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Case No. 2017-0337-SG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ORACLE CORPORATION DERIVATIVE LITIGATION	CONSOLIDATED C.A. No. 2017-0337-SG

VERIFIED AMENDED DERIVATIVE COMPLAINT

Plaintiff Firemen's Retirement System of St. Louis, by and through its undersigned counsel, as and for its Verified Amended Derivative Complaint against the defendants named herein, alleges on personal knowledge as to itself, and on information and belief, including the investigation of counsel, the review of publicly available information, the review of certain books and records produced in response to a demand made under 8 *Del. C.* § 220, and discovery from non-party T. Rowe Price Associates, Inc. ("T. Rowe Price"), as to all other matters, as follows:

NATURE OF THE ACTION

1. This stockholder derivative action arises out of an M&A transaction in which self-interested senior executives on both sides shared a common interest in causing the acquirer to pay an unwarranted multi-billion-dollar premium.

2. Nominal defendant Oracle Corporation ("Oracle" or the "Company") is not a typical controlled company, but the effect is the same at

Oracle as at any other. At Oracle, the wishes of Lawrence J. Ellison—the Company's founder, long-time former CEO (until 2014), current Executive Chairman and Chief Technology Officer, 28% stockholder, and one of the ten wealthiest individuals in the world—hold sway. That reality was no more apparent than when Ellison wanted Oracle to buy NetSuite Inc. ("NetSuite"), a company Ellison had co-founded in 1998 and continued to control. NetSuite had recently come under competitive threat from Oracle and was suffering as a result. Rather than tell Ellison to stand aside while Oracle continued to crush NetSuite in the marketplace, the Oracle Board of Directors (the "Board") allowed Oracle senior management to orchestrate a sham special committee process whose sole objective was to buy NetSuite at an unwarranted premium. Oracle paid $9.3 billion to buy NetSuite, over $4 billion of which went to Ellison and his family (the "Acquisition").

3. Each member of Oracle's then-Board faces personal liability for knowing complicity in a sham acquisition process. So do the two then-top executives of NetSuite—co-founder, Chief Technology Officer and Chairman of the Board Evan Goldberg and CEO Zachary Nelson—who acted in league with Ellison and his chief lieutenants.

4. Numerous steps leading up to the Acquisition were indicative of a sham process.

5. ***First***, Oracle could have suggested combining with NetSuite at any time, but Oracle chose to do so only when NetSuite was suffering from recent competition with Oracle. In 2014, large Enterprise Resource Planning ("ERP") software providers such as Oracle, SAP and Microsoft began focusing on the medium-sized businesses serviced by NetSuite. Consequently, NetSuite's prospects and stock price collapsed in 2015. Oracle's internal documents confirmed the public perception that NetSuite was losing out to Oracle. Yet, rather than continue to dominate in the marketplace, or pursue other alternatives, Oracle focused on NetSuite as a desired acquisition target.

6. ***Second***, Ellison put an acquisition of NetSuite on the Board's agenda at a Board retreat he hosted and attended. No pretense was made that Ellison or anyone else from Oracle management should be walled off from discussion of whether it made sense to focus on an acquisition of NetSuite.

7. ***Third***, Ellison's long-time enforcer, Oracle co-CEO Safra Catz, served as the point person for consideration and implementation of the Acquisition. Catz interacted directly with NetSuite, attended nearly all Special Committee meetings, and supervised the creation of management presentations to

the Special Committee. All of her recommendations to the Special Committee were adopted. No pretense was made that Catz had sealed herself off from Ellison. Her job, as always, was to see to it that Ellison's wishes were implemented.

8. ***Fourth***, the initial Board-approved contact between Catz and NetSuite was contrived. The Board authorized Catz to contact NetSuite for the supposed purpose of finding out if NetSuite was interested in a potential acquisition–a nonsensical question with a foreordained answer given that NetSuite's controller, Ellison, supported putting the potential acquisition on the Oracle Board's agenda.

9. ***Fifth***, the true purpose of Catz's approach to NetSuite was improper. The Board forbade Catz from discussing price terms with NetSuite, but she did so anyway, because that was the true purpose of the meeting. Catz suggested to NetSuite CEO Zach Nelson a price of $100 per share, which represented a 42% premium above NetSuite's then-stock price. Nelson responded by suggesting a price of $125 per share, which represented a 78% premium.

10. ***Sixth***, Catz and Nelson both concealed the substance of their contrived, improper conversation. Catz lied to Oracle's Board. She falsely stated that she and Nelson had not discussed any deal terms. Nelson concealed the

substance of this conversation from NetSuite's stockholders. Oracle's Offer to Purchase, filed with the Securities and Exchange Commission ("SEC") on August 18, 2016, disclosed that the Board had directed management that initial discussions with NetSuite "should be limited to ascertaining NetSuite's potential willingness to entertain an offer," and omitted any reference to price terms when describing Nelson's initial conversation with Catz:

> On January 21, 2016, a senior representative of Oracle indicated to a senior representative of NetSuite that Oracle would be potentially interested in acquiring NetSuite. The senior representative of NetSuite responded that he would need to discuss with the NetSuite Board its willingness to consider an offer to acquire NetSuite.

NetSuite's Schedule 14D-9 relating to Oracle's tender offer (the "14D-9"), filed with the SEC on August 18, 2019, used the same wording to describe that initial conversation.

11. ***Seventh***, days after the contrived, improper and concealed conversation between Catz and Nelson, Goldberg arranged to speak with Ellison. The rationale and true substance of that conversation is not disclosed in the 14D-9, which merely states:

> Mr. Ellison indicated his understanding that Oracle would be potentially interested in acquiring NetSuite. He also indicated that he would not seek to influence NetSuite's decision with respect to an acquisition.

In reality, Goldberg obtained a commitment from Ellison that the NetSuite organization would not be harmed in the acquisition process or thereafter, and that it would become an intact, freestanding business unit within Oracle.

12. ***Eighth***, the evaluation and negotiation process unrolled over a period of months according to the pre-arranged, concealed plan. The Board never authorized the Special Committee to pursue a transaction other than an acquisition of NetSuite. Oracle made an initial offer of $100 per share. NetSuite countered at $125 per share. A deal was struck at the near-midpoint of $109 per share.

13. ***Ninth***, the Special Committee retained a financial advisor on conflicting terms. Moelis & Company LLC ("Moelis") stood to be paid $17 million if an acquisition of NetSuite closed, but only $1 million if the proposed Acquisition did not proceed beyond the evaluation stage. This conflicting arrangement was known or knowable to all directors.

14. ***Tenth***, Moelis presented sham valuation analyses at management's direction, including synergized projections dramatically improved over NetSuite's historic results.

15. ***Eleventh***, late in the negotiation process, Oracle management created revised upward projections for NetSuite that were denominated as "Base"

and “Upside” cases, with the prior, already-aggressive projections of NetSuite re-labeled as the “Conservative” case.

16. ***Twelfth,*** Oracle management and Oracle’s Board caused Oracle to file an intentionally false and misleading Offer to Purchase in an attempt to conceal the sham nature of the acquisition process. Materially misleading aspects of the Offer to Purchase include:

- The Offer to Purchase misleadingly states that “Mr. Ellison did not participate in any discussions relating to NetSuite” at the Board retreat, without disclosing that Ellison placed the NetSuite discussion on the Board agenda and sat in on the Board discussions.
- The Offer to Purchase falsely states that decision to have Oracle management contact NetSuite management about NetSuite’s willingness to consider an acquisition offer was made by “the independent members of the Board,” when, in reality, the decision was made by the Board at a full Board meeting with Ellison in attendance.
- The Offer to Purchase omits that Catz suggested a price of $100 per share to Nelson and Nelson responded by suggesting a price of $125 per share.

- The Offer to Purchase omits any reference to the conversation between Goldberg and Ellison.

17. Each member of Oracle's Board had good reason to question the independence and disinterestedness of his or her fellow directors, given the immense industry power of Oracle and Ellison, the industry links of the various directors, and a well-earned reputation of Oracle's Board for poor governance and acquiescence to Ellison's lavish executive compensation demands. No Oracle director took any action upon learning, during the pendency of the Acquisition, that Catz and Nelson had secretly and improperly discussed in their initial conversation a price range of $100 to $125 per share, which made a mockery of the Special Committee's subsequent negotiations within the same range.

THE PARTIES

18. Plaintiff Firemen's Retirement System of St. Louis was a stockholder of Oracle at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Oracle stockholder.

Nominal Defendant

19. Nominal defendant Oracle is a Delaware corporation with principal executive offices in Redwood City, California. Oracle is a technology giant that offers an integrated array of applications, servers, storage, and cloud technologies to serve modern businesses. Oracle has over 135,000 full-time employees, over 420,000 customers across 195 countries, and its market capitalization exceeds $200 billion.

Individual Defendants

20. The individual defendants are the thirteen members of the Board of Directors at the time of the Acquisition, which consisted of four officers of the Company and nine outside directors, three of whom served on the Special Committee (the "Oracle Director Defendants"), plus two senior officers of NetSuite (the "NetSuite Defendants").

21. Defendant Ellison founded Oracle in 1977 and served as Oracle's Chief Executive Officer until September 2014, at which time he assumed the titles of Chairman of the Board and Chief Technology Officer. His total compensation from Oracle in 2016 was $41,518,534. Ellison was also the controlling stockholder of NetSuite. As of September 30, 2016, through NetSuite Restricted Holdings LLC, he held 39.2% of NetSuite's common stock. When

combined with his family members, trusts for their benefit, and related entities, Ellison and his affiliates beneficially owned an aggregate of approximately 44.8% of NetSuite common stock prior to the Acquisition. NetSuite Restricted Holdings LLC entered into a tender and support agreement pursuant to which it agreed to tender its shares in favor of the Acquisition.

22. Defendant Safra A. Catz has been Oracle's Co-CEO since September 2014. Catz held other various positions with Oracle beginning in 1999. Her total compensation from Oracle in 2016 was $40,943,812.

23. Defendant Mark V. Hurd has been Oracle's Co-CEO since September 2014. Hurd was Oracle's President from September 2010 to September 2014. His total compensation from Oracle in 2016 was $41,121,896.

24. Defendant Jeffrey O. Henley has been Oracle's Executive Vice Chairman of the Board since September 2014. He was Oracle's Chairman of the Board from January 2004 to September 2014 and Executive Vice President and CFO from March 1991 to July 2004. His total compensation from Oracle in 2016 was $3,794,766.[1]

[1] The value of the 400,000 options granted to Henley for fiscal 2016 was not disclosed and is therefore estimated based on the disclosed per option value for options awarded to other Oracle executives on the same day.

25. Defendant George H. Conrades has served as an Oracle director since January 2008. He was a member of the Special Committee created in connection with the Acquisition. His total compensation from Oracle in 2016 was $468,645.

26. Defendant Renée J. James has served as an Oracle director since December 2015. She was Chairman of the Special Committee created in connection with the Acquisition. Her total compensation from Oracle in 2016 was $548,005.

27. Defendant Leon E. Panetta has served as an Oracle director since January 2015. He was a member of the Special Committee created in connection with the Acquisition. His total compensation from Oracle in 2016 was $424,681.

28. Defendant Michael J. Boskin has served as an Oracle director since April 1994. His total compensation from Oracle in 2016 was $724,092.

29. Defendant Jeffrey S. Berg has served as an Oracle director since February 1997. His total compensation from Oracle in 2016 was $512,398.

30. Defendant Hector Garcia-Molina has served as an Oracle director and has been since October 2001. His total compensation from Oracle in 2016 was $425,645.

31. Defendant Naomi O. Seligman has served as an Oracle director since November 2005. Her total compensation from Oracle in 2016 was $440,645.

32. Defendant Bruce R. Chizen has served as an Oracle director since July 2008. He was Oracle's Lead Independent Director until at least September 2016. His total compensation from Oracle in 2016 was $716,061.

33. Defendant H. Raymond Bingham served as an Oracle director from November 2002 to March 2017. His total compensation from Oracle in 2016 was $890,902.

34. Defendant Evan Goldberg co-founded NetSuite with Ellison in 1998, after working for eight years as Ellison's close engineering lieutenant at Oracle. Goldberg refers to Ellison as his "close friend," "amazing mentor [for] over 30 plus years" and longtime "trusted advisor." At a talk at Harvard Business School, Goldberg proudly displayed a photo of himself steering Ellison's first boat:

Goldberg was Chief Technology Officer and Chairman of the Board of NetSuite. The aggregate value of Goldberg's NetSuite equity in the overpriced Acquisition was ***over $217 million***. As contemplated at the outset of the Acquisition negotiations, upon consummation of the Acquisition, Goldberg was named Executive Vice President, Oracle NetSuite Global Business Unit, with responsibility for product strategy and development.

