HB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA, Plaintiff, v. SHUBHADA INDUSTRIES, d/b/a SHUBHADA, INC.; BABU METGUD, a/k/a BOB METGUD; SHUBHADA KALYANI, a/k/a SHUBHADA (SUE) METGUD; METCON AEROSPACE & DEFENSE, d/b/a METCON INDUSTRIES; NRI CAPITAL CORPORATION; and THE INNOVATION TECHNOLOGY & ENTERPRISE DEVELOPMENT CENTER, INC., Defendants.	:	17 4324 Civil Action No. ________ JURY TRIAL DEMANDED A TRUE COPY CERTIFIED TO FROM THE RECORD DATED: SEP 27 2017 ATTEST: Steve Tomas DEPUTY CLERK, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

This case is about a scheme to defraud the United States by overcharging the military for spare vehicle parts. Defendants Shubhada Industries, d/b/a Shubhada, Inc. ("Shubhada Industries" or "the company"), and its principals proposed to manufacture two light assemblies, a type of turn signal for munitions trailers, for the Defense Logistics Agency ("the Agency"). Their quote described Shubhada Industries as the manufacturer rather than a dealer. This distinction mattered because manufacturers, unlike dealers, do not retain invoices that trace items back to their source and show how much they cost. Lacking that information, the Agency accepted the quote. It was the Agency's first time buying these light assemblies.

Shubhada Industries nevertheless acted as a dealer. The company purchased the light assemblies from someone else for $1,351.62, charged the Agency $73,842.00 for the same items—a 5400 percent markup—and pocketed the difference. The company and its principals then made false statements to hide their dealer role. Knowing the truth, the Agency would not have purchased light assemblies at a 5400 percent markup.

Consequently, plaintiff the United States of America seeks triple damages and statutory penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733, against Shubhada Industries, its principals, and the alter-ego corporations that they created. In the alternative, the United States seeks repayment under theories of payment under mistake of fact and unjust enrichment.

PARTIES

1. Plaintiff is the United States of America.

2. Defendant Shubhada Industries is a corporation with a business address of 4201 Church Road, Suite 1, Mount Laurel, New Jersey, 08054. The company sells equipment to the United States to service military vehicles and aircraft, and claims to provide research and development services.

3. Defendant Metcon Aerospace and Defense, d/b/a Metcon Industries ("Metcon") is a corporation that shares a business address with Shubhada Industries at 4201 Church Road, Suite 1, Mount Laurel, New Jersey, 08054.

4. Defendant Babu Metgud, also known as Bob Metgud ("Metgud"), is an individual who resides at 861 Cox Road, Moorestown, New Jersey, and who serves as Shubhada Industries' director of engineering and Metcon's president.

5. Defendant Shubhada Kalyani, also known as Shubhada (Sue) Metgud ("Kalyani"), is an individual who resides at 861 Cox Road, Moorestown, New Jersey, and who serves as Shubhada Industries' president.

6. Defendant NRI Capital Corporation is a corporation that shares the same business address as Shubhada Industries and Metcon.

7. Metgud owns and operates NRI Capital Corporation, and Kalyani serves as its president.

8. Defendant The Innovation Technology & Enterprise Development Center, Inc., is a corporation that shares the same business address of Shubhada Industries, Metcon, and NRI Capital Corporation.

9. Metgud serves as the president of The Innovation Technology & Enterprise Development Center, Inc., which also employs Kalyani.

JURISDICTION AND VENUE

10. This Court possesses subject matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1345.

11. Venue is proper under 28 U.S.C. §§ 1391(b) and 1391(c), and under 31 U.S.C. § 3732(a), because an act proscribed by 31 U.S.C. § 3729 occurred within this district and at least one defendant transacted business in this district to result in a false claim.

THE AGENCY REQUESTED PRICE QUOTES FOR LIGHT ASSEMBLIES

12. On December 3, 2014, the United States Defense Logistics Agency Troop Support in Philadelphia, Pennsylvania, issued Request for Quotations No. SPE8E7-15-T-0715 inviting contractors to submit quotes to furnish two light assemblies for munitions trailers.

13. Light assemblies are heavy-duty turn signals that attach to the rear of munitions trailers. A photograph of two light assemblies appears below:

Light Assemblies

14. A munitions trailer is a type of towed military transport vehicle typically used to move munitions on aircraft carriers and land bases. A photograph of a munitions trailer, with attached light assemblies, appears below:

15. The issuer of the Request for Quotations, the Defense Logistics Agency, is a component of the United States Department of Defense that provides worldwide logistics support for combat missions.

16. The Agency is the largest logistics combat component that awards and administers contracts on behalf of a variety of departments within the Department of Defense, including the Department of the Navy.

17. The Agency sought to procure the light assemblies for a customer, the United States Navy, to use at a military base in Cherry Point, North Carolina.

18. Although the Navy provided the funds to purchase the light assemblies, the Agency administered the contract, payment, and post-award oversight.

19. The Agency had not purchased light assemblies prior to the solicitation. In other words, the light assemblies were a first time buy. The Request for Quotations therefore stated that there was no contract history available.

THE AGENCY REQUIRED DEALERS TO KEEP PRICE TRACING INFORMATION

20. The Request for Quotations contained a clause that applied to awardees who did not manufacture the light assemblies, such as dealers. *See* Master Solicitation, Rev. 25, Part A

(Oct. 2014) (citing Defense Logistics Acquisition Directive ("DLAD") 52.211-9014 (Aug 2012)), *available online at* http://www.dla.mil/HQ/Acquisition/Offers/eProcurement.aspx (last accessed July 25, 2017).

