011-2012 was \$14.35 million.

C. National School Lunch Program

61. Through the National School Lunch Program ("NSLP"), 42 U.S.C. §§ 1753(b)(2), 1756, and 1759a, USDA provides states and the District with cash assistance

and donations of food to be used to assist public schools to serve nutritious lunches to children each school day. 7 C.F.R. § 210.4. Schools that participate in the NSLP must offer children nutritious, well-balanced, and age-appropriate meals. *Id.* § 210.10(a). The District receives reimbursement for every meal served that meets the nutritional requirements of the NSLP. *Id.*

62. USDA administers the NSLP through its Food and Nutrition Service division ("FNS"). *Id.* §§ 210.3(a), 220.3(a). FNS contracts with state agencies which, in turn, contract with local school food authorities that implement the federal programs. In the District, the state agency is the Office of the School Superintendent ("OSSE") and the school food authority ("SFA") is DCPS.

63. FNS's contracts with OSSE and OSSE's contracts with DCPS require the parties to abide by applicable federal regulations. Each state agency (OSSE in the District) must submit monthly, quarterly, and annual reports to FNS documenting: (1) the number of children eligible for free lunch; (2) the total number of children eligible for reduced price lunch; and (3) the total number of children enrolled in participating local schools. The reports must also show the disbursement of program funds. *Id.* § 210.5.

64. USDA reimburses DCPS on a cost-per-meal basis. *Id.* §§ 210.7, 210.8, 220.11. To obtain reimbursement from the federal government, DCPS must certify the number of meals served, counted daily at the point of service, correctly identifying the number of free, reduced price and paid lunches served to eligible children. *See id.* § 210.7(c). DCPS must state that the claim is correct, supported by available records, and made in accordance with the terms of the existing agreement. *Id.* § 210.8(c).

65. DCPS, the school authority, is responsible for implementing an auditing system that accurately counts the number of lunches and meal supplements served to eligible children. DCPS' system is called the Point of Sale system ("POS"). *Id.*

66. Federal regulations allow school authorities to contract with food service management companies to manage food service operations for the school authorities, including the administration of the free, reduced price, and paid reimbursable lunches for eligible children. *Id.* §§ 210.7(c), 210.16.

67. When the contractual relationship is governed by a cost-reimbursable contract, the food service management company purchases food on the school district's behalf and submits the invoices to the school district for repayment from the nonprofit school food service account. A nonprofit school food service account is a "restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and is used only for the operation or improvement of the nonprofit school food service." *Id.* § 210.2.

68. All federally-donated food received by DCPS and made available to the food service management company is to accrue to the benefit of DCPS only. All contracts must ensure that the food service management company credits the SFA for the value of all donated food received for use in the SFA's meal service in the school year, on at least an annual basis, through invoice reductions, refunds, discounts, or other means. *Id.* §§ 250.51(a) and (b). All forms of crediting must include clear documentation of the value received from the donated foods.

69. The SFA and the food service management company must maintain records of the receipt of donated food and of the crediting of the SFA for the value of donated food, and other records relating to donated food. *Id.* § 250.54.

70. Contracts with food service management companies that permit all income and expenses to accrue to the food service management company, and then permit the food service management company to derive its profit as a percentage of cost or income are prohibited. Cost-reimbursement contracts that provide for fixed fees, such as those that provide for management fees established on a per-meal basis, are allowed. *Id.* § 210.16(c)(3).

71. No payments are to be made for meals served by a food service management company that are “spoiled or unwholesome at the time of delivery or do not meet specifications under the contract.” *Id.*

72. Allowable costs paid by a local SFA to a food service management company must be net of all discounts, rebates and other applicable credits accruing to or received by the food service management company or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the local SFA. *Id.* § 210.21(f)(1).

73. A food service management company must separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable and the amount that is unallowable. *Id.* § 210.21(f)(ii)(A).

74. The food service management company must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment, and that records have been established that maintain the visibility of

unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. *Id.* § 210.21(f)(ii)(B).

75. The food service management company must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and must individually identify the amount as a discount or rebate or, in the case of other applicable credits, identify the name of the creditor. *Id.* § 210.21(f)(iv).

76. The food service management company must maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request to the SFA, the state agency or the USDA. *Id.* § 210.21(f)(vi).

77. Other federal programs, including the School Breakfast Program ("SBP"), impose similar restrictions on procurement contracts between participating school districts and private food service management companies. *See id.* § 220.16(e); § 215.14a(d).

78. DCPS participates in the NSLP, the SBP, and other federal meal programs. This was known to Chartwells in 2008.

D. The 2008 Contract with Chartwells

79. On or about June 27, 2008, DCPS and Compass Group USA, by and through the joint venture agreement with Compass Group USA's Chartwells division and Thompson Hospitality, executed Contract No. GAGA-2008-C-0134, the 2008 contract. This contract contained a base year term from the date of award of the contract until June 30, 2009, and permitted the District to extend the contract for four one-year periods. *See* 2008 Contract, at F.2, F.3.

80. The 2008 contract was a cost-reimbursement contract with a firm-fixed price component for administrative costs, and a firm-fixed unit price component for management fees. *Id.* B.21.1. The cost reimbursement component included food costs, wages, fringe benefits, management labor costs, and direct costs.

81. The 2008 contract allowed DCPS to be charged by Chartwells for its costs of operating the food service program, including (1) costs of goods, including food, beverages, and supplies; (2) salaries and wages of employees; and (3) other costs and charges needed to perform the obligations of the contract. *Id.* C.35.1.

82. The amount of “cost-reimbursable” expenditures was limited in each category and expressly relieved DCPS of any obligation to reimburse Chartwells for costs incurred beyond these amounts unless modifications to the contract were agreed to and executed by DCPS and Chartwells prior to spending, pursuant to the District’s anti-deficiency procurement rules. *Id.* B.22.3-22.7.