35. Defendant Zachary Nelson was hired by Ellison at Oracle in 1992 and became Oracle's longest-serving Vice President for Marketing. In 2002, Ellison offered Nelson the job of CEO of NetSuite. Nelson is known for driving a Bentley Continental GT previously owned by Ellison. Ellison offered to sell

his Bentley to Nelson when Nelson told Ellison, at Evan Goldberg's 40th birthday party in 2006, that Nelson wanted a Bentley. The aggregate value of Nelson's NetSuite equity in the overpriced Acquisition was ***over $88 million***.

FACTUAL BACKGROUND

Ellison is Oracle's "Cult Leader" who Dominates and Controls the Company and its Board

36. Ellison co-founded what would eventually become Oracle in 1977, along with Bob Miner and Ed Oates. Since Oracle's inception, Ellison has served as an Oracle director and in the Company's highest leadership roles, currently as Oracle's Chairman of the Board and Chief Technology Officer. Prior to his current positions, Ellison served as CEO from 1977 to September 2014 and served as Chairman of the Board from 1995 to 2004.

37. Those that have seen the inner-workings of Oracle consistently, and publicly, attest to Ellison's dominance and control over the Company and its Board. Karen Southwick quoted Marc Benioff, a former Oracle executive in marketing and product management, and now CEO of Salesforce.com, in her biography about Ellison entitled, *Everyone Else Must Fail*, as stating, "Larry's like a spiritual guru, and Oracle is like a cult." Benioff explained: "If Larry was

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incapacitated, the cult would dissolve. It's unclear if Oracle is a sustainable enterprise without Larry because his personality is so firmly entrenched."

38. Benioff made similar statements in an article entitled *Irreplaceable*, which was published on October 16, 2008. In that article, Benioff stated, "Larry's personality mandates that he's in charge, so he can't have a successor." Current Oracle director and senior executive Henley said in the same article, "[t]here is no successor to Larry, no heir apparent. . . Larry still wants total control." Charles Phillips, former Oracle president and director, said that "Larry will be here forever. We don't discuss succession. That's not my job." Former Oracle director Donald Lucas told Forbes, "This is a team, and Larry is the only captain. If someone wants to pop up and announce they're the star—poof! You're out."

39. In *Everyone Else Must Fail*, Southwick also quoted former Oracle Board member, and current Chairman and CEO of Enlighted, Joe Costello, as stating that Ellison viewed the Oracle Board as a "necessary inconvenience." Costello had first-hand knowledge of Ellison's domination of the Oracle Board. Ellison sparred with Costello when Costello challenged Ellison's decision to name Ronald Wohl to run Oracle's applications division. And, after the company at which Costello was Chief Executive Officer selected SAP over Oracle for its

applications, Ellison threatened to ruin Costello and his reputation. When Costello made clear that he would not force his team to use Oracle, Ellison effectively fired Costello from the Board, prompting a former Oracle senior executive and board member to observe that Costello's "resignation should have sent a signal to everyone: the board serves at Larry's will."

40. Costello was not the only high profile exit from Oracle due to Ellison's control. In June 2000, Ellison forced former Oracle President, Chief Operating Officer and Director Ray Lane to resign, calling Lane on the last day of his family vacation to force the move. Ellison reportedly told Lane that: "What we're doing here at Oracle, the reengineering of the company, is so important that authority has to be driven from my office. The whole company needs to understand that there is one single centralized point of authority, and it will be with the CEO." According to *Forbes* magazine, after Lane's departure, "Ellison moved quickly to consolidate his power, annexing the president and COO titles, and announcing that Lane will not be replaced."

41. Southwick quoted Lane in *Everyone Else Must Fail*, as stating that "[Oracle is] basically a dictatorship, and everybody works in the hope that they'll get rich." Southwick also quoted former technology journalist Alex Vieux expressing a similar sentiment:

> Larry has an acute sense of when he doesn't need people anymore. He's like a juicer. He squeezes people dry and then discards them. I've seen it with Gary Bloom, Ray Lane, Gary Kennedy, Terry Garnett. At the same time, he gives them good money and exposure they would never get without him. They get a springboard to do whatever they want with their lives. He fulfills his part of the bargain, but he does it in a very devilish way.

42. In fiscal 2008, Ellison made more than $83 million in compensation. During the 2008 Oracle stockholder meeting, in the face of criticism over this pay package, current Oracle director Berg stated that the company "has an extremely reasonable deal with [Ellison]." Berg observed that Ellison was no ordinary CEO, stating that: "I guess as a founder, owner, operator, you can equate him to the owner of a team who can sit up in a skybox and own the franchise."

43. The massive overcompensation of Ellison despite Oracle's underperformance and consistent objection by Oracle's stockholders demonstrates Ellison's power and the Board's deference to him. Stockholders have rejected Oracle's pay practices in every annual meeting since at least 2012, making Oracle the only company in the S&P 500 that has failed five straight say-on-pay votes. In 2012, approximately 85% of the voted shares not owned by Ellison disapproved of Oracle's executive compensation practices. By Oracle's 2013 annual meeting, Institutional Shareholder Services, Glass Lewis & Co., Egan-Jones Proxy Services, and CtW Investment Group all recommended voting

against the Company's executive pay. ISS, Egan-Jones and CtW went further in recommending votes against certain Oracle directors, specifically the Compensation Committee directors, due to their consistent rubber stamping of Oracle's executive compensation. CtW's letter noted that "neither the board nor the Compensation Committee seem to grasp the depth of shareholder frustration with Oracle's pay practices" and concluded by stating that "Oracle's compensation practices have not been materially changed, nor has the Compensation Committee which approved the pay program that shareholders rejected last year." Amazingly, the Compensation Committee has done nothing meaningful to address stockholder concerns. In 2016, approximately 83% of the voted shares not owned by Ellison still disapproved of Oracle's executive compensation practices. That stands in marked contrast to other S&P 500 companies, where the median say-on-pay disapproval percentage in 2016 was less than 5%.

44. Ellison's cult leader status and control over Oracle continues to the present day, notwithstanding that Oracle announced in 2014 that Ellison would pass his CEO title to Catz and Hurd, while Ellison would serve as Chief Technology Officer and chair Oracle's Board.

45. Even after Ellison stepped down as Chief Executive Officer, Catz indicated Ellison would never truly relinquish control of Oracle. Catz observed at a 2014 conference: "Larry Ellison's vision is more alive today than ever." Catz told the *San Francisco Chronicle* in 2015 that "I personally don't believe he's ever retiring. There is no near-term or even medium-term scenario of him retiring. I suspect that I will retire before him."

46. Oracle's announcement downplayed the move's impact, quoting Ellison as saying, "The three of us have been working well together for the last several years, and we plan to continue working together for the foreseeable future. Keeping this management team in place has always been a top priority of mine." During Oracle's Q1 2015 Earnings Call later that day, Ellison said he thought Catz and Hurd "deserve the recognition, they deserve the CEO title," and repeated his plan for continuity:

> I'm going to continue to work with . . . Mark, and Safra as I have exactly in the past. So I'm going to continue doing what I've been doing over the last several years.

Catz was even more direct, interrupting Hurd to say:

> I just want to make sure, we are very, very clear. There will actually be no changes. Okay? Not no [sic] significant changes. I just want to clarify. No changes whatsoever.

47. Two weeks later at the Oracle OpenWorld conference, Ellison likened his newly-titled role to President Abraham Lincoln captaining his postwar cabinet, except that on Ellison's cabinet "we tend to agree on things." Ellison also reiterated that he did not "think there are going to be any large changes," that "we will continue to work together as a team," and that, for him, "it was important that both [Catz and Hurd] get the recognition and the credits that they deserve."

48. Oracle analysts agreed that Ellison's new title would not result in any significant changes to the management or governance of Oracle:

- Barclays: "We think this news is a non-event as actual roles from a day to day perspective have not really changed."
- BMO Capital Markets: "Larry Ellison's abdication of the throne looks largely symbolic . . . as respective managerial roles appear to be unchanged."
- William Blair: "These changes are not expected to have any material impact on management or operations."
- Morningstar: "Overall, these changes do not alter our view of the firm. First, we view Ellison's role and involvement as the most important to shareholders, and he is retaining is influence as both chairman and CTO in a similar manner as today. Second, there are no changes to reporting structures or responsibilities, so we do not view the appointments as a positive or negative for shareholders."

- JMP Securities: "One perspective on these semantics came from a former Oracle sales leader who put it this way: 'As far as I can tell, Larry's move translates roughly as follows: (1) I'm 70 years old and I'm not intending to leave Oracle in a box. (2) I'm not going anywhere soon, and I expect to be the ultimate decision-maker at Oracle for some years to come. Co-CEOs are only a problem if there's no tie-breaker, and I'm still breaking the ties around here. (3) I don't want to lose either Mark or Safra. They each want to be CEO. Wish granted. You're welcome. (4) The succession plan is either Mark or Safra. Contrary to everything I've suggested in prior years, the next CEO of Oracle will not be an engineer. No, not even Thomas Kurian.'"

49. The financial press echoed the view that Larry Ellison was maintaining his control of Oracle. In an article published by the *Harvard Business Review* titled *Oracle: The Worst-Governed, Best Run Company Around*, Justin Fox wrote:

> After 37 years in charge, Larry Ellison finally stepped down as Oracle's CEO on Thursday. Except that he's not really stepping down. The 70-year-old will stay on as the software giant's executive chairman and also its chief technology officer – the latter title a formalization of a role he was already playing. And the new co-CEOs, Safra Catz and Mark Hurd, will continue to do the same things they did as co-presidents, the only difference being that they will now report to the board instead of just to Ellison. But Ellison is of course chairman of that board (long-time chairman Jeff Henley will stay on as vice chairman).
>
> Basically, not much has changed at Oracle, except that the company's governance structure has gotten more complicated. For this it will probably be subjected to criticism from watchdogs like ISS, Glass Lewis, and GMI Ratings. That won't be anything new

> for Oracle, which has gotten used to being labeled a governance disaster. . . .

Fortune's online publication was in accord:

> The most shocking thing about Thursday's bombshell announcement that Larry Ellison is stepping down as CEO of Oracle is how little will change. . . . The move, resonant of Bill Gates having become chief software architect of Microsoft when he resigned as CEO, changes relatively little about how Oracle runs. As Oracle noted in its news release, engineering already reports to Ellison.
>
> Not much changes for Oracle's new CEOs either.
>
> Safra Catz has been Ellison's 'Ms. Inside' for years, with responsibility for finance, legal and manufacturing. She has long been Ellison's iron fist, ensuring that his will was done within the walls of the company. . . . As CEO, Catz will continue to oversee the same functions, including Oracle's prodigious acquisitions engine. . . .
>
> The wondrous thing about Larry Ellison is that he's always done exactly what he wanted to do when he wanted to do it. . . .

Steven J. Vaughan-Nichols for ZDNet's *Between the Lines* similarly observed:

> The only way I ever thought Larry Ellison would leave Oracle's boardroom would be in a hearse. On his tombstone, made of the finest Carrara marble with platinum letters, it would read something like "Larry 'Oracle' Ellison, Founded 1977, Closed 2047." I mean, seriously: In an industry filled with control freaks, Ellison is the Platonic ideal of iron-fisted control.
>
> Nope, Larry Ellison may no longer be Oracle's CEO, but he's not going anywhere. . . .

> If Oracle wants to continue to be a dominant player it might be time for Ellison to really retire. . . .
>
> Oh, who am I kidding?! He may be 70 and he could retire to splashing in a pool of gold ala Scrooge McDuck, but although his title may change, this is Larry Ellison we're talking about. When push comes to shove on any major decision, he's still going to be the one calling the shots.

50. Recent reports confirm that Ellison continues to call the shots at Oracle. After spending the day shadowing co-CEO Hurd at Oracle's September 2016 OpenWorld conference – at which Ellison delivered the two-hour opening keynote address – *Business Insider* reporter Julie Bort observed that Ellison is "still very much the leader of the executive triad."

Ellison-Controlled NetSuite Begins Suffering from Competition By Oracle and Ellison Decides that Oracle Should Acquire NetSuite Rather Than Cannibalize It

51. NetSuite was founded in 1998 as NetLedger by Ellison and former Oracle Vice President Evan Goldberg out of a desire to provide companies with business management software over the internet. Ellison, through an affiliated entity, provided the financial backing to start NetSuite and was NetSuite's controlling stockholder, with Ellison's children also having a meaningful stake in the company.