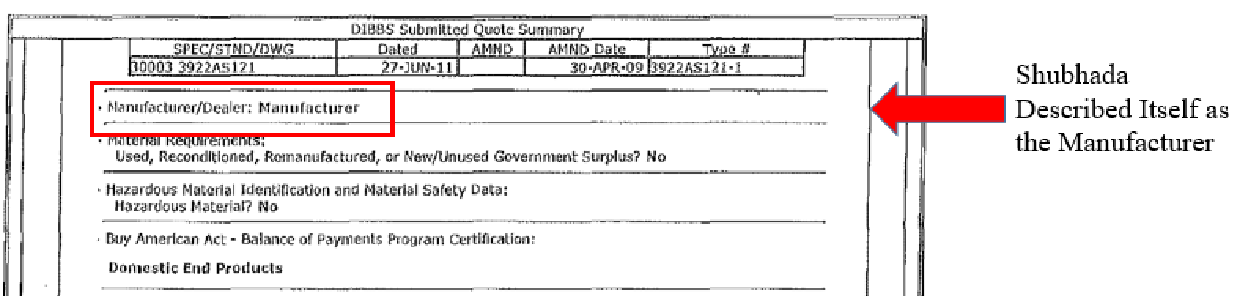
21. Under this dealer clause, if the awardee did not manufacture the light assemblies, the awardee needed to retain information tracing them back to their manufacturing source, including the purchase order invoices. This information would allow the Agency to evaluate the reasonableness of the dealer's price, among other things.

22. In defense contracts like this one, traceability documents are a tool that the Agency can use to ensure that the military pays the dealer a reasonable price, including a reasonable profit.

SHUBHADA INDUSTRIES DESCRIBED ITSELF AS THE MANUFACTURER

23. On December 16, 2014, Shubhada Industries submitted a quote to furnish two light assemblies for a total price of $73,842.00, or $36,921.00 each.

24. Shubhada Industries represented itself as the light assemblies' manufacturer rather than a dealer. In the following section of its quote, entitled "Product Offered Representations," Shubhada Industries stated that would manufacture the light assemblies:


DIBBS Submitted Quote Summary

SPEC/STND/DWG	Dated	AMND	AMND Date	Type #
30003 3922AS121	27-JUN-11		30-APR-09	3922AS121-1

- Manufacturer/Dealer: Manufacturer
- Material Requirements:
  Used, Reconditioned, Remanufactured, or New/Unused Government Surplus? No
- Hazardous Material Identification and Material Safety Data:
  Hazardous Material? No
- Buy American Act - Balance of Payments Program Certification:
  Domestic End Products

25. Shubhada Industries likewise described itself as a manufacturer in a government contracting database. By submitting the quote, Shubhada Industries acknowledged that the company was registered in the System for Award Management ("SAM") database, the primary

government repository for contractor information required to conduct business with the United States government. *See* Master Solicitation Part A (incorporating Defense Federal Acquisition Regulation Supplement 252.204-7004 (Feb. 2014)). At the time of the company's quote, Shubhada Industries described itself as a manufacturer in the SAM database.

26. As part of its annual certifications and representations in the SAM database for years 2014 and 2015, Shubhada Industries certified that for commercial items, the "place of manufacture" means "the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture."

27. The distinction between a dealer and a manufacturer was a crucial part of the Agency's decision-making process.

28. The Agency would have requested traceability documents if Shubhada Industries had described itself as a dealer because the price was sufficiently high and the Agency lacked a procurement history for these light assemblies.

29. The Agency had no reason to request traceability documents when it evaluated the company's price, because Shubhada Industries represented itself as the manufacturer. By definition, such documents do not exist when a company manufactures an item.

THE AGENCY ACCEPTED SHUBHADA INDUSTRIES' QUOTE

30. Shubhada Industries was the only entity that submitted a quote to furnish the light assemblies.

31. On May 11, 2015, the Agency accepted Shubhada Industries' quote by placing an order under purchase agreement number SPE8E7-15-M-7194 for two light assemblies at a total

price of $73,842.00. *See* Order for Supplies or Services ("Purchase Agreement") at 1, attached as Exhibit 1.

32. The Agency relied upon Shubhada Industries' representations—including its representation that the company was the manufacturer—when deciding to place the order.

33. The Purchase Agreement prohibited Shubhada Industries from substituting light assemblies manufactured by anyone else. The agreement provided that "[w]hen the purchase order text (POT) identifies supplies by manufacturer's name, commercial and Government Entity (CAGE) code, and part number," like the order did in this case, "the specified item(s) are the only item(s) acceptable under this contract" and Shubhada Industries "may not substitute a different item after award." Purchase Agreement at 7 (citing DLAD 52.211-9023 (Nov. 2011)), attached as Exhibit 1.

SHUBHADA INDUSTRIES BOUGHT THE LIGHT ASSEMBLIES FROM SOMEONE ELSE RATHER THAN MANUFACTURE THEM

34. On May 14, 2015, a few days after the Agency ordered the light assemblies from Shubhada Industries, Metgud contacted DeVal Corporation ("DeVal") in Philadelphia, Pennsylvania.

35. DeVal manufactures parts and equipment for the United States military, including the munitions trailers that contain light assemblies.

36. On May 20, 2015, Metgud asked DeVal to quote a price for the light assemblies that were depicted in Drawing Number 3922AS121—the same drawing of the light assemblies required under Shubhada Industries' Purchase Agreement with the Agency.

37. Metgud communicated with DeVal about the light assemblies using an email address and telephone number for Metcon.

38. The shared address of Shubhada Industries and Metcon was a two-room office located in a retail strip mall that also contained offices for a florist, real estate agent, an attorney, and other consumer retailers. It was not a manufacturing facility.

39. In response to Metgud's request, DeVal quoted a price of $675.81 for each light assembly.

40. On May 21, 2015, Metgud sent an email to DeVal to confirm that DeVal possessed all the specifications and drawings that would be necessary "to manufacture Part No. Assembly Drawing # 3922AS121," referring to the light assemblies required under the Purchase Agreement with the Agency:

> **We wanted to make sure that you have all the needed TDP, Specs & Drawings etc to manufacture the**
> **Part No. Assembly DRAWING # 3922AS121.**

41. Metgud attached a drawing of the light assemblies required under the Purchase Agreement and stated, "please find the enclosed Drawing and confirm that you have the same drawing you have to manufacture, please."

42. DeVal confirmed, stating "we do manufacture the light assembly" and the drawing is "the same item as the item DeVal Corporation manufactures."

43. On June 1, 2015, Metgud ordered light assemblies from DeVal at the quoted price of $675.81 each. DeVal thereafter began the process of manufacturing the light assemblies.

44. Metgud paid for the light assemblies through Metcon using the same physical address as Shubhada Industries.

45. Metgud signed the purchase order as Metcon's purchasing agent:

Purchasing Agent: BOB METGUD.