83. The contract permitted Chartwells to charge an annual administrative fee of either \$900,000 or \$1 million, depending on student participation in the DCPS meal program. The administrative fee was paid to cover all of Chartwells’s overhead costs, and was to be paid by DCPS on a monthly basis. *Id.* C.35.2. The administrative fee was meant to cover all of Chartwells’s administrative costs.

84. The contract also permitted Chartwells to charge a management fee of \$.085 per meal. *Id.* C.35.3.

85. Under the 2008 contract, Chartwells was responsible for management of the DCPS NSLP, SBP, Snack Program, Summer Meal Program, Aftercare, Head Start,

Saturday Program, Special Milk Program, and all other food service programs at DCPS.

Id. C.1.2, C.10-16.

86. The 2008 contract required Chartwells to provide services to (1) 38 secondary schools, serving breakfast and lunch, and (2) 110 elementary schools receiving pre-plated breakfast and lunch meals, including the Aftercare, Head Start, and Saturday programs. The 2008 contract provided that Chartwells would provide food services for a total of 148 schools. However, due to school closings, Chartwells only provided food services to 125 schools, 23 fewer than the original contract amount. *Id.* C.1.3. In the third and fourth years of the contract, Chartwells provided food services to 107 and 108 schools respectively.

87. The scope of the 2008 contract included: (1) managing and reporting all revenue-generating activities including cash sales or federal reimbursement; (2) improving the collection of student applications for free and reduced meals and improving students' breakfast and lunch participation-; (3) managing the commodity program in coordination with DCPS; (4) reporting the food service income statement including net income on a monthly basis; and (5) depositing all income accrued in the DCPS food service account in coordination with the District's Office of the Chief Financial Officer ("OCFO"). Any profit or guaranteed return was to remain in the DCPS food service account. *Id.* C.2.1.

88. The contract required Chartwells to provide full meal planning, preparation of meals, and delivery of meals to DCPS schools in accordance with specified rules and regulations. *Id.* C.2.2-2.9.

89. Chartwells was required to use the current DCPS POS (Point of Sale system) or to “implement a system” to obtain an accurate point of service meal and milk count for all students, including free and reduced-cost meals. *Id.* C.3.1-3.8; C.7.1.

90. Chartwells was obligated to try to increase participation in the DCPS school meal programs by providing outreach to parents and incentives to eligible families. *Id.* C.3.9.2.

91. Meal standards were set forth in the 2008 contract, and provided that Chartwells “shall sell on the premises [of DCPS] only those foods and beverages authorized by DCPS and only at the times and places designated by DCPS.” *Id.* C.4.6.

92. In addition, DCPS was not obligated to pay Chartwells for “meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications, or do not otherwise meet the requirements of the contract.” *Id.* C.4.7.

93. The 2008 contract specified that Chartwells was required to use USDA donated food received by DCPS. Moreover, any USDA donated food used by Chartwells had to accrue solely to the benefit of DCPS’ non-profit school food service program, and Chartwells was mandated to keep records to substantiate that the full value of all USDA donated food was used solely for the benefit of DCPS. *See id.* C.5.1-5.6.

94. In addition, Chartwells had to credit DCPS on a monthly basis for all discounts, rebates, and allowances received by Chartwells associated with the purchase of processed commodity products on behalf of DCPS. All costs to DCPS had to be net of all discounts, rebates, and allowances received by Chartwells. The cost reduction was to be shown on Chartwells’s monthly invoice or operating statement as a credit or reduction in the amount billed to DCPS. *Id.* C.5.8.

95. Under the 2008 contract, Chartwells agreed to provide food and nutrition services at the price set forth in its original March 21, 2008 Proposal as modified by its BAFO and amended BAFO for the base year and any option years of the contract. *Id.* B.1.1.

96. The 2008 contract provided for a ceiling on total expenses of \$28,023,275 in the base year of the contract.

97. Chartwells guaranteed DCPS that “if the actual guaranteed minimized loss is greater than this amount, [Chartwells] shall reduce its management fee and administrative fee by the difference between the guaranteed fee and the actual loss[], but in no event shall [Chartwells’s] reimbursement obligation exceed the total amount of [Chartwells’s] management fee and administrative fee plus \$1,000,000.” *Id.* B.1.13.1.

98. Chartwells’s management fee and administrative fee are firm-fixed prices, as required by federal regulations.

99. Chartwells’s BAFO set forth two different pricing schedules based on two different levels of student participation in the DCPS meal program. “Provision 2” was based on a population of 50,000 students, and “Non-Provision 2” was based on a population of 47,744 students.

100. Under Non-Provision 2, with student population of 47,744, the contract provided for a guaranteed minimized loss (“GML”) for DCPS and a Net Income for Chartwells, of no more than \$6,699,974.

101. The contract required that Chartwells adhere to the Non-Provision 2 budget unless DCPS approved Provision 2.

102. When the 2008 contract was executed, DCPS anticipated that it would transition to the Guarantee with Provision 2. Chartwells had promised to assist DCPS in obtaining a targeted eligibility rate of 80% for free meals, and 6% for reduced meals, for an estimated population of 54,857 students. Chartwells assured DCPS that these goals would be attainable.

103. Provision 2 status would have given DCPS a GML and Chartwells net income of \$5,785,831. *Id.* B.1.14.

104. Under the 2008 contract, Chartwells's purchases of food and supplies are reimbursed on a "cost reimbursable" basis. *Id.* § B.1.2 – 1.11. To control costs, however, DCPS included a provision requiring Chartwells to purchase food at "the lowest price possible" as follows:

The Contractor shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards and in full compliance with [federal rules and regulations].

Id. C.8.1.

105. This lowest price provision, also known as a "best price" provision, is a standard provision in government contracts.