52. Ellison has long viewed NetSuite as his company and planned for Oracle to eventually acquire it. In a 2003 biography of Ellison, *Softwar: An Intimate Portrait of Larry Ellison and Oracle*, author Matt Symonds discussed "Ellison's plan for Oracle to buy [NetSuite]" at some future point "if [NetSuite] proves to be successful." When Symonds asked what would happen if Microsoft made an offer for NetSuite, Ellison responded: "I'd tell them to get fucked. I suppose Evan [Goldberg, NetSuite's co-founder,] might take a swing at me, but I own 55 per cent of the company, and there's no way in hell Microsoft's going to get it."

53. NetSuite was a successful business and grew rapidly. By the time of NetSuite's December 2007 public offering, the company was valued at approximately $1.5 billion, with Ellison and his affiliates owning approximately 65% of NetSuite's common stock. NetSuite continued its fast growth following its IPO, expanding its annual revenues from $108 million in 2007 to $741 million in 2015.

54. Over time, NetSuite's success became increasingly important to Ellison's legacy and Oracle's reputation.

55. In 2008, Ellison remarked dismissively about the future of cloud computing:

> The interesting thing about cloud computing is that we've redefined cloud computing to include everything that we already do. I can't think of anything that isn't cloud computing with all of these announcements. The computer industry is the only industry that is more fashion-driven than women's fashion. Maybe I'm an idiot, but I have no idea what anyone is talking about. What is it? It's complete gibberish. It's insane. When is this idiocy going to stop?
>
> We'll make cloud computing announcements, because, you know, if orange is the new pink, we'll make orange blouses. I mean, I'm not going to fight this thing…. I don't understand what we would do differently in the light of cloud computing other than … change the wording on some of our ads.

These widely publicized remarks came to haunt Ellison and Oracle given the massive shift to cloud computing and the widespread perception that Oracle was late to recognize it.

56. Ellison, NetSuite, and Oracle responded to this public relations debacle by portraying Ellison as the visionary godfather of cloud computing. According to this origin story, cloud computing began with a five-minute phone call from Ellison to Goldberg about co-founding NetSuite. At a 2014 presentation by Zach Nelson and Evan Goldberg at Harvard Business School, Nelson succinctly described the origin story:

> It's amazing that the five-minute conversation that Evan's going to talk to you about with Larry Ellison is, has fundamentally changed the world.

Goldberg gave Ellison most of the credit for creating NetSuite:

> You know most of the company was definitely Larry's idea. I'd say, you know, I get thirty-percent credit or something like that, and he gets seventy.

57. In a 2012 interview, Ellison defended himself by pointing to the founding of NetSuite:

> Well, let me see. I'm not interested in cloud computing. I started NetSuite. NetSuite was my idea. I called up Evan Goldberg and said, "We're going to do ERP on the Internet, software as a service." Six months later Marc Benioff, finding out what NetSuite was doing, and kind of copied it.

At a January 2014 public appearance, Ellison pointed to NetSuite to defend Oracle from the charge that it was late to cloud computing:

> Well, I think I started the first cloud company, called NetSuite, which is a year older than Salesforce.com. So how can Oracle be late to the cloud?

58. An important factor in NetSuite's growth was that it provided cloud-based financial management and ERP software suites for medium sized businesses without meaningful competition from large ERP software providers, such as Oracle, SAP and Microsoft. By 2015, however, the large ERP software providers began to aggressively target the cloud-based SaaS ERP market that was NetSuite's bread and butter.

59. Oracle, in particular, was outcompeting NetSuite with its new focus on cloud-based ERP software. The increased competition diminished NetSuite's future prospects and NetSuite's stock price fell dramatically from $107.31 per share on January 2, 2015 to $82.38 on January 4, 2016 to $53.11 per share on February 12, 2016.

60. An internal April 29, 2015 Oracle management presentation shows how Oracle was an increasing competitive threat to NetSuite. The management presentation was part of a "NetSuite Competitive Analysis" discussion by Oracle's Independence Committee, consisting at that time of defendants Bingham, Garcia-Molina, and Berg, and inferably took place because the Independence Committee was required to discuss and approve software subscription and licensing support agreements between Oracle and NetSuite, which Oracle correctly considered a "Related Party Transaction" given Ellison's control of both companies. The presentation, attended by Catz, was critical of NetSuite's products and competitive position vis-à-vis Oracle and included the following conclusions:

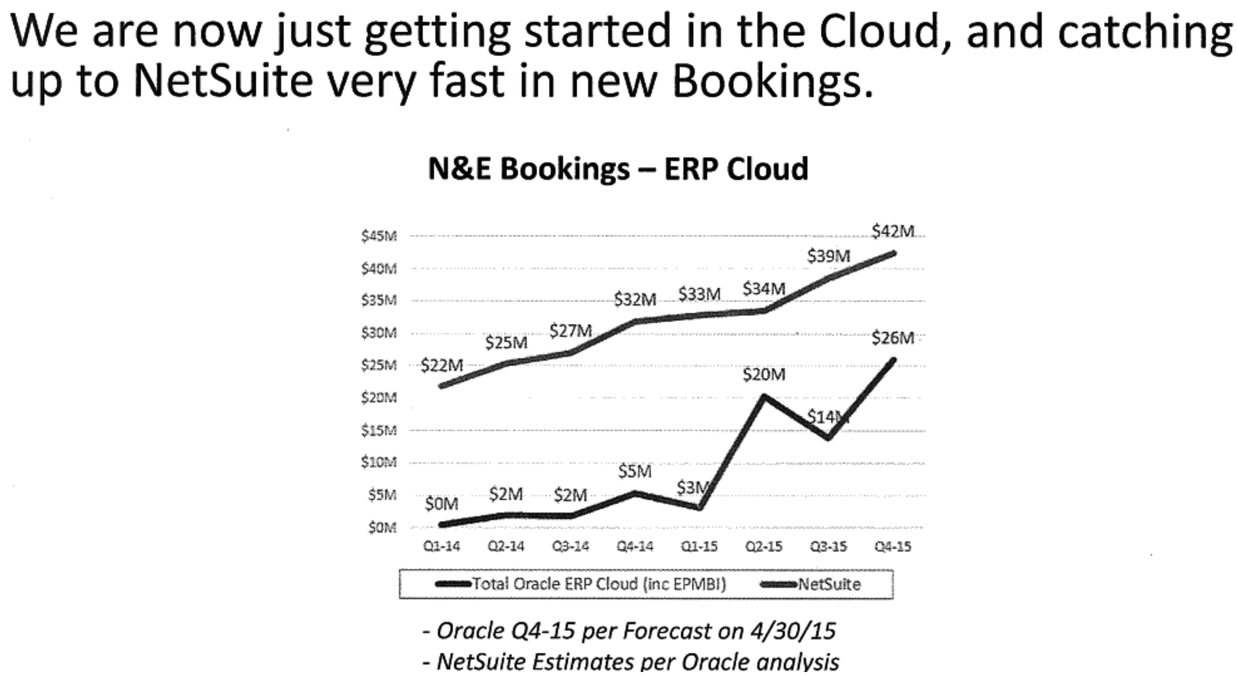
- In Head to Head Competes, Oracle Dominates in the Larger Opportunities Due to Superior Global Functionality

- In Next Fiscal Year, Competes will Continue to Rise as Oracle Adds Coverage for Products Industries and Continues to Grow Coverage in Mid-Market

It also included financial information showing how Oracle had begun to compete against and win business from NetSuite after Oracle started focusing on cloud-based ERP in fiscal year 2014. Specifically, although Oracle and NetSuite only had competed for $16.7 million of opportunities in the six-year period from fiscal year 2007 to 2013, they competed for $23.6 million of opportunities in fiscal year 2014 and $39.1 million of opportunities in fiscal year 2015. Oracle management included in the presentation analyst commentary on NetSuite indicating that Ellison's "potential conflicts of interest . . . could prevent potential acquirers such as SAP or Microsoft from making a bid for NetSuite even if it is in the best interest of shareholders. Further, it could make NetSuite less aggressive to attack the enterprise market to avoid competing with Oracle." The full Oracle Board inferably knew of the existence and conclusions of the NetSuite competitive analysis given that the Independence Committee was required to and did report back to the full Board.

61. Another Oracle management presentation prepared in mid-2015 and inferably presented to Oracle's Independence Committee and/or Board contained an analysis showing and concluding that "Since take off [in Q1 2014], [Oracle's]

win rates in ERP Cloud are significantly higher against NetSuite than against Other Competitors." The mid-2015 Oracle management presentation also included the following slide showing how Oracle was a competitive threat to NetSuite:



62. By 2016, the public market was aware that one of Ellison's companies, Oracle, was cannibalizing the other, NetSuite. A June 2016 analyst report by Cowen and Company initiating coverage on NetSuite at "Underperform" with a $70 per share price target emphasized the competitive pressures on NetSuite, particularly from Oracle, as follows:

Competition Is Intensifying

Historically, major ERP incumbents (ORCL, SAP, MSFT) were reluctant to move into the Cloud in order to protect their legacy business. This left N with a wide open field, but the mindset from legacy vendors has significantly shifted and they all now have aggressive pushes into the market. In FY14 (May), ORCL signed ~ 135 new Cloud ERP customers; in FY16 it signed ~ 1,650. ORCL's 4Q16 report shows that its new customer wins just inflected well beyond N's run rate, and our checks suggest ORCL is weighing on N win rates. ….

…

We think ORCL is the biggest near-term competitive threat

Based on our industry conversation and based on ORCL's particular traction in new customer wins with its Cloud ERP product, we believe ORCL is showing up more often in competitive situations against N. Previously, ORCL mostly focused on the large enterprise market with its on-premise products, but the maturity of its SaaS solutions (which started to inflect roughly 2 years ago) is enabling ORCL to move down into the mid-market where it historically did not compete. Combined with ORCL's ability to be more aggressive with pricing and bundle ERP with other products in its portfolio, we think this creates a more challenging competitive backdrop for N that could impact win rates, sales cycles or price points.

Of ORCL's major SaaS initiatives across CRM, HCM and ERP, ERP is the area that has been garnering the most incremental traction over the last year, by far. And in early 2016, ORCL launched a new SaaS offering designed for the Manufacturing vertical, one of N's key industry focuses. As shown below, based on ORCL's 4016 (May) report of 808 new Cloud ERP customers (up nearly 2.5x Y N) and our model for N of 420 new customers in 2016 (ending June), this will be the first quarter that ORCL has signed more new customers than N in Cloud ERP, and by a wide margin. 18-24

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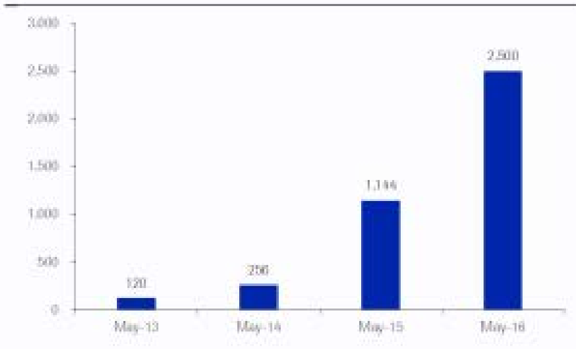
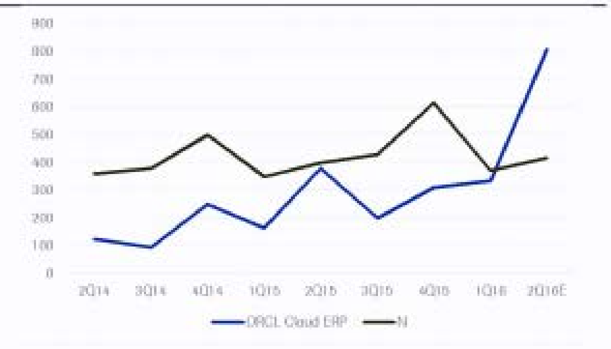
months ago ORCL was generating half the number of new customers as N.

Figure 5 : Number of ORCL Cloud ERP Customers



Source: Company Reports, Cowen and Company

Figure 6 : New Customers – ORCL vs. N



Source: Company Reports, Cowen and Company

63. Oracle's competitive success against NetSuite was a win for Oracle's public stockholders but a big problem for Ellison. Ellison remained NetSuite's controlling stockholder, with his related entities and family members holding approximately 45% of NetSuite's outstanding shares during 2015 and 2016.[2] If the status quo continued, Oracle would crush NetSuite in the marketplace and potentially reduce the value of Ellison's controlling stake in NetSuite by billions of dollars.