46. In DeVal's purchase order, Metcon indicated that DeVal was responsible for manufacturing full and complete light assemblies, pursuant to the solicitation requirements, by directing DeVal to "[p]rovide all materials and Manufacturing Labor per Contract Drawing # (30003) 3922AS121" at the quoted price:

METCON INDUSTRIES

PURCHASE ORDER

PO Number: J-127-101

Ordered From	Ship To
DE VAL CORP 7341 TULIP ST PHILADELPHIA PA 19136	Metcon Industries 4201 Chuch Road, Suite # 1 Mount Laurel N.J. 08054

Shipped to MetCon at same address as Shubhada

Date Ordered	Dated Wanted	Ship Via	Terms	F.O.B.
6-1-2015	SEE BELOW	UPS	C.O.D.	MOUNT LAUREL , N.J.

Please enter our order for the following items, to be shipped as directed.

Qty	Description	Price	Extension
12 Each	LIGHT ASSEMBLIES : Dwg # (30003) 3922AS121 Provide all materials and Manufacturing Labor per Contract Drawing # (30003) 3922AS121 & Quality Management System of ISO 9001-2008	$675.81	$8,109.72

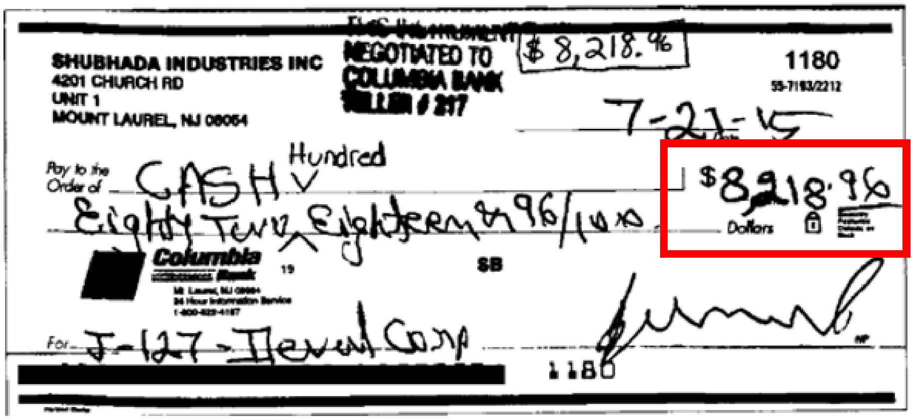
Price of $675.81 per light assembly, including all manufacturing labor

47. On July 17, 2015, DeVal shipped the light assemblies to the shared address for Shubhada Industries and Metcon in accordance with the drawings and specifications required by the Agency's solicitation.

48. The light assemblies that DeVal shipped to Metcon were ready to use on the Navy munitions trailers. They required no further engineering or development.

49. Prior to shipping the light assemblies to Metcon, DeVal plugged them in and tested them to ensure that they were working and ready to install on a munitions trailer.

50. Acting through Metgud, Metcon then paid DeVal for the light assemblies by withdrawing cash from Shubhada Industries' bank account. Metcon sent DeVal a cashier's check on the same day and in the same amount as the cash withdrawal:


SHUBHADA INDUSTRIES INC
4201 CHURCH RD
UNIT 1
MOUNT LAUREL, NJ 08054

NEGOTIATED TO COLUMBIA BANK TELLER # 217

$ 8,218.96

1180
55-7193/2212

7-21-15

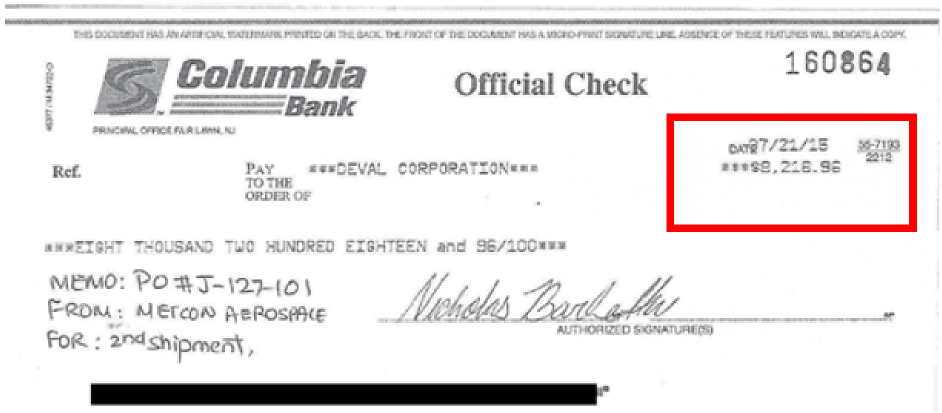
Pay to the Order of CASH $8,218.96

Eighty Two Hundred Eighteen & 96/100 Dollars

Columbia Bank

For J-127 - Deval Corp

[redacted] 1180


Columbia Bank

Official Check

160864

DATE 07/21/15 55-7193/2212

Ref.

PAY TO THE ORDER OF ***DEVAL CORPORATION***

***$8,218.96

EIGHT THOUSAND TWO HUNDRED EIGHTEEN and 96/100

MEMO: PO #J-127-101
FROM: METCON AEROSPACE
FOR: 2nd shipment,

AUTHORIZED SIGNATURE(S)

[redacted]

SHUBHADA INDUSTRIES ATTACHED ITS OWN LABEL

51. On July 21, 2015, Shubhada Industries received the completed light assemblies from DeVal.

52. Shubhada Industries, Metgud, and Metcon then affixed a label on the light assemblies to make it look like Shubhada Industries had manufactured them:

53. The label included a "model number," J-127, that matched the purchase order number from the actual manufacturer, DeVal.

54. On or about July 28, 2015, a few days after receiving the light assemblies, Metgud, Shubhada Industries, and Metcon shipped them to the military base in North Carolina with Shubhada Industries' label affixed.

55. Shubhada Industries, Metgud, and Kalyani then sought payment of $73,842 by furnishing the light assemblies and submitting an invoice under the Purchase Agreement.

56. On September 21, 2015, the Agency transmitted a wire payment to Shubhada Industries of $73,842, plus interest, to pay the company's invoice.