106. In addition, DCPS was to receive "all discounts or rebates for purchases made on its behalf." *Id.* C.8.2. Chartwells, as required by federal law, had to properly credit DCPS on a monthly basis for all discounts, rebates, and allowances received by Chartwells. The contract further required that Chartwells identify the amount of each discount, rebate, and credit on bills and invoices presented to DCPS and individually identify the amount as a discount or rebate, or identify the nature of the credit. *Id.* B.22.9.5; *see also* 7 C.F.R. § 210.21(f)(1)(iv)-(v). Chartwells was not only required to

identify such discounts, rebates, and credits on its bills to DCPS, but also to maintain documentation of such discounts, rebates, and credits and furnish such documentation to DCPS upon request. Contract B.22.9.7; 7 C.F.R. § 210.21(f)(1)(vi).

107. The 2008 contract required Chartwells to provide monthly Profit & Loss statements fifteen days after the end of each month. *Id.* C.38.1.

108. Chartwells agreed “[f]rom the preparation of an initial budget to the closing financial statement” to provide DCPS with “up to date daily, weekly and monthly information. [Chartwells] shall utilize their accounting program and internal auditing system to ensure accurate and timely data is supplied to DCPS.” *Id.* B.1.15.1. In addition, Chartwells agreed to implement a series of necessary programs for audit and controls, including inventory control, sales reporting, and internal audits to compile and maintain daily purchase records, summaries of daily purchase records and closings, statistical data sheets, production records, monthly inventories, and records of menu costing. *Id.* B.1.15-B.1.16.

109. The 2008 contract set forth requirements for recordkeeping by Chartwells and availability of records for audit and on-site inspections, as well as responsibilities for maintaining inventory, equipment, and government-furnished property. *Id.* C.19-C.20.

110. The 2008 contract specified that Chartwells would be responsible for ensuring that all its personnel had background checks, including fingerprinting, prior to working with DCPS students. *Id.* C.39.2. In addition, Chartwells was required to maintain a “drug-free” workplace, *see id.* I.4 *et seq.*, and provide DCPS, upon request, with a copy of the results from all background checks, drug testing, and fingerprinting. *Id.* C.39.2.

111. The 2008 contract required Chartwells to submit invoices on a monthly basis for services rendered. *Id.* G.3.1. Prior to submission of invoices, Chartwells was required to “certify” each invoice for “accuracy and correctness.” *Id.* G.3.2.

112. The 2008 contract provided that payment of a claim did not preclude DCPS from making a claim for adjustment on any item found not to be in accordance with the provisions of the 2008 contract and bid specifications. *Id.* C.32.4.

113. Chartwells was required to “pay DCPS the full amount of any meal overclaims, which are attributable to [Chartwells’s] negligence, including those overclaims based on review or audit findings, which occurred during the effective dates of renewal and renewal contracts.” *Id.* C.30.2.

114. In addition, Chartwells agreed to fund certain improvements to the premises of DCPS in the amount of \$4,300,000 to facilitate the performance of the food service program.

E. Modifications to the 2008 Contract

115. Between 2008 and 2012, DCPS and Chartwells executed twenty-four modifications to the 2008 contract, including modifications to extend the contract for an additional option year or to adjust the budgetary authorization to cover additional costs incurred by Chartwells. These budgetary modifications were executed after Chartwells had exceeded the budgetary limits.

116. In March 2011, DCPS and Chartwells executed Modification 20, which modified the allotted budget for option year two of the contract and limited the amount that Chartwells was required to pay back to DCPS in option year 2 to its earned management fee of \$1 million.

F. The 2012 Contract with Chartwells

117. On or about June 27, 2012, DCPS executed Contract No. GAGA-2012-C-0057A, a new contract with Compass Group USA, by and through its Chartwells division and its SSC Service Solutions division, after a competitive procurement process ("2012 contract"). Upon information and belief, Thompson Hospitality remained involved in the 2012 contract in an unspecified capacity.

118. The 2012 contract contains a base-year term from the date of award until June 30, 2013 (the end of the 2012-2013 school year), and permits the District to extend the contract for four one-year periods. The estimated contract amount approved by the District's Council for the base year was \$29,636,417.

119. The 2012 contract is a firm-fixed unit price per meal contract, providing individual unit costs by meal type and the estimated quantity of meals to be served in each contract year. *Id.* B.5.1.4. The 2012 contract was to provide food services to 103 DCPS schools, and is significantly more expensive than the original 2008 contract, which was supposed to provide food services to 148 schools.

120. The costs to be included in the calculation of fixed-fee-per-meal pricing are set forth in the contract and include purchased food costs; all non-food items necessary for the meal to be served and consumed; salaries, wages, taxes, benefits, retirement plans and the cost of administering such plans for all contractor-salaried employees and contractor-hourly employees working at DCPS school facilities; all insurance required under the contract; cleaning supplies for kitchen facilities; District or federal licensing costs or fees; printing expenses; and transport and delivery costs for food and equipment. *Id.* B.5.2.1-.17. All available discounts, rebates and credits are

accounted for in the price proposals made in the BAFOs to the 2012 contract. *See id.* G.9.5.2.

121. The 2012 contract specifies nutrition standards for meals. *Id.* C.6.1.4-6.1.6. Chartwells must reimburse DCPS on a per-meal basis for any and all meals that do not meet program requirements. *Id.* C.6.1.12.