[2] As of September 30, 2016, Ellison, his family members, trusts for their benefit, and related entities together held approximately 44.8% of NetSuite's outstanding shares. The amount of NetSuite stock owned by Ellison and his affiliates remained fairly consistent since at least its IPO, with the drop in ownership percentage largely due to stock issuances by NetSuite.

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64. The solution to Ellison's problem was to have Oracle buy NetSuite rather than compete NetSuite's value away.

Oracle's Management and Board Execute on Ellison's Plan to Have Oracle Acquire NetSuite

65. Inferably, at some point between mid-2015, when Oracle management prepared the presentations documenting Oracle's competitive strength against NetSuite, and January 2016, Ellison decided that Oracle would acquire NetSuite and instructed Oracle management, including his long-time lieutenant Catz and friend and subordinate Hurd, to execute on his decision.

66. Ellison, as Chairman of the Oracle Board and master of its agenda, sprung the decision to acquire NetSuite on the Board on the second day of a two-day in-person Board meeting on January 14-15, 2016 at Ellison's $43 million Porcupine Creek estate attended by all thirteen then-Oracle directors. Catz led a strategy discussion with the Board, during which Douglas Kehring, Oracle's Chief of Staff, provided the Board with a verbal "overview of a potential acquisition" of NetSuite, which management had already code named "Napa."

67. There are numerous remarkable aspects of this initial Board discussion about Oracle's acquisition of NetSuite, all of which demonstrate the controlled mindset of Oracle's management and directors.

68. The management proposal to acquire NetSuite was first presented to the entire Board, including Ellison, even though Oracle had an Independence Committee that was expressly charged with reviewing and approving related party transactions, such as a potential acquisition of NetSuite, and was required under Oracle's policies to be promptly notified of, review, and assess any potential conflicts of interest involving Ellison, such as a potential acquisition of NetSuite.[3]

69. The Board appears to have allowed Ellison to sit in on the management proposal to acquire NetSuite and the Board discussion of the proposal, even though Ellison did not actually participate in the discussion.[4]

70. The management proposal to Oracle's Board focused solely on the possibility of acquiring NetSuite. There appears to have been no discussion of

[3] The members of the Independence Committee at this time were defendants Berg (Chair), Bingham, Conrades, and Garcia-Molina.

[4] While the Board minutes state that "Mr. Ellison noted that he would recuse himself from any discussions related to NetSuite given his ownership interest in NetSuite," the minutes do not state that Ellison left the meeting at any point in time, in contrast to instances where individuals did physically leave the meeting. On the same page, just after the NetSuite discussion, for example, the minutes state: "Mr. Kehring left the meeting."

alternatives, such as acquiring other ERP software companies or simply competing against NetSuite given Oracle's recent success in doing so.

71. The Board was not provided with any written materials about the potential NetSuite acquisition. Instead, the Board simply asked Ellison loyalists and subordinates Catz and Hurd about their perspectives on an acquisition of NetSuite.

72. The Board did not consider creating a Special Committee or having the Independence Committee address the potential acquisition of NetSuite. The Board did not ask management, who report to Ellison, about Ellison's role in management's proposal to acquire NetSuite. Notably absent from the minutes is any discussion of the genesis of management's idea to acquire NetSuite. Also notably absent from the minutes is any discussion of any conflicts of interest of Oracle management.

73. The result of the discussion demonstrates the fealty of the Oracle Board to Ellison. The Board "directed management to continue to assess the feasibility of pursuing Project Napa." The mandate did not include evaluation of alternatives. The Board further directed Ellison's direct reports, Catz and Hurd, to contact NetSuite "to understand if NetSuite would be willing to receive an indication of interest" but "to not engage in any price discussions or otherwise

engage with NetSuite's management."[5] The Board did not discuss whether it was appropriate to have Catz and Hurd contact NetSuite, rather than, for example, an independent director. Such a discussion, of course, would have been awkward given that the entire Board discussion of the potential NetSuite acquisition took place with Ellison, Catz, and Hurd present.

The Oracle Board Could Not In Good Faith Expect That Catz Would Protect Oracle's Interests Against Ellison's Interests

74. Once the Board allowed Catz to take a leading role in the acquisition process, it was pre-ordained that Oracle would ultimately acquire NetSuite at an inflated price that was good for Ellison and bad for Oracle's public stockholders. As was known to the Board, Catz was the Oracle co-CEO with responsibility for acquisitions and placed her loyalty to Ellison above all else, including Oracle's interests. The Board did not and could not have believed in good faith that Catz would protect Oracle's interests against Ellison's interests.

75. Catz has long served as Ellison's right-hand and enforcer; her fate at Oracle was and is inextricably intertwined with Ellison's ability to remain in power. For nearly two decades, Catz's only function at Oracle has been to

[5] Where applicable, all code names in documents have been replaced by actual names.

implement Ellison's directives and, while her title changed to co-CEO at present, her role as Ellison's enforcer has not.

76. Catz's deep loyalty to Ellison is long-standing. In 1999, Ellison personally recruited Catz to join Oracle when she was covering software as an investment banker at Donaldson, Lufkin & Jenrette. According to *Fortune*, "[w]hen she arrived at Oracle, Catz didn't even have an office; she worked at a round table in CEO Ellison's suite." The *Wall Street Journal* wrote, "She sat in on [Ellison's] meetings, and dogged other executives to follow his directives." Catz described her start at Oracle, as quoted in 2003 by Symonds in *Softwar*, as follows: "I came in with absolutely no agenda other than to help Larry. That actually made my job incredibly easy. If Larry wants something done, now it happens because I'm going to check that it has. That was the thing that was really missing."

77. Catz soon rose to power at Oracle as Ellison's enforcer. Catz joined the Board in 2001. In 2003, Southwick quoted Gary Bloom, who worked with Catz inside Ellison's inner-circle as Oracle's Chief Operating Officer, as follows: "Larry would let Safra know what he wants, and she'd go back to the executives.' . . . 'The reason she moved into such a powerful position so quickly is because she's so close to Larry[.]" Current Oracle Board Vice Chairman Henley

described Catz in 2006 as follows: "Her power isn't that she has a lot of people working for her; she doesn't. Her power is that she's on the same wavelength as Larry." Catz expressed the same sentiment, as quoted in *Softwar*: "I'm not interested in building power and I don't have any individual power here. People will send me things for my approval and my response will always be okay, if it's within the scope of a decision I already know Larry has approved. I say that as a reminder that I don't have any power of my own." After interviewing Catz in 2006, *Forbes* concluded that "[Catz] is Ellison's enforcer and chief of staff." Catz has also been described "as Ellison's 'hatchet man' in carrying out what he wants done."

78. Catz continued her rise to power within Oracle, as Ellison named her CFO in 2005 and Co-President in 2010. Her function, however, did not change. In a 2009 article published by *Fortune* entitled *The Enforcer: Who is Oracle's Safra Catz?*, Adam Lashinsky described Catz's role at Oracle as follows:

> As Ellison's ultra-effective consigliere, Catz not only acts as his proxy, but translates her boss's ideas and ambitions into reality – power that goes well beyond the scope of most conventional deputies. . . . Catz's title has never been particularly meaningful. ***Her real job is making sure the entire organization follows the policies that Larry Ellison sets***. . . . [Catz's] fusion of financial and operational acumen with a willingness to stubbornly enforce [Ellison's] vision makes Catz a singular force to be reckoned with at Oracle. Given that Ellison likes to rule from a distance – the 65-year

> old spends time in Malibu, Calif., these days – the buck effectively stops with Catz. . . . ***Catz knows full well that the only person whose opinion matters is Larry Ellison's***.

79. The *Wall Street Journal* similarly observed that Catz is the "enforcer, gatekeeper, and de facto operating chief for Oracle's visionary but mercurial CEO" Ellison. The *Wall Street Journal* also wrote:

> Oracle executives have come to view Ms. Catz as Mr. Ellison's proxy.
> "Every time I talk to Safra I assume I'm talking to Larry," says John Hall, senior vice president of Oracle University, the company's education arm. "She's Larry's right hand." . . . [Catz rose to prominence at Oracle] because of her unique ability to speak for Mr. Ellison. She frequently communicates bad news, sets limits or enforces decisions made by Mr. Ellison, Oracle executives say.

80. Ellison once declared, "If I dropped dead tomorrow, Safra Catz would be CEO of Oracle." In response, Catz declared her loyalty to Ellison, stating to *Forbes*, "I don't know who would take over if something happened to Larry. I don't want the job. Without him, Oracle wouldn't be the same." In sum, as Catz herself indicated to Symonds, she exists at Oracle "only to make sure that the things that Ellison wants to happen get done."

81. Several months into her role as co-CEO, on April 30, 2015, Catz again confirmed her inextricable ties to Ellison:

> [Oracle management is] not just Mark [Hurd] and me; it's Larry, Mark and Me. We're lucky. I like it. . . . ***If Larry left – is it in one***

> ***of his fancy cars? – I would be in the passenger seat. I've been on record on this***. Unfortunately, if I want to get some rest, he's more committed, more in, every day.

82. Given Catz's deep, long-standing, and currently existing loyalty to Ellison over Oracle, Catz should have been isolated from any acquisition of an Ellison-controlled entity. Instead, Catz drove the process for acquiring NetSuite, engaged in unsupervised communications directly with NetSuite management, and, as described in more detail below, controlled the valuations of NetSuite through her influence on the projections. The Board's knowing breach of their duties by placing Catz at the center of the NetSuite acquisition process had predictably adverse consequences for Oracle.

Catz and Nelson Secretly Agree on Oracle Paying an Unwarranted Multi-Billion-Dollar Premium for NetSuite, and Goldberg Is Assured of Business Autonomy Post-Closing

83. On January 21, 2016, less than a week after the initial Oracle Board discussion of a potential acquisition, Catz contacted NetSuite's CEO, Zach Nelson. That conversation evidences an illicit conspiracy among self-interested senior executives of Oracle and NetSuite to cause Oracle to pay an unwarranted multi-billion-dollar premium for NetSuite.

84. The substance of Catz's conversation with Nelson would be unknown but for a series of unexpected occurrences. In August 2016, Nelson

described his conversation with Catz to a gathering of T. Rowe Price senior investment professionals, as part of an effort to convince them of the benefit of the Acquisition to NetSuite investors. T. Rowe Price summarized Nelson's description of his conversation with Catz in a private letter to NetSuite's board of directors. To T. Rowe Price's surprise, NetSuite filed that letter publicly with the Securities and Exchange Commission. Plaintiff later successfully demanded that Oracle obtain formal discovery from T. Rowe Price.

85. An internal T. Rowe Price email from the day after its meeting with Nelson comments on Nelson's description of his conversation with Catz:

> There is no real price discovery except Safra's $100 bid (off the cuff according to N). Zack's $125 bid (off the cuff according to N).

One week later, ten portfolio managers from T. Rowe Price co-signed a letter to NetSuite's board of directors that summarized Nelson's description of his conversation as follows:

> In our recent meeting, Mr. Nelson described the initial contact with Oracle as a loose, pre-due-diligence exploratory conversation where a price range of $100-125 was discussed.

An attendee at T. Rowe Price's meeting with Nelson testified about Nelson's discussion of his conversation with Catz:

> [Nelson] didn't specifically say, Safra said this. It was more like, Safra, you know, mentioned 100; I went back with 125.

86. The T. Rowe Price deponent recalled Nelson recounting how Catz "almost made the statement 'It's time,' you know, as, like, it was an inevitability that now you have to come, so to speak."

87. The fact that an Oracle negotiator made a secret bid of $100 per share and treated an acquisition at that price level as inevitable is astounding, as is the fact that a NetSuite negotiator secretly responded by seeking $125 per share, with an apparent secret understanding that the ultimate deal price would be bracketed by those numbers. Those prices represented a massive premium of 42% to 78% above NetSuite's $70.21 per share closing price on January 21, 2016.

88. Oracle had massive leverage to seek an acquisition at a significantly lower price. It was largely unknown to the market but well known to the parties that Oracle was out-competing NetSuite. In such circumstances, an arms'-length negotiator for Oracle would have pointed out that Oracle was out-competing NetSuite, that NetSuite's stock price had dropped precipitously with the increased competition and decline in NetSuite's future prospects, and that an acquisition by Oracle would be a lifeline for NetSuite at any reasonable price.