METGUD TRIED TO DECEIVE THE AGENCY

57. The Navy thereafter learned about the price of the light assemblies and believed it was excessive. Thus, on August 17, 2015, a Navy engineer at the military base in North Carolina who received the light assemblies contacted Shubhada Industries to inquire about the company's pricing and cost structure.

58. Metgud did not inform the Navy engineer that Shubhada Industries had acted as a dealer by purchasing the light assemblies from DeVal. To the contrary, Metgud told the Navy engineer that the price reflected Shubhada Industries' engineering and development costs. *See* Email from Babu Metgud to John Cropper (Aug. 17, 2015), attached as Exhibit 2.

59. According to Metgud's email, the "Product Engineering & Development and Manufacturing Tools and Process Engineering & Development costs are very high to achieve the technical objectives of the designs and specifications."

60. Metgud wrote that the light assemblies are "NOT a commercial or industrial Off the Shelf item nor a common commodity," and instead require "Custom Engineering, Custom Manufacturing Tool Design, [and] Custom Manufacturing Processes."

61. Metgud implied that the Navy engineer lacked sufficient training to understand these development costs, writing that the cost of the light assemblies "may seem very high, to untrained eyes," and the price merely "looks Artificially high to untrained eyes."

62. Metgud encouraged the Navy to buy more light assemblies from Shubhada Industries, explaining that the solution to the high price was "to increase the Quantities."

63. The Navy was not convinced. On October 16, 2015, the Navy notified the Agency that the light assemblies were overpriced and challenged Shubhada Industries' price under a price challenge program.

METGUD FALSELY DESCRIBED OVERTIME AND DEVELOPMENT COSTS

64. On October 19, 2015, in response to the Navy's price challenge, the Agency likewise asked Shubhada Industries and Metgud to provide information that would support the price.

65. This information was important because, among other reasons, Shubhada Industries warranted for a period of one year that the light assemblies conformed to all contract requirements. During this period of time, the Agency could reject the supplies and require a refund of the contract price, or "retain the supplies and require an equitable adjustment in the contract price" if the light assemblies failed to conform to the contract requirements. *See* Purchase Agreement at 12 (citing DLAD 52.246-9054 (Nov. 2011)), attached as Exhibit 1.

66. In response, Metgud sent a six-page letter on Shubhada Industries' behalf addressing the high price that the company charged the Agency. *See* Letter from Babu Metgud to Daniel Ferry (Oct. 15, 2015), attached as Exhibit 3.

67. In this letter, Metgud and Shubhada Industries did not tell the Agency that someone else had manufactured the light assemblies, or that Shubhada Industries had purchased them for a small fraction of the cost charged to the Agency.

68. Metgud instead explained that Shubhada Industries' development cost was "very high" for the light assemblies, similar to what he told the Navy engineer.

69. Metgud emphasized Shubhada Industries' labor costs as the supposed manufacturer, stating that "Shubhada got its engineers to work overtime and accomplished the task of engineering development."

70. Metgud also wrote that nobody except Shubhada Industries "understood the task, engineering design, manufacturing and performance requirements (which is complex)," but "Shubhada analyzed and understood the task."

71. Metgud described Shubhada Industries as a "lean, six sigma team manufacturer."

72. Kalyani likewise described Shubhada Industries as the manufacturer that had assembled component parts to make the light assemblies. In an email, she demanded that the Agency pay for the light assemblies and stated, "we need to pay our subs and suppliers."

73. Metgud and Kalyani's statements were false. Shubhada Industries did not incur "very high" development costs. Nor did Shubhada Industries accomplish the task of engineering development, get its engineers to work overtime, or function as a manufacturer. Shubhada Industries likewise obtained no component parts from "subs and suppliers" during its manufacturing process.

74. Shubhada Industries instead bought ready-to-use light assemblies from DeVal, like a dealer, and rebranded them to sell to the Agency at an exorbitant price.

75. Shubhada Industries did not have any hourly employees, much less a team of engineers, who could have worked overtime to manufacture the light assemblies. Metgud and Kalyani were the company's only employees.

76. Metgud, Kalyani, and Shubhada Industries knowingly made these false records and statements in an attempt to prevent the Agency from discovering that the company did not manufacture the light assemblies, allowing them to retain the overpayment.

77. In October 2015, the Agency asked Metgud, Kalyani, and Shubhada Industries to return the money that the Agency had overpaid, but they refused. The Agency also asked them for a cost breakdown. Summarizing this request, Metgud wrote in an email message dated October 23, 2015, that the Agency "tried to justify that we should refund the money."

78. Seeking to capitalize further on the scheme, Metgud urged the Agency to purchase more light assemblies. Metgud told the Agency that an "Economy-of-Scale is missing. To get a lower unit price, production quantity must be in the range of 40-50 pieces." As Megud put it, "Shubhada suggested to the buyer to increase the quantity and realize the lower unit price," but the "advice fell on deaf ears."

79. Metgud offered a price discount on these additional items, stating that Shubhada Industries would sell the Agency light assemblies for $32,916.00 each for any quantities greater than four, and $24,951.00 each for any quantities greater than six.

80. The Agency did not take up Metgud's invitation to buy dozens more light assemblies from the company at this "discounted" price.

81. Instead, the Agency referred the matter for a fraud investigation.

METGUD AND KALYANI REFUSED TO ANSWER QUESTIONS BY INVOKING THE FIFTH AMENDMENT

82. During the ensuing fraud investigation, Metgud and Kalyani declined to answer questions about the light assemblies by invoking their right against self-incrimination under the Fifth Amendment of the United States Constitution.

83. Unlike in criminal cases, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976).

84. Metgud invoked the Fifth Amendment 226 times.

85. For example, during oral testimony pursuant to 31 U.S.C. § 3733(h), Metgud declined to answer whether he misrepresented the company's role:

> Q. Did you misrepresent the role of Shubhada Industries to representatives of the Defense Logistics Agency so that you could keep money as a manufacturer?
>
> A. On the advice of my counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

86. Metgud also declined to answer whether he sought to retain the Agency's overpayment for the light assemblies:

> Q. Did you tell the Defense Logistics Agency that Shubhada Industries manufactured the light assemblies so that you could keep the higher price?
>
> A. On the advice of my counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

87. Moreover, Metgud declined to answer whether the company earned a profit of 5400 percent on the light assemblies:

> Q. Did you, in fact, make a profit on the light assemblies?
>
> A. On the advice of my counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.
>
> Q. How much profit did you actually make on the light assemblies?
>
> A. On the advice of my counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

88. Kalyani similarly invoked the Fifth Amendment 179 times.

89. For example, Kalyani declined to answer whether Shubhada Industries misrepresented itself as a manufacturer:

> Q. Did Shubhada Industries describe itself as a manufacturer in order to conceal its real role as a dealer?
>
> A. On the advice of counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

(Continued on next page)

Q. At the time that Shubhada Industries submitted the bid, did you represent Shubhada Industries as the manufacturer of the light assemblies?