122. The 2012 contract has a cost reimbursement component for the maintenance, repair, and replacement of all DCPS equipment. *Id.* B.3.2.3. Under the cost-reimbursable component, but not under the fixed-price components, Chartwells must explicitly disclose credits, rebates, and discounts negotiated or included in accruing goods and services and must report them as credits against invoices to DCPS. Further, Chartwells must provide DCPS with sufficient information on invoices and bills to facilitate the identification of allowable and unallowable costs, credits, and the amounts of such rebates and credits. *Id.* B.5.1.1, 5.1.2. Chartwells's determination of allowable costs must be in line with applicable District regulations. *Id.*

123. Chartwells is required to conduct an assessment of school sites and provide written notification and the estimated cost of all equipment maintenance, repairs, and replacements within 60 days of executing the contract. All estimated costs have to be approved by the contracting officer, and DCPS is not obligated to reimburse Chartwells for any incurred costs in the absence of the specified notice. *Id.* B.11.2-6.

124. In addition, the 2012 contract provides that Chartwells shall be reimbursed for its operational and administrative expenses for the Fresh Fruit & Vegetable Program ("FFVP"). The FFVP is a federally-funded program that provides all enrolled students in DCPS elementary schools with a variety of free fresh fruits and vegetables throughout the

school day. Under the 2012 contract, Chartwells is required to submit monthly program invoices to DCPS to substantiate Chartwells's cost figure. *Id.* B.3.2.2. Chartwells is required to pass on to DCPS any rebates generated by the volume of Chartwells's purchases of fruits and vegetables because FFVP is considered a cost-reimbursable component of the contract. *Id.* B.5.1.1 – 5.1.2.

125. The value of USDA donated food received by DCPS has been factored into the fixed unit prices of meals charged to DCPS, (*see id.* B.5.2.1, B.5.1.4), but Chartwells must monitor the actual value of such donated food must be monitored by separate inventory. *Id.* C.6.10.11. The value of the donated foods used must be noted on the invoice for the month in which the donated food was used. *Id.*

126. At the end of each school year, Chartwells is tasked with reconciling the actual value of USDA donated food against the total value of the per-meal credits set forth in the 2012 contract at the end of each contract year and provide a final credit for any balance due to the District. *Id.* C.6.10.12.

127. Under the 2012 contract, as under the 2008 contract, Chartwells is liable for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods. In addition, Chartwells must notify DCPS of such loss, improper use of, or damage to donated foods and credit DCPS within 30 days.

128. Although the 2012 contract does not make financial guarantees of profitability or loss minimization for DCPS, it does require Chartwells to increase student participation in the meal programs, thereby increasing federal reimbursement, and to improve food quality. Yet, during school year 2012-2013, the first year of the 2012

contract, Chartwells served almost 1 million fewer meals than it served during school year 2011-2012.

G. Performance of the 2008 Contract

129. Chartwells's performance was deficient from the outset. As Lisa Ruda, Chief of Staff to then-Chancellor Michelle Rhee, described to Keith Cullinan, President of Chartwells School Dining, and Warren Thompson, CEO of Thompson Hospitality, "the student meal program that Chartwells/ Thompson . . . provided to [DCPS] during the first two days of the 2008-2009 school year . . . has fallen far below the *standards that we have set for ourselves and the vendors with which we contract to serve our schools.*" Ruda Letter to Chartwells, dated August 26, 2008 (emphasis added). Among the problems: (1) meals were not delivered or delivered late, (2) frozen food was delivered to schools that did not have the capability to heat or defrost the food, (3) the quality of the food was unacceptable, for example, students were served "slim jims" for lunch, (4) kitchens were not adequately staffed, and (5) Chartwells was not able to provide timely, accurate, and reliable information to schools that were waiting to feed students.

130. Ruda set forth DCPS' expectations for Chartwells's performance under the contract: (1) all schools will be able to serve students with nutritious, high quality meals; (2) meals will arrive on time for kitchens and staff to serve meals at all schools; (3) Chartwells/Thompson will be able to provide meals when emergencies occur and provide timely, accurate and reliable information; and (4) the student meal program must support and not hinder classroom instruction. *Id.*

131. Therefore, on August 26 and again on September 24, 2008, DCPS issued two Notices to Show Cause and to Cure Performance Deficiencies ("Notices to Cure").

Both Notices to Cure listed items requiring immediate corrective action to avoid termination of the 2008 contract. On September 30, 2008, Chartwells provided a joint written response to both Notices to Cure, stating that it had “experienced challenges during the opening days of school,” but that all deficiencies had been remedied.

132. Despite its assurances to DCPS, Chartwells was not fulfilling its promise, from its proposal to DCPS, to serve “[a]ppetizing food to drive meal participation,” as David Goodman, Executive Director, OFNS, and the Contracting Officer’s Technical Representative for the 2008 contract, informed Chartwells on December 8, 2008.

133. For example, during school year 2007-2008, prior to contracting with Chartwells, Woodson High School (“Woodson”) was chosen to be DCPS’s first pilot high school to test higher quality food and marketing. At Woodson, DCPS provided healthy and appetizing lunch choices, increased lunch participation from 80 students per day to over 200 students per day, and continued its success until the end of the school year. In contrast, as Goodman observed when he visited Woodson after Chartwells took over the contract, Chartwells had cut back on lunch choices, the staff did not know the pricing, the food was not fresh, appetizing or appealing, and there was “woefully” inadequate marketing and sales. One of the stated objections of the 2008 contract was to replicate DCPS’ successful pilot program. Instead, Chartwells was undercutting what DCPS had accomplished at Woodson and the other pilot schools.

134. As OFNS observed in 2009, at the end of the base year of the contract:

The overall performance of [Chartwells] has been unsatisfactory to poor. [Chartwells] failed to implement its transition plan as outlined by its proposal and [BAFO] to ensure smooth school opening . . . the numerous complaints and failures have resulted in a lack of confidence by DCPS leadership . . . [Chartwells] failed to properly track and manage the overall budget for the food services operations . . . [Chartwells] has been

inconsistent in its responsiveness to DCPS requests for data and information resulting in delays in responding to federal and state inquiries and [] adequately analyzing the overall operations. In addition, there have been significant issues relative to inadequate employee training

Goodman Letter to Chartwells, dated December 8, 2008.