89. Given its competitive advantage in the marketplace, Oracle's most potent threat would be to wait out NetSuite and make an acquisition offer later, once the market became aware of NetSuite's vulnerability. NetSuite understood this. T. Rowe Price's deponent testified that Nelson and NetSuite lead director Steve Gomo explained to T. Rowe Price in August 2016 that "things have slowed; you know, it's harder; we're competing more with – with Oracle." T. Rowe Price's most senior investment professionals recognized internally that the most likely scenario in the event NetSuite's stockholders did not approve a sale to Oracle is that NetSuite would not meet quarterly expectations and "ORCL rebids at some lower price."

90. Oracle could also exert commercial pressure on NetSuite, given NetSuite's heavy reliance on its commercial relationship with Oracle. NetSuite's 2016 Form 10-K discloses its reliance on Oracle database software as a risk factor:

> ***We rely on third-party software, including Oracle database software, which may be difficult to replace or could cause errors or failures of our service that could lead to lost customers or harm to our reputation.***
>
> We rely on software licensed from third parties to offer our service, including database software from Oracle. This software may not continue to be available to us on commercially reasonable terms, or at all. Any loss of the right to use any of this software could result in delays in the provisioning of our service until equivalent

> technology is either developed by us, or, if available, is identified, obtained and integrated, which could harm our business. Any errors or defects in third-party software could result in errors or a failure of our service which could harm our business.

91. Additionally, Oracle possessed a fearsome reputation as a hard-nosed acquiror. As stated in one typical profile, entitled *Larry Ellison: Why it pays to be a jerk*, which appeared in *Canadian Business* in 2011:

> The aggressive way in which Oracle pursues expansion has prompted many to compare Ellison to a warlord. Of all the acquisitions the company has made over the years, none is more emblematic of his unapologetically conquering spirit than the hostile takeover of PeopleSoft he mounted in 2003….
>
> … Ruthless though it may have seemed, none denied the brilliance of Ellison's power play, and in the end, he emerged victorious….

92. In a true arms-length negotiation, Oracle would be expected to wield its competitive success, its commercial leverage, and its fearsome reputation to its advantage. But, Ellison's financial self-interest and personal legacy as the founder of cloud computing was on the NetSuite side of the ledger, and his Oracle lieutenants were loyal to him. Recognizing as much, Nelson and Goldberg both jumped at the chance to extract undeserved riches and social concessions from conflicted negotiators.

93. On January 27, 2016, six days after Nelson's conversation with Catz, Goldberg arranged a principal-to-principal conversation with Ellison. In

that conversation, Goldberg secured an undisclosed understanding from Ellison about how an acquisition would work. Rather than Oracle acting in its normal predatory fashion, Ellison promised to keep the NetSuite business intact post-closing. Goldberg recounts: “There was a commitment at highest level of Oracle – Mark Hurd, Safra Catz and Larry Ellison – to maintain the integrity of the Netsuite organization. We became what’s called a global business unit.” The basic premises of the proposed Acquisition were established at the outset by conflicted negotiators, before any Special Committee process.

The Oracle Board Belatedly Attempts to Paper Over the Sham Process with a Special Committee Empowered Only With Respect to an Acquisition of NetSuite

94. Even though Catz reached out to NetSuite in January 2016 as directed by the Oracle Board, the Board apparently did nothing to address the sizable and conflict-ridden potential NetSuite transaction until two months later, when it held a special meeting on March 18, 2016. The March 18, 2016 Board meeting was attended by each of the thirteen defendant directors other than Ellison, Henley, Hurd, Bingham, and Seligman.

95. At the March 18 meeting, Catz reported back to the Board on her discussion with NetSuite. Catz concealed her price discussions with NetSuite

and continued to act out the sham process that Oracle management and directors knew was at play. The Board minutes state as follows:

> Ms. Catz stated that following the January board meeting, as directed by the Board, she had reached out to a senior representative of NetSuite to gauge whether NetSuite would be willing to consider a potential offer from the Corporation. Ms. Catz stated that the NetSuite representative had indicated that the NetSuite board would be willing to consider an offer from the Corporation. ***Ms. Catz informed the Board that no other terms or details relating to any potential transaction with NetSuite were discussed***.

Catz's dissembling to the Board, which should have been no surprise to the Oracle directors given her loyalty to Ellison, was part of the script to mask the reality that the acquisition of NetSuite was a forgone conclusion. In reality, Oracle's acquisition of NetSuite was preordained to occur at a price within the range of $100 to $125 per share – a price range determined solely by CEOs who were beholden to Ellison. It thus was no coincidence when, just two months later, Catz recommended an initial proposal at the low end of that price range – $100 per share. It also was no coincidence when NetSuite countered Oracle's $100 initial proposal at a price of $125 per share – the high end of the predetermined price range. And, it was unsurprising that the final agreement ended up very close to the midpoint of the $100-$125 range. A quote from the Delaware Supreme Court applies here:

> Based on these facts, it is reasonable to infer that these valuations set the field of play for the economic negotiations to come by fixing the range in which offers and counteroffers might be made.[65]
>
> > [65] *See generally* Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124, 1128-30 (1974) (coining the term "anchoring" to describe the phenomenon in which a starting value biases future adjustments toward that initial value).

Olenik v. Lodzinski, 2019 WL 1497167, at *9 (Del. Apr. 5, 2019).

96. Thus, by the time the Board met on March 18, 2016 to consider whether to form a special committee, there was no longer any real work to be done. Nevertheless, the Board appointed defendants James, Panetta and Conrades as the members of a Special Committee empowered with respect to the NetSuite transaction.

97. The narrowly crafted Special Committee resolutions reflect the Board's desire to ensure that the NetSuite transaction was completed in accordance with Ellison's wishes. The resolutions delegated the full and exclusive power of the Board to the Special Committee with regard to the "Potential Transaction," which was limited to a possible acquisition of all of the outstanding equity of NetSuite. To ensure that the directive was clear, the resolutions broadly identify the Special Committee's powers in regard to NetSuite by expressly stating, among other things, that the Special Committee

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had the power to establish and direct the process for a potential acquisition of NetSuite, negotiate and document terms with NetSuite, determine whether a transaction with NetSuite was fair, approve or reject a transaction with NetSuite, and effectuate a transaction with NetSuite. Consistent with limiting the Special Committee's power only to a transaction with NetSuite, the only identified power with respect to alternatives was simply to "evaluate" them. The Special Committee thus had no power to pursue alternatives without coming back to Ellison and the full Board.

98. The Special Committee resolutions and the Board's discussion of the Special Committee's powers also reflect the Board's belated attempt to protect themselves from liability for the process failures to date. The resolutions delegate the full powers of the Independence Committee to the Special Committee for purposes of the potential NetSuite transaction, including expressly the power to make the required determinations under the Independence Committee charter and Oracle's conflict of interest policy that the Independence Committee should have addressed months before. Similarly, the Board discussed that the Special Committee was responsible for directing "senior management's involvement in assessing a potential transaction," seemingly recognizing the

problem with the Board's previous decision to place Catz at the center of the transaction process.

99. The Special Committee resolutions required the Special Committee to keep the other members of the Board apprised of negotiations with NetSuite, which the Special Committee ultimately did at Board meetings on April 29, 2016 and July 26, 2016.[6]

100. Remarkably, on April 29, 2016, Oracle signaled to NetSuite that Oracle would not use its commercial leverage against NetSuite. On that day, which was during the early stages of the acquisition process, Oracle's Independence Committee (Defendants Berg, Bingham, Conrades, and Garcia-Molina) approved by written consent licensing Oracle's Active Data Guard software to NetSuite at a whopping ***75.4% discount***. This related-party, discounted licensing transaction with NetSuite was presented to the full Board at the April 29, 2016 Board meeting.

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[6] The April 29, 2016 Board meeting was attended by all thirteen defendant directors other than Conrades. The July 26, 2016 Board meeting was attended by all thirteen defendant directors.

The Special Committee Retains Moelis and Incentivizes Moelis to Complete an Acquisition of NetSuite

101. The Special Committee retained Moelis & Company LLC ("Moelis") to act as its financial advisor and incentivized Moelis to execute on the NetSuite transaction. The Moelis engagement letter created a huge financial incentive for Moelis to pursue and complete a transaction with NetSuite and no financial incentive for Moelis to recommend any other acquisition or alternative. Specifically, the Moelis engagement letter provided for the following fee structure: an "Evaluation Phase Fee" of $1 million for evaluating a potential transaction with NetSuite and nominally alternatives thereto; an "Opinion Fee" of $2 million for issuing an opinion on the fairness of a potential transaction with NetSuite (but not alternative transactions); and "Transaction Fee" of $17 million upon the closing of an acquisition of NetSuite (but not alternative transactions). The Evaluation Phase Fee and the Opinion Fee were to be offset against the Transaction Fee. Thus, $16 million of Moelis's $17 million total fee was contingent upon reaching the point of a fairness opinion on a transaction with NetSuite, and $14 million of that fee was contingent upon the closing of an acquisition of NetSuite by Oracle. Moelis thus was highly incentivized to ensure that Oracle pursued a transaction with Netsuite and that the acquisition of

NetSuite closed. Put differently, with only a $1 million fee that was not contingent on NetSuite, Moelis would almost assuredly lose money on the engagement if Oracle did not pursue and close an acquisition of NetSuite, particularly since it was a purported independent financial advisor to the Special Committee that had no claim to and would be unlikely to receive any other assignment from Oracle.

102. The Special Committee members, and by extension the Oracle Board members who received reports on the acquisition process, knowingly breached their fiduciary duties by creating a huge financial incentive for Moelis to provide biased advice to the Special Committee, upon which the Oracle directors could not rely in good faith.

The Special Committee Appoints a Conflicted Chair and Places Catz at the Center of the Acquisition Process

103. At the Special Committee's first meeting, held on April 8, 2016, it appointed James as the chair of the Special Committee. James's role was highly problematic given her "close friendship" with Catz, which Catz publicly proclaimed at Oracle's 2014 OpenWorld conference in her first public comments in her co-CEO role.

104. James and the Special Committee continued to rely on Catz to lead the acquisition of NetSuite, notwithstanding their knowledge of her long-standing allegiance to Ellison. At no point during the process did the Board instruct Catz to refrain from discussing the NetSuite process with Ellison or take any measure to ensure she was not simply acting as Ellison's henchman.

105. Catz appeared and presented at 10 of 13 Special Committee meetings and provided direction at every step of the way. The Special Committee's evaluation of the acquisition was only as good as the information provided to it by Catz, which was influenced by Ellison and was, even apart from conflicts, deceptive, fundamentally flawed, and inconsistent. Indeed, as explained more fully below, Catz and her management team created inflated, illegitimate projections to justify the acquisition of NetSuite at an inflated price.

106. At no point during the acquisition process did the Special Committee take a single action that Catz had recommended against. Instead, the Special Committee dutifully followed each and every recommendation made by Catz and the management team. For example:

- May 20, 2016: Catz recommends that the Special Committee focus solely on an acquisition of NetSuite; the Special Committee determines at the same meeting that it would focus solely on an acquisition of NetSuite.

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- May 27, 2016: Catz recommends that Oracle make an initial offer to NetSuite of $100 per share; the Special Committee determines at the same meeting to offer NetSuite $100 per share.
- June 8, 2016: Catz recommends that Oracle raise its offer to $106 per share; the Special Committee determines at the same meeting to raise its offer to NetSuite $106 per share.
- June 14, 2016: Catz recommends delaying a further response to NetSuite; the Special Committee determines at the same meeting not to immediately respond to NetSuite.
- June 28, 2016: Catz recommends that management hold continued due diligence meetings with NetSuite; the Special Committee determines at the same meeting that Oracle management should hold due diligence meetings with NetSuite.
- July 27, 2016: Catz makes a presentation to the Special Committee that management is "seeking Special Committee's approval to . . . acquire NetSuite for $109 per share;" the Special Committee approves the acquisition of NetSuite at $109 per share.

This chronology is described in greater detail below.

The Special Committee Decides The Acquisition Warrants Further Exploration Without Meaningfully Evaluating Alternatives

107. On May 20, 2016, the Special Committee held a meeting, ostensibly to decide whether to pursue an acquisition of NetSuite. This should have been a meeting where the Special Committee took a meaningful look at alternatives to acquiring NetSuite, but there was no meaningful review of alternatives.

108. The Special Committee received a nine-page presentation from Oracle management, including Catz, and a thirty-page presentation from Moelis.

Consistent with the incentives of management and Moelis, both presentations were simply pitchbooks in favor of the NetSuite acquisition. Neither presentation contained any meaningful information or analysis concerning organic alternatives to buying NetSuite. Nor did the presentations contain any information about the possibility of simply competing against NetSuite, including information about how Oracle was performing in competitions against NetSuite.