A. On the advice of counsel, I respectfully decline to answer because to do so would tend to make me a witness against myself.

Q. At the time of submitting the bid to the Defense -- Defense Logistics Agency, did Shubhada Industries have the option of representing itself as a dealer?

A. On the advice of counsel, I respectfully decline to answer because to do so would tend to make me a witness against myself.

90. Kalyani also refused to divulge her relationship with other companies:

Q. Do you hold a position at Metcon Industries?

A. On the advice of counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

Q. Do you work for Metcon Industries?

A. On the advice of counsel, I respectfully decline to answer because to do so would tend to make me a witness against myself.

Q. Do you hold an officer position in any company or business?

A. On the advice of counsel, I respectfully decline to answer because to do so would tend to make me a witness against myself.

91. Kalyani similarly refused to state whether Shubhada Industries performed any work to manufacture the light assemblies:

> Q. Did anyone at Shubhada Industries
> perform any work at all relating to the light
> assemblies at 4201 Church Road in New Jersey?
> A. On the advice of counsel, I
> respectfully decline to answer because to do so
> may tend to make me a witness against myself.

ALTER EGOS OF SHUBHADA INDUSTRIES

92. Defendants NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are legal fictions that serve as alter egos of Shubhada Industries.

93. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., share the same address and office location as Shubhada Industries: a two-room office in a retail strip mall with a common, shared entrance.

94. NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries pay their collective rent for the shared office space through a single shared entity.

95. NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries do not have separate or distinguishable office spaces.

96. NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries share the same officers and employees.

97. The employees of NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries have access to the same files, materials, and paperwork.

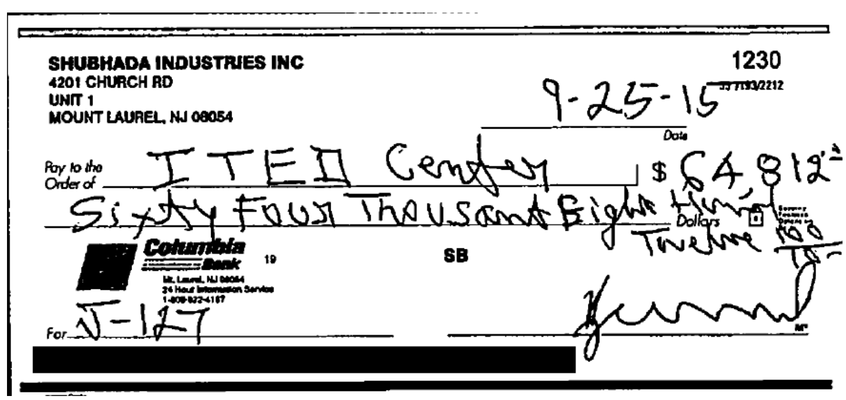
98. Kalyani serves as the president of Shubhada Industries and NRI Capital Corporation, and Metgud owns NRI Capital Corporation and serves as president of The Innovation Technology & Enterprise Development Center, Inc.

99. The same person, Metgud, writes checks and controls the finances of NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries.

100. NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., and Shubhada Industries freely transfer money between their bank accounts.

101. For example, on September 23, 2015, Shubhada Industries received the government's wire transfer of $73,842.00 in the company's checking account for the light assemblies.

102. Two days later, on September 25, 2015, Metgud wrote a check from Shubhada Industries' bank account transferring most of these proceeds—$64,812.00—to The Information Technology & Enterprise Development Center, Inc.:


SHUBHADA INDUSTRIES INC
4201 CHURCH RD
UNIT 1
MOUNT LAUREL, NJ 08054

1230

9-25-15
Date

Pay to the Order of ITED Center $64,812

Sixty Four Thousand Eight hundred Twelve Dollars

Columbia Bank

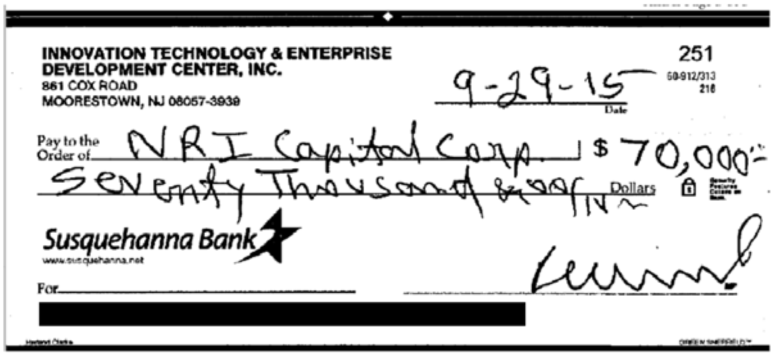
SB

For J-127

[redacted]

103. The memo line of the check stated "J-127," referring to DeVal's purchase order number for the light assemblies.

104. On September 29, 2015, as soon as the funds arrived in the account, Metgud wrote a check transferring the funds to NRI Capital Corporation, along with an additional amount to make an even number:



INNOVATION TECHNOLOGY & ENTERPRISE
DEVELOPMENT CENTER, INC.
861 COX ROAD
MOORESTOWN, NJ 08057-3939

251

Date 9-29-15

Pay to the Order of NRI Capital Corp. $ 70,000

Seventy Thousand & 00/100 Dollars

Susquehanna Bank
www.susquehanna.net

For

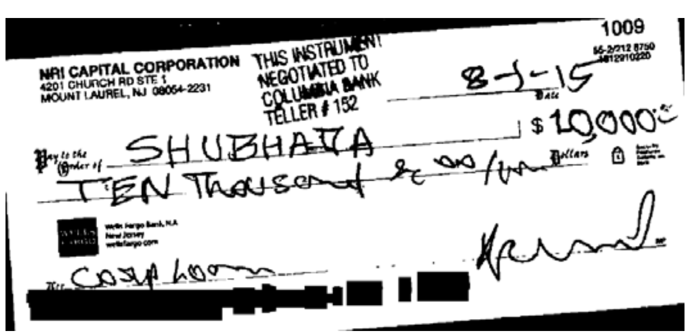
[redacted]

105. Over the following months, Metgud then transferred these funds back to the Shubhada Industries account in smaller increments.