135. In the base year, Chartwells fell short on its student participation projection by 2 million meals and DCPS had more than double the expected loss. Chartwells's failure to meet its projected targets continued into school years 2009-2010 and 2010-2011.

136. In January 2010, Jeffrey Mills was hired as Director of OFNS. In the spring of 2010, Mills began work to transform DCPS menus for the fall of 2010 by eliminating processed foods from DCPS menus and converting kitchens from heat and serve to cooking from scratch. In addition, OFNS ensured that for school year 2010-11, DCPS would review and approve all menu items, meeting USDA Healthier US Gold Level standards and the Institute of Medicine nutritional standards. Another change by DCPS was to request that at least 20% of all produce be purchased from the MidAtlantic region. Finally, flavored milk and highly sugared cereals would be eliminated from meals. The elimination of flavored milk reduced per meal costs by six to eight cents per meal.

137. In addition, DCPS issued two RFPs for vendors to provide "portable meals" and "from scratch cooking" to fourteen schools. These vendors were asked to meet the same nutritional standards as Chartwells; however, unlike Chartwells, these vendors would invoice DCPS on a cost-per-meal basis.

138. During the summer of 2010, DCPS rolled out a number of new meal programs, including breakfast in the classroom in 56 schools, grab-and-go breakfasts in

34 middle and high schools, Head Start family-style meals in 68 schools, and evening meals in 100 aftercare programs.

139. At the end of school year 2009-2010, 74 DCPS schools were awarded Provision 2 status. As a result, in 2010-2011, students enrolled in these schools would receive free lunch meals.

140. Despite these improvements in quality and added reimbursement for DCPS, and the introduction of two new vendors to serve specified schools, Chartwells's performance remained deficient and the prices paid for food remained high. In fact, the two new vendors were providing meals costing, on average, one dollar less per meal than Chartwells's meals, and the meals were of higher quality. Many school principals requested that their schools be allowed to use the new vendors instead of Chartwells.

141. On April 27, 2010, DCPS Chief Procurement Officer Sayed El Baz sent a Notice to Cure to Keith Cullinan, President of Chartwells School Dining, and Warren Thompson, CEO of Thompson Hospitality Services. In his summary of deficiencies, El Baz listed six problem areas: (1) overspending and underperformance on revenue; (2) inadequate staffing; (3) problems with point of sale machine usage; (4) Department of Health violations; (5) problems with capital investment and rebates; and (6) mismanagement of inventory and waste. *See* El Baz letter, April 27, 2010.

142. El Baz noted that, in the base year of the contract, Chartwells missed its guaranteed minimized loss target of \$6.7 million by \$7.3 million for a net miss of \$14 million. The CPO ascribed the additional loss of \$7.3 million to overspending and underperformance. Despite a reduced number of students – which should logically have resulted in a lower total cost – Chartwells spent more than it projected under the contract.

Moreover, Chartwells failed to generate projected cash sales of \$4.6 million and reimbursable income of \$16.7 million in the base year.

143. In February and March 2011, DCPS and Chartwells were engaged in a dispute over the cost overruns under the 2008 contract. Chartwells resisted switching to vendors requested by DCPS, seeking instead to stay with Chartwells's "preferred" vendors and arguing that this would reduce costs. Chartwells did not inform DCPS that it was using Foodbuy, its corporate affiliate, to negotiate all the contracts with vendors, rather than seeking to ensure that DCPS was obtaining the lowest prices for food.

144. During school year 2011-2012, the final year of the 2008 contract, the same number of meals were served to DCPS students as in school year 2010-2011. However, Chartwells increased its food costs by over \$1 million by over-ordering food (for which DCPS paid), stockpiling food, and refusing to purchase food at the lowest possible prices.

145. DCPS paid \$48.3 million to Chartwells over the course of the 2008 contract, \$26.3 million more from District local funds than Chartwells had originally guaranteed in Chartwells's BAFO.

146. DCPS paid more than double the projected subsidy of District funds even though, compared to the projections in its BAFO, Chartwells served 14 million fewer meals and provided food services to 23 fewer schools in the base year of the contract and 40 fewer schools in option years 2 and 3.

H. 2012 Audit of Chartwells's Performance Under 2008 Contract

147. In May 2012, DCPS engaged an independent audit firm, Federal Management Systems, Inc. ("FMS"), to assess the performance of Chartwells under the 2008 contract.

148. The purpose of the FMS audit was to (1) determine whether prices, rebates, discounts and allowances were consistent with the terms and conditions of the contract; (2) determine the number of non-compliant meals; (3) determine whether there were inconsistencies in food inventory; (4) determine if there were charges not authorized by the contract; (5) determine whether Chartwells properly reimbursed DCPS for GML; (6) determine if there were inconsistencies in equipment inventories; and (7) review the accuracy of the 2008 D&F to determine if DCPS had saved money and achieved other goals by contracting with Chartwells.

149. The FMS auditors concluded that privatization of school food services through Chartwells had not resulted in cost savings for DCPS. Privatization increased DCPS' school food program costs by more than 50%. The FMS auditors compared this figure with the fact that 95% of school food programs in this country break even or make money, but DCPS had large losses.

II. DAMAGES TO THE DISTRICT

150. Although Chartwells promised it could achieve the scope of work outlined in the 2008 contract and limit the DCPS subsidy from District funds, in actuality, Chartwells sought and obtained increases to the subsidy for each year of the 2008 contract.

151. In the base year, 2008-2009, Chartwells projected to DCPS that it would need to subsidize its food service program by no more than \$6,285,000 to \$7,199,000 depending on the level of federal reimbursement. The actual subsidy paid by DCPS in school year 2008-2009 was \$14,203,224, a 112% increase over Chartwells's projection, even though Chartwells provided services to 23 fewer schools than the 148 schools set forth in the original contract.