109. Both presentations concluded that NetSuite was preferable to other acquisition targets, although neither contained non-superficial information to support such a conclusion. The management presentation contained a single-page with no information other than the logos of approximately twenty companies and a title "potential ERP acquisition targets considered." The Moelis presentation contained two pages on "Select SaaS Landscape" that provided bullet points on six companies. The landscape presentation expressly relied on the input of Oracle management and touted NetSuite as a "potentially actionable opportunity" while dismissing at least two other potential acquisition targets on the basis of "actionability." Moelis and the Special Committee, of course, had no authority (or incentive) to actually inquire about whether the other targets were actionable.

110. The Moelis presentation concluded that, although NetSuite had never been profitable on a GAAP basis and its growth would be heavily dependent on Oracle's ability to scale its sales force and could require significant further investment by Oracle, a potential acquisition of NetSuite warranted further exploration. The presentation did not include any quantitative financial analysis or an evaluation of the potential economic terms of a transaction between Oracle and NetSuite.

111. The management presentation was designed to advocate Catz's conclusion "that NetSuite provides the best strategic fit with Oracle" and again recommended in favor of an acquisition. Catz's presentation contrasted sharply with management's view of NetSuite before Ellison set the Company on an acquisition course, even though there does not appear to have been any substantial change in NetSuite's product offering. The following excerpts compare management's presentation from April 2015, before Ellison expressed interest in acquiring NetSuite, to Catz's presentation on May 20, 2016:

> April 2015: "Suboptimal accounting model for global companies (intercompany, master reference data, GL structure). ***Not a complete suite.*** ***Missing popular services*** such as Workforce Management, Learning Management, Profitability Management, Balanced Scorecard, etc. ***Too many Tech features missing*** such as Identity Management, Data Integration, etc."

> May 2016: "Well designed Offering. Provides customers with a ***full business system to run a company***, but hasn't targeted deep best-of-breed solution requirements."
>
> April 2015: "***Cumbersome, old-fashioned user interface.*** Weak reporting with ***static dashboards*** created during implementation."
>
> May 2016: "Architecture ***allows customers to create customizations*** where NetSuite's products need to be finished, and can be upgraded."

The Special Committee followed management's recommendation and determined that it would focus on an acquisition of NetSuite. When doing so, the Special Committee did not question Catz why management's view of NetSuite had so dramatically changed since the year prior.

The Special Committee Decides To Make An Initial Proposal of $100 Per Share

112. After following management's recommendation to pursue an acquisition of NetSuite, the Special Committee met a week later, on May 27, 2016, to determine the offer price. At the May 27 meeting, Moelis presented its preliminary financial analysis of NetSuite, which included a Selected Public SaaS Companies analysis, a Selected Precedent Transactions analysis, and a DCF analysis.

113. Moelis's Selected Public SaaS Companies analysis showed that NetSuite's "operating statistics" fell below Moelis's concluded mean and median

operating statistics in all but one of the categories included in the analysis, with its gross margin and EBITDA margin falling significantly below Moelis's concluded mean and median:

Selected Public SaaS Companies

MOELIS & COMPANY

As of May 23, 2016 (*$ in millions*)	Enterprise Value	Revenue CY'16E	Revenue Growth '15A-'16E	Revenue Growth '16E-'17E	Gross Margin CY'16E	EBITDA Margin CY'16E	LT Growth Rate	Enterprise Value / Revenue LTM	Enterprise Value / Revenue CY'16E	Enterprise Value / Revenue CY'17E	Enterprise Value / EBITDA [1] CY'16E	Enterprise Value / EBITDA [1] CY'17E
Selected Public SaaS Companies												
salesforce.com, inc.	$58,058	$8,190	22.8%	19.8%	76.9%	20.5%	29.9%	8.2x	7.1x	5.9x	34.6x	28.4x
Workday, Inc.	14,906	1,549	33.2%	31.0%	72.3%	8.2%	50.0%	12.8x	9.6x	7.3x	n/m	n/m
Palo Alto Networks, Inc.	13,945	1,571	36.6%	32.0%	77.2%	22.0%	43.6%	12.1x	8.9x	6.7x	40.4x	28.0x
ServiceNow, Inc.	12,506	1,370	36.3%	30.2%	75.0%	17.9%	45.9%	11.4x	9.1x	7.0x	n/m	32.5x
Splunk, Inc.	7,075	882	32.0%	28.7%	87.1%	9.1%	49.5%	10.6x	8.0x	6.2x	n/m	n/m
The Ultimate Software Group, Inc.	5,731	779	26.0%	22.0%	63.4%	24.9%	23.3%	8.7x	7.4x	6.0x	29.6x	23.9x
Cornerstone OnDemand, Inc.	2,191	432	27.2%	24.0%	72.2%	7.7%	20.0%	6.0x	5.1x	4.1x	n/m	40.8x
Overall Mean		**$2,110**	**30.6%**	**26.8%**	**74.9%**	**15.8%**	**37.4%**	**10.0x**	**7.9x**	**6.2x**	**34.8x**	**30.7x**
Overall Median		**1,370**	**32.0%**	**28.7%**	**75.0%**	**17.9%**	**43.6%**	**10.6x**	**8.0x**	**6.2x**	**34.6x**	**28.4x**
Napa (Wall Street)	**$6,416**	**$967**	**30.4%**	**26.8%**	**69.8%**	**8.0%**	**44.4%**	**8.1x**	**6.6x**	**5.2x**	**n/m**	**n/m**

NetSuite thus should have garnered a lower multiple than Moelis's concluded mean and median revenue multiples, particularly for purposes of determining an opening acquisition offer. Instead, the Special Committee would ultimately authorize an initial proposal of $100 per share, implying a multiple of 8.8x 2016 revenue and 7.0x 2017 revenue, which ***exceeded*** Moelis's median revenue multiples of 8.0x 2016 revenue and 6.2x 2017 revenue, as well as Moelis's mean revenue multiples of 7.9x 2016 revenue and 6.2x 2017 revenue. In terms of enterprise value, the $100 per share initial proposal exceeded Moelis's valuation of NetSuite—as determined by Moelis's Selected Public SaaS Companies analysis—by at least $773 million and by as much as $981 million.

114. Moelis's Selected Precedent Transactions analysis resulted in median multiples of 9.0x last twelve months ("LTM") revenue and 7.9x next twelve months ("NTM") revenue. The $100 per share initial proposal likewise exceeded those multiples, implying a valuation of NetSuite at a multiple of 10.8x NetSuite's LTM revenue and 8.3x its NTM revenue. In terms of enterprise value, the $100 initial proposal exceeded Moelis's valuation of NetSuite—as determined by Moelis's Selected Precedent Transactions analysis—by at least $411 million and by as much as $1.42 billion.

115. To justify offering such a significant premium to Moelis's median multiples, the presentation stated that "[c]ertain of Napa's operating statistics fall on the higher end of the range of those statistics for companies used in the Selected Public SaaS Companies and Selected Precedent Transactions."

116. With respect to the Selected Public SaaS Companies analysis, that claim was demonstrably false. As explained above, NetSuite's "operating statistics" fell below Moelis's reported medians in 5 out of the 6 categories of operating statistics included in the analysis, with its gross margin and EBITDA

margin falling significantly below Moelis's concluded medians, and with just one operating statistic falling at or slightly above the median.

117. As to the Selected Precedent Transactions analysis, it was true that NetSuite's LTM revenue and NTM revenue growth rate fell at the higher end of the range for companies included in the analysis. But many of the companies included in the Selected Precedent Transactions analysis had already achieved profitability, whereas NetSuite had never turned a profit on a GAAP basis in any year during its 18-year history. Moreover, nearly all of the transactions included in the Selected Precedent Transactions analysis involved a competitive bidding process that generated price discovery and premium revenue multiples for the target companies. Those transactions were hardly comparable precedent for the opening bid in Oracle's prospective acquisition of NetSuite, as Ellison's control of NetSuite operated to dissuade prospective acquirors from submitting competing bids.

118. The other ostensible justification for the $100 per share offer was Moelis's DCF analysis. That analysis, however, was based on synergized projections for NetSuite that were prepared not by NetSuite management but by Oracle's conflicted management, led by Catz. Oracle's "Management Incremental Case" for NetSuite was based on unrealistic assumptions, such as the

assumption that Oracle would transmogrify NetSuite's steadily-declining EBIT margin from 2.4% in the prior twelve months into an unprecedented 21.3% in 2017, and further to a staggering 46.3% in 2021:

Napa Historical and Projected Financial Summary
(Orlando Management Incremental Case)

MOELIS & COM

	Napa Standalone FYE December				Napa as part of Orlando FYE May				
($ in millions, unless indicated)	FY13A Year	FY14A Year	FY15A Year	LTM Mar-16	FY17E Year [1]	FY18E Year	FY19E Year	FY20E Year	FY21E Year
Subscription and support	$333.6	$447.8	$593.1	$633.5	$829.8	$1,070.5	$1,359.5	$1,699.4	$2,073.2
YoY Growth	*31.9%*	*34.2%*	*32.5%*	*31.6%*	*31.0%*	*29.0%*	*27.0%*	*25.0%*	*22.0%*
Professional services and other	81.0	108.5	148.1	159.5	204.1	253.1	303.7	358.4	415.7
YoY Growth	*44.8%*	*34.0%*	*36.5%*	*36.5%*	*28.0%*	*24.0%*	*20.0%*	*18.0%*	*16.0%*
Total Revenue	**$414.5**	**$556.3**	**$741.1**	**$792.9**	**$1,033.9**	**$1,323.6**	**$1,663.2**	**$2,057.8**	**$2,489.0**
YoY Growth	***34.2%***	***34.2%***	***33.2%***	***32.6%***	***30.4%***	***28.0%***	***25.7%***	***23.7%***	***21.0%***
Subscription and support Gross Profit	284.4	384.1	508.3	541.1	713.6	931.3	1,196.4	1,512.4	1,865.9
Subscription and Support Margin	*85.3%*	*85.8%*	*85.7%*	*85.4%*	*86.0%*	*87.0%*	*88.0%*	*89.0%*	*90.0%*
Professional services and other Gross Profit	9.9	14.0	12.3	12.9	20.4	29.1	38.0	50.2	62.4
Professional Services and Other Margin	*12.2%*	*12.9%*	*8.3%*	*8.1%*	*10.0%*	*11.5%*	*12.5%*	*14.0%*	*15.0%*
Gross Profit	**$294.3**	**$398.1**	**$520.6**	**$554.0**	**$734.1**	**$960.4**	**$1,234.3**	**$1,562.6**	**$1,928.3**
Total Gross Margin	***71.0%***	***71.6%***	***70.2%***	***69.9%***	***71.0%***	***72.6%***	***74.2%***	***75.9%***	***77.5%***
R&D [2]	$56.8	$80.7	$105.8	$112.6	$100.0	$125.0	$150.0	$175.0	$200.0
% of Revenue	*13.7%*	*14.5%*	*14.3%*	*14.2%*	*9.7%*	*9.4%*	*9.0%*	*8.5%*	*8.0%*
S&M	183.3	252.1	343.0	367.2	387.7	430.2	469.9	514.4	560.0
% of Revenue	*44.2%*	*45.3%*	*46.3%*	*46.3%*	*37.5%*	*32.5%*	*28.3%*	*25.0%*	*22.5%*
G&A	32.6	39.2	53.1	55.1	25.8	33.1	16.6	16.5	16.2
% of Revenue	*7.9%*	*7.0%*	*7.2%*	*7.0%*	*2.5%*	*2.5%*	*1.0%*	*0.8%*	*0.7%*
Total Operating Expenses	**$272.7**	**$371.9**	**$501.9**	**$535.0**	**$513.6**	**$588.2**	**$636.5**	**$705.9**	**$776.2**
% of Revenue	*65.8%*	*66.9%*	*67.7%*	*67.5%*	*49.7%*	*44.4%*	*38.3%*	*34.3%*	*31.2%*
EBIT	**$21.6**	**$26.2**	**$18.7**	**$19.0**	**$220.5**	**$372.2**	**$597.8**	**$856.7**	**$1,152.1**
EBIT Margin	***5.2%***	***4.7%***	***2.5%***	***2.4%***	***21.3%***	***28.1%***	***35.9%***	***41.6%***	***46.3%***

Moelis based its DCF analysis on the synergized EBIT projections provided by Oracle's conflicted management "at the Company's direction," resulting in a range of values per share of $121.21 – $181.56, and a range of implied perpetuity growth rates of 5.4% – 10.1%. The results of the DCF analysis far exceeded the values resulting from Moelis's Selected Public SaaS Companies and Selected

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Precedent Transactions analyses, which were based on Wall Street consensus projections for NetSuite, as opposed to Oracle management's tainted projections.

