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**To:** [BROWN Katherine \\* GOV](#); [LEONARD Kristen \\* GOV](#); [TRUMMER Ivo \\* GOV](#); [ISAAK Misha \\* GOV](#); [PETTIT Alex \\* DAS](#)  
**Cc:** [BOYLES Stormy \\* GOV](#); [REDACTED] [ktb@](#) [REDACTED]  
**Subject:** Confidential  
**Date:** Tuesday, September 13, 2016 6:05:52 PM  
**Attachments:** [Memo to Counsel re settlement 2016 FINAL.docx](#)

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Colleagues, attached is the embargoed script and time sequencing memo I've prepared for the rollout of the settlement announcement on Thursday morning at 10:15 (tentative). We are planning to roll this out at a news conference in Portland. Ellen Rosenblum cannot make it – she is in Washington, D.C., this week, so we are inviting Fred Boss to join you, Misha, and Alex Pettit at the podium.

I am working with DOJ and Oracle to complete the joint news release. Governor, Misha and I will bring your news conference remarks to the prep session tomorrow afternoon so you can become familiar with them, practice them, and get any questions answered before you need to make calls to leadership or address the media. Thanks, all, and congrats to Misha for his hard work that led to this incredibly positive outcome. KG

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**MEMORANDUM –DRAFT**

September 13, 2016

TO: Governor Kate Brown  
Kristen Leonard  
Ivo Trummer  
CC: Misha Isaak, Deputy General Counsel  
FR: Kristen Grainger, Communications Director  
RE: Time line and script re: Oracle settlement

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**RUN OF SHOW – Ivo, note new time frames:**

Oregon has entered into a settlement agreement with Oracle that is likely to be announced on Thursday, September 15, 2016, with limited, preliminary notice provided as follows:

1. The evening prior (i.e., Wednesday evening, September 14<sup>th</sup>) to the public announcement, Governor Brown calls the Speaker and President directly (the AG may want to participate in these calls – if so, Misha will be present and conference her in), **notifies Leonard/Trummer/Grainger when completed.**
4. Thursday, September 15<sup>th</sup> between 9:30 a.m. and 11:00 a.m., Trummer/Knott proceed with key legislative staff outreach including Ken Rocco, and then **notify Leonard/Grainger when completed.**
6. While that is happening, Leonard or her designate contacts Sen. Wyden and Sen. Merkley's offices. Karmen informs the rest of Oregon's federal delegation as needed. Grainger informs senior policy staff in the Governor's Office via email.

**Embargo remains in place until publicly announced.**

## TALKING POINTS:

What follows are talking points to use in conveying the substance of the embargoed settlement to those who should be informed in advance of a public announcement:

- What I am about to share with you is embargoed until announced publicly. Sharing any aspect of it, including timing, could compromise or possibly scuttle the agreement. **(This is really important!)**
- Governor Brown and Attorney General Rosenblum have reached a settlement with Oracle.
- This settlement agreement not only resolves this costly litigation and closes a damaging chapter of public finger-pointing and failure; it provides new resources for STEM programs, and gives Oregon the opportunity to significantly improve its IT infrastructure and its services to Oregonians.
- It is a solid agreement, and we are confident this is the right thing for Oregon.

## COMPONENTS:

The settlement has two main components – in-kind, and cash:

### 1. In-Kind:

- A 5-year unlimited license agreement (ULA) for a package of business enterprise software for the State of Oregon – a tool for the Legislature to use to significantly modernize the State’s IT system with the opportunity to save the State hundreds of millions of dollars;
- Customer support services for the State of Oregon provided at no cost for the duration of the ULA with a market value of \$60 million. The same services will be provided at a discount thereafter; and
- Hardware (servers), estimated value is \$20-\$30 million.