152. In option year 1 (the second year of contract), Chartwells projected to DCPS that it would need to subsidize its food service program by no more than \$4,823,000 to \$5,588,000 depending on the level of federal reimbursement. The actual subsidy paid by DCPS in school year 2009-2010 was \$10,727,118, a 112% increase over Chartwells's projection, even though Chartwells provided services to 25 fewer schools than the 148 schools set forth in the original contract.

153. In option year 2 (the third year of the contract), Chartwells projected to DCPS that it would need to subsidize its food service program by no more than \$4,324,000 to \$5,582,000 depending on the level of federal reimbursement. The actual subsidy paid by DCPS in school year 2010-2011 was \$10,560,332, a 109% increase over Chartwells's projection, even though Chartwells provided services to 41 fewer schools than the 148 schools set forth in the original contract.

154. In option year 3 (the fourth year of contract), Chartwells projected to DCPS that it would need to subsidize the food service program by no more than \$4,057,000 to \$5,588,000 depending on the level of federal reimbursement. The actual subsidy paid by DCPS in 2011-2012 was \$12,872,444, a 156% increase over projection,

even though Chartwells provided services to 40 fewer schools than the 148 school set forth in the original contract.

A. Fraudulent Inducement of the 2008 Contract

155. Chartwells fraudulently induced DCPS to enter into the 2008 contract by promising DCPS cost savings that never materialized. When Chartwells negotiated the 2008 contract, it knew, or should have known, that it could not fulfill its promised projections under the contract, yet made these promises in an effort to win the contract.

156. DCPS relied on representations made by Chartwells in its BAFO and amended BAFO, as well as projected costs that Chartwells provided to DCPS for inclusion in the 2008 D&F.

157. Despite Chartwells's assurances and projections, DCPS experienced the increased losses set forth at paragraphs 152-155. The operating, administrative, and management expenses that Chartwells passed on to DCPS increased over the life of the 2008 contract even though the number of schools and the number of meals served decreased during the same period.

158. Chartwells also fraudulently induced DCPS to enter into the 2008 contract by promising DCPS to purchase all food at the "lowest price possible consistent with maintaining quality standards." *Id.* C.8.1. In fact, when it negotiated the 2008 contract, Chartwells intended to use a related corporate subsidiary, Foodbuy, to negotiate and monitor all vendor contracts under the 2008 contract. Chartwells never disclosed this conflict of interest despite a contractual mandate to disclose such relationships.

159. Chartwells knew, or should have known, that its relationship with Foodbuy prevented it from fulfilling its best price obligations under the 2008 contract.

160. Chartwells repeatedly reaffirmed its false, inaccurate, and incomplete statements, including its false cost projections and failure to disclose its relationship with Foodbuy, to induce DCPS to extend the 2008 contract for three option years.

161. Chartwells's false statements and fraudulent conduct during the negotiation and performance of the 2008 contract led to Chartwells's submission of false claims to DCPS, including false invoices. These claims were false because the District's decision to enter into the 2008 contract and to pay the claims were based on inaccurate, incomplete, and false statements that Chartwells made during the negotiation and performance of the contract. Absent these statements, the District would not have entered into the 2008 contract or paid the resulting claims.

162. Given that DCPS was fraudulently induced by Chartwells to enter into the contract, and Chartwells never corrected its fraudulent representations to DCPS, each claim for payment made by Chartwells to DCPS during the period August 2008 to July 2012 was a false claim.

163. Chartwells invoiced DCPS an estimated \$26,528,128 above and beyond its original projections in the 2008 contract and its BAFOs.

B. Violation of Best Price Provision

164. Chartwells overcharged DCPS by failing to obtain best prices for food and non-food supplies consistent with maintaining quality standards in compliance with the contract and federal regulations. *See id.* C.8.1.

165. Chartwells relied on Foodbuy, a related subsidiary, to negotiate all vendor contracts pursuant to the 2008 contract and, in violation of the 2008 contract's conflict of interest provision. Chartwells did not disclose to DCPS the terms of its arrangement with

Foodbuy, even though the arrangement with Foodbuy prevented Chartwells from fulfilling its contractual obligations to DCPS. *See id.* H.3.2.

166. At no time did Chartwells inform DCPS that it ever performed any analyses or other comparisons to determine if it was purchasing food at the lowest possible prices consistent with maintaining quality standards.

167. Chartwells has refused to justify its prices despite being asked to do so by DCPS.

168. In March 2012, DCPS OFNS documented instances when Chartwells quoted prices for food that were considerably higher than prices quoted by other vendors for the same items. In a comparison of prices for products between Chartwells and other suppliers, DCPS determined that Chartwells's prices were, on average, 10% higher for non-produce groceries and 17% higher for produce. As the FMS auditors noted, in the majority of instances, Chartwells's prices were higher than two other purchasing organizations to which Chartwells was compared.

169. During the time period August 2008 to July 2012, Chartwells submitted invoices to DCPS that were false in that each invoice included overcharges for food. DCPS paid these invoices. DCPS has been overcharged an amount to be determined at trial, including the \$4,185,104 in overcharges found by the FMS audit.

C. Damages Owed under Guaranteed Minimized Loss Provisions

170. The 2008 contract expressly provided: "For the entire contract period, [Chartwells] shall provide a net income/[GML] to DCPS." B.1.2.1.

171. Chartwells refused to provide DCPS with its GML calculated amounts for each year of the 2008 contract despite DCPS' requests for such an accounting in accordance with 2008 contract requirements.

