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8 AMERICAN ARBITRATION ASSOCIATION

9 CHARTONE, INC., a Delaware corporation;) Case No.:
10 Claimant,)
11 vs.) CLAIM FOR BREACH OF CONTRACT;
12 NETCUBE SYSTEMS, INC., a California) BREACH OF WARRANTY; FRAUD
13 corporation; and DOES 1 through 50,)
14 inclusive;)
15 Respondents.)

16 Comes now Claimant ChartOne, Inc. (“CHARTONE”) and alleges as follows:

17 **GENERAL ALLEGATIONS**

18 1. Claimant CHARTONE is, and at all relevant times herein was, a Delaware
19 corporation authorized to do business in the State of California, and maintaining a local place of
20 business at 226 Airport Parkway, Suite 200, San Jose, California.

21 2. Claimant is informed and believes, and thereon alleges, that Respondent Netcube
22 Systems, Inc. (hereinafter “NETCUBE” or “Respondent”) is, and at all relevant times herein
23 was, a California corporation with its principal place of business located at 1275 Arbor Ave., Los
24 Altos, California.

25 3. Claimant is ignorant of the true names and capacities of Respondents claimed
26 against herein as DOES 1 through 50, inclusive, and therefore claims against these Defendants
27 by such fictitious names. Claimant prays leave to amend or supplement this Claim to allege their
28 true names and capacities when the same have been ascertained.

1 9. NETCUBE and DOES 1 through 50 materially breached the Master Services
2 Agreement and associated Task Orders, including the implied covenant of good faith and fair
3 dealing, by, among other conduct,

4 a. failing and/or refusing to implement the PeopleSoft HR and Finance
5 modules in a manner consistent with good practice in the industry and so as not to damage or
6 otherwise interfere with CHARTONE'S existing hardware and software packages; and

7 b. charging CHARTONE for services either not authorized to be performed,
8 or at rates higher than those agreed upon by CHARTONE in the Master Services Agreement and
9 associated Task Orders.

10 10. The breaches by NETCUBE and DOES 1 through 25 of the Master Service
11 Agreement and associated Task Orders forced CHARTONE to incur expenses for additional
12 administrative and consulting time, and resulted in business inefficiencies and productivity
13 losses. Additionally, CHARTONE was forced to retain another consulting company to correct
14 NETCUBE'S and DOES 1 through 25's work, including the cost to re-build the servers and to
15 correctly re-install the necessary software at an estimated cost in excess of \$400,000.00.

16 11. CHARTONE has performed all of its obligations and satisfied all conditions for
17 which it was responsible under the Master Services Agreement and Task Orders, except for those
18 conditions and obligations that were excused, waived or otherwise discharged.

19 12. As a direct and proximate result of NETCUBE'S and DOES 1 through 25's
20 breaches, CHARTONE has incurred damages in an amount in an amount to be proved more
21 specifically at arbitration, but which is currently estimated to exceed \$700,000.00.

22 WHEREFORE, CHARTONE prays for judgment against NETCUBE and DOES 1
23 through 25 as more fully set forth below.

24 **SECOND CAUSE OF ACTION**

25 [Breach of Warranty Against NETCUBE and DOES 1 through 35]

26 13. Claimant hereby realleges and incorporates by this reference each and every
27 allegation contained in Paragraph 1 through 12 of its Claim as though fully set forth herein.

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