106. Kalyani refused to divulge information about these money transfers:

> Q. Can you tell me what happened to the money that Shubhada Industries earned from the light assemblies?
>
> A. On the advice of counsel, I respectfully decline to answer because to do so may tend to make me a witness against myself.

107. Shubhada Industries also shared cash with NRI Capital Corporation, Metgud, and Kalyani. For example, on August 1, 2015, NRI Capital Corporation transferred $10,000.00 to Shubhada Industries' account, describing it on the check's memo line as a "corp. loan":



NRI CAPITAL CORPORATION
4201 CHURCH RD STE 1
MOUNT LAUREL, NJ 08054-2231

THIS INSTRUMENT NEGOTIATED TO COLUMBIA BANK TELLER # 152

1009

Date 8-1-15

Pay to the Order of SHUBHADA $ 10,000

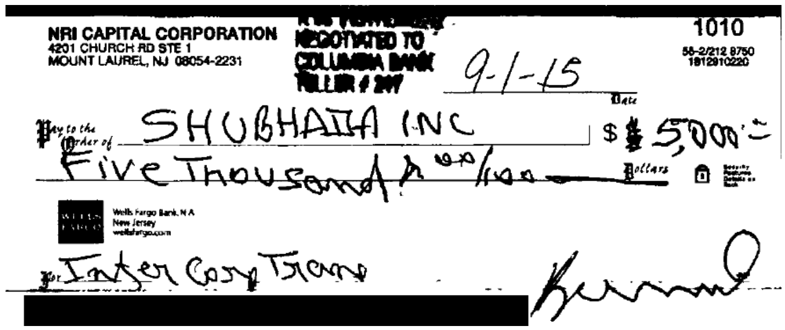
TEN Thousand & 00/100 Dollars

For corp loan

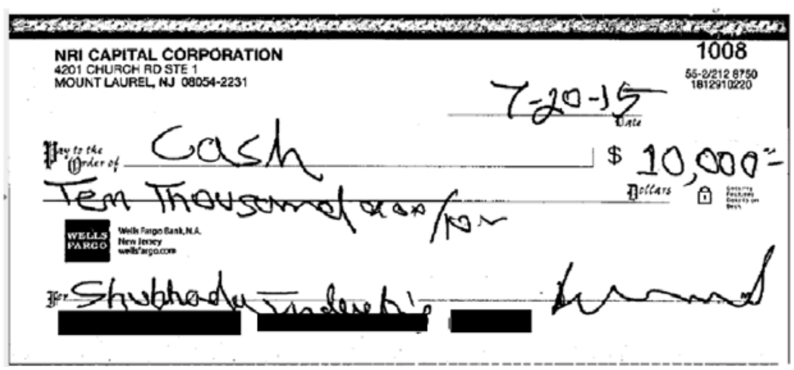
[redacted]

108. This transfer of money was open-ended with no specific period within which Shubhada Industries had to repay it, no interest rate, and no supporting documentation.

109. The next month, NRI Capital Corporation transferred an additional $5,000.00 to Shubhada Industries, describing it on the check's memo line as an "inter corp. transfer":



110. And, on other occasions, Metgud wrote checks from NRI Capital Corporation's account and received cash to operate Shubhada Industries:



111. Metgud and Kalyani then withdrew money from Shubhada Industries' bank account to pay their personal expenses, including dental fees, university tuition, rental payments for a personal residence, home utility bills, and multiple unexplained cash withdrawals totaling thousands of dollars.

112. Metgud also arranged for monthly direct deposits of his personal Social Security benefits into The Innovation Technology & Enterprise Development Center, Inc.'s bank account.

113. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries by virtue of the fact that, among

other things, these entities (1) share the same officers and employees (Metgud and Kalyani); (2) share a common address and work space at 4201 Church Road; (3) transferred money freely between themselves; (4) shared their assets when they purchased the light assemblies and after they received payment from the Agency; (5) provided interest free loans to Shubhada Industries and/or gave the company money that was not paid back; and (6) funded a bank account that Metgud and Kalyani used for their personal expenses.

114. Because NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries, they are liable for the acts of Shubhada Industries and its officers, directors, and employees.

COUNT I
Violation of the False Claims Act: Presentation of a False Claim
(31 U.S.C. § 3729(a)(1)(A))
Defendants Shubhada Industries, Metgud, Kalyani, Metcon, NRI Capital Corporation, and The Innovation Technology & Development Center, Inc. (All Defendants)

115. The United States incorporates by reference paragraphs 1 through 114 as though fully set forth herein.

116. This is a claim against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace & Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Development Center, Inc.—for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1)(A), as amended, for knowingly presenting or causing to be presented a false or fraudulent claim to the United States.

117. The False Claims Act defines "knowingly" as meaning that a defendant "(1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b).

118. By enacting the False Claims Act, Congress expressed its desire "to reach all types of fraud, without qualification, that might result in financial loss to the government." *United States v. Neifert-White Co.*, 390 U.S. 228, 233 (1968). Thus, a false claim "may take many forms, the most common being a claim for goods or services not provided, or provided in violation of contract terms, specifications, statute or regulation." S. Rep. No. 99-345 at 9, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5274.

119. Shubhada Industries agreed to furnish light assemblies manufactured by the company, as set forth in the Purchase Agreement.

120. Shubhada Industries did not furnish light assemblies manufactured by the company, as the Purchase Agreement required, and instead furnished light assemblies manufactured by someone else, DeVal Corporation, at a substantially lower cost.

121. Shubhada Industries did not tell the Agency that the company had purchased these items from someone else. To the contrary, Shubhada Industries submitted an invoice for payment under the Purchase Agreement as the light assemblies' manufacturer.

122. By furnishing the light assemblies and causing the submission of an invoice to the Agency, defendants caused Shubhada Industries to submit a claim for payment of $73,842.00, which was 5400 percent more than the company's cost. This claim was false.

123. The Agency would have requested price tracing information, learned the actual cost, and declined to accept the quote if Shubhada Industries had told the Agency that it purchased, or planned to purchase, the light assemblies from DeVal.

124. Metgud, Kalyani, and Shubhada Industries knew that the company's claim for payment was false, because they subsequently made false statements describing the company's manufacturing processes and engineering. They had no reason to lie except to conceal the scheme from the Agency.

125. By virtue of the acts described above, defendants presented or caused to be presented a claim for payment to the United States knowing that the claim was false, fictitious, or fraudulent, or with reckless disregard or deliberate ignorance of the truth or falsity of the claim.

126. The United States paid the false or fraudulent claim because of these acts, causing damage to the United States.

127. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, those corporations are liable for the acts of Shubhada Industries and its officers, directors, and employees.

128. By reason of the false or fraudulent claim that defendants presented or caused to be presented, the United States is entitled to three times the amount by which it was damaged, plus a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each false claim presented or caused to be presented.

COUNT II
Violation of the False Claims Act: Retention of Overpayment
(31 U.S.C. § 3729(a)(1)(G))
Defendants Shubhada Industries, Metgud, Kalyani, Metcon, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc. (All Defendants)

129. The United States incorporates by reference paragraphs 1 through 128 as though fully set forth herein.

130. This is a claim against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace & Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1)(G), as amended, for knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay money to the United States.

131. Under the so-called "reverse false claims" provision, the False Claims Act provides for treble damages and penalties against any person who "knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729(a)(1)(G).

132. An obligation under the False Claims Act is "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." 31 U.S.C. § 3729(b)(3) (emphasis added).

133. "The plain text of the [False Claims Act's] reverse claims provision is clear: any individual who 'knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government' may be subject to liability." *United States ex rel. Customs Fraud Investigations, LLC. v. Victaulic Co.*, 839 F.3d 242, 254 (3d Cir. 2016).

134. Shubhada Industries, Metgud, Kalyani, and Metcon knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay money to the Government for the light assemblies by retaining an overpayment.

135. Specifically, Shubhada Industries, Metgud, Kalyani, and Metcon knew that Shubhada Industries did not manufacture the light assemblies as required by the Purchase Agreement, but they made false statements, created false records, and concealed DeVal's role so that they could retain the higher, non-dealer price that the Agency erroneously paid.

136. Shubhada Industries, Metgud, and Kalyani then falsely described the company's work as a manufacturer because, pursuant to the contract, light assemblies that it had manufactured were the only acceptable items.

137. Shubhada Industries, Metgud, Kalyani, and Metcon knew that the Agency would have paid a substantially lower price for the light assemblies if Shubhada Industries had described itself as a dealer, or if Shubhada Industries had disclosed that it furnished these items as a dealer despite the Purchase Agreement's requirements.

138. Accordingly, when the Agency asked Shubhada Industries, Metgud, and Kalyani to return the overpayment in October 2015, they refused to do so. For the same reason, Metcon concealed its role by purchasing the light assemblies from DeVal using cash that it withdrew from Shubhada Industries' account.

139. Shubhada Industries, Metgud, and Kalyani continue to retain this overpayment. Metcon also continues to retain this overpayment by virtue of acting as Shubhada Industries and purchasing the light assemblies using that company's money.

140. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, they are liable for the acts of Shubhada Industries and its officers, directors, and employees.

141. The acts and omissions described above caused damages to the United States.

142. By reason of the conduct described above, the United States is entitled to three times the amount by which it was damaged, plus a civil penalty of not less than $10,781.00 and not more than $21,563.00.[1]

[1] The False Claims Act provides for a civil penalty of not less than $5,000 and not more than $10,000. 31 U.S.C. § 3729(a)(1). This penalty amount increased to $5,500 to $11,000 for violations occurring after September 28, 1999, *see* 28 C.F.R. § 85.3 and 64 Fed. Reg. 47099, *47103 (1999), and further increased to $10,781 to $21,563 effective August 1, 2016, for violations occurring after November 2, 2015, *see* 81 Fed. Reg. 42491, *42494 (2016). This complaint seeks to recover the penalty amounts that correspond to the time of the alleged violations. The amounts vary depending on the count of the complaint, because some violations occurred before November 2, 2015, and some occurred after.

COUNT III
Violation of the False Claims Act: Making or Using a False Record or Statement
(31 U.S.C. § 3729(a)(1)(B))
Defendants Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.

143. The United States incorporates by reference paragraphs 1 through 142 as though fully set forth herein.

144. This is a claim against defendants Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1)(B), as amended, for knowingly making, using, or causing to be made or used, false records or statements material to a false or fraudulent claim.

145. A "claim" under the False Claims Act includes, among other things, any request for money or property that that government makes to a contractor when the government has provided any portion of the money or property requested. 31 U.S.C. § 3729(b)(2)(A)(ii).

146. In response to the Navy's price challenge, the Agency requested cost information from Metgud and Shubhada Industries in order to justify the price.

147. At the time of these requests, the Agency had already paid the full, non-dealer contract price to Shubhada Industries.

148. Metgud and Shubhada Industries made false statements and created false records to make it look like Shubhada Industries manufactured the light assemblies, knowing that the Agency challenged the price and requested a refund. Kalyani then used these false records to demand payment from the Agency and falsely stated that the company needed to pay "subs and suppliers" from its manufacturing process.

149. By reason of the conduct described above, Shubhada Industries, Metgud, and Kalyani knowingly made, used, or caused to be made or used, false records or statements material to a false or fraudulent claim to the United States.

150. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, those corporations are liable for the acts of Shubhada Industries and its officers, directors, and employees.

151. The acts and omissions described above caused damage to the United States.

152. By reason of the false records or false statements that Shubhada Industries and Metgud presented or caused to be presented, the United States is entitled to three times the amount by which it was damaged, plus a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each false record or statement.