172. Chartwells failed to pay DCPS the GML for each year of the 2008 contract despite DCPS' requests to be paid.

173. DCPS is owed an amount to be determined at trial including the \$4.1 million found by the FMS audit.

D. Non-Compliant Meals

174. Chartwells has overcharged DCPS by providing many meals that were non-compliant with standards specified under the 2008 contract. Non-compliant meals include instances when food was delivered late, the number of meals was insufficient, or the food was of poor quality or spoiled.

175. The 2008 contract required Chartwells to document instances of non-compliant meals and reimburse DCPS for all instances of non-compliant meals. DCPS and the FMS auditors found, however, that Chartwells's self-reporting system produced incomplete and inaccurate data.

176. DCPS reported and documented repeated instances when Chartwells's meals were spoiled, the quality of food was poor, or the meals were non-compliant. Chartwells never reimbursed DCPS for non-compliant meals despite DCPS' requests for payment.

177. DCPS was overcharged an amount to be determined at trial including the \$3,682,432 in overcharges found by the FMS audit.

E. Additional Overcharges in 2008 Contract

178. Chartwells overcharged DCPS by overstocking food during the four years of the 2008 contract. The 2008 Contract required Chartwells to track the food inventory and control the waste of food by, among other things, ordering appropriate amounts of food. Despite this contractual provision, Chartwells failed to properly manage the food inventory, causing food to spoil. DCPS observed and recorded repeated instances where Chartwells ordered and overstocked food at school cafeterias operated by Chartwells even though Chartwells knew, or should have known, that the food would spoil. Chartwells charged DCPS for this spoiled food.

179. DCPS estimated that spoiled food created by Chartwells's overstocking caused considerable cost to DCPS because food costs represented approximately 40% of total expenses under the 2008 contract.

180. DCPS is owed an amount to be determined at trial including the \$354,200 in overcharges found by the FMS audit.

F. Appropriateness of Contract Charges and Expenses

181. The 2008 contract provides that all changes to the contract must be approved by the DCPS Contracting Officer. Despite this contract provision, Chartwells made changes to the contract, affecting the prices that DCPS paid for services, without obtaining approval from the Contracting Officer and enacting modifications to the 2008 contract. As an example, the management fee varied during the four years of the contract.

182. These unapproved changes in prices on invoices rendered each invoice false in that Chartwells was charging for costs not approved under the contract.

183. Chartwells also passed through expenses to DCPS for expenses that were expressly prohibited by contract provisions. As an example, under the 2008 contract, Chartwells had to pay all wages and related costs for hiring temporary employees. Chartwells charged DCPS for these costs despite contract provisions prohibiting charging DCPS for these costs. As a result, the District has been damaged in an amount to be determined at trial.

184. In addition, although the 2008 contract allowed Chartwells to charge a monthly administrative fee, Chartwells allocated administrative expenses from its corporate office for payment by DCPS. Monthly fees were charged to DCPS for travel, lodging, meals, and cellphone usage, which were paid by DCPS. As a result, the District has been damaged in an amount to be determined at trial.

G. Living Wage Adjustment

185. When Chartwells submitted its response to the RFP, it submitted pricing that included its labor cost. After the award of the contract, Chartwells discovered that it was paying its employees below the required Living Wage standard. Chartwells tried to obtain from DCPS a price adjustment to the contract. However, DCPS denied any adjustments to the contract for increased payroll costs. Nevertheless, Chartwells included the back-pay reimbursement in its invoices, which the District paid.

186. As a result, the District has been overcharged in an amount to be determined at trial.

H. Damages under the 2012 Contract

187. The 2012 contract required Chartwells to pass on any rebates generated by the volume of purchases for fruits and vegetables for DCPS under the cost-reimbursable FFVP. Chartwells never paid DCPS any rebates under the contract – a clear payment obligation to DCPS – until it learned that it was being investigated by the District.

188. The cost-reimbursable component of the 2012 contract required Chartwells to disclose and pass on any credits, rebates, and discounts in accruing goods and services for the maintenance, repair, and replacement of all DCPS equipment. Chartwells never identified the amounts of such rebates and credits and did not pass them on to DCPS.

189. Under the 2012 contract, Chartwells is required to reconcile the actual value of USDA donated foods at the end of each contract year and provide a final credit for any balance due to DCPS. Until it learned that it was being investigated by the District, Chartwells failed to do a year-end reconciliation for school years 2012-2013 and 2013-2014 and, to date, has failed to pay amounts due to DCPS.

I. DCPS Was Substantially Injured as a Result of Chartwells's Unlawful Actions

190. Chartwells submitted and caused to be submitted false invoices to DCPS. These claims were not reimbursable because Chartwells:

- (1) made misrepresentations to induce DCPS to enter into the 2008 contract;
- (2) did not seek to obtain the lowest prices possible for food during the 2008 contract;
- (3) improperly charged DCPS for non-compliant meals, including spoiled and missing meals during the 2008 contract;

(4) double-billed for administrative charges, and failed to maintain documentation to justify the services;

(5) failed to remit the GML for all years of the 2008 contract, even though it missed its targeted projections by millions of dollars each year of the 2008 contract, thereby avoiding paying an obligation to DCPS;

(6) made unauthorized changes to the 2008 contract that affected the prices DCPS paid for services and goods;

(7) failed to pay the District rebates and other monies owed under the 2012 contract; and

(8) failed to remit all monies due and owing to DCPS despite DCPS' requests for payment.

191. The District has identified a minimum of \$11.2 million in overpayments to Chartwells; however, it is likely that Chartwells owes much more to the District. Further, during the time period August 2008 through February 2015, Chartwells submitted at least 66 invoices to the District that it certified as complete and accurate when, in fact, the invoices contained overcharges or other false statements as detailed above. To date, Defendants have not remitted these overpayments to the District.

COUNT I – FALSE CLAIMS ACT – FALSE CLAIMS
D.C. Code § 2-381.02(a)(1) (2011 Supp.)