119. Catz and Kehring, among others, also presented a slide book regarding NetSuite at the May 27 meeting. Management's presentation included two DCF calculations, one based on a terminal multiple and the other based on a perpetuity growth rate. Management's book indicated that an acquisition of NetSuite at $100 per share would have been, by far, the most expensive large horizontal SaaS acquisition since 2012, as measured by EV / LTM EBIT. Despite those figures, management recommended an initial proposal of $100 per share in cash—the low end of the range Catz discussed in her initial conversation with Nelson. The Special Committee followed suit, unaware of Catz's unauthorized price discussion, and asked Moelis to convey an initial proposal to NetSuite of $100 per share in cash.

NetSuite Counters The Initial Proposal At $125 Per Share, And The Special Committee Responds With An Offer of $106 Per Share

120. NetSuite countered the initial proposal at $125 per share—the high end of the price range Catz discussed with Nelson. The Special Committee met on June 8, 2016, again with Catz and other members of Ellison's management team present. Management presented the same DCF valuation ranges as the prior

meeting. Management advised the Special Committee to counter at $106 per share and, at the conclusion of the meeting, the Special Committee followed suit by asking Moelis to convey an offer of $106 per share to NetSuite.

NetSuite Counters At $120 Per Share, And Oracle Learns That NetSuite Will Miss Its Second Quarter Consensus Revenue Estimates

121. NetSuite countered at $120 per share, which prompted another Special Committee meeting on June 14, 2016. At that June 14th meeting, management advised the Special Committee to hold off on an immediate response, so the Special Committee did so.

122. On June 28, 2016, NetSuite's financial advisor called Moelis, indicating that the "recent market volatility as a result of the vote on Brexit may have created a window of opportunity to come to an agreement on price." The reality was that NetSuite's results were softening—NetSuite's subscription revenue would likely miss consensus estimates, and NetSuite would be challenged to meet its standalone revenue guidance for the remainder of fiscal year 2016. Catz recommended that, in response, the parties should schedule another due diligence session. The Special Committee again followed suit. Oracle management conducted the July 6 diligence call with NetSuite's CFO, also attended by James and Moelis.

123. At a July 8, 2016 Special Committee meeting, Catz recommended that the Special Committee request additional meetings between management and NetSuite—the Special Committee again complied and requested just that. The Special Committee minutes do not indicate that the Special Committee provided any guidance or instruction regarding whether any topics were off-limits. Between July 8 and July 12, 2016, Oracle management, led by Catz, held multiple unsupervised meetings and calls with NetSuite.

124. The Special Committee met on July 12, 2016 to discuss management's findings. As noted, management observed that NetSuite's subscription revenue would likely miss consensus estimates and that NetSuite would be challenged to meet its standalone revenue guidance for the remainder of fiscal year 2016. NetSuite's softening financial performance should not have come as a surprise to the Special Committee, as Moelis had recently provided the Committee with equity research reports from analysts who initiated coverage of NetSuite a month earlier in June 2016. Cowen & Company ("Cowen"), for example, initiated coverage of NetSuite at a rating of "underperform." Cowen noted that "cracks in growth surfaced in 2015" and that "competition is intensifying." Cowen stated that the major ERP incumbents "all now have aggressive pushes into the market," whereas NetSuite used to have "a wide open

field." Cowen placed a price target of $70 per share on NetSuite, significantly below its $77.40 per share trading price at that time.

125. Based on the decrease in NetSuite's expected growth, management presented new DCF ranges with reductions in value off of the May 27, 2016 presentation (which justified the Special Committee's $100 per share initial offer). These decreases included:

- DCF Terminal Multiple Range: $9.41 per share decrease on the low end; $14.00 per share decrease on the high end.
- DCF Perpetuity Growth Rate Range: $5.14 per share decrease on the low end; $9.48 per share on the high end.

Management did not change the midpoint discount rates, terminal multiples, or perpetuity growth rates since its May 27, 2016 presentation – the lower values were driven by the decreased growth inherent in NetSuite's latest financial results. Management's presentation also demonstrated that the Acquisition, even at $106 per share, was drastically out of line with the historical prices the Company paid in acquisitions. In particular, the presentation included two slides comparing an acquisition of NetSuite at $106 per share to precedent transactions, including those completed by Oracle. The slides showed that the Acquisition at $106 per share would be the richest deal Oracle ever engaged in based on expected growth versus revenue multiple. In addition, the presentation demonstrated that even at $106 per share, the Acquisition would be at the highest multiple to LTM EBIT of any of the Company's SaaS acquisitions. Despite the decrease in NetSuite's value and the richness of the price, the Special Committee chose to reaffirm management's initial recommended offer of $106 per share. The Special Committee did not review a presentation from Moelis when reaching that conclusion.

Despite NetSuite's Softening Financial Performance, The Special Committee Increases Its Offer To $109 Per Share Based on Newly Created Sham Projections From Catz

126. The following day, July 13, 2016, the Special Committee met to consider NetSuite's counter-offer of $111 per share. The spread between Oracle's bid and NetSuite's ask had thus narrowed to a midpoint of $108.50 per share. Catz and Oracle's management team presented a new set of valuation materials, but in just one day, created two new sets of projections in order to make NetSuite appear more valuable. Under the new "Valuation Summary," management changed the name of its one existing set of NetSuite projections to the "Conservative Case." The "Conservative Case" resulted in identical DCF valuation ranges to the prior single-case valuation. Since their presentation just one day prior—with no due diligence meetings or new information in the interim—Catz and Oracle management created two new sets of higher

projections for NetSuite. Management called the new, higher sets of projections the "Base" and "Upside" cases. In order to create the "Base" and "Upside" cases, management simply ratcheted up its projected growth rates, professional services margins, and R&D spend for NetSuite. With respect to the already-aggressive assumptions in the Terminal Multiple DCF range, the new "Base" and "Upside" ranges, for the first time, presented valuation ranges entirely above the upcoming $109 per share acquisition price. After Catz provided views on Oracle's next move, the Special Committee determined to make a "best and final" proposal at $109 per share. The Special Committee did not consider the unreliable nature of these ratcheted-up projections, which prevented the Special Committee from making its "best and final" offer on a fully-informed basis.

127. Throughout the months of June and July 2016, the Special Committee permitted Ellison to negotiate directly with NetSuite regarding whether Ellison would vote his shares proportionately with NetSuite's other stockholders in the event of a superior proposal. The Special Committee opened this direct line of communication between Ellison's representatives and NetSuite on June 8, 2016, but did not indicate that any topic was off-limits for discussion. Ellison agreed to proportional voting, which made it easier for public stockholders of NetSuite to block a transaction (or threaten to do so) and thereby

press for a higher price from Oracle. The Special Committee was not otherwise informed of back-and-forth negotiations, or whether Ellison negotiated any other issues directly with NetSuite.

The Special Committee Meets And Approves The Acquisition Of NetSuite For $109 Per Share

128. After NetSuite agreed to $109 per share, the Special Committee met to approve the Acquisition on July 27, 2016. Catz and other members of Ellison's management team were of course in attendance. Catz's management presentation stated in its Executive Summary: "Seeking Special Committee's approval to enter into a definitive agreement to acquire NetSuite for $109 per share through a cash tender offer." Management's presentation was thus not intended as an independent analysis of the transaction; it was a sales pitch for the Special Committee to complete a deal. In that presentation, Oracle management's "Valuation Summary" remained materially similar to the inflated DCF ranges presented on July 13, 2016.

129. Moelis also presented its fairness analysis at the July 27 meeting. Like Moelis's preliminary financial analysis (presented at the May 27 Special Committee meeting), Moelis's final fairness analysis was based upon a Selected

Public SaaS Companies analysis, a Selected Precedent Transactions analysis, and a DCF analysis.

130. Moelis's final Selected Public SaaS Companies analysis, like its preliminary analysis, demonstrated that NetSuite's financial performance fell below the median performance for companies included with respect to 5 of the 6 performance metrics that Moelis analyzed, with NetSuite's gross margin and EBITDA margin falling significantly below Moelis's concluded medians:

Selected Public SaaS Companies

MOELIS & COMPANY

- Consistent with Napa, the Selected Public SaaS Companies below are commonly valued on a revenue multiple basis
- Given Napa's operating performance is consistent with the Selected Public SaaS Companies below, for valuation purposes, the revenue multiple means and medians were taken into consideration by Moelis

As of July 22, 2016			Revenue		Gross	EBITDA	LT	Enterprise Value /			Enterprise Value /	
	Enterprise	Revenue	Growth		Margin	Margin	Growth	Revenue			EBITDA [1]	
($ in millions)	Value	CY'16E	'15A-'16E	'16E-'17E	CY'16E	CY'16E	Rate	LTM	CY'16E	CY'17E	CY'16E	CY'17E
Selected Public SaaS Companies												
salesforce.com, inc.	$58,666	$8,308	24.6%	21.6%	76.9%	20.1%	29.2%	8.3x	7.1x	5.8x	35.1x	26.9x
Workday, Inc.	16,192	1,554	33.7%	30.7%	71.9%	8.5%	38.3%	12.9x	10.4x	8.0x	n/m	n/m
ServiceNow, Inc.	12,957	1,369	36.1%	30.1%	75.0%	17.9%	43.9%	11.8x	9.5x	7.3x	n/m	33.9x
Palo Alto Networks, Inc.	12,363	1,583	25.5%	31.4%	77.4%	21.3%	40.9%	9.8x	7.8x	5.9x	36.6x	25.8x
Splunk, Inc.	7,928	897	34.2%	28.2%	85.6%	8.5%	43.8%	10.9x	8.8x	6.9x	n/m	n/m
The Ultimate Software Group, Inc.	6,493	779	26.1%	21.9%	63.3%	24.9%	23.3%	9.8x	8.3x	6.8x	33.5x	27.0x
Cornerstone OnDemand, Inc.	2,563	432	27.1%	23.9%	72.3%	7.9%	20.0%	7.0x	5.9x	4.8x	n/m	45.9x
Overall Mean		**$2,132**	**29.6%**	**26.8%**	**74.6%**	**15.6%**	**34.2%**	**10.1x**	**8.3x**	**6.5x**	**35.1x**	**31.9x**
Overall Median		**1,369**	**27.1%**	**28.2%**	**75.0%**	**17.9%**	**38.3%**	**9.8x**	**8.3x**	**6.8x**	**35.1x**	**27.0x**
Napa (Wall Street - at Market)	**$7,203**	**$966**	**30.4%**	**26.6%**	**69.7%**	**8.5%**	**36.8%**	**8.5x**	**7.5x**	**5.9x**	**n/m**	**n/m**
Napa (Napa Mgmt. - at Market)	**$7,203**	**$960**	**29.6%**	**26.9%**	**67.5%**	**n/a**	**n/a**	**8.5x**	**7.5x**	**5.9x**	**n/a**	**n/a**

131. Thus, based on Moelis's Selected Public SaaS Companies analysis, NetSuite warranted a valuation below the prices implied by the concluded median revenue multiples of 9.8x LTM revenue, 8.3x 2016 revenue, and 6.8x

2017 revenue. The proposed transaction price of $109 per share, however, implied revenue multiples for NetSuite far in excess of Moelis's median revenue multiples:

Orlando Offer Summary

MOELIS & COMPANY

ORLANDO OFFER IMPLIED VALUATION

($ in millions, except per share amounts)

Offer Price	**$109.00**
Basic Shares Outstanding [1]	80.922
Dilutive Securities and Make-Whole Shares [2]	5.944
Fully Diluted Shares Outstanding	86.866
Implied Equity Value	**$9,468.4**
Plus: Debt (as of 06/30/16) [3]	$295.5
Less: Cash (as of 06/30/16)	(410.7)
Total Enterprise Value	**$9,353.2**

Per Share Price Premium	Price	Premium
% Unaffected [4] (as of 07/11/16)	$75.85	43.7%
% Current (as of 07/22/16)	84.72	28.7%
% 1-Month Prior Avg. (beginning 06/22/16)	76.13	43.2%
% 1-Year Prior Avg. (beginning 07/22/15)	79.30	37.5%
Premium to 52-Week High (as of 07/24/15)	102.46	6.4%
Premium to 52-Week Low (as of 02/16/16)	51.75	110.6%

IMPLIED TRANSACTION MULTIPLES

Reported	Statistic	TEV Multiple
Revenue - LTM (6/30/16) [6]	846.4	11.1x

Wall Street Consensus [5]	Statistic	TEV Multiple
Revenue - CY2016E	$966.1	9.7x
Revenue - NTM (6/30/17)	1,090.5	8.6x
Revenue - CY2017E	1,222.8	7.6x
EBITDA - CY2016E	$81.7	NM
EBITDA - CY2017E	109.8	NM

Napa Management [6]	Statistic	TEV Multiple
Revenue - CY2016E	$960.2	9.7x
Revenue - NTM (6/30/17)	1,084.1	8.6x
Revenue - CY2017E	1,218.3	7.7x
EBITDA - CY2016E	NA	NA
EBITDA - CY2017E	NA	NA

Moelis does not explain this marked departure from its analysis; it simply states, without explanation, that the median revenue multiples were somehow "taken into consideration by Moelis" in recognition of the fact that "Napa's operating performance is consistent with the Selected Public SaaS Companies." If one were to charitably assume that NetSuite warranted a median revenue multiple, as Moelis suggested in its fairness presentation, then Moelis's Selected Public SaaS

Companies analysis would indicate that Oracle overpaid for NetSuite by at least $978 million and by as much as $1.35 billion.