2. Cash:

- \$25 million in cash to reimburse the State's litigation costs;
  - \$10 million in grants for Science, Technology, Engineering & Math (STEM) initiatives at Oregon K-12 schools statewide.
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- CLAW BACK: These are unusual circumstances, so the settlement agreement had to be crafted creatively so as to address all relevant interests, and therefore hopefully will avoid triggering a claw-back of funds by the federal government.
  - OTHER LITIGATION INVOLVING ORACLE: This agreement resolves all pending litigation related to Cover Oregon involving Oracle and the State of Oregon.
  - FINANCIAL BENEFITS: Resolving all related litigation ends the ongoing expenses associated with it, and makes the State whole for costs incurred to date – totaling nearly \$25 million.
    1. It is worth noting that, should the matter have proceeded to trial, legal costs were estimated to jump to as much as \$1.5 million *per month*.
    2. Another **important financial benefit** that could result from the settlement is *cost avoidance* – i.e., savings – for example:
      - The opportunity to modernize, at a fraction of the cost, the State's entire IT systems environment. The existing proposal for the much-needed comprehensive modernization of the State's IT system would cost between \$150-\$200 million per biennium over five years. Utilizing the ULA provided under the settlement agreement, the cost for the systems modernization could **decrease to an estimated \$40-\$60 million per biennium**.

- Cancel major agency IT projects no longer necessary if the ULA is utilized, saving \$35 million.
  - Eliminate the need to switch state agencies' software and systems currently using Oracle products to another vendor, as the litigation would have required, saving the State approximately \$22 million.
  - Reduce the number of duplicative programs and applications across state government, as well as the number of licenses and permits required.
- The settlement will be announced publicly on Thursday, September 15<sup>th</sup>. Until then, all aspects, including the existence of a settlement, are **embargoed**.

[END]

## **Q & A:**

### **More about addressing the Feds' "claw-back" potential:**

- The State is going to be briefing the federal government on the settlement, once final.
- Our attorneys are confident that, despite these unusual circumstances, we have crafted a creative settlement that addresses all of the relevant interests, including the federal government's – specifically, (1) the nature of the cash settlement, and (2) the in-kind elements that offer the State enormous resources to significantly improve delivery of health and other services to Oregonians.
- It is a solid agreement, and we are confident this is the right thing for Oregon.

### **What's the agreement's dollar value:**

Optimizing the ultimate value of the in-kind components requires legislative action that the Governor's Office or Attorney General cannot, under this agreement or otherwise, commit the Legislature to taking. Such a characterization also might trigger the Feds to seek reimbursement (claw-back). The safest dollar amount we could use today is, "The estimated value of the agreement at signing is well over \$100 million dollars. If the Legislature maximizes its investment in modernizing the State's IT systems, the value of the license agreement could be multiples of that."

**Oracle as "bad actors"** – the State has accused Oracle officials of criminal conduct and repeatedly called them out as bad actors who failed to deliver on an important and expensive state project. How can you now be in favor of a long-term relationship between the State of Oregon and Oracle?

In these unusual circumstances, it was important to craft a settlement that addressed all of the relevant interests, including those of the federal government. In light of that, we believe the in-kind nature of the agreement is the best way for Oracle to remedy the damage it caused Cover Oregon. It is a solid agreement, and we are confident this is the right thing for Oregon.

The fact is: Oracle is the industry leader in enterprise software. Although the State had a very bad experience with Oracle building our health insurance exchange, we have no concerns about the quality of Oracle's enterprise software products.

**Long-term commitment by the State:** Is the Legislature willing to move forward with this long term relationship with Oracle, based on everything the State's been through? Are you going to go to bat for this agreement in the budget process and beyond?

A: Currently, our state IT systems are antiquated and duplicative, and there have been issues and concerns about data security, as I am sure the Legislature would agree. This settlement gives us the chance to revolutionize state government IT systems for a fraction of the cost, something we desperately need to do but have never had the resources to do.

That said, this agreement cannot commit the Legislature to take any particular action, and we cannot speak for legislative leadership. But we will make sure they are aware of the opportunities and benefits it presents.

**Budget impact:**

Previous information provided by Alex Pettit, Oregon CIO, estimates the existing proposal for the much-needed comprehensive modernization of the State's IT system would cost between \$150-\$200 million per biennium over five years.

Utilizing the ULA provided under the settlement agreement, the cost for the systems modernization could **decrease to an estimated \$40-\$60 million per biennium.**