192. The allegations of paragraphs 1 through 191 are realleged as if fully set forth herein.

193. As described above, during the time period August 2008 through July 2012, Defendants knowingly presented and caused to be presented false claims (that is,

invoices for payment under the 2008 contract) to DCPS for payment or approval, which DCPS paid.

194. As a result of Defendants' false claims, the District was damaged in an amount to be determined at trial and therefore is entitled to treble damages under the False Claims Act, plus a civil penalty for each false claim.

COUNT II – FALSE CLAIMS ACT – FALSE RECORDS AND STATEMENTS
D.C. Code § 2-381.02(a)(2) (2011 Supp.)

195. The allegations of paragraphs 1 through 194 are realleged as if fully set forth herein.

196. As described above, during the time period August 2008 through July 2009, Defendants knowingly, made, used, and caused to be made or used false records and statements to get false claims (that is, statements in support of invoices for payment under the 2008 contract) paid or approved by DCPS, which DCPS paid.

197. As a result of Defendants' false records or statements, the District was damaged in an amount to be determined at trial and therefore is entitled to treble damages under the False Claims Act, plus a civil penalty for each false record or statement.

COUNT III – FALSE CLAIMS ACT – CONCEAL OBLIGATIONS TO PAY
D.C. Code § 2-381.02(a)(7) (2011 Supp.)

198. The allegations of paragraphs 1 through 197 are realleged as if fully set forth herein.

199. As described above, Defendants knowingly made, used, and caused to be made and used, false records and statements to conceal, avoid, or decrease obligations to pay or transmit money to the District.

200. Among other things, during the time period August 2012 to March 2013, Defendants knowingly submitted invoices to DCPS that were false because they failed to disclose and remit rebates owed to DCPS under the 2012 contract.

201. As a result of Defendants' false records and statements, the District was damaged in an amount to be determined at trial and therefore is entitled to treble damages under the False Claims Act, plus a civil penalty for each false record or statement.

COUNT IV – FALSE CLAIMS ACT – CONCEAL OBLIGATIONS TO PAY
D.C. Code § 2-381.02(a)(6) (2013)

202. The allegations of paragraphs 1 through 201 are realleged as if fully set forth herein.

203. As described above, Defendants knowingly made, used, and caused to be made and used, false records or statements material to obligations to pay or transmit money to DCPS, or to conceal, avoid, or decrease obligations to pay or transmit money to DCPS.

204. Among other things, during the time period April 2013 to February 2015, Defendants knowingly submitted invoices to DCPS that were false because they failed to disclose and remit rebates owed to DCPS under the 2012 contract.

205. As a result of Defendants' false records and statements, the District was damaged in an amount to be determined at trial and therefore is entitled to treble damages under the False Claims Act, plus a civil penalty for each false record or statement.

COUNT V – FALSE CLAIMS ACT – OVERPAYMENTS
D.C. Code § 2-381.02(a)(9) (2011 Supp.) (as amended 2013)

206. The allegations of paragraphs 1 through 205 are realleged as if fully set forth herein.

207. As described above, Defendants were the beneficiaries of inadvertent payments or overpayments by the District of monies not due and knowingly failed to repay the inadvertent payments or overpayments to the District.

208. As a result of Defendants' knowing failures to repay monies they received from the District that were not due, the District was damaged in an amount to be determined at trial and therefore is entitled to treble damages under the False Claims Act.

COUNT VI – COMMON LAW – NEGLIGENT MISREPRESENTATION

209. The allegations of paragraphs 1 through 208 are realleged as if fully set forth herein.

210. As described above, Defendants made negligent misrepresentations to the District.

211. Defendants made these misrepresentations without any reasonable basis to believe that they were in fact true.

212. Defendants' misrepresentations were direct and proximate causes of the District's injuries, as they led the District to make payments it would not have made otherwise.

213. As a result of Defendants' misrepresentations, the District was damaged in the amount of the overbillings to be determined at trial.

COUNT VII – COMMON LAW – FRAUD

214. The allegations of paragraphs 1 through 214 are realleged as if fully set forth herein.

215. As described above, Defendants made misrepresentations to the District.

216. Defendants made these misrepresentations knowing of their falsity.

217. Defendants' misrepresentations were direct and proximate causes of the District's injuries, as they led the District to make payments it would not have made otherwise.

218. The District relied upon Defendants' misrepresentations in paying Defendants' claims for payment.

219. As a result of Defendants' misrepresentations, the District was damaged in the amount of the overbillings to be determined at trial. Further, the District is entitled to punitive damages for Defendants' intentional fraud.

WHEREFORE, plaintiff, the District of Columbia, requests that judgment be entered in its favor and against Defendants as follows:

- (a) The amount of the District's damages to be determined at trial;
- (b) Treble damages pursuant to the District's False Claims Act in an amount to be determined at trial;
- (c) Civil penalties pursuant to the District's False Claims Act for each false claim and false record or statement;
- (d) Punitive damages;
- (e) Interest, costs, and other recoverable expenses permitted by law; and
- (f) Such other relief as may be just and appropriate.

Jury Demand

The District of Columbia demands a trial by jury with respect to all issues.

Respectfully Submitted,

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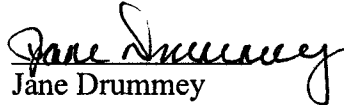
Date: April 20, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2015, I caused a true and correct copy of the foregoing District of Columbia's Complaint in Intervention for Treble Damages under the District's False Claims Act and For Other Relief to be served on counsel for the Relator by email and first-class mail to:

Colette G. Matzzie, Esq.
Phillips & Cohen LLP
2000 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Because this action is under seal pursuant to D.C. Code § 2-381.03(b)(2), Defendants have not been served with copies of the foregoing Notice.


Jane Drummey