132. The proposed acquisition price likewise exceeded the value of NetSuite implied by Moelis's Selected Precedent Transactions analysis. The $109 per share price implied a valuation of NetSuite at a multiple of 11.1x LTM revenue, which was well above Moelis's concluded median multiple of 9.2x LTM revenue and Moelis's concluded mean multiple of 9.3x LTM revenue. In terms of enterprise value, Moelis's Selected Precedent Transactions analysis demonstrates that Oracle overpaid for NetSuite by $1.5 billion – $1.6 billion on a LTM revenue basis.

133. Moreover, it appears that Oracle management manipulated Moelis's Selected Precedent Transactions analysis, resulting in the artificial inflation of Moelis's mean revenue multiple and, thus, NetSuite's value on a precedent transactions basis. Moelis's analysis included Oracle's acquisition of DataLogix Holdings, Inc. ("DataLogix") as one of the precedent transactions. Moelis noted on the slide describing its Selected Precedent Transactions analysis that "DataLogix Holdings, Inc. financial information was provided by Oracle Management, as DataLogix Holdings, Inc. was private at the time of [the] transaction." Oracle management apparently understated DataLogix's LTM

revenue in the information it provided to Moelis, thereby resulting in an implied LTM revenue multiple of 11.6x – one of the higher multiples in the data set. According to an article published by *Forbes*, Oracle's acquisition of DataLogix actually implied a much lower revenue multiple of 9.6x. Oracle management's manipulation of Moelis's analysis (and, thus, the Special Committee's process) resulted in a mean LTM revenue multiple that was more than 0.1 higher than it should have been, which was significant considering that 0.1x LTM revenue was equal to $84.6 million in enterprise value. More fundamentally, it suggests that Oracle management, not Moelis, actually selected the precedent transactions included in Moelis's Selected Precedent Transactions analysis.

134. If Oracle management selected the precedent transactions, that would explain why Moelis's Selected Precedent Transactions analysis included inflated revenue multiples for other transactions included in the analysis. For example, Moelis's analysis indicated that Concur Technologies, Inc. ("Concur") was acquired at multiples of 12.9x and 10.6x its LTM and NTM revenues, respectively. Concur, however, stated in its definitive proxy statement that the "merger consideration represented . . . multiples of ***12.6 times*** our last twelve months revenue and ***10.2 times*** our projected next twelve months revenue. . . ."

135. Moelis's DCF analyses also illustrate the influence of Oracle management on the Special Committee process. Moelis's final DCF analyses, like its preliminary DCF analysis, were based not on standalone projections for NetSuite provided by NetSuite management, but on synergized projections for NetSuite as part of Oracle provided by Oracle management. Those projections contained the same unreasonable assumption that Oracle would not only reverse the steady decline in NetSuite's EBIT margin (which had dipped to just 2.9% in 2015), but that it would grow NetSuite's EBIT margin to at least 22.1% by the second half of 2017, and further increase it to as much as 46.5% by 2021. These assumptions cannot be squared with any reasonable view of NetSuite's business, as best illustrated by NetSuite's own management projections:

Napa Historical and Projected Financial Summary (Napa Management Model)

MOELIS & COMPANY

($ in millions, unless indicated)	Napa Standalone FYE December FY13A Year	FY14A Year	FY15A Year	LTM Jun-16	Napa Standalone FYE December FY16E Year	FY17E Year	FY18E Year	FY19E Year	FY20E Year	FY21E Year
Subscription and support	$333.6	$447.8	$593.1	$672.7	$744.8	$935.6				
YoY Growth	*31.9%*	*34.2%*	*32.5%*	*30.3%*	*25.6%*	*25.6%*				
Professional services and other	81.0	108.5	148.1	173.7	215.4	282.7				
YoY Growth	*44.8%*	*34.0%*	*36.5%*	*36.5%*	*45.5%*	*31.2%*				
Total Revenue	**$414.5**	**$556.3**	**$741.1**	**$846.4**	**$960.2**	**$1,218.3**	**$1,533.0**	**$1,929.0**	**$2,425.0**	**$3,023.0**
YoY Growth	***34.2%***	***34.2%***	***33.2%***	***31.5%***	***29.6%***	***26.9%***	***25.8%***	***25.8%***	***25.7%***	***24.7%***
Cost of Subscription and support	49.1	63.7	84.8	100.6	113.4					
Cost of Professional services and other	71.1	94.5	135.7	160.0	198.7					
Total Cost of Revenue	120.2	158.1	220.6	260.6	312.1	388.3	471.0	560.0	671.0	818.0
Subscription and support Gross Profit	284.4	384.1	508.3	572.1	631.4					
Subscription and Support Margin	*85.3%*	*85.8%*	*85.7%*	*85.0%*	*84.8%*					
Professional services and other Gross Prof	9.9	14.0	12.3	13.7	16.7					
Professional Services and Other Margin	*12.2%*	*12.9%*	*8.3%*	*7.9%*	*7.7%*					
Gross Profit	**$294.3**	**$398.1**	**$520.6**	**$585.8**	**$648.1**	**$830.0**	**$1,062.0**	**$1,369.0**	**$1,754.0**	**$2,205.0**
Total Gross Margin	***71.0%***	***71.6%***	***70.2%***	***69.2%***	***67.5%***	***68.1%***	***69.3%***	***71.0%***	***72.3%***	***72.9%***
R&D	$54.8	$78.1	$102.8	$114.8	$124.2					
% of Revenue	*13.2%*	*14.0%*	*13.9%*	*13.6%*	*12.9%*					
S&M	183.3	252.1	343.0	385.9	416.7					
% of Revenue	*44.2%*	*45.3%*	*46.3%*	*45.6%*	*43.4%*					
G&A	32.6	39.2	53.1	57.7	62.7					
% of Revenue	*7.9%*	*7.0%*	*7.2%*	*6.8%*	*6.5%*					
Total Operating Expenses	**$270.7**	**$369.3**	**$498.9**	**$558.5**	**$603.6**	**$769.0**	**$951.0**	**$1,184.0**	**$1,469.0**	**$1,791.0**
% of Revenue	*65.3%*	*66.4%*	*67.3%*	*66.0%*	*62.9%*	*63.1%*	*62.0%*	*61.4%*	*60.6%*	*59.2%*
EBIT	**$23.6**	**$28.8**	**$21.7**	**$27.3**	**$44.5**	**$61.0**	**$111.0**	**$185.0**	**$285.0**	**$414.0**
EBIT Margin	***5.7%***	***5.2%***	***2.9%***	***3.2%***	***4.6%***	***5.0%***	***7.2%***	***9.6%***	***11.8%***	***13.7%***

Oracle management's synergized projections, which Oracle management directed Moelis to rely on, unsurprisingly led to anomalous results. Moelis's DCF analyses resulted in a range of prices from $117 – $211 per share, which implied a range of perpetuity growth rates from 6.1% – 9.5%, at multiples of the rate of inflation and the expected GDP growth rate at each end of the range.

136. Despite the fact that Moelis's own analyses demonstrated that Oracle's proposed offer of $109 per share significantly overvalued NetSuite, Moelis ultimately indicated that it was prepared to provide a fairness opinion, and

the Special Committee adopted resolutions to effectuate the acquisition of NetSuite at $109 per share.

137. On July 28, 2016, before the market opened, Oracle announced that it would acquire NetSuite for $109 per share. On August 18, 2016, Oracle filed its Schedule TO with the materially false and misleading Offer to Purchase. The Acquisition closed on November 5, 2016.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

138. Plaintiff brings this action derivatively in the right and for the benefit of Oracle to redress injuries suffered, and to be suffered, by Oracle as a direct result of breaches of fiduciary duty by the Oracle Director Defendants and aiding and abetting breaches of fiduciary duty by the NetSuite Defendants. Oracle is named as a nominal defendant solely in a derivative capacity.

139. Plaintiff was a stockholder of Oracle at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Oracle stockholder.

140. Plaintiff will adequately and fairly represent the interests of Oracle in enforcing and prosecuting its rights, and Plaintiff has retained counsel experienced in prosecuting this type of derivative action.

141. The Board of Oracle at the time of the filing of the initial complaint consisted of the following twelve individuals: defendants Ellison, Henley, Catz, Hurd, Berg, Boskin, Chizen, Conrades, Garcia-Molina, James, Panetta, and Seligman. Defendant Bingham was a member of the Oracle Board at all times relevant to the Acquisition but resigned in March 2017 amidst concerns about his relationship with a private equity fund backed by the Chinese government.

142. In the Memorandum Opinion of March 19, 2018, Vice Chancellor Glasscock ruled that "a majority of Oracle's twelve-person board could not impartially consider a demand." (Mem. Op. at 47.) Specifically, Ellison was ruled to be "conflicted," senior Oracle officers Catz, Hurd, and Henley "lack independence from Ellison," and "Plaintiff has cast reasonable doubt on the independence of at least Conrades, James, and Seligman." (*Id.* at 46-47.)

143. The current Board of Directors of Oracle consists of fourteen individuals, including Ellison, Catz, Hurd, Henley, Conrades, James, and Seligman.

144. Plaintiff has not made any demand on the Board to institute this action because such a demand is unnecessary under Delaware law, in light of the prior Memorandum Opinion and Oracle's formation of a special litigation committee to address claims concerning the Acquisition, and because making

demand would be a futile, wasteful, and useless act. The facts alleged in this complaint demonstrate that, at a minimum, reasonable doubt exists as to whether a majority of the Board was disinterested and independent, and whether the Acquisition and the decisions made in the Acquisition process were the product of a valid exercise of business judgment.

COUNT ONE
(Against the Oracle Director Defendants for Breach of Fiduciary Duty)

145. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

146. The Oracle Director Defendants owed and owe Oracle fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe Oracle the highest obligation of good faith, fair dealing, loyalty, and due care.

147. The Oracle Director Defendants violated and breached their fiduciary duties of care and loyalty by pressing for and agreeing to the Acquisition to benefit Ellison at the expense of Oracle and by causing Oracle to make materially false and misleading disclosures in its Schedule TO in order to cover up the sham nature of the acquisition process.

148. As a direct and proximate result of the Oracle Director Defendants' breaches of their fiduciary obligations, Oracle has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

149. Plaintiff, on behalf of Oracle, has no adequate remedy at law.

COUNT TWO
(Against the NetSuite Defendants for Aiding and Abetting)

150. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

151. The NetSuite Defendants knowingly participated in the breaches of fiduciary duty committed by Ellison, Catz, and Hurd by (i) negotiating on a non-arms-length basis with conflicted Oracle representatives respecting the major contours of the Acquisition; (ii) participating in a sham negotiation process with the Special Committee within the originally established parameters; and (iii) failing to disclose in NetSuite's 14D-9 the actual substance of the original communications with Oracle's conflicted representatives.

152. As a direct and proximate result of the NetSuite Defendants aiding and abetting of breaches of fiduciary obligations, Oracle has sustained significant

damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

153. Plaintiff, on behalf of Oracle, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Oracle, demands judgment as follows:

A. Declaring that the Oracle Director Defendants breached their fiduciary duties to the Company;

B. Declaring that the NetSuite Defendants aided and abetted breaches of fiduciary duties by the Oracle Director Defendants;

C. Awarding money damages against all defendants, jointly and severally, for all losses and damages suffered by Oracle as a result of the acts complained of herein, together with pre-judgment interest;

D. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

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DATED: July 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2019, I caused a true and correct copy of the **Public Version of the Verified Amended Derivative Complaint** to be served upon the following counsel of record by File&Serve*Xpress*:

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