COUNT IV
Violation of the False Claims Act: Conspiracy
(31 U.S.C. § 3729(a)(1)(C))
Defendants Shubhada Industries, Metgud, Kalyani, Metcon, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc. (All Defendants)

153. The United States incorporates by reference paragraphs 1 through 152 as though fully set forth herein.

154. This is a claim against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace and Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729(a)(1)(C), as amended, for entering into a conspiracy to defraud the United States by getting a false claim paid in violation of 31 U.S.C. § 3729(a)(1)(A), (B), and (G).

155. Shubhada Industries, Metgud, Kalyani, and Metcon conspired to conceal the company's role as a dealer rather than manufacturer of the light assemblies, which, if known, would have reduced the obligations of the United States or resulted in repayments from the company to the Agency.

156. Shubhada Industries, Metgud, Kalyani, and Metcon took substantial steps to further the conspiracy by preparing false records, making false statements, submitting claims for reimbursement for payment, and taking action to obtain the light assemblies from DeVal as the real manufacturer.

157. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, those corporations are liable for the acts of Shubhada Industries and its officers, directors, and employees.

158. The acts and omissions described above caused damage to the United States.

159. By reason of the conduct above, the United States is entitled to three times the amount by which it was damaged, plus a civil penalty of not less than $5,500.00 and not more than $11,000.00.

COUNT V
Common Law Fraud
Defendants Shubhada Industries, Metgud, Kalyani, Metcon, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc. (All Defendants)

160. The United States incorporates by reference paragraphs 1 through 159 as through fully set forth herein.

161. This is a claim of common law fraud against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace & Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.

162. Metgud, Shubhada Industries, and Metcon made false representations about Shubhada Industries' role in manufacturing the light assemblies, and Kalyani adopted the false representations in her communications with the Agency.

163. These false representations, described more fully above, were material to the Agency's obligation to transmit payments under the Purchase Agreement.

164. Shubhada Industries, Metgud, Kalyani, and Metcon knew that these representations were false.

165. Shubhada Industries, Metgud, Kalyani, and Metcon made the representations in order to deceive the Agency and cause the Agency to accept the company's quote and make full payments under the Purchase Agreement.

166. The Agency relied upon the representations when entering into the Purchase Agreement and when evaluating the contract price after the Navy's price challenge.

167. Shubhada Industries, Metgud, Kalyani, and Metcon also failed to disclose material information to the Agency by purchasing light assemblies as a dealer and furnishing those items to the Agency at the non-dealer price.

168. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, those corporations are liable for the acts of Shubhada Industries and its officers, directors, and employees.

169. By reason of the conduct described above, the United States is entitled to damages in an amount to be determined by a trier of fact.

COUNT VI
Payment by Mistake of Fact
Defendants Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc. (All Defendants)

170. The United States incorporates by reference paragraphs 1 through 169 as though fully set forth herein.

171. This is a claim for the recovery of monies paid under mistake of fact against Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.

172. The United States made payments on the claim that these defendants submitted, or caused to be submitted, under the erroneous belief that the claim was proper.

173. This erroneous belief was material to the payment that the United States made to Shubhada Industries. Shubhada Industries then transferred the proceeds of the payment to NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., which transferred them back to Shubhada Industries in smaller increments for the benefit of Metgud and Kalyani.

174. Because of this mistake of fact, Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, The Innovation Technology & Enterprise Development Center, Inc., received monies to which they were not entitled and caused damages to the United States.

175. NRI Capital Corporation and The Innovation Technology & Enterprise Development Center, Inc., are alter egos of Shubhada Industries. Thus, those corporations are liable for the acts of Shubhada Industries and its officers, directors, and employees.

176. By reason of the payments described above, the United States is entitled to damages in an amount to be determined by a trier of fact.

COUNT VII
Unjust Enrichment
Defendants Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.

177. The United States incorporates by reference paragraphs 1 through 176 as though fully set forth herein.

178. This is a claim for the recovery of monies that defendants Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., obtained through unjust enrichment.

179. The conduct described above unjustly enriched Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., with federal monies that in good conscience they should not be allowed to retain.

180. Shubhada Industries, Metgud, Kalyani, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., have been unjustly enriched to the detriment of the United States.

181. By reason of the payments described above, the United States is entitled to damages in an amount to be determined by a trier of fact.

CLAIM FOR RELIEF

WHEREFORE, the United States of America demands judgment against defendants as follows:

a. On Count I (False Claims Act: Presentation of a False Claim), judgment against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace & Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for treble the damages sustained by the United States, plus civil penalties assessed against them of between $5,500.00 and $11,000.00 per false claim as mandated by law, and post-judgment interest, costs, and other proper relief;

b. On Count II (False Claims Act: Retention of Overpayment), judgment against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace and Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for treble the damages sustained by the United States, plus civil penalties assessed against them of between $10,781.00 and $21,563.00 as mandated by law, and post-judgment interest, costs, and other proper relief;

c. On Count III (False Claims Act: Making or Using a False Record or Statement), judgment against defendants Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., for treble the damages sustained by the United States, plus civil penalties assessed against them of between $5,500.00 and $11,000.00 as mandated by law, and post-judgment interest, costs, and other proper relief;

d. On Count IV (False Claims Act: Conspiracy), judgment against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace and Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for treble the damages sustained by the United States, plus civil penalties assessed against them of between $5,500.00 and $11,000.00 as mandated by law, and post-judgment interest, costs, and other proper relief;

e. On Count V (Common Law Fraud), judgment against all defendants—Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, Metcon Aerospace & Defense, d/b/a Metcon Industries, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc.—for the damages sustained by the United States, to be determined at trial, plus post-judgment interest, costs, and other proper relief

f. On Count VI (Payment by Mistake of Fact), judgment against defendants Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., for the damages sustained by the United States, to be determined at trial, plus post-judgment interest, costs, and other proper relief;

g. On Count VII (Unjust Enrichment), judgment against defendants Shubhada Industries, d/b/a Shubhada, Inc., Babu Metgud, a/k/a Bob Metgud, Shubhada Kalyani, a/k/a Shubhada (Sue) Metgud, NRI Capital Corporation, and The Innovation Technology & Enterprise Development Center, Inc., for the damages sustained by the United States, to be determined at trial, plus pre-judgment and post-judgment interest, costs, and other proper relief; and

h. For such other and further relief as the Court deems just and equitable.

Respectfully submitted,

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