

Cause No. ~~2002-58710~~

FAROUK SYSTEMS, INC.,  
Plaintiff,

v.

ORACLE, CORPORATION,  
Defendant.

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IN THE DISTRICT COURT  
  
OF HARRIS COUNTY, TEXAS  
  
234TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

COMES NOW Farouk Systems, Inc. ("Farouk" or "Plaintiff"), and files this Original Petition complaining of Oracle Corporation ("Oracle" or "defendant") as follows:

**I. DISCOVERY LEVEL**

1. Plaintiff contemplates that this case will proceed under Discovery Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II. PARTIES AND SERVICE**

2. Plaintiff, Farouk Systems, Inc., is a Texas Corporation with its principal place of business in Harris County Texas.

3. Defendant, Oracle Corporation, is a Delaware Corporation with its principal place of business in Redwood City, California. Defendant may be served with process through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 800 Brazos, Suite 750, Austin, Texas 78701.

**III. JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over Defendant because Defendant has systematic and continuous contacts with the State of Texas. Additionally, the causes of action and damages detailed below are within the subject matter jurisdiction of this Court.

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DEPUTY

5. Venue of this action is proper in this county under the general venue rule because all or a substantial part of the events or omissions occurred in this county. This case also arises out of a contract that was performed in whole or in part in Houston, Harris County, Texas.

#### IV. STATEMENT OF FACTS

6. Farouk produces and sells hair care products to salons around the world. The company has achieved tremendous growth in the last few years. Due to this growth, Farouk needed to expand its existing software systems. It sought to purchase and implement new software to encompass reporting, inventory tracking, order to cash, e-commerce, materials, work orders and procedures for payment as well as accounts payable, accounts receivable, cash management, and general ledger.

7. In mid to late 2001 Farouk learned that Oracle was aggressively promoting new software that would purportedly address Farouk's software needs.

8. On or around September 27, 2002, Farouk Systems met with Oracle. In this meeting, Oracle represented that their software could address all of the above-referenced software needs. Based upon these representations, Farouk entered into an Oracle License and Service Agreement (the "Agreement") on or about October 15, 2001.

9. After numerous delays, the software was brought online in January 2002. The software immediately failed to perform as promised. The defects in the software were substantial and prevented Farouk from efficiently running its business. Specifically, the software failed to generate orders and invoices, or generated incomplete orders and invoices, thereby making the information it produced unreliable. Additionally, the inventory function of the software has failed to accurately perform. Farouk's consultant on this project, Deloitte and Touche (Deloitte"), also had to perform numerous patches in an attempt to shore up the deficiencies in the software.

10. For three months, both Farouk and Deloitte attempted to resolve the bugs and defects in the software, but the software simply did not work. In March 2002, Farouk took the software off-line and was forced to revert back to its old software system. During the three months that the software was

in use, its defects severely limited Farouk's ability to complete its sales orders. Accordingly Farouk saw a sharp decline in its monthly sales and a decrease in customer satisfaction with its order processing. Immediately after the software was taken off-line the monthly sales jumped to pre-software levels.

## V. CAUSES OF ACTION

11. All conditions precedent to pursuing this action have been performed or have occurred.

Farouk adopts by reference the foregoing facts in support of each of its causes of action.

### A. Breach of Contract

12. Oracle breached the Agreement by providing software that did not comply with the representations in the Contract. Specifically, Oracle provided software that failed to perform vital functions such as generating orders and invoices and keeping accurate inventory. Oracle's breach of the Contract has proximately caused Farouk damages in excess of the jurisdictional limits of this Court. Farouk seeks to recover from Oracle these damages together with pre-judgment interest on all amounts due at the maximum lawful rate.

### B. Breach of Warranty

13. Oracle has breached express and implied warranties with respect to the software in that it does not work as intended and is not fit for its particular purpose. This breach has proximately caused Farouk damages for which it seeks recovery from Oracle.

### C. Fraud

14. Oracle induced Farouk into the Contract through a series of representations about its capabilities. These representations proved false. Farouk relied on these false, misleading representations to its detriment thereby suffering damages that it seeks to recover from Oracle. Oracle's misrepresentations were made knowingly and/or with the intent to deceive. As a consequence, Farouk also seeks to recover punitive damages along with its actual damages.

**D. Attorney's Fees**

15. Farouk has made demand upon Oracle for a return of the money expended by Farouk in connection with the Contract, but Oracle has failed to return this money. Farouk, therefore, finds it necessary to retain the undersigned attorneys to bring this action. Farouk seeks recovery of its reasonable and necessary attorney's fees incurred in such action pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, and as an aspect of punitive damages.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Farouk Systems, Inc., plaintiff, respectfully requests that Oracle Corporation, defendant, be served with process herein, and that after trial or other hearing of this matter, Farouk Systems, Inc. recover judgment for its actual and exemplary damages from defendant, together with pre-judgment interest, attorney's fees, costs of court, and post-judgment interest on all amounts awarded. Farouk Systems, Inc. also requests such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

Bracewell & Patterson, L.L.